

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**

TV EARS, INC.,

Plaintiff,

v.

SYK GROUP, LLC, LIBERTY
HEALTH SUPPLY, LLC, TRUEDIO
LLC, and SAM Y. Kim, and
individual,

Defendants.

CASE NO. 16cv867-GPC(WVG)

**ORDER GRANTING
DEFENDANTS SYK GROUP, LLC
AND SAM Y. KIM'S MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
DENYING MOTION TO DISMISS
FOR FAILING TO STATE A
CLAIM AS MOOT**

[Dkt. No. 15.]

Before the Court is Defendants SYK Group, LLC and Sam Y. Kim's motion to dismiss pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(2) for lack of personal jurisdiction. (Dkt. No. 15.) Alternatively, they move to dismiss the Complaint for failing to state a claim pursuant to Rule 12(b)(6). Plaintiff filed an opposition on September 30, 2016. (Dkt. No. 25.) A reply was filed on October 14, 2016. (Dkt. No. 27.) Based on the reasoning below, the Court GRANTS Defendants' motion to dismiss.

Background

Plaintiff TV Ears, Inc. ("TV Ears") is a Nevada corporation with its principal place of business located in Spring Valley, California. (Dkt. No. 1, Compl. ¶ 1.) In the late 1990's, Plaintiff designed and developed TV Ears headsets, an assistive listening

1 device designed for clear and distinct television listening and dialogue comprehension.
2 (Id. ¶¶ 13, 14.) TV Ears owns registered trademarks related to its products. (Id. ¶ 22.)
3 TV Ears is a top selling brand for TV listening devices and has been recommended by
4 doctors and audiologists in North America and Europe and is well recognized by the
5 relevant consuming public. (Id. ¶¶ 30, 31, 32.) Plaintiff alleges all Defendants
6 developed a business model to copy Plaintiff’s product design, trademarks,
7 functionality, customer support materials, marketing materials and advertising model.
8 (Id. ¶ 34.) Defendants’ “TrueDio Ears” products are a knock off of TV Ears’
9 headphone products. (Id. ¶ 40.)

10 Defendant Sam Y. Kim (“Kim”) is an individual residing in Illinois. (Id. ¶ 2;
11 Dkt. No. 15-2, Kim Decl. ¶ 2.) Defendant SYK Group, LLC (“SYK Group”) is a
12 limited liability company organized under the laws of the State of Illinois with its
13 principal place of business in Illinois with no other offices. (Dkt. No. 1, Compl. ¶ 3;
14 Dkt. No. 15-2, Kim Decl. ¶ 4.) Kim is the founder and Chief Executive Officer
15 (“CEO”) and the sole member of SYK Group. (Dkt. No. 1, Compl. ¶ 6; Dkt. No. 15-2,
16 Kim Decl. ¶ 4.)

17 SYK Group is an investment and growth advisory group specializing in early
18 stage companies and internet commerce based business models and is an investor in
19 several such companies including Defendants Liberty Health Supply, LLC (“Liberty
20 Health) and TrueDio, LLC (“TrueDio”). (Dkt. No. 15-2, Kim Decl. ¶ 5.) Defendant
21 Liberty Health is an Illinois limited liability company with its principal place of
22 business in Libertyville, Illinois. (Id. ¶ 6.) Kim founded Liberty Health in February
23 2011 and is its CEO. (Id.) Kim and his wife are currently the sole members of Liberty
24 Health. (Id.) Liberty Health is an online distributor and retailer of dependable
25 solutions to protect, assist, and enhance the lives of individuals seeking to lead an
26 active, independent lifestyle, including individuals in need of assistive devices and
27 solutions for help with hearing, visual, or mobility loss. (Id. ¶ 7.) Liberty Health offers
28 over 4,000 products that span across many health and wellness categories such as

1 audio, visual, mobility, sports and fitness. (Id.) Liberty Health advertises, markets and
2 sells products to customers in all 50 states, including California. (Id.)

3 Defendant TrueDio was founded by Kim in September 2013 and is an Illinois
4 limited liability company with its principal place of business is in Libertyville, Illinois
5 and Kim is the sole member. (Id. ¶ 8.) TrueDio is an e-commerce electronics retailer
6 and “private label OEM of television and audio assistive products.” (Id. ¶ 9.) TrueDio
7 advertises, markets and sells products to customers in all 50 states, including
8 California. (Id.)

9 Kim does not receive any money directly from customers who purchase goods
10 or services from Liberty Health or TrueDio. (Id. ¶ 18.) He does not have an office in
11 California, does not maintain any books or records in California, does not have any
12 bank accounts or other tangible personal or real property in California, and does not
13 pay income or other taxes in California. (Id. ¶¶ 20, 21, 22.) He does not conduct or
14 transact any business in California, other than in his capacity as an officer and/or
15 representative of Liberty Health, TrueDio, or SYK Group’s other portfolio companies.
16 (Id. ¶ 19.) His only contacts with California outside of his capacity as an officer and/or
17 representative of these companies include a vacation every couple of years. (Id. ¶ 23.)

18 The Complaint alleges six causes of action of cybersquatting pursuant to 15
19 U.S.C. 1125(d); trademark infringement; trade dress infringement; federal unfair
20 competition and false designation; federal dilution by blurring; and California unfair
21 competition. (Dkt. No. 1, Compl.) An answer was filed by Defendants Liberty Health
22 and TrueDio. (Dkt. No. 16.) Defendants SYK Group and Kim filed a motion to
23 dismiss for lack of personal jurisdiction, or in the alternative, motion to dismiss for
24 failing to state a claim.

25 In its opposition Plaintiff does not dispute and concedes that the Court does not
26 have jurisdiction over Defendant SYK Group. According, the Court GRANTS
27 Defendant SYK Group’s motion to dismiss as unopposed. Therefore, the remaining
28 issue is whether the Court has personal jurisdiction over non-resident Defendant Kim.

1 **A. Legal Standard on Personal Jurisdiction**

2 “When a defendant moves to dismiss for lack of personal jurisdiction, the
3 plaintiff bears the burden of demonstrating that the court has jurisdiction.” In re
4 Western States Wholesale Natural Gas Antitrust Litigation v. Oneok, Inc., 715 F.3d
5 716, 741 (9th Cir. 2013). If the motion is based on written materials rather than an
6 evidentiary hearing, the plaintiff need only make “a prima facie showing of
7 jurisdictional facts to withstand the motion to dismiss.” Bryton Purcell LLP v.
8 Recordon & Recordon, 575 F.3d 981, 985 (9th Cir. 2009). On a prima facie showing,
9 the court resolves all contested facts in favor of the non-moving party. In re Western
10 States, 715 F.3d at 741; AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588
11 (9th Cir. 1996) (if conflicted facts are contained in the parties’ affidavits, the facts must
12 be resolved in favor of the plaintiff for purposes of determining whether a prima facie
13 case of personal jurisdiction has been established.) At the same time, however, the
14 plaintiff cannot establish jurisdiction by alleging bare jurisdictionally-triggering facts
15 without providing some evidence of their existence. Amba Mktg. Sys., Inc. v. Jobar
16 Int’l, Inc., 551 F.2d 784, 787 (9th Cir. 1977). “When a defendant moves to dismiss for
17 lack of personal jurisdiction, the plaintiff is ‘obligated to come forward with facts, by
18 affidavit or otherwise, supporting personal jurisdiction.’” Scott v. Breeland, 792 F.2d
19 925, 927 (9th Cir. 1986) (quoting Amba, 551 F.2d at 787.)

20 “Where, as here, no federal statute authorizes personal jurisdiction, the district
21 court applies the law of the state in which the court sits.” Marvix Photo, Inc. v. Brand
22 Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011) (citations omitted). California’s
23 long-arm statute is “coextensive with the outer limits of due process under the state and
24 federal constitutions, as those limits have been defined by the United States Supreme
25 Court.” Republic Int’l Corp. v. Amco Eng’rs, Inc., 516 F.2d 161, 167 (9th Cir. 1976)
26 (quoting Threlkeld v. Tucker, 496 F.2d 1101, 1103 (9th Cir. 1974)). As such, the
27 Court need only consider the requirements of due process. Due process requires that
28 nonresident defendants have “minimum contact” with the forum state “such that the

1 maintenance of the suit does not offend traditional notions of fair play and substantial
2 justice.” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). Personal
3 jurisdiction can be either “general” or “specific.” See Helicopteros Nacionales de
4 Colombia, S.A. v. Hall, 466 U.S. 408, 415-16 (1984).

5 **B. General Personal Jurisdiction over Defendant Kim**

6 Kim argue that this Court lacks general personal jurisdiction over him because
7 he lacks sufficient contacts to support general jurisdiction. In response, Plaintiff
8 asserts that the Court has continuous and systematic business contacts with California
9 through his alter egos, Defendants TrueDio and Liberty Health, who concede that the
10 Court has general jurisdiction over them.

11 A court may exercise general jurisdiction over a nonresident defendant when he
12 is domiciled in the forum state or his activities in the forum are “substantial” or
13 “continuous and systematic.” Panvision Internat’l, L.P. v. Toeppen, 141 F.3d 1316,
14 1320 (9th Cir. 1998). “To determine whether a nonresident defendant’s contacts are
15 sufficiently substantial, continuous, and systematic, we consider their ‘[l]ongevity,
16 continuity, volume, economic impact, physical presence, and integration into the state's
17 regulatory or economic markets.’” Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d
18 1218, 1224 (9th Cir. 2011) (citations and internal quotation marks omitted).

19 Here, Kim is domiciled in Illinois and has never lived in California. (Dkt. No.
20 15-2, Kim Decl. ¶ 2.) He asserts that all his dealings with or in California have all been
21 in his capacity as an officer and/or representative of Liberty Health or TrueDio. (Id.
22 ¶ 19.) He does not maintain an office in California, does not maintain any books or
23 records in California, does not pay income or other taxes in California and does not
24 have any bank accounts or other personal or real property in California. (Id. ¶¶ 20, 21,
25 22.) He occasionally vacations in California every couple of years. (Id. ¶ 23.) In
26 response, Plaintiff does not argue that the Court has general jurisdiction over Kim
27 based on his own personal contacts in California and presents no facts that his contacts
28 are substantial or continuous and systematic with the forum. Therefore, Plaintiff has

1 not demonstrated that the Court has general jurisdiction over Kim based on his direct
2 contacts.

3 Instead, Plaintiff argues that general jurisdiction over Kim is proper based on
4 alter ego theory of liability. Kim contends that Plaintiff cannot rely on conclusory alter
5 ego allegations to create personal jurisdiction as to him even if there is jurisdiction over
6 Defendants TrueDio and Liberty Health.

7 “The mere fact that a corporation is subject to local jurisdiction does not
8 necessarily mean its nonresident officers, directors, agents, and employees are subject
9 to jurisdiction as well.” NuCal Foods, Inc. v. Quality Egg LLC, 887 F. Supp. 2d 977,
10 996 (E.D. Cal. 2012) (citation omitted). “For jurisdictional purposes, the acts of
11 corporate officers and directors in their official capacities are the acts of the
12 corporation exclusively and are thus not material for purposes of establishing minimum
13 contacts as to the individuals.” Id. However, if a plaintiff shows that a defendant
14 corporation is the alter ego of an individual defendant such that the corporate form may
15 be disregarded, then a finding of personal jurisdiction over one supports a finding of
16 personal jurisdiction over the other. Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1393-
17 94 (9th Cir. 1984) (concluding that the California court had personal jurisdiction over
18 two individual defendants from New York, and therefore also had personal jurisdiction
19 over thirteen corporations and partnerships from New York that were the alter egos of
20 the two individual defendants but otherwise had no ties to California).

21 For the alter ego doctrine to apply, a plaintiff “must make out a prima facie case
22 ‘(1) that there is such unity of interest and ownership that the separate personalities [of
23 the two entities] no longer exist and (2) that failure to disregard [their separate
24 identities] would result in fraud or injustice.’” Ranza v. Nike, Inc., 793 F.3d 1059,
25 1073 (9th Cir. 2015) (quoting Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir. 2001)).

26 The “unity of interest and ownership” factor requires “a showing that the parent
27 controls the subsidiary to such a degree as to render the latter the mere instrumentality
28 of the former.” Id. (citation omitted). “This test envisions pervasive control over the

1 subsidiary, such as when a parent corporation dictates every facet of the subsidiary’s
2 business - from broad policy decisions to routine matters of day-to-day operation.” Id.
3 (internal quotation marks omitted).

4 However, when the evidence only reveals “an active parent corporation involved
5 directly in decision-making about its subsidiaries’ holdings,” while each entity
6 “observe[s] all of the corporate formalities necessary to maintain corporate
7 separateness” the “unity of interest and ownership” factor is not met. Unocol, 248 F.3d
8 at 928. “Total ownership and shared management personnel are alone insufficient to
9 establish the requisite level of control.” Ranza, 793 F.3d at 1073 (citing Harris Rutsky
10 & Co. Ins. Servs. v. Bell & Clements Ltd., 328 F.3d 1122, 1135 (9th Cir. 2003)). In
11 AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 591 (9th Cir. 1996), the Ninth
12 Circuit noted that in Flynt, a prima facie showing of alter ego relationship was made
13 by submitting affidavits indicating the “two sole shareholders of several corporations
14 had converted corporate assets for their own use, had dealt with the various
15 corporations as if they were one, and had transferred assets among the corporations,
16 leaving some of them undercapitalized.” Id. (citing Flynt, 734 F.2d at 1393-94). In
17 AT&T, the Ninth Circuit noted that the relationship between the two entities resembled
18 a normal parent-subsidary relationship; therefore, there was no alter ego relationship.
19 Id. In Ranza, the court stated that while the evidence demonstrated that the parent
20 corporation was active in macro management issues, there was no evidence that the
21 parent corporation directed the subsidiary’s routine day to day operations and nothing
22 to show that the entities failed to observe their separate corporate formalities; thus,
23 there was no alter ego relationship. Ranza, 793 F.3d at 1075.

24 In this case, Plaintiff relies solely on the summary allegation in the Complaint
25 that “Defendants were working at the direction of each other, and for their individual
26 and mutual benefit,” (Dkt. No. 1, Compl. ¶ 10), and Kim’s declaration filed in support
27 of his motion to dismiss, to argue that because Kim is the officer, owner, and operator
28 of Liberty and TrueDio, (Dkt. No. 25, Kim Decl. ¶ 19), and has vacationed in

1 California, (Id. ¶23), he has complete ownership over Defendants TrueDio and Liberty
2 Health; therefore there is both unity of interest and ownership and that injustice would
3 result if he is not held liable for trademark infringement by TrueDio and Liberty
4 Health. Plaintiff urges the Court to make an inference of alter ego relationship based
5 on these two allegations.

6 On a motion to dismiss based on personal jurisdiction, a plaintiff cannot “simply
7 rest on the bare allegations of its complaint.” Schwarzenegger v. Fred Martin Motor
8 Co., 374 F.3d 797, 800 (9th Cir. 2004) (quoting Amba, 551 F.2d at 787). While a
9 prima facie showing of personal jurisdiction is only required, “mere ‘bare bones’
10 assertions of minimum contacts with the forum or legal conclusions unsupported by
11 specific factual allegations will not satisfy a plaintiff’s pleading burden.” Swartz v.
12 KPMG LLP, 476 F.3d 756, 766 (9th Cir. 2007) (citations omitted). In Amba, the Ninth
13 Circuit asserted that the plaintiff “could not simply rest on the bare allegations of its
14 complaint, but rather was obligated to come forward with facts, by affidavit or
15 otherwise, supporting personal jurisdiction.” Amba, 551 F.2d at 787. Moreover,
16 disregarding the corporate entity is an extreme remedy which will be done only in
17 exceptional circumstances. Calvert v. Huckins, 875 F. Supp. 674, 678 (1995).
18 Therefore, plaintiffs who invoke the alter ego theory to assert personal jurisdiction has
19 a “slightly higher burden.” Id.

20 Here, Plaintiff has failed to come forth with any evidence to support either factor
21 of the alter ego test, and therefore, has failed to make a prima facie showing of alter
22 ego relationship between Kim and Liberty Health and/or TrueDio. While the Court is
23 to draw all reasonable inferences in favor of Plaintiff on a motion to dismiss, it has not
24 provided any factual basis for the Court to make an inference to support an alter ego
25 relationship.

26 Plaintiff also argues that a party may consent to a court’s jurisdiction through a
27 forum-selection clause even in the absence of minimum contacts and cites to Lusa
28 Lighting, Inc. v. Lowe’s Companies, Inc., No. CV08-3596-DOC-MLGX, 2008 WL

1 4381573, at *2 (C.D. Cal. Sept. 24, 2008). It may be correct that TrueDio has
2 expressly stated that venue shall be in California for any claims against it, (Dkt. No. 1,
3 Comp. ¶ 8; Dkt. No. 1-2, Compl., Ex. 1), the website does not say anything about Kim.
4 Lusa Lighting does not address whether a company’s CEO is subject to personal
5 jurisdiction by virtue of the company’s forum selection clause.

6 The Court concludes it does not have general personal jurisdiction over Kim.

7 **C. Specific Personal Jurisdiction over Defendant Kim**

8 Kim next argues that this Court lacks specific jurisdiction over him because
9 Plaintiff has not alleged any conduct that he targeted California consumers or
10 purposefully directed his allegedly wrongful conduct at California residents, and he did
11 not direct any of the alleged infringing actions of TrueDio and Liberty Health. In
12 response, Plaintiff asserts that the elements of the effects test in Calder v. Jones, 465
13 U.S. 783 (1984) has been met, and also on another theory, Kim is subject to specific
14 personal jurisdiction because he personally directed TrueDio and Liberty Health to
15 commit trademark infringement.

16 Specific jurisdiction exists when a case “aris[es] out of or relate[s] to the
17 defendant’s contacts with the forum.” Helicopteros Nacionales de Colombia, S.A., 466
18 U.S. at 414 n. 8. The inquiry whether a forum State may assert specific jurisdiction
19 over a nonresident defendant “focuses on ‘the relationship among the defendant, the
20 forum, and the litigation.” Walden v. Riore, 134 S. Ct. 1115, 1121 (2014). Specific
21 jurisdiction is limited to ruling on “issues deriving from, or connected with, the very
22 controversy that establishes jurisdiction.” Goodyear Dunlop Tires, 131 S. Ct. at 2851
23 (citation omitted).

24 The Ninth Circuit conducts a three-prong test to determine whether a
25 non-resident defendant is subject to specific personal jurisdiction,

- 26 (1) The non-resident defendant must purposefully direct his activities
27 or consummate some transaction with the forum or resident thereof; or
28 perform some act by which he purposefully avails himself of the
privilege of conducting activities in the forum, thereby invoking the
benefits and protections of its laws; (2) the claim must be one which
arises out of or relates to the defendant’s forum-related activities; and

1 (3) the exercise of jurisdiction must comport with fair play and
2 substantial justice, i.e. it must be reasonable.

3 Schwarzenegger, 374 F.3d at 802 (citing Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir.
4 1987)). “A purposeful avilment analysis is most often used in suits sounding in
5 contract,” while a “purposeful direction analysis . . . is most often used in suits
6 sounding in tort.” Id. For tort claims, such as trademark infringement, a “purposeful
7 direction” test looks “to evidence that the defendant has directed his actions at the
8 forum state, even if those actions took place elsewhere.” Id. (citing Schwarzenegger,
9 374 F.3d at 802-03). The plaintiff bears the burden of satisfying the first two prongs
10 and then the burden shifts to the defendant to make a “compelling case” that the third
11 part has not been met. Schwarzenegger, 374 F.3d at 802. “If any of the three
12 requirements is not satisfied, jurisdiction in the forum would deprive the defendant of
13 due process of law.” Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1155 (9th Cir. 2006)
14 (internal citations and quotations omitted).

15 The Ninth Circuit applies the three part purposeful direction test enunciated in
16 Calder v. Jones for trademark infringement actions. See Nissan Motor Co. v. Nissan
17 Computer Corp., 246 F.3d 675, 675 (9th Cir. 2000). Under the three-part Calder
18 “effects” test to evaluate purposeful direction, Plaintiff must establish that the
19 defendant allegedly “(1) committed an intentional act, (2) expressly aimed at the forum
20 state, (3) causing harm that the defendant knows is likely to be suffered in the forum
21 state.” Dole Food Co. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002) (citing Calder v.
22 Jones, 465 U.S. 783 (1984)).

23 An intentional act for purposes of the effects test is “an external manifestation
24 of the actor's intent to perform an actual, physical act in the real world, not including
25 any of its actual or intended results.” Wash. Shoe Co. v. A–Z Sporting Goods, Inc.,
26 704 F.3d 668, 674 (9th Cir. 2012); Schwarzenegger, 374 F.3d at 806 (an intentional act
27 “refers to an intent to perform an actual, physical act in the real world.”).

28 In its opposition, Plaintiff argues that Kim “committed an intentional act of
specifically targeting and using Plaintiff’s registered TV EARS trademark to promote

1 TrueDio Ears, which infers intentional trademark infringement based upon Plaintiffs’
2 much earlier use of the TV EARS marks (Compl. ¶¶ 13, 14¹). (Dkt. No. 25 at 15.)
3 Kim argues that there are no allegations or evidence that he specifically targeted California
4 consumers or expressly aimed his purported wrongful conduct at California residents.
5 The Court agrees. Nowhere in the Complaint or in its opposition do Plaintiff provide
6 any factual support for its argument in opposition. The Complaint only alleges that
7 Kim resides in Illinois, is the founder and CEO of Liberty, and SYK owns and operates
8 TrueDio and Liberty at the direction of Kim. (Dkt. No. 1. Compl. ¶¶ 2, 6, 7.) While
9 there are allegations of trademark infringement, these allegations are lumped together
10 as “Defendants” and do not allege an intentional act by Kim. Plaintiff’s citation to
11 paragraphs 13 and 14 of the Complaint do not support its allegation that Kim
12 committed an intentional act. Accordingly, Plaintiff has failed to allege that Kim
13 committed an intentional act.

14 Because the Complaint does not provide any specific facts concerning the
15 alleged trademark infringement by Kim, and Plaintiff has not submitted any evidence
16 in support of its opposition, the next two factors to support purposeful direction of
17 expressly aiming at the forum state and causing harm that the defendant knows is likely
18 to be suffered in the forum state are also not supported.

19 Because Plaintiff has not met the first factor to support a claim for specific
20 personal jurisdiction, the Court need not address the other two factors. See
21 Schwarzenegger, 374 F.3d at 802 (“If the plaintiff fails to satisfy either of the [first
22 two] prongs, personal jurisdiction is not established in the forum state.”)

23 Next, under another theory to support specific personal jurisdiction, Plaintiff
24 argues that Kim, as the founder, CEO and/or sole member and operated Defendants
25 Liberty Health and True Dio, directed these Defendants to commit trademark

26
27 ¹Paragraph 13 of the Complaint states, “Plaintiff’s owner, George Dennis, came
28 up with the idea for TV EARS when his father began losing his hearing in the early
90’s”, (Dkt. No. 1, Compl. ¶ 13), and Paragraph 14 states, “in late 1990, Mr. Dennis
developed a cost-effective wireless ‘assistive listening device’ designed for clear and
distinct television listening and dialogue comprehension.” (Id. ¶ 14.)

1 infringement. Kim argues that Plaintiff has not presented any allegations or facts that
2 he directed any of the alleged conduct by TrueDio and Liberty Health.

3 In Davis, the Ninth Circuit held the district court's assertion of personal
4 jurisdiction over non-resident stockholder defendants comported with due process.
5 Davis v. Metro Prods., Inc., 885 F.2d 515, 523 (9th Cir. 1989). In support of its ruling,
6 it relied on a First Circuit case, where the court stated that "cases which have found
7 personal liability on the part of corporate officers have typically involved instances
8 where the defendant was the 'guiding spirit' behind the wrongful conduct . . . or the
9 'central figure' in the challenged corporate activity." Id. at 523 n. 10 (quoting Escude
10 Cruz v. Ortho Pharm. Corp., 619 F.2d 902, 907 (1st Cir. 1980)). Based on the Ninth
11 Circuit's ruling in Davis, California district courts have asserted personal jurisdiction
12 over a nonresident corporate officer when the corporate officer "is the primary
13 participant in the alleged wrongdoing or had control of and direct participation in the
14 alleged activities." Allstar Mktg. Group, LLC v. Your Store Online, LLC, 666 F.
15 Supp. 2d 1109, 1120 (C.D. Cal. 2009) (citation and internal quotation omitted) (citing
16 cases). Under this theory, each defendant's contacts with the forum state must be
17 examined individually to determine whether that defendant has sufficient minimum
18 contacts to support a finding of jurisdiction. Davis, 885 F.2d at 522.

19 In Silverlit Toys Manufactory, Ltd. v. Absolute Toy Mktg., Inc., No. 06-7966
20 CW, 2007 WL 521239, at *9-10 (N.D. Cal. 2007), the defendant moved to dismiss the
21 individual nonresident defendants based on lack of personal jurisdiction in a trademark
22 and copyright infringement case. Id. at 8. The issue was whether the individual
23 defendants were the moving force behind the infringing activity. Id. The plaintiff
24 provided evidence, by attaching a Company Fact Sheet published in November 2006,
25 that one of the defendants was a manager in the company. Id. at 9. While this fact was
26 disputed by the defendant, the court resolved the conflict in plaintiff's favor and denied
27 the motion to dismiss for lack of personal jurisdiction. Id. As to the other defendant,
28 the plaintiff provided evidence that the defendant made misleading statements about

1 the infringing product's sales in a press release which was sufficient to establish he was
2 a "moving active force behind the alleged infringement even if he was unaware that his
3 actions were improper." Id.

4 Here, there are no specific allegations concerning Kim in the Complaint, except
5 explaining who he is, and all allegations concerning the alleged wrongful conduct are
6 lumped together as "Defendants." (See Dkt. No. 1, Compl.) Furthermore, Plaintiff
7 presents no evidence to support an allegation that Kim was the moving force behind
8 the alleged infringement. Merely being a founder, CEO and/or sole member of Liberty
9 Health and TrueDio is not sufficient to make prima facie showing that Kim personally
10 participated and encouraged sales of alleged infringing products in California. See
11 Allstar, 666 F. Supp. 2d at 1121 (defendants were the moving force behind the
12 infringing product based on the plaintiff's allegation that they "personally participated
13 and encouraged the sales of allegedly infringing products in this district").
14 Accordingly, the Court concludes it does not have specific personal jurisdiction over
15 Kim.


16 In sum, the Court GRANTS Defendant Kim's motion to dismiss for lack of
17 personal jurisdiction. Because the Court dismisses Kim as a Defendant in this case, the
18 Court DENIES Defendant's motion to dismiss for failure to state a claim as moot.

19 Conclusion

20 Based on the above, the Court GRANTS Defendants SYK Group, LLC and Sam
21 Y. Kim's motion to dismiss for lack of personal jurisdiction. The Court also DENIES
22 Defendants' motion to dismiss for failure to state a claim as moot. The hearing set on
23 October 28, 2016 shall be **vacated.**

24 IT IS SO ORDERED.

25
26 DATED: October 26, 2016

27 
28 HON. GONZALO P. CURIEL
United States District Judge