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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

TODD E. VERBICK, an individual,

Plaintiff,

v.

THE MOVEMENT TECHNOLOGY
COMPANY, INC., a Washington
corporation; PREDICTUV
TECHNOLOGIES, INC., a Delaware
corporation; PREDICTUV LLC, a
Delaware limited liability company;
KELVIN HILL, an individual; ZSOLT
CSENDE, an individual; VIVIEN
SZAKACS, an individual;
CHRISTOPHER KEIL, an individual;
NIALL LAWLOR, an individual;
GERRY LAWLOR, an individual; ROB
GRINNELL, an individual; and DOES 1
to 100,

Defendants.

Case No.: 20-CV-611 TWR (DEB)

**ORDER (1) TAKING MATTER
UNDER SUBMISSION WITHOUT
ORAL ARGUMENT;
(2) GRANTING DEFENDANT THE
MOVEMENT COMPANY, INC.’S
MOTION TO DISMISS WITH
PREJUDICE; AND
(3) FOR PLAINTIFF TO SHOW
CAUSE WHY DEFENDANTS
PREDICTUV TECHNOLOGIES,
INC. AND PREDICTUV LLC
SHOULD NOT BE DISMISSED
PURSUANT TO CIVIL LOCAL
RULES 41.1(a) AND 55.1**

(ECF No. 65)

Presently before the Court is Defendant The Movement Technology Company, Inc.’s (“TMC”) Motion to Dismiss Plaintiff Todd E. Verbick’s Second Amended Complaint. (“Mot.,” ECF No. 65.) The Court takes this matter under submission without

1 oral argument pursuant to Civil Local Rule 7.1(d)(1).¹ Having carefully considered the
2 parties' arguments, Plaintiff's Second Amended Complaint ("SAC," ECF No. 63), and the
3 relevant law, the Court **GRANTS WITH PREJUDICE** Defendant's Motion. The Court
4 also **ORDERS** Plaintiff **TO SHOW CAUSE** why this action should not be dismissed as
5 to Defendants Predictuv Technologies, Inc. and Predictuv LLC pursuant to Civil Local
6 Rules 41.1(a) and 55.1.

7 **BACKGROUND**

8 The Court incorporates the factual and procedural background from the Court's
9 November 19, 2021, Order (1) Granting Motion to Dismiss First Amended Complaint, and
10 (2) Dismissing Without Prejudice Plaintiff's First Amended Complaint. (*See* ECF No. 62
11 at 2–4.)

12 **LEGAL STANDARD**

13 "A Court's power to exercise jurisdiction over a party is limited by both statutory
14 and constitutional considerations." *In re Packaged Seafood Prod. Antitrust Litig.*, 338 F.
15 Supp. 3d 1118, 1135 (S.D. Cal. 2018). Constitutionally, "[t]he Due Process Clause of the
16 Fourteenth Amendment constrains a State's authority to bind a nonresident defendant to a
17 judgment of its courts." *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (citing *World-Wide*
18 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)). Statutorily, "California's long-
19 arm statute allows the exercise of personal jurisdiction to the full extent permissible under
20 the U.S. Constitution." *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *see also* Cal.
21 Civ. Proc. Code § 410.10.

22 The Supreme Court has recognized "two types of personal jurisdiction: 'general'
23 (sometimes called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-
24

25 ¹ Plaintiff contends that he was "forced to wait almost a year from the time of [Defendants' April 2020]
26 jurisdictional challenge to Plaintiff's original Complaint for a ruling[.]" which was issued on March 25,
27 2021. (*See* ECF No. 66 ("Opp'n") at 2; *see also id.* at 7.) Plaintiff, however, fails to take into
28 consideration that this case—along with over 200 others—was not transferred to the undersigned until
October 6, 2020. (*See* ECF No. 41.) The Court also notes that Plaintiff's lack of compliance with this
District's Civil Local Rules and the undersigned's Standing Order for Civil Cases has delayed the Court's
ability to rule on the instant Motion.

1 linked’) jurisdiction.” *Bristol-Myers Squibb Co. v. Super. Ct.*, 582 U.S. ___, 137 S. Ct.
2 1773, 1780 (2017) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S.
3 915, 919 (2011)). “For an individual, the paradigm forum for the exercise of general
4 jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in
5 which the corporation is fairly regarded as at home.” *Id.* (quoting *Goodyear*, 564 U.S.
6 at 924). “A court with general jurisdiction may hear *any* claim against that defendant, even
7 if all the incidents underlying the claim occurred in a different State.” *Id.* (emphasis in
8 original) (citing *Goodyear*, 564 U.S. at 919).

9 For a court to exercise specific jurisdiction, by contrast, “‘the *suit*’ must ‘aris[e] out
10 of or relat[e] to the defendant's contacts with the *forum*.’” *Id.* (alterations and emphasis in
11 original) (quoting *Daimler*, 571 U.S. at 127 (2014)) (citing *Burger King Corp. v.*
12 *Rudzewicz*, 471 U.S. 462, 472–473 (1985); *Helicopteros Nacionales de Colombia, S.A. v.*
13 *Hall*, 466 U.S. 408, 414 (1984)). “In other words, there must be ‘an affiliation between the
14 forum and the underlying controversy, principally, [an] activity or an occurrence that takes
15 place in the forum State and is therefore subject to the State’s regulation.’” *Id.* (alteration
16 in original) (quoting *Goodyear*, 564 U.S. at 919). “For this reason, ‘specific jurisdiction is
17 confined to adjudication of issues deriving from, or connected with, the very controversy
18 that establishes jurisdiction.’” *Id.* (quoting *Goodyear*, 564 U.S. at 919).

19 ANALYSIS

20 TMC moves to dismiss Plaintiff’s Second Amended Complaint for lack of personal
21 jurisdiction pursuant to Rule 12(b)(2). (*See* Mot. at 1.) Alternatively, TMC requests
22 transfer of this action to the Western District of Washington pursuant to the provisions in
23 the disputed contract and 28 U.S.C. sections 1406 and 1631. (*See id.*) Plaintiff opposes
24 both requests, asserting that TMC is subject to personal jurisdiction due to it “actively
25 selling convertible securities and seeking high level investors to purchase TMC in
26 California.” (*See* Opp’n at 5.)

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1 **I. Personal Jurisdiction**

2 For the reasons discussed previously, (*see* ECF Nos. 48, 62), Plaintiff again fails to
3 establish personal jurisdiction over Defendant TMC. The redline of the Second Amended
4 Complaint, as compared to the First Amended Complaint, indicates that most of Plaintiff’s
5 “amendments” were decapitalizing Defendants’ names. (*Compare* ECF No. 70 (redline of
6 SAC), *with* ECF No. 49 (FAC).) The only substantive addition that touches the
7 jurisdictional analysis is Plaintiff’s allegation he was also in attendance at the 2017 San
8 Diego meeting with Dean Graziano. (*See* SAC ¶ 24.) This fact, however, does not impact
9 the Court’s analysis.

10 The Court previously found that the nexus between the San Diego meeting and
11 Plaintiff’s purchase of the convertible security was “too attenuated to find that the
12 underlying alleged harm in the instant case arose from TMC’s actions at the initial
13 meeting.” (*See* ECF No. 62 at 9.) The Court noted in a footnote that the Plaintiff’s absence
14 from the meeting simply “*further* demonstrat[ed] the attenuation,” (*id.* (emphasis added)),
15 i.e., it was not the sole, or even main, factor in the Court’s finding that jurisdiction does
16 not exist. Thus, the Court again **DISMISSES**, this time **WITH PREJUDICE**, Plaintiff’s
17 Second Amended Complaint against Defendant TMC for lack of personal jurisdiction.

18 **II. Transfer of Venue**

19 Defendant TMC contends that the Western District of Washington “has personal
20 jurisdiction over TMC and would be a more appropriate venue for the action.” (Mot. at 8.)
21 Plaintiff opposes the transfer, but states that if “any relief is warranted it is only an order
22 transferring the venue of the case.” (*See* Opp’n at 3–4.) In light of its dismissal of this
23 action as to Defendant TMC, *see supra* Section I, the Court **DENIES AS MOOT** TMC’s
24 alternative request for transfer of venue to the Western District of Washington.

25 **III. Breach of Contract**

26 Although the Court has dismissed Defendant TMC, which does not seek to dismiss
27 Plaintiff’s breach of contract claim, the Court briefly addresses the claim solely to correct
28 an error in Plaintiff’s Opposition. Plaintiff claims that the Court found in its prior dismissal

1 order, (*see* ECF No. 62), that “Plaintiff’s Breach of Contract cause of action could only be
2 maintained against TMC because it is the only party to the Convertible Security
3 Agreement.” (*See* Opp’n at 8.) Further, Plaintiff contends that the Court found the breach
4 of contract cause of action against TMC to be viable. (*See id.* at 3.)

5 The Court, however, made no such findings. TMC did not move to dismiss the
6 breach of contract claim. (*See* ECF No. 52 at 7.) Instead, Defendants asserted only that
7 the “Individual Defendants Should be Dismissed From the First Cause of Action for Breach
8 of Contract.” (*Id.*) Because the issue was never briefed, and thus never ruled upon, it is
9 inappropriate for Plaintiff to interpret the lack of dismissal against TMC as any affirmative
10 finding by the Court.

11 **IV. Attorneys’ Fees and Costs**

12 Defendant TMC requests that, should the Court grant the instant Motion, the Court
13 “entertain a separate attorneys’ fees and costs motion pursuant to the terms of the contract,
14 namely Paragraph 5(d) of the Convertible Security Agreements.” (*See* Mot. at 8.) This
15 language indicates that Defendant TMC plans to file an independent motion pursuant to
16 Federal Rule of Civil Procedure 54(d).² Therefore, the Court **RESERVES** ruling on the
17 fee issue until the requisite motion is filed.

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19 ² Federal Rule of Civil Procedure 54(d), regarding attorneys’ fees, states in relevant part:

20 **(A)** *Claim to Be by Motion.* A claim for attorney’s fees and related nontaxable expenses
21 must be made by motion

22 **(B)** *Timing and Contents of the Motion.* Unless a statute or a court order provides
23 otherwise, the motion must:

24 **(i)** be filed no later than 14 days after the entry of judgment;

25 **(ii)** specify the judgment and the statute, rule, or other grounds entitling the
26 movant to the award;

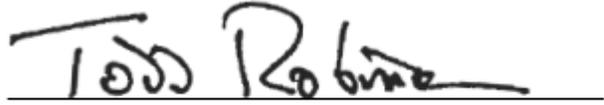
27 **(iii)** state the amount sought or provide a fair estimate of it; and

28 **(iv)** disclose, if the court so orders, the terms of any agreement about fees for
the services for which the claim is made.

1 Order why Defendants Predictuv Technologies, Inc. and Predictuv LLC should not be
2 dismissed pursuant to Civil Local Rules 41.1(a) and 55.1.

3 **IT IS SO ORDERED.**

4 Dated: May 10, 2022

A handwritten signature in black ink that reads "Todd Robinson". The signature is written in a cursive style with a horizontal line underneath it.

6 Honorable Todd W. Robinson
7 United States District Judge

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