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

Proceeding	92045947
Party	Defendant Great Concepts, LLC
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DAN TANA,

Petitioner,

v.

GREAT CONCEPTS, LLC,

Registrant.

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Cancellation No. 92045947

Registration No. 2929764

Mark: Dantannas

EXHIBIT “1”
TO
GREAT CONCEPTS’ REQUEST TO REMOVE SUSPENSION OF PROCEEDINGS

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10	DAN TANA,)	CASE NO.: CV 07-5532 ABC (JWJx)
)	
11	Plaintiff,)	
)	ORDER RE: DEFENDANT'S MOTION TO
12	v.)	DISMISS
)	
13	DANTANNA'S, et al.,)	
)	
14	Defendants.)	
)	
15)	
)	
16)	

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18 Pending before the Court is Defendant Great Concepts's (a.k.a.

19 Dantanna's, "Defendant") Motion to Dismiss for Lack of Personal

20 Jurisdiction, filed on November 19, 2007. Plaintiff Dan Tana

21 ("Plaintiff") opposed on December 3, 2007 and Great Concepts replied

22 on December 10, 2007. The Court found this matter appropriate for

23 resolution without oral argument and VACATED the January 28, 2008

24 hearing date. See Fed. R. Civ. Proc. 78; Local Rule 7-15. Upon

25 consideration of the materials submitted by the parties and the case

26 file, the Court GRANTS Great Concepts's Motion to Dismiss for Lack of

27 Personal Jurisdiction.

28 //

1 **I. FACTUAL AND PROCEDURAL BACKGROUND**

2 On August 23, 2007, Plaintiff Dan Tana ("Plaintiff") filed a
3 complaint against Defendants, Dantanna's and Great Concepts
4 (collectively "Great Concepts"). (Pl.'s Compl. 1.) The Court struck
5 as moot Great Concepts's initial Motion to Dismiss for Lack of
6 Personal Jurisdiction after Plaintiff filed a First Amended Complaint
7 ("FAC"), alleging two claims. (Order Striking Mot. Dismiss, Nov. 15,
8 2007; FAC ¶¶ 23-34.) The first claim alleges that Great Concepts
9 violated the Lanham Act (15 U.S.C. § 1125(a)) by naming its restaurant
10 "Dantanna's," a name allegedly "confusingly similar" to "Dan Tana's."
11 (FAC. ¶ 26.) The second claim alleges that Great Concepts violated
12 the common law right of publicity by illicitly exploiting Plaintiff's
13 name and likeness. (FAC ¶ 31.) Subsequently, Great Concepts refiled
14 its Motion to Dismiss for Lack of Personal Jurisdiction. Therein,
15 Great Concepts argues that it does not have sufficient "minimum
16 contacts" with the forum state, California, to allow the Court to
17 exercise personal jurisdiction over it, and asks the Court to dismiss
18 the case. Timely Opposition and Reply were filed.

19 In 1964, after gaining notoriety as a soccer player and actor,
20 Plaintiff Dan Tana ("Plaintiff") opened a restaurant in Los Angeles
21 called "Dan Tana's," named after himself. (FAC ¶¶ 9, 12.) "Dan
22 Tana's" restaurant eventually gained fame and media coverage. (FAC ¶
23 11-14; see Blakely Decl. Ex. 2.) On December 31, 2005, The Patent and
24 Trademark Office ("PTO") refused Plaintiff's application to register
25 the mark "Dan Tana's" because Defendant Great Concepts, owns a mark
26 with similar likeness, called "Dantanna's." (FAC ¶ 16.)

27 Defendant Great Concepts operates a sports bar and restaurant in
28 Atlanta, Georgia named "Dantanna's." (Def.'s Mot. to Dismiss ("Mot."))

1 3:4-5; Clapp. Decl. ¶ 5.) Prior to opening "Dantanna's" in October
2 2003, Great Concepts applied for a trademark under the same name.
3 (Clapp. Decl. ¶ 3.) The PTO issued that mark to Great Concepts on
4 March 1, 2005. (Id. at ¶ 4.) In connection with this Motion, David
5 Clapp, Great Concepts's managing general partner, filed an affidavit
6 attesting to Great Concepts's lack of contacts within California and
7 rebutting Plaintiff's inaccurate jurisdictional allegations. (Reply
8 3:11-15; Clapp Decl. ¶ 2; ¶¶ 7-22.) Therein, he claims that he first
9 learned of "Dan Tana's" while his attorneys were filing the
10 application for the trademark. (Blakely Decl. Ex. 5.)

11 Great Concepts is incorporated and has its principal place of
12 business in Georgia. (FAC ¶ 3.) Great Concepts's sole venture is
13 operating "Dantanna's." (Clapp. Decl. ¶ 5.) During its four years of
14 existence, "Dantanna's" has operated at only its Atlanta location.
15 (Id. at ¶ 6.) Great Concepts does not have property, offices, bank
16 accounts, telephone numbers or other contact information in the State
17 of California. (Mot. 3:18-19.) Likewise, Great Concepts has never
18 operated a restaurant or other business outside of Georgia. (Clapp.
19 Decl. ¶ 10.) But, before starting Great Concepts and opening
20 "Dantanna's," Mr. Clapp directly oversaw the opening and operation of
21 a restaurant in Hollywood, California called "Café TuTu Tango." (FAC
22 ¶ 19.)

23 All of Great Concepts's employees work and reside in Georgia.
24 (Clapp Decl. ¶ 9.) Currently, however, Great Concepts uses the
25 freelance work of a California resident, Kelly Vallendar, who updates
26 "Dantanna's" website and menu. (Id. at. ¶¶ 15, 18.) Ms. Vallendar
27 initially was Mr. Clapp's employee when Mr. Clapp was managing another
28 Georgia restaurant. (Id. at ¶ 15.) In Spring 2003, Mr. Clapp hired

1 Ms. Vallendar to design the typographical logo for "Dantanna's"
2 restaurant. (Id. at ¶ 16.) At the end of 2003, Ms. Vallendar moved
3 from Georgia to La Mesa, California to be with her husband. (Taylor
4 Decl. Ex. 1.) Since then, she has performed approximately \$3,800
5 worth of design work yearly for Great Concepts. (Clapp Decl. ¶ 19.)
6 During her entire tenure with Great Concepts, Ms. Vallendar has
7 remained an independent contractor. (Id.)

8 "Dantanna's" website, www.Dantannas.com, contains certain
9 interactive features. (Pl.'s Opp'n 1). Most notably, it allows
10 persons to make reservations and order takeout services online.
11 (Clapp Decl. ¶ 14.) The website also allows persons to email the
12 restaurant's management. (Mot. 10:9-10.)

13 "Dantanna's" was referenced in a May 2007 issue of *Restaurants &*
14 *Institutions* magazine, a nationwide publication that reaches
15 California. (FAC ¶ 20.) In fact, Plaintiff subscribes to the
16 magazine and received that same issue at his California residence.
17 (Pl.'s Opp'n 3-4.) Plaintiff claims that Great Concepts published and
18 distributed the advertisement. (FAC ¶ 21.) Upon review of the
19 advertisement, however, it is apparent that the advertisement is for
20 the magazine's e-newsletter and not for "Dantanna's." (See Blakely
21 Decl. Ex. 7.) In large print the advertisement's title reads
22 "*Restaurants & Institutions: Recipes and Ideas.*" (Id.) It also
23 contains three pictures, one of which is a picture of a spinach salad
24 with a small-printed caption beneath the picture that reads
25 "Dantanna's, Atlanta." (Id.) Mr. Clapp submitted an affidavit
26 attesting that Great Concepts was not responsible for placing the
27 advertisement. (Clapp Decl. ¶ 13.)

28 //

1 **II. LEGAL STANDARD**

2 When a defendant challenges personal jurisdiction in a motion to
3 dismiss and no evidentiary hearing is held, plaintiff need only make a
4 *prima facie* showing of personal jurisdiction. See AT&T v. Compagnie
5 Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996). To make this
6 *prima facie* showing, "uncontroverted allegations in [the plaintiff's]
7 complaint must be taken as true, and 'conflicts between the facts
8 contained in the parties' affidavits must be resolved in [the
9 plaintiff's] favor for purposes of deciding whether a *prima facie* case
10 for personal jurisdiction exists.'" Id. (quoting WNS, Inc. v. Farrow,
11 884 F.2d 200, 203 (5th Cir.1989)); see also Ballard v. Savage, 65 F.3d
12 1495, 1498 (9th Cir. 1995) (explaining that plaintiff need only
13 demonstrate facts that, if true, would support jurisdiction).

14 Where there is no applicable federal statute governing personal
15 jurisdiction, the district court applies the law of the state in which
16 the district court sits. Dole Food Co. v. Watts, 303 F.3d 1104, 1110
17 (9th Cir. 2002). California has a "long-arm" statute that permits
18 "[a] court of [the] state [to] exercise jurisdiction on any basis not
19 inconsistent with the Constitution of this state or of the United
20 States." CAL. CIV. PROC. CODE § 410.10. Thus, California's statutory
21 limitation is "coextensive with the outer limits of due process under
22 the state and federal constitutions, as those limits have been defined
23 by the United States Supreme Court" and "[j]urisdiction . . . is thus
24 constrained only by constitutional principles." Sher v. Johnson, 911
25 F.2d 1357, 1361 (9th Cir. 1990); see also Ballard, 65 F.3d at 1500 n.4
26 (9th Cir. 1995) ("California permits its courts to exercise personal
27 jurisdiction to the extent permitted by the federal due process
28 clause.").

1 A court may constitutionally exercise personal jurisdiction over
2 a nonresident defendant only so long as there exist "minimum contacts"
3 between the defendant and the forum, such that maintenance of the suit
4 "does not offend traditional notions of fair play and substantial
5 justice." Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).
6 The "minimum contacts" sufficient to confer personal jurisdiction have
7 been categorized as either general or specific. See Helicopteros
8 Nacionales De Columbia, S.A. v. Hall, 466 U.S. 408, 414 -15 nn.8-9
9 (1984). A defendant is present "generally" in the forum when its
10 activities in the state are "substantial" or "continuous and
11 systematic." Sher, 911 F.2d at 1361; Dole Food, 303 F.3d at 1111.
12 "Specific jurisdiction" exists where the claim for relief arises
13 directly from defendant's contacts with the forum state. See AT&T, 94
14 F.3d at 588.

15 16 **III. DISCUSSION**

17 Plaintiff does not contend that this Court may exercise general
18 jurisdiction over Great Concepts. Indeed, it is clear that Great
19 Concepts's minimal contacts with California fall well short of the
20 requisite "systematic and continuous" contacts needed to confer
21 general jurisdiction. Plaintiff argues only that this Court may
22 exercise specific jurisdiction over Great Concepts. Accordingly, the
23 Court will limit its analysis to only the question of specific
24 jurisdiction.

25 **A. SPECIFIC JURISDICTION**

26 Where general jurisdiction does not exist, the Ninth Circuit has
27 established a three-part test to evaluate whether the Court may
28 exercise specific jurisdiction over a defendant:

1 (1) The nonresident defendant must do some act or consummate some
2 transaction with the forum or perform some act by which he
3 purposefully avails himself of the privilege of conducting
4 activities in the forum, thereby invoking the benefits and
5 protections of its laws;

6 (2) The claim must arise out of or result from the defendant's
7 forum-related activity; and

8 (3) The exercise of jurisdiction must be reasonable.

9
10 Ochoa v. J.B. Martin & Sons Farms, Inc., 287 F.3d 1182, 1188-89 (9th
11 Cir. 2002) (footnote omitted). Although Ninth Circuit law formerly
12 required a plaintiff to demonstrate each of these three factors, in
13 light of subsequent Supreme Court precedent, a more flexible approach
14 has been adopted to allow interpretation of the factors in light of
15 reasonableness considerations when necessary. Id. at 1189 n.2 (citing
16 Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985)).

17 **1. Purposeful Direction**

18 In the past, the Ninth Circuit used the term "purposeful
19 availment" as shorthand for two distinct concepts: purposeful
20 availment and purposeful direction. Yahoo, Inc. v. La Ligue Contre Le
21 Racisme Et L'Antisemitisme, 433 F.3d 1199, 1206 (9th Cir. 2006);
22 Schwarzenegger v. Fred Martin Co., 374 F.3d 797, 802 (9th Cir. 2004)
23 (noting that "availment and direction are, in fact, two distinct
24 concepts"). "A purposeful availment analysis is most often used in
25 suits sounding in contract." Schwarzenegger, 374 F.3d at 802. In
26 contrast, in tort cases, such as this one, courts inquire whether the
27 defendant "purposefully directed" its activities to the forum state,
28 applying an "effects" test focusing on "the forum in which the

1 defendant's actions were felt," regardless from where those actions
2 originated. Yahoo, 433 F.3d at 1206.

3 Generally, purposeful direction is designed to protect a
4 defendant from being "haled into a jurisdiction solely because of
5 'random,' 'fortuitous,' or 'attenuated' contacts, or the unilateral
6 activity of another party or third person." Burger King, 471 U.S. at
7 476. Purposeful direction in intentional tort cases is analyzed under
8 a three-part test enunciated in Calder v. Jones. Calder v. Jones, 465
9 U.S. 783 (1984) (the "Calder test"). That test requires a showing
10 that the defendant "(1) committed an intentional act, (2) expressly
11 aimed at the forum state, (3) causing harm that the defendant knows is
12 likely to be suffered in the forum state." Dole Food, 303 F.3d at
13 1111.

14 Great Concepts has not purposefully directed its conduct towards
15 California. The advertisement in *Restaurant and Institutions* magazine
16 refers to "Dantanna's." That advertisement, however, is for the
17 magazine's e-newsletter, not for "Dantanna's," and no evidence or
18 allegation suggests that Great Concepts actually placed the
19 advertisement in the nationwide magazine. Without Great Concepts's
20 having placed, circulated, or otherwise caused this advertisement to
21 reach California, purposeful direction towards California is absent.

22 Plaintiff argues that Great Concepts purposefully directed its
23 conduct towards California by intentionally misappropriating
24 Plaintiff's name. (Pl.'s Opp'n 7:26-8:11.) Plaintiff contends that
25 because the name "Dan Tana" and all the fame associated with it
26 originated in California, Great Concepts's conduct was directed
27 towards California. (Id.) Plaintiff's argument falters for three
28 reasons. First, harm is not equivalent to purposeful direction.

1 Contrary to Plaintiff's contention, it is insufficient that merely the
2 effects of Great Concepts's conduct were felt in California. Indeed,
3 Calder and its progeny require the effects be felt in the forum state
4 and the effects result from action directed *towards* the forum state.
5 Schwarzenegger, 374 F.3d at 803 (holding that purposefully directed
6 conduct consists of actions outside the forum state that are directed
7 *towards* the forum state); see, e.g., Calder, 465 U.S. at 789-790
8 (finding purposeful direction where defendants *wrote and edited* the
9 injury-causing article, which reached the forum); Keeton v. Hustler
10 Magazine, Inc., 465 U.S. 770, 774-75 (1984) (finding purposeful
11 direction where defendant published magazines in Ohio and *circulated*
12 them in the forum state, New Hampshire); World-Wide Volkswagen Corp.
13 v. Woodson, 444 U.S. 286, 297-98 (1980) (noting that a "forum State
14 does not exceed its powers under the Due Process Clause if it asserts
15 personal jurisdiction over a corporation that *delivers* its products
16 into the stream of commerce with the expectation that they will be
17 purchased by consumers in the forum State") (emphasis added); Mattel,
18 Inc. v. MCA Records, Inc., 296 F.3d 894, 899 (9th Cir. 2002) (finding
19 purposeful direction where defendant *distributed* its pop music albums
20 from Europe to the forum state, California); Plant Food Co-Op v.
21 Wolfkill Feed & Fertilizer Corp., 633 F.2d 155, 159 (9th Cir. 1980)
22 (finding purposeful direction where defendant *shipped* defective or
23 mislabeled fertilizer to the forum state, Montana).

24 Second, Plaintiff fails to demonstrate that Great Concepts
25 anticipated a devastating impact upon Plaintiff merely by selecting a
26 name similar to Plaintiff's for its Atlanta-based restaurant. See
27 Calder, 465 U.S. at 789-790 (finding purposeful direction where
28 *defendants anticipated* that writing and editing a defamatory article

1 in the *National Enquirer*, in the state in which the magazine had its
2 largest circulation and in which plaintiff lived and worked, would
3 have a devastating impact upon plaintiff).

4 Third, the argument is circular and alleges that because
5 Plaintiff is located in California, the action must have been directed
6 there. This would eviscerate the requirement that conduct be directed
7 towards California. The issue is not the nature of Plaintiff's name;
8 rather the issue is whether Great Concepts's conduct in naming its
9 restaurant "Dantanna's" was directed towards California. See Callaway
10 Golf Corp. v. Royal Canadian Golf Ass'n, 125 F. Supp. 2d 1194, 1202
11 (D. Cal. 2000) (looking to the nature and quality of defendant's
12 commercial activity).

13 Plaintiff next argues that Great Concepts's website is conduct
14 directed toward California.¹ (Pl.'s Opp'n 8:12-9:5.) The Ninth
15 Circuit uses the sliding scale approach to determine jurisdiction
16 based on the level of interactivity associated with a website.
17 Callaway Golf, 125 F. Supp. 2d at 1202; Cybersell, Inc. v. Cybersell,
18 Inc., 130 F.3d 414, 419 (9th Cir. 1997). Under the sliding scale
19 approach, "the likelihood that personal jurisdiction can be
20 constitutionally exercised is directly proportionate to the nature and
21

22 ¹ For this proposition, Plaintiff cites two inapposite cases:
23 Gator.com v. L.L. Bean and Stomp v. Neato. Gator.com was vacated and
24 abrogated. Gator.com Corp. v. L.L. Bean, Inc., 366 F.3d 789 (9th Cir.
25 2004) (vacating Gator.com Corp. v. L.L. Bean, Inc., 341 F.3d 1072 (9th
26 Cir. 2003)). In Stomp, the defendant's website was highly commercial
27 and a substantial portion of the site was dedicated to the selling of
28 goods. Stomp v. Neato, 61 F.Supp.2d 1074, 1078 (C.D. Cal. 1999).
Dantannas.com, on the other hand, is not highly commercial, nor does
it sell merchandise over the internet; it is a nearly passive website
that does not support the exercise of personal jurisdiction in
California for the reasons discussed herein.

1 quality of commercial activity that an entity conducts over the
2 Internet." Cybersell, 130 F.3d at 419 (quoting Zippo Mfg. Co. v.
3 Zippo Dot Com, 952 F. Supp. 1119, 1124 (D. Pa. 1997)). At one end are
4 websites where defendant conducts business transactions with forum-
5 state residents. Callaway Golf, 125 F. Supp. 2d at 1202. At the other
6 end are passive websites that merely allow users to exchange
7 information with the defendant. Id.

8 Great Concepts's website falls much closer to the latter end.
9 Plaintiff alleges that Great Concepts "advertis[es] and offer[s] its
10 product for sale via the Internet and magazines" and "has placed its
11 product into the stream of commerce." (Pl.'s Opp'n 9:12-13.)
12 However, Great Concepts's Georgia-based website, meant to attract
13 consumers to its Georgia restaurant, merely allows restaurant patrons
14 to make reservations, order takeout, and email management. Plaintiff
15 does not even allege that a California resident has ever accessed
16 Dantannas.com, let alone purchased anything from the website.

17 Nor does Plaintiff specify what product consumers allegedly can
18 purchase online, let alone any product whose purchase could give rise
19 to purposeful direction towards California. If Plaintiff is relying
20 on the online takeout service to establish jurisdiction - the only
21 "product" that can be "purchased" through the website - such purchases
22 could possibly trigger jurisdiction in California only if the Court
23 accepts the absurd corollary that Great Concepts anticipated
24 California residents ordering food from California, flying five hours
25 across country to pick it up and six hours back to California, and
26 perhaps consuming their take-out meals within the forum state. See
27 Calder, 465 U.S. at 789-790 (requiring that *defendants anticipated*

28

1 that writing and editing the defamatory article in the largest
2 circulated magazine would have a devastating impact upon plaintiff).

3 Plaintiff fails to allege anything that could suggest that the
4 website's features were directed towards California residents. On the
5 contrary, the website's online reservation system and takeout service
6 are likely only to be used by those planning to dine at "Dantanna's,"
7 in Atlanta, not those who live 3,000 miles away in Los Angeles.
8 Likewise, the email feature is likely only to be used by those who
9 have dined at "Dantanna's" and have a comment or complaint for its
10 management. See Cybersell, 130 F.3d at 420 (holding that defendant's
11 essentially passive website advertisement is insufficient to confer
12 personal jurisdiction over defendant for alleged trademark
13 infringement over the internet because holding otherwise would
14 automatically confer personal jurisdiction over every trademark
15 infringement case and would not comport with traditional notions of
16 purposeful activity); Panavision Int'l, L.P. v. Toeppen, 141 F.3d
17 1316, 1322 (9th Cir. 1998) (holding that using someone else's
18 trademark and posting a website is insufficient to subject a party
19 domiciled in one state to jurisdiction in another) (citing Cybersell,
20 130 F.3d at 418); Callaway Golf, 125 F. Supp. 2d at 1203 (holding that
21 website's feature that allowed visitors to sign a "guestbook" and post
22 questions was insufficient interactivity to warrant personal
23 jurisdiction).

24 Plaintiff also argues that Great Concepts purposefully directed
25 conduct towards California when its owner opened a restaurant in
26 Hollywood, California. (FAC ¶ 19.) However, Mr. Clapp was not acting
27 on behalf of Great Concepts, for Great Concepts was neither affiliated
28 with the Hollywood restaurant nor in existence at that time. See

1 Int'l Shoe, 326 U.S. at 316 (noting that since a corporate personality
2 is a fiction, its presence within a state can only be manifested by
3 activities carried on within the state by persons acting on its
4 behalf). In his affidavit, Mr. Clapp attested that Great Concepts has
5 never done business in California, which Plaintiff does not refute.
6 (Clapp Decl. ¶ 10.) Because Plaintiff does not refute Mr. Clapp's
7 attestation, the Court must take those attestations as true and
8 discount Plaintiff's allegations in his FAC. Taylor v. Portland
9 Paramount Corp., 383 F.2d 634, 639 (9th Cir. 1967) (citing McNutt v.
10 General Motors Acceptance Corp., 298 U.S. 178, 198 (1936)) (holding
11 that the party asserting jurisdiction has the burden of establishing
12 it if his allegations are challenged).

13 Plaintiff has, therefore, failed to make a *prima facie* showing
14 that General Concepts purposefully directed its conduct towards
15 California.

16 2. Arising Out Of

17 The second prong of the three-prong test requires that
18 defendant's California activities be directly related to plaintiff's
19 claim. Plaintiff must prove that but for defendant's conduct directed
20 toward plaintiff in California, he would not have been injured.
21 Panavision, 141 F.3d at 1322. Where, as here, defendant has only one
22 forum-state contact, plaintiff's claim must arise out of that specific
23 purposeful contact with the forum-state. Lake v. Lake, 817 F.2d 1416,
24 1421 (9th Cir. 1987) (citing McGee v. Int'l Life Ins. Co., 355 U.S.
25 220, 223 (1957)).

26 Plaintiff argues that the mere mention of "Dantanna's" in a
27 magazine distributed in California satisfies this element. (Pl.'s
28 Opp'n 9:18-24.) Again, Plaintiff misinterprets the test because his

1 claims do not arise from a magazine advertisement (which Great
2 Concepts did not place). Since Great Concepts's sole activity in
3 California is using the freelance work of Ms. Vallendar, Plaintiff
4 must prove that his claims arise from that contact.² This, Plaintiff
5 cannot do. Ms. Vallendar's trademark design for "Dantanna's"
6 originated in Georgia, not California. Plaintiff's claims, therefore,
7 do not arise from Great Concepts's California-related activities.

8 **3. Reasonableness**

9 Although Plaintiff failed to show compelling minimum contacts,
10 the presence of factors rendering jurisdiction reasonable "may balance
11 out an otherwise insufficient showing of minimum contact[s]." Haisten
12 v. Grass Valley Medical Reimbursement Fund, Ltd., 784 F.2d 1392, 1400
13 (9th Cir. 1986) (quoting Burger King, 471 U.S. at 478). To determine
14 whether the exercise of jurisdiction would be reasonable, courts
15 examine seven factors: 1) the extent of defendant's purposeful
16 interjection; 2) the burden on the defendant in defending the forum;
17 3) the conflict with the sovereignty of the defendant's state; 4) the
18 forum state's interest in the suit; 5) the most efficient judicial
19 resolution of the dispute; 6) the importance of the forum to
20 plaintiff's interest in convenient and effective relief; and 7) the
21 existence of an alternative forum. Brand v. Menlove Dodge, 796 F.2d
22 1070, 1075 (9th Cir. 1986). "These seven factors together determine
23 whether under the totality of the circumstances the defendant could
24 reasonably anticipate being called upon to present a defense in a

25
26 ² Alternatively, Plaintiff could satisfy this element if he
27 could prove that Great Concepts targeted California when it named its
28 Atlanta-based restaurant "Dantanna's." But, as exhaustively detailed
above, nothing suggests that Great Concepts intended for its Atlanta-
based restaurant's name to reach California.

1 distant forum." Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d
2 834, 840 (9th Cir. 1986). "To determine reasonableness, we consider
3 the relative significance of each factor and balance them all." Id.

4 a) *Purposeful Interjection*

5 This factor is analagous to purposeful direction. Sinatra v.
6 National Enquirer, Inc., 854 F.2d 1191, 1199 (9th Cir. 1988). Great
7 Concepts has no business, property, offices, bank accounts, or contact
8 information in California. See Pacific Atl. Trading Co. v. M/V Main
9 Express, 758 F.2d 1325, 1329 (9th Cir. 1985) (holding that defendants
10 who maintained no offices, employees, agents, or property in
11 California and who only sent one representative to California had not
12 purposefully interjected itself in the forum). The only tie it has
13 with California is an independent contractor, whose relationship with
14 Great Concepts began in Georgia. Ms. Vallendar moved to California
15 for personal reasons, not associated with Great Concepts. See Data
16 Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1288 (9th Cir.
17 1977) (noting that it may be unreasonable to exercise jurisdiction
18 where the effect in the forum was not caused by purposeful action).
19 Since moving to California, she has done minimal work for Great
20 Concepts, averaging only \$3,800 of yearly work. See Facebook, Inc. v.
21 ConnectU LLC, 2007 U.S. Dist. LEXIS 61962 (N.D. Cal. 2007) (finding
22 that hiring multiple independent contractors to perform work in
23 California falls well below a threshold that would confer
24 jurisdiction). Furthermore, Plaintiff has not alleged that Great
25 Concepts was at all responsible for the *Restaurants and Institutions*
26 advertisement. To the contrary, the unrefuted Clapp affidavit
27 establishes that the advertisement is not for Great Concepts, was not
28 placed by Great Concepts, and makes only *de minimus* reference to Great

1 Concepts. See Data Disc, 557 F.2d at 1284 (citing Taylor, 383 F.2d at
2 639) (noting that if a disputed jurisdictional fact was only supported
3 by one side's affidavit, the court may not assume the truth of the
4 unsupported allegation). Consequently, Great Concepts has not
5 purposefully interjected itself in California and this factor weighs
6 strongly in favor of Great Concepts.

7 *b) Defendant's Burden*

8 Great Concepts's burden in litigating in California would be
9 substantial. It is a small company located solely in Atlanta,
10 Georgia. A majority of its witnesses – namely employees – reside in
11 Georgia. Great Concepts's documents concerning the "Dantanna's" name
12 and origin lie in Georgia. Plaintiff correctly points out that in the
13 age of technology this inconvenience would fall short of depriving
14 Great Concepts of due process were the matter to be litigated in
15 California; however, due process inquiries are only proper where there
16 is a clear justification for the exercise of jurisdiction. See
17 Panavision, 141 F.3d at 1323. Here, there is not and this factor
18 strongly favors Great Concepts.

19 *c) Sovereignty*

20
21 This factor concerns the degree to which an exercise of
22 jurisdiction in California would conflict with that of Georgia, Great
23 Concepts's state of domicile. Id. No conflict exists here because
24 California and Georgia are equally able to exercise jurisdiction for
25 Plaintiff's federal and common law claims. This factor weighs in
26 favor of Plaintiff.

27 //

1 d) *Forum State's Interest*

2 "California maintains a strong interest in providing an effective
3 means of redress for its residents tortiously injured." Gordy v.
4 Daily News, L.P., 95 F.3d 829, 836 (9th Cir. 1996) (quoting Sinatra,
5 854 F.2d at 1200). Plaintiff is a California resident and thus this
6 factor weighs in favor of Plaintiff.

7 e) *Efficient Resolution*

8 This factor focuses on the location of evidence and witnesses.
9 Panavision, 141 F.3d at 1323 (citing Caruth, 59 F.3d at 129). It is
10 no longer heavily weighted due to modern advances in communication and
11 transportation. Id. Even though Plaintiff's restaurant, domicile, and
12 evidence of fame are in California, because this litigation concerns
13 Great Concepts's allegedly illicit name, greater focus will be on
14 Great Concepts's name, rather than Plaintiff's name. While a majority
15 of evidence and witnesses regarding "Dantanna's" name are located in
16 Georgia, one of the most important witnesses, Ms. Vallendar, the logo
17 and trademark creator, is located in California. This factor is
18 neutral.

19 f) *Plaintiff's Interest in California as the Forum*

20 Plaintiff's interests in California are not as strong as Great
21 Concepts's interest in Georgia. California could not provide any
22 greater relief than Georgia. It may be slightly more costly for
23 Plaintiff, a California resident, to litigate in Georgia, but it would
24 be significantly more costly for Great Concepts to litigate in
25 California. Therefore, while Plaintiff has an interest in California,
26 it cannot overshadow the heavy burdens Great Concepts would be forced
27 to endure.
28

1 g) *Alternative Forum*

2 An alternative forum exists in Georgia. Plaintiff has neither
3 demonstrated nor alleged any substantial burden he would face if this
4 matter were litigated in Georgia.

5 In sum, while both Plaintiff and Great Concepts have three
6 factors in their favors, Great Concepts's showing of unreasonableness
7 is far greater on its prevailing factors than Plaintiff's showing of
8 reasonableness on his prevailing factors. The Court, therefore,
9 concludes that Great Concepts could not have reasonably anticipated
10 being haled into a California court to defend its Georgia restaurant's
11 name. Regardless, even if the factors were balanced or if Plaintiff
12 had a slightly stronger showing of reasonableness, Plaintiff would
13 have to make a far greater showing of reasonableness in California to
14 overcome his deficiencies in the first two prongs of the specific
15 jurisdiction test. It follows that Great Concepts did not
16 purposefully direct conduct towards California and specific
17 jurisdiction is absent.

18 **B. Additional Discovery**

19 As an alternative, Plaintiff requests that the Court order
20 additional discovery on Mr. Clapp's knowledge of Plaintiff's
21 restaurant prior to the opening of "Dantanna's." (See Pl.'s Opp'n
22 12:20-13:2.) This matter, however, is irrelevant to whether Great
23 Concepts has sufficient contacts with the forum state. Further, Great
24 Concepts has submitted an affidavit establishing that it does not
25 direct advertising towards, or have any other contacts with,
26 California other than its occasional use of Ms. Vallendar as an
27 independent contractor. (See Clapp Decl. ¶ 13.) Plaintiff's mere
28

1 request for discovery, unsupported by any factual allegations, cannot
2 overcome Great Concepts's factual showing, thereby making any
3 additional discovery unavailing. See Pebble Beach Co. v. Caddy, 453
4 F.3d 1151, 1160 (9th Cir. 2006) (citing Terracom v. Valley Nat. Bank,
5 49 F.3d 555, 562 (9th Cir. 1995)) (holding that where a plaintiff's
6 personal jurisdiction claim is attenuated and based on bare
7 allegations, additional discovery is inappropriate). Accordingly,
8 Plaintiff's request for additional discovery is denied.

9
10 **IV. CONCLUSION**

11 The Court holds that it may not exercise personal jurisdiction
12 over Defendant Great Concepts, a.k.a. Dantanna's, because Great
13 Concepts lacks the requisite minimum contacts with California.
14 Furthermore, Great Concepts did not purposefully direct conduct
15 towards California and thus exercising jurisdiction over it would be
16 unreasonable. The Court therefore **GRANTS** Great Concepts's Motion to
17 Dismiss for Lack of Personal Jurisdiction and **DISMISSES** Plaintiff's
18 Complaint, with prejudice to its refiling in California, but without
19 prejudice to its refiling elsewhere.

20
21 **IT IS SO ORDERED.**

22
23 **DATED: February 12, 2008**



24
25 **AUDREY B. COLLINS**
26 **UNITED STATES DISTRICT JUDGE**
27
28