

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIGNATOURS CORPORATION,

Plaintiff,

v.

WAYNE CALLENDER,

Defendant.

CASE NO. 2:23-cv-885

ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

This matter comes before the Court on Defendant Wayne Callender's motion to dismiss Plaintiff Signatours Corporation's complaint for lack of jurisdiction, or in the alternative, to transfer the case to the District of Idaho. Dkt. No. 5. The Court has considered the papers submitted in support of and opposition to the motion, as well as the record in the case. For the reasons stated below, the Court GRANTS the motion.

1. BACKGROUND

The following factual allegations are taken from Signatours complaint:

Signatours is a photography company specializing in "creating original photographs for the lodging, hospitality, and architecture industries." Dkt. No. 1 at

1 1. It's incorporated in Washington, and its principal place of business is Seattle. *Id.*
2 at 3. In June 2018, Signatours took photographs of vacation rental properties in
3 Idaho. *Id.* at 2. That same month, Signatours registered the photos with the U.S.
4 Copyright Office ("Copyrighted Works"). *Id.* Signatours owns the federal
5 registration for the Copyrighted Works. *Id.*

6 Signatours alleges, Callender was "offered the opportunity" to buy the
7 Copyrighted Works, and the parties negotiated a purchase price. *Id.* at 4. Callender
8 ultimately decided not to buy the Copyrighted Works, but he later displayed
9 "photographs that are virtually identical to the Copyrighted Works" on websites to
10 market and advertise his vacation rental homes. *Id.*

11 Signatours alleges Callender is liable for copyright infringement.

12 2. DISCUSSION

13 2.1 Legal standard.

14 The Court must dismiss an action if it lacks personal jurisdiction over the
15 defendant. Fed. R. Civ. P. 12(b)(2). The plaintiff bears the burden of proving that
16 the exercise of personal jurisdiction would be appropriate when a defendant moves
17 to dismiss a case under Rule 12(b)(2). *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir.
18 2015). If the defendant's motion is supported only by written materials, "the
19 plaintiff need only make a *prima facie* showing of jurisdictional facts." *Sher v.*
20 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (emphasis added). In this context, a
21 "prima facie" showing means that the plaintiff has produced admissible evidence
22 which, if believed, would be sufficient to establish the existence of personal
23 jurisdiction. *See Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d

1 1122, 1129 (9th Cir. 2003). “The plaintiff cannot simply rest on the bare allegations
2 of its complaint if an allegation is challenged by the defendant, but uncontroverted
3 allegations in the complaint must be taken as true.” *Corker v. Costco Wholesale*
4 *Corp.*, 585 F. Supp. 3d 1284, 1289 (W.D. Wash. 2022) (cleaned up). Any conflicts
5 between sworn statements must be resolved in favor of the plaintiff. *Am. Tel. & Tel.*
6 *Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

7 If no federal statute authorizes personal jurisdiction, federal courts apply the
8 law of the state in which they sit to determine whether the exercise of personal
9 jurisdiction over a defendant is appropriate. *See Daimler AG v. Bauman*, 571 U.S.
10 117, 125 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington law permits courts to
11 “exercise jurisdiction over a nonresident defendant to the extent permitted by the
12 due process clause of the United States Constitution.” *SeaHAVN, Ltd. v. Glitnir*
13 *Bank*, 226 P.3d 141, 149 (Wash. Ct. App. 2010).

14 Jurisdiction reflects due process only if the defendant has “certain minimum
15 contacts with [the forum state] such that the maintenance of the suit does not
16 offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v.*
17 *Wash.*, 326 U.S. 310, 316 (1945). Based on the extent and nature of the contacts, the
18 Court can exercise either general or specific jurisdiction. *Goodyear Dunlop Tires*
19 *Operations, S.A., v. Brown*, 564 U.S. 915, 919 (2011).

20 **2.2 The Court does not have general jurisdiction over Callender.**

21 Signatours concedes that the exercise of general jurisdiction over Callender
22 would be improper in Washington. Rightly so. “For general jurisdiction to exist, a
23

1 defendant must engage in ‘continuous and systematic general business contacts,’
2 . . . that ‘approximate physical presence’ in the forum state[.]” *Mavrix Photo, Inc. v.*
3 *Brand Techs., Inc.*, 647 F.3d 1218, 1223–24 (9th Cir. 2011). Callender is a citizen of
4 Idaho. Dkt. No. 1 at 3. He does not have substantial, continuous, and systemic
5 contacts in Washington. He does not own bank accounts, vehicles, or other property
6 in Washington. Dkt. No. 6 at 2. He also does not have any employees or a mailing
7 address in Washington. *Id.* Thus, the Court cannot exercise general jurisdiction
8 over Callender.

9 **2.3 The Court does not have specific jurisdiction over Callender.**

10 Instead, Signatours argues that the Court has specific jurisdiction over
11 Callender. The Ninth Circuit applies a three-part test when analyzing specific
12 jurisdiction over a non-resident defendant:

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

18 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

19 Signatours bears the burden of satisfying the first two prongs of the test. *Id.*
20 If it meets this requirement, the burden shifts to Callender to “present a compelling
21 case” that the exercise of jurisdiction would not be reasonable. *Burger King Corp. v.*
22 *Rudzewicz*, 471 U.S. 462, 476–78 (1985).

1 In tort and “tort-like” cases, such as copyright infringement, courts inquire
2 “whether a defendant ‘purposefully direct[ed] his activities’ at the forum state,
3 applying an ‘effects’ test that focuses on the forum in which the defendant’s actions
4 were felt, whether or not the actions themselves occurred within the forum.” *Maurix*
5 *Photo, Inc.*, 647 F.3d at 1228 (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme*,
6 433 F.3d 1199, 1206 (9th Cir. 2006) (internal quotations omitted)). Under the effects
7 test, “the defendant must have (1) committed an intentional act, (2) expressly aimed
8 at the forum state, (3) causing harm that the defendant knows is likely to be
9 suffered in the forum state.” *Doe v. WebGroup Czech Republic, A.S.*, 89 F.4th 1188,
10 1198 (9th Cir. 2024) (internal quotations omitted).

11 The Court concludes Callender, through his agent, committed an “intentional
12 act” by downloading and using the Copyrighted Works. *See Wash. Shoe Co. v. A-Z*
13 *Sporting Goods, Inc.*, 704 F.3d 668, 674 (9th Cir. 2012) (“[A]n intentional act is an
14 external manifestation of the actor’s intent to perform an actual, physical act in the
15 real world[.]”). Thus, the first prong of the effects test is met.

16 As for the second prong, Signatours argues that Callender “purposefully
17 directed his activities with a resident of this forum,” by negotiating for the “sale of
18 the professionally photographed images that are now the subject of this copyright
19 dispute in this forum[.]” and “steal[ing] the images” and uploading them to
20 VRBO.com rather than purchasing them from Signatours. Dkt. No. 8 at 7; *see* Dkt.
21 No. 1 at 4. Thus, Signatours’s claim of express aiming turns on its contention that
22
23

1 Callender knew Signatours was a Washington resident and that it “stole” and
2 posted the Copyrighted works on the internet.¹

3 But “[e]xpress aiming requires more than the defendant’s awareness that the
4 plaintiff it is alleged to have harmed resides in or has strong ties to the forum,
5 because ‘the plaintiff cannot be the only link between the defendant and the
6 forum.’” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 980 (9th Cir. 2021) (quoting
7 *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). Indeed, “the Supreme Court ha[s]
8 ‘consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’
9 inquiry by demonstrating contacts between the plaintiff (or third parties) and the
10 forum State.” *Briskin v. Shopify, Inc.*, 87 F.4th 404, 416 (9th Cir. 2023) (quoting
11 *Walden*, 571 U.S. at 284).

12 Here, Signatours does not allege that Callender’s conduct was aimed toward
13 Washington, nor does Signatours allege that its injury is tied to Washington in any
14 meaningful way. In this way, Signatours’s injury is entirely personal and would
15 follow it whether it resided in Washington or elsewhere. *See id.* This Court cannot
16 find express aiming based on Signatours’s mere presence in Washington, as

18 ¹ Callender denies doing business with Signatours, insisting that his contacts were
19 with a third-party rental property marketing and advertising company called Stay
20 Coeur d’Alene Vacation Rentals (“StayCDA”). Dkt. Nos. 6 at 2; 7 at 2; 11 at 6.
21 Signatours provides several emails showing communications between Callender’s
22 agent and Kellie Seldon, who it claims was a Signatours employee. So the parties
23 dispute whether Callender communicated directly with Signatours or StayCDA
about the photos. The Court resolves this discrepancy in Signatours favor. *See*
Schwarzenegger, 374 F.3d at 800 (“Conflicts between parties over statements
contained in affidavits must be resolved in the plaintiff’s favor.”). Even assuming its
version of events is true, however, Signatours cannot satisfy the “expressly aimed”
requirement as explained below.

1 Signatours suggests. “To rule otherwise would essentially be to hold that a
2 ‘copyright holder can always sue wherever it happens to be located.’” *Adobe Sys. Inc.*
3 *v. Cardinal Camera & Video Ctr., Inc.*, No. 15-CV-02991-JST, 2015 WL 5834135, at
4 *4 (N.D. Cal. Oct. 7, 2015) (quoting 5 Patry on Copyright § 17:166.50 (online ed.
5 2015)).

6 Similarly, simply posting the infringing photos on VRBO.com (or the like) is
7 not enough to establish the express aiming requirement. *See Briskin*, 87 F.4th at
8 417–18. When a website is the only jurisdictional contact, “something more”—
9 conduct directly targeting the forum—is needed. *Id.* at 417 (quoting *Mavrix Photo*,
10 647 F.3d at 1229). With a website, the Court’s “analysis turns on whether the site
11 had a forum-specific focus or the defendant exhibited an intent to cultivate an
12 audience in the forum.” *Id.* (quoting *Mavrix Photo, Inc.*, 647 F.3d at 1229).


13 Here again, Signatours does not allege that Callender’s online activity had a
14 Washington-specific focus. In fact, on this score, Callender has expressly disclaimed
15 directing any of his business activities toward Washington. Callender no doubt
16 benefits from Idaho’s boarder relationship with Washington, but the fact—standing
17 alone—that the states share a boarder and that Callender may foreseeably profit
18 from persons in Washington renting his property in Idaho does not answer the
19 purposeful direction question. *See id.* at 423; *see also AMA Multimedia, LLC v.*
20 *Wanat*, 970 F.3d 1201, 1210 (9th Cir. 2020) (“Although [the defendants] may have
21 foreseen that ePorner would attract a substantial number of viewers in the United
22 States, this alone does not support a finding of express aiming.”).

1 Because Callender did not expressly aim its suit-related conduct toward
2 Washington, the Court cannot exercise specific jurisdiction over Callender. *Briskin*,
3 87 F.4th at 422.

4 **3. CONCLUSION**

5 For the reasons stated above, Callender’s motion to dismiss is GRANTED. Dkt.
6 No. 5. The complaint is DISMISSED for lack of personal jurisdiction.²

7 Dated this 7th day of February, 2024.

8 
9 _____
10 Jamal N. Whitehead
11 United States District Judge

12
13
14
15
16
17
18
19
20
21
22 ² Dismissal under Rule 12(b)(2) is without prejudice as to the merits of the case.
23 This Order is not intended to preclude Plaintiff from pursuing its claim in another
jurisdiction.