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8 C.V.

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11
12 Elliot McGucken, an individual,
13 Plaintiff,

14 vs.

15 National Geographic Partners, LLC, a
Delaware limited liability company;
16 Yasno Publishing, LLC, a Russia
limited liability Company; Editorial
17 Televisa S.A. de C.V., a Mexico
company; and DOES 1-10, inclusive,
18 Defendants.

Case No. 2:22-cv-00681-JFW-PVC

**MEMORANDUM OF LAW IN
SUPPORT OF DEFENDANT
EDITORIAL TELEVISA, S.A. DE C.V.
AND NATIONAL GEOGRAPHIC
PARTNERS, LLC'S MOTION TO
DISMISS PLAINTIFF'S AMENDED
COMPLAINT**

[Filed Concurrently with the Declaration of
Karen Murillo, the Declaration of Kenneth
Gordon and [Proposed] Order]

Date: August 22, 2022
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Judge: The Honorable John F. Walter
Courtroom: 7A

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MEMORANDUM OF LAW

I. INTRODUCTION

Through the filing of his Amended Complaint, Plaintiff Elliot McGucken (“Plaintiff” or “McGucken”) continues to seek to improperly subject Editorial Televisa S.A. de C.V. (“Televisa”), a foreign entity with no ties to the United States, to this Court’s jurisdiction.¹ See generally ECF No. 34 (“Am. Compl.”).

Specifically, Plaintiff now alleges: (1) that a California Consumer Rights Portal pop-up allegedly appears on the webpage www.ngenespanol.com (the “Webpage”); and (2) that there are “California based advertisements to California residents” on the Webpage that Televisa and Defendant National Geographic Partners, LLC (“National Geographic”) allegedly profit from. See Am. Comp. ¶¶ 19-21. These new allegations do nothing more than show that the Webpage is accessible to individuals in California, and fail to overcome the indisputable fact that the Webpage targets residents of Mexico, not California, as the Webpage is displayed entirely in a foreign language (Spanish) and the products offered for sale on the Webpage are magazine subscriptions, the cost of which is listed in Mexican pesos and are only available to Mexican residents. Accordingly, Televisa respectfully requests that the Amended Complaint be dismissed in its entirety for lack of personal jurisdiction under Rule 12(b)(2).

In addition, Plaintiff’s Amended Complaint still fails to state a claim for relief, or a basis for subject matter jurisdiction, with regard to National Geographic Partners, LLC (“National Geographic”). Specifically, Plaintiff pleads only that National Geographic entered into “agreement[s]” with the Mexican company Televisa and the

¹ On June 1, 2022, Televisa, along with Defendant National Geographic Partners, LLC (“National Geographic”), moved to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction under Rule 12(b)(1), or in the alternative, for failure to state a claim under Rule 12(b)(6). See generally ECF No. 27. Televisa also moved to dismiss Plaintiff’s Complaint for lack of subject matter jurisdiction under Rule 12(b)(2). Id. Apparently recognizing his pleading defects, in response, Plaintiff filed a First Amended Complaint on June 20, 2022. See ECF No. 34.

1 Russian company Yasno. However, a licensor’s mere execution of a license
2 agreement with a foreign company does not subject the licensor to subject matter
3 jurisdiction where the licensees, not the licensor, are alleged to have committed the
4 infringing acts. That is precisely the case here. As stated in the attached declaration
5 of Kenneth Gordon, the allegedly infringing websites are operated by Televisa and
6 Yasno, not National Geographic, and those companies, rather than National
7 Geographic, are solely responsible for the selection and use of the content displayed
8 on the websites. Indeed, the only allegation in the First Amended Complaint that is
9 specific to National Geographic’s alleged acts of infringement is that it licensed its
10 “‘NatGeo’ name and brand” to Televisa and Yasno. Am. Compl. ¶ 17. Those
11 allegations plainly are not sufficient for this Court to exercise subject matter
12 jurisdiction over National Geographic, and do not state a claim for copyright
13 infringement.

14 **II. BACKGROUND**

15 In his Amended Complaint, Plaintiff claims that he is “an award-winning fine
16 art photographer” and is the owner of copyrighted photographs (the “Subject
17 Photography”). Am. Compl. ¶ 12. Plaintiff also claims that he owns U.S. copyright
18 registrations for the Subject Photography, and that he has displayed the Subject
19 Photography on his website, emcgucken.com, and through authorized third-parties.
20 *Id.* ¶¶ 12, 13, 14. Plaintiff added allegations in his Amended Complaint that upon
21 information and belief, Defendants made copies of Plaintiff’s photography by
22 accessing United States-based website and social media accounts based in California,
23 which allegedly depict events in California, and distributed and displayed his
24 photography to California and United States viewers. *Id.* ¶ 17; *see also id.* ¶¶ 22-24.
25 Plaintiff alleges that Defendants infringed his alleged copyrights by displaying
26 images of the Subject Photography, without his authorization, on a Russian website
27 (www.nat-geo.ru) and a Mexican website (www.ngeenspanol.com). *Id.* ¶ 15 & Exs.

1 A-1 & A-2.² Plaintiff pleads that the website www.nat-geo.ru is owned and operated
2 by Defendants National Geographic and Yasno, and that the website
3 www.ngeenspanol.com is owned and operated by Defendants National Geographic
4 and Televisa. *Id.* ¶ 15.

5 Plaintiff continues to acknowledge in the Amended Complaint that Televisa is
6 a “Mexico company” and that Yasno is a “Russia limited liability company.” *Id.* ¶¶
7 6, 7. Recognizing the jurisdictional defects in his Complaint, Plaintiff makes new
8 allegations in his Amended Complaint regarding California, including a “link to a
9 pop-up page for a California Consumer Rights Portal” on the Webpage, which
10 supposedly “indicates that the [Webpage] is not merely accessible to consumers in
11 California, but it contemplates California consumers as part of its audience.” Am.
12 Compl. ¶ 19. Plaintiff goes on to allege that these “are all acts that occur when
13 consumers and viewers in California use [the Webpage], and occurred in the United
14 States based on the Miami location of the website’s servers.” *Id.* ¶ 20. And Plaintiff
15 further alleges that Televisa and National Geographic “profit[] from United States
16 and California based companies who advertise on its website by displaying California
17 based advertisements to California residents.” *Id.* at ¶ 21. Notably, Plaintiff does
18 not identify any advertisement on the Webpage for any goods or services offered for
19 sale by any of the Defendants.

20 These new allegations do not remedy the Court’s lack of personal jurisdiction
21 over Televisa and the Court should dismiss Plaintiff’s Amended Complaint in its
22 entirety.

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27 ² The exhibits to the Amended Complaint show that the allegedly infringing websites
28 are displayed, respectively, entirely in Cyrillic (www.nat-geo.ru) and in Spanish
(www.ngeenspanol.com). *Id.* at Exs. A-1 & A-2.

1 **III. ARGUMENT**

2 **A. The Amended Complaint Should Be Dismissed for Lack of Personal**
3 **Jurisdiction under Rule 12(b)(2).**

4 **1. Legal Standard Governing Rule 12(b)(2)**

5 Dismissal is appropriate under Fed. R. Civ. P. 12(b)(2) when a plaintiff has not
6 met its burden of pleading personal jurisdiction. *See, e.g., Hendricks v. New Video*
7 *Channel Am., LLC*, No. 14-cv-02989, 2015 WL 3616983 WL, at *1 (C.D. Cal. June
8 8, 2015). When assessing a Rule 12(b)(2) motion, the Court is under no obligation
9 to accept the allegations in a complaint as true, and may consider evidence presented
10 in affidavits or by other means. *See, e.g., Rio Props., Inc. v. Rio Int’l Interlink*, 284
11 F.3d 1007, 1019 (9th Cir. 2002); *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir.
12 1990); *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.
13 1977).

14 “Federal courts ordinarily follow state law in determining the bounds of their
15 jurisdiction.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *see also Penguin*
16 *Grp. (USA) Inc. v. Am. Buddha*, 609 F.3d 30, 35 (2d Cir. 2010) (“[i]n litigation arising
17 under federal statutes that do not contain their own jurisdictional provisions, such as
18 the Copyright Act ... federal courts are to apply the personal jurisdiction rules of the
19 forum state”). California’s long-arm jurisdictional statute is coextensive with federal
20 due process requirements. *Doe v. Geller*, 533 F.Supp.2d 996, 1005 (N.D. Cal. 2008).
21 The Due Process Clause requires that a defendant have “certain minimum contacts
22 with [the forum] such that the maintenance of the suit does not offend ‘traditional
23 notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S.
24 310, 316 (1945) (citation omitted). Personal jurisdiction may be “general” (i.e., “all-
25 purpose”) or “specific” (i.e., “case-specific”). *Daimler*, 571 U.S. at 132.

26 Here, Plaintiff’s jurisdictional allegations fall into two categories: (1)
27 Plaintiff’s formulaic allegation that Televisa “is a Mexico company doing business
28

1 in and with the State of California”; and (2) allegations that the Webpage is accessible
2 to consumers in California, evidenced by the Webpage’s “pop-up” page for a
3 California Consumer Rights Portal and third-party advertisements directed towards
4 California. *See* Am. Compl. ¶¶ 7, 17-21. Both sets of allegations are without legal
5 support and are insufficient to plead either general or specific personal jurisdiction
6 over Televisa.

7 **2. Plaintiff Has Failed to Plead General Personal Jurisdiction**
8 **Over Televisa.**

9 For general jurisdiction to exist over an out-of-state defendant, the defendant
10 must “engage in continuous and systematic general business contacts that
11 approximate physical presence in the forum state.” *Schwarzenegger v. Fred Martin*
12 *Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (internal citations and quotation marks
13 omitted). “This is an exacting standard, as it should be, because a finding of general
14 jurisdiction permits a defendant to be haled into court in the forum state to answer
15 for any of its activities anywhere in the world.” *Id.* “Unless a defendant’s contacts
16 with a forum are so substantial, continuous, and systematic that the defendant can be
17 deemed to be ‘present’ in that forum for all purposes,” general jurisdiction is not
18 present. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d
19 1199, 1205 (9th Cir. 2006) (en banc); *see also Roberts v. Synergistic Int’l, LLC*, 676
20 F.Supp.2d 934, 942 (E.D. Cal. 2009) (“For general (unlimited) jurisdiction, a higher
21 level of ‘contacts’ with the forum state is required to support local jurisdiction.”).

22 In assessing general jurisdiction, a court must focus on the “economic reality”
23 of the defendant’s activities; where they are “more occasional than continuous, and
24 more infrequent than systematic,” general jurisdiction is not appropriate. *Gates*
25 *Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984). “Factors to be taken
26 into consideration are whether the defendant makes sales, solicits or engages in
27 business in the state, serves the state’s markets, designates an agent for service of
28

1 process, holds a license, or is incorporated there.” *Bancroft & Masters, Inc. v.*
2 *Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000), *overruled on other grounds*
3 *by Yahoo! Inc.*, 433 F.3d 1199 (9th Cir. 2006) (citing *Hirsch v. Blue Cross, Blue*
4 *Shield*, 800 F.2d 1474, 1478 (9th Cir. 1986)). *See also Mavrix Photo, Inc. v. Brand*
5 *Techs., Inc.*, 647 F.3d 1218, 1224 (9th Cir. 2011) (“To determine whether a
6 nonresident defendant’s contacts are sufficiently substantial, continuous, and
7 systematic, we consider their ‘[l]ongevity, continuity, volume, economic impact,
8 physical presence, and integration into the state’s regulatory or economic markets,’”
9 (quoting *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1172 (9th Cir.
10 2006))). “[A] general jurisdiction analysis requires ‘an appraisal of a corporation’s
11 activities in their entirety, nationwide and worldwide. A corporation that operates in
12 many places can scarcely be deemed at home in all of them. Otherwise, “at home”
13 would be synonymous with “doing business” tests framed before specific jurisdiction
14 evolved” *Handsome Music, LLC v. Etoro USA LLC*, No. LACV-20-08059,
15 2020 WL 8455111, at *4 (C.D. Cal. Dec. 17, 2020) (quoting *Daimler AG*, 571 U.S.
16 at 139 n.20).

17 Here, Plaintiff’s allegations regarding the Webpage are plainly insufficient to
18 demonstrate that Televisa’s contacts with California are so continuous and systematic
19 to warrant the exercise of general jurisdiction; instead, the factual record reveals
20 otherwise. Indeed, Televisa is domiciled and headquartered in Mexico. Decl. of
21 Karen Murillo (“Murillo”) ¶ 5. It has no employees, no offices, and no operations in
22 either California or the United States. Murillo Decl. ¶¶ 7, 8, 9. It owns no property,
23 transacts no business, and does not do business in California or elsewhere in the
24 United States. *Id.* ¶ 7, 9, 10. It has never owed or been required to pay taxes in
25 California and has never maintained a registered agent for service in California.
26 Murillo Decl. ¶¶ 8, 9. These facts are consistently found by courts in the Ninth
27 Circuit to be insufficient to confer general personal jurisdiction over a foreign
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1 defendant, and this case should be no different. *See, e.g., Martinez v. Aero*
2 *Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (concluding defendant was not
3 subject to general jurisdiction in California because it had its principal place of
4 business outside California, had no office, staff, or physical presence in California
5 and was not licensed within California); *Worldwide Subsidy Grp., LLC v. Fed'n Int'l*
6 *de Football Ass'n*, No. 14-00013, 2014 WL 12631652, at *6–7 (C.D. Cal. June 9,
7 2014) (declining to find general jurisdiction over FIFA and noting FIFA is not
8 domiciled in California, has no offices or employees in California, and pays no taxes
9 in California); *Star Fabrics, Inc. v. Neiman Marcus Grp. LLC*, No. CV 14-07170,
10 2014 WL 12591288, at *3 (C.D. Cal. Dec. 5, 2014) (declining to exercise general
11 jurisdiction in copyright infringement case where defendant has no physical presence
12 in California, was not registered to do business in California, and had never
13 conducted any business activities in California).³ Put simply, outside of Televisa’s
14 alleged operation of the Webpage there are no facts for the Court to exercise general
15 jurisdiction.

16 Nor are Plaintiff’s allegations regarding the accessibility of the Webpage or
17 the third-party advertisements for California businesses sufficient to confer general
18 jurisdiction. As the Murillo Declaration makes plain, Televisa has never advertised
19 its goods and services to California residents, and Televisa does not control what
20 specific third-party advertisements appear on the Webpage. Murillo Decl. ¶ 12. The
21 third-party advertiser selects the advertisements and Televisa has no knowledge or
22 input into what advertisement is used. *Id.*⁴ Courts in the Ninth Circuit have

23 ³ *Josh Agle, Inc. v. Fusion Ent.*, No. SACV 07-00917, 2008 WL 11340002, at *2
24 (C.D. Cal. June 5, 2008) (finding no general jurisdiction over Colorado corporation
25 in copyright infringement, trademark infringement, and unfair competition case
26 where defendant’s principal place of business is in Denver, Colorado, defendant has
no office or place of business in California, does not use, own or rent any real or
personal property located there, and has never conducted business in California).

27 ⁴ Even in cases in which it is the defendant’s *own* advertisements for *its own* goods
and services (which is not the case here), courts have found that insufficient to confer
28 general jurisdiction. *See SMS Signature Cars, Inc. v. Arrington Engines, Inc.*, No.
EDCV-10-01878, 2011 WL 13225291, at *6 (C.D. Cal. May 20, 2011) (“In addition,

1 consistently rejected similar attempts to subject a foreign defendant to general
2 personal jurisdiction. *See, e.g., Handsome Music, LLC*, 2020 WL 8455111, at *5
3 (describing courts as “reluctant to find general jurisdiction based on a defendant’s
4 internet presence, even when the defendant hosts a highly interactive website”); *P &*
5 *P Imps. LLC v. OJCommerce, LLC*, No. SACV-19-00898, 2019 WL 8012690, at *3
6 (C.D. Cal. Oct. 4, 2019) (“Further, marketing and selling to California residents
7 through Defendants’ website or Amazon.com is insufficient to establish personal
8 jurisdiction.”).

9 For example, in *Handsome Music, LLC v. Etoro USA LLC*, the defendant
10 maintained an interactive website with a California consumer protection notice;
11 required users to verify their address, Social Security number, and deposit funds into
12 an account before using the website; played an allegedly infringing advertisement on
13 four occasions; and had an employee and a consultant who each lived in California.
14 2020 WL 8455111, at *5. The court rejected plaintiff’s argument that defendant’s
15 website showed that defendant “knows that its users reside in California, is
16 encouraging those in California to use its service, and is consciously taking money
17 from those users in California when those users deposit funds into their [] account.”
18 *Id.* Here, Plaintiff’s allegations of a California Consumer Rights Portal pop-up and
19 third-party advertisements for goods and services wholly unrelated to Televisa are
20 contacts far more attenuated than the facts, contacts, and interactive website in
21 *Handsome Music*, in which the court found no general jurisdiction.

22 The extent of Televisa’s connection to California is its alleged maintenance
23 and operation of the Webpage and when coupled with the myriad facts demonstrating

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25 the limited Internet advertising with which Plaintiff alleges Defendant has targeted
26 Californians is insufficient to constitute the substantial or continuous and systematic
27 activity necessary for to establish general jurisdiction.”); *Silicon Econ., Inc. v. Fin.*
28 *Acct. Found.*, No. 10-CV-01939, 2010 WL 4942468, at *4 (N.D. Cal. Nov. 24, 2010)
 (“Without some evidence of the volume of sales or interactions generated through
 the FASB website, there is no basis for the Court to conclude that the FASB website
 generates such ‘regular and systematic’ contacts in California that it ‘approximates
 physical presence’ here.” (quoting *Schwarzenegger*, 374 F.3d at 801)).

1 Televisa’s lack of a connection to California as delineated in the Murillo declaration,
2 the Court is without any basis to exercise general jurisdiction. *See, e.g., Handsome*
3 *Music, LLC*, 2020 WL 8455111, at *6 (finding no personal general jurisdiction over
4 a Delaware limited liability company with its principal place of business in Hoboken,
5 New Jersey, who employs a single California employee and retains one California
6 consultant, maintains an interactive website that is accessible by anyone browsing on
7 the internet, and there is no evidence that defendant had a physical presence in
8 California and was not registered to do business in California); *Schwarzenegger*, 374
9 F.3d at 801 (concluding general jurisdiction in California was not proper over a
10 defendant that indirectly made purchases of items imported by California entities,
11 had a California choice-of-law provision with some of its sales contracts, used a
12 California direct-mail marketing company, hired a California-incorporated sales
13 training company for consulting, and had a “website accessible by anyone capable of
14 using the Internet, including people living in California”).

15 **3. Plaintiff Has Failed to Sufficiently Plead Specific Personal**
16 **Jurisdiction Over Televisa.**

17 Plaintiff also failed to sufficiently plead that Televisa is subject to specific
18 personal jurisdiction in California. To plead specific personal jurisdiction over a non-
19 resident defendant, the Plaintiff must plead that “(1) the non-resident defendant ...
20 purposefully direct[ed] his activities or consummate[d] some transaction with the
21 forum or a resident thereof; or perform[ed] some act by which he purposefully avails
22 himself of the privilege of conducting activities in the forum, thereby invoking the
23 benefits and protections of its laws; (2) the claim must be one which arises out of or
24 relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction
25 must comport with fair play and substantial justice, i.e., it must be reasonable.”
26 *Mavrix Photo, Inc.*, 647 F.3d at 1227–28. McGucken did not sufficiently plead any
27 of the foregoing elements.
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1 When as is the case here, specific jurisdiction is alleged based on internet
2 conduct, “the likelihood that personal jurisdiction can be constitutionally exercised
3 is directly proportionate to the nature and quality of the commercial activity that an
4 entity conducts over the Internet.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414,
5 419 (9th Cir. 1997) (citation omitted). “Not all material placed on the Internet is,
6 solely by virtue of its universal accessibility, expressly aimed at every state in which
7 it is accessed.” *Lindora, LLC v. Limitless Longevity LLC*, No. 15-cv-2847, 2016 WL
8 6804443, at *8 (S.D. Cal. Sept. 29, 2016) (citation omitted). Courts have adopted a
9 sliding scale when assessing whether operating a website can give rise to sufficient
10 minimum contacts with the forum: “At one end of the scale are ‘passive’ websites
11 which merely display information, such as an advertisement. Personal jurisdiction is
12 not appropriate when a website is merely ... passive. At the other end of the scale are
13 ‘interactive’ websites which function for commercial purposes and where users
14 exchange information.” *j2 Cloud Servs., Inc. v. Fax87*, No. 13-05353, 2017 WL
15 1535083, at *6 (C.D. Cal. Apr. 27, 2017) (quoting *Am. Auto. Ass’n, Inc. v. Darba*
16 *Enters. Inc.*, No. C 09-00510, 2009 WL 1066506, at *4 (N.D. Cal. Apr. 21, 2009)).

17 **a. Plaintiff Did Not Sufficiently Plead That Televisa**
18 **Purposefully Directed Any Activities at California.**

19 In analyzing the first prong of the Ninth Circuit's test, courts use the three-part
20 “effects” test set forth by the Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984).
21 To satisfy the *Calder* test, the plaintiff must plead that the defendant: (1) committed
22 an intentional act; (2) that is expressly aimed at the forum state; (3) caused harm that
23 defendant understands is likely to be felt in the forum state. *Dole Food Co. v. Watts*,
24 303 F.3d 1104, 1111 (9th Cir. 2002). This test requires Plaintiff to show that
25 California was a “focal point both of [Televisa’s] actions and of the harm suffered.”
26 *BackGrid USA, Inc. v. Modern Notoriety Inc.*, No. CV 21-03318, 2021 WL 4772474,
27 at *5 (C.D. Cal. Sept. 15, 2021) (finding plaintiff failed to meet its burden under the
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1 *Calder* test) (citations omitted), *appeal dismissed*, No. 21-56104, 2021 WL 6414652
2 (9th Cir. Nov. 23, 2021). Here, Plaintiff did not sufficiently plead any of the three
3 elements of the *Calder* test.

4 **(1) Televisa’s Alleged Ownership and Operation of**
5 **a Passive Website is Not an “Intentional Act.”**

6 First, the only allegation in the Complaint regarding an alleged intentional act
7 by Televisa is Plaintiff’s allegation that Televisa reproduced, distributed, and
8 displayed the Subject Photography on the Webpage. *See* Am. Compl. ¶ 15. These
9 allegations plainly fail the first prong of the *Calder* test as the mere the operation of
10 a “passive website” does not satisfy the purposeful direction test. *See Holland Am.*
11 *Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007) (“We
12 consistently have held that a mere web presence is insufficient to establish personal
13 jurisdiction.”); *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006)
14 (“[W]e reject ... any contention that a passive website constitutes express[] aiming.”),
15 *overruled in part on other grounds by Yahoo! Inc.*, 433 F.3d 1199; *DFSB Kollektive*
16 *Co. v. Bourne*, 897 F.Supp.2d 871, 880 (N.D. Cal. 2012) (“One rule, however, is
17 clear: A defendant has not purposefully availed himself of the privilege of conducting
18 activities in a forum state merely because he operates a website which can be
19 accessed there.”).

20 **(2) Televisa Did Not “Expressly Aim” its Allegedly**
21 **Infringing Conduct at California.**

22 In order to satisfy the express aiming prong of the *Calder* test, Plaintiff must
23 demonstrate that Televisa’s allegedly infringing conduct was expressly aimed at
24 California. But Plaintiff cannot do so.

25 Televisa did not use the Webpage to expressly aim its allegedly tortious
26 conduct at California because the Webpage is expressly aimed to residents of
27 Mexico: it is in Spanish, it offers products for sale only to Mexican consumers, and
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1 the sale price is listed in pesos. Murillo Decl. ¶¶ 13, 14, 15, 16; *see Voodoo SAS v.*
2 *SayGames LLC*, No. 19-cv-07480, 2020 WL 3791657, at *4 (N.D. Cal. July 7, 2020),
3 *appeal dismissed*, No. 20-16486, 2021 WL 3411803 (9th Cir. May 18, 2021) (stating
4 a “foreign company’s use of English on its website does not indicate that it is
5 targeting any particular state, or indeed, the United States at all”). This is further
6 supported by Televisa’s lack of any connection to California. Televisa never had an
7 office in California, does not itself specifically target or advertise to residents of
8 California, does not own property in California, does not have any employees in
9 California, does not sell any products or provide any services in California, does not
10 pay taxes in California, is not registered to do business in California, and does not
11 have an agent for service in California. *See generally* Murillo Decl.

12 Plaintiff’s new allegations fail to demonstrate otherwise. First, a California
13 Consumer Rights Portal pop-up is not evidence of “express aiming” because it
14 merely shows that Televisa knew its Webpage could be accessed by someone in
15 California. *See Massie v. Gen. Motors Co.*, No. 20-cv-01560, 2021 WL 2142728, at
16 *7 (E.D. Cal. May 26, 2021) (finding “defendants’ alleged knowledge that some
17 California residents would visit the site, and statements in GM’s privacy policy
18 related to California law on GM’s national website, do not amount to the directly
19 targeted conduct sufficient to establish jurisdiction”); *Voodoo SAS*, 2020 WL
20 3791657, at *4–6 (finding terms of use on website that contain a release of liability
21 and provide that California residents expressly waive California Civil Code § 1542
22 and a privacy policy that addresses requirements of California Consumer Privacy
23 Act, Cal. Civ. Code § 1798.100, showed that defendant knew its game may be
24 purchased by California residents, but did not indicate that defendant specifically
25 aimed its game at California residents); *Handsome Music, LLC*, 2020 WL 8455111,
26 at *9 (“The Court is not persuaded Defendant’s California-specific privacy notice
27 alone demonstrates Defendant’s express aiming at California.”); *Lindora, LLC*, 2016
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1 WL 6804443, at *8 (finding website’s statement that “it complies with California
2 law” to be “insufficient to demonstrate that defendant did something more to
3 expressly aim its alleged infringing actions at California”) (internal quotation marks
4 omitted).

5 Second, the two third-party advertisements for a Santa Monica bike rental and
6 a SoCal Honda dealership are not evidence of “express aiming” because the third-
7 party advertisements are not for Televisa’s goods and services⁵ and Televisa had no
8 control, direction, or involvement. *See* Murillo Decl. ¶ 12; *Lindora, LLC*, 2016
9 WL 6804443, at *8 (“Plaintiff does not allege that Defendant advertised in California
10 or reached out to California clientele or Plaintiff.”); *Dos Santos v. Telemundo*
11 *Comm’ns Grp., LLC*, No. SACV 12–1373, 2012 WL 9503003, at *7 (C.D. Cal. Dec.
12 19, 2012) (dismissing case for lack of personal jurisdiction because “there was no
13 evidence that the defendants specifically targeted California or profited from it” or
14 “acted with a desire or goal of appealing to California and exploiting the market for
15 commercial gain, or that they directed [the distributor’s] broadcasts and
16 advertising”).

17 Moreover, Plaintiff’s vague allegation that Televisa “profits” from such third-
18 party advertisement is unsupported by any additional factual allegations, nor is there
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20 ⁵ Internet advertisements alone are insufficient to confer specific personal
21 jurisdiction; something more is required. *Cybersell, Inc.*, 130 F.3d at 418; *Dinar*
22 *Corp. Inc. v. Sterling Currency Grp., LLC*, No. 13-cv-02106, 2014 WL 4072023, at
23 *4 (D. Nev. Aug. 15, 2014) (“a commercial purpose accompanying a web post is
24 insufficient to constitute ‘something more.’” Indeed, even a posted advertisement is
25 considered passive information.”). “In determining whether a nonresident defendant
26 has done ‘something more,’” courts consider several factors, including “the
27 interactivity of the defendant’s website, the geographic scope of the defendant’s
28 commercial ambitions, and whether the defendant ‘individually targeted’ a plaintiff
known to be a forum resident.” *Mavrix Photo, Inc.*, 647 F.3d at 1229 (internal
citations omitted). Even in cases where the defendant is advertising *its own* services
and goods directly to California residents, that is not sufficient to confer specific
personal jurisdiction. *See Hatheway v. Sirochman*, No. CV-19-08028, 2019 WL
3973658, at *5 (D. Ariz. Aug. 22, 2019) (“In our modern age, products and services
are frequently advertised on the internet. This does not mean an advertiser is subject
to personal jurisdiction under the ‘purposeful direction’ test in every state in which a
potential customer has access to the internet and can thus view the advertisement.”).

1 any suggestion that these third-party advertisements are an integral component of
2 Televisa’s business model and profitability. *Voodoo SAS*, 2020 WL 3791657, at *4–
3 6. *See also Handsome Music, LLC*, 2020 WL 8455111, at *8–9 (finding plaintiff
4 did “not present any evidence to show Defendant’s website has a specific focus on
5 California or has a substantial California user base. Plaintiff proffers no evidence to
6 show Defendant posts and profits from California-specific advertisements on its
7 website.”); *Lindora, LLC*, 2016 WL 6804443, at *8 (“Nor does Plaintiff allege that
8 Defendant has, knows of, and profits from a large following of California residents
9 who access its website.”); *Sanho Corp. v. Cimo Techs, Inc.*, No. C 11–2473, 2012
10 WL 3075094, at *4–6 (N.D. Cal. July 30, 2012) (finding no express aiming in a
11 copyright infringement case where there were no allegations that the defendant’s
12 website was commercially popular or that the defendant attracted customers from the
13 forum state through its website); *SDS Korea Co. v. SDS USA, Inc.*, 732 F.Supp.2d
14 1062, 1079–80 (S.D. Cal. 2010) (granting motion to dismiss where record contained
15 “no evidence the ad resulted in any interaction with potential customers in the forum,
16 nor any sales to California residents or businesses”); *Productive People, LLC v. Ives*,
17 No. CV09-00651, 2009 WL 10671597, at *5 (C.D. Cal. Apr. 30, 2009) (“Plaintiff
18 presents no evidence that Defendants even received a single inquiry from a California
19 resident.”).

20 The Webpage is expressly aimed at residents of Mexico, and Plaintiff’s new
21 allegations fail to prove otherwise. Thus, Plaintiff cannot demonstrate that Televisa’s
22 allegedly tortious conduct was expressly aimed at California.

23 **(3) The Webpage Did Not Cause Harm in**
24 **California.**

25 Third, Plaintiff did not (and cannot validly) plead that Televisa’s website
26 caused any harm in California. On the contrary, the Webpage offers to sell magazine
27 subscriptions only to Mexican residents, the cost of which is listed in Mexican pesos.

1 Murillo Decl. ¶¶ 13, 14, 15, 16. *See also Voodoo SAS*, 2020 WL 3791657, at *6
2 (finding plaintiff failed to establish that the California market has special significance
3 in this case, such that defendant’s worldwide distribution of its game “through the
4 Apple App Store and Google Play could be viewed as causing harm in California as
5 well as Paris.”).

6 Plus, Plaintiff pleads no allegations that Televisa even knew Plaintiff existed,
7 much less that it knew where Plaintiff resided. *See Star Fabrics, Inc.*, 2014 WL
8 12591288, at *4 (finding no specific jurisdiction over defendant in copyright
9 infringement action where plaintiff’s failure to establish defendant’s knowledge of
10 plaintiff’s existence, let alone its place of incorporation, dictates that plaintiff cannot
11 satisfy this element); *see also EZScreenPrint LLC v. SmallDog Prints LLC*, No. CV-
12 17-03605, 2018 WL 3729745, at *2 (D. Ariz. Aug. 6, 2018) (finding no personal
13 jurisdiction over defendants where plaintiff failed to allege that defendants knew
14 plaintiff was a resident of Arizona because “defendants could not know that the harm
15 they allegedly caused was likely to be suffered in Arizona if they did not know
16 Plaintiff was a resident of Arizona”).

17 For these reasons, Plaintiff fails to satisfy the *Calder* test and did not
18 sufficiently plead the first prong of the Ninth Circuit’s three-part specific jurisdiction
19 test (purposeful direction of activities at the forum state). *Star Fabrics, Inc.*, 2014
20 WL 12591288, at *4 (plaintiff failed to plead facts establishing any of the three
21 elements under purposeful direction in copyright infringement case); *Josh Agle, Inc.*,
22 2008 WL 11340002, at *6 (display of allegedly infringing content on passive
23 websites not sufficient to confer jurisdiction over defendants).

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b. Plaintiff Cannot Show That Its Claim Arises Out of Televisa’s California-Related Activities Because Televisa Has No Such Activities.

Likewise, Plaintiff fails to satisfy the second prong of the specific jurisdiction test, which requires that Plaintiff’s claims “arise[] out of or relate[] to the defendant’s forum-related activities.” *Schwarzenegger*, 374 F.3d at 802. Here, Plaintiff fails to satisfy this prong because as the sworn declaration submitted herewith demonstrates, Televisa does not have “California-related” activities, rather Televisa’s website is focused entirely on a consumer market in another country, Mexico. *See Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967) (“We do not think that the mere allegations of the complaint, when contradicted by affidavits, are enough to confer personal jurisdiction of a nonresident defendant.”); *Citcon USA, LLC v. MaplePay Inc.*, No. 19-cv-02112, 2021 WL 1238231, at *5, *8 (N.D. Cal. Apr. 2, 2021), *recons. denied sub nom. Citcon USA, LLC v. Miao*, 2021 WL 4499267 (N.D. Cal. June 1, 2021) (stating the court cannot assume the truth of plaintiff’s conclusory allegations which were successfully contradicted by defendants via affidavit); *Star Fabrics, Inc.*, 2014 WL 12591288, at *4-5 (finding plaintiff failed to satisfy this factor in copyright infringement action where plaintiff provided only speculative and conclusory statements to establish defendant’s contacts with California).

c. The Exercise of this Court’s Jurisdiction Over Televisa Would Not be Reasonable.

Plaintiff likewise cannot establish the third prong of the specific personal jurisdiction test, as the exercise of personal jurisdiction over Televisa, a Mexican company that does no business in the United States, would be unreasonable. *See Schwarzenegger*, 374 F.3d at 802. In evaluating reasonableness, courts consider: (1) the extent of the defendant’s purposeful injection into the forum; (2) the defendant’s burdens from litigating in the forum; (3) the extent of conflict with the sovereignty

1 of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5)
2 the most efficient judicial resolution of the controversy; (6) the importance of the
3 forum to the plaintiff’s interest in convenient and effective relief; and (7) the
4 existence of an alternative forum. *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 474–
5 75 (9th Cir. 1995). Here, all of the factors should be weighed in Televisa’s favor or,
6 at a minimum, are neutral and do not favor McGucken.

7 First, Televisa has not purposefully injected itself into California. *See*
8 *generally* Murillo Decl.; *supra* § III.A.2.; *see, e.g., Thiring v. Borden*, No. 06-759,
9 2007 WL 1875656, at *8 (D. Or. June 27, 2007) (exercise of personal jurisdiction
10 over foreign defendant in copyright infringement action would be unreasonable
11 “particularly [given] the lack of contacts with this forum”). The second factor also
12 favors Televisa because litigating this action in the United States would pose a great
13 burden to Televisa, as its witnesses are Mexican citizens who either do not speak
14 English or do not speak English as a first language. *See In re Phenylpropanolamine*
15 *(PPA) Prods. Liab. Litig.*, 344 F.Supp.2d 686, 696 (W.D. Wash. 2003) (“As a foreign
16 corporation, NAG faces unique burdens litigating in a foreign legal system”); *Walker*
17 *& Zanger (West Coast) Ltd. v. Stone Design S.A.*, 4 F.Supp.2d 931, 940 (C.D. Cal.
18 1997) (“Because Stone Design is a foreign national, the reasonableness standard is
19 somewhat more stringent”), *aff’d*, 142 F.3d 447 (9th Cir. 1998).

20 The third factor likewise favors Televisa because, as a Mexican company
21 subject to Mexican law, there is a risk that a U.S. injunction could conflict with the
22 laws governing copyright infringement in Televisa’s home country of Mexico. And
23 the fourth and fifth factors favor Televisa because the forum state (California) has no
24 interest in this dispute, given that no infringing acts occurred here and there is no
25 evidence of harm to California residents. Moreover, the most efficient resolution is
26 to dismiss the Complaint. Finally, the sixth and seventh factors favor Televisa
27 because any argument that California is the most convenient forum for McGucken is
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1 outweighed by the fact that Televisa has no contacts with California and does no
2 business here. Moreover, an alternative forum exists for this dispute – in Mexico –
3 pursuant to the TRIPS Agreement. *See* § 38:1. History and General Intellectual
4 Property Law Provisions in Mexico, 8 Pat. L. Fundamentals § 38:1 (2d ed.) (“Mexico
5 is a signatory of . . . the World Trade Organization (WTO) including the TRIPS
6 agreement.”); § 19:121; International treaties and conventions, 5 Eckstrom's
7 Licensing: Joint Ventures § 19:121 (“Mexico has been a World Trade Organization
8 (WTO) Member and Signatory to the Trade-Related Aspects of Intellectual Property
9 Rights (TRIPS) Agreement since January 1995.”).

10 Accordingly, Plaintiff cannot satisfy the third prong of the specific personal
11 jurisdiction test, as requiring Televisa to litigate in this forum would be unreasonable.
12 *See, e.g., Thiring*, 2007 WL 1875656, at *8 (finding burden on German corporation
13 in copyright infringement action to be great given, among other things, status as
14 foreign corporation and lack of presence in the United States, and thus holding that
15 exercise of personal jurisdiction over defendant would be unreasonable).

16 In sum, applying the foregoing principles, Plaintiff has failed to plead that
17 Televisa is subject to specific personal jurisdiction in California. And because
18 Televisa is not subject to general or personal jurisdiction in this state, Televisa
19 respectfully requests that it be dismissed from this action for lack of personal
20 jurisdiction.

21 **B. The Amended Complaint Should Be Dismissed for Lack of Subject**
22 **Matter Jurisdiction under Rule 12(b)(1) or for Failure to State a**
23 **Claim under Rule 12(b)(6).**

24 **1. Legal Standard Governing Rule 12(b)(1) and Rule 12(b)(6)**

25 Fed. R. Civ. P. 12(b)(1) provides for dismissal of a claim when the court lacks
26 subject matter jurisdiction. The plaintiff bears the burden of establishing subject
27 matter jurisdiction, and because “[f]ederal courts are courts of limited jurisdiction,”
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1 it is “presumed that a cause lies outside this limited jurisdiction.” *Kokkonen v.*
2 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). A
3 challenge to the court’s subject matter jurisdiction under Rule 12(b)(1) may be a
4 facial challenge or a factual challenge. *Safe Air for Everyone v. Meyer*, 373 F.3d
5 1035, 1039 (9th Cir. 2004) (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)).
6 In a facial challenge, the court determines whether the allegations in the complaint,
7 assumed to be true, are sufficient to invoke jurisdiction, whereas in a factual
8 challenge, the court “may review evidence beyond the complaint” and “need not
9 presume the truthfulness of the plaintiff’s allegations.” *Id.*

10 Fed. R. Civ. P. 12(b)(6) provides for dismissal of a claim where the complaint
11 does not “contain sufficient factual matter, accepted as true, to ‘state a claim to relief
12 that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
13 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To satisfy this standard, a
14 plaintiff must allege “factual content that allows the court to draw the reasonable
15 inference that the defendant is liable for the misconduct alleged.” *Id.* (citing
16 *Twombly*, 550 U.S. at 556). A complaint does not state a plausible claim to relief by
17 merely offering a “formulaic recitation of the elements of a cause of action,” or by
18 making “naked assertions devoid of further factual enhancement.” *Iqbal*, 556 U.S.
19 at 678 (internal quotations and citation omitted). Nor do “[t]hreadbare recitals of the
20 elements of a cause of action, supported by mere conclusory statements . . . suffice.”
21 *Id.* (citing *Twombly*, 550 U.S. at 555).

22 **2. Plaintiff Did Not Sufficiently Plead Subject Matter**
23 **Jurisdiction With Regard to National Geographic, Nor State**
24 **a Claim for Copyright Infringement With Regard to It.**

25 Plaintiff’s Amended Complaint still fails to state a claim for relief, or a basis
26 for subject matter jurisdiction, with regard to National Geographic. Specifically,
27 Plaintiff pleads only that National Geographic entered into “agreement[s]” with the
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1 Mexican company Televisa and the Russian company Yasno. Am. Compl. ¶ 17(d).
2 However, a licensor’s mere execution of a license agreement with a foreign company
3 does not subject the licensor to subject matter jurisdiction where the licensees, not
4 the licensor, are alleged to have committed the infringing acts. *See, e.g., Gibson*
5 *Guitar Corp. v. Viacom Int’l Inc.*, No. CV 12-10870, 2013 WL 2155309, at *6 (C.D.
6 Cal. May 17, 2013), *aff’d sub nom. Gibson Brands, Inc. v. Viacom Int’l, Inc.*, 640 F.
7 App’x 677 (9th Cir. 2016) (“Plaintiff has not alleged any facts that, taken as true,
8 would constitute control sufficient to make Viacom vicariously liable; the control
9 required by a license agreement is not sufficient. Because the license agreement and
10 licensing relationship are the sole basis for Plaintiff’s allegations against Viacom, the
11 court finds that Plaintiff has failed to state a claim for vicarious infringement.”).

12 That is precisely the case here. As attested in the attached declaration of
13 Kenneth Gordon, the allegedly infringing websites are operated by Televisa and
14 Yasno, not National Geographic, and those companies, rather than National
15 Geographic, are solely responsible for the selection and use of the content displayed
16 on the websites. Indeed, the only allegation in the First Amended Complaint that is
17 specific to National Geographic is that it licensed its “ ‘NatGeo’ name and brand” to
18 Televisa and Yasno. Am. Compl. ¶ 17(d). Those allegations plainly are not sufficient
19 for this Court to exercise subject matter jurisdiction over National Geographic, and
20 do not state a claim for copyright infringement. *See, e.g., Oban US, LLC v. Nautilus,*
21 *Inc.*, No. 13cv1076, 2014 WL 2854539, at *3 (D. Conn. June 23, 2014) (“Because
22 Plaintiff has not alleged any facts beyond Nautilus’ status as a licensor of its mark to
23 Sports Beat to support a theory of contributory infringement, it has not stated a viable
24 claim.”); *Stross v. Twitter, Inc.*, No. 21-cv-8360, 2022 WL 1843142, at *4 (C.D. Cal.
25 Feb. 28, 2022) (“Plaintiff’s claim for vicarious infringement is premised entirely on
26 conclusory allegations and fails to state a claim.”); *Kilina Am., Inc. v. Bonded*
27 *Apparel, Inc.*, Nos. CV 19-3027, CV 19-4018, 2019 WL 8065854, at *2 (C.D. Cal.

1 Nov. 19, 2019) (granting motion to dismiss vicarious liability claim because
2 plaintiff's allegations that defendants had the "right and ability to supervise the
3 infringing conduct" lacks the requisite detail to sustain a claim that defendants had
4 supervisory authority over the infringer's conduct).

5 Accordingly, the allegations in the Amended Complaint plainly are not
6 sufficient for this Court to exercise subject matter jurisdiction over National
7 Geographic, and do not state a claim for copyright infringement.

8 **C. Plaintiff Cannot Cure the Jurisdictional Defects and the Complaint**
9 **Should be Dismissed With Prejudice.**

10 Dismissal without leave to amend is appropriate here because the Complaint's
11 deficiencies cannot be cured by amendment. Courts also routinely deny leave to
12 amend when dismissing complaints for lack of personal jurisdiction, and this case
13 should be no different. *See Elofson v. McCollum*, No. 15-cv-05761, 2017 WL
14 2877099, at *6 (N.D. Cal. July 6, 2017) (dismissing case without leave to amend
15 where plaintiff "ha[d] not satisfied his burden to present evidence sufficient to ...
16 make a prima facie showing of personal jurisdiction."), *aff'd*, 774 F. App'x 409 (9th
17 Cir. 2019); *Lefkowitz v. Scyt USA*, No. 15-cv-05005, 2016 WL 537952, at *5 (N.D.
18 Cal. Feb. 11, 2016) (dismissing action for lack of personal jurisdiction without leave
19 to amend where plaintiff failed to show the court could exercise general or specific
20 jurisdiction over defendants based on their conduct in California or based on
21 successor liability); *Pelican Commc'ns, Inc. v. Schneider*, No. C-14-4371, 2015 WL
22 527472, at *3 (N.D. Cal. Feb. 6, 2015) (granting Rule 12(b)(2) motion without leave
23 to amend where plaintiff failed to make a prima facie showing of personal jurisdiction
24 and gave no indication it could do so).

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IV. CONCLUSION

For the all the reasons discussed herein, Defendant respectfully request that this Motion be granted.

Dated: July 12, 2022

ARENTFOX SCHIFF LLP

By: /s/ Allan E. Anderson
Allan E. Anderson
Ross Q. Panko
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