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

LARISSA ETTORE,

vs.

DAVID CALVO, et al.,

Plaintiff,

Defendants.

CASE NO. 16cv2915-LAB (BGS)
**ORDER DENYING MOTION FOR
EARLY DISCOVERY; AND

ORDER CONTINUING BRIEFING
SCHEDULE AND HEARING ON
MOTIONS TO DISMISS**

Plaintiff Larissa Ettore originally filed her claims against Defendants Ronald Huxtable and David Calvo as a third party complaint in the related case of *Ayers v. Lee*, 14cv542-LAB (BGS). Huxtable and Calvo then moved to dismiss for lack of personal jurisdiction. Because *Ayers* was already winding down at that point, and because Ettore’s claims had no direct relationship to the claims pending in *Ayers*, the Court severed those claims and directed Ettore to file a new complaint.

Defendants then filed motions to dismiss for lack of personal jurisdiction. (Docket nos. 4 and 5.) Huxtable’s motion also sought dismissal for improper venue; and Calvo’s, for failure to state a claim. Plaintiff Larissa Ettore moved to continue the hearing on those motions, and also for early jurisdictional discovery.

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1 **Discussion**

2 The fact that Ettore filed her claims in a case where the Court already had personal
3 jurisdiction over the other parties does not mean the Court has jurisdiction over Huxtable and
4 Calvo.

5 Their motions point out that the underlying claims in this case arose primarily in
6 Nevada, and that neither of them is resides here or resided here at the time the claims arose.
7 Huxtable and Calvo are residents of Florida and Texas, respectively. They also argue that
8 neither of them directed their actions towards this District or towards California, so as to
9 make personal jurisdiction or venue proper here.

10 Ettore argues that she has a colorable claim that the Court can exercise personal
11 jurisdiction over Defendants. She bases this on the complaint in *Ayers*. She refers to an
12 order by the SEC, which she attaches to her complaint. She alleges that some defendants
13 in the related case, *Ayers v. Lee*, were located in this District, or in California. She also
14 refers generally to claims that Calvo and Huxtable assisted James Yiu Lee in his scam.
15 Ettore resides in this District, but does not allege that Calvo or Huxtable had any contact with
16 her here.

17 The *Ayers* complaint does not mention California as the situs for any part of the
18 claims, though it does mention a number of other states. *Ayers* was originally filed in the
19 District of Nevada, and transferred to this District only when the defendants waived their
20 objections to defective venue, so that the case could be adjudicated along with the related
21 case, *S.E.C. v. Lee*, 14cv347-LAB (BGS), which was then pending in this District.

22 The SEC order (Complaint, Ex. B) does not identify any connection between the
23 underlying claims and this District. It identifies various things Huxtable and Lee did, the bulk
24 of which appear to have taken place either in Florida, Nevada, Colorado, or in some place
25 where one of the *Ayers* plaintiffs lived. The only apparent connection between Huxtable and
26 this District is that Huxtable sent communications to Lee, and Lee was a resident of this
27 District. But the *Ayers* complaint makes clear much of what Lee did occurred in Nevada,

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1 Colorado, or other states. And in any case, even if Huxtable had some connection with this
2 District, it would not give the Court any basis for exercising personal jurisdiction over Calvo.

3 "It is clear that the question of whether to allow discovery is generally within the
4 discretion of the trial judge. However, where pertinent facts bearing on the question of
5 jurisdiction are in dispute, discovery should be allowed." *America West Airlines, Inc. v. GPA*
6 *Group, Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989). Where the movant can point to "little more
7 than a hunch that [early discovery] might yield jurisdictionally relevant facts," denial of
8 discovery is appropriate. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). Courts
9 in this circuit have required plaintiffs to present at least a colorable basis for jurisdiction. See
10 *Calix Networks, Inc. v. Wi-Lan, Inc.*, 2010 WL 3515759, at *4 (N.D. Cal., Sept. 8, 2010).

11 Here, Ettore has not even presented a colorable basis for personal jurisdiction. None
12 of the pleadings or evidence she points to suggest that there might be evidence showing that
13 either Huxtable or Calvo might be subject to personal jurisdiction in this District. The case
14 for jurisdiction over Calvo is even weaker, because he is not named in the SEC order.
15 Furthermore, unlike some other cases, alternative venues are available where jurisdiction
16 would be proper. At a bare minimum, personal jurisdiction would be proper in the two
17 districts where Calvo and Huxtable reside. The claims might need to be severed in order to
18 be transferred there. Another possibility is the District of Nevada, where most of the
19 underlying claims arose.

20 **Conclusion and Order**

21 The motion for early jurisdictional discovery is **DENIED**. Ettore requested that the
22 hearing on the two motions to dismiss be continued to allow her to seek early discovery. But
23 during the pendency of her *ex parte* discovery request, the deadline to file her oppositions
24 to the Defendants' two motions passed.

25 Ettore may file her oppositions to the two motions by **Monday, April 24, 2017** and
26 Defendants may file their reply briefs by **Monday May 1, 2017**. The hearing on the two
27 motions is **CONTINUED** from Monday, April 3 to **Monday, May 8, 2017 at 11:15 a.m.** The

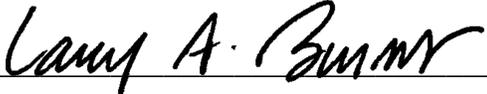
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1 parties should bear in mind that the Court may vacate the hearing if it determines oral
2 argument is not necessary.

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IT IS SO ORDERED.

DATED: March 29, 2017



HONORABLE LARRY ALAN BURNS
United States District Judge