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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Michael S. Williams,)	No. CV-19-03482-PHX-SPL
	}	
Plaintiff,	}	ORDER
vs.	}	
	}	
Christopher J. Wiggins, et al.,	}	
	}	
Defendants.	}	
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Before the Court is Christopher J. Wiggins and Seldon Wiggins (together, the “Defendants”) Motion to Dismiss for Lack of Personal Jurisdiction Under Federal Rule of Civil Procedure 12(b), or in the Alternative to Transfer Venue (the “Motion”). (Doc. 12) The Motion was fully briefed on July 5, 2019, and oral argument was requested by Plaintiff Michael S. Williams (the “Plaintiff”). (Docs. 18, 19) Because it would not assist in resolution of the instant issues, the Court finds the pending motion is suitable for decision without oral argument. See LRCiv. 7.2(f); Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998). The Court’s ruling is as follows.

I. Background

Defendant Christopher J. Wiggins (“Wiggins”) is a co-founder, former chief executive officer, and majority shareholder of ORhub, Inc. (“ORhub”). (Doc. 1-2 at 3; Doc. 18 at 5) ORhub is incorporated in Nevada and headquartered in Tempe, Arizona. (Doc. 18 at 26) The Plaintiff is an investor in ORhub and an Arizona resident. (Doc. 18 at 26)

1 Frederic Buonincontri (“Buonincontri”) and Lanny Lang (“Lang”) are also ORhub investors
2 and Arizona residents. (Doc. 18 at 26)

3 In October 2018, Buonincontri filed a lawsuit against ORhub in the Maricopa County
4 Superior Court. (Doc. 18 at 26) On April 4, 2019, Wiggins sent an email (the “April Email”)
5 to approximately 78 ORhub investors and stockholders, including Williams, Buonincontri,
6 and Lang, making statements that the Plaintiff alleges are defamatory. (Doc. 18 at 27; Doc.
7 1-2 at 4) The April Email (i) included statements alleging “collusion and wrongful
8 behavior” between Williams, Buonincontri, and Lang; (ii) referred to Williams,
9 Buonincontri, and Lang as “criminal,” accusing them of “intentionally damaging the value
10 of” ORhub; and (iii) stated that Williams, Buonincontri, and Lang “have continued to
11 manipulate the truth and mislead [ORhub’s] shareholders.” (Doc. 1-2 at 4–5)

12 On April 17, 2019, the Plaintiff initiated this lawsuit (the “Complaint”) in the
13 Maricopa County Superior Court alleging causes of action for defamation and false light
14 invasion of privacy. (Doc. 1-2) The case was removed to this Court on May 24, 2019. (Doc.
15 1) The Defendants filed the Motion seeking dismissal of the Complaint pursuant to Federal
16 Rule of Civil Procedure 12(b)(2).

17 **II. Legal Standard**

18 “[T]he plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”
19 *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). Where, as here, a defendant’s motion
20 to dismiss is based on a written record and no evidentiary hearing is held, “the plaintiff need
21 only make a prima facie showing of jurisdictional facts.” *Id.* “For a court to exercise
22 personal jurisdiction over a non-resident defendant, that defendant must have at least
23 ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction ‘does not
24 offend traditional notions of fair play and substantial justice.’” *Dole Food Co. v. Watts*, 303
25 F.3d 1104, 1110–11 (9th Cir. 2002) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310,
26 316 (1945)). “In judging minimum contacts, a court properly focuses on ‘the relationship
27 among the defendant, the forum, and the litigation.’” *Calder v. Jones*, 465 U.S. 781, 788
28 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). When no federal statute

1 specifically defines the extent of personal jurisdiction, federal courts look to the law of the
2 state where the district court sits—in this case, Arizona. *CE Distribution, LLC v. New Sensor*
3 *Corp.*, 380 F.3d 1107, 1110 (9th Cir. 2004). “Arizona’s long-arm rule permits the exercise
4 of personal jurisdiction to the extent allowed by the due process clause of the United States
5 Constitution.” *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1188 (9th Cir.
6 2002).

7 Personal jurisdiction may be either general or specific. See *Bancroft & Masters, Inc.*
8 *v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). General jurisdiction exists where
9 a non-resident defendant engages in substantial, continuous or systematic activities within
10 the forum. *Marlyn Nutraceuticals, Inc. v. Improvita Health Prod.*, 663 F. Supp. 2d 841, 848
11 (D. Ariz. 2009) (citing *Perkins v. Benguet Consol. Mining, Co.*, 342 U.S. 437, 445 (1952)).

12 In deciding whether a defendant is subject to specific personal jurisdiction, federal
13 courts consider whether (1) the non-resident defendant purposefully directs his activities or
14 consummates some transaction with the forum or resident thereof; or performs some act by
15 which he purposefully avails himself of the privilege of conducting activities in the forum,
16 thereby invoking the benefits and protections of its laws; (2) the claim arises out of or relates
17 to the defendant’s forum-related activities; and (3) the exercise of jurisdiction comports with
18 fair play and substantial justice, i.e. it must be reasonable. *Picot*, 780 F.3d at 1211 (citing
19 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). The
20 plaintiff has the burden of proving the first two prongs. *CollegeSource, Inc. v. AcademyOne,*
21 *Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011). If he does so, the burden shifts to the defendant
22 to “set forth a ‘compelling case’ that the exercise of jurisdiction would not be reasonable.”
23 *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). For claims
24 sounding in tort, courts apply a “purposeful direction” test and look to evidence that the
25 defendant has directed his actions at the forum state, even if those actions took place
26 elsewhere. *Schwarzenegger*, 374 F. 3d at 802.

27 **III. Analysis**

28 The Defendants seek dismissal of this case because the Court does not have personal

1 jurisdiction over either of the Defendants. (Doc. 12 at 6) The Defendants argue that the
2 Plaintiff fails to establish general or specific personal jurisdiction through the allegations in
3 the Complaint because (i) the Defendants are not Arizona residents and (ii) the April Email
4 was not directed at Arizona residents. (Doc. 12 at 6) In response, the Plaintiff argues that
5 the Court has personal jurisdiction over the Defendants because the defamatory actions
6 taken by the Defendants targeted and impacted persons and entities residing in Arizona.
7 (Doc. 18 at 5)

8 **A. General Jurisdiction**

9 The Defendants argue that they do not have the requisite minimum contacts with
10 Arizona for the Court to have general personal jurisdiction over the parties. The Defendants
11 argue that they are California residents who do not reside or conduct business in Arizona.
12 (Doc. 12 at 6) The Defendants also argue that they do not own any assets in Arizona and
13 do not travel to Arizona. (Doc. 12 at 8) In response, the Plaintiff argues that the Defendants
14 conduct business in Arizona because Wiggins is a current board advisor and stockholder of
15 ORhub, which is headquartered in Arizona. (Doc. 18 at 20)

16 The Court finds that it does not have general personal jurisdiction over the
17 Defendants because the Plaintiff has failed to allege sufficient information demonstrating
18 that the Defendants have substantial, continuous and systematic contacts with Arizona. The
19 Plaintiff fails to dispute that the Defendants are not Arizona residents or that they do not
20 spend any meaningful amount of time in Arizona. Even the Plaintiff's allegation that the
21 Defendants are stockholders in Arizona companies fails to prove continuous and systematic
22 contacts, as the Plaintiff fails to allege that the Defendants' stockholder relationship requires
23 the Defendants to travel or conduct business in Arizona on a continuous or systematic basis.
24 Accordingly, the Court finds that it cannot exercise general personal jurisdiction over the
25 Defendants.

26 **B. Specific Jurisdiction**

27 The Defendants argue that the allegations in the Complaint do not allege facts
28 sufficient to confer specific personal jurisdiction over the Defendants. The Court of Appeals

1 for the Ninth Circuit analyzes specific jurisdiction under a three-prong test: (1) the non-
2 resident defendant must purposefully direct his activities or consummate some transaction
3 with the forum or resident thereof; or perform some act by which he purposefully avails
4 himself of the privilege of conducting activities in the forum, thereby invoking the benefits
5 and protections of its laws; (2) the claim must be one which arises out of or relates to the
6 defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport with
7 fair play and substantial justice, i.e. it must be reasonable. *Mavrix Photo, Inc. v. Brand*
8 *Techs., Inc.*, 647 F.3d 1218, 1227–28 (9th Cir. 2011).

9 1. Purposeful Direction

10 In order to determine whether a party purposefully directs out-of-forum activities at
11 a forum, courts implement an “effects test”. *Freestream Aircraft (Bermuda) Ltd. v. Aero*
12 *Law Grp.*, 905 F.3d 597, 606 (9th Cir. 2018). The “effects test” focuses on the forum in
13 which a defendant’s actions were felt, whether or not the actions themselves occurred within
14 the forum. *MJG Enterprises, Inc. v. Cloyd*, 2010 WL 3842222, at *6 (D. Ariz. Sept. 27,
15 2010). The three-part test requires that the defendant have “(1) committed an intentional
16 act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
17 likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d at 805.

18 The Defendants concede that sending the April Email qualifies as an intentional act.
19 (Doc. 12 at 12) However, as to the second prong of the “effects test,” the Defendants argue
20 that the April Email at issue was not expressly aimed at Arizona because (i) the target
21 audience of the April Email was persons primarily outside of Arizona, and (ii) the majority
22 of the April Email recipients reside outside of Arizona. (Doc. 12 at 12) In response, the
23 Plaintiff argues that 18 of the approximately 78 email recipients reside in Arizona, and the
24 purpose of the email was to disrupt an Arizona-based company and an Arizona-based
25 lawsuit. (Doc. 18 at 13–15)

26 The “express aiming” requirement is met when “the defendant is alleged to have
27 engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a
28 resident of the forum state.” *Marlyn Nutraceuticals*, 663 F. Supp. 2d at 851. Acts that have

1 merely foreseeable effects in the forum state are insufficient. *Id.* Instead, the Defendants
2 must have known that the consequences of their allegedly wrongful conduct would be felt
3 in Arizona. *Id.* The *Walden* precedent found that individualized targeting is, on its own,
4 insufficient to confer specific personal jurisdiction. *Axiom Foods, Inc. v. Acerchem Int'l,*
5 *Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017).

6 In this case, the Defendants clearly expected the email to impact a company
7 headquartered in Arizona; however, even though the April Email was sent to a group
8 including Arizona residents, the Defendants dispute that they specifically targeted Arizona
9 residents through the email. The Court finds that there are sufficient allegations in the
10 Complaint to demonstrate that Arizona residents were the target of the email or that the
11 email was sent to specifically induce action from the Arizona email recipients. The
12 strongest example of this is that the Arizona stockholders were purposely included in the
13 list of email recipients. (Doc. 1-2 at 4) The Complaint also alleges that Wiggins sought to
14 galvanize stockholders to file a class action lawsuit against the Plaintiff, Buonincontri, and
15 Lang. (Doc. 1-2 at 6)

16 In *Dole*, the Court exercised specific jurisdiction where the defendants
17 communicated “frequently” with a company’s decisionmakers who resided in the forum
18 state, and the company’s principal place of business was in the forum state. *Dole*, 303 F.3d
19 at 1109–12. This case is distinguishable from *Dole* because the communication at issue in
20 this case was not frequent. Here, the Defendants sent a single email seeking to communicate
21 with a large group of stockholders, most of which residing outside of Arizona, in order to
22 organize support against an Arizona company led by Arizona residents.

23 This case is also distinguishable from *Neuromechanical, LLC* because the
24 Defendants sent the April Email directly to approximately 18 Arizona residents, including
25 the Plaintiff. *Neuromechanical, LLC v. Kiro Kids Pty. Ltd.*, 2011 WL 333337, at *3 (D.
26 Ariz. Jan. 31, 2011) (finding that less than one percent of the defendants’ emails targeted
27 Arizona residents).¹ In *Axiom*, the Court focused on the defendant’s contacts with the

28 ¹ The 18 Arizona email recipients constitute approximately 20 percent of the total

1 proposed forum state of California while adjudicating a copyright infringement claim.
2 *Axiom Foods*, 874 F.3d at 1070–71. In *Axiom*, a defendant’s knowledge regarding the forum
3 of a copyright was one required element necessary to establish individualized targeting.
4 This case is distinguishable from *Axiom* because the Defendants’ alleged dissemination of
5 defamatory communication to Arizona residents necessitates the Court’s consideration of
6 the Defendants’ communication and contact with Arizona residents.

7 The Court’s finding is supported by the *Walden* precedent, as (i) the Defendants
8 established minimum contacts in Arizona through communication via email with Arizona
9 residents, which is sufficient to constitute a “relevant contact”; and (ii) the April Email was
10 widely circulated to Arizona residents within the relevant stockholder group, and the brunt
11 of the Plaintiff’s injury occurred in Arizona. *Walden v. Fiore*, 571 U.S. 277, 285–87 (2014).
12 This is evidenced by the Plaintiff’s claim that his professional reputation is centered in
13 Arizona. (Doc. 18 at 25) Ultimately, it was the Defendants’ communication with the
14 relevant forum that allows the Court’s exercise of specific jurisdiction in this case.
15 Accordingly, the Court finds that the Defendants expressly aimed their actions at Arizona
16 residents for the purpose of the “effects test”.

17 Finally, the third prong of the “effects test” asks if a defendant’s intentional action
18 aimed at the forum state caused harm that the defendant knew was likely to be suffered in
19 the forum. *MJG Enterprises*, 2010 WL 3842222, at *9. “When a forum in which a plaintiff
20 corporation has its principal place of business is in the same forum toward which defendants
21 expressly aim their acts, the ‘effects’ test permits that forum to exercise personal
22 jurisdiction”. *Id.* It is undisputed that ORhub hosts its headquarters and principal place of
23 business in Arizona. The Defendants argue that the Plaintiff’s harm was not foreseeable in
24 Arizona because most of the targeted recipients of the April Email reside outside of Arizona.
25 However, the Court finds this argument unsupported by the fact that the Plaintiff,
26 Buonincontri, and Lang were included in the email, and the Defendants knew each of them
27 to be Arizona residents operating an Arizona company. (Doc. 1-2 at 4) Thus, the Court

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April Email recipients.

1 finds that the Defendants purposefully directed their actions at Arizona.

2 2. Forum Related Activities

3 The Defendants do not directly address whether the April Email constitutes a forum-
4 related activity. To address this issue, the Court analyses whether the Plaintiff would not
5 have been injured “but for” the Defendants’ conduct directed toward the Plaintiff in
6 Arizona. *Biliack v. Paul Revere Life Ins. Co.*, 265 F. Supp. 3d 1003, 1008 (D. Ariz. 2017)
7 (stating “whether the claim arises out of or relates to the defendant’s forum-related
8 activities, is established ‘if the plaintiff would not have been injured but for’ the defendant’s
9 conduct directed at the forum.”). The Plaintiff argues that the Plaintiff’s claims for
10 defamation “arise out of [the Defendants’] Arizona-focused emails sent to 18 Arizona
11 recipients,” but no further argument is provided. (Doc. 18 at 17)

12 Based on the established “but for” precedent, the Court cannot find that the Plaintiff’s
13 claims arise out of the Defendants’ forum-related activities. It is entirely plausible that the
14 Plaintiff could bring identical claims against the Defendants had the April Email only been
15 distributed to parties outside of Arizona. Although the Plaintiff may argue that the majority
16 of his harm was experienced in Arizona, the Court cannot find that his injury did not occur
17 elsewhere. With identical content and intent behind the distribution of the April Email, the
18 Plaintiff can still bring claims against the Defendants in another forum, and the Defendants’
19 act of sending the allegedly defamatory April Email does not create a cause of action
20 specific to Arizona. Thus, the Court finds that the Plaintiff still may have been injured but
21 for the Defendants’ forum-related conduct. Therefore, the Motion must be granted.

22 3. Reasonableness

23 The Plaintiff has the burden of establishing the first two prongs of the specific
24 jurisdiction analysis before the burden shifts to the Defendants to argue that the exercise of
25 jurisdiction would not be reasonable. *CollegeSource*, 653 F.3d at 1076. Because the Court
26 finds that the Plaintiff has not met his burden, the Court declines to address the
27 reasonableness of an exercise of specific jurisdiction or the Defendants’ motion to transfer
28 venue.

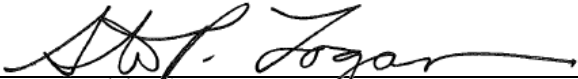
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Accordingly,

IT IS ORDERED that the Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction Under Federal Rule of Civil Procedure 12(b), or in the Alternative to Transfer Venue (Doc. 12) is **granted**; and

IT IS FURTHER ORDERED that the Clerk of Court shall terminate this case and enter judgment accordingly.

Dated this 4th day of October, 2019.



Honorable Steven P. Logan
United States District Judge