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UNITED STATES DISTRICT COURT

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DISTRICT OF NEVADA

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<p>MARLE CORDEIRO, Plaintiff, vs. MICHAEL L. POSTLE, Defendant.</p>

Case No.: 2:20-cv-00640-JCM-EJY

**DEFENDANT MICHAEL L. POSTLE’S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION, OR, IN THE
ALTERNATIVE, BASED ON FORUM NON
CONVENIENS**

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Defendant Michael L. Postle (“Michael”) by and through his attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby files this motion to dismiss for lack of personal jurisdiction, or, in the alternative, based on forum non conveniens.

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This motion is supported by the memorandum of points and authorities below, the pleadings and papers on file herein, the declaration of Michael Postle in support of the motion (attached hereto as “**Exhibit 1**”), and any oral argument the Court may consider at the time of the hearing.

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DATED this 16th day of June 2020.

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MAIER GUTIERREZ & ASSOCIATES

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/s/ Joseph N. Mott
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On June 6, 2020, the United States District Court for the Eastern District of California
4 dismissed a complaint, filed against Michael by the same firm that now represents plaintiff Marle
5 Cordeiro (“Marle” or “Plaintiff”) that asserted nearly identical claims to those asserted by Marle in
6 this case.¹ Knowing that she was drawing dead in California, Plaintiff filed her complaint in Nevada,
7 despite a complete lack of any basis for a Nevada court to exercise personal jurisdiction over
8 Michael. The timing of Plaintiff’s complaint related to the dismissal of the California Case and the
9 common counsel in the two cases should not be dismissed as mere coincidence; it is very clear that
10 the filing of Plaintiff’s complaint in Nevada at the same time a nearly identical complaint was
11 dismissed in California is a blatant attempt to forum shop.

12 Notwithstanding the obvious forum shopping, this Court may not lawfully assert personal
13 jurisdiction over Michael because (1) he is a resident and a citizen of California (*see* Comp. at ¶ 1);
14 (2) he does not have continuous and systematic contacts with Nevada; and, (3) he did not direct any
15 activities toward Nevada related to the allegations in the complaint. Accordingly, Michael does not
16 have the appropriate contacts with Nevada for the Court to exercise either general or specific
17 jurisdiction over him. Michael respectfully requests that this Court grant his motion to dismiss for
18 lack of personal jurisdiction.

19 Alternatively, because it is undisputed that Michael is a resident and citizen of California, the
20 doctrine of forum non conveniens also warrants dismissal of the Complaint. Litigating this matter
21 in Nevada would be burdensome for Michael, and California is a more appropriate forum for this
22 lawsuit. In fact, based upon the facts alleged in the Complaint, Plaintiff has only engaged in poker
23 games with Michael *in California* at Kings Casino, LLC d/b/a Stones Gambling Hall (“Stones”) and
24 not one single casino in the State of Nevada. Accordingly, if this Court declines to grant his motion
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27 ¹ That case was styled as *Brill, et al. v Postle, et al.*, U.S. District Court, Eastern District of California,
28 Case No. 2:19-cv-02027-WBS-AC (the “California Case”). Although the order granting Michael’s
motion to dismiss is public record, for the Court’s ease of reference, it is attached hereto as **“Exhibit
2.”**

1 to dismiss based on lack of personal jurisdiction, Michael respectfully requests that this Court
2 alternatively grant his motion to dismiss based on forum non conveniens.

3 **II. STATEMENT OF FACTS**

4 Michael Postle is a professional poker player who resides in the state of California. *See*
5 Complaint (ECF No. 1) at ¶ 2. Michael regularly participated in live streamed poker games at Stones,
6 a casino located in Citrus Heights, California. Although there are many locations around the country
7 to which poker professionals will frequently travel to participate in poker games in an effort to
8 maximize their earnings, including Las Vegas, Nevada and Reno, Nevada, Michael only played
9 poker in California. *See Comp.* at ¶ 23.

10 Michael has a young daughter who lives with him at his residence in Antelope, California.
11 Although Michael has full custody of his daughter, she frequently visits her mother, who lives in
12 Oregon. To facilitate efficient and convenient exchanges of their daughter, Michael and his daughter
13 meet Michael's ex-wife in Reno, Nevada approximately once or twice a month. Michael and his ex-
14 wife chose Reno as their regular meeting location because it is between their two residences and
15 because their daughter likes to stay at certain Reno resorts and play the carnival and other games in
16 the resorts' game rooms. Michael also occasionally travels to Reno alone or with friends to relax
17 and unwind when he receives discounted or free room offers at various resorts. Because it is only a
18 two hour drive from his home in California and because it is marketed as, and intended to be, a place
19 to go for rest and relaxation, Reno is a convenient and obvious destination for Michael to
20 occasionally visit.

21 When in Reno, Michael will sometimes play penny slots or engage in sports betting, primarily
22 during football season. He otherwise enjoys the amenities the resorts have to offer and uses the
23 opportunity to relax and decompress from the stresses of life. Michael's visits to Nevada are always
24 for either exchange of his daughter or vacation; he does not conduct any business in Nevada and
25 lives and spends the vast majority of his time in California. Michael's visits to Reno are usually one
26 or two nights in length with his longest ever stay in Reno being three nights.

27 On or about September 21, 2019, Marle traveled to Citrus Heights, California to play poker
28 at Stones. *Comp.* at ¶ 48. Although she alleges she was "invited" to play poker at Stones, she does

1 not allege that she was invited by Michael, and in fact, he was not involved in any way with her
2 alleged invitation or travel to California to play at Stones.² See Comp. at ¶47. While at Stones, Marle
3 played poker at the same table as Michael for a period of time while appearing on the Stones Live
4 Poker stream. Comp. at ¶48. This single occasion is the only interaction Marle alleges ever occurred
5 between her and Michael. See generally Comp.

6 Notably, there is absolutely no nexus between Nevada and the events giving rise to Marle’s
7 complaint as the complaint is based solely on the single interaction between Marle and Michael in
8 California, all witnesses and evidence are located in California, and Michael is a resident of
9 California. Nevertheless, Marle filed the instant complaint in Nevada.

10 **III. THE COURT SHOULD DISMISS THIS ACTION BECAUSE THE COURT MAY**
11 **NOT LAWFULLY ASSERT PERSONAL JURISDICTION OVER MICHAEL**

12 **A. THE LEGAL STANDARD FOR A MOTION TO DISMISS FOR LACK OF PERSONAL**
13 **JURISDICTION**

14 Fed. R. Civ. P. 12(b)(2) allows a court to dismiss a complaint for lack of personal jurisdiction
15 over the defendant. In opposing a defendant’s motion to dismiss for lack of personal jurisdiction,
16 the plaintiff bears the burden of demonstrating that jurisdiction is proper. *Picot v. Weston*, 780 F.3d
17 1206, 1211 (9th Cir. 2015).

18 “Federal courts ordinarily follow state law in determining the bounds of their jurisdiction
19 over persons.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). Because Nevada’s long-arm
20 statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S.
21 Constitution, the Court must whether exercising jurisdiction comports with due process. NRS
22 14.065; *Picot*, 780 F.3d at 1211.

23 “For a court to exercise personal jurisdiction over a nonresident defendant, that defendant
24 must have at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction
25 ‘does not offend traditional notions of fair play and substantial justice.’” *Schwarzenegger v. Fred*

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28 ² Michael believes that Marle was actually invited to play at Stones by Veronica Brill, the lead plaintiff
in the California Case and a friend of Marle’s.

1 *Martin Mot. Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (citing *Int'l Shoe Co. v. Washington*, 326 U.S.
2 310, 316 (1945)). “Minimum contacts” may be satisfied through either general or specific
3 jurisdiction. *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001).

4 General jurisdiction is a very high standard and exists only where a defendant’s “affiliations
5 with the state are so ‘continuous and systematic’ as to render them essentially at home in the forum
6 state.” *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe*,
7 326 U.S. at 317); see also *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1074 (9th Cir.
8 2011) (defendant must engage in “continuous and systematic general business contacts” that
9 “approximate physical presence” in the forum state) (internal quotations and citations omitted).
10 There are only limited circumstances in which a defendant is subject to “all-purpose jurisdiction,”
11 and “[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual's
12 domicile.” *Daimler AG*, 571 U.S. at 137.

13 Specific jurisdiction looks to the nature and the quality of the defendant’s contact with the
14 forum state. *Peterson v. Kennedy*, 771 F.2d 1244, 1261 (9th Cir. 1985). There is a three-part test to
15 assist in this analysis: 1) the non-resident defendant must have purposefully directed its activities or
16 purposefully availed itself of the privilege of conducting activities in the forum: 2) the claim must
17 arise out of the defendant’s forum-related activities; and 3) the application of jurisdiction must
18 comport with fair play and substantial justice. *Schwarzenegger*, 374 F.3d at 802. The plaintiff bears
19 the burden of satisfying the first two prongs of this test. *Id.*

20 The Ninth Circuit treats purposeful availment and purposeful direction as different methods
21 of analysis depending on the alleged claims. *Wash. Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d
22 668, 672 (9th Cir. 2012). Purposeful availment is used to analyze jurisdiction in the context of contract
23 actions and purposeful direction is used to analyze jurisdiction in the context of tort actions.
24 *Schwarzenegger*, 374 F.3d at 802 (citing *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir.
25 2002). A defendant can be found to have “purposefully directed its activities” to the forum state only
26 if the defendant “(1) committed an intentional act’ (2) expressly aimed at the forum state; (3) causing
27 harm that the defendant knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d
28 at 803 (citing *Calder v. Jones*, 465 U.S. 783 (1984). This test is referred to as the *Calder* effects test.

1 **B. THE FACTS DO NOT SUPPORT EITHER GENERAL OR SPECIFIC JURISDICTION OVER**
2 **MICHAEL**

3 **1. Michael Lacks Sufficient Contacts With Nevada to Establish General**
4 **Jurisdiction**

5 As discussed above, general jurisdiction is a very high standard and exists only where a
6 defendant's "affiliations with the state are *so 'continuous and systematic' as to render them*
7 *essentially at home in the forum state.*" See *Goodyear Dunlop Tires Ops., S.A., supra* (emphasis
8 added); see also *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114,
9 1123 (9th Cir. 2002) (contacts must be "substantial, continuous, and systematic.").

10 Marle has neither alleged, nor shown, that Michael's contacts with Nevada were so
11 substantial, continuous, or systematic to render Michael "at home" in Nevada. In fact, Marle's
12 Complaint undermines a finding of general jurisdiction over Michael by alleging that Michael is a
13 citizen and resident of California. See Comp. at ¶ 2. Beyond admitting that Michael is a resident of
14 California, Marle's complaint is nearly completely silent regarding jurisdiction, aside from an
15 unsubstantiated, one line allegation that Michael "habitually travels...to Reno, Nevada, often for
16 extended periods of time." Comp. at ¶ 24. As noted above, Michael travels to Reno mainly to
17 exchange custody of his daughter with his ex-wife and occasionally for relaxation, but never for
18 more than two or three nights. Significantly, Marle completely failed to provide, and is unable to
19 provide, any detail or evidence related to her one-line allegation that Michael "habitually travels" to
20 Reno and stays for extended periods of time.

21 Even assuming, *arguendo*, Marle did properly allege, and could demonstrate, that Michael
22 frequented Reno for extended periods of time, general jurisdiction would still not lie as sporadic
23 vacations or business trips are insufficient to support a finding of general jurisdiction. *Davis & Cox*
24 *v. Summa Corp.*, 751 F.2d 1507, 1526 (9th Cir. 1985) (overruled on other grounds by 28 U.S.C. §
25 1961 (2006) ("These business and vacation trips to California, amounting to an average of about
26 three weeks a year, did not constitute 'conducting business' in California to support a finding of
27 general jurisdiction. Moreover, the 'nature and quality' of the recreational visits weigh against our
28 finding of general jurisdiction over Lummis.") (internal citations omitted); *Laxalt v. McClatchy*, 622

1 F. Supp. 737, 742 (D. Nev. 1985) (“*The few vacations or personal trips that these individual*
2 *defendants have made into Nevada do not constitute the level of activities which must exist for*
3 *general jurisdiction to lie.*”) (emphasis added) (overruled on other grounds); *Scaglione v. Colibri*
4 *Group, Inc.*, 2009 WL 10675501 at *7 (C. D. Cal. 2009) (flying into a state for business trips cannot
5 be the basis for general jurisdiction). Accordingly, Michael’s occasional brief trips to Reno, Nevada,
6 for exchange of custody or for relaxation, are insufficient to establish general jurisdiction in Nevada.
7 Given Marle’s failure and inability demonstrate that Michael has continuous and systematic
8 contact(s) with Nevada, the Court should not assert general jurisdiction over Michael and should
9 dismiss the Complaint.

10 **2. This Court May Not Properly Assert Specific Jurisdiction Over Michael**

11 As for specific jurisdiction, Marle has failed to satisfy the three-part test: 1) the non-resident
12 defendant must have purposefully directed its activities or purposefully availed itself of the privilege
13 of conducting activities in the forum: 2) the claim must arise out of the defendant’s forum-related
14 activities; *and* 3) the application of jurisdiction must comport with fair play and substantial justice.
15 *Schwarzenegger*, 374 F.3d at 802.

16 Within the Calder effects test, for the Court to find that Michael purposefully directed
17 activities to Nevada, it would have to find that he (1) committed an intentional act (2) expressly
18 aimed at Nevada; (3) causing harm that he knew was likely to be suffered in Nevada.
19 *Schwarzenegger*, 374 F.3d at 803. Here, there simply is no evidence that Michael committed an
20 intentional act that was *expressly aimed* at Nevada, nor that any harm was suffered in Nevada.

21 Marle’s complaint does not contain any allegations of any of these elements. Instead, it makes
22 very clear that Michael’s visits to Nevada had nothing to do with Marle, that Marle actually traveled
23 to Michael’s state of residence to play poker, and that any alleged wrongdoing occurred solely in
24 California. In fact, Marle makes very clear that Michael does not play poker outside California, and
25 uses this fact as one of the primary arguments for her baseless allegations (namely, that Michael
26 cheated at poker with the help of an insider at Stones and refused to play anywhere without the help
27 of the insider). *See Comp at ¶ 23.*

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1 Both the United States Supreme Court and the Nevada Supreme Court have made clear that
2 exercising personal jurisdiction over a defendant in these circumstances, when the defendant himself
3 has taken no action in the forum giving rise to the asserted claims, violates due process. *Bristol-*
4 *Myers Squibb Co. v. Super. Ct.*, 137 S. Ct. 1773, 1780-82 (2017); *Fulbright v. Eighth Jud. Dist. Ct.*,
5 342 P.3d 997, 1001-02 (2015). The law does not support this stretch of jurisdiction; therefore,
6 Michael’s motion to dismiss for lack of personal jurisdiction must be granted.

7 **IV. IN THE ALTERNATIVE, THE COURT SHOULD GRANT MICHAEL’S MOTION**
8 **TO DISMISS BASED ON FORUM NON CONVENIENS**

9 **A. THE LEGAL STANDARD FOR MOTION TO DISMISS BASED ON FORUM NON**
10 **CONVENIENS**

11 A trial court has the “sound discretion” to dismiss a case on the basis of forum non
12 conveniens. *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 257 (1981). A decision to dismiss on these
13 grounds is based on the court’s assessment of burden on the parties and convenience to the parties,
14 as well as difficulties in adjudication based on the forum ultimately decided upon. *Quackenbush v.*
15 *Allstate Inc. Co.*, 517 U.S. 706, 723 (1996).

16 A defendant seeking dismissal for forum non conveniens must show (1) that an alternative
17 forum is available and adequate, and (2) that the balance of the public and private interest factors
18 favors dismissal. *Lockman Found. v. Evangelical All. Mission*, 930 F.2d 764, 767 (9th Cir. 1991).
19 An alternative forum is adequate if: (1) the defendant is amenable to process there; and (2) the other
20 jurisdiction offers a satisfactory remedy. *Id.* at 768. The private interest factors relate primarily to
21 the convenience of the litigants. These factors are: (1) the residence of the parties and the witnesses;
22 (2) the forum's convenience to the litigants; (3) access to physical evidence and other sources of
23 proof; (4) whether unwilling witnesses can be compelled to testify; (5) the cost of bringing witnesses
24 to trial; (6) the enforceability of the judgment; and (7) all other practical problems that make trial of
25 a case easy, expeditious, and inexpensive. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1146 (9th
26 Cir. 2001).

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1 **B. THIS COURT SHOULD DISMISS THE COMPLAINT BASED ON FORUM NON**
2 **CONVENIENS BECAUSE CALIFORNIA IS AN ADEQUATE AND APPROPRIATE FORUM,**
3 **AND FORCING MICHAEL TO LITIGATE THIS ACTION IN NEVADA WOULD BE**
4 **BURDENSOME AND OPPRESSIVE**

5 California is an adequate and appropriate forum for this action. Michael is a resident and a
6 citizen of the State of California and is unquestionably subject to personal jurisdiction in California.
7 The federal courts in California have the same remedies available to them as this Court. Accordingly,
8 if the case were litigated in California, Marle would not be unfairly prejudiced.

9 Both public and private interest factors weigh heavily in favor of Michael. Michael is a
10 California resident. Although Marle is a Nevada resident, she willingly traveled to California
11 specifically for the business purpose of playing poker at Stones, and the entire factual basis for
12 Marle's complaint took place in California. On the other hand, Michael's only activities in Nevada
13 consist of tourist type activities and the claims asserted in the complaint have nothing to do with
14 Nevada. Allowing this action to proceed in Nevada would be counter to both the public and private
15 interest as Michael is a California resident, and Nevada has essentially no interest at all in the case
16 and all facts giving rise to the alleged claims took place in California.

17 California is a convenient forum for the parties and nearly all evidence, proof, and witnesses
18 are located in California. Marle has demonstrated that she has no trouble traveling to California for
19 business purposes and because every single fact giving rise to the suit occurred in California, the
20 relevant proof and witnesses are all located in California. Because Marle is willing to travel to
21 California, Michael is a resident of California, and the relevant proof and witness are all located in
22 California, California is a convenient forum.

23 The need to compel witnesses and the costs of bringing witnesses to trial also both weigh in
24 favor of Michael. Because nearly all of the witnesses are located in California, it would be more
25 efficient and cost effective to bring them to testify in trial in California. If the case proceeds in
26 Nevada, Marle is essentially the only party/witness who will not have to travel to testify. Litigating
27 the matter in California would not only be the most convenient forum for most of the witnesses, but
28 it would also ease any burdens associated with their ability to testify in this matter.

1 Based on the foregoing, it would be unduly burdensome to require Michael to litigate this
 2 matter in Nevada. Accordingly, Michael respectfully requests that the Court dismiss the complaint
 3 based on *forum non conveniens*.

4 **V. CONCLUSION**

5 The filing of this complaint in Nevada is puzzling. Given the completely California based
 6 facts, the only explanation for Marle filing in Nevada is that she knew her case would be dismissed
 7 in California and decided to instead try her hand in a Nevada court hoping for a more favorable
 8 ruling. This is the definition of forum shopping and such conduct should not be tolerated. If Marle’s
 9 claims must be litigated, they should be litigated in California. For the reasons stated above, Michael
 10 respectfully requests that this Court grant his motion to dismiss for lack of personal jurisdiction, or,
 11 in the alternative, based on *forum non conveniens*.

12 DATED this 16th day of June 2020.

13 **MAIER GUTIERREZ & ASSOCIATES**

14
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21 **EXHIBIT LIST**

Exhibit No.	Description	Page No.’s
1	Declaration of Michael L. Postle	2
2	Memorandum and Order Re: Defendants’ Motions to Dismiss	25

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 16th day of June 2020, service of the foregoing **DEFENDANT MICHAEL L. POSTLE’S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, OR, IN THE ALTERNATIVE, BASED ON FORUM NON CONVENIENS** via the Court’s CM/ECF system to all parties and counsel as identified on the Court-generated Notice of Electronic Filing.

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