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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JT FOXX ORGANIZATION,
Plaintiff,
v.
VERONIQUE PALMER,
Defendant.

Case No. [17-cv-02661-DMR](#)

**ORDER DENYING PLAINTIFF'S
MOTION FOR EARLY DISCOVERY
WITHOUT PREJUDICE**

Dkt. No. 7

Plaintiff JT Foxx Organization (“Plaintiff”) moves the court pursuant to Federal Rule of Civil Procedure 26(d) for leave to take discovery prior to the Rule 26 conference so that it may ascertain the identity of two as-of-yet unnamed defendants (“Doe Defendants 1 and 2”) in this action. Specifically, Plaintiff requests permission to issue an early subpoena to Google, Inc. (“Google”), which is the platform upon which Doe Defendant 1 owns and operates a blog called “mr.sharepoint.blogspot.com” that published allegedly defamatory statements about Plaintiff’s business. Doe Defendant 2 helped write the allegedly defamatory statements. Plaintiff seeks subscriber information sufficient to identify Doe Defendants 1 and 2 for purposes of service of the summons and the complaint. This matter is appropriate for determination without oral argument. See Civ. L.R. 7-1(b). For the reasons contained herein, the court **DENIES** Plaintiff’s motion **WITHOUT PREJUDICE**.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff is a Florida company that provides training seminars and coaching sessions to entrepreneurs who want to start their own business. (Compl. ¶ 11) [Docket No. 1]. Plaintiff operates throughout the United States as well as globally. (Id.). On May 8, 2017, Plaintiff filed the instant action against Defendants Veronique Palmer (“Palmer”) and Doe Defendants 1 and 2, alleging claims for libel and unfair or deceptive business practices under California Business &

1 Professions Code § 17200. Plaintiff seeks to stop Defendants from publishing defamatory
2 statements about Plaintiff’s business.

3 According to Plaintiff, Doe Defendant 1 owns and operates a blog called
4 “mr.sharepoint.blogspot.com” which is run on the Google platform. (Compl. ¶ 14). Google is
5 based in Northern California. (Compl. ¶¶ 10, 14). Palmer, who is a South African citizen, wrote a
6 review of Plaintiff’s business services entitled “Why the JT Foxx Free Seminars are a Scam and
7 South Africans Need to Catch a Wake Up.” The review was posted on Doe Defendant 1’s blog
8 on November 26, 2015. (Blog Post (Ex. A to Compl.)). According to Plaintiff, Palmer’s written
9 review contained false and libelous statements about Plaintiff’s business, including that Plaintiff is
10 a scam and is ripping off its clients, and that individuals associated with Plaintiff are criminals.
11 (Compl. ¶¶ 23-26; Blog (Ex. A to Compl.)). Plaintiff alleges that Doe Defendant 2 helped write the
12 defamatory review. (Compl. ¶ 4). Plaintiff asserts that Palmer and Doe Defendants 1 and 2
13 thereafter manipulated the Google search engine via the Google platform so that Palmer’s review
14 was displayed near the top of the search list for Google searches for “JT Foxx.” (Compl. ¶ 15).
15 As a result, Palmer’s review was “seen and read by hundreds if not thousands of customers and
16 prospective clients,” some of whom reside in the San Francisco Bay Area. (Compl. ¶ 27).
17 Plaintiff contends that it suffered and continues to suffer extraordinary damages including loss of
18 potential customers, loss of goodwill, and loss of existing customers as a result of the defamatory
19 blog. (Compl. ¶¶ 18, 29).

20 Plaintiff, through its attorneys, asked Google to remove Palmer’s review and to provide
21 subscriber information for the review and the blog site, but Google refused to do either without a
22 court order. (Compl. ¶ 17); (Vu Decl. ¶ 5 [Docket No. 7-1]); (Ex. D to Vu Decl.). Palmer’s
23 review is still on the “mr.sharepoint.blogspot.com” blog and is still one of the top search results
24 when searching for “JT Foxx” on the Google search engine. (Vu Decl. ¶ 7).

25 On May 9, 2017, Plaintiff’s counsel sent the summons, the complaint, and other necessary
26 service documents to the South African consulate to serve on Palmer pursuant to the procedures
27 prescribed by the South African Department of Justice and Constitutional Development. (Vu
28 Decl. ¶ 2); (Ex. A through C to Vu Decl.). Plaintiff’s counsel has not heard back from the South

1 African consulate regarding the status of Plaintiff’s service on Palmer. (Vu Decl. ¶ 3).

2 Plaintiff now moves the court for leave to take discovery prior to the parties’ Rule 26(f)
3 conference. Specifically, Plaintiff seeks leave to serve a subpoena on Google requesting the
4 identity of the owner(s) of the “mr.sharepoint.blogspot.com” blog including the owner(s’)
5 name(s); company name(s), e-mail address(es), physical address(es), phone number(s), and
6 contact person(s). (Proposed Subpoena (Ex. E to Vu Decl.)). Plaintiff asserts that the Rule 26(f)
7 conference will be delayed indefinitely if the court does not grant its motion due to its difficulties
8 serving Palmer in South Africa.

9 **II. LEGAL STANDARD**

10 Generally, a party may not initiate discovery before the parties have met and conferred
11 pursuant to Federal Rule of Civil Procedure 26(f). However, a court may authorize earlier
12 discovery “for the parties’ and witnesses’ convenience and in the interests of justice.” Fed. R. Civ.
13 P. 26(d)(3). Courts have permitted “limited discovery . . . after [the] filing of the complaint to
14 permit the plaintiff to learn the identifying facts necessary to permit service on the
15 defendant.” *Columbia Ins. Co. v. seescandy.com*, 185 F.R.D. 573, 577 (N.D. Cal. 1999); see
16 also *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980) (when the true identity of the
17 defendants is not known before complaint is filed, a plaintiff “should be given an opportunity
18 through discovery to identify the unknown defendants, unless it is clear that discovery would not
19 uncover the identities, or that the complaint would be dismissed on other grounds”).

20 The plaintiff must demonstrate good cause for early discovery. See *Semitool, Inc. v. Tokyo*
21 *Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). In evaluating whether a plaintiff
22 establishes good cause to learn the identity of the defendants through early discovery, courts
23 examine whether the plaintiff (1) identifies the unknown party with sufficient specificity that the
24 court can determine that the party is a real person who can be sued in federal court, (2) recounts
25 the steps taken to locate and identify the party, (3) demonstrates that the action can withstand a
26 motion to dismiss, and (4) demonstrates a reasonable likelihood that the discovery will lead to
27 identifying information that will permit service of process. *Columbia Ins. Co.*, 185 F.R.D. at 578-
28 580.

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III. DISCUSSION

At the outset, although Plaintiff says that it seeks early discovery to reveal the identities of Doe Defendants 1 and 2, in reality, Plaintiff’s proposed subpoena is only aimed at obtaining information about Doe Defendant 1. The subpoena seeks identifying information about the owner(s) of the blog entitled “mr.sharepoint.blogspot.com,” which is Doe Defendant 1. The subpoena is not focused on Doe Defendant 2, who is alleged to be “a company or individual that helped write the defamatory blog material” for the blog in question. The court therefore limits its analysis to Doe Defendant 1.

Having evaluated Plaintiff’s motion for early discovery “in light of all the surrounding circumstances,” *Semitool*, 208 F.R.D. at 275 (citation and internal quotation marks omitted), the court finds that Plaintiff has failed to satisfy the first factor in the Columbia test. Specifically, on the current record, Plaintiff has not demonstrated that the court likely has personal jurisdiction over Doe Defendant 1. See *Columbia Ins. Co.*, 185 F.R.D. at 578 (explaining that the first factor “is necessary to ensure that federal requirements of jurisdiction and justiciability can be satisfied”). For the same reason, Plaintiff has failed to satisfy the third prong of the Columbia test to the extent that it has not demonstrated that the action can withstand a motion to dismiss due to lack of personal jurisdiction over Doe Defendant 1.

A. Personal Jurisdiction

Personal jurisdiction is proper if it is “consistent with [California’s] long-arm statute and if it comports with due process of law.” *Boschetto v. Hansing*, 539 F.3d 1011, 1020–21 (9th Cir. 2008). Under California’s long-arm statute, a federal court may exercise personal jurisdiction over a defendant to the extent permitted by the Due Process Clause of the Constitution. Cal. Code Civ. Proc. § 410.10; *Panavision v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). “For a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’ ” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Minimum contacts may be established through a showing of either general or specific

1 jurisdiction. Schwarzenegger, 374 F.3d at 801.

2 Here, Plaintiff contends that the court has specific jurisdiction over Doe Defendant 1.
3 (Motion for Early Discovery (“Mot.”) at 5) [Docket No. 7].

4 Specific jurisdiction is justified by the “nature and quality of the defendant’s contacts in
5 relation to the cause of action.” Data Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1287
6 (9th Cir. 1977). In determining whether specific jurisdiction exists, courts apply a three-part test:

- 7 (1) The nonresident defendant must purposefully direct his activities
8 or consummate some transaction with the forum or resident thereof;
9 or perform some act by which he purposefully avails himself of the
10 privilege of conducting activities in the forum, thereby invoking the
11 benefits and protections of its laws; (2) the claim must be one which
arises out of or results from the defendant's forum-related activities;
and (3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

12 Schwarzenegger, 374 F.3d at 802 (citation omitted). The plaintiff bears the burden of making a
13 prima facie showing by establishing the first two elements of the test, at which point the burden
14 shifts to the defendant to “present a compelling case” that the exercise of jurisdiction would not be
15 reasonable. *Id.* (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 477 (1985)). “If any of the
16 three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due
17 process of law.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006) (internal
18 citations and quotation marks omitted). A plaintiff need only make a “prima facie” showing in
19 order to avoid a motion to dismiss. *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements*
20 *Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003).

21 To establish the first prong of the specific jurisdiction test, Plaintiff must show that Doe
22 Defendant 1 “either purposefully availed itself of the privilege of conducting activities in
23 California, or purposefully directed its activities toward California.” *Schwarzenegger*, 374 F.3d at
24 802. Purposeful availment is most often used in cases related to contract disputes, and purposeful
25 direction is used in suits, such as this libel action, that sound in tort. *Id.*

26 To evaluate purposeful direction, the Ninth Circuit uses the three-part “effects test” set
27 forth in *Calder v. Jones*, 465 U.S. 783 (1984). Under the *Calder* effects test, a defendant
28 purposefully directs activity at a forum state when he or she “(1) commit[s] an intentional act, (2)

1 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be
2 suffered in the forum state.” Schwarzenegger, 374 F.3d at 805 (citation omitted).

3 **1. Intentional Act**

4 The first prong of the Calder effects test requires the commission of an intentional act.
5 The Ninth Circuit “construe[s] ‘intent’ . . . as referring to an intent to perform an actual, physical
6 act in the real world, rather than an intent to accomplish a result or consequence of that act.”
7 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010) (quoting
8 *Schwarzenegger*, 374 F.3d at 806). Plaintiff satisfies the first prong. The complaint alleges that
9 Doe Defendant 1 owns and operates a blog that published a defamatory review of Plaintiff’s
10 business. (Compl. ¶¶ 14, 23-26; Blog (Ex. A to Compl.)); *Rio Props., Inc. v. Rio Int’l Interlink*,
11 284 F.3d 1007, 1020 (9th Cir. 2002) (concluding that operating a passive website was an
12 intentional act); *iYogi Holding Pvt. Ltd. v. Secure Remote Support, Inc.*, No. C-11-0592 CW, 2011
13 WL 6291793, at *7 (N.D. Cal. Oct. 25, 2011), report and recommendation adopted sub nom. *Iyogi*
14 *Holding PVT Ltd. v. Secure Remote Support Inc.*, No. C 11-0592 CW, 2011 WL 6260364 (N.D.
15 Cal. Dec. 15, 2011) (finding the non-resident defendants “committed an intentional act by posting
16 shill reviews about Plaintiff on consumer review websites and by operating their own websites
17 that posted false, misleading and defamatory statements about Plaintiff’s business”).

18 **2. Express Aiming**

19 The second prong examines whether a defendant expressly aimed the act at the forum
20 state. Under Ninth Circuit law, “maintenance of a passive website alone cannot satisfy the express
21 aiming prong” of the Calder effects test. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218,
22 1229 (9th Cir. 2011) (quoting *Brayton Purcell LLP*, 606 F.3d at 1129); see also *DFSB Kollektive*
23 *Co. Ltd. v. Bourne*, 897 F. Supp. 2d 871, 880 (N.D. Cal. 2012) (explaining that it is clear that “[a]
24 defendant has not purposefully availed himself of the privilege of conducting activities in a forum
25 state merely because he operates a website which can be accessed there”) (citation and internal
26 quotation marks omitted).

27 However, “‘operating even a passive website in conjunction with ‘something more’ –
28 conduct directly targeting the forum – is sufficient.”” *Mavrix Photo, Inc.*, 647 F.3d at 1229

1 (quoting *Rio Props., Inc.*, 284 F.3d at 1020). The Ninth Circuit has considered several factors in
2 determining whether a nonresident defendant has done “something more,” “including the
3 interactivity of the defendant’s website; the geographic scope of the defendant’s commercial
4 ambitions; and whether the defendant individually targeted a plaintiff known to be a forum
5 resident.” *Mavrix Photo, Inc.*, 647 F.3d at 1229 (internal citation and internal quotation marks
6 omitted).

7 According to Plaintiff, Doe Defendant 1 expressly aimed its conduct at California because
8 it operated the blog “on the Google platform, based out of Northern California, and intentionally
9 published defamatory statements about Plaintiff and manipulated Google’s search engine,
10 operated in Northern California, to artificially display such defamatory statements in returning
11 search results for ‘JT Foxx’ for all of JT Foxx’s clients and potential clients, including those
12 located in the Northern District of California, to see.” Mot. at 5, citing Compl. ¶¶ 14-15.

13 These allegations are insufficient to establish that Doe Defendant 1 expressly aimed its
14 conduct at California. As is clear under Ninth Circuit law, Doe Defendant 1’s operation and
15 ownership of a blog website does not satisfy the “express aiming prong” of the *Calder* effects test.
16 See *Brayton Purcell LLP*, 606 F.3d at 1129; *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419-
17 20 (9th Cir. 1997); see also *Pooka Pooka LLC v. Safari Beach Club*, No. C-12-03817 DMR, 2013
18 WL 12203872, at *4 (N.D. Cal. Apr. 17, 2013) (finding that the defendant’s “mere operation of a
19 website potentially accessible by Californians [did] not establish this court’s personal jurisdiction
20 over Defendants” where there was “nothing to suggest that Defendants were targeting
21 Californians”).

22 Plaintiff has not shown that there is “something more” than the existence of Doe
23 Defendant 1’s blog to establish that Doe Defendant 1 expressly aimed activity at California. The
24 complaint and motion contain virtually no facts about Doe Defendant 1 other than that it posted
25 the allegedly defamatory statements written by Veronique Palmer and Doe Defendant 2 on the
26 blog website. The record is silent as to the nature of Doe Defendant 1’s blog, its intended
27 readership, or the commercial aspects of the blog, if any. See, e.g., *Mavrix*, 647 F. 3d at 1229,
28 1231 (“most salient” fact supporting specific jurisdiction was that defendant used plaintiff’s

1 copyrighted photos to exploit California market for its own commercial gain; “same would not
2 necessarily be true” for “unpaid blogger who posted an allegedly actionable comment or photo to
3 a website accessible in all fifty states, but who could not be as certain . . . that his actions would be
4 so widely observed and who did not seek commercial gain from users outside his locality.”)

5 Nor is there any indication that Doe Defendant 1 targeted Plaintiff’s California-based
6 activities. Plaintiff is a resident of Florida. Although the complaint generally alleges that Plaintiff
7 “operates throughout the United States as well as globally,” (Compl. ¶ 11), Plaintiff makes no
8 representation about how much business it conducts in California. The blog posting itself was
9 written by Defendant Palmer, a South African citizen, and the posting discusses a seminar that
10 Plaintiff presented in South Africa. At most, Plaintiff states that “clients and potential clients” in
11 California could view the offending blog post. Mot. at 5, citing Compl. ¶¶ 14-15. However, “the
12 express aiming requirement is not satisfied where it is merely foreseeable that there will be an
13 impact on individuals in the forum.’ . . . Instead, plaintiffs must show that there was ‘individual
14 targeting’ of forum residents.” *DFSB Kollektive Co.*, 897 F. Supp. 2d at 875 (quoting *Fiore v.*
15 *Walden*, 688 F.3d 558, 577 (9th Cir. 2011)).

16 Plaintiff rests much of its argument on the fact that Doe Defendant 1’s blog is hosted on
17 the Google platform and the alleged manipulation of search terms took place on the Google
18 platform. The fact that Google is headquartered in California is inadequate to provide the
19 “something more” beyond operation of a website that is necessary to trigger specific jurisdiction.
20 As noted by the court in *DFSB Kollektive Co.*, such an outcome ignores the ubiquity of the
21 internet:

22 While the location of [internet] companies is relevant for lawsuits directly
23 involving the companies, the Court is unpersuaded that the headquarters of these
24 Internet companies establishes that Defendant expressly aimed his infringing
25 activities at the California market. To adopt Plaintiff’s reasoning would render the
26 “expressly aimed” prong of the *Calder* test essentially meaningless as it has
27 become ubiquitous for businesses – large and small – to maintain Facebook and/or
28 other similar accounts for marketing purposes and would subject millions of
persons around the globe to personal jurisdiction in California.

DFSB Kollektive Co., 897 F. Supp. 2d at 883.

In sum, the court finds that on the current record, Plaintiff has not demonstrated that Doe

1 Defendant 1 purposefully directed its activities at California under the Calder effects test.
2 Therefore, Plaintiff has not satisfied the first element of the specific jurisdiction test, and cannot
3 demonstrate that personal jurisdiction likely exists over Doe Defendant 1. The court does not
4 reach the remaining elements of the specific jurisdiction test, nor does it reach the remaining
5 factors of the Columbia test.

6 **IV. CONCLUSION**

7 For the foregoing reasons, the court denies Plaintiff’s motion for early discovery without
8 prejudice. See Berlin Media Art e.k. v. Does 1-654, No. 11-03770 JSC, 2001 WL 36383080, at *3
9 (N.D. Cal. Oct. 18, 2011) (because the court’s analysis suggested that it lacked personal
10 jurisdiction over the Doe defendants, the court denied the plaintiff’s motion for early discovery
11 “for [that] reason alone”); see also Celestial Inc. v. Swarm Hash, No. CV-12-00132 DDP (SSx),
12 2012 WL 995273, at *3 (C.D. Cal. Mar. 23, 2012) (denying the plaintiff’s motion for early
13 discovery without prejudice because the plaintiff’s complaint would not survive a motion to
14 dismiss for lack of personal jurisdiction).

15
16 **IT IS SO ORDERED.**

17 Dated: August 23, 2017

