

1 Plaintiffs allege that GM partnered with Decibel to use Decibel's Session Replay software. (Id. ¶¶ 19-
2 20, 33-37.) According to the first amended complaint, the Session Replay software captures website
3 visitors' mouse clicks, keystrokes, names, zip codes, phone numbers, email addresses, IP addresses,
4 and locations at the time of the visit. (Id. ¶ 44.) Plaintiffs allege that GM captured their own
5 information using Session Replay when they purportedly visited the Chevrolet website in August and
6 September 2020. (Id. ¶¶ 2, 4-5, 39-41.) Plaintiffs allege that they are California residents and that they
7 were physically located in California when they visited GM's nationally accessible Chevrolet website.
8 (Id. ¶¶ 4-5.) Based on these allegations, Plaintiffs assert claims against both Defendants for violations
9 of the California Invasion of Privacy Act, Cal. Penal Code §§ 631 and 635, and for invasion of privacy
10 under the California Constitution, and a claim against Decibel for violation of the Federal Wiretap
11 Act, 18 U.S.C. § 2512. (See id. ¶¶ 59-96.)

12 **II. Legal Standards**

13 **A. Motion to Dismiss Under Federal Rule of Civil Procedure 12(b)(2)**

14 Federal Rule of Civil Procedure 12(b)(2) allows a party to file a motion to dismiss for lack
15 of personal jurisdiction. When there is no federal statute authorizing personal jurisdiction, the district
16 court applies the law of the state in which the district court sits. *Mavrix Photo, Inc. v. Brand Techs.,*
17 *Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). California's long-arm statute is coextensive with federal due
18 process requirements. Cal. Code Civ. Proc. § 410.10. Accordingly, the "jurisdictional analyses under
19 state law and federal due process are the same." *Mavrix Photo, Inc.*, 647 F.3d at 1223
20 (citing *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800-01 (2004)). "For a court to
21 exercise personal jurisdiction over a nonresident defendant, that defendant must have at least 'minimum
22 contacts' with the relevant forum such that the exercise of jurisdiction 'does not offend traditional
23 notions of fair play and substantial justice.'" *Schwarzenegger*, 374 F.3d at 801 (quoting *Int'l Shoe Co. v.*
24 *Washington*, 326 U.S. 310, 316 (1945)). Under the minimum contacts test, there are two categories
25 of personal jurisdiction: general jurisdiction and specific jurisdiction. *Daimler AG v. Bauman*, 571 U.S.
26 117, 126-27 (2014).

27 A court may assert general personal jurisdiction over corporations "when their affiliations with
28 the State are so 'continuous and systematic' as to render them essentially at home in the forum

1 State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). There are two
2 "paradigm all-purpose forums" in which a corporation will primarily be "at home" for the purposes
3 of general jurisdiction: its place of incorporation and its principal place of business. *Daimler*, 571 U.S.
4 at 137. General jurisdiction is not limited to these two forums, but it will only be available elsewhere in
5 the "exceptional case" that a corporation's affiliations with a forum are "so substantial and of such a
6 nature as to render the corporation at home in that State." *Id.* at 139 n.19; *see also Martinez v. Aero*
7 *Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) ("Only in an 'exceptional case' will general
8 jurisdiction be available anywhere else."). Indeed, under the modern jurisdiction theory, general
9 jurisdiction "has played a reduced role," and "[the Supreme Court's] post-*International Shoe* opinions
10 on general jurisdiction . . . are few." *Daimler*, 571 U.S. at 128-29.

11 Specific jurisdiction, on the other hand, is satisfied when the defendant's activities are directed
12 toward the forum state and the defendant's liability arises out of or relates to those activities. *Id.* at 127.
13 In the Ninth Circuit, courts employ a three-part test to determine whether a defendant's contacts suffice
14 to establish specific jurisdiction: "(1) the nonresident defendant must have purposefully availed himself
15 of the privilege of conducting activities in the forum by some affirmative act or conduct; (2) plaintiff's
16 claim must arise out of or result from the defendant's forum-related activities; and (3) exercise of
17 jurisdiction must be reasonable." *Roth v. Garcia Marquez*, 942 F.2d 617, 620-21 (9th Cir. 1991)
18 (emphasis omitted). The plaintiff bears the burden of satisfying the first two prongs, and if they are met,
19 the burden shifts to the defendant "to set forth a 'compelling case' that the exercise of jurisdiction would
20 not be reasonable." *Mavrix Photo Inc.*, 647 F.3d at 1228.

21 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff bears
22 the burden of establishing the court's jurisdiction over the defendant. *Wash. Shoe Co. v. A-Z Sporting*
23 *Goods Inc.*, 704 F.3d 668, 671-72 (9th Cir. 2012). However, when the defendant's motion is based on
24 written materials rather than an evidentiary hearing, the plaintiff need only make a "prima facie
25 showing of jurisdictional facts to withstand the motion to dismiss." *Id.* (quoting *Pebble Beach Co. v.*
26 *Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)). The court resolves all disputed facts in favor of the
27 plaintiff. *Id.* at 672.

28 ///

1 **B. Motion to Dismiss Under Rule 12(b)(3)**

2 A party may move to dismiss an action based on improper venue pursuant to Rule
3 12(b)(3). Fed. R. Civ. P. 12(b)(3). Once a defendant challenges venue, the plaintiff bears the burden of
4 demonstrating that the chosen venue is proper. *Piedmont Label Co. v. Sun Garden Packing Co.*, 598
5 F.2d 491, 496 (9th Cir. 1979). In determining whether venue is proper, the pleadings need not be
6 accepted as true and the court may consider facts outside of the pleadings. *Doe I v. AOL, LLC*, 552
7 F.3d 1077, 1081 (9th Cir. 2009).

8 Venue in a civil action is proper in:

9 (1) a judicial district in which any defendant resides, if all defendants are residents of
10 the State in which the district is located;

11 (2) a judicial district in which a substantial part of the events or omissions giving rise to
12 the claim occurred, or a substantial part of property that is the subject of the action is
13 situated; or

14 (3) if there is no district in which an action may otherwise be brought as provided in this
15 section, any judicial district in which any defendant is subject to the court's personal
16 jurisdiction with respect to such action.

17 28 U.S.C. § 1391(b)(1)-(3). "The first two paragraphs of §1391(b) define the preferred judicial districts
18 for venue in a typical case, [while] the third paragraph provides a fallback option." *Atl. Marine Constr.*
19 *Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 571 U.S. 49, 56 (2013). When venue is improper, the
20 district court can either dismiss the action, "or if it be in the interest of justice, transfer such case to any
21 district or division in which it could have been brought." 28 U.S.C. § 1406(a). "A determination of
22 improper venue does not go to the merits of the case and therefore [dismissal] must be without
23 prejudice." *In re Hall, Bayoutree Assocs., Ltd.*, 939 F.2d 802, 804 (9th Cir. 1991).

22 **III. Discussion and Analysis**

23 **A. Personal Jurisdiction**

24 **1. General Jurisdiction**

25 ***a. GM***

26 Plaintiffs admit that GM is a Delaware limited liability company with its principal place of
27 business in Detroit, Michigan. (Doc. 25 at ¶ 6; see also Doc. 29-1, Burnell Decl., at ¶ 3.) GM alleges
28 that Plaintiffs do not and cannot allege the type of "constant and pervasive" contacts that are required

1 for this Court to conclude that this is an “exceptional” case in which general jurisdiction is
2 nevertheless present. (Doc. 29 at 11, citing *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069-70 (9th Cir.
3 2015).) GM further alleges that Plaintiffs’ allegations that GM owns and operates websites accessed
4 by California residents (Doc. 25 at ¶¶ 1, 4-5) are not enough to establish general jurisdiction. (Doc. 29
5 at 11-12.) Plaintiffs note that GM argues the Court lacks general personal jurisdiction over it, but
6 Plaintiffs do not contend general jurisdiction applies here. (Doc. 32 at 6, n.2.)

7 *b. Decibel*

8 Decibel is a corporation formed under the laws of Delaware with its principal place of business
9 in the United Kingdom, and thus, Decibel alleges under the traditional “paradigm,” California does not
10 have general jurisdiction over Decibel. (Doc. 30 at 9-10; Doc. 30-1, Harris Decl., at ¶ 11.) Decibel
11 further argues that this is not an “exceptional” case, as Plaintiffs have failed to allege facts that reveal
12 any activity by Decibel that amounts to “substantial” or “continuous . . . and systematic” contacts
13 necessary to find it “at home” in California. (Doc. 30 at 10.) According to Decibel, Decibel currently
14 has only three employees within California, out of 39 nationwide, and Decibel has never had executive
15 officers in California and does not pay California state sales taxes. (Harris Decl. ¶¶ 12-13.) Plaintiffs
16 note that Decibel argues the Court lacks general personal jurisdiction over it, but Plaintiffs do not
17 contend general jurisdiction applies here. (Doc. 31 at 6, n.2.)

18 *c. Analysis*

19 General jurisdiction requires Plaintiffs to show that Defendants’ own affiliations with
20 California are sufficiently “continuous and systematic” and that California essentially operates as
21 Defendants’ home. *Goodyear*, 564 U.S. at 919 (internal citation and quotation marks omitted). “This is
22 an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to
23 be hauled into court in the forum state to answer for any of its activities anywhere in the
24 world.” *Schwarzenegger*, 374 F.3d at 801 (internal citation omitted). Plaintiffs must prove that
25 Defendants’ contacts with California are of the type that “approximate physical presence.” *Bancroft &*
26 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (internal citation
27 omitted), holding modified by *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199 (9th Cir.
28 2006). Only a limited set of affiliations that effectively render a corporate defendant at home in the

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.