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LEASEWEB NETHERLANDS B.V.

11  
12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

14  
15 BARRY ROSEN,  
16 Plaintiff,

17 vs.

18 LEASEWEB USA, INC.; LEASEWEB  
NETHERLANDS B.V. dba  
19 LEASEWEB.COM; and DOES 1-10,  
20 inclusive,

21  
22 Defendants.

Case No.: 2:22-cv-03676-SVW-JPR

Assigned to:  
District Judge Stephen V. Wilson  
Magistrate Judge Jean P. Rosenblum

**NOTICE OF MOTION AND  
MOTION BY DEFENDANTS  
LEASEWEB USA, INC. AND  
LEASEWEB NETHERLANDS  
B.V.'S TO DISMISS COMPLAINT  
FOR LACK OF PERSONAL  
JURISDICTION**

[Fed. R. Civ. P. 12(b)(2)]

[Filed concurrently with supporting  
Declarations of Martijn Bethlehem  
and Chris Dorcisis; [Proposed] Order]

Complaint Filed: May 27, 2022

1           **PLEASE TAKE NOTICE THAT** on Monday, September 26, 2022, at 1:30  
2 p.m. or as soon thereafter as counsel may be heard, in the courtroom of the Honorable  
3 Stephen V. Wilson, of the above-captioned Court located at the First Street  
4 Courthouse on 350 West First Street, Courtroom 10A, Defendants LEASEWEB  
5 USA, INC. (“Leaseweb USA”) and LEASEWEB NETHERLANDS, B.V.  
6 (“Leaseweb NL”) (collectively, “Leaseweb Entities”) will and hereby do move this  
7 Court, pursuant to Federal Rule of Civil Procedure 12(b)(2), for an order dismissing  
8 the Complaint by Plaintiff BARRY ROSEN (“Plaintiff”) for lack of personal  
9 jurisdiction.

10           This motion is made following the conference of counsel pursuant to Local  
11 Rule 7-3, which took place on July 19, 2022.

12           This Motion is based on this Notice, the accompanying Memorandum of Points  
13 and Authorities, Declarations of Martijn Bethlehem and Chris Dorcsis in support  
14 thereof, the Reply (if any), the Court’s files and records, matters that may be  
15 judicially noticed, and such further oral argument or documentary evidence that may  
16 be presented prior to or at the time of the hearing.

17  
18 Dated:           July 26, 2022



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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff Barry Rosen (“Plaintiff”) is a photographer and prolific litigant who has filed over 50 lawsuits for alleged copyright infringement. Defendants Leaseweb USA, Inc. (“Leaseweb USA”) and Leaseweb Netherlands B.V. (“Leaseweb NL”) (collectively, “Leaseweb Entities”) provide cloud services including website hosting and are the latest targets of Plaintiff’s litigation strategy.

Plaintiff initiated this lawsuit against Leaseweb Entities alleging that certain customers of Leaseweb Entities (“Doe Defendants”) made Plaintiff’s copyrighted images available on their websites hosted on Leaseweb Entities’ servers. Yet, Leaseweb Entities do not have control over the content uploaded by their customers, and can only help facilitate removal of infringing content upon reasonable notice from the copyright-holder.

Plaintiff asserts that there is personal jurisdiction over Leaseweb Entities based on nonspecific and attenuated contacts with California. These allegations fall far short of establishing personal jurisdiction over either Leaseweb USA or Leaseweb NL, requiring their dismissal.

First, there is no general jurisdiction over Leaseweb NL because it is a Netherland-based entity that is not “fairly regarded as at home” in the United States. *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017). Neither has Plaintiff shown the substantial contacts necessary to establish general jurisdiction over Leaseweb USA.

Nor is there specific jurisdiction based on either Entity’s hosting of the domains that contained the allegedly infringing content because the websites and content were not owned or controlled by Leaseweb Entities. Leaseweb Entities merely were passive hosts. The website owners, furthermore, were not based in California, and the objectionable content was not hosted on servers located in the

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1 State. Finally, the mere availability of the leaseweb.com domain in California, and  
2 worldwide, does not create jurisdiction in this State.

3 For all these reasons, and as discussed further below, the Court should dismiss  
4 Leaseweb Entities for lack of personal jurisdiction.

5 **II. RELEVANT FACTS**

6 Leaseweb Entities are two of nine Leaseweb sales entities offering business  
7 customers around the world unmanaged, Infrastructure-as-a-Service (IAAS), cloud  
8 hosting services under the Leaseweb brand name. The Leaseweb website allows  
9 prospective customers to choose which Leaseweb sales entity to contract for cloud  
10 hosting services, based on location of each entity’s servers, and corresponding quality  
11 of service, latency, capacity and computing power. Each entity accordingly has its  
12 own Sales Terms and Conditions, Acceptable Use Policy, Support and SLA  
13 Schedule, and Service Specifications applicable to its respective customers.<sup>1</sup>  
14 (Declaration of Martijn Bethlehem (“Bethlehem Decl.”), ¶ 4; Declaration of Chris  
15 Dorcsis (“Dorcsis Decl.”), ¶ 4).

16 Two of the website domains identified in the Complaint as containing  
17 allegedly infringing content, celebposter.com and nposter.com, were customers / end  
18 users of Leaseweb NL. (Bethlehem Decl., ¶¶ 9-11). Leaseweb NL is based in  
19 Amsterdam, the Netherlands, and it hosts its customers/end users’ content on servers  
20 physically located in the Netherlands. It has no offices, property, assets, officers, or  
21 employees in the United States. It does not own or control any bank accounts in  
22 California or the U.S. and does not pay taxes here. (Bethlehem Decl., ¶¶ 3, 5, 17).  
23 Less than a fraction of one percent of Leaseweb NL’s customers are based in  
24 California, and neither the Leaseweb NL customer nor end user at issue in this case is  
25 based in California as far as Leaseweb NL is aware. (Bethlehem Decl., ¶¶ 16, 9-11).

26

27

28 <sup>1</sup> See <https://www.leaseweb.com/legal/sales-contract> (last visited July 16, 2022).  
- 2 - Case No.: 2:22-cv-03676

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1 While Leaseweb NL is registered under the Digital Millennium Copyright Act  
2 (DMCA), its DMCA agent is based in Amsterdam. (Bethlehem Decl., ¶ 19).  
3 Likewise, the personnel who handle abuse notifications submitted to Leaseweb NL  
4 via the dedicated email address, abuse@nl.leaseweb.com, and who processed  
5 Plaintiff’s takedown notices at issue in this case, are based in the Netherlands. *Id.*

6 The third domain identified in the Complaint, idposter.com, was a customer of  
7 Leaseweb USA. Leaseweb USA is a Delaware corporation headquartered in Virginia.  
8 (Dorcsis Decl., ¶ 11). Leaseweb USA has several data centers in the United States,  
9 including two in California. (Dorcsis Decl., ¶¶ 5, 6). The data for idposter, however,  
10 was not held by this customer of Leaseweb USA on servers in California. (Dorcsis  
11 Decl., ¶ 11).

12 Leaseweb USA employs two data center engineers at its Southern California  
13 location and one engineer in Northern California. (Dorcsis Decl., ¶ 7.) No California  
14 employee is involved in the processing of abuse reports. *Id.* Rather, takedown notices  
15 submitted via the company-specific email address, abuse@us.leaseweb.com, and  
16 website form, are handled by Leaseweb USA’s compliance team in Virginia. (Dorcis  
17 Decl., ¶ 8). Prior to March 21, 2022, Leaseweb USA’s DMCA agent based in  
18 Washington, D.C. would receive and forward takedown notices to the compliance  
19 team in Virginia for processing. Leaseweb USA has since updated its designated  
20 DMCA agent, and takedown notices are now received directly by the Leaseweb USA  
21 compliance team in Virginia for processing. (Dorcis Decl., ¶ 8).

22 Like Leaseweb NL, California-based customers make up only a fraction of one  
23 percent of Leaseweb USA’s global customer base. (Dorcsis Decl., ¶ 10). Leaseweb  
24 USA’s (now former) customer, idposter, was based in Ukraine. (Dorcsis Decl., ¶ 12).

25 Leaseweb NL and Leaseweb USA operate as wholly separate entities. They do  
26 not provide services to each other’s customers or host their respective customers’  
27 content on servers owned by another Leaseweb sales entity. Nor do Leaseweb NL

1 and Leaseweb USA share any bank accounts, offices, or employees. (Dorcsis Decl., ¶  
2 15; Bethlehem Decl., ¶ 15).

3 **III. LEGAL STANDARD**

4 “Once a defendant challenges personal jurisdiction, the ‘plaintiff bears the  
5 burden of establishing that jurisdiction is proper.’” *Harmoni Int’l Spice, Inc. v. Bai*,  
6 No. 2:16-cv-00614-AB-AS, 2016 WL 6542731, at \*7 (C.D. Cal. May 24, 2016)  
7 (*citing Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008) (“*Boschetto*”));  
8 Fed. R. Civ. P. 12(b)(2).

9 Before discovery and in the absence of an evidentiary hearing, the plaintiff  
10 must “make ‘a prima facie showing of jurisdictional facts to withstand the motion to  
11 dismiss.’” *Burri L. PA v. Skurla*, 35 F.4th 1207, 1213 (9th Cir. 2022) (*quoting Pebble*  
12 *Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006) (“*Pebble Beach*”). The  
13 court “may not assume the truth of allegations in a pleading which are contradicted  
14 by affidavit.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th  
15 Cir. 2011) (quotations omitted); *BackGrid USA, Inc. v. Mod. Notoriety Inc.*, No.  
16 2:21-cv-03318-RSWL-PD, 2021 WL 4772474, at \*2 (C.D. Cal. Sept. 15, 2021)  
17 (“plaintiff cannot ‘simply rest on the bare allegations of [the] complaint’”) (*quoting*  
18 *Mavrix Photo Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011)). The  
19 plaintiff must “come forward with facts, by affidavit or otherwise, supporting  
20 personal jurisdiction.” *Barantsevich v. VTB Bank*, 954 F. Supp. 2d 972, 982 (C.D.  
21 Cal. 2013); *see also Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th  
22 Cir. 1977). “Disputed allegations in the complaint that are not supported with  
23 evidence or affidavits cannot establish jurisdiction.” *BackGrid USA*, 2021 WL  
24 4772474, at \*2 (*citing AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1207 (9th  
25 Cir. 2020)).

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**IV. ANALYSIS**

**A. Law on Personal Jurisdiction**

Under the Due Process Clause of the Fourteenth Amendment, a court may only exercise personal jurisdiction over an out-of-state defendant where the defendant has “certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011).

There are two recognized bases for personal jurisdiction over nonresident defendants—general jurisdiction and specific jurisdiction. “A court may assert general jurisdiction over foreign (sister-state or foreign country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Id.* at 919.

Meanwhile, “[t]he inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation. Specifically, the defendant’s suit-related conduct must create a substantial connection with the forum State. [The court’s] primary concern is the burden on the defendant.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (“*Axiom*”) (internal quotes and citations omitted).

**B. Plaintiff Cannot Establish General Jurisdiction Over Leaseweb Entities**

“The standard for establishing general jurisdiction is ‘fairly high’ and requires that the defendant’s contacts be substantial enough to approximate physical presence.” *Doe v. Xytex Corp.*, No. 2:16-cv-06621-JAK-AGE, 2017 WL 11633485, at \*2 (C.D. Cal. June 20, 2017).

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1 Plaintiff does not, and cannot, allege that the Court has general jurisdiction  
2 over Leaseweb Entities, because they lack “continuous and systematic” contacts with  
3 California. Plaintiff conclusorily alleges that “Defendants have operated and/or  
4 currently operate commercial businesses through which Defendants knowingly,  
5 systematically, and continuously transacted or transact business and enter or entered  
6 into contracts on ongoing basis with and provide or provided services to individuals  
7 or companies in California, . . . .” (Compl., ¶ 14). But Plaintiff’s vague references to  
8 “Defendants”—inclusive of Leaseweb Entities and the unnamed Doe Defendants—  
9 are insufficient for purposes of jurisdiction. *Doe v. WebGroup Czech Republic, a.s.*,  
10 No. 2:21-cv-024280-VAP-SK, 2022 WL 982248, at \*10 (C.D. Cal. Jan. 13, 2022)  
11 *am. on recon. in part sub nom.*, 2022 WL 982245 (C.D. Cal. Feb. 25, 2022)  
12 (“*WebGroup Czech Republic*”) (granting motion under Rule 12(b)(2) where  
13 complaint “comingles the Defendants together throughout much of the pleading,  
14 without identifying which entities are responsible for the conducted underlying the  
15 claims”); *accord Sollberger v. Wachovia Securities, LLC*, No. 09-cv-0766-AG, 2010  
16 WL 2674456, at \*4-5 (C.D. Cal. June 30, 2010) (granting motion to dismiss “shotgun  
17 pleading” under Rule 12(b)(6) where complaint “uses the omnibus term  
18 ‘Defendants’”).

19 In any event, the evidence submitted by Leaseweb Entities directly refutes  
20 Plaintiff’s conclusory allegations. As explained above, Leaseweb NL has no offices,  
21 property, assets, or officers or employees in the United States. (Bethlehem Decl., ¶  
22 17). It does not own or control any bank accounts in California or the U.S. and does  
23 not pay taxes here. *Id.* Leaseweb USA is a Delaware corporation headquartered in  
24 Virginia. (Dorcsis Decl., ¶ 3). Leaseweb USA has several data centers in the United  
25 States. (Dorcsis Decl., ¶ 5). Its servers in California, however, did not host the  
26 allegedly infringing customer content. (Dorcsis Decl., ¶ 11.) And none of its three  
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1 California employees are involved with customer sales or the processing of takedown  
2 notices. (Dorcsis Decl., ¶ 7).

3 While a small number of Leaseweb Entities’ respective customers are based in  
4 California—less than one percent of each Entity’s customer base—that is insufficient  
5 to establish general jurisdiction. (Dorcsis Decl., ¶ 10, Bethlehem Decl., ¶ 16); *Mavrix*  
6 *Photo Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1226 (9th Cir. 2011) (“*Mavrix*”)  
7 (“occasional sales to forum residents by a nonresident defendant do not suffice to  
8 establish general jurisdiction.”) (internal quotes omitted); *see also Congoleum Corp.*  
9 *v. DL W Aktiengesellschaft*, 729 F.2d 1240, 1242 (9th Cir. 1984) (noting that “no  
10 court has ever held that the maintenance of even a substantial sales force within the  
11 state is a sufficient contact to assert jurisdiction in an unrelated cause of action”).  
12 These limited contacts are not continuous and systematic and cannot establish general  
13 jurisdiction over Leaseweb Entities in California.

14 In short, neither entity is at home in California.

15 **C. Plaintiff Cannot Establish Specific Jurisdiction Over Leaseweb**  
16 **Entities**

17 To meet the “minimum contacts” needed to establish specific personal  
18 jurisdiction, the Ninth Circuit applies a three-prong test:

- 19 (1) The non-resident defendant must **purposefully direct** his  
20 activities or consummate some transaction with the forum or  
21 resident thereof; or perform some act by which he  
22 **purposefully avails** himself of the privilege of conducting  
23 activities in the forum, thereby invoking the benefits and  
24 protections of its laws;
- 25 (2) the claim must be one which **arises out of or relates to**  
26 the defendant’s forum-related activities; and
- 27 (3) the exercise of jurisdiction must comport with **fair play**  
28 **and substantial justice**, *i.e.* it must be **reasonable**.

26 *Mavrix*, 647 F.3d at 1227-28 (emphasis added) (*citing Schwarzenegger v. Fred*  
27 *Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (“*Schwarzenegger*”)).

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1 The plaintiff bears the burden of satisfying the first and second prongs of the  
2 test. *Schwarzenegger*, 374 F.3d at 802. Only once established does the burden shift to  
3 the defendant “to ‘present a compelling case’ that the exercise of jurisdiction would  
4 not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-  
5 78 (1985)); *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1208 (9th Cir. 2020)  
6 (“*AMA*”). “If any of the three requirements is not satisfied, jurisdiction in the forum  
7 would deprive the defendant of due process of law” and the motion to dismiss must  
8 be granted. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir.  
9 1995).

10 Plaintiff here fails to meet his burden on either prong. But even if he did, the  
11 Court’s exercise of jurisdiction over foreign webhosting defendants would be  
12 unreasonable. Leaseweb Entities lack the necessary minimum contacts and the Court  
13 must decline to exercise specific personal jurisdiction and should grant the Motion to  
14 Dismiss.

15 **1. Leaseweb Entities Have Not Purposefully Directed Any**  
16 **Activities at California**

17 The first prong of the minimum contacts test requires a plaintiff to establish  
18 purposeful availment or purposeful direction, which turns on “the nature of the  
19 underlying claims.” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 979 (9th Cir.  
20 2021) (“*Ayla*”). Copyright infringement cases, such as here, sound in tort, and courts  
21 therefore apply the “purposeful direction” analysis. *AMA*, 970 F.3d at 1209.

22 “Where allegedly tortious conduct takes place outside the forum and has  
23 effects inside the forum, [the Ninth Circuit] has examined purposeful direction using  
24 an ‘effects test’ based on *Calder v. Jones*, 465 U.S. 783 (1984) [(“*Calder*”).]” *Id.*  
25 Under the “effects” test, “the defendant allegedly must have (1) committed an  
26 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the  
27 defendant knows is likely to be suffered in the forum state.” *Mavrix*, 647 F.3d at 1228



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1 (citing *Calder*, 456 U.S. 783). “[I]f the plaintiff fails at the first step [of  
2 demonstrating purposeful direction], the jurisdictional inquiry ends and the case must  
3 be dismissed.” *Boschetto*, 539 F.3d at 1016 (9th Cir. 2008).

4 “For purposes of jurisdiction, a defendant acts intentionally when he acts with  
5 ‘an intent to perform an actual, physical act in the real world, rather than an intent to  
6 accomplish a result or consequence of that act.” *AMA*, 970 F.3d at 1209 (citing  
7 *Schwarzenegger*, 374 F.3d at 806). As to the second element, “[e]xpress aiming  
8 requires more than the defendant’s awareness that the plaintiff it is alleged to have  
9 harmed resides in or has strong ties to the forum, because ‘the plaintiff cannot be the  
10 only link between the defendant and the forum.’” *Ayla*, 11 F.4th at 980 (quoting  
11 *Walden v. Fiore*, 571 U.S. 277, 285 (2014)). Moreover, “the ‘expressly aimed’  
12 requirement is a necessary but not sufficient condition, alone, for jurisdiction. In  
13 order to establish specific jurisdiction, a plaintiff must also show that jurisdictionally  
14 significant harm was suffered in the forum state.” *Mavrix*, 647 F.3d at 1231.

15 Finally, the Ninth Circuit has “warned courts not to focus too much on the  
16 third [element] . . . holding that ‘something more’ is needed in addition to a mere  
17 foreseeable effect.” *Pebble Beach*, 453 F.3d at 1156.

18 **a) Leaseweb Entities Have Not Committed Any Intentional**  
19 **Act**

20 In an attempt to meet the first element of the effects test, Plaintiff alleges that  
21 Leaseweb Entities “jointly own and/or operate, and/or manage and/or offer servers  
22 and other services located within or directed to the State of California.” (Compl., ¶ 7).

23 As explained, however, Leaseweb NL stores its customers’ data only on  
24 servers located in the Netherlands. It does not jointly own, operate, or manage servers  
25 with Leaseweb USA, or any other entity, anywhere in the United States. Nor does  
26 Leaseweb NL provide customer service to the customers of other Leaseweb sales  
27 entities. (Bethlehem Decl., ¶ 7).

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1 Leaseweb USA likewise only stores its customers’ data on its own servers, and  
2 it does not provide customer service to the customers of other Leaseweb entities.  
3 (Dorcsis Decl., ¶ 5). While Leaseweb USA has two data centers in California, the  
4 allegedly infringing content was not stored on servers in the State. (Dorcsis Decl., ¶  
5 11). In any event, the mere presence of Leaseweb USA’s servers in California or the  
6 U.S. is not sufficient to establish personal jurisdiction. *See Man-D-Tec, Inc. v. Nylube*  
7 *Prods. Co.*, No. 2:11-cv-01573-GMS, 2012 WL 1831521, at \*2 (D. Ariz. May 18,  
8 2012) (“Plaintiff ‘cannot rely on the fortuitous location of Defendant’s servers to  
9 establish personal jurisdiction.’ If the mere location of a server could create personal  
10 jurisdiction, any state where a server is located would have personal jurisdiction over  
11 any user of that server.”); *see also Shrader v. Biddinger*, 633 F.3d 1235, 1240 (10th  
12 Cir. 2011) (mass emailing, website hosting, and Internet posting are “particularly  
13 non-territorial” because “the internet operates ‘in’ every state regardless of where the  
14 user is physically located”).

15 Plaintiff also alleges that Leaseweb NL “actively seeks the protection of  
16 United States laws by inter alia, registering with the United States Copyright Office a  
17 Digital Millennium Copyright Agent from at least December 1, 2016 to the present.”  
18 (Compl., ¶ 7.) Leaseweb NL is registered under the DMCA, however, a defendant’s  
19 registration under the DMCA as a service provider or designated agent is “not on its  
20 own sufficient, to establish intention to invoke the protections of the forum state and  
21 the United States more generally.” *Maxim v. Guangzhou NetEase Computer Sys.*  
22 *Co.*, No. 2:20-cv-11331-AB-JC, 2021 WL 4839579, at \*5 (C.D. Cal. Aug. 11, 2021)  
23 (“*Maxim*”). Furthermore, Leaseweb NL’s DMCA agent is not based in California. Its  
24 DMCA agent is based in Amsterdam. (Bethlehem Decl., ¶ 15). Meanwhile, prior to  
25 March 21, 2022, Leaseweb USA’s DMCA agent was based in Washington, D.C. and  
26 would forward takedown notices for processing by the team in Virginia. Leaseweb  
27 USA updated its designated DMCA agent effective March 21, 2022, and takedown

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1 notices are now received directly by the Leaseweb USA compliance team in Virginia  
2 for processing. (Dorcsis Decl., ¶ 8).

3 **b) Leaseweb Entities Have Not Expressly Aimed Any Acts**  
4 **at California**

5 The express aiming inquiry requires “something more” than a foreign act with  
6 foreseeable effects in the forum state. *Axiom*, 874 F.3d 1064, 1070 (9th Cir. 2017)  
7 (citing *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir.  
8 2012) (“*Washington Shoe*”), *abrogated on other grounds* (“*Calder* cannot stand for  
9 the broad proposition that a foreign act with foreseeable effects in the forum state  
10 always gives rise to specific jurisdiction.” (citation omitted)). “Due process requires  
11 that a defendant be hauled into court in a forum State based on his own affiliation  
12 with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes  
13 by interacting with other persons affiliated with the State.” *Walden*, 571 U.S. at 286  
14 (citations omitted).

15 Plaintiff here generally alleges that Leaseweb Entities “target and solicit target  
16 customers located in the United States and specifically in California by offering their  
17 services through the website leaseweb.com.” (Compl., ¶ 4). He also contends that  
18 “Defendants” “operate sophisticated highly interactive websites . . . through servers  
19 located in California[,]” and transact business with customers in California. (Compl.,  
20 ¶ 19).

21 As an initial matter, it is unclear whether Plaintiff’s vague reference to  
22 “Defendants” in the Complaint is intended to refer to the Leaseweb Entities, the Doe  
23 Defendants, or both. The same is true for lumped together allegations against  
24 “Leaseweb Defendants.” “Plaintiff[] cannot establish personal jurisdiction by  
25 alleging that ‘Defendants’ . . . took actions in or aimed at California because  
26 those sorts of ‘shotgun’ pleadings do not satisfy Plaintiff[’s] burden to  
27 demonstrate personal jurisdiction with respect to each defendant.” *Broidy Cap*.

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1 *Mgmt., LLC v. Qatar*, No. 2:18-cv-02421-JFW, 2018 WL 9943551, at \*7 (C.D. Cal.  
2 Aug. 22, 2018) (emphasis added); *WebGroup Czech Republic*, at \*9-10 (granting  
3 motion to dismiss for lack of personal jurisdiction where complaint failed to specify  
4 alleged culpability among foreign and webhosting/server defendants).

5 In any event, Leaseweb Entities provide their respective customers with  
6 unmanaged cloud hosting services. They do not manage or “operate” customers’  
7 websites, and they did not manage or operate the websites that allegedly contained  
8 the infringing content at issue, nor did they post such content. (Dorcsis Decl., ¶ 13;  
9 Bethlehem Decl., ¶ 8). Those customers’ websites, including the allegedly infringing  
10 customer content, moreover, were hosted on servers located outside the State, and the  
11 customers themselves were not based in California as far as Leaseweb USA and  
12 Leaseweb NL are aware. (Dorcsis Decl., ¶ 11; Bethlehem Decl., ¶¶ 9, 10).

13 Customers anywhere in the world can purchase cloud services from Leaseweb  
14 Entities, or other distinct and separate Leaseweb companies (*i.e.*, sales entities), on  
15 the leaseweb.com website. (Dorcsis Decl., ¶¶ 3, 4; Bethlehem Decl., ¶¶ 4, 7).  
16 Prospective customers have the option to choose which of nine Leaseweb sales  
17 entities to contract with, thereby determining where in the world their data will be  
18 stored. Each Leaseweb Entity has its own Sales Terms and Conditions, Acceptable  
19 Use Policy, and Service Specifications applicable to its respective customers.  
20 (Dorcsis Decl., ¶ 4; Bethlehem Decl., ¶ 4).

21 The fact that the leaseweb.com website could be accessed by prospective  
22 customers in California (and around the world) “is not sufficient to establish that a  
23 defendant expressly aimed their activities at the forum” state. *Maxim*, 2021 WL  
24 4839579, at \*5 (“‘something more’—conduct directly targeting the forum—” is  
25 required) (*quoting Mavrix*, 647 F.3d at 1229). “In determining whether ‘something  
26 more’ is present, [c]ourts consider factors including: ‘the interactivity of the  
27 defendant’s website; the geographic scope of the defendant’s commercial ambitions;

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1 and whether the defendant “individually targeted” a plaintiff known to be a forum  
2 resident.” *WebGroup Czech Republic*, 2022 WL 982248, at \*6 (citing *Mavrix*, 647  
3 F.3d at 1229) (20% of website traffic coming from U.S. and alleged use of geo-  
4 targeted advertising insufficient to show foreign defendants aimed website at United  
5 States); see *AMA*, 970 F.3d at 1210 (same).

6 The Ninth Circuit’s 2020 holding in *AMA* is instructive on the issue of express  
7 aiming as it relates to a defendant’s website.<sup>2</sup> In that case, the court held that the  
8 defendant from Poland who operated a website that allowed users to upload and view  
9 video content, lacked a forum-specific focus, evidenced in part by the fact that 80%  
10 of its users were located outside the United States. Although a significant portion of  
11 the content available on the website was created in the U.S., the court held that such  
12 facts were not sufficient to show that the defendant had expressly aimed its website at  
13 the U.S. market. *AMA*, 970 F.3d at 1210; see *Walden*, 571 U.S. at 284 (“[T]he  
14 relationship must arise out of contacts that the defendant himself creates with the  
15 forum State.”) (internal quotation marks omitted).

16 The Ninth Circuit contrasted the situation in *AMA* with its earlier decision in  
17 *Mavrix*, 647 F.3d 1218, where the defendant posted copyrighted celebrity photos  
18 belonging to the plaintiff on the defendant’s celebrity gossip website. In *Mavrix*, the  
19 court found “most salient” to the jurisdiction analysis was the fact that the defendant  
20 had used the plaintiff’s photos “as part of its exploitation of the California mark for  
21 its own commercial gain.” *AMA*, 970 F.3d at 1209-10 (citing *Mavrix*, 647 F.3d at  
22 1229-31). Among other things, the court in *Mavrix* pointed to the defendant’s  
23 website’s California-centered content and California-specific advertising for jobs,  
24 hotels and vacations on the site. *Mavrix*, 647 F.3d at 1221-23, 30. Such facts, the

25 \_\_\_\_\_  
26 <sup>2</sup> Notably, the defendant in *AMA* was the actual owner of the website that  
27 contained the allegedly infringing content. Leaseweb Entities, by contrast, are even  
28 further removed than the defendant in *AMA*. Leaseweb Entities merely hosted the  
domains, to make the websites available on the Internet.

1 court in *Mavrix* held, demonstrated intent and was sufficient to establish that the  
2 defendant had expressly aimed its activities at California.

3 No analogous facts are alleged here. Rather, this case is more akin to the  
4 situation in *AMA*. The market for IAAS cloud hosting is global, as evidenced by the  
5 large proportion of customers for each Leaseweb NL and Leaseweb USA that are  
6 outside of California and outside of the United States altogether. (Dorcsis Decl., ¶ 10;  
7 Bethlehem Decl., ¶ 16). Leaseweb Entities do not control to whom customers (or  
8 their end users) direct the content or what data they provide. Nor can they access the  
9 content on a server leased to a customer without the customer's consent. (Dorcsis  
10 Decl., ¶ 13; Bethlehem Decl., ¶ 8). And, unlike the defendant in *Mavrix*, Leaseweb  
11 Entities cannot and did not upload any of the infringing content themselves. (Dorcsis  
12 Decl., ¶ 14; Bethlehem Decl., ¶¶ 9-11). Leaseweb Entities absolutely did not  
13 intentionally use Plaintiff's copyrighted photos for their own commercial gain. *Id.*;  
14 *see also AMA*, 970 F.3d at 1210; *WebGroup Czech Republic*, 2022 WL 982248, at  
15 \*6-7, 8-10.

16 Furthermore, Plaintiff cannot rely on the location of Leaseweb USA's servers  
17 in California to satisfy the express aiming factor of the *Calder* effects test. *See*  
18 *Hungerstation LLC v. Fast Choice LLC*, No. 19-cv-05861-HSG, 2020 WL 137160, at  
19 \*5 (N.D. Cal. Jan. 13, 2020) ("As other courts in this circuit have held, the presence  
20 of servers in California (which may or may not host Plaintiff's source code or  
21 confidential data) is insufficient to find that Defendants expressly aimed their conduct  
22 at California.")<sup>3</sup>

23 For all these reasons, Plaintiff cannot sufficiently allege that Leaseweb Entities  
24 have expressly aimed their actions at the forum state.

25  
26  
27 <sup>3</sup> *Hungerstation, aff'd*, No. 20-15090, 2021 WL 963777 (9th Cir. Mar. 15, 2021),  
28 *opinion amended and superseded on denial of reh'g*, 2021 WL 1697886 (9th Cir.  
Apr. 29, 2021), *and aff'd*, 2021 WL 1697886 (9th Cir. Apr. 29, 2021).

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**c) Leaseweb Entities’ “Knowledge” that Plaintiff Could Incur Harm in California Is Insufficient to Establish Specific Jurisdiction**

In support of the final element of the effects test to establish purposeful direction, Plaintiff contends that Leaseweb Entities had “actual knowledge” that their alleged acts would harm Plaintiff and that Plaintiff was a resident of California. (Compl., ¶ 20.) Plaintiff presumably bases this allegation on the fact that his takedown notices provided a California Post Office Box for Plaintiff’s mailing address. (Dorcsis Decl., ¶ 16, Ex. A; Bethlehem Decl., ¶ 20, Ex. A). A mailing address linked to a P.O. Box, of course, is insufficient to establish one’s residency. *See Jones v. Upland Hous. Auth.*, No. 5:12-cv-02074-VAP-OP, 2013 WL 708540, at \*14 (C.D. Cal. Feb. 21, 2013).

Plaintiff is likely to point to a 2014 case, *Perfect 10, Inc. v. Ocom B.V.*, where the district court found personal jurisdiction over Leaseweb USA. No. 2:14-cv-00808-JFW-VBK, 2014 WL 12591631 (C.D. Cal. 2014) (“*Perfect 10*”). The court there relied on the “individualized targeting” analysis in *Washington Shoe*, 704 F.3d at 675, to support a finding of jurisdiction. *See Perfect 10*, 2014 WL 12591631 at \*4. But a plaintiff can no longer show sufficient minimum contacts by merely establishing a defendant’s knowledge of the plaintiff’s forum connection plus a foreseeable harm suffered in the forum. *Walden*, 571 U.S. at 289; *Axiom*, 874 F.3d 1064 (“In light of the court’s instruction in *Walden*, mere satisfaction of the test outlined in *Washington Shoe*, without more, is insufficient to comply with due process.”); *AMA*, 970 F.3d at 1209, n.5, 1211; *Pebble Beach*, 453 F.3d at 1158. For this reason, the district court’s conclusion in *Perfect 10* is not binding on the Court here.<sup>4</sup>

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<sup>4</sup> *Perfect 10* is also distinguishable under the express aiming element. That case concerned a California-based customer that was allegedly infringing a California company’s copyrights. *Perfect 10*, 2014 WL 12591631, at \*4 & n.2. Here, of course,

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1 For all these reasons the first prong of the minimum contacts test is not met.  
2 The Court’s analysis can end here. *See Maxim*, 2021 WL 4839579, at \* 7.

3 **2. Plaintiff’s Alleged Injuries Do Not Arise Out of Any Forum-**  
4 **Directed Activities by Leaseweb Entities**

5 Should there be any doubts regarding the first prong, however, Plaintiff also  
6 fails to establish the second prong of the minimum contacts analysis because he does  
7 not adequately allege that his injuries arise out of or relate to Leaseweb Entities’  
8 forum-related activities. Under the second prong of the minimum contacts test, a  
9 plaintiff bears the burden in showing that the litigation results from injuries arising  
10 out of the defendant’s activities directed at the forum state.

11 “In determining whether the plaintiff’s claims arise out of or relate to  
12 defendant’s forum related activities ‘the Ninth Circuit follows the “but for” test.’”  
13 *Tatung Co., Ltd. v. Hsu*, No. 8:13-cv-1743-DOC-AN, 2015 WL 11072178, at \*42  
14 (C.D. Cal. Apr. 23, 2015) (*citing Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir.  
15 2007)). “In the case of multiple defendants, courts analyze the nexus between a  
16 defendant’s contacts and the claims against the defendant.” *Id.* “[A] plaintiff must  
17 show that there is a non-tenuous connection between the out-of-state defendant’s  
18 forum-directed activities and the plaintiff’s alleged injuries.” *Gaudio v. Critical Mass*  
19 *Indus. LLC*, No. 2:19-cv-08214-FWS-AGR, 2019 WL 8163804 at \*9 (C.D. Cal. Dec.  
20 9, 2019).

21 “Specific jurisdiction over a nonresident corporation is appropriate where the  
22 defendant directed activities at the forum and the litigation results from injuries  
23 arising out of or related to those activities.” *Watkins v. Autozone Parts, Inc.*, No.

24 \_\_\_\_\_  
25 Leaseweb Entities have presented evidence regarding the fact that none of the former  
26 customers or end users at issue in the Complaint were based in California, as well as  
27 to the nominal percentage that California-based customers comprise for each Entity.  
(Dorcsis Decl., ¶¶ 10-12; Bethlehem Decl., ¶¶ 9-11, 16.) In *Perfect 10*, Leaseweb  
28 USA also did not present any evidence of how many of its customers at the time were  
California residents. *Perfect 10*, 2014 WL 12591631 at \*4.



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1 3:08-cv-01509-H-AJB, 2008 WL 5132092, at \*3 (S.D. Cal. Dec. 5, 2008) (*citing*  
2 *Data Disc, Inc. v. Sys. Tech. Associates, Inc.*, 557 F.2d 1280, 1287 (9th Cir. 1977))  
3 (emphasis added).

4 As explained above, any forum-related activities by Leaseweb Entities are  
5 limited to passively making the leaseweb.com website available over the Internet, and  
6 Leaseweb USA’s passive hosting of websites for its customers around the world who  
7 have chosen to base their data on Leaseweb USA’s servers California (none of which  
8 were the Leaseweb USA customer at issue in Plaintiff’s Complaint). While a very  
9 small percentage of Leaseweb USA and Leaseweb NL’s customers are based in  
10 California, none of the Doe Defendants were based in California and the allegedly  
11 infringing content was held on servers located outside the State. The actual cause of  
12 Plaintiff’s alleged injuries was certain users of Leaseweb Entities’ services who  
13 uploaded the infringing content. The fact that Leaseweb Entities provide a hosting  
14 service from its local servers for customers does not establish a sufficient nexus with  
15 Plaintiff’s claims, and any attempt to link Leaseweb Entities actions to Plaintiff’s  
16 claims would be too tenuous to support “but for” causation. *See Handsome Music,*  
17 *LLC v. Etoro USA LLC*, No. 2:20-cv-08059-VAP-JC, 2020 WL 8455111, at \*10-11  
18 (C.D. Cal. Dec. 17, 2020) (no “but for” causation in copyright infringement case  
19 where defendant’s contacts with California was limited to maintaining users and  
20 capturing new subscribers to its online trading platform); *Werner v. Dowlatsingh*, 818  
21 F. App’x 671, 672 (9th Cir. 2020) (Toronto-based defendant allegedly displaying  
22 copyright protected videos on YouTube did not create a substantial connection with  
23 California).

24 Plaintiff cannot establish that Leaseweb Entities have purposefully directed  
25 any activities at California, and cannot show that his alleged injuries arise out of or  
26 are related to Leaseweb Entities’ forum-related conduct. Accordingly, this Court  
27 lacks specific personal jurisdiction over Leaseweb Entities.

**3. Exercising Personal Jurisdiction Over Leaseweb Entities  
Would Not Be Fair or Reasonable**

Only once a plaintiff establishes both the first and second prongs of the minimum contacts test must the defendant “come forward with a compelling case that the exercise of jurisdiction would not be reasonable.” *Boschetto*, 539 F.3d at 1016 (9th Cir. 2008) (internal quotations omitted); *see also Menken v. Emm*, 503 F.3d 1050, 1057 (9th Cir. 2007). In other words, it must appear that the exercise of jurisdiction by local courts in the particular case would “comport with fair play and substantial justice.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985).

Because Plaintiff cannot establish the first two prongs, Leaseweb Entities are not required to make a “compelling case” that the exercise of jurisdiction would be unreasonable. Nevertheless, the exercise of jurisdiction over two passive webhosting companies would be clearly unreasonable given the factual circumstances here.

The Ninth Circuit considers seven factors in assessing the reasonableness of exercising specific jurisdiction over a non-resident defendant: (1) the extent of the defendants’ purposeful interjection into the forum state’s affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum. *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1132 (9th Cir. 2003). “No one of the factors is dispositive in itself. Instead, [courts must] balance all seven.” *Id.*

At least five of the seven factors weigh in favor of Leaseweb Entities. In support of the first (purposeful interjection) and second (burden) factors, Leaseweb NL has not interjected itself into California affairs at all. It is an out-of-state international party, with no presence in the United States, let alone California. All its

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1 operations and employees are based in the Netherlands, making any appearance in  
2 this Court uniquely costly and burdensome. *Asahi Metal Industry Co., Ltd. v.*  
3 *Superior Court of Cal.*, 480 U.S. 102, 115 (cautioning that “[g]reat care and reserve  
4 should be exercised when extending our notions of personal jurisdiction into the  
5 international field.”); *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th  
6 Cir. 1993) (“Sovereignty concerns weigh more heavily when the defendants have no  
7 United States-based relationships.”); *Phillips v. Worldwide Internet Solutions*, No.  
8 05-cv-5125-SBA, 2006 WL 1709189, at \*7 (N.D. Cal. June 20, 2006) (“[c]onsidering  
9 the international context, the heavy burden on the alien defendant, and the slight  
10 interests of the plaintiff and the forum State, the Court concludes that the exercise of  
11 personal jurisdiction over [Canadian website hosting company] would be  
12 unreasonable and unfair”) (internal quotations and citations omitted).

13 Similarly, Leaseweb USA’s contacts with California are minimal at best, and  
14 entirely unrelated to facts of this case. Leaseweb USA’s maintenance of servers in  
15 California did not give rise to or relate to Plaintiff’s alleged injuries. Moreover,  
16 neither Leaseweb Entity could have known that the infringing conduct would cause  
17 harm to Plaintiff in California simply because his takedown notices contained an  
18 address with a California P.O. Box.

19 The third factor (sovereignty of the defendant’s state) and seventh factor  
20 (existence of alternative forum) also favor Leaseweb Entities. Setting aside the merits  
21 of Plaintiff’s allegations, alternative forums exist where Plaintiff can more efficiently  
22 pursue his claims. *Rippey v. Smith*, 16 Fed. Appx. 596, 600 (9th Cir. 2001) (“the  
23 plaintiff bears the burden of proving the unavailability of an alternate forum.”). The  
24 United States District Court for the Eastern District of Virginia is the proper forum to  
25 litigate claims against Leaseweb USA, which is based in Manassas, Virginia.

26 The courts in the Netherlands would also permit a foreign litigant to pursue a  
27 copyright claim there. Both the United States and the Netherlands are parties to the

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1 Berne Convention for the Protection of Literary and Artistic Works (“Berne  
2 Convention”).<sup>5</sup> Article 5(1) of the Berne Convention provides that authors of works  
3 protected by the Berne Convention in other countries that are party to the Convention  
4 enjoy the same copyright protection as nationals of that country. In the Netherlands,  
5 photographic works are protected under Article 10(1)(A) of the Dutch Copyright Act.  
6 A copyright owner has the exclusive right to publish and reproduce the photograph  
7 and can claim damages for copyright infringement. Dutch Copyright Act, arts. 1, 27.

8 Finally, it would be more efficient for Plaintiff to pursue his claims in these  
9 alternative jurisdictions. No witnesses or evidence are located in California. *Core-*  
10 *Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th Cir. 1993) (as to the fifth  
11 factor, courts look “primarily at where the witnesses and the evidence are likely to be  
12 located.”). And alternative jurisdictions are likely to be less busy than this Court,  
13 meaning judicial and party resources would be conserved.<sup>6</sup> Therefore, the fifth factor  
14 (efficient judicial resolution) also weights in Leaseweb Entities’ favor.

15 For all these reasons, it would be unreasonable to exercise personal jurisdiction  
16 over both Leaseweb USA and Leaseweb NL in California.

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20 <sup>5</sup> Berne Convention, available at <https://wipolex.wipo.int/en/text/283693>; see  
21 also World Intellectual Property Organization, Berne Notification No. 121 (Nov. 17,  
22 1988), [https://www.wipo.int/treaties/en/notifications/berne/treaty\\_berne\\_121.html](https://www.wipo.int/treaties/en/notifications/berne/treaty_berne_121.html);  
Berne Convention Implementation Act of 1988, Pub. L. 100-568, 102 Stat. 2853, 17  
U.S.C.A. § 101 *et seq.*

23 <sup>6</sup> For example, the average judicial case load in the Eastern District of Virginia  
24 is 322 cases/judge and median time from filing to trial of civil cases during the 12-  
25 month period ending March 31, 2022 (the most recent period available) was 18.1  
26 months. By comparison, the average judicial case load in the Central District of  
27 California is 483 cases/judge, and 21.8 months to a civil trial. See U.S. COURTS,  
FEDERAL COURT MANAGEMENT STATISTICS (Mar. 31, 2022),  
[https://www.uscourts.gov/statistics/table/na/federal-court-management-](https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2022/03/31-I)  
28 [statistics/2022/03/31-I](https://www.uscourts.gov/statistics/table/na/federal-court-management-statistics/2022/03/31-I); FEDERAL JUDICIAL CASELOAD STATISTICS (Mar. 31, 2022),  
[https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-](https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2022/03/31)  
[statistics/2022/03/31](https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2022/03/31).

1 **V. CONCLUSION**

2 For the foregoing reasons, the Court should grant this Motion and dismiss the  
3 Complaint as to Leaseweb USA and Leaseweb NL for lack of personal jurisdiction.

4

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