

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

TWITCH INTERACTIVE, INC.,
Plaintiff,
v.
FISHWOODCO GMBH,
Defendant.

Case No. 22-cv-03218-EJD

**ORDER DENYING MOTION TO
DISMISS WITHOUT
PREJUDICE; GRANTING
REQUEST FOR
JURISDICTIONAL DISCOVERY**

Re: ECF No. 46

Before the Court is Intervenor's Loots Media GmbH, Fuehnen Holding GmbH, and Marc Fuehnen's (collectively, "Intervenor's") Motion to Dismiss ("Mot." or "Motion"). ECF No. 46. For the reasons set forth below, the Court DENIES Intervenor's Motion without prejudice to renew the Motion following the completion of limited jurisdictional discovery.

I. BACKGROUND

Both Judge DeMarchi and this Court have previously provided detailed summaries of the relevant facts, and the Court will summarize the facts relevant to Intervenor's Motion here. See ECF No. 36, Report and Recommendation re Mot. Default J. ("R&R"), at 2-8; see also ECF No. 45, Order on Intervention and Default Judgment.

A. Parties

Twitch Interactive, Inc. ("Petitioner" or "Twitch") is a San Francisco company that provides streaming services for content creators. Petition to Confirm Arbitration Awards ("Pet." or "Petition") ¶¶ 7-8, ECF No. 1. Twitch also owns rights in the TWITCH trademark and the "Glitch Logo." *Id.* ¶ 10. Respondent Fishwoodco GmbH is alleged to have operated an

1 advertisement platform called Loots that enabled streamers to display advertisements on their
2 streams, with the revenue being shared between the streamers and Respondent, i.e., without any
3 revenue going to Twitch. Pet. ¶¶ 11–12. Respondent also allegedly used Twitch marks in its
4 materials that suggest the platform supports Twitch. *Id.* ¶ 12. In May 2016, Respondent signed up
5 for a Twitch user account and, therefore, agreed to Twitch’s terms of service (“TOS”), trademark
6 guidelines, and other policies incorporated into the TOS. *Id.* ¶ 13. In September 2018,
7 Respondent also purportedly entered into a Developer Services Agreement for a developer account
8 with Twitch. *Id.* ¶ 13. Around October 2019, Respondent filed for bankruptcy in Germany.
9 ECF No. 39-3, Decl. of Marc Fuehnen (“Fuehnen Decl.”) ¶ 11.

10 Intervenor Marc Fuehnen was the former *Geschäftsführer* (equivalent to a Chief Executive
11 Officer) of Respondent until he was released from his duties by the bankruptcy administrator,
12 Sebastian Laboga. Fuehnen Decl. ¶¶ 2, 12.

13 Intervenor Loots Media GmbH (“Loots Media”) is a German company that Mr. Fuehnen
14 co-founded in January 2020 with four other shareholders. *Id.* ¶ 19. Although Loots Media
15 operates on a similar business model to Respondent’s, Loots Media does not permit Twitch users
16 to run branded content using Loots Media’s platform. *Id.* ¶ 21.

17 Intervenor Fuehnen Holding GmbH is a German asset management company whose sole
18 shareholder is Mr. Fuehnen. Fuehnen Decl. ¶ 4.

19 **B. JAMS Arbitration**

20 In March 2017, Twitch sent cease-and-desist communications to Respondent, alleging
21 violations of Twitch’s TOS and infringement of Twitch’s intellectual property. Pet. ¶ 16. On
22 August 20, 2019, Twitch initiated JAMS arbitration proceedings in Santa Clara County, California
23 per the arbitration clause in Twitch’s TOS. *Id.* ¶ 17. Twitch asserted claims for Lanham Act
24 violations, breach of various contracts, and tortious interference with contractual relationships.
25 ECF No. 3-7.

26 Respondent initially participated in the arbitration via Marc Fuehnen, who engaged in
27 settlement negotiations with Twitch’s counsel. Fuehnen Decl. ¶¶ 10–11. Around October 2019,

1 Respondent filed for bankruptcy in Germany. *Id.* ¶ 11. Nonetheless, the settlement negotiations
2 continued and progressed to a point where the parties were to sign the settlement agreement in
3 December 2019. *Id.* ¶ 14. However, Mr. Fuehnen was purportedly discharged from his duties as
4 Respondent’s *Geschäftsführer* before the settlement agreement could be signed. *Id.* ¶¶ 14–15.
5 Mr. Fuehnen asserts that, after he was discharged, he could no longer represent the Respondent in
6 any official capacity. *Id.* ¶ 15. Instead, the “only individual with the authority to represent the
7 Respondent” following Mr. Fuehnen’s discharge “would have been Mr. Laboga.” Mot. 5.

8 After Mr. Fuehnen and Respondent purportedly “fell silent,” Twitch moved for default
9 judgment in the JAMS arbitration in September 2020. Pet. ¶ 21. On January 4, 2021, the tribunal
10 granted default judgment, awarded \$1,488,000 in damages, and issued an injunction against
11 Respondent and its “officers, agents, representatives, employees, and successors and assigns.”
12 Pet. ¶ 28.

13 In October 2021, Twitch requested that the JAMS tribunal issue an amended order that
14 also included Intervenors because Respondent was purportedly continuing its “operation of the
15 exact same scheme but under a slightly altered name.” Pet. ¶ 30. The tribunal granted the request
16 and amended the injunction to also include “Loots Media GmbH, Fuehnen Holding GmbH, Marc
17 Fuehnen, and the operators of its websites like loot.com and new.loots.com.” *Id.* ¶ 31.
18 Mr. Fuehnen was purportedly served with the amended award by email on March 1, 2022.
19 Opp. 15.

20 **C. Procedural History**

21 After initial unsuccessful service attempts via the Hague Service Convention, Twitch
22 served Respondent via email to Mr. Fuehnen. ECF No. 18. Respondent Fishwoodco GmbH did
23 not appear in this action, resulting in an entry of default and Judge DeMarchi’s issuance of a
24 Report and Recommendation for Default Judgment. *See* Entry of Default, ECF No. 20; R&R.
25 Mr. Fuehnen, however, reached out to Twitch’s counsel, JAMS, and Judge DeMarchi’s staff
26 regarding the Petition on behalf of Proposed Intervenors. *See* R&R 6–7.

27 The Proposed Intervenors filed a request for leave to file a brief as amici curiae and

1 appeared at the May 30, 2023, hearing on Twitch’s motion for default judgment. ECF Nos. 23,
2 35. On May 31, 2023, Judge DeMarchi issued an Order for Reassignment to a District Judge with
3 a Report and Recommendation to grant default judgment and deny the amicus filing. ECF No. 36.
4 On August 29, 2023, the Intervenors filed a motion to intervene to file a motion to dismiss
5 themselves for lack of personal jurisdiction. ECF No. 39. The Court granted the motion to
6 intervene and accepted the Intervenors’ instant motion to dismiss. ECF No. 45.

7 On December 7, 2023, Twitch filed an opposition to the motion to dismiss, and on
8 December 21, 2023, Intervenors replied. ECF No. 49, Twitch’s Opposition to Motion to Dismiss
9 (“Opp.”); ECF No. 50, Intervenors’ Reply in Support of Motion to Dismiss (“Reply”). The Court
10 heard oral argument on the Motion on February 22, 2024.

11 **II. LEGAL STANDARD**

12 The parties dispute the relevant legal standard. Intervenors argue that the FAA provides
13 the exclusive grounds for vacating an award issued in the United States. Mot. 7. Twitch argues
14 that the New York Convention governs confirmation of foreign arbitration awards like this one.
15 Opp. 6. The Ninth Circuit has held that “neither the Convention nor its implementing legislation
16 removed the district courts’ obligation to find jurisdiction over the defendant in suits to confirm
17 arbitration awards.” *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d
18 1114, 1121 (9th Cir. 2002) (“Interpreting the FAA to dispense with the jurisdictional requirements
19 of Due Process in actions to confirm arbitral awards would raise clear questions concerning the
20 constitutionality of the statutes”).

21 On a motion to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the
22 burden of establishing personal jurisdiction. *Farmers Ins. Exch. v. Portage La Prairie Mut. Ins.*
23 *Co.*, 907 F.2d 911, 912 (9th Cir. 1990). Where the motion to dismiss is based on written
24 materials, rather than an evidentiary hearing, the plaintiff need only make a prima facie showing
25 of jurisdictional facts to satisfy their burden. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th
26 Cir. 2002). While the plaintiff cannot “simply rest on the bare allegations of its complaint,”
27 uncontroverted allegations in the complaint must be taken as true. *Amba Mktg. Sys., Inc. v. Jobar*

1 *Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977); *AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d
2 586, 588 (9th Cir. 1996). Conflicts between parties over statements contained in affidavits must
3 be resolved in the plaintiff's favor. *Id.* If a plaintiff's proof is "limited to written materials," the
4 materials must only contain facts that "support a finding of jurisdiction." *Data Disc, Inc. v. Sys.*
5 *Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977).

6 The exercise of personal jurisdiction over a nonresident defendant must be authorized
7 under the state's long-arm statute and must satisfy the due process clause of the United States
8 Constitution. *Perez v. United States*, 103 F. Supp. 3d 1180, 1197 (S.D. Cal. 2015). California's
9 long-arm statute permits the exercise of personal jurisdiction "on any basis not inconsistent with
10 the Constitution of this state or the United States." Cal. Code Civ. Proc. § 410.10. Under the due
11 process analysis, a defendant may be subject to either general or specific personal jurisdiction.
12 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984).

13 **III. DISCUSSION**

14 Intervenor's move to dismiss Twitch's efforts to enforce the arbitration award on the
15 grounds that this Court lacks personal jurisdiction over Intervenor's. Mot. 1. On reply, Intervenor's
16 contend that the award against Intervenor's should be vacated under 9 U.S.C. § 10(a)(4), which
17 permits vacatur "[w]here the arbitrators exceeded their powers, or so imperfectly executed them
18 that a mutual, final, and definite award upon the subject matter submitted was not made."
19 Reply 7.

20 Twitch contends that Intervenor's Motion should be denied because (1) the Court has
21 authority under Rule 65 to confirm the awards as to the Intervenor's regardless of any jurisdictional
22 issue, and (2) irrespective of this Court's authority under Rule 65, it has specific personal
23 jurisdiction over Intervenor's. Opp. 1. In the alternative, Twitch requests an opportunity to
24 conduct limited discovery on the issue of personal jurisdiction. *Id.* at 2.

25 **A. Federal Rule of Civil Procedure 65(d)**

26 Twitch contends that this Court has authority to confirm the arbitration awards as to
27 Intervenor's regardless of any jurisdictional issues pursuant to Rule 65(d)(2) because the Arbitrator

1 “determined that the Loots Intervenor were in active concert or participation with Loots, the
2 original defendant.” Opp. 7. Rule 65 provides that “persons bound” by an injunction may include
3 not only “parties,” but their “officers, agents, servants, employees, and attorneys,” as well as
4 “other persons who are in active concert or participation” with them, so long as that person
5 receives “actual notice of [the injunction] by personal service or otherwise.” Fed. R. Civ. P.
6 65(d)(2).

7 **1. Whether Rule 65 Applies to Arbitration-Issued Injunctions**

8 Intervenor argue that Rule 65 applies to *court*-issued injunctions rather than *arbitrator*-
9 issued injunctions, and therefore does not apply to the instant action. Reply 10. The parties have
10 not presented cases applying Rule 65(d)(2) in an arbitration context. Although not discussed
11 directly, in *Int’l Petroleum Prod. & Additives Co., Inc. v. Black Gold, S.A.R.L.*, 418 F. Supp. 3d
12 481, 484 (N.D. Cal. 2019), the court confirmed an arbitration award and found that the arbitrator
13 did not exceed his powers where the awarded injunction was “limited to a set of persons and
14 entities who might act on behalf of [petitioner], namely, ‘any and all persons acting in concert with
15 [petitioner] or in participation with it or in support of it or in combination with it or in collusion
16 with it or in conspiracy with it, whether as aiders, abettors, co-conspirators, agents, servants,
17 employees or otherwise....” *Id.* at 492, n. 12 (citing award). In so finding, the court cited Rule
18 65(d)(2), implicitly approving the application of the Rule to an arbitration award. *Id.*

19 **2. Whether Intervenor Received Actual Notice**

20 Assuming Rule 65 extends to arbitration-issued injunctions, the Rule also requires that
21 Intervenor received “actual notice” of the injunction against them. Fed. R. Civ. P. 65(d)(2).
22 Twitch argues that Mr. Fuehnen’s (1) admission that he participated in the proceedings on behalf
23 of Respondents for “multiple months before going silent,” and (2) acknowledged receipt of the
24 Final Award demonstrate Intervenor did receive actual notice of the injunction. Opp. 7.

25 In *Optronix Techs., Inc. v. Ningbo Sunny Elec. Co.*, plaintiff brought a motion for civil
26 contempt against several non-parties. No. 16-cv-06370-EJD, 2020 WL 3617907, at *5 (N.D. Cal.
27 July 2, 2020). This Court found that one foreign defendant received actual notice to satisfy

1 Rule 65(d) where the party received the motion “despite the fact that he was not served.” *Id.* at *4,
2 5. This Court explained that “[t]he ‘or otherwise’ at the end of Rule 65(d) makes clear that
3 personal service is not required to bind non-party officers of a corporation to a court order, as long
4 as the non-party has ‘actual notice’ of the order.” *Id.* at *5 (citing Fed R. Civ. P. 65(d)).

5 This is consistent with the findings of several other district courts, which concluded that an
6 injunction (albeit, a *court*-issued injunction, not an *arbitration*-issued injunction) can apply to
7 non-parties who have received notice of the order. *See, e.g., AirWair Int’l Ltd. v. ITX USA LLC*,
8 No. 19-CV-07641-SI, 2021 WL 5302922, at *7 (N.D. Cal. Nov. 15, 2021) (finding injunction
9 would be enforceable against non-party who was previously dismissed based on a lack of personal
10 jurisdiction “to the extent that they have notice and are legally identified with, or aiding and
11 abetting, defendant”); *Al Otro Lado v. Wolf*, 497 F. Supp. 3d 914, 929 (S.D. Cal. 2020) (finding
12 non-parties bound by injunction after finding non-party was “in active concert or participation”
13 with defendants); *Netlist Inc v. Diablo Techs. Inc.*, No. 13-CV-05962-YGR, 2015 WL 163434, at
14 *1 (N.D. Cal. Jan. 12, 2015) (clarifying that non-parties “not specifically named in the injunction”
15 but otherwise “in active concert or participation with [defendant]” would be bound by injunction).

16 Here, the Arbitrator issued a permanent injunction against “Respondent and its officers,
17 agents, representatives, employees, and successors and assigns, including but not limited to Loots
18 Media GmbH, Fuehnen Holding GmbH, Marc Fuehnen, and the operators of its websites like
19 loot.com and new.loots.com (or any other name or website incorporating Loots or that is
20 confusingly similar to Loots.” ECF No. 3-7, Amended Order Granting Default Judgment Against
21 Respondent (“DJ Order”) 8. Thereafter, Twitch served the Final Award on Mr. Fuehnen on March
22 1, 2022 (ECF No. 16-2) and served the Petition to Confirm on November 17, 2022 (ECF No. 18).
23 This is sufficient to demonstrate “actual notice” of the Arbitrator’s injunction. *BYD Co. Ltd v.*
24 *Khazai*, No. 20-CV-5530-DMG-AGRX, 2020 WL 3893310, at *1 (C.D. Cal. July 10, 2020)
25 (finding actual notice occurred where plaintiffs emailed the TRO, and non-party replied to
26 plaintiffs’ email).

27 Nevertheless, the Court is not inclined to find that Rule 65(d), a rule governing the Federal

1 Rules of Civil Procedure, extends to an arbitrator-issued injunction such that the Court can bypass
2 a jurisdictional analysis. Accordingly, the Court will proceed to evaluate whether Intervenors are
3 subject to this Court’s personal jurisdiction.

4 **B. General and Specific Jurisdiction**

5 Intervenors argue that this Court lacks both general and specific jurisdiction against them
6 and on that basis, Intervenors “move to dismiss the arbitration award insofar as it relates to the
7 injunctive relief applied against them.” Mot. 11–12. Twitch disputes only this Court’s exercise of
8 specific personal jurisdiction over Intervenors. Opp. 10.

9 The Ninth Circuit and district courts in this Circuit evaluate personal jurisdiction in the
10 context of a motion to confirm an arbitration award. In *Kirby Morgan Dive Systems*, the Ninth
11 Circuit remanded an order confirming an arbitration award where the district court lacked
12 jurisdiction “under the traditional minimum contacts framework” because the petitioner “presented
13 no evidence that [respondent]” purposefully availed himself of the privilege of conducting
14 activities in the forum” or “purposefully directed his activities toward the forum.” *Kirby Morgan
15 Dive Sys., Inc. v. Hydrospace, Ltd.*, 478 F. App’x 382, 383 (9th Cir. 2012) (finding “the district
16 court’s exercise of personal jurisdiction over [respondent] violated due process”); *see also*
17 *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1121 (9th Cir.
18 2002) (“Interpreting the FAA to dispense with the jurisdictional requirements of Due Process in
19 actions to confirm arbitral awards would raise clear questions concerning the constitutionality of
20 the statutes”).

21 *Hellmich*, relying on *Kirby*, found personal jurisdiction over respondents where petitioner
22 “met his burden of proving that the [respondents] have such a unity of interest that treating them
23 as separate entities for personal jurisdiction purposes in this case would be unjust.” *Hellmich v.
24 Mastiff Contracting, LLC*, No. 14-CV-1354 DOCANX, 2015 WL 391989, at *8 (C.D. Cal. Jan.
25 27, 2015) (“To confirm an arbitral award, a petitioner must establish that a non-resident
26 respondent has consented to personal jurisdiction in the forum or that the respondent otherwise has
27 sufficient contacts with the forum such that exercising jurisdiction over him or her does not offend

1 traditional notions of fair play and substantial justice”) (quotations omitted).

2 In another unpublished opinion, the Ninth Circuit in *Greenfield Advisors* affirmed the
3 district court’s confirmation of an arbitration award and entry of judgment against defendants after
4 finding that the district court had personal jurisdiction over the defendants. *Greenfield Advisors*
5 *LLC v. Salas*, 733 F. App’x 364, 366 (9th Cir. 2018). After evaluating the defendants’ contacts
6 with the forum state, the Ninth Circuit concluded that the defendants had “not met their burden of
7 setting forth a compelling case that the exercise of jurisdiction would not be reasonable.” *Id.* at
8 367 (quotations omitted) (citing *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076
9 (9th Cir. 2011)); *see also Goodwin Procter, LLP v. Gibson*, No. 12-CV-02167 NC, 2012 WL
10 12921028, at *6 (N.D. Cal. July 23, 2012) (dismissing petition for confirmation of an arbitration
11 award where court lacked personal jurisdiction over defendants).

12 Consistent with the decisions above, the Court will evaluate whether personal jurisdiction
13 over Intervenors exists such that confirming an arbitration award against Intervenors would not
14 violate due process. When determining whether to exercise specific jurisdiction, courts apply a
15 three-part test: (1) the nonresident defendant must do some act or consummate some transaction
16 with the forum or perform some act by which he purposefully avails himself of the privilege of
17 conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2)
18 the claim must be one which arises out of or results from the defendant’s forum-related activities;
19 and (3) exercise of jurisdiction must be reasonable. *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d
20 1316, 1320 (9th Cir. 1998), *holding modified by Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
21 *L’Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006). The plaintiff bears the burden of satisfying the
22 first two of these three elements; if the plaintiff fails to establish either of them, specific personal
23 jurisdiction over the nonresident defendant is improper. *Goodwin Procter*, 2012 WL 12921028, at
24 *4 (citing *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). If the
25 plaintiff satisfies the first two elements, the burden then shifts to the defendant to “present a
26 compelling case” that the exercise of jurisdiction would not be reasonable. *Id.* (citations omitted).

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1. Purposeful Availment in California

A purposeful availment analysis, as opposed to a purposeful direction analysis, is most often used in suits sounding in contract. *Schwarzenegger*, 374 F.3d at 802. A showing that a defendant purposefully availed himself of the privilege of doing business in a forum state typically consists of evidence of the defendant’s actions in the forum, such as executing or performing a contract there. *Id.* By taking such actions, a defendant “purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Id.* (citations omitted).

Intervenors argue that they have not purposefully availed themselves of conducting activities in California because they “never had and do not have any dealing with Petitioner.” Mot. 12. Intervenors contend they “did not contemplate a relationship, enter into a contract, or agree to arbitration.” *Id.* Even if Intervenors were bound by the arbitration agreement, Intervenors argue that this would nevertheless be insufficient to establish jurisdiction because “even an explicit agreement to arbitrate does not constitute consent to personal jurisdiction in the Northern District of California.” Mot. 13 (citing *Foster v. Device Partners Infl LLC*, No. C 12-02279-DMR, 2012 WL 6115618, at *2 (N.D. Cal. Nov. 21, 2012)).

Twitch counters that it has “uncovered” evidence that demonstrates Intervenors have ties to California, including evidence that (1) Loots formed a domestic corporation—Fishwoodco Inc.—in 2018 (prior to the arbitration proceedings) with a business address in Torrance, California naming Mr. Fuehnen as the CEO; (2) Intervenors’ website show ties to California, including statements that they partner with companies based in or operating out of California and graphics showing thousands of active users in the United States; and (3) Intervenors’ privacy policy states that the company processes payments via corporations based in California. Opp. 15–18 (citing *Oomph Innovations LLC v. Shenzhen Bolsesic Elecs. Co.*, No. 18-CV-05561-EJD, 2020 WL 5847505, at *2 (N.D. Cal. Sept. 30, 2020) (exercising personal jurisdiction over defendants that “sold products to residents of California, including Plaintiff, through interactive Internet websites”)).

1 Regarding the business address in Torrance, California, Intervenors argue that
2 Mr. Fuehnen was “unaware of the filing” and because the venture “never became operational,” the
3 Intervenors “never benefitted or profited from” California—the state in which it was formed.
4 Reply 15–16. Intervenors also dispute Twitch’s evidence regarding Intervenor’s website. The
5 websites, Intervenors argue, “merely provide general information on the platform.” Reply 15.
6 Intervenors also contend that Twitch misinterprets the graphics on the website; the “2,000 monthly
7 active users” figure purportedly refers to *Canada*, not California—as Twitch contends. *Id.* at 15–
8 16.

9 Intervenors are German citizens or Germany entities with an apparent overlap with
10 Respondents. Reply 5. For example, online records relating to the registration of New.Loots
11 showed that it was apparently being operated through Loots’ CEO, co-founder and representative,
12 Loots Intervenor Fuehnen, with the new website (new.loots.com) being hosted at the exact same
13 URL as the old one (www.loots.com), except that the previous prefix (www.) was replaced with
14 (new.) attached to the same domain (loots.com). *See* Opp. 4, ECF No. 49-1, Declaration of Diana
15 Palacios (“Palacios Decl.”) ¶ 18. Mr. Fuehnen, the former CEO of Respondent Fishwood GmbH,
16 states that “there is simply no legal or commercial nexus between the companies.” Fuehnen Decl.
17 ¶ 19. Mr. Fuehnen also contends that “[n]one of [his] business dealings, or the dealings of Loots
18 Media GmbH or Fuehnen Holding GmbH, involve or have dealt with California.” *Id.* ¶ 23. In
19 sum, Mr. Fuehnen claims no connection with the state. *Id.*

20 The Court recognizes that, despite Mr. Fuehnen’s statements disclaiming any connection to
21 California, Twitch has presented some evidence demonstrating ties to this jurisdiction, including
22 evidence regarding Intervenors’ websites and a public business record showing Mr. Fuehnen’s
23 name associated with a business incorporated in California. *See* Opp. 15–16. On the record
24 before it, the Court is unable to conclude that Intervenors purposefully availed themselves of the
25 privilege of doing business in California such that the Court may establish personal jurisdiction
26 over them. At the same time, the Court is not convinced that Intervenors can necessarily avoid
27 personal jurisdiction in California given the evidence presented thus far. Under these

1 circumstances, where “pertinent facts bearing on the question of jurisdiction are controverted” and
2 “where a more satisfactory showing of the facts is necessary,” the Court finds limited
3 jurisdictional discovery is appropriate. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir.
4 2008). Jurisdictional discovery should be granted where “discovery on th[e] issue might well
5 demonstrate facts sufficient to constitute a basis for jurisdiction.” *Payrovi v. LG Chem Am., Inc.*,
6 491 F. Supp. 3d 597, 608 (N.D. Cal. 2020) (citing *Harris Rutsky & Co. Ins. Servs. v. Bell &*
7 *Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003)).

8 Accordingly, this Court finds that limited jurisdictional discovery is warranted, and Twitch
9 is allowed discovery on the extent and nature of Intervenor’s contacts with California. Such
10 discovery may include (1) information relating to Intervenor’s use of Twitch and/or other
11 streaming entities they place advertisements on based in or with ties to California; (2) information
12 relating to its contractual partners located in California, including the apparent 35 plus entities
13 listed as partners on Intervenor’s websites; (3) information relating to users in California;
14 (4) information relating to the migration from loots.com to new.loots.com, and recently, from
15 new.loots.com back to loots.com; and (5) information relating to the Intervenor’s disclosure of
16 user information in California and financial transactions through institutions located in California.

17 **2. Whether the Claims Arise Out of Forum-Related Activity**

18 The second requirement for specific, personal jurisdiction considers whether the claim
19 asserted in the litigation arises out of the defendant’s forum related activities. The Court “must
20 determine if [Twitch] would not have been injured ‘but for’ the [Intervenor’s] conduct directed
21 toward [Twitch] in California.” *Panavision*, 141 F.3d at 1322 (9th Cir. 1998).

22 Intervenor’s argue that the second requirement for personal jurisdiction fails because
23 Twitch’s enforcement of the arbitration award arising from Respondent’s breach of contract is
24 unrelated to Intervenor. Mot. 15. In attempting to demonstrate this lack of connection,
25 Intervenor contend that since Mr. Fuehnen was terminated as managing director of Respondent in
26 December 2019, he “no longer had any affiliation with Respondent.” Mot. 15.

27 Twitch counters that “the basis of these confirmation proceedings is the Arbitration in this

1 District—proceedings that Mr. Fuehnen participated in.” Opp. 19. Additionally, Twitch argues
2 that the Arbitrator determined the Loots brand, which Mr. Fuehnen owns, “used Twitch’s services
3 and intellectual property . . . just as had been done under the company’s original name.” Opp. 19.

4 The Court finds that the claims here appear to arise out of forum-related activity.
5 Mr. Fuehnen participated, at least initially, in the arbitration before falling silent. *See* DJ Order 1.
6 The arbitration forms the basis of these confirmation proceedings in this District. Additionally,
7 Twitch presented evidence that the Intervenors “appear to have migrated from new.loots.com back
8 to loot.com, the same websites operated by Loots.” Mot. 19. However, the Court will reserve
9 ruling on this factor following the conclusion of jurisdictional discovery, which may further
10 inform the Court’s analysis regarding this factor.

11 **3. Whether Exercising Personal Jurisdiction Over Intervenors Would Be**
12 **Reasonable**

13 The final requirement for specific jurisdiction is reasonableness. For jurisdiction to be
14 reasonable, it must comport with fair play and substantial justice. *Bancroft & Masters, Inc. v.*
15 *Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000), *holding modified by Yahoo!*, 433 F.3d
16 1199. Intervenors have the burden to demonstrate unreasonableness and are required to put on a
17 “compelling case.” *Id.* The reasonableness determination requires the consideration of several
18 specific factors: (1) the extent of Intervenors’ purposeful interjection into the forum state, (2) the
19 burden on the Intervenors in defending in the forum, (3) the extent of the conflict with the
20 sovereignty of the Intervenors’ state, (4) the forum state’s interest in adjudicating the dispute,
21 (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum to the
22 Petitioner’s interest in convenience and effective relief, and (7) the existence of an alternative
23 forum. *Id.*

24 In their opening brief, Intervenors failed to meet their burden to demonstrate
25 unreasonableness, having simply argued that exercising jurisdiction over them would be
26 unreasonable because “[b]y never agreeing to arbitration in Santa Clara County, California, or
27 otherwise availing itself of California or United States law, Intervenors never indicated a

1 willingness to defend its legal interests in a forum in California.” Mot. 16. On reply, Intervenors
2 contend that, as residents of Germany and not native English speakers, it would be burdensome to
3 defend themselves in California, and “Germany has a strong sovereign interest in regulating its
4 laws.” Reply 17.

5 Twitch argues that California has a strong interest in confirming the valid result of an
6 arbitration litigated in this District and deterring others from participating in similar unlawful
7 schemes. Opp. 20–21.

8 The Court will reserve ruling on this factor—which involves considering the extent of the
9 Intervenors’ purposeful interjection into the forum state—following the conclusion of
10 jurisdictional discovery.

11 **4. Other Bases to Find Personal Jurisdiction**

12 The Court is unpersuaded by Twitch’s remaining arguments to support exercising personal
13 jurisdiction over Intervenors.

14 Consent. First, Twitch contends that because Intervenors challenge a portion of the
15 Arbitrator’s Final Award, and because Twitch’s Terms of Service (“TOS”) state that federal and
16 state courts in California “have exclusive jurisdiction over any appeals of an arbitration award,”
17 Mr. Fuehnen consented to jurisdiction by participating in the Arbitration. Opp. 10. Intervenors
18 respond that they neither agreed to arbitrate nor bound themselves to the TOS. Reply 13.

19 In *Voltage Pictures, LLC v. Gussi, S.A. De C.V.*, the court found that an international
20 respondent challenging an arbitration award “waived its ability to raise personal jurisdiction as a
21 defense in [the] action” because the party “agreed to submit to the jurisdiction of courts in the
22 Forum . . . to confirm an arbitration award.” No. 21-CV-04751, 2022 WL 18397529, at *3 (C.D.
23 Cal. Mar. 28, 2022), *aff’d but criticized*, No. 23-55123, 2024 WL 413497 (9th Cir. Feb. 5, 2024).
24 On appeal, the Ninth Circuit affirmed this holding and rejected respondent’s objection to the
25 district court’s exercise of personal jurisdiction over it. Because “it [was] undisputed that
26 [respondent] by entering into the [arbitration agreement], consented and submitted to the district
27 court exercising personal jurisdiction over it,” the Ninth Circuit explained that the “only basis for

1 [respondent] to contest the district court’s exercise of personal jurisdiction over it would be
2 insufficient service of [petitioner’s] notice of motion to confirm the arbitral award.” *Voltage*
3 *Pictures*, 2024 WL 413497, at *5 (cleaned up). The court ultimately affirmed because it found
4 that service of the motion was sufficient on respondent. *Id.* at *12.

5 Here, unlike the party challenging jurisdiction in *Voltage*, Intervenors strongly dispute that
6 it signed the arbitration agreement and participated in the arbitration. Reply 10. Although
7 Mr. Fuehnen appears to have signed the arbitration agreement on behalf of Respondents, the other
8 Intervenors did not. Moreover, Intervenors argue that, as third parties, they “never had the right to
9 respond” and were prevented from participating in the arbitration at all. *Id.* at 10–11. This case is
10 therefore unlike *Voltage Pictures*. Without a more fully developed record as to Intervenors’ ties to
11 California, the Court cannot determine that Mr. Fuehnen’s agreement to arbitrate on behalf of
12 Respondents is sufficient to constitute consent to personal jurisdiction as to Intervenors. *See*
13 *Foster v. Device Partners Int’l LLC*, 2012 WL 6115618 (N.D. Cal. Nov. 21, 2012)
14 (recommending dismissal for lack of personal jurisdiction despite defendant’s signature on
15 arbitration agreement with “clause requiring the parties to arbitrate disputes in San Francisco”).

16 Aiding and abetting. Twitch next argues the Court can exercise personal jurisdiction over
17 Intervenors because the Arbitrator determined that the Intervenors aided and abetted Loots.
18 Opp. 11. Because Loots signed the arbitration agreement, which subjects Loots to this Court’s
19 jurisdiction, Twitch contends that the Court has authority to extend jurisdiction to Intervenors
20 because the Arbitrator determined Intervenors “carried out Loots’ scheme.” *Id.*; *see Reebok Int’l*
21 *Ltd. v. McLaughlin*, 49 F.3d 1387, 1392 (9th Cir. 1995) (personal jurisdiction over non-party who
22 assisted violation of an injunction “may be sound, even necessary”).

23 Intervenors explain that the *Reebok* reasoning does not apply to it because Intervenors are
24 non-domestic, and *Reebok* expressed doubt when “a district court seeks to reach out across the
25 Atlantic in an attempt to impose conflicting duties on another country’s nationals within its own
26 borders.” *Reebok*, 49 F.3d at 1392. The Court agrees and declines to find personal jurisdiction
27 over Intervenors, German residents and entities, based on *Reebok* without a more fully developed

1 record as to Intervenor’s ties to California.

2 **IV. CONCLUSION**

3 Twitch’s request for limited jurisdictional discovery is GRANTED as described above.
4 Intervenor’s motion to dismiss is DENIED without prejudice to renew the motion after Twitch has
5 had a full and fair opportunity to complete jurisdictional discovery consistent with this order. Any
6 disputes regarding the scope of jurisdictional discovery are referred to the magistrate judge.

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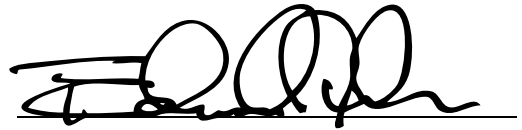
8 **IT IS SO ORDERED.**

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10 Dated: May 9, 2024

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EDWARD J. DAVILA
United States District Judge

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28 Case No.: 22-cv-03218-EJD
ORDER DENYING MOTION TO DISMISS