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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9
10 DAVID L. WICKLINE,

No. C 14-00192 SI

11 Plaintiff,

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION AND
TRANSFERRING THE ACTION TO THE
DISTRICT COURT FOR THE
NORTHERN MARIANA ISLANDS**

12 v.

13 UNITED MICRONESIA DEVELOPMENT
ASSOCIATION, INC.,

14 Defendant.
15 _____/

16 Presently before the Court is a motion by defendant United Micronesia Development
17 Association, Inc. ("UMDA") (1) to dismiss plaintiff David L. Wickline's complaint for lack of personal
18 jurisdiction; (2) to transfer the action under 28 U.S.C. § 1406; or, in the alternative, (3) to stay the
19 action. Docket No. 35. For the reasons set forth below, the Court GRANTS UMDA's motion to dismiss
20 for lack of personal jurisdiction and TRANSFERS the action to the District Court for the Northern
21 Mariana Islands.

22
23 **BACKGROUND**

24 UMDA is a corporation organized under the laws of the Commonwealth of the Northern Mariana
25 Islands ("CNMI") with its principal place of business in Saipan, CNMI. Docket No. 26, First Amended
26 Complaint ("FAC") ¶ 2; Docket No. 35-1, Lifoifoi Decl. ¶ 3. UMDA's business is focused on making
27 passive investments in real estate and various businesses—including airlines, cable systems, and resort
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1 properties—located in Micronesia. Docket No. 35-1, Lifoifoi Decl. ¶ 3; Docket No. 35-4, Mafnas Decl.
2 ¶ 4.

3 UMDA does not do business in California or solicit any business in California. Docket No. 35-4,
4 Mafnas Decl. ¶ 4. UMDA does not have any customers or clients in California. *Id.* UMDA is not
5 authorized to do business in California. *Id.* UMDA does not own any real property in California and
6 has never done so. *Id.* ¶ 5. UMDA does not have any bank accounts in California and has never had
7 an office in California. *Id.* ¶ 6. Finally, UMDA has never derived income from California activities or
8 owed or paid taxes in California. *Id.* ¶ 7.

9 Since 2000, Wickline has resided and maintained his principal office in Occidental, California.
10 Docket No. 45-1, Wickline Decl. ¶ 2. In the fall of 2007, UMDA’s board of directors appointed
11 Wickline to fill a vacant position as a member of its board of directors. Docket No. 35-1, Lifoifoi Decl.
12 ¶ 4. Wickline was appointed to the position “based on his impressive financial background as well as
13 his extensive business experience in Micronesia.” *Id.*; FAC ¶ 7.

14 On October 7, 2009, by unanimous consent of UMDA’s board of directors, UMDA hired
15 Wickline as an employee, and on November 17, 2009, at a meeting of the board of directors, UMDA
16 named him president and chief executive officer (“CEO”). Docket No. 35-1, Lifoifoi Decl. ¶ 5. The
17 board of directors deemed Wickline qualified to serve as president and CEO in part “because of his
18 extensive business experience in Micronesia and his relationship with local business leaders and
19 politicians.” *Id.* No UMDA representative traveled to California to negotiate with Wickline or offer
20 a position to Wickline. *Id.* But, at the time they hired Wickline, UMDA’s board of directors knew that
21 Wickline was a California resident. Docket No. 45-1, Wickline Decl. ¶ 2. Wickline accepted
22 employment from UMDA on the express condition that he would not be required to relocate to Saipan.¹

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24 ¹ Although Wickline did not relocate from California to Saipan, he signed various documents
25 related to his employment with UMDA listing a Saipan address as his home address, including his W-4
26 tax form and his enrollment application for medical insurance. Docket No. 35-4, Mafnas ¶ 11, Ex. 1;
27 Docket No. 47-3, Mafnas Decl. ¶ 5, Ex. 1. In addition, at various times during his employment, UMDA
28 provided Wickline with an Executive Suite in the Palms Resort hotel located in Saipan for his exclusive
use, allowed Wickline to stay in a condominium UMDA owned in Saipan, and reimbursed Wickline for
his hotel costs when he stayed in Saipan. Docket No. 35-4, Mafnas Decl. ¶ 15; Docket No. 45-1,
Wickline Decl. ¶ 4.

1 *Id.* ¶ 3. Wickline alleges that as UMDA’s CEO, he was to receive the same compensation package as
2 the prior president and CEO, which included an annual salary of \$300,000, a monthly housing
3 allowance, complete medical and dental benefits, long-term disability insurance, and severance. FAC
4 ¶¶ 8-9. In addition, Wickline alleges that he accepted the employment on the condition that UMDA
5 would negotiate and agree no later than at the end of 2009 to additional performance-based
6 compensation.² *Id.* ¶ 8.

7 Wickline’s responsibilities as CEO included supervising UMDA’s employees, all of whom
8 resided in CNMI; managing UMDA’s existing business interests in Micronesia; helping to identify new
9 investment opportunities in Micronesia; and attending meetings of the UMDA board of directors.
10 Docket No. 35-1, Lifoifoi Decl. ¶ 7. As an employee of UMDA, Wickline performed some of his duties
11 in California and some of his duties in Saipan. Docket No. 45-1, Wickline Decl. ¶¶ 3-4; Docket No.
12 35-4, Mafnas Decl. ¶¶ 17-18. During his employment, UMDA paid for his California telephone and cell
13 phones. Docket No. 45-1, Wickline ¶ 3. In addition, Wickline maintained a bank account in Saipan to
14 receive his salary from UMDA. *Id.* ¶ 4; Docket No. 35-4, Mafnas ¶ 12. UMDA withheld the applicable
15 CNMI “Wage & Salary” taxes from Wickline’s salary and paid these taxes to the CNMI Department
16 of Finance–Revenue and Taxation. Docket No. 35-4, Mafnas ¶ 12, Ex. 2; Docket No. 47-3, Mafnas
17 Decl ¶ 7.

18 Wickline alleges that at the time he became CEO, UMDA was nearly insolvent, and its principal
19 asset, the Palms Resort hotel, was badly in need of renovation and was experiencing operating losses
20 of more than \$3,000,000 a year. FAC ¶ 10. On April 12, 2010, after Wickline had obtained temporary
21 funding for UMDA’s most urgent needs, he requested that UMDA honor its commitment to negotiate
22 his performance-based compensation. *Id.* On October 1, 2010, at a board meeting, plaintiff alleges that
23 the board advised him that it had agreed that he be granted options to purchase 150,000 shares of
24 UMDA stock at \$5.00 a share. *Id.* ¶ 13. Wickline alleges that under the terms of the grant, an option
25 to purchase 50,000 shares of UMDA stock vested immediately, an additional option to purchase 50,000
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27 ² Wickline alleges that the parties drafted a formal written employment contract memorializing
28 the agreement, but that the draft was never finalized and signed by the parties. FAC ¶ 9.

1 shares would vest when UMDA secured recapitalization and renovation funding for the Palms Resort
2 hotel, and an additional option to purchase 50,000 shares would vest upon the opening of the renovated
3 hotel. *Id.* ¶¶ 13, 15.

4 Wickline alleges that through his efforts UMDA was able to sell the Palms Resort hotel in
5 August 2011 for \$20,000,000 rather than at a distressed sale-price, which likely would have been in the
6 range of \$4,000,000. FAC ¶¶ 16-17. Plaintiff alleges that as a result of the sale, UMDA’s stock value
7 increased from between \$2 and \$3 per share to \$45 per share. *Id.* ¶ 17.

8 In 2011 or 2012, Wickline began negotiating on behalf of UMDA with United Airlines, Inc. for
9 the extension of UMDA’s United airline travel passes (“the United Passes”), which were scheduled to
10 expire on December 31, 2011.³ FAC ¶ 18; Docket No. 45-1, Wickline Decl. ¶ 7; Docket No. 35-2,
11 O’Connor Decl. ¶¶ 3-10. Plaintiff alleges that in July 2012 at a meeting of the board of directors, one
12 of UMDA’s directors, Jose Lifofoi, told Wickline that he was no longer needed and demanded that he
13 resign from his positions as CEO and director. *Id.* ¶ 19. Wickline alleges that at this meeting, the board
14 of directors determined that he was to remain employed by UMDA as a consultant with the nominal title
15 of CEO but with no salary until three conditions were met: (1) UMDA paid Wickline all of his earned
16 but deferred compensation, which was to be determined in good faith; (2) Wickline would continue to
17 represent UMDA in its negotiations with United regarding the airline passes and, in exchange, Wickline
18 would receive continued use of his United Pass for the full term of whatever extension UMDA could
19 secure; and (3) Wickline would assist UMDA in the prosecution of claims before the Financial Industry
20 Regulatory Authority (“FINRA”) in Hawaii in exchange for compensation to be negotiated in good
21 faith. FAC ¶ 20-21; Docket No. 45-1, Wickline Decl. ¶ 6.

22 Wickline alleges that with this new agreement in place, he continued negotiations with United
23 and obtained an extension of the passes until December 31, 2018, and in exchange UMDA assigned him
24 one of the new extended passes. FAC ¶ 21. Wickline alleges that UMDA also paid him his deferred
25 salary portion of his earned compensation. *Id.* ¶ 22. But, when Wickline attempted to exercise his stock

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27 ³ The United Passes entitle the holders of the passes to unlimited, First-Class travel on United’s
28 operated global routes. FAC ¶ 18.

1 options for 150,000 shares of stock, the board refused to accept his tender and issue the certificates. *Id.*
2 Wickline alleges that this consultant position as UMDA’s nominal CEO ended around February 2013.
3 *Id.* ¶ 1.

4 Wickline remained on the board of directors of UMDA until August 2013. FAC ¶¶ 1, 23. After
5 August 2013, Wickline held the position of UMDA’s Business Development Officer—a consultant
6 position with no salary but entitling Wickline to retain his United Pass—while negotiations over
7 Wickline’s remaining earned compensation continued. *Id.*; Docket No. 45-1, Wickline Decl. ¶ 7. On
8 January 13, 2014, after a failed mediation, UMDA terminated Wickline and terminated his United Pass.
9 FAC ¶ 23; Docket No. 45-1, Wickline Decl. Ex. D; Docket No. 35-3, Torres Decl. ¶¶ 8-9.

10 On January 13, 2014, UMDA also filed a complaint against Wickline in the Superior Court of
11 the Commonwealth of the Northern Mariana Islands (“the CNMI action”), alleging claims for: (1)
12 declaratory relief; (2) fraud; (3) breach of fiduciary duty; (4) unjust enrichment; (5) injunctive relief;
13 and (6) wrongful dilution under 4 CMC § 4106. Docket No. 35-3, Torres Decl. Ex. 2. In the complaint,
14 UMDA alleges that Wickline used his position as an officer and director of UMDA to carry out a
15 fraudulent scheme against UMDA to obtain options to purchase 150,000 shares of UMDA stock. *Id.*
16 at 1. On February 3, 2014, Wickline removed the action pursuant to 28 U.S.C. § 1441 to the District
17 Court for the Northern Mariana Islands. *Id.* Ex. 4. On April 29, 2014, after Wickline filed a motion to
18 dismiss the complaint, UMDA filed a first amended complaint. *Id.* Ex. 6. The district court in the
19 CNMI action has scheduled a trial date for August 3, 2015. Docket No. 50-1.

20 On January 13, 2014, the same calendar day as but 24 hours later than the filing of the CNMI
21 action, plaintiff filed the present action in the Northern District of California against UMDA. Docket
22 No. 1, Compl. On March 4, 2014, UMDA filed a motion to dismiss the complaint for lack of personal
23 jurisdiction. Docket No. 12. On April 4, 2014, plaintiff filed a first amended complaint (“FAC”),
24 mooted UMDA’s prior motion to dismiss. Docket No. 26, FAC. In the FAC, plaintiff alleges causes
25 of action for: (1) fraud; (2) breach of contract - stock options; (3) promissory estoppel; (4) breach of
26 contract - wages; (5) breach of contract - United pass; (6) conversion; (7) violation of California Labor
27 Code §§ 201, 202; and (8) breach of contract to negotiate in good faith. *Id.* ¶¶ 24-67.

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1 By the present motion, UMDA moves (1) to dismiss the action for lack of personal jurisdiction;
2 (2) to transfer the action under 28 U.S.C. § 1406 to the District Court for the Northern Mariana Islands;
3 or, in the alternative, (3) to stay the action until the conclusion of the CNMI action. Docket No. 35,
4 Def.’s Mot.

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6 **LEGAL STANDARD**

7 Pursuant to Federal Rule of Civil Procedure 12(b)(2), a defendant may move to dismiss a
8 complaint for lack of personal jurisdiction. “The plaintiff bears the burden of demonstrating that
9 jurisdiction is appropriate.” *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010).
10 “Where, as here, a motion to dismiss is based on written materials rather than an evidentiary hearing,
11 the plaintiff need only make a prima facie showing of jurisdictional facts.” *Id.* “Uncontroverted
12 allegations in the complaint must be taken as true, and conflicts over statements contained in affidavits
13 must be resolved in [plaintiff’s] favor.” *Id.*; accord *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements*
14 *Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003).

15 Where there is no federal statute applicable to determine personal jurisdiction, a district court
16 should apply the law of the state where the court sits. See *Schwarzenegger v. Fred Martin Motor Co.*,
17 374 F.3d 797, 800 (9th Cir. 2004). California’s long-arm statute only requires that the exercise of
18 personal jurisdiction comply with federal due process requirements. *Id.* at 800-01 (“Because
19 California’s long-arm jurisdictional statute is coextensive with federal due process requirements, the
20 jurisdictional analyses under state law and federal due process are the same.”).

21 For a court to exercise personal jurisdiction over a nonresident defendant, due process requires
22 that the defendant has either a continuous and systematic presence in the state (general jurisdiction), or
23 minimum contacts with the forum state such that the exercise of jurisdiction “does not offend traditional
24 notions of fair play and substantial justice” (specific jurisdiction). *Int’l Shoe Co. v. Washington*, 326
25 U.S. 310, 316 (1945) (citation omitted); see also *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001)
26 (“Applying the ‘minimum contacts’ analysis, a court may obtain either general or specific jurisdiction
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1 over a defendant.”). Here, Wickline asserts that the Court has personal jurisdiction over UMDA because
2 UMDA is subject to specific jurisdiction in California. Docket No. 42, Pl.’s Opp’n at 5.

3 In order for a court to exert specific jurisdiction in accordance with due process, a nonresident
4 defendant must have “‘minimum contacts’ with the forum state such that the assertion of jurisdiction
5 ‘does not offend traditional notions of fair play and substantial justice.’” *Pebble Beach Co. v. Caddy*,
6 453 F.3d 1151, 1155 (9th Cir. 2006) (quoting *Int’l Shoe*, 326 U.S. at 315). The Ninth Circuit employs
7 a three-part test to determine whether the defendant has such minimum contacts with a forum state.

8 “(1) The non-resident defendant must purposefully direct his activities or consummate
9 some transaction with the forum or resident thereof; or perform some act by which he
10 purposefully avails himself of the privilege of conducting activities in the forum, thereby
11 invoking the benefits and protections of its laws;

12 (2) the claim must be one which arises out of or relates to the defendant’s forum-related
13 activities; and

14 (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e.
15 it must be reasonable.”

16 *Schwarzenegger*, 374 F.3d at 802. “The plaintiff bears the burden of satisfying the first two prongs of
17 the test.” *Id.* “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts
18 to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be
19 reasonable.” *Id.*

20 “Personal jurisdiction must exist for each claim asserted against a defendant.” *Action*
21 *Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004). However, under the
22 doctrine of pendent personal jurisdiction, “a court may assert pendent personal jurisdiction over a
23 defendant with respect to a claim for which there is no independent basis of personal jurisdiction so long
24 as it arises out of a common nucleus of operative facts with a claim in the same suit over which the court
25 does have personal jurisdiction.” *Id.* Therefore, in a case such as this where all of plaintiff’s claims
26 arise out of a common nucleus of operative facts, if personal jurisdiction exists on one claim, the Court
27 may exercise jurisdiction over all the other claims. *See Wash. Shoe Co. v. A-Z Sporting Goods Inc.*, 704
28 F.3d 668, 673 (9th Cir. 2012) (“If Washington has jurisdiction over this claim, it may exercise

1 jurisdiction over the remaining claims, which are related.”); *NetApp, Inc. v. Nimble Storage*, No.
2 5:13-CV-05058-LHK (HRL), 2014 U.S. Dist. LEXIS 65818, at *22-23 (N.D. Cal. May 12, 2014).

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4 **DISCUSSION**

5 **I. Whether the Court Should Apply the Purposeful Availment Test or the Purposeful**
6 **Direction Test**

7 Under the first prong of the specific jurisdiction test, plaintiff must establish that UMDA either
8 purposefully availed itself of the privilege of conducting activities in California or purposefully directed
9 its activities toward California. *See Schwarzenegger*, 374 F.3d at 802. The Ninth Circuit “often use the
10 phrase ‘purposeful availment,’ in shorthand fashion, to include both purposeful availment and
11 purposeful direction, but availment and direction are, in fact, two distinct concepts.” *Id.* (citations
12 omitted). Purposeful availment analysis is most often used for claims sounding in contract, and
13 purposeful direction is most often used for claims sounding in tort. *Id.*

14 Here, plaintiff alleges claims against UMDA sounding in both contract and tort. *See generally*
15 *Compl.* In its motion, UMDA argues that although the complaint alleges both contract and tort claims,
16 the Court should apply only the purposeful availment test because the case primarily sounds in contract
17 and all of plaintiff’s tort claims are premised on his alleged contractual relationship with UMDA. Def.’s
18 *Mot.* at 9-12. In response, plaintiff argues that he should be able to rely on either the purposeful
19 availment test or the purposeful direction test because the complaint includes claims for fraud and
20 conversion that do not arise out of his contract claims. *Docket No. 42, Pl.’s Opp’n* at 6-8.

21 In several decisions, the Ninth Circuit has applied the purposeful availment test to suits that
22 involve both contract and tort claims where the tort claims arise out of the plaintiff’s contractual
23 relationship with the defendant. For example, in *Sher v. Johnson*, 911 F.2d 1357, 1362-64 (9th Cir.
24 1990), the Ninth Circuit applied a purposeful availment analysis to a complaint alleging both contract
25 and tort claims in a legal malpractice suit. The court stated: “Although some of [plaintiff]’s claims
26 sound in tort, all arise out of [plaintiff]’s contractual relationship with the defendants.” *Id.* at 1362.
27 Next, in *Boschetto v. Hansing*, 539 F.3d 1011, 1016-19 (9th Cir. 2008), the Ninth Circuit applied the
28 purposeful availment analysis to a complaint that contained four state law causes of action for breach

1 of contract, misrepresentation, fraud, and violation of the California Consumer Protection Act, stating
2 that the plaintiff's case sounded "primarily in contract." Finally, in *HK China Grp. v. Beijing United*
3 *Auto. & Motorcycle Mfg. Corp.*, 417 F. App'x 664, 665-66 (9th Cir. 2011), the Ninth Circuit applied
4 the purposeful avilment test to a complaint that included claims for breach of contract and fraud. The
5 court explained "when the alleged fraud is merely the representations in the contract that gave rise to
6 the breach[.]" then the action sounds primarily in contract. *Id.* at 665; *see also, e.g., Panthera Railcar*
7 *LLC v. Kasgro Rail Corp.*, No. C 12-06458 SI, 2013 U.S. Dist. LEXIS 68563, at *8-13 (N.D. Cal. May
8 13, 2013) (applying the purposeful avilment test to a complaint that included six tort claims because
9 "all of the tort claims ar[o]se out of [plaintiff]'s contractual relationship with defendants.").

10 Here, Wickline argues that the Court should apply the purposeful direction test based on the
11 presence of two tort claims in the first amended complaint—his claim for fraud and his claim for
12 conversion. Pl.'s Opp'n at 6-8. In the first amended complaint, Wickline alleges that UMDA is liable
13 for fraud based on UMDA's false representation that Wickline would have options to purchase 150,000
14 shares of UMDA stock and his reliance on that representation in continuing to work for UMDA as its
15 CEO. FAC ¶¶ 24-29. Here, "the alleged fraud is merely the representations in the contract that gave
16 rise to the breach." *HK China Grp.*, 417 F. App'x at 665; *see FAC* ¶¶ 30-35 (alleging claim for breach
17 of contract based on UMDA's refusal to honor Wickline's tender of \$750,000 and issue him stock
18 certificates representing 150,000 shares of UMDA stock). Therefore, Wickline's fraud claim sounds
19 primarily in contract.

20 Turning to plaintiff's conversion claim, Wickline alleges that UMDA is liable for conversion
21 because it has wrongfully dispossessed him of his United Pass by terminating him as an officer of
22 UMDA. FAC ¶¶ 52-57. In the FAC, plaintiff alleges that he was entitled to the United Pass based on
23 the agreement reached at the July 2012 board meeting providing that Wickline would continue to
24 represent UMDA in its negotiations with United regarding the extension of the passes in exchange for
25 Wickline retaining his United Pass for the full term of the obtained extension, and Wickline's
26 performance under the alleged agreement. FAC ¶¶ 20-21. Therefore, Wickline's conversion claim
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1 arises out of his contractual relationship with UMDA.⁴ See FAC ¶¶ 46-51 (alleging claim for breach
2 of contract based on UMDA terminating him as an officer and thereby depriving him of his United
3 Pass). In sum, the Court concludes that Wickline’s action sounds primarily in contract, and, therefore,
4 for him to meet his burden of establishing that the Court has specific, personal jurisdiction over UMDA,
5 he must satisfy the purposeful availment test. See *Boschetto*, 539 F.3d at 1016; *Sher*, 911 F.2d at 1362.

6
7 **II. Whether Plaintiff Has Satisfied the Purposeful Availment Test**

8 The purposeful availment test requires that “in each case that there be some act by which the
9 defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus
10 invoking the benefits and protections of its laws.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475
11 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “A defendant has purposely availed
12 himself of the benefits of a forum if he has deliberately ‘engaged in significant activities within a State
13 or has created “continuing obligations” between himself and the residents of the forum.’” *Id.* (quoting
14 *Burger King*, 471 U.S. at 475-76). Further, “[p]urposeful availment requires that the defendant engage
15 in some form of affirmative conduct allowing or promoting the transaction of business within the forum
16 state.” *Gray & Co. v. Firstenberg Machinery Co.*, 913 F.2d 758, 760 (9th Cir. 1990); accord
17 *Boschetto*, 539 F.3d at 1016. This “purposeful availment” requirement ensures that a defendant will not
18 be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts or of the
19 unilateral activity of another party or a third person. *Burger King*, 471 U.S. at 475 (“The unilateral
20 activity of those who claim some relationship with a nonresident defendant cannot satisfy the
21 requirement of contact with the forum State.”).

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23 ⁴ In his opposition, Wickline relies on this Court’s prior decision in *PSI Seminars v. LB Seminars*
24 *for Life Success & Leadership*, No. C 12-04711 SI, 2013 U.S. Dist. LEXIS 15020 (N.D. Cal. Feb. 1,
25 2013) to argue that the purposeful direction test should be used. Pl.’s Opp’n at 7. Relying on this case,
26 Wickline argues that the purposeful availment test should not be applied when the tort is committed after
27 the parties’ contractual relationship has concluded. *Id.* However, Wickline’s reliance on *PSI Seminars*
28 is unpersuasive because in that case both sides had analyzed the question using the purposeful direction
test; neither had urged use of the purposeful availment test. See Docket No. 47-1, Ex. 2 at 10-16, Ex.
3 at 5-9. Moreover, even under plaintiff’s assertion of the law, application of the purposeful availment
test here would still be proper. Plaintiff’s conversion claim is based on his allegations that under the
relevant agreement, UMDA had a continuing obligation to provide him with his United Pass until
December 31, 2018. FAC ¶¶ 20-21, 47. Plaintiff alleges that defendant’s conversion of his United Pass
occurred on January 13, 2014. *Id.* ¶ 54. Therefore, under plaintiff’s allegations, at the time the tort
allegedly occurred, the contractual relationship between himself and UMDA had not concluded.

1 “A showing that a defendant purposefully availed himself of the privilege of doing business in
2 a forum state typically consists of evidence of the defendant’s actions in the forum, such as executing
3 or performing a contract there.” *Schwarzenegger*, 374 F.3d at 802. But, “the formation of a contract
4 with a nonresident defendant is not, standing alone, sufficient to create jurisdiction.” *Boschetto*, 539
5 F.3d at 1017; *accord Burger King*, 471 U.S. at 478 (“If the question is whether an individual’s contract
6 with an out-of-state party alone can automatically establish sufficient minimum contacts in the other
7 party’s home forum, we believe the answer clearly is that it cannot.”). In determining whether there was
8 a purposeful availment based on a contract, the Court “must look to ‘prior negotiations and
9 contemplated future consequences, along with the terms of the contract and the parties’ actual course
10 of dealing’ to determine if the defendant’s contacts are ‘substantial’ and not merely ‘random, fortuitous,
11 or attenuated.’” *Sher*, 911 F.2d at 1362 (quoting *Burger King*, 471 U.S. at 479, 480).

12 After reviewing the record in this case, the Court concludes that Wickline has failed to establish
13 that UMDA purposefully availed itself of the privilege of conducting activities in California. In
14 performing the purposeful availment analysis in this case, the Court finds particularly instructive the
15 Ninth Circuit’s decision in *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802 (1988). In *McGlinchy*, the
16 Ninth Circuit found no purposeful availment of California law where the plaintiff and defendant entered
17 into a contract that was executed by the plaintiff in California and the majority of plaintiff’s performance
18 under the contract occurred in California. *See id.* at 816-17. The Ninth Circuit explained that although
19 the contract was executed by plaintiff in California, it was negotiated in England. *Id.* at 816. Therefore,
20 “‘the substance of the relationship was formed’ in England, [and] the formality of signing the contract
21 in California cannot establish jurisdiction.” *Id.* The Ninth Circuit further explained that no authorized
22 agents of the defendant “were alleged to have performed or executed any portion of the contract in
23 California.” *Id.* The Ninth Circuit also explained that “the contract makes no reference to California
24 or to the United States, either as appellants’ place of residence or as a forum for dispute settlement.”
25 *Id.* As to plaintiff’s performance under the contract, the court noted that the plaintiff’s allegations that
26 it performed 90% of its activities in California and that it invited defendant to use its California
27 facilities, “even if accurate, describes only unilateral activity.” *Id.* Such unilateral activity is
28 insufficient to confer personal jurisdiction over the defendant. *Id.*

1 The Court also find instructive the Ninth Circuit’s decision in *Slepian v. Guerin*, No. 98-35039,
2 1999 U.S. App. LEXIS 3371 (9th Cir. Mar. 1, 1999). In *Slepian*, the Ninth Circuit found no purposeful
3 availment of Oregon law where the defendant, a California company that did not conduct any business
4 activities in Oregon, entered into an employment agreement with the plaintiff, an Oregon resident. *See*
5 *id.* at *4-8. The Ninth Circuit first noted that the plaintiff had initiated contact with the defendant by
6 sending her resume to defendant’s headquarters in California and interviewing for the position in
7 California. *Id.* at *5. The Ninth Circuit further noted “that [plaintiff]’s ‘employment contract was
8 negotiated in California and performed by [defendant] in California and by [plaintiff] nationwide.’
9 [Plaintiff]’s services for [defendant] were never directed at Oregon residents or Oregon businesses.”
10 *Id.* at *6. Finally, the Court explained that “[plaintiff]’s presence in Oregon and [defendant]’s
11 accommodation of [plaintiff]’s choice of residence were not coupled with other contacts initiated by
12 [defendant] and directed toward the forum.” *Id.* at *7. Based on these facts, the Ninth Circuit concluded
13 that the plaintiff had failed to establish that the defendant purposeful availed itself of the privilege of
14 conducting activities in Oregon. *Id.* at *8.

15 Examining first the formation of the contracts, it is unclear from the record who pursued whom
16 in initiating negotiations with respect to the initial employment agreement.⁵ But, the record shows that
17 all of the alleged agreements were entered into in Saipan during meetings of the board of directors. FAC
18 ¶¶ 8, 13, 20; Docket No. 35-1, Lifoifoi Decl. ¶ 5. It also appears from the record that all the negotiations
19 for these agreements occurred in Saipan at these board meetings, not in California. FAC ¶¶ 8, 10, 13,
20 20; Docket No. 35-1, Lifoifoi Decl. ¶ 5 (“No UMDA representative traveled to California to negotiate
21 with Wickline or offer a position to Wickline.”). Therefore, the substance of the contractual relationship
22 was formed in Saipan, not California, and these facts weigh against a finding of purposeful availment.
23 *See McGlinchy*, 845 F.2d at 816; *Slepian*, 1999 U.S. App. LEXIS 3371, at *5-6.

24 Turning to the contemplated future consequences of the contracts, plaintiff does not allege that
25 any part of the contracts were performed by defendant in California. Plaintiff does not allege that any
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27 ⁵ Regardless of who was in pursuit, the record shows that Wickline was hired because of his
28 extensive experience in Micronesia and his relationships with local business leaders and politicians, not
because of any relationship he had with California residents or California businesses. FAC ¶ 7; Docket
No. 35-1, Lifoifoi Decl. ¶¶ 4, 5.

1 authorized agent of UMDA ever visited California in furtherance of UMDA’s duties under the
2 agreements. In addition, the Court notes that any salary payments made by UMDA to plaintiff under
3 the agreements were to his bank account in Saipan. Docket No. 45-1, Wickline ¶ 4; Docket No. 35-4,
4 Mafnas ¶ 12. Plaintiff states that at the time the initial contract was entered into UMDA knew that he
5 was a California resident, and that he accepted the employment on the basis that he not be required to
6 relocate to Saipan. Docket No. 45-1, Wickline ¶ 3. Plaintiff argues, therefore, that the contract
7 contemplated that the majority his duties and obligations under the contract would be performed in
8 California. Pl.’s Opp’n at 9. But, the fact that plaintiff performed the majority of his duties in
9 California, his place of residence, through the use of a phone or email merely constitutes unilateral
10 activity and is insufficient to establish purposeful availment. *See McGlinchy*, 845 F.2d at 816
11 (“[Plaintiffs]’ statement that it ‘performed 90% of [its] activities in the Bay Area,’ even if accurate,
12 describes only unilateral activity.”); *Slepian*, 1999 U.S. App. LEXIS 3371, at *6 (“[Plaintiff]’s use of
13 phone, fax, and electronic mail to perform some of her job duties from home does not establish that
14 [defendant] conducted sufficient activities in the forum.” (citing *Peterson v. Kennedy*, 771 F.2d 1244,
15 1262 (9th Cir. 1985)). This unilateral activity is insufficient to establish a purposeful availment by
16 UMDA. *See id.* Moreover, plaintiff does not allege that any of his duties or obligations under the
17 contract were directed at California residents or California businesses. To the contrary, all of his
18 activities under the agreements were directed towards Micronesia or Hawaii. As UMDA’s CEO,
19 Wickline’s responsibilities consisted of supervising UMDA’s employees, all of whom resided in CNMI;
20 managing UMDA’s existing business interests in Micronesia; helping to identify new investment
21 opportunities in Micronesia; and attending meetings of the UMDA board of directors. Docket No. 35-1,
22 Lifoifoi Decl. ¶ 7; Docket No. 45-1, Wickline Decl. ¶¶ 3-4. Further, Wickline’s duties under the
23 subsequent consultant agreement were to negotiate on behalf of UMDA with United Airlines for the
24 extension of UMDA’s United Passes, and to assist in the prosecution of claims before the FINRA in
25 Hawaii. FAC ¶ 20; Docket No. 45-1, Wickline Decl. ¶ 4.

26 In addition, like the defendant in *Slepian*, UMDA does not conduct any business in California
27 and has not conducted any business in California since it hired Wickline. *See* Docket No. 35-4, Mafnas
28 Decl. ¶ 4; Docket No. 35-1, Lifoifoi Decl. ¶ 9. UMDA does not have any customers or clients in

1 California. Docket No. 35-4, Mafnas Decl. ¶ 4. UMDA is not authorized to do business in California,
2 and UMDA has never derived income from California activities or owed or paid taxes in California.
3 *Id.* ¶¶ 4, 7.

4 In his opposition, plaintiff, relying on the Ninth Circuit’s decision in *Roth v. Garcia Marquez*,
5 942 F.2d 617 (9th Cir. 1991), argues that there was a purposeful availment because the economic
6 realities of the contracts is that UMDA engaged in a six-year business relationship with a California
7 resident, who performed the majority of his duties in California. Pl.’s Opp’n at 9. The Court does not
8 find plaintiff’s reliance on *Roth* persuasive. *Roth* involved a contract between a California movie
9 producer and a book author residing in Mexico, granting the producer the rights to make a movie based
10 on one of the author’s novels. 942 F.2d at 619. Although it was the movie producer who solicited the
11 defendants, the defendants had never visited the forum state, and the movie would be filmed in Brazil,
12 the Ninth Circuit found a purposeful availment based on the future consequences of the contract. *Id.*
13 at 622. The Ninth Circuit explained: “The point here is simply that the contract concerned a film, most
14 of the work for which would have been performed in California. Though the shooting most likely would
15 have taken place in Brazil, all of the editing, production work, and advertising would have occurred in
16 California.” *Id.* Therefore, “most of the future of the contract would have centered on the forum[,]” and
17 the “economic reality” was “that the contract’s subject would have continuing and extensive
18 involvement with the forum.” *Id.* In relying on *Roth*, plaintiff focuses on where performance of the
19 contract would occur. But, the place of performance is not dispositive of the issue in determining
20 whether there was a purposeful availment. *See McGlinchy*, 845 F.2d at 816; *Peterson*, 771 F.2d at 1262;
21 *Slepian*, 1999 U.S. App. LEXIS 3371, at *6. What distinguishes *Roth* from *McGlinchy* and *Slepian* is
22 the results of the performance. In *Roth*, the parties’ performance under the contract was directed at
23 California businesses and California residents and promoted the transaction of business within
24 California because all of the editing, production work, and advertising for the film would have occurred
25 in California. *Cf. Gray*, 913 F.2d at 760 (“Purposeful availment requires that the defendant engage in
26 some form of affirmative conduct allowing or promoting the transaction of business within the forum
27 state.”). In contrast, here, the parties’ performance under the agreements was directed at Micronesia
28 businesses and Micronesia residents, in addition to a FINRA action in Hawaii. FAC ¶ 20; Docket No.

1 35-1, Lifoifoi Decl. ¶ 7; Docket No. 45-1, Wickline Decl. ¶¶ 3-4. In no way did the parties’
2 performance under the agreements allow for or promote the transaction of business within California.
3 Therefore, the “economic reality” of the agreements was that the contracts’ subject was activities in
4 Micronesia, not in California.

5 In sum, plaintiff has failed to establish that UMDA purposeful availed itself of the privilege of
6 conducting activities in California, and, therefore, has failed to establish that the Court has specific,
7 personal jurisdiction over UMDA. Accordingly, the Court grants UMDA’s motion to dismiss the action
8 for lack of personal jurisdiction.

9
10 **III. Whether to Transfer or Dismiss the Case**

11 UMDA argues that if the Court concludes that it lacks personal jurisdiction over it, then it should
12 dismiss the action or transfer the action under 28 U.S.C. § 1406 to the District Court for the Northern
13 Mariana Islands. Def.’s Mot. at 23. Once a Court determines that it lacks personal jurisdiction, it may
14 dismiss the case or, in the interest of justice, transfer the case under 28 U.S.C. § 1406(a). *See Goldlawr,*
15 *Inc. v. Heiman*, 369 U.S. 463, 466 (1962) (“The language of 28 U.S.C. § 1406(a) is amply broad enough
16 to authorize the transfer of cases . . . whether the court in which it was filed had personal jurisdiction
17 over the defendants or not.”); *Nelson v. International Paint Co.*, 716 F.2d 640, 643 & n.4 (9th Cir.
18 1983). The Court finds that transfer is appropriate here. The District Court for the Northern Mariana
19 Islands would have personal jurisdiction over UMDA, and there is already a related action between the
20 parties pending before that court. Accordingly, the Court TRANSFERS the action to the District Court
21 for the Northern Mariana Islands.

22 **CONCLUSION**

23 For the foregoing reasons, the Court GRANTS UMDA’s motion to dismiss for lack of personal
24 jurisdiction and TRANSFERS the action to the District Court for the Northern Mariana Islands. Docket
25 No. 35.

26 **IT IS SO ORDERED.**

27 Dated: June 30, 2014



28

SUSAN ILLSTON
United States District Judge