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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 Righthaven, LLC, a Nevada limited) CASE NO. 2:10-cv-01322-JCM-LRL
11 liability company)
12 Plaintiff,)
13 vs.)
14 KAYSE JAMA, an individual, and) DEFENDANT'S REPLY TO
15 CENTER FOR INTERCULTURAL) PLAINTIFF'S OPPOSITION TO
16 ORGANIZING, a Non-Profit Organization,) MOTION TO DISMISS
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COME NOW, Defendants KAYSE JAMA, an individual, and CENTER FOR INTERCULTURAL ORGANIZING, by and through their attorneys of record, OLSON, CANNON, GORMLEY & DESRUISSEAUX, and hereby submits their reply to Plaintiff's Opposition to Defendants' Motion to Dismiss.

This reply is made and based on the papers and pleadings on file herein, the following Points and Authorities, and any oral argument that this Court may entertain.

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POINTS AND AUTHORITIES

I.

INTRODUCTION

As this Court is aware from the media attention garnered by the numerous Complaints filed in this jurisdiction, Plaintiff was solely established to operate under a business model it trolls the Internet to locate articles it believes originated from the Las Vegas Review-Journal website without the express consent of the copyright holder. In most cases, the Complaints are filed against people or organizations who do not profit in any way from posting such articles, that are already offered for free on the Las Vegas Review-Journal website. Rather than issue any type of cease and desist letters, Plaintiffs immediately file suit and attempt to extract settlement from the defendants.

In this particular case, Plaintiff alleges that the Center for Intercultural Organizing (“CIO”) posted an article entitled “POLICE ARRESTS: Misdemeanor violations leading to deportations” on its website. The substance of the article discusses the possible targeting of illegal immigrants by the Las Vegas Metropolitan Police Department. Because the article focuses on a local story published by a local newspaper, Plaintiff claims that any unauthorized reproduction of such material automatically submits the re-publisher to the personal jurisdiction of Nevada. In support, Plaintiff cites to another Federal District Court case denying a Motion to Dismiss for Lack of Personal Jurisdiction as precedent. Putting aside the fact that this Court is not compelled to agree with that decision, there are independent reasons why decision is misguided.

CIO is a non-profit organization that does not charge any subscription fees or derive any income from the use of its website. CIO's purpose is to educate and assist immigrants and refugees who have recently relocated to the United States of America. Its efforts are solely directed to residents of Portland, Oregon. In carrying out that goal, CIO seeks to update its constituency regarding immigration affairs occurring both regionally and nationally. Neither CIO nor Jama have ever attempted to enter the Nevada market, nor is it their desire to do so in the future. They hold no bank accounts, real property, personal property or other assets within the State of Nevada. To subject a non-profit organization to the jurisdiction of Nevada, under these facts would be unreasonable.

II.

LEGAL ARGUMENT

Plaintiff's Opposition to the Motion to Dismiss fails to meet its burden that personal jurisdiction exists over the Defendants. To establish jurisdiction, Plaintiff must demonstrate a *prima facie* case for a Court to assert jurisdiction. *Butcher's Union Local No. 48 v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986). Much like the other complaints, Plaintiff makes conclusory statements, unsupported by facts. Plaintiff claims the alleged activity of posting one on-line newspaper article onto its website brings the Defendants within the personal jurisdiction of the State of Nevada. While the article admittedly speaks to issues affecting Nevada residents, this in of itself, does not establish that Defendants' alleged activities were targeting residents in the state of Nevada. As the Motion to Dismiss and the supporting Affidavit demonstrate, Defendants solely direct their efforts toward the residents of the State of Oregon. More specifically, such efforts are directed toward incoming immigrants and refugees from other countries. The mere fact that the article addresses Nevada issues does not create an instantaneous exercise of personal jurisdiction in Nevada. CIO is a non-profit organization dedicated to educating immigrants and refugees about issues that could potentially impact them. It is highly plausible that any state exercising it's respective will over non-U.S. citizens may be replicated by the other forty-nine (49) states in the United States. In reviewing the CIO website, it is clear that none of its activities are directed at drawing any viewership, or profit, away from the Las Vegas Review-Journal or any other newspaper outside the state of Oregon.

A. Plaintiff Failed to Address Defendants' Assertion that No Basis for the Exercise of General Personal Jurisdiction Exists.

Because Plaintiff failed to address Defendants' claim that general personal jurisdiction does not exist, it has effectively waived any ability to do so. Plaintiff's Opposition is devoid of any discussion of the *Bancroft* factors for determining whether general personal jurisdiction exists. Moreover, there is no discussion of how Defendants had any continuous and systematic contacts with Nevada or Nevada residents. Therefore, Plaintiff has failed to establish that the Court can exercise general personal jurisdiction over Defendants.

B. This Court is Not Bound by the Ruling in the *Righthaven, LLC v. Dr. Shezad Malik Law Firm, P.C.* Matter.

In its Opposition, Plaintiff states that the decision rendered in *Righthaven LLC v. Dr. Shezad Malik Law Firm P.C.*, No. 2:10-cv-0636-RLH-RJJ, slip op. at 2-3 (D.Nev. Sept 2, 2010) "definitively" resolves all of the other pending Motions to Dismiss for Lack of Personal Jurisdiction. Such a proposal would effectively dispose of the requirement that each analysis of personal jurisdiction be considered on the individual facts and circumstances. Pursuant to the *Malik* Court order,

“The Ninth Circuit found that where a defendant “willfully infringed copyrights owned by [the plaintiff], which, as [the defendant] knew, had its principal place of business in the Central District [of California], “[t]his fact alone is sufficient to satisfy the ‘purposeful availment’ requirement.” *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Inc.*, 106 F.3d 284, 289 (9th Cir. 1994).

See Malik Order Denying Motion to Dismiss at Pg. 2 ¶ 21-26.

Both Plaintiff's and the *Malik* Court's interpretation of *Columbia Pictures* is flawed. Plaintiff claims that *Malik* "...clearly follows the position of the Ninth Circuit: willful copyright infringers who reproduce content from a source known to exist in the forum purposefully avail themselves of said forum's personal jurisdiction." *See* Opposition to Motion to Dismiss at Pg. 2 ¶ 11-14. If this were true, no other prong or test would be required to determine personal jurisdiction requirements in copyright infringement cases.

Plaintiff fails to properly read *Columbia Pictures Television v. Krypton Broadcasting of Birmingham, Incorporated*, 106 F.3d 284 (9th Cir. 1997). The Ninth Circuit held in *Columbia* that willful copyright infringement would satisfy one prong of the three prong test for exercise of specific personal jurisdiction. Under *Columbia*, a plaintiff must show (1) the defendant purposefully availed himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws; (2) the claim must arise out of or result from the defendant's forum-related activities; and (3) the exercise of jurisdiction must be reasonable. With all due respect to the decision rendered in *Malik*, the *Columbia* opinion is not dispositive of the specific personal jurisdiction issue. The purposeful availment element prong is only one of three that must be satisfied to establish jurisdiction. A review of the *Malik* Order shows that the Court failed to address the remaining factors or any of the other factors discussed in the defendant's Motion to Dismiss.

1 This Court is not compelled to follow the decision pronounced by the Malik Court. The
2 doctrine of stare decisis does not compel one district court judge to follow the decision of another.
3 *Starbuck v. City and County of San Francisco*, 556 F.2d 450 (1977). Judge Hunt issued an Order
4 denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction in Case No. 2:10-cv-0636-
5 RLH-RJJ, decided September 2, 2010. Notwithstanding the glaring differences between the instant
6 matter and the *Malik* case, that decision is not binding upon this Court, nor should it be given any
7 consideration, given the facts surrounding the decision.

8 **C. Plaintiff Has Failed to Show That There is a Basis to Exercise Specific Personal
9 Jurisdiction.**

10 **1. Plaintiff Has Failed to Establish Purposeful Availment.**

11 The *Calder* effects test is not satisfied and Plaintiff fails to establish that Defendants
12 purposefully availed themselves of the benefits and privileges of conducting activities in Nevada.

13 Plaintiff failed to establish that the "express aiming" component of *Calder* is met. Even when
14 accepting Plaintiffs' allegation that CIO posted the article, such conduct does not rise to express
15 aiming at Nevada, because the article could be read from anywhere in the world. Therefore, because
16 the article concerned illegal aliens in Nevada does not establish that Defendants "expressly aimed"
17 tortious conduct at Nevada. Once a defendant successfully rebuts Plaintiff's allegations of willful
18 copyright infringement and the intentional tort element of the *Calder* effects test has not been
19 satisfied. In this case, the original holder of the copyright to the article allows articles to be copy and
20 pasted easily from its website. Moreover, it encourages its readers to send articles to third parties.
21 Through these actions, the original holder has granted its readers an implicit license to re-publish its
22 articles. At the very least, it shows that such actions do not rise to the level of willful.

23 Plaintiff failed to establish the "express aiming" component of the *Calder* effects test. To
24 satisfy the express aiming element, the Ninth Circuit requires "something more". Because the article
25 concerned local law enforcement actions, Plaintiff claims this qualifies as the "something more"
26 element. The express aiming element does not consider whether the alleged infringer engaged in
27 ancillary activities in the forum state. Here, the alleged tortious conduct was not directed at any
28 particular state because it could be read from anywhere on the Internet. In addition, Plaintiff has not

1 presented any facts that rebut Defendant's claim that it had no knowledge of Righthaven, at the time
2 of the alleged publishing.

3 **2. Even if the Plaintiff's Allegations are Accepted as True, Defendants' Activities
4 Do Not Arise From Nevada Contacts.**

5 Plaintiff failed to show its cause of action "arises out of or is related to" Defendants' forum
6 contacts. Defendant has no forum contacts. CIO is a self-contained, non-profit organization that
7 solely dedicates its efforts to assisting immigrants and refugees in and around the Portland area. It
8 has no ties to Nevada and does not attempt to reach out to, or solicit Nevada residents.

9 Plaintiff argues that because the article addresses local law enforcement, the alleged efforts
10 were designed to specifically target Nevada residents. This argument is absurd when considering
11 CIO's purpose. Plaintiff fails to substantiate why an article addressing immigration impacts only
12 those residing in Nevada. Anyone who has opened a newspaper or watched television in 2010
13 knows that immigration issues are nation wide. Arizona recently enacted legislation that continues
14 to trigger responses throughout the United States. Similarly, is it so irrational to envision that law
15 enforcement agencies take cues from one another? CIO focuses its efforts toward immigrants and
16 refugees, most of whom have family members that may attempt to gain future entry into the country,
17 by legal means or otherwise. Plaintiff's claim that the article "...is of specific concern to Nevada
18 residents" is not the standard upon which any of the respective prongs are decided. The substance
19 of the article does not control whether Defendants' activities were aimed at the residents of a forum
20 state.

21 Plaintiff's allegations that Defendants' alleged posting was designed to entice Nevada
22 residents to visit its website is a stretch, much less rise to the level of the "something more"
23 threshold required by the Ninth Circuit. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,
24 804 (9th Cir. 2004). How or why Nevada residents would be drawn to the Oregon based CIO website
25 by the posting of a single article is baffling. The article contains information highly relevant to the
26 hot button topic of immigration issues in the United States. Surely, news reporting agencies within
27 Nevada, including Las Vegas Review Journal, have wrote more than a few articles regarding the
28 recent immigration legislation in Arizona. Clearly, the impact of these immigration issues are of

1 paramount national concern. Therefore, it is not "illogical or contradicted by the evidence" as the
2 Plaintiff would like to believe.

3 Despite Plaintiff's claim that Defendants knew the alleged infringement would likely have
4 harmful effects in Nevada, Plaintiff fails to provide any support of such harmful effect. Plaintiff
5 reiterates such harmful effects were known to Defendants but do not set forth in the Complaint, nor
6 the Opposition how Plaintiff was adversely impacted by the alleged actions of Defendants. Instead
7 Plaintiff continues to state that Righthaven is a Nevada entity. Plaintiff cites *Yahoo!, Inc. v. La*
8 *Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199 Ninth Cir. (2006), for the proposition
9 that any harmful effects felt in Nevada should not diminish a Court's ability to exercise of specific
10 personal jurisdiction. While the *Yahoo!* Case may stand for such propositions, it is not applicable
11 to harmful effects test where there is no harm in Nevada whatsoever.

12 Plaintiff's analogy in its Opposition [See Plaintiff's Opposition to Motion to Dismiss, p. 14,
13 ll. 19-25], best characterizes its position with regard to applying the balancing tests for determining
14 personal jurisdiction. In its four (4) line analogy, Plaintiff sets forth simple facts and makes broad
15 conclusory statements without analyzing any of the sub-factors that obviously are considered
16 important to the Ninth Circuit. In Defendants' Motion to Dismiss, Defendants discussed Plaintiff's
17 failure to allege where any wrongful conduct occurred. Defendants, through sworn testimony
18 established that all of their activities occur within the State of Oregon and not anywhere else. Rather
19 than analyze this fact in its proper respect, Plaintiff mischaracterized Defendants' position by stating
20 Defendants claim immunity from Nevada personal jurisdiction so long as the alleged conduct took
21 place from a computer outside the State of Nevada. The fact that Defendants activities are limited
22 to the State of Oregon is only one consideration in the analysis of determining whether specific
23 personal jurisdiction exists.

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25 **3. Given the Circumstances of Defendants' Alleged Activities, Exercise of
26 Personal Jurisdiction Would Be Unreasonable.**

27 The Court in *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286 (1980) set
28 forth the factors for what constitutes unreasonable exercise of personal jurisdiction. The factors

1 include: (1) the burden on the defendant; (2) the forum State's interest in adjudicating the dispute;
2 (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial
3 system's interest in obtaining the most efficient resolution of controversies; and (5) the shared
4 interest of the several States in furthering fundamental substantive social policies.

5 First, requiring Defendants to defend against the lawsuit in Nevada will create an undue
6 burden on CIO by draining it of both financial and physical resources. CIO and Jama are both
7 residents of Oregon, who focus all of their efforts on furthering the interests of the non-profit
8 organization.

9 Second, Nevada's interest in adjudicating this dispute is no greater than any other
10 jurisdiction. By posting its articles on the Interne for free, the Las Vegas Review-Journal has
11 interjected itself into the national media. Therefore, this factor weighs against finding
12 reasonableness.

13 Third, the Plaintiff's interests in obtaining convenient and effective relief weighs against
14 finding of reasonableness. Plaintiff should not be granted deference because they simply filed a
15 multitude of lawsuits in the Nevada Federal District Court. Plaintiff can obtain relief in the Oregon
16 courts.

17 Fourth, the interstate judicial system's interest in obtaining the most efficient resolution of
18 controversies weighs against reasonableness. This factor focuses on the proximity of the forum to
19 witnesses and physical evidence and the Court's ability to exercise personal jurisdiction over all the
20 parties. In this case, Defendants are Oregon residents and all infringement is alleged to have
21 occurred in Oregon.

22 Finally, the shared interest in all the states and nations in furthering social policies against
23 a finding of reasonableness. In this case, Plaintiff failed to identify any public policy of Nevada that
24 would be lessened by litigating the case in its proper jurisdiction, Oregon. There is also a shared
25 interest by all states in having its citizens protected from baseless lawsuits. Therefore, this factor
26 weighs against a finding of resonableness.

27 Based upon the above, the Court should deny exercise of personal jurisdiction over
28 Defendants.

C. No Basis Exists to Require Defendants to Participate in Jurisdictional Discovery.

Where a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials made by the defendants, the Court need not permit even limited discovery. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151 (9th Cir. 2006). In order to obtain discovery of jurisdictional facts, the plaintiff must at least make a "colorable" showing that the Court can exercise personal jurisdiction over the defendant. *Mitan v. Feeney*, 497 F.Supp. 2d 1113, 1119 (C.D. Cal. 2007). Notwithstanding, Plaintiff's allegation that it believes discovery will enable it to demonstrate sufficient forum contacts to establish the court's personal jurisdiction is insufficient to warrant additional discovery. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). A Plaintiff must provide a little more than a hunch that it might yield jurisdictionally relevant facts. *Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986).

Federal Rule of Civil Procedure 26(b)(2)(C) states that “on motion or on its own, the court must limit the frequency or extent of discovery...if it determines that...the burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action and the importance of the discovery in resolving the issues.” Here, Plaintiff states it should be entitled to conduct jurisdictional discovery to determine the extent and number of Nevada-based literary works displayed on CIO’s website, specifically concerning Nevada and Nevada residents, and the number of Nevada-based Internet users accessing the website. *See* Complaint Page 13 ¶1-4. Plaintiff fails to articulate how these issues will impact the personal jurisdiction analysis. Does this mean Plaintiff will stipulate to Dismiss for Lack of Personal Jurisdiction if it discovers there are no Nevada users or any other Nevada based articles?

Therefore, given the facts as alleged in Plaintiff's Complaint and Plaintiff's failure to provide facts in response to Defendants' factual averments against the exercise of personal jurisdiction, Defendants request that the Court refuse Plaintiff's request for a fishing expedition.

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CONCLUSION

For the foregoing reasons, the Court should grant Defendants' Motion to Dismiss the Complaint for Lack of Personal Jurisdiction.

DATED this 27 day of September, 2010.

OLSON, CANNON,
GORMLEY & DESRUISSEAUX

By: JAMES R. OLSON, ESQ.
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CERTIFICATE OF SERVICE

2 **I HEREBY CERTIFY** that on the 27th day of September, 2010, I served the foregoing,
3 **DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS**, on:

4 Steve A. Gibson, Esq.
5 RIGHTHAVEN LLC
6 9960 West Cheyenne Avenue, Suite 210
7 Las Vegas, Nevada 89129-7701

8 through the CM/ECF system of the United States District Court for the District of Nevada (or, if
9 necessary, by U.S. Mail, first class, postage prepaid), upon the following:
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AN EMPLOYEE OF OLSON, CANNON,
GORMLEY & DESRUISSEAU