

APPENDIX TABLE OF CONTENTS

	Page
United States Court of Appeals for the Ninth Circuit, Memorandum Opinion, January 27, 2023	App. 1
United States District Court for the Central District of California, Eastern Division, Order, December 27, 2021	App. 3
United States Court of Appeals for the Ninth Circuit, Order on Petition for Rehearing, Rehearing En Banc, and Motion Seeking Leave of Court to Amend Complaint Pursuant to 28 U.S. Code § 1653, May 12, 2023	App. 11

App. 1

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CURTIS JASON WENDT-WEST, v. STATE OF HAWAI'I, DEPARTMENT OF EDUCATION; and KATHLEEN DIMINO, Complex Area Superintendent, in her official capacity only, Defendants-Appellees.	No. 22-55091 D.C. No. 5:21-cv- 01336-JWH-SP MEMORANDUM* (Filed Jan. 27, 2023)
---	---

Appeal from the United States District Court
for the Central District of California
John W. Holcomb, District Judge, Presiding

Submitted January 18, 2023**

Before: GRABER, PAEZ, and NGUYEN, Circuit
Judges.

Curtis Jason Wendt-West appeals pro se from the
district court's judgment dismissing for lack of personal
jurisdiction his action alleging federal and state
law employment claims. We have jurisdiction under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

App. 2

U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(2). *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 857 (9th Cir. 2022). We affirm.

The district court properly dismissed Wendt-West's action for lack of personal jurisdiction because Wendt-West failed to allege facts sufficient to establish that defendants had such continuous and systematic contacts with California to establish general personal jurisdiction, or sufficient claim-related contacts with California to provide the court with specific personal jurisdiction over defendants. *See id.* at 858-59 (discussing requirements for general and specific personal jurisdiction).

We do not consider matters not specifically and distinctly raised and argued in the opening brief or allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

CURTIS JASON WENDT-WEST, Plaintiff, v. STATE OF HAWAII, DEPARTMENT OF EDUCATION; and KATHLEEN DIMINO, Complex Area Superintendent, in her official capacity only, Defendants.	Case No. 5:21-cv- 01336-JWH-SPx ORDER GRANTING DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO TRANSFER VENUE [ECF No. 27] (Filed Dec. 27, 2021)
--	---

Before the Court is the motion of Defendants State of Hawai'i Department of Education ("HDOE") and Kathleen Dimino, in her official capacity only, to dismiss for improper venue and lack of personal jurisdiction.¹ The Court finds this matter appropriate for resolution without a hearing. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support and in opposition,² the Court orders that the Motion is **GRANTED**, as set forth herein.

¹ Defs.' Mot. to Dismiss, or in the Alternative, to Transfer Venue (the "Motion") [ECF No. 27].

² The Court considered the following papers: (1) Verified Compl. ECF No. 11] (the "Complaint"); (2) the Motion (including its attachment; (3) Pl.'s Opp'n to the Motion the "Opposition") (including its attachment) [ECF No. 28]; and (4) Defs.' Reply in Supp. of the Motion (the "Reply") [ECF No. 36].

I. BACKGROUND

A. Procedural Background

Pro se Plaintiff Curtis Wendt-West filed his Verified Complaint commencing this action on August 9, 2021.³ Wendt-West filed a second Verified Complaint two days later. Defendants filed the instant Motion on October 25; Wendt-West opposed on November 2; and Defendants replied on November 19.

B. Factual Background

Wendt-West asserts claims for (1) violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a); (2) violations of Title IX of the Education Amendments Act of 1972, as amended, 20 U.S.C. § 1681; violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101; (4) wrongful discharge in violation of public policy; (5) wrongful demotion in violation of public policy; (6) immediate payment of wages and waiting time penalties; (7) negligent supervision; (8) failure to prevent discrimination and harassment; (9) defamation; (10) breach of contract; (11) violations of the First Amendment of the U.S. Constitution; (12) violations of the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution; (13) involuntary servitude; (14) property damage; (15) intentional infliction of emotional distress; (16) retaliation against a whistleblower in violation of the False Claims Act, 31 U.S.C. § 3729; and (17)

³ Unless noted otherwise, all dates are in 2021.

App. 5

conspiracy to deprive Wendt-West of his civil rights in violation of 18 U.S.C. § 241.⁴ The following brief factual summary is based upon the allegations in the Complaint.

Wendt-West worked for the HIDOEES as a school counsellor at 'Iao Intermediate School in Wailuku.⁵ He worked as a 10-month non-tenured employee on a limited term appointment agreement.⁶ Wendt-West commenced his employment on July 31, 2017, and he notified HIDOE of his intention to end his employment on January 26, 2020.⁷

Wendt-West left his job with HIDOE due to what he perceived to be a hostile and discriminatory work environment, as well as a breach of the Collective Bargaining Agreement covering his limited term appointment.⁸ Wendt-West and his husband subsequently sold their home in Hawai'i and moved to the mainland in February 2020.⁹ HIDOE did not recognize Wendt-West's employment separation and continued to list Wendt-West as its employee.¹⁰

Wendt-West's hostile work environment claims include several events, but they center around a 2019

⁴ Complaint ¶¶ 568-770

⁵ *Id.* at ¶ 7.

⁶ *Id.*

⁷ *Id.* at ¶¶ 7 & 8.

⁸ *Id.* at ¶ 10.

⁹ *Id.* at ¶ 11.

¹⁰ *Id.* at ¶¶ 12-19.

incident in which Wendt-West was accused of having an affair with a female colleague.¹¹ In August 2020, Wendt-West filed a complaint with the EEOC; he received a Right to Sue letter on May 21.¹²

II. LEGAL STANDARD

Under Rule 12(b)(2) of the Federal Rules of Civil Procedure, a party may seek to dismiss an action for lack of personal jurisdiction. To defeat such a motion, the plaintiff must demonstrate that the exercise of personal jurisdiction is proper. *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007). If the motion is based upon written materials, then “the plaintiff need only make a *prima facie* showing of jurisdictional facts.” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Therefore, the court inquires into only whether the plaintiff’s “pleadings and affidavits make a *prima facie* showing of personal jurisdiction.” *Caruth v. Int'l Psychoanalytical Ass'n.*, 59 F.3d 126, 128 (9th Cir. 1995). Factual disputes are settled in the plaintiff’s favor. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1554 (9th Cir. 2006). Although unrefuted assertions in the complaint must be taken as true, the plaintiff cannot “simply rest on the bare allegations of its complaint.” *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977).

A party that seeks a court’s exercise of personal jurisdiction over a nonresident must meet the

¹¹ *Id.* at ¶ 23.

¹² *Id.* at ¶ 17.

constitutional limits of due process and satisfy the long-arm statute of the forum state. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154–55 (9th Cir. 2006). California’s long-arm statute is coextensive with constitutional due process. Cal. Civ. Proc. Code § 410.10. Thus, when determining personal jurisdiction, federal courts in California must ensure that exercising personal jurisdiction satisfies due process.

A federal court may exercise personal jurisdiction over a non-resident party when the non-resident party has “at least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial justice.’” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110–11 (9th Cir. 2002) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 326 (1945)). A district court “may exercise either general or specific personal jurisdiction over non-resident defendants.” *Fed. Deposit Ins. Corp. v. British-Am Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987).

III. DISCUSSION

Defendants argue that the Court should dismiss Wendt-West’s Complaint “for improper venue and lack of personal jurisdiction, as Defendants do not reside in the Central District of California, none of the events giving rise to Plaintiff’s claims are alleged to have occurred in the Central District of California, and none of the property at issue is located in the Central

District of California.”¹³ In his Opposition, Wendt-West argues that venue is proper because many of the unlawful acts alleged in his Complaint took place while he was in California.¹⁴ The Court concludes that it lacks personal jurisdiction over Defendants.

A court may exercise general jurisdiction over a foreign entity when its “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe*, 326 U.S. at 317). Here, Defendants are Hawai’i residents,¹⁵ and they were served with process in Hawai’i, which (of course) is outside of the Central District of California.¹⁶ Wendt-West does not attempt to argue in his Opposition that the Court has general jurisdiction over Defendants.¹⁷ Accordingly, the Court finds that it lacks general jurisdiction over Defendants.

In the absence of general jurisdiction, a court may have still specific jurisdiction over a party. Whether a district court may exercise specific jurisdiction over a defendant “depends on an affiliatio[n] between the forum and the underlying controversy, principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Id.*

¹³ Motion 1:6-10.

¹⁴ Opposition 2:7-14.

¹⁵ Verified Complaint ¶¶ 4 & 5.

¹⁶ See Proofs of Service [ECF Nos. 14-21].

¹⁷ See generally Opposition.

at 919 (internal quotations and citations omitted) (alteration in original). Here, Defendants lack the sort of affiliation with California that would justify the Court's exercise of specific jurisdiction. Wendt-West does not allege that Defendants maintain offices or own property in California, nor does he allege that he was required to perform any contractual duty in California.¹⁸

Wendt-West argues that Defendants retaliated against him in the Central District of California,¹⁹ but that argument fails. Wendt-West asserts that HIDOE transmitted harassing letters to him at his home in California,²⁰ but those letters were sent to his former address in Hawai'i and then forwarded to his new address in California.²¹ The Court finds that the underlying controversy, as alleged, did not take place in California, and it is not subject to California's regulation.

In any event, this Court may not exercise jurisdiction over a sovereign state government without that government's consent. *Franchise Tax Bd. Of California v. Hyatt*, 139 S. Ct. 1485, 1492 (2019) ("States retain their sovereign immunity from private suits brought in the courts of other states."). California's long-arm statute therefore cannot authorize jurisdiction over a sister-state without that state's consent. Defendants

¹⁸ See generally Verified Complaint.

¹⁹ See, e.g., Opposition 16:16-24:15.

²⁰ *Id.*

²¹ Verified Complaint ¶ 425.

are a state agency and a state employee who is sued in her official capacity. In their Amended Answer, Defendants do not give their consent to be sued outside of Hawai'i.²²

Accordingly, the Court **GRANTS** the Motion. The Verified Complaint is **DISMISSED** for lack of personal jurisdiction.

IV. CONCLUSION

For the foregoing reasons, the Court hereby **ORDERS** as follows:

1. The Motion is **GRANTED**.
2. The Verified Complaint is **DISMISSED**.
3. The Clerk is **DIRECTED** to close this case.

IT IS SO ORDERED.

Dated: December 27, 2021 /s/ John W. Holcomb
John W. Holcomb
UNITED STATES
DISTRICT JUDGE

²² Defs.' Am. Answer to the Complaint (the "Amended Answer") [ECF N. 26].

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CURTIS JASON WENDT-WEST, Plaintiff-Appellant, v. STATE OF HAWAII, DEPARTMENT OF EDUCATION; and KATHLEEN DIMINO, Complex Area Superintendent, in her official capacity only, Defendants-Appellees.	No. 22-55091 D.C. No. 5:21-cv- 01336-JWH-SP Central District of California, Riverside ORDER (Filed May 12, 2023)
--	--

Before: GRABER, PAEZ, and NGUYEN, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Wendt-West's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 19) are denied.

Wendt-West's opposed motion to file an amended complaint (Docket Entry Nos. 20 and 21) is denied.

App. 12

No further filings will be entertained in this closed case.
