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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FUTURE MOTION, INC.,
Plaintiff,
v.
JW BATTERIES LLC,
Defendant.

Case No. [21-cv-06771-EMC](#)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS**

Docket No. 16

United States District Court
Northern District of California

Plaintiff Future Motion, Inc. is a company that markets and sells “the ONEWHEEL® line of self-balancing electronically motorized skateboards, along with related accessories, replacement parts, and merchandise.” Compl. ¶ 9. The skateboards have processors and software incorporated into them that control various functions and safety features – *e.g.*, “monitoring the status of the skateboard and causing it to slow down or stop if it approaches an unsafe operating condition.” Compl. ¶ 11. Future Motion has filed suit against Defendant JW Batteries LLC (“JW”) because the latter sells a computer processor chip that is allegedly intended to circumvent the safety and technological measures implemented by Future Motion for its skateboards. Also, JW sells a sticker that Future Motion claims incorporates a Future Motion trademark. Currently pending before the Court is JW’s motion to dismiss for lack of personal jurisdiction and/or improper venue.¹

Having considered the parties’ briefs and accompanying submissions (including the supplemental briefing provided after Future Motion had an opportunity to take jurisdictional

¹ The Court previously gave Future Motion leave to take jurisdictional discovery. *See* Docket No. 30 (order).

1 discovery), the Court hereby **GRANTS** the motion to dismiss.

2 **I. FACTUAL & PROCEDURAL BACKGROUND**

3 A. Complaint

4 In the complaint, Future Motion alleges as follows.

5 Future Motion is a company that markets and sells the ONEWHEEL® line of self-
6 balancing motorized skateboards. *See* Compl. ¶ 9. Below is an example of a user riding one of
7 the skateboards.



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16 Compl. ¶ 9.

17 Future Motion uses processors and software in the skateboards to control various functions
18 and safety features. *See* Compl. ¶ 11. Some of the important safety features involve
19 “communications between the battery management system processor (‘BMS’), which monitors the
20 status of the skateboard battery, and the main controller of the skateboard.” Compl. ¶ 12. “[T]he
21 controller is programmed not to allow the skateboard motor to operate unless [it] receives
22 information from the BMS indicating that the battery is in a safe riding condition.” Compl. ¶ 16.
23 Also, the controller is programmed to take action to avoid potential rider injury – *e.g.*, “a battery
24 approaching an extremely high power draw or an extremely low state of charge will cause
25 pushback to avoid rider injury.” Compl. ¶¶ 12, 17.

26 JW is a company that advertises and sells a computer processor chip “intended to
27 circumvent the Future Motion safety and technological measures [such as] those described above.”
28 Compl. ¶ 20. The chip is known as the JWFFM Chip, with “FFM” meaning “F*ck Future

1 Motion.” Compl. ¶ 20. JW sells the chip through its e-commerce website. *See* Compl. ¶ 21.
 2 The JWFFM Chip intercepts communications between the BMS and controller in the Future
 3 Motion skateboard and further alters and deletes information from the BMS that could indicate an
 4 unsafe riding condition. *See* Compl. ¶ 22. “In this manner, the JWFFM Chip allows
 5 unauthorized, aftermarket batteries to access the . . . controller and to control the skateboard,
 6 regardless of whether the battery meets Future Motion’s safety requirements.” Compl. ¶ 22. JW
 7 has a video on its YouTube channel that shows customers how to install the chip. JW also offers
 8 to install the chips for customers itself. *See* Compl. ¶¶ 24-25.

9 In addition to the above, JW offers “JWXR” stickers through its website “which
 10 incorporate Future Motion’s distinctive, stylized XR trademark, as shown below.”



13 **Defendant’s Use of JWXR**



14 **Future Motion’s XR Mark**

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 16 Comp. ¶ 28. JW’s sticker “creates the false impression that [JW] is affiliated with Future Motion,
 17 or that Future Motion sponsors or approved [JW] or its products.” Compl. ¶ 29.

18 Based on, *inter alia*, the above allegations, Future Motion asserts the following causes of
 19 action.

- 20 (1) Circumvention of a technological measure in violation of the Copyright Act. *See*
 21 17 U.S.C. § 1201.²

22
 23
 24 ² Section 1201(a)(1)(A) provides in relevant part: “No person shall circumvent a technological
 25 measure that effectively controls access to a work protected under this title.” 17 U.S.C. §
 1201(a)(1)(A).

26 Section 1201(a)(2) provides in relevant part:

27 No person shall manufacture, import, offer to the public, provide, or
 28 otherwise traffic in any technology, product, service, device,
 component, or part thereof, that –

1 (2) Violation of the Computer Fraud & Abuse Act. *See* 18 U.S.C. § 1030.³

2 (3) False designation of origin in violation of the Lanham Act. *See* 15 U.S.C. §
3 1125(a).

4 **B. Jurisdictional Evidence**

5 Both parties have provided evidence related to whether JW has a presence in California for
6 purposes of personal jurisdiction. That evidence indicates as follows.⁴

- 7 • **JW’s location.** JW is a Texas corporation. Its only physical location is in Texas.
8 *See* Martin Decl. ¶ 2. It does not operate any location in California. *See* Martin
9 Decl. ¶ 5.
- 10 • **JW’s products.** JW’s products include the chip at issue, *i.e.*, the JWFFM Chip, as
11 well as batteries. *See* Martin Decl. ¶ 8 (testifying that JW “offers a number of
12 products for sale through its website *including* the JWFFM Chip”) (emphasis
13 added). According to Future Motion, the chip and the batteries work hand in hand.
14 Specifically, the batteries will not work unless the JWFFM Chip is installed, and
15 the chip does not function as planned without the battery. At the hearing on the
16 motion to dismiss, JW did not dispute Future Motion’s assertion about the
17 relatedness of the chips and batteries.
- 18 • **JWFFM Chip.** To develop the JWFFM Chip, JW borrowed a Future Motion
19 Onewheel from a resident of Texas; it did not purchase the product from Future

20 _____
21 (A) is primarily designed or produced for the purpose of
22 circumventing a technological measure that effectively controls
access to a work protected under this title; [or]

23 (B) has only limited commercially significant purpose or use other
24 than to circumvent a technological measure that effectively
controls access to a work protected under this title

25 *Id.* § 1201(a)(2).

26 ³ Section 1030(a)(5)(C) prohibits one from “intentionally access[ing] a protected computer
27 without authorization, and as a result of such conduct, caus[ing] damage and loss.” 18 U.S.C. §
1030(a)(5)(C).

28 ⁴ The evidence described below includes evidence obtained by Future Motion from jurisdictional
discovery.

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Motion or anyone else. *See* Martin Reply Decl. ¶ 9.

- **JW’s means of selling its products.** JW sells all of its products, including the JWFFM Chip, through a website, <https://jwbatteries.com/>. *See* Martin Decl. ¶ 7. JW does not have a contractual relationship with anyone in California for sales or distribution of its products. *See* Martin Decl. ¶ 5.
- **JW’s advertising.** JW maintains that it does not “run any advertisements for its products in California or otherwise.” Martin Decl. ¶ 10. Future Motion suggests that JW still advertises through its website as well as through its Instagram and Facebook accounts. *See* Kolitch Decl. ¶¶ 5-6. However, Future Motion has not pointed to anything specifically about JW’s website or its social media accounts that indicates a targeting of California customers.
- **JW’s sales.** JW has shipped its products to customers in 45 states, plus D.C. *See* Martin Decl. ¶ 12(a) (adding that JW has shipped products to 10 jurisdictions outside of the United States).
 - Since JW started tracking distribution of the stickers, it has sold 79 stickers nationwide, with 15 out of the 79 being sold to people in California (about 19%). *See* Pl.’s Supp. Br., Ex. B.
 - For a 16-month period (September 2020-January 2022), JW had 583 sales with California customers (including about 60 returns). The bulk of these sales – 570 – involved “relevant” products (*i.e.*, not just chips but also batteries). *See* Pl.’s Supp. Br., Ex. C. Therefore, on average, there were about 36 sales of “relevant” products per month to Californians ($570/16 = 35.6$).
 - For a 17-month period (August 2020-January 2022), JW had 3,415 sales total (most in the United States). The bulk of these sales – 3,350 – involved “relevant” products. *See* Pl.’s Supp. Br., Ex. D. Accordingly, if there were 570 out of 3,350 sales of “relevant” products to California, sales to

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California represented about 17% of the total.⁵

- JW's sales to California also account for less than 19% of total sales in terms of revenue (not just units).⁶ See Martin Decl. ¶ 12(b).

- **Installation of the JWFFM Chip.** JW can install the chip for its customers if requested. JW found two instances in which a customer sent it a product from California so that JW could install a JWFFM Chip. See Martin Reply Decl. ¶ 7. JW also suggests how a customer can get a JWFFM chip installed by someone else. For example, on its webpage for the JWFFM chip, JW has a "FAQ" section where it states that "we highly encourage individuals to have the chip professionally installed"; that "Stoke Life Services can handle the installation"; and that jon@stokelife.guru can be contacted "for more information and the SLS shop in your area." Kolitch Decl. ¶ 2 & Ex. A (JWFFM Chip webpage). "SLS is a global Personal Electric Vehicle (PEV) repair shop network – something like an Angie's List for PEV repair shops." Martin Reply Decl. ¶ 2. Although JW makes referrals to SLS, there is no indication that JW has a contractual relationship with SLS. Counsel for JW confirmed this at the hearing.
- **Communications between JW and California customers.** Future Motion has provided evidence demonstrating that JW has communicated with prospective customers located in California, as well as existing customers located in California (e.g., to provide technical support). These communications, however, do not indicate that JW is reaching out to prospective or existing customers in California; rather, the communications indicate that those customers are reaching out to JW. Nor is there any indication that communications with customers generally were targeted at California.

⁵ If the Court were to look at only chips, it appears that there were about 125 sales of chips to Californians and that there were about a total of 640 sales of chips. 125/640 is about 19.5%.

⁶ With respect to the JWFFM Chip specifically, sales to California "account for a little more than 3% of [JW's] revenue." Martin Decl. ¶ 12(c).

1 **II. DISCUSSION**

2 A. Legal Standard

3 A motion to dismiss for lack of personal jurisdiction is brought pursuant to Federal Rule of
4 Civil Procedure 12(b)(2).

5 When a defendant moves to dismiss for lack of personal jurisdiction,
6 "the plaintiff bears the burden of demonstrating that jurisdiction is
7 appropriate." [If] no evidentiary hearing occur[s] . . . , "the plaintiff
8 need only make a prima facie showing of jurisdictional facts." All
uncontroverted allegations in the complaint are deemed true, and
factual disputes are to be resolved in favor of the non-moving party.

9 *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1141 (9th Cir. 2017).

10 A motion to dismiss for improper venue is brought pursuant to Rule 12(b)(3). In the
11 instant case, JW's venue argument applies to the Copyright Act claim only. Title 28 U.S.C. §
12 1400(a) provides that "[c]ivil actions . . . arising under any Act of Congress relating to copyrights
13 . . . may be instituted in the district in which the defendant or his agent resides or may be found."
14 28 U.S.C. § 1400(a). The Ninth Circuit "interprets this provision to allow venue in any judicial
15 district where, if treated as a separate state, the defendant would be subject to personal
16 jurisdiction." *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1126 (9th Cir.
17 2010).

18 B. Personal Jurisdiction

19 "Where . . . no federal statute authorizes personal jurisdiction, the district court applies the
20 law of the state in which the court sits. California's long-arm statute 'is coextensive with federal
21 due process requirements, [so] the jurisdictional analyses under state law and federal due process
22 are the same.'" *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011).

23 There is no dispute here that JW is not a resident of California. "A district court's exercise
24 of jurisdiction over a nonresident defendant comports with due process when the defendant has at
25 least 'minimum contacts' with the forum and subjecting the defendant to an action in that forum
26 would 'not offend traditional notions of fair play and substantial justice.'" *Ayla, Ltd. Liab. Co. v.*
27 *Alya Skin Pty. Ltd.*, No. 20-16214, 2021 U.S. App. LEXIS 25921, at *8-9 (9th Cir. Aug. 27,
28 2021). There can be either general jurisdiction or specific jurisdiction over a nonresident

1 defendant.

2 In the instant case, Future Motion does not contend that there is general jurisdiction over
3 JW. Instead, it asserts only specific jurisdiction. For specific jurisdiction, the Ninth Circuit
4 applies a three-prong test.

5 (1) The non-resident defendant must purposefully direct his
6 activities or consummate some transaction with the forum or
7 resident thereof; or perform some act by which he purposefully
8 avails himself of the privilege of conducting activities in the forum,
9 thereby invoking the benefits and protections of its laws; (2) the
claim must be one which arises out of or relates to the defendant's
forum-related activities; and (3) the exercise of jurisdiction must
comport with fair play and substantial justice, i.e., it must be
reasonable.

10 *CollegeSource*, 653 F.3d at 1076. The plaintiff bears the burden of meeting the first two prongs
11 above; if it does so, then the burden shifts to the defendant “to set forth a ‘compelling case’ that
12 the exercise of jurisdiction would not be reasonable.” *Id.*

13 With respect to the first prong, the Ninth Circuit usually uses a purposeful direction
14 analysis in tort cases,

15 “applying an 'effects' test that focuses on the forum in which the
16 defendant's actions were felt, whether or not the actions themselves
17 occurred within the forum.” The "effects" test, which is based on
18 the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783
19 (1984), requires that "the defendant allegedly must have (1)
committed an intentional act, (2) expressly aimed at the forum state,
(3) causing harm that the defendant knows is likely to be suffered in
the forum state."

20 *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011).

21 In the case at bar, JW focuses on the express aiming prong of the effects test. It argues that
22 all it has done is sell products on the Internet on a national scale, which is not enough to show
23 express aiming at California – even taking into account the sales it has made to California. Future
24 Motion disagrees. For the reasons discussed below, the Court finds JW’s argument persuasive.
25 Although at this juncture, Future Motion need only establish a prima facie case of jurisdiction, it
26 has not met even that relatively lenient standard.

27 C. Specific Jurisdiction: Express Aiming

28 As an initial matter, Court notes that Future Motion’s analysis has fundamental flaw –

1 which JW points out. Specifically, several of Future Motion’s arguments in favor of personal
 2 jurisdiction are dependent on JW’s conduct expressly targeting *Future Motion* (e.g., through the
 3 stickers and through the chip named “FFM” which allegedly stands for F*ck Future Motion) –
 4 with Future Motion suffering injury in California since it is located there. But the case law
 5 (including Ninth Circuit case law) on which Future Motion relies to support its argument largely
 6 predates *Walden v. Fiore*, 571 U.S. 277 (2014). The Ninth Circuit has expressly noted that,

7 [i]n *Walden*, the Supreme Court rejected our conclusion that the
 8 defendants' "knowledge of [the plaintiffs'] 'strong forum
 9 connections,'" plus the "foreseeable harm" the plaintiffs suffered in
 10 the forum, comprised sufficient minimum contacts. The Court
 11 found that our approach "impermissibly allow[ed] a plaintiff's
 12 contacts with the defendant and forum to drive the jurisdictional
 13 analysis." The Court made clear that we must look to the
 14 defendant's "own contacts" with the forum, not to the defendant's
 15 knowledge of a plaintiff's connections to a forum.

16 In light of the Court's instructions in *Walden*, mere satisfaction of
 17 the test outlined in *Washington Shoe* [i.e., individualized targeting of
 18 the plaintiff by the defendant], without more, is insufficient to
 19 comply with due process. Following *Walden*, we now hold that
 20 while a theory of individualized targeting may remain relevant to the
 21 minimum contacts inquiry, it will not, on its own, support the
 22 exercise of specific jurisdiction, absent compliance with what
 23 *Walden* requires.

24 *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069-70 (9th Cir. 2017) (emphasis
 25 added).

26 Because much of Future Motion’s supplemental brief is gutted by *Walden* and *Axiom*
 27 *Foods*, this leaves Future Motion with, in essence, two arguments: specifically, that there is
 28 personal jurisdiction over JW based on (1) its communications with California (i.e., forum)
 residents and based on (2) its sales to California residents.

With respect to communications, as noted above, Future Motion has provided evidence
 demonstrating that JW has communicated with both prospective and existing customers located in
 California. But nothing in these communications suggests that JW is soliciting the customers;
 rather, the communications indicate that it is customers who are unilaterally reaching out to JW.
 Moreover, there is no evidence that JW’s communications with customers targeted California in
 any way. The communications therefore provide little support to Future Motion.

1 With respect to sales, the Court first takes note of Future Motion’s contention that the
2 Court should consider not just the sales of the JWFFM Chips and the stickers but also the JW
3 batteries. Future Motion acknowledges that its claims are technically based on the chips and
4 stickers, not the batteries. However, it contends that the battery sales should still be counted
5 because, as indicated above, the batteries and chips work hand in hand – *i.e.*, without the chips, the
6 batteries cannot be used.

7 For purposes of the pending motion, the Court accepts Future Motion’s contention that the
8 sales of chips, stickers, *and* batteries should all count. But sweeping in batteries does not yield
9 much, if any, real benefit to Future Motion. For example, as indicated above, based on
10 jurisdictional discovery, it appears that, over a 16- to 17-month period, JW sold about 570
11 “relevant” products (both chips and batteries) to Californians. This translates to (1) about 36 sales
12 per month to Californians and (2) about 17% of JW’s total sales to Californians.

13 **The percentage of sales is not particularly helpful.** In *AMA Multimedia, LLC v. Wanat*,
14 970 F.3d 1201 (9th Cir. 2020), the plaintiff was a Nevada company that produced and distributed
15 adult entertainment over the Internet. The plaintiff discovered that there was an internationally
16 available website, ePorn.com, that displayed the plaintiff’s copyrighted works. ePorn.com was
17 a Polish company owned in part by a Polish resident. *See AMA*, 970 F.3d at 1204-05. About 19%
18 of the website’s visitors were from the United States, “making the United States its largest
19 market.” *Id.* at 1205. But in spite of this percentage, the Ninth Circuit concluded that specific
20 jurisdiction was lacking. The court noted that “we [have] held that a website’s operators can be
21 said to have ‘expressly aimed’ at a forum where a website ‘with national viewership and scope
22 appeals to, and profits from, an audience in a particular state.’” *Id.* at 1210 (emphasis added).
23 But, essentially, there was nothing in the record to suggest that ePorn.com had appealed to a
24 U.S. audience specifically. *See, e.g., id.* at 1210 (stating that, even if “ePorn ‘features a
25 significant portion of U.S.-based content from producers like [plaintiff] and U.S.-based models,’
26 this does not mean ePorn’s subject matter is aimed at the U.S. market”; “ePorn’s content is
27 primarily uploaded by its users, and the popularity or volume of U.S.-generated adult content does
28 not show that Wanat [the defendant] expressly aimed the site at the U.S. market”). This is the

1 same basic situation before the Court. Although the percentage of sales to California is 17%, there
 2 is nothing to suggest JW has been appealing to a California audience specifically.⁷ Nothing shows
 3 that, relative to the consumer market for the products at issue, 17% is a substantially
 4 disproportionate share of the national market.

5 Future Motion suggests still that the regularity of sales should still be enough to support
 6 specific jurisdiction. The Court does not dispute that, in some circumstances, regularity of sales
 7 can be significant. Most notably, in *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), the
 8 plaintiff was a New York resident who sued Hustler Magazine, a Ohio corporation, for allegedly
 9 libelous material published in the magazine. She filed suit in New Hampshire in order to take
 10 advantage of the state’s long statute of limitations. Hustler had a circulation of about 10,000-
 11 15,000 copies per month in the state. The Supreme Court held that Hustler’s “regular circulation
 12 of magazines in the forum State is sufficient to support an exercise of jurisdiction in a libel action
 13 based on the contents of the magazine”; “[s]uch regular monthly sales of thousands of magazines
 14 [even though only 1% of total sales⁸] cannot by any stretch of the imagination be characterized as
 15 random, isolated, or fortuitous.” *Id.* at 773-74. The court continued:

16 Where, as in this case, respondent Hustler Magazine, Inc., has
 17 continuously and deliberately exploited the New Hampshire market,
 18 it must reasonably anticipate being haled into court there in a libel
 19 action based on the contents of its magazine. . . . Respondent
 20 produces a national publication aimed at a national audience. There
 is no unfairness in calling it to answer for the contents of that
 publication wherever a number of copies are regularly sold and
 distributed.

21 *Id.* at 781.

22 But the facts in *Keeton* are clearly different from those in the instant case. In *Keeton*, the

23 _____
 24 ⁷ Admittedly, in *Ayla, Ltd. Liab. Co. v. Alya Skin Pty. Ltd.*, 11 F.4th 972 (9th Cir. 2021), the Ninth
 25 Circuit found that there was specific jurisdiction where the defendant’s sales to the United States
 26 were only 10% of its total sales. *See id.* at 981. But notably, in *Ayla*, there were multiple
 27 advertisements by the defendant that specifically targeted Americans. *See id.* at 980 (referring to
 advertising on Instagram with the words “ATTENTION USA BABES WE NOW ACCEPT after
 pay,” advertising of Black Friday sales, and advertising on defendant’s website that its products
 were featured in American magazines).

28 ⁸ *See Keeton v. Hustler Mag., Inc.*, 682 F.2d 33, 33 (1st Cir. 1982) (“[Defendants’] circulation in
 New Hampshire amounts to less than one percent of their total circulation in the United States.”).

1 defendant regularly sold 10,000-15,000 copies of its magazine per month in New Hampshire. In
 2 contrast, here, JW averages sales of about 36 products per month to California. It appears that the
 3 substantial number of sales in *Keeton* allowed the Supreme Court to infer that the defendant was
 4 deliberately exploiting the New Hampshire market – and that the defendant could reasonably
 5 anticipate being haled into court in the state. That same reasoning does not have much traction in
 6 a case such as the instant suit where the number of sales is so significantly smaller.

7 Finally, the Court takes note of *Mavrix*, 647 F.3d at 1218, as there the Ninth Circuit
 8 addressed an issue similar to the one before this Court – specifically, “whether tortious conduct on
 9 a nationally accessible website is expressly aimed at any, or all, of the forums in which the website
 10 can be viewed.” *Id.* at 1229. In *Mavrix*, the plaintiff was a Florida company that licensed and sold
 11 candid photos of celebrities, *e.g.*, to magazines such as *People*. The defendant was a Ohio
 12 company that operated a website called celebrity-gossip.net. The plaintiff sued the defendant for
 13 copyright infringement in a California district court after the defendant posted the plaintiff’s
 14 copyrighted photos on its website without permission. *See id.* at 1221-22.

15 The record did not reflect how many of the celebrity-gossip.net’s visitors were from
 16 California. But notably, the record contained evidence that the website courted a California
 17 audience. *See id.* at 1222.

18 As did Hustler in distributing its magazine in New Hampshire [in
 19 *Keeton*], Brand "continuously and deliberately exploited" the
 20 California market for its website. Brand makes money by selling
 21 advertising space on its website to third-party advertisers: the more
 22 visitors there are to the site, the more hits that are made on the
 23 advertisements; the more hits that are made on the advertisements,
 24 the more money that is paid by the advertisers to Brand. A
 25 substantial number of hits to Brand's website came from California
 26 residents. One of the ways we know this is that some of the third-
 27 party advertisers on Brand's website had advertisements directed to
 28 Californians. . . . *The fact that the advertisements targeted
 California residents indicates that Brand knows – either actually or
 constructively – about its California user base, and that it exploits
 that base for commercial gain by selling space on its website for
 advertisements.*

Id. at 1230 (emphasis added).

The Ninth Circuit also took into account that the defendant’s website had
 a specific focus on the California-centered celebrity and

United States District Court
Northern District of California

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entertainment industries. Based on the website's subject matter, as well as the size and commercial value of the California market, we conclude that Brand anticipated, desired, and achieved a substantial California viewer base. This audience is an integral component of Brand's business model and its profitability. As in *Keeton*, it does not violate due process to hold Brand answerable in a California court for the contents of a website whose economic value turns, in significant measure, on its appeal to Californians.

Id. at 1230; *see also id.* at 1231 (thus stating that, “where, as here, a website with national viewership and scope *appeals to, and profits from,* an audience in a particular state, the site's operators can be said to have ‘expressly aimed’ at that state”) (emphasis added).

In contrast to *Mavrix*, there is nothing to suggest that the sales that JW made to California were tied in any way to some targeting of the forum state by JW or that JW otherwise appealed to a California audience even if that appeal did not produce actual sales. Indeed, based on the record submitted, the relatively small number sales in California could well have resulted without any effort on the part of JW to court a California audience at all.

While neither the Supreme Court nor the Ninth Circuit has articulated a concrete formula for determining personal jurisdiction under the express arising prong of the test where internet sales are involved, *cf. Good Job Games Bilism Yazilim Ve Pazarlama A.S. v. SayGames, LLC*, No. 20-16123, 2021 U.S. App. LEXIS 36507, at *2 (9th Cir. Dec. 10, 2021) (not providing a specific test but indicating that, per *AMA*, *Mavrix*, and *Ayla*, the following information is relevant: revenue derived from the forum state, efforts to advertise in or market to or profit from the forum state, and distribution in the forum state), it is evident that, absent a large and regular volume of sales into the forum state, there must be some element of targeting the forum state that distinguishes the forum state from other states. Given the low volume of sales in the instant case and the lack of a clear disproportion of sales in California together with the lack of any evidence of specific targeting at California, there is no specific jurisdiction over JW.

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1 **III. CONCLUSION**


2 For the foregoing reasons, the Court grants JW's motion to dismiss for lack of personal
3 jurisdiction. Because the Court dismisses for lack of personal jurisdiction, the Court need not
4 address JW's additional contention that venue in this District was improper.

5 This order disposes of Docket No. 16.

6 The Clerk of the Court is ordered to enter a final judgment in accordance with this opinion
7 and close the file in the case.

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9 **IT IS SO ORDERED.**

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11 Dated: May 2, 2022

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14 EDWARD M. CHEN
15 United States District Judge
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United States District Court
Northern District of California