

1 PETER K. STRIS (SBN 216226)  
 peter.stris@strismaher.com  
 2 BRENDAN S. MAHER (SBN 217043)  
 brendan.maher@strismaher.com  
 3 ELIZABETH R. BRANNEN (SBN 226234)  
 elizabeth.brannen@strismaher.com  
 4 VICTOR O'CONNELL (SBN 288094)  
 victor.oconnell@strismaher.com  
 5 STRIS & MAHER LLP  
 725 South Figueroa Street, Suite 1830  
 6 Los Angeles, CA 90017  
 Telephone: (213) 995-6800  
 7 Facsimile: (213) 261-0299

8 *Attorneys for Defendant*  
 McDonald's Corporation  
 9

10 **UNITED STATES DISTRICT COURT**  
 11 **CENTRAL DISTRICT OF CALIFORNIA**  
 12 **WESTERN DIVISION**

13 JADE BERREAU, as administrator of  
 the Estate of Dashiell Snow,

14 Plaintiff,

15 v.

16 MCDONALD'S CORPORATION, and  
 17 DOES 1-10, inclusive,

18 Defendants.

Case No. 2:16-CV-07394 FMO(ASx)

**REPLY IN SUPPORT OF  
 DEFENDANT'S MOTION TO  
 DISMISS FOR LACK OF  
 PERSONAL JURISDICTION AND  
 IMPROPER VENUE PURSUANT  
 TO FEDERAL RULES OF CIVIL  
 PROCEDURE 12(B)(2) AND 12(B)(3)**

Date: January 26, 2017  
 Time: 10:00 a.m.  
 Judge: Hon. Fernando M. Olguin

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

ARGUMENT ..... 1

    I.    This Court Lacks Personal Jurisdiction ..... 1

    II.   Venue Is Improper In This Court..... 5

    III.  The Request For Jurisdictional Discovery Is Groundless..... 6

CONCLUSION..... 10

**TABLE OF AUTHORITIES**

**Cases**

1

2 **Cases**

3 *Am. W. Airlines, Inc. v. GPA Grp., Ltd.*,  
 4 877 F.2d 793 (9th Cir. 1989)..... 8

5 *Amoco Egypt Oil Co. v. Leonis Nav. Co., Inc.*,  
 6 1 F.3d 848 (9th Cir. 1993)..... 2

7 *AT&T Co. v. Compagnie Bruxelles Lambert*,  
 8 94 F.3d 586, 591 (9th Cir. 1996)..... 9

9 *Barantsevich v. VTB Bank*,  
 10 954 F. Supp. 2d 972 (C.D. Cal. 2013)..... 10

11 *Boschetto v. Hansing*,  
 12 539 F.3d 1011 (9th Cir. 2008)..... 7

13 *Calix Networks, Inc. v. Wi-Lan, Inc.*,  
 14 No. 3:09-CV-06038, 2010 WL 3515759  
 15 (N.D. Cal. Sept. 8, 2010)..... 7

16 *Calvert v. Huckins*,  
 17 875 F. Supp. 674, 678 (E.D. Cal. 1995)..... 9, 10

18 *CarMax Auto Superstores California LLC v.*  
 19 *Hernandez*,  
 20 94 F. Supp. 3d 1078 (C.D. Cal. 2015)..... 6

21 *Daimler AG v. Bauman*,  
 22 134 S. Ct. 746 (2014) ..... 2, 8

23 *Doe v. Unocal Corp.*,  
 24 248 F.3d 915, 927 (9th Cir. 2001)..... 9, 10

25 *Dunning v. Quander*,  
 26 508 F.3d 8 (D.C. Cir. 2007) ..... 7

27 *Edwards v. Toys “R” Us*,  
 28 527 F. Supp. 2d 1197 (C.D. Cal. 2007)..... 5

*Goodyear Dunlop Tires Operations, S.A. v. Brown*,  
 131 S. Ct. 2846 (2011) ..... 2

*Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*,  
 328 F.3d 1122 (9th Cir. 2003)..... 7

*Helicopteros Nacionales De Columbia, S.A. v. Hall*,  
 466 U.S. 408 (1984) ..... 3

*In re Benham*,  
 No. 2:13-CV-00205, 2014 WL 4543268  
 (C.D. Cal. Sept. 12, 2014)..... 6

1 *Johnson v. Mitchell*,  
 No. 2:10-CV-01968, 2012 WL 1657643  
 2 (E.D. Cal. May 10, 2012) ..... 7

3 *Kramer Motors, Inc. v. British Leyland, Ltd.*,  
 628 F.2d 1175, 1177 (9th Cir. 1980)..... 9, 10

4  
 5 *Laub v. U.S. Dept. of the Interior*,  
 342 F.3d 1080 (9th Cir. 2003)..... 7

6 *Lightfoot v. Cendant Mortg. Corp.*,  
 769 F.3d 681 (9th Cir. 2014)..... 2

7  
 8 *Mackovich v. U.S. Government*,  
 No. 1:06-CV-00422, 2008 WL 2053978  
 (E.D. Cal. May 13, 2008) ..... 7

9  
 10 *Martinez v. Manheim Central California*,  
 No. 1:10-CV-01511, 2011 WL 1466684  
 (E.D. Cal. Apr. 18, 2011) ..... 10

11  
 12 *Orchid Biosciences, Inc. v. St. Louis University*,  
 198 F.R.D. 670 (S.D. Cal. 2001)..... 8

13 *Panterra Networks, Inc. v. Convergence Works, LLC*,  
 No. 5:09-CV-01759, 2009 WL 4049956 (N.D. Cal.  
 14 Nov. 20, 2009)..... 10

15 *Pebble Beach Co. v. Caddy*,  
 453 F.3d 1151 (9th Cir. 2006)..... 6

16  
 17 *Terracom v. Valley Nat. Bank*,  
 49 F.3d 555 (9th Cir. 1995)..... 1, 7

18 *Walden v. Fiore*,  
 134 S. Ct. 1115 (2014) ..... 3

19  
 20 *Wells Fargo & Co. v. Wells Fargo Express Co.*,  
 556 F.2d 406 (9th Cir. 1977)..... 8

21 *Williams v. Canon, Inc.*,  
 432 F. Supp. 376, 380 (C.D. Cal. 1977)..... 9

22  
 23  
 24  
 25  
 26  
 27  
 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## INTRODUCTION

This case must be dismissed because it was filed in the wrong court. *See* McDonald’s Corporation’s (“McDonald’s”) Motion (ECF No. 14-1, “Mot.”) at 3-8 (arguing that this Court lacks personal jurisdiction over McDonald’s); *id.* at 9-10 (arguing that venue is improper in this District).

Plaintiff Jade Berreau does not even *attempt* to establish that this Court may properly exercise personal jurisdiction over McDonald’s. *See, e.g.,* Opposition (ECF No. 23, “Opp.”) at 10 (“Plaintiff does not argue that she can establish personal jurisdiction for the purposes of this motion.”). And she writes literally nothing about venue, thereby conceding that it too is improper.

All that remains for this Court to evaluate is Plaintiff’s (procedurally improper) request for jurisdictional discovery. The Court should deny that request because Plaintiff has not articulated *any* colorable basis on which personal jurisdiction and venue would be satisfied in this case. Nor could she. McDonald’s has submitted uncontroverted evidence making clear that there are no facts to discover that would allow Plaintiff’s claims to proceed in this Court. Under such circumstances, courts in this Circuit (and elsewhere) routinely grant motions to dismiss without discovery. *See, e.g., Terracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995) (affirming dismissal and denial of jurisdictional discovery where plaintiff failed to demonstrate how it would allow contradiction of defendant’s affidavits).

That is what should happen here: dismissal with prejudice.

## ARGUMENT

### **I. This Court Lacks Personal Jurisdiction.**

Plaintiff acknowledges that she bears the burden to establish that jurisdiction is proper and must make a *prima facie* showing of jurisdictional facts. *Opp.* at 9. She acknowledges that personal jurisdiction may be either “general” or “specific,” *Opp.* at

1 8, but misunderstands what the law requires to establish either. And she identifies no  
2 facts which might be discovered that could permit her to defeat McDonald’s motion.

3 *General jurisdiction.* The Supreme Court’s decision in *Daimler* specified that  
4 there are only two places where a corporation is at home and therefore subject to general  
5 jurisdiction: its place of incorporation and its principal place of business. Mot. at 5  
6 (quoting *Lightfoot v. Cendant Mortg. Corp.*, 769 F.3d 681, 689 (9th Cir. 2014) (citing  
7 *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014)). *Daimler* therefore precludes the  
8 exercise of general jurisdiction over McDonald’s (a Delaware corporation  
9 headquartered in Illinois), as well as McDonald’s USA, LLC (a Delaware limited  
10 liability company headquartered in Illinois). See Mot. at 1 & n.1 (citing Declaration of  
11 David Vilkama (“Vilkama Decl.”), Ex. A at 1, Ex. B). The Opposition fails altogether  
12 to respond to this argument. That is because there simply is no response.<sup>1</sup>

13 *Specific jurisdiction.* Plaintiff correctly acknowledges that specific jurisdiction  
14 is permissible only when a cause of action arises out of a defendant’s purposeful  
15 contacts with the forum. Opp. at 9. See also Mot. at 3 (citing *Goodyear Dunlop Tires*  
16 *Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011); *Walden v. Fiore*, 134 S. Ct.  
17 1115, 1121-23 (2014); *Helicopteros Nacionales De Columbia, S.A. v. Hall*, 466 U.S.  
18 408, 414 n.8 (1984)). But Plaintiff does not (and cannot) identify a single relevant act  
19 or omission of McDonald’s (or McDonald’s USA, LLC) that allegedly took place in or  
20 was directed to California. This failure precludes the exercise of specific jurisdiction.

21  
22 \_\_\_\_\_  
23 <sup>1</sup> As noted in McDonald’s Motion, Supreme Court jurisprudence would permit the  
24 exercise of general jurisdiction in truly exceptional circumstances (such as a company  
25 temporarily relocating its headquarters during a war). See Mot. at 5, n.3. Of course,  
26 Plaintiff does not suggest that McDonald’s alleged contacts with California would rise  
27 to the level of such exceptional circumstances. They would not. Indeed, even before  
28 *Goodyear* and *Daimler*, both the Supreme Court and the Ninth Circuit  
“regularly . . . declined to find general jurisdiction even where the contacts were quite  
extensive.” *Amoco Egypt Oil Co. v. Leonis Nav. Co., Inc.*, 1 F.3d 848, 851 n.3 (9th Cir.  
1993) (citations omitted).

1 Some of the additional “facts” Plaintiff identifies show the *opposite* of a  
2 California connection. To wit, Plaintiff identifies foreign language websites. Patterson  
3 Decl. ¶ 11 & Ex. J. She asserts without support that these are *McDonald’s* websites.<sup>2</sup>  
4 But even if they were websites operated by McDonald’s (rather than third parties, or  
5 various foreign subsidiaries or affiliates), they show activity directed outside of the  
6 United States. Plaintiff characterizes them as showcasing graffiti décor (not, by the  
7 way, the allegedly copied image) “*to franchisees throughout Europe and Asia.*” *Id.*  
8 (emphasis added).

9 And the alleged “facts” about McDonald’s California contacts have nothing  
10 whatsoever to do with this case. For example: Plaintiff’s suggestion that an Illinois-  
11 based McDonald’s subsidiary enters into franchise agreements that govern the use of  
12 intellectual property and requires franchisees to adhere to intellectual property and  
13 design standards in general, Opp. at 7-8, has no bearing on whether McDonald’s (or  
14 even that subsidiary) *had anything to do with adoption of the specific décor or artwork*  
15 *about which Plaintiff complains.* The uncontroverted evidence is that they did not.

16 Ultimately, there is no dispute—and Plaintiff has not identified any basis to  
17 question—the following facts, which are dispositive against the exercise of specific  
18 jurisdiction:

19 1. Ms. Berreau is a New York resident who asserts copyright, Lanham Act,  
20 unfair competition, and negligence claims against McDonald’s on the basis that  
21 McDonald’s allegedly appropriated graffiti art painted by her deceased partner (a) on a

22 \_\_\_\_\_  
23 <sup>2</sup> In fact, this assertion is unfounded, because McDonald’s Corporation is not the  
24 registrant of these domains. On their face, some reflect otherwise. *See, e.g.*, Ex. J at 2-  
25 4 (“Copyright McDonald’s Maroc”). And the publicly available domain information  
26 for each country registry—Morocco (.ma), Estonia (.ee), Lithuania (.lt), China (.cn),  
27 and the Czech Republic (.cz)—confirms that McDonald’s Corporation is not the  
28 registrant for any of these domains. Indeed, one (docplayer.cz) is registered to an  
unaffiliated third party. The registry for each country can be accessed and then searched  
from nonprofit Norid’s compilation site of top-level domain registries,  
<https://www.norid.no/no/domenenavnbasert/domreg>.

1 wall *in New York City* (b) into McDonald’s restaurants *located overseas*. Mot. at 2  
2 (citing Complaint, ECF No. 1, ¶¶ 2, 11, 18-19, 33).

3 2. No restaurants in California—or anywhere else in the United States—use  
4 the disputed décor. Mot. at 6-7 (citing Vilkama Decl. ¶ 4 (affirming that it is used only  
5 in McDonald’s restaurants located *outside* the United States)); *see also* Opp. at 2-3, 5.

6 3. Neither McDonald’s nor McDonald’s USA, LLC had any role in creating  
7 or approving the disputed décor for use in those restaurants. Mot. at 6-7 (citing Vilkama  
8 Decl. ¶ 5).

9 4. The one corporate location Plaintiff identifies in this District, an office in  
10 Long Beach, is an office of McDonald’s USA, LLC, not McDonald’s Corporation. And  
11 this McDonald’s USA, LLC office was not involved in creating or approving décor for  
12 any McDonald’s restaurants. Mot. at 8 (citing Vilkama Decl. ¶ 6).

13 Rather than arguing that she has made the requisite showing, Plaintiff ultimately  
14 concedes, correctly, that “for the purposes of this motion” she cannot establish personal  
15 jurisdiction. Opp. at 10. She has not and cannot. And although Plaintiff objects and  
16 purports to make a procedurally improper request for the Court to strike and not  
17 consider the evidence McDonald’s submitted via Mr. Vilkama’s declaration, there is  
18 simply no basis to do that. Opp. at 3, n.1.

19 *Plaintiff’s hollow attack on Mr. Vilkama’s Declaration.* Plaintiff objects that Mr.  
20 Vilkama “lacks foundation for his assertions.” *Id.* Not so. Mr. Vilkama has personal  
21 knowledge of the facts set forth in his declaration. The declaration provides the basis  
22 for his personal knowledge of those facts, and Plaintiff has identified no genuine reason  
23 to call that into question. Specifically, Mr. Vilkama affirms his familiarity with the  
24 creation and approval process for décor in McDonald’s restaurants by virtue of his  
25 position as the company’s Director of Global Retail Design and New Concepts.<sup>3</sup>

26

27 <sup>3</sup> Since the filing of the declaration, Mr. Vilkama has been promoted to the role of  
28 Senior Director, Creative Design.

1 This is adequate and entirely proper. *See, e.g., Edwards v. Toys “R” Us*, 527 F.  
2 Supp. 2d 1197, 1201-02 (C.D. Cal. 2007) (citing Ninth Circuit authorities recognizing  
3 that “[p]ersonal knowledge can be inferred from a declarant’s position within a  
4 company or business,” and overruling foundation objection because “[e]ach of the  
5 declarants occupies a position at Toys from which personal knowledge of the facts to  
6 which he testifies can be inferred,” and plaintiff “offered no evidence that rebuts the  
7 inference of personal knowledge flowing from [declarant’s] position”) (citations  
8 omitted).

9 None of the more specific representations Plaintiff says are missing, such as  
10 “who came up with the concept, how many restaurants use the infringing design,” and  
11 so forth, are necessary (or even relevant) to substantiate Mr. Vilkama’s personal  
12 knowledge that neither McDonald’s nor McDonald’s USA, LLC had a role in creating  
13 or approving the disputed décor, and that this décor is used solely outside the United  
14 States.

15 For purposes of this motion, McDonald’s has established these simple facts, and  
16 they should end the inquiry. Mot. at 7. These facts demonstrate the lack of any  
17 connection between Plaintiff’s allegations and either McDonald’s or California.  
18 Plaintiff has not identified any colorable basis to question McDonald’s “powerful”  
19 attestations. Opp. at 3. Specific jurisdiction is not merely “tenuous,” as Plaintiff  
20 recognizes. *Id.* It is utterly lacking.

## 21 **II. Venue Is Improper In This Court.**

22 Plaintiff also has not met her burden to show that venue is proper. Mot. at 9-10.  
23 The Opposition does not even try. The Court can, and should, deem improper venue  
24 conceded. *Cf., e.g., In re Benham*, No. 2:13-CV-00205, 2014 WL 4543268 at \*5 (C.D.  
25 Cal. Sept. 12, 2014). Nothing in the Opposition provides any basis remotely to suspect  
26 that any events or omissions giving rise to Plaintiff’s claim occurred in this District.  
27 They did not. Nor could venue be proper on some other basis.

28

1 **III. The Request For Jurisdictional Discovery Is Groundless.**

2 Rather than attempt to establish a basis for personal jurisdiction or venue,  
3 Plaintiff seeks jurisdictional discovery. Opp. at 2, 10-15. As an initial matter, that  
4 request is procedurally improper. Plaintiff has not filed a motion specifying the  
5 discovery she seeks or satisfied the motion-related prerequisites of this Court’s local  
6 rules. See L.R. 7-3. The Court could exercise discretion to deny the request on this basis  
7 alone. *CarMax Auto Superstores California LLC v. Hernandez*, 94 F. Supp. 3d 1078,  
8 1087-88 (C.D. Cal. 2015).

9 In any event, Plaintiff’s request is unwarranted. She has not identified anything  
10 she anticipates discovering that could or would contradict the evidence submitted by  
11 McDonald’s or otherwise provide an adequate basis for this Court to exercise  
12 jurisdiction. Under such circumstances, it is proper to refuse to exercise jurisdiction  
13 without permitting discovery. See *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1160  
14 (9th Cir. 2006) (Where ““a plaintiff’s claim of personal jurisdiction appears to be both  
15 attenuated and based on bare allegations in the face of specific denials made by the  
16 defendants, the Court need not permit even limited discovery.””) (quoting *Terracom v.*  
17 *Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995)); see also *Mackovich v. U.S.*  
18 *Government*, No. 1:06-CV-00422, 2008 WL 2053978, at \*1 (E.D. Cal. May 13, 2008)  
19 (denying discovery where plaintiff made “no showing that if further discovery were  
20 allowed, the outcome of the motion to dismiss would be affected.” (citing *Laub v. U.S.*  
21 *Dept. of the Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003)).

22 Put differently, courts routinely deny jurisdictional discovery when the request  
23 amounts to nothing more than a “fishing expedition.” *Johnson v. Mitchell*, No. 2:10-  
24 CV-01968, 2012 WL 1657643, at \*7 (E.D. Cal. May 10, 2012) (citation omitted); see  
25 also *Dunning v. Quander*, 508 F.3d 8, 10 (D.C. Cir. 2007) (affirming denial of Rule  
26 56(f) discovery request and explaining that without some reason to question the  
27 affiant’s veracity, plaintiff’s “desire to ‘test and elaborate’ affiants’ testimony falls  
28

1 short; her plea is too vague to *require* the district court to defer or deny dispositive  
2 action” (emphasis in original)). That is all Plaintiff is requesting, the opportunity to  
3 fish. Unlike the cases Plaintiff cites in which discovery should have been granted, she  
4 has not even articulated “a hunch” that discovery “might yield jurisdictionally relevant  
5 facts,” and to be entitled to discovery, she must identify more than that. *Calix Networks,*  
6 *Inc. v. Wi-Lan, Inc.*, No. 3:09-CV-06038, 2010 WL 3515759, at \*3 (N.D. Cal. Sept. 8,  
7 2010) (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008)).<sup>4</sup>

8 Unless Plaintiff has identified discovery that could allow her to defeat  
9 McDonald’s motion, her request should be denied. *See Am. W. Airlines, Inc. v. GPA*  
10 *Grp., Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989) (jurisdictional discovery may properly be  
11 denied “when it is clear that further discovery would not demonstrate facts sufficient to  
12 constitute a basis for jurisdiction”) (quoting *Wells Fargo & Co. v. Wells Fargo Express*  
13 *Co.*, 556 F.2d 406, 431 n. 24 (9th Cir. 1977)). Plaintiff has not.

14 First, Plaintiff requests discovery about whether McDonald’s operates from the  
15 location identified in Long Beach. Opp. at 12. That office is not a location of  
16 McDonald’s. But even if it were, that would not possibly support the exercise of general  
17 or specific jurisdiction. *See Mot.* at 1, n.1, 8 & n.4 (explaining this point).

18  
19  
20 <sup>4</sup> In *Laub v. U.S. Dep’t of the Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003), the  
21 plaintiff proffered documents “suggest[ing] that there is at least an arguable claim” that  
22 further discovery about the defendant’s role in administering the government program  
23 at issue would have created a reasonable probability “that the outcome of the factual  
24 motion to dismiss would have been different.” In *Harris Rutsky & Co. Insurance*  
25 *Services v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003), the Ninth Circuit  
26 observed that the record contained certain specific evidence of control over day to day  
27 activities and remanded for discovery concerning alter ego or agency because it  
28 concluded that such discovery “might well demonstrate facts sufficient to constitute a  
basis for jurisdiction.” In *Orchid Biosciences, Inc. v. St. Louis University*, 198 F.R.D.  
670, 672, n.1 & 673-74 (S.D. Cal. 2001), the court found “ample evidence” of pertinent  
controverted jurisdictional facts, and the defendant had submitted contradictory  
affidavits.

1           *General jurisdiction.* As explained above (*supra* at 2), the notion that with further  
2 discovery Plaintiff might show general jurisdiction on the basis of McDonald’s  
3 “widespread business in California,” Opp. at 10, or non-headquarters locations,  
4 contravenes controlling law after *Daimler*. Both McDonald’s and McDonald’s USA,  
5 LLC are subject to general jurisdiction only in Delaware or Illinois. No amount of  
6 discovery can possibly change that. As such, there is no basis to permit discovery about  
7 any contacts *unrelated* to the allegations of this lawsuit.

8           *Specific jurisdiction.* Mr. Vilkama’s Declaration is clear that Long Beach played  
9 no role in causing McDonald’s restaurants to adopt the disputed décor. Vilkama Decl.  
10 ¶ 6. He is equally clear that neither McDonald’s nor McDonald’s USA, LLC played  
11 such a role. *Id.* ¶ 5. Plaintiff has no reason to believe that discovery would reveal that  
12 any acts on which Plaintiff’s claims are based occurred in California or are in any way  
13 related to the business McDonald’s conducts in California. It would not.

14           Second, Plaintiff requests “alter ego” discovery. Opp. at 12-15. But that request  
15 is equally unfounded. Plaintiff mistakenly asserts that McDonald’s does not dispute  
16 that its subsidiary, McDonald’s USA, LLC, has sufficient contacts with California to  
17 be subject to personal jurisdiction here. Opp. at 12. To the contrary, McDonald’s  
18 Motion made clear that “the result would be no different if Plaintiff were to seek to  
19 amend her complaint to name McDonald’s USA, LLC as a defendant.” Mot. at 8, n.4.  
20 McDonald’s was unequivocal that this Court lacks personal jurisdiction *over the*  
21 *subsidiary too*: “The governing Supreme Court and Ninth Circuit precedent precludes  
22 exercising personal jurisdiction over McDonald’s USA, LLC for all the same reasons.”  
23 *Id.*

24           As a result, even if Plaintiff had identified a colorable basis on which to permit  
25 alter ego discovery, the Court should deny this request because it would make no  
26 difference to the outcome of this Motion. In any event, the notion that discovery could  
27

1 warrant imputing to McDonald’s the affairs of McDonald’s USA, LLC in connection  
2 with Plaintiff’s claims is fanciful.<sup>5</sup>

3 \* \* \*

4 Plaintiff has not identified controverted jurisdictional facts as to either  
5 McDonald’s or its subsidiary that would potentially change the outcome of this motion  
6 or warrant her request for discovery. As in *Barantsevich v. VTB Bank*, her request for  
7 discovery should be denied and McDonald’s motion granted. 954 F. Supp. 2d 972, 998  
8 (C.D. Cal. 2013) (declining discovery). *See also Martinez v. Manheim Central*  
9 *California*, No. 1:10-CV-01511, 2011 WL 1466684, at \*5 (E.D. Cal. Apr. 18, 2011)  
10 (declining discovery “in the absence of a minimal factual showing supporting personal  
11 jurisdiction and, moreover, where no theory has been posited about what facts would  
12 be discovered and what they would show if Plaintiffs were permitted to fish on a hunch

13 \_\_\_\_\_  
14 <sup>5</sup> “Disregarding the corporate entity” through application of the alter ego and agency  
15 doctrines is “an *extreme remedy*.” *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal.  
16 1995) (emphasis added). Because of the strong presumption in favor of corporate  
17 separateness, courts “will pierce the corporate veil only in *exceptional* circumstances.”  
18 *Id.* (citation omitted and emphasis added). To establish an alter ego relationship, a  
19 plaintiff must show “(1) that there is such unity of interest and ownership that the  
20 separate personalities of [the parent and subsidiary] no longer exist *and* (2) that failure  
21 to disregard [their separate identities] would result in fraud or injustice.” *AT&T Co. v.*  
22 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996) (emphasis added).  
23 Similarly, to overcome the presumption of corporate separateness on an agency theory  
24 requires a showing that the parent does more than dictate general policies; rather, it  
25 must “control[] the internal affairs” of the subsidiary, “or determine[] how it operates  
26 on a daily basis.” *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177  
27 (9th Cir. 1980); *see also Doe v. Unocal Corp.*, 248 F.3d 915, 927 (9th Cir. 2001);  
28 *Williams v. Canon, Inc.*, 432 F. Supp. 376, 380 (C.D. Cal. 1977). Nothing Plaintiff  
suggests comes remotely close to justifying piercing the corporate veil. Sharing an  
address, guaranteeing loans, setting standards, and even having overlapping business  
executives all do not suffice. *See AT&T*, 94 F.3d at 591; *Kramer Motors*, 628 F.2d at  
1177-78 (no piercing where parent guaranteed loans, reviewed and approved major  
decisions, placed several of its own directors on subsidiary’s board, and was closely  
involved in subsidiary’s pricing decisions); *Unocal Corp.*, 248 F.3d at 927  
 (“overlapping directors and officers” not enough); *Calvert*, 875 F. Supp. at 678 (same).

1 that something might be caught in a widely-cast net”); *Panterra Networks, Inc. v.*  
2 *Convergence Works, LLC*, No. 5:09-CV-01759, 2009 WL 4049956, at \*4 (N.D. Cal.  
3 Nov. 20, 2009) (denying discovery related to plaintiff’s agency theory of jurisdiction  
4 in part because “plaintiff has failed to offer any evidence to contradict the evidence  
5 submitted by defendants”).

6 **CONCLUSION**

7 McDonald’s respectfully requests that the Court grant its Motion to Dismiss.

8 Dated: January 12, 2017

**STRIS & MAHER LLP**

9 /s/ Elizabeth R. Brannen  
10 Elizabeth R. Brannen

11 *Attorneys for Defendant*  
12 McDonald’s Corporation

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28