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

HIT BOUND MUSIC, LTD., a
Canadian Corporation,

Plaintiff,

v.

BBC FILMS, a British corporation; LE
PREMIER PRODUCTIONS, INC., a
New York corporation; COHEN
MEDIA GROUP, LLC, a New York
limited liability company;
FULLDAWA FILMS, LLC, a
Delaware limited liability company;
and DOES 1-10, inclusive

Defendants.

Case No.: 2:16-cv-7125 CBM (KSx)

**ORDER GRANTING DEFENDANT
BBC FILMS' MOTION TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION**

The matter before the Court is Defendant British Broadcasting Corporation's ("BBC's") Motion to Dismiss pursuant to Rule 12(b)(2) for Lack of Personal Jurisdiction (the "Motion"). (Dkt. No. 40.)

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff Hit Bound Music, Ltd. ("Plaintiff" or "Hit Bound") is a Canadian corporation in the business of music publishing. (Dkt. No. 12, First Amended Complaint ("FAC") ¶ 4.) Plaintiff alleges that Defendants infringed its copyrights for the musical compositions "*I'm Not Impressed*," "*Giselle*," and "*(It's Not*

1 *Exactly a Sonata) for Renata*” (the “Compositions”), by using the Compositions in
2 the musical soundtrack to the film *My Old Lady* (the “Film”) without Plaintiff’s
3 permission. (FAC ¶¶ 12, 15.)

4 In or around July 2013, BBC commenced negotiations concerning *My Old*
5 *Lady* with various entities including a United Kingdom company that sold rights
6 to distribute the Film in various territories around the world, and a New York-
7 based company that helped obtain and negotiate financing agreements for the
8 Film. (Declaration of Helen Giles, Legal and Business Affairs Manager at BBC
9 Films (“Giles Decl.”) ¶¶ 7, 14-20.) A New York based attorney and Los Angeles
10 attorney were involved in the negotiations. (Giles Decl. ¶¶ 21-21, Ex. H – J.) BBC
11 agreed to provide a portion of the Film’s financing and acquired public service
12 broadcast rights in *My Old Lady*, including the right to distribute the Film
13 throughout the United Kingdom¹ for a period of fifteen years. (Giles Decl. ¶ 25,
14 Ex. L.) BBC also entered into a production finance agreement and various other
15 agreements for third parties to distribute the Film in territories around the world.
16 (Giles Decl. ¶¶ 24-26.)

17 *My Old Lady* was filmed entirely in France, with post-production work
18 taking place in New York. (Declaration of Rachel Horovitz, film producer who
19 worked on production of *My Old Lady* (“Horovitz Decl.”) ¶ 2.)

20 II. LEGAL STANDARD

21 Federal Rule of Civil Procedure 12(b)(2) allows a court to dismiss a
22 Complaint for lack of personal jurisdiction. “The Due Process Clause [of the
23 Fourteenth Amendment] protects an individual’s liberty interest in not being
24 subject to the binding judgments of a forum with which he or she has established
25 no meaningful ‘contacts, ties, or relations.’” *Burger King Corp. v. Rudzewicz*, 471

26 _____
27 ¹ BBC also acquired distribution rights in the following surrounding territories:
28 Northern Ireland, the Channel Islands, the Isle of Man, the United Kingdom
continental shelf, the Republic of Ireland, Malta, and Gibraltar.

1 U.S. 462, 471-72 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 319
2 (1945)). “Where a defendant moves to dismiss a complaint for lack of personal
3 jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is
4 appropriate.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th
5 Cir. 2004) (citation omitted).

6 To prove personal jurisdiction, “[t]he plaintiff need only make a prima facie
7 showing of jurisdictional facts.” *Id.* Where a 12(b)(2) motion challenges the facts
8 alleged, however, the motion must be decided on the basis of competent evidence
9 (usually declarations and discovery materials). *Data Disc, Inc. v. Sys. Tech.*
10 *Assocs., Inc.*, 557 F.2d 1280, 1289-90 (9th Cir. 1977). The plaintiff cannot
11 “simply rest on the bare allegations of its complaint,” and the Court cannot assume
12 the truth of allegations in a pleading that is contradicted by a sworn affidavit. *Id.*
13 at 1284.

14 III. DISCUSSION

15 A. General Jurisdiction

16 A court has general jurisdiction over a foreign corporation defendant when
17 its “affiliations with the State are so ‘continuous and systematic’ as to render it
18 essentially at home in the forum State.” *Daimler AG v. Bauman*, 134 S. Ct. 746,
19 749 (2014); *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919
20 (2011). A corporation’s “continuous activity of some sorts within a state is
21 [generally] not enough to support the demand that the corporation be amenable to
22 suits unrelated to that activity.” *Int'l Shoe*, 326 U.S. at 318 (1945). Rather, in the
23 paradigmatic circumstance for exercising general jurisdiction, the corporate
24 defendant is incorporated or has its principal place of business in the forum state.
25 *Daimler*, 134 S. Ct. at 761 n. 19; *Goodyear*, 564 U.S. at 924.

26 Here, there is no evidence indicating that BBC meets the requirements of
27 general jurisdiction. BBC’s principal place of business is in the United Kingdom,
28 where it is the main public service provider of broadcast television, radio news,

1 and other entertainment content. (Giles Decl. ¶¶ 2-3.) BBC has no business
2 operations or property in California, and is not incorporated there. (Giles Decl.
3 ¶ 4.)

4 Plaintiff argues that BBC should be subject to general jurisdiction in
5 California because its subsidiary, BBC Worldwide, operates an office in Los
6 Angeles. (Opp'n 3.) Plaintiff's counsel provides a copy of BBC Worldwide's
7 website which indicates that it operates an office at 10351 Santa Monica
8 Boulevard. (Declaration of Jennifer J. McGrath ("McGrath Decl."), Ex. 1.)
9 However, "[t]he existence of a parent-subsidary relationship is insufficient, on its
10 own, to justify imputing one entity's contacts with a forum state to another for the
11 purpose of establishing personal jurisdiction." *Ranza v. Nike, Inc.*, 793 F.3d 1059,
12 1070 (9th Cir. 2015). In *Ranza*, the Ninth Circuit recognized that following the
13 Supreme Court's decision in *Daimler*, the agency theory is no longer available to
14 establish jurisdiction over a parent company, as "[s]uch a theory . . . sweeps too
15 broadly to comport with the requirements of due process." *Id.* at 1071.

16 Accordingly, Plaintiff fails to make a prima facie showing of jurisdictional
17 facts for general jurisdiction.

18 **B. Specific Jurisdiction**

19 Specific personal jurisdiction over Defendant exists if:

- 20 (1) Defendant purposefully directed its activities or consummated some
21 transaction with the forum or resident of the forum; or performed
22 some act by which it purposefully availed itself of the privilege of
23 conducting activities in the forum, thereby invoking the benefits and
24 protections of its laws;
- 24 (2) the claim arises out of or relates to Defendant's forum-related
25 activities; and
- 26 (3) the exercise of jurisdiction comports with fair play and substantial
27 justice, *i.e.* it is reasonable.

28 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir.

1 2010). Plaintiff bears the burden of satisfying the first two prongs of the test.
2 *Schwarzenegger*, 374 F.3d at 802 (citation omitted). If Plaintiff fails to satisfy
3 either of the first two prongs, “personal jurisdiction is not established in the forum
4 state.” *Id.*

5 With respect to the first prong, “[a] purposeful availment analysis is most
6 often used in suits sounding in contract,” whereas “[a] purposeful direction
7 analysis, . . . is most often used in suits sounding in tort.” *Schwarzenegger*, 374
8 F.3d at 802. Accordingly, the Court conducts a purposeful direction analysis in this
9 case. *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir.
10 2011) (applying purposeful direction analysis in copyright infringement case).

11 In evaluating the purposeful direction prong, the Ninth Circuit applies an
12 “effects” test, which “requires that the defendant have (1) committed an intentional
13 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant
14 knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d at
15 806. All three parts of the effects test must be satisfied. *Id.*

16 Plaintiff provides no evidence that BBC’s conduct was “expressly aimed” at
17 California. The expressly aimed requirement of the effects test is satisfied when
18 the defendant is alleged to have “engaged in wrongful conduct targeted at a
19 plaintiff whom the defendant knows to be a resident of the forum state.” *Bancroft*
20 *& Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). Here,
21 the manager who negotiated BBC’s involvement in the Film “had never heard of
22 [Plaintiff] prior to this lawsuit and, therefore, did not know that [Plaintiff] was a
23 corporation with its principal place of business in Canada.” (Giles Decl. ¶ 13.)
24 BBC obtained certain rights to distribute the Film in the United Kingdom only, not
25 to California or anywhere else in the United States. (Giles Decl. ¶¶ 5, 9, 11.) The
26 Film was not shot in California and post-production work did not take place in
27 California. (Horovitz Decl. ¶¶ 1–3.) The mere fact that *My Old Lady* was shown
28

1 and distributed by a third party² in California is not enough to establish that BBC's
2 conduct was expressly aimed at California. *See Schwarzenegger*, 374 F.3d at 805
3 (emphasizing that “‘something more’ than mere foreseeability [is required] in
4 order to justify the assertion of personal jurisdiction . . .”).

5 Plaintiff argues that BBC's pre-production negotiations were expressly
6 aimed at California. BBC negotiated (1) the right to acquire public service rights
7 to *My Old Lady* in the U.K. and (2) to provide financing for the Film. (Giles Decl.
8 ¶¶ 24, 25, Exs. K, L.) However, neither of these agreements were expressly aimed
9 at business in California, and both agreements contained venue clauses
10 designating exclusive jurisdiction in the courts of England and Wales. (*Id.*) The
11 fact that a Los Angeles attorney was involved during BBC's negotiations is
12 insufficient by itself to confer personal jurisdiction. *See Burger King*, 471 U.S. at
13 478. BBC's negotiations took place entirely via teleconference or email
14 correspondence; BBC did not travel to California for any business related to the
15 Film. *See Roth v. Garcia Marquez*, 942 F.2d 617, 622 (9th Cir. 1991) (The
16 “ordinary ‘use of the mails, telephone, or other international communication
17 simply do not qualify as purposeful activity invoking the benefits and protections
18 of the [forum] state.’”).

19 Based on the evidence provided, the Court therefore finds that the expressly
20 aimed prong of the effects test has not been met here.³

21 Because the Court finds that Plaintiff has not satisfied the purposeful
22 direction prong of the specific jurisdiction test, it does not reach the remaining two
23

24 ² BBC contends that Defendant Cohen Media Group, LLC distributed the Film in
25 California. (Reply at 5.)

26 ³ The Court “need not, and do[es] not” reach the other parts of the effects test
27 because Plaintiff fails to “sustain his burden with respect to the second part of the
28 . . . effects test.” *Schwarzenegger*, 374 F.3d at 807 n.1.

1 prongs of that test. *Schwarzenegger*, 374 F.3d at 802.

2 **V. CONCLUSION**

3 The Court **GRANTS** Defendant BBC's Motion to Dismiss. Plaintiff's
4 claims against BBC are hereby **DISMISSED WITH PREJUDICE**.

5
6 **IT IS SO ORDERED.**

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8 DATED: June 28, 2017

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10 **CONSUELO B. MARSHALL**
11 **UNITED STATES DISTRICT JUDGE**

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