

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DENNIS GRAY ,

vs.

TALK FUSION, INC. et al.,

Plaintiff,

Defendants.

CASE NO. 15cv2665-LAB (JLB)
**ORDER VACATING HEARING, AND
REQUIRING SUPPLEMENTAL
BRIEFING ON PERSONAL
JURISDICTION**

On calendar for Monday, May 16, 2016 is a hearing on motions to dismiss, to transfer venue, and to stay. (Docket nos. 10, 11, 12, and 15.) Defendants have also moved *ex parte* for oral argument on these motions. (Docket no. 29.)

Normally, the Court would address the threshold issue of personal jurisdiction first. See *Brayton Purcell LLP v. Recordon & Recordon*, 606 f.3d 1124, 1135 (9th Cir. 2010) (“[P]ersonal jurisdiction is a threshold issue in every lawsuit and the erroneous exercise of personal jurisdiction deprives all subsequent proceedings of legal effect.”). But here, Plaintiffs’ briefing is not very helpful, and the Court believes that oral argument would likewise not be helpful.

The problem is that, although Defendants cited and relied on the standards for personal jurisdiction discussed in *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S.Ct. 2846 (2011) and *Daimler AG v. Bauman*, 134 S.Ct. 746 (2014), Plaintiff cited and relied

1 on older Ninth Circuit standards that *Goodyear* and *Daimler* have explained are invalid,¹ and
2 failed to discuss or even mention these two cases. Three of the four Defendants are located
3 in the Middle District of Florida. The fourth, Mane World Promotions, Inc., is located in
4 Oregon. None are alleged to have any offices or other permanent operations in this District
5 or in California. Instead, Plaintiffs rely on several of the Defendants' business activities in
6 California generally. This is essentially the old "doing business in" standard for general
7 jurisdiction that *Goodyear* and *Daimler* explained is not valid. Instead, the standard requires
8 that a defendant's contacts with the forum state be so continuous and systematic as to
9 render them "essentially at home in the forum state." *Daimler*, 134 S.Ct. at 754 (quoting
10 *Goodyear*, 131 S.Ct. at 2851). The "essentially at home" part of this test is crucial;
11 continuous and systematic contacts, by themselves, are not enough. *Daimler*, 134 S.Ct. at
12 761. See also *id.* at 762 n.20 ("A corporation that operates in many places can scarcely be
13 deemed at home in all of them. Otherwise, 'at home' would be synonymous with doing
14 business'. . . .")

15 Plaintiff's briefing also relies on specific jurisdiction, contending that Defendants
16 aimed or directed their activities at this forum. Plaintiff's claims are based on his investment
17 in an allegedly fraudulent pyramid scheme that Defendants disguised as a business
18 opportunity. His theory seems to be that because he lives here, entered into the agreement
19 here, and suffered financial loss while living here, there is specific personal jurisdiction here.²

20 Neither the complaint nor the briefing explain what Defendants did to aim their
21 activities at this forum. For example, there is no allegation that one of their representatives
22 held a meeting here where Plaintiff was enticed to invest in their scheme. Nor is there any
23 allegation that Defendants targeted Plaintiff particularly (as opposed to advertising their
24

25 ¹ The only post-*Goodyear* decision Plaintiffs cited is *CollegeSource, Inc. v.*
26 *AcademyOne, Inc.*, 653 F.3d 1066 (9th Cir. 2011), though Plaintiffs relied on it for principles
that *Goodyear* and *Daimler* left unaltered.

27 ² This is a putative class action, but no class has been certified and no class members
28 besides Gray have been identified. It is unknown where other class members live, how they
came to do business with Defendants, or whether Defendants in any way aimed their
activities at these putative class members.

1 business opportunities to a nationwide audience). Merely marketing products to a
2 nationwide audience, without more, will not support specific personal jurisdiction. *Holland*
3 *America Line Inc. v. Wärtsilä North America, Inc.*, 485 F.3d 450, 459 (9th Cir.2007) (“The
4 placement of a product into the stream of commerce, without more, is not an act purposefully
5 directed to a forum state.”) There are plenty of factual allegations about other things
6 Defendants did in California, but nothing about what they did here that harmed Plaintiff or
7 gave rise to his claims.

8 A secondary problem is that Defendants’ in-forum activities are not always broken
9 down by Defendant. As *Daimler* made clear, one defendant’s in-forum activities are not
10 necessarily attributable to another defendant for purposes of establishing personal
11 jurisdiction. Here, Defendants Robert Reina and Talk Fusion Worldwide, Inc. have argued
12 that Talk Fusion Inc.’s activities in California are not attributable to them. Defendant Mane
13 World points out Plaintiff has not alleged it did anything at all in California, and denies even
14 having any contacts here. (See Docket no. 10-1, at 1:21–24.)

15 Additionally, neither the complaint nor the briefing focuses on this District, as opposed
16 to California generally. The only alleged contact with this District is whatever business
17 Defendants did with Plaintiff himself.

18 In light of this, holding argument now would not be useful, and the Court **VACATES**
19 the hearing currently on calendar for Monday, May 16, 2016. Plaintiff is **ORDERED** to file
20 supplemental briefing addressing the factual basis for general or specific personal
21 jurisdiction over each Defendant, in light of *Goodyear* and *Daimler*. No later than **May 26,**
22 **2016**, he must file his memorandum of points and authorities, not longer than seven pages.
23 The page limit does not include any appended or lodged material. If they wish, Defendants
24 may file a joint reply brief, subject to the same page limit, by **June 2, 2016**. After the briefing

25 ///

26 ///

27 ///


28 ///

1 is filed, this matter will remain under submission on the papers. The Court will schedule
2 argument at a later date if appropriate.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: May 11, 2016


HONORABLE LARRY ALAN BURNS
United States District Judge