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Bcc: Message-Id: <5770444@azd.uscourts.gov> Subject: Activity in Case 2:10-cv-00063-JWS
REmentors, Inc. v. Main, et al Order on Motion to Dismiss Party Content-Type: text/html

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U.S. District Court

DISTRICT OF ARIZONA

Notice of Electronic Filing

The following transaction was entered on 7/28/2010 at 11:12 AM MST and filed on 7/28/2010

Case Name: REMentors, Inc. v. Main, et al

Case Number: 2:10-cv-00063-JWS

Filer:

WARNING: CASE CLOSED on 07/28/2010

Document Number: 21

Docket Text:

ORDER AND OPINION granting Defendant's [9] Motion to Dismiss claims against Monica Main for lack of personal jurisdiction. The Clerk will please enter judgment dismissing plaintiff's claims against defendant Monica Main. Signed by Judge John W Sedwick on 07/27/10.(ESL)

2:10-cv-00063-JWS Notice has been electronically mailed to:

Maria Crimi Speth mcs@jaburgwilk.com, dag@jaburgwilk.com

Mark D Bogard mdb@jaburgwilk.com

2:10-cv-00063-JWS Notice will be sent by other means to those listed below if they are affected by this filing:

Monica Main

P.O. Box 55232

Santa Clarita, CA 91385-5232

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=7/28/2010] [FileNumber=5770442-0]
] [1c7dcd3a0b5d7bf146912219778badc5e39b94e18c9687eac5b00df4ea43a12beeb
36b183adb94f6b1731471aa51932a9978ef681efe9baa1519b8533605f58f]]

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

REMENTORS, INC., a Massachusetts))	
corporation d/b/a DAVID LINDAHL's))	
RE MENTOR,))	
))	
Plaintiff,))	2:10-cv-00063 JWS
))	
vs.))	ORDER AND OPINION
))	
MONICA MAIN, <i>et al.</i> ,))	[Re: Motion at Docket 9]
))	
Defendants.))	
_____))	

I. MOTION PRESENTED

At docket 9, Defendant Monica Main moves to dismiss all of Plaintiff ReMentors, Inc.'s, *dba* David Lindahl's RE Mentor's ("RE Mentor") claims of trademark infringement and copyright violations under the Lanham Act. At docket 12, RE Mentor opposes the motion. Main replies at docket 13. Oral argument was not requested and would not assist the court.

II. BACKGROUND

RE Mentor is a Massachusetts corporation that does business under the name “David Lindahl’s RE Mentor.”¹ The corporation is operated by David Lindahl, who is its founder and principal.² RE Mentor offers real estate investing education, coaching, and mentoring; the corporation specializes in “investing in apartment buildings for cash flow and appreciation.”³ RE Mentor has copyrighted certain educational materials at issue in this case.⁴

Defendants in this action are Global Success Strategies (“Global Success”) and Monica Main (collectively, “defendants”).⁵ According to RE Mentor, Global Success is a California corporation.⁶ Default judgment has been entered against Global Success.⁷ Main claims to be “based in” Los Angeles County, California.⁸ She also claims to be an independent contractor for her own marketing consultancy company, which is also “situated” in California.⁹ Main claims that she licensed her products and services,

¹Docket 1 ¶ 5.

²*Id.* ¶ 8.

³*Id.* ¶¶ 9-10.

⁴*Id.* ¶¶ 17-18.

⁵*Id.* ¶¶ 6-7.

⁶*Id.* ¶ 6.

⁷Docket 11.

⁸Docket 9 at p. 2.

⁹*Id.*

including materials for her Apartment Building Cash Flow System, to Global Success.¹⁰ She also claims that she secured a copyright on these materials in 2007.¹¹

In its complaint, RE Mentor makes a number of allegations against the defendants. RE Mentor alleges that defendants purchased internet search engine advertisements that read “Lindahl is a Joke” and “Lindahl Scam Exposed” to direct Internet users to their own website.¹² RE Mentor also alleges that defendants are attempting to directly compete with RE Mentor.¹³ Although there is no allegation to the same effect in the complaint, RE Mentor also claims in its motion papers that defendants do business in Arizona through “highly interactive internet commerce.”¹⁴ According to RE Mentor’s motion papers, defendants’ website obtains payment from users via credit card, and upon confirmation of payment, users become customers and can download files and materials for defendants’ Apartment Building Cash Flow System.¹⁵ RE Mentor further alleges that defendants are utilizing RE Mentor’s copyright protected materials that defendants are representing as their own.¹⁶

Main moved to dismiss for lack of personal jurisdiction, lack of venue, and for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). RE Mentor

¹⁰*Id.*

¹¹*Id.*

¹²Docket 1 ¶¶ 19-20.

¹³*Id.* ¶ 22.

¹⁴Docket 12 at p. 1.

¹⁵*Id.* at p. 3.

¹⁶Docket 1 ¶ 24.

responded, and Main filed a reply. Neither party submitted any affidavits, and neither requested an evidentiary hearing. As it turns out, only the first issue needs to be addressed.

III. STANDARD OF REVIEW

A motion to dismiss for lack of personal jurisdiction is made pursuant to Federal Rule of Civil Procedure 12(b)(2). “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction over the defendant.”¹⁷ A plaintiff is required to “make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”¹⁸ However, a plaintiff may not “simply rest on the bare allegations of its complaint.”¹⁹ “Mere “bare bones” assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff’s pleading burden.”²⁰

Where there is no federal statute governing personal jurisdiction, the law of the forum state applies.²¹ Under Rule 4.2(a) of the Arizona Rules of Civil Procedure, a defendant will be subject to personal jurisdiction “so long as doing so comports with due process” under the Arizona and U.S. Constitutions.²² Because Arizona’s long-arm

¹⁷*Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).

¹⁸*Id.* (quoting *Doe v. Unocal*, 248 F.3d 915, 922 (9th Cir. 2001)).

¹⁹*Schwarzenegger v. Fred Martin Motor Company*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)).

²⁰*Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

²¹*Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008).

²²*Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 416 (9th Cir. 1997).

statute is coextensive with federal due process requirements, the jurisdictional analyses under state law and federal due process are the same; the plaintiff must show that the defendant has 'minimum contacts' with the forum state such that the exercise of jurisdiction "does not offend traditional notions of fair play and substantial justice."²³

IV. DISCUSSION

Main argues that she should not be subject to personal jurisdiction in Arizona because she is not a resident of Arizona, has never lived or worked in Arizona, and does not "conduct business concentrating Arizona."²⁴ She also correctly points out that there were no allegations in RE Mentor's complaint to show that her activities were directed at Arizona.²⁵ Main argues, therefore, that RE Mentor has not made a sufficient showing that she has 'minimum contacts' with the forum of Arizona. In response, RE Mentor asserts in its motion papers that Main places advertisements on the Internet and operates a commercial website from which Arizona residents can make purchases, and, therefore, personal jurisdiction is proper in this forum.²⁶

There are two types of personal jurisdiction, general and specific. General jurisdiction exists where a non-resident defendant engages in "continuous and systematic general business contacts" within a forum.²⁷ Specific jurisdiction is proper

²³*Schwarzenegger*, 374 F.3d at 801 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

²⁴Docket 9 at p. 5.

²⁵*Id.*

²⁶See generally docket 12 at pp. 1-3, 5.

²⁷*Schwarzenegger*, 374 F.3d at 801 (quoting *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 416 (1984)).

where a defendant makes deliberate contact with a forum and the cause of action relates to that contact.²⁸ Here, RE Mentor argues that Main's Internet advertisements and interactive website, both of which are accessible to all Internet users, are sufficient to demonstrate that Main is subject to both general and specific jurisdiction.²⁹

RE Mentor argues that general jurisdiction is proper because Main operates a "highly interactive website."³⁰ However, there is no authority in this Circuit for RE Mentor's proposition that an interactive website with the potential to be used by forum consumers, but without any facts that demonstrate actual use or contact with the forum, is sufficient to establish general jurisdiction. RE Mentor even concedes that the Ninth Circuit has not sustained a finding of general jurisdiction on internet activity alone.³¹ Moreover, RE Mentor does not point to any facts alleged in its complaint to show that Main actually engaged in substantial, continuous or systematic activities within Arizona. As a result, general jurisdiction cannot be exercised over Main in this case.

"Unless a defendant's contacts with a forum are so substantial, continuous, and systematic that the defendant can be deemed to be "present" in that forum for all purposes, a forum may exercise only "specific" jurisdiction--that is, jurisdiction based on the relationship between the defendant's forum contacts and the plaintiff's claim."³² The

²⁸*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985).

²⁹Docket 12 at p. 8.

³⁰*Id.*

³¹*Id.*

³²*Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006).

Ninth Circuit has established a three-prong test to be used to determine whether a party has 'minimum contacts' with a forum state sufficient to find specific 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.³³

The plaintiff bears the burden of satisfying the first two prongs of this test.³⁴ In this case, RE Mentor has failed to meet the first prong. It follows that there is no need to address the second or third prongs.

Under the first prong of the Ninth Circuit's 'minimum contacts' test, a plaintiff must show either that a defendant purposefully availed itself of the privilege of conducting activities in the forum state or purposefully directed its activities toward the forum.³⁵ Purposeful availment is supported by evidence of the defendant's actions in the forum that show the defendant invoked the benefits and protections of the laws in the forum, "such as executing or performing a contract there."³⁶ In contrast, purposeful direction is conduct toward a forum that "generally consists of evidence of the defendant's actions outside the forum state that are directed at the forum, such as distribution in the forum of goods originating elsewhere."³⁷ Because RE Mentor does

³³*Id.* at 1205-06.

³⁴*Pebble Beach*, 453 F.3d at 1155.

³⁵*Yahoo!*, 433 F.3d at 1206.

³⁶*Schwarzenegger*, 374 F.3d at 802.

³⁷*Id.* at 803.

not show that Main acted from within Arizona, or that she invoked the benefits and protections of the laws of Arizona, the court focuses on whether or not Main purposefully directed her conduct toward Arizona.

This Circuit evaluates purposeful direction under the three-part “effects” test from *Calder v. Jones*.³⁸ “[Under] *Calder*, the “effects” test requires that the defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”³⁹ The Ninth Circuit has observed that *Calder* “cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific [personal] jurisdiction”; “something more” is required than mere foreseeability.⁴⁰ For purposeful direction to be found, a defendant must “expressly aim,” or individually target, wrongful conduct toward a plaintiff in the forum state.⁴¹

RE Mentor argues that the interactivity of Main’s website constitutes purposeful direction sufficient to establish specific jurisdiction by relying on *Brayton Purcell LLP v. Recordon & Recordon*,⁴² where the Ninth Circuit found the plaintiff to have satisfied the “purposeful direction” prong for specific personal jurisdiction.⁴³ In that case, the plaintiff showed that the defendant was a law firm that was licensed to practice within the forum

³⁸ *Id.*

³⁹ *Id.* (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)).

⁴⁰ *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000).

⁴¹ *Id.* 1087-88.

⁴² 606 F.3d 1124 (9th Cir. 2010).

⁴³ Docket 12 at p. 9.

and had an interactive website targeted at a particular client base within that forum.⁴⁴ Plaintiff in that case was a resident of the forum state, licensed to practice law in that forum, and with an established practice focusing on the same client base.⁴⁵

Unlike the situation in *Brayton*, in the instant case there is no allegation that RE Mentor itself is a resident of or even doing business in Arizona. There is no allegation that RE Mentor has a special clientele or customer base in Arizona. Indeed, there is not even an allegation in the complaint that RE Mentor has its own website which might be accessed in Arizona. There is also no allegation that Main has targeted persons in Arizona. In short, there is nothing to show that either party has any connection to Arizona save that defendants have a website that may be accessed from Arizona. Of course, the same might be said with respect to any state in the Union and numerous foreign nations. Accepting all of the allegations in the complaint as true, RE Mentor has not shown the “something more” required by *Brayton* and the earlier Ninth Circuit cases cited in it.⁴⁶

V. CONCLUSION

For the reasons set out above, the motion at docket 9 to dismiss claims against Monica Main for lack of personal jurisdiction is **GRANTED**.

⁴⁴*Brayton Purcell LLP*, 606 F.3d at 1129.

⁴⁵*Id.*

⁴⁶RE Mentor also argues that Main’s assertion in her briefing that neither party conducts business “concentrating” in Arizona is an admission that she conducts at least some business there. Docket 12 at p. 10. The court does not believe such an attenuated negative inference is warranted, particularly in the case of a *pro se* litigant. *Cf. Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

The Clerk will please enter judgment dismissing plaintiff's claims against defendant Monica Main.

DATED this 27th day of July 2010.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

Other Orders/Judgments

2:10-cv-00063-JWS REMentors, Inc. v. Main, et al **CASE CLOSED on 07/28/2010**
STD

U.S. District Court

DISTRICT OF ARIZONA

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Case Name: REMentors, Inc. v. Main, et al

Case Number: 2:10-cv-00063-JWS

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Document Number: 22

Docket Text:

ORDER FROM CHAMBERS of the Honorable John W. Swedwick, that the Clerk of Court is directed to hold in abeyance this court's direction in the order at docket [21] to enter judgment dismissing the claims against defendant Monica Main pending further order of the Court.(ESL)

2:10-cv-00063-JWS Notice has been electronically mailed to:

Maria Crimi Speth mcs@jaburgwilk.com, dag@jaburgwilk.com

Mark D Bogard mdb@jaburgwilk.com

2:10-cv-00063-JWS Notice will be sent by other means to those listed below if they are affected by this filing:

Monica Main(Terminated)

P.O. Box 55232

Santa Clarita, CA 91385-5232

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Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1096393563 [Date=7/28/2010] [FileNumber=5772233-0]
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7c94eeb35e8b4b44b84a1154b864818cd7efa60e777f93edb23e3b19aa1a7]]

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7/28/2010

**MINUTES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

REMENTORS, INC..

v. *GLOBAL SUCCESS STRATEGIES,
INC.*

THE HONORABLE JOHN W. SEDWICK

CASE NO. 2:10-cv-00063 (JWS)

PROCEEDINGS: **ORDER FROM CHAMBERS**

Date: July 28, 2010

In an order at docket 21 the court dismissed plaintiff's claim against defendant Monica Main for lack of personal jurisdiction. Earlier, a default was entered against defendant Global Success Strategies ("Global") by the Clerk of Court based on its failure to appear and defend. For the same reasons the court dismissed the claims against defendant Main for lack of jurisdiction, it appears that the court lacks personal jurisdiction over Global. Within 7 days from the date of this order, plaintiff shall show cause why this court should not dismiss its claims against Global for lack of personal jurisdiction. The response from plaintiff does NOT constitute an opportunity to reargue the court's decision with respect to defendant Main. Rather, plaintiff shall confine the response to showing what differences, if any, between Main's situation and that of Global might warrant the exercise of personal jurisdiction over Global. Plaintiff is expected to candidly admit that there are no material differences between the two defendants for purposes of personal jurisdiction, if that be the case.

The Clerk of Court is directed to hold in abeyance this court's direction in the order at docket 21 to enter judgment dismissing the claims against defendant Monica Main pending further order of the court.

Case: 2:10cv63

Monica Main

P.O. Box 55232
Santa Clarita, CA 91385-5232

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**U.S. District Court
DISTRICT OF ARIZONA**

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Case Name: REMentors, Inc. v. Main, et al

Case Number: 2:10-cv-00063-JWS

Filer:

WARNING: CASE CLOSED on 07/28/2010

Document Number: 24(No document attached)

Docket Text:

TEXT-ONLY ORDER: The Court has reviewed the Plaintiff's Response to the Order to Show Cause at docket 23. Based thereon, the Court will not dismiss this case as to Defendant Global Success Strategies, Inc. as to which it appears further proceedings will be necessary. However, the Court directs the entry of judgment at this time in favor of Defendant Monica Main pursuant to the Order at docket 21 and Fed. R. Civ.P.54(b), because there is no just reason for delay. Ordered by Honorable John W. Sedwick on 8/6/10. This is a TEXT ENTRY ONLY. There is no PDF document associated with this entry. (SJF)

2:10-cv-00063-JWS Notice has been electronically mailed to:

Maria Crimi Speth mcs@jaburgwilk.com, dag@jaburgwilk.com
Mark D Bogard mdb@jaburgwilk.com

2:10-cv-00063-JWS Notice will be sent by other means to those listed below if they are affected by this filing:

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P.O. Box 55232
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Bcc: Message-Id: <5815124@azd.uscourts.gov> Subject: Activity in Case 2:10-cv-00063-JWS
REmentors, Inc. v. Main, et al Clerk's Judgment Content-Type: text/html

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U.S. District Court
DISTRICT OF ARIZONA

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Case Name: REMentors, Inc. v. Main, et al

Case Number: 2:10-cv-00063-JWS

Filer:

WARNING: CASE CLOSED on 07/28/2010

Document Number: 25

Docket Text:

CLERK'S 54(b) JUDGMENT - IT IS ORDERED AND ADJUDGED by way of this Court, dismissing defendant Monica Main for lack of personal jurisdiction and pursuant to Federal Rules of Civil Procedure 54(b). There being no just reason for delay, judgment is entered dismissing this defendant. Signed on 8/6/10. (KMG)

2:10-cv-00063-JWS Notice has been electronically mailed to:

Maria Crimi Speth mcs@jaburgwilk.com, dag@jaburgwilk.com

Mark D Bogard mdb@jaburgwilk.com

2:10-cv-00063-JWS Notice will be sent by other means to those listed below if they are affected by this filing:

Monica Main(Terminated)

P.O. Box 55232

Santa Clarita, CA 91385-5232

The following document(s) are associated with this transaction:

Case: 2:10cv63

Monica Main

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