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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

TWO JINN, INC., a California Corporation
d/b/a/ ALADDIN BAIL BONDS,

Plaintiff,

vs.

GOVERNMENT PAYMENT SERVICE,
INC., a Delaware corporation,

Defendant.

CASE NO. 09CV2701 JLS (BLM)

**ORDER (1) GRANTING
DEFENDANT'S MOTION TO
DISMISS; (2) DENYING
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

(Doc. Nos. 3, 13.)

Presently before the Court is Defendant Government Payment Service, Inc.'s ("Defendant") motion to dismiss Plaintiff Two Jinn, Inc. d/b/a Aladdin Bail Bonds ("Plaintiff") complaint in the above-captioned matter. For the reasons stated below, the Court **GRANTS** Defendant's motion to dismiss (Doc. No. 13) and **DENIES** Plaintiff's motion for preliminary injunction. (Doc. No. 3.)

BACKGROUND

Plaintiff initiated this action on December 2, 2009, invoking this Court's jurisdiction on the basis of diversity. (Doc. No. 1.) Plaintiff is a licensed bail agent in the state of California and Defendant is a Delaware Corporation with its principal place of business in Indiana. (Complaint ¶¶ 7, 3.) Plaintiff contends that Defendant solicits and transacts bail in California, advertises its business in the Sheriffs' Association magazine throughout California, and "enter[s] into 'revenue sharing plans' related to the sale of cash bail with California county sheriff's departments." (*Id.* ¶¶ 8 - 9.) Plaintiff alleges that Defendant does so without a valid California license to solicit and

1 transact bail in California in violation of Cal. Ins. Code 1800, et seq and various provisions of the
2 California Code of Regulations. (*Id.* ¶ 12, 14-17.)

3 Plaintiff's first cause of action is for unfair and unlawful business practices under the
4 California Business and Professions Code §§ 17200, et seq and 17500, et seq.. (Complaint ¶¶ 18-
5 23.) Plaintiff's second cause of action is for declaratory relief relating to the California Insurance
6 Code and Code of Regulations. (*Id.* ¶ 24-26.) Plaintiff seeks injunctive relief, disgorgement of
7 "ill-gotten revenues and restitution," declaratory relief "relating to the law governing the
8 transaction of bail in California" and attorneys fees and costs. (Complaint at 7.)

9 On December 9, 2009, Plaintiff filed a motion for preliminary injunction. (Doc. No. 3.)
10 GovPay filed its response to the motion for preliminary injunction on March 11, 2010 (Doc. No.
11 22), and Plaintiff filed its reply on March 18, 2010. The hearing on the motion set for March 25,
12 2010 was subsequently vacated.

13 On January 11, 2010, Defendant filed the present motion to dismiss, abstain, or transfer
14 Plaintiff's complaint. (Doc. No. 13.) Plaintiff filed a response in opposition to the motion to
15 dismiss on February 11, 2010. (Doc. No. 19.) Defendant filed its reply on February 18, 2010.
16 (Doc. No. 21.) The hearing on the matter scheduled for February 25, 2010 was thereafter vacated
17 and was taken under submission without oral argument. (Doc. No. 20.)

18 DISCUSSION

19 Defendant's motion to dismiss sets forth a "plethora of reasons" why Plaintiff's complaint
20 should be dismissed: (1) abstention under various doctrines; (2) lack of constitutional and statutory
21 standing; (3) lack of diversity jurisdiction; (4) failure to satisfy Rule 9's heightened pleading
22 requirements for fraud allegations; and (5) incorrect venue. (Doc. No. 13.) In the alternative,
23 GovPay moves for change of venue. (*Id.*) The Court finds Plaintiff lacks constitutional standing
24 to bring this action, and thus grants Defendant's motion to dismiss on this ground.

25 Article III, § 2 of the United States Constitution places a case-or-controversy limitation on
26 federal judicial authority which underpins our standing jurisprudence. *See Friends of the Earth,*
27 *Inc. v. Laidlaw Env'tl. Serv., Inc.*, 528 U.S. 167, 180 (2000). "[A] plaintiff must demonstrate
28 standing separately for each form of relief sought." *Id.* at 185. The United States Supreme Court

1 has set forth three requirements to establish Article III standing under the federal constitution: (1)
2 “the plaintiff must have suffered an ‘injury in fact’—an invasion of a legally protected interest
3 which is (a) concrete and particularized and (b) actual or imminent, not ‘conjectural’ or
4 hypothetical””; (2) “a causal connection between the injury and the conduct complained of—the
5 injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant’”; and (3) “it must
6 be ‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable
7 decision.”” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (internal citations omitted).

8 “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.*
9 Whether a party has Article III standing to bring a cause of action in federal court is a different
10 analysis than whether the plaintiff has adequately established statutory standing under California’s
11 Unfair Competition Law (“UCL”), California Business and Professions Code §§ 17200 and 17500.

12 Defendant first contends that Plaintiff lacks standing to bring a cause of action under the
13 UCL because, while couched under the UCL, the “true impetus for [Defendant’s] cause of action
14 is its allegation that [Defendant] is operating as an unlicensed bail bondsman in violation of the
15 Insurance Code.” (MTD at 12-13.) Defendant, however, argues that enforcement of the Insurance
16 Code is exclusively within the province of the Insurance Commissioner. (*Id.* (citing Cal. Ins. Code
17 § 1814¹.) Even assuming *arguendo* that authority to enforce the Insurance Code lies exclusively
18 with the Commissioner, this does not prevent Plaintiff’s standing to bring the suit under the UCL.
19 The UCL plainly authorizes private litigants to maintain private actions under the UCL for
20 violations of a statute even if that statute does not itself create a private right of action. Cal. Bus.
21 & Prof. Code § 17204; *see also Kasky v. Nike, Inc.*, 27 Cal.4th 939, 949-50 (2002); *Stevens v.*
22 *Superior Court*, 75 Cal. App. 4th 594, 602-06 (1999) (holding that plaintiff may bring a claim
23 under the UCL based on a violation of insurance licensing requirements because the statutes did
24 not bar private enforcement). Thus, the Court rejects this argument.

25 The other requirements for standing, however, must also be satisfied. Defendant focuses

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27 ¹ California Insurance Code § 1814 provides: “The violation of any foregoing provision of this
28 chapter, or any rule of the commissioner made pursuant thereto, is a public offense, punishable by a
fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in the
county jail not exceeding one year, or by both such fine and imprisonment.” Cal. Ins. Code § 1814.

1 on the argument that Plaintiff has not suffered an “injury in fact” required under Article III. (*See*
2 MTD at 12-15; Reply at 3-6.) Plaintiff claims that it has satisfied the “injury in fact” constitutional
3 standing requirement because “by failing to comply with the costly and onerous bail regulatory
4 requirements and through its violations of the bail related statutes and regulations, [Defendant] has
5 obtained a competitive advantage and diverted bail customers from law abiding bail agents,
6 including Plaintiff, and caused Plaintiff and the other law abiding bail agents to lose the financial
7 benefits of sales they they would have made but for [Defendant’s] illegal activities.” (Opp. at 12;
8 Complaint, ¶¶ 7-23.) More specifically, Plaintiff argues that, because every bail transaction
9 involves a detainee ready to pay a fee in exchange for release, if Defendant had not committed the
10 alleged illegal conduct, “the vast majority of [Defendant’s] bail customers would have purchased
11 and paid for bail from properly-licensed, law-abiding bail agents such as [Plaintiff].” (Opp. at 13.)
12 Plaintiff further alleges that the injunction Plaintiff seeks in the action would redress the injury
13 allegedly caused. (*Id.*)

14 The Court finds that Plaintiff does not have constitutional standing to seek declaratory and
15 injunctive relief pursuant to California Business and Professional Code § 17200 and § 17500. The
16 injury in fact required for Article III standing must be “concrete and particularized and . . . actual
17 or imminent, not ‘conjectural’ or hypothetical.” *Lujan*, 504 U.S. at 561; *see also Whitmore v.*
18 *Arkansas*, 495 U.S. 149, 155 (1990). Here, Plaintiff asserts an injury in fact on the basis that
19 “[s]ome of the diverted bail customers certainly would have purchased bail from Plaintiff and as
20 such, Plaintiff has suffered actual, concrete and particularized financial injury as a direct result of
21 [Defendant’s] misconduct.” (Opp. at 13.) This alleged “injury” is mere conjecture, and is
22 certainly not concrete or particularized. Plaintiff has not, and likely could not, point to any
23 potential customers who would have purchased bail from sources other than Defendant, much less
24 Plaintiff. Plaintiff admits, in fact, that “it is conceivable that some [Defendant] customers might
25 have found a way to post cash or property to secure their release.” (*Id.*) To further draw the
26 conclusion that these customers would have chosen the services of Plaintiff over the other various
27 bail services is too attenuated to be “actual and particularized” or more than “conjectural.”

28 Plaintiff cites several cases in support of its alleged standing. These cases, however,

1 address only statutory standing under the UCL, which requires that “a plaintiff must have ‘suffered
2 injury in fact and [have] lost money or property as a result of such unfair competition.” *Aron v. U-*
3 *Haul Co. of CA*, 143 Cal.App.4th 796, 802 (2006). Accordingly, the cases cited regarding
4 statutory “injury in fact” analyses are unpersuasive as to the Court’s determination regarding
5 Article III standing sufficient to bring this action in federal court. Moreover, to the extent the state
6 courts’ analysis regarding statutory “injury in fact” is similar to the analysis regarding
7 constitutional “injury in fact,” the cases cited are unhelpful.

8 Plaintiff cites *Overstock.com, Inc. v. Gradient Analytics, Inc.*, 151 Cal. App. 4th 688
9 (2007) as example of sufficiently pled “injury in fact.” (Opp. at 14). The *Overstock* court found
10 that the plaintiff has met the requirement because it pled that the “unlawful, unfair, or fraudulent
11 business acts or practices’ result[ed] in diminution in value of its assets and decline in its market
12 capitalization and other vested interests.” 151 Cal. App. 4th at 716. The violation of the UCL
13 alleged in *Overstock*, however, was the defendant’s “knowing and intentional dissemination of
14 negative reports on Overstock containing false and/or misleading statement concerning Overstock
15 . . .” *Id.* Thus, the alleged injury concerning diminution of value and other economic
16 consequences to plaintiff is indeed less “speculative” or “conjectural” as in the present case, where
17 there is no direct connection between Defendant’s activities and Plaintiff’s business. The other
18 cases cited by Plaintiff are no more helpful. *White v. Tans Union, LLC* found sufficient standing
19 under the UCL, but the court went on to note that the UCL only required an allegation that the
20 plaintiffs have suffered a loss of income and that “the statute does not require that the losses in
21 question were the product of the defendant’s wrongful acquisition of the plaintiff’s property.” 462
22 F. Supp. 2d 1079, 1084 (C.D. Cal. 2006). Thus, the applicable standing requirements under the
23 UCL are different from the requirements pertaining to constitutional standing.²

24 Accordingly, even if the Court were to utilize the statutory standing analysis to aid its

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26 ² Plaintiff also cites *E & E Co., Ltd. v. Kam Hing Enterprises, Inc.*, 2008 WL 3916256 (N.D.
27 Cal. 2008). The court in *E & E Co.* found that the plaintiff adequately alleged injury in fact under the
28 UCL sufficient to constitute standing. The underlying facts in *E & E Co.* are unclear, and the court’s
analysis as to why injury in fact is sufficiently pled by asserting that defendants’ “wrongful conduct
has injured Plaintiff by causing Plaintiff to lose sales and business opportunities” is conclusory and
unhelpful to this Court. Furthermore, the court did not address constitutional standing which, as
discussed above, is a different analysis than statutory standing under the UCL.

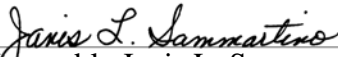
1 constitutional standing determination, the cases cited and the law under the UCL is inapplicable
2 and unhelpful to this Court. The Court therefore finds that Plaintiff does not have constitutional
3 standing to bring this action.

4 **CONCLUSION**

5 For the reasons stated above, Defendant's motion to dismiss **GRANTED** and the action is
6 **DISMISSED WITHOUT PREJUDICE**. Given this finding, Plaintiff's pending motion for
7 preliminary injunction is also **DENIED**.

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9 IT IS SO ORDERED.

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11 DATED: April 1, 2010

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13 Honorable Janis L. Sammartino
14 United States District Judge

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