UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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KALLIOPE AMORPHOUS,

Plaintiff,

- against -

JANET MORAIS, as individual and president of DeMorais International, Inc. and Manager of Koket, LLC; DEMORAIS INTERNATIONAL, INC.; KOKET, LLC; AMÂNDIO PEREIRA, as individual and President of MeninaDesign Lda; MENINADESIGN LDA, dba Boca do Lobo and Boca do Lobo International,

Defendants.
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MEMORANDUM AND ORDER
17 Civ. 631 (NRB)

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Plaintiff Kalliope Amorphous ("plaintiff") brings this action against defendants Janet Morais ("Morais"), DeMorais International, Inc. ("DeMorais"), Koket, LLC ("Koket"), Amândio Pereira ("Pereira"), and MeninaDesign Lda, dba Boca do Lobo and Boca do Lobo International ("Menina" and, collectively, "defendants"), alleging violations of the Copyright Act (17 U.S.C. § 101 et seq.), the Digital Millennium Copyright Act (17 U.S.C. § 1202(b)(3)), and the Lanham Act (15 U.S.C. § 1125(a)(1)). Plaintiff alleges that defendants used two of her copyrighted photos "without her authorization and removed her name and copyright management information in a massive international print

and digital advertising campaign . . . to promote and sell their brands' image and furniture." First Amended Complaint ("FAC") ¶ 2.

Defendants have moved, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, to dismiss plaintiff's FAC for lack of personal jurisdiction. See Dkt. No. 41. In addition, Pereira and Menina have moved to dismiss the FAC for insufficient service of process under Rule 12(b)(5). See id. For the reasons discussed *infra*, these motions are denied.

Background

Plaintiff is a "prominent visual artist" known for her "extensive work in self-portrait photography." FAC ¶ 1. A New York City resident "[u]ntil and through 2013," plaintiff "currently divides her time between Providence Rhode Island and New York City," where she also works part-time. See Am Compl. ¶ 7; Declaration of Kalliope Amorphous ("Amorphous Decl.") ¶¶ 2, 7, 9, July 6, 2017, Dkt. No. 48. In August 2012, plaintiff created "original works of art as part of a series entitled 'The Glass House Series.'" FAC ¶ 20. Two images from that series are relevant to this litigation: "Go Back" and "Sunset" (the "Photographs at Issue"), both self-portraits. See id. ¶¶ 21-22. The Photographs at Issue were copyrighted and displayed on plaintiff's website, where they were available for purchase or license. See id. ¶¶ 24, 26.

In November 2016, plaintiff "discovered an advertising campaign on the internet carried out by [Menina], in connection with DeMorais and Koket," which utilized the Photographs at Issue without authorization or attribution. Id. ¶ 27.

Menina was established in Porto, Portugal in 2003 by Pereira and his business partner, Ricardo Magalhaes. Declaration of Amândio Pereira ("Pereira Decl.") ¶ 4, Apr. 16, 2017, Dkt. No. 42-2. Menina "manufactures and sells furniture and other products under the Boca do Lobo brand and other brands." Id. ¶ 6. Its offices and manufacturing facilities are located in Porto, where it employs approximately thirty-five designers and marketers and twenty skilled craftspeople. Id. ¶ 7.

DeMorais is "an independent company," formed in 2008 and owned by Morais. Declaration of Janet Morais ("Morais Decl.") ¶ 5, Apr. 16, 2017, Dkt. No. 42-1. DeMorais is, *inter alia*, "the exclusive sales representative" of Menina. Id. DeMorais sells to "interior designers, architects and the like." Id. ¶ 8. "If a United States customer wishes to purchase a Menina Boca do Lobo or other brand product, it does so through DeMorais. Under the applicable terms and conditions of sale, DeMorais orders the product from Menina in Portugal, imports the product into the United States, clears the product through U.S. Customs, and completes the sales transaction

with the customer in Virginia," where DeMorais is located and incorporated. Id. ¶¶ 6, 9.

Koket is Menina's "feminine counterpart," founded in 2010 and owned by Morais. Id. ¶¶ 4, 11; Amorphous Decl. Ex. L. Koket is located in Virginia and "sells designer products" to "interior designers, architects, and the like," but has no retail customers. Morais Decl. ¶¶ 11, 12, 14.

Finally, Morais and Pereira are common-law spouses residing in Northern Virginia. See FAC ¶ 13; Morais Decl. ¶ 2; Pereira Decl. ¶ 2.

According to plaintiff, defendants used the Photographs at Issue "in international and national advertising campaigns to promote at least three products manufactured and sold by the Defendants worldwide." FAC ¶ 30. Specifically, defendants allegedly featured plaintiff's photograph "Go Back" in advertisements for their "Tortuga Chest," and her photograph "Sunset" in advertisements featuring their "Soho Center Table" and "Carytical Rug." Id. ¶¶ 32-34.

The advertisements appeared in "magazine covers worldwide, catalogs, press packages, promotional materials, and sales sheets" as well as on Menina and DeMorais' websites. Id. ¶ 36. In particular, plaintiff documented defendants' allegedly infringing use of the Photographs at Issue: (i) in magazines, including *The Resident* (UK), *The Art of Design* (UK), *Modern Luxury Miami* (US),

Hi Home (Russia), and *F Magazine* (Angola); (ii) on design websites including Press Loft, Covet Edition, Home and Decoration, and Contemporary Rugs; (iii) on webpages on Menina and DeMorais' websites, such as "Spring Trends – 10 Stunning Hallway Ideas," "100 Home Décor Ideas," and "Residential Projects"; (v) in Boca do Lobo's annual press kit; (iv) on Menina's Facebook page, LinkedIn profile, and Instagram account; (v) on the cover and several pages of the Covet Lounge[1] 2016 Covet House Catalog; and (vi) in the 2017 Boca do Lobo Press Kit. See id. ¶¶ 37-64 & Exs. D, E, F, G, I, J, N, Q.[2]

Certain of the advertisements featuring the Photographs at Issue referenced the films *Fifty Shades of Grey* and *Fifty Shades Darker*, as defendants "were commissioned to design the interior of the hyper luxury apartment of Christian Grey, the [films']

[1] Covet Lounge is "a project where 5 founding European design brands, Boca do Lobo, DelightFULL, Brabbu, Koket and Maison Valentina, along with partners Aldecco, Castro Lighting and Miyabi Casa have formed a group of designers & specialists that aim to fulfill the void in the design industry. This project consists of a place where designers, architects, bloggers and field experts come together for a design celebration." FAC ¶ 41. The Covet Catalog, which Menina "circulates to interior designers and architects," is "a visual platform for the display of a variety of Menina products." Pereira Decl. ¶ 13.

[2] Plaintiff's submissions in opposition to defendants' motion to dismiss include a variety of allegations of events that occurred *after* she initiated this litigation (e.g., infringing uses of her photographs and defendants' participation in certain New York trade shows). However, because "personal jurisdiction depends on the defendant's contacts with the forum state at the time the lawsuit was filed," these allegations will not be considered for the purpose of defendants' Rule 12(b)(2) motion. Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria, 937 F.2d 44, 52 (2d Cir. 1991); Ehrenfeld v. Bin Mahfouz, No. 04 Civ. 9641(RCC), 2006 WL 1096816, at *3 n.2 (S.D.N.Y. Apr. 26, 2006).

protagonist." See FAC ¶ 3; see, e.g., id. Ex. H (advertising "the pieces you that can see in the movie," including the "Tortuga Chest" depicted alongside "Go Back"). Because "[t]hese films are misogynistic and anti-feminist," plaintiff "would never have licensed the use of [her] portrait or image to promote the[m]." Amorphous Decl. ¶ 64.

In addition to their advertising over the internet and through periodicals, defendants and their agents also traveled to New York to promote their products. Koket and Menina hosted booths at, and sent representatives to, trade shows in New York, including the 2016 Architectural Design Show and the 2016 Boutique Design New York trade fair. See Declaration of Jordan Palmer ("Palmer Decl.") ¶¶ 5, 7, July 11, 2017, Dkt. No. 50; Pereira Decl. ¶ 12. Morais herself twice per year "attend[s] a trade show in New York to answer questions about products made by Koket, LLC." Morais Decl. ¶ 4. Further, in 2016, approximately $210,000 of Menina's sales were to entities with addresses in New York, although DeMorais, Menina's "exclusive" United States sales representative, has never "sold the Menina 'Tortuga Chest,' "Soho Center Table,' or 'Carytical Rug' products" in New York. Morais Decl. ¶¶ 5, 9-10; Pereira Decl. ¶ 11.

Plaintiff asserts that she has suffered multiple injuries from defendants' purported infringement of her copyrights. "Defendants' conduct . . . has deprived her of her ability to sell

her Photographs at Issue and made the entire body of Photographs at Issue available for use by Defendants, with no payment to her." FAC ¶ 76. Additionally, the use of her self-portrait in connection with the films *Fifty Shades of Grey* and *Fifty Shades Darker* has caused her, as a feminist, both embarrassment and "severe emotional distress."[3] See id. ¶ 101; Amorphous Decl. ¶ 65. "As a direct and proximate result of Defendants' misrepresentation of fact"—that she is affiliated with these films—"Plaintiff has lost the potential to license or sell these Photographs at Issue to her own clients and customers." FAC ¶ 105.

Discussion

I. Personal Jurisdiction

In opposing a motion to dismiss pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, it is the plaintiff's burden to demonstrate that the district court has jurisdiction over the defendants. Whitaker v. Am. Telecasting, Inc., 261 F.3d 196, 208 (2d Cir. 2001). "In order to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that jurisdiction exists." Penguin Grp. (USA) Inc. v. Am. Buddha, 609 F.3d 30, 34 (2d Cir. 2010) (quoting Thomas v. Ashcroft,

[3] As plaintiff's counsel candidly conceded at oral argument, neither the Copyright Act nor the Lanham Act authorizes damages for emotional distress. See Oral Arg. Tr. 25:8-20, Feb. 20, 2018. In addition, counsel admitted that plaintiff has not alleged that she is aware of, or been approached by, anyone who was upset that her works had been used in connection with *Fifty Shades of Grey* and/or *Fifty Shades Darker*. See id. 25:21-26:11.

470 F.3d 491, 495 (2d Cir. 2006)). Such a showing "entails making 'legally sufficient allegations of jurisdiction,' including 'an averment of facts that, if credited, would suffice to establish jurisdiction over the defendant.'" Id. (alterations incorporated) (quoting In re Magnetic Audiotape Antitrust Litig., 334 F.3d 204, 206 (2d Cir. 2006) (per curiam)).

In reviewing a Rule 12(b)(2) motion, this Court may consider documents beyond the pleadings in determining whether personal jurisdiction exists. See Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A., 722 F.3d 81, 84 (2d Cir. 2013); Yaah Raj Films (USA) Inc. v. Dishant.com LLC, No. 08-CV-2715 (ENV)(RML), 2009 WL 4891764, at *1 n.1 (E.D.N.Y. Dec. 15, 2009) ("A motion to dismiss a claim for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) is inherently a matter requiring the resolution of factual issues outside of the pleadings, and accordingly all pertinent documentation submitted by the parties may be considered in deciding the motion." (internal quotation marks omitted)). In doing so, "all allegations are construed in the light most favorable to the plaintiff and doubts are resolved in the plaintiff's favor." Whitaker, 261 F.3d at 208 (quoting A.I. Trade Fin., Inc. v. Petra Bank, 989 F.2d 76, 79-80 (2d Cir. 1993)).

Where, as here, an action arises under federal statutes lacking provisions for national service of process—the Copyright Act, see Penguin Grp., 609 F.3d at 35, the Digital Millennium

Copyright Act, see Philpot v. Kos Media LLC, No. 16-CV-01523 (AT)(BCM), 2017 WL 2270248, at *6 (S.D.N.Y. Apr. 21 2017), report and recommendation adopted, 2017 WL 2269531 (S.D.N.Y. May 23, 2017), and the Lanham Act, see Sunward Elecs., Inc. v. McDonald, 362 F.3d 17, 22 (2d Cir. 2004)—a federal district court may exert personal jurisdiction over out-of-state defendants only if (1) defendants are subject to jurisdiction under the law of the forum state, here, New York, and (2) the exercise of personal jurisdiction over the defendants comports with the Due Process Clause of the United States Constitution. See Sonera Holding B.V. v. Cukurova Holding A.S., 750 F.3d 221, 224 (2d Cir. 2014).

A. New York Law

Plaintiff asserts that defendants are subject to personal jurisdiction under N.Y. C.P.L.R. § 302(a)(1), which provides that "a court may exercise personal jurisdiction over any non-domiciliary . . . [1] who in person or through an agent . . . transacts any business within the state, so long as [2] the plaintiff's cause of action arises from that transaction."[4] FAC ¶ 15; Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d

[4] Plaintiff also alleges jurisdiction on the basis of N.Y. C.P.L.R. § 302(a)(3). See FAC ¶ 15. As we conclude that exercising jurisdiction is proper under § 302(a)(1), we need not consider this separate ground. See Transaero, Inc. v. Chappell, No. 13-CV-5752 (JFB)(GRB), 2014 WL 1783732, at *7 (E.D.N.Y. May 6, 2014).

50, 60 (2d Cir. 2012) (internal quotation marks omitted and alterations incorporated).

To demonstrate a "transaction of business," satisfying the first prong, plaintiff must show that each out-of-state defendant engaged in "some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within" the forum state, New York. Ehrenfeld v. Bin Mahfouz, 9 N.Y.3d 501, 508, 881 N.E.2d 830 (2007) (internal quotation marks omitted). "Purposeful availment occurs when the non-domiciliary, through volitional acts, seeks out and initiates contact with New York, solicits business with New York, and establishes a continuing relationship." Hau Yin To v. HSBC Holdings, PLC, 700 F. App'x 66, 67 (2d Cir. 2017) (internal quotation marks and alterations omitted). "At a minimum, the defendant must, 'on his or her own initiative . . . project himself or herself into the state to engage in a sustained and substantial transaction of business.'" Id. (alterations omitted) (quoting D&R Glob. Selections, S.L. v. Bodega Olegario Falcon Pineiro, 29 N.Y.3d 292, 298, 78 N.E.3d 1172 (2017)).

A claim "arises from" a transaction or activity, the second prong of § 302(a)(1), when there is "some articulable nexus between the business transacted and the cause of action sued upon" or "when there is a substantial relationship between the transaction and the claim asserted." Sole Resort, S.A. de C.V. v. Assure Resorts

Mgmt., LLC, 450 F.3d 100, 103 (2d Cir. 2006) (quoting Kreutter v. McFadden Oil Corp, 71 N.Y.2d 460, 464, 522 N.E.2d 40 (1988)). Courts must "consider 'the totality of the circumstances surrounding the defendants' activities in New York in connection with the matter giving rise to the lawsuit' to 'determine if there is a *direct* relation between the cause of action and the in-state conduct.'" Capital Records, LLC v. VideoEgg, Inc., 611 F. Supp. 2d 349, 361 (S.D.N.Y. 2009) (quoting Hoffirtz for Cutlery, Inc. v. Amjac, Ltd., 763 F.2d 55, 60 (2d Cir. 1985)). A connection or nexus that is "merely coincidental" or "at best, tangential" is "insufficient to support jurisdiction." Sole Resort, 450 F.3d at 104 (quoting Johnson v. Ward, 4 N.Y.3d 516, 520, 829 N.E.2d 1201 (2005)).

There is no doubt that defendants have availed themselves of the privilege of doing business in the forum state, New York.

First, Menina, and thus DeMorais, filled more than $200,000 worth of orders to New York addresses in 2016 alone. Pereira Decl. ¶ 11; see Chloé v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 170 (2d Cir. 2010) (A "single act of shipping a [product] might well be sufficient, by itself, to subject [a non-domiciliary] to the jurisdiction of a New York court under § 302(a)(1)."); Hypnotic Hats, Ltd. v. Wintermantel Enters., LLC, No. 15-CV-06478 (ALC), 2016 WL 7451306, at *2 (S.D.N.Y. Dec. 27, 2016).

Second, Menina, Koket, and agents thereof, including Morais, participated in multiple trade shows in New York, including the 2016 Architectural Design Show and the 2016 Boutique Design New York trade fair.[5] Palmer Decl. ¶¶ 5, 7; Morais Decl. ¶ 4; Pereira Decl. ¶ 12; see Verragio, Ltd. v. SK Diamonds, No. 16-cv-6931 (KBF), 2017 WL 1750451, at *2 (S.D.N.Y. May 4, 2017); Melissa & Doug, LLC v. LTD Commodities, LLC, No. 15-CV-8085 (JPO), 2016 WL 4367975, at *4 (S.D.N.Y. Aug. 15, 2016); Millennium, L.P. v. Dakota Imaging, Inc., No. 03 Civ. 1838(RWS), 2003 WL 22940488, at *3-4 (S.D.N.Y. Dec. 15, 2003).

Third, Menina's "New York Business Developer & Product Specialist," Didia Sousa ("Sousa"), traveled to New York to meet with vendors in September and October 2016. Declaration of Kalliope Amorphous ("Amorphous Suppl. Decl.") Ex. B., Feb. 24, 2018, Dkt. No. 63; Declaration of Madison Pracht ("Pracht Decl.") Ex. B, June 16, 2017, Dkt. No. 49; see Saint Tropez Inc. v. Ningbo Maywood Indus. & Trade Co., No. 13 Civ. 5230(NRB), 2014 WL 3512807, at *5 (S.D.N.Y. July 16, 2014) (citing Scholastic, Inc. v. Stouffer, No. 99Civ.11480(AGS), 2000 WL 1154252, at *4 (S.D.N.Y. Aug. 14, 2000)).

[5] Morais and Pereira's declarations make no mention of DeMorais' participation in the New York trade shows. However, as Menina's "exclusive sales representative," through which all United States purchases of Menina's products must be made, DeMorais would have been a beneficiary of all of Menina's New York sales and distribution efforts. See Morais Decl. ¶¶ 5, 9.

Defendants, therefore, have availed themselves of the privilege of doing business in New York to satisfy the first prong of the § 302(a)(1) inquiry. A more challenging question is whether the alleged infringement arose out of defendants' transactions of business in New York, as § 302(a)(1) also requires.

While none of the products defendants advertised in connection with the Photographs at Issue were ever sold in New York, see Morais Decl. ¶ 10; Pereira Decl. ¶ 11, plaintiff asserts that defendants brought materials featuring the Photographs at Issue—the Covet House Catalog and the Boca do Lobo Press Kit—into New York, including to the trade shows in which defendants participated. See Pl.'s Opp'n at 7, 11. However, plaintiff's opposition brief did not cite any evidence that defendants had done so prior to plaintiff initiating this litigation in 2017.

At oral argument, we asked defense counsel whether any of plaintiff's photos had been displayed at the trade shows in which defendants participated:

> The Court: Are your clients prepared to swear under penalties of perjury that they did not display on any piece of paper Ms. Amorphous's photographs when they were in New York at any time at a trade show?
>
> Mr. Koslowe: Your Honor, they told me they did not. I would have to ask them to sign an affidavit to that effect if your Honor wants.
>
> The Court: Well, I think that it is key to know the answer to that question, because i[t] seems to me pretty obvious as a matter of law that

> if they did display or utilize . . . any piece of paper at the trade show [with] Ms. Amorphous's photographs . . . that would lead to a holding that there was long-arm jurisdiction.

Oral Arg. Tr. 6:18-7:13.

On February 23, 2018, Rute Henriques, Pereira, Joana Reis, Eduardo Silva, Joana Silva, Sousa (on behalf of Menina) and Morais (on behalf of Koket) filed declarations swearing that, when attending trade shows in New York, each "did not bring with me, display, or make available to anyone, any piece of paper of any kind, nature, or description, that had on it photographs taken by plaintiff Kalliope Amorphous or in which plaintiff Kalliope Amorphous owned the copyright." Dkt. No. 61.

These declarations are unresponsive to this Court's direction; while each declarant swears that he or she did not *personally* bring, display, or make available materials including the Photographs at Issue, none of the declarants swear that the Photographs at Issue were not *actually* brought, displayed, or made available at the New York trade shows in which they participated.[6] Moreover, in response to these declarations, plaintiff submitted photos from Covet House's Facebook page featuring Sousa, Menina's

[6] We explained that the declarations should address "any and all documents which were brought into New York by the defendants—nothing cute here—which included Ms. Amorphous's photographs in connection with the promotion of the sales of the defendant's businesses. So however broad and comprehensive as possible." Oral Arg. Tr. 38:3-7 (emphasis added).

"New York Business Developer & Product Specialist." See Amorphous Suppl. Decl. Ex. B; Pracht Decl. Ex. B. In the October 2016 photos, Sousa is seen meeting with Reddymade Architecture & Design in New York while holding the Covet House catalog, which prominently features the Photographs at Issue. See Amorphous Suppl. Decl. Ex. B; Amorphous Decl. Ex. F. Covet House also posted photos to its Facebook page in late September 2016 featuring the Covet House catalog in front of the Paramount Theatre in Midtown Manhattan, with the caption "Covet House catalogue is going around New York City!" and of the catalog with the caption "'Celebrate design with friends' – Covet House Catalogue at #NY !" Amorphous Suppl. Decl. Exs. A & B.

In sum, plaintiff has, on the record as currently developed, established a prima facie case of jurisdiction. Defendants have, on multiple occasions, transacted business in New York using the Photographs at Issue.

B. Due Process

Having concluded that personal jurisdiction exists over defendants pursuant to N.Y. C.P.L.R. § 302(a)(1), the next question is whether exercising such jurisdiction comports with due process.

"To establish [specific] personal jurisdiction over a defendant, due process requires a plaintiff to allege (1) that a defendant has 'certain minimum contacts' with the relevant forum, and (2) that the exercise of jurisdiction is reasonable in the

circumstances." Eades v. Kennedy, PC Law Offices, 799 F.3d 161, 168-69 (2d Cir. 2015) (quoting In re Terrorist Attack on September 11, 2001, 714 F.3d 659, 673 (2d Cir. 2013)).

i. Sufficient Minimum Contacts

"The requisite 'minimum contacts' analysis 'overlaps significantly' with New York's § 302(a)(1) inquiry into whether a defendant transacted business in the State." Minnie Rose LLC v. Yu, 169 F. Supp. 3d 504, 515 (S.D.N.Y. 2016) (quoting Brown v. Web.com Grp., Inc., 57 F. Supp. 3d 345, 358 (S.D.N.Y. 2014)). Thus, sufficient contacts exist "where the defendant[s] purposefully availed [themselves] of the privilege of doing business in the forum and could foresee being haled into court there." Eades, 799 F.3d at 169 (quoting Licci, 732 F.3d at 170). "Additionally, because specific personal jurisdiction must be established with respect to '*each* claim asserted,'" plaintiff's "claim[s] must arise out of or relate to the defendant's contacts with the forum." In re LIBOR-Based Fin. Instruments Antitrust Litig., No. 11 MDL 2262 (NRB), 2015 WL 6243526, at *27 (S.D.N.Y. Oct. 20, 2015), aff'd sub nom. in part, vacated in part, and remanded, Charles Schwab Corp. v. Bank of Am. Corp., 883 F.3d 68 (2d Cir. 2018). "In other words, there must be 'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" Bristol-

Myers Squibb Co. v. Superior Court of Calif., S.F. Cty., 137 S. Ct. 1773, 1780 (2017) (quoting Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011)).

As discussed *supra*, defendants have availed themselves of the privilege of doing business in the New York market through completing hundreds of thousands of dollars of sales to New Yorkers, participating in New York trade shows, and sending sales representatives to New York. These activities satisfy not only N.Y. C.P.L.R. § 302(a)(1), but also due process's requirement of sufficient minimum contacts. See Hypnotic Hats, 2016 WL 7451306, at *4; Melissa & Doug, 2016 WL 4367975, at *4-5; Saint Tropez, 2014 WL 3512807, at *7.

There is also an "affiliation" between New York State and the underlying controversy. See Bristol-Myers Squibb, 137 S. Ct. at 1780. Defendants, without payment or permission, used plaintiff's copyrighted photos at meetings with New York vendors. See Amorphous Suppl. Decl. Ex. B; Amorphous Decl. Ex. F; Pracht Decl. Ex. B.

ii. Reasonableness

"[W]here the plaintiff has made a threshold showing of minimum contacts at the first stage," defendants may still show that the court lacks personal jurisdiction by "present[ing] a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Metro Life Ins. Co. v. Robertson-Ceco

Corp., 84 F.3d 560, 568 (2d Cir. 1996) (internal quotation marks omitted). Courts consider the following factors in determining reasonableness:

> (1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the most efficient resolution of the controversy; and (5) the interests of the state in furthering substantive social policies.

Siegel v. Ford, No. 16-CV-8077 (JPO), 2017 WL 4119654, at *5 (S.D.N.Y. Sept. 15, 2017) (quoting Schottenstein v. Schottenstein, 04 Civ. 5851(SAS), 2004 WL 2534155, at *8 (S.D.N.Y. Nov. 8, 2004)). However, "[w]here a plaintiff makes the threshold showing of the minimum contacts required for the first test, a defendant must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Bank Brussels Lambert v. Fiddler Gonzalez & Rodriguez, 305 F.3d 120, 129 (2d Cir. 2002) (internal quotation marks omitted).

Considering each of the factors in turn, it is clear that exercising jurisdiction over defendants is reasonable under the circumstances. First, even crediting defendants' assertion that it would be a "personal and professional" burden to litigate in New York, Morais Decl. ¶ 22, Pereira Decl. ¶ 19, such "generalized complaints of inconvenience" are an insufficient basis on which to defeat a finding of personal jurisdiction, especially when some of the defendants travel to New York within the regular course of

their business. See Chloé, 616 F.3d at 173; see Bank Brussels Lambert, 305 F.3d at 129-30 ("Even if forcing the defendant to litigate in a forum relatively distant from its home base were found to be a burden, that argument would provide defendant only weak support, if any, because the conveniences of modern communication and transportation ease what would have been a serious burden only a few decades ago." (internal quotation marks omitted)). Second, New York has an interest in adjudicating cases of copyright and trademark infringement allegedly perpetrated against those who live and work in the state. Cf. Chloé, 616 F.3d at 173 ("[A] state frequently has a 'manifest interest in providing effective means of redress for its residents.'" (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 483 (1985))). Third, plaintiff has an interest in adjudicating this matter in New York, where she alleges the harm to her reputation was felt, and where she lives and works at least part-time. Fourth, litigation in Virginia or Portugal would not necessarily lead to a more efficient resolution of the controversy. Documentary evidence located in Virginia and Portugal, where defendants are located, can easily be sent to New York. See Minnie Rose, 169 F. Supp. 3d at 516. Further, any inconvenience to live witnesses based in Virginia and Portugal is cancelled out by the similar inconvenience that New York witnesses would experience if the case were litigated in Virginia or Portugal. Finally, "[d]efendants do not assert, nor

can the Court discern, any substantive social policies that would be furthered by permitting this case to be heard" in Virginia or Portugal. Id.

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On balance, the Court finds that its assertion of personal jurisdiction over defendants amply comports with due process. Defendants' motion to dismiss for lack of personal jurisdiction is therefore denied.

II. Service of Process

Defendants Pereira and Menina move, in the alternative, to dismiss plaintiff's complaint on grounds of improper service of process against them.

"When confronted with a motion to dismiss pursuant to [Rule] 12(b)(5) for insufficient service of process, the burden to show that service was adequate rests with the plaintiff." C3 Media & Mktg. Grp., LLC v. Firstgate Internet, Inc., 419 F. Supp. 2d 419, 427 (S.D.N.Y. 2005). In satisfying this burden, "[c]onclusory statements that a defendant was properly served are insufficient to overcome a defendant's sworn affidavit that he was never served with process." Howard v. Klynveld Peat Marwick Goerdeler, 977 F. Supp. 654, 658 (S.D.N.Y. 1997), aff'd, 173 F.3d 844 (2d Cir. 1999). In resolving this motion, the Court "must look to matters outside the complaint" to determine whether service was adequate. George v. Prof'l Disposables Int'l Inc., 221 F. Supp. 3d 428, 441 n.4

(S.D.N.Y. 2016) (citing Darden v. DaimlerChrysler N. Am. Holding Corp., 191 F. Supp. 2d 382, 387 (S.D.N.Y. 2002)).

According to plaintiff's affidavit of service, Pereira was served by serving Morais, his common-law wife, at their residence in Virginia. See Affidavit of Robert Proffitt, March 23, 2017, Dkt. No. 32; FAC ¶ 13. Morais, "a person of suitable age and discretion," apparently "stated that he/she resides with" Pereira. Id. Morais's declaration, however, states that she was "told by a nanny who was watching my three-year old child playing in front of my house in Gainesville, Virginia, that a man approached my child. The man left a copy of a summons and complaint in this case at the closed front door of my house." Morais Decl. ¶ 21.

Rule 4(e)(1) of the Federal Rules of Civil Procedure states that "an individual . . . may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where . . . service is made." In Virginia, where Pereira was served, service may be accomplished: (1) "by delivering a copy of [the process] to any person found there, who is a member of his family," if "the party to be served is not found at his usual place of abode," or (2) "[i]f such service cannot be effected . . . then by posting a copy of such process at the front door." Va. Code Ann. § 8.01-296(2)(a)-(b). If we are to believe the affidavit of service, service was properly accomplished by "delivering a copy"

to Janet Morais, Pereira's common-law wife. And if we are to believe Morais's declaration, service was still properly accomplished by posting a copy at the door. In either event, service was proper, and Pereira's motion is denied.

Defendant Menina was served process via the New York Secretary of State. See Affidavit of Sarah J. Horne, Mar. 27, 2017, Dkt. No. 33. Rule 4(e)(1) permits defendants to be served by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located." Fed. R. Civ. P. 4(e)(1). In New York, where this Court is located, serving a foreign corporation via the Secretary of State is proper "[i]n any case in which a non-domiciliary would be subject to the personal or other jurisdiction of the courts of the state under article three of the civil practice law and rules." N.Y. Bus. Corp. Law. § 307(a). In other words, service of process via the New York Secretary of State would be satisfactory if Menina were subject to personal jurisdiction in New York under N.Y. C.P.L.R. § 302(a)(1). As we have concluded that such jurisdiction exists, there is no defect in service, and Menina's motion is denied.

Conclusion

Because we have concluded that plaintiff has made a prima facie case of personal jurisdiction over defendants, their motion to dismiss the first amended complaint on that basis is denied.

Similarly, because we conclude that service of process on Pereira and Menina was sufficient, their motion to dismiss on that basis is also denied. The Clerk of the Court is respectfully directed to terminate Dkt. No. 41.

Counsel are directed to appear before this Court for a status conference on April 23, 2018, in Courtroom 21A, 500 Pearl Street, New York, NY 10007, at 2:30 P.M.

Dated: New York, New York
March 15, 2018

NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE