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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 DONGXIAO YUE,
12 Plaintiff,
13 v.
14 CHUN-HUI MIAO, et al.,
15 Defendants.
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Case No. C18-1074-DMR

**PLAINTIFF'S OPPOSITION TO
DEFENDANTS' AMENDED MOTION TO
DISMISS, PURSUANT TO FED. R. CIV. P.
12(b)(2), OR IN THE ALTERNATIVE, TO
TRANSFER VENUE PURSUANT TO 28
U.S.C. § 1404(a).**

Hearing Date: May 10, 2018
Time: 11:00 AM
Courtroom: 4, 3rd Floor

Judge: The Honorable Donna M. Ryu

1 Plaintiff hereby opposes Defendants Chui-hui Miao ("Miao") and bian-wang.com
2 ("BIAN")'s motion to dismiss for lack of personal jurisdiction or transfer venue. Plaintiff's
3 opposition is based on the declaration of Dongxiao Yue ("Yue Decl."), being filed concurrently,
4 the Verified Complaint ("VC") and the records of this case.

5 INTRODUCTION

6 This case arose out of Miao's personal participation in a defamation campaign against
7 Plaintiff on Miao's website bian-wang.com and Defendants' bad faith refusal to perform their
8 contractual obligation of deleting the offending publications upon Plaintiff's request. As Plaintiff
9 will show, Defendants' California related activities support a finding of both purposeful availment
10 and purposeful direction for the specific personal jurisdiction analysis. Defendants failed to show
11 that the exercise of jurisdiction over them is unreasonable. Personal jurisdiction over Defendants
12 is thus proper. Defendants also fail to make sufficient showing of inconvenience for a
13 discretionary transfer of venue from California to South Carolina. Their motions should be denied.

14 FACTS

15 Plaintiff has been the owner and administrator of a Chinese language social media website
16 zhenzhubay.com ("ZZB") since 2012. Many of ZZB's members are residents of the San Francisco
17 Bay Area (Yue Decl. ¶5.) Yeyclub.com ("Yeyclub") is a competing website. It has been owned
18 and operated by California resident Muye Liu, who is a defendant in a related defamation lawsuit
19 pending in the Superior Court of California (Yue Decl. ¶7.) Defendant Miao established the BIAN
20 website in January 2013. (Yue Decl. ¶8.) Initially, Miao and Liu cooperated by making "friend
21 link" between their websites. Miao specifically targeted a California audience by focusing on local
22 California issues, including writing or posting many articles about SCA5 and inviting Plaintiff to
23 comment. Miao actively promoted BIAN to California residents, including an alleged attempt to
24 entice Yeyclub members to join BIAN. This eventually led to a dispute between the Miao and
25

1 Liu. And Miao wrote many articles about these disputes. (Yue Decl. ¶¶ 8-20.) At least four of
2 BIAN's bloggers (including Plaintiff) reside in California. (Yue Decl. ¶21.)

3
4 When Plaintiff registered on BIAN, he read and consented to its three rules. Rule No.2
5 stated that "any blog article that contains a Netizen's user ID in its subject shall be immediately
6 deleted once being reported (same applies to comments)." (Yue Decl. ¶¶13-15.) Plaintiff invoked
7 Rule 2 in September 2015, requesting Miao and BIAN to delete certain posts. Miao readily
8 complied with the deletion request. (Yue Decl. ¶27.)

9
10 Miao knew that Plaintiff resided in California no later than May 2013, when he registered
11 as "BIAN-WABG" on Plaintiff's ZZB. (Yue Decl. ¶¶5,10.) In mid-2015, several users posted
12 defamatory blogs against Plaintiff on Bian-Wang.com. Miao personally engaged in and
13 encouraged in various defamatory attacks against Plaintiff. On September 21, 2015, Plaintiff
14 emailed Miao a California subpoena seeking to discover the identifying information of the other
15 users who posted the defamatory content. Miao's initial response to Plaintiff was that "Bi'An will
16 accept service of the subpoena by email without prejudice." On November 3, 2015, Miao
17 published the California subpoena with Plaintiff's full name, California address and telephone
18 number on BIAN. About two weeks later, Miao informed Plaintiff that he would not comply with
19 the subpoena. The attacks against Plaintiff continued. (Yue Decl. ¶¶22-33.)

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21 On January 18, 2016, a California resident posted a blog article on ZZB, stating that he
22 noticed a blog article on Bian-wang.com falsely accusing ZZB of falsifying data, and asked
23 whether Bian-wang.com should be sued. (Yue Decl. ¶34.)

24
25 On June 13, 2016, Plaintiff commenced the related action of Yue v. Trigmax Solutions, et
26 al. in Superior Court of California. Plaintiff again served Miao a subpoena, this time re-issued by
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1 court of Common Pleas of Richland County, South Carolina. Again, Miao refused comply with
 2 the subpoena. (Yue Decl. ¶¶35-36.)

3 On December 15, 2016, Plaintiff requested Miao to delete the malicious postings under
 4 Rule No.2, stating it was a contract between Plaintiff and Defendants, and they must perform their
 5 obligations. Miao refused to delete the postings. Instead, he unilaterally changed Rule No.2,
 6 adding a so-called one year "statute of limitations". (Yue Decl. ¶¶35-36.)

8 Plaintiff had no choice and filed this lawsuit on December 15, 2017 in the Contra Costa
 9 County Superior Court. Miao removed the case to the federal district court for the Northern
 10 District of California, and moved to dismiss for lack of personal jurisdiction or to transfer venue.

12 ARGUMENT

13 I. THE COURT HAS SPECIFIC JURISDICTION OVER THE DEFENDANTS

14 A. Legal Standard

15 In opposing a motion to dismiss for lack of personal jurisdiction, the plaintiff need only
 16 make a prima facie showing of jurisdictional facts to avoid the granting of a motion to dismiss.
 17 Caruth v. Int'l Psychoanalytical Ass'n, 59 F.3d 126, 128 (9th Cir. 1995). "Uncontroverted
 18 allegations in [plaintiff's] complaint must be taken as true, and conflicts between the facts
 19 contained in the parties' affidavits must be resolved in [plaintiff's] favor." Brayton Purcell LLP v.
 20 Recordon & Recordon, 606 F.3d 1124, 1127 (9th Cir. 2010).

22 A non-resident defendant may be subject to specific jurisdiction when the non-resident
 23 defendant has "certain minimum contacts with [a state] such that the maintenance of the suit does
 24 not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe Co. v. Washington,
 25 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). In the Ninth Circuit, specific jurisdiction is
 26 analyzed under a three-prong test:
 27

(1) the defendant must either purposefully direct his activities toward the forum or purposefully avail himself of the privileges of conducting activities in the forum; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002). The plaintiff has the burden in satisfying the first two prongs for conferring personal jurisdiction upon a defendant. The burden then shifts to the defendant to "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985).

Purposeful availment and purposeful direction are "two distinct concepts."

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir.2004). "A purposeful availment analysis is most often used in suits sounding in contract." *Ibid.* "To have purposefully availed itself of the privilege of doing business in the forum, a defendant must have 'performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.'" Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008). "[W]here the defendant 'deliberately' has engaged in significant activities within a State,..., or has created 'continuing obligations' between himself and residents of the forum,..., he manifestly has availed himself of the privilege of conducting business there." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985).

Purposeful direction analysis is often employed in cases involving tortious conduct.

Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1228 (9th Cir. 2011). "In tort cases, we typically inquire whether a defendant 'purposefully direct[s] his activities' at the forum state, applying an 'effects' test that focuses on the forum in which the defendant's actions were felt, whether or not the actions themselves occurred within the forum." Yahoo! Inc. v. La Lique Contre

1 Le Racisme, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc). The *Calder* “effects” test, based on
 2 Calder v. Jones, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), “requires that ‘the
 3 defendant . . . have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
 4 causing harm that the defendant knows is likely to be suffered in the forum state.” Mavrix Photo,
 5 Inc. at 1228 (citation omitted).

6
 7 **B. Defendants California Related Activities Satisfy Both The Purposeful Availment And**
 8 **Purposeful Direction Tests**

9 **1. Defendants’ promotion of their web service to a California audience and their**
 10 **continuing obligation under their contract with Plaintiff satisfy the purposeful availment test.**

11 As stated above, Defendants actively reached into California and vigorously promoted the
 12 BIAN web service to California residents. At least four BIAN bloggers reside in California.
 13 Defendants also created continuing obligations between themselves and Plaintiff (and other
 14 California residents) in establishing their Rule No.2, which required them to delete any blog or
 15 comment which contained the name of a user upon request. (Yue Decl. ¶¶1-22.) They must expect
 16 that when they refuse to perform their obligations when a California resident makes a Rule No.2
 17 request, they may be held accountable under California law. Defendants’ California related
 18 activities thus satisfy the purposeful availment test under Burger King.
 19

20 **2. Defendants’ intentional tortious conduct aimed at California and knowingly caused**
 21 **harm to be suffered by Plaintiff in California satisfies the purposeful direction test.**

22 **i. Defendants’ Breach of Good Faith and Fair Dealing was an Intentional Act**

23 After Plaintiff requested Defendants to delete the injurious web postings according the
 24 BIAN’s Rule No. 2, Defendants initially reacted with personal attacks against Plaintiff. After
 25 Plaintiff persisted in his request, Defendants deliberately changed the rule by adding so called one-
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1 year of “statute of limitations” and used the new rule to refuse Plaintiff’s requests for deletion.
 2 Defendants’ wrongful acts were intentional.

3 **ii. Defendants Expressly Aimed at California**

4 The ‘express aiming’ requirement “is satisfied when the defendant is alleged to have
 5 engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of
 6 the forum state.” Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1087 (9th Cir.
 7 2000). Here, Defendants knew that Plaintiff resided in California. (Yue Decl. ¶¶5-33.) Defendants
 8 also knew that the postings on Bian-Wang.com tend to injure Plaintiff, as they had been informed
 9 of two defamation lawsuits against the persons who made the defamatory postings, and they had
 10 received two subpoenas from two lawsuits. (Yue Decl. ¶¶10-38.) By their bad faith conduct,
 11 Defendants intentionally continued the publishing of the injurious material against Plaintiff into
 12 California and thus expressly aimed at California.

13 Defendants misconstrued Walden v. Fiore, 134 S. Ct. 1115 (2014). That case dealt with a
 14 situation where the defendant’s alleged intentional act was directed at a plaintiff **while the**
 15 **plaintiff was outside of his resident state**. Similarly, in Picot v. Weston, 780 F.3d 1206 (9th Cir.
 16 2015), the defendant’s alleged conduct was making statements to a non-forum resident, without
 17 “contacting any person in California”. In both cases, defendants’ actions did not reach into the
 18 forum. Here, Defendants published a California subpoena on BIAN and defiantly announced that
 19 it was invalid and they would ignore it. (Yue Decl. ¶30, Ex.7.) Defendants interacted with the
 20 California Plaintiff while he was in California. Defendants tortiously breached their promise on
 21 the BIAN website and intentionally published the defamatory content into California, where
 22 Defendants actively competed against the California based Yeyclub and ZZB for readership. The
 23 Supreme Court has “consistently rejected the notion that an absence of physical contacts can
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1 defeat personal jurisdiction there.” *Burger King*, 471 U.S. at 476. In the age of internet,
 2 Defendants don’t have to leave South Carolina to launch attacks aimed at California.

3 ***iii. Defendants Caused Harm in California***

4 The final element of the *Calder* ‘effects’ test is satisfied if Plaintiff can show that “a
 5 jurisdictionally sufficient amount of harm is suffered in the forum state.” *Yahoo!*, 433 F.3d at 1207
 6 (en banc) (clarifying that the “brunt” of the harm need **not** be suffered in the forum state.).

7 Here, Plaintiff suffered and continues to suffer from the defamatory and injurious postings
 8 on Bian-Wang.com, which has at least four known California bloggers. At least one California
 9 resident personally voiced his concerns about the defamatory postings on BiAn-wang.com, and
 10 asked if they should be sued in court. The links to some of the injurious postings have been
 11 prominently displayed on the front page of Bian-Wang.com. Many of the postings attacking
 12 Plaintiff have been viewed thousands of times. (Yue Decl. ¶¶21-34.) Defendants harmed
 13 Plaintiff’s reputation by publishing the injurious postings to California residents. Defendants also
 14 caused the California Plaintiff substantial emotional suffering by publishing the injurious material
 15 into California. Defendants’ unfair competition against Plaintiff also harmed Plaintiff in his
 16 endeavor of creating a social media website. (VC ¶¶2-54.)

17 **C. The Claims In This Case Arise Out Of Defendants’ California Related Activities**

18 The claims are based on Defendants’ breach of a contract between them and the California
 19 Plaintiff, and their bad faith publication of defamatory material into California despite an
 20 agreement to delete the posts upon request, and their unfair competition against Plaintiff. The
 21 claims arise out of Defendants’ California related activities.

22 **D. Defendants Fail To Show Personal Jurisdiction Over Them Is Unreasonable**

1 Since Plaintiff satisfied the purposeful availment and “arising out of” prongs of the specific
 2 personal jurisdiction analysis, the burden shifts to Defendants to “present a compelling case that
 3 the presence of some other considerations would render jurisdiction unreasonable.” *Burger King*,
 4 471 U.S. at 476-78. Defendants’ argument on this prong is essentially a bare assertion that burden
 5 on the Defendant is substantial and California’s interest is minimal. Def Mot. p.10:18.

6 As Plaintiff has shown above, Defendants purposefully directed their injurious conduct at the
 7 forum state. “California has a strong interest in providing a forum for its residents and citizens
 8 who are tortuously injured.” *Dole Food Company, Inc. v. Watts*, 303 F.3d 1104, 1115-16 (9th Cir.
 9 2002). Mere inconvenience for Defendant to litigate in another state “is not dispositive” in finding
 10 unreasonableness in the jurisdictional inquiry. Numerous courts held that exercising jurisdiction
 11 over out-of-state defendants and foreign defendants reasonable. See, e.g., *CYBERsitter, LLC v.*
 12 *P.R.C.*, 805 F. Supp. 2d 958 (C.D. Cal. 2011) (defendants in China); *Figi Graphics, Inc. v. Dollar*
 13 *Gen. Corp.*, 33 F. Supp. 2d 1263 (S.D. Cal. 1998) (defendants in Tennessee). Since Defendants
 14 have failed to show a “compelling” reason why the exercise of personal jurisdiction over them
 15 would be unreasonable, their motion to dismiss for lack of personal jurisdiction should be denied.

18 **II. THE COURT SHOULD DENY DEFENDANTS’ REQUEST FOR TRANSFER**

19 Defendants do not dispute that venue is proper but request transfer based on inconvenience
 20 alone. A case may be transferred “[f]or the convenience of parties and witnesses, in the interests of
 21 justice,” to “any other district or division where it might have been brought[.]” 28 U.S.C. §
 22 1404(a). Under § 1404(a), a district court has discretion “to adjudicate motions for transfer
 23 according to an individualized, case-by-case consideration of convenience and fairness.” *Jones v.*
 24 *GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000). Courts consider multiple factors in
 25 determining whether transfer is appropriate. Such factors include:
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(1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Id. at 498-99.

Factor 2 is favorable to Plaintiff since the claims are based on California state law. Factor 3 is favorable to Plaintiff because he is local resident of the forum. Factor 4 is favorable to a California forum because Plaintiff has little contact with South Carolina but Defendants have plenty of contacts with California. (Yue Decl. ¶42.) Factor 7 is again favorable to Plaintiff because most of the third party witnesses, including the defendants in the related Yue v. Trigmax Solutions, LLC case and the California readers to whom Bian-Wang.com published the defamatory postings, are in California. (Yue Decl. ¶43.) All other factors are at most neutral. For instance, while the cost of litigating in South Carolina may be less for Defendants, it will be higher for Plaintiff. "The defendant must make a strong showing of inconvenience to warrant upsetting the plaintiff's choice of forum." Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). Here, Defendants fail to make such a showing. The Court should deny their motion to transfer.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court deny Defendants' motion to dismiss for lack of personal jurisdiction and deny their motion to transfer.

Respectfully submitted.

Dated: March 16, 2018

/S/
DONGXIAO YUE