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7 UNITED STATES DISTRICT COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA
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10 MICHAEL ROSS, an individual;
11 BELLA PORTIA ROSS, an
12 individual; M. ROSS
13 PHILIPPINE CORPORATION, a
14 Philippines corporation,

NO. CIV. S-08-2723 LKK/KJM

15 Plaintiffs,

16 v.

O R D E R

17 RACHEL ALLEN REVIEWERS USA,
18 INC., a Philippines
19 corporation; REGNAR DELEON,
20 an individual; RAQUEL DELEON,
21 an individual; and DOES 1-25,
22 inclusive,

23 Defendants.

24 _____/
25 Plaintiffs Michael Ross, Bella Portia Ross, and M Ross
26 Philippine Corporation have brought suit against defendants Rachell
Allen Reviewers USA, Inc., Regnar de Leon, Raquel de Leon, and
unnamed defendants for violations of the Racketeer Influenced and
Corrupt Organization Act (RICO), intentional misrepresentation,
false promise, and conspiracy. Pending before the court is

1 defendants' motions in the alternative to dismiss for lack of
2 personal jurisdiction or subject matter jurisdiction or for
3 improper venue. The court resolves the motion on the papers. For
4 the reasons stated herein, the motion is granted for lack of
5 personal jurisdiction.

6 **I. Background**

7 **A. Allegations of the Complaint and Procedural History**

8 Plaintiffs filed a complaint in this court in November 2008.
9 In it, they allege that defendant Rachell Allen Reviewers USA, Inc.
10 "presented [plaintiffs] with the opportunity to start a nursing
11 review and test preparation business located in the Philippines."
12 Compl. ¶ 15. During these negotiations, plaintiffs allege,
13 defendants made material misrepresentations about the business.
14 Plaintiffs allege that they relocated to the Philippines based on
15 these false representations and entered into a licensing agreement
16 with Rachell Allen Reviewers USA, Inc. through its agent, defendant
17 Regnar de Leon. As part of this business endeavor, plaintiffs
18 Michael and Bella Portia Ross allegedly formed the M Ross
19 Philippine Corporation, also named as a plaintiff.

20 Some time later, plaintiffs allegedly learned that the
21 representations made by defendants were false. They allege causes
22 of action for violations of RICO, intentional misrepresentation,
23 false promise, and conspiracy. They seek compensatory, punitive,
24 and treble damages and attorneys' fees.

25 Both plaintiffs and defendants acknowledge that a similar suit
26 has been brought in the Philippines. See Declaration of Robert W.

1 Hunt In Support of Defendants' Motion to Dismiss ("Hunt Decl.") Ex.
2 2-3; Pls.' Opp'n to Defs.' Mot. to Dismiss at 6 (relying on same).
3 That complaint was brought by the M. Ross Philippine Corporation,
4 apparently filed in September 2008. Hunt Decl. Ex. 2. It alleges
5 that defendants Regnar de Leon, Raquel de Leon and two other
6 defendants made false representations to plaintiff in discussions
7 regarding a nursing test preparation business. Id. The allegations
8 of that complaint include those made in the instant suit, although
9 with more detail than those of the instant suit. See generally id.;
10 Compl. Plaintiff seeks damages in that suit and also alleges that
11 defendants' conduct constitutes the crime of "estafa" or
12 "swindling" under the Philippine Penal Code. Hunt Decl. Ex. 2. The
13 complaint is signed by Bella Portia Ross, as President of the M.
14 Ross Philippine Corporation. Id.

15 Defendant Regnar de Leon filed a counter-affidavit in the suit
16 brought in the Philippines, which appears to be a form of Answer,
17 in which he denied the plaintiffs' allegations. Hunt Decl. Ex. 3.
18 This appears to have been filed in that suit in October 2008.

19 **B. Evidence Relevant to Personal Jurisdiction Issue**

20 To support their assertion that this court has personal
21 jurisdiction over the defendants, plaintiffs have submitted the
22 declaration of plaintiff Michael Ross. In it, he declared that he
23 "was presented with the opportunity to start a nursing review and
24 test preparation business located in the Philippines." Declaration
25 of Michael Ross in Opposition to Defendants' Motion to Dismiss
26 ("Ross Decl.") ¶ 3. At the time, he was living in Vallejo,

1 California. Id. He further declared that, "[d]uring negotiations
2 with Defendants regarding the license agreement, [he] resided in
3 City of Vallejo, State of California. Defendants contacted [him]
4 in California by electronic mail and telephone calls. . . ." Id.
5 ¶ 4.

6 Defendants have tendered evidence relevant to the issue of
7 personal jurisdiction as well. Defendant Regnar de Leon has
8 declared that defendant Rachell Allen Reviewers USA, Inc. is a
9 Philippine corporation, "not incorporated in the United States" and
10 that it "does not have a business presence in the United States."
11 Declaration of Regnar de Leon In Support of Defendants' Motion to
12 Dismiss ("De Leon Decl.") ¶ 12. He also has declared that,
13 "Defendants never directed any conduct at all into the State of
14 California." Id. ¶ 13. According to the declaration,

15 Plaintiffs Mr. and Mrs. Ross were in the Philippines
16 when [Regnar de Leon] (and [his] mother, Defendant
17 Raquel de Leon) first met them, and Plaintiffs Mr. and
18 Mrs. Ross were in the Philippine when [the parties]
19 negotiated the licensing agreement. [Regnar de Leon's]
20 initial contact with Plaintiffs Mr. and Mrs. Ross was
21 through their agent, Oliver Juanir, in the Philippines.

22 Id.

23 Plaintiffs alleged in their complaint, and defendants do not
24 dispute, that defendant Regnar de Leon has his principal place
25 residence in the Philippines, defendant Raquel de Leon has her
26 principal place of residence in Michigan, and defendant Rachell
27 Allen Reviewers USA, Inc. is a Philippine corporation. Compl. ¶¶
28 8-10; see also Defs.' Mot. to Dismiss at 9; De Leon Decl. ¶¶ 4, 12.
29 Regnar de Leon is also alleged to have a residence in Illinois.

1 Compl. ¶ 9.

2 **II. Standard for a Motion to Dismiss for Lack of Personal**
3 **Jurisdiction**

4 When a defendant challenges the sufficiency of personal
5 jurisdiction, the plaintiff bears the burden of establishing that
6 the exercise of jurisdiction is proper. Sinatra v. National
7 Enquirer, Inc., 854 F.2d 1191, 1194 (9th Cir. 1988).

8 Analysis of the appropriateness of the court's personal
9 jurisdiction over a defendant in a case in which the court
10 exercises diversity jurisdiction begins with California's long arm
11 statute. Aanestad v. Beech Aircraft Corp., 521 F.2d 1298, 1300 (9th
12 Cir. 1974). California's long arm statute authorizes the court to
13 exercise personal jurisdiction on any basis consistent with the due
14 process clause of the United States Constitution. Cal. Code Civ.
15 Proc. § 410.10; Rocke v. Canadian Auto Sport Club, 660 F.2d 395,
16 398 (9th Cir. 1981).

17 Consistent with the due process clause, the court may exercise
18 personal jurisdiction over a defendant when the defendant has
19 certain minimum contacts with the forum state such that the
20 maintenance of the suit does not offend traditional notions of fair
21 play and substantial justice. Int'l Shoe Co. v. Washington, 326
22 U.S. 310, 316 (1945). If the defendant is domiciled in the forum
23 state, or if the defendant's activities there are "substantial,
24 continuous and systematic," a federal court can exercise general
25 personal jurisdiction as to any cause of action involving the
26 defendant, even if unrelated to the defendant's activities within

1 the state. Perkins v. Benquet Consolidated Mining Co., 342 U.S. 437
2 (1952); Data Disc, Inc. v. Systems Technology Assoc., Inc., 557
3 F.2d 1280, 1287 (9th Cir. 1977).

4 If a non-resident defendant's contacts with California are not
5 sufficiently continuous or systematic to give rise to general
6 personal jurisdiction, the defendant may still be subject to
7 specific personal jurisdiction on claims arising out of defendant's
8 contacts with the forum state. Burger King Corp. v. Rudzewicz, 471
9 U.S. 462, 477-78 (1985); Haisten v. Grass Valley Medical
10 Reimbursement Fund, Ltd., 784 F.2d 1392, 1397 (9th Cir. 1986).

11 The court employs a three-part test to determine whether the
12 exercise of specific personal jurisdiction comports with
13 constitutional principles of due process. See Schwarzenegger v.
14 Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). First,
15 specific jurisdiction requires a showing that the out-of-state
16 defendant purposefully directed its activities toward residents of
17 the forum state or purposefully availed itself of the privilege of
18 conducting activities in the forum state, thus invoking the
19 benefits and protections of its laws. Burger King, 471 U.S. at
20 474-75. Second, the controversy must be related to or arise out of
21 defendant's contact with the forum. Ziegler v. Indian River County,
22 64 F.3d 470, 473 (9th Cir. 1995). Third, the exercise of
23 jurisdiction must comport with fair play and substantial justice,
24 i.e., it must be reasonable. Haisten, 784 F.2d at 1397. If the
25 defendant has had the requisite minimum contacts with the forum
26 state, exercise of jurisdiction is presumed reasonable; at that

1 point, the burden lies on the defendant to show that jurisdiction
2 over it would be unreasonable. Sinatra, 854 F.2d at 1195.

3 **III. Analysis**

4 Defendants move to dismiss on the grounds that the court lacks
5 personal jurisdiction, that the court lacks subject matter
6 jurisdiction due to the inadequacy of plaintiffs' RICO allegations,
7 and that venue is improper in this district. Because the court
8 concludes that plaintiff has not shown that the court has personal
9 jurisdiction over the defendants, it need not reach the alternate
10 grounds.

11 As stated above, the court may exercise personal jurisdiction
12 over a defendant where either the defendant has "substantial,
13 continuous and systematic" contacts with the forum state (general
14 personal jurisdiction), Perkins, 342 U.S. 437, or where the claim
15 has arisen out of defendant's contacts with the forum state
16 (specific personal jurisdiction). Burger King Corp., 471 U.S. 462.
17 Here, plaintiff contends that the court has specific personal
18 jurisdiction over defendants. See Pls.' Opp'n to Mot. to Dismiss
19 at 3-7.

20 In order for the court to exercise specific personal
21 jurisdiction over the defendants, the plaintiffs must first show
22 that defendants purposely directed its activities toward the forum
23 state or purposely availed itself of the privilege of conducting
24 business in the forum state. Burger King Corp., 471 U.S. at 474-75.
25 The crux of this inquiry is whether defendant had sufficient
26 contacts with the forum state so as to reasonably expect to be

1 haled into court there. Id. at 474, citing Hanson v. Denckla, 357
2 U.S. 235, 253 (1958). The defendant's contacts with the forum state
3 must not be merely "random, fortuitous, or attenuated." Id. at 475,
4 citing Keeton v. Hustler Magazine, Inc., 465 U.S. 770, 774 (1984)
5 and World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 299
6 (1980) (internal punctuation omitted). Instead, the defendant must
7 have created through its acts a substantial connection to the forum
8 state. Id.

9 What suffices to meet this standard depends, of course, on the
10 facts of the particular case. In Sher v. Johnson, 911 F.2d 1357
11 (9th Cir. 1990), the Ninth Circuit confronted a similar factual
12 scenario as that alleged here, which serves as some guidance in the
13 instant case. There, plaintiff had retained defendant as his
14 attorney to represent him in a criminal prosecution in Florida.
15 Sher, 911 F.2d at 1360. Defendant was based in Florida, while
16 plaintiff resided at the time in California. Id. As such, the
17 defendant had mailed the retainer agreement to plaintiff in
18 California, where it was executed; plaintiff's wife sent payment
19 checks to the defendant drawn from California banks; a deed of
20 trust on plaintiff's home in California secured the payments and
21 was held by a California attorney on defendant's behalf; and
22 defendant went to California multiple times to meet with plaintiff.
23 Id. Eventually a dispute arose between the parties and plaintiff
24 sued defendant in a federal district court in California for
25 malpractice. Id.

26 The court held that there were sufficient contacts to support

1 specific personal jurisdiction. Id. at 1362. Applying Sinatra, 854
2 F.2d at 1195, the court explained that a defendant has purposefully
3 availed itself of the benefits of the forum state where it has
4 “performed some type of affirmative conduct which allows or
5 promotes the transaction of business within the forum state.” Id.
6 Although plaintiff alleged tort causes of action against defendant,
7 the tort arose from the contractual relationship between the
8 parties. Id. Nevertheless, the existence of the contract with a
9 party in the forum state or the fact that it was executed in the
10 forum state does not, without more, suffice to establish purposeful
11 availment. Id., citing Burger King, 471 U.S. at 478. Instead, the
12 court must consider “prior negotiations and contemplated future
13 consequences, along with the terms of the contract and the parties’
14 course of dealing.” Id.

15 Applying this rule, the court held that most of defendant’s
16 contacts with California were insufficient to show that he had a
17 substantial connection with the state. The execution of the
18 retainer agreement in California, the payments to defendant from
19 a California bank, and the defendant’s visits to California alone
20 were not sufficient. Id. at 1363. Although these acts occurred in
21 California and laid the basis of the parties’ relationship, there
22 was no evidence that they were undertaken by defendant to
23 deliberately create a substantial connection with California. Id.
24 at 1362-63. This was particularly true because those acts were
25 performed as incidental to defendant’s representation of plaintiff
26 in Florida. Id. at 1363. Significantly, neither defendant nor his

1 partners had affirmatively acted to solicit business in California.
2 Id. at 1362.

3 The execution of the deed of trust, however, did indicate the
4 defendant's substantial connection with the state that
5 "contemplated significant future consequences in California." Id.
6 at 1363 (internal citations omitted). This taken together with the
7 defendant's other contacts with California constituted personal
8 availment. Id. at 1363-64.

9 The Sher court's conclusion comports with that of other
10 Circuit cases that have also faithfully applied the High Court's
11 rule that only significant contacts with the forum state constitute
12 purposeful availment. See, e.g., Boschetto v. Hansing, 539 F.3d
13 1011, 1017 (9th Cir. 2008) (a "long transaction for the sale of one
14 item" in the forum state does not constitute purposeful availment);
15 Omeluk v. Langsten Slip & Batbyggeri, 52 F.3d 267, 271 (9th Cir.
16 1995) (defendant's purchase of items for a ship and initial docking
17 in the forum state did not create substantial contacts with it);
18 cf. T.M. Hylwa, M.D., Inc. v. Palka, 823 F.2d 310, 314-15 (9th Cir.
19 1987) (accountant's on-going provision of services to his client
20 after the client moved to California evinced a continuous
21 relationship with the forum state constituting purposeful
22 availment); Hirsch v. Blue Cross, Blue Shield of Kansas City, 800
23 F.2d 1474, 1479 (9th Cir. 1986) (defendant's provision of health
24 coverage to a person residing in California suggested significant,
25 on-going contacts with the state, demonstrating purposeful
26 availment).

1 Here, plaintiffs have not shown any of the defendants have had
2 significant contacts with California that could fairly be
3 characterized as having purposefully availed themselves of the
4 privilege of conducting business here. The entirety of plaintiffs'
5 evidence on this issue is the following portion of plaintiff
6 Michael Ross's declaration:

7 In or about the Spring of 2007, I was presented with the
8 opportunity to start a nursing review and test
9 preparation business located in the Philippines. At the
10 time this opportunity presented itself, I was residing
11 in the City of Vallejo, State of California. During
negotiations with Defendants regarding the license
agreement, I resided in City of Vallejo, State of
California. Defendants contacted me in California by
electronic mail and telephone calls. . . .

12 Ross Decl. ¶¶ 3-4. This is plainly insufficient to meet plaintiffs'
13 burden.

14 First, significantly, there is no evidence that defendants
15 contacted or solicited plaintiffs' business while the latter
16 resided in California, or that it was defendants who presented
17 plaintiffs with the business opportunity. In fact, the evidence
18 tendered suggests that there was a third party who may have
19 facilitated plaintiffs' contact with defendants about the business
20 opportunity. See De Leon Decl. ¶ 6 (declaring that plaintiffs
21 "engaged the services of Oliver Juanir, who contacted [defendant
22 Regnar de Leon] and asked whether RAR would offer a review program
23 to his clients"); see also Hunt Decl. Ex. 2 (complaint filed in
24 Philippines) ¶¶ 6-9 (alleging Oliver Juanir made representations
25 about defendants that later proved false). This is significant
26 because where a defendant has solicited plaintiff's business in the

1 forum state, this has been held to weigh in favor of finding there
2 was purposeful availment. See Sher, 911 F.2d at 1362; Sinatra, 854
3 F.2d at 1195; Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d
4 834, 840 (9th Cir. 1986); Taubler v. Giraud, 655 F.2d 991, 994 (9th
5 Cir. 1981). Plaintiffs do not argue nor have tendered any evidence
6 that the third party who may have been involved was an agent of
7 defendants.

8 Second, there is no evidence that defendants' contacts with
9 California, if any, were for the purpose of establishing a
10 continuous business relationship in California. It is undisputed
11 that the purpose of any contacts between defendants and plaintiffs,
12 while the latter resided in California, was to facilitate a
13 business venture in the Philippines. In this way, the facts of this
14 case are distinguishable from those cases where a defendant has
15 been held to have purposefully availed himself of the benefits of
16 the forum state by establishing a business relationship with a
17 party who continued to be located in California. See Palka, 823
18 F.2d at 314-15; Hirsch, 800 F.2d at 1479. Instead, as in Sher,
19 defendants' acts performed to create a business relationship that
20 would exist elsewhere cannot alone demonstrate the type of
21 substantial contacts with the state that renders proper the
22 assertion of jurisdiction over the defendant. See Sher, 911 F.2d
23 at 1362; see generally Burger King Corp., 471 U.S. at 474-75.

24 Even if a defendant could have found to have purposefully
25 availed itself of the forum state through conducting the type of
26 negotiations alleged here, plaintiff simply has not tendered enough

1 evidence from which the court can determine whether these actions
2 represent significant contact with California or mere random and
3 intermittent acts. See Burger King Corp., 471 U.S. at 474-75.
4 Plaintiffs have tendered no evidence regarding the number or
5 frequency of communications between defendants and them while the
6 plaintiffs were in California, nor which defendants participated
7 in those communications. Plaintiffs have simply not met their
8 burden in this regard.

9 Finally, although this dispute arises out of a contractual
10 relationship regarding the licensing of defendants' product,
11 plaintiffs' causes of action sound in tort. Like the Sher court,
12 the court considers the "purposeful availment" analysis to best
13 capture the nature of this relationship. However, when torts are
14 at issue, the Circuit has typically considered personal
15 jurisdiction in terms of whether defendant purposefully directed
16 its activities to the forum state, causing a harm that it knew
17 would likely be suffered in the forum state. See Menken v. Emm, 503
18 F.3d 1050, 1057-58 (9th Cir. 2007), citing Calder v. Jones, 465
19 U.S. 783, 789-90 (1984).

20 Even if this were the proper approach in the instant case,
21 plaintiffs have tendered no evidence to suggest that this test
22 would be met either. Plaintiffs have not tendered evidence, first,
23 that establishes that defendants knew or should have known that
24 plaintiffs resided in California. See Ross Decl. ¶¶ 4, 7 (stating
25 that defendants' contact with plaintiffs was by e-mail and
26 telephone). Additionally, plaintiffs' allegations are that

1 defendants, through their misrepresentations, induced plaintiffs
2 to begin a new business in the Philippines. See id. ¶ 3. Plaintiffs
3 have not shown, nor is it apparent to the court, why any harm
4 suffered by them may not properly be considered to have occurred
5 in the Philippines rather than California. Accordingly, even under
6 the purposefully direction analysis, plaintiffs have failed to show
7 that the first prong of the test for specific personal jurisdiction
8 has been met.

9 Because plaintiffs have failed to satisfy the first prong of
10 the test, the court need not consider the second or third prongs.
11 See Boschetto, 539 F.3d at 1016; Pebble Beach Co. v. Caddy, 453
12 F.3d 1151, 1155 (9th Cir. 2006); Omeluk, 52 F.3d 267. Defendants'
13 motion is therefore granted for lack of personal jurisdiction.


14 **IV. Conclusion**

15 For the reasons stated herein, defendants' motion to dismiss
16 is GRANTED.

17 The Clerk is directed to close the case.

18 IT IS SO ORDERED.

19 DATED: April 2, 2009.

20
21 
22 LAWRENCE K. KARLTON
23 SENIOR JUDGE
24 UNITED STATES DISTRICT COURT
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26