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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GO DADDY OPERATING COMPANY,
LLC,

Plaintiff,

v.

USMAN GHAZNAVI, et al.,

Defendants.

Case No. 17-cv-06545-PJH

ORDER

Re: Dkt. Nos. 30, 31, 32, 33, 37, 41, 42,
46, 47, 48, 51

Defendants Usman Anis’s and Silicon Valley Graphic, LLC’s motion to dismiss plaintiff’s complaint in its entirety and strike portions of the complaint; defendant Salman Ghaznavi’s motion to quash service and dismiss the complaint; plaintiff GoDaddy’s motion for a preliminary injunction; and the parties’ numerous requests for judicial notice and evidentiary objections came on for hearing before this court on February 14, 2018. Plaintiff appeared through its counsel, Nathan Dooley. Defendants appeared through their counsel, Brenda Prackup. Having read the papers filed by the parties and carefully considered their arguments and the relevant legal authority, and good cause appearing, the court hereby rules as follows, for the reasons stated at the hearing and for the following reasons.

BACKGROUND

Plaintiff Go Daddy Operating Company, LLC (“GoDaddy”) brought this action against defendants Usman Ghaznavi a/k/a Usman Anis (“Usman Anis”), Salman Ghaznavi a/k/a Salman Anis (“Salman Ghaznavi”), Silicon Valley Graphics (“SVG”), and a number of unidentified “Doe” defendants for injunctive relief and damages arising from

1 alleged unauthorized use of GoDaddy's trademarks.

2 GoDaddy asserts violations of 15 U.S.C. § 1114 (trademark infringement),
3 § 1125(a) (false designation of origin, unfair competition, false advertising), § 1125(c)
4 (trademark dilution), § 1125(d) (cybersquatting), as well as state-law and common-law
5 claims of unfair competition, false advertising, trademark infringement, and intentional
6 interference with prospective economic advantage. Plaintiff also seeks an accounting.

7 In addition to acting as a domain name registrar, GoDaddy offers more than 50
8 online products and services to the public, including website design, logo design, and
9 business design. Compl. ¶¶ 2, 18–20. As set forth in the complaint, GoDaddy owns
10 certain trademarks and has developed significant common law rights in the GoDaddy
11 trade name. See id. ¶¶ 21–22.

12 On November 29, 2017, GoDaddy filed certificates of service showing service of
13 the summons and complaint on each of the defendants at 45333 Fremont Blvd., Suite 5,
14 in Fremont, California (the "Fremont Address"). The proofs of service show (1) personal
15 service on Usman Anis on November 14, 2017; (2) substituted service on SVG on
16 November 14, 2017, at the address of its registered agent, by leaving papers with Usman
17 Anis, described as "Employee/Owner," followed by service by mail; and (3) substituted
18 service on Salman Ghaznavi, by leaving papers with Lo Ann Do, graphic designer, on
19 November 17, 2017, following attempts on three successive days to personally serve
20 Salman Ghaznavi. Dkts. 16–18.

21 The complaint arises primarily from defendants' alleged use of GoDaddy's
22 trademarks on a number of websites they operate (the websites at issue are the
23 "Infringing Domains"). Defendants allegedly use the marks to advertise logo design,
24 business design, and website design services. Compl. ¶ 3. Plaintiff further alleges that
25 the defendants contacted GoDaddy customers and non-customers, falsely identified
26 themselves as working with GoDaddy, and solicited business based on those false
27 representations. Id. ¶¶ 4, 39–50. GoDaddy alleges a spam campaign and telephonic
28 conversations between defendants' employees and potential customers. Id. ¶¶ 40–47.

1 Plaintiff alleges that defendants have orchestrated a similar pattern and practice of
2 offenses against others' intellectual property, through a network of related corporate
3 entities, which are ultimately controlled by the named defendants in this action. Id. ¶¶ 6–
4 7, 28–29, 37–38. GoDaddy alleges that defendants conduct their network of operations
5 from two addresses, called the “Fremont Address” and the “Sunnyvale Address” (440
6 North Wolfe Road, MS# 142, Sunnyvale, California 94085).

7 GoDaddy alleges that the Infringing Domains utilize a “domain name privacy
8 service,” and that prior to utilizing the domain name privacy service, defendants
9 registered domains using alias names, including “Fedrick King.” Id. ¶¶ 24–25. GoDaddy
10 claims that such alleged acts make identifying the true owner of these domains difficult
11 when relying on public information, although GoDaddy claims to have learned that some
12 were registered by defendants. Id. ¶¶ 24–27. For example, GoDaddy claims to have
13 learned through WhoIsGuard that Salman Ghaznavi is the registered owner of at least
14 one of the Infringing Domains. Id. ¶ 26.

15 GoDaddy asserts that it discovered defendants' use of the Infringing Domains in
16 July 2017, when a customer brought it to GoDaddy's attention. Id. ¶¶ 30–31. When
17 GoDaddy investigated, it learned that the infringing domain was registered using
18 GoDaddy, on an account paid for by Usman Anis using the Fremont Address. Id. ¶ 32.
19 GoDaddy terminated that account based on violations of GoDaddy's terms of service and
20 discovered that the same account had registered four additional Infringing Domains. Id.
21 GoDaddy then learned that defendants had a second GoDaddy account, paid for by the
22 same credit card linked to Usman Anis, which listed the Sunnyvale Address as the
23 contact and billing address. Id. ¶ 33.

24 GoDaddy asserts that its discovery of the Infringing Domains also shed light on
25 their relation to a spam campaign involving the domain name route66d.com, which in the
26 summer of 2016 was used to send spam text messages that appeared to be from
27 GoDaddy. Id. ¶ 34. GoDaddy contends that this spam campaign gave rise to a large
28 number of customer complaints and threats of litigation from customers who believed

1 they had received the messages from GoDaddy. Id. ¶ 35. This spam campaign was
 2 nearly identical to another spam campaign during the same time period that also used
 3 GoDaddy marks and directed GoDaddy customers to a website at
 4 theamericandesigns.com. Id.

5 The complaint goes on to explain how GoDaddy learned of other domains or
 6 products that improperly used GoDaddy trademarks, and/or which engaged in spam
 7 advertising that appeared to come from GoDaddy, and which it alleges originated with
 8 defendants. See id. ¶¶ 37–51.

9 GoDaddy filed its complaint on November 10, 2017. Dkt. 1. On December 14,
 10 2017, GoDaddy moved the court for a temporary restraining order (Dkt. 24), which was
 11 argued and denied on December 20, 2017 (Dkt. 27). In that order declining to issue a
 12 TRO, the court reasoned:

13 It is undisputed that GoDaddy has a protectable interest in the
 14 GoDaddy Marks, and that unauthorized use of the Marks by
 15 persons or entities other than GoDaddy would be likely to
 16 cause consumer confusion. However, the court finds that
 17 GoDaddy has failed to make a clear showing that it is entitled
 18 to the extraordinary remedy of temporary injunctive relief.
 19 Primarily, GoDaddy has not made a sufficient showing that
 any particular defendant is responsible for the alleged
 infringement in this case. . . . [T]he interests of justice would
 be better served by a fully-briefed motion for injunctive relief,
 rather than the present hastily-assembled motion for a
 temporary restraining order, heard on shortened time.

20 Dkt. 27 at 3–4.

21 On December 26, 2017, defendants Usman Anis and SVG filed a motion to
 22 dismiss and strike portions of the complaint. Dkt. 30. On December 29, 2017, defendant
 23 Salman Ghaznavi moved to quash service of the complaint and dismiss it for lack of
 24 personal jurisdiction. Dkt. 32. On January 10, 2018, GoDaddy filed a motion for a
 25 preliminary injunction against defendants Usman Anis, Salman Ghaznavi, and SVG. Dkt.
 26 37.

27 DISCUSSION

28 A. Motion to Quash

1 To determine whether service of process is proper, courts look to the requirements
2 of Federal Rule of Civil Procedure 4, which provides that service is proper if it is done
3 “following state law for serving a summons in an action brought in courts of general
4 jurisdiction in the state where the district court is located or where service is made[.]”
5 Fed. R. Civ. P. 4(e)(1). California allows substitute service at one’s office, usual mailing
6 address, or usual place of business. Cal. Civ. Proc. Code § 415.20(a)–(b). Plaintiff
7 successfully effected substitute service on Salman Ghaznavi under California law by
8 leaving a copy of the summons and complaint at 45333 Fremont Blvd., Suite 5, Fremont,
9 CA 94538 in the presence of a person apparently in charge and thereafter mailing a copy
10 of the summons and complaint by first-class mail. See Dkt. 18. Salman Ghaznavi
11 contends that service was ineffective because it did not comply with the additional
12 requirements of the Hague Convention. Dkt. 32 at 13–14; Dkt. 40 at 9. The Hague
13 Convention applies only when “a transmittal abroad . . . is required as a necessary part of
14 service.” Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 707 (1988).
15 Furthermore, “the internal law of the forum is presumed to determine whether there is
16 occasion for service abroad.” Id. at 704. Because California law does not require the
17 mailing of documents abroad in order to effect service of process in the technical sense,
18 the Hague Convention does not apply. Id. at 707–08; Piatek v. Siudy, 351 F. App’x 232,
19 233 (9th Cir. 2009).

20 Defendant Salman Ghaznavi’s motion to quash service is therefore DENIED.
21 Defendant’s accompanying request for judicial notice (Dkt. 33) is DENIED as moot.

22 **B. Motion to Dismiss for Lack of Personal Jurisdiction**

23 The party seeking to invoke the federal court’s jurisdiction bears the burden of
24 demonstrating jurisdiction. Picot v. Weston, 780 F.3d 1206, 1211 (9th Cir. 2015). When
25 resolving a motion to dismiss under Rule 12(b)(2) on written materials, the court accepts
26 uncontroverted facts in the complaint as true and resolves conflicts in affidavits in the
27 plaintiff’s favor. Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1223 (9th Cir.
28 2011).

1 The Due Process Clause of the Fourteenth Amendment “limits the power of a
2 state’s courts to exercise jurisdiction over defendants who do not consent to jurisdiction.”
3 Martinez v. Aero Caribbean, 764 F.3d 1062, 1066 (9th Cir. 2014). Due process requires
4 that the defendant “have certain minimum contacts with it such that the maintenance of
5 the suit does not offend traditional notions of fair play and substantial justice.” Int’l Shoe
6 Co. v. Wash., 326 U.S. 310, 316 (1945) (internal quotation marks omitted). Under the
7 “minimum contacts” analysis, a court can exercise either “general or all-purpose
8 jurisdiction,” or “specific or conduct-linked jurisdiction.” Daimler AG v. Bauman, 134 S.
9 Ct. 746, 751 (2014) (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S.
10 915, 919 (2011)); see Int’l Shoe Co., 326 U.S. at 316–20.

11 Under general jurisdiction, a nonresident defendant may be subject to suit even on
12 matters unrelated to his contacts with the forum. Daimler, 134 S. Ct. at 754–58. To
13 establish general jurisdiction, the plaintiff must demonstrate that the defendant has
14 continuous and systematic contacts sufficient to approximate physical presence in the
15 state. In re W. States Wholesale Natural Gas Antitrust Litig., 715 F.3d 716, 741 (9th Cir.
16 2013). “For an individual, the paradigm forum for the exercise of general jurisdiction is
17 the individual’s domicile[.]” Goodyear, 564 U.S. at 924; see generally Lockard v.
18 Lockard, 15 F.3d 1086 (9th Cir. 1993). Being an officer or owner of a California
19 corporation is not alone sufficient to establish general personal jurisdiction over an
20 individual. Ishiyama v. Glines, No. 216CV00222APGPAL, 2016 WL 5661991, at *2 (D.
21 Nev. Sept. 29, 2016); i2 Glob. Commc’ns, Inc. v. Blue Jay, Inc., No. 08-cv-4254-PJH,
22 2009 WL 29905, at *7 (N.D. Cal. Jan. 5, 2009); Swensen v. Murchison, 507 F. Supp. 509,
23 512 n.3 (N.D. Cal. 1981); see also Johnston Farms v. Yusufov, No.
24 117CV00016LJOSKO, 2017 WL 6571527, at *5 n.3 (E.D. Cal. Dec. 26, 2017) (Oberto,
25 Mag. J.); Logtale, Ltd. v. IKOR, Inc., No. 11-cv-05452-EDL, 2014 WL 1478901, at *5
26 (N.D. Cal. Apr. 14, 2014) (Laporte, Mag. J.).

27 In the absence of general jurisdiction, a court may exercise specific jurisdiction
28 over a defendant if his less-substantial contacts with the forum gave rise to the claim or

1 claims pending before the court—that is, if the cause of action “arises out of” or has a
2 substantial connection with that activity. Hanson v. Denckla, 357 U.S. 235, 250–53
3 (1958); see also Goodyear, 564 U.S. at 924–25. The inquiry into whether a forum state
4 may assert specific jurisdiction over a nonresident defendant focuses on the relationship
5 among the defendant, the forum, and the litigation. Walden v. Fiore, 134 S. Ct. 1115,
6 1121 (2014).

7 Specific jurisdiction is analyzed using a three-part test: First, the nonresident
8 defendant must have purposefully directed his activities or consummated some
9 transaction with the forum or a forum resident, or performed some act by which he
10 purposefully availed himself of the privilege of conducting activities in the forum, thereby
11 invoking the benefits and protections of its laws; second, the claim must be one which
12 arises out of or relates to the nonresident defendant’s forum-related activities; and third,
13 the exercise of jurisdiction must comport with fair play and substantial justice, i.e., it must
14 be reasonable. See Picot, 780 F.3d at 1211. If the plaintiff is successful at establishing
15 the first two prongs, the burden shifts to the defendant to set forth a compelling case that
16 the exercise of jurisdiction would not be reasonable. Id. at 1211–12.

17 With regard to the first prong, the “purposeful availment” standard and the
18 “purposeful direction” standard are two distinct concepts. Washington Shoe Co. v. A-Z
19 Sporting Goods Inc., 704 F.3d 668, 672 (9th Cir. 2012). For claims sounding in tort,
20 courts apply the “purposeful direction” test. Schwarzenegger v. Fred Martin Motor Co.,
21 374 F.3d 797, 802–03 (9th Cir. 2004). Because GoDaddy’s claims are based on
22 trademark infringement, generally characterized as a tort, personal jurisdiction may be
23 found if Salman Ghaznavi has purposefully directed his activities at the forum.¹ See
24 Panavision Int’l, L.P. v. Toeppen, 141 F.3d 1316, 1321 (9th Cir. 1998), modified on other
25 grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme, 433 F.3d
26

27 ¹ For claims sounding in contract, courts apply the “purposeful availment” analysis, asking
28 whether the defendant has “purposefully avail[ed]” itself of “the privilege of conducting
activities within the forum State, thus invoking the benefits and protections of its laws.”
Schwarzenegger, 374 F.3d at 802 (quoting Hanson, 357 U.S. at 253).

1 1199 (9th Cir. 2006). The plaintiff must allege that the defendant “(1) committed an
 2 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
 3 defendant knows is likely to be suffered in the forum state.” Yahoo! Inc., 433 F.3d at
 4 1206.

5 Acting as an employee or agent of a corporation does not shield one from
 6 individual personal jurisdiction when one’s own actions within that corporation otherwise
 7 satisfy the personal jurisdiction test. E.g., Davis v. Metro Productions, Inc., 885 F.2d 515,
 8 522 (9th Cir. 1989); j2 Glob. Commc’ns, 2009 WL 29905, at *7 (“the fiduciary shield
 9 doctrine does not prevent this court from exercising jurisdiction over Luxenberg
 10 [corporate officer] merely because his acts in California were undertaken in an official,
 11 business capacity. . . . The conduct that may be considered in determining whether the
 12 assertion of personal jurisdiction over Luxenberg is appropriate are those acts which
 13 Luxenberg would be personally liable for, i.e., tortious acts he authorized, directed, or
 14 meaningfully participated in.”); Johnston Farms, 2017 WL 6571527, at *5 n.3.

15 Under Federal Rule of Civil Procedure 4(k)(2), “a court may exercise jurisdiction
 16 when three requirements are met. First, the claim against the defendant must arise
 17 under federal law Second, the defendant must not be subject to the personal
 18 jurisdiction of any state court of general jurisdiction. Third, the federal court’s exercise of
 19 personal jurisdiction must comport with due process.” Holland Am. Line Inc. v. Wartsila
 20 N. Am., Inc., 485 F.3d 450, 461 (9th Cir. 2007) (citations omitted). “The due process
 21 analysis is identical to the one discussed above when the forum was California, except
 22 here the relevant forum is the entire United States.” Pebble Beach Co. v. Caddy, 453
 23 F.3d 1151, 1159 (9th Cir. 2006); Holland, 485 F.3d at 462 (“The due process analysis
 24 under Rule 4(k)(2) is nearly identical to traditional personal jurisdiction analysis with one
 25 significant difference: rather than considering contacts between the [defendants] and the
 26 forum state, we consider contacts with the nation as a whole.”).

27 Plaintiff fails to allege sufficient facts to support the exercise of general personal
 28 jurisdiction. Plaintiff alleges in its complaint that Salman Ghaznavi is a California

1 resident. Compl. ¶ 11. However, a declaration from Salman Ghaznavi states that he
2 resides full time and is employed in Pakistan. Dkt. 32-1 ¶¶ 2–9. Although the court must
3 accept uncontroverted allegations in plaintiff’s favor, plaintiff has not submitted a
4 competing affidavit actually disputing that controverted point. See Mavrix Photo, Inc.,
5 647 F.3d at 1223 (“We may not assume the truth of allegations in a pleading which are
6 contradicted by affidavit, but we resolve factual disputes in the plaintiff’s favor.”) (citations
7 and internal quotation marks omitted). Plaintiff argues that this court can exercise
8 general personal jurisdiction over Salman Ghaznavi due to his positions in and ownership
9 of various California corporations and similar entities. That is not enough. Plaintiff has
10 failed to allege that Salman Ghaznavi has sufficiently continuous and systematic contacts
11 with California or the United States for this court to exercise general personal jurisdiction
12 over him.

13 Plaintiff has similarly failed to allege sufficient facts to support the exercise of
14 specific personal jurisdiction. For example, plaintiff may have alleged that companies
15 with which Salman Ghaznavi is associated have committed intentional acts aimed at
16 California, but plaintiff has not alleged that Salman Ghaznavi himself undertook such acts
17 or directed or meaningfully participated in such acts.

18 Because a more satisfactory showing of the facts is necessary to determine
19 whether the court has personal jurisdiction over Salman Ghaznavi—including Salman
20 Ghaznavi’s place of residence, the extent of his ownership of and control over the various
21 entities in plaintiff’s complaint, and whether he personally conducted or directed any of
22 the actions alleged in the complaint—jurisdictional discovery is appropriate. Boschetto v.
23 Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008); America West Airlines, Inc. v. GPA Group,
24 Ltd., 877 F.2d 793, 801 (9th Cir. 1989) (“where pertinent facts bearing on the question of
25 jurisdiction are in dispute, discovery should be allowed”); Halo Elecs., Inc. v. Bel Fuse
26 Inc., No. CIV. C-07-06222 RMW, 2010 WL 2605195, at *7 (N.D. Cal. June 28, 2010).
27 Discovery will allow plaintiff to determine the level of control Salman Ghaznavi exercised
28 over the entities it alleges have violated its trademarks. Second, the parties dispute

1 material facts on the issue. For example, plaintiff alleges Salman Ghaznavi is a
2 California resident (Compl. ¶ 11) and defendants disagree (Dkt. 32-1 ¶ 2); plaintiff claims
3 Salman Ghaznavi sent or directed the sending of text messages, phone calls, and
4 advertisements to California citizens (Dkt. 38 at 12–13), and defendants claim Salman
5 Ghaznavi does not advertise in the U.S. at all (Dkt. 32-1 ¶ 8).

6 Therefore, the court DEFERS JUDGMENT on defendant Salman Ghaznavi’s
7 motion to dismiss for lack of personal jurisdiction. The court GRANTS a 90-day period of
8 jurisdictional discovery for plaintiff, ending on May 15, 2018. Plaintiff may file a
9 supplemental brief concerning this court’s personal jurisdiction over Salman Ghaznavi on
10 or before June 14, 2018; defendant may respond on or before June 28, 2018; and
11 plaintiff may reply on or before July 5, 2018. The briefing shall conform to Civil Local
12 Rule 7, with respect to page limits and otherwise. No hearing shall be held on the
13 supplemental briefing. As discussed below, the briefing may also address whether
14 Salman Ghaznavi should be enjoined by the preliminary injunction issued herein.

15 **C. Motion to Dismiss for Failure to State A Claim**

16 A motion to dismiss under Rule 12(b)(6) tests for the legal sufficiency of the claims
17 alleged in the complaint. Ileto v. Glock, 349 F.3d 1191, 1199–1200 (9th Cir. 2003).
18 Under Federal Rule of Civil Procedure 8, which requires that a complaint include a “short
19 and plain statement of the claim showing that the pleader is entitled to relief,” (Fed. R.
20 Civ. P. 8(a)(2)), a complaint may be dismissed under Rule 12(b)(6) if the plaintiff fails to
21 state a cognizable legal theory or has not alleged sufficient facts to support a cognizable
22 legal theory. Somers v. Apple, Inc., 729 F.3d 953, 959 (9th Cir. 2013).

23 While the court must accept factual allegations in the complaint, legally conclusory
24 statements not supported by actual factual allegations need not be accepted. Ashcroft v.
25 Iqbal, 556 U.S. 662, 678–79 (2009). The complaint must proffer sufficient facts to state a
26 claim for relief that is plausible on its face. Bell Atlantic Corp. v. Twombly, 550 U.S. 544,
27 555, 558–59 (2007) (citations and internal quotation marks omitted).

28 “A claim has facial plausibility when the plaintiff pleads factual content that allows

1 the court to draw the reasonable inference that the defendant is liable for the misconduct
 2 alleged.” Iqbal, 556 U.S. at 678 (citation omitted). “[W]here the well-pleaded facts do not
 3 permit the court to infer more than the mere possibility of misconduct, the complaint has
 4 alleged—but it has not ‘show[n]’—that the pleader is entitled to relief.” Id. at 679 (quoting
 5 Fed. R. Civ. P. 8(a)(2)). Where dismissal is warranted, it is generally without prejudice,
 6 unless it is clear the complaint cannot be saved by any amendment. Sparling v. Daou,
 7 411 F.3d 1006, 1013 (9th Cir. 2005).

8 **1. Trademark Infringement, 15 U.S.C. § 1114**

9 “To prevail on a claim of trademark infringement under the Lanham Act, 15 U.S.C.
 10 § 1114, a party ‘must prove: (1) that it has a protectible ownership interest in the mark;
 11 and (2) that the defendant’s use of the mark is likely to cause consumer confusion.’”
 12 Network Automation, Inc. v. Advanced Sys. Concepts, Inc., 638 F.3d 1137, 1144 (9th Cir.
 13 2011) (quoting Dep’t of Parks & Recreation v. Bazaar Del Mundo Inc., 448 F.3d 1118,
 14 1124 (9th Cir. 2006)). The statute also requires plaintiff to show defendant’s use of the
 15 mark “in commerce.” 15 U.S.C. § 1114(1). The Lanham Act defines “use in commerce”
 16 as “the bona fide use of a mark in the ordinary course of trade.” 15 U.S.C. § 1127. The
 17 Ninth Circuit has held that, for example, “the use of a trademark as a search engine
 18 keyword that triggers the display of a competitor’s advertisement is a ‘use in commerce’
 19 under the Lanham Act.” Network Automation, 638 F.3d at 1144; see also Brookfield
 20 Comm’ns, Inc. v. W. Coast Entm’t Corp., 174 F.3d 1036, 1053 (9th Cir. 1999) (plaintiff
 21 was entitled to a preliminary injunction with respect to infringing domain name registration
 22 and purchasing search engine keywords because it had shown the marks were protected
 23 and that there was a likelihood of confusion, although the court did not directly address
 24 the “use in commerce” requirement).

25 Plaintiff’s complaint contains deep factual detail, including specific allegations that
 26 defendants have now and historically undertaken efforts to disguise their identities when
 27 registering domains. Compl. ¶¶ 6–7, 24–27, 36. The complaint also details particular
 28 mechanisms defendants allegedly employed to mask their identities, and plaintiff’s

1 investigatory efforts to reveal the same. Id. ¶¶ 24–27, 32–36. Given plaintiff’s well-pled,
 2 factual allegations tying Usman Anis to the Fremont and Sunnyvale Addresses (id. ¶ 10),
 3 tying SVG to the Fremont Address (id. ¶ 12), tying a number of domains at issue to
 4 domain name privacy services (id. ¶ 24), and tying at least one domain using a privacy
 5 service to the Fremont Address (id. ¶ 26), tying a domain registered to Fredrick King to a
 6 GoDaddy account paid for by Usman Anis (id. ¶¶ 25, 32), plaintiff has proffered sufficient
 7 facts to state a claim for relief that is plausible on its face by allowing the court to draw a
 8 reasonable inference that the defendants are liable for the misconduct alleged.

9 Moreover, plaintiff specifically alleges that an email from “g0daddydesigns.com”
 10 was sent “On Behalf of GoDaddy”, that the domain hosted a website displaying infringing
 11 marks, and that the domain was hosted by “an account paid for by [Usman] Anis, and
 12 registered to the Fremont Address”; plaintiff further alleges that the domain resolved to an
 13 IP address registered to Usman Anis at the Fremont Address. Id. ¶¶ 30–32. Plaintiff’s
 14 complaint is sufficient to allege a claim for trademark infringement against Usman Anis
 15 under Rule 8.

16 Plaintiff alleges that SVG shares a physical address and phone number² with a
 17 number of allegedly-infringing domains and that SVG’s website was registered by the
 18 same account that registered certain allegedly-infringing domains. Compl. ¶¶ 33, 37–38.
 19 Although plaintiff pleads SVG’s actions with less particularity than it does Usman Anis’s,
 20 the complaint as a whole—including the credible allegations that defendants are
 21 attempting to use technical means to mask their identities online—allow the court to draw
 22 the reasonable inference that defendant SVG, whose contact information is attached to
 23 many of the allegedly-infringing materials, is liable for the misconduct alleged.

24 Plaintiff also makes sufficient allegations to establish “use in commerce.” The
 25

26 ² Defendants’ briefing contests this point, but no cited declaration controverts plaintiff’s
 27 allegation. Dkt. 39 at 5:8–10 (citing a declaration of Usman Anis, Dkt. 26-1). Notably,
 28 Usman Anis’s declaration does not deny that the alleged number is associated with SVG.
 Rather, the declaration attaches a printout of a Yelp webpage that shows another number
 associated with the business.

1 domain registrations alone are sufficient. Even if they are not, plaintiff alleges that
 2 defendants included images confusingly similar to their registered marks on websites and
 3 in email communications advertising services in direct competition with plaintiff's own
 4 services.

5 Defendants Usman Anis's and SVG's motion to dismiss plaintiff's trademark
 6 infringement claim is therefore DENIED.

7 **2. False Designation of Origin, 15 U.S.C. § 1125(a)**

8 The same standard is embodied in 15 U.S.C. § 1125(a), which applies to both
 9 registered and unregistered trademarks, and 15 U.S.C. § 1114, which provides protection
 10 only to registered marks. Brookfield Communications, Inc. v. W. Coast Entertainment
 11 Corp., 174 F. 3d 1036, 1046 nn.6 & 8 (9th Cir. 1999).

12 For the reasons stated above, defendants Usman Anis's and SVG's motion to
 13 dismiss plaintiff's false designation of origin claim is therefore DENIED.

14 **3. Trademark Dilution, 15 U.S.C. § 1125(c)**

15 "In order to prove a violation of the Federal Trademark Dilution Act, a plaintiff must
 16 show that (1) the mark is famous; (2) the defendant is making a commercial use of the
 17 mark in commerce; (3) the defendant's use began after the mark became famous; and
 18 (4) the defendant's use of the mark dilutes the quality of the mark by diminishing the
 19 capacity of the mark to identify and distinguish goods and services." Panavision Int'l,
 20 L.P., 141 F.3d at 1324 (citing 15 U.S.C. § 1125(c)).

21 Defendant only challenges whether plaintiff's complaint "make[s] any allegation
 22 that [Usman] Anis or SVG is making commercial use of the Marks in commerce." Dkt. 30
 23 at 13.

24 GoDaddy alleges that its marks are famous, and identifies the marks with
 25 particularity. Compl. ¶¶ 21–22, 74. The complaint alleges that SVG and Usman Anis are
 26 making commercial use of the marks by: displaying the marks on particular domains to
 27 siphon traffic from GoDaddy's websites by operating websites confusingly related to
 28 GoDaddy (id. ¶ 23); registering domain names that are themselves confusingly similar to

1 the marks (id.); making public communications purporting to be related to GoDaddy (id.
 2 ¶¶ 30–31, 40); funding certain of the accounts at issue (id. ¶¶ 27, 32–33); and purporting
 3 to represent a relationship between GoDaddy and defendants using SVG’s phone
 4 number, Usman Anis’s Sunnyvale Address, and a domain allegedly registered and paid
 5 for by Usman Anis via his GoDaddy account (id. ¶¶ 29–33). Given the allegations pled
 6 and the allegation that defendants are actively concealing the true name or identify of the
 7 owners of the Infringing Domains, the court can draw a reasonable inference that Usman
 8 Anis and SVG are responsible for the alleged commercial use of the GoDaddy marks.
 9 Plaintiff also adequately pleads that defendants’ alleged acts are confusing to customers,
 10 and they harass and annoy customers in a way that dilutes GoDaddy’s marks.

11 Defendants Usman Anis’s and SVG’s motion to dismiss plaintiff’s trademark
 12 dilution claim is therefore DENIED.

13 **4. Cybersquatting, 15 U.S.C. § 1125(d)**

14 “The Anti–Cybersquatting Consumer Protection Act establishes civil liability for
 15 ‘cyberpiracy’ where a plaintiff proves that (1) the defendant registered, trafficked in, or
 16 used a domain name; (2) the domain name is identical or confusingly similar to a
 17 protected mark owned by the plaintiff; and (3) the defendant acted ‘with bad faith intent to
 18 profit from that mark.’” DSPT Int’l, Inc. v. Nahum, 624 F.3d 1213, 1218–19 (9th Cir.
 19 2010) (citing 15 U.S.C. § 1125(d)(1)(A)). The Ninth Circuit has described cybersquatting
 20 as “when a person other than the trademark holder registers the domain name of a well
 21 known trademark and then attempts to profit from this by either ransoming the domain
 22 name back to the trademark holder or by using the domain name to divert business from
 23 the trademark holder to the domain name holder.” Bosley Med. Inst., Inc. v. Kremer, 403
 24 F.3d 672, 680 (9th Cir. 2005) (quoting DaimlerChrysler v. The Net Inc., 388 F.3d 201,
 25 204 (6th Cir. 2004)).

26 GoDaddy alleges that defendants Usman Anis and SVG “registered, trafficked in,
 27 or used” certain domains (Compl. ¶¶ 23–27, 32–33); that such domains contain or are
 28 confusingly similar to GoDaddy’s protected marks (id. ¶¶ 23, 30–31); and that defendants

1 acted with bad faith intent to profit from the trademarks (*id.* ¶¶ 23–25, 30–31, 87).

2 Defendants Usman Anis’s and SVG’s motion to dismiss plaintiff’s cybersquatting
3 claim is therefore DENIED.

4 **5. Unfair Competition, Cal. Bus & Prof. Code § 17200**

5 A claim under § 17200 can be founded on the same conduct underlying a Lanham
6 Act claim. Cleary v. News Corp., 30 F.3d 1255, 1262–63 (9th Cir. 1994) (“This Circuit
7 has consistently held that state common law claims of unfair competition and actions
8 pursuant to California Business and Professions Code § 17200 are ‘substantially
9 congruent’ to claims made under the Lanham Act.”). The law also encompasses
10 practices that are unfair even if not specifically proscribed by some other law. Cel-Tech
11 Commc’ns, Inc. v. Los Angeles Cellular Tel. Co., 20 Cal. 4th 163, 180 (1999) (“The
12 statutory language referring to ‘any unlawful, unfair *or* fraudulent’ practice (italics added)
13 makes clear that a practice may be deemed unfair even if not specifically proscribed by
14 some other law. . . . In other words, a practice is prohibited as ‘unfair’ or ‘deceptive’ even
15 if not ‘unlawful’ and vice versa.”) (citations and internal quotation marks omitted).

16 The parties agree that this claim survives if plaintiff’s trademark infringement claim
17 survives. Dkt. 30 at 14–15; Dkt. 39 at 5; Dkt. 36 at 14–15. The court agrees.

18 Defendants Usman Anis’s and SVG’s motion to dismiss plaintiff’s unfair
19 competition claim under §17200 is therefore DENIED.

20 **6. False Advertising, Cal. Bus. & Prof. Code § 17500**

21 “California’s False Advertising Law makes it unlawful for any person to ‘induce the
22 public to enter into any obligation’ based on a statement that is ‘untrue or misleading, and
23 which is known, or which by the exercise of reasonable care should be known, to be
24 untrue or misleading.” Davis v. HSBC Bank Nevada, N.A., 691 F.3d 1152, 1161 (9th Cir.
25 2012) (quoting Cal. Bus. & Prof. Code § 17500). “Whether an advertisement is
26 ‘misleading’ must be judged by the effect it would have on a reasonable consumer. . . .
27 In applying this test, we are mindful that whether a business practice is deceptive will
28 usually be a question of fact not appropriate for decision on a motion to dismiss.” *Id.* at

1 1161–62 (citations and internal quotation marks omitted).

2 Plaintiff sufficiently alleges—at least—false statements of fact regarding an
3 association with GoDaddy. Compl. ¶¶ 30–31, 40. Defendants Usman Anis’s and SVG’s
4 motion to dismiss plaintiff’s false advertising claim under §17500 is therefore DENIED.

5 **7. California Common Law Trademark Infringement**

6 The parties agree this claim survives or fails for the same reasons as plaintiff’s
7 trademark infringement claim, addressed above, as it requires proof of the same
8 elements. Dkt. 30 at 16; Dkt. 36 at 16; Dkt. 39 at 5. The court agrees. Defendants
9 Usman Anis’s and SVG’s motion to dismiss plaintiff’s common law trademark
10 infringement claim is therefore DENIED.

11 **8. Intentional Interference With Prospective Economic Advantage**

12 The elements of intentional interference with prospective economic advantage are
13 “(1) an economic relationship between the plaintiff and another, containing a probable
14 future economic benefit or advantage to plaintiff, (2) defendant’s knowledge of the
15 existence of the relationship, (3) that defendant intentionally engaged in acts or conduct
16 designed to interfere with or disrupt the relationship, (4) actual disruption, and
17 (5) damage to the plaintiff as a result of defendant’s acts.” Della Penna v. Toyota Motor
18 Sales, U.S.A., Inc., 11 Cal. 4th 376, 380 n.1 (1995) (internal quotation marks omitted).

19 The sixth element (6) requires “that the defendant not only knowingly interfered with the
20 plaintiff’s expectancy, but engaged in conduct that was wrongful by some legal measure
21 other than the fact of interference itself.” Id. at 393.

22 GoDaddy alleges that it provides domain name registration services (Compl.
23 ¶¶ 18–19), and services to facilitate the use of those domains once registered, like web
24 design and search optimization (id. ¶ 20). GoDaddy alleges that defendants solicit
25 business only for the second category of services. Id. ¶¶ 3–4.

26 The first element of the claim requires pleading “an existing economic relationship
27 or one ‘containing the probability of future economic benefit.’” Transcription Commc’ns
28 Corp. v. John Muir Health, 2009 WL 666943, at *10 (N.D. Cal. Mar. 13, 2009) (quoting

1 Acculmage Diagnostics Corp v. Terarecon, Inc., 260 F. Supp. 2d 941, 956 (N.D. Cal.
2 2003)). “California state law requires ‘proof that it is reasonably probable that the lost
3 economic advantage would have been realized but for the defendant’s interference.’” Id.
4 (quoting Youst v. Longo, 43 Cal. 3d 64, 71 (1987)); Youst, 43 Cal. 3d at 72 (plaintiff must
5 “show a probability of the prospective advantage, that is, that plaintiff would have
6 benefited economically but for the interference”).

7 GoDaddy likely adequately pleads that it has existing or probable economic
8 relationships for domain name registration services. For example, it describes its
9 response to spamming campaigns, where it wrote that “GoDaddy has neither provided
10 nor shared any customer data with [the spammers]. Instead, they pulled contact
11 information from the public WHOIS database.” Compl. ¶ 34. That public WHOIS
12 information would relate to registration services, but not GoDaddy’s other services. See,
13 e.g., id., Ex. R. Plaintiff elsewhere refers to spam emails sent to “GoDaddy customers,”
14 although it does not specify the GoDaddy services those customers contracted for. Id.
15 ¶ 39. However, GoDaddy does not identify any contracts it has, or other reasons to
16 anticipate economic advantage, relating to any services other than domain registration—
17 including with respect to any services that compete with defendants.

18 The second element requires GoDaddy to plead “knowledge by the defendant of
19 the relationship with which the interference occurred.” Transcription Commc’ns Corp.,
20 2009 WL 666943, at *10. The Ninth Circuit has stated that “[w]hen the defendant
21 performs the act that causes the interference, the defendant need not know exactly who
22 is a party to the contract, so long as he knows he is interfering with a contractual
23 relationship.” Altera Corp. v. Clear Logic, Inc., 424 F.3d 1079, 1092 (9th Cir. 2005). In
24 holding the same, the California Supreme Court relied upon the Restatement Second of
25 Torts: “conduct must be intended to affect the contract of a specific person. It is not
26 enough that one has been prevented from obtaining performance of a contract as a result
27 of the actor’s conduct. . . . Only when the actor’s conduct is intended to affect a specific
28 person is the actor subject to liability under this rule.” Ramona Manor Convalescent

1 Hosp. v. Care Enterprises, 177 Cal. App. 3d 1120, 1133 (1986) (citing Rest. 2d Torts,
2 § 766, com. p). In Ramona Manor Convalescent Hosp., an action “made with the
3 knowledge that such action would frustrate the legitimate contractual expectations of a
4 specific, albeit unnamed” person was sufficient to incur liability. In sum, the defendant
5 must know of a specific contractual subject matter that would be interfered with, although
6 it need not know who specifically will be harmed by its interference with that relationship.
7 See, e.g., id.; Sebastian Int’l, Inc. v. Russolillo, 162 F. Supp. 2d 1198, 1204 (C.D. Cal.
8 2001) (“If a potential defendant was completely unaware of contractual relations with a
9 third party, then it would be impossible to infer any intent to interfere on the defendant’s
10 part. However, such intent can certainly be inferred if the defendant knows that
11 contractual relations with a third party exist, but does not know the specific identity of the
12 contractual party.”).

13 Plaintiff alleges that defendants knew of GoDaddy’s relationships with customers
14 for domain registration services through querying the public WHOIS database. Compl.
15 ¶ 34, Ex. R. GoDaddy fails to allege that any defendant knew of contracts or other
16 “reasonably probable” prospective economic relationships for other services.

17 The third element requires GoDaddy to plead “acts by defendant designed to
18 disrupt the relationship.” Transcription Commc’ns Corp., 2009 WL 666943, at *11
19 (quoting Accuimage Diagnostics Corp., 260 F. Supp. 2d at 956). “California law clearly
20 establishes an intent requirement for this element.” Id. (citing Korea Supply Co. v.
21 Lockheed Martin Corp., 29 Cal. 4th 1134, 1153 (2003)). Substantial certainty is an
22 alternative to pleading intent—“a plaintiff may alternately plead that the defendant knew
23 that the interference was certain or substantially certain to occur as a result of its
24 action.” Id.

25 GoDaddy argues that its complaint “is replete with allegations of intentional acts
26 performed by all Defendants to disrupt GoDaddy’s relationship with its customers.” Dkt.
27 36 at 17. But “intentional acts” is not the standard. California requires either specific
28 intent or “knowledge that its actions were certain or substantially certain to interfere with

1 plaintiff's business expectancy." Korea Supply Co., 29 Cal. 4th at 1166. Regarding
2 GoDaddy's domain registration services, GoDaddy does not allege and the complaint
3 does not lead to a reasonable inference that defendants had the intent or knowledge that
4 their actions would interfere with those contracts. Regarding GoDaddy's website design
5 services—assuming GoDaddy were to adequately allege probable future economic
6 benefit from them—GoDaddy's allegations satisfy this element. Specifically, GoDaddy
7 alleges that defendants' agents represented to customers that they were a subsidiary of
8 GoDaddy. That intentional act makes it sufficiently clear that defendants knew they were
9 soliciting customers who were seeking to contract with GoDaddy.

10 The fourth and fifth elements require plaintiff to plead "actual disruption" and
11 "damages proximately caused by the acts of the defendant." Accuimage Diagnostics
12 Corp., 260 F. Supp. 2d at 956. For the closely related tort of interference with contract,
13 the California Supreme Court permits "liability where the defendant does not literally
14 induce a breach of contract, but makes plaintiff's performance of the contract 'more
15 expensive or burdensome[.]'" Ramona Manor Convalescent Hosp., 177 Cal. App. 3d at
16 1131. Plaintiffs can offer credible evidence that defendants' intentional actions resulted
17 in greater expense or burden on the performance of its contractual obligations with third
18 parties. Sebastian Int'l, Inc., 162 F. Supp. 2d at 1205.

19 GoDaddy's complaint describes in some detail the adverse impact defendants'
20 actions have had on its relationships with customers, although it is unclear what services
21 these customers obtained or sought from GoDaddy. Compl. ¶¶ 34, 46–47, 50–51.

22 Sixth, plaintiff must allege that defendant "engaged in conduct that was wrongful
23 by some legal measure other than the fact of interference itself." Della Penna, 11 Cal.
24 4th at 393. Given the other related causes of action, GoDaddy satisfies this element.

25 Put simply, GoDaddy does not identify any particular prospective economic
26 relationship that defendants knew about and actually disrupted. Plaintiff instead alleges
27 general reputational harm, unmoored from disrupted relationships regarding the types of
28 services defendants offer. GoDaddy confirmed at oral argument that its claim is based

1 on defendants' interference with GoDaddy's services other than domain registration; but
2 GoDaddy does not allege that it lost (or even has) any particular relationships for services
3 that defendants provide, much less ones that defendants knew of or actually interfered
4 with.

5 Defendants Usman Anis's and SVG's motion to dismiss plaintiff's intentional
6 interference with prospective economic advantage claim is therefore GRANTED WITH
7 LEAVE TO AMEND.

8 **9. Accounting**

9 An accounting is supported when any of the following conditions are met in a
10 Lanham Act claim: "if the defendant is unjustly enriched, if the plaintiff sustained
11 damages from the infringement, or if the accounting is necessary to deter a willful
12 infringer from doing so again." George Basch Co. v. Blue Coral, Inc., 968 F.2d 1532,
13 1537 (2d Cir. 1992) (citations and internal quotation marks omitted). Taking plaintiff's
14 pleadings as true, the complaint satisfies each of the three justifications for an
15 accounting.

16 Defendants Usman Anis's and SVG's motion to dismiss plaintiff's request for an
17 accounting is therefore DENIED.

18 **10. Injunctive Relief**

19 Defendants move to court to dismiss "Plaintiff's claim for injunctive relief" because
20 it "is not an independent cause of action." Dkt. 30 at 19. The court understands plaintiff's
21 complaint to seek injunctive relief as a remedy, not as a cause of action. Compl. at
22 41:18–42:15. Defendants Usman Anis's and SVG's motion to dismiss plaintiff's claim for
23 injunctive relief is therefore DENIED AS MOOT.

24 Defendants' accompanying request for judicial notice (Dkt. 31) is also DENIED.
25 Defendants request the court take judicial notice of a document pursuant to Federal Rule
26 of Evidence 201. Dkt. 31. Defendants describe the exhibit as a printout from the
27 California Secretary of State website that would show one of the entities plaintiff alleges
28 defendants control, AppDesignAgency, LLC, is in "suspended" status. However, no

1 exhibit was attached to its submission, nor did counsel bring a copy of the document to
2 the hearing. The request is to “take judicial notice of the following documents attached
3 as Exhibit 1.” Because there is no such document, the request is DENIED AS MOOT.

4 **D. Motion to Strike**

5 Defendants move to strike certain portions of and exhibits to plaintiff’s complaint.
6 Dkt. 30 at 19–24. Rule 12(f) provides that the “court may strike from a pleading an
7 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.”
8 Fed. R. Civ. P. 12. The function of a motion to strike is to “avoid the expenditure of time
9 and money that must arise from litigating spurious issues by dispensing with those issues
10 prior to trial.” Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
11 (citation and internal quotation marks omitted). To determine whether to grant a motion
12 to strike under Rule 12(f), the court considers whether the matter the moving party seeks
13 to have stricken is (1) an insufficient defense; (2) redundant; (3) immaterial;
14 (4) impertinent; or (5) scandalous. Id. at 973–74.

15 Motions to strike are not favored and “should not be granted unless it is clear that
16 the matter to be stricken could have no possible bearing on the subject matter of the
17 litigation.” Colaprico v. Sun Microsystem, Inc., 758 F. Supp. 1335, 1339 (N.D. Cal. 1991).
18 When a court considers a motion to strike, it “must view the pleadings in a light most
19 favorable to the pleading party.” In re 2TheMart.com, Inc. Sec. Litig., 114 F Supp. 2d
20 955, 965 (C.D. Cal. 2000). A court must deny the motion to strike if there is any doubt
21 whether the allegations in the pleadings might be relevant in the action. Id.

22 The materials defendants seek to strike could possibly have a bearing on the
23 subject matter of the litigation. The portions defendants seek to strike are background
24 materials, particularly when read in light of the conduct alleged throughout the complaint.
25 Defendants Usman Anis’s and SVG’s motion to strike is therefore DENIED.

26 **E. Preliminary Injunction**

27 Federal Rule of Civil Procedure 65 provides federal courts with the authority to
28 issue temporary restraining orders and preliminary injunctions. Fed. R. Civ. P. 65(a)–(b).

1 Generally, the purpose of a preliminary injunction is to preserve the status quo and the
 2 rights of the parties until a final judgment on the merits can be rendered. See U.S.
 3 Philips Corp. v. KBC Bank N.V., 590 F.3d 1091, 1094 (9th Cir. 2010).

4 A plaintiff seeking a preliminary injunction can satisfy either of two tests. His first
 5 option is to establish that (1) he is likely to succeed on the merits; (2) he is likely to suffer
 6 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in his
 7 favor; and (4) an injunction is in the public interest. Winter v. Nat. Res. Def. Council, Inc.,
 8 555 U.S. 7, 20 (2008).

9 Alternatively, the plaintiff's second option is to show that (1) "serious questions
 10 going to the merits were raised"; (2) "the balance of hardships tips sharply in the plaintiff's
 11 favor"; (3) "there is a likelihood of irreparable injury"; and (4) "the injunction is in the public
 12 interest." Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1135 (9th Cir. 2011).

13 This is sometimes referred to as the "sliding scale approach." Showing "serious
 14 questions going to the merits" requires a plaintiff to demonstrate a "substantial case for
 15 relief on the merits." Leiva-Perez v. Holder, 640 F.3d 962, 967 (9th Cir. 2011). A
 16 "serious question" is one on which the plaintiff "has a fair chance of success on the
 17 merits." Sierra On-Line, Inc. v. Phoenix Software, Inc., 739 F.2d 1415, 1421 (9th Cir.
 18 1984).

19 GoDaddy's complaint is long and detailed, and its preliminary injunction motion
 20 and accompanying declarations establish sufficient evidence to support a preliminary
 21 injunction. Although GoDaddy has presented substantially more evidence about a
 22 number of Usman Anis's and SVG's activities, the court summarizes some of the relevant
 23 information regarding g0daddydesigns.com in particular:

- 24 • The domain has been registered to Fredrick King (Dkt. 37-2 ¶ 44; Dkt. 37-1
 25 ¶ 17) and hosted by Usman Anis (Dkt. 37-1 ¶ 18, Ex. F).
- 26 • Usman Anis has paid for the domain. Dkt. 37-2 ¶ 40; Dkt. 37-1 ¶¶ 14 & 16,
 27 Exs. C & E.
- 28 • The domain is tied to both the Fremont Address (Dkt. 37-2 ¶ 44; Dkt. 37-1

¶¶ 14 & 16, Exs. C & E) and the Sunnyvale Address (Dkt. 37-1, Ex. B).

- The domain is tied to a commonly-used phone number, 800-589-2951. Dkt. 37-1, Ex. B.
- The domain has been the source of customer spam or confusing emails to customers. Dkt. 37-1, Ex. B.
- A customer has contacted GoDaddy regarding confusing emails sent from the domain. Dkt. 37-1 ¶ 13, Ex. B.

1. Likelihood of Success or Serious Questions Going to the Merits

Defendants did not dispute in their papers or at oral argument that GoDaddy is likely to succeed on the merits against some defendant; they instead argue that GoDaddy is unlikely to succeed on the merits against these particular defendants. Much of plaintiff's motion is dedicated to explicating its factual investigation into the ownership and interrelated control of the Infringing Domains. Dkt. 37 at 4–10.

Plaintiff has shown serious questions going to the merits given: (1) regarding the substantive law, it is undisputed that plaintiff is likely to succeed on the merits against the correct defendant; (2) plaintiff has demonstrated competent evidence demonstrating Usman Anis has registered or owns certain of the Infringing Domains; and (3) plaintiff has proffered evidence demonstrating a likelihood that many more of the domains at issue are part of a common plan or scheme with the domains tied to Usman Anis and SVG.

2. Balance of Hardships

Under the “sliding scale” approach, plaintiff must show that the balance of hardships tips sharply in its favor if it only shows “serious questions going to the merits” rather than a likelihood of success on the merits.

Defendants cannot claim any hardship from an injunction that would prevent them from using GoDaddy's trademarks, especially considering they have no current right to do so (they do not allege to have a contractual right or any other right). In fact, defendants deny any participation in the alleged infringing activities at all. GoDaddy, however, faces strong, cognizable hardship. As discussed in the irreparable harm

1 analysis below, GoDaddy is suffering ongoing reputational harm, loss of goodwill, and
2 loss of control over their federally-protected marks.

3 **3. Irreparable Harm**

4 Reputational harm and loss of goodwill can constitute irreparable harm. 11A
5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2948.1 (3d ed.
6 1998) (“Injury to reputation or goodwill is not easily measurable in monetary terms, and
7 so often is viewed as irreparable.”) (collecting cases); American Trucking Associations,
8 Inc. v. City of Los Angeles, 559 F.3d 1046 (9th Cir. 2009) (potential loss of customer
9 goodwill); Stuhlberg Int’l Sales Co., Inc. v. John D. Brush and Co., Inc., 240 F.3d 832,
10 841 (9th Cir. 2001) (evidence of loss of customer goodwill supports finding of irreparable
11 harm).

12 The district court must base a finding of likelihood if irreparable harm on evidence
13 in the record. In the Ninth Circuit, an employee declaration “reporting numerous and
14 persistent complaints from would-be customers who received robo-calls for what they
15 believed were [plaintiff’s] products” and “emails and social media posts from consumers”
16 is sufficient to support a finding of a threat to plaintiff’s “reputation and goodwill.” Life
17 Alert Emergency Response, Inc. v. LifeWatch, Inc., 601 F. App’x 469, 473–74 (9th Cir.
18 2015). Because reputational harm and loss of goodwill “constitutes irreparable harm, as
19 it is not readily compensable,” such a showing is sufficient to establish irreparable harm
20 for a preliminary injunction. Id.

21 Plaintiff has made the necessary showing. Plaintiff has submitted a declaration
22 attesting that GoDaddy has received numerous customer complaints in response to
23 communications originating from domains at issue in this case. Dkt. 37 at 20 (citing
24 Becerra Decl. ¶¶ 34–43, Exs. O–S).

25 **4. Balance of Equities**

26 The balance of the equities favors GoDaddy. Contrary to defendants’ arguments,
27 GoDaddy’s size does not preclude it from suffering irreparable reputational harm.
28 Furthermore, the ongoing infringing use of GoDaddy’s trademarks to promote deceptive

1 and annoying business practices is causing real, public harm to GoDaddy.
2 Defendants respond by denying the allegations, so an injunction would not prevent them
3 from any ongoing legitimate business practice. Second, to the extent they are using
4 GoDaddy's trademarks, an injunction preventing them from continuing illegal activities is
5 not inequitable. Defendants expressed concern at oral argument that the injunction
6 would be enforced against them even if they did not violate it; that concern is not
7 sufficient to tip the balance of equities against GoDaddy.

8 **5. Public Interest**

9 The public has a strong interest in protecting trademarks. If plaintiff's allegations
10 are true, defendants are serial infringers who have so far evaded attempts to police their
11 infringing conduct by pleading ignorance. It is in the public's interest to stop the conduct.
12 It is against the public's interest to enjoin a party from infringing trademarks when he has
13 not in fact been infringing them, but a narrowly-tailored injunction can ease that concern
14 by enjoining only illegal conduct.

15 Plaintiff's motion for a preliminary injunction is therefore GRANTED with respect to
16 defendants Usman Anis and SVG, in accordance with the terms specified below. The
17 court's ruling is DEFERRED with respect to Salman Ghaznavi, which will be determined
18 on the papers submitted by the parties concerning personal jurisdiction.

19 **F. Evidentiary Objections**

20 Plaintiff and defendants Usman Anis and SVG have filed a number of evidentiary
21 objections and materials related to evidentiary objections.

22 First, Local Rule 7-3(a) governs opposition briefs and provides, in relevant part:
23 "Any evidentiary and procedural objections to the motion must be contained within the
24 brief or memorandum. Pursuant to Civil L.R. 7-4(b), such brief or memorandum may not
25 exceed 25 pages of text." Rules 7-3(c) & (d) govern replies and supplementary
26 materials, respectively. Courts in this district regularly strike separately-filed evidentiary
27 objections and responses for violating Local Rule 7-3. Hennighan v. Insphere Ins. Sols.,
28 Inc., 38 F. Supp. 3d 1083, 1095 (N.D. Cal. 2014), aff'd, 650 F. App'x 500 (9th Cir. 2016);

1 Beauperthuy v. 24 Hour Fitness USA, Inc., 772 F. Supp. 2d 1111, 1119 (N.D. Cal. 2011);
 2 see also Coleman v. Kaiser Permanente, No. 12-CV-02668-JST, 2014 WL 2886293, at
 3 *3 (N.D. Cal. June 25, 2014); Ashley v. City & Cty. of San Francisco, No. 12-CV-00045-
 4 JST, 2014 WL 4627736, at *14 (N.D. Cal. Feb. 4, 2014).

5 Second, “the Federal Rules of Evidence do not strictly apply to preliminary
 6 injunction proceedings.” Disney Enterprises, Inc. v. VidAngel, Inc., 224 F. Supp. 3d 957,
 7 966 (C.D. Cal. 2016), aff’d, 869 F.3d 848 (9th Cir. 2017) (citing Republic of the
 8 Philippines v. Marcos, 862 F.2d 1355, 1363 (9th Cir. 1988) (en banc)); Herb Reed
 9 Enterprises, LLC v. Fla. Entm’t Mgmt., Inc., 736 F.3d 1239, 1250 n.5 (9th Cir. 2013);
 10 Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1394 (9th Cir. 1984) (citing 11C Charles Alan
 11 Wright & Arthur R. Miller, Federal Practice and Procedure § 2949 (1973)). For example,
 12 a district court may “consider hearsay in deciding whether to issue a preliminary
 13 injunction.” Johnson v. Couturier, 572 F.3d 1067, 1083 (9th Cir. 2009) (citations omitted).
 14 “While district courts may consider inadmissible evidence in the context of a preliminary
 15 injunction, this does not mean that evidentiary issues have no relevance to this
 16 proceeding. Such issues, however, properly go to weight rather than admissibility.”
 17 Disney Enterprises, 224 F. Supp. 3d at 966 (citation omitted); 11A Charles Alan Wright &
 18 Arthur R. Miller, Federal Practice and Procedure § 2949 (3d ed. 1998).

19 Accordingly, the parties’ separate filings concerning evidentiary objections (Dkts.
 20 41, 42, 46, 47 & 48) violate Civil Local rule 7-3 and are hereby STRICKEN.³ Plaintiff’s
 21 evidentiary objections to Usman Anis’s declaration (Dkt. 48 at 3; Dkt. 51 at 15) are
 22 OVERRULED. In light of the relaxed evidentiary standard for preliminary injunction
 23 proceedings, the court need not rule on admissibility; the court has considered the likely
 24 admissibility of the evidence when assessing whether to order the preliminary injunction.
 25 See Disney Enterprises, 224 F. Supp. 3d at 966 n.1.

26
 27
 28 ³ Even if the objections were not stricken, the court need not rule on admissibility given
 that “the Federal Rules of Evidence do not strictly apply to preliminary injunction
 proceedings.” Disney Enterprises, Inc., 224 F. Supp. 3d at 966.

1 **G. PRELIMINARY INJUNCTIVE RELIEF**

2 Pursuant to Rule 65 of the Federal Rules of Civil Procedure, IT IS HEREBY
3 ORDERED that:

4 1. Defendants Usman Anis and SVG, as well as their officers, agents, servants,
5 employees, members, and managers, are enjoined from the following:

6 a. Advertising, marketing, distributing, selling, sending emails, text messages,
7 making phone calls, or publishing, including the publication of any webpage
8 or electronic media, any materials bearing a GoDaddy trademark or any
9 similar representations or renderings of GoDaddy trademarks, including any
10 kind of distribution on any social media displaying any GoDaddy trademark,
11 or similar representations or renderings thereof;

12 b. Operating, registering, continuing to use, continuing to display GoDaddy
13 trademarks upon, siphoning traffic from, generating sales, leads, or internet
14 traffic from, or otherwise continuing to utilize in any manner, any domain
15 containing the words “go” and “daddy,” or domains using a combination of
16 characters creating a confusingly similar display, for example containing
17 “g0” rather than “go”;

18 c. Destroying, moving, concealing, transferring, damaging, or failing to
19 preserve any data, media, documents, materials, or information of any kind
20 that contains any representation or information related to GoDaddy
21 trademarks;

22 d. Concealing, altering, injuring, destroying, or failing to preserve in their
23 present form, corporate books and records, including any and all financial
24 records related to any use, misuse, or reference to any GoDaddy
25 trademarks including, but not limited to, any and all sales made in
26 connection with or reference to GoDaddy trademarks;

27 ///

28 ///

1 IT IS FURTHER ORDERED that pursuant to Rule 65(c), Plaintiff shall by March
2 23, 2018, post a bond in the total amount of \$5,000 as a condition to entry of this
3 preliminary injunction.

4 **IT IS SO ORDERED.**

5 Dated: February 28, 2018



6
7 PHYLLIS J. HAMILTON
8 United States District Judge
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United States District Court
Northern District of California