

1 MARC E. MAYER (SBN 190969)  
mem@msk.com  
2 EMILY F. EVITT (SBN 261491)  
efe@msk.com  
3 MITCHELL SILBERBERG & KNUPP LLP  
11377 West Olympic Boulevard  
4 Los Angeles, California 90064-1683  
Telephone: (310) 312-2000  
5 Facsimile: (310) 312-3100

6 Attorneys for Plaintiff Manwin Licensing  
International S.à.r.l.  
7  
8

9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA  
11

12 MANWIN LICENSING  
INTERNATIONAL SARL, a  
13 Luxembourg Limited Liability  
Company,

14 Plaintiff,

15 v.

16 NICHOLAS BULGIN, a/k/a "Gill  
17 Manwinder," "Yi Weng," "Chris Hill,"  
"contact@Manwinsucks.com," "Jim  
18 Jagen," and "Radishdreams", an  
individual, JAMES MARTIN, an  
19 individual, and Does 1-10, inclusive,

20 Defendants.  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CV12-02484 GW (SHx)

The Honorable George H. Wu

**PLAINTIFF'S RESPONSE TO  
ORDER TO SHOW CAUSE RE  
PERSONAL JURISDICTION OVER  
DEFENDANT NICHOLAS BULGIN**

[Declaration of Gianfranco Salerno and  
Declaration of Marc E. Mayer lodged  
concurrently herewith]

Date: March 11, 2013  
Time: 8:30 a.m.  
Ctm.: 10

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Introduction.....	1
I. STATEMENT OF FACTS.....	2
A. Manwin and Its Business .....	2
B. Bulgin’s Attacks on Manwin .....	4
II. THIS COURT HAS PERSONAL JURISDICTION OVER DEFENDANT BULGIN .....	6
A. Bulgin Purposefully Directed His Activities at This Forum. ....	7
1. Bulgin Committed an Intentional Act. ....	8
2. Bulgin Expressly Aimed His Acts At California. ....	9
3. Plaintiff Suffered Foreseeable Injury in California. ....	13
B. Plaintiff’s Claims Arise From Bulgin’s California-Based Conduct...	13
C. The Exercise of Personal Jurisdiction Over Bulgin Is Reasonable. ...	14
Conclusion .....	18

**TABLE OF AUTHORITIES**

**Page(s)**

**CASES**

<u>Action Embroidery Corp. v. Atlantic Embroidery, Inc.,</u> 368 F.3d 1174 (9th Cir. 2004) .....	18
<u>Ballard v. Savage,</u> 65 F.3d 1495 (9th Cir. 1995) .....	14
<u>Bancroft &amp; Masters v. Augusta Nat’l,</u> 223 F.3d 1082 (9th Cir. 2000) .....	6, 8, 9
<u>Brayton Purcell LLP v. Recordon &amp; Recordon,</u> 606 F.3d 1124 (9th Cir. 2010) .....	8, 9
<u>Burger King Corp. v. Rudzewicz,</u> 471 U.S. 462 (1985) .....	14
<u>Calder v. Jones,</u> 465 U.S. 783 (1984) .....	7, 8, 11
<u>Corporate Inv. Business Brokers v. Melcher,</u> 824 F.2d 786 (9th Cir. 1987) .....	17
<u>Decker Coal Co. v. Commonwealth Edison Co.,</u> 805 F.2d 834 (9th Cir. 1986) .....	17
<u>Dole Food Co., Inc. v. Watts,</u> 303 F.3d 1104 (9th Cir. 2002) .....	8
<u>Incorp Services Inc. v. Incsmart.Biz Inc.,</u> 11-CV-4660-EJD-PSG, 2012 WL 3685994 (N.D. Cal. Aug. 24, 2012) .....	11, 16, 17
<u>Int’l Shoe Co. v. State of Washington,</u> 326 U.S. 310 (1945) .....	6
<u>Keeton v. Hustler Magazine, Inc.,</u> 465 U.S. 770 (1984) .....	8, 11, 16
<u>MGM Studios Inc. v. Grokster, Ltd.,</u> 243 F. Supp. 2d 1073 (C.D. Cal. 2003) .....	<i>passim</i>

**TABLE OF AUTHORITIES**  
**(continued)**

**Page(s)**

<u>Nissan Motor Co. v. Nissan Computer Corp.</u> ,	
89 F. Supp. 2d 1154 (C.D. Cal. 2000).....	10, 11, 13, 15
<u>Panavision Int’l, L.P. v. Toeppen</u> ,	
141 F.3d 1316 (9th Cir. 1998).....	<i>passim</i>
<u>Piping Rock Partners, Inc. v. David Lerner Assocs.</u> ,	
No. C 12-04634 SI, 2012 U.S. Dist. LEXIS 161643 (N.D. Cal. Nov. 9,	
2012).....	9, 11, 12
<u>Rio Props. v. Rio Int’l Interlink</u> ,	
284 F.3d 1007 (9th Cir. 2002).....	8, 10, 12, 16
<u>Smith v. Stewart</u> ,	
291 Ga. App. 86, 660 S.E.2d 822 (2008).....	16
<u>TeleVideo Sys., Inc. v. Heidenthal</u> ,	
826 F.2d 915 (9th Cir. 1987).....	7
<u>Yahoo! Inc. v. La Ligue Contre Le Racisme</u> ,	
433 F.3d 1199 (9th Cir. 2006).....	8, 13

**STATUTES**

California Business & Professions Code	
§ 17200 .....	18
California Code of Civil Procedure	
§ 410.10 .....	6
Lanham Act.....	16

**OTHER AUTHORITIES**

U.S. Constitution .....	6
-------------------------	---

## Introduction

Defendant Nicholas Bulgin declared war on Plaintiff Manwin Licensing International S.à.r.l and its U.S. affiliates (collectively, “Manwin”). He mounted an escalating campaign that began with cybersquatting and progressed to harassment and defamation. Bulgin set out to extort Manwin for return of domain names that Bulgin had registered with the intent of infringing Manwin’s trademark and then, when Manwin refused to purchase those domain names, Bulgin used them as a platform to defame Manwin in the eyes of its business partners and other members of the adult-entertainment industry. Although Bulgin launched his attacks online, their effects were felt most heavily in this judicial district, where Manwin’s U.S. operations are headquartered, where many of Manwin’s business partners – including one of its most important business partners, Playboy Enterprises, Inc. – is located, and where the adult-entertainment industry is based and primarily does business.

Bulgin knows about this lawsuit and, in fact, has directly communicated with Manwin and its counsel about this lawsuit and Manwin’s claims. However, Bulgin has steadfastly and deliberately refused to participate in this litigation. In the meantime, while refusing to appear in the action or engage Manwin in settlement discussions, he has continued to defame Manwin undeterred. In fact, after the lawsuit was filed, Bulgin posted his most offensive and damaging defamatory statements (including false accusations of piracy of content and child pornography and bizarre threats to “take down” Manwin), and these statements remain posted on the Internet, specifically on Twitter and Blogspot pages designed to harm Manwin.

On January 11, 2013, after filing *and hand-serving* Bulgin at his home with *two* Complaints, Manwin filed a motion for default judgment, seeking statutory damages for violation of the Anticybersquatting Consumer Protection Act and permanent injunctive relief. Manwin has sought a reasonable and fully supportable

1 statutory damage award and has attempted to narrowly tailor its request for  
 2 injunctive relief. Without entry of default judgment, Manwin will be without  
 3 effective recourse to stop Bulgin's continued abuse, and it will continue unabated.  
 4 (In the meantime, Bulgin will have succeeded in his scheme to harm Manwin by  
 5 having forced it to spent tens of thousands of dollars in litigating against him, with  
 6 no consequence). In fact, while Blogspot has advised Manwin that it will remove  
 7 Bulgin's defamatory statements upon receipt of an appropriate court order (but will  
 8 not do so otherwise), Bulgin has continued to threaten to harm Manwin as a result  
 9 of this litigation.

10 In an Order issued February 12, 2013 (Docket 29), the Court requested  
 11 supplemental briefing on whether it had personal jurisdiction to enter default  
 12 judgment against Bulgin. As set forth in more detail below, because the effects of  
 13 Bulgin's cybersquatting and defamation were felt in this judicial district, and  
 14 furthermore Bulgin targeted Manwin's business, business partners, and the adult  
 15 entertainment industry in Los Angeles, personal jurisdiction is proper.

## 16 **I. STATEMENT OF FACTS**

17 The relevant facts are set forth in Plaintiff's Motion for Entry of Default  
 18 Judgment, but are summarized and elaborated upon in certain respects here.

### 19 **A. Manwin and Its Business**

20 Plaintiff Manwin Licensing International S.à.r.l. ("Manwin Licensing" or  
 21 "Plaintiff"), is a Luxembourg company that is one entity in a group of companies  
 22 collectively referred to as "Manwin" (hereinafter "Manwin"). Declaration of  
 23 Gianfranco Salerno in Response to Order to Show Cause re Personal Jurisdiction  
 24 ("Salerno Decl."), ¶ 2. Manwin Licensing is in the business of owning, acquiring,  
 25 and licensing trademarks and website domain names, and its portfolio of premium  
 26 adult-oriented domain names and trademarks is one of the largest in the world. Id.

27 Manwin Licensing is the corporate entity that is responsible for holding and  
 28 licensing Manwin's portfolio of trademarks and domain names, but does not itself

1 exploit those trademarks and domain names. Id. ¶ 3. Rather, Manwin Licensing’s  
2 trademarks and domain names are licensed to – and then used and exploited by –  
3 Manwin companies located throughout the world, including in Luxembourg,  
4 Montreal, Los Angeles, and Cyprus. Id.

5 Manwin has offices in Europe, Canada, and the United States. Id. ¶ 4.  
6 Manwin’s United States operations are conducted primarily from its office in  
7 Burbank, California, by three Manwin companies: Manwin USA, Inc., Manwin  
8 D.P. Corp., and Playboy Plus Entertainment, Inc. Id. Manwin’s Burbank office  
9 employs approximately 150 full-time employees and 137 part-time employees or  
10 freelance employees. Id. The Burbank office is Manwin’s only U.S. office. Id. It  
11 is the hub of Manwin’s United States operations, and many of Manwin’s U.S.  
12 business deals are conducted from that office. Id.

13 The largest of Manwin’s U.S. companies, Playboy Plus Entertainment, is in  
14 the business of producing and distributing a variety of adult-oriented content,  
15 including via the Internet, satellite television, and radio broadcasting. Id. ¶ 5.  
16 Playboy Plus Entertainment is a licensee of Playboy Enterprises, Inc. (“PEI”),  
17 which has its principal place of business in Beverly Hills, California. Id. PEI is  
18 one of Manwin’s most important business partners. Id. All business relating to  
19 Playboy content produced and distributed by Manwin is conducted from Manwin’s  
20 Burbank office, with the approval and oversight of PEI. Id.

21 Additionally, Manwin’s California operations and business contacts provide  
22 Manwin access to Los Angeles, a worldwide center of the adult-entertainment  
23 industry where many of the most important producers and distributors of adult  
24 content are located. Id. ¶ 6. Manwin does business with numerous adult content  
25 producers in the Los Angeles area. Id. It also works with Internet and technology  
26 companies, advertisers, and performers located in Los Angeles. Id. Throughout  
27 the United States, the Manwin brand is considered one of the most prestigious

1 brands in the adult content business. Id. Manwin's U.S. operations amount to tens  
 2 of millions of dollars spent and invested each year in the Los Angeles area. Id.

3 **B. Bulgin's Attacks on Manwin**

4 Beginning in the second half of 2011, Bulgin mounted an escalating  
 5 campaign of cybersquatting, harassment, and defamation with the goal of extorting  
 6 Plaintiff to pay him large sums of money. As detailed in the Motion for Default  
 7 Judgment (hereinafter "Motion" or "Mot.") and the Complaint, Bulgin (or his  
 8 accomplices) registered or acquired numerous domain names containing Manwin's  
 9 trademarks, including, but not limited to, the infringing domain names  
 10 www.manwin.net, www.manwin.co, www.manwinsucks.com, and  
 11 www.manwin.us. First Amended Complaint ("FAC"), ¶ 17; Mot. at 3.

12 After Plaintiff refused to purchase the infringing "manwin.net" from Bulgin  
 13 for \$100,000, Bulgin advised Manwin that it can "kiss [my] rear" and threatened to  
 14 sell the domain name to another cybersquatter to "get massive traffic and blow you  
 15 off the #1 spot in search engines." FAC, ¶ 18; Declaration of Antoine Gignac in  
 16 Support of Plaintiff's Motion for Default Judgment Against Defendant Nicholas  
 17 Bulgin ("Gignac Decl."), ¶¶ 6-7. Bulgin then mounted a coordinated campaign  
 18 intended to force Manwin into purchasing the infringing domains. Id. As detailed  
 19 in the Motion, Bulgin used a series of pseudonyms and false personas to write e-  
 20 mails to Plaintiff, its business partners, and the U.S. Patent and Trademark Office  
 21 attacking Manwin. Mot. at 3-6. Furthermore, Bulgin created a defamatory,  
 22 "manwinsucks.com" website on which he published false statements about  
 23 Manwin and its owner, Fabian Thylmann. Id. at 6. Bulgin, who has defiantly  
 24 refused to participate in this litigation, continues to defame Manwin today via  
 25 Blogspot and Twitter. Declaration of Marc E. Mayer in Response to Order to  
 26 Show Cause re Personal Jurisdiction ("Mayer OSC Decl."), ¶ 2. Bulgin's  
 27 misconduct is discussed in detail in the Motion. However, certain of his misdeeds  
 28 merit elaboration here, as they relate to Bulgin's contacts with California:



1 First, Bulgin targeted one of Manwin's most important business partners,  
 2 PEI, which is based in Beverly Hills, California. During 2011, Manwin and PEI  
 3 were in the process of negotiating the deal whereby Manwin acquired the Playboy  
 4 Plus assets. Salerno Decl., ¶ 8. The deal was publically reported and ultimately  
 5 closed November 1, 2011. Id. However, during the pendency of the deal, on or  
 6 about August 22, 2011, Bulgin (using the fake name "Jim Jagen") reached out to  
 7 PEI and accused Manwin of using "stolen property." Id., Ex. 1. Bulgin went on to  
 8 write, "[a]s for your joint venture with Manwin, I suggest you seriously look at  
 9 who you do business with because it can bring great harm to your own company  
 10 name. Manwin do not seem like people who care much for the law or about how  
 11 things should be done." Id. Bulgin contacted PEI again on October 27, 2011. Id.,  
 12 Ex. 2. This time, he copied PEI on an e-mail to Manwin's legal department, in  
 13 which he accused Manwin of "illegally profiting using websites that does not [sic]  
 14 provide legal content" and threatened to "shut [Manwin's] sites down one by one."  
 15 Id. Not only were Bulgin's statements false, but they were also expressly targeted  
 16 at interfering with Manwin's deal with PEI, a Beverly Hills company, and the  
 17 creation of Manwin's Burbank-based Playboy Plus division.

18 Second, Bulgin attempted to interfere with Plaintiff's ongoing litigation in  
 19 the Central District of California. Specifically, after learning that Plaintiff was  
 20 engaged in litigation against ICM (the entity that controls the registry for the .xxx  
 21 top-level domain), Bulgin exhorted members of the public to register infringing  
 22 Manwin-related domain names and then re-direct those domains to ICM. FAC  
 23 ¶ 22; Salerno Decl., ¶ 9. Bulgin was therefore aware of and attempting to  
 24 undermine Plaintiff's ongoing litigation in this judicial district.

25 Third and finally, even before this litigation began, Bulgin knew that  
 26 Plaintiff was represented by Los Angeles-based counsel, and Bulgin has contacted  
 27 Plaintiff's counsel in Los Angeles several times over the course of this litigation.  
 28 Mayer OSC Decl., ¶¶ 3-4. On or about January 11, 2012, Plaintiff's counsel, Marc

1 Mayer, sent a cease-and-desist letter to Bulgin, demanding that he transfer the  
 2 infringing domain names. Id. ¶ 3. Mr. Mayer’s letterhead bore Mitchell Silberberg  
 3 & Knupp LLP’s Los Angeles address. Id. On or about February 1, 2013, Bulgin  
 4 called Mr. Mayer on his Los Angeles telephone number. Id. Furthermore,  
 5 although Bulgin refused to participate in this litigation, he called and e-mailed  
 6 Mr. Mayer several more times throughout the litigation. Id. ¶ 4.

## 7 **II. THIS COURT HAS PERSONAL JURISDICTION OVER** 8 **DEFENDANT BULGIN**

9 Federal courts analyze personal jurisdiction under the applicable state law  
 10 which, in California, provides for the exercise of jurisdiction to the broadest extent  
 11 permissible under the U.S. Constitution. Cal. Code Civ. Proc. § 410.10. See  
 12 Panavision Int’l, L.P. v. Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998). Therefore,  
 13 “the only question before the Court is whether the exercise of *in personam*  
 14 jurisdiction in this case is consistent with due process.” MGM Studios Inc. v.  
 15 Grokster, Ltd., 243 F. Supp. 2d 1073, 1082 (C.D. Cal. 2003). In other words,  
 16 Bulgin need only have “certain minimum contacts with the forum [state] such that  
 17 the maintenance of the suit does not offend ‘traditional notions of fair play and  
 18 substantial justice.’” Id. (quoting Int’l Shoe Co. v. State of Washington, 326 U.S.  
 19 310, 316 (1945)).

20 The exercise of specific personal jurisdiction “is presumptively reasonable  
 21 where: (1) a nonresident defendant purposefully avails itself of the privilege of  
 22 conducting activities in the forum state, thereby invoking the protections of its  
 23 laws; and (2) the plaintiff’s claims arise out of the defendants’ forum-related  
 24 activities.” Grokster, 243 F. Supp. 2d at 1084.<sup>1</sup> Taking the factual allegations of  
 25 the Complaint as true and drawing all reasonable inferences in Plaintiff’s favor, as  
 26

---

27 <sup>1</sup> “General” personal jurisdiction exists where a defendant’s contacts with the  
 28 forum are so substantial or continuous and systematic that the defendant can expect  
 to be haled into court there, even if the action is unrelated to its contacts. Bancroft  
& Masters v. Augusta Nat’l, 223 F.3d 1082, 1086 (9th Cir. 2000). Manwin  
 Licensing does not contend here that Bulgin is subject to general jurisdiction.

the Court must on a motion for default judgment, see TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987), Plaintiff has satisfied both these requirements for exercising specific personal jurisdiction over Bulgin. Bulgin, who has refused to participate in the litigation process, has also made no attempt to rebut the presumption that an exercise of jurisdiction would be reasonable.

**A. Bulgin Purposefully Directed His Activities at This Forum.**

The “purposeful availment” requirement for personal jurisdiction ensures that a defendant will not be haled into court based on “random, fortuitous, or attenuated” contacts with California. Panavision, 141 F.3d at 1320. This prong “requires that defendant purposefully direct its activities toward the forum, or purposefully avail itself of the privilege of conducting activities within the forum state.” Grokster, 243 F. Supp. 2d at 1084. “Even where a defendant does not directly contact the forum state, purposeful availment may be demonstrated where the *effects* of a defendant’s conduct are felt in the forum state.” Id. at 1088 (emphasis added); Panavision, 141 F.3d at 1321-22.

In intentional tort cases, courts apply the “effects test,” derived from Calder v. Jones, 465 U.S. 783 (1984), to analyze whether a defendant’s tortious behavior was purposefully directed toward the forum state.<sup>2</sup> Grokster, 243 F. Supp. 2d at 1088. See also Panavision, 141 F. 3d at 121 (applying effects test to find personal jurisdiction where defendant registered a website infringing plaintiff’s trademark).

Under the effects test, personal jurisdiction is appropriate where a non-resident defendant engages in (1) intentional actions (2) expressly aimed at the forum state (3) causing harm, which is suffered – and which the defendant knows

---

<sup>2</sup> Courts in the Ninth Circuit also have applied a “sliding scale” test to measure online jurisdictional contacts, based upon the interactivity of the defendant’s website or Internet presence. However, the Calder effects test presents an alternative basis for finding purposeful availment, and is more properly applied in intentional tort cases involving “transitory” conduct such as defamation or infringement of intellectual property, as is the case here. See Grokster, 243 F. Supp. 2d at 1087-88.

1 is likely to be suffered – in the forum state.<sup>3</sup> Yahoo! Inc. v. La Ligue Contre Le  
 2 Racisme, 433 F.3d 1199, 1206 (9th Cir. 2006). Plaintiff’s case against Bulgin  
 3 satisfies all three factors of the Calder effects test.

#### 4 **1. Bulgin Committed an Intentional Act.**

5 The “intentional act” element of the Calder test is easily satisfied because  
 6 “intentional” simply means an intent to act, not an intent to achieve any particular  
 7 result. Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th  
 8 Cir. 2010). Intentional acts have included sending a complaint letter, Bancroft &  
 9 Masters, 223 F.3d at 1088; registering a domain name, Panavision, 141 F.3d at  
 10 1321; and operating and advertising a passive website, Rio Props. v. Rio Int’l  
 11 Interlink, 284 F.3d 1007, 1019-20 (9th Cir. 2002).

12 Here, Bulgin committed many intentional acts: Bulgin registered, or caused  
 13 to be registered, numerous domain names that infringed Plaintiff’s trademarks,  
 14 including, but not limited to, www.manwin.net, www.manwin.co,  
 15 www.manwinsucks.com, and www.manwin.us. FAC, ¶ 17. Bulgin created a false  
 16 persona (in fact numerous such personas), through which he offered to sell the  
 17 domain www.manwin.net to Plaintiff for \$100,000 and then threatened to harm  
 18 Manwin when his offers were rejected. Id. ¶ 18. Bulgin created a website  
 19 (www.manwinsucks.com), and later a Twitter Account and Blogspot Page, and  
 20 used those pages for the sole and exclusive purpose of defaming Manwin and  
 21 attempting to undermine its business. Id. ¶ 21; Declaration of Marc E. Mayer In  
 22 Support of Plaintiff’s Motion for Default Judgment Against Defendant Nicholas  
 23

---

24 <sup>3</sup> As the Ninth Circuit has clarified, “jurisdictionally sufficient harm may be  
 25 suffered in multiple forums” because “a corporation does not suffer harm in a  
 26 *particular* geographic location in the same sense that an individual does.” Dole  
 27 Food Co., Inc. v. Watts, 303 F.3d 1104, 1113 (9th Cir. 2002) (emphasis in  
 28 original); see also Yahoo! Inc. v. La Ligue Contre Le Racisme, 433 F.3d 1199,  
 1207 (9th Cir. 2006) (“We take this opportunity to clarify our law and to state that  
 the ‘brunt’ of the harm need not be suffered in the forum state.”). Moreover the  
 Supreme Court has found that jurisdictional minimum contacts may exist where  
 the brunt of the harm occurs outside of the forum. See Keeton v. Hustler  
Magazine, Inc., 465 U.S. 770, 780-81 (1984).

1 Bulgin (“Mayer Mot. Decl.”), ¶ 11. Bulgin sent disparaging e-mails to one of  
 2 Plaintiff’s most important business partners, PEI. Salerno Decl., ¶ 8. The above  
 3 list is not exhaustive, and each was an “intentional act.”

## 4 **2. Bulgin Expressly Aimed His Acts At California.**

5 The express aiming requirement “is satisfied when the defendant is alleged  
 6 to have engaged in wrongful conduct targeted at a plaintiff whom the defendant  
 7 knows to be a resident of the forum state.” Bancroft & Masters, 223 F.3d at 1087.  
 8 In other words, defendant must have “individually targeted” the California  
 9 plaintiff. Id. at 1088. Express aiming may exist online where, as here, a defendant  
 10 registers a domain name knowing it is the trademark of a California-based plaintiff  
 11 and then attempts to extort payment. See Panavision, 141 F.3d at 1322. Likewise,  
 12 online defamation gives rise to specific jurisdiction “where a defendant’s alleged  
 13 conduct intentionally and specifically targets the plaintiff and his or her activities  
 14 in the forum state....” Piping Rock Partners, Inc. v. David Lerner Assocs.,  
 15 No. C 12-04634 SI, 2012 U.S. Dist. LEXIS 161643, at \*13 (N.D. Cal. Nov. 9,  
 16 2012).

17 The Ninth Circuit has recognized that, in the context of online torts, express  
 18 aiming requires “something more” than “registering someone else’s trademark as a  
 19 domain name and posting a web site on the Internet...” Panavision, 141 F.3d at  
 20 1322. Accord Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1129  
 21 (9th Cir. 2010) (“operating even a passive website in conjunction with ‘something  
 22 more’ – conduct directly targeting the forum – is sufficient to confer personal  
 23 jurisdiction) (internal citations and quotation marks omitted). While the  
 24 “something more” test is a fact-specific inquiry, there can be little dispute that the  
 25 test is met here.

26 In Panavision International L.P. v. Toeppen, the defendant, like Bulgin, was  
 27 a habitual cybersquatter, who registered a domain name containing plaintiff  
 28 Panavision’s trademark. 141 F.3d at 1319. When Panavision refused to purchase

1 the infringing domain name and pay defendant \$13,000 to “settle the matter,”  
 2 defendant retaliated by registering a new domain name containing another  
 3 Panavision trademark. Id. The Ninth Circuit affirmed the district court’s exercise  
 4 of personal jurisdiction, reasoning that defendant had not simply registered an  
 5 infringing domain name and posted a website, he had “engaged in a scheme to  
 6 register Panavision’s trademarks as his domain names for the purpose of extorting  
 7 money from Panavision.” Id. at 1322. Defendant’s attacks “had the effect of  
 8 injuring Panavision in California where Panavision has its principal place of  
 9 business and where the movie and television industry is centered.” Id. Thus, there  
 10 was express aiming.

11 Similarly, the court found personal jurisdiction in Nissan Motor Co. v.  
 12 Nissan Computer Corp., 89 F. Supp. 2d 1154, 1160 (C.D. Cal. 2000), where  
 13 defendant computer company initially registered the domain names “nissan.com”  
 14 and “nissan.net” in good faith, but then changed its website to capitalize on  
 15 consumer confusion by adding a logo like plaintiff’s as well as automobile  
 16 advertisements. Id. at 1157. The court rejected defendant’s argument that it was  
 17 not subject to personal jurisdiction because it “merely operated a passive website,”  
 18 and held that defendant’s “intentional exploitation of consumer confusion supplies  
 19 the ‘something more’” required for express aiming. Id. at 1160.

20 Additionally, there was express aiming in Rio Props. v. Rio Int’l Interlink,  
 21 where defendant operated passive websites with domain names confusingly similar  
 22 to plaintiff’s trademark and also ran radio and print advertisements for the  
 23 infringing websites in the forum state. Rio Props., 284 F. 3d at 1020. The court  
 24 noted that “operating even a passive website in conjunction with ‘something more’  
 25 – conduct directly targeting the forum – is sufficient to confer personal  
 26 jurisdiction.” Id. By advertising its infringing websites in the forum state,  
 27 defendant had supplied the necessary “something more.” Id.



1 In the context of online defamation, the Northern District of California  
 2 recently found express aiming in Piping Rock Partners, Inc. v. David Lerner  
 3 Assocs, 2012 U.S. Dist. LEXIS 161643, involving facts roughly analogous to those  
 4 here. In Piping Rock, plaintiffs sued defendants for their “retaliatory online ‘smear  
 5 campaign[,]” which “included nineteen allegedly libelous posts on various  
 6 consumer-report websites, including eight identical posts directed at [plaintiffs].”  
 7 Id. at \*5. The court found personal jurisdiction and expressly rejected the  
 8 argument that defendants’ defamatory posts did not constitute “express aiming”  
 9 under Calder. Id. at \*12-14. The court held that “[defendant’s] conduct was  
 10 expressly aimed at the forum state because it individually targeted plaintiffs and  
 11 their professional activities in California, the undisputed locus of plaintiffs’  
 12 business operations.” Id. at \*13-14.

13 Here, Bulgin expressly aimed his conduct at Manwin’s California operations  
 14 and intended to cause Manwin harm in this judicial district. Like defendant in  
 15 Panavision, Bulgin did not merely register infringing domain names and post  
 16 websites, he attempted to extort Manwin to pay him for the domains. FAC, ¶ 18;  
 17 Gignac Decl., ¶¶ 6-7. As in Panavision, Manwin’s U.S. operations are based in  
 18 Los Angeles, which is also a major center of the adult-entertainment industry.  
 19 Salerno Decl., ¶¶ 4, 6; Panavision, 141 F. 3d at 1322; Grokster, 243 F. Supp. 2d at  
 20 1092 (“[defendant] is well aware that California is the heart of the entertainment  
 21 industry, and that the brunt of the injuries described in these cases is likely to be  
 22 felt here.”). See also Nissan, 89 F. Supp. 2d at 1160 (finding personal jurisdiction  
 23 where plaintiff exclusive trademark licensee of Japanese company was based in  
 24 California).<sup>4</sup> Bulgin knew or should have known that Manwin’s U.S. operations

25  
 26 <sup>4</sup> Manwin Licensing International S.à.r.l is a Luxembourg company. However,  
 27 “[i]n judging minimum contacts, a court properly focuses on ‘the relationship  
 28 among the defendant, the forum, and the litigation.’” Keeton v. Hustler Magazine,  
Inc., 465 U.S. 770, 775 (U.S. 1984). See also Incorp Services Inc. v. Incsmart.Biz  
Inc., 11-CV-4660-EJD-PSG, 2012 WL 3685994, at \*8 (N.D. Cal. Aug. 24, 2012)  
 (finding defendant’s conduct was expressly aimed at California in spite of

1 were based in Los Angeles. In fact, before litigation commenced, he corresponded  
2 and spoke with Plaintiff's Los Angeles counsel. Mayer OSC Decl., ¶ 3.

3 Moreover, Bulgin's conduct went far beyond the defendant's conduct in  
4 Panavision. Bulgin did not merely try to extort Manwin for the return of its  
5 domain names – he escalated to defamation. Bulgin began an online smear  
6 campaign, like defendants in Piping Rock, which he waged on several fronts –  
7 including the “manwinsucks.com” website, e-mails, and posts on industry bulletin  
8 boards – and which continues today on Blogspot and Twitter. Mot. at 4-7; Mayer  
9 OSC Decl., ¶ 2. However, rather than aiming at Manwin's California business  
10 through online references to Manwin's address and telephone number (as the  
11 defendant did in Piping Rock), Bulgin attacked directly by sending defamatory  
12 e-mails to Manwin's Beverly Hills-based business partner, PEI. Salerno Decl., ¶ 8,  
13 Exs. 1, 2. In doing so, Bulgin targeted his conduct at residents of the forum even  
14 more directly than defendant in Rio Props., who merely ran general radio and  
15 newspaper advertisements in the forum. In fact, Bulgin contacted PEI with the  
16 express and stated goal of disrupting the critical PEI-Manwin deal, whereby  
17 Manwin acquired Playboy assets and expanded Manwin's California operations.  
18 Salerno Decl., ¶ 8, Exs. 1, 2. Additionally, Bulgin attempted to interfere with  
19 Manwin's pending litigation in the Central District of California. FAC, ¶ 22;  
20 Salerno Decl., ¶ 9. Thus, even more so than defendants in Rio Props. and Piping  
21 Rock, Bulgin “individually targeted plaintiff[] and [its] professional activities in  
22 California....” 2012 U.S. Dist. LEXIS 161643 at \*13-14.

23 In short, Bulgin's scheme of extortion and defamation was expressly aimed  
24 at Manwin's operations, business partners, and industry in Los Angeles, and  
25 Bulgin's relentless attacks on Manwin were certainly “something more” than  
26 merely registering and posting an infringing website.

27  
28 plaintiff's out-of-state residence and noting that “a district court may have jurisdiction irrespective of where the plaintiff and defendant reside.”).



### 3. Plaintiff Suffered Foreseeable Injury in California.

The third requirement of purposeful direction is satisfied when the defendant caused harm that he knew would likely be suffered in the forum state. Yahoo!, 433 F.3d at 1206-07. Bulgin certainly knew that his conduct would harm Plaintiff in California, the site of Manwin's U.S. headquarters, its important business partners, and a center of the adult-entertainment industry. See Panavision, 141 F.3d at 1321-22 (defendant who appropriated "Panavision" trademarks knew that his conduct would have the effect of "injuring Panavision in California where Panavision has its principal place of business and where the movie and television industry is centered."); Grokster, 243 F. Supp. 2d at 1089 (defendant "reasonably should be aware that many, if not most, music and video copyrights are owned by California-based companies."); Nissan Motor Co., 89 F. Supp. 2d at 1160 (brunt of harm suffered in California, where exclusive licensee of infringed trademarks was located). Moreover, the Ninth Circuit has clarified that "the 'brunt' of the harm need not be suffered in the forum state[] [i]f a jurisdictionally sufficient amount of harm is suffered in the forum state...." Yahoo!, 433 F.3d at 1207. Therefore, it is irrelevant whether Bulgin *also* knew that his conduct was likely to cause harm elsewhere, such as in Luxembourg, where Plaintiff is incorporated. Harm to Manwin in California was reasonably foreseeable.

Plaintiff has therefore satisfied all three requirements of personal direction.

#### **B. Plaintiff's Claims Arise From Bulgin's California-Based Conduct.**

In addition to purposeful direction, a plaintiff asking the court to exercise specific personal jurisdiction must demonstrate that its claims arise from defendant's forum-related activities. This requirement is established "if the plaintiff[] would not have been injured 'but for' the defendant's activities." Nissan Motor Co., 89 F. Supp. 2d at 1160. The Ninth Circuit has held that the registration of infringing trademarks and domain names are sufficient "but-for" causes of harm where, as here, those actions were "directed toward [plaintiff] in California" and

1 “had the effect of injuring [plaintiff] in California.” Panavision, 141 F.3d at 1322.  
 2 See Grokster, 243 F. Supp. 2d at 1086 (defendant’s “distribution of the [software at  
 3 issue] and licensing of its use, are ‘but for’ causes of the alleged infringement”).

4 Here, Plaintiff’s claims arise from Bulgin’s contacts with California. Bulgin  
 5 engaged in a program of extortion and defamation aimed at Manwin, which has its  
 6 U.S. headquarters in California. FAC, ¶ 18; Gignac Decl., ¶¶ 6-7; Salerno Decl.,  
 7 ¶ 4. Bulgin sent defamatory e-mails to one of Manwin’s most important business  
 8 partners, PEI, which is based in Beverly Hills, California, and attempted to disrupt  
 9 a business deal between Manwin and PEI. Salerno Decl., ¶ 8, Exs. 1, 2.

10 **C. The Exercise of Personal Jurisdiction Over Bulgin Is Reasonable.**

11 If a plaintiff satisfies the “purposeful direction” and “arising from”  
 12 requirements, it creates a presumption that the exercise of specific personal  
 13 jurisdiction is reasonable. Grokster, 243 F. Supp. 2d at 1084; see also Ballard v.  
 14 Savage, 65 F.3d 1495, 1500 (9th Cir. 1995) (courts “presume that an otherwise  
 15 valid exercise of specific jurisdiction is reasonable”). To overcome the  
 16 presumption of reasonableness, Bulgin “must present a *compelling case* that the  
 17 presence of some other considerations would render jurisdiction unreasonable.”  
 18 Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985) (emphasis added).

19 As a threshold matter, jurisdiction over an out-of-state defendant is  
 20 “reasonable” if defendant has “fair warning that the particular activity may subject  
 21 that person to the jurisdiction of a foreign sovereign.” Grokster, 243 F. Supp. 2d at  
 22 1091. Here, Plaintiff’s Los Angeles-based counsel sent Bulgin a pre-litigation  
 23 demand letter. Mayer OSC Decl., ¶ 3. A few weeks later, but before Plaintiff filed  
 24 suit, Bulgin called Manwin’s counsel at his Los Angeles offices.<sup>5</sup> Id. Therefore  
 25  
 26

---

27 <sup>5</sup> Additionally, Bulgin attempted to disrupt Plaintiff’s ongoing litigation in the  
 28 Central District of California regarding the .xxx top-level domain; therefore Bulgin  
 knew or should have known that it was a potential forum. FAC, ¶ 22; Salerno  
 Decl., ¶ 9.

1 Bulgin had “fair warning” that his continued misconduct could subject him to  
2 jurisdiction in Los Angeles, California.

3 Additionally, courts consider seven factors in evaluating reasonableness:  
4 “(1) the extent of a defendant’s purposeful interjection; (2) the burden on the  
5 defendant in defending in the forum; (3) the extent of conflict with the sovereignty  
6 of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute;  
7 (5) the most efficient judicial resolution of the controversy; (6) the importance of  
8 the forum to the plaintiff’s interest in convenient and effective relief; and (7) the  
9 existence of an alternative forum.” Panavision, 141 F.3d at 1323. Bulgin has not  
10 appeared in this action, and therefore has not even attempted to refute the  
11 presumption of reasonableness. Nonetheless, Plaintiff addresses the seven  
12 “reasonableness” factors. These factors favor Plaintiff; certainly none presents a  
13 “compelling case” against exercising personal jurisdiction.

14 1. Purposeful Interjection. “The factor of purposeful interjection is  
15 satisfied by a finding of purposeful availment.” Grokster, 243 F. Supp. 2d at 1092.  
16 See also Nissan Motor Co., 89 F. Supp. 2d at 1161 (purposeful interjection is  
17 “analogous to purposeful availment.”). As set forth above, the purposeful  
18 availment (or “purposeful direction”) requirement is satisfied here.

19 2. Burden on Defendant. “[U]nless the inconvenience is so great as to  
20 cause a deprivation of due process, [defendant’s burden] will not overcome clear  
21 justifications for the exercise of jurisdiction.” Panavision, 141 F.3d at 1323.  
22 Litigating in California would not deprive Bulgin of due process. “In this era of  
23 fax machines and discount air travel, requiring [a defendant] to litigate in  
24 California is not constitutionally unreasonable.” Id. Bulgin, a serial cybersquatter  
25 with the wherewithal to register dozens of domain names, litigate domain name  
26 disputes before the World Intellectual Property Organization (“WIPO”), and set up  
27 dozens of e-mail accounts, certainly has the ability and intelligence to appear in a  
28 California action. See Mot. at 2-7; Mayer Mot. Decl., ¶ 4, Ex. 2. Bulgin also

1 could have elected to contest jurisdiction if he wished to do so; instead, although  
 2 he knew about the litigation before it was filed, he refused to participate in the  
 3 judicial process.

4 3. Extent of Conflict With a Foreign State. Because Plaintiff's  
 5 cybersquatting claims against Bulgin arise under the Lanham Act, "the federal  
 6 analysis would be the same in either [Georgia] or California." Panavision,  
 7 141 F.3d at 1323. Further, under Georgia law, the elements of a defamation claim  
 8 are analogous to those considered by California courts. See Smith v. Stewart,  
 9 291 Ga. App. 86, 91, 660 S.E.2d 822, 828 (2008) ("(1) a false and defamatory  
 10 statement concerning the plaintiff; (2) an unprivileged communication to a third  
 11 party; (3) fault by the defendant amounting at least to negligence; and (4) special  
 12 harm or the actionability of the statement irrespective of special harm."). This case  
 13 does not present a conflict between sovereigns.

14 4. Forum State's Interest in Adjudicating Dispute. California  
 15 undoubtedly has an interest in redressing injuries that occur within the state and  
 16 that affect the state's adult-entertainment industry. See Rio Props, 284 F.3d at  
 17 1021 ("[A]s the gambling center of the United States and home of [plaintiff],  
 18 Nevada asserts a strong interest in adjudicating [plaintiff's] claims . . ."). See also  
 19 Keeton, 465 U.S. at 776 (noting that "[f]alse statements of fact harm both the  
 20 subject of the falsehood and the readers of the statement" and that "New  
 21 Hampshire may rightly employ its libel laws to discourage the deception of its  
 22 citizens"); Incorp, 2012 WL 3685994, at \*11 (adopting the reasoning of Keeton in  
 23 the context of online false advertising). As mentioned above, Plaintiff maintains  
 24 its base of U.S. operations in Burbank, California. Salerno Decl., ¶ 4. As such, it  
 25 regularly transacts business with numerous California companies, and Manwin's  
 26 U.S. operations amount to tens of millions of dollars spent and invested each year  
 27 in the Los Angeles area. Id. ¶ 5-6. Further, Bulgin's defamatory messages were  
 28 targeted toward California companies, including PEI. Id. ¶ 8. California plainly

1 has a significant interest in protecting its residents from deception, and its  
2 businesses from defamation and cybersquatting.

3 5. Efficient Judicial Resolution. This factor “focuses on the location of  
4 the evidence and witnesses,” and is “no longer weighed heavily given the modern  
5 advances in communication and transportation.” Panavision, 141 F.3d at 1323.  
6 Manwin’s U.S. headquarters are in Burbank, California, and Plaintiff’s partner PEI  
7 also is based in Los Angeles. Salerno Decl., ¶¶ 4, 5. Additionally, the two  
8 services that Bulgin continues to use to defame Manwin, Twitter and Blogspot, are  
9 located in Northern California. These companies are potential witnesses in this  
10 litigation, and their documents are likely located in California. See Incorp, 2012  
11 WL 3685994, at \*11-12 (“Plaintiffs contends that it plans to seek discovery and  
12 call witnesses from Google, Yahoo!, and California UPS Store(s), all of whom are  
13 based in the forum state of California.”).

14 6. Convenient and Effective Relief for Plaintiff. As mentioned above,  
15 many of Plaintiff’s witnesses (including Twitter and Google) are located in  
16 California. Moreover, Plaintiff’s injury occurred in California. See Decker Coal  
17 Co. v. Commonwealth Edison Co., 805 F.2d 834, 841 (9th Cir. 1986). And,  
18 critically, transfer of this action would further delay Plaintiff’s ability to obtain  
19 relief. See Incorp, 2012 WL 3685994, at \*12 (“Forcing Plaintiff to now re-file and  
20 recommence an action in another forum would be inconvenient, particularly given  
21 the delay that would be caused to Plaintiff.”).

22 7. Existence of an Alternative Forum. “[T]his factor is significant only  
23 if other factors weigh against an exercise of jurisdiction.” Grokster, 243 F. Supp.  
24 2d at 1094. See also Corporate Inv. Business Brokers v. Melcher, 824 F.2d 786,  
25 791 (9th Cir. 1987). Whether this action could be litigated in Georgia, or some  
26  
27

1 other forum, is irrelevant — and certainly is not a “compelling” reason to find  
 2 jurisdiction in California unreasonable.<sup>6</sup>

### 3 4 Conclusion

5 For the foregoing reasons, this Court may properly exercise specific personal  
 6 jurisdiction over Defendant Nicholas Bulgin, and Plaintiff respectfully requests  
 7 that the Court enter default judgment against him.

8  
9 Dated: February 25, 2013

MARC E. MAYER  
 EMILY F. EVITT  
 MITCHELL SILBERBERG & KNUPP LLP

11  
12 By: /s/ Marc E. Mayer  
 13 Marc E. Mayer  
 14 Attorneys for Plaintiff  
 15 Manwin Licensing International S.à.r.l.

16  
17  
18  
19  
20  
21 <sup>6</sup> Plaintiff has also sought default judgment on its unfair competition cause of  
 22 action (Cal. Bus. & Prof. Code § 17200). As discussed in the Motion, Bulgin’s  
 23 violation of the Anticybersquatting Consumer Protection Act also constitutes a  
 24 violation of California’s unfair competition law. See Mot. at 11-12. Therefore,  
 25 Plaintiff has not separately discussed the Court’s personal jurisdiction over  
 26 Plaintiff’s unfair competition cause of action in this supplemental brief. Moreover,  
 27 under the doctrine of “pendant personal jurisdiction,” “[w]hen a defendant must  
 28 appear in a forum to defend against one claim, it is often reasonable to compel that  
 defendant to answer other claims in the same suit arising out of a common nucleus  
 of operative facts.” Action Embroidery Corp. v. Atlantic Embroidery, Inc.,  
 368 F.3d 1174, 1181 (9th Cir. 2004). This doctrine supports “judicial economy,  
 avoidance of piecemeal litigation, and [the] overall convenience of the parties.” Id.  
 Accordingly, if this Court finds that either Plaintiff’s cybersquatting or defamation  
 claim supports the exercise of personal jurisdiction, because the claims arise from a  
 common nucleus of operative facts, the Court may retain jurisdiction over them all.