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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PAUL MOTEKAITIS, et al.,

Plaintiffs,

v.

USI INSURANCE SERVICES, LLC, et al.,

Defendants.

Case No. 24-cv-00885-RS

**ORDER REGARDING MOTIONS TO
DISMISS****I. INTRODUCTION**

Plaintiffs Paul Motekaitis and Carri Mangelli Kneass aver that they were defamed by a long list of Defendants, including their former employer USI Insurance Services, LLC; six USI employees; Marsh & McLennan Insurance Agency, LLC (“MMA”); and one of its employees, David Russell. In essence, Plaintiffs claim that USI and its top brass harmed them by writing and then widely disseminating a maliciously false email about the circumstances of Plaintiffs’ split with the firm. After receiving leave to amend the complaint, Plaintiffs added a defamation claim against Russell and MMA for their part in allegedly republishing the email by forwarding it to others in the insurance industry. Russell and MMA now move to dismiss, contending that Plaintiffs lack jurisdiction over Russell and that they fail to state a claim against either Defendant. MMA additionally moves to strike the complaint pursuant to California’s anti-SLAPP statute. For the reasons explained below, Russell and MMA’s motions to dismiss are granted.

II. BACKGROUND

This order assumes the parties’ familiarity with the facts, discussed briefly below. In relevant part, the operative third amended complaint (“TAC”) avers that David Russell is the managing director of MMA, an insurance agency that allegedly recruited Plaintiffs around the time of their departure from USI. After learning of an email (“the Kane Email”) that USI had circulated, an MMA employee Plaintiffs dub “Individual 1” asked Motekaitis about the “weird rumors” therein. TAC ¶ 56. Plaintiffs aver that Motekaitis told Individual 1 the email contained falsehoods and misrepresentations, and that Individual 1 responded by reassuring Motekaitis “he did not believe the Kane Email and that this situation reflected a corporate hit.” *Id.* ¶ 57.

Despite this conversation, Plaintiffs aver that MMA staff republished the Kane Email. *Id.* ¶ 57. Plaintiffs specifically allege that Russell began to republish and disseminate the email internally, to MMA staff. *Id.* With no apparent effort to verify its contents, MMA staff also allegedly republished the email externally, “throughout the Private Risk Management industry, all in efforts to poach [Plaintiffs’] clients and/or hinder their abilities to compete against MMA.” *Id.*; *see also* TAC ¶ 59–60. The only specific such example in the complaint is the allegation that Emily Milnes, an MMA employee not named as a defendant, forwarded the email to the head of underwriting at AIG—“one of the largest sources of business for [Plaintiffs]”—so as to tarnish their reputations. *Id.* ¶ 58. Russell, Plaintiffs claim, “approved the dissemination of the email,” and both he and the company “acted with malice” by republishing it even “while entertaining serious doubts as to the veracity of the statements contained therein.” *Id.* ¶ 60.

III. LEGAL STANDARD

A. Motion to Dismiss for Lack of Jurisdiction

An action is subject to dismissal if the Court lacks personal jurisdiction over the defendants. *See* Fed. R. Civ. P. 12(b)(2). Where there is no federal statute applicable to determine personal jurisdiction, a district court applies the personal jurisdiction law of the state where it sits. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). The relevant California law requires only that the exercise of personal jurisdiction comply with federal due

1 process requirements. *See id.* at 800-01. Personal jurisdiction over a defendant who does not
2 reside in the forum state may be exercised consistent with due process if the defendant has either a
3 continuous and systematic presence in the state (general jurisdiction), or minimum contacts with
4 the forum state such that the exercise of jurisdiction “does not offend traditional notions of fair
5 play and substantial justice” (specific jurisdiction). *See Int’l Shoe Co. v. Washington*, 326 U.S.
6 310, 316 (1946) (citation and internal quotation marks omitted).

7 Specific jurisdiction may be invoked over a non-resident defendant upon the satisfaction of
8 three requirements: “(1) The non-resident defendant must purposefully direct his activities or
9 consummate 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 invoking
11 the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to
12 the defendant’s forum-related activities; and (3) the exercise of jurisdiction must comport with fair
13 play and substantial justice, *i.e.* it must be reasonable.” *Schwarzenegger*, 374 F.3d at 802 (citation
14 omitted).

15 “The plaintiff bears the burden of satisfying the first two prongs of the test.” *Id.* (citation
16 omitted). “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts
17 to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be
18 reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)). The
19 plaintiff need only make a prima facie showing of jurisdiction to defeat a motion to dismiss but
20 “may not simply rest on the bare allegations of the complaint.” *Ranza v. Nike, Inc.*, 793 F.3d
21 1059, 1068 (9th Cir. 2015) (internal quotation marks and alteration omitted). “[U]ncontroverted
22 allegations must be taken as true, and conflicts between parties over statements contained in
23 affidavits must be resolved in the plaintiff’s favor.” *Id.* (internal quotation marks and alteration
24 omitted).

25 **B. Motion to Dismiss for Failure to State a Claim**

26 A complaint must contain “a short and plain statement of the claim showing that the
27 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not

1 required, a complaint must have sufficient factual allegations to state a claim that is “plausible on
 2 its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S.
 3 544, 555, 570 (2007)). Dismissal under Rule 12(b)(6) may be based on either the “lack of a
 4 cognizable legal theory” or on “the absence of sufficient facts alleged under a cognizable legal
 5 theory.” *See Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal
 6 quotation marks and citation omitted). When evaluating such a motion, the court must accept all
 7 material allegations in the complaint as true and construe them in the light most favorable to the
 8 non-moving party. *In re Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1140 (9th Cir. 2017). It
 9 must also “draw all reasonable inferences in favor of the nonmoving party.” *Usher v. City of Los*
 10 *Angeles*, 828 F.2d 556, 561 (9th Cir. 1987).

11 **C. Motion to Strike**

12 A court may strike from a pleading any redundant, immaterial, impertinent, or scandalous
 13 matter. Fed. R. Civ. P. 12(f). Under California law, such a motion may be made “for the pre-trial
 14 dismissal of certain actions, known as Strategic Lawsuits Against Public Participation, or SLAPPs,
 15 that masquerade as ordinary lawsuits but are intended to deter ordinary people from exercising
 16 their political or legal rights or to punish them for doing so.” *Makaeff v. Trump Univ., LLC*, 715
 17 F.3d 254, 261 (9th Cir. 2013) (internal quotation marks omitted) (quoting *Batzel v. Smith*, 333
 18 F.3d 1018, 1024 (9th Cir. 2003), *superseded in part by statute on other grounds as stated in*
 19 *Breazeale v. Victim Servs., Inc.*, 878 F.3d 759, 766–67 (9th Cir. 2017)). The relevant statute
 20 provides that a party may file a motion to strike a cause of action against it if the complaint
 21 “aris[es] from any act of that person in furtherance of the person’s right of petition or free speech
 22 under the United States Constitution or the California Constitution in connection with a public
 23 issue.” CAL. CIV. PROC. CODE § 425.16(b)(1). The statute is to be “construed broadly.” *Id.*
 24 § 425.16(a); *Vess v. Ciba–Geigy Corp. USA*, 317 F.3d 1097, 1109 (9th Cir. 2003).

25 “A court considering a motion to strike under the anti-SLAPP statute must engage in a
 26 two-part inquiry.” *Vess*, 317 F.3d at 1110. First, “the moving defendant must make a prima facie
 27 showing that the plaintiff’s suit arises from an act in furtherance of the defendant’s constitutional
 28

1 right to free speech.” *Makaeff*, 715 F.3d at 261. “The burden then shifts to the plaintiff [] to
2 establish a reasonable probability that it will prevail on its claim in order for that claim to survive
3 dismissal.” *Id.*

4 IV. DISCUSSION

5 A. Russell

6 As a Connecticut resident, Russell contends that a District Court for the Northern District
7 of California cannot exercise jurisdiction over him, either general or specific. Plaintiffs concede
8 on the general jurisdiction front but maintain that specific jurisdiction is appropriate, given their
9 allegations that Russell committed what they describe as California-targeted actions—namely, the
10 forwarding of an email (allegedly defaming Plaintiffs, who are California residents) to an audience
11 which included other Californians.

12 Plaintiffs’ pleadings fail to allege facts sufficient to establish specific jurisdiction. Because
13 the at-issue claim sounds in tort, Plaintiffs must first demonstrate that Russell purposefully
14 directed his activities at California—a requirement that involves showing how Russell “(1)
15 committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the
16 defendant knows is likely to be suffered in the forum state.” *Axiom Foods, Inc. v. Acerchem Int’l,*
17 *Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (citation omitted). Although the TAC sufficiently
18 alleges that Russell acted intentionally when he authorized the republication of the email,
19 Plaintiffs fail to allege that Russell in any way targeted California or knew that harm would likely
20 occur there. All the TAC says about him is that he “began to republish and disseminate the Kane
21 email within MMA,” TAC ¶ 57, and that he “acted with malice” when he “approved the
22 dissemination of the Kane Email” while “entertaining serious doubts as to the veracity of the
23 statements contained therein.” *Id.* ¶ 60; *see also* ¶ 106-110. Nothing about those allegations has
24 anything to do with California. In the defamation count, Plaintiffs further aver that Russell
25 approved and authorized the email’s republication to “clients and prospective employers . . . so as
26 to cause the highest possible harm to Plaintiffs,” *id.* ¶ 109, but this also fails to connect the dots
27 between Russell and the forum state.

1 republication of the Kane Email was privileged.¹

2 MMA’s first argument is unconvincing. “To state a claim for defamation under California
3 law, a plaintiff must allege the defendant (1) published a (2) false, (3) defamatory, and (4)
4 unprivileged statement that (5) either has a natural tendency to injure or causes special damage.”
5 *Chemla v. FedEx Corp. Servs., Inc.*, No. 20-cv-06581-RS, 2021 WL 4497862, at *2 (N.D. Cal.
6 Mar. 29, 2021) (citing Cal. Civ. Code §§ 44-46); *see also Taus v. Loftus*, 40 Cal.4th 683, 720
7 (2007). Here, Plaintiffs have sufficiently alleged that MMA staff published to others in the
8 insurance industry the Kane Email, which they claim was false and defamatory, in a way that has a
9 natural tendency to injure them. *See* TAC ¶ 109–10 (alleging the elements of defamation).
10 Although Defendants complain that Plaintiffs fails to aver with specificity the statements that were
11 false, who made them, and when, the complaint repeatedly explains the defamatory contents in the
12 email and further asserts that MMA employees, including Emily Milnes, republished the email on
13 or around January 23, 2024. *See, e.g.*, TAC ¶ 58.

14 MMA’s second argument—that Plaintiffs’ defamation claim must be dismissed pursuant to
15 Section 230—fares much better. That statute provides that “[n]o provider or user of an interactive
16 computer service shall be treated as the publisher or speaker of any information provided by
17 another information content provider.” 47 U.S.C. §230(c)(1). “Section 230(c)(1) immunity is an
18 affirmative defense, and the burden is always on the party advancing an affirmative defense to
19 establish its validity[.]” *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 738 (9th Cir. 2024) (internal
20 citations and quotation marks omitted). To carry that burden, Defendants cite to *Phan v. Pham*,
21 182 Cal. App. 4th 323, 324 (2010), an apt comparator to this case in which the California Court of
22 Appeal expressly held that, pursuant to Section 230, someone who “receive[s] a defamatory e-mail
23 over the internet and simply hit[s] the forward icon. . . cannot be held liable for the defamation.”

24 Plaintiffs do not contest that MMA was a user of an interactive computer service, nor that

25 _____
26 ¹ MMA and Russell also argue for dismissal of an intentional infliction of emotional distress
27 claim, which Plaintiffs alleged against “All Defendants.” Plaintiffs explain in opposition that they
28 did not intend to allege that claim against Russell and MMA. That claim is therefore waived as
against Russell and MMA.

1 MMA received the Kane Email from another information content provider. Instead, Plaintiffs
2 respond that MMA did more than just forward the email because it “also added content that
3 defamed Plaintiffs.” Opp. Br., Dkt. No. 76 (“Opp. Br.”), at 20. The complaint, however, makes
4 no such allegation—to the contrary, it merely states that MMA republished and disseminated the
5 email. TAC ¶ 57–59. Featuring no allegation that MMA employees did anything regarding the
6 content of the email other than to “hit the forward icon,” Plaintiffs’ defamation claim against
7 MMA is accordingly barred as a matter of law. *See Phan*, 182 Cal. App. 4th at 324 (citing *Barrett*
8 *v. Rosenthal*, 40 Cal.4th 33, 51 (2006)).

9 Plaintiffs suggest that they could amend the complaint to include an allegation that Russell,
10 as managing director of MMA, materially contributed to the Kane Email by stating that Motekaitis
11 “had the largest book in the state of California (now we know how)” in a preface to an email that
12 he forwarded internally. It is curious that Plaintiffs have not added this allegation to the pleadings
13 already, given that they are now on their third amended complaint.

14 At any rate, this additional unpled allegation would hardly repair Plaintiffs’ fundamental
15 Section 230 problem. In *Phan*, the court found that where the defendant forwarded an allegedly
16 defamatory email and “introduce[d] it with some language of [defendant’s] own,” the introduction
17 was not sufficient to “materially contribute” to the underlying defamatory email such that Section
18 230 immunity was defeated. *See* 182 Cal. App. 4th at 325 (discussing import of introductory
19 paragraph stating “[e]verything will come out to the daylight, I invite you and our classmates to
20 read the following comments[.]”). Likewise here, Russell’s addition to the email did not
21 materially contribute to the alleged defamation. His quippy introduction is quite contrary to the
22 sort of contribution that the Ninth Circuit has recognized as fatal to Section 230 immunity. *See*
23 *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1172 (9th
24 Cir. 2008) (finding a material contribution where a defendant website “[wa]s directly involved
25 with developing and enforcing a system that subjects subscribers to allegedly discriminatory
26 housing practices”); *see also Nicholas Servs., LLC v. Glassdoor, LLC*, No. 24-cv-05789-RS, 2025
27 WL 240765, at *3–*4 (N.D. Cal. Jan. 17, 2025) (finding no material contribution).

28 Moreover, even if the unpleaded allegation about Russell’s introductory paragraph could

1 be incorporated into the complaint via amendment such that it might be construed as a material
2 contribution that forecloses Section 230 immunity, Plaintiffs would nevertheless run headlong into
3 MMA’s Anti-SLAPP arguments. As to its burden to make a prima facie showing that the
4 defamation claim arises out of protected activity, MMA explains that the at-issue email concerned
5 public interests protected by CAL. CIV. PROC. CODE § 425.16(b)(1). “The ‘public interest’
6 requirement of section 425.16(e) is construed broadly.” *Henley v. Jacobs*, No. 18-cv-2244-SBA,
7 2019 WL 8333524, at *9 (N.D. Cal. Aug. 2, 2019) (citing *Gilbert v. Sykes*, 147 Cal. App. 4th 13,
8 23 (2007)). “California courts have not definitively adopted any particular test to determine
9 whether a statement qualifies as a matter of public interest for purposes of § 425.16.” *Henley*,
10 2019 WL 8333524, at *9 (citing *Hilton v. Hallmark Cards*, 599 F.3d 894, 906 (9th Cir. 2010)).
11 “Nonetheless, a ‘commonly cited test’ is set forth in *Rivero v. Am. Fed’n of State, Cnty., & Mun.*
12 *Emps.*, 105 Cal. App. 4th 913 (2003) (“*Rivero*”).” *Id.* (citing *Hilton*, 599 F.3d at 906). “In *Rivero*,
13 the California Court of Appeal identified three categories of public issues: (1) statements
14 concerning a person or entity in the public eye; (2) conduct that could directly affect a large
15 number of people beyond the direct participants; (3) or a topic of widespread, public interest.” *Id.*
16 (citing *Hilton*, 599 F.3d at 906) (quotations omitted). All three categories are satisfied here, MMA
17 argues, given the TAC’s own averments about Plaintiffs being “prominent” insurance brokers with
18 “over 1,800” clients. TAC ¶¶ 17, 18, 43.

19 Plaintiffs fail to rebut MMA’s argument that they were persons in the public eye, that the
20 email concerned conduct that could directly affect a large number of people, nor that widespread,
21 public interest existed as to the topic of their alleged misconduct. Instead, they primarily argue
22 that the email constituted commercial speech exempt from California’s Anti-SLAPP law. *See*
23 CAL. CIV. PROC. CODE § 425.17(c). As the California Court of Appeal has explained, that
24 exemption means that “[a] defendant who makes statements about a business competitor’s goods
25 or services to advance the defendant’s business cannot use the anti-SLAPP statute against causes
26 of action arising from those statements.” *Xu v. Huang*, 73 Cal. App. 5th 802, 813 (2021).

27 Although Plaintiffs’ argument presupposes that MMA is their business competitor, it is
28 hard to see how. The TAC makes clear that Plaintiffs were no longer in the business of insurance

1 brokering at the time MMA staff forwarded the email. *See* TAC ¶ 42 (detailing that Plaintiffs
2 were terminated on January 22, 2024); *id.* ¶ 50 (“Plaintiffs have been unable to obtain employment
3 in the industry.”); *id.* ¶ 58 (identifying the forwarding of the email as occurring on January 23,
4 2024). Based on the averments in the complaint, it does not appear that MMA was in competition
5 with either Plaintiff such that the commercial speech exception could apply. Unlike the situation
6 in *Huang*, where the plaintiff and defendant were both in the business of selling insurance at the
7 time of the alleged defamation, here, Plaintiffs were not in the same business as MMA—they were
8 not in business at all. The commercial speech exception to California’s Anti-SLAPP law is
9 therefore inapplicable.

10 Stripped of that argument, Plaintiffs must bear their burden of “establish[ing] a reasonable
11 probability that [they] will prevail on [their] claim” in order to defeat MMA’s Anti-SLAPP
12 motion. *See Makaeff*, 715 F.3d at 261. They fail to do so. At the close of their briefing, Plaintiffs
13 suggest that MMA’s forwarding of the email could not have been in the public interest because it
14 “made its defamatory statements in private settings for the purpose of obtaining business.” *Opp.*
15 *Br.* at 11. But the complaint alleges far more than that—that MMA spread the email “to Plaintiffs’
16 contacts in the insurance industry . . . so as to cause the highest possible harm to Plaintiffs.” TAC
17 ¶ 109. The complaint also fails to demonstrate a reasonable probability of success for the Section
18 230 issues explained above: the only evidence of any contribution to the Kane Email was
19 Russell’s introductory quip, which is immaterial under Ninth Circuit caselaw. Indeed, this entire
20 exercise is somewhat academic, given that the only allegation which might scuttle Section 230
21 immunity so as to warrant the Anti-SLAPP analysis—*i.e.*, the introductory sentence that Russell
22 allegedly added to one of the forwarded emails— is missing from the complaint.

23 V. CONCLUSION

24 For the reasons explained above, personal jurisdiction is lacking as to Russell; his motion
25 to dismiss is therefore granted. As to MMA, Plaintiffs fail to state a legally cognizable claim
26 sufficient to overcome Section 230 immunity. MMA’s motion to dismiss is likewise granted,
27 without further leave to amend the complaint.

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IT IS SO ORDERED.

Dated: March 5, 2025



RICHARD SEEBORG
Chief United States District Judge