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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES – GENERAL**

Case No. SACV 13-320-JST (ANx)

Date: September 17, 2013

Title: Rongxiang Xu v. Nobel Assembly at Karolinska Institutet, et al.

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**Present: Honorable JOSEPHINE STATON TUCKER, UNITED STATES DISTRICT JUDGE**

Terry Guerrero  
Deputy Clerk

N/A  
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:  
Not Present

ATTORNEYS PRESENT FOR DEFENDANT:  
Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER ON DEFENDANT’S MOTION TO  
DISMISS (Doc. 15)**

Before the Court is a Motion to Dismiss for Lack of Personal Jurisdiction, filed by Defendant Nobel Assembly at Karolinska Institutet. (Mot., Doc. 15, “Motion”.) Plaintiff opposed the Motion, (Opp’n, Doc. 28, “Opposition”), and Defendant replied (Reply, Doc. 32.) Having reviewed the briefs and taken the matter under submission, Court GRANTS Defendant’s Motion.

**I. Background**

By way of background, the Court sets forth the allegations from Plaintiff Rongxiang Xu’s state court complaint and the jurisdictional facts from Defendant Nobel Assembly’s declaration of Lars Heikensten, Executive Director of the Nobel Foundation as follows. (Doc. 1 Ex. A., “Complaint” or “Compl.”; Declaration of Lars Heikensten, Doc. 15-2, “Heikensten Decl.”) Plaintiff alleges that he is the inventor of ‘the technology of awakening human somatic cell to turn pluripotent stem cell and regenerating in situ new cell, tissue and organ of its own,’ the founder of “human body generative restoration science” and a renowned life scientist and medical scientist. (Compl. ¶ 3.) Plaintiff’s principal residence is Los Angeles County, California. (*Id.*)

Defendant Nobel Assembly is a Swedish corporation organized and existing under the laws of Sweden. (Compl. ¶ 4; Heikensten Decl. ¶ 3.) Defendant operates as an

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affiliate of the Nobel Foundation in awarding the Nobel Prize in Physiology and Medicine. (Heikensten Decl. ¶ 2.) Defendant does not maintain offices, agents, or subsidiaries in California or anywhere else in the United States. (Heikensten Decl. ¶¶ 4-5, 7.) Defendant does not claim to have the right to conduct business in California, does not hold a bank account or real property in California, does not pay California taxes, does not possess a California phone number or address, does not solicit funds or conduct marketing in California, and does not sell products or furnish services in California. (Heikensten Decl. ¶¶ 6, 8-14.) The content on Defendant's website is primarily directed towards the dissemination of information about the Nobel Foundation and Nobel Laureates. (Heikensten Decl. ¶ 21.) The website is "generally not interactive," but it does direct visitors to sign up for a monthly newsletter, to "follow" the Defendant on social media websites, and provide information on contacting the Defendant by email. (Heikensten Decl. ¶ 22.)

According to the Complaint, on October 8, 2012, the Nobel Prize in Physiology or Medicine 2012 was awarded jointly to Sir John B. Gurdon and Shinya Yamanaka for the discovery that mature cells can be reprogrammed to become pluripotent. (Compl. ¶ 9.) In an abstract published on Defendant's website in conjunction with the selection of Gurdon and Yamanaka, Defendant claimed that the scientists' discovery "represents a paradigm shift in our understanding of cellular differentiation and of the plasticity of the differentiated state." (Compl. ¶ 10.) The abstract also states that: "[t]ogether, Gurdon and Yamanaka have transformed our understanding of cellular differentiation. They have demonstrated that the usually very stable differentiated state can be unlocked because it harbours a potential for reversion to pluripotency. This discovery has introduced fundamentally new research areas, and offers exciting new opportunities to study disease mechanisms." (Compl. ¶ 10.)

Plaintiff alleges that this statement is false and has specifically injured Plaintiff's reputation, occupation, and profession. (Compl. ¶¶ 11, 16.) Plaintiff further alleges that the statement has exposed him to contempt and ridicule, as his accomplishments and

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achievements have been disparaged, questioned, diminished, and discredited. (Compl. ¶ 16.)

On December 3, 2012, Plaintiff filed the above-cited Complaint in the Superior Court of the State of California. *See Rongxiang Xu v. The Nobel Assembly at Karolinska Institutet, a Swedish corporation, aka Nobelforsamlingen, et al.*, Case No. 30-2012-00615804-CU-DF-CJC. The Complaint includes a claim for defamation and a claim for unfair and/or fraudulent business practices in violation of Cal. Bus. Prof. Code § 17200 and California common law, and a third claim, also for violation of § 17200, that requests an injunction. (Compl. ¶¶ 6-8.)

On February 22, 2013, Defendant filed a notice of removal of the action to federal court. (Doc. 1.) Defendant then moved to dismiss the action for lack of personal jurisdiction on March 29, 2013. (Doc. 15.) Plaintiff's sole support for jurisdiction in the Complaint is as follows: "[t]his Court has personal jurisdiction over the Nobel Assembly as the above statement was continuously transmitted and made available throughout the United States, including this judicial district." (Cmpl ¶ 17.)

## **II. Legal Standard**

Rule 12(b)(2) allows a party to assert lack of personal jurisdiction as a defense by motion. Fed. R. Civ. P. (12)(b)(2). "Although the defendant is the moving party on a motion to dismiss [for lack of personal jurisdiction], the plaintiff bears the burden of establishing that jurisdiction exists." *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). "[I]n the absence of an evidentiary hearing, the plaintiff need only make 'a prima facie showing of jurisdictional facts to withstand the motion to dismiss.'" *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)). The "uncontroverted allegations in [the plaintiff's] complaint must be taken as true, and conflicts between the facts contained in the parties' affidavits must be resolved in [the plaintiff's] favor." *Rio Props.*, 284 F.3d at 1019. In other words, "for the purpose of this

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[prima facie] demonstration, the court resolves all disputed facts in favor of the plaintiff.” *Pebble Beach*, 453 F.3d at 1154.

**III. Discussion**

Defendant moves to dismiss for lack of general and specific jurisdiction. (Mot. at 3.) Plaintiff’s Opposition to the Motion, in its discussion on specific jurisdiction, does not address the Motion and instead asks for leave to amend its Complaint to add a proposed claim. (Opp’n at 12.) Plaintiff’s informal motion for leave, embedded in an opposition to a motion to dismiss, is not properly before the Court.<sup>1</sup> For the reasons set forth below, the Court finds that it has neither general nor specific jurisdiction over Defendant for the claims in the Complaint.

**A. General Jurisdiction**

For general jurisdiction to exist over a nonresident defendant, “the defendant must engage in continuous and systematic general business contacts that approximate physical presence in the forum state.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (internal quotation marks omitted) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984); *Bancroft & Masters, Inc. v. Augusta Na. Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000)).

As discussed above, Defendant has offered a declaration attached to its Motion stating that it is not registered or licensed to do business in California, that it does not pay taxes, own property, or maintain bank accounts in California, and that it does not sell products or target communications on its website to anyone in California. (Heikensten Decl. ¶¶ 8-14, 19-21.) Moreover, Defendant’s website is passive and cannot be used to make purchases. (Heikensten Decl. ¶¶ 8-11, 20-21.)

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<sup>1</sup> Plaintiff subsequently filed a formal motion for leave to amend, (Doc. 35), which is set for hearing on October 18, 2013.

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The sole basis in Plaintiff's Complaint for jurisdiction is that the statement posted on Defendant's website "was continuously transmitted and made available throughout the United States, including this judicial district." (Compl. ¶ 17.) Plaintiff's Opposition, apparently filed after jurisdictional discovery, argues that "[a]t its core Nobel is in the business of evaluating potential laureates, awarding Nobel Prizes and disseminating information about Nobel Laureates and their contributions. In each of these respects, Nobel [sic] engages or does business with California individuals or entities." (Opp'n at 9.) In support of general jurisdiction, Plaintiff argues that Californians both nominate and receive Nobel prizes, and alleges nineteen other specific contacts with California. (*Id.* at 9-10.) These nineteen contacts include, for example:

- "[c]ollaborating with San Francisco Bay Area affiliate KQED in broadcasting Nobel Media programs, including those titled 'Nobel Minds' and 'Nobel Laureates'"
- "[c]ollaborating with various California entities on official Nobel social media sites, including Facebook (Menlo Park, CA), Twitter (San Francisco, CA), Google-Google Plus and YouTube (Mountain View, CA)"
- "Jan A. Andersson currently is a board member of the Nobel Assembly and has membership with the Nobel Committee. He undertook research at the DNAX Research Institute (Palo Alto, CA) and was a guest professor in the Division of Experimental Medicine at UCSF"
- "The Delaney AIDS Research Enterprise ("DARE"), which accepts its donations through the UCSF Foundation, has aligned its research with the Karolinska Institutet"

None of the contacts meet the "exacting standard" of "approximate physical presence." *Schwarzenegger*, 374 F.3d at 801. In particular, "engaging in commerce with residents of the forum state is not in and of itself the kind of activity that approximates physical presence within the state's borders." *Bancroft*, 223 F.3d at 1086.

"[Defendant's] business relationships with other California companies constitute 'doing business with California' but not necessarily 'doing business in California.'" *Mavrix*

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*Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1226 (9th Cir. 2011) (citations omitted).

Even if, for example, Defendant has continuous activity with Facebook, “[a] corporation’s ‘continuous activity of some sorts within a state’ . . . ‘is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” *Goodyear*, 131 S. Ct. at 2856 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945)).

The Court finds that the alleged contacts are insufficient to support general jurisdiction. *See Bancroft & Masters*, 223 F.3d at 1086 (license agreements with two television networks and a handful of California vendors insufficient to approximate physical presence).

**B. Specific Jurisdiction**

The Ninth Circuit applies a three-part test to determine whether a district court can exercise specific personal jurisdiction over a nonresident defendant:

- (1) The nonresident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
- (2) the claim must be one which arises out of or relates to the 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.

*Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)).

“The plaintiff bears the burden of satisfying the first two prongs of the test.” *Id.* (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). “If the plaintiff



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succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

In its Opposition, Plaintiff fails to address specific jurisdiction as to any claim in the Complaint. The Court finds specific jurisdiction lacking over the claims in the Complaint, for the reasons below.

**1. Purposeful Direction**

“The purposeful availment requirement ensures that a nonresident defendant will not be haled into court based upon ‘random, fortuitous or attenuated’ contacts with the forum state.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998) (quoting *Burger King*, 471 U.S. at 475). The phrase “purposeful availment” includes both purposeful availment and purposeful direction, which are distinct concepts. *Schwarzenegger*, 374 F.3d at 802. While a purposeful availment analysis is used in suits sounding in contract, a purposeful direction analysis is used in suits sounding in tort. *Id.* The underlying action in this case is defamation and unfair business practices. Purposeful direction is therefore the proper analytical framework in this case.

The Ninth Circuit “evaluate[s] purposeful direction under the three-part ‘effects’ test traceable to the Supreme Court’s decision in *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482, 79 L.Ed.2d 804 (1984).” *Id.* at 803. Under this test, “the defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Id.* (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) (citations omitted).

**a. Intentional Act**

First, Defendant must have “committed an intentional act.” *Id.* Defendant’s “alleged defamatory statement constitute intentional acts.” *Slaughter v. Van Cleve*, No.

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CV-07-6599, 2007 WL 4357567, at \*6 (C.D. Cal. Dec. 10, 2007) (citing *Schwarzenegger*, 374 F.3d 806)); *see also Katzenbach v. Grant*, No. 1:04CV6501 OWW LJO, 2005 WL 1378976, at \*7 (E.D. Cal. June 7, 2005) (“Defamation is an intentional tort and satisfies the first prong of the effects test.”). The Court finds that this prong of the test is met.

**b. Expressly Aimed at the Forum State**

Second, the conduct must have been expressly “aimed at the forum state.” *Schwarzenegger*, 374 F.3d at 802. In general, express aiming requires more than “‘untargeted negligence’ that merely happened to cause harm to [a plaintiff].” *Schwarzenegger*, 374 F.3d at 807 (quoting *Calder*, 465 U.S. at 789, 104 S.Ct. 1482). “The requirement is satisfied ‘when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state.’” *Menken v. Emm*, 503 F.3d 1050, 1059 (9th Cir. 2007) (quoting *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)); *see Bancroft & Masters*, 223 F.3d at 1087 (concluding that “express aiming encompasses wrongful conduct individually targeting a known forum resident”).

The Ninth Circuit has “made clear that ‘maintenance of a passive website alone cannot satisfy the express aiming prong.’” *Mavrix*, 647 F.3d at 1229 (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2010)). However, the Ninth Circuit has also held that “operating even a passive website in conjunction with ‘something more’—conduct directly targeting the forum—is sufficient.” *Id.* (quoting *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002)).

“In determining whether a nonresident defendant has done something more, [the Ninth Circuit has] considered several factors, including the interactivity of the defendant’s website,” *id.*; “the geographic scope of the defendant’s commercial ambitions,” *id.*; and “whether the defendant individually targeted a plaintiff known to be a forum resident.” *Id.* (internal citations and quotation marks omitted).



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Defendant in this case operates a non-commercial passive website. By itself, this is insufficient to satisfy the express aiming prong. *See Mavrix*, 647 F.3d at 1229. As such, the Court must determine if there is “something more.”

Regarding interactivity, courts consider “the ‘level of interactivity and commercial nature of the exchange of information that occurs on the Web site’ to determine if sufficient contacts exist to warrant the exercise of jurisdiction.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997) (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997)). As in *Cybersell*, here Defendant “has conducted no commercial activity over the Internet in [the forum district]. All that it did was post an essentially passive homepage on the web . . . .” *Id.* at 419.

As to the geographic scope of the defendant’s commercial ambitions, Defendant’s website is not commercial. (*See, e.g.*, Heikensten Decl. ¶¶ 2-11, 20-21.) Even if it were commercial, neither the website nor the statement was targeted to Californians. (Heikensten Decl. ¶¶ 19, 25.)

As to whether the Defendant individually targeted a plaintiff known to be a forum resident, Plaintiff alleges that Defendant had “knowledge of Dr. Xu’s prior body of work and discoveries.” (Compl. ¶ 14.) However, Plaintiff does not allege that Defendant knew Plaintiff was a resident of this forum, or that Defendant individually targeted him. Indeed, the statement at issue does not even mention Plaintiff, and a declaration by the Executive Director of the Nobel Foundation denies knowledge of Plaintiff. (Heikensten Decl. ¶ 27.)

The Court finds that there has not been “something more” and that the statement alleged in the Complaint was not expressly aimed at the forum state.

**c. Harm Likely to be Suffered in the Forum State**

For the reasons set forth above, the Court also finds that Defendant’s conduct did not “cause[] harm that it knew was likely to be suffered in the forum.” *Brayton Purcell*, 606 F.3d at 1131. A finding that the statement would have foreseeably harmed Plaintiff

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would amount to a finding that *anyone* whose work the Defendant was allegedly familiar with would be foreseeably harmed by the nomination of someone else as a Nobel Laureate. To the extent Plaintiff has alleged recognizable “harm” as a result of the claimed action, the Court finds the evidence insufficient to show that Defendant knew the harm was likely to be suffered in this forum.

**2. Arising Out of Forum-Related Activities**

The second requirement for specific personal jurisdiction is that Plaintiff’s action “arises out of or relates to [Defendant’s] forum-related activities.” *Schwarzenegger*, 374 F.3d at 802.

The Court finds that the conduct alleged—a post on a website maintained by an entity in Sweden that does not mention Defendant—does not “arise out of or relate to” forum-related activities and was not “directed towards” Plaintiff. Therefore, this factor is not met.

**3. Reasonableness**

“When the first two requirements are met, the burden shifts to the defendant to present ‘a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’” *Zumba Fitness, LLC v. Brage*, No. CV 11-53611-GHK (CWx), 2011 WL 4732812, at \*3 (C.D. Cal. Oct. 6, 2011) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). Because Plaintiff has not met the first two factors, or even provided any argument as to these factors, the Court will not consider the third factor.

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**IV. Conclusion**

For the foregoing reasons, the Motion is GRANTED. The claims in Plaintiff's Complaint are dismissed.<sup>2</sup>

Initials of Preparer: tg

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<sup>2</sup> On August 29, 2013, Plaintiff filed a motion for leave to amend his Complaint, which is set for hearing on October 18, 2013. (Doc. 35.)