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PENN AND SANDI ELLETSON,

Case No. 2:17-CV-1107 JCM (VCF)

Plaintiff(s),

ORDER

V.

CHALMERS AUTOMOTIVE, LLC, et al.,

Defendant(s).

Presently before the court is a motion to dismiss filed by defendants Chalmers Automotive, LLC, Albert J. Chalmers, Michael Ferris, and David Green (collectively, as “defendants”). (ECF No. 8). Plaintiffs Penn Elleston and Sandi Elleston (collectively, as “plaintiffs”) filed a response (ECF No. 10),¹ to which defendants replied (ECF No. 13).

I. Facts

The instant action involves a contract for the purchase and delivery of a Mercedes-Benz Luxury Sprinter Van, VIN number WD3FE8CC5FP125554 (the “van”), to Nevada. Chalmers Automotive, LLC (“Chalmers Automotive”) delivers vehicles to purchasers in different states and advertises its services on its website. (ECF No. 1). Ferris is Chalmers Automotive’s national sales manager. (ECF No. 1).

Plaintiffs allege that they paid defendants \$97,500.00 to modify and deliver the van into Nevada. (ECF No. 1). Plaintiffs further allege that defendants made false representations to plaintiffs regarding the van, to which defendants did not have title. (ECF No. 1).

¹ Pursuant to Local Rule IC 2-2(b), a separate document must be filed on the docket for each purpose. The court cannot consider plaintiffs' requests for leave to amend their complaint and/or for jurisdictional discovery unless they are filed separately, as a motion.

1 On April 21, 2017, plaintiffs filed the underlying complaint, alleging eight causes of action:
2 (1) fraud against all defendants; (2) consumer fraud against all defendants; (3) conversion against
3 Ferris, Chalmers, and Chalmers Automotive; (4) breach of contract against Chalmers Automotive;
4 (5) unjust enrichment against Chalmers Automotive; (6) detrimental reliance against Chalmers
5 Automotive; (7) piercing the corporate veil against Chalmers Automotive; and (8) civil conspiracy
6 against Chalmers, Green, and Ferris. (ECF No. 1).

7 In the instant motion, defendants move to dismiss for lack of personal jurisdiction pursuant
8 to Federal Rule of Civil Procedure 12(b)(2). (ECF No. 8).

9 **II. Legal Standard**

10 Federal Rule of Civil Procedure 12(b)(2) allows a defendant to move to dismiss for lack of
11 personal jurisdiction. To avoid dismissal under Rule 12(b)(2), a plaintiff bears the burden of
12 demonstrating that its allegations would establish a *prima facie* case for personal jurisdiction. See
13 *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Allegations in plaintiff's complaint
14 must be taken as true and factual disputes should be construed in the plaintiff's favor. *Rio Props,*
15 *Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).

16 When no federal statute governs personal jurisdiction, the district court applies the law of
17 the forum state. *Boschetto*, 539 F.3d at 1015; *see also Panavision Int'l L.P. v. Toeppen*, 141 F.3d
18 1316, 1320 (9th Cir. 1998). Where a state has a "long-arm" statute providing its courts jurisdiction
19 to the fullest extent permitted by the due process clause, as Nevada does, a court need only address
20 federal due process standards. See *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 134 P.3d
21 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065); *see also Boschetto*, 539 F.3d at 1015.

22 An assertion of personal jurisdiction must comport with due process. See *Wash. Shoe Co.*
23 *v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). To satisfy due process, a court
24 may exercise personal jurisdiction over a defendant only where the defendant has certain minimum
25 contacts with the forum state "such that the maintenance of the suit does not offend traditional
26 notions of fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945).

1 Two categories of personal jurisdiction exist: (1) general jurisdiction; and (2) specific
2 jurisdiction. See *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–15 (1984);
3 see also *LSI Indus., Inc. v. Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

4 General jurisdiction arises where the defendant has continuous and systematic ties with the
5 forum, even if those ties are unrelated to the litigation. See *Tuazon v. R.J. Reynolds Tobacco Co.*,
6 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales de Columbia, S.A.*, 466 U.S.
7 at 414–16). “[T]he plaintiff must demonstrate the defendant has sufficient contacts to constitute
8 the kind of continuous and systematic general business contacts that approximate physical
9 presence.” *In re W. States Wholesale Nat'l Gas Litig.*, 605 F. Supp. 2d 1118, 1131 (D. Nev. 2009)
10 (internal quotation marks and citations omitted).

11 For example, a state court has general jurisdiction over the state’s own residents. The
12 United States Supreme Court recently clarified, however, that general jurisdiction exists only
13 where the defendant is at “home” in the forum state. See *Daimler AG v. Bauman*, --- U.S. ----, ---
14 -, 134 S. Ct. 746, 760–62 (2014).

15 “The purposeful availment prong of the minimum contacts test requires a qualitative
16 evaluation of the defendant’s contact with the forum state, in order to determine whether [the
17 defendant’s] conduct and connection with the forum State are such that [the defendant] should
18 reasonably anticipate being haled into court there.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell*
19 & *Clements Ltd.*, 328 F.3d 1122, 1130 (9th Cir. 2003) (internal quotation marks and citations
20 omitted).

21 The Ninth Circuit has established a three-prong test for analyzing an assertion of specific
22 personal jurisdiction:

23 (1) The non-resident defendant must purposefully direct his activities or
24 consummate some transaction with the forum or resident thereof; or perform some
25 act by which he purposefully avails himself of the privilege of conducting activities
26 in the forum, thereby invoking the benefits and protections of its laws;
27 (2) the claim must be one which arises out of or relates to the defendant’s forum-
28 related activities; and
29 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
i.e., it must be reasonable.

1 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). “The plaintiff bears
2 the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of
3 these prongs, personal jurisdiction is not established in the forum state.” Id. (citations omitted).

4 **III. Discussion**

5 As an initial matter, no general jurisdiction exists over defendants in Nevada as they are
6 citizens of Missouri and are not “at home” in Nevada. Plaintiffs are citizens of Nevada; defendants
7 are citizens of Missouri. (ECF No. 1). Accordingly, to withstand dismissal under Rule 12(b)(2),
8 plaintiffs must demonstrate that their allegations establish a *prima facie* case for specific
9 jurisdiction. See *Boschetto*, 539 F.3d at 1015.

10 In other words, plaintiffs must satisfy the first two prongs of the test for specific
11 jurisdiction. See *Schwarzenegger*, 374 F.3d at 802. The first prong of the specific jurisdiction test
12 refers to both purposeful direction and purposeful availment. *Mavrix Photo, Inc. v. Brand Techs.,*
13 Inc., 647 F.3d 1218, 1228 (9th Cir. 2011). “A purposeful direction analysis . . . is most often used
14 in suits sounding in tort.” *Schwarzenegger*, 374 F.3d at 802.

15 Purposeful direction is analyzed under the “Calder-effects” test, wherein “the defendant
16 allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
17 causing harm that the defendant knows is likely to be suffered in the forum state.” *Brayton Purcell*
18 LLP v. *Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010) (quoting *Yahoo! Inc. v. La*
19 *Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006)); see also
20 *Calder v. Jones*, 465 U.S. 783, 788–89 (1984) (establishing an “effects doctrine” for intentional
21 action aimed at the forum).

22 Defendants must not only cause harm to a person who they know will feel a “judicially
23 sufficient amount of harm” in the forum state (Nevada), but the intentional activity must also be
24 directed to the forum state itself. See *Yahoo! Inc.*, 433 F.3d at 1207. Activity is not “aimed at” a
25 forum state merely because it is expected that its effects will be felt there, otherwise the third
26 element of the Calder-effects test would swallow the second. See *Poor Boy Prods. v. Fogerty*,
27 No. 3:14-CV-00633-RCJ, 2015 WL 5057221, at *3 (D. Nev. Aug. 26, 2015).

28

1 In the instant motion, defendants argue that plaintiffs have failed to show that defendants
2 purposefully availed themselves of Nevada or Nevada law. (ECF No. 8 at 4). Citing to Burger
3 King Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985), defendants further contend that a contract
4 between a nonresident defendant and a resident plaintiff, alone, is insufficient to establish specific
5 jurisdiction. (ECF No. 8 at 4).

6 In response, plaintiffs contend that defendants interjected themselves into Nevada by
7 making false representations to plaintiffs while they (plaintiffs) were in Nevada. (ECF No. 10 at
8 9). Plaintiffs thus maintain that Nevada has specific jurisdiction over defendants. (ECF No. 10).

9 Plaintiffs have sufficiently alleged that defendants purposefully directed their activities at
10 residents of Nevada. Plaintiffs' complaint alleges that defendants falsely represented that they had
11 legal title to the van, that defendants and plaintiffs entered into a contract—under which plaintiffs
12 would pay defendants \$97,915.00 to modify and deliver the van to plaintiffs in Nevada, that
13 plaintiffs paid the agreed upon amount to defendants, and that defendants never delivered the van.
14 (ECF No. 1). Therefore, plaintiffs have sufficiently alleged that defendants committed intentional
15 acts directed at Nevada and Nevada's residents, which caused harm that defendants knew would
16 likely be suffered in Nevada.

17 The causes of action alleged in plaintiffs' complaint arise from defendants'
18 misrepresentations (i.e., intentional acts), thereby satisfying the second prong of the specific
19 jurisdiction test.

20 Defendants bear the burden of satisfying the third prong of the specific jurisdiction test.
21 See Schwarzenegger, 374 F.3d at 802 ("If the plaintiff succeeds in satisfying both of the first two
22 prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of
23 jurisdiction would not be reasonable." (quoting Burger King Corp., 471 U.S. at 476–78)).
24 Defendants have failed to meet their burden as their motion fails to address the third prong entirely.

25 Accordingly, defendants' motion to dismiss (ECF No. 8) will be denied as specific
26 jurisdiction over defendants exists.

27 . . .

28 . . .

IV. Conclusion

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants' motion to dismiss (ECF No. 8) be, and the same hereby is, DENIED.

DATED July 13, 2017.

James C. Mahan
UNITED STATES DISTRICT JUDGE