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4 UNITED STATES DISTRICT COURT  
5 NORTHERN DISTRICT OF CALIFORNIA  
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7 RAPHAEL STRICKER,  
8 Plaintiff,  
9 v.  
10 SAMUEL SHOR, et al.,  
11 Defendants.

Case No. 17-cv-03491-HSG

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS; ORDER SETTING CASE  
MANAGEMENT CONFERENCE**

Re: Dkt. No. 13

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13 Pending before the Court is Defendants' motion to dismiss for lack of personal jurisdiction  
14 and for improper venue. Dkt. No. 13. The Court finds this matter appropriate for disposition  
15 without oral argument and the matter is deemed submitted. See Civil L.R. 7-1(b). For the reasons  
16 detailed below, the Court **GRANTS** the motion as to Defendants Samuel Shor and Betty Maloney,  
17 and **DENIES** the motion as to Defendants Barbara Buchman and the International Lyme and  
18 Associated Diseases Society ("ILADS").

19 **I. BACKGROUND**

20 Plaintiff Raphael Stricker filed this action against Defendants Samuel Shor, Betty  
21 Maloney, Barbara Buchman, and ILADS, asserting causes of action for copyright infringement,  
22 declaratory relief, and defamation. See Dkt. No. 1. Plaintiff is a doctor specializing in Lyme and  
23 associated diseases, with a practice based in San Francisco, California. Id. ¶ 7. He is a member  
24 and on the board of directors of ILADS, along with the individual Defendants in this case. Id.  
25 ¶¶ 7–10. According to Plaintiff, the individual Defendants plagiarized an article he authored about  
26 Chronic Lyme Disease, and then accused Plaintiff of plagiarizing it himself, including by  
27 contacting the ILADS membership and the journal that was publishing Plaintiff's article. Id.  
28 ¶¶ 13–38. The journal, consequently, decided not to publish the accused article. Id. Of the

1 Defendants, only Barbara Buchman resides in California. Dkt. No. 13-1 at 2.

2 **II. DISCUSSION**

3 The Court first addresses Defendants’ contention that the Court lacks personal jurisdiction  
4 over this action and then turns to Defendants’ contention that the Northern District of California is  
5 an improper venue. See *Leroy v. Great W. United Corp.*, 443 U.S. 173, 180 (1979) (“The question  
6 of personal jurisdiction, which goes to the court’s power to exercise control over the parties, is  
7 typically decided in advance of venue, which is primarily a matter of choosing a convenient  
8 forum.”).

9 **A. Personal Jurisdiction**

10 **i. Legal Standard**

11 “Personal jurisdiction must exist for each claim asserted against a defendant.” *Action*  
12 *Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004). However, under  
13 the doctrine of pendent personal jurisdiction, “a court may assert pendent personal jurisdiction  
14 over a defendant with respect to a claim for which there is no independent basis of personal  
15 jurisdiction so long as it arises out of a common nucleus of operative facts with a claim in the  
16 same suit over which the court does have personal jurisdiction.” *Id.* Therefore, in a case like this  
17 one, in which all of plaintiff’s claims arise out of a common nucleus of operative facts, if personal  
18 jurisdiction exists for one claim, the Court may exercise jurisdiction over all the other claims. *Id.*

19 In analyzing personal jurisdiction, the Court must engage in a two-part inquiry:  
20 (1) whether the state’s long-arm statute confers personal jurisdiction over the nonresident  
21 defendant, and (2) whether the exercise of jurisdiction comports with due process. See *Lake v.*  
22 *Lake*, 817 F.2d 1416, 1420 (9th Cir. 1987).

23 Where a state authorizes “jurisdiction on any basis not inconsistent with the Constitution of  
24 this state or of the United States,” as does California, see Cal. Civ. Proc. Code § 410.10, federal  
25 courts must determine whether the exercise of jurisdiction over a defendant “comports with the  
26 limits imposed by federal due process.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014);  
27 *Inamed Corp. v. Kuzmak*, 249 F.3d 1356, 1360 (Fed. Cir. 2001) (“[B]ecause California’s long-arm  
28 statute is coextensive with the limits of due process, the two inquiries collapse into a single

1 inquiry: whether jurisdiction comports with due process.”). “Due process requires that the  
2 defendant have sufficient minimum contacts with [the forum state] such that maintenance of the  
3 suit does not offend traditional notions of fair play and substantial justice.” *Celgard, LLC v. SK*  
4 *Innovation Co.*, 792 F.3d 1373, 1377 (Fed. Cir. 2015) (quoting *Int’l Shoe Co. v. Washington*, 326  
5 U.S. 310, 316 (1945)) (internal quotation marks omitted).

6 A plaintiff may invoke either general or specific personal jurisdiction. *Ranza v. Nike, Inc.*,  
7 793 F.3d 1059, 1068 (9th Cir. 2015). Specific jurisdiction exists if: (1) the defendant has  
8 performed some act or consummated some transaction with the forum by which it purposefully  
9 availed itself of the privilege of conducting business in California; (2) the plaintiff’s claims arise  
10 out of or result from the defendant’s forum-related activities; and (3) the exercise of jurisdiction is  
11 reasonable. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002) (citing  
12 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475–76 (1985)). “When a defendant moves to  
13 dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the  
14 court has jurisdiction over the defendant.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th  
15 Cir. 2006). Although the court “may not assume the truth of allegations in a pleading which are  
16 contradicted by affidavit,” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th  
17 Cir. 2011) (internal quotation marks omitted), the court must resolve conflicts between the facts  
18 contained in the parties’ affidavits in plaintiff’s favor. See *Schwarzenegger v. Fred Martin Motor*  
19 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004). “[I]n the absence of an evidentiary hearing, the plaintiff  
20 need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”  
21 *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 671–72 (9th Cir. 2012) (internal  
22 quotation marks omitted).

23 **ii. General Jurisdiction**

24 Defendant Buchman resides in California. Therefore, the Court has personal jurisdiction  
25 over her. See *Artas Film & TV Prods. GMBH v. Shepherd*, 959 F.2d 239 (9th Cir. 1992)  
26 (“General jurisdiction is easily established when the defendant is a resident of the forum state.”)  
27 (citing *Pennoyer v. Neff*, 95 U.S. 714, 720 (1878)). Defendants offer no authority for their novel  
28 suggestion that the location of Ms. Buchman’s alleged activities somehow alters this rule.

1 Plaintiff contends that the Court should find general jurisdiction over ILADS because it is  
2 registered as a foreign corporation with California and has designated an agent for service of  
3 process. This is not sufficient because “California does not require corporations to consent to  
4 general personal jurisdiction in that state when they designate an agent for service of process or  
5 register to do business.” *AM Tr. v. UBS AG*, 681 F. App’x 587, 588–89 (9th Cir. 2017).<sup>1</sup>

6 **iii. Specific Jurisdiction**

7 **a. Purposeful Availment**

8 Defendants assert that they did not have sufficient contacts with California to justify the  
9 Court’s exercise of personal jurisdiction. Dkt. No. 13-1 at 4–7. “The purposeful availment  
10 requirement ensures that a non-resident defendant will not be haled into court based upon random,  
11 fortuitous, or attenuated contacts with the forum state.” *Rio Properties*, 284 F.3d at 1019. A non-  
12 resident defendant purposefully avails itself of the forum if its contacts with the forum are  
13 attributable to (1) intentional acts; (2) expressly aimed at the forum; (3) that cause harm, the brunt  
14 of which is suffered—and which the defendant knows is likely to be suffered—in the forum. *Id.*  
15 A “foreign act that is both aimed at and has effect in the forum satisfies the first prong of the  
16 specific jurisdiction analysis.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006)  
17 (citing *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984)).

18 **1. ILADS**

19 Plaintiff’s allegations sufficiently make the required prima facie showing that the ILADS  
20 organization has committed such acts, subjecting it to jurisdiction in this district. For example,  
21 Plaintiff alleges that defamatory statements were emailed on behalf of ILADS to executives and  
22 members of ILADS, over 10% of whose membership resides in California. See Dkt. No. 1 ¶¶ 36,  
23 48; Dkt. No. 1-3 at 3, 11; Dkt. No. 28 at 4–5. Additionally, Plaintiff alleges that an attorney  
24 representing ILADS sent a demand letter to Dr. Stricker.<sup>2</sup> Dkt. No. 1 ¶ 37. The record  
25 adequately makes a prima facie showing that the ILADS organization knew that its actions would

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27 <sup>1</sup> While it is not binding authority, the Court may rely on the Ninth Circuit’s decision in *AM Tr. v.*  
*UBS AG* 681 F. App’x 587 (9th Cir. 2017) as persuasive authority.

28 <sup>2</sup> Though not explicitly alleged by Plaintiff, presumably ILADS sent this demand letter to  
California, where Dr. Stricker lives and works.

1 have a harmful effect on the plaintiff, who resided in California, and that the brunt of the injury  
2 caused by its actions would be felt in California, where Plaintiff practices medicine. Thus, ILADS  
3 is subject to the jurisdiction of the California courts. *Calder*, 465 U.S. at 788–89, 104 S.Ct. at  
4 1486–87. The fact that certain actions took place in other states does not defeat personal  
5 jurisdiction where the effects of ILADS’s out-of-state conduct were felt in California. *Id.*

6 **2. Drs. Shor and Maloney**

7 Plaintiff’s allegations are insufficient to establish specific jurisdiction over Drs. Shor and  
8 Maloney. Drs. Shor and Maloney reside in Virginia and Minnesota, respectively. Dkt. No. 13-1 at  
9 7. Plaintiff’s allegations that Dr. Shor contacted Dove Press and Chronic Diseases International,  
10 neither of which is located in California, see Dkt. No. 1 ¶¶ 25, 30, 32; Dkt. No. 30 at 4, and that  
11 Dr. Maloney replied to Dr. Stricker’s email to a private group, see Dkt. No. 1 ¶ 36, do not  
12 demonstrate that these defendants specifically aimed their acts toward California. At most,  
13 Plaintiff alleges “random, fortuitous, or attenuated contacts with the forum state,” and such  
14 contacts do not support jurisdiction. *Rio Properties*, 284 F.3d at 1019.<sup>3</sup>

15 **b. Claims Arise out of Forum-Related Conduct**

16 In determining whether a plaintiff’s claims arise out of a defendant’s forum-related  
17 conduct, a plaintiff must show that it would not have suffered an injury “but for” the defendant’s  
18 forum-related activities. See *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1075 (9th Cir. 2001).  
19 Plaintiff’s claims arise, at least in part, from ILADS’s conduct directed at California. Therefore,  
20 the Court finds that the “but for” requirement is met here. Plaintiff has made a prima facie  
21 showing that the reputation-based effects of the alleged defamation connect ILADS to California,  
22 because the reputational injury would not have occurred “but for” the multiple emails and other  
23 communications made on behalf of ILADS to Plaintiff directly, see Dkt. No. 1 ¶¶ 36, 37, 48, and  
24 to the ILADS membership, many of whom reside in California, see Dkt. No. 28 at 1. See *Walden*  
25 *v. Fiore*, 134 S. Ct. 1115, 1124, 188 L. Ed. 2d 12 (2014).

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27 <sup>3</sup> Moreover, even if these actions were sufficient show purposeful availment by Drs. Shor and  
28 Maloney, it would be unreasonable for the Court to assert jurisdiction over these defendants in  
California on this thin basis. See *Rio Properties*, 284 F.3d at 1021 (listing reasonableness factors).

**c. Reasonableness**

1 The exercise of jurisdiction is reasonable if it comports with “traditional notions of fair  
2 play and substantial justice.” *Int’l Shoe Co.*, 326 U.S. at 316. The Court must consider several  
3 factors in determining reasonableness: (1) the extent of a defendant’s purposeful interjection;  
4 (2) the burden on the defendant in defending in the forum; (3) the extent of conflict with the  
5 sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating the dispute;  
6 (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum to the  
7 plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative forum.  
8 *Rio Properties*, 284 F.3d at 1021. No single factor is dispositive. *Id.*

9 These factors weigh in favor of the Court exercising personal jurisdiction over ILADS. As  
10 discussed above, ILADS interjected itself into California by making the allegedly defamatory  
11 statements to the ILADS membership, and by directing certain communications to Dr. Stricker in  
12 California. See *Sinatra v. National Enquirer*, 854 F.2d 1191, 1199 (9th Cir.1988) (“The factor of  
13 purposeful interjection is analogous to the purposeful direction analysis.”). Because the alleged  
14 defamation was directed, at least in part, toward California, California’s interest in adjudicating  
15 this dispute is as strong as any other forum’s. Defendants’ argument that the burden would be  
16 substantial to defend outside Maryland is similarly unavailing. Moreover, “with the advances in  
17 transportation and telecommunications and the increasing interstate practice of law, any burden [of  
18 out-of-state litigation] is substantially less than in days past.” *Menken v. Emm*, 503 F.3d 1050,  
19 1060 (9th Cir. 2007) (internal quotation marks omitted). Defendants have not identified any other  
20 basis for the Court to conclude that exercising personal jurisdiction would be unreasonable given  
21 the facts of this case. Further, Plaintiff notes that ILADS is registered as a foreign corporation  
22 with California, which requires a representation that ILADS “transact[s] intrastate business”  
23 within California. Dkt. No. 28 at 3; Cal. Corp. Code § 2105. While, as noted above, such  
24 registration does not necessarily subject ILADS to general jurisdiction, it does suggest that  
25 specific jurisdiction in California is reasonable.

**B. Venue**

26 Here, the Northern District of California is a proper venue under 28 U.S.C. § 1400(a). It is  
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1 undisputed that Ms. Buchman resides in the Northern District of California. See Dkt. No. 13-1  
2 n.2; Dkt. No. 28 at 1. The Court may, in its discretion, transfer a civil action to any other district  
3 or division where it might have been brought “[f]or the convenience of the parties and witnesses  
4 [or] in the interest of justice.” 28 U.S.C. § 1404(a); see also *Van Dusen v. Barrack*, 376 U.S. 612,  
5 616 (1964), superseded by statute on other grounds. The moving party first must show that the  
6 transferee forum is “one in which the action might have been brought.” *Hoffman v. Blaski*, 363  
7 U.S. 335, 343–44 (1960). Next, the moving party must “demonstrate that a transfer of venue  
8 would promote the convenience of parties and witnesses and the interests of justice.” *Kannar v.*  
9 *Alticor, Inc.*, No. C-08-5505 MMC, 2009 WL 975426, at \*1 (N.D. Cal. Apr. 9, 2009). At the  
10 second step, “the district court has discretion to adjudicate motions for transfer according to an  
11 individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC*  
12 *Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (internal quotation marks omitted). The  
13 Court may consider:

- 14 (1) the location where the relevant agreements were negotiated and  
15 executed, (2) the state that is most familiar with the governing law,  
16 (3) the plaintiff’s choice of forum, (4) the respective parties’  
17 contacts with the forum, (5) the contacts relating to the plaintiff’s  
18 cause of action in the chosen forum, (6) the differences in the costs  
of litigation in the two forums, (7) the availability of compulsory  
process to compel attendance of unwilling non-party witnesses, and  
(8) the ease of access to sources of proof.

19 *Id.* at 498–99.

20 These factors weigh in favor of maintaining the case in this district. Defendants have not  
21 demonstrated sufficient cause to transfer, and the Court declines in its discretion to transfer this  
22 case.

### 23 **III. CONCLUSION**

24 For the foregoing reasons, the Court **GRANTS** the motion to dismiss for lack of personal  
25 jurisdiction as to Defendants Samuel Shor and Betty Maloney, and **DENIES** the motion to dismiss  
26 for lack of personal jurisdiction as to Defendants Barbara Buchman and ILADS. The Court  
27 **DENIES** the motion to dismiss for improper venue. The Court **SETS** a case management  
28 conference for April 24, 2018 at 2:00 p.m. The Court directs the parties to meet and confer and

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file on or before April 17, 2018 a joint case management statement that includes a proposed case schedule, including a trial date.

**IT IS SO ORDERED.**

Dated: 4/11/2018

  
HAYWOOD S. GILLIAM, JR.  
United States District Judge