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

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|---------------------------------|---|-----------------------------|
| FERDAWS AMIRI, ILYAS YONISI     | ) | Case No. 14-CV-03333 SC     |
|                                 | ) |                             |
| Plaintiffs,                     | ) | ORDER TRANSFERRING VENUE TO |
|                                 | ) | THE EASTERN DISTRICT OF     |
| v.                              | ) | <u>VIRGINIA</u>             |
|                                 | ) |                             |
| DYNCORP INTERNATIONAL, INC., et | ) |                             |
| al.                             | ) |                             |
|                                 | ) |                             |
| Defendants.                     | ) |                             |
|                                 | ) |                             |
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**I. INTRODUCTION**

Now before the Court is Defendants DynCorp International Inc. ("DII"), DynCorp International LLC ("DI LLC"), Worldwide Recruiting and Staffing Services LLC, and DTS Aviation Services, LLC's<sup>1</sup> (collectively, "Defendants" or "DynCorp") motion to dismiss Plaintiffs Ferdaws Amiri and Ilyas Yonisi's second amended

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<sup>1</sup> DTS Aviation Services, LLC was erroneously sued as "DynCorp Aviation Services, Inc." ECF No. 35 ("French Decl.") at ¶ 9. For simplicity the Court will refer to the Defendant by its correct name, or "DTS" for short.

1 complaint ("SAC"), ECF No. 22, for lack of personal jurisdiction  
2 and improper venue. ECF No. 32 ("Mot."). The motion is opposed,  
3 ECF No. 40 ("Opp'n"), and Defendants filed a reply. ECF No. 42  
4 ("Reply"). The motion is appropriate for resolution without oral  
5 argument under Civil Local Rule 7-1(b). For the reasons set forth  
6 below, the motion is GRANTED and the Court DIRECTS the clerk to  
7 transfer the action to the Eastern District of Virginia, Alexandria  
8 Division pursuant to 28 U.S.C. Section 1406(a).

9

10 **II. BACKGROUND**

11 This is a personal injury case alleging claims for battery,  
12 assault, and various forms of negligence that arose from a car  
13 accident in Afghanistan.

14 Plaintiffs worked for a company called AECOM Government  
15 Services as military contractors, and were in Afghanistan to  
16 participate in human intelligence gathering in support of United  
17 States military operations. Among many other nationwide and  
18 worldwide activities, Defendants provide an array of military  
19 contracting services including transportation, security, training,  
20 advising, and mentoring for the Afghan National Police.

21 Plaintiffs allege that, while driving military informants from  
22 Camp Phoenix (a military installation in Kabul maintained by the  
23 United States Army) two DynCorp vehicles driven by DynCorp  
24 employees repeatedly tried to run Plaintiffs off the road.  
25 Plaintiffs' vehicle was struck several times, and both Plaintiffs  
26 suffered serious injuries as a result. Furthermore, Plaintiffs  
27 contend that DynCorp was aware of other similar acts by its drivers

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1 but, rather than attempt to prevent such conduct, encouraged its  
2 employees to act aggressively.

3 Plaintiffs are citizens of California. DII is incorporated in  
4 Delaware with its principal place of business in Virginia. DI LLC  
5 is organized in Delaware with its principal place of business in  
6 Virginia, and is wholly owned by DII. DTS Aviation Services, LLC  
7 ("DTS Aviation") is organized in Nevada with its principal place of  
8 business in Texas, and DI LLC is its sole member. Worldwide  
9 Recruiting and Staffing Services LLC ("Worldwide") is organized in  
10 Delaware with its principal place of business in Texas, and DI LLC  
11 is its sole member.

12 Now Defendants move to dismiss under Rules 12(b)(2) and  
13 12(b)(3) of the Federal Rules of Civil Procedure, arguing that the  
14 Court lacks personal jurisdiction over Defendants and that venue is  
15 improper in this district. Plaintiffs oppose.

16

17 **III. LEGAL STANDARD**

18 **A. Personal Jurisdiction**

19 Under Rule 12(b)(2) of the Federal Rules of Civil Procedure,  
20 defendants may move to dismiss for lack of personal jurisdiction.  
21 Plaintiffs bear the burden of showing that the Court has personal  
22 jurisdiction over Defendants. See Pebble Beach Co. v. Caddy, 453  
23 F.3d 1151, 1154 (9th Cir. 2006). "[T]his demonstration requires  
24 that the plaintiff make only a prima facie showing of  
25 jurisdictional facts to withstand the motion to dismiss." Id.  
26 (quotations omitted). "[T]he court resolves all disputed facts in  
27 favor of the plaintiff . . . ." Id. (quotations omitted).

28 The Court follows state law in determining the bounds of

1 personal jurisdiction. Walden v. Fiore, 134 S. Ct. 1115, 1121  
2 (2014). California's long-arm statute is coextensive with the  
3 limits of federal due process. Schwarzenegger v. Fred Martin Motor  
4 Co., 374 F.3d 797, 800-01 (9th Cir. 2004). "Although a  
5 nonresident's physical presence within the territorial jurisdiction  
6 of the court is not required, the nonresident generally must have  
7 'certain minimum contacts . . . such that the maintenance of the  
8 suit does not offend traditional notions of fair play and  
9 substantial justice.'" Walden, 134 S. Ct. at 1121 (quoting Int'l  
10 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)).

11 If a defendant has sufficient minimum contacts with the  
12 relevant forum, personal jurisdiction may be founded on either  
13 general jurisdiction or specific jurisdiction. Panavision Int'l,  
14 L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). Plaintiffs  
15 in this case rely solely on general jurisdiction. General  
16 jurisdiction exists only when the defendant's contacts "'are so  
17 continuous and systematic as to render [it] essentially at home in  
18 the forum state.'" Daimler AG v. Bauman, 134 S. Ct. 746, 752  
19 (2014) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown,  
20 131 S. Ct. 2846, 2851 (2011)) (internal quotation marks omitted).

21 **B. Venue**

22 Federal Rule of Civil Procedure 12(b)(3) allows a defendant to  
23 move to dismiss an action for improper venue. On a Rule 12(b)(3)  
24 motion, "the pleadings need not be accepted as true, and the court  
25 may consider facts outside of the pleadings," but the court must  
26 draw all reasonable inferences and resolve all factual conflicts in  
27 favor of the non-moving party. Murphy v. Schneider Nat'l, Inc.,  
28 362 F.3d 1133, 1137 (9th Cir. 2004).

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**III. DISCUSSION**

Plaintiffs do not argue that the Court may exercise specific jurisdiction over Defendants. Instead, they argue that personal jurisdiction here is founded on general jurisdiction. Additionally, Plaintiffs allege venue is proper in this district solely on the basis of the Court's personal jurisdiction over Defendants. See 28 U.S.C. 1391(b)(3) (providing for venue in "any judicial district in which any defendant is subject to the court's personal jurisdiction . . .").

Because the Court concludes it lacks personal jurisdiction over Defendants, the Court finds venue improper as well.

**A. Personal Jurisdiction**

In order to exercise general (sometimes called "all-purpose") jurisdiction over Defendants, the Court must conclude that Defendants have "certain minimum contacts with [California] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe, 326 U.S. at 316 (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). Even if Plaintiffs can satisfy that test, the exercise of general jurisdiction also requires a showing that Defendants' contacts with California are "'so continuous and systematic as to render [Defendants] essentially at home'" in California. Daimler, 134 S. Ct. at 760 (quoting Goodyear, 131 S. Ct. at 2851) (internal quotation marks omitted). In other words, to be "essentially at home in the forum [s]tate," a company must be "comparable to a domestic enterprise in that State." Id. at 758 n.11.

Some have called this the "home-state test," and outside a

1 corporation's place of incorporation or principal place of business  
2 it is rarely satisfied. See Howard M. Erichson, The Home-State  
3 Test for General Personal Jurisdiction, 68 Vand. L. Rev. En Banc  
4 81, 83 (2013). In two recent cases, the Supreme Court has termed  
5 these two forums -- the place of incorporation and principal place  
6 of business -- the "paradigm all-purpose forums . . . ." Daimler,  
7 134 S. Ct. at 760; Goodyear, 131 S. Ct. at 2853-54. Nonetheless,  
8 the Supreme Court did not restrict general jurisdiction to only  
9 those two forums. Instead, the Court pointed out "that in an  
10 exceptional case . . . a corporation's operations in a forum other  
11 than its formal place of incorporation or principal place of  
12 business may be so substantial and of such a nature as to render  
13 the corporation at home in that state." Daimler, at 761 n.19  
14 (citing Perkins v. Benguet Consolidated Mining Co., 342 U.S. 437  
15 (1952)). While the Court did not define what an "exceptional case"  
16 is, its treatment of Perkins v. Benguet Consolidated Mining Co.,  
17 342 U.S. 437 (1952), indicates the bar for such a finding is very  
18 high.

19 In Perkins, the defendant was a corporation organized under  
20 the laws of the Philippines. During the Japanese occupation in  
21 World War II, the defendant's president moved to Ohio where he  
22 maintained an office, the company's files, and organized the  
23 company's activities. Id. at 448. The plaintiff sued the company  
24 in Ohio on a claim that had no connection to Ohio. Id. at 438.  
25 Nevertheless, the Supreme Court held that exercising general  
26 jurisdiction over the defendant was appropriate because "Ohio was  
27 the corporation's principal, if temporary, place of business."  
28 Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 780, n.11 (1984).

1 "This presumably is the type of situation that [Daimler] envisioned  
2 as the 'exceptional case' in which a defendant's affiliations with  
3 the forum are 'comparable' to those of a domestic company." Alan  
4 M. Trammell, A Tale of Two Jurisdictions, 68 Vand. L. Rev.  
5 (forthcoming 2015) at 20, available at:  
6 [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2417040](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2417040) (last  
7 accessed January 9, 2015). Yet "in the overwhelming majority of  
8 cases there will be no occasion to explore whether a Perkins-type  
9 exception might apply" because the Supreme Court's analysis in  
10 Daimler focused almost exclusively on the paradigmatic bases for  
11 general jurisdiction -- the corporation's place of incorporation  
12 and principal place of business. Id. (citing Daimler, 134 S. Ct.  
13 at 761)).

14 None of the paradigmatic bases for general jurisdiction are  
15 present in this case. Defendants are not incorporated in  
16 California, and none have their principal place of business here.  
17 Accordingly, Plaintiffs must show that this is the kind of  
18 "exceptional case" in which Defendants' operations in California  
19 are "so substantial and of such a nature as to render [Defendants]  
20 at home in" California. Daimler, 134 S. Ct. at 761 n.19.

21 Plaintiffs argue that five sets of contacts between Defendants  
22 and California are sufficient to create general jurisdiction: (1)  
23 DI LLC's contracts to do business with NASA at Edwards Air Force  
24 Base in Edwards, California, (2) DI LLC's contract to do aircraft  
25 maintenance for the Marine Corps in Miramar, California, (3) DII's  
26 contract with the State of California to fight wildfires, (4) two  
27 aircraft maintenance facilities owned or operated by DII or DI LLC  
28 in Redding and Ukiah, California, and (5) DI LLC's 239 employees in

1 California.

2 As a preliminary matter, Defendants take issue with some of  
3 these factual allegations. While these factual issues ultimately  
4 do not affect the outcome (the Court lacks personal jurisdiction  
5 regardless), the Court pauses to address them.

6 For instance, Plaintiffs argue that DII's contacts with  
7 California are sufficient to render it at home here because (1) it  
8 has a contract with CalFire, a state agency, to fight wildfires,  
9 and (2) DII or its subsidiaries operate two aircraft maintenance  
10 facilities in the state. Defendants do not dispute the particulars  
11 of the CalFire contract, which was in place in one form or another  
12 since 2001, was the subject of a \$137.7 million extension in 2008,  
13 includes responsibility for wildfire prevention and control for 30  
14 million acres of state land, and involved 7,550 flight hours by  
15 DynCorp pilots in 2007 alone. Instead, as Defendants point out in  
16 several declarations, the CalFire contract is actually between  
17 DynCorp International LLC, not DynCorp International, Inc. Those  
18 same declarations aver that DII is not registered to do business in  
19 California, has no registered agent in California, and has no  
20 employees, contracts, or facilities in California. See ECF Nos. 35  
21 ("French Decl.") at ¶¶ 3-6; 37 ("Castillo Decl.") at ¶ 3.  
22 Plaintiffs ignore these declarations, instead resting on the  
23 allegations in their complaint and the declaration of one of their  
24 attorneys attaching various documents located during Internet  
25 searches. See ECF No. 40-2 ("Flores Decl.") Ex. A. Among those  
26 documents is a press release indicating that DII has the contract  
27 with CalFire, and two entries from yp.com, the internet version of  
28 the Yellow Pages, showing DynCorp locations in Redding and Ukiah.



1 Id. at 1-7.

2 Defendants complain that "Plaintiffs contend that a press  
3 release has the same force and effect, and in fact, should be  
4 deemed more reliable than declaration [sic] submitted to this court  
5 under penalty of perjury." Reply at 4. But for the purposes of a  
6 Rule 12(b)(2) motion, the Court must resolve factual disputes in  
7 Plaintiffs' favor. See Pebble Beach, 453 F.3d at 1154. True,  
8 "[w]hen a defendant provides affidavits to support a Rule 12(b)(2)  
9 motion, the plaintiff may not simply rest on the allegations of the  
10 complaint." Wright & Miller, 4 Fed. Prac. & Proc. Civ. § 1067.6  
11 (3d ed.); see also Mavrix Photo, Inc. v. Brand Techs., Inc., 647  
12 F.3d 1218, 1223 (9th Cir. 2011), however that is not what happened  
13 with these allegations. Even if Plaintiffs' declaration appears  
14 exceedingly weak in light of Defendants' substantial submissions,  
15 because the Court did not hold an evidentiary hearing, the Court  
16 must treat Plaintiffs' allegations about the CalFire contract and  
17 Redding and Ukiah locations as true for the purpose of the motion.  
18 Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328  
19 F.3d 1122, 1129 (9th Cir. 2003).

20 This is not true, however, of several of the unsupported  
21 allegations in Plaintiffs' complaint. For example, Plaintiffs  
22 contend that DII is the parent company of the various DynCorp  
23 entities and "controls and is involved in the contracts and  
24 decision making for doing business that DynCorp International LLC  
25 and other entities has in California . . . ." Opp'n at 9. In  
26 Plaintiffs' view "[t]his has been pleaded in the Complaint and is  
27 sufficient to subject DynCorp International Inc[.] to jurisdiction  
28 in California as it is the principal of its agent DynCorp

1 International LLC and the other DynCorp defendants." Id. (citing  
2 Daimler, 134 S. Ct. at 760 for the proposition that "the Supreme  
3 Court assumed the contacts of the subsidiary could be imputed to  
4 the parent"). Tabling Plaintiffs' legal conclusion for the moment,  
5 Plaintiffs' sole basis for this factual conclusion is the  
6 allegations in their Complaint. However, as Defendants point out  
7 in their declarations, DII is not the managing member of any of the  
8 other DynCorp entities and "makes no decisions as it has no  
9 employees." Reply at 4 (citing French Decl. ¶¶ 8, 10, 14).  
10 Instead, DII is the sole member of DI LLC which, in turn, is the  
11 sole member of DTS Aviation and Worldwide. Similarly, Defendants'  
12 declarations contradict Plaintiffs' unsupported allegation that DII  
13 has been registered with the California Secretary of State to do  
14 business in the state since 1946. Compare Compl. ¶ 13, with French  
15 Decl. ¶ 4. Because these are "allegations in a pleading [that] are  
16 contradicted by affidavit," the Court "may not assume the[ir]  
17 truth . . . ." Marvix, 647 F.3d at 1223 (quoting Data Disc., Inc.  
18 v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1284 (9th Cir. 1977))  
19 (quotation marks omitted).

20 As a result, the relevant contacts are as follows. DII's  
21 contacts are limited to the CalFire contract and the Ukiah and  
22 Redding addresses. DI LLC has (1) a contract with NASA worth  
23 between \$46.6 million and \$176.9 million (depending on whether NASA  
24 exercises certain options) for aircraft maintenance and support  
25 split between four facilities, one of which is located in  
26 California (Edwards Air Force Base), (2) a \$9,643,087 contract with  
27 the Marine Corps with 16 percent of the work to be performed at the  
28 Marine Corps Air Station Miramar, California, (3) 239 employees who

1 reside in California, and (4) registration with the Secretary of  
2 State to do business in California. Worldwide posts jobs in  
3 California on its website, which lists positions with DynCorp  
4 entities worldwide. Plaintiffs do not allege any direct contacts  
5 between DTS Aviation Services LLC and California, however,  
6 Plaintiffs do allege that DTS (and the other DynCorp entities) is  
7 an agent or alter ego of the other Defendants.

8       Considering the DynCorp entities' activities "in their  
9 entirety, nationwide and worldwide," none of the DynCorp entities  
10 can be deemed "at home" in California. Daimler, 134 S. Ct. at 762  
11 n.20. Nonetheless, to understand that conclusion it is helpful to  
12 review two recent cases, Daimler and a subsequent Ninth Circuit  
13 case, Martinez v. Aero Caribbean, 764 F.3d 1062 (9th Cir. 2014),  
14 both of which found contacts between corporate defendants and  
15 California insufficient to satisfy the home-state test.

16       First, in Daimler, the Supreme Court held that the California  
17 activities of Daimler's subsidiary, Mercedes-Benz USA, LLC  
18 ("MBUSA"), were insufficient to subject Daimler to general  
19 jurisdiction in California. 134 S. Ct. at 750-51. MBUSA, a  
20 Delaware corporation with its principal place of business in New  
21 Jersey had multiple facilities in California, was "the largest  
22 supplier of luxury vehicles to the California market," with  
23 California sales accounting for 2.4% of Daimler's worldwide sales.  
24 Id. at 752. While the Supreme Court assumed (without deciding)  
25 both that MBUSA would be subject to general jurisdiction and that  
26 MBUSA's contacts with California could be imputed to Daimler, the  
27 Court nonetheless held that Daimler's contacts were insufficient  
28 "to render [it] essentially at home" in California. Id. at 751.

1 Instead, the Court emphasized that general jurisdiction is  
2 available against corporate defendants outside a corporation's  
3 place of incorporation and principal place of business in only  
4 "exceptional case[s] . . . ." Id. at 760-61 & n.19.

5 Second, after Daimler, the Ninth Circuit rejected an attempt  
6 to assert general jurisdiction against a foreign corporation in  
7 California. In Martinez, the plaintiffs alleged general  
8 jurisdiction against ATR, a French company, based on several  
9 hundred million dollars of contracts to sell aircraft and  
10 components in California, sending company representatives to  
11 California for business purposes, an unaffiliated entity's use of  
12 ATR's aircraft for flights in California, and advertisements in  
13 publications distributed in California. 764 F.3d at 1071. Relying  
14 heavily in Daimler, Judge Fletcher wrote that these contacts were  
15 "plainly insufficient to subject ATR to general jurisdiction in  
16 California." Id. Specifically, the Ninth Circuit noted that ATR  
17 was organized and had its principal place of business in France,  
18 had no offices, staff, or other physical presence in California,  
19 was not licensed to do business in California, and its California  
20 contacts were minor compared to its worldwide activities. Id.

21 In light of these cases it is easy to conclude that DTS  
22 Aviation and Worldwide are not "at home" in California. Setting  
23 aside the possibility of jurisdiction based on an agency or alter  
24 ego theory (which the Court will address later), Plaintiffs allege  
25 no contacts at all between DTS Aviation and California. Plaintiffs  
26 do allege contacts between Worldwide and California stemming from  
27 Worldwide's website, which lists jobs available in California,  
28 however, that is not sufficient either. Worldwide provides

1 staffing and recruiting services for all the DynCorp entities  
2 worldwide, not simply or predominantly in California. When viewed  
3 "in their entirety" Worldwide's California activities are at best a  
4 small part of a much larger, worldwide business, and fall far short  
5 of the high bar for exercising general jurisdiction. Concluding  
6 otherwise would leave Worldwide subject to suit in any state in  
7 which it operates -- a result that runs directly contrary to  
8 Daimler. See 134 S. Ct. at 761-62 (rejecting a theory that would  
9 render jurisdiction "presumably . . . available in every other  
10 State in which [an entities'] sales are sizeable").

11 General jurisdiction is also inappropriate as to DII or DI  
12 LLC. First, while DII has two addresses in California, the Supreme  
13 Court has signaled that the existence of local offices or real  
14 property "should not attract heavy reliance today." Daimler, 134  
15 S. Ct. at 761 n.18. The reason to discount local offices is a  
16 result of the shift from the territorial view of jurisdiction,  
17 embodied in Pennoyer v. Neff, 95 U.S. 714 (1877), to today's more  
18 flexible view. Daimler, at 754-55 & n.18. Moreover, viewing those  
19 locations as well as DII's CalFire contract and DI LLC's NASA and  
20 Marine Corps contracts and California employees in light of DII and  
21 DI LLC's "activities in their entirety, nationwide and worldwide,"  
22 it is clear neither is "at home" in California. Id. at n.20. For  
23 instance, the most recent amendment to Form S-4 filed by DII stated  
24 that it had "approximately 89 active contracts and approximately  
25 128 active task orders," with ordinary contracts ranging "from  
26 three to ten years."<sup>2</sup> Similarly, DI LLC's California contracts

27 \_\_\_\_\_  
28 <sup>2</sup> See Delta Tucker Holdings, Inc. & DynCorp International, Inc.,  
Am. No. 1 to Form S-4 (filed June 3, 2011). The Court takes

1 "together equate to approximately 1% of worldwide revenues," ECF  
2 No. 36 ("Hille Decl.") at ¶ 2, and just 239 of its 13,350 worldwide  
3 employees work in California, none of whom are corporate officers.  
4 Castillo Decl. ¶ 5-7. If a few isolated government contracts were  
5 enough to subject DI LLC to suit for causes of action having  
6 nothing to do with those contracts (or even the forum state), then  
7 DI LLC would presumably be amenable to suit in all 33 states in  
8 which it operates. See id. at ¶ 5. The Supreme Court rejected a  
9 similar theory in Daimler when it said "[s]uch exorbitant exercises  
10 of all-purpose jurisdiction would scarcely permit out-of-state  
11 defendants to structure their primary conduct with some minimum  
12 assurance as to where that conduct will and will not render them  
13 liable to suit." 134 S. Ct. at 761-62 (internal quotation marks  
14 omitted); see also United States ex rel. Imco Gen. Const., Inc. v.  
15 Ins. Co of Pa., No. C14-0752RSL, 2014 WL 4364854, at \*3 (W.D. Wash.  
16 Sept. 3, 2014). As a result, the Court finds that because DII and  
17 DI LLC's "California contacts are minor compared to [their] other  
18 worldwide contacts," neither can be properly deemed "at home" in  
19 California. Martinez, 764 F.3d at 1070.

20 Nor are Plaintiffs' agency or alter ego allegations sufficient  
21 to provide jurisdiction over Defendants. The Ninth Circuit's  
22 approach to determining personal jurisdiction based on agency or  
23 alter ego is in flux after the Supreme Court's decision in Daimler.  
24 See Donald Earl Childress III, General Jurisdiction after Bauman,  
25 66 Vand. L. Rev. En Banc 197, 199 (2014) ("The Court appears to be  
26 calling into doubt whether a subsidiary's contacts can ever be

27  
28 judicial notice of this filing. See In re Netflix, Inc., Sec.  
Litig., 923 F. Supp. 2d 1214, 1218 n.1 (N.D. Cal. 2013).

1 imputed to establish general jurisdiction . . . ."); see also  
2 Daimler, 134 S. Ct. at 759 n.13 (pointing out that even though  
3 agency relationships are relevant to specific jurisdiction, "[i]t  
4 does not inevitably follow, however, that similar reasoning applies  
5 to general jurisdiction") (emphasis in original).

6 Before Daimler, under Ninth Circuit law a court could impute a  
7 subsidiary's contacts with the forum to the parent if one of two  
8 tests was satisfied. The first test asks whether "there is such  
9 unity of interest and ownership that the separate personalities of  
10 the two entities no longer exists and . . . that failure to  
11 disregard their separate identities would result in fraud or  
12 injustice." Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001)  
13 (alterations omitted) (quoting Am. Tele. & Telegraph Co. v.  
14 Compagnie Bruxelles Lambert, 94 F.3d 586, 591 (9th Cir. 1996)). In  
15 other words, are the entities alter egos? The second approach,  
16 which the Ninth Circuit called the agency test, required "a showing  
17 that the subsidiary functions as the parent corporation's  
18 representative in that it performs services that are sufficiently  
19 important to the foreign corporation that if it did not have a  
20 representative perform them, the corporation's own officials would  
21 undertake to perform substantially similar services." Id. at 928.  
22 The Supreme Court took issue with this second test, pointing out  
23 that it "stacks the deck," and "will always yield a pro-  
24 jurisdiction answer" because "'[a]nything a corporation does  
25 through a[] . . . subsidiary . . . is presumably something the  
26 corporation would do by other means if the . . . subsidiary . . .  
27 did not exist.'" Daimler, 134 S. Ct. at 759 (quoting Bauman v.  
28 DaimlerChrysler Corp., 676 F.3d 774, 777 (9th Cir. 2011)

1 (O'Scannlain, J., dissenting from denial of rehearing en banc))  
2 (internal quotation marks omitted).

3 Here the Court need not decide whether DI LLC or the other  
4 DynCorp entities' contacts with California can be imputed to DII or  
5 if Defendants are all alter egos of one another. Even assuming for  
6 the sake of argument that Defendants are all alter egos of one  
7 another and their California contacts can be imputed to one  
8 another, those contacts still fall far short of showing that this  
9 is an "exceptional case" where any of the DynCorp entities is at  
10 home in California. Id. at n.19. Concluding otherwise would, in  
11 light of DynCorp's substantial worldwide and nationwide activities,  
12 render it "at home" virtually everywhere it operates. But "[a]  
13 corporation that operates in many places can scarcely be deemed at  
14 home in all of them." Id. at n.20. Here, whether based on an  
15 agency/alter ego theory or standing alone, Defendants' contacts are  
16 simply insufficient to render them answerable for all claims in  
17 California. As a result, Plaintiffs have not shown the exercise of  
18 general jurisdiction would be appropriate here, and Defendants  
19 motion is GRANTED.

20 **1. Jurisdictional Discovery and Leave to Amend**

21 In the alternative, Plaintiffs seek jurisdictional discovery  
22 or leave to amend their complaint to allege additional  
23 jurisdictional facts.

24 "Discovery may be appropriately granted where pertinent facts  
25 bearing on the question of jurisdiction are controverted or where a  
26 more satisfactory showing of the facts is necessary." Boschetto v.  
27 Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) (quoting Data Disc.,  
28 557 F.2d at 1285 n.1)). However, "[w]here a plaintiff's claim of



1 personal jurisdiction appears to be both attenuated and based on  
2 bare allegations in the face of specific denials made by the  
3 defendants, the Court need not permit even limited discovery."  
4 Pebble Beach, 453 F.3d at 1160 (quoting Terracom v. Valley Nat'l  
5 Bank, 49 F.3d 555, 562 (9th Cir. 1995)). "To this end, plaintiff's  
6 [sic] seeking jurisdictional discovery must provide some basis to  
7 believe that discovery will lead to relevant evidence providing a  
8 basis for the exercise of personal jurisdiction," and courts have  
9 discretion to "deny requests based 'on little more than a hunch  
10 that [discovery] might yield jurisdictionally relevant facts.'" Pfister v. Selling Source, LLC, 931 F. Supp. 2d 1109, 1118 (D. Nev.  
11 2013) (quoting Boschetto, 539 F.3d at 1020).

12  
13 Here, Plaintiffs suggest that jurisdictional discovery is  
14 appropriate because there is "possible confusion" over Defendants'  
15 corporate structure. However, as the Court found earlier, even if  
16 all the contacts Plaintiffs have identified can be imputed to DII,  
17 that is still insufficient to permit the Court to exercise general  
18 jurisdiction over DII or the other Defendants. As a result,  
19 Plaintiffs' discovering more about Defendants' corporate structure  
20 is highly unlikely to yield jurisdictionally relevant facts.  
21 Plaintiffs also request discovery into "the specific nature of  
22 [Defendants'] business in California," but this is also  
23 insufficient because it is based on nothing more than a hunch that  
24 additional discovery might yield additional contacts. Opp'n at 13-  
25 14; see also Boschetto at 1020. Furthermore, even if Plaintiffs  
26 found potentially relevant jurisdictional facts through  
27 jurisdictional discovery, there is no basis aside from speculation  
28 for concluding those facts would render this the kind of

1 "exceptional case" in which exercising general jurisdiction outside  
2 the paradigm all-purpose forums is appropriate. See Daimler, 134  
3 S. Ct. at 761 n.19.

4 Because the Court finds, as discussed further below, that  
5 transferring the action, rather than dismissing it, is the  
6 appropriate course of action, the Court declines to dismiss the  
7 action. As a result, there is no need to address Plaintiffs'  
8 argument about leave to amend.

9 **B. Venue**

10 Additionally, the Court finds venue is improper in this  
11 District. Plaintiffs allege venue is proper in this District based  
12 on 28 U.S.C. Section 1391(b)(3), which provides for venue in "any  
13 judicial district in which any defendant is subject to the court's  
14 personal jurisdiction" when "there is no district in which an  
15 action may otherwise be brought." Id. Because the Court finds  
16 that none of the Defendants is subject to the Court's personal  
17 jurisdiction, venue is clearly improper under this subsection. See  
18 Pfister, 931 F. Supp. 2d at 1120. Similarly, neither of the two  
19 other subsections of Section 1391(b) can be satisfied because none  
20 of the Defendants reside in this District, and the events at issue  
21 did not take place here. See 28 U.S.C. § 1391(b)(1)-(2).  
22 Accordingly, Defendants' Rule 12(b)(3) motion is GRANTED.

23 Anticipating this conclusion, Plaintiffs urge the Court to  
24 transfer the case to a proper venue rather than dismiss the action,  
25 pointing out that their claims might be time-barred if the Court  
26 dismisses the action. 28 U.S.C. Section 1406(a) permits the Court  
27 to cure venue defects "in the interest of justice" by transferring  
28 the case "to any district or division in which it could have been

1 brought" rather than dismissing the action. As other courts have  
2 recognized, "[a] compelling reason for transfer is that the  
3 plaintiff, whose case if transferred . . . will be time-barred if  
4 his case is dismissed and thus has to be filed anew in the right  
5 court." Phillips v. Seiter, 173 F.3d 609, 610 (7th Cir. 1999)  
6 (Posner, J.). As a result, the Court finds that transferring  
7 rather than dismissing the action is in the interests of justice.<sup>3</sup>

8 Defendants concede personal jurisdiction exists in Virginia  
9 and argue that venue is proper there as well. However, Defendants  
10 do not specify which of Virginia's two districts, the Eastern and  
11 Western Districts, would be proper. Based on the Court's research,  
12 it appears that DynCorp global headquarters is located at 1700 Old  
13 Meadow Road, McLean, Virginia 22102. See DynCorp International,  
14 Contact, <http://www.dyn-intl.com/about-di/contact/> (last accessed  
15 January 12, 2015). McLean is in Fairfax County, and therefore  
16 falls within the Eastern District of Virginia, Alexandria Division.  
17 E.D. Va. Local Civ. R. 3(B)(1). Accordingly, the Court DIRECTS the  
18 Clerk to transfer this action there.

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28 <sup>3</sup> The Court notes that it has the authority to transfer venue even  
when it lacks personal jurisdiction over Defendants. See Goldlawr,  
Inc. v. Heiman, 369 U.S. 463, 466 (1962).

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**V. CONCLUSION**

For the reasons set forth above, the Court finds the exercise of general jurisdiction is inappropriate here and venue does not lie in this District. Accordingly, in the interests of justice, the Court DIRECTS the clerk to transfer the action to the Eastern District of Virginia, Alexandria Division, for all further proceedings.

IT IS SO ORDERED.

Dated: January 13, 2015

  
UNITED STATES DISTRICT JUDGE