

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

**JG Action Enterprises, Inc. v. Michael Marchky; Harley-Davidson of
Siouxland, Inc. d/b/a Rooster's Harley-Davidson**

Case No. 25-cv-2108-BAS-MMP (S.D. Cal. Dec. 3, 2025) · No. 25-cv-2108-BAS-MMP · Decided December 3,
2025

OPINION

Marchky

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 JG ACTION ENTERPRISES, INC., Case No. 25-cv-2108-BAS-MMP 12 Plaintiff,
ORDER:

13 v. (1) GRANTING DEFENDANT'S

MOTION TO DISMISS

14 MICHAEL MARCHKY; HARLEY-

UNDER RULE 12(B)(2); DAVIDSON OF SIOUXLAND, INC.

15 (2) DENYING DEFENDANT'S

d/b/a ROOSTER'S HARLEY-

MOTION TO DISMISS

16 DAVIDSON,

UNDER RULE 12(B)(5); AND

17 Defendants. (3) TERMINATING AS MOOT

DEFENDANT'S MOTION TO

18

TRANSFER VENUE

19 (ECF No. 5) 20 21 Presently before the Court is Defendant Michael Marchky's ("Defendant")
motion 22 to dismiss for lack of personal jurisdiction and insufficient service of process. Fed. R.
Civ. 23 P. 12(b)(2), 12(b)(5). In the alternative, Defendant seeks transfer of venue. 28 U.S.C. § 24
1406. The Court finds Defendant's motion suitable for determination on the papers 25 submitted.
See Fed. R. Civ. P. 78(b); Civ. L.R. 7.1(d)(1). For the following reasons, the 26 Court GRANTS
Defendant's motion to dismiss under Rule 12(b)(2), DENIES 27 Defendant's motion to dismiss
under Rule 12(b)(5), and TERMINATES AS MOOT 28 Defendant's motion to transfer venue.
(ECF No. 5.)

1 I. BACKGROUND

2 Plaintiff JG Action Enterprises, Inc. (“Plaintiff”) filed suit in California against two 3 defendants: Michael Marchky and Harley-Davidson of Siouxland, Inc. (doing business as 4 Rooster’s Harley-Davidson). (Compl. ¶¶ 5, 6, ECF No. 1.) The latter defendant submitted 5 itself to this Court’s jurisdiction by filing an answer. (ECF No. 3.) But Defendant Marchky 6 contested this Court’s jurisdiction in a motion to dismiss under Rules 12(b)(2) and 12(b)(5). 7 (ECF No. 5.) In the alternative, Defendant seeks transfer of venue. (Id.) 8 The lawsuit centers on breach of contract claims. Plaintiff is a California-based talent 9 executive search firm in the powersports, motorcycle, and marine industries. (Compl. ¶ 7.) 10 As relevant here, Plaintiff and Defendant Marchky entered into a contract, whereby 11 Defendant agreed to recruit job candidates. (Id. 11.) The contract was written on Plaintiff’s 12 letterhead, which included Plaintiff’s California address in the footer of the first page. 13 (Marchky Decl., Ex. A, ECF No. 5-3.) Plaintiff alleges a breach of contract, intentional 14 interference with contractual relationship, and intentional interference with prospective 15 economic advantage against Defendant Marchky. (Compl. ¶¶ 52, 64, 71.) 16 Defendant is currently domiciled in Sioux City, Iowa. (Marchky Decl. ¶ 2.) 17 Defendant was introduced to Plaintiff through a mutual business contact. (Id. ¶ 6.) At the 18 time of the contract, Defendant was based in Florida. (Id. ¶ 7.) Defendant worked for 19 Plaintiff remotely as an independent contractor without required travel. (Id. ¶ 8.) Further, 20 the parties communicated with each other remotely. (Id. ¶ 9.) Although Defendant remotely 21 contacted California clients, the allegations in the complaint do not arise out of those 22 contacts. (Id. ¶¶ 10, 12.) The contract neither mentions California in a choice-of-law 23 provision nor a forum selection clause. (Id., Ex. A.) Defendant never resided in California. 24 (Id. ¶ 2.) And Defendant never traveled to California in relation to the contract. (Id. ¶¶ 5, 25 8, 11.) 26 27 28

1 II. ANALYSIS

2 The Court first discusses the motion to dismiss for lack of personal jurisdiction, then 3 turns to the motion to dismiss for insufficient service of process. Finally, the Court 4 addresses the motion to transfer venue. 5 A. Motion to Dismiss for Lack of Personal Jurisdiction 6 Defendant seeks to dismiss the complaint for lack of personal jurisdiction under Rule 7 12(b)(2). Defendant claims that the Court lacks general and specific personal jurisdiction. 8 (Mot. 2:11–12, ECF No. 5.) Plaintiff does not argue general personal jurisdiction (Opp’n 9 3:7–8); thus, the Court focuses its analysis on specific personal jurisdiction. 10 “District courts have the power to exercise personal jurisdiction to the extent 11 authorized by the law of the state in which they sit.” *Lions Gate Ent. Inc. v. TD Ameritrade 12 Servs. Co., Inc.*, 170 F. Supp. 3d 1249, 1257 (C.D. Cal. 2016) (citing Fed. R. Civ. P. 13 4(k)(1)(A)). California’s long-arm jurisdictional statute is coextensive with federal due 14 process requirements. See *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 15 1998) (citing Cal. Code Civ. P. § 410.10). For the Court to properly exercise specific 16 personal jurisdiction in accordance with due process, the defendant must have “minimum 17 contacts” with the forum state. *International Shoe Co. v. Washington*, 326 U.S. 310, 316 18 (1945)

(citation modified). To establish minimum contacts, the court relies on the Dole 19 factors: (1) The non-resident defendant must purposefully direct his activities or 20 consummate some transaction with the forum or resident thereof; or perform some act by 21 which he purposefully avails himself of the privileges of conducting activities in the forum, 22 thereby invoking the benefits and protections of its laws; (2) the claim must be one which 23 arises out of or relates to the defendant's forum-related activities; and (3) the exercise of 24 jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. 25 *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). The minimum contacts 26 inquiry "looks to the defendant's contacts with the forum State itself, not the defendant's 27 contacts with persons who reside there," emphasizing that "it is the defendant's conduct 28 that must form the necessary connection with the forum State." *Walden v. Fiore*, 571 U.S. 1 277, 285 (2014); see also *Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 262 2 (2017). If the plaintiff successfully bears the burden of meeting the first two prongs, then 3 the defendant shoulders the burden of the final prong. *Schwarzenegger v. Fred Martin 4 Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2003). 5 "[A] contract alone does not automatically establish minimum contacts in the 6 plaintiff's home forum." *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008); see 7 also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). Rather, to determine 8 whether the defendant "purposefully established minimum contacts within the forum," the 9 court considers "prior negotiations and contemplated future consequences, along with the 10 terms of the contract and the parties' actual course of dealing." *Burger King*, 471 U.S. at 11 479. 12 In opposition, Plaintiff argues that Defendant "consummate[d] some transaction 13 with the forum or resident thereof"—the first Dole factor—because Defendant entered into 14 a five-page contract with Plaintiff, which listed Plaintiff's California address on the bottom 15 of the first page. (Opp'n 5:17–20.) However, entering into a contract with a California 16 company is not enough to establish minimum contacts with California. 17 Two Ninth Circuit cases are relevant here. In *Picot*, the Ninth Circuit affirmed a 18 California district court's motion to dismiss for lack of personal jurisdiction. *Picot v. 19 Weston*, 780 F.3d 1206 (9th Cir. 2015). Even though a Wisconsin defendant entered into a 20 contract with a California plaintiff, that was not enough to establish specific personal 21 jurisdiction over the defendant in California for the contract and tort claims. See *id.* at 1213. 22 Also, in *Cranfield*, the Ninth Circuit affirmed an Idaho district court's motion to dismiss 23 for lack of personal jurisdiction. *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 24 1163 (9th Cir. 2023), cert. denied, 144 S. Ct. 826 (2024). There, the fact that an English 25 corporation *Cranfield* entered into a contract with the Idaho corporation *Tamarack* could 26 not justify personal jurisdiction in Idaho. Upon review, the Ninth Circuit reasoned: 27 While *Tamarack* is an Idaho resident, there's no evidence that *Cranfield* sought out *Tamarack* in Idaho or benefitted from 28 1 *Tamarack's* residence in Idaho. Neither the contract's negotiations, terms, nor contemplated consequences establish 2 that *Cranfield* formed a substantial connection with Idaho. And 3 while the course of dealings show that *Cranfield* employees entered Idaho several times, those transitory

trips into the forum state do not sufficiently reflect purposeful availment. *Davis*, 71 F.4th at 1163. Similar to the facts of *Cranfield*, there is no evidence that Defendant sought employment with Plaintiff because of Plaintiff's California residence. Moreover, as Defendant highlights, none of the contract's terms tie the contract nor the contract's consequences to California. And unlike the facts in *Cranfield*, Defendant did not even enter California for work-related trips. Although Plaintiff cites to several California Court of Appeal decisions, these cases are not dispositive because the Court must follow the Supreme Court's and Ninth Circuit's precedent. See *Integral Dev. Corp. v. Weissenbach*, 99 Cal. App. 4th 576 (2002); *Hall v. LaRonde*, 56 Cal. App. 4th 1342 (1997). Given that Plaintiff cannot satisfy the first Dole factor, Plaintiff cannot carry its burden to justify the Court's exercise of specific personal jurisdiction. Accordingly, the Court dismisses without prejudice the claims against Defendant Marchky for lack of personal jurisdiction. B. Motion to Dismiss for Insufficient Service of Process Further, Defendant seeks to dismiss the complaint for insufficient service of process under Rule 12(b)(5). Defendant argues that because Plaintiff did not file proof of service in either federal or state court, proper Rule 4 compliance cannot be verified. (Mot. 2:14–15) Given that the Court finds no purposeful availment, the Court declines to analyze the remaining Dole factors. Moreover, to the extent Plaintiff alleges a different analysis for its contract and tort claims, the Ninth Circuit cautions against drawing a fine distinction between the two tests, stating “there's no need to adhere to an iron-clad doctrinal dichotomy to analyze specific jurisdiction.” *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1162 (9th Cir. 2023) (“[W]hen considering specific jurisdiction, courts should comprehensively evaluate the extent of the defendant's contacts with the forum state and those contacts' relationship to the plaintiffs' claims—which may mean looking at both purposeful availment and purposeful direction.”). Given the lack of contacts outside the contractual hook, the Court 16.) But Plaintiff has since filed proof of service. (ECF Nos. 6, 7.) Accordingly, the Court 2 || denies the motion to dismiss for insufficient service of process. C. Transfer of Venue Finally, Defendant argues that the case should be transferred to either the Middle 5 || District of Florida (the site of contract execution and performance) or the Northern District 6 || of Iowa (the site of contract breach and “attempted” service). (Mot. 2:19—20.) Given that 7 Court grants Defendant's motion to dismiss, the Court terminates as moot the motion 8 || to transfer venue.

9 CONCLUSION

10 Accordingly, the Court GRANTS Defendant's motion to dismiss under Rule 11 || 12(b)(2), DENIES Defendant's motion to dismiss under Rule 12(b)(5), and 12 || TERMINATES AS MOOT Defendant's motion to transfer venue. (ECF No. 5.) The 13 || Court DISMISSES WITHOUT PREJUDICE Plaintiffs claims against Defendant 14 || Michael Marchky for lack of personal jurisdiction. 15 IT IS SO ORDERED. 16 17 || DATED: December 3, 2025 (yatta Bahar te 18 H n. Cynthia Bashant, Chief Judge United States District Court 19 20 21 22 23 24 25 26 27 28 _f_

