

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 LEX TECNICA, LTD.,

4 Plaintiff

5 v.

6 VANGUARD FIELD STRATEGIES, LLC,
7 et al.,

8 Defendants

Case No.: 2:23-cv-00069-APG-EJY

**Order Denying Defendants' Motion to
Dismiss**

[ECF No. 28]

9 Plaintiff Lex Tecnica, Ltd., as assignee of former plaintiff Community Schools Initiative
10 (CSI), sues defendants Vanguard Field Strategies, LLC and Axiom LLC for allegedly defrauding
11 CSI out of over \$2.2 million in a failed signature gathering effort in support of a ballot initiative.
12 Lex alleges that the defendants represented themselves as experts in the area who would gather
13 signatures at a 70% validity rate so CSI could collect enough signatures to qualify its ballot
14 initiative under Nevada law. Lex contends that the defendants falsely reassured CSI that the
15 signature gathering effort was going well when in fact it was failing to obtain valid signatures at
16 anything approaching a 70% rate. The Nevada Secretary of State found an average validity rate
17 of 53.3%, and the measure failed. Lex asserts claims for breach of contract, breach of the
18 implied covenant of good faith and fair dealing, unjust enrichment, fraudulent inducement,
19 fraudulent misrepresentation, negligent misrepresentation, and deceptive trade practices.

20 Vanguard and Axiom move to dismiss the claims for fraudulent inducement, fraudulent
21 misrepresentation, negligent misrepresentation, and deceptive trade practices, arguing that these
22 fraud-based claims are personal to CSI and not assignable to Lex. Axiom moves to dismiss all
23 claims against it on the grounds that this court lacks personal jurisdiction over Axiom. Lex

1 responds that the claims are assignable because they seek only pecuniary loss. Alternatively,
2 Lex asserts that CSI should be added back as a plaintiff if the claims are not assignable. Lex also
3 argues that it has adequately established personal jurisdiction over Axiom. Alternatively, it
4 requests jurisdictional discovery.

5 I deny the defendants' motion to dismiss the fraud-based claims, with leave to amend if
6 Lex chooses to do so. I deny Axiom's motion to dismiss for lack of personal jurisdiction.

7 **I. FRAUD-BASED CLAIMS**

8 The defendants argue that CSI's assignment to Lex is "void ab initio" as to the fraud-
9 based claims because fraud claims are personal to the one defrauded and cannot be assigned.
10 The defendants contend that the assignment of these claims fails because Lex seeks damages to
11 CSI's reputation; damages for years of preparatory work, wasted volunteer hours, and stalled
12 political momentum; and punitive damages; all of which are personal to CSI.

13 Lex responds that the defendants are contradicting themselves because in Vanguard's
14 first motion to dismiss, it argued that CSI lacked standing because it had assigned its rights to
15 Lex and that these same claims were assignable under Nevada law. Additionally, Lex argues
16 that the claims are assignable because Lex seeks only economic damages and does not seek non-
17 economic damages for emotional distress or physical pain. Lex contends that its request for
18 damages for years of preparatory work and volunteer time lost are concrete expenses.
19 Additionally, Lex argues that CSI's goodwill is an intangible asset capable of being considered
20 in a calculation of economic damages. Alternatively, Lex argues that if these claims were not
21 assignable, then I should give leave for CSI to be added back as a plaintiff for these four claims.

22 The original and first amended complaints were brought by CSI "with rights assigned in
23 trust to" Lex. ECF Nos. 1 at 2; 9 at 4. Vanguard moved to dismiss, arguing that CSI was not the

1 real party in interest because it had assigned all its rights to Lex. ECF No. 18 at 4. Vanguard
2 also argued that the fraudulent inducement, fraudulent misrepresentation, and negligent
3 misrepresentation claims “each allege only pecuniary loss or economic damages, and therefore,
4 are also assignable.” *Id.* And it asserted that the deceptive practices claim was assignable. *Id.* at
5 5. In response, Lex amended the complaint to drop CSI and substitute itself as the plaintiff in the
6 second amended complaint (SAC). ECF No. 21.

7 Vanguard (and Axiom) now take the opposite position and assert that these same claims
8 are not assignable. In their reply brief, Vanguard and Axiom state that their position is not
9 contradictory because they were moving to dismiss a complaint filed by a different plaintiff. But
10 Vanguard has taken a contradictory position by asserting that the same claims seeking the same
11 types of relief were both assignable and non-assignable. *See* ECF No. 9 at 22, 30, 33 (first
12 amended complaint also asserting damages based on reputational damage, loss of preparatory
13 work time, loss of volunteer time, stalled momentum, and punitive damages). Despite this
14 conduct, I must determine whether the claims are assignable because standing is a non-waivable
15 requirement of Article III jurisdiction. *Renee v. Duncan*, 686 F.3d 1002, 1012 (9th Cir. 2012).

16 Nevada “prohibits the assignability of certain causes of action, regardless of how the
17 assignment is accomplished” because some claims “are personal in nature and meant to
18 recompense the injured party.” *Reynolds v. Tufenkjian*, 461 P.3d 147, 150-52 (Nev. 2020). To
19 determine whether a cause of action is assignable, Nevada law analyzes “the nature of the claim
20 to be assigned and . . . the public policy considerations that would be implicated if assignment
21 were permitted.” *Id.* at 151-52 (quotation omitted). Those policy considerations include whether
22 the type of damages are “non-economic losses such as physical pain and mental anguish” versus
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1 claims more akin to recovery for loss of property. *Id.* at 153-54 (quoting *Maxwell v. Allstate Ins.*
2 *Cos.*, 728 P.2d 812, 506-07 (Nev. 1986)).

3 For example, “claims for personal injury torts are not assignable,” but “when a tort claim
4 alleges purely pecuniary loss, . . . the claim may be assigned.” *Id.* at 154. Fraud and intentional
5 misrepresentation claims are generally unassignable because they are personal to the one
6 defrauded. *Id.* at 151 (citing *Prosky v. Clark*, 109 P. 793, 794 (Nev. 1910)). In contrast,
7 negligent misrepresentation claims are assignable because “Nevada law only recognizes
8 negligent misrepresentation claims in the context of business transactions,” so “the nature of
9 such a claim is not to recover for a personal injury, but instead is more akin to a claim seeking
10 recovery for a loss of property.” *Id.* at 153. “Claims alleging damages to property, rather than
11 personal damages, are generally assignable.” *Id.* “Additionally, because a claim for negligent
12 misrepresentation in Nevada can only be based on pecuniary loss, assigning such claims does not
13 implicate . . . public policy concerns . . . because they do not include non-economic losses such
14 as physical pain and mental anguish.” *Id.* at 153-54 (quotation omitted).

15 In the SAC, Lex alleges that the defendants made false representations to CSI to induce it
16 to enter into the contract and continued to falsely represent the success of the signature gathering
17 effort to induce CSI to pay for more signature gathering. CSI asserts it was damaged by paying
18 over \$2.2 million, its reputation was damaged, it lost “years in preparatory work for the
19 initiative,” “volunteer hours” were “wasted,” and there was “stalled political momentum.” ECF
20 No. 21 at 28, 30. Lex also seeks punitive damages. *Id.* at 31, 33.

21 The defendants argue that requesting damages for reputational harm, lost preparatory
22 work, volunteer hours, stalled political momentum, and punitive damages are not assignable
23 because they go beyond pecuniary loss and are personal to CSI. Lex responds that all claims

1 were properly assigned because they seek only pecuniary damages involving economic damages
2 or lost property, not physical injury or mental anguish. Lex notes that damages for lost
3 preparatory work and wasted volunteer hours can be quantified as expenses. It also contends that
4 reputation is goodwill, which is an intangible asset that can be considered in an economic
5 damage calculation.

6 As an initial matter, under *Reynolds*, a negligent misrepresentation claim is assignable
7 because it is limited to pecuniary loss. I therefore deny the defendants’ motion to dismiss this
8 claim as being unassignable.

9 The fraud-based claims are also assignable because the claims’ nature is akin to a
10 recovery for loss of property, and they do not implicate the public policy concerns at issue in
11 *Prosky* or *Maxwell*. The request for reputational damage to a political action committee is a
12 pecuniary loss akin to goodwill of a business or damage to property, not a personal injury. *See*
13 *Ford v. Ford*, 782 P.2d 1304, 1308-09 (Nev. 1989) (assigning monetary value to a medical
14 practice’s goodwill in the context of a divorce); *cf. Clark Cnty. Sch. Dist. v. Virtual Educ.*
15 *Software, Inc.*, 213 P.3d 496, 504 (Nev. 2009) (stating that under Nevada law, “where
16 communications concern the goods or services provided by a business entity, a plaintiff generally
17 seeks to redress injury to economic interests”).¹ Likewise damages for lost preparatory work and
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19 ¹ In their reply, the defendants argue that the Supreme Court of Nevada has recognized that
20 damage to a business reputation is not an economic loss. ECF No. 35 at 3. But the case they cite
21 supports the conclusion that damage to a business’s reputation is property damage. *See Lopez v.*
22 *Javier Corral, D.C.*, Nos. 51541, 51972, 367 P.3d 745, 2010 WL 5541115, at *3-4 (Nev. 2010)
23 (stating, in the context of the economic loss doctrine, that although “purely economic losses are
not recoverable in tort absent personal injury or property damage,” the doctrine did not apply in
that case because “the damages here were not solely for economic loss, as they include damages
to Corral’s reputation and business—his intangible property” (quotation omitted)). Likewise, the
cases the defendants cite regarding reputational harm being personal are not persuasive because
they involved either non-applicable statutory language or injury to individuals. *See Diaz v.*
Gates, 380 F.3d 480, 485 (9th Cir. 2004) (concluding that injury to an individual’s reputation did

1 wasted volunteer hours seek pecuniary damages for the value of that time, not for physical
2 injuries or mental anguish.²

3 Finally, the defendants do not provide sufficient authority for me to conclude that Nevada
4 would hold that where a claim is otherwise assignable, punitive damages are not also assignable.
5 The original motion contains no law for this proposition. In their reply, the defendants cite to
6 Ninth Circuit law that the Jones Act is limited to “pecuniary” losses, and that punitive damages
7 are non-pecuniary. *See Kopczynski v. The Jacqueline*, 742 F.2d 555, 560-61 (9th Cir. 1984).
8 They also cite to a Ninth Circuit case for the general proposition that “punitive damages cannot
9 be used to punish a defendant for the harms to a third party.” *Riley v. Volkswagen Grp. of Am.,*
10 *Inc.*, 51 F.4th 896, 901 (9th Cir. 2022). Even if I considered these cases and the related
11 arguments raised for the first time in the reply,³ they do not necessarily lead to the conclusion
12 that Nevada would hold that every claim that seeks punitive damages is unassignable. Other
13 courts have held that that where a claim is otherwise assignable, the remedy of punitive damages
14 for that claim is also assignable. *See, e.g., Great Am. Ins. Co. v. Vasquez Marshall Architects,*
15 *No. 19-CV-1173-CAB-NLS*, 2019 WL 4242481, at *3-4 (S.D. Cal. Sept. 6, 2019); *Diehl v.*
16 *Starbucks Corp.*, *No. 12-CV-2432-AJB-BGS*, 2014 WL 295468, at *11-14 (S.D. Cal. Jan. 27,
17 *2014)* (and cases cited therein). I do not definitively rule on this issue at this time because it has

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20 not qualify as injury to business or property under the federal RICO statute), *on reh’g en banc*,
21 420 F.3d 897 (9th Cir. 2005); *Kelly v. Fleetwood Enters., Inc.*, 377 F.3d 1034, 1039 (9th Cir.
2004) (quoting an Oregon statute defining noneconomic damages to include injury to
22 reputation).

22 ² In their reply, the defendants argue that volunteer hours are not compensable because the
23 workers were volunteers. ECF No. 35 at 3. That may be an argument for why Lex cannot
recover damages for these hours, but it does not explain why the claims are not assignable.

23 ³ *See Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007) (“The district court need not consider
arguments raised for the first time in a reply brief.”).

1 not been briefed by either side. Instead, I deny the defendants’ motion to dismiss on this ground,
2 without prejudice to file another, properly supported motion. However, if Lex wants to amend to
3 add CSI as the plaintiff on the fraud-based claims that seek punitive damages for the avoidance
4 of doubt, it has leave to do so.

5 **II. PERSONAL JURISDICTION OVER AXIOM**

6 Axiom moves to dismiss for lack of personal jurisdiction over it, arguing that the SAC’s
7 allegations related to Axiom do not support either general or specific personal jurisdiction.
8 Axiom asserts that Vanguard’s actions cannot be attributed to it to establish personal jurisdiction
9 because the two are separate entities and the SAC does not adequately allege the two entities are
10 alter egos. Axiom also argues that its failure to register with the State of Nevada does not
11 establish contacts with Nevada or prevent it from defending against this lawsuit.

12 Lex responds that it need not rely on alter ego allegations to support the exercise of
13 personal jurisdiction over Axion. Lex contends that Axiom is subject to this court’s general
14 personal jurisdiction because it is a nationally renowned political consulting firm with a history
15 in Nevada, where it has conducted at least one campaign and has at least one employee. Lex also
16 argues that this court has specific personal jurisdiction over Axiom because it has plausibly
17 alleged that Axiom purposefully directed its activities at Nevada, Lex’s claims arise out of those
18 contacts, and it would not be unreasonable for Axiom to be haled into court here.

19 “When no federal statute governs personal jurisdiction, the district court applies the law
20 of the forum state.” *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Nevada’s long-
21 arm statute is co-extensive with federal standards, so I may exercise personal jurisdiction if
22 doing so comports with federal constitutional due process. Nev. Rev. Stat. § 14.065(1); *Walden*
23 *v. Fiore*, 571 U.S. 277, 283 (2014). “For a court to exercise personal jurisdiction over a

1 nonresident defendant, that defendant must have at least minimum contacts with the relevant
2 forum such that the exercise of jurisdiction does not offend traditional notions of fair play and
3 substantial justice.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir.
4 2004) (quotation omitted). “There are two forms of personal jurisdiction that a forum state may
5 exercise over a nonresident defendant—general jurisdiction and specific jurisdiction.” *Boschetto*,
6 539 F.3d at 1016.

7 When a defendant moves to dismiss for lack of personal jurisdiction on the basis of
8 written materials rather than an evidentiary hearing, I must determine whether the plaintiff’s
9 “pleadings and affidavits make a prima facie showing of personal jurisdiction.” *Schwarzenegger*,
10 374 F.3d at 800 (quotation omitted). In deciding whether a plaintiff has met its burden, I must
11 accept as true the uncontroverted allegations in its complaint and resolve conflicts in the
12 evidence in its favor. *Id.*

13 **A. General Jurisdiction**

14 General personal jurisdiction allows a court to hear any claim against a defendant when
15 that defendant’s “affiliations with the State are so continuous and systematic as to render [it]
16 essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)
17 (quotation omitted). That is satisfied as to an entity by showing that it is incorporated or formed
18 in the forum, has its principal place of business there, or is “otherwise at home” there. *Impossible*
19 *Foods Inc. v. Impossible X LLC*, 80 F.4th 1079, 1086 (9th Cir. 2023) (quotation omitted).

20 The second amended complaint alleges that Vanguard and Axiom are Texas limited
21 liability companies. ECF No. 21 at 4. There is no allegation that either company has its principal
22 place of business in Nevada. The allegations that Axiom is “nationally renowned,” and that
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1 Vanguard is Axiom’s “nationwide grassroots and field division” do not make Axiom at home in
2 Nevada.

3 In Lex’s response to the motion to dismiss, it argues that Axiom has conducted at least
4 one political campaign in Nevada and that Roe, “through Axiom, is currently leading a national
5 U.S. Presidential Campaign.” ECF No. 32 at 11. Lex also contends that Axiom has employees in
6 Nevada, including a lobbyist identified on Axiom’s website who tweeted election results while
7 visiting Nevada in January 2023. *Id.* at 11-12. However, being active in the state is not sufficient
8 to support general personal jurisdiction. *See Daimler*, 571 U.S. at 137-38 (rejecting the argument
9 that general jurisdiction extends to any state in which a corporation “engages in a substantial,
10 continuous, and systematic course of business” (quotation omitted)). Rather, Lex must show that
11 Axiom’s contacts with Nevada “are so continuous and systematic as to render [it] essentially at
12 home” in Nevada. *Id.* at 139. It has not done so.

13 **B. Specific Jurisdiction**

14 Specific jurisdiction depends on an “activity or an occurrence that takes place in the
15 forum State and is therefore subject to the State’s regulation.” *Goodyear Dunlop Tires*
16 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). “In contrast to general, all-purpose
17 jurisdiction, specific jurisdiction is confined to adjudication of issues deriving from, or connected
18 with, the very controversy that establishes jurisdiction.” *Id.* (quotation omitted).

19 Specific jurisdiction exists over Axiom (1) if it “performed some act or consummated
20 some transaction by which it “purposefully directed its activit[ies] toward” Nevada or it
21 “purposefully availed itself of the privilege of conducting business” in Nevada; (2) if Lex’s
22 claims “arise out of or result from” Axiom’s “forum-related activities;” and (3) “if the exercise
23 of jurisdiction is reasonable.” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 979 (9th Cir. 2021)

1 (quotation omitted). Lex “bears the burden on the first two prongs,” but if it meets that burden,
2 then Axiom “must come forward with a compelling case that the exercise of jurisdiction would
3 not be reasonable.” *Id.* (quotation omitted).

4 1. Purposeful Direction or Availment

5 Whether to use purposeful availment or purposeful direction for the first prong of the
6 specific jurisdiction test “turns on the nature of the underlying claims.” *Id.* Generally, purposeful
7 availment applies when the underlying claims are contractual and purposeful direction applies
8 when the underlying claims are tortious in nature. *Id.* Here, Lex asserts both contract and tort
9 claims, so “both tests are relevant.” *Glob. Commodities Trading Grp., Inc. v. Beneficio de Arroz*
10 *Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020). “At bottom, both purposeful availment and
11 purposeful direction ask whether defendants have voluntarily derived some benefit from their
12 interstate activities such that they will not be haled into a jurisdiction solely as a result of
13 random, fortuitous, or attenuated contacts.” *Id.* (quotation omitted). Consequently, “the first
14 prong may be satisfied by purposeful availment, by purposeful direction, or by some
15 combination thereof.” *Davis v. Cranfield Aerospace Sols., Ltd.*, 71 F.4th 1154, 1162 (9th Cir.
16 2023) (quotation omitted).

17 A “defendant purposefully directs its activities toward the forum when the defendant has
18 (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
19 defendant knows is likely to be suffered in the forum state.” *Ayla, LLC*, 11 F.4th at 980
20 (quotation omitted). An intentional act means “an intent to perform an actual, physical act in the
21 real world” *Schwarzenegger*, 374 F.3d at 806. “Express aiming requires more than the
22 defendant’s awareness that the plaintiff it is alleged to have harmed resides in or has strong ties
23 to the forum, because the plaintiff cannot be the only link between the defendant and the forum.”

1 *Ayla*, 11 F.4th at 980 (quotation omitted). Rather, “something more,” such as “conduct directly
2 targeting the forum is required to confer personal jurisdiction.” *Id.* (simplified).

3 The SAC alleges that CSI hired Vanguard because the defendants “heavily emphasized
4 the reputation of Axiom and Jeff Roe . . . to create a perception that Vanguard was supported by
5 the full support, experience, and reputations of Axiom and Roe and others.” ECF No. 21 at 9.
6 Vanguard and Axiom drafted the contract and Vanguard’s vice president of sales, Scott Scheid,⁴
7 discussed it with CSI, “with insight from Axiom.” *Id.* After signing the contract, Scheid copied
8 an email to “Axiom leadership Tom Goodson and Joe Williams . . . indicating [Goodson and
9 Williams] would send the invoices.” *Id.* at 9-10.⁵ According to the SAC, Goodson and Williams
10 “were involved in the contract and would be involved in the services going forward,” which
11 “further reinforc[ed] Plaintiff’s expectation and reasonable conclusion that it was contracting
12 with Axiom.” *Id.* at 10. Goodson contacted CSI to make payments. *Id.* Additionally, “[Scheid]
13 represented to CSI that he would be in constant contact with Axiom, Roe, Williams, and
14 Goodson about the signature gathering effort.” *Id.* According to the SAC, Scheid continually
15 advised CSI that the signature gathering effort was going well, which induced CSI to continue to
16 request Vanguard to gather more signatures, and in turn pay the defendants for those efforts. *Id.*
17 at 12. The invoices were sent by, and payment was sent to, Goodson and Williams. *Id.*

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20 ⁴ The SAC sometimes refers to this person as Sheid. I take the spelling from the email excerpted
in the SAC. *See* ECF No. 21 at 10.

21 ⁵ In reply, the defendants argue that Williams and Goodson are actually Vanguard employees
22 and were acting as such in the emails to which the SAC refers, which the defendants assert is
shown by their email addresses that are not displayed on the email pictured in the SAC. ECF No.
23 35 at 5. The defendants contend I can consider the email because Lex incorporated it in the
SAC, but the defendants do not provide the actual email, instead providing only attorney
argument to support this assertion, and only in reply. I therefore take the SAC’s allegations as
true at this stage that Williams and Goodson were acting on Axiom’s behalf.

1 Lex alleges that upon realizing that the signature gathering effort fell short of what was
2 being represented, CSI asked for a refund. *Id.* at 19. According to the complaint, Scheid assured
3 CSI “that a refund was forthcoming, that Defendants would ‘take care of it,’ and that one of
4 Defendant’s various senior leadership would contact [CSI] after Christmas.” *Id.* at 19. CSI
5 believed that this senior leadership was Roe or someone else at Axiom, as confirmed by a text
6 message Scheid sent to CSI in which he stated that he “‘filled in’ Axiom leadership and needed
7 to wait for several of these people . . . to get back from vacation.” *Id.* at 19-20. Scheid also
8 stated that Axiom President Rob Phillips would call CSI after Christmas and “take care of it.” *Id.*
9 at 19. However, Phillips did not call, nor did anyone else. *Id.* at 20.

10 Although a close call, Lex has alleged sufficient facts that Axiom engaged in intentional
11 acts purposefully directed at Nevada causing harm that Axiom knew was likely to be suffered in
12 Nevada. Taking the SAC’s allegations and all reasonable inferences as true, Axiom’s reputation
13 was touted as the reason to hire Vanguard; Axiom assisted in drafting the contract or provided
14 “insight” into that contract; Goodson and Williams, acting on Axiom’s behalf, issued invoices,
15 contacted CSI for payment, and received payment; Scheid represented that he was in constant
16 contact with Axiom throughout the effort; and when the effort failed, Scheid advised CSI that
17 Axiom leadership had to be informed and would take care of CSI’s dissatisfaction with the
18 contract’s performance. Axiom thus directed its activities at Nevada by participating in the
19 formation, performance, and receipt of payment for a signature gathering effort for a ballot
20 initiative in Nevada that lasted for approximately six months. ECF No. 21 at 4-7, 11. Its contacts
21 with the forum thus were not random, fortuitous, or attenuated, or based solely on CSI’s location.
22 The purpose of those contacts was to conduct a political signature gathering campaign in Nevada
23 in support of a Nevada ballot initiative in exchange for payment. To the extent the

1 representations about Vanguard’s performance were false, Axiom knew the harm would be felt
2 in Nevada, both because that is where CSI would be defrauded and because that is where the
3 ballot initiative would fail if not enough valid signatures were obtained. Even if Lex has not
4 sufficiently alleged purposeful direction, I would allow jurisdictional discovery, rather than
5 dismiss at this stage. *See Laub v. United States Dep’t of Interior*, 342 F.3d 1080, 1093 (9th Cir.
6 2003) (stating that a court “ordinarily” should grant jurisdictional discovery “where pertinent
7 facts bearing on the question of jurisdiction are controverted or where a more satisfactory
8 showing of the facts is necessary”).

9 2. Arise Out of Lex’s Claims

10 Lex’s claims arise out of Axiom’s forum-related activities. Lex alleges Vanguard
11 breached the contract with which Axiom allegedly was assisting and for which Axiom was
12 invoicing and receiving payment. Lex also alleges that the defendants falsely represented their
13 ability to perform the contract, as well as periodically falsely represented how the signature
14 gathering was proceeding to induce Lex to continue making payments, that Scheid consulted
15 with Axiom throughout, and that Axiom invoiced and received those payments.

16 3. Exercise of Jurisdiction is Reasonable

17 Because Lex met its burden of making a prima facie showing on the first two factors,
18 Axiom bears the burden of showing the exercise of jurisdiction would be unreasonable. It did
19 not argue that the exercise of jurisdiction would be unreasonable in its initial motion or in its
20 reply. Consequently, Axiom has not met its burden on this factor.

21 As a result, Lex has made a prima facie case of specific personal jurisdiction over Axiom.
22 Even if it had not, I would grant jurisdictional discovery. Consequently, I deny the defendants’
23 motion to dismiss for lack of personal jurisdiction.

1 **III. CONCLUSION**

2 I THEREFORE ORDER that the defendants' motion to dismiss (**ECF No. 28**) is

3 **DENIED.**

4 I FURTHER ORDER that by February 16, 2024, plaintiff Lex Tecnica, Ltd. may file a
5 third amended complaint to add Community Schools Initiative as a plaintiff if it chooses to do
6 so.

7 DATED this 17th day of January, 2024.



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10 ANDREW P. GORDON
11 UNITED STATES DISTRICT JUDGE
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