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

<p>GRANDESIGN ADVERTISING FIRM, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TALON US (GRANDESIGN) LLC and TALON OUTDOOR, LTD.,</p> <p style="text-align: center;">Defendants.</p> <hr/> <p>TALON US (GRANDESIGN) LLC,</p> <p style="text-align: center;">Counterclaimant and Third-Party Plaintiff,</p> <p style="text-align: center;">v.</p> <p>GRANDESIGN ADVERTISING FIRM, INC., and AARON GAEIR,</p> <p style="text-align: center;">Counterclaim Defendant and Third- Party Defendant.</p>	<p>Case No. 3:20-cv-00719-LAB-DEB</p> <p><b>ORDER DENYING MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(2) [Dkt. 15]</b></p>
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Plaintiff Grandesign Advertising Firm, Inc. (“Grandesign”) alleges that Talon US (Grandesign) LLC (“Talon US”) violated the Lanham Act by using Grandesign’s tradename and breached an Asset Purchase Agreement under

1 which Talon US acquired part of Grandesign’s business. Grandesign names  
2 Talon US’s ultimate parent, Talon Outdoor, Ltd. (“Talon Outdoor”), a United  
3 Kingdom entity headquartered in London, England, as a defendant, too.

4 Talon Outdoor has moved to dismiss the claims against it for lack of  
5 personal jurisdiction. (Dkt. 15.) Grandesign opposes that Motion and argues  
6 that, at a minimum, it should have an opportunity to conduct jurisdictional  
7 discovery to determine whether Talon US is its foreign parent’s alter ego.

8 Grandesign fails to make the necessary prima facie showing of general  
9 jurisdiction under an alter ego theory, but it alleges enough to establish  
10 specific jurisdiction. The Motion is **DENIED**. (Dkt. 15.)

### 11 **BACKGROUND**

12 Talon Outdoor, a United Kingdom limited company with its principal  
13 place of business in London, sought to expand the operations of its family of  
14 companies to the west coast of the United States. To accomplish that, it  
15 directed one of its subsidiaries to form a new subsidiary, Talon US. The new  
16 entity executed an asset purchase agreement with Grandesign, but payments  
17 under that agreement came from Talon Outdoor and, when the final payment  
18 came due, Grandesign received a notice sent by a Talon Outdoor executive  
19 and directing questions to that executive.

20 Grandesign alleges that Talon Outdoor is liable under the APA since  
21 Talon US is merely an alter ego of its parent. It contends that Talon Outdoor  
22 is subject to the Court’s personal jurisdiction on the same basis.

### 23 **DISCUSSION**

24 The burden of proving personal jurisdiction rests with the plaintiff.  
25 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). On a  
26 motion to dismiss under Rule 12(b)(2), the plaintiff must make only a *prima*  
27 *facie* showing of personal jurisdiction. *American Tel. & Yel. Co. v. Compagnie*  
28 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

1 Courts may exercise either general or specific jurisdiction over a  
2 defendant. Under the former theory, a corporate defendant's connections  
3 must be "so continuous and systematic as to render it essentially at home in  
4 the forum state." *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1020  
5 (2017) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S.  
6 915 (2011)). Specific jurisdiction, on the other hand, "requires that the  
7 defendant have certain minimum contacts such that the maintenance of the  
8 suit does not offend traditional notions of fair play and substantial justice"—  
9 that is, "the defendant's suit-related conduct must create a substantial  
10 connection with the forum state." *Id.* at 1022-23 (quoting *Int'l Shoe Co. v.*  
11 *Washington*, 326 U.S. 310, 318 (1945) and *Walden v. Fiore*, 571 U.S. 277,  
12 284 (2014)).

13 Although Grandesign fails to establish that Talon Outdoor has  
14 continuous and systematic contacts with California, it makes the required  
15 *prima facie* showing that Talon Outdoor's suit-related conduct create a  
16 substantial connection with California. Accordingly, the Court can exercise  
17 specific personal jurisdiction over Talon Outdoor in this matter.

### 18 **I. Grandesign Fails to Make a *Prima Facie* Showing of General** 19 **Jurisdiction**

20 Grandesign offers only one theory supporting general jurisdiction over  
21 Talon Outdoor: that Talon US, which is undisputedly subject to the Court's  
22 jurisdiction, is Talon Outdoor's alter ego. (Dkt. 29 at 9.) "The alter ego test is  
23 designed to determine whether the parent and subsidiary are not really  
24 separate entities, such that one entity's contacts with the forum state can be  
25 fairly attributed to the other." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1071 (9th  
26 Cir. 2015) (internal marks omitted). To establish that Talon Outdoor and  
27 Talon US "are not really separate entities" at this stage, Grandesign must  
28 make a *prima facie* showing "(1) that there is such a unity of interest and

1 ownership such that the separate personalities of the two entities no longer  
2 exist and (2) that failure to treat them as one would result in fraud or injustice.”  
3 *Id.* at 1073 (marks omitted, quoting *Doe v. Unocal Corp.*, 248 F.3d 915, 926  
4 (2001)).

5 The unity of interest of prong requires “a showing that the parent  
6 controls the subsidiary to such a degree as to render the latter the mere  
7 instrumentality of the former.” *Id.* The parent must have “pervasive control . . .  
8 such as . . . [its] dictat[ion of] every facet of the subsidiary’s business—from  
9 broad policy decisions to routine matters of day-to-day operation.” *Id.* The  
10 parent’s mere involvement in day-to-day operations, as opposed to its control  
11 over or dictation of them, doesn’t suffice to label the subsidiary an alter ego.  
12 See *id.* at 1073-74.

13 Grandesign’s showing falls short of this standard. It alleges:

- 14 1) Talon Outdoor negotiated the APA and made payments under that  
15 agreement on Talon US’s behalf, (Dkt. 1 ¶¶ 20, 28, 30);
- 16 2) Talon Outdoor, on its website, listed Talon US’s offices as Talon  
17 Outdoor offices, (*id.* ¶ 21), and assigns its employees email  
18 addresses through Talon Outdoor’s domain, talonoutdoor.com, (*id.*  
19 ¶ 29);
- 20 3) Talon US doesn’t “keep minutes of major corporate decisions,  
21 ensur[e] proper capitalization, maintain[] the distinction between  
22 corporate assets and parent assets, and maintain[] separate bank  
23 accounts,” with Talon US continuing to have no bank account  
24 through July 2019, (*id.* ¶¶ 22, 23);
- 25 4) Talon US “shadow-operated off of *Grandesign’s* infrastructure,” (*id.*  
26 ¶ 23 (emphasis added)), paying business expenses, payroll, and  
27 contractors through Grandesign’s infrastructure and relying on  
28 Grandesign for insurance, (*id.* ¶¶ 23-25);

- 1 5) “Directives to Grandesign from Talon typically come from Talon  
2 Outdoor executives or employees, not Talon US,” (*id.* ¶ 27);
- 3 6) Talon US and Talon Outdoor have substantial overlap in directors  
4 and management personnel, (*id.* ¶¶ 29-32);
- 5 7) That Talon Outdoor’s CEO, Barry Cupples, directed Aaron Gaeir,  
6 Grandesign’s former CEO and then Talon US’s Chief Revenue  
7 Officer, to copy Cupples “on all mails to any colleagues at Talon on  
8 this side of the pond,” that is, communications with Talon Outdoor;
- 9 8) That one of Talon US’s managers “was surprised,” five days after  
10 Gaeir’s termination, that Talon US wouldn’t be paying Gaeir the Final  
11 Earnout Payment in dispute in this case, and “stated that he was  
12 under the impression that the payment had to be made and had  
13 already been made,” (*id.* ¶¶ 34, 36); and
- 14 9) Talon US “acted based on purported authorization from various  
15 sources,’ including individuals purporting to hold titles with Talon US  
16 while also serving as executives of Talon Outdoor or other entities  
17 in the Talon family (*id.* ¶ 35).

18 But none of this amounts to pervasive control of Talon. The payment of  
19 large, extraordinary expenses is anything but a day-to-day operation. The  
20 sharing of a website, while suggestive of a close relationship, doesn’t indicate  
21 control. Talon US’s use of *Grandesign*’s infrastructure suggests that Talon  
22 US wasn’t fully fleshed-out, but it speaks more to Grandesign’s own leverage  
23 over Talon US than it does to Talon Outdoor’s control.

24 That “[d]irectives to Grandesign from Talon” came from Talon Outdoor  
25 doesn’t move the needle, either—were these “directives” in connection with  
26 Grandesign’s duties to Talon US? Did they relate to the APA, or to day-to-  
27 day operations? Without more specificity, this vague allegation doesn’t speak  
28 to the level of control that Talon Outdoor exerted over Talon US.

1 And even the allegation that Cupples wanted to be copied on  
2 communications between Talon US and Talon Outdoor, while it reaches the  
3 level of day-to-day, doesn't support a plausible inference that Talon Outdoor  
4 controlled Talon US. To the contrary, that request is just as consistent with  
5 the inference that Cupples sought to maintain control over Talon Outdoor's  
6 relationship with a separate entity.

7 The Court's conclusion is confirmed by Talon Outdoor's affidavits.  
8 Talon Outdoor "is not responsible for securing clients for [Talon US],"  
9 (Dkt. 15-2 ¶ 13), it "does not share any bank accounts with [Talon US]" as of  
10 August 2019, (*id.* ¶ 16), and it funded Talon US's operations through an  
11 interest-bearing loan. (Dkt. 15-3 ¶ 3). Talon US, for its part, "makes its own  
12 corporate decisions[,] . . . passes its own resolutions," and maintains separate  
13 accounts and books. (Dkt. 15-4 ¶¶ 18-19.)

14 Grandesign must make a *prima facie* showing of Talon Outdoor's  
15 *pervasive* control of Talon US, and it hasn't done so. The parent entity's  
16 heavy involvement in the APA isn't enough to establish the level of day-to-  
17 day control necessary to show that Talon US is a mere alter ego of Talon  
18 Outdoor. Talon US's jurisdictional contacts can't be imputed to Talon Outdoor,  
19 so the Court doesn't have general personal jurisdiction over that Defendant.

## 20 **II. Talon Outdoor Is Subject to the Court's Specific Personal** 21 **Jurisdiction**

22 While Grandesign's showing isn't enough to establish general  
23 jurisdiction, it satisfies the standard for specific jurisdiction. A defendant is  
24 subject to such jurisdiction where its "minimum contacts" with a forum suffice  
25 to show that it would not "offend traditional notions of fair play and substantial  
26 justice" for it to face claims against it in that forum. *Williams*, 851 F.3d at  
27 1022.<sup>1</sup> "[T]he defendant's suit-related conduct must create a substantial

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28 <sup>1</sup> Because the Court sits in California, its specific jurisdiction is limited by

1 connection with” California to be subject to suit here. *Id.* at 1022-23.

2 A connection to a California-based plaintiff isn’t enough—the  
3 jurisdictional inquiry must “focus[] on the relationship among the defendant,  
4 the forum, and the litigation.” *Walden*, 571 U.S. at 287. “The proper question  
5 is not whether the plaintiff experienced a particular injury or effect but whether  
6 the defendant’s conduct connects him to the forum in a meaningful way.” *Id.*  
7 at 290. To exercise specific personal jurisdiction over an out-of-state  
8 defendant, then, the Court must be satisfied that: “(1) the defendant either  
9 purposefully directs its activities or purposefully avails itself of the benefits  
10 afforded by the forum’s laws; (2) the claim arises out of or relates to the  
11 defendant’s forum-related activities; and (3) the exercise of jurisdiction  
12 comports with fair play and substantial justice.” *Williams*, 851 F.3d at 10123  
13 (internal marks removed).

14 Grandesign’s Complaint successfully invokes the Court’s jurisdiction  
15 under this theory. Talon Outdoor purposefully directed its activities to  
16 California, “expand[ing] its U.S. coverage” by purchasing assets from  
17 Grandesign, a California business. (Dkt. 1 ¶ 20 (quoting Talon Outdoor press  
18 release).) Its executives negotiated the APA, with Talon Outdoor Chairman  
19 and co-founder Eric Newnham signing the APA as a Manager of Talon US.  
20 (*Id.* ¶¶ 9, 10, 28; Dkt. 1-2 at 46.) It then made payments to Grandesign under  
21 the APA on Talon US’s behalf, and when the Earn-Out Payment at issue in  
22 this case came due, a Talon Outdoor executive with no apparent relationship  
23 to Talon US transmitted a notice to Gaeir stating that he would not be  
24 receiving the Earn-Out Payment. (*Id.* ¶ 31.) The notice informed him, too, that  
25 any questions should be directed to the same Talon Outdoor executive.

26 \_\_\_\_\_  
27 California’s long-arm statute, too. But that statute permits the exercise of  
28 jurisdiction to the limits of due process, so the analyses for personal  
jurisdiction under state law and federal due process are the same. Cal. Code  
Civ. Proc. § 410.10; *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110.

1 (Dkt. 1-5 at 3.) Five days later, one of Talon US’s two Managers expressed  
2 surprise when he learned that Gaeir didn’t receive payment, stating that he  
3 believed that the payment had been made. (Dkt. 1 ¶ 34.)

4 These allegations—which aren’t contradicted by the affidavits Talon  
5 Outdoor offers—establish a plausible inference that Talon Outdoor, not Talon  
6 US, made the decision that Gaeir wouldn’t be paid. Accordingly, Gaeir’s  
7 claims arise out of Talon Outdoor’s forum-related activities.

8 Finally, the Court finds that the exercise of jurisdiction over Talon  
9 Outdoor comports with fair play and substantial justice. Under this prong, the  
10 Court must consider seven factors: “(1) the extent of the defendants’  
11 purposeful injection into the forum state’s affairs; (2) the burden on the  
12 defendant of defending in the forum; (3) the extent of conflict with the  
13 sovereignty of the defendant’s state; (4) the forum state’s interest in  
14 adjudicating the dispute; (5) the most efficient judicial resolution of the  
15 controversy; (6) the importance of the forum to the plaintiff’s interest in  
16 convenient and effective relief; and (7) the existence of an alternative forum.”  
17 *Dole Food*, 303 F.3d at 1114 (9th Cir. 2002).

18 As to the first factor, the extent of Talon Outdoor’s purposeful direction  
19 of its activities toward California supports the conclusion that it has sufficiently  
20 purposefully injected itself into California’s affairs. *See id.* at 1114-15 (noting  
21 overlap between “purposeful injection” and “purposeful avilment  
22 requirement.”)

23 For the second, it would be burdensome to require Talon Outdoor, a  
24 UK entity, to defend against a suit in California. But the Ninth Circuit  
25 recognizes that “[m]odern advances in communications and transportation  
26 have significantly reduced the burden of litigating in another country,” and  
27 that English-speaking defendants face lesser burdens than they otherwise  
28 would. *Id.* at 1115. Talon Outdoor’s affidavits and the other exhibits submitted



1 in support of this motion satisfy the Court that the relevant executives are  
2 fluent in English. The second factor weighs against a finding of fair play and  
3 substantial justice, but not heavily.

4 Third, any conflict with the sovereignty of the United Kingdom (beyond  
5 the minor conflict that necessarily occurs when a foreign national faces  
6 litigation in an American court) isn't apparent here, so this factor, too, weighs  
7 only weakly against a finding of fair play and substantial justice.

8 Fourth is California's interest in adjudicating this dispute. Grandesign  
9 has its principal place of business in California and the assets it sold remain  
10 in California. (Dkt. 1 ¶¶ 1, 5.) California has a strong interest in providing a  
11 forum for its residents. *See Dole Food*, 303 F.3d at 1115-16 (citing *Panavision*  
12 *Intern., L.P. v. Toebben*, 141 F.3d 1316, 1323 (9th Cir. 1998).

13 The fifth factor, efficient resolution, focuses on the location of the  
14 evidence and witnesses. *Panavision*, 141 F.3d at 1323. Even in 1998, "[i]t  
15 [was] no longer weighed heavily given the modern advances in  
16 communication and transportation." *Id.* This factor favors California, as well.  
17 The presence of Grandesign and Talon US offices, the purchased assets,  
18 and Gaeir in San Diego indicates that the case's center of gravity is here,  
19 rather than in the United Kingdom.

20 Sixth, litigation in California is important to Grandesign's ability to obtain  
21 convenient and effective relief because doing so permits Grandesign to  
22 litigate its claims against both Talon entities in a single lawsuit in a single  
23 country. While this factor is "not of paramount importance," it favors the  
24 Court's exercise of jurisdiction over Talon Outdoor. *Dole*, 303 F.d3 at 1116.

25 Seventh and finally, "whether another reasonable forum exists  
26 becomes an issue only when the forum state is shown to be unreasonable."  
27 *Sinatra v. National Enquirer, Inc.*, 854 F.2d 1191, 1201 (9th Cir. 1988).  
28 Because this forum hasn't been shown to be unreasonable, this factor is not

1 relevant here.

2 Balancing these factors, the Court finds that exercise of jurisdiction over  
3 Talon Outdoor comports with fair play and substantial justice.

4 **CONCLUSION**

5 Because (1) Talon Outdoor purposefully directed its activities toward  
6 California, (2) the suit arises out of Talon Outdoor's contacts with California,  
7 and (3) exercise of jurisdiction over Talon Outdoor comports with fair play and  
8 substantial justice, the motion to dismiss for lack of personal jurisdiction is  
9 **DENIED.**

10 The Court's finding that the Complaint fails to adequately allege alter  
11 ego ultimately may result in dismissal of Grandesign's claim against Talon  
12 Outdoor relying the related theory of veil piercing. While serial motions to  
13 dismiss are disfavored, Talon Outdoor may brief this issue via motion to  
14 dismiss under Rule 12(b)(6) filed within 14 days of this Order.

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16 Dated: March 24, 2021

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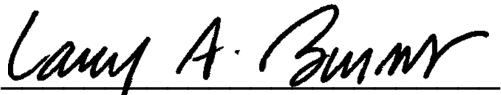
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**Hon. Larry Alan Burns**  
United States District Judge