

1 November 2015, the Bahamas Paradise Defendants removed the action to this Court. Notice of
2 Removal, ECF 1. The Bahamas Paradise Defendants then moved to dismiss the allegations
3 against them pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6), arguing that
4 Plaintiffs failed to allege a basis for the Court to exercise personal jurisdiction over them and
5 failed to state a claim for relief against them. Mot. to Dismiss, ECF 25.

6 In support of their Motion to Dismiss, the Bahamas Paradise Defendants filed several
7 declarations contesting Plaintiffs’ jurisdictional allegations. Specifically, the Bahamas Paradise
8 Defendants contended that Cruise Operator, Inc. operates, but does not own, the Grand
9 Celebration cruise ship; both of the Bahamas Paradise Defendants transact business out of Florida,
10 not California; neither of them has ever “controlled” GBCL’s telemarketing activities; and neither
11 of them has any “affiliation” with GBCL. Ryerson Decl. ¶¶ 3–11, ECF 26; Lambert Decl. ¶¶ 3–
12 12, ECF 27. The Court granted the Bahamas Paradise Defendants’ Motion to Dismiss, but granted
13 Plaintiffs leave to amend. ECF 42. The Court found that “Plaintiffs [had] failed to adequately
14 plead any of the three forms of agency necessary to support a claim of vicarious liability or for
15 exercising jurisdiction on that basis[.]” *Id.* at 3. The Court also found that “even if Plaintiffs had
16 sufficiently alleged an agency relationship in their FAC, they failed to controvert the declarations
17 the Bahamas Paradise Defendants submitted to show a lack of agency.” *Id.*

18 Now before the Court is Plaintiffs’ Motion to Conduct Expedited Jurisdictional Discovery.
19 ECF 45.

20 **II. LEGAL STANDARD**

21 “A district court is vested with broad discretion to permit or deny [jurisdictional]
22 discovery.” *Laub v. U.S. Dep’t of the Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003).
23 Jurisdictional discovery should ordinarily be granted “where pertinent facts bearing on the
24 question of jurisdiction are controverted . . . or where a more satisfactory showing of the facts is
25 necessary.” *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir.
26 1977) (holding that district court abused its discretion in refusing to grant jurisdictional
27 discovery).

28 In this district, courts have held that “a plaintiff need not make out a prima facie case of

1 personal jurisdiction before it can obtain jurisdictional discovery.” *Calix Networks, Inc. v. Wi-*
2 *Lan, Inc.*, No. 09-cv-06038-CRB (DRM), 2010 WL 3515759, at *4 (N.D. Cal. Sept. 8, 2010)
3 (citing *eMag Sols., LLC v. Toda Kogyo Corp.*, No. C 02-1611, 2006 WL 3783548, at *2 (N.D.
4 Cal. Dec. 21, 2006) (“It would . . . be counterintuitive to require a plaintiff, *prior* to conducting
5 discovery, to meet the same burden that would be required to defeat a motion to dismiss.”).
6 “Rather, a plaintiff must present a ‘colorable basis’ for jurisdiction, or ‘some evidence’
7 constituting a lesser showing than a prima facie case.” *Id.* (citations omitted). Indeed, the Ninth
8 Circuit has reversed for abuse of discretion when further discovery “might well” have established
9 a basis for personal jurisdiction. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*,
10 328 F.3d 1122, 1135 (9th Cir. May 12, 2003).

11 **III. DISCUSSION**

12 **A. Jurisdictional Discovery**

13 Plaintiffs contend that “the respective websites of the Bahamas Paradise Defendants and
14 GBCL provide a colorable basis for concluding that further discovery might well reveal facts
15 demonstrating that the Bahamas Paradise Defendants have retained GBCL to act as their
16 promotional agent.” Mot. 2, ECF 45. Plaintiffs make several arguments in support of
17 jurisdictional discovery: First, Plaintiffs assert that “the purpose of GBCL’s website is to promote
18 cruises aboard the Grand Celebration—the one and only ship mentioned anywhere on the[ir]
19 website, and a ship that happens to be owned by one of the Bahamas Paradise Defendants and
20 operated by the other.” *Id.* Second, Plaintiffs allege that “the materials available on GBCL’s
21 website are largely identical to, if not exactly the same as, those found on the Bahamas Paradise
22 Defendants’ website, including images of the Grand Celebration, the use of the same logos,
23 descriptions of the same promotional offers, and the linking-to of nearly identical forms.” *See id.*
24 Finally, Plaintiffs contend that “the telephone number held out by GBCL to Grand Celebration
25 passengers actually belongs to the Bahamas Paradise Defendants.” *See id.* at 6. According to
26 Plaintiffs, “[t]his demonstrates a relationship between GBCL and the Bahamas Paradise
27 Defendants, and it conflicts with the [Defendants’] Declarations’ vague assertion that no
28 ‘affiliation’ between the companies exists.” *Id.* Thus, Plaintiffs argue that “these facts provide a

1 colorable basis for questioning the veracity of the statements found in [Defendants’] Declarations,
2 and they justify limited discovery on the nature of the affiliation between the Bahamas Paradise
3 Defendants and GBCL.” *Id.* at 2.

4 The Bahamas Paradise Defendants oppose Plaintiffs’ motion, arguing that Plaintiffs “have
5 failed to make a colorable showing or present any evidence that the Court can exercise personal
6 jurisdiction over the Bahamas Paradise Defendants, and they disregard that the proper inquiry for
7 agency relationship is whether the Bahamas Paradise Defendants had the right to control and
8 direct the telemarketing activities at issue[.]” Opp.12, ECF 50. Specifically, they argue that
9 “Plaintiffs were required to present evidence of an agency relationship between [GBCL] and the
10 Bahamas Paradise Defendants related to the alleged telemarketing conduct that forms the basis of
11 Plaintiffs’ TCPA claim,” but they did not do so. *Id.* at 5–6. The Bahamas Paradise Defendants
12 also argue that Plaintiffs “exaggerate the supposedly ‘overwhelming similarity’ of Bahama
13 Paradise’s and Grand Bahama’s websites, and never explain how that is evidence of an agency
14 relationship.” *Id.* at 7. Moreover, the Bahamas Paradise Defendants argue that “[n]othing on the
15 websites indicates an agency relationship” between them and GBCL. *Id.* at 8. Thus, the Bahamas
16 Paradise Defendants ask this Court to deny Plaintiffs’ motion. Defendant GBCL joined the
17 Bahamas Paradise Defendants opposition. Joinder, ECF 52.¹

18 In reply, Plaintiffs contend that jurisdictional discovery on the business relationship
19 between the Bahamas Paradise Defendants and GBCL will yield jurisdictionally relevant facts.
20 Reply ISO Mot. 3, ECF 56.

21 The Court concludes that Plaintiffs have established that a more satisfactory showing of
22 the facts is necessary and that there is a “colorable basis” for jurisdiction based on one of the three
23 methods of establishing agency. Although the Bahamas Paradise Defendants rightly point out that
24 Plaintiffs fail to provide significant evidence supporting their agency theories, Plaintiffs are not

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26 ¹ GBCL uses the joinder to “plead[] its entitlement to dismissal . . . on the basis of Federal Rules
27 of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(6)[.]” Joinder 2, ECF 52. Specifically, GBCL
28 claims that it “was never formally served with the First Amended Complaint” or the original
complaint. *Id.* GBCL has not filed a motion to dismiss pursuant to Federal Rule of Civil
Procedure 12 or in compliance with Civil L.R. 7. Thus, these issues are not properly before the
Court.

1 required to do so at this stage. Rather, Plaintiffs must present only a “colorable basis” for
2 jurisdiction. They have done so by highlighting the similarities in the webpages, documents, and
3 phone numbers of the Defendants. Accordingly, the Court finds that limited jurisdictional
4 discovery is warranted on the issue of whether GBCL serves as an agent of the Bahamas Paradise
5 Defendants such that GBCL’s California contacts may be imputed to the Bahamas Paradise
6 Defendants.

7 In their opposition, the Bahamas Paradise Defendants ask the Court to deny Plaintiffs’
8 motion because Plaintiffs failed to comply with the Court’s meet and confer requirement prior to
9 filing the motion. Opp. 3–4, ECF 50. To the extent Plaintiffs did not comply with the Court’s
10 meet and confer requirement, the defect has been cured—it is evident from Plaintiffs’ reply that
11 the parties did meet and confer. *See generally* Reply, ECF 56. Additionally, Plaintiffs’ have
12 provided a narrow discovery plan in compliance with the Court’s previous order. *Id.* at 4; *see also*
13 Ex. B to Reply ISO Mot., ECF 56-2.

14 Finally, the Bahamas Paradise Defendants also ask that the Court grant them leave to
15 conduct jurisdictional discovery. Opp. 12, ECF 50. Because Plaintiffs do not object, the Court
16 finds such discovery warranted as well. Reply 4, ECF 56.

17 **B. Scope of Discovery**

18 In their Reply,² Plaintiffs request leave to: (1) take a four hour Rule 30(b)(6) deposition
19 limited to any relationship or dealings between the Bahamas Paradise Defendants and GBCL; any
20 benefit received by the Bahamas Paradise Defendants as a result of GBCL’s telemarketing
21 activities; and any knowledge the Bahamas Paradise Defendants have of such activities and (2)
22 serve requests for production of documents on the Bahamas Paradise Defendants, seeking any
23 documents that discuss or evidence the matters enumerated above. Reply ISO Mot. 4, ECF 56.
24 Defendants object to the scope of Plaintiffs’ request, and ask the Court to limit jurisdictional
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26 _____
27 ² After reviewing Plaintiffs’ Motion and Defendants’ Opposition, this Court ordered the parties to
28 meet and confer in an attempt to narrow the scope of Plaintiffs’ requested jurisdictional discovery.
ECF 45. The parties complied with the Court’s order and Plaintiffs provided a narrower discover
plan in their Reply. *See* Reply ISO Mot., ECF 56.

1 discovery to any agency relationship involving GBCL’s telemarketing calls to Plaintiffs in
2 California. *Id.* at 5 (drafted by the Bahamas Paradise Defendants).

3 The Court GRANTS Plaintiffs’ motion to take a four hour Rule 30(b)(6) deposition.
4 However, because the Court agrees with Defendants that the request is overly broad, the
5 deposition must be limited to the following topics:

- 6 a. Any relationship or dealings between GBCL and the Bahamas Paradise Defendants (or any
7 of their agents or co-venturers, including but not limited to tour operators) relating to the
8 Grand Celebration.
- 9 b. Any benefit, direct or indirect, received by the Bahamas Paradise Defendants as a result of
10 GBCL’s telemarketing.


11 The Court DENIES Plaintiffs’ request to discuss “any knowledge the Bahamas Paradise
12 Defendants have of GBCL’s telemarketing activities for the booking of cruises on the Grand
13 celebration.” The Court GRANTS Plaintiffs’ motion as to the proposed document request as it
14 relates to (a) and (b) above.

15 Additionally, the Court GRANTS the Bahamas Paradise Defendants’ request to conduct
16 jurisdictional discovery as enumerated in Exhibit C to Plaintiffs’ reply. Ex. C to Reply ISO Mot.,
17 ECF 56-3 (drafted by the Bahamas Paradise Defendants).

18 The parties are ORDERED to complete jurisdictional discovery on or before November
19 28, 2016 and to file an amended complaint, if any, or a notice of dismissal by December 30, 2016.

20 **IT IS SO ORDERED.**

21 Dated: September 28, 2016

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23 BETH LABSON FREEMAN
24 United States District Judge
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