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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ALFREDO SAAVEDRA,
Plaintiff,
v.
ALBIN MANUFACTURING CORP., *et*
al.,
Defendants.

Civil No. 10cv2312 L(POR)
**ORDER DENYING MOTION TO
DISMISS THE FIRST AMENDED
COMPLAINT [doc. #11] and
TRANSFERRING VENUE**

Defendants Albin Manufacturing Corp. (AMC), Albin Marine, Inc.¹ and Fred W.A. Peters move to dismiss the first amended complaint under Federal Rules of Civil Procedure 12(b)(2), 12(b)3) and 12(b)(6). Plaintiff opposes the motion. The Court finds this matter suitable for determination on the papers submitted without oral argument pursuant to Civil Local Rule 7.1(d)(1).

I. Background

As set forth in the FAC, plaintiff alleges that he contracted with the Albin defendants to purchase a new 2006 Albin 40 North Sea Cutter yacht with various upgrades; however, defendants actually provided a different and defective yacht to him. Plaintiff purchased the yacht

¹ In their motion to dismiss, defendants state that Albin Marine ceased all business operations approximately 10 years ago and has no assets. Defendants also note that “[t]o the best of Defendants’ knowledge, Defendant Albin Manufacturing, Inc. does not exist and likely has been confused in this case for Defendant AMC.” Defendants’ Memo of Ps&As at 1.

1 from a dealer located in Connecticut and signed the purchase order on July 17, 2006; the U.S.
2 Coast Guard registered the yacht to plaintiff on October 4, 2006; and defendants tendered the
3 yacht on July 24, 2007. Upon inspection of the yacht in St. Petersburg, Florida, plaintiff rejected
4 the boat as nonconforming.

5 Plaintiff filed this action on November 9, 2010. The FAC includes claims for: breach of
6 implied warranties under the Magnuson-Moss Act, 15 U.S.C. §§ 2301, *et seq.*; California
7 Consumer Legal Remedies Act, California Civil Code §§ 1770, *et seq.*; breach of the Song-
8 Beverly Warranty Act, California Civil Code § 1792, *et seq.*; violation of the Florida Deceptive
9 and Unfair Trade Practices Act, Florida Stats. §§ 501.202, *et seq.*; breach of written contract;
10 rescission of contract; fraud; and common law breach of warranty.

11 **II. Motion to Dismiss for Lack of Personal Jurisdiction**

12 As noted above, the Albin defendants and Fred W.A. Peters move to dismiss the FAC for
13 lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). Plaintiff bears the
14 burden of establishing that jurisdiction is proper. *Mavrix Photo, Inc. v. Brand Technologies, Inc.*,
15 2011 WL 3437047, *2 (9th Cir., Aug. 8, 2011.) If the defendant's motion is based on written
16 materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing
17 of jurisdictional facts to withstand the motion to dismiss. *Id.* (citing *Brayton Purcell LLP v.*
18 *Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010). “The plaintiff cannot ‘simply rest
19 on the bare allegations of its complaint,’ but uncontroverted allegations in the complaint must be
20 taken as true.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)
21 (quoting *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). The court
22 “may not assume the truth of allegations in a pleading which are contradicted by affidavit,” *Data*
23 *Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977), but must resolve
24 “factual disputes in the plaintiff's favor.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th
25 Cir.2006).

26 The district court applies the law of the state in which the court sits when no federal
27 statute authorizes personal jurisdiction. FED. R. CIV. P. 4(k)(1)(A); *Panavision Int'l, L.P. v.*
28 *Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). California's long-arm statute, CAL. CIV. PROC.

1 CODE § 410.10, is coextensive with federal due process requirements; therefore, the
2 jurisdictional analyses under state law and federal due process are the same. *Schwarzenegger*,
3 374 F.3d at 800–01.

4 For a court to exercise personal jurisdiction over a nonresident defendant consistent with
5 due process, that defendant must have “certain minimum contacts” with the relevant forum
6 “such that the maintenance of the suit does not offend ‘traditional notions of fair play and
7 substantial justice.’” *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting
8 *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Under a due process analysis, a defendant may be
9 subject to either general or specific personal jurisdiction. *Helicopteros Nacionales de Columbia*,
10 *S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868 (1984).

11 **A. General Jurisdiction**

12 “For general jurisdiction to exist over a nonresident defendant . . . the defendant must
13 engage in continuous and systematic general business contacts, that approximate physical
14 presence in the forum state.” *Schwartzenegeger*, 374 F.3d at 801 (internal quotations omitted).
15 “This is an exacting standard, as it should be, because a finding of general jurisdiction permits a
16 defendant to be haled into court in the forum state to answer for any of its activities anywhere in
17 the world.” *Id.*

18 While acknowledging that the Albin defendants have no physical contacts with California
19 and are located in Connecticut, plaintiff contends that the Court has general jurisdiction over
20 them because they have advertised their yachts on the internet, and have two authorized dealers
21 for their yachts in California.

22 As the Ninth Circuit recently noted:

23 To permit the exercise of general jurisdiction based on the accessibility in the
24 forum of a non-resident interactive website would expose most large media entities
25 to nationwide general jurisdiction. That result would be inconsistent with the
26 constitutional requirement that “the continuous corporate operations within a state”
27 be “so substantial and of such a nature as to justify suit against [the nonresident
28 defendant] on causes of action arising from dealings entirely distinct from those
29 activities.” *International Shoe*, 326 U.S. at 318. See generally 4 RAYMOND T.
30 NIMMER, THE LAW OF COMPUTER TECHNOLOGY § 19:7, at 19–12 n. 1 (4th ed.
31 2011) (collecting cases).

32 *Mavrix Photo.*, 2011 WL 3437047, *2.

1 Given their extremely minor contacts with California that plaintiff relies upon, the
2 exercise of general jurisdiction over the Albin defendants is unjustified.

3 Also appearing to recognize that general jurisdiction over defendant Peters, a Connecticut
4 citizen, is untenable, plaintiff concedes this point by failing to mention him in his opposition.
5 Accordingly, the Court finds that plaintiff has failed to assert sufficient facts to prove that any
6 defendant is subject to general jurisdiction before this Court.

7 **B. Specific Jurisdiction**

8 A court exercises specific personal jurisdiction over a defendant where the claim arises
9 out of or has a substantial connection to the defendant's contact with the forum. *Glencore Grain*
10 *Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002). The Ninth
11 Circuit analyzes specific jurisdiction according to a three-prong test: (1) The non-resident
12 defendant must purposefully direct his activities or consummate some transaction with the forum
13 or resident thereof; or perform some act by which he purposefully avails himself of the privilege
14 of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
15 (2) the claim must be one which arises out of or relates to the defendant's forum-related
16 activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice,
17 *i.e.*, it must be reasonable. *Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007).

18 The plaintiff bears the burden of satisfying the first two prongs of this specific jurisdiction
19 test. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Where plaintiff fails to satisfy either
20 of these prongs, personal jurisdiction is not established in the forum state.² *Schwarzenegger*, 374
21 F.3d at 802. “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then
22 shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not
23 be reasonable.” *Id.*

24 **1. Purposeful Availment**

25 The first prong concerning purposeful availment is assessed by using the three-part
26 effects test set found in *Calder v. Jones*, 465 U.S. 783 (1984); *see also, Dole Food Co., Inc. v.*

27 ² Plaintiff does not address whether defendant Peters is subject to the Court’s
28 specific jurisdiction and therefore has not met his burden to establish personal jurisdiction in
California.

1 *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) (describing *Calder* and the three-part effects test).
2 This effects test states that the defendant must have allegedly: “(1) committed an intentional act,
3 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be
4 suffered in the forum state.” *Schwarzenegger*, 374 F.3d at 803. All three parts of the test must be
5 satisfied. *Id.*

6 In arguing that defendants aimed their activities at California, plaintiff contends that the
7 Albin defendants “advertised its yachts on the internet with the intent to reach potential
8 customers across the United States and world wide” and as result “established a presence in
9 California” . . . “with the intent to obtain customers in California.” (Opp. at 7-8.) When personal
10 jurisdiction is premised on a defendant's internet activity, courts must examine “the level of
11 interactivity and commercial nature of the exchange of information that occurs on the Web site.”
12 *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997) (quotation omitted). “[T]he
13 likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to
14 the nature and quality of commercial activity that an entity conducts over the Internet.” *Id.* at 419
15 (quotation omitted). Passive web presence alone is not enough to confer personal jurisdiction.
16 *Id.* at 418. Rather, “something more” must show that the defendant purposefully directed activity
17 in a substantial way to the forum state. *Id.*

18 Here, defendants’ website is not interactive and as plaintiff acknowledges, the website
19 targets the general population and is not expressly aimed at California. (Opp. at 7.) Thus, the
20 Court finds that plaintiff has failed to establish that defendants expressly aimed their activities at
21 the forum state.

22 Second, plaintiff has failed to establish that defendants caused harm that they knew was
23 likely to be suffered in California. Indeed, plaintiff does not even argue that defendants knew
24 their actions were likely to cause harm to plaintiff in the forum. Plaintiff has not put forth any
25 evidence to suggest that defendants were aware that plaintiff had a connection to California or
26 that defendants caused harm that they knew was likely to be suffered by plaintiff in the forum
27 state.

28 The three parts of the *Calder* effects test have not been met here. Accordingly, the Court

1 finds that defendants have not purposefully availed themselves of the privilege of conducting
2 activities within the forum state.

3 **2. Arising Out Of or Resulting From Defendant's Forum-Related**
4 **Contacts**

5 The Ninth Circuit has adopted a “but for” test to determine whether a plaintiff's claim
6 arises out of a defendant's forum-related contacts. *See Mattel, Inc. v. Greiner & Hausser GmbH*,
7 354 F.3d 857, 864 (9th Cir. 2003). This second prong is met if plaintiff demonstrates that “but
8 for” defendant's contacts with California, plaintiff's claim would not have arisen. *Id.*

9 Plaintiff has not sufficiently shown that this “but for” requirement is met here.
10 Specifically, the Court finds that defendants’ limited forum-related contacts, *i.e.*, a non-
11 interactive internet website and the presence of two licensed Albin dealers in California, is not
12 directly related to the injuries plaintiff alleges he suffered as a result of his purchase of a non-
13 conforming yacht from defendants. Indeed, plaintiff did not purchase the yacht from one of the
14 two licensed Albin dealers in California. Thus, the Court finds that plaintiff's claim does not
15 arise out of or result from defendants’ alleged forum-related contacts.

16 **3. Conclusion**

17 Because plaintiff has not sufficiently demonstrated that the Albin defendants have
18 purposefully availed themselves of the privileges of conducting activities in California and
19 plaintiff's claims do not arise out of defendants’ forum related activities, the Court finds that
20 plaintiff has failed to show that specific jurisdiction is present in this Case.

21 Further, because the Court finds that Plaintiff has failed to establish that this Court has
22 either general or specific jurisdiction over any defendant in this action and defendants’ motion to
23 dismiss may be granted or alternatively, transferred to a proper venue

24 **III. Improper Venue**

25 Under 28 U.S.C. § 1406(a)³, if the court determines that venue is improper, as is the case
26 here, the court must either dismiss the action or, if it is in the interests of justice, transfer the case

27 ³ Plaintiff argues that venue should be determined under 28 U.S.C. § 1404(a) rather
28 than § 1406 because Albin is subject to personal jurisdiction in this Court. The Court has
concluded otherwise. Section 1404(a) is applicable.

1 to a district or division in which it could have been brought. Whether to dismiss for improper
2 venue, or alternatively to transfer venue to a proper court, is a matter within the sound discretion
3 of the district court. *See King v. Russell*, 963 F.2d 1301, 1304 (9th Cir. 1992).

4 Under the general venue statute, a civil action in which jurisdiction is not founded on
5 diversity of citizenship may be brought only in (1) a judicial district where any defendant
6 resides, if all defendants reside in the same state, (2) a judicial district in which a substantial part
7 of the events or omissions giving rise to the claim occurred, or a substantial part of the property
8 that is the subject of the action is situated, or (3) a judicial district in which any defendant may
9 be found, if there is no district in which the action may otherwise be brought. 28 U.S.C. §
10 1391(b). For purposes of venue, a corporation is deemed to reside in any district in which it is
11 subject to personal jurisdiction at the time the action was commenced. 28 U.S.C. § 1391(c). As
12 noted above, in this action the defendant corporations are not subject to personal jurisdiction in
13 California.

14 The Court notes that no party resides in California at this time; plaintiff resides in Cancun
15 Mexico; the Albin defendants reside in Connecticut; the yacht was manufactured in Texas and
16 delivered to plaintiff in Florida.

17 Defendants argue that venue is appropriate in Connecticut where defendants reside or in
18 Florida: “The resolution of this matter can be most efficiently resolved in Florida or
19 Connecticut.” (Defendants’ Memo of Ps&As at 15). Plaintiff argues, under 28 U.S.C. § 1406,
20 that Florida is a more convenient forum and would also have personal jurisdiction over the Albin
21 defendants.

22 Because it appears the parties agree that Florida is an appropriate venue for this action,
23 the Court finds in the interest of justice that transfer of this action to Florida is warranted rather
24 than dismissal.

25 **IV. Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6)**

26 Because the Court finds that it does not have personal jurisdiction over the defendants,
27 the Court declines to decide whether any or all of plaintiff’s causes of action are barred by the
28 applicable statutes of limitation.

1 **V. Conclusion**

2 Based on the foregoing, **IT IS ORDERED** denying defendants' motion to dismiss for
3 lack of personal jurisdiction. **IT IS FURTHER ORDERED** transferring this action to the
4 United States District Court for the Middle District of Florida, St. Petersburg, Florida.

5 **IT IS SO ORDERED.**

6 DATED: August 19, 2011

7 
8 M. James Lorenz
United States District Court Judge

9 COPY TO:

10 HON. LOUISA S. PORTER
11 UNITED STATES MAGISTRATE JUDGE

12 ALL PARTIES/COUNSEL

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