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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

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6 TRANSPARENTBUSINESS, INC. *et al.*,

Case No. 3:20-cv-00582-MMD-WGC

7 Plaintiffs,

ORDER

8 v.

9 INFOBAE, *et al.*,

10 Defendants.

11 **I. SUMMARY**

12 This is a defamation case involving comments published on an Argentinian news
13 website about an American company. Plaintiffs TransparentBusiness, Inc., Maria Silvina
14 Moschini, and Alexander Konanykhin allege state law tort claims against Defendants
15 Infobae and Santiago Siri.¹ (ECF No. 1.) Before the Court is Defendant Siri's motion to
16 dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2).²
17 (ECF No. 12 ("Motion").) Because the Court finds it does not have personal jurisdiction
18 over Siri, the Court will grant the Motion.

19 **II. BACKGROUND**

20 The following allegations are adapted from the Amended Complaint (ECF No. 4)
21 unless otherwise indicated.

22 Plaintiff TransparentBusiness is incorporated in Delaware and has its principal
23 place of business in Nevada. (*Id.* at 3.) Plaintiff Alexander Konanykhin is an individual
24 domiciled in Nevada. (*Id.* at 4.) Plaintiff Silvina Moschini did not name her state of
25

26 ¹Infobae was dismissed from this action pursuant to Federal Rule of Civil
27 Procedure 41(a)(1)(A)(i). (ECF No. 26.) Siri is the only remaining defendant in this action.

28 ²The Court considered Plaintiffs' response (ECF No. 14) and Defendant's reply
(ECF No. 16). Defendant also filed a motion to for leave to file a corrected image of his
motion to dismiss (ECF No. 15) because he failed to upload a signed copy. The Court will
grant the motion for leave to file.

1 domicile. (*Id.*) Defendant Santiago Siri is an Argentinian citizen who resides in San
2 Francisco, New York, and Madrid, Spain. (*Id.* at 4.)

3 On October 7, 2020, Infobae published an article in Spanish titled “Controversy
4 among entrepreneurs over the new Argentine tech unicorn: ‘it’s a pyramid scam, they
5 should go to jail.’” (*Id.* at 2.) Defendant Siri’s remarks regarding Plaintiffs
6 TransparentBusiness, Konanykhin and Moschini were quoted in the article: “It’s a pyramid
7 scam, they are stealing money from people. They should go to jail.” (*Id.*) Siri further
8 remarked that Plaintiffs Konanykhin and Moschini “are scammers by soliciting
9 unsuspecting investors on Facebook.” (*Id.*)

10 On October 9, 2020, Plaintiffs sent Infobae a demand letter to correct the article.
11 (*Id.* at 6.) The article remains on Infobae’s website without the corrections Plaintiffs
12 demanded. (*Id.*)

13 At the time the article was published, TransparentBusiness was conducting its third
14 round of private equity fundraising and planned to raise \$330 million privately by the end
15 of 2021. (*Id.* at 3.) It had raised \$20 million prior to Siri’s remarks that Infobae published.
16 (*Id.*)

17 Plaintiffs’ Complaint allege four tort claims: defamation, business disparagement,
18 intentional interference with prospective economic advantage, and negligence. (ECF No.
19 4.) Defendant Siri moved to dismiss for lack of personal jurisdiction. (ECF No. 12.)

20 **III. LEGAL STANDARD**

21 In opposing a defendant’s motion to dismiss for lack of personal jurisdiction, a
22 plaintiff bears the burden of establishing that jurisdiction is proper. *Boschetto v. Hansin*,
23 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, the defendant’s motion is based on
24 written materials rather than an evidentiary hearing, “the plaintiff need only make a prima
25 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Brayton Purcell*
26 *LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (internal quotation
27 marks omitted). The plaintiff cannot “simply rest on the bare allegations of its complaint,”
28 but uncontroverted allegations in the complaint must be taken as true. *Schwarzenegger*

1 *v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting *Amba Mktg. Sys.,*
2 *Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). The court “may not assume the
3 truth of allegations in a pleading which are contradicted by affidavit,” *Data Disc, Inc. v.*
4 *Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977), but it may resolve factual
5 disputes in the plaintiff’s favor, *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.
6 2006).

7 **IV. DISCUSSION**

8 A two-part analysis governs whether a court retains personal jurisdiction over a
9 nonresident defendant. “First, the exercise of jurisdiction must satisfy the requirements of
10 the applicable state long-arm statute.” *Chan v. Soc’y Expeditions*, 39 F.3d 1398, 1404
11 (9th Cir. 1994). Since “Nevada’s long-arm statute, NRS § 14.065 reaches the limits of
12 due process set by the United States Constitution,” the Court moves on to the second
13 part of the analysis. See *Baker v. Eighth Judicial Dist. Ct. ex rel. Cty. of Clark*, 999 P.2d
14 1020, 1023 (Nev. 2000). “Second, the exercise of jurisdiction must comport with federal
15 due process.” *Chan*, 39 F.3d at 1404-05. “Due process requires that nonresident
16 defendants have certain minimum contacts with the forum state so that the exercise of
17 jurisdiction does not offend traditional notions of fair play and substantial justice.” *Id.*
18 (citing *Int’l Shoe v. Washington*, 326 U.S. 310, 316 (1945)). Courts analyze this
19 constitutional question with reference to two forms of jurisdiction: general and specific
20 jurisdiction.

21 Plaintiffs do not contest that the Court lacks general personal jurisdiction over
22 Defendant, but argue instead that the Court may exercise specific jurisdiction over him.
23 (ECF No. 4.) In examining whether specific jurisdiction exists, the minimum contacts
24 inquiry is “defendant focused”—the relationship to be examined is that between the
25 defendant and the forum state, and that relationship must arise out of the defendant’s
26 own contacts “with the forum state itself, not . . . with persons who reside there.” *Walden*
27 *v. Fiore*, 571 U.S. 277, 284-85 (2014). Specifically, a court may exercise specific
28 jurisdiction over a defendant only where “the defendant’s suit-related conduct” created a

1 substantial connection with the forum [s]tate.” *Williams v. Yamaha Motor Co. Ltd.*, 851
2 F.3d 1015, 1022-23 (9th Cir. 2017) (quoting *Walden*, 571 U.S. at 284-85).

3 Incorporating these overarching considerations, the Ninth Circuit provides a three-
4 prong test for analyzing an assertion of specific personal jurisdiction. First, “[t]he non-
5 resident defendant must purposefully direct his activities or consummate some
6 transaction with the forum or resident thereof; or perform some act by which he
7 purposefully avails himself of the privilege of conducting activities in the forum, thereby
8 invoking the benefits and protections of its laws.” *CollegeSource, Inc. v. AcademyOne,*
9 *Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (quoting *Schwarzenegger v. Fred Martin Motor*
10 *Co.*, 374 F.3d 797, 802 (9th Cir. 2004)). Second, “the claim must be one which arises out
11 of or relates to the defendant’s forum-related activities.” *Id.* In the Ninth Circuit,
12 “purposeful availment” and “purposeful direction” call for distinct analyses. *See id.* For
13 suits sounding in tort, the court considers whether there is purposeful direction. *See*
14 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1206 (9th
15 Cir. 2006). Third, if the plaintiff satisfies its burden of establishing the first two-prongs, the
16 burden shifts to the defendant to “set forth a ‘compelling case’ that the exercise of
17 jurisdiction would not be reasonable.” *CollegeSource, Inc.*, 653 F.3d at 1076 (citing
18 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-78 (1985)).

19 Because Plaintiffs have not sufficiently established that Defendant has minimum
20 contacts with Nevada, nor that their claims arise out of or relate to Defendant’s contacts
21 with the state, the Court finds it may not exercise personal jurisdiction over Defendant
22 Siri.

23 **A. Purposeful Direction**

24 Plaintiffs contend that Defendant has purposefully directed his activities in Nevada
25 because he “issued public statements over the internet and published those statements
26 into the Nevada forum discussing Nevada residents, availed themselves of the Nevada
27 marketplace and Nevada readerships, and harmed Plaintiffs in the State of Nevada.”
28 (ECF No. 4 at 4; ECF No. 14 at 4.) Defendant counters that he “had virtually no contacts

1 with Nevada, and none related to the alleged defamatory acts underlying this action.”
2 (ECF No. 12 at 2.) Defendant states that he “had no knowledge of Plaintiffs’ location(s),
3 business activities, or their actual or prospective business relationships” until he saw
4 articles about TransparentBusiness as an “Argentinian ‘unicorn’ company.” (*Id.* at 3.) He
5 further states that he made the allegedly defamatory statements to Argentinian news
6 outlet Infobae while he was in Madrid, Spain. (*Id.*)

7 As noted, the first prong for establishing specific jurisdiction here concerns whether
8 Defendant’s actions outside the forum state were purposefully directed at the forum state.
9 *Burger King*, 471 U.S. at 476. Courts consider whether the defendant (1) committed an
10 intentional act, (2) expressly aimed at the forum state, and (3) causing harm that the
11 defendant know is likely to be suffered in the forum state. *See Dole Food Co. v. Watts*,
12 303 F.3d 1104, 1111 (9th Cir. 2002) (citing *Calder v. Jones*, 465 U.S. 783, 804 (1984)).
13 The Ninth Circuit requires “something more” than a passive website that has the
14 foreseeable effect of reaching the forum state for purposeful direction to be established
15 through internet-based activities. *See Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419
16 (9th Cir. 1997).

17 First, the Court agrees with Defendant that Plaintiffs have not established
18 purposeful direction with Nevada but have instead only established activities that affect
19 Plaintiffs as Nevada citizens. Although Plaintiffs argue that Defendant either knew or
20 should have known of Plaintiffs’ citizenship in Nevada when he made the defamatory
21 statements, this is not the inquiry *Walden* demands. *See* 571 U.S. at 284-85. Rather,
22 Defendant’s awareness that Plaintiffs were Nevada citizens or that they would suffer harm
23 in Nevada is what *Walden* would find to be Defendant’s contacts with Plaintiffs and not
24 with the forum state itself. *See* 571 U.S. at 286.

25 Second, Plaintiffs have not offered, nor does the Court otherwise find that
26 Defendant Siri has done “something more” than make comments that were published by
27 Infobae on its passive website to purposefully direct his activities towards Nevada.
28 Plaintiffs only cite to *Abiomed, Inc. v. Turnball* as the “something more” to show Siri

1 targeted Nevada citizens with his defamatory remarks. 379 F. Supp. 2d 90, 92, 95 (D.
2 Mass. 2005). But in *Abiomed*, the district court found that “Defendant’s occasional
3 business travel to Massachusetts, supervision of Massachusetts employees, frequent
4 telephonic contact with state residents, and alleged use of Massachusetts sources to
5 learn confidential information about Plaintiff were all “contacts which relate to the claim.”
6 *Id.* at 94. Although the message board website could be visited by anyone in the world,
7 the defendant collected information from Massachusetts sources, was aware
8 Massachusetts residents were reading his content, and in some instances, directly
9 messaged Massachusetts individuals to direct them to the content. *Id.* at 94-95.

10 But here, there is no evidence that either Siri or Infobae contacted any Nevadans
11 or were in any way aware that Nevada residents would read its article. Infobae publishes
12 articles in Spanish, and its website contains dedicated sections to Latin American
13 countries like Colombia, Venezuela, Argentina, and Mexico. Although there is an
14 “Americas” section, there is nothing directing website visitors toward particular regions in
15 the United States, much less toward Nevada. Infobae did not target Nevada through the
16 passive content they post on their website, and nothing from Defendant Siri’s quotes
17 referenced or targeted Nevada either. The Court cannot find that Defendant Siri’s
18 comments on Infobae’s website were expressly aimed or purposefully directed at Nevada.
19 Accordingly, the facts in *Abiomed* are not analogous to this situation here and only further
20 demonstrates the lack of “something more” required for the Court to exercise personal
21 jurisdiction over Defendant.

22 **B. Whether Plaintiffs’ Claims Arose Out of Forum-Related Activities**

23 Even assuming that Plaintiffs established purposeful direction, Plaintiffs’ claims
24 must also “arise out of or relate to the defendant’s contacts” with the forum state for the
25 Court to properly exercise personal jurisdiction over an out-of-state defendant. *Ford Motor*
26 *Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1035 (2021) (quoting *Bristol-Myers*
27 *Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, 137 S. Ct. 1773, 1780 (2017)). Claims “arise
28 out of” a defendant’s contacts with the forum state when there is a causal connection

1 between the contacts and the claims. See *id.* at 1026. Claims can also “relate to”
2 defendant’s contacts, even if they do not “arise out of” those contacts. See *id.* at 1026-
3 28. The Supreme Court has not articulated a “relate to” test, but in *Ford*, it clarified that if
4 a company attempts to directly serve the forum state’s market for its product and the
5 product causes injury in that forum state, the claims “relate to” defendant’s activities. *Id.*
6 at 1032. However, the Supreme Court also stated in *Ford* that its holding, which involved
7 physical purchases of cars, did not extend to the “doctrinal questions” associated with
8 personal jurisdiction in the online context. *Id.* at 1028 n.4 (“And we do not here consider
9 internet transactions, which may raise doctrinal questions of their own”).

10 Although Plaintiffs’ claims are based on internet transactions, applying *Ford* here
11 still leads the Court to conclude that Plaintiffs’ claims against Defendant do not arise out
12 of or relate to Defendant’s contacts with Nevada. See *id.* Defendant’s three previous
13 travels to Nevada as a tourist prior to 2015 do not constitute a causal connection to
14 Plaintiffs’ claims. (ECF No. 12 at 3.) Moreover, there is no causal connection between his
15 contacts with Nevada and the claims because Defendant made the allegedly defamatory
16 statements to Infobae while he was residing in Madrid, Spain. (*Id.*) Ultimately, Plaintiffs’
17 injuries could have been experienced anywhere because Infobae is a passive website
18 accessible worldwide and not just in Nevada.

19 In sum, the Court finds that the first two prongs for the exercise of specific
20 jurisdiction is not met here. The Court thus need not consider whether exercising
21 jurisdiction over Defendant would be reasonable. Accordingly, the Court will grant
22 Defendant’s motion to dismiss for lack of personal jurisdiction.

23 **V. CONCLUSION**

24 The Court notes that the parties made several arguments and cited to several
25 cases not discussed above. The Court has reviewed these arguments and cases and
26 determines that they do not warrant discussion as they do not affect the outcome of the
27 motions before the Court.

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1 It is therefore ordered that Defendant's motion for leave to file (ECF No. 15) is
2 granted.

3 It is further ordered that Defendant's motion to dismiss (ECF No. 12) is granted.

4 The Clerk of Court is directed to close this case.

5 DATED THIS 29th Day of June 2021.

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MIRANDA M. DU
9 CHIEF UNITED STATES DISTRICT JUDGE
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