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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHETAN UTTARKAR,  
Plaintiff,  
v.  
SUDHIR BAJAJ, et al.,  
Defendants.

Case No.14-CV-02250-LHK

**ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS WITH  
PREJUDICE**

Re: Dkt. No. 101

Plaintiff Chetan Uttarkar<sup>1</sup> (“Plaintiff”) brings this action against Defendant Sudhir Bajaj (“Defendant”) and Does 1 through 10. Before the Court is Defendant’s motion to dismiss Plaintiff’s Second Amended Complaint (“SAC”), ECF No. 98, for failure to state a claim, failure to properly serve Defendant, lack of personal jurisdiction, and lack of subject matter jurisdiction. ECF No. 101. The Court finds this motion suitable for decision without oral argument under Civil Local Rule 7-1(b) and hereby VACATES the motion hearing and the case management conference set for February 11, 2016, at 1:30 p.m. Having considered the parties’ submissions,

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<sup>1</sup> Plaintiff’s First Amended Complaint stated that his last name was “Utterkar.” ECF No. 33. Plaintiff corrected the spelling of his last name to “Uttarkar” in his Second Amended Complaint. ECF No. 98.

1 the record in this case, and the relevant law, the Court hereby GRANTS Defendant’s motion to  
2 dismiss Plaintiff’s SAC with prejudice under Federal Rule of Civil Procedure 12(b)(2) for lack of  
3 personal jurisdiction.

4 **I. BACKGROUND**

5 **A. Factual Background**

6 On or around April 3, 1999, Plaintiff and Bajaj, then President of PlanetSoft, Inc.  
7 (“PlanetSoft”), signed a Memorandum of Understanding (“MOU”) summarizing the terms and  
8 conditions of Plaintiff’s partnership with PlanetSoft. SAC ¶¶ 20-21. The MOU required that  
9 Plaintiff would work half-time for PlanetSoft for three months and then either Plaintiff or his  
10 spouse, Marceline Uttarkar, would work full-time thereafter on “mutual consent of both parties.”  
11 SAC, Exh. 2. The agreement would also “be finalized upon at [sic] the end of the 3 months.” *Id.*  
12 The MOU detailed that Plaintiff would be working half-time “to develop new business in  
13 PlanetSoft’s area of specialty in the New York and New Jersey areas” at a salary of \$40,000.00/yr.  
14 prorated monthly. *Id.* That salary would increase to \$80,000.00/yr. for full-time work upon  
15 “mutual agreement” and “satisfactory full time focus.” *Id.* In addition, the MOU required that  
16 Plaintiff would “invest \$25,000.00 towards the equity of PlanetSoft.” *Id.*; SAC ¶ 23. The MOU  
17 provided that Plaintiff would receive 5 percent of the equity in PlanetSoft in exchange for one  
18 person’s full-time work and the \$25,000.00 investment. *Id.* ¶ 25 & Exh. 2. Plaintiff was further  
19 given the option to invest \$50,000.00 more for an additional 2.5 percent interest in PlanetSoft, but  
20 Plaintiff did not do so. *Id.* ¶ 24. Finally, the MOU noted that all equity would be vested as long as  
21 Plaintiff was “operationally participating in the growth and development of PlanetSoft business on  
22 a full time basis.” *Id.* Exh. 1. According to the MOU, if participation by Plaintiff was no longer  
23 full time, “equity will be bought back prorated on the basis of valuing the company at twice the  
24 current revenue.” *Id.* ¶ 27 & Exh. 2.

25 The MOU was written on PlanetSoft letterhead. *Id.* ¶ 21 & Exh. 2. The MOU was signed  
26 by Bajaj and by Plaintiff. *Id.* Exh. 2. The signed MOU was faxed to Plaintiff from PlanetSoft’s  
27 office and lists Bajaj’s PlanetSoft email address. *Id.* Plaintiff paid the \$25,000.00 initial

1 investment to PlanetSoft. *Id.* ¶ 28. Plaintiff’s spouse, Marceline Uttarkar, worked full time at  
2 PlanetSoft from June 1999 until about February 2004. *Id.* ¶ 32. Plaintiff worked full time at  
3 PlanetSoft from September 2000 until about July 2001, at which point he ceased working at  
4 PlanetSoft due to 66 percent wage cuts. *Id.* ¶¶ 30-31.

5 Plaintiff alleges that he “requested and offered Defendants numerous opportunities from  
6 2003 through 2013 to buy back Plaintiff’s vested 5% equity” in PlanetSoft, and that “[s]ettlement  
7 discussions” took place during that period. *Id.* ¶ 46. In 2008, Bajaj and the former attorney for  
8 PlanetSoft, Shivbir Grewal, “discussed formal settlement/mutual release” with Plaintiff that  
9 “proposed to buy back Plaintiff’s 5% vested equity as well as reimburse Plaintiff for expenses and  
10 unpaid wages incurred during, relating to, and resulting from Plaintiff’s employment” with  
11 PlanetSoft. *Id.* ¶ 48. While the agreement was drafted, it was never executed because Bajaj  
12 “ceased all communications” with Plaintiff. *Id.* Plaintiff alleges that he “pursued and followed-  
13 up” with Bajaj from 2009-2011 to no avail. *Id.* ¶ 49.

14 Plaintiff alleges that around June of 2012, Ebix, Inc. (“Ebix”) purchased all of PlanetSoft’s  
15 stock for approximately \$40 million dollars. *Id.* ¶ 56 & Exh. 7. Plaintiff alleges that Ebix  
16 “reportedly acquired all of the outstanding capital stock of [PlanetSoft] for \$35,000,000.00 in cash  
17 at closing, and \$5,000,000.00 payable in the form of 297,265 shares of the common stock of  
18 [Ebix] issued at closing.” *Id.* ¶ 57. The deal also “reportedly involve[d] earn-out cash payments  
19 to [PlanetSoft] shareholders, based on specific revenue numbers achieved” within two years. *Id.*  
20 Following the sale, Bajaj allegedly resumed communicating with Plaintiff by telephone and email  
21 “to discuss settlement and release of Plaintiff’s 5% vested equity” in PlanetSoft, but Bajaj did not  
22 inform Plaintiff of the sale to Ebix. *Id.* ¶¶ 50-54. After Plaintiff learned of the sale, Plaintiff  
23 contacted Ebix and Bajaj multiple times through counsel requesting compensation for Plaintiff’s 5  
24 percent interest in PlanetSoft. *Id.* ¶¶ 61–62 & Exh. 3. Plaintiff has not received any compensation  
25 for his 5 percent interest in PlanetSoft. *Id.* ¶ 60.

26 Plaintiff resides in Santa Clara County, California. *Id.* ¶ 1. Bajaj allegedly has residences  
27 in India, Florida, Georgia, and California. *Id.* ¶ 2, 14. Bajaj is the President of PlanetSoft, Inc., a

1 former Delaware corporation whose primary place of business is Sacramento, California. *Id.* ¶ 2.

2 **B. Procedural History**

3 Plaintiff filed his original complaint against Ebix, Bajaj, and Does 1-10 on May 15, 2014.  
4 ECF No. 1. Ebix filed motions to dismiss and to transfer on July 21, 2014. ECF Nos. 15, 16.  
5 Plaintiff filed timely oppositions, ECF Nos. 18, 19, and Ebix filed timely replies, ECF Nos. 20, 21.  
6 On October 6, 2014, the Court granted Ebix’s motion to dismiss Plaintiff’s breach of contract  
7 claim without prejudice. (“October 6, 2014 Order”), ECF No. 29. In the October 6, 2014 Order,  
8 the Court also denied Ebix’s motion to dismiss or transfer venue. *Id.*

9 Plaintiff filed his First Amended Complaint on October 23, 2014. FAC, ECF No. 33. Ebix  
10 filed a motion to dismiss on November 18, 2014. ECF No. 44. Plaintiff filed a timely opposition,  
11 ECF No. 49, and Ebix filed a timely reply, ECF No. 50. On March 18, 2015, the Court granted  
12 Ebix’s motion to dismiss Plaintiff’s breach of contract claim with prejudice. (“March 18, 2015  
13 Order”), ECF No. 59.

14 While Plaintiff served Ebix on May 30, 2014, Plaintiff was unable to effectuate service on  
15 Bajaj as Plaintiff could not locate Bajaj. *See* ECF No. 52. On December 15, 2014, Plaintiff filed a  
16 “Status Report re: Service upon Defendant Sudhir Bajaj.” *Id.* Plaintiff represented that on  
17 December 6, 2015, a Mr. Navipeta Mahest personally served a security guard at the gated entrance  
18 to Bajaj’s residence in Secunderabad, India. *Id.* Plaintiff also mailed the documents to the  
19 residence and emailed the documents to Bajaj’s two last known email addresses on December 15,  
20 2014. *Id.*

21 On December 29, 2014, Bajaj made a special appearance and filed a motion to dismiss for  
22 defective service, lack of personal jurisdiction, and failure to state a claim. ECF No. 53. Plaintiff  
23 filed his opposition on January 12, 2015, ECF No. 54, and Bajaj filed a timely reply, ECF No. 55.  
24 On March 18, 2015, the Court granted Bajaj’s motion to dismiss for defective service without  
25 prejudice. ECF No. 59. The court further noted that Plaintiff had not sufficiently alleged facts  
26 showing that the Court’s exercise of personal jurisdiction over Bajaj would be appropriate. *Id.*

27 Plaintiff filed a motion for leave to file a Second Amended Complaint on April 1, 2015.

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1 ECF No. 63. Bajaj made a special appearance and filed an opposition on April 15, 2015. ECF  
2 No. 68. Plaintiff filed a timely reply. ECF No. 69. Ebix filed an opposition on May 29, 2015,  
3 ECF No. 81, and Plaintiff filed a timely reply to Ebix’s opposition, ECF No. 85. On August 25,  
4 2015, the Court granted in part and denied in part Plaintiff’s motion for leave to file a Second  
5 Amended Complaint. ECF No. 95. The Court permitted Plaintiff to file a Second Amended  
6 Complaint with seven causes of action against Bajaj only. *Id.*

7 On July 30, 2015, Plaintiff filed an ex parte motion to serve Bajaj by publication in the  
8 Atlanta Journal-Constitution. ECF No. 90. Bajaj filed an opposition to Plaintiff’s ex parte motion  
9 on August 3, 2015. ECF No. 91. Plaintiff filed objections to Bajaj’s opposition on August 13,  
10 2015. ECF No. 92. Plaintiff filed a motion to find that Bajaj has waived service of process on  
11 August 19, 2015. ECF No. 93. At the Case Management Conference on August 27, 2015, the  
12 Court granted Plaintiff’s ex parte motion to serve Bajaj by publication and denied as moot  
13 Plaintiff’s motion to find that Bajaj has waived service of process. ECF No. 108.

14 Plaintiff filed his Second Amended Complaint on September 4, 2015. ECF No. 98. On  
15 September 17, 2015, Plaintiff filed a motion for leave to file a motion for reconsideration of the  
16 Court’s order granting in part and denying in part Plaintiff’s motion for leave to file a Second  
17 Amended Complaint. ECF No. 99. The Court denied Plaintiff’s motion for leave to file a motion  
18 for reconsideration on November 11, 2015. ECF No. 104.

19 Bajaj filed the instant motion to dismiss on October 22, 2015. Plaintiff filed a response on  
20 November 5, 2015. Bajaj filed a reply on November 12, 2015. ECF No. 105.

21 **II. LEGAL STANDARD**

22 **A. Rule 12(b)(2)**

23 When a defendant moves to dismiss for lack of personal jurisdiction, “the plaintiff bears  
24 the burden of demonstrating that jurisdiction is appropriate.” *Schwarzenegger v. Fred Martin*  
25 *Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). Because this Court has not conducted an  
26 evidentiary hearing, Plaintiff “need only make a prima facie showing of jurisdictional facts.” *Sher*  
27 *v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). While a plaintiff cannot “simply rest on the

1 bare allegations of its complaint,’ uncontroverted allegations in the complaint must be taken as  
2 true [and] [c]onflicts between parties over statements contained in affidavits must be resolved in  
3 the plaintiff’s favor.” *Schwarzenegger*, 374 F.3d at 800 (quoting *Amba Mktg. Systems, Inc. v.*  
4 *Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977), and citing *AT & T v. Compagnie Bruxelles*  
5 *Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)).

6 Where, as here, there is no federal statute that governs personal jurisdiction, the Court must  
7 apply the law of the state in which it sits. *Schwarzenegger*, 374 F.3d at 800. In this case,  
8 “[b]ecause California’s long-arm jurisdictional statute is coextensive with federal due process  
9 requirements, the jurisdictional analyses under state law and federal due process are the same.” *Id.*  
10 at 800–01. That is, for this Court to exercise personal jurisdiction over Defendant, Defendant  
11 “must have at least ‘minimum contacts’ with the relevant forum such that the exercise of  
12 jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Id.* at 801  
13 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). A federal court may exercise  
14 either general or specific jurisdiction over a non-resident defendant. General jurisdiction exists  
15 where a defendant has “continuous and systematic” contacts with the forum state such that the  
16 defendant may be “haled into court in the forum state to answer for any of its activities anywhere  
17 in the world.” *Schwarzenegger*, 374 F.3d at 801. Specific jurisdiction is more limited in scope  
18 and can be exercised where the defendant has sufficient minimum contacts with the forum state,  
19 and the plaintiff’s claims arise out of those contacts. *Id.* at 801–02.

20 **B. Leave to Amend**

21 If the court concludes that the complaint should be dismissed, it must then decide whether  
22 to grant leave to amend. Under Rule 15(a) of the Federal Rules of Civil Procedure, leave to  
23 amend “shall be freely given when justice so requires,” bearing in mind “the underlying purpose  
24 of Rule 15 . . . [is] to facilitate decision on the merits, rather than on the pleadings or  
25 technicalities.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (citation omitted).  
26 Nonetheless, a district court may deny leave to amend a complaint due to “undue delay, bad faith  
27 or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments

1 previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
2 amendment, [and] futility of amendment.” *See Leadsinger, Inc. v. BMG Music Publ’g*, 512 F.3d  
3 522, 532 (9th Cir. 2008).

4 **III. DISCUSSION**

5 The Court begins by briefly describing its March 18, 2015 Order on Bajaj’s motion to  
6 dismiss the FAC. In the March 18, 2015 Order, the Court held that Plaintiff had not properly  
7 effected service upon Bajaj. ECF No. 59. The Court further held that Plaintiff had not alleged  
8 facts sufficient to show that the Court could exercise personal jurisdiction over Bajaj. *Id.*  
9 Specifically, the Court held that Plaintiff’s assertion in his briefing that Bajaj “personally owned  
10 property and lived in California at times relevant to this litigation until approximately 2012,” ECF  
11 No. 54 at 14-15, was insufficient to support the exercise of general jurisdiction over Bajaj because  
12 this assertion was not alleged in either the FAC or an affidavit. ECF No. 59. The Court further  
13 held that Plaintiff had not alleged a sufficient basis for the exercise of specific jurisdiction because  
14 Bajaj’s only California contacts alleged in the FAC were those of PlanetSoft, not Bajaj, and  
15 Plaintiff did not allege any nexus between PlanetSoft’s contacts with California and Plaintiff’s  
16 cause of action against Bajaj. *Id.* The Court cautioned that failure to cure the deficiency in  
17 alleging personal jurisdiction over Bajaj would result in a dismissal with prejudice. *Id.*

18 In the instant motion, Defendant moves to dismiss the SAC for failure to state a claim,  
19 failure to properly serve Defendant, lack of personal jurisdiction, and lack of subject matter  
20 jurisdiction. ECF No. 101. The Court begins by discussing Defendant’s argument that the SAC  
21 should be dismissed for lack of personal jurisdiction. Because the Court concludes that the SAC  
22 does not allege facts sufficient for this Court to exercise personal jurisdiction over Defendant, the  
23 Court does not reach Defendant’s remaining arguments for dismissal.

24 **A. The Exercise of Personal Jurisdiction Over Bajaj**

25 A federal court may exercise either general or specific jurisdiction over a non-resident  
26 defendant. *Schwarzenegger*, 374 F.3d at 801-02. Defendant argues that Plaintiff has not alleged  
27 facts supporting this Court’s exercise of either general or specific jurisdiction over Defendant.

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1 ECF No. 101. The Court addresses Plaintiff’s arguments for general and specific jurisdiction in  
2 turn.

3 **1. General Jurisdiction**

4 The Court may exercise general jurisdiction over a defendant who is domiciled in the  
5 forum state. *Panavision Int’l, L.P. v. Toebben*, 141 F.3d 1316, 1320 (9th Cir. 1998).  
6 Additionally, general jurisdiction over a non-resident exists where a defendant has “continuous  
7 and systematic” contacts with the forum state such that the defendant may be “haled into court in  
8 the forum state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374  
9 F.3d at 801.

10 Although the SAC alleges that Defendant resides in California, SAC ¶¶ 2, 13, Plaintiff  
11 concedes in his response to Defendant’s motion to dismiss that Defendant does *not* in fact reside  
12 in California. *See* ECF No. 103 at 11 (“DEFENDANT has admitted, multiple times in his filings,  
13 he does not reside in California. Plaintiff’s investigation has also shown, and DEFENDANT has  
14 not and will not dispute, that DEFENDANT is not a residence [sic] of California”). Because  
15 Defendant is not a resident of California, general jurisdiction over Defendant exists only if  
16 Defendant has sufficient “continuous and systematic” contacts with California. *Schwarzenegger*,  
17 374 F.3d at 801. However, Plaintiff does not argue that Defendant has sufficient “continuous and  
18 systematic” contacts with California to establish the Court’s general personal jurisdiction over  
19 Defendant. *See generally* ECF No. 103.

20 Instead, Plaintiff argues that general jurisdiction is appropriate in the instant case because  
21 Defendant has submitted to the Court’s jurisdiction by “making general appearances” to both  
22 contest jurisdiction and assert additional defenses. ECF No. 103 at 9-10. “Defendants can waive  
23 the defect of lack of personal jurisdiction by appearing generally without first challenging the  
24 defect in a preliminary motion, or in a responsive pleading.” *Jackson v. Hayakawa*, 682 F.2d  
25 1344, 1347 (9th Cir. 1982). However, Federal Rule of Civil Procedure 12(b) explicitly allows a  
26 defendant to combine a 12(b)(2) defense with any other 12(b) defense. Fed. R. Civ. P. 12(b) (“No  
27 defense or objection is waived by joining it with one or more other defenses or objections in a

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1 responsive pleading or motion.”). In the instant case, Defendant has challenged the Court’s  
2 exercise of personal jurisdiction over Defendant in each of Defendant’s filings before this Court.  
3 *See* ECF Nos. 53, 55, 68, 91, 101, 105 (Defendant’s filings in the instant case, each of which  
4 challenges the Court’s exercise of personal jurisdiction over Defendant). Therefore, Defendant  
5 has not submitted to the Court’s exercise of personal jurisdiction through his participation in this  
6 lawsuit.

7 Because Plaintiff has not met his burden of showing that the Court may exercise general  
8 personal jurisdiction over Defendant, *see Schwarzenegger*, 374 F.3d at 800 (“[T]he plaintiff bears  
9 the burden of demonstrating that jurisdiction is appropriate”), the Court turns to whether Plaintiff  
10 has shown that the Court may exercise specific personal jurisdiction over Defendant.

11 **2. Specific Jurisdiction**

12 The Ninth Circuit has developed a three-prong test for analyzing whether a non-resident  
13 defendant is subject to specific personal jurisdiction:

- 14 (1) The non-resident defendant must purposefully direct his activities or consummate some  
15 transaction with the forum or resident thereof; or perform some act by which he  
16 purposefully avails himself of the privilege of conducting activities in the forum, thereby  
17 invoking the benefits and protections of its laws;
- 18 (2) the claim must be one which arises out of or relates to the defendant's forum-related  
19 activities; and
- 20 (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must  
21 be reasonable.

22 *Schwarzenegger*, 374 F.3d at 802. The plaintiff bears the burden of establishing the first two  
23 prongs of the test. *Id.* “If the plaintiff succeeds in satisfying both of the first two prongs, the  
24 burden then shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction  
25 would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78,  
26 (1985)).

27 The entirety of Plaintiff’s argument in support of the exercise of specific jurisdiction over  
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1 Defendant is as follows:

2 Plaintiff alleges that DEFENDANT, as the President of  
3 PLANETSOFT, “purposefully directed PLANETSOFT activities at  
4 businesses and consumers that resided in California and benefited  
5 from doing said business in California.” SAC, ¶ 14. Plaintiff also  
6 alleged that DEFENDANT, with the help of a California-based  
7 attorney, Mr. Shivbir Grewal, negotiated, on behalf of  
8 PLANETSOFT, a buyback settlement of Plaintiff’s equity interest in  
9 PLANETSOFT. SAC, ¶ 16. These settlement negotiations  
10 contributed to Plaintiff’s belief DEFENDANT would buyback his  
11 equity interest in PLANETSOFT.

12 ECF No. 103 at 11. In this argument, Plaintiff identifies two California-based activities that  
13 Plaintiff contends support the exercise of specific jurisdiction in California: (1) Defendant directed  
14 PlanetSoft’s business activities in California; and (2) Defendant negotiated a settlement agreement  
15 with Plaintiff through the help of a California-based attorney. The Court addresses each of these  
16 activities in turn.

17 **a. PlanetSoft’s California Business Activities**

18 In the SAC, Plaintiff alleges that Defendant is the President of PlanetSoft, and that  
19 PlanetSoft conducts business in California. SAC ¶¶ 14-15. Plaintiff argues that by directing  
20 PlanetSoft’s business activities in California, Defendant is subject to specific jurisdiction in  
21 California. ECF No. 103. Defendant does not dispute that Defendant is the President of  
22 PlanetSoft and that PlanetSoft conducts business in California. ECF Nos. 101, 105. Instead,  
23 Defendant argues that Plaintiff has not established that PlanetSoft’s activities in California can be  
24 attributed to Defendant for purposes of this Court’s exercise of specific jurisdiction over  
25 Defendant. *Id.*

26 “The mere fact that a corporation is subject to local jurisdiction does not necessarily mean  
27 its nonresident officers, directors, agents, and employees are suable locally as well.” *Winery v.*  
28 *Graham*, No. C 06-3618 MHP, 2007 WL 963252, at \*5 (N.D. Cal. Mar. 29, 2007). To the  
contrary, the fiduciary shield doctrine protects an individual from being subjected to personal  
jurisdiction based on acts undertaken in the individual’s corporate capacity. *See Davis v. Metro*  
*Productions, Inc.*, 885 F.2d 515, 520 (9th Cir.1989) (“[A] person’s mere association with a

1 corporation that causes injury in the forum state is not sufficient in itself to permit that forum to  
2 assert jurisdiction over the person.”). There are two circumstances under which the fiduciary  
3 shield doctrine does not apply: “(1) where the corporation is the agent or alter ego of the  
4 individual defendant; or (2) by virtue of the individual's control of, and direct participation in the  
5 alleged activities.” *Mulato v. Wells Fargo Bank, N.A.*, 76 F. Supp. 3d 929, 945 (N.D. Cal. 2014)  
6 (quoting *j2 Global Commc'ns, Inc. v. Blue Jay, Inc.*, No. 08–cv–4254 PJH, 2009 WL 29905, at \*5  
7 (N.D. Cal. Jan. 5, 2009)).

8 Plaintiff has not shown that either exception to the fiduciary shield doctrine applies in the  
9 instant case. As to the first exception, Plaintiff has not alleged that PlanetSoft has no separate  
10 existence such that it might be treated as the alter ego of Defendant. *See Flynt Distributing Co.,*  
11 *Inc. v. Harvey*, 734 F.2d 1389, 1393–94 (9th Cir.1984) (stating that where a corporation is the  
12 alter ego of its owners, jurisdiction over the corporation supports jurisdiction over the owners).

13 Similarly, with respect to the second exception, Plaintiff has not alleged that Defendant  
14 was in control of and a direct participant in PlanetSoft’s business activities in California. *See*  
15 *Mulato*, 76 F. Supp. at 945 (stating that the fiduciary shield doctrine may not apply “by virtue of  
16 the individual’s control of, and direct participation in the alleged activities”). Absent allegations  
17 that an exception to the fiduciary shield doctrine applies in the instant case, Defendant cannot be  
18 subject to personal jurisdiction in California solely because he is president of a company that did  
19 business in California. *See Winery v. Graham*, No. 06-3618, 2007 U.S. Dist. LEXIS 22858, at 15  
20 (N.D. Cal. Mar. 28, 2007) (“The mere fact that a corporation is subject to local jurisdiction does  
21 not necessarily mean its nonresident officers, directors, agents, and employees are suable locally  
22 as well.”); *see also* March 18, 2015 Order (rejecting Plaintiff’s argument that PlanetSoft’s  
23 California-based activities could be the basis of specific jurisdiction over Defendant).

24 Furthermore, even if PlanetSoft’s contacts with California could be attributed to Bajaj,  
25 Plaintiff has failed to satisfy the second prong of the specific jurisdiction analysis, that is, whether  
26 Plaintiff’s claims arise out of or relate to Defendant’s forum-related activities. Specifically,  
27 Plaintiff has failed to allege any nexus between PlanetSoft’s business activities in California and

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1 Plaintiff's causes of action. Plaintiff's causes of action arise out of the alleged breach of an MOU  
2 that described Plaintiff's responsibilities in New York and New Jersey, while Bajaj resided in  
3 Massachusetts. *See* SAC. Thus, the causes of action do not relate to PlanetSoft's business  
4 activities in California.

5 The Court therefore concludes that PlanetSoft's business activities in California are not  
6 sufficient for the Court to exercise specific jurisdiction over Bajaj.

7 **b. Settlement Negotiations**

8 Plaintiff additionally argues that the Court may exercise specific jurisdiction over  
9 Defendant based on the fact that in 2008, Defendant, with the assistance of a California-based  
10 attorney, negotiated a buyback settlement agreement with Plaintiff while Plaintiff and Defendant  
11 both resided in California. ECF No. 103 at 11. Plaintiff states that Defendant participated in these  
12 negotiations on behalf of PlanetSoft. *Id.* Plaintiff further alleges that these settlement negotiations  
13 resulted in a draft settlement agreement that was never signed or executed. SAC ¶ 48.

14 As with PlanetSoft's business activities in California, Plaintiff has not argued that  
15 Defendant's settlement negotiations on behalf of PlanetSoft may be attributed to Defendant  
16 individually. Without showing that an exception to the fiduciary shield doctrine applies, Plaintiff  
17 has not shown that Defendant is subject to personal jurisdiction based on acts undertaken in  
18 Defendant's corporate capacity as the representative for PlanetSoft. *See Davis*, 885 F.2d at 520  
19 (holding that, absent an exception, the fiduciary shield doctrine protects an individual from being  
20 subjected to personal jurisdiction based on acts undertaken in the individual's corporate capacity).

21 Even assuming, *arguendo*, that the settlement negotiations could be ascribed to Defendant  
22 personally, the Court finds that the contacts associated with negotiating an unsigned,  
23 unenforceable draft contract are too attenuated to satisfy the purposeful availment prong of the  
24 specific jurisdiction inquiry. The purposeful availment prong "ensures that a defendant will not be  
25 haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the  
26 unilateral activity of another party or a third person." *Burger King Corp.*, 471 U.S. at 475. The  
27 Ninth Circuit has held that contract negotiations within the forum state satisfy the purposeful

1 availment prong of the specific jurisdiction analysis only where the defendant’s negotiations  
 2 “allow[] or promote[] the transaction of business within the forum state.” *Sinatra v. Nat’l*  
 3 *Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988). Thus, the Ninth Circuit has held that specific  
 4 jurisdiction in California is appropriate for claims of breach of contract arising out of contracts “at  
 5 least partially negotiated in California and actually formed in California.” *Data Disc, Inc. v.*  
 6 *Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1287-88 (9th Cir. 1977).

7 In the instant case, no contract was actually formed, in California or elsewhere, as a result  
 8 of Defendant’s alleged settlement negotiations in California. SAC ¶ 48. Likewise, Plaintiff points  
 9 to no evidence that the unsuccessful settlement negotiations “allow[ed] or promote[d]  
 10 [Defendant’s] transaction of business within the forum state.” *See Sinatra*, 854 F.2d at 1195.  
 11 Absent evidence that the settlement negotiations were part of “ongoing efforts by [Defendant] to  
 12 avail [himself] of the benefits and protections of California,” the ultimately unsuccessful  
 13 settlement negotiations in California do not satisfy the purposeful availment prong of the specific  
 14 jurisdiction analysis. *See BJI Energy Sol’ns, LLC v. Artemis Techs. d/b/a Alpha-Lite*, No. CV  
 15 04-1521-RGK(JTLX), 2004 WL 1498164, at \*3-4 (C.D. Cal. June 17, 2004) (holding that  
 16 unsuccessful contract negotiations in California that resulted in an unsigned draft contract were  
 17 insufficient to establish personal jurisdiction in California because the plaintiff had not produced  
 18 evidence of “ongoing efforts” by the defendant “to avail itself of the benefits and protections of  
 19 California”).

20 Therefore, Plaintiff has not met his burden to show that this Court may exercise specific  
 21 jurisdiction over Defendant. *See Schwarzenegger*, 374 F.3d at 800 (“[T]he plaintiff bears the  
 22 burden of demonstrating that jurisdiction is appropriate.”).

23 Because Plaintiff has not demonstrated that the Court may exercise either general or  
 24 specific jurisdiction over Defendant, the Court GRANTS Defendant’s motion to dismiss the SAC  
 25 under Rule 12(b)(2) for lack of personal jurisdiction.

26 **B. Leave to Amend**

27 The Court now turns to whether to grant Plaintiff leave to amend his complaint. The Court

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1 may deny leave to amend a complaint due to “undue delay, bad faith or dilatory motive on the part  
2 of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue  
3 prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of  
4 amendment.” *See Leadsinger*, 512 F.3d at 532.

5 In the instant case, the Court previously dismissed Plaintiff’s First Amended Complaint for  
6 failure to properly serve Baja and for lack of personal jurisdiction as to Bajaj. March 18, 2015  
7 Order. The Court gave Plaintiff an opportunity to amend his complaint to address the Court’s  
8 concerns as to personal jurisdiction. *Id.* In the March 18, 2015 Order, the Court warned Plaintiff  
9 that failure to cure the deficiencies in personal jurisdiction would result in dismissal with  
10 prejudice. *Id.* Plaintiff’s SAC has failed to cure the personal jurisdiction deficiencies. Giving  
11 Plaintiff an additional opportunity to amend his complaint to address personal jurisdiction would  
12 be futile, would cause undue delay, and would unduly prejudice Defendant by requiring Defendant  
13 to file repeated motions to dismiss on personal jurisdiction grounds. Therefore, the Court’s  
14 dismissal of Plaintiff’s SAC is with prejudice. *See Leadsinger*, 512 F.3d at 532.

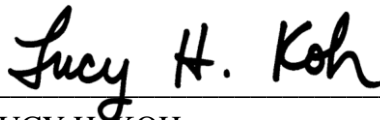
15 **IV. CONCLUSION**

16 For the foregoing reasons, the Court GRANTS Defendant’s Motion to Dismiss with  
17 prejudice.

18 **IT IS SO ORDERED.**

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20 Dated: February 2, 2016



21  
22 LUCY H. KOH  
United States District Judge

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