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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 RIGHTHAVEN, LLC,

11 Plaintiff,

12 v.

13 DEAN MOSTOFI,

14 Defendant.
15

Case No. 2:10-CV-01066-KJD-GWF

ORDER

16 Presently before the Court is Defendant's Amended Motion to Dismiss (#11). Plaintiff filed
17 a response in opposition (#12) to which Defendant replied (#15).

18 **I. Background**

19 Plaintiff's complaint alleges that Defendant infringed its copyright in a newspaper article.
20 Righthaven, LLC ("Righthaven"), a Nevada corporation, claims that Dean Mostofi ("Mostofi"), an
21 individual residing in Maryland, reproduced and displayed on his website <deanmostofi.com> ("the
22 Website") an article owned by Plaintiff. Defendant is the owner and registrar of the Website.
23 Plaintiff is the owner of the copyright to the article entitled "Court reprimands lawyer of misleading
24 ads" ("the Infringing Work" or "Work") that was published in the Las Vegas Review Journal
25 ("LVRJ") newspaper on April 11, 2010.
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1 On or about April 20, 2010, Mostofi displayed and continued to display the Infringing Work,
2 under a different title. The complaint alleges that Mostofi claimed and continues to claim authorship
3 of the Work. The Work, as displayed on the Website, contained the name of the news reporter who
4 wrote the article and her email address and Nevada phone number. On June 24, 2010, the United
5 States Copyright Office granted Righthaven the registration to the Work. On June 30, 2010, Plaintiff
6 filed the present complaint. Mostofi has now moved to dismiss the action for lack of personal
7 jurisdiction, or to transfer venue to the District of Maryland.

8 II. Analysis

9 A. Personal Jurisdiction

10 Defendant claims lack of personal jurisdiction and argues that it would be unduly
11 burdensome to litigate in Nevada. The assertion of personal jurisdiction satisfies due process when
12 there are “minimum contacts” with the forum state “such that the maintenance of the suit does not
13 offend ‘traditional notions of fair play and substantial justice.’” Int’l Shoe Co. v. Wash., 326 U.S.
14 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). These requirements “give a
15 degree of predictability to the legal system that allows potential defendants to structure their primary
16 conduct with some minimum assurance as to where that conduct will and will not render them liable
17 to suit.” World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

18 Personal jurisdiction may be either general or specific. See Panavision Int’l, L.P. v. Toeppen,
19 141 F.3d 1316, 1320 (9th Cir. 1990). General jurisdiction exists when there are “substantial” or
20 “continuous and systematic” contacts with the forum state, even if the cause of action is unrelated to
21 those contacts. Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086 (citing
22 Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415 (1984)). Specific jurisdiction
23 may be asserted “if the case arises out of certain forum-related acts.” Id. “Whether dealing with
24 specific or general jurisdiction, the touchstone remains ‘purposeful availment’ ... [to] ensure[] that ‘a
25 defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or
26

1 “attenuated” contacts.’ ” Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d
2 1114, 1123 (9th Cir. 2002) (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475 (1985)).

3 In this action, Plaintiff only argues that Defendant is subject to specific jurisdiction in
4 Nevada. A district court uses a three-part test to determine whether it may exercise specific
5 jurisdiction over a nonresident defendant: (1) The nonresident defendant must do some act or
6 consummate some transaction within the forum, or perform some act by which he purposefully avails
7 himself of the privilege of conducting activities in the forum, thereby invoking its benefits and
8 protections; (2) the claim must be one which arises out of or results from the defendant’s forum-
9 related activities; and (3) the exercise of jurisdiction must be reasonable. See Cybersell, Inc. v.
10 Cybersell, Inc., 130 F.3d 414, 416 (9th Cir. 1997).

11 For the first part of the Ninth Circuit’s test, the “effects” test of Calder v. Jones, 465 U.S.
12 783, 789-90 (1983), is used to determine if the defendant purposefully availed himself of the
13 privilege of conducting activities in the forum. “Under Calder the ‘effects’ test requires that the
14 defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
15 causing harm that the defendant knows is likely to be suffered in the forum state.” Schwarzenegger
16 v. Fred Martin Motor Co., 374 F.3d 797, 803 (9th Cir. 2004). The Ninth Circuit found that where a
17 defendant “willfully infringed copyrights owned by [the plaintiff], which, as [the defendant] knew,
18 had its principal place of business in the Central District [of California], “[t]his fact alone is
19 sufficient to satisfy the ‘purposeful availment’ requirement.” Columbia Pictures Television v.
20 Krypton Broadcasting of Birmingham, Inc., 106 F.3d 284, 289 (9th Cir. 1994). Adopting this
21 reasoning, two other courts in this district recently found that it “is common knowledge that the Las
22 Vegas Review Journal newspaper is published and distributed in Las Vegas, Nevada by the party
23 which assigned the copyrights together with the right to seek redress for past, present, and future
24 infringements.” Righthaven LLC v. Dr. Shezad Malik Law Firm, P.C., No. 2:10-cv-0636-RLH-RJJ,
25 2010 WL 3522372, at *1 (D. Nev. Sept. 2, 2010); Righthaven LLC v. Majorwager.com, Inc., No.
26 2:10-cv-00484-GMN-LRL, 2010 WL 4386499, at *1 (D. Nev. Oct. 28, 2010) . Not only is

1 Defendant imputed with the common knowledge that the LVRJ newspaper is published and
2 distributed in Las Vegas, which is in the forum state of Nevada, but the Infringing Work published
3 on the Website demonstrates that Mostofi was aware or should have been aware that the LVRJ was
4 the source of the Infringing Work and that it was located in Nevada, because both the reporter's
5 email address and Nevada phone number were included in the Infringing Work. Thus, the first prong
6 of the Ninth Circuit's three part test is satisfied.

7 The second prong of the test to determine whether the exercise of specific jurisdiction
8 satisfies due process is that Plaintiff's claim must arise out of activity conducted in the forum state.
9 That is easily satisfied as Plaintiff's claim, that Defendant allegedly infringed the copyrighted
10 material, arose from the local publication of the article in Nevada by the LVRJ and its subsequent
11 posting on the LVRJ's website.

12 Finally, under the third prong, Plaintiff must demonstrate that the exercise of jurisdiction is
13 reasonable. "[T]here is a presumption of reasonableness upon a showing that the defendant
14 purposefully directed his action at forum residents which the defendant bears the burden of
15 overcoming by presenting a compelling case that jurisdiction would be unreasonable." Colombia,
16 106 F.3d at 289(quoting Haisten v. Grass Valley Med. Reimbursement, 784 F.2d 1392, 1397 (9th
17 Cir. 1986)(citing Burger King, 471 U.S. at 477). The five factors to consider when determining if the
18 exercise of personal jurisdiction would be unreasonable are: (1) the burden on the defendant; (2) the
19 forum State's interest in adjudicating the dispute; (3) the plaintiff's interest in obtaining convenient
20 and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient
21 resolution of controversies; and (5) the shared interest of the several States in furthering fundamental
22 substantive social policies. World-Wide Volkswagen, 444 U.S. at 292.

23 The only factor favoring Defendant is the first. It would be a substantial burden on Defendant
24 to have to litigate in Nevada. However, all of the other factors favor Plaintiff. Arguably, the forum
25 state has an interest in adjudicating an infringement upon a news article originated by the forum
26 state's largest local newspaper publisher written about actions taken by the Nevada State Bar. The

1 Las Vegas Review Journal's subscribers are purportedly primarily residents of the forum state of
2 Nevada and the LVRJ advertisers consist mainly of local Nevada businesses. Any infringement could
3 reasonably be expected to affect them as well. Finally, Plaintiff has named numerous Defendants in
4 other identical suits each from numerous other states. "The interstate judicial system would benefit
5 from the efficient resolution of this case in the same forum as the others. This would serve
6 fundamental substantive common social policies." Majorwager.com, 2010 WL 4386499, at *4.
7 Accordingly, the Defendant has not overcome the presumption of reasonableness and this Court has
8 personal jurisdiction over Defendant.

9 B. Venue

10 Under § 1404(a), a district court has discretion to "adjudicate motions for transfer according
11 to an individualized, case-by-case consideration of convenience and fairness." Jones v. GNC
12 Franchising, Inc., 211 F. 3d 495, 498 (9th Cir. 2000)(citing Stewart Org. v. Ricoh Corp., 487 U.S.
13 22, 29 (1988)). Section 1404(a) reads: "For the convenience of parties and witnesses, in the interest
14 of justice, a district court may transfer any civil action to any other district or division where it might
15 have been brought." When a court evaluates a section 1404(a) motion, the plaintiff's choice of
16 forum is "entitled to 'paramount consideration' and the moving party must show that a balancing of
17 interests weighs heavily in favor of transfer." Galli v. Travelhost, Inc., 603 F. Supp. 1260, 1262 (D.
18 Nev. 1985). Accordingly, "§ 1404(a) provides for transfer to a more convenient forum, not to a
19 forum likely to prove equally convenient or inconvenient." Van Dusen v. Barrack, 376 U.S. 612,
20 645-46 (1964). The burden is therefore on the defendant to make the strong showing that a change
21 of venue is warranted. See Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th
22 Cir. 1986); Galli, 603 F. Supp. at 1262. Finally, a decision to transfer is committed to the sound
23 discretion of the trial court.

24 In assessing whether to grant a motion to transfer, the Court is presented with two questions:
25 whether the action "might have been brought" in the proposed transferee district; and whether the
26 transferee forum is more convenient. See 28 U.S.C. § 1404(a). Here, neither party disputes that this

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