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3 **UNITED STATES DISTRICT COURT**4 **NORTHERN DISTRICT OF CALIFORNIA**

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7 **NOBELBIZ, INC.**

Case No.: 13-CV-2518 YGR

8 **Plaintiff,**9 **v.**10 **VERACITY NETWORKS, LLC,****ORDER GRANTING MOTION TO DISMISS FOR  
LACK OF PERSONAL JURISDICTION AND  
DISMISSING CASE**11 **Defendant.**

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13 **I. INTRODUCTION**

14 Plaintiff NobelBiz, Inc. has patented a method of disguising a long-distance caller's phone  
15 number so that it looks like a local number on caller ID. This innovation increases contact rates  
16 for, e.g., collection agencies and telemarketers. Plaintiff alleges that its invention's name,  
17 "LocalTouch," is a common-law trademark.

18 Defendant Veracity Networks, LLC is a Provo, Utah-based telecom company that sells  
19 internet services, as well as internet-based phone and cable services, to residential and small  
20 business customers in Utah. Veracity's motto is: "World Class Service with a Local Touch." It  
21 allegedly offers its customers a service called a "Nationwide Local Presence Number," which  
22 Plaintiff describes as a "local caller ID management service."

23 Plaintiff sues for trademark and patent infringement. Dkt. No. 1 ("Compl."). Now before  
24 the Court is Veracity's motion to dismiss this case for lack of personal jurisdiction. Dkt. No. 8  
25 ("Mot."). The Motion is fully briefed. Dkt. Nos. 15 ("Opp'n"), 30 ("Reply"). Having carefully  
26 reviewed the parties' papers and having had the benefit of oral argument, for the reasons set forth  
27 below the Court **GRANTS** Veracity's motion and **DISMISSES** this case without prejudice to later  
28 refiling in a court of competent jurisdiction.

1 **II. LEGAL STANDARD**

2 Case law distinguishes between two types of personal jurisdiction a court may exercise over  
3 an out-of-state defendant: “general” and “specific” jurisdiction. *See Ziegler v. Indian River Cnty.*,  
4 64 F.3d 470, 473 (9th Cir. 1995). Here, Plaintiff concedes that Defendant is not subject to general  
5 personal jurisdiction in California. Reply at 2. The Court therefore focuses on specific jurisdiction.

6 The Ninth Circuit applies a three-part test to determine whether a non-resident defendant’s  
7 activities are sufficiently related to the forum state to establish specific jurisdiction:

8 (1) The non-resident defendant must purposefully direct his activities or  
9 consummate some transaction with the forum or resident thereof; or perform  
some act by which he purposefully avails himself of the privilege of conducting  
activities in the forum, thereby invoking the benefits and protections of its laws;

10 (2) the claim must be one which arises out of or relates to the defendant’s forum-  
related activities; and

11 (3) the exercise of jurisdiction must comport with fair play and substantial justice,  
i.e. it must be reasonable.

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14 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (citing *Lake v. Lake*,  
15 817 F.2d 1416, 1421 (9th Cir. 1987)).

16 With respect to the first part of this test, “purposeful direction” and “purposeful availment”  
17 are two distinct concepts: courts generally use a purposeful direction analysis in cases sounding in  
18 tort but a purposeful availment analysis in cases sounding in contract. *Compare, e.g., Dole Food*  
19 *Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) (purposeful direction test in tort case) *with*  
20 *Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001) (purposeful availment test in contract  
21 case). The purposeful direction test applies in intellectual property infringement cases. *See, e.g.,*  
22 *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998) (trademark); *Symantec*  
23 *Corp. v. Acronis, Inc.*, C 12-05331 SI, 2013 WL 496290, at \*3-4 (N.D. Cal. Feb. 7, 2013) (patent);  
24 *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) cert. denied,  
25 132 S. Ct. 1101 (U.S. 2012) (copyright). To determine whether the purposeful-direction prong is  
26 satisfied, courts apply “an ‘effects’ test that focuses on the forum in which the defendant’s actions  
27 were felt, whether or not the actions themselves occurred within the forum.” *Mavrix Photo*, 647  
28 F.3d at 1228 (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir.

1 2006)). This effects test, drawn from *Calder v. Jones*, 465 U.S. 783 (1984), “requires that ‘the  
2 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum  
3 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.’”  
4 *Mavrix Photo*, 647 F.3d at 1228 (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d  
5 1124, 1128 (9th Cir. 2010)).

6 Plaintiffs bear the burden of establishing both purposeful direction through the *Calder*  
7 effects test and that their claims arise out of or relate to the defendant’s forum-related activities.  
8 See *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008). If they do so, then “the defendant  
9 must come forward with a ‘compelling case’ that the exercise of jurisdiction would not be  
10 reasonable.” *Id.* “But if the plaintiff fails at the first step, the jurisdictional inquiry ends and the  
11 case must be dismissed.” *Id.*

12 Here, the motion to dismiss is based on written materials (pleadings, declarations, and  
13 exhibits) rather than an evidentiary hearing. Accordingly, the plaintiffs need only make a *prima*  
14 *facie* showing of jurisdiction. *Schwarzenegger*, 374 F.3d at 800. A plaintiff makes a *prima facie*  
15 showing by producing admissible evidence which, if believed, would be sufficient to establish the  
16 existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). In  
17 deciding whether such a showing has been made, a district court must accept as true the  
18 uncontested allegations in the complaint; where allegations are contested, they are construed in  
19 the light most favorable to the plaintiff and all doubts are resolved in the plaintiff’s favor. *AT&T v.*  
20 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

21 **III. DISCUSSION**

22 As set forth above, the *Calder* effects test has three prongs. The Court’s analysis focuses on  
23 the “express aiming” prong, which is the *sine qua non* of purposeful direction. NobelBiz’s  
24 principal argument is that even though Veracity is a Utah-based company, it has designs on a  
25 national market and therefore may be subject to specific personal jurisdiction in any state it has  
26 targeted. *See generally* Opp’n 1, 14.<sup>1</sup>

27 1 NobelBiz’s secondary argument is that Veracity is subject to personal jurisdiction in California  
28 because Veracity’s customers use its long-distance and other telephone services to place calls into  
California, and because the allegedly infringing caller ID service can be used to make a call placed

1       The Court rejects that argument. NobelBiz’s declarations and exhibits fail to make the  
2 required *prima facie* showing that Veracity has “expressly aimed” its commercial activities at  
3 California specifically, or alternatively at a broader market that includes California. On the  
4 contrary, NobelBiz’s materials unequivocally characterize Veracity as a Utah-based company doing  
5 business, and seeking to do business, in Utah. The exhibits offered to show Veracity’s purposeful  
6 direction at California are instead replete with references to Veracity as a “local Utah Internet  
7 provider,” the recipient of “local Utah awards,” “a leading Utah telecommunications provider,” a  
8 “locally owned” provider serving customers “throughout Utah,” “Utah’s business choice,” and so  
9 forth. *Opp’n*, Exs. 4, 4, 6, 9. One document states that “Veracity services are available to business  
10 and residents in American Fork, Provo, Orem, Traverse Mountain, Salt Lake City, Murray, Ogden,  
11 Kaysville, Bountiful, Midvale, [and] St. George”—all Utah municipalities—and boasts of  
12 Veracity’s having been “recognized as the best telecommunications provider in the state of Utah.”  
13 *Id.*, Ex. 5 at 2. A printout of a Veracity webpage, which NobelBiz frequently cited at oral  
14 argument, shows Veracity referring to itself as “one of Utah’s fastest growing telecommunication  
15 providers” and “the best telecommunications provider in Utah.” *Id.*, Ex. 8. The webpage  
16 elaborates: “We have the capabilities, expertise, and knowledge to perform like a national provider,  
17 but we are true to our motto: ‘World Class Service With a Local Touch.’” *Id.* The webpage  
18 continues by boasting that its customers enjoy service “that only a local company can provide.” *Id.*  
19 In sum, NobelBiz’s own exhibits severely undercut its position that Veracity seeks to cater to a  
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21 to California from Utah appear to come from California. *Opp’n* at 1, 9 (“Even if California  
22 residents cannot ‘purchase’ Veracity’s services, they are directly affected by them as they can and  
23 do receive calls through Veracity’s infringing services.”), 10 (“Veracity’s customers make calls to  
24 residents of California and employ a Veracity service so that the caller ID appears as a California  
25 number.”), 14. The argument is without merit. Veracity’s customers are not Veracity. The fact  
26 that they may use Veracity long-distance service to call California, or that Californians may receive  
27 a spoofed caller ID number in the course of a call placed by a Veracity customer, is not a cause of  
28 any of NobelBiz’s alleged injuries. The alleged injuries arise from alleged infringement by  
Veracity. NobelBiz seeks to analogize Veracity’s customers to a distribution chain, *see Opp’n* at 9  
(citing *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1565 (Fed. Cir. 1994)), but  
the analogy is inapposite. NobelBiz has not suggested that Veracity’s customers can purchase  
Veracity services and then resell them to another. Veracity’s customers are the end of the  
distribution chain, not an intermediary link in it.

1 nationwide market. On the contrary, NobelBiz's exhibits, even given the benefit of reasonable  
2 inferences, show a Utah company whose key selling point appears to be its distinctly local  
3 character. The exhibits, in fact, show Veracity distinguishing itself from national companies by  
4 measuring itself against only Utah companies. *E.g., id.*, Ex. 5 (Veracity press release boasting of  
5 having been “one of over 80 Utah companies” to be included on a list of fast-growing U.S.  
6 businesses, wherein Veracity CEO expresses pride at “receiv[ing] national recognition for our  
7 corporate growth and *local dedication to Utah's residents and businesses*”) (emphasis supplied).  
8 The exhibits marshaled by NobelBiz do not admit of the interpretation NobelBiz draws from them.

9 The Court is also not persuaded by NobelBiz's argument that Veracity “expressly aimed”  
10 itself at California solely by virtue of its website. “Not all material placed on the Internet is, solely  
11 by virtue of its universal accessibility, expressly aimed at every state in which it is accessed.”  
12 *Mavrix Photo*, 647 F.3d at 1231. “[M]aintenance of a passive website alone cannot satisfy the  
13 express aiming prong.” *Brayton Purcell*, 606 F.3d at 1129. However, “operating even a passive  
14 website in conjunction with ‘something more’—conduct directly targeting the forum—is  
15 sufficient.” *Mavrix Photo*, 647 F.3d at 1229 (quoting *Rio Properties, Inc. v. Rio Int'l Interlink*, 284  
16 F.3d 1007, 1020 (9th Cir. 2002)). “In determining whether a nonresident defendant has done  
17 ‘something more,’ we have considered several factors, including the interactivity of the defendant's  
18 website . . . ; the geographic scope of the defendant's commercial ambitions . . . ; and whether the  
19 defendant ‘individually targeted’ a plaintiff known to be a forum resident . . . .” *Id.*(citations  
20 omitted). “It is the aggregate effect of a defendant's contacts with the forum that courts consider,  
21 not individual acts taken in isolation, to determine if jurisdiction exists.” *Wine Grp. LLC v.*  
22 *Levitation Mgmt., LLC*, CIV. 2:11-1704 WBS J, 2011 WL 4738335, at \*6 (E.D. Cal. Oct. 6, 2011)  
23 (citing *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 606-07 (9th Cir. 2010)).

24 The aggregate effect of Veracity's website operations, including its presence on various  
25 social media, does not support the exercise of specific personal jurisdiction over Veracity in  
26 California. Veracity's website does not specifically target California. Users who attempt to inquire  
27 about Veracity's services through its website are required to enter their addresses; it is undisputed  
28 that when users enter an address outside Utah, the website gives the following message: “[O]h-no!

1 We're sorry, we can't find an exact match for your address. Veracity Networks services may not  
2 be available where you live. For additional help, or if you are currently a customer of Veracity  
3 Networks, please call [Veracity's Utah phone number] or use the form below." The form allows  
4 users to send an email to Veracity, identifying themselves as a current customer (or not) and the  
5 services that interest them, and giving them the option of directing their email to either "Sales" or  
6 "Support. Opp'n, Ex. 19. Considered in the context of all the evidence presented, the website does  
7 not give rise to an inference that Veracity sought to cultivate either a California or, alternatively, a  
8 national customer base. It is undisputed that Veracity "conducts no commercial activity in  
9 California" and that "residents of California cannot purchase Veracity's services even if they  
10 desired." Mot. at 3; *see also* Opp'n at 7 (assuming truth of those statements but arguing that they  
11 "do not relieve" Veracity from California's jurisdiction). Veracity cannot be compelled to submit  
12 to personal jurisdiction in California simply because its website did not discourage California  
13 consumers strongly enough.<sup>2</sup>

14 At oral argument, NobelBiz suggested that this Court could exercise personal jurisdiction  
15 over Veracity because some of Veracity's customers may have satellite offices in California. That  
16 fact, if true, would not change the analysis. The activities of Veracity's customers are not the  
17 activities of Veracity. NobelBiz argues that Veracity's customers' activities do bear on this Court's  
18 ability to exercise specific jurisdiction over Veracity because it is foreseeable that Veracity's  
19 customers will enter the stream of commerce and direct themselves toward California. The  
20 argument is unavailing. Veracity's provision of internet, cable television, and local and long-  
21 distance telephone calling services does not subject it to personal jurisdiction anywhere that its  
22 customer's internet activities or long-distance telephone calls can reach. Such activities conducted  
23 by Veracity's customers, on their own behalf rather than Veracity's, are nothing more than the sort

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25 <sup>2</sup> NobelBiz urges this Court to follow *Wine Group*, but that case is distinguishable. In *Wine Group*,  
26 the Eastern District of California held that the exercise of specific personal jurisdiction was  
27 justified where the defendant operated a commercial website that "targeted all fifty states, including  
28 California." *Wine Grp. LLC v. Levitation Mgmt., LLC*, CIV. 2:11-1704 WBS J, 2011 WL  
4738335, at \*10 (E.D. Cal. Oct. 6, 2011). Here, Veracity's website emphasizes its character as a  
Utah business and indicates to non-Utah website users who inquire about the availability of  
Veracity's services that the services "may not be available where [they] live." Opp'n, Ex. 19.

1 of “fortuitous” contacts that do not, without more, give rise to specific personal jurisdiction in the  
2 forum to which the customer’s calls are placed or from which the customer’s websites are accessed.  
3 *Cf. Mavrix Photo*, 647 F.3d at 1226 (holding that incorporation in California of designers who  
4 made and serviced defendant’s website was insufficient to confer specific personal jurisdiction over  
5 defendant in California).

6 Similarly, NobelBiz argues that Veracity’s presence on various social media sites results in  
7 personal jurisdiction over Veracity in any forum where these sites can be accessed because these  
8 sites feature interactive components and, hence, amount to purposeful direction toward any forum  
9 in which a user could interact with Veracity. At oral argument, NobelBiz went so far as to suggest  
10 that *all* activity on social media sites is a form of advertising subjecting the account holder to  
11 personal jurisdiction wherever his or her social media account may be viewed. The Court finds  
12 NobelBiz’s argument unpersuasive in light of the totality of the record now before it. Veracity’s  
13 mere presence on social media sites does not, without more, support an inference that it seeks  
14 nationwide sales. Rather, the predominant feature of Veracity’s online presence is the single-  
15 mindedness with which it cultivates Veracity’s Utah-focused brand. Veracity’s YouTube page  
16 appears to show nothing but the trailers of movies available to subscribers to Veracity’s “on  
17 demand” movie service. Opp’n, Exs. 23 (identifying the content of Veracity’s YouTube channel as  
18 “On Demand previews”), 20-21 (screenshots of YouTube page carrying dozens of movie  
19 previews). It is undisputed that only Utah residents may subscribe to Veracity’s services.  
20 Veracity’s Facebook page evinces a similar focus on commerce within the state of Utah: the posts  
21 therein are principally comprised of Veracity-related news, announcements of job openings at  
22 Veracity (i.e., within Utah), and news items slanted toward a Utah audience, e.g., “10 Apps Utah  
23 locals should have,” and a link to an online news story headlined “Utah bans teen drivers from  
24 using cellphones.” *Id.*, Ex. 9 at 1, 2. As for Veracity’s Twitter page, it has 263 tweets—which are  
25 protected from view by anyone but Veracity’s “confirmed followers.” *Id.*, Ex. 29. The exhibit  
26 indicates that Veracity has zero followers. *Id.* Veracity’s Twitter account cannot be said to be  
27 aimed at *any* particular forum. Finally, Veracity has a Pinterest account. *See id.*, Exs. 25-27. The  
28 banner on Veracity’s Pinterest page states: “Veracity Networks is a locally-owned, facilities-based

1 telecommunications provider servicing commercial customers and residential customers *in Utah*.”  
2 *Id.*, Ex. 25 (emphasis supplied). NobelBiz has not satisfied the Court that Veracity’s presence on  
3 social media, or elsewhere on the Internet, amounts to express aiming at California or any broader  
4 market including California.<sup>3</sup>

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court **GRANTS** the motion of Defendant Veracity Networks,  
7 LLC to dismiss this action for lack of personal jurisdiction. The Court hereby **DISMISSES** this case  
8 without prejudice to later refiling in a court of competent jurisdiction.

9 **IT IS SO ORDERED.**

10 Date: September 27, 2013

  
11 YVONNE GONZALEZ ROGERS  
12 UNITED STATES DISTRICT COURT JUDGE

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21 <sup>3</sup> The Court **DENIES** NobelBiz’s motion for jurisdictional discovery. Opp’n at 14. “Although there  
22 is no definitive Ninth Circuit authority specifically addressing the level of showing that a plaintiff  
23 must make to be entitled to jurisdictional discovery, district courts in this circuit have required a  
24 plaintiff to establish a ‘colorable basis’ for personal jurisdiction before discovery is ordered.  
25 [Citations.] This ‘colorable’ showing should be understood as something less than a *prima facie*  
26 showing, and could be equated as requiring the plaintiff to come forward with ‘some evidence’  
27 tending to establish personal jurisdiction over the defendant.” *Johnson v. Mitchell*, 2012 U.S. Dist.  
28 LEXIS 65934, at \*19-20 (E.D. Cal. May 10, 2012). “[W]here a plaintiff’s claim of personal  
jurisdiction appears to be both attenuated and based on bare allegations in the face of specific  
denials made by the defendants, the Court need not permit even limited discovery.” *Pebble Beach  
Co. v. Caddy*, 453 F.3d 1151, 1160 (9th Cir. 2006) (quoting *Terracom v. Valley Nat. Bank*, 49 F.3d  
555, 562 (9th Cir.1995)). Here, as set forth above, NobelBiz has not established a colorable basis  
for personal jurisdiction. It has offered only bare allegations, which are amply controverted by its  
own supporting documents.