

# CHAOS BALL: Court Dismisses Defendant for Lack of Jurisdiction When the Plaintiff Just Flat Fails to Present Opposing Evidence

Article By:

Eric J. Troutman

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So I'm a big Seattle Mariners fan. (Don't judge me.)

Of late, the Mariners have become famous for something called "Chaos Ball," which is best summed up in the baseball truism "if you put the ball in play good things are going to happen."

For instance, yesterday the Mariners won a baseball game because a ball was literally thrown through the first baseman's glove. That just doesn't happen.

This story is a bit like that.

In *JOHNSON v. CHARTER COMMUNICATIONS, INC.*, Slip Copy2022 WL 2643980 (N.D. Cal. July 8, 2022) a defendant filed a motion for dismissal for lack of personal jurisdiction. The argument was simple enough—neither they nor any of their vendors had made the challenged calls. So they had not availed themselves of the Court's jurisdiction.

While that seems straightforward enough, because the issue of jurisdiction turned on a "foundational fact"—i.e. whether something had taken place with respect to California—all the Plaintiff had to do was oppose with a declaration stating she had received the phone call she described in the complaint. In other words the motion had about a 0.001% chance of success.

About the odds of a ball going through a first baseman's glove at a critical juncture in a baseball game.

For reasons I can't chalk up to anything other than "Chaos Ball" the Plaintiff simply flubbed it. They failed to submit a declaration and the Court was compelled to dismiss the suit, although it did so only after making a cautious record:

*"If [Guss] had filed affidavits or declarations in response," the Court "would have been obligated to resolve conflicting statements in [Guss's] favor. But [Guss] filed no affidavits or declarations in response."* [\*LNS Enterprises LLC v. Cont'l Motors, Inc.\*, 22 F.4th 852, 858 \(9th Cir. 2022\)](#) (internal citation omitted). And because Guss filed no affidavit at all (presumably because her counsel

*believed she did not have to), “[t]he relevant uncontroverted record ... includes [Spectrum’s] rebuttals to [Guss’s] allegations.” Id.; see also [Toy, 2019 WL 1904215, at \\*3](#) (“[B]ecause the Court ‘may not assume the truth of allegations in a pleading which are contradicted by affidavit,’ the Court must accept [Patnekar]’s account of [Spectrum’s] activities.” (quoting [CollegeSource, Inc., 653 F.3d at 1073](#))). ... Instead, this is what the Ninth Circuit described in *Data Disc* as the “relatively easy” case in which the plaintiff, for whatever reason, filed no sworn affidavit in response to the other side’s submission contradicting the complaint. [557 F.2d at 1284](#). Under these circumstances, the uncontroverted record – including Spectrum’s disavowals – defeats Guss’s efforts to establish specific personal jurisdiction.*

All Plaintiff had to do was file a declaration to win. And she didn’t do it.

Chaos Ball.

I’m not saying I’d encourage the filing of a motion that would never be granted unless the other side screwed up. But, then again, good things do happen when you put the ball in play.

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