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2
3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**

6
7 EMPLOYERS MUTUAL CASUALTY
8 COMPANY,

9 Plaintiff,

10 v.

11 SANCTUARY SYSTEMS, LLC, et al.,

12 Defendants.

Case No. 22-cv-02561-BLF

**ORDER DENYING SANCTUARY
DEFENDANTS' MOTION TO
DISMISS, OR IN THE ALTERNATIVE,
TRANSFER VENUE**

[Re: ECF 28]

United States District Court
Northern District of California

13 Plaintiff Employers Mutual Casualty Company (“EMC”) filed this declaratory relief
14 action to resolve insurance coverage disputes arising from two policies it issued to Defendant
15 Sanctuary Systems, LLC (“Sanctuary”) – a Commercial General Liability Policy (“CGL Policy”)
16 and a Commercial Umbrella Policy (“Umbrella Policy”) (collectively, the “Policies”). EMC
17 requests a declaration that the Policies do not give rise to a duty to defend or indemnify Sanctuary
18 and other potential insureds in a California state court action (“Underlying Action”) arising from
19 Sanctuary’s sales of allegedly defective filtration materials to California manufacturers of N95
20 masks. EMC also claims entitlement to recoup any monies it may pay to provide a defense or
21 indemnification in the Underlying Action.

22 EMC seeks this relief against three defendants in the Underlying Action: Sanctuary, 305
23 Consulting, LLC (“305 Consulting”), and Bryan Sigler (collectively, “the Sanctuary Defendants”).
24 EMC also seeks relief against the plaintiffs in the Underlying Action, Advoque Safeguard, LLC
25 (“Advoque”) and Ciasom LLC (“Ciasom”), on the basis that they may become judgment creditors
26 with a direct right of action against EMC.¹

27
28 ¹ EMC has voluntarily dismissed additional Defendants Robert Sigler, Global Trust Group, LLC,
and Benham Pourdeyhimi. See Notices of Voluntary Dismissal, ECF 25, 29.

1 The Sanctuary Defendants move to dismiss this action for lack of personal jurisdiction and
2 improper venue pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(3) or, in the
3 alternative, to transfer this action to the United States District Court for the Eastern District of
4 North Carolina, Sanctuary's home state, pursuant to 28 U.S.C. § 1404(a). EMC opposes the
5 motion.

6 For the reasons discussed below, the Sanctuary Defendants' motion is DENIED.

7 **I. BACKGROUND**

8 *Sanctuary*

9 Sanctuary is a limited liability company organized under the laws of North Carolina. *See*
10 Barnes Decl. ¶ 5, ECF 28-1. Since its formation in 2017, the company's only members have been
11 North Carolina resident Benham Pourdeyhimi and Alabama resident Mac Barnes III. *See id.* ¶¶
12 23, 10-12. Sanctuary produces "nonwoven materials," including materials for use in the
13 manufacture of masks used to protect against COVID-19. *See id.* ¶¶ 11-16. Its principal place of
14 business and sole manufacturing facility are located in Fremont, North Carolina. *See id.* ¶ 5.
15 Sanctuary has thirty-seven employees who work in North Carolina and one who works in
16 Alabama. *See id.* at 7.

17 *The Policies*

18 In February 2020, Sanctuary obtained the subject Policies from EMC, a corporation
19 organized and existing under the laws of the State of Iowa with its principle place of business in
20 Iowa. *See* Compl. ¶ 4, ECF 1; Barnes Decl. Ex. A, Policies. The Policies were issued through the
21 Montgomery, Alabama office of EMC's agent, Thomson Insurance, Inc. Barnes Decl. ¶ 9.

22 While they do not identify the place of execution or acceptance, the Policies list
23 Montgomery, Alabama addresses for Sanctuary and Thomson. *See* Barnes Decl. Ex. A, CGL
24 Policy at 8, Umbrella Policy at 55.² The Policies provide nationwide coverage to Sanctuary and
25 other qualifying insureds for liability arising from covered commercial operations. *See* Barnes
26 Decl. Ex. A, CGL Policy at 26, Umbrella Policy at 75. The Policies have been renewed through

27 _____
28 ² Citations to the Policies refer to the ECF page numbers.

1 February 2023. *See* Hopper Decl. ¶ 2, ECF 30-3.

2 *Underlying Action*

3 On December 17, 2021, California-based companies Advoque and Ciasom filed the
4 Underlying Action, titled *Advoque Safeguard, LLC et al. v. Sanctuary Systems LLC et al.*, in the
5 Santa Clara County Superior Court. *See* Barnes Decl. Ex. B, Underlying Compl. Advoque and
6 Ciasom allege that during the height of the COVID-19 pandemic, they obtained contracts worth
7 more than 125 million dollars to manufacture N95 masks, including a 90 million dollar contract
8 with the State of California. *See id.* at ¶¶ 17, 31. Advoque and Ciasom contracted with Sanctuary
9 for the supply of materials to be used in the manufacture of N95 masks, based in part on
10 representations by Sanctuary, 305 Consulting, and Bryan Sigler that the materials would meet or
11 exceed applicable filtration requirements for N95 masks. *See id.* ¶¶ 18-24. 305 Consulting is a
12 limited liability company organized under the laws of Nevada with its principal place of business
13 in Las Vegas, Nevada. *See* Bryan Sigler Decl. ¶ 5, ECF 28-2. Bryan Sigler is 305 Consulting's
14 sole member, and he resides in Florida. *See id.* ¶ 3.

15 When tested, the N95 masks manufactured by Advoque and Ciasom with materials
16 supplied by Sanctuary failed to meet the required 95% filtration efficiency. *See* Underlying
17 Compl. ¶¶ 25-29. Advoque and Ciasom allege that the materials supplied by Sanctuary were
18 defective and failed to meet or exceed applicable filtration requirements for N95 masks as
19 promised. *See id.* ¶¶ 29-31. As a result, Advoque and Ciasom allegedly breached their contracts
20 and suffered catastrophic business losses. *See id.* They assert nineteen state law claims against
21 Sanctuary, 305 Consulting, Bryan Sigler, and others, including claims for breach of contract,
22 negligence, breach of warranty, fraud, unfair business practices.

23 *Present Declaratory Relief Action*

24 Sanctuary tendered the defense of the Underlying Action to EMC under the Policies. *See*
25 Hopper Decl. ¶ 3. EMC agreed to defend Sanctuary, 305 Consulting, and Bryan Sigler under a
26 reservation of rights. *See id.* ¶ 8. EMC thereafter filed the present suit against the Sanctuary
27 Defendants, Advoque and Ciasom, and others who have since been dismissed, asserting claims
28 for: (1) declaratory relief re no duty to defend; (2) declaratory relief re no duty to indemnify;

1 (3) recoupment re defense expenses; and (4) recoupment re indemnity. *See* Compl., ECF 1.

2 *Current Motion*

3 The Sanctuary Defendants move to dismiss EMC’s complaint for lack of personal
4 jurisdiction under Rule 12(b)(2) and improper venue under Rule 12(b)(3) or, in the alternative, to
5 transfer this action to the United States District Court for the Eastern District of North Carolina,
6 Sanctuary’s home state, under 28 U.S.C. § 1404(a).

7 **II. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

8 **A. Legal Standard**

9 A party may challenge the Court’s personal jurisdiction over it by bringing a motion to
10 dismiss under Federal Rule of Civil Procedure 12(b)(2). When a defendant raises a challenge to
11 personal jurisdiction, the plaintiff bears the burden of establishing that jurisdiction is proper. *See*
12 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). The plaintiff may meet that burden by
13 submitting affidavits and discovery materials. *Id.* “Where, as here, the defendant’s motion is
14 based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima
15 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Ranza*, 793 F.3d at 1068
16 (quotation marks and citation omitted). “[T]he plaintiff cannot simply rest on the bare allegations
17 of its complaint,” but the uncontroverted allegations in the complaint must be accepted as true and
18 factual disputes created by conflicting affidavits must be resolved in the plaintiff’s favor.
19 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quotation marks
20 and citation omitted).

21 “Where, as here, there is no applicable federal statute governing personal jurisdiction, the
22 district court applies the law of the state in which the district court sits.” *Schwarzenegger*, 374
23 F.3d at 800. “Because California’s long-arm jurisdictional statute is coextensive with federal due
24 process requirements, the jurisdictional analyses under state law and federal due process are the
25 same.” *Id.* at 800-801. “Although a nonresident’s physical presence within the territorial
26 jurisdiction of the court is not required, the nonresident generally must have ‘certain minimum
27 contacts . . . such that the maintenance of the suit does not offend traditional notions of fair play
28 and substantial justice.’” *Walden v. Fiore*, 571 U.S. 277, 283 (2014) (quoting *Int’l Shoe Co. v.*

1 *Washington*, 326 U.S. 310, 316 (1945)).

2 A federal district court may exercise either general or specific personal jurisdiction over a
3 nonresident defendant. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). General personal
4 jurisdiction exists when the defendant’s contacts “are so continuous and systematic as to render
5 [it] essentially at home in the forum State.” *Id.* (quotation marks and citation omitted). Specific
6 personal jurisdiction exists when the defendant’s contacts with the forum state are more limited
7 but the plaintiff’s claims arise out of or relate to those contacts. *Id.* at 127-28.

8 **B. Discussion**

9 As discussed above, Sanctuary is based in North Carolina, 305 Consulting is based in
10 Nevada, and Bryan Sigler is a resident of Florida. The burden is on EMC to establish that the
11 Sanctuary Defendants have sufficient contacts with California to give rise to either general or
12 specific personal jurisdiction. EMC does not attempt to establish the existence of general personal
13 jurisdiction, but it argues that the Sanctuary Defendants’ contacts with California give rise to
14 specific personal jurisdiction in this case.

15 The Ninth Circuit has established a three-prong test for whether a court can exercise
16 specific personal jurisdiction over a non-resident defendant: (1) the defendant “must purposefully
17 direct his activities or consummate some transaction with the forum or resident thereof; or perform
18 some act by which he purposefully avails himself of the privilege of conducting activities in the
19 forum, thereby invoking the benefits and protections of its laws”; (2) “the claim must be one
20 which arises out of or relates to the defendant’s forum-related activities”; and (3) “the exercise of
21 jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.”
22 *Schwarzenegger*, 374 F.3d at 802. “The minimum contacts test ensures that a defendant will not
23 be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts.”
24 *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d 597, 603 (9th Cir. 2018)
25 (quotation marks and citation omitted). “The plaintiff bears the burden of satisfying the first two
26 prongs of the test.” *Schwarzenegger*, 374 F.3d at 802. If the plaintiff succeeds, the burden shifts
27 to the defendant to set forth a “compelling case that the presence of some other considerations
28 would render jurisdiction [in California] unreasonable.” *Freestream*, 905 F.3d at 607.

1 **1. Purposeful Availment or Purposeful Direction**

2 Under the first prong of the test, EMC must show either purposeful availment or
3 purposeful direction by the Sanctuary Defendants. “[A] showing that a defendant purposefully
4 availed himself of the privilege of doing business in a forum state typically consists of evidence of
5 the defendant’s actions in the forum, such as executing or performing a contract there.”
6 *Freestram*, 905 F.3d at 605 (quotation marks and citation omitted). “By contrast, [a] showing
7 that a defendant purposefully directed his conduct toward a forum state . . . usually consists of
8 evidence of the defendant’s actions outside the forum state that are directed at the forum, such as
9 the distribution in the forum state of goods originating elsewhere.” *Id.* (quotation marks and
10 citation omitted). “[A] purposeful availment analysis is most often used in suits sounding in
11 contract, whereas a purposeful direction analysis is most often used in suits sounding in tort.” *Id.*
12 (quotation marks and citation omitted).

13 EMC’s claims against the Sanctuary Defendants are grounded in the Policies and thus
14 sound in contract. Ordinarily, the Court would apply a purposeful availment analysis to a suit
15 sounding in contract. In this case, however, EMC argues that the scope of its contractual
16 obligations under the Policies depends on the allegations in the Underlying Action, which include
17 both contract and tort claims against the Sanctuary Defendants. Thus, EMC asserts, the Sanctuary
18 Defendants’ conduct giving rise to the Underlying Action should be considered in determining the
19 existence of personal jurisdiction. This assertion is disputed by the Sanctuary Defendants, who
20 argue that contacts relating to the Underlying Action should not factor into the personal
21 jurisdiction analysis in this declaratory relief action. According to the Sanctuary Defendants, the
22 current declaratory relief action does not arise out of those contacts, but rather arises solely out of
23 the Policies entered into by North Carolina company Sanctuary and Iowa company EMC.

24 In the Court’s view, this dispute more properly is addressed at the second prong of the
25 minimum contacts test, which asks whether the claim at issue “arises out of or relates to the
26 defendant’s forum-related activities.” *Schwarzenegger*, 374 F.3d at 802. At the first prong, which
27 asks only whether the defendant engaged in purposeful activities creating contacts with the forum
28 state, the Court will consider all of the Sanctuary Defendants’ purposeful contacts with California.

1 EMC asserts that the Sanctuary Defendants purposefully availed themselves of the
2 privilege of doing business in California by entering into contracts with California-based
3 companies Advoque and Ciasom to supply them with materials for use in the manufacture of N95
4 masks that in turn would be sold in California. Advoque and Ciasom claim that Sanctuary
5 accepted more than 8 million dollars in exchange for mask materials it supplied to them in
6 California. *See* Underlying Compl. ¶¶ 36-38. Sanctuary entered into a nondisclosure agreement
7 with Advoque in connection with the supply contracts. *See* Pl.’s Compendium Ex. 3,
8 Nondisclosure Agreement, ECF 30-1. The nondisclosure agreement was signed by Bryan Sigler
9 on behalf of Sanctuary. *See id.* Bryan Sigler and 305 Consulting allegedly made
10 misrepresentations to California-based Advoque and Ciasom in connection with the supply
11 contracts. *See* Underlying Compl. ¶¶ 18-24. All of the Sanctuary Defendants allegedly
12 participated in tortious conduct, including negligence and fraudulent concealment, directed toward
13 California in connection with supplying defective mask materials to Advoque and Ciasom. *See id.*
14 ¶¶ 54-56, 98-104. The Court finds these contacts sufficient to establish that the Sanctuary
15 Defendants purposefully availed themselves of the privilege of doing business in California and
16 purposefully directed their conduct to California. The first prong of the minimum contacts test is
17 satisfied.

18 EMC directs the Court to other contacts related to the Underlying Action as well, including
19 the Sanctuary Defendants’ failure to challenge personal jurisdiction in the Underlying Action,
20 their defense of the Underlying Action, and their request that EMC defend and indemnify them in
21 the Underlying Action. Numerous district courts have concluded that such conduct does not
22 constitute “purposeful” activity, reasoning that “while an out-of-state insured demands a defense,
23 it did not choose to litigate in the underlying forum, such that it is purposefully availing itself of a
24 particular forum.” *Ohio Sec. Ins. Co. v. Premium Food Grp., Inc.*, No. CV 21-15690 (FLW), 2022
25 WL 2358425, at *4 (D.N.J. June 30, 2022); *see also Admiral Ins. Co. v. Briggs*, No. CIV.A.
26 302CV0310P, 2002 WL 1461911, at *7 (N.D. Tex. July 2, 2002) (rejecting insurer’s argument in
27 declaratory relief action “that by demanding a defense under the Policy, [defendant insureds] have
28 invoked the protection of Texas insurance law, and that this constitutes personal availment of

1 Texas law sufficient to establish minimum contact with the forum”). Following the rationale of
2 those cases, this Court agrees that the Sanctuary Defendants’ litigation of the Underlying Action,
3 and request for a defense and indemnity in that action, do not constitute “purposeful” activity.

4 EMC has identified one contrary decision from this district, *Evanston*, a declaratory relief
5 action in which the court found that a non-resident defendant was “subject to specific personal
6 jurisdiction . . . due to his participation in the underlying suit.” *Evanston Ins. Co. v. Honso USA,*
7 *Inc.*, No. C 10-05596 WHA, 2011 WL 1362071, at *5 (N.D. Cal. Apr. 11, 2011). The *Evanstan*
8 court found it significant that the state court had found the non-resident defendant subject to
9 personal jurisdiction in the underlying suit and “declined to part company” with the state court on
10 that issue. *See id.* *Evanston* is factually distinguishable from the present case, and this Court does
11 not find its rationale applicable here. It is this Court’s view that being sued in a particular forum,
12 and requesting that an insurer defend such suit, do not constitute “purposeful” activities by an
13 insured. This Court therefore declines to follow *Evanston*.

14 For the reasons discussed above, however, the Sanctuary Defendants’ purposeful forum-
15 related activities related to the supply contracts with Advoque and Ciasom are sufficient to satisfy
16 the purposeful avilment/purposeful direction prong.

17 **2. Arises Out Of or Relates To**

18 The real crux of the parties’ jurisdictional dispute is whether EMC’s declaratory relief
19 action “arises out of or relates to” the Sanctuary Defendants’ forum-related activities.
20 *Schwarzenegger*, 374 F.3d at 802. In determining whether a plaintiff’s claim arises out of or
21 relates to the defendant’s forum-related activities, “the Ninth Circuit follows the ‘but for’ test.”
22 *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007) (quotation marks and citation omitted).
23 Under this test, EMC must show that its claims would not have arisen “but for” the Sanctuary
24 Defendants’ California-related conduct.

25 The Ninth Circuit has not offered guidance on whether an insurer’s declaratory relief
26 action may be said to arise out of or relate to its insured’s activities giving rise to the underlying
27 action for which coverage is sought. Other federal courts have split on this issue, some courts
28 holding that the insured’s activities relating to the underlying action do factor into the personal

1 jurisdiction analysis and others holding that they do not. The two lines of cases are discussed
2 below.

3 *Cases Holding that Contacts re Underlying Action Do Factor into Analysis*

4 EMC cites several cases in which an insurer's declaratory relief action was found to "arise
5 out of or relate to" the insured's forum contacts that led to the underlying action. *Bartile Roofs*,
6 another declaratory relief action brought by EMC, is directly on point. The insured, Bartile, was a
7 Utah-based roofer that worked on construction of a luxury hotel near Jackson Hole, Wyoming.
8 *See Emps. Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153 (10th Cir. 2010). After being
9 named as a party in a California state court action stemming from the construction project, Bartile
10 tendered the defense of the state court action to EMC under CGL policies. *See id.* at 1157-58.
11 EMC agreed to provide a defense under a reservation of rights and thereafter filed a declaratory
12 relief action in the United States District Court for the District of Wyoming. *See id.* at 1158. As
13 here, EMC sought a declaration that it had no duty to defend or indemnify in the underlying state
14 court action, and recoupment of any defense costs incurred. *See id.* Bartile moved to dismiss the
15 declaratory relief action for lack of personal jurisdiction and improper venue or, in the alternative,
16 to transfer the action to the United States District Court for the District of Utah, its home state.
17 *See id.* The district court denied the motion. *See id.*

18 On appeal, the Tenth Circuit rejected Bartile's argument that the district court erred in
19 exercising personal jurisdiction. *See Bartile*, 618 F.3d at 1164. As relevant here, the Tenth
20 Circuit found that EMC's declaratory relief action arose out of or related to Bartile's Wyoming
21 contacts because "EMC seeks to avoid having to defend or indemnify Bartile for injuries arising
22 out of the allegedly negligent work on the luxury hotel in Wyoming." *Id.* at 1161. The court
23 found expressly that "[t]he but-for causation approach is satisfied because Bartile's allegedly
24 negligent work was an event in the causal chain leading to the request for a declaratory judgment."
25 *Id.*

26 A number of district courts have applied a similar approach in finding the existence of
27 personal jurisdiction in declaratory relief actions brought by insurers. In *Splash Dogs*, the district
28 court rejected an insured's challenge to personal jurisdiction in a declaratory relief action filed by

1 his insurer, finding that the declaratory relief action arose out of the insured’s forum-related
2 activities that led to the underlying suit. *See Capitol Specialty Ins. Corp. v. Splash Dogs, LLC*,
3 801 F. Supp. 2d 657, 666 (S.D. Ohio 2011). The insured was in the business of “canine dock
4 jumping,” which involves sporting competitions in which dogs jump from docks into pools of
5 water. *See id.* at 661. Although not a resident of Ohio, the insured held a jumping competition
6 there and also performed work for an Ohio-based competitor called DockDogs, which eventually
7 filed the underlying suit against the insured. *See id.* at 662. In the insurer’s subsequent
8 declaratory relief action, the district court found that the coverage issue had “a substantial
9 connection” to the insured’s Ohio activities. *See id.* at 670. The district court concluded that the
10 insurer’s claims “arose in the wake of DockDogs’ statutory and tort claims,” and that had the
11 insured “not done the things he did,” the insurer would not have any claims to assert in the
12 declaratory relief action. *Id.* at 671 (internal quotation marks and citation omitted).

13 In *Massachusetts Bay*, the district court likewise considered the insured’s conduct related
14 to the underlying action in determining the existence of personal jurisdiction in the insurer’s
15 declaratory relief action. *See Massachusetts Bay Ins. Co. v. Portland Water Dist.*, No. CIV. 99-
16 487-M, 2000 WL 1499493 (D.N.H. May 10, 2000). The insured, Portland Water District
17 (“PWD”), provided wastewater and sewage treatment services to citizens in the Portland, Maine
18 area. *See id.* at *1. PWD entered into an agreement with a third party to dispose of PWD’s
19 wastewater treatment plant residuals in both Maine and New Hampshire. *See id.* The third party
20 allegedly deposited toxic sludge generated by PWD on a farm in New Hampshire. *See id.* at *2.
21 After a man who lived nearby died from respiratory problems, his parents and estate sued PWD in
22 state court. *See id.* PWD tendered the defense of the state court suit to its insurer, Massachusetts
23 Bay, which provided a defense under a reservation of rights and filed a declaratory relief action in
24 the United States District Court for the District of New Hampshire. *See id.* The district court
25 denied PWD’s motion to dismiss the declaratory relief action for lack of personal jurisdiction,
26 concluding that “this declaratory judgment action arises directly out of PWD’s having allegedly
27 disposed of toxic waste in this forum, its having been named as a defendant in the underlying state
28 tort action, and Mass Bay’s desire to obtain a judicial determination of its obligations, if any, to

1 provide PWD with a defense in this state and indemnify it for any damages it must pay in the
2 pending tort action.” *Id.* at *4.

3 *Cases Holding that Contacts re Underlying Action Do Not Factor into Analysis*

4 The Sanctuary Defendants urge the Court not to follow the cases cited by EMC, and
5 instead to follow cases holding that personal jurisdiction in a declaratory relief action depends on
6 the insured’s contacts relating to the policies, not the insured’s contacts relating to the underlying
7 action. In *Ohio Security Insurance*, an insurer filed a declaratory relief action in the United States
8 District Court for the District of New Jersey against its insured, Premium, and additional insured,
9 Nut Cravings, to determine its coverage obligations regarding a New Jersey state court action
10 against Nut Cravings. *See Ohio Sec. Ins. Co.*, 2022 WL 2358425. The state court action, brought
11 by a husband and wife, alleged that the wife suffered multiple strokes after consuming unwashed
12 poppy seeds purchased from Nut Cravings through the Amazon.com marketplace. *See id.* at *3.
13 The district court determined that although the sale of allegedly defective products into New
14 Jersey might subject Nut Cravings to specific personal jurisdiction in the underlying state court
15 action, that sale did not subject Nut Cravings to personal jurisdiction in the declaratory relief
16 action. *See id.* at *6. The district court reasoned that the “declaratory judgment claim, which
17 alleges that Nut Cravings is not covered by Premium Food’s policies . . . do not ‘arise out of or
18 relate to’ the alleged commercial activities of Nut Cravings.” *Id.* The district court concluded that
19 “this dispute arises out of insurance policies that were purchased by a New York Corporation in
20 New York from a New York insurance broker,” and that as a result personal jurisdiction did not lie
21 in New Jersey. *Id.*

22 The district court applied a similar rationale in *Hartford*, a declaratory relief action brought
23 by an insurer in the United States District Court for the Eastern District of Virginia to determine
24 its coverage obligations regarding an underlying action pending in the same court. *See Hartford*
25 *Cas. Ins. Co. v. JR Mktg., LLC*, 511 F. Supp. 2d 644, 645 (E.D. Va. 2007). Specifically, the
26 insurer sought a declaration that its insureds had no right to independent counsel in the underlying
27 action. *See id.* The district court dismissed the declaratory relief action for lack of personal
28 jurisdiction over the insureds, a California-based company and individual California residents.

1 *See id.* at 651. The court held that the declaratory relief action “concerns the insureds’ rights
2 under the CGL Policy, not the claims asserted against them in the Virginia Action.” *Id.* at 650.
3 Observing that “the mere purchase of an insurance policy with nationwide coverage does not
4 subject an insured to personal jurisdiction in every state of the union,” the district court concluded
5 that “[w]hile the insureds might have foreseen business litigation in Virginia at the time they
6 purchased the CGL Policy, they could not reasonably anticipate being haled into court there to
7 determine their rights under an insurance policy delivered to them in California.” *Id.* (internal
8 quotation marks and citation omitted).

9 In *Pierce*, insurers filed a declaratory relief action in the United States District Court for
10 the Eastern District of Missouri to determine its coverage obligations regarding an underlying
11 action pending in the same court. *See Nat’l Indem. Co. v. Pierce Waste Oil Serv., Inc.*, 740 F.
12 Supp. 721, 723 (E.D. Mo. 1990). The underlying action was brought by the United States to
13 recover environmental clean-up costs relating to the insureds’ operation of waste oil storage tanks
14 in Missouri. *See id.* The district court determined that it lacked personal jurisdiction over the
15 Illinois-based insureds, because the declaratory relief action concerned only the parameters of the
16 insureds’ contractual relationship with the insureds. *See id.* at 724. The district court reasoned
17 that:

18 The parties’ contract defines the parameters of this relationship by setting forth
19 their respective rights and establishing the scope of plaintiffs’ potential liability.
20 Neither defendants’ contracting to lease property in Missouri, nor defendants’
21 transaction of business or possession of real estate in Missouri created additional
22 rights or enlarged the scope of plaintiffs’ potential liability. These activities may
23 have *prompted* plaintiffs to seek this declaratory judgment, but they did not give
24 rise to the rights at issue in this case. On the contrary, the parties’ respective rights
25 and the universe of plaintiffs’ liability were established when they entered into a
26 contract for insurance in Illinois.

27 *Id.* (footnotes omitted). The district court concluded that “because this cause of action arises from
28 acts occurring exclusively in Illinois, the Missouri long-arm does not provide personal jurisdiction
over the *Pierce* defendants with respect to this declaratory judgment action.” *Id.*

This Court Follows the Cases that Consider Contacts re Underlying Action

This Court finds the line of cases relied on by EMC to be more persuasive. Just as the
Tenth Circuit found in *Bartile* that EMC’s declaratory relief action would not have arisen but for

1 Bartile’s forum-related conduct giving rise to the underlying action, *see Bartile*, 618 F.3d at 1161,
2 this Court finds that EMC’s declaratory relief action would not have arisen but for the Sanctuary
3 Defendants’ California-related conduct giving rise to the underlying action. Under these
4 circumstances, the Court is at a loss to understand how it could divorce the present declaratory
5 relief action from the underlying state court action, as urged by the Sanctuary Defendants. There
6 is a “causal connection between the actions that give rise to an underlying lawsuit and insurance
7 coverage questions pertaining to that case.” *Splash Dogs*, 801 F. Supp. 2d at 666. “[T]his case
8 involves more than merely the interpretation of an insurance contract formed [elsewhere] and an
9 insured with no contacts with this forum.” *Massachusetts Bay*, 2000 WL 1499493, at *4.

10 The Court concludes that EMC has demonstrated that its declaratory relief action arises out
11 of, and relates to, the Sanctuary Defendants’ forum-related contacts regarding the supply contracts
12 with Advoque and Ciasom. The second prong of the minimum contacts test therefore is satisfied.

13 3. Exercise of Jurisdiction is Reasonable

14 Because EMC has satisfied its burden with respect to the first two prongs of the minimum
15 contacts test, the burden shifts to the Sanctuary Defendants to set forth a “compelling case that the
16 presence of some other considerations would render jurisdiction [in California] unreasonable.”
17 *Freestream*, 905 F.3d at 607. Courts in the Ninth Circuit consider a seven-factor balancing test
18 when addressing the question of reasonableness: “(1) the extent of the defendant’s purposeful
19 interjection into the forum state’s affairs; (2) the burden on the defendant of defending in the
20 forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s
21 interest in adjudicating the dispute; (5) the most efficient judicial resolution of the controversy; (6)
22 the importance of the forum to the plaintiff’s interest in convenient and effective relief; and (7) the
23 existence of an alternative forum.” *Id.*

24 While the Sanctuary Defendants recite these factors, their motion contains only a scant
25 paragraph discussing them, which addresses only the fourth factor with particularity. *See Defs.’*
26 *Mot.* at 9-10, ECF 28. The Sanctuary Defendants argue that “California has no substantial interest
27 in the adjudication of this matter and there is no significant purpose in hearing the action in this
28 forum.” *Id.* at 10. This argument is unpersuasive, given that EMC seeks a declaration regarding

1 its obligation to defend the Sanctuary Defendants in a California action asserting claims arising
 2 out of alleged misconduct directed toward California companies. The Court finds that the
 3 Sanctuary Defendants have failed to meet their burden to show compelling reasons why exercise
 4 of personal jurisdiction in this case would be unreasonable.

5 Accordingly, the Sanctuary Defendants' motion to dismiss for lack of personal jurisdiction
 6 is DENIED.

7 **III. MOTION TO DISMISS FOR IMPROPER VENUE**

8 **A. Legal Standard**

9 A defense of improper venue may be raised by motion under Federal Rule of Civil
 10 Procedure 12(b)(3). When venue is improper, the court "shall dismiss, or if it be in the interest of
 11 justice, transfer such case to any district or division in which it could have been brought." 28
 12 U.S.C. § 1406(a). The plaintiff bears the burden of showing that venue is proper. *See Piedmont*
 13 *Label Co. v. Sun Garden Packing Co.*, 598 F.2d 491, 496 (9th Cir. 1979) ("Plaintiff had the
 14 burden of showing that venue was properly laid in the Northern District of California.").

15 Venue is governed by 28 U.S.C. § 1391(b), which provides as follows:

16 **(b) Venue in general.** – A civil action may be brought in –

- 17 (1) a judicial district in which any defendant resides, if all defendants are
 18 residents of the State in which the district is located;
- 19 (2) a judicial district in which a substantial part of the events or omissions giving
 20 rise to the claim occurred, or a substantial part of property that is the subject of
 21 the action is situated; or
- 22 (3) if there is no district in which an action may otherwise be brought as
 23 provided in this section, any judicial district in which any defendant is subject to
 24 the court's personal jurisdiction with respect to such action.

25 28 U.S.C. § 1391(b).

26 **B. Discussion**

27 EMC's opposition does not expressly argue that venue is proper in this district, but at the
 28 hearing EMC's counsel argued that venue is proper under 28 U.S.C. § 1391(b)(2) because a
 substantial part of the events giving rise to this declaratory relief action occurred here. In a
 declaratory relief action brought by an insurer to determine a coverage dispute, the "court looks to

1 the underlying events for which coverage is sought.” *Ins. Co. of N. Am. v. Matson Terminals, Inc.*,
2 No. CV 13-08958 SJO (FFMx), 2014 WL 10987407, at *2 (C.D. Cal. Apr. 10, 2014) (internal
3 quotation marks and citation omitted). “This approach makes eminent sense when the action is
4 truly a dispute over whether a given accident, event, or malady qualifies for coverage under a
5 particular insurance policy.” *Id.* “In such a scenario, the facts surrounding the claimant’s
6 affliction are often integral to a determination on coverage.” *Id.*

7 In *Matson*, the district court found that the facts giving rise to the insured’s claim under the
8 policy were not integral to resolution of the insurer’s declaratory relief action seeking a coverage
9 determination. *See Matson*, 2014 WL 10987407, at *2. Instead, the parties’ coverage dispute
10 required the district court to construe the policy’s terms and possibly relevant statutory language.
11 *See id.* Under those circumstances, the court found that venue would depend on where the policy
12 was negotiated or executed, where it was to be performed, and where the alleged breach occurred.
13 *See id.* at *3. Focusing on those factors, the court concluded that the plaintiff had failed to
14 establish that venue was proper in the forum. *See id.* at *3-4.

15 The present case is factually distinguishable from *Matson*, as EMC’s declaratory relief
16 action raises a substantial dispute whether the underlying action qualifies for coverage under the
17 Policies. As EMC argued at the hearing, resolution of that dispute will depend in part on factual
18 determinations regarding the Sanctuary Defendants’ conduct. A substantial part of the Sanctuary
19 Defendants’ relevant conduct occurred in this judicial district, as the Sanctuary Defendants sold
20 the allegedly defective mask materials to Advoque and Ciasom here. EMC also pointed out that
21 California companies Advoque and Ciasom are named as defendants in the declaratory relief
22 action. The Court concludes that under the standards set forth in *Matson*, EMC has shown that
23 venue is proper in this district under 28 U.S.C. § 1391(b)(2).

24 This conclusion is consistent with *Bartile*, the Tenth Circuit decision addressing another
25 declaratory relief action brought by EMC. The Tenth Circuit found that substantial events giving
26 rise to EMC’s declaratory relief action included *Bartile*’s allegedly negligent work at the luxury
27 hotel in Wyoming. *See Bartile*, 618 F.3d at 1166-67. The Tenth Circuit emphasized that “venue
28 is not limited to the district with the *most* substantial events or omissions,” and that venue may be

1 proper in multiple districts. *See id.* at 1165-66.

2 Accordingly, the Sanctuary Defendants’ motion to dismiss for improper venue is DENIED.

3 **IV. MOTION TO TRANSFER**

4 **A. Legal Standard**

5 Even where venue is proper, “[f]or the convenience of parties and witnesses, in the interest
6 of justice, a district court may transfer any civil action to any other district or division where it
7 might have been brought or to any district or division to which all parties have consented.” 28
8 U.S.C. § 1404(a). An action “might have been brought” in any court that has subject matter
9 jurisdiction over the claims and personal jurisdiction over the defendant, and where venue would
10 have been proper. *See Doe v. Epic Games, Inc.*, 435 F. Supp. 3d 1024, 1040 (N.D. Cal. 2020)

11 Courts in this District have regularly considered the following factors when deciding
12 whether to transfer a case under § 1404(a): “(1) plaintiff’s choice of forum, (2) convenience of the
13 parties, (3) convenience of the witnesses, (4) ease of access to the evidence, (5) familiarity of each
14 forum with the applicable law, (6) feasibility of consolidation with other claims, (7) any local
15 interest in the controversy, and (8) the relative court congestion and time of trial in each forum.”
16 *Doe v. Epic Games*, 435 F. Supp. 3d at 1040; *see also Barnes & Noble, Inc. v. LSI Corp.*, 823 F.
17 Supp. 2d 980, 993 (N.D. Cal. 2011); *Vu v. Ortho–McNeil Pharm., Inc.*, 602 F.Supp.2d 1151, 1156
18 (N.D. Cal. 2009). None of these factors is dispositive, and “a district court has broad discretion to
19 adjudicate motions for transfer on a case-by-case basis.” *Ctr. for Biological Diversity v.*
20 *Kemphorne*, No. 08-1339, 2008 WL 4543043 (N.D. Cal. Oct. 10, 2008) (citation omitted). “The
21 burden is on the party seeking transfer to show that when these factors are applied, the balance of
22 convenience clearly favors transfer.” *Lax v. Toyota Motor Corp.*, 65 F. Supp. 3d 772, 776 (N.D.
23 Cal. 2014) (citing *Commodity Futures Trading Comm’n v. Savage*, 611 F.2d 270, 279 (9th Cir.
24 1979)).

25 **B. Discussion**

26 In the event the Court declines to dismiss EMC’s declaratory relief action, the Sanctuary
27 Defendants ask the Court to transfer the action to the United States District Court for the Eastern
28 District of North Carolina, Sanctuary’s home state, pursuant to 28 U.S.C. § 1404(a). The

1 Sanctuary Defendants’ motion is based in part on its assertion that the Policies were issued to
2 Sanctuary in its home state of North Carolina. Recognizing that an argument could be made that
3 the Policies were issued in Alabama, the Sanctuary Defendants make an alternative request for
4 transfer to the United States District Court for the Middle District of Alabama if the Court finds
5 that forum to be more appropriate.

6 As the parties seeking transfer, the Sanctuary Defendants have the burden to show that the
7 declaratory relief action could have been brought in the Eastern District of North Carolina or the
8 Middle District of Alabama, and that the factors listed above clearly favor transfer. The Sanctuary
9 Defendants have not established that two defendants named in the present declaratory relief action,
10 Advoque and Ciasom, are subject to personal jurisdiction in North Carolina or Alabama. The
11 transfer motion fails on that basis.

12 The Sanctuary Defendants argue that Advoque and Ciasom are not proper defendants here.
13 As noted above, Advoque and Ciasom are California-based companies that are named as
14 defendants in EMC’s declaratory relief action on the ground that they might become judgment
15 creditors with a direct right of action against EMC. The Sanctuary Defendants argue that North
16 Carolina law governs EMC’s declaratory relief action and that under North Carolina law, neither
17 Advoque nor Ciasom has a legal interest in the Policies. *See Selective Ins. Co. v. Mid-Carolina*
18 *Insulation Co.*, 126 N.C. App. 217, 220 (1997) (“[W]hen an injured person is not a party to an
19 insurance liability indemnity contract, and the contract contains no agreement that the insurance
20 shall inure to the benefit of the person injured, the insurance is a matter wholly between the insurer
21 and the insured, and the injured person has no legal or equitable interest.”). It may be that
22 Advoque and Ciasom are improperly joined in the declaratory relief action. However, they have
23 not been dismissed and, because they are parties, the Sanctuary Defendants must establish that
24 they would be subject to personal jurisdiction in North Carolina or Alabama in order to meet their
25 burden on the motion to transfer.

26 In their reply brief, the Sanctuary Defendants suggest that this Court could sever Advoque
27 and Ciasom and transfer the remainder of the declaratory relief action to the Eastern District of
28 North Carolina or the Middle District of Alabama. The Court is not inclined to sever EMC’s

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1 action based on an argument raised in the Sanctuary Defendant’s reply brief. Moreover, it is the
2 Court’s view that Defendants have not identified an adequate basis for severance, other than their
3 preference to litigate in Sanctuary’s home state.


4 Even if the Court were inclined to sever the action (which it is not), the Sanctuary
5 Defendants have not demonstrated that the relevant factors clearly favor transfer of EMC’s
6 declaratory relief action against them. The first factor, the plaintiff’s choice of form, does not
7 favor transfer. It is not clear that the second factor, convenience of the parties, favors transfer.
8 While litigating in its home state of North Carolina would be more convenient for Sanctuary, 305
9 Consulting is based in Nevada, Bryan Sigler is a resident of Florida, Advoque and Ciasom are
10 based in California, and EMC is based in Ohio. With respect to the third and fourth factors,
11 convenience of witnesses and access to evidence, respectively, the Sanctuary Defendants have not
12 identified any witnesses or evidence located in North Carolina or Alabama. The fifth factor, the
13 familiarity of each forum with applicable law, favors transfer because it appears that the law of
14 North Carolina or Alabama will govern interpretation of the Policies. The sixth factor, feasibility
15 of consolidation with other claims, is not applicable. The seventh factor, local interest in the
16 controversy, does not favor transfer. California has an interest in determining whether insurance is
17 available to compensate California companies Advoque and Ciasom should they prevail in the
18 underlying action. Finally, the Court has no information regarding the eighth factor, the relative
19 congestion of the courts.

20 The Court having considered the relevant factors and exercised its discretion, the
21 Sanctuary Defendants’ motion to transfer is DENIED.

22 **V. ORDER**

- 23 (1) The Sanctuary Defendants’ motion to dismiss or, in the alternative, to transfer is
24 DENIED; and
25 (2) This order terminates ECF 28.

26
27 Dated: January 18, 2023


BETH LABSON FREEMAN
United States District Judge