

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

GeoSolutions B.V. v. Sina.Com Online

Case No. 5:21-cv-08019-EJD (N.D. Cal. Mar. 16, 2023) · No. 5:21-cv-08019-EJD · Decided March 16, 2023

SUMMARY

The United States District Court for the Northern District of California grants the defendants’ motions to dismiss in this dispute involving alleged misappropriation of location-based-services technology and related contractual arrangements. The court concludes that the plaintiffs failed to establish general or specific personal jurisdiction over the foreign defendants and failed to state claims against the California defendants. The dismissals are granted with leave to amend, while the motions concerning supplementary materials and a discovery stay are denied as moot.

OPINION

1 2 3 UNITED STATES DISTRICT COURT 4 NORTHERN DISTRICT OF CALIFORNIA 5
SAN JOSE DIVISION 6 7 GEOSOLUTIONS B.V., et al., Case No. 5:21-cv-08019-EJD 8
Plaintiffs, ORDER GRANTING MOTIONS TO DISMISS WITH LEAVE TO AMEND; 9 v.
DENYING AS MOOT MOTION FOR LEAVE TO FILE SUPPLEMENTARY 10 SINA.COM
ONLINE, et al., MATERIALS; DENYING AS MOOT MOTION FOR DISCOVERY STAY 11
Defendants.

12 Re: ECF Nos. 26, 27, 50, 67, 84, 93, 118 13 Plaintiffs GeoSolutions B.V. and GeoSolutions
Holdings N.V. (collectively, 14 “GeoSolutions” or “Plaintiffs”) bring this action against thirteen
separate corporate entities within 15 the Chinese media conglomerate that Plaintiffs refer to as the
“Sina Group,” and against two 16 individual executives within the Sina Group.

Before the Court are five separate motions to 17 dismiss. Four of the motions (ECF Nos. 26, 50,
67, 84) have been brought by eight corporate 18 defendants (the “Foreign Defendants”)¹ and Cao
Guowei, aka Charles Chao, who argue that the 19 Court lacks personal jurisdiction over them.
One motion (ECF No. 27) has been brought by 20 Sina.com Online and Weibo R&D Limited
(collectively, the “California Defendants,” and together 21 with the Foreign Defendants and
Charles Chao, the “Defendants”²), who argue that Plaintiffs’ 22 complaint fails to state a claim.

Also before the Court is Plaintiffs’ motion for leave to file 23 24 1 The Foreign Defendants are as
follows: Weibo Corporation; Sina Corporation; New Wave MMXV Limited; Sina Hong Kong
Limited; Beijing Sina Internet Information Service Company 25 Ltd.; Sina (Beijing) Information
Technology Co. Ltd.; Sina.com Technology (China) Co., Ltd.; and Sina Group Holding Company
Limited.

26 2 Four defendants have not yet appeared: GyPSii (Shanghai) Co., Ltd.; Beijing New Media Technology Information Company; Beijing Weimeng Technology Co., Ltd.; and Wang Gaofei. 27 Case No.: 5:21-cv-08019-EJD 1 supplementary materials (ECF No. 93) and Defendants' motion to stay discovery pending this 2 Court's order on the motions to dismiss (ECF No. 118).

Having considered the parties' 3 submissions and their arguments at hearing, the Court GRANTS each of the motions to dismiss 4 and DENIES AS MOOT Plaintiffs' motion for leave to file and Defendants' motion for discovery 5 stay. 6 I. BACKGROUND 7 A. The Parties 8 GeoSolutions B.V. is a Netherlands technology company that developed and 9 commercialized location-based services ("LBS") technology for use in social networking services.

10 Compl., ECF No. 1-2 ¶ 15. GeoSolutions B.V. is fully owned by GeoSolutions Holdings N.V., a 11 Netherlands holding company. Id. ¶ 14. 12 The Sina Group is a Chinese media conglomerate which operates the social media app, 13 Weibo. Id. ¶ 2.

The corporate defendants are each entities under the Sina umbrella, and various 14 subsidiary and contractual relationships exist between them. Id. ¶¶ 13, 16-27. Two of the 15 corporate defendants, Sina.com Online and Weibo R&D Limited, are California corporations with 16 principal places of business in Palo Alto, California. Id. ¶¶ 18-19.

The remaining corporate 17 defendants are a mix of companies incorporated in China, Hong Kong, the Cayman Islands, and 18 the British Virgin Islands, and with principal places of business in China and Hong Kong. Id. 19 ¶¶ 16-17, 20-27. 20 Charles Chao is an individual who is a citizen and resident of China. Id. ¶ 28. He is an 21 executive of various Sina entities and serves as the "apex" of the Sina Group.

Id. ¶¶ 28, 44. Wang 22 Gaofei is an individual who is a citizen and resident of China. Id. ¶ 29. He is also an executive of 23 various Sina entities. Id. 24 B. Factual Background 25 GeoSolutions was founded in the early 2000s to develop a mobile application that allowed 26 its users to track and share their locations and activities. Compl. ¶ 49.

To that end, GeoSolutions 27 Case No.: 5:21-cv-08019-EJD 1 created the GyPSii mobile app, through which users could search for and identify their contacts by 2 location in real time. Id. ¶ 50. GeoSolutions launched its GyPSii app for the 2008 Beijing 3 Olympics via a wholly owned subsidiary, GyPSii (Shanghai) Co., Ltd. ("GyPSii Co."). Id. ¶¶ 50- 4 51. This was one of the earliest implementations of LBS technology for use in social networking, 5 predating similar efforts by applications such as Foursquare, Instagram, and Facebook.

Id. The 6 launch was a success, and the GyPSii app attracted interest from several large brands as an 7 advertising platform. Id. 8 As some social networking companies, including GeoSolutions, worked on developing 9 LBS technologies, others sought to build microblogging services similar

to Twitter. Id. ¶ 52. 10 Several competing microblogs launched in China but most were shut down following riots in July 11 2009.

Id. The Sina Group stepped into the resulting void, launching its Weibo microblogging 12 service in August 2009. Id. ¶ 53. Although Weibo quickly captured Chinese market share, it 13 faced monetization challenges. Id. To address those challenges, the Sina Group decided to target 14 an LBS social networking company for acquisition or partnership, and it selected GeoSolutions as 15 its preferred partner.

Id. 16 In August 2010, Sina.com Technology (China) Co., Ltd. (“STC”) signed a memorandum 17 of understanding with GyPSii Co. in which they agreed to create a new company, as a joint 18 venture, to provide LBS services to Sina entities using GeoSolutions’ technology. Id. ¶ 55.

In 19 November 2010, the terms of the deal were modified. Id. ¶ 56. Rather than create a new 20 company, the parties agreed to transform GyPSii Co. from a wholly owned subsidiary of 21 GeoSolutions into the contemplated joint venture, with GeoSolutions taking a 40% stake while 22 Sina Hong Kong Ltd. (“Sina HK”)—which was taking the place of STC in the deal—would hold a 23 60% stake.

Id. The parties finalized their joint venture agreement in June 2011, along with a 24 license agreement allowing GyPSii Co. to hold a license for GeoSolutions’ LBS technology, and 25 in July 2011 they signed articles of association governing the joint venture. Id. ¶¶ 58, 60. Soon 26 thereafter, the Sina Group’s Weibo microblogging service began to incorporate new LBS features 27 Case No.: 5:21-cv-08019-EJD 1 and monetize their use.

Id. ¶ 61. Sina entities also continued to enter additional contracts with 2 GyPSii Co. Throughout 2012, Beijing Sina Internet Information Service Company Ltd. and 3 Beijing New Media Technology Information Company executed agreements with GyPSii Co. to 4 publish GeoSolutions’ LBS code and transfer more LBS applications to Weibo. Id. ¶ 63. 5 Allegedly, Sina HK did not uphold its end of the joint venture agreement.

By the middle 6 of 2014, GeoSolutions discovered data suggesting that Sina entities were using GeoSolutions’ 7 LBS technology without paying GyPSii Co., therefore denying GeoSolutions fair compensation 8 for its stake in GyPSii Co. Id. ¶ 64. GeoSolutions demanded an audit and changes to the 9 contractual relationship between themselves, GyPSii Co., and Sina HK, but still entered into a 10 renewed license agreement in August 2014, at least in part due to the promise of an upfront 11 “minimum license fee” and ability to approve all future sublicenses of its LBS technology.

Id. 12 ¶¶ 60, 64, 66. 13 According to GeoSolutions, Sina HK failed to honor those new contractual promises as 14 well, and permitted GeoSolutions to conduct only a “sham audit” that concealed how Sina entities 15 had been using GeoSolutions’ LBS technology. Id. ¶ 67. GeoSolutions then

commenced 16 arbitration proceedings against Sina HK before a tribunal in Amsterdam, which resulted in a \$115.17 million award to GeoSolutions.³ Id. ¶¶ 67-68.

The arbitration involved document disclosures, 18 written submissions, and witness testimony through which GeoSolutions allegedly discovered that 19 the Sina Group had created a “shadow LBS department.” Id. ¶¶ 54, 68. Purportedly, Charles 20 Chao, Wang Gaofer, and other Sina executives developed the idea for this shadow department 21 while negotiating with GeoSolutions regarding the joint venture agreement.

Id. ¶ 55. They placed 22 Wang Gaofer in charge of the department and hired engineers to misappropriate GeoSolutions’ 23 LBS technology and know-how with the aim of ultimately cutting GeoSolutions out of financial 24 gains from the joint venture. Id. ¶¶ 54-55, 59. 25 26 3 Since Plaintiffs filed their complaint, the Amsterdam Court of Appeal has set aside the arbitration award against Sina HK.

Statement of Recent Decision, ECF No. 83. 27 Case No.: 5:21-cv-08019-EJD C. Procedural History 1 Plaintiffs initially filed suit against Defendants in Santa Clara County Superior Court on 2 March 15, 2021. See Compl. Following Plaintiffs’ attempt to serve the California Defendants by 3 mail on September 13, 2021, the California Defendants removed the case to federal court on 4 October 13, 2021.

Notice of Removal, ECF No. 1. All Defendants who subsequently appeared 5 have since filed joinders and consented to the removal. ECF Nos. 22, 42, 62, 77. On December 6 20, 2021, the California Defendants filed a motion to dismiss for failure to state a claim. ECF No. 7 27. Between December 20, 2021 and September 30, 2022, as they made their appearances in this 8 case, the Foreign Defendants and Mr. Chao filed four separate motions to dismiss for lack of 9 personal jurisdiction.

ECF Nos. 26, 50, 67, 84. The Court held a hearing on the motions to 10 dismiss on February 22, 2023. ECF No. 103. 11 II. MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION 12 A. Legal Standard 13 On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of 14 showing that the court has jurisdiction.

In re W. States Wholesale Nat. Gas Antitrust Litig., 715 F.3d 716, 741 (9th Cir. 2013). When the motion is based on written submissions rather than an 16 evidentiary hearing, the plaintiff “need only make a prima facie showing of jurisdictional facts.” 17 CollegeSource, Inc. v. AcademyOne, Inc., 653 F.3d 1066, 1073 (9th Cir. 2011) (citation omitted). 18 The plaintiff may not ““simply rest on the bare allegations of its complaint,” but uncontroverted 19 allegations in the complaint must be taken as true.” Id. (quoting Schwarzenegger v. Fred Martin 20 Motor Co., 374 F.3d 797, 800 (9th Cir.

2004)). As such, the Court may not assume the truth of 21 allegations that are contradicted by an affidavit, *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977), and must resolve factual disputes in favor of the plaintiff. *Pebble 23 Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).

Moreover, “[t]he jurisdictional inquiry 24 must decouple defendants, considering whether each individual defendant has had sufficient 25 ‘minimum contacts’ with the forum state to justify an exercise of jurisdiction over that defendant.” 26 *Burri Law PA v. Skurla*, 35 F.4th 1207, 1213 (9th Cir. 2022); see also *Calder v. Jones*, 465 U.S. 27 Case No.: 5:21-cv-08019-EJD 1 783, 790 (1984) (“Each defendant’s contacts with the forum State must be assessed 2 individually.”).

3 When there is no federal statute authorizing personal jurisdiction, a court applies the law of 4 the state in which it sits. *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998). 5 In this case, California’s long-arm statute applies. Cal. Code Civ. Proc. § 410.10.

The long-arm 6 statute “is coextensive with federal due process requirements,” so the jurisdictional analysis 7 collapses into the due process analysis. *Schwarzenegger*, 374 F.3d at 800-01. Due process, in 8 turn, requires that an out-of-state defendant have “certain minimum contacts” with the forum state 9 “such that the maintenance of the suit does not offend traditional notions of fair play and 10 substantial justice.” *BNSF Ry.*

Co. v. Tyrrell, 581 U.S. 402, 413 (2017) (quoting *Int’l Shoe Co. v. 11 Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks omitted). Personal jurisdiction 12 may be general, which permits a court to hear “any and all claims against” a defendant, or specific, 13 which is based on the connection between the forum state and underlying controversy. *Goodyear 14 Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

15 B. Foreign Defendants 16 1. General Jurisdiction 17 The paradigmatic bases for general jurisdiction are the domicile for individuals, and the 18 place of incorporation or principal place of business for corporations. *Daimler AG v. Bauman*, 19 571 U.S. 117, 137 (2014). Only in extraordinary cases, where contacts are “so constant and 20 pervasive ‘as to render [a defendant] essentially at home in the forum State,’” may a court exercise 21 general jurisdiction in a forum other than those identified above.

Id. at 122 (quoting *Goodyear*, 22 564 U.S. at 919). An exception to these rules exists where two or more defendants are alter egos 23 of each other such that the defendants are not truly separate entities and the contacts of one 24 defendant may be imputed to the other. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070-71 (9th Cir. 25 2015).

To establish an alter ego relationship, a plaintiff “must make out a prima facie case (1) that 26 there is such unity of interest and ownership that the separate personalities [of the two entities] no 27 Case No.: 5:21-cv-08019-EJD 1 longer exist and (2) that failure to disregard [their separate

identities] would result in fraud or 2 injustice.” Id. at 1073 (citation and internal quotation marks omitted; alterations in original).

3 “The standard for personal jurisdiction under an alter ego theory is lower than the standard for 4 liability under an alter ego theory,” *FTC – Forward Threat Control, LLC v. Dominion Harbor 5 Enters., LLC*, No. 19-cv-06590-EJD, 2020 WL 5545156, at *7 (N.D. Cal. Sept. 16, 2020) (citation 6 omitted), but conclusory allegations are insufficient. *Cisco Sys. Inc., v. Link US, LLC*, No. 18-cv- 7 07576-CRB, 2019 WL 6682838, at *3 (N.D.

Cal. Dec. 6, 2019). 8 Here, Plaintiffs do not argue that any of the Foreign Defendants are at home in California 9 or that they have such pervasive contacts that they are essentially at home.⁴ Instead, they rely on 10 an alter ego theory, asserting that each of the Foreign Defendants are alter egos of each other and 11 of the California Defendants. Compl. ¶ 31; see also, e.g., Opp’n to Sina HK’s Mot. to Dismiss, 12 ECF No. 71, at 7-11.5 They argue that the California Defendants are at home in California, where 13 they are registered as corporations and maintain their principal places of business, Compl. ¶¶ 18- 14 19, so the alter ego theory allows them to impute general jurisdiction from the California 15 Defendants to the Foreign Defendants.

E.g., Opp’n to Sina HK’s Mot. to Dismiss 9-10. 16 a. The Sina Group’s Variable Interest Entity Structure 17 Plaintiffs’ primary argument for establishing their alter ego theory is that the Sina Group 18 operates a variable interest entity (“VIE”) structure, which “blurs the corporate distinctions” 19 among Sina entities. Compl. ¶¶ 37-43; Hr’g Tr., ECF No. 105, at 14:6-23.

The VIE structure is a 20 mechanism that allows foreign-owned companies to operate in China despite laws restricting 21 foreign ownership of Chinese businesses in certain industries. Compl. ¶¶ 37-38. By contracting 22 with entities known as VIEs, foreign-owned companies are able to exercise managerial control and 23 24 4 Counsel for Plaintiffs disclaimed any reliance on those arguments at hearing, Hr’g Tr., ECF No. 25 105, at 14:6-23, and Plaintiffs’ briefing does not raise those arguments either.

5 The arguments raised by Plaintiffs in opposition to the Foreign Defendants’ motions to dismiss 26 are substantially similar for each motion. When discussing Plaintiffs’ arguments, the Court therefore cites to only a single opposition by way of example. 27 Case No.: 5:21-cv-08019-EJD 1 receive the VIEs’ revenues. Id. ¶ 37. According to Foreign Defendants, a VIE structure requires 2 at least three companies: a holding company incorporated outside China; a company incorporated 3 inside China that is wholly owned by the foreign holding company (a “wholly foreign owned 4 enterprise,” or “WFOE”); and a VIE entity incorporated in China and owned by Chinese nationals.

5 Mot. to Dismiss (“Chao Mot.”),⁶ ECF No. 50, at 2. The VIE holds the permits and licenses 6 required to conduct business in China and contracts with the WFOE. Id. 7 In Plaintiffs’ view, they

may plead the existence of an alter ego relationship by pleading 8 the existence of a VIE structure. Plaintiffs cite no case law in support of their proposition, but the 9 Court need not decide whether they are correct as a matter of law because Plaintiffs have failed to 10 sufficiently plead the factual premise of their argument.

Plaintiffs seek to impute the California 11 Defendants' contacts to the Foreign Defendants, so they must at a minimum plead that the 12 California Defendants were part of a VIE structure with some or all of the Foreign Defendants. 13 While Plaintiffs allege that the Sina Group uses VIEs to conduct business in China, Compl. ¶¶ 37- 14 38, 40-42, the California Defendants are located in the United States.

Id. ¶¶ 18-19. Thus, the 15 California Defendants are not VIEs, and Plaintiffs conceded as much at hearing. Hr'g Tr. 6:8-13. 16 Moreover, Plaintiffs have not pleaded any facts showing that the California Defendants had any 17 other role in a VIE structure with the Foreign Defendants. 18 Recognizing this problem, Plaintiffs argue that the entirety of the Sina Group is one large 19 "VIE structure." Hr'g Tr.

6:14-19; Compl. ¶ 43. Allegedly, this structure is a "deceptive and 20 convoluted style of corporate organization [which] blurs the corporate distinctions among" Sina 21 entities and leads the Sina Group to "rarely respect[] the purported separateness of its ostensibly 22 distinct entities." Compl. ¶ 43. Plaintiffs cannot survive a motion to dismiss simply by labelling 23 all of the Sina Group as a "VIE structure." *Reynolds v. Binance Holdings Ltd.*, 481 F. Supp. 3d 24 997, 1005 (N.D.

Cal. 2020) ("[A] plaintiff must offer more than labels and conclusions."). For 25 26 6 This motion was filed by Charles Chao, Sina (Beijing) Information Technology Co. Ltd., and Sina.com Technology (China) Co., Ltd. 27 Case No.: 5:21-cv-08019-EJD 1 one, the argument does not correct the deficiencies identified above as to the California 2 Defendants because Plaintiffs do not identify how the California Defendants participated in the 3 alleged VIE structure.

Further, Plaintiffs do not explain what it means for a large conglomerate 4 composed of multiple entities to be a VIE structure. Such a structure is a method of control by 5 one entity, the WFOE, over another, the VIE. Compl. ¶ 37. But the complaint contains no detail 6 about which Sina entities are VIEs and which are WFOEs, leaving the Court to guess which 7 entities are which and how they are interrelated.

Finally, while Plaintiffs aver that the Sina Group 8 conducts business in China using VIEs, Compl. ¶¶ 37-42, it does not follow from that fact that all 9 Sina entities participate in controlling those VIEs. The Court cannot, on the basis of Plaintiffs' 10 sweeping allegation that the whole Sina Group is a VIE structure, conduct the individualized 11 jurisdictional analysis that Burri Law requires.

Therefore, Plaintiffs have failed to plead facts 12 supporting their VIE theory. 13 b. Unity of Interest 14 The Court next turns to the traditional alter ego test described in Ranza. When analyzing 15 the unity of interest prong of the alter ego test, courts have looked to nine factors: 16 (1) the commingling of funds and other assets of the entities, (2) the holding out by one entity that it is liable for the debts of the other, (3) 17 identical equitable ownership of the entities, (4) use of the same offices and employees, (5) use of one as a mere shell or conduit for 18 the affairs of the other, (6) inadequate capitalization, (7) disregard of corporate formalities, (8) lack of segregation of corporate records, and 19 (9) identical directors and officers.

20 *Yih v. Taiwan Semiconductor Mfg. Co.*, No. 20-cv-04184-EJD, 2020 WL 6290377, at *5 (N.D. 21 Cal. Oct. 27, 2020) (citation omitted). A court need not find that every factor is present to 22 determine that there is a unity of interest between two entities, *Updateme Inc. v. Axel Springer SE*, 23 No. 17-cv-05054-SI, 2018 WL 1184797, at *10 (N.D. Cal. Mar. 7, 2018), but it must be able to 24 conclude that “[one entity] controls the [other] to such a degree as to render the latter the mere 25 instrumentality of the former.” *Ranza*, 793 F.3d at 1073 (citation omitted).

26 As explained above, Plaintiffs must impute the California Defendants’ contacts to the 27 Case No.: 5:21-cv-08019-EJD 1 Foreign Defendants in order to establish general jurisdiction via an alter ego theory. Much like 2 with the VIE theory, Plaintiffs plead few facts connecting the California Defendants to the Foreign 3 Defendants. Instead, they offer a laundry list of allegations—many of which are conclusory or 4 unrelated to the California Defendants—without attempting to fit them into the nine-factor 5 framework.

E.g., *Opp’n to Chao Mot.*, ECF No. 54, at 11-13. Applying that framework, the 6 Court concludes Plaintiffs have not sufficiently alleged that either of the California Defendants has 7 a unity of interest with any of the Foreign Defendants. 8 Regarding the third and ninth factors, Plaintiffs plead that Mr. Chao owns, or occupies the 9 officer and director positions of, various Sina entities, including that he is the CEO of Sina.com 10 Online, one of the California Defendants.

Compl. ¶¶ 20, 28, 36, 46. They also allege that 11 Sina.com Online is a wholly owned subsidiary of Sina Corporation. Compl. ¶ 35. Such 12 allegations of “[t]otal ownership and shared management personnel” are insufficient on their own 13 to establish the required level of control. *Ranza*, 793 F.3d at 1073. And Plaintiffs’ remaining 14 allegations take them no further.

Plaintiffs briefly address the fourth factor by alleging that 15 Sina.com Online shares an address with Weibo R&D Limited. Compl. ¶ 48. Yet both are 16 California Defendants, so their common address does not affect whether they have a unity of 17 interest with the Foreign Defendants. Plaintiffs also appear to argue under the fifth factor that 18 Sina.com Online is merely a conduit for other Sina entities because Sina.com Online operates a 19 shared internet portal for all Sina businesses.

Compl. ¶ 18. But operating a shared website merely 20 shows that Sina.com Online assisted with administrative functions for the broader Sina Group, not 21 that any other Sina entity had control over Sina.com Online or vice versa. Reynolds, 481 F. Supp. 2d 3d at 1006-07. 23 The only other allegations which touch on the California Defendants are too conclusory to 24 support unity of interest.

See Compl. ¶¶ 35 (Sina entities “fail to respect corporate formalities and 25 instead constitute a single, coordinated enterprise.”), 43 (“This deceptive and convoluted style of 26 corporate organization blurs the corporate distinctions among [Sina entities]....

The Sina Group 27 Case No.: 5:21-cv-08019-EJD 1 rarely respects the purported separateness of its ostensibly distinct entities in operation.”). Making 2 blanket allegations across fifteen separate defendants does not satisfy a plaintiff’s burden to show 3 personal jurisdiction exists as to each defendant. See Burri Law, 35 F.4th at 1213. Similarly, the 4 allegation that all Sina employees understand they “work for the Sina Group as a whole” and 5 report to supervisors at other entities provides no detail as to which specific defendants may share 6 employees.

Compl. ¶ 44. 7 As Plaintiffs failed to plead unity of interest, the Court need not address the “fraud or 8 injustice” prong of the alter ego test. Ranza, 793 F.3d at 1075 n.9. The Court finds that Plaintiffs 9 have not sufficiently pleaded general jurisdiction under their alter ego theory.7 10 2. Specific Jurisdiction 11 In the Ninth Circuit, courts apply a three-prong test to determine whether a non-resident 12 defendant has “minimum contacts” justifying the exercise of specific personal jurisdiction: 13 (1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident 14 thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, 15 thereby invoking the benefits and protections of its laws; 16 (2) the claim must be one which arises out of or relates to the defendant’s forum-related activities; and 17 (3) the exercise of jurisdiction must comport with fair play and 18 substantial justice, i.e. it must be reasonable.

19 Schwarzenegger, 374 F.3d at 802 (quoting Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)). A 20 plaintiff bears the burden of satisfying the first two prongs. Id. If it successfully does so, the 21 burden shifts to the defendant to “present a compelling case” that exercising jurisdiction would be 22 unreasonable. Id. (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78 (1985)).

But if 23 a plaintiff fails to establish either of the first two prongs, “the jurisdictional inquiry ends and the 24 7 Sina (Beijing) Information Technology Co., Ltd. (“SBIT”) also argues that it is not subject to 25 general jurisdiction because it dissolved in 2008. Chao Mot. 7. Plaintiffs dispute that SBIT has dissolved. Opp’n to Chao Mot. 1-2.

However, the Court does not address this factual 26 disagreement now because Plaintiffs have failed to plead general jurisdiction under their alter ego theory. 27 Case No.: 5:21-cv-08019-EJD 1

case must be dismissed.” *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008).² Here, the Foreign Defendants argue that Plaintiffs’ claims do not arise out of or relate to³ the Foreign Defendants’ forum contacts—in other words, that there is not an adequate nexus—⁴ because the forum contacts are not but for causes of Plaintiffs’ alleged injuries.

E.g., *Chao* Mot. 5 15-16. The Court agrees. As an initial matter, because Plaintiffs have failed to plead their alter ego theory, none of the contacts of any one defendant may be imputed to another. Consequently,⁷ the California Defendants’ contacts are not relevant to the specific jurisdiction analysis for the⁸ Foreign Defendants. Setting aside the California Defendants’ contacts, Plaintiffs have pleaded⁹ only two other contacts between any defendant and California.

First, the servers storing the¹⁰ technology which was allegedly misappropriated from Plaintiffs are either in Santa Clara,¹¹ California or Palo Alto, California. Compl. ¶¶ 48, 116. It is not clear who owns these servers, but¹² the complaint appears to attribute ownership to Sina Corporation and Weibo Corporation. Id. 13 ¶ 48.

Second, there are 450,000 users of the Weibo service in California. Id. However, that¹⁴ contact cannot be attributed to any Foreign Defendant because Beijing Weimeng Technology Co.,¹⁵ Ltd., a defendant who has not yet appeared in this case, distributes and markets the Weibo app in¹⁶ the United States. Id. ¶ 25. Plaintiffs have failed to plead forum contacts for any of the six¹⁷ Foreign Defendant not identified above, so they have failed to establish specific jurisdiction as to¹⁸ those six.

¹⁹ Even as to Sina Corporation and Weibo Corporation, Plaintiffs have not established that²⁰ there is an adequate nexus between the forum contacts of those two defendants and Plaintiffs’²¹ claims. To show that claims arise out of or relate to forum contacts, a plaintiff may demonstrate²² that it would not have been injured but for those forum contacts. *Nat.*

Gas Antitrust Litig., 715 23 F.3d at 742. Here, there is no indication that the presence of servers in California was a but for²⁴ cause of the misappropriation of Plaintiffs’ LBS technology. There is no allegation that the²⁵ servers provided a means for the misappropriation of Plaintiffs’ LBS technology, and the mere²⁶ storage of that technology on the servers is too far removed from the alleged wrongdoing to²⁷ Case No.: 5:21-cv-08019-EJD 1 establish but for causation.

See *Ross v. Abbott Vascular Inc.*, No. 19-cv-03794-JST, 2020 WL 2 4934487, at *7 (N.D. Cal. Apr. 6, 2020) (“[C]ontacts based solely on uploading information to³ company-wide... servers housed in the United States are too attenuated to establish minimum⁴ contacts or comport with due process.”).⁵ Plaintiffs argued for the first time at hearing that the Supreme Court’s decision in *Ford*⁶ *Motor Co. v. Montana Eighth Judicial District Court*, 141 S. Ct.

1017 (2021), makes clear that but⁷ for causation is not required to establish an adequate nexus, and that the nexus requirement can be⁸ satisfied if claims are sufficiently “related to” forum

contacts. Hr’g Tr. 18:9-23.

In light of the 9 recent decision in *Yamashita v. LG Chem, Ltd.*, No. 20-17512, __ F.4th __, 2023 WL 2374776 10 (9th Cir. Mar. 6, 2023), in which the Ninth Circuit interpreted *Ford Motor*, Plaintiffs appear to be 11 correct that an alternate test for nexus exists. *Yamashita* clarified that but for causation is the test 12 for whether claims “arise out of” forum contacts, but a plaintiff may alternatively establish a 13 sufficient nexus by showing that its claims “relate to” forum contacts.

Id. at *5. Nonetheless, 14 Plaintiffs did not argue the “related to” test in their briefing, and the Court will not consider 15 arguments raised for the first time at hearing. *Brown v. Google LLC*, 525 F. Supp. 3d 1049, 1061 16 (N.D. Cal. 2021) (collecting cases). 17 Plaintiffs have not met their burden to show that their claims arose out of or are related to 18 any of Foreign Defendants’ forum contacts.

Accordingly, the Court concludes that Plaintiffs have 19 not established specific jurisdiction and need not address purposeful availment or substantial 20 justice. 21 * * * 22 Because Plaintiffs have not met their pleading burden as to either general jurisdiction or 23 specific jurisdiction, the Court GRANTS the Foreign Defendants’ motions to dismiss for lack of 24 personal jurisdiction.

25 C. Charles Chao 26 Mr. Chao argues, and Plaintiffs concede, that he is not subject to general jurisdiction in this 27 Case No.: 5:21-cv-08019-EJD 1 Court under a theory that he is domiciled in California. Chao Mot. 5; Hr’g Tr. 14:6-23. He also 2 argues that he is protected from any other basis for personal jurisdiction under the fiduciary shield 3 doctrine.

Chao Mot. 5. In response, Plaintiffs contend that the fiduciary shield doctrine is not 4 compatible with the Supreme Court’s decision in *Calder v. Jones*, 465 U.S. 783. Opp’n to Chao 5 Mot. 9 n.7. The Court need not address the continued viability of the fiduciary shield doctrine, 6 though, because Mr. Chao’s arguments regarding the fiduciary shield point to a more fundamental 7 flaw with Plaintiffs’ theory of personal jurisdiction: there are insufficient contacts between Mr. 8 Chao and California.

9 First, as Mr. Chao argues, he is not in an alter ego relationship with either of the California 10 Defendants. Chao Mot. 5-6. Excluding generalized allegations about the Sina Group as a whole, 11 which do not meet the requirement of decoupling defendants for purposes of jurisdictional 12 analysis, the only allegation of a unity of interest between Mr. Chao and either California 13 Defendant is that he controls Sina.com Online.

Compl. ¶ 35. This lone allegation of total 14 ownership, unsupported by any other allegations, does not establish an alter ego relationship. 15 *Ranza*, 793 F.3d at 1073. Thus, general jurisdiction cannot be imputed from the California 16 Defendants to Mr. Chao. 17 Second, Mr. Chao argues that there is no connection between his involvement with the 18 underlying controversy and California.

Chao Mot. at 6. The Court addressed much of this 19 argument when considering whether it had specific jurisdiction over the Foreign Defendants. 20 Because the Court found earlier that Plaintiffs' claims were not sufficiently connected to 21 California, even if Mr. Chao had personally directed or carried out every action forming Plaintiffs' 22 claims, he still would not be subject to personal jurisdiction.

The only additional contact that the 23 Court has not yet addressed is that Mr. Chao "visited and/or directly communicated with the Sina 24 Group entities within the territorial jurisdiction of this Court to further the factual basis of the 25 claims described [in the complaint]." Compl. ¶ 28. This vague and conclusory allegation 26 provides no factual support describing what those communications were or how they furthered the 27 Case No.: 5:21-cv-08019-EJD 1 alleged misconduct that Plaintiffs are challenging.

The Court cannot conclude on this basis that 2 Mr. Chao has sufficient contacts with this forum. 3 Accordingly, the Court GRANTS Mr. Chao's motion to dismiss for lack of personal 4 jurisdiction. 5 D. Jurisdictional Discovery 6 Plaintiffs request that the Court grant jurisdictional discovery if it dismisses their claims 7 for lack of personal jurisdiction. E.g., Opp'n to Chao Mot.

18-20. Jurisdictional discovery is not 8 available as of right, and whether to grant jurisdictional discovery is committed to the Court's 9 discretion. *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 10 1977). Where a plaintiff's request is based on "little more than a hunch that it might yield 11 jurisdictionally relevant facts," jurisdictional discovery is not warranted.

Boschetto, 539 F.3d at 12 1020. 13 On this record, the Court cannot conclude that discovery is based on any more than a 14 "hunch." As to specific jurisdiction, the underlying controversy appears to have exclusively taken 15 place outside of the United States, and the Court sees no allegations even hinting at a meaningful 16 connection between this forum and the wrongs that Plaintiffs allege.

And as to general 17 jurisdiction, many of Plaintiffs' allegations are conclusory, or generalized to the Sina Group as a 18 whole, leaving the Court to guess at whether jurisdictional discovery would be likely to yield 19 information relevant to the jurisdiction of individual defendants. See *Burri Law*, 35 F.4th at 1213 20 (jurisdictional inquiry must decouple defendants and consider each individually).

Moreover, to 21 succeed on their alter ego theory, Plaintiffs must show that the California Defendants are alter 22 egos of the Foreign Defendants or Mr. Chao, and the current allegations do not raise any suspicion 23 that either of the California Defendants have more than a typical subsidiary or sister entity 24 relationship with any other Sina entity.

Before the Court will grant jurisdictional discovery, 25 Plaintiffs must raise at least a suggestion that jurisdiction may be appropriate as to individual 26 defendants, either through additional allegations or through evidence gathered in their previous 27 Case No.: 5:21-cv-08019-EJD 1 arbitration proceedings against Sina HK. 2 Plaintiffs' request for jurisdictional discovery is DENIED.

3 III. MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM 4 A. Legal Standard 5 On a motion to dismiss for failure to state a claim, a court assesses whether a plaintiff has 6 pleaded each claim with enough specificity to "give the defendant fair notice of what the... claim 7 is and the grounds upon which it rests." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) 8 (citation omitted).

Conclusory allegations and bare recitals of the elements of a claim are 9 insufficient. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). There must be adequate factual matter 10 to allow a court to reasonably infer that the defendant is liable. Id. 11 B. Discussion 12 Plaintiffs have failed to state a claim against the California Defendants for the simple 13 reason that they have not pleaded that the California Defendants participated in the alleged 14 misconduct.

The Court has determined that Plaintiffs have not successfully pleaded an alter ego 15 theory, so none of the other Sina entities' actions may be imputed to the California Defendants. 16 The complaint contains no allegations that the California Defendants participated in any RICO 17 predicates, participated in misappropriating trade secrets, made any misrepresentations, or took 18 part in any misconduct that Plaintiffs raise under the UCL.

Absent the California Defendants' 19 involvement in the underlying misconduct, declaratory relief is also unavailable against them. 20 Accordingly, the Court GRANTS the California Defendants' motion to dismiss. 21 IV. OTHER MOTIONS 22 Plaintiffs move to file supplementary materials in support of their opposition to one of the 23 Foreign Defendants' motions to dismiss for lack of jurisdiction.

ECF No. 93. They seek to file: 24 (a) an announcement that a subsidiary of Weibo Corporation entered into an agreement to 25 purchase STC from Sina HK, and (b) a diagram from one of Sina Corporation's SEC filings that 26 illustrates some of the hierarchy between various Sina entities. Id. Because neither of those 27 Case No.: 5:21-cv-08019-EJD 1 documents remediates the jurisdictional deficiencies identified above, the Court DENIES AS 2 || MOOT Plaintiffs' motion for leave to file supplementary materials.

3 Defendants also move to stay discovery pending resolution of their motions to dismiss. 4 || ECF No. 118.8 Having now decided Defendants' motions to dismiss, the Court DENIES AS 5 MOOT their motion to stay discovery. 6 || Vv. CONCLUSION 7 Each of the Foreign Defendants' and Mr. Chao's motions to dismiss for lack of personal 8 || jurisdiction is GRANTED.

The California Defendants' motion to dismiss for failure to state a claim is also GRANTED. Because the Court cannot be sure that Plaintiffs will be unable to correct their jurisdictional and other pleading deficiencies—particularly because Plaintiffs have represented that they have discovery material from the earlier arbitration proceedings that may be relevant to jurisdictional questions here—the Court GRANTS leave to amend.

Plaintiffs shall file their amended complaint within thirty (30) days of this Order. The Court DENIES AS MOOT Plaintiffs' motion for leave to file supplementary materials and Defendants' motion to stay discovery pending resolution of the motions to dismiss. IT IS SO ORDERED. = Dated: March 16, 2023 EDWARD J. DAVILA United States District Judge ——— 8 Defendants styled their request as an administrative motion under Civil L.R.

7-11, but requests for stays of discovery are properly brought as regularly noticed motions subject to Civil L.R. 7-2 through 7-4. Case No.: 5:21-cv-08019-EJD ORDER GRANTING MOTS. TO DISMISS; DEN. MOT. FOR LEAVE TO FILE; DEN. MOT. FOR DISCOVERY STAY