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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA
6 SAN JOSE DIVISION

7
8 LARRY KLAYMAN,
9 Plaintiff,

10 v.

11 STEPHANIE A. LUCK DELUCA,
12 SUZANNE JAMBE, JAMES ROLLINSON,
13 BAKER HOSTETLER, HEWITT B.
14 SHAW, EBAY, INC., PAYPAL, INC.,

15 Defendants.

Case No. [5:14-CV-03190-EJD](#)

**ORDER GRANTING RULE 12(B)(1)
AND 12(B)(2) MOTIONS TO DISMISS;
DENYING AS MOOT RULE 12(B)(6)
MOTIONS TO DISMISS; DENYING AS
MOOT MOTIONS TO STRIKE**

[Re: Dkt. Nos. 24, 27, 29, 30, 34]

16 Plaintiff Larry Klayman (“Plaintiff”) initiated the instant action against Defendants
17 Stephanie A. Luck Deluca (“Deluca”), Baker Hostetler (“Baker Firm”), Suzanne Jambe
18 (“Jambe”), James Rollinson (“Rollinson”), Hewitt B. Shaw (“Shaw”),¹ eBay, Inc. (“eBay”), and
19 PayPal, Inc.’s (“PayPal”) alleging fraud, tort claims, and violation of the Racketeer Influenced and
20 Corrupt Organizations Act, 18 U.S.C. § 1961, et seq. (“RICO”). Presently before the court are
21 Defendants’ motions to dismiss for lack of jurisdiction and failure to state a claim, and motions to
22 strike pursuant to California’s Anti-SLAPP statute, Cal. Civ. Proc. Code § 425.16. The court
23 found these matters suitable for decision without oral argument pursuant to Civil Local Rule 7–
24 1(b) and previously vacated the hearing. Having reviewed the parties’ briefing, the court

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¹ Jambe, Rollinson, and Shaw will be referred to collectively as “Baker Attorneys.”

27 Case No. 5:14-CV-03190-EJD
28 ORDER GRANTING RULE 12(B)(1) AND 12(B)(2) MOTIONS TO DISMISS; DENYING AS
MOOT RULE 12(B)(6) MOTIONS TO DISMISS; DENYING AS MOOT MOTIONS TO
STRIKE

1 GRANTS Deluca, Jambe, Rollinson, and Shaw’s motions to dismiss for lack of jurisdiction, and
2 DENIES AS MOOT the remaining motions to dismiss and motions to strike.

3 **I. BACKGROUND**

4 This action arises from an underlying divorce and child custody dispute in Ohio. Plaintiff
5 alleges that in 2003, Plaintiff and Deluca divorced, both entering into a Consent Marital
6 Settlement Agreement that contained a choice of law provision requiring the application of
7 Virginia law. Compl. at ¶ 14. Deluca hired the Baker Firm to represent her in the divorce and
8 custody proceedings. Id. at ¶ 15. In 2007, after Deluca remarried, she allegedly precluded
9 Plaintiff from visiting or contacting the children. Id. at ¶ 17. Consequently, Plaintiff withheld
10 child support relying on Virginia law, which provides a complete defense for non-payment of
11 child support when the obligor is denied access to one’s children. Id. at ¶ 19. Plaintiff alleges that
12 an Ohio court, however, erroneously applied Ohio law and found Plaintiff in contempt for the non-
13 payment. Id. at ¶ 20. The Ohio court also awarded a judgment of \$320,000 in attorneys’ fees to
14 Deluca. Id.

15 Plaintiff alleges that in 2011, the Baker Firm and the Baker Attorneys filed a motion to
16 show cause for Plaintiff’s non-payment of the judgment. Id. at ¶ 21. In 2012, an Ohio court
17 allegedly issued subpoenas, which the Baker Firm and Baker Attorneys served on PayPal. Id. at ¶
18 24. With the subpoena, Deluca, the Baker Firm, and the Baker Attorneys allegedly sought to
19 induce PayPal into releasing financial records that they believed contained Plaintiff’s banking
20 information. Id. Plaintiff filed a motion to quash the subpoenas, and PayPal objected to the
21 subpoenas. Id. at ¶ 28-30. After Deluca, the Baker Firm, and the Baker Attorneys allegedly
22 induced the release of Plaintiff’s PayPal account information, PayPal released the information. Id.
23 at ¶¶ 31-34. Upon hearing of the release of the documents, Plaintiff contacted PayPal, and PayPal
24 then demanded the return of the released documents and information. Id. at ¶¶ 37-38. Plaintiff
25 alleges that the Baker Firm and the Baker Attorneys made photocopies or kept electronic copies of
26 the released documents, and provided them to Deluca. Id. at ¶ 40.

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Plaintiff commenced the instant action in July 2014. See Dkt. No. 1. Plaintiff alleges the following claims against Deluca, the Baker Firm, and the Baker Attorneys: (1) fraud by statement to third parties; (2) fraud; (3) intrusion into private affairs; (4) trespass to chattels; (5) conversion; (6) unlawful, unfair, fraudulent business practices; (7) civil violations of RICO; and (8) conspiracy to engage in RICO. See id. Plaintiff also alleges the following claims against PayPal: (1) breach of contract; and (2) negligence. See id. In August 2014, Defendants filed a series of motions to dismiss for lack of jurisdiction, motions to dismiss for failure to state a claim, and motions to strike pursuant to California’s Anti-SLAPP statute. See Dkt. Nos. 24, 27, 29, 30, 34. Each motion has been fully briefed. See Dkt. Nos. 36, 37, 38, 39, 40, 41.

II. LEGAL STANDARD

A. Federal Rule of Civil Procedure 12(b)(1)

Under Rule 12(b)(1), a party may file a motion to dismiss for lack of subject matter jurisdiction. A Rule 12(b)(1) motion may be either facial or factual. Wolfe v. Strankman, 392 F.3d 358, 362 (9th Cir. 2004). A facial 12(b)(1) motion involves an inquiry confined to the allegations in the complaint, whereas a factual 12(b)(1) motion permits the court to look beyond the complaint to extrinsic evidence. Id. When a defendant makes a facial challenge, all material allegations in the complaint are assumed true, and the court must determine whether lack of federal jurisdiction appears from the face of the complaint itself. Id.

Federal courts are courts of limited jurisdiction, adjudicating only cases which the Constitution and Congress authorize. Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). “A party invoking the federal court’s jurisdiction has the burden of proving the actual existence of subject matter jurisdiction.” Thompson v. McCombe, 99 F.3d 352, 353 (9th Cir. 1996). If a court determines that it lacks subject matter jurisdiction, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3).

1 (1996). For purposes of diversity jurisdiction, a corporation is a citizen of the state in which it is
2 incorporated and the state where its principal place of business is located. Lightfoot v. Cendant
3 Morg. Corp., 769 F.3d 681, 698 (9th Cir. 2014). A partnership and an LLC “is a citizen of every
4 state of which its owners/members are citizens.” Johnson v. Columbia Props. Anchorage, LP, 437
5 F.3d 894, 899) (9th Cir. 2006). The amount in controversy is determined from the face of the
6 pleadings, and the amount alleged controls so long as the claim is made in good faith. Geographic
7 Expeditions, Inc. v. Estate of Lhotka, 599 F.3d 1102, 1106 (9th Cir. 2010).

8 Here, Deluca argues that this court lacks subject matter jurisdiction because there is no
9 complete diversity—several partners of the Baker Firm are residents of Florida, the same state of
10 residency of Plaintiff. Dkt. No. 27 at 11. In response, Plaintiff states that neither the Baker Firm
11 nor the Baker Attorneys have shown evidence to suggest that any of the partners of the Baker Firm
12 are domiciled in Florida. Dkt. No. 36 at 11. The Ninth Circuit, however, has provided that the
13 party asserting diversity jurisdiction bears the burden of proof. See Kanter v. Warner-Lambert
14 Co., 265 F.3d 853, 857-58 (9th Cir. 2001).

15 In the instant action, Plaintiff asserts diversity jurisdiction, and thus he bears the burden of
16 proof. See Compl. at ¶ 10. In his complaint, Plaintiff alleges that he is a resident of Florida. Id. at
17 ¶ 1. As to the Defendants, Plaintiff alleges that: Deluca and the Baker Attorneys are residents of
18 Ohio; and PayPal and eBay are corporations with its headquarters and principal place of business
19 in California. Id. at ¶¶ 2-4, 6-8. There are no allegations, however, of all of the states of which
20 the Baker Firm’s partners are citizens. See id. at ¶¶ 5. Plaintiff has failed to meet his burden,
21 therefore, there is no diversity jurisdiction. Given that Plaintiff had an opportunity to rehabilitate
22 this issue in his opposition brief, but failed to do so, this court presumes that allowing leave to
23 amend would be futile.

24 **2. Federal Question**

25 Federal district courts have federal question jurisdiction over “all civil actions arising
26 under the Constitution, laws or treaties of the United States.” 28 U.S.C. § 1331. The basis for

1 federal question jurisdiction must appear on the face of the properly pleaded complaint, either
2 because it raises an issue of federal law or because the plaintiff's right to relief under state law
3 requires resolution of a substantial question of federal law. Franchise Tax Bd. v. Constr. Laborers
4 Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983).

5 Here, Plaintiff alleges two claims pursuant to the RICO statute. Compl. at ¶¶ 89, 101.
6 Since the complaint raises an issue of federal law, there is federal question jurisdiction so long as
7 the federal claims are valid.

8 **B. Personal Jurisdiction**

9 The parties do not dispute personal jurisdiction over PayPal and eBay. Thus, only personal
10 jurisdiction over Deluca, the Baker Firm, and the Baker Attorneys will be addressed.

11 **1. Defendant Deluca**

12 Plaintiff asserts specific personal jurisdiction over Deluca. Dkt. No. 36 at 9. The Ninth
13 Circuit applies a three-prong test to determine whether a defendant has sufficient contacts to be
14 susceptible to specific personal jurisdiction:

- 15 (1) The non-resident defendant must purposefully direct his
16 activities or consummate some transaction with the forum or
17 resident thereof; or perform some act by which he purposefully
18 avails himself of the privilege of conducting activities in the forum,
19 thereby invoking the benefits and protections of its laws;
(2) the claim must be one which arises out of or relates to the
20 defendant's forum-related activities; and
(3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

21 Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010). The plaintiff
22 bears the burden of satisfying the first two prongs. Schwarzenegger v. Fred Martin Motor Co.,
23 374 F.3d 797, 802 (9th Cir. 2004). If the plaintiff succeeds, then the burden shifts to the defendant
to present a compelling case that the exercise of jurisdiction would not be reasonable. Id.

24 To satisfy the first prong of the sufficient contacts test, a plaintiff must establish that the
25 defendant either purposefully availed herself of the privilege of conducting activities in the forum
26 state, or purposefully directed her activities toward the forum state. Id. Purposeful availment and

1 purposeful direction are two distinct concepts, with the former used in suits sounding in contract
2 and the latter used in suits sounding in tort. Id. Here, Plaintiff argues the theory of purposeful
3 direction. Dkt. No. 36 at 7-9.

4 “A showing that a defendant purposefully directed his conduct toward a forum state . . .
5 usually consists of evidence of the defendant’s actions outside the forum state that are directed at
6 the forum, such as the distribution in the forum state of goods originating elsewhere.”
7 Schwarzenegger, 374 F.3d at 803. The Ninth Circuit evaluates purposeful direction under a three-
8 part test traceable to the Supreme Court’s decision in Calder v. Jones, 465 U.S. 783 (1984). Id.
9 The Calder effects test “requires that the defendant have (1) committed an intentional act, (2)
10 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be
11 suffered in the forum state.” Id. at 805. As to the first prong, “an intentional act is an external
12 manifestation of the actor’s intent to perform an actual, physical act in the real world, not
13 including any of its actual or intended results.” Washington Shoe Co. v. A-Z Sporting Goods,
14 Inc., 704 F.3d 668, 674 (9th Cir. 2012). As to the second prong, there is express aiming when a
15 defendant knows his action will have a potentially devastating impact upon a plaintiff who
16 defendant knows lives or works in the forum state. See id. at 675.

17 To show purposeful direction, Plaintiff alleges that Deluca hired the Baker Firm to
18 represent her in the divorce and custody proceedings. Compl. at ¶ 15. The Baker Firm, on behalf
19 of Deluca, served subpoenas to PayPal so it could release Plaintiff’s financial records. Id. at ¶ 24.
20 Through this act, Deluca allegedly intentionally intruded into Plaintiff’s private affairs,
21 intentionally interfered with Plaintiff’s perceived use of the PayPal account, and intentionally
22 interfered with records believed to be Plaintiff’s. Id. at ¶¶ 56, 62, 68.

23 Deluca argues that she did not purposefully direct her conduct toward California because
24 the service of subpoenas upon PayPal was an incidental and highly attenuated contact with
25 California arising out of the contempt proceedings in the Ohio state court. Dkt. No. 41 at 3.
26 Plaintiff generally argues that Defendant Deluca directed her actions towards Defendant PayPal,

1 located in California, and the torts committed were a result of the release of records kept in
2 California. Dkt. No. 36 at 9. The court agrees. While Deluca may arguably have authorized an
3 intentional act by serving a subpoena, through counsel, directed at a third party in California, there
4 is no indication that Deluca expressly aimed her act towards California. Serving a subpoena alone
5 would not have a devastating impact upon Plaintiff in California since Plaintiff neither lives nor
6 works in California. See Bancroft & Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1087-88
7 (9th Cir. 2000) (defendant acted intentionally when it sent a letter to plaintiff, and the letter was
8 expressly aimed at California because it individually targeted plaintiff in its forum state of
9 California); Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1209
10 (9th Cir. 2006) (a cease and desist letter alone does not justify the exercise of personal
11 jurisdiction). Moreover, there is no indication that the subpoena would cause harm that was likely
12 to be suffered in California. Plaintiff generally alleges that he was harmed as a result of the
13 release of the financial records. Compl. at ¶¶ 58, 64, 70. While the financial records may have
14 been released in California, the harm to Plaintiff personally should have been suffered in the state
15 where he resides or works, neither of which is California.

16 Accordingly, Plaintiff has failed to satisfy the Calder effects test to establish purposeful
17 direction. Since Plaintiff failed to meet his burden to satisfy the first prong of the sufficient
18 contacts test, this court declines to exercise specific personal jurisdiction over Deluca.

19 **2. RICO Defendants: Deluca, the Baker Firm, and the Baker Attorneys**

20 Plaintiff alleges RICO claims against Deluca, the Baker Firm, and the Baker Attorneys.
21 As such, he alleges that personal jurisdiction is proper pursuant to 18 U.S.C. § 1965, which allows
22 for nationwide jurisdiction under RICO. Compl. at ¶ 10. The RICO statute provides that a civil
23 action may be instituted in the district in which the defendant “resides, is found, has an agent, or
24 transacts his affairs.” 18 U.S.C. § 1965(a). In § 1965(b), Congress provided for service of process
25 upon RICO defendants residing outside the federal court’s district when it is shown that “the ends
26 of justice” require it. 18 U.S.C. § 1965(b); Butcher’s Union Local No. 498 v. SDC Inv., Inc., 788

1 F.2d 535, 538 (9th Cir. 1986). Through this provision, Congress intended “to enable plaintiffs to
2 bring all members of a nationwide RICO conspiracy before a court in a single trial.” Butcher’s
3 Union, 788 F.2d at 539. “For nationwide service to be imposed under section 1965(b), the court
4 must have personal jurisdiction over at least one of the participants in the alleged multidistrict
5 conspiracy and the plaintiff must show that there is no other district in which a court will have
6 personal jurisdiction over all of the alleged co-conspirators.” Id. Plaintiff has the burden of
7 showing affirmatively that there is no other district that could exercise jurisdiction over all of the
8 alleged co-conspirators. Barantsevich v. VTB Bank, 954 F. Supp. 2d 972, 989-990 (C.D. Cal.
9 2013).

10 Deluca, the Baker Firm, and the Baker Attorneys argue that they lack significant contacts
11 with California. Dkt. No. 27 at 9. They argue that the individual defendants are all residents of
12 Ohio, and while the Baker Firm is a national law firm with an office in California, none of the
13 legal services for Deluca were handled by the California office. Id. at 9-10. They further argue
14 that the ends of justice is not served by conferring personal jurisdiction over them since their
15 witnesses and records are located in Ohio, and the alleged claim occurred in Ohio. Id. at 10. In
16 response, Plaintiff argues that the Baker Firm has substantial and continuous contact with
17 California because of its office in Los Angeles, and the Baker Firm’s counsel works out of the Los
18 Angeles office. Dkt. No. 36 at 9-10.

19 This court agrees with Deluca, the Baker Firm and the Baker Attorneys. First, the court
20 must have personal jurisdiction over at least one of the participants. There is no indication that
21 this court can exercise personal jurisdiction over Deluca or the Baker Attorneys since they all live
22 in Ohio, and Plaintiff has not made a case of specific personal jurisdiction over them. Second,
23 even if this court can exercise personal jurisdiction over the Baker Firm because of some presence
24 in California, Plaintiff has failed to allege that there is no other district court that will have
25 personal jurisdiction over all of the RICO Defendants. The complaint states that Deluca and the
26 Baker Attorneys are residents of Ohio, the Baker Firm has an office in Ohio, and at least part of

1 the alleged acts of the conspiracy occurred in Ohio. Compl. at ¶¶ 2-6, 15, 20-24. As such, an
2 Ohio court would have jurisdiction over all of the RICO defendants.

3 Accordingly, personal jurisdiction over the RICO Defendants is improper in this district.
4 The court, therefore, declines to exercise personal jurisdiction under RICO over Deluca, the Baker
5 Firm, and the Baker Attorneys.

6 **C. Conclusion as to Jurisdiction**

7 Since this court lacks personal jurisdiction over RICO Defendants Deluca, the Baker Firm,
8 and the Baker Attorneys, the RICO claims must be dismissed. Furthermore, given that the RICO
9 claims are dismissed, the complaint lacks a federal claim. Accordingly, federal question
10 jurisdiction is lacking. The court declines to exercise supplemental jurisdiction over the remaining
11 state law claims. See 28 U.S.C. § 1367(c)(3).

12 **IV. ORDER**

13 For the foregoing reasons, Deluca's Motion to Dismiss on the grounds of lack of
14 jurisdiction is GRANTED, and all claims are DISMISSED WITHOUT PREJUDICE. All other
15 motions to dismiss and motions to strike are DENIED AS MOOT. The Clerk shall close the file.

16
17 **IT IS SO ORDERED.**

18 Dated: January 30, 2015

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20 EDWARD J. DAVILA
United States District Judge