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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding no.	91276101
Party	Defendant Arrehman Arraheem Corporation
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Attachments	Reply in Support of Motion to Dismiss.pdf(64510 bytes) Ex. A [Order of Dismissal].pdf(210616 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Application Serial No. 90/327,658
Published in the Official Gazette of January 11, 2022
Mark: BUNDU KHAN KABAB HOUSE BEST BBQ JUST FOR YOU

BUNDOO KHAN USA, LLC	§	
	§	
Opposer,	§	
	§	
v.	§	Opposition No. 91276101
	§	Cancellation No. 92080482
ARREHMAN ARRAHEEM CORP.	§	
	§	
Applicant.	§	

ARREHMAN ARRAHEEM CORPORATION'S
REPLY IN SUPPORT OF ITS MOTION TO DISMISS

In its Response to Arrehman's Motion to Dismiss the Second Amended Notice of Opposition and Amended Petition to Cancel, BK USA desperately[1] attempts to fit a square peg in a round hole. BK USA's Response makes clear that it is trying to plead around the "well-known mark doctrine," which this Board and the Central District of California have both already dismissed. BK USA also continues to ignore that it cannot support a false association claim with activities taking place outside the United States. And vague references to uses of Bundoo Khan by unnamed third-parties do not suffice to state a plausible claim for false association. BK USA's false association claims should therefore be dismissed, with prejudice.

[1] Petitioner Bundoo Khan USA LLC's desperation is evident when it argues that "Arrehman has not filed a response to the Amended Petition for Cancellation in the Cancellation Proceeding," while recognizing that the cancellation and opposition proceedings are consolidated and even using the consolidated case heading in its brief. In fact, the very first paragraph in Arrehman's Motion to Dismiss says, "Arrehman files this Motion to Dismiss Petitioner's Second Amended Notice of Opposition and Amended Petition to Cancel." 22 TTABVUE. And the TTAB subsequently entered an order staying both proceedings. 23 TTABVUE. In that order, the TTAB used the consolidated case heading and noted that, "The Board notes Applicant/Respondent's motion (filed May 1, 2023) to dismiss Petitioner's Second Amended Notice of Opposition and Amended Petition to Cancel." 22 TTABVUE." *Id.* (emphasis added).

I. BK USA's Attempt to Disguise its "Well-Known Mark" Priority Claim Fails

BK USA originally filed a district court action in the Ninth Circuit (C.D. Cal.) asserting priority based on the well-known mark doctrine. *Bundoo Khan USA LLC v. Arrehman Arraheem Corp.*, No. 8:22-cv-00304 (C.D. Cal. 2022). The Ninth Circuit happens to be one of the only circuits that recognizes the "well known mark doctrine." *ITC Ltd. v Punchgini Inc.*, 482 F.3d 135, 156 (2d Cir. 2007), *cert. denied*, 128 S.Ct. 288 (2007). After the California case was dismissed for lack of personal jurisdiction, BK USA asserted the well-known mark doctrine in the current proceedings. Ex. A [Order of Dismissal]; 13 TTABTVUE 6. This Board struck BK USA's claim, noting that the Board does not recognize the doctrine. 18 TTABVUE 20. Then, in a last ditch effort, BK USA amended its pleadings to assert only a false association claim. 20 TTABVUE.

After multiple failed attempts to assert a priority claim under the "well-known mark" doctrine, BK USA now attempts to disguise that priority claim as a claim for false association. The Board should reject BK USA's attempt to use its false association claim to improperly gain priority over Arrehman's use in the United States for almost 20 years. The TTAB expressly rejected the "well-known mark" doctrine in *Bayer*. *Bayer Consumer Care Ag v. Belmora LLC*, 90 U.S.P.Q.2d 1587, 1591 (T.T.A.B. 2009). In so doing, the TTAB relied upon the Second Circuit *Punchgini* case. *Id.* (citing *Punchgini Inc.*, 82 USPQ2d 1414, 1433). The facts of *Punchgini* are almost identical to the facts here. 482 F.3d at 143. *Punchgini* involved a famous restaurant "Bukhara" in India that sued American restaurants based on priority of use under the "well-known mark" doctrine. *Id.* The *Punchgini* court refused to apply the "well-known mark" doctrine and relied on the fact that the "principle of territoriality is basic to American trademark law." *Id.* The *Punchgini* court further reasoned that Congress did not intend to "depart from the principle of territoriality" because, although Congress detailed circumstances under which the holders of

foreign ***registered marks*** can claim priority rights in the United States, Congress did not address the "well-known mark" doctrine. *Id.* at 155, 166. The *Punchgini* court thus concluded that "absent some use of its mark in the United States, a foreign mark holder generally may not assert priority rights under federal law, even if a United States competitor has knowingly appropriated that mark for his own use." *Id.* at 156. The very same policy applies here. BK USA cannot sidestep the "principle of territoriality" that is "basic to American trademark law" by attempting to apply its facts to a claim for false association. This is especially true because, as further discussed below, BK USA has failed to adequately allege that any prior use "uniquely identifies" the plaintiff such that a connection is presumed as required for a false association claim (not required by the "well-known mark" doctrine). 18 TTABVUE 6-7.

II. All Alleged Uses of the BUNDU KHAN Name in the United States Prior to Arrehman's Use Were Unknown Third-Party Uses

BK USA fails to state a claim for false association because it does not and cannot allege that the BUNDOO KHAN mark "***uniquely identif[ies] the plaintiff in the United States***" such that a connection between Arrehman and Bundoo Khan would be presumed. 18 TTABVUE 8 (emphasis added)

The Board has already ruled that "the designation at issue must uniquely identify ***the plaintiff in the United States***." 18 TTABVUE 8 (emphasis added). BK USA argues that this Board already determined that "Petitioner need not allege its own use of the mark or designation at issue to state a Section 2(a) claim." 25 TTABVUE 4 (actual page numbers not present in pleading). But what this Board decided was that "[even though [BK USA] is not required to plead that it used BUNDOO KHAN as a service mark in the United States prior to [Arrehman]," BK USA ***is required*** to "clearly allege that [BK USA]'s designation BUDNOO KHAN uniquely pointed to the persona of Mr. Khan **in the United States, prior to** [Arrehman]'s use of its

registered mark." 22 TTABVUE 14 (emphasis in original). BK USA still fails to allege that any use (much less its use or its alleged predecessor's use) of BUDOO KHAN **in the United States, prior to** Arrehman's use (almost 20 years ago) uniquely pointed to the persona of Mr. Khan (or his or his family's alleged restaurants in Pakistan and Dubai). That is because BK USA's ***only*** allegations of use in the United States prior to Arrehman's use almost 20 years ago are alleged uses by third parties that BK USA cannot even name. 20 TTABVUE 2 ("In as early as the 1990's, there were restaurants using the Bundoo Khan name in the United States in connection with Pakistani barbeque, including in Chicago and Los Angeles."). These allegations are insufficient to allege that BUNDOO KHAN uniquely pointed to the persona Mr. Khan in the United States prior to Arrehman's use because third party uses "***are not evidence*** that the marks which are the subjects thereof are in use and ***that the public is familiar with the use of those marks.***" *Hornby v. TJX Companies, Inc.*, 87 USPQ2d 1411, 1416 (TTAB 2008) (quoting *In re White*, 80 USPQ2d 1654, 1659-60 (TTAB 2006)).

BK USA casts doubt on Arrehman's reliance on *Horby* for the proposition that third party uses are not evidence to show that the public is familiar with the use of those marks. But BK USA is wrong. BK USA points to a completely unrelated statement in *Hornby* that says, "[t]hird-party registrations can, of course, be used to show that a term has a particular significance within an industry, in the same way that dictionaries are used." *Hornby*, 87 USPQ2d at 1416. But the unrelated statement that BK USA points to in *Hornby* does not change the TTAB's clear holding that third party uses "***are not evidence*** that the marks which are the subjects thereof are in use and ***that the public is familiar with the use of those marks.***" *Id.* (emphasis added). Thus, because BK USA's only allegations of use in the United States prior to Arrehman's use are third party uses and

because third party uses are not evidence the that uses "uniquely identify ***the plaintiff in the United States***," BK USA's allegations of third party uses fail to state a claim for false association.

III. All Alleged Uses by Anyone Allegedly Associated with BK USA or the Alleged Related Entities are Outside the United States

This Board has already recognized that "activities in countries outside the United States" are not considered in a claim for false suggestion. 18 TTABVUE 14 (quoting *Hornby*, 87 USPQ2d at 1416). BK USA's only allegations related to activity in the United States are the alleged activities of unknown and unnamed "restaurants using the Bundoo Khan name in the United States in connection with Pakistani barbeque, including in Chicago and Los Angeles" in "as early as the 1990's." 20 TTABVUE 2-3. Every allegation before 2021 related to the alleged Mr. Khan, his alleged restaurants, or his alleged family occurred ***outside*** the United States. *Id.* These allegations are insufficient to allege that "the designation at issue" "uniquely identif[ies] ***the plaintiff in the United States***."

BK USA argues that *Hornby* held that activities outside the United States are relevant to a false association claim. 25 TTABVUE 7 (no actual page numbers used). But, *Hornby* said that it is ***not*** proper to consider activities outside the United States ***unless*** there is evidence that "such activities reached or had an impact on U.S. consumers." *Hornby*, 87 USPQ2d at 1416. Thus, because BK USA's ***ONLY*** allegations of activities in the United States relate to unknown third parties that allegedly opened restaurants in Chicago and Los Angeles "as early as the 1990's," BK USA has not sufficiently alleged that the overseas activities reached or had an impact on U.S. consumers as required to state a claim for false association. Thus, BK USA's false association grounds for cancellation/opposition must be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was served on Petitioner by electronic mail on May 29, 2023 to:

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:22-cv-00304-DOC-KES Date: July 14, 2022

Title: BUNDOO KHAN USA LLC V. ARREHMAN ARRAHEEM CORPORATION

PRESENT: THE HONORABLE DAVID O. CARTER, UNITED STATES DISTRICT JUDGE

Karlen Dubon	Not Present
Courtroom Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:	ATTORNEYS PRESENT FOR DEFENDANT:
None Present	None Present

PROCEEDINGS (IN CHAMBERS): ORDER GRANTING MOTION TO DISMISS [20]

Before the Court is Defendant Arrehman Arraheem Corporation's ("Defendant") Motion to Dismiss ("Motion" or "Mot.") (Dkt. 20). The Court finds this matter suitable for resolution without oral argument. Fed. R. Civ. Pro. 78; Cal. R. 7-15. Having reviewed the papers, the Court **GRANTS** Defendant's Motion and **VACATES** the hearing scheduled for July 18, 2022.

I. BACKGROUND

A. Facts

The following relevant facts are drawn from Plaintiff Bundoo Khan USA LLC's ("Plaintiff") First Amended Complaint ("FAC") (Dkt. 19). The instant action relates to a trademark infringement dispute between Plaintiff and Defendant. *See generally* FAC. Plaintiff is a California company that exclusively owns the license and franchise of the BUNDOO KHAN restaurant in the United States. *Id.* ¶¶ 9, 19. Defendant is a Texas corporation with its principal place of business in Texas. *Id.* ¶ 10. Defendant operates multiple restaurants in Texas, using the name BUNDU KHAN. *Id.* ¶ 11. Plaintiff alleges that Defendant represents to customers without authorization that Defendant's restaurant is associated with the original BUNDOO KHAN restaurant. *Id.*

B. Procedural History

Plaintiff filed its Complaint in this Court on February 25, 2022 (Dkt. 1). On April 29, 2022, Plaintiff filed its First Amended Complaint. On May 20, 2022, Defendant filed the present Motion to Dismiss. On June 17, 2022, Plaintiff filed its Opposition ("Opp'n") (Dkt. 23), and Defendant filed its Reply (Dkt. 25) on June 27, 2022.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(2), defendants may move to dismiss for lack of personal jurisdiction. While the plaintiff bears the burden of showing that the Court has personal jurisdiction over the defendant, the court "resolves all disputed facts in favor of the plaintiff." *See Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006) (quotation marks and citation omitted). The Court may consider evidence presented in affidavits and declarations in determining personal jurisdiction. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977); *but see Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) ("When a district court acts on a defendant's motion to dismiss under Rule 12(b)(2) without holding an evidentiary hearing, the plaintiff need make only a prima facie showing of jurisdictional facts to withstand the motion to dismiss. That is, the plaintiff need only demonstrate facts that if true would support jurisdiction over the defendant." (citations omitted)). "The plaintiff cannot simply rest on the bare allegations of its complaint, but uncontroverted allegations in the complaint must be taken as true." *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (quotation marks and citation omitted). The Court "may not assume the truth of allegations in a pleading which are contradicted by affidavit." *Data Disc, Inc.*, 557 F.2d at 1284.

There are two limitations that restrict a court's power to exercise personal jurisdiction over a nonresident defendant: the constitutional principles of due process and the applicable state personal jurisdiction rule. *Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990). The Ninth Circuit has held that because California's personal jurisdiction rule is "coextensive with the outer limits of due process," personal jurisdiction inquiries under California law are constrained solely by constitutional principles. *Id*. at 1361; Cal. Civ. Proc. Code § 410.10.

The Supreme Court has held that constitutional due process requires that a nonresident defendant have sufficient "minimum contacts" with the forum state "such

that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). When the defendant's activities in the forum state are substantial, continuous and systematic, a court may exercise general jurisdiction over the defendant, even if the cause of action is unrelated to defendant's contacts with the forum. *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). Where a court lacks general personal jurisdiction, it may have specific personal jurisdiction if the defendants have certain minimum contacts with the forum state, the controversy arises out of those contacts, and the exercise of jurisdiction is reasonable. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472-74 (1985). There are three requirements for a court to exercise specific jurisdiction over a non-resident defendant: (1) the defendant must "purposefully direct his activities" toward the forum, (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. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017).

When a motion to dismiss is granted, the court must decide whether to grant leave to amend. The Ninth Circuit has a liberal policy favoring amendments, and thus leave to amend should be freely granted. *See, e.g.*, *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). However, a court need not grant leave to amend when permitting a plaintiff to amend would be an exercise in futility. *See, e.g.*, *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) ("Denial of leave to amend is not an abuse of discretion where the pleadings before the court demonstrate that further amendment would be futile.").

III. DISCUSSION

Defendant moves to dismiss Plaintiff's claims for lack of personal jurisdiction pursuant to Rule 12(b)(2), contending that there is neither general jurisdiction nor specific jurisdiction and that jurisdictional discovery is not necessary. Mot. at 2. The Court considers each issue in turn.

A. General jurisdiction

Plaintiff does not dispute that Defendant is not a California citizen and has no "systematic contacts" with California to render general jurisdiction appropriate. *See generally* FAC; Mot. at 3. Thus, to exercise personal jurisdiction over Defendant, the Court must find that specific jurisdiction exists.

B. Specific jurisdiction

Defendant argues that there is no specific jurisdiction because the cease and desist letters and other allegations do not demonstrate sufficient "minimum contacts." Plaintiff argues that its allegations demonstrate sufficient actions in and toward California to support jurisdiction.

The Ninth Circuit follows a three-part test for ascertaining whether specific personal jurisdiction obtains: (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. *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir. 2017) (citing *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). The plaintiff bears the burden of demonstrating that the first two elements are satisfied. If the plaintiff fails to do so, then personal jurisdiction is not established; if, on the other hand, the plaintiff succeeds in showing that the first two requirements are met, then the defendant must "present a compelling case" that the exercise of personal jurisdiction would be unreasonable. *Id.*

The first prong of the test encompasses both purposeful direction and purposeful availment, which are "two distinct concepts." *Id.* Purposeful direction, which is analyzed under the *Calder* "effects" test, is limited to claims of intentional tort. *Holland Am. Line, Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450 (9th Cir. 2007); *see Calder v. Jones*, 465 U.S. 783, 789 (1984).

1. Complaint

In deciding whether to exercise jurisdiction at the motion to dismiss stage, the Court looks only at the pleadings. The Court finds that the allegations stated in the FAC are not specific enough to establish personal jurisdiction. Even if Plaintiff amends to include the contents of the declarations in its complaint, it would still be insufficient to support personal jurisdiction because Plaintiff provides only vague hearsay evidence. The Court analyzes the specific allegations in detail below.

2. Cease and desist letters

Plaintiff argues that Defendant purposefully directed actions toward California under the *Calder* "effects" test by sending cease and desist letters to Plaintiff. FAC ¶ 29; Opp'n at 8. Defendant argues that sending cease and desist letters is its only conduct that was "expressly aimed" at California. Mot. at 4. Defendant notes that Plaintiff fails to meet the burden of establishing specific jurisdiction because (1) the general rule is that a cease and desist letter alone is not sufficient to establish personal jurisdiction, and (2) Defendant's cease and desist letters were not "abusive, tortious, or otherwise wrongful" to be an exception to the general rule. Mot. at 4-5. The Court agrees with Defendant: the Ninth Circuit has made clear that "[a] cease and desist letter is not in and of itself sufficient to establish personal jurisdiction over the sender of the letter." *Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1208-09 (9th Cir. 2006). Accordingly, the cease and desist letters alone cannot establish jurisdiction.

3. Meetings and statements in California

Plaintiff next argues that several meetings in California provide sufficient contacts to support jurisdiction.

First, Plaintiff alleges that in early 2021, Habib Wanker, allegedly acting on Defendant's behalf, conveyed Defendant's interest in operating a restaurant in California and offered Plaintiff a license to use Defendant's mark (BUNDU KHAN) in California. *See* Declaration of S. Farreed Jafrey ("F. Jafrey Decl.") (Dkt. 23-3) ¶¶ 5-6; Declaration of Abdullah Jafrey ("A. Jafrey Decl.") (Dkt. 23-2) ¶¶ 5-6. Defendant argues that Wanker had no actual or apparent authority to represent Defendant when this alleged negotiation occurred, because Wanker resigned from Defendant's business on June 2, 2020 and had no other affiliation with Defendant. Reply at 6-7. Because Wanker resigned from Defendant before 2021 when this interaction allegedly happened, the Court agrees that Wanker had no authority to represent Defendant in 2021 and thus his alleged contact with California in 2021 cannot suffice as Defendant's purposeful direction.

Second, Plaintiff alleges that Defendant dispatched Wamiq Kamal and an individual named Taha to scout potential restaurant locations in Southern California. F. Jafrey Decl. ¶¶ 9-16; A. Jafrey Decl. ¶¶ 9-15. Plaintiff argues that Kamal and Taha, representing Defendant, participated in an in-person meeting in California in 2021 which discussed ways to "take out" Plaintiff's restaurant. FAC ¶¶ 26, 29(b); F. Jafrey Decl. ¶¶ 10, 18-19; A. Jafrey Decl. ¶¶ 17-18. Defendant argues that these declarations are not

based on the Jafreys' personal knowledge, but are hearsay from Kamal, and that Kamal's knowledge is also hearsay from Taha. Reply at 7-9. Defendant further argues that this evidence is unreliable because Plaintiff provides no other facts to connect Taha or Kamal to Defendant. *Id* at 13. Plaintiff's conclusory allegations that Kamal and Taha were representatives of Defendant are based solely on speculation and thus are insufficient to support personal jurisdiction.

Third, Plaintiff alleges that an owner of Shahnawaz, a Los Angeles restaurant, is also a representative of Defendant. FAC ¶ 24; F. Jafrey Decl. ¶¶ 20-21; A. Jafrey Decl. ¶ 19; Declaration of Shabaz Mueed ("Mueed Decl.") ¶ 5. Plaintiff also alleges that a representative of Shahnawaz named Mozamil approached Plaintiff's chef Mueed seeking to make him quit and instead work for Defendant. FAC ¶ 29(c); F. Jafrey Decl. ¶ 21; A. Jafrey Decl. ¶ 20; Mueed Decl. ¶ 6. Defendant argues that the Jafreys' and Mueed's statements about this were also heard from Kamal and thus are hearsay. Reply at 7-9. Plaintiff does not provide the name of this owner of Shahnawaz, nor does it provide facts to support the relationship between Shahnawaz and Defendant. The Court thus finds this allegation conclusory, vague, and insufficient to support personal jurisdiction.

Fourth, Plaintiff alleges that Defendant made statements to Plaintiff's customers that Plaintiff is not associated with the original Bundoo Khan family; it is not clear from the FAC whether these statements occurred in California. FAC ¶¶ 29(d), (e); F. Jafrey Decl. ¶ 22; A. Jafrey Decl. ¶ 21. Defendant argues that this evidence is unreliable because those unnamed customers' statements are themselves hearsay, and the Jafreys' statements based on those customers' statements are also hearsay. Reply at 9-10, 13. Since these allegations lack specific details connecting Defendant to any actions in California, the Court agrees that they are insufficient to establish Defendant's purposeful direction under the "effects" test.

Although a plaintiff's version of the facts is not taken as true if it is directly contravened, *see Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003), "in establishing its prima facie case, the documents submitted by the plaintiff 'are construed in the light most favorable to the plaintiff and all doubts are resolved in its favor.'" *Metro. Life Ins. Co. v. Neaves*, 912 F.2d 1062, 1064 n.1 (9th Cir. 1990) (citation omitted). In addition, "conflicts between the facts contained in the parties' affidavits must be resolved in [claimant's] favor for purposes of deciding whether a prima facie case for personal jurisdiction exists." *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001) (quoting *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996)) (quotation marks omitted).

Even construing the allegations in Plaintiff's favor, the Court finds that the evidence provided in the declarations fails to adequately plead personal jurisdiction.

4. Meetings and statements in Texas

Plaintiff next alleges that in 2021, Mr. Khan of Defendant and the owner of Shahnawaz restaurant had a discussion in Texas regarding opening a California location. FAC ¶ 29(f); Mueed Decl. ¶ 7. Defendant argues that this statement is also hearsay since Mueed heard the alleged statements from the owner of Shahnawaz. Reply at 10. The Court finds that the allegations regarding Defendant's expansion plan in California lack specifics and do not provide sufficient evidence of contacts aimed at California.

Plaintiff also alleges that Defendant told its chef Mueed that Defendant was related to the original Bundoo Khan when Mueed visited Texas. Opp'n at 6; Mueed Decl. ¶¶ 8-9. Defendant denies this allegation and argues that even if this were true, Defendant was making a statement in Texas to someone who Defendant did not know was from California and thus it was not an "intentional act" aimed at California. Reply at 11. The Court agrees. Plaintiff offers no evidence if Defendant knew Mueed was Plaintiff's chef and a California resident. And even if Defendant knew, making a statement to a California resident in Texas is not a sufficient contact for a California court to exercise personal jurisdiction. *Walden v. Fiore*, 571 U.S. 277, 285 (2014) ("'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there.").

Accordingly, the Court GRANTS Defendant's Motion and finds there is no specific jurisdiction over Defendant. Plaintiff's Complaint is therefore DISMISSED WITH LEAVE TO AMEND.

C. Jurisdictional Discovery

Plaintiff requests jurisdictional discovery related to the exercise of personal jurisdiction over Defendant. Opp'n at 9. Defendant counters that jurisdictional discovery should be denied because Plaintiff provides only vague allegations that are specifically denied by Defendant.

"A court may permit discovery to aid in determining whether it has personal jurisdiction." *EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d

1074, 1093 (C.D. Cal. 2010) (citing *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977)). Jurisdictional discovery is discretionary, and "may be appropriately granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). There are also circumstances when jurisdictional discovery is unwarranted. For example, jurisdictional discovery is inappropriate when the request for discovery "was based on little more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (citing *Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (refusing jurisdictional discovery where the plaintiffs "state only that they 'believe' discovery will enable them to demonstrate sufficient contacts to establish personal jurisdiction")). In general, "a refusal to grant discovery to establish jurisdiction is not an abuse of discretion when 'it is clear that further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction.'" *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003). However, jurisdictional discovery should be granted where "discovery on th[e] issue might well demonstrate facts sufficient to constitute a basis for jurisdiction." *Harris Rutsky*, 328 F.3d at 1135.

Here, Plaintiff offers only vague hearsay evidence which is based on "speculation." Though Plaintiff may submit more specific evidence to support jurisdiction, jurisdictional discovery is unlikely to assist the Court since the disputed facts regard private conversations. Because further discovery would not demonstrate facts sufficient to constitute a basis for jurisdiction, the Court DENIES jurisdictional discovery.

IV. DISPOSITION

For the reasons explained above, the Court GRANTS Defendant's Motion to Dismiss in its entirety and VACATES the hearing scheduled for July 18, 2022. Plaintiff's Complaint is DISMISSED WITH LEAVE TO AMEND. Plaintiff shall file any amended complaint by August 5, 2022.

The Clerk shall serve this minute order on the parties.

Initials of Deputy Clerk: kdu