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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Case No.: 2:20-cv-00640-JCM-EJY
**DEFENDANT MICHAEL L. POSTLE’S
 REPLY IN SUPPORT OF MOTION TO
 DISMISS FOR LACK OF PERSONAL
 JURISDICTION, OR, IN THE
 ALTERNATIVE, BASED ON FORUM NON
 CONVENIENS**

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.

This Motion is supported by the memorandum of points and authorities below, the pleadings and papers on file herein, and any oral argument the Court may consider at the time of the hearing.

DATED this 6th day of July 2020.

MAIER GUTIERREZ & ASSOCIATES

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

2 **I. INTRODUCTION**

3 Having failed to plead sufficient facts in her Complaint to support a finding of personal
4 jurisdiction, Marle attempts to introduce a number of new unfounded allegations in her opposition
5 in a long-shot bid to keep the case alive. However, the law requires that a Complaint plead facts
6 sufficient for a finding of jurisdiction and that simply has not happened in this case. Michael Postle
7 did not direct any conduct toward Nevada, did not cause any injury in Nevada, and does not have
8 continuous and systematic contacts with Nevada, and Marle Cordeiro’s Complaint does not plead
9 facts indicating to the contrary. Accordingly, Michael Postle respectfully suggests that this Court
10 cannot exercise personal jurisdiction over him.

11 **II. NEITHER THE FACTS NOR THE ALLEGATIONS IN THE COMPLAINT**
12 **SUPPORT PERSONAL JURISDICTION OVER MICHAEL**

13 **A. MARLE FAILED TO SATISFY THE THREE-PRONGED CALDER EFFECTS TEST FOR**
14 **SPECIFIC JURISDICTION**

15 Marle’s Opposition makes a case that Kings Casino, LLC d/b/a Stones Gambling Hall
16 (“Stones”) could be subject to jurisdiction in Nevada but does not allege facts sufficient for the Court
17 to exercise jurisdiction over Michael. Marle has consistently alleged that although the complained
18 of conduct all occurred in California, Michael should nevertheless be subject to Nevada jurisdiction
19 because a third party broadcast the alleged misconduct. This argument is inconsistent with the law
20 governing personal jurisdiction.

21 The 9th Circuit employs a three part test for determining whether a court can exercise personal
22 jurisdiction over a defendant: 1) the non-resident defendant must have purposefully directed its
23 activities or purposefully availed itself of the privilege of conducting activities in the forum; 2) the
24 claim must arise out of the defendant’s forum-related activities; and 3) the application of jurisdiction
25 must comport with fair play and substantial justice. *Schwarzenegger v. Fred Martin Motor Co.*, 374
26 F.3d 802 (9th Cir. 2004) (citing *Calder v. Jones*, 465 U.S. 783 (1984)).

27 To determine whether a defendant purposefully directed conduct at the forum state, courts
28 use an “effects test.” Within the effects test, a defendant can be found to have “purposefully directed

1 its activities” to the forum state only if the defendant “(1) committed an intentional act; (2) expressly
2 aimed at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the
3 forum state.” *Id.* at 803.¹ For jurisdiction to lie, all three parts must be satisfied. *Id.* at 805.

4 Marle’s complaint does not contain any allegations satisfying the three parts of the effects
5 test. Marle has not alleged nor shown that Michael engaged in tortious conduct expressly directed at
6 Nevada, nor that he knew harm was likely to be suffered in Nevada as a result of his alleged conduct.
7 Moreover, Marle has not demonstrated that there was actually any injury in Nevada. In fact, Marle
8 in her complaint concedes that the alleged wrongdoing actually took place in California. *See Comp.*
9 at ¶¶ 47-48.

10 In her Opposition to Motion to Dismiss, Marle misconstrues the *Calder* case and selectively
11 emphasizes the contacts required for jurisdiction. As the *Calder* Court observed, “[a]n individual
12 **injured in California** need not go to Florida to seek redress from persons who, though remaining in
13 Florida, knowingly **cause the injury in California.**” *Calder*, 465 U.S. at 790 (emphasis added).
14 Marle focused on the language that allowed the plaintiff to sue in their home state but completely
15 missed the point of the case. The crux of the analysis was centered on the crucial fact that **the injury**
16 **in Calder case took place in California.** In *Calder*, plaintiff was a resident of California, was injured
17 in California, by defendants from Florida, and since the injury took place in California, California
18 exercised its long-arm statute over defendants in Florida. The most heavily weighted factor in *Calder*
19 was where the subject incident took place. Similarly, in the instant case, the alleged injury, and all
20 alleged conduct giving rise to it, took place in California. As such, within *Calder*, jurisdiction lies in
21 California, not Nevada.

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24 ¹ Plaintiff’s recitation of the *Calder* effects test standard in her Opposition to Motion to Dismiss
25 (ECF No. 11) at 8:4-8 is a blatant misstatement of the standard employed by the 9th Circuit. Instead
26 of citing to the actual standard from *Schwarzenegger* or *Calder*, Plaintiff paraphrases the standard in
27 an attempt to lower the bar for personal jurisdiction. Most egregiously, Plaintiff asserts that mere
28 “indiscriminate[]” conduct is sufficient for specific personal jurisdiction. Plaintiff attempts to
support this revision to the *Calder* standard by citing to an unpublished case from the Middle
District of Florida that is completely distinguishable from the instant case. *See infra* at p. 4. Mr.
Postle respectfully suggests that this Court should apply the standard as enunciated by the 9th Circuit
and not apply the new standard Plaintiff proposes.

1 1. **Michael Did Not Commit Any Intentional Acts Aimed At Nevada**

2 Marle’s Opposition and the precedent she cites in it provide a decent basis for jurisdiction
3 over Stones in Nevada, but not Michael. Stones is the one that broadcast the alleged improper
4 conduct to Nevada. Michael, on the other hand, had nothing to do with the website nor its content
5 and did not direct any activity related to Marle’s complaint to the state of Nevada.

6 Marle’s Opposition claims that Michael “engaged in a pattern of fraudulent conduct aimed
7 at cheating myriad persons in broadcast poker games and luring subsequent victims to partake in
8 those cheated poker games.” *See* Opposition at 8:9-11. Moreover, Marle alleges that Michael lured
9 people from Nevada, and that some unidentified people in Nevada were swindled. However, her
10 Complaint does not contain any such allegations, nor are any of these newfound allegations
11 supported by reality or facts.

12 Marle’s Complaint merely alleges that she was invited to California to participate in a Stone’s
13 poker broadcast, but does not allege that Michael was the person who invited her nor that he had
14 anything to do with her invitation. *See* Comp. (ECF No. 1) at ¶¶ 47, 48. Marle’s Complaint contains
15 a subheading stating “Ms. Cordeiro Lured into Playing with the Defendant,” but it does not contain
16 a single factual allegation that Michael did anything to “lure” Marle to California, nor that Michael
17 was even aware of Marle’s existence. *See id.* at pg. 10 ln. 16. Significantly, Marle avoids making
18 these specific allegations against Michael because they would be completely untrue; Michael did not
19 invite Marle to Stones, nor did Michael do anything to lure Marle to Stones.

20 Marle’s Opposition also indicates that she was “swindled in Nevada” and that jurisdiction
21 over Michael lies in Nevada because she “consumed” the broadcasts in Nevada. *See* Opp. (ECF No.
22 11) at 8:18-19. Importantly, though, Marle’s Complaint does not contain any such allegations and
23 her Opposition merely alleges that **the broadcast induced her to Stones to gamble, not any**
24 **specific conduct by Michael**. In fact, neither her Complaint nor her Opposition assert any allegation
25 at all that Marle traveled to California to gamble based on anything Michael did. She does not allege
26 that she traveled to California to play against Michael, nor that she even knew if Michael would be
27 present when she was there.

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1 Ultimately, Marle has completely failed to allege any specific conduct by Michael directed
2 to Nevada, let alone that he knew that harm would occur in Nevada based on his actions. Instead,
3 she is attempting to conflate Stones' conduct – broadcast of live poker games and inviting her to
4 travel to California to play poker – to Michael in an attempt to manufacture jurisdiction.
5 Unfortunately for Marle, the standard is that Michael himself must have committed an intentional
6 act directed at Nevada, not merely that he participated in a broadcast that someone else directed at
7 Nevada.

8 Accordingly, because Marle has failed to make allegations sufficient to satisfy the *Calder*
9 effects test, this Court cannot find that Michael purposefully directed conduct at Nevada and
10 exercising jurisdiction over him would be inappropriate.

11 **2. Freedom Mentor and Mavrix are Easily Distinguishable From, and**
12 **Completely Inapplicable To, The Instant Case**

13 In her Opposition, Marle cites to *Freedom Mentor, LLC v. Saeger*, an unreported case from
14 the United States District Court for the Central District of Florida, to support her argument for
15 personal jurisdiction. 2019 WL 313788 (M.D. Fla. 2019). However, the *Freedom Mentor* decision
16 is not binding on this Court and is completely distinguishable from the instant case. In *Freedom*
17 *Mentor*, the Florida court held that Defendants' operation of a website, based in Utah and New York,
18 that intentionally misappropriated registered trademarks of a Florida company for commercial gain
19 was calculated to cause injury in Florida. *See id.* at *3-4. Significantly, in *Freedom Mentor*, the
20 defendants were **the operators** of the website viewable in Florida and infringed on the marks of a
21 Florida based plaintiff. *See id.* at *1, *3. Unlike *Freedom Mentor*, here, Michael was not the operator
22 of the website or even affiliated with the operator of the website in any way. Instead, he was a mere
23 participant in an internet stream broadcast by Stones on its website. Additionally, in *Freedom*
24 *Mentor*, the Defendants infringed on the intellectual property of a Florida company, so it was
25 reasonable for the Florida court to hold that Defendants' activity was directed at Florida. No such
26 nexus exists here; although Marle is a Nevada resident, Michael is as California resident, all conduct
27 alleged in the complaint occurred in California, and Michael had nothing to do with the broadcast.

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1 Similarly, in *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011),
2 an Ohio based defendant was determined to have targeted individuals by means of advertisements
3 aimed at California residents. Again, though, the defendant in *Mavrix* was the operator of the website
4 and the website included specific California targeted advertisements and content. This is completely
5 different than the instant case where, again, Michael was a mere participant in a poker game that
6 Stones streamed on the internet. Unlike *Mavrix*, Michael had nothing to do with the subject website
7 and did not direct any activity, conduct, or content to Nevada.

8 **B. MARLE HAS NEITHER ALLEGED NOR SHOWN THAT MICHAEL’S CONTACTS WITH**
9 **NEVADA WERE SUFFICIENT TO SUPPORT EXERCISE OF GENERAL JURISDICTION**

10 Marle alleges that general personal jurisdiction is appropriate because Michael visits Reno
11 once or twice a month. Marle also makes a strange and convoluted argument that because Michael
12 is a professional poker player he must be traveling to Nevada to play. In support of this, Marle makes
13 a completely untrue and unfounded allegation, on information and belief, that Michael has been
14 banned from California casinos, and thus could only be playing by traveling to Nevada. Her
15 Complaint makes no such allegations.

16 Sporadic vacations or business trips are insufficient to support a finding of general or specific
17 jurisdiction. *Davis & Cox v. Summa Corp.*, 751 F.2d 1507, 1526 (9th Cir. 1985) (overruled on other
18 grounds by 28 U.S.C. § 1961 (2006) (“These business and vacation trips to California, amounting to
19 an average of about three weeks a year, did not constitute ‘conducting business’ in California to
20 support a finding of general jurisdiction. Moreover, the ‘nature and quality’ of the recreational visits
21 weigh against our finding of general jurisdiction over Lummis.”) (internal citations omitted); *Laxalt*
22 *v. McClatchy*, 622 F. Supp. 737, 742 (D. Nev. 1985) (“***The few vacations or personal trips that***
23 ***these individual defendants have made into Nevada do not constitute the level of activities which***
24 ***must exist for general jurisdiction to lie.*”) (emphasis added) (overruled on other grounds);
25 *Scaglione v. Colibri Group, Inc.*, 2009 WL 10675501 at *7 (C. D. Cal. 2009) (flying into a state for
26 business trips cannot be the basis for general jurisdiction). Michael concedes that he visits Nevada
27 once or twice a month to either exchange custody of his minor daughter or to relax. Within the
28 relevant 9th Circuit law, this is not enough for general personal jurisdiction to lie.**

1 Given Marle’s failure and inability demonstrate that Michael has continuous and systematic
2 contact(s) with Nevada, the Court should not assert general jurisdiction over Michael and should
3 dismiss the Complaint.

4 **C. JURISDICTIONAL DISCOVERY IS NOT APPROPRIATE BECAUSE MARLE’S**
5 **COMPLAINT LACKS SUFFICIENT ALLEGATIONS TO SUPPORT ANY SUCH**
6 **DISCOVERY**

7 Jurisdictional discovery is not appropriate when the facts alleged in a complaint are
8 insufficient to plausibly give rise to jurisdiction. *See Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th
9 Cir. 2008) (holding that jurisdictional discovery was inappropriate where the complaint lacked
10 sufficient facts to support a finding of jurisdiction.) Moreover, “where a plaintiff’s claim of personal
11 jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials
12 made by the defendants, the Court need not permit even limited discovery.” *Pfister v. Selling Source,*
13 *LLC*, 931 F. Supp. 2d 1109, 1118 (D. Nev. 2013). A plaintiff is not entitled to jurisdictional discovery
14 merely because she thinks she might be able to uncover relevant facts. *See Boschetto*, 539 F.3d at
15 1020 (citing *Butcher’s Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir.1986)
16 (holding that district court did not abuse its discretion by refusing jurisdictional discovery where the
17 plaintiffs “state only that they ‘believe’ discovery will enable them to demonstrate sufficient
18 California business contacts to establish the court’s personal jurisdiction”).

19 Marle’s request for jurisdictional discovery is a request to conduct a fishing expedition. In
20 her Opposition, Marle makes a myriad of new and unfounded allegations in an attempt to justify the
21 need for jurisdictional discovery. The Complaint does not allege that Michael travels to Las Vegas
22 – he does not. The Complaint does not allege that Michael owns property in Nevada – he does not.
23 The Complaint does not allege that Michael regularly plays poker in Nevada – he does not. The
24 Complaint does not allege that Michael owns any businesses in Nevada – he does not. The absence
25 of any of these allegations in the Complaint weighs against the propriety of jurisdictional discovery.

26 The only allegation in the Complaint that is relevant to general jurisdiction at all is the
27 unfounded and untrue allegation that Michael “habitually” travels to Nevada, “often for extended
28 periods of time.” *See Comp.* (ECF No. 1) at ¶24. That single bare allegation is not sufficient for the

1 Court to exercise general personal jurisdiction over Michael or grant leave for Marle to conduct
2 jurisdictional discovery as Michael denies habitually traveling to Nevada for any extended periods
3 of time. *See Pfister*, 931 F. Supp. 2d at 1118 (“where a plaintiff’s claim of personal jurisdiction
4 appears to be both attenuated and based on bare allegations in the face of specific denials made by
5 the defendants, the Court need not permit even limited discovery.”); *see also* Mot. to Dismiss (ECF
6 No. 10) at 3:10-28; *see also*, Declaration of Michael L. Postle, Exhibit 1 to Mot. to Dismiss (ECF.
7 No. 10).

8 No amount of jurisdictional discovery will uncover anything close to the contacts with
9 Nevada required for general personal jurisdiction for one simple reason: the contacts don’t exist.
10 Marle is aware of all of the facts necessary to allege specific jurisdiction, but has failed to make a
11 showing that jurisdiction is proper because the facts don’t support such a finding. Michael’s admitted
12 one or two *visits* to Reno per month are not sufficient minimum contacts for general jurisdiction.
13 Therefore, jurisdictional discovery would just be a waste of the parties’ and this Court’s valuable
14 time and resources and Marle’s request for such discovery should be denied.

15 **D. FORUM NON CONVENIENS IS APPLICABLE TO THIS CASE**

16 The facts alleged in the Complaint here stemmed from events allegedly occurring in
17 California and Michael’s alleged conduct is not tied to Nevada in any way. California is an adequate
18 and appropriate forum for this action. Michael is a resident and a citizen of the State of California
19 and is unquestionably subject to personal jurisdiction in California. The federal courts in California
20 have the same remedies available to them as this Court and if the case were litigated in California,
21 Marle would not be unfairly prejudiced. Accordingly, the doctrine of forum non conveniens also
22 warrants dismissal of the Complaint.

23 **III. CONCLUSION**

24 Michael Postle directed absolutely no activity or conduct to the state of Nevada related to
25 Plaintiff’s complaint. Instead, he merely participated in a poker game that a third party broadcast on
26 the internet. Without specific conduct directed to Nevada that gives rise to an injury in Nevada, this
27 Court cannot assert specific personal jurisdiction over Michael. Moreover, Marle’s Complaint lacks
28 allegations anywhere near sufficient for a finding of general personal jurisdiction.

1 The reality is that Marle is attempting to drag Michael to court in Nevada based on the alleged
2 actions of Stones – specifically, the broadcast of poker games to Nevada on Stones’ website. The
3 law does not support this stretch of jurisdiction. Accordingly, Michael respectfully requests that the
4 Court grant his Motion to Dismiss for lack of personal jurisdiction. Alternatively, if this Court
5 declines to grant his Motion to Dismiss based on lack of personal jurisdiction, Michael respectfully
6 requests that this Court grant his Motion to Dismiss based on forum non-conveniens.

7 DATED this 6th day of July 2020.

8 **MAIER GUTIERREZ & ASSOCIATES**

9
10 /s/ Joseph N. Mott

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that on the 6th day of July 2020, service of the foregoing **DEFENDANT MICHAEL L. POSTLE’S REPLY IN SUUPPORT OF 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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