No. 18-56349

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JEFFREY R. WERNER
AND
INCREDIBLE FEATURES, INC.,
Plaintiffs-Appellants,

v.

LANDON DOWLATSINGH,
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
Hon. Christina A. Snyder
No. 2:18-cv-03560

APPELLANT'S OPENING BRIEF

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, Plaintiffs-Appellants Jeffrey R. Werner and Incredible Features, Inc., hereby files their corporate disclosure statement as follows: Incredible Features, Inc. is a privately held corporation. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Dated: April 24, 2019

Respectfully submitted,

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STATEMENT OF JURISDICTION

This action arises under 28 U.S.C. § 1331, the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.* ("Copyright Act"), and the Digital Millennium Copyright Act ("DMCA"). Excerpt of Record ("ER") 20-74.

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 because this appeal is taken from an order of the district court granting a motion to dismiss for lack of personal jurisdiction. The dismissal was entered on September 17, 2018. ER 242. Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(A), a Notice of Appeal was timely filed on October 12, 2018. ER 1-4.

ISSUES PRESENTED

1. Whether personal service of the summons and complaint on Dowlatsingh while he was physically present in Florida is sufficient to satisfy due process and confer personal jurisdiction in the United States pursuant to Federal Rules of Civil Procedure 4(k)(2) and the holding of *Burnham v. Superior Ct*., 495 U.S. 604 (1990).

2. Whether Dowlatsingh purposefully directed his contacts through his repeated trips to California and the United States for the stated purposes of promoting his YouTube Channels and cultivating a fan base, and his entering into sponsorship relationships with United States based businesses, sufficient to satisfy the "effects test" outlined in *Calder v. Jones*, 465 U.S. 783 (1984).

3. Whether the district court abused its discretion in declining to transfer the case to the Middle District of Florida pursuant to 28 U.S.C. § 1404(b) where Dowlatsingh had been physically present in Florida when personally served with a copy of the summons and complaint.

PERTINENT RULES AND STATUTES

Pertinent rules and statutes are reproduced in the addendum attached hereto.

STATEMENT OF THE CASE

I. INTRODUCTION

A. Jeffrey R. Werner is a Professional Photographer Specializing in Unique and Incredible Subject Matter.

Plaintiff-appellant Jeffrey R. Werner is a professional photographer with over 35 years experience. ER 36. Werner is known for his specialty work with capturing dangerous stunts, exotic animals, sideshow eccentricities, and people who have overcome incredible obstacles. ER 36. Werner's work has been featured in publications such as *Life, Time, Newsweek, People, Marie Claire, FHM, Smithsonian, Playboy, Maxim, In Touch, Daily Mail,* and *Penthouse,* and on television shows such as *That's Incredible!, The World's Greatest Stunts, Stuntmasters, Guinness World Record Spectaculars, Ripley's Believe It Or Not,* and *I Dare You*. ER 36. Werner is the president of the editorial syndication agency, Incredible Feature's Inc., which is also a plaintiff-appellant to this action. ER 26.

Werner and Incredible Feature Inc.[1] are the rights holders to 17 photographs ("Images") of various subject matter, including: Stacy Herald, the World's Smallest Mom; Barbie Thomas an armless competitive body builder; Tonya

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[1] Werner and Incredible Features will be collectively referred to in this brief as "Werner."

[2] According to his social media posts, Dowlatsingh's "fan meet ups" in California, Washington D.C. and Florida were held contemporaneously with his attendance at the VidCon and PlayList Live conventions, respectively. ER 123, 132-133, 140-

Angus, a former model diagnosed with gigantism; and Jackie Samuel a professional snuggler. ER 37, 47-61.

B. Landon Dowlatsingh is a YouTuber With Billions of Video Views Who Has Extensive Contacts With the United States.

Defendant-Appellee Landon Dowlatsingh is the owner, operator, and content producer for a series of highly successful YouTube channels including the channels *LandonProduction* and *MostAmazingTop10* ("YouTube Channels"), which have garnered millions of subscribers and billions of video views. ER 38. Dowlatsingh actively targets US based viewers and has traveled extensively to places in the Untied States such as California, Nevada, Washington D.C. and Florida in order to meet US based fans and to promote his YouTube Channels. ER 30, 64-66, 131-134, 140-181.

From at least 2014 to 2017, Dowlatsingh attended the yearly VidCon convention in Anaheim, California to promote his YouTube Channels by hosting fan meet ups, passing out business cards and t-shirts to attendees, networking with other YouTube content creators, and even speaking at the event. ER 114-115, 131-133, 140-173. In addition, Dowlatsingh traveled to Nevada in 2015 specifically for a fan meet and greet in Las Vegas,[2] and also traveled to Washington D.C. in 2016

[2] According to his social media posts, Dowlatsingh's "fan meet ups" in California, Washington D.C. and Florida were held contemporaneously with his attendance at

and Orlando, Florida in 2017 to attend the PlayList Live convention and to promote his YouTube Channels. ER 123, 132-134, 140-181.

In addition to travel to the United States, Dowlatsingh has also entered into sponsorship deals for the YouTube Channels with US based companies. ER 115, 134-135, 122, 183-195.

C. Dowlatsingh Engaged in Extensive Copyright Infringement and Was Served While Promoting His YouTube Channels in Florida.

In December of 2017, Werner discovered that the Images were being used without authorization in five monetized videos on Dowlatsingh's YouTube Channels ("Infringing Videos"). The Infringing Videos had over 735,000 combined views. ER 38-39, 68-87. At least one of the Images used in an Infringing Video on Dowlatsingh's *MostAmazingTop10* YouTube Channel contained the clearly visible watermark "© Incredible Features/ Barcroft[3] M" affixed to the bottom left hand corner of the Image. ER 71, 113, 130-131, 138. Dowlatsingh later admitted that the Images were downloaded from Google before being incorporated into the Infringing Videos. ER 113, 127-128. In addition, Werner also noticed that

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the VidCon and PlayList Live conventions, respectively. ER 123, 132-133, 140-181. In contrast, the record does not establish that Dowlatsingh attended any convention in Nevada when he traveled to Las Vegas to meet with his fans.

[3] Barcroft Media is a UK based sublicensing agent used by Werner for some of his European licensing.

each Infringing Video was stamped with an unauthorized watermark in the bottom right hand corner. ER 39-42, 69-87.

On April 27, 2018, Werner filed a complaint in the Central District of California alleging copyright infringement and violation of the DMCA. ER 33-87, 240. Shortly thereafter, Dowlatsingh travelled to Florida to attend PlayList Live, a self-described "three-day event where online creators and their biggest supporters come together." ER 134. On April 29, 2018, while preparing to speak at the convention, Dowlatsingh was personally served with a copy of the summons and complaint in Orlando. ER 88-90.

On July 19, 2018, Dowlatsingh moved to dismiss Werner's complaint for lack of personal jurisdiction pursuant to Federal Rules of Civil Procedure 12(b)(2). ER 91-125, 241. The district court held a telephonic hearing on September 17, 2019. ER 20-32, 242. On September 24, 2018, the district court adopted its tentative ruling granting Dowlatsingh's motion, and entered a minute order dated September 17, 2018, dismissing the case. ER 6-18, 242. On October 12, 2018, Werner timely filed a notice of appeal. ER 1-4, 242.

STANDARD OF REVIEW

The appellate court reviews de novo the district court's dismissal for lack of personal jurisdiction. *Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 671 (9th Cir. 2012). The factual findings underlying the district court's jurisdiction determination are reviewed for clear error. *Panavision, Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). To avoid dismissal, the plaintiff bears the burden of demonstrating that its allegations establish a prima facie showing of personal jurisdiction. *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Uncontroverted allegations in the complaint must be taken as true, and factual disputes are construed in the plaintiff's favor. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).

Additionally, a denial of a motion to transfer venue is reviewed for abuse of discretion. *Decker Coal Co. v. Commonwealth Edison Co*., 805 F.2d 834, 842 (9th Cir. 1986).

SUMMARY OF THE ARGUMENT

When Dowlatsingh was personally served with process while physically present in Florida, due process was conclusively satisfied and any district court in the United States, including the Central District of California, could properly exercise personal jurisdiction pursuant to rule 4(k)(2) of the Federal Rules of Civil Procedure. The district court improperly analyzed whether due process had been satisfied by focusing exclusively on whether the Central District could assert specific jurisdiction over Dowlatsingh based on his "minimum contacts," while completely ignoring Ninth Circuit and Supreme Court precedent which holds that service of process combined with physical presence conclusively satisfies due process without regard to a defendant's other minimum contacts.

Additionally, the district court failed to properly analyze whether Dowlatsingh "purposefully directed" his contacts towards California and the United States under the "effect test" outlined in *Calder v. Jones*, 465 U.S. 783 (1984). Not only do Dowlatsingh's contacts with California satisfy the three prongs of the "effects test," Dowlatsingh's aggregate contacts with the United States also satisfy the prongs of the "effects test" under rule 4(k)(2).

Finally, the district court abused its discretion in failing to transfer the case to Middle District of Florida in the absence of jurisdiction in the Central District of California. The district court concluded that fact that Dowlatsingh was served in

Florida was not pertinent to the analysis because the relevant forum at the time Dowlatsingh was served was California and not Florida. However, that reasoning is flawed because the transfer statute expressly requires the transferring court to consider the forum where the case "might have been brought" and not where the case was actually filed. Therefore, the district court abused its discretion in failing to transfer the case rather than dismiss it outright.

While the court does not need to reach the issues of purposeful direction or transfer because Dowlatsingh's physical presence in Florida when served with process conclusively satisfies due process, those arguments serve as an alternative basis on which personal jurisdiction may be established.

The judgment of the district court should therefore be reversed, and the case remanded for further proceedings.

ARGUMENT

I. BY VIRTUE OF BEING PERSONALLY SERVED IN FLORIDA, DOWLATSINGH IS SUBJECT TO PERSONAL JURISDICTION IN ANY UNITED STATES DISTRICT COURT UNDER RULE 4(K)(2)

A. For Claims Arising Under Federal Law, Personal Jurisdiction is Established Pursuant to Rule 4(k)(2) Through Service of Process.

In civil actions arising under federal law, Federal Rule of Civil Procedure 4(k)(2) – often referred to as the federal long arm statute – provides a mechanism for a federal court to obtain personal jurisdiction through service of process. Where a summons has been served, Rule 4(k)(2) allows any federal district court to exercise personal jurisdiction provided the defendant is not subject to the courts of general jurisdiction in any particular state and the exercise of jurisdiction is consistent with due process. *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain C*o., 284 F.3d 1114, 1126 (9th Cir. 2002); Fed. R. Civ. Proc. 4(k)(2) ("If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state").

The due process analysis under 4(k)(2) is nearly identical to the traditional due process analysis with one significant difference: rather than analyzing a defendant's minimum contacts with respect to a particular state forum, under the

4(k)(2) due process analysis the defendant's aggregate minimum contacts are analyzed against the United States as a whole. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1159 (9th Cir. 2006) ("The due process analysis is identical to the one discussed above when the forum was California, except here the relevant forum is the entire United States").

Rule 4(k)(2) is properly applicable to this case as Werner's claim arises under federal copyright law, Dowlatsingh is not subject to the personal jurisdiction of any state court of general jurisdiction[4], and, as explained more fully below, the court's exercise of personal jurisdiction would be consistent with "firmly established" due process principles.

B. The District Court Erred in Failing to Consider the Applicability of *Burnham* to the 4(k)(2) Due Process Analysis.

A proper 4(k)(2) analysis involves a determination of whether due process is satisfied. *See* Fed. R. Civ. Proc. 4(k)(2) (personal jurisdiction proper "[i]f the exercise of jurisdiction is consistent with the Constitution and laws of the United States."). While an analysis of minimum contacts is one way in which due process

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[4] The district court concluded that Dowlatsingh's minimum contacts with California were insufficient to confer personal jurisdiction, a finding that Werner disputes. Dowlatsingh's minimum contacts with both California and the United States as a whole are separately analyzed in section II, *infra*.

may be satisfied, it is not the exclusive test for due process. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 311 (1945).

Prior to *Int'l Shoe*, jurisdiction over persons was necessarily limited by the geographic bounds of the forum. *See Pennoyer v. Neff*, 95 U.S. 714, (1877). In addition to recognizing physical presence as a valid basis for exercising jurisdiction, the *Int'l Shoe* court presaged the recognition of additional categories of personal jurisdiction based on the litigant's "minimum contacts" with the forum. One category, today called "specific jurisdiction," *see Goodyear Dunlop Tires Operations, S. A.* v. *Brown*, 564 U.S. 915, 923-924 (2011), encompasses cases in which the suit "arise[s] out of or relate[s] to the defendant's contacts with the forum," *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414, n. 8 (1984). *Int'l Shoe* distinguished exercises of specific, case-based jurisdiction from a category today known as "general jurisdiction," exercisable when a defendants contacts are so "continuous and systematic" as to justify suit "on causes of action arising from dealings entirely distinct from those activities." *Int'l Shoe,* 326 U.S., at 318. While the "specific" and "general" jurisdiction categories embraced by *Int'l Shoe* and its progeny rely on an analysis of minimum contacts to justify due process, nothing in the line of cases supporting the minimum contacts doctrine supplant the established notion that physical presence is itself sufficient to satisfy due process. *See Burnham v. Superior Court*, 495 U.S. 604, 619 (1990).

The line of cases flowing from *Int'l Shoe* primarily deal with a state court's jurisdiction over a non-resident defendant, generally by the use of a state long-arm statute. Nonetheless,

> " 'minimum contacts' with a particular district or state for purposes of personal jurisdiction is *not* a limitation imposed on the federal courts in a federal question case by due process concerns. The Constitution does not require the federal districts to follow state boundaries. . . . It is clear that Congress can provide for nationwide service of process in federal court for federal question cases without falling short of the requirements of due process."

Sec. Inv'r Prot. Corp. v. Vigman, 764 F.2d 1309, 1315 (9th Cir. 1985) quoting *Johnson v. Creative Arts & Wool Masters, Inc.*, 743 F.2d 947, 950 (1st Cir. 1984).

In the portion of its Order addressing 4(k)(2) jurisdiction, the district court correctly recognized that the only element in dispute was whether "this Court's exercise of personal jurisdiction over defendant[] would comport with Fifth Amendment due process." ER 16-17. However, when analyzing due process, the district court focused exclusively on whether Dowlatsingh's minimum contacts were sufficient to confer specific jurisdiction[5] and failed to analyze whether due process was satisfied under the Supreme Court's holding in *Burnham* when Dowlatsingh was served in Florida, despite the fact that Werner raised this argument in both his Opposition brief and at the hearing. *See* ER 24-26, 123.

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[5] Werner had previously conceded that "general" jurisdiction could not be established. ER 117.

Whether or not the district court properly concluded that Dowlatsingh lacked sufficient minimum contacts to satisfy due process under a specific jurisdiction analysis, the district court erred in failing to consider whether due process was satisfied under 4(k)(2) by Dowlatsingh's physical presence in the United States when he was served. As personal service on Dowlatsingh while physically present in Florida conclusively satisfied due process, the district court erred in concluding that the exercise of 4(k)(2) jurisdiction was improper. *See Bourassa v. Desrochers*, 938 F.2d 1056, 1058 (9th Cir. 1991)(invoking *Burnham* under nationwide service of process statute and reversing dismissal for lack of personal jurisdiction).

C. Under the Binding Precedents of *Burnham* and *Bourassa* the District Court Could Properly Exercise Personal Jurisdiction Over Dowlatsingh Consistent With Constitutional Due Process.

One of the most "firmly established principles of personal jurisdiction" is that personal jurisdiction exists over defendants physically present in the forum. *Burnham,* 495 U.S. at 610. In-forum personal service serves as a proper basis for exercising personal jurisdiction consistent with constitutional due process, regardless of whether the defendant's presence in the forum is related to the claims asserted the suit. *Id*. at 615-16. Therefore, when a rule or statute authorizes

nationwide service of process[6], due process is satisfied when a defendant is personally served anywhere in the United States. *See Bourassa*, 938 F.2d at 1056 (asserting personal jurisdiction over Canadian resident served with process while vacationing in Florida pursuant to statute authorizing nationwide service of process); *Burnham* 495 U.S. at 619 ("The short of the matter is that jurisdiction based on physical presence alone constitutes due process because it is one of the continuing traditions of our legal system that define the due process standard of 'traditional notions of fair play and substantial justice.'"); *see also California Practice Guide Federal Civil Procedure Before Trial* § 5:25 (Rutter Group 2019) ("If a federal statute authorizes service nationwide[,] service on defendant while physically present *anywhere* in the United States provides a basis for personal jurisdiction in any district in the country." (citation omitted, emphasis in original)).

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[6] A federal statute or rule that provides for nationwide service of process entitles a court to assert personal jurisdiction over a defendant in any judicial district of the United States, subject only to constitutional limits. *See* NOTE: NATIONWIDE PERSONAL JURISDICTION IN ALL FEDERAL QUESTION CASES: A NEW RULE 4., 64 N.Y.U.L. Rev. 1117, 1118, fn. 5 (1989). Where a federal statute such as 4(k)(2) confers nationwide service of process, "the question becomes whether the party has sufficient contacts with the United States, not any particular state." *Sec. Inv'r Prot. Corp. v. Vigman*, 764 F.2d 1309, 1315 (9th Cir. 1985) (citation and quotation omitted.).

In *Bourassa*, the plaintiff brought a federal securities action in the Central District of California against a Canadian citizen residing in Canada. *Bourassa*, 938 F.2d at 1056. Similar to 4(k)(2)[7], the relevant securities statute at issue authorized nationwide service of process. *Id.* at 1057. The defendant was subsequently served while vacationing in Florida. *Ibid.* The district court concluded that the defendant lacked sufficient minimum contacts with California and dismissed for lack of personal jurisdiction. *Id.* at 1056. On appeal the court reversed, invoking *Burnham* to conclude that due process had been properly satisfied because the defendant's voluntary presence in Florida alone was sufficient to establish personal jurisdiction pursuant to the relevant statute because it authorized nationwide service of process. *Id.* at 1058.

On April 29, 2018, Dowlatsingh was personally served with a copy of the summons and complaint while voluntarily attending the PlayList Live convention in Orlando, Florida. ER 88-90. Due process is conclusively satisfied because by visiting Orlando, Dowlatsingh availed himself of significant benefits provided by Florida and the United States. *See Burnham* 495 U.S. at 637-38 (citations and quotations omitted). His health and safety were guaranteed by police, fire, and emergency medical services; he was free to travel on roads and waterways

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[7] *Bourassa* was decided in 1991, two years before the adoption of 4(k)(2) in 1993.

maintained by the state and federal government; he likely enjoyed the fruits of the economy as well. *Ibid.* Moreover, the Privileges and Immunities Clause of Article IV prevented the government from discriminating against Dowlatsingh by denying him the protections of its law or the right of access to its courts. *Ibid.* Subject only to the doctrine of forum non-conveniens, Dowlatsingh was free to use courts in all circumstances in which those courts would be available to citizens. *Ibid.* Without imposing jurisdiction over Dowlatsingh by his physical presence, an asymmetry would arise: Dowlatsingh would have the full benefit of the power of the Florida state and federal courts as a plaintiff while retaining immunity from their authority as a defendant. *Ibid.*

Moreover, the burden on Dowlatsingh litigating in the United States or, more specifically the Central District of California, would be slight. Not only has Dowlatsingh has made yearly visits to California since at least 2014, he has also travelled to Nevada, Florida, Washington D.C., and various other locations in the United States[8] in roughly the same timeframe. ER 114-115, 131-133, 140-181. Thus, to the extent that travel to the forum would be required, it is clear that it would not be prohibitively inconvenient. See *Burnham* 495 U.S. at 638-39.

[8] Since Werner filed this lawsuit Dowlatsingh has also traveled to Ohio, Tennessee, and Hawaii.

Additionally, modern technology and a variety of procedural devices ameliorate any additional burdens that may arise. *Ibid.*

Therefore, as the Central District of California properly had personal jurisdiction over Dowlatsingh pursuant to 4(k)(2) and the holdings in *Burnham* and *Bourassa,* the district court should be reversed and this matter remanded.

II. DOWLATSINGH PURPOSEFULLY DIRECTED HIS CONTACTS TOWARDS CALIFORNIA AND THE UNITED STATES

To exercise specific jurisdiction over a non-resident defendant, due process requires that the defendant "have certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe,* 326 U.S. at 316. Courts employ a three-part test to determine if a defendant has sufficient minimum contacts to be subject to specific personal jurisdiction:

> (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004) (quoting *Lake v. Lake,* 817 F.2d 1416, 1421 (9th Cir. 1987)).

In its Order, the district court focused exclusively on the "purposeful direction" prong of the minimum contacts analysis when analyzing Dowlatsingh's contacts under the California long arm statute and 4(k)(2). ER 12-17. As explained more fully below, contrary to the district court's holding, Dowlatsingh's contacts were purposefully directed at California and the United States as a whole such that the purposeful direction prong of the minimum contacts is sufficiently satisfied.

A. Dowlatsingh's Contacts With California Satisfy the Three Prongs of the *Calder* Effects Test.

For cases involving copyright infringement, the proper analytical framework is "purposeful direction" rather than "purposeful availment." *Schwarzenegger,* 374 F.3d at 802; *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010). Purposeful direction is evaluated using the three-part "Calder-effects" test, taken from the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984). *See Schwarzenegger*, 374 F.3d at 803. Under this test, "the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc) (internal quotation marks omitted).

Here, Dowlatsingh's contacts satisfy the three prongs of the *Calder* effects test because Dowlatsingh engaged in willful copyright infringement, expressly aimed his contacts at California, and caused a foreseeable harm.

1. *Dowlatsingh Engaged in Willful Copyright Infringement*

Where there is no applicable federal statute governing personal jurisdiction, the district court applies the law of the state in which the district court sits. *See* Fed. R. Civ. P. 4(k)(1)(A); *Panavision Int'l, L.P.,* 141 F.3d at 1320. Because California's long-arm jurisdictional statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same. *See Panavision*, 141 F.3d at 1320 (citing Cal. Civ. Proc. Code § 410.10).

During the district court proceedings, Werner proffered evidence that Dowlatsingh admitted to using the Images in the Infringing Videos (ER 13, 127-130), that at least one of the Images used contained a visible watermark identifying Incredible Features as the copyright holder (ER 130, 138), and that Dowlatsingh admitted that he reviews every video before it is posted to his YouTube Channel to verify the propriety of the pictures and other content appearing in the videos before they are disseminated to the public (ER 129-130). The district court concluded that Werner failed to show that Dowlatsingh, rather than a student editor under his employ, was actually aware[9] of the infringing activity, but also concluded that

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[9] Although not raised by Werner or the district court, Dowlatsingh could be held vicariously liable for any willful infringement committed by a student editor working under him since the evidence proffered suggests that Dowlatsingh has the

Werner stated a plausible claim that Dowlatsingh was a "willful infringer" of Werner's Copyright under a theory of "willful blindness." ER 13.

Werner therefore satisfied the first prong of the *Calder* effects test by plausibly alleging willful infringement.

2. *Dowlatsingh Expressly Aimed His Contacts at California*

Despite concluding that Dowlatsingh had been plausibly alleged to be a willful infringer, the district court concluded that Dowlatsingh's contacts were not expressly aimed at California because the theory of individual targeting advanced in *Wash. Shoe Co.* is no longer sufficient to establish express aiming, and Dowlatsingh's attendance at VidCon conferences in California does not establish that he actively targeted California residents.

The Ninth Circuit has previously held that specific jurisdiction exists where a plaintiff files suit in its home state against an out-of-state defendant and alleges that defendant intentionally infringed its intellectual property rights knowing that the plaintiff was located in the forum state. *Amini Innovation Corp. v. JS Imps., Inc.*, 497 F. Supp. 2d 1093, 1105 (C.D. Cal. 2007) (citing and collecting cases); *see also Wash Shoe Co.*, 704 F.3d at 675-76 (plaintiff who alleged that defendant

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right to supervise the infringing activity and also has a direct financial interest in such activities. *See A&M Records, Inc. v. Napster, Inc.,* 239 F.3d 1004, 1022 (9th Cir. 2001).

"willfully infringed copyrights owned by [plaintiff], which, as [defendant] knew, had its principal place of business in the Central District [of California]," established that defendant's intentional act was "expressly aimed at the Central District of California because [defendant] *knew* the impact of his willful violation would be felt there.") (emphasis in original)

To establish express aiming, Werner proffered evidence that at least one of the Images contained a watermark identifying Incredible Features as the copyright holder to that Image. ER 113, 130-131, 138. Werner also proffered evidence that Dowlatsingh admitted to reviewing every video before it is posted to his YouTube Channels in order to verify that the propriety of the pictures and other content incorporated into the videos before they are disseminated to the public. ER 129-130. The district court concluded that "[e]ven if it were true that Dowlatsingh reviewed all of his videos before posting them and saw plaintiffs' watermark on one of the Images, there is no indication that Dowlatsingh knew the copyright holders were located in California because the small watermark the plaintiffs rely on to establish this knowledge lacks any mention of California." ER 16.

The district court's analysis, however, directly conflicts with its own prior finding that Dowlatsingh was "willfully blind." ER 13. The fact that the watermark does not mention California does not allay the fact that it prominently proclaims Incredible Features, a California corporation, as the copyright holder. The

watermark therefore placed a "willfully blind" Dowlatsingh on inquiry notice of the identity of the copyright holder such that he knew or should have known that the Image in question was held by a California entity. *See Wash. Shoe Co.* 704 F.3d at 678 ("Because the harm caused by an infringement of the copyright laws must be felt at least at the place where the copyright is held, we think that the impact of a *willful* infringement is necessarily directed there as well … Where A-Z knew or should have known that Washington Shoe is a Washington company, A-Z's intentional acts were expressly aimed at the state of Washington.").

Additionally, the district court's characterization of the watermark as "small" misses the point. Dowlatsingh admitted that the Images were downloaded from Google before being incorporated into the Infringing Videos. ER 113, 127-128. Dowlatsingh also admitted that he reviews every video before it is posted to his YouTube Channels in order to verify that the propriety of the pictures and other content incorporated into the videos before they are disseminated to the public. ER 129-130. The watermark clearly identifies Incredible Features as the copyright holder, notwithstanding the district court's subjective opinion about the watermark's size. Dowlatsingh had multiple opportunities to see the watermark before the Image was incorporated in to the final version of the Infringing Video.

Even if "individual targeting" is no longer a viable theory, Dowlatsingh's repeated trips to California to promote his YouTube Channels, coupled with his

sponsorship arrangement for his YouTube Channels with a California based company, sufficiently establish that Dowlatsingh "expressly aimed" his contacts at California.

In *Mavrix Photo, Inc. v. Brand Techs., Inc*., 647 F.3d 1218, 1230 (9th Cir. 2011), the court addressed a similar personal jurisdiction issue and found that an Ohio-based celebrity gossip website was subject to personal jurisdiction in California because the *Mavrix* defendant "anticipated, desired, and achieved a substantial California viewer base." *Mavrix Photo*, 647 F.3d at 1230.

Likewise, while attending VidCon, Dowlatsingh engaged in numerous purposeful activities such as networking, handing out business cards, meeting fans, distributing "LandonProduction" branded t-shirts, and speaking on a panel. ER 132-133, 140-173. Dowlatsingh's frequent visits to California were no doubt designed to promote and cultivate an audience for his YouTube Channels in California. Such an increase in California based viewership would enhance the monetization of his YouTube Channels. *See Mavrix Photo* 647 F.3d at 1230 ("The fact that the advertisements targeted California residents indicates that Brand knows — either actually or constructively — about its California user base, and that it exploits that base for commercial gain.").

Additionally, Dowlatsingh's sponsorship deal with the California based company Vincero Watches demonstrates that he actively targeted the California market as a source of sponsorship and advertising revenue.

It is clear that Dowlatsingh expressly aimed his contacts at California by actively cultivating his California fan base and exploiting the California market for sponsorship deals. Werner therefore satisfied the second prong of the *Calder* effects test.

3. *Dowlatsingh Caused Foreseeable Harm in California*

The district court concluded that Werner did not satisfy the third prong of the *Calder* effects test because "there is no indication that Dowlatsingh knew or should have known that the copyrights of the Images were held by a California resident," and there is "no indication that Dowlatsingh's visits to California had any relationship to the harm suffered by plaintiffs." ER 15-16.

As stated in section II.A.2, *supra*, the watermark located on one of the Images placed a "willfully blind" Dowlatsingh on inquiry notice such that he knew or should have known the identity of the stated copyright holder, the California based Incredible Features.

Additionally, Dowlatsingh's trips to California to promote his YouTube Channels significantly contributed to the harm suffered by Werner. The *Mavrix Photo* court addressed a similar situation:

> In determining the situs of a corporation's injury, "[o]ur precedents recognize that in appropriate circumstances a corporation can suffer economic harm both where the bad acts occurred and where the corporation has its principal place of business." *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1113 (9th Cir. 2002). "[J]urisdictionally sufficient harm may be suffered in multiple forums." *Id*. (citing *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1486 (9th Cir. 1993)). Mavrix alleges that, by republishing the photos of Ferguson and Duhamel, Brand interfered with Mavrix's exclusive ownership of the photos and destroyed their market value. The economic loss caused by the intentional infringement of a plaintiff's copyright is foreseeable. *See Brayton Purcell*, 606 F.3d at 1131. It was foreseeable that this economic loss would be inflicted not only in Florida, Mavrix's principal place of business, but also in California. A substantial part of the photos' value was based on the fact that a significant number of Californians would have bought publications such as *People* and *Us Weekly* in order to see the photos. Because Brand's actions destroyed this California-based value, a jurisdictionally significant amount of Mavrix's economic harm took place in California.

Mavrix Photo, Inc., 647 F.3d at 1231-32.

Here, as Dowlatsingh's infringement was "willful" it is foreseeable that the harm would be suffered in California where Werner is based. Additionally, a substantial part of harm suffered by Werner, and conversely Dowlatsingh's benefit derived from the infringement, spawns from the fact that a significant number of Californians would be directed to view Dowlatsingh's the YouTube Channels, including the Infringing Videos, due to Dowlatsingh's efforts to cultivate a California fan base.

Because Dowlatsingh knew or should have known that a California resident owned the Images, his willful infringement therefore caused a foreseeable harm in California and therefore satisfied the third prong of the *Calder* effects test.

In conclusion, Dowlatsingh's contacts satisfy the three prongs of the *Calder* effects test. The judgment of the district court must therefore be reserved, and the case remanded for further proceedings.

B. Dowlatsingh Purposefully Directed His Contacts at the United States as a Whole Pursuant to Rule 4(k)(2).

Even if Dowlatsingh's contacts with California would be insufficient to support an exercise of personal jurisdiction pursuant to the California long arm statute, under Rule 4(k)(2) the court may also consider Dowlatsingh's contacts with the United States as a whole. *See* Fed. R. Civ. Proc. 4(k)(2). The district court concluded that Dowlatsingh's aggregate contacts with the United States were not "meaningfully different" from his contacts with California, without elaborating further. ER 17. However, the district court failed to consider two contacts that materially differ from those related to California.

First, as explained in section I.C, *supra*, Dowlatsingh was personally served with process while physically present in Florida. ER 88-90. This contact was meaningfully different than Dowlatsingh's California contacts because he was not served with process while on one of his numerous trips to California.

Second, the district court did not properly consider the material differences between Dowlatsingh's meet and greets with fans at VidCon in California and whether he targeted the United States as a whole with his meet and greets in Las

Vegas, Nevada and at conventions in Washington D.C. and Florida. Regarding the meet and greet contacts, the district court stated:

> Further, Dowlatsingh's attendance at three[10] annual VidCon conferences in California does not establish that he actively targeted forum residents. Plaintiffs do not allege that VidCon is targeted at California or Californians, merely that it is hosted in Anaheim, California. And even if Dowlatsingh hoped to increase his fan base while attending VidCon conferences in California, there is no indication that Dowlatsingh targeted Californians in particular as opposed to VidCon attendees in general.

ER 15.

Even if the district court properly concluded that Dowlatsingh's attendance at VidCon was not a contact targeted specifically at Californians as opposed to VidCon attendees in general, the district court erred in failing to consider whether the contacts targeted at VidCon attendees could be considered directed at he United States as a whole under 4(k)(2). The court also failed to consider Dowlatsingh's contacts with respect to his attendance at the PlayList Live conventions in Washington D.C. and Orlando, Florida and whether the "fan meet ups" that he organized in those locations had any bearing on 4(k)(2) jurisdiction.

Additionally, Dowlatsingh's "fan meet ups" in California, Washington D.C., and Florida were held contemporaneously with his attendance at the VidCon and

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[10] The district court mistakenly asserts that Dowlatsingh attended VidCon in 2014, 2015, and 2017, however the evidence proffered by Werner establishes that Dowlatsingh also attended VidCon in 2016 and that he was invited to speak to attendees during that year's event. ER 115, 133, 164-168.

PlayList Live conventions, respectively. ER 123, 134-136, 140-181. In contrast, Dowlatsingh did not attend any convention in Nevada when he traveled to Las Vegas to meet with his fans, despite the fact that the district court apparently concluded that he did. ER 17, 114-115, 123, 132, 140, 161. Unlike the convention meet and greets which the district court surmised would not be targeted specifically at forum residents, Dowlatsingh's trip to Las Vegas was solely to meet with Nevada based fans and therefore was specifically targeted at Nevada residents or, at the very least, residents of the United States.

The district court therefore erred in failing to consider these materially different contacts under its 4(k)(2) analysis. The judgment of the district court should therefore be reversed and the case remanded for further proceedings.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY DECLINING TO TRANSFER THE CASE TO THE MIDDLE DISTRICT OF FLORIDA RATHER THAN DISMISSING IT

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division *where it might have been brought*." 28 U.S.C. § 1404(a) (emphasis added). Section 1404(a) "is intended to place discretion in the district court to adjudicate motions for transfer according to an 'individualized, case-by-case consideration of convenience and fairness.'" *Stewart Org., Inc. v. Ricoh Corp*., 487 U.S. 22, 29, (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)).

The district court erred in declining to transfer the case to the Middle District of Florida rather than dismissing it outright. As explained above, the district court failed to consider the applicability of *Burnham* when analyzing Werner's 4(k)(2) argument. The district court did briefly consider *Burnham*'s effect on the request to transfer to the Middle District of Florida, which is where Dowlatsingh was located when served. ER 17-18. The district court concluded that *Burnham* did not apply since the relevant forum at the time Dowlatsingh was served was California and not Florida. ER 18. However, this analysis is flawed because the transfer statute expressly requires the transferring court to consider the forum where the case "might have been brought" and not where the case was actually filed. *See Hoffman v. Blaski*, 363 U.S. 335, 342-343 (1960); *Paramount Pictures, Inc. v. Rodney*, 186 F.2d 111, 119 (3d Cir. 1950)("Section 1404(a) directs the attention of the judge who is considering a transfer to the situation which existed when suit was instituted.").

Had the case been brought in Florida rather than California, it would be unquestionable that the Middle District would have acquired personal jurisdiction over Dowlatsingh pursuant to *Burnham* when he was personally served with process. *See Burnham* 495 U.S. at 610-613. Therefore the district court abused its discretion by failing to transfer the case to the Middle District of Florida.

IV. CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed and the case remanded further proceedings.

Dated: April 24, 2019

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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellants Jeffrey R. Werner and Incredible Features Inc. state that they are unaware of any related cases pending before this Court.

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), I certify that:

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 10,143 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

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ADDENDUM

Table of Contents

Rule 4. Summons

(a) CONTENTS; AMENDMENTS.

(1) *Contents.* A summons must:

(A) name the court and the parties;

(B) be directed to the defendant;

(C) state the name and address of the plaintiff's attorney or—if unrepresented—of the plaintiff;

(D) state the time within which the defendant must appear and defend;

(E) notify the defendant that a failure to appear and defend will result in a default judgment against the defendant for the relief demanded in the complaint;

(F) be signed by the clerk; and

(G) bear the court's seal.

(2) *Amendments.* The court may permit a summons to be amended.

(b) ISSUANCE. On or after filing the complaint, the plaintiff may present a summons to the clerk for signature and seal. If the summons is properly completed, the clerk must sign, seal, and issue it to the plaintiff for service on the defendant. A summons—or a copy of a summons that is addressed to multiple defendants—must be issued for each defendant to be served.

(c) SERVICE.

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) *By Whom.* Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) *By a Marshal or Someone Specially Appointed.* At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. §1915 or as a seaman under 28 U.S.C. §1916.

(d) WAIVING SERVICE.

(1) *Requesting a Waiver.* An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons. The notice and request must:

(A) be in writing and be addressed:

(i) to the individual defendant; or

(ii) for a defendant subject to service under Rule 4(h), to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process;

(B) name the court where the complaint was filed;

(C) be accompanied by a copy of the complaint, 2 copies of the waiver form appended to this Rule 4, and a prepaid means for returning the form;

(D) inform the defendant, using the form appended to this Rule 4, of the consequences of waiving and not waiving service;

(E) state the date when the request is sent;

(F) give the defendant a reasonable time of at least 30 days after the request was sent—or at least 60 days if sent to the defendant outside any judicial district of the United States—to return the waiver; and

(G) be sent by first-class mail or other reliable means.

(2) *Failure to Waive.* If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant:

(A) the expenses later incurred in making service; and

(B) the reasonable expenses, including attorney's fees, of any motion required to collect those service expenses.

(3) *Time to Answer After a Waiver.* A defendant who, before being served with process, timely returns a waiver need not serve an answer to the complaint until 60 days after the request was sent—or until 90 days after it was sent to the defendant outside any judicial district of the United States.

(4) *Results of Filing a Waiver.* When the plaintiff files a waiver, proof of service is not required and these rules apply as if a summons and complaint had been served at the time of filing the waiver.

(5) *Jurisdiction and Venue Not Waived.* Waiving service of a summons does not waive any objection to personal jurisdiction or to venue.

(e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

(g) SERVING A MINOR OR AN INCOMPETENT PERSON. A minor or an incompetent person in a judicial district of the United States must be served by following state law for serving a summons or like process on such a defendant in an action brought in the courts of general jurisdiction of the state where service is made. A minor or an incompetent person who is not within any judicial district of the United States must be served in the manner prescribed by Rule 4(f)(2)(A), (f)(2)(B), or (f)(3).

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

(i) SERVING THE UNITED STATES AND ITS AGENCIES, CORPORATIONS, OFFICERS, OR EMPLOYEES.

(1) *United States.* To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) *Agency; Corporation; Officer or Employee Sued in an Official Capacity.* To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.

(3) *Officer or Employee Sued Individually.* To serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity), a party must serve the United States and also serve the officer or employee under Rule 4(e), (f), or (g).

(4) *Extending Time.* The court must allow a party a reasonable time to cure its failure to:

(A) serve a person required to be served under Rule 4(i)(2), if the party has served either the United States attorney or the Attorney General of the United States; or

(B) serve the United States under Rule 4(i)(3), if the party has served the United States officer or employee.

(j) SERVING A FOREIGN, STATE, OR LOCAL GOVERNMENT.

(1) *Foreign State.* A foreign state or its political subdivision, agency, or instrumentality must be served in accordance with 28 U.S.C. §1608.

(2) *State or Local Government.* A state, a municipal corporation, or any other state-created governmental organization that is subject to suit must be served by:

(A) delivering a copy of the summons and of the complaint to its chief executive officer; or

(B) serving a copy of each in the manner prescribed by that state's law for serving a summons or like process on such a defendant.

(k) TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

(1) *In General.* Serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant:

(A) who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located;

(B) who is a party joined under Rule 14 or 19 and is served within a judicial district of the United States and not more than 100 miles from where the summons was issued; or

(C) when authorized by a federal statute.

(2) *Federal Claim Outside State-Court Jurisdiction.* For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

(*l*) Proving Service.

(1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.

(2) *Service Outside the United States.* Service not within any judicial district of the United States must be proved as follows:

(A) if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or

(B) if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

(3) *Validity of Service; Amending Proof.* Failure to prove service does not affect the validity of service. The court may permit proof of service to be amended.

(m) TIME LIMIT FOR SERVICE. If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

This subdivision (m) does not apply to service in a foreign country under Rule 4(f), 4(h)(2), or 4(j)(1), or to service of a notice under Rule 71.1(d)(3)(A).

(n) ASSERTING JURISDICTION OVER PROPERTY OR ASSETS.

(1) *Federal Law.* The court may assert jurisdiction over property if authorized by a federal statute. Notice to claimants of the property must be given as provided in the statute or by serving a summons under this rule.

(2) *State Law.* On a showing that personal jurisdiction over a defendant cannot be obtained in the district where the action is brought by reasonable efforts to serve a summons under this rule, the court may assert jurisdiction over the defendant's assets found in the district. Jurisdiction is acquired by seizing the assets under the circumstances and in the manner provided by state law in that district.

28 U.S. Code § 1404. Change of venue

(a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented.

(b) Upon motion, consent or stipulation of all parties, any action, suit or proceeding of a civil nature or any motion or hearing thereof, may be transferred, in the discretion of the court, from the division in which pending to any other division in the same district. Transfer of proceedings in rem brought by or on behalf of the United States may be transferred under this section without the consent of the United States where all other parties request transfer.

(c) A district court may order any civil action to be tried at any place within the division in which it is pending.

(d) Transfers from a district court of the United States to the District Court of Guam, the District Court for the Northern Mariana Islands, or the District Court of the Virgin Islands shall not be permitted under this section. As otherwise used in this section, the term "district court" includes the District Court of Guam, the District Court for the Northern Mariana Islands, and the District Court of the Virgin Islands, and the term "district" includes the territorial jurisdiction of each such court.

Cal. Code Civ. Proc. § 410.10

§ 410.10. Jurisdiction exercisable

A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: April 24, 2019

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CERTIFICATION

I hereby certify that this paper copy of Appellants' Opening Brief is identical in form and content to that which was electronically filed on April 24, 2019, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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