IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO
CIVIL DIVISION

LARRY C. JAMES, *et al.*,	:	**CASE NO. 2017 CV 00839**
Plaintiffs,	:	**Judge Timothy N. O'Connell**
vs.	:	**DEFENDANTS SIDLEY AUSTIN LLP AND DAVID HOFFMAN'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION OR FORUM NON CONVENIENS**
DAVID HOFFMAN, *et al.*,	:	
Defendants.	:	
	:	
	:	**ORAL ARGUMENT REQUESTED**

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

INTRODUCTION

In response to Sidley Austin LLP's and David Hoffman's motion to dismiss, Plaintiffs submitted a 45-page brief and hundreds of pages of affidavits and exhibits. Much of this material is not properly before the Court.[1] None of it changes the result. The jurisdictional allegations in Plaintiffs' Complaint and the additional assertions raised in Plaintiffs' opposition papers do not establish personal jurisdiction or preclude the application of the doctrine of forum non conveniens.

Plaintiffs' arguments to the contrary rest entirely on mistaken legal positions. For example, Plaintiffs claim that general jurisdiction requires only that a defendant do substantial business in a state despite the United States Supreme Court having rejected precisely that argument. Similarly, Plaintiffs claim that personal jurisdiction lies anywhere a defamatory statement is read, contrary to United States and Ohio Supreme Court authority. The Court should reject these arguments and Plaintiffs' other faulty legal positions and grant Sidley and Hoffman's motion. Taking this case out of Ohio, after all, makes good sense. Four of the five plaintiffs live elsewhere and bring claims that have nothing to do with the state. And the other plaintiff, the lone Ohio resident party in this eight party action, brings claims that have only the slightest connection to the state.

---

[1] Sidley and Hoffman have concurrently filed a motion to strike in whole or part certain of the affidavits based on their many evidentiary infirmities. The affidavits and exhibits can be categorized as evidence seeking to establish (1) that Hoffman interviewed individuals in-person or over the phone in Ohio, Affidavits of L. James, R. Levant, E. Swenson; (2) that individuals in Ohio read the Report, *e.g.*, Affidavits of W. Peters, J. Mihura, G. Meyer, K. Platoni; (3) that individuals, including individuals in Ohio, discussed the Report, *e.g.*, Affidavit of W. Peters; and (4) that the merits, *e.g.*, Affidavits of K. Platoni. The merits are irrelevant to this motion. To the extent the other propositions are relevant, the pertinent facts are not disputed for purposes of this motion.

ARGUMENT

I. Plaintiffs Cannot Establish General Jurisdiction Over Sidley or Hoffman.

This Court cannot exercise general jurisdiction over Sidley or Hoffman because neither is "at home" in Ohio. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). The United States Supreme Court reiterated this principle earlier this week. *BNSF Ry. Co. v. Tyrrell*, 2017 WL 2322834, at *9 (U.S. May 30, 2017). A defendant is at home in its place of incorporation or principal place of business or, if an individual, her domicile. *Daimler*, 134 S. Ct. at 760-61. These "paradigm" locations are the foundation of general jurisdiction. *See, e.g.*, *Grubb v. Day to Day Logistics, Inc.*, 2015 WL 4068742, at *4 (S.D. Ohio July 2, 2015) ("*Daimler* limited general jurisdiction over a corporation to the corporation's principal place of business and its place of incorporation."); *Dull v. Energizer Pers. Care, LLC*, 2015 WL 5308871, at *7 (S.D. Ohio Sept. 11, 2015). Since Ohio is not Hoffman's domicile, not Sidley's principal place of business, and not where the Sidley partnership is legally organized, it is not their home.

Aside from the paradigm locations, a court may exercise general jurisdiction over a defendant in the "exceptional case" in a forum that is "the center of [the defendant's]" activities. *Tyrrell*, 2017 WL 2322834 at *9. The "center" is the forum where the defendant's operations are more significant than they are anywhere else. *E.g.*, *Allstate Ins. Co. v. Electrolux Home Prod., Inc.*, 2014 WL 3615382, at *4 (N.D. Ohio July 19, 2014) ("Absent a showing that [Defendant's] operations in Ohio are more substantial than any other state in which it sells its products, this is not an exceptional case."); *Presby Patent Tr. v. Infiltrator Sys., Inc.*, 2015 WL 3506517, at *5 (D.N.H. June 3, 2015) (same). Plaintiffs provide no information about Sidley's or Hoffman's work in states other than Ohio, leaving this Court no way to determine whether Sidley's or

Hoffman's Ohio work here is more significant than their work anywhere else.[2] Plaintiffs have thus failed to recognize that the forum's centrality to the defendant, not the volume of the defendants' activities there, is what matters. *Tyrrell*, 2017 WL 2322834 at *10.

Indeed, Plaintiffs argue volume, saying that general jurisdiction exists over Sidley because "Sidley regularly and systematically chooses to practice law in Ohio." Pls.' Br. at 35-37. But *Tyrrell* and *Daimler* have rejected the notion that the volume of activity alone can support general jurisdiction. "Plaintiffs would have us look beyond the [paradigm locations] and approve the exercise of general jurisdiction *in every State* in which a corporation 'engages in a substantial, continuous, and systematic course of business.' … That formulation, we hold, is unacceptably grasping." *Daimler*, 134 S. Ct. at 760-61 (emphasis added). Unless the forum is of "central" importance to the defendant, it simply does not matter how much business the defendant does there. A defendant "that operates in many places can scarcely be deemed at home in all of them." *Id*. at 762 n.20. Even if substantial activity alone could support general jurisdiction, Sidley's Ohio activity would not be nearly enough. Applying *Daimler*, the Supreme Court in *Tyrrell* recently reversed a finding of general jurisdiction over a railroad company with "over 2,000 miles of railroad track and more than 2,000 employees" in the forum state. 2017 WL 2322834 at *10. Sidley's Ohio activities pale next to those the Supreme Court has already deemed inadequate.

Plaintiffs' arguments as to Hoffman fare no better. First, they rely on two pre-*Daimler* cases, *ABKCO Indus. v. Lennon*, 377 N.Y.S.2d 362 (1975) and *Conn v. Zakharov*, 667 F.3d 705, 710 (6th Cir. 2012). Pls.' Br. at 37-38. *Daimler* eliminated whatever persuasive value *Conn* and

---

[2] In fact, it is not. Sidley has its largest office in Illinois, and Hoffman lives and works in Illinois.

ABKCO may have had. *Roxane Labs., Inc. v. Vanda Pharm., Inc.*, 2016 WL 7371267, at *5 (S.D. Ohio Dec. 20, 2016) ("The pre-*Daimler* cases [the Plaintiff] relies on are beside the point."). And *Conn* hurts Plaintiffs' case because it held that an individual with far more connection to Ohio than Hoffman was not subject to general jurisdiction here. 667 F.3d at 710 (affirming motion to dismiss by Russian citizen who owned Ohio real estate, vehicles, had an Ohio bank account and visited regularly). Second, Plaintiffs' argument that general jurisdiction over Sidley would necessarily establish it over Hoffman is—like their other arguments—contrary to law: "The [Plaintiffs] contend, without benefit of case support, that … jurisdiction over the partnership establishes jurisdiction over the partners. The [Plaintiffs] are wrong." *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990).

To support their general jurisdiction arguments, Plaintiffs mischaracterize several important cases. For example, Plaintiffs claim *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945), "recognized that 'some single or occasional acts of the corporate agent in a state … may be deemed sufficient to render the corporation liable to suit." Pls.' Br. at 34-35. That quote does not help Plaintiffs because it refers to the standard for *specific* jurisdiction, not, as Plaintiffs contend, *general* jurisdiction. Plaintiffs also claim that "[i]n *Fern Exposition Serv. LLC v. Lenhof*, … the court held that it had general jurisdiction over the defendant, an employee of an Ohio-based company … ." Pls.' Br. at 36. But *Lenhof* actually held the opposite: "We, therefore, conclude that the trial court *did not* have general personal jurisdiction over Mr. Lenhof." *Fern Exposition Serv., LLC v. Lenhof*, 1st Dist. Hamilton No. C-130791, 2014-Ohio-3246 at ¶ 20 (emphasis added).

Finally, Plaintiffs lay bare their fundamental misapprehension of the law of general jurisdiction when they argue that it requires less contact with a state for a partnership or

individual than for a corporation. Pls.' Br. at 35. They offer no reason to expose partnerships and individuals to suit based on regular business contacts in a jurisdiction while denying general jurisdiction over corporations in identical circumstances. The question is whether the defendant is "at home" in the forum, regardless of business structure or the geographical limits of an individual's professional activities.

II. The Court Cannot Exercise Specific Personal Jurisdiction Over the Claims Against Sidley or Hoffman.

A. Plaintiffs Cannot Establish Purposeful Availment Based on the Allegedly Defamatory Statements in the Report Because Sidley and Hoffman Did Not Intentionally Target Ohio.

To establish purposeful availment based on the publication of allegedly defamatory statements in a forum, the plaintiff must show that the defendant intentionally targeted that forum. *Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1120 (6th Cir. 1994). Plaintiffs cannot show that Sidley or Hoffman intentionally targeted Ohio because neither Sidley nor Hoffman (a) made the Report available to Ohio readers; (b) tailored the Report for Ohio readers more than readers in any other state; or (c) wrote the Report about Plaintiffs' Ohio activities. Sidley Br. at 9-11. Plaintiffs do not argue that the Report was about Plaintiffs' Ohio activities or written for an Ohio audience. They do argue that Sidley and Hoffman are responsible for making it available to Ohio readers but both their arguments on this point fail.

Plaintiffs argue that Sidley and Hoffman are responsible for making the Report available in Ohio because they sent the Report to two Ohio-resident APA board members, Pls'. Br. at 13, and because they knew that APA and news outlets like the *New York Times* would make the Report widely available, including in Ohio, *id*. at 17. Neither fact helps them. As explained in Sidley and Hoffman's motion, the *New York Times* publication of the Report and whether Sidley and Hoffman knew the Report would be widely distributed are irrelevant because publication by

others, even if foreseeable, cannot establish intentional targeting. Sidley Br. at 10 (citing *Reynolds*, 23 F.3d at 1120). And sending a report to a group that happens to include two individuals from a state does not logically or legally allow an inference of an intentional targeting of the state. *See Reynolds*, 23 F.3d at 1120; *see also Kauffman Racing Equip. v. Roberts*, 126 Ohio St. 3d 81, 88 (2010) (noting that purposeful availment requires more than "attenuated contacts").

B. Plaintiffs' Publication-Only Theory of Purposeful Availment is Contrary to Law.

Instead of addressing intentional targeting, Plaintiffs argue that, in a defamation action, the case law "establish[es] that purposeful availment occurs when defamatory statements are published into a jurisdiction." Pls.' Br. at 15. Thus, they rest their case for purposeful availment on the undisputed fact that the Report was available to Ohio readers. Pls.' Br. at 15-22. Under this view of the law, any statement published on the Internet exposes the speaker to personal jurisdiction in every state. To support that expansive view, Plaintiffs cite four cases: *Calder v. Jones*, 465 U.S. 783 (1984); *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984); *Kauffman Racing Equip. v. Roberts*, 126 Ohio St. 3d 81 (2010); and *Fallang v. Hickey*, 40 Ohio St. 3d 106 (1988). Not one supports Plaintiffs' view.

Calder rejected Plaintiffs' view and focused on intentional targeting. 465 U.S. at 790. It found purposeful availment because the defendants were "not charged with mere untargeted negligence [but with] actions [they] *expressly aimed* at California." *Id*. at 789 (emphasis added). In *Calder*, the publication at issue had its largest circulation in the forum (California) and the allegedly defamatory article concerned the plaintiff's California activities. *Id*. at 788-89; *see also Walden v. Fiore*, 134 S. Ct. 1115, 1124 (2014) ("[T]he injury to the Plaintiff's reputation in the estimation of the California public … combined with the various facts that gave the article a

California focus, sufficed to authorize the California court's exercise of jurisdiction."). To the extent that the defendants in *Calder* wanted their publication to have an effect *anywhere*, they wanted it to have an effect in California, where the publication had its widest circulation and where the subject matter of the story was of special interest. Those key facts—largest circulation and focus on the plaintiff's in-state activities—are absent here.

Plaintiffs also rely heavily upon the Ohio Supreme Court's decision in *Kauffman*, which echoes *Calder*'s emphasis on intentional targeting. 126 Ohio St. 3d at 89-91 ("Like the defendants in *Calder*, [Defendant] is not alleged to have engaged in untargeted negligence.").[3] Like *Calder*, *Kauffman* found purposeful availment because it found intentional targeting: "[Defendant] *intended* the effects of his conduct to be felt in Ohio. His statements were communicated with the very purpose of having their consequences felt by [the plaintiff] in Ohio." *Id*. at 92. (emphasis in original). And, again like *Calder*, it found intentional targeting because the defendant's allegedly defamatory statements focused on the plaintiff's in-forum

---

[3] *Calder* and *Kauffman* are not alone in rejecting Plaintiffs' expansive view of the law. All over the country, federal courts of appeals and state courts of last resort recognize that defamation-based purposeful availment requires more than the publication of the statement in the forum. Federal courts of appeals that have rejected Plaintiffs' position include: *Anzures v. Flagship Rest. Grp*., 819 F.3d 1277, 1281-82 (10th Cir. 2016); *Forras v. Rauf*, 812 F.3d 1102, 1108 (D.C. Cir. 2016); *Isaacs v. Arizona Bd. of Regents*, 608 F. App'x 70, 74-75 (3d Cir. 2015) (per curiam); *Johnson v. Arden*, 614 F.3d 785, 796-97 (8th Cir. 2010); *Consulting Eng'rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 280 (4th Cir. 2009); *Scotts Co. v. Aventis S.A.*, 145 F. App'x 109, 113 n.1 (6th Cir. 2005); *Noonan v. Winston Co.*, 135 F.3d 85, 91 (1st Cir. 1998). State courts of last resort that have rejected Plaintiffs' position include: *State ex rel. State Treasurer of Wyoming v. Moody's Inv'rs Serv., Inc*., 349 P.3d 979, 985 (Wyo. 2015); *Shams v. Hassan*, 829 N.W.2d 848, 856 (Iowa 2013); *Abdouch v. Lopez*, 829 N.W.2d 662, 674 (Neb. 2013); *Kauffman*, 126 Ohio St. 3d at 92; *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1200 (Colo. 2005); *Griffis v. Luban*, 646 N.W.2d 527, 533-34 (Minn. 2002).

activities. *Id*. at 91 ("[The allegedly defamatory] posts were premised solely on the activities of [the plaintiff] in Ohio.").

Kauffman not only required intentional targeting, it rejected Plaintiffs' publication-only theory of purposeful availment. *Kauffman* read *Calder* as requiring conduct "'calculated to cause injury' in a 'focal point' where the 'brunt' of the injury is experienced." *Id.* at 92 (citing *Calder*, 465 U.S. at 789-91). Then *Kauffman* explained that intentional targeting is what allows a court to find the singular focal point: "While the effects of Internet conduct may be felt in many [forums], the intent requirement allows a court to find a particular focal point." *Id*. This is inconsistent with Plaintiffs' theory because, if publication alone suffices, there is no singular focal point—personal jurisdiction would exist in any state with Internet access.

Because it required intentional targeting, *Kauffman* is consistent with the Sixth Circuit's decisions in *Reynolds* and *Cadle Co. v. Schlichtmann*, 123 F. App'x 675, 679 (6th Cir. 2005). Both *Reynolds* and *Cadle* found no intentional targeting of the forum and thus no purposeful availment of Ohio because—as here—the alleged defamation in those cases had nothing to do with the plaintiffs' in-forum activities. *Cadle*, 123 F. App'x at 679 ("[The] website does not demonstrate purposeful availment in Ohio. The website specifically refers to Cadle's activities in Massachusetts. … . Just as in *Reynolds*, while the 'content' of the publication was about an Ohio resident, it did not concern that resident's Ohio activities."). Unlike Plaintiffs, who ignore the issue of in-forum activities, *Kauffman* accepted it as critical, and used it to distinguish both *Reynolds* and *Cadle*. 126 Ohio St. 3d at 91. That *Kauffman* reached a different result on its facts than *Reynolds* and *Cadle* does not mean that the courts applied different legal standards. To the contrary, they all analyzed intentional targeting. Neither stopped, as Plaintiffs would, at whether forum readers read the allegedly defamatory statement.

Plaintiffs' two remaining cases are older and do not save their argument. *Fallang v. Hickey*, 40 Ohio St. 3d 106, 106 (1988), was a dispute about the plaintiff's skill as a surgeon. *Id.* The plaintiff worked at a hospital in Middletown Ohio. *Id.* The defendant intentionally targeted Ohio by sending a letter into the state that bore on the dispute about the plaintiff's surgical practices there. *Id.* *Keeton* is irrelevant. It is not a case about whether purposeful availment requires intentional targeting. Personal jurisdiction in *Keeton* turned, not on defamatory statements, but on the extent of "regular circulation of [the defendant's] magazines in the forum State [which] … support[ed] an assertion of jurisdiction in a libel action based on the contents of the magazine." 465 U.S. at 773–74. Plaintiffs therefore misread *Keeton* to stand for the view that a plaintiff can sue "in any state in which the publisher has deliberately circulated its publications." Pls.' Br. at 16. *Keeton* is not about how to apply the jurisdictional rule at issue in cases like *Calder* and *Kauffman*. *See, e.g.*, *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 426 (5th Cir. 2005) ("Because [defendant] has insufficient circulation to satisfy jurisdiction under *Keeton*, its contacts must be analyzed in terms of the *Calder* effects test.").

Recognizing that the publication-only theory is not the law reveals the irrelevance of most of Plaintiffs' affidavits and exhibits. For example, Plaintiffs seek to show that the Report was read by Ohio residents based upon an affidavit attaching an analysis of Twitter usage (Exs. F & G to Aff. of R. Newman) and an affidavit attaching a commissioned report on *New York Times* circulation (Aff. of S. Hansen for the Alliance of Audited Media). As explained in Sidley and Hoffman's motion, this evidence of in-forum readership is irrelevant to intentional targeting without evidence (a) the Report was intended for Ohio readers as distinguished from readers in other states; (b) Sidley and Hoffman – rather than APA, the *New York Times*, Twitter, or

whomever else – published the Report into Ohio; and that (c) the Report dealt with Plaintiffs' Ohio activities. Sidley Br. at 9-11.

C. Plaintiffs Cannot Establish Purposeful Availment Based on Sidley and Hoffman's Investigative Activities in Ohio.

Plaintiffs' Complaint relied on the publication of the Report and Hoffman's interview of James in Ohio in an attempt to support specific jurisdiction. Compl. ¶¶ 35, 38, 61-62. Sidley and Hoffman addressed those allegations in their motion. Sidley Br. at 5. Now Plaintiffs seek to supplement their complaint by noting that Sidley and Hoffman interviewed one more witness in Ohio, collected computer files from that witness, and interviewed several other Ohio-resident witnesses by phone. Pls.' Br. at 4. These additions change nothing. In the context of an 8-month, 148-witness, 200-interview, 50,000-document, 14-city, 10-state investigation, all the Ohio activities put together remain too insignificant to establish the substantial connection necessary for purposeful availment. *See Walden*, 134 S. Ct. at 1123.

As Sidley and Hoffman pointed out in their motion, Sidley Br. at 6-8, a defendant's contact with in-forum individuals does not create a substantial connection between the defendant and the forum if the only reason for that contact is that those individuals located themselves in that forum. *Means v. U.S. Conference of Catholic Bishops*, 836 F.3d 643, 649-50 (6th Cir. 2016); *Calphalon Corp. v. Rowlette*, 228 F.3d 718, 723 (6th Cir. 2000). The additional interviews do not undermine the applicability of that rule here. Like the James interview, the rest of the Ohio interviews were not a result of Sidley or Hoffman choosing to engage with Ohio, but rather choosing to engage with various witnesses who happened to be there.

Plaintiffs' attempts to show otherwise fail for two reasons. First, Plaintiffs suggest that Sidley chose Ohio by emailing James and saying "[w]e'll probably want to talk both in person and by phone … ." Pls.' Br. at 23. But asking to meet in person is not the same as asking to

meet specifically in Ohio. Despite the hundreds of pages of material they submitted, Plaintiffs have nothing to suggest that, had James or any other witness offered to be interviewed anywhere other than Ohio, Hoffman would have refused. There was nothing that *required* the interview to be in Ohio; it was just a matter of convenience to James. The same is true of the other conversations that Hoffman had with Ohioans. They are all the kind of "random, fortuitous, or attenuated" contacts that cannot support jurisdiction. *Walden*, 134 S. Ct. at 1123. That was the conclusion reached by *Calphalon* and *Means* under similar circumstances. *See* Sidley Br. at 6-7. Plaintiffs ignore *Calphalon* and *Means* completely. They do not try to distinguish either case or explain how the rule the two cases rely on is satisfied here.

Second, all the Ohio interviews put together are still too insignificant, when placed in the context of the entire 8-month investigation, to support purposeful availment. *Pace v. Platt*, 2002 WL 32098709, at *8 (N.D. Fla. Sept. 10, 2002) (defendant conducted three interviews in Florida, and the court found that those contacts were "so remote that he should not have reasonably anticipated that he would be haled into court in Florida as a result"); *accord Kauffman*, 126 Ohio St. 3d at 92. Plaintiffs try to argue otherwise by suggesting that the Ohio interviewees, and James in particular, are especially central figures in the Report. Pls.' Br. at 24. But Plaintiffs' handful of paragraphs on this subject does not change the fact that the Ohio interviewees are still just a handful of interviewees out of over a hundred.

And even if the information provided by the Ohio interviewees were especially important, important information alone cannot create a substantial connection between Ohio and Sidley or Hoffman. *Walden*, 134 S. Ct. at 1121 ("The inquiry … focuses on the relationship among the defendant, the forum, and the litigation.") (internal quotation marks omitted). Plaintiffs do not explain why, or cite authority holding that, an interviewee's *information* creates

the required significant connection between the interviewer and the interviewee's *location*. The one case they cite, *Neal v. Janssen*, 270 F.3d 328, 331-33 (6th Cir. 2001), is irrelevant to the point and also distinguishable. *Neal*, primarily a fraud case, affirmed the trial court's finding of purposeful availment based on the defendants' calls and faxes to the plaintiff in the forum *because* those calls and faxes were, themselves, the fraudulent misstatements that gave rise to the lawsuit. *Id*. Plaintiffs do not here claim they were defamed *in the interviews.* Thus, the connection between the Ohio-based activities and the claim present in *Neal* is missing here.

D. Plaintiffs' Claims Did Not Arise Out of Sidley or Hoffman's Ohio Interviews.

Specific jurisdiction requires that the plaintiffs' claims arise from the defendants' forum contacts. *Kauffman*, 126 Ohio St. 3d at 93. The arguments Sidley and Hoffman made on this point as to the James interview apply equally to the few newly raised in-person and phone contacts. Sidley Br. at 8-9. Defamation claims "do[] not 'arise out of' [any prior] interview but [rather] out of the ensuing publication of the allegedly defamatory remarks." *McNeil v. Hugel*, 1994 WL 264200, at *14 (D.N.H. May 16, 1994), *aff'd*, 77 F.3d 460 (1st Cir. 1996). This applies to the James interview, the other in-person interview, and all the phone interviews. The two activities, investigation and publication, are too attenuated to support jurisdiction. That, as Plaintiffs point out, *McNell* is not controlling in Ohio does not detract from its logic, which, notably, Plaintiffs do not challenge.

Moreover, Plaintiffs' defamation claims do not arise from the Ohio interviews because the Ohio interviews are not an important or material element of proof of those claims. Sidley Br. at 8 (citing *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002)). Plaintiffs do not seriously contest this point. They say only that Sidley and Hoffman's Ohio contacts "were more numerous

and important than Defendants disclos[ed in their motion]," Pls.' Br. at 26, but they again fail to explain why this matters.

E. The Other Plaintiffs, Who Do Not Reside in Ohio, Cannot Establish Specific Jurisdiction Over Their Claims Based on Specific Jurisdiction Over James's Claims.

This Court should not exercise personal jurisdiction over either Sidley or Hoffman for any claim by any Plaintiff. But if this Court concludes that James's claims can be maintained in Ohio, it must consider Plaintiffs' argument that personal jurisdiction over James's claims provides personal jurisdiction over the other four Plaintiffs' claims. Pls.' Br. at 27. It does not. Although there are no Ohio decisions on this issue, numerous courts around the country have rejected the notion of "pendent" or "ancillary" specific personal jurisdiction. *E.g.*, *Demaria v. Nissan N. Am., Inc.*, 2016 WL 374145, at *8 (N.D. Ill. Feb. 1, 2016) ("[T]he Court is not persuaded that pendent personal jurisdiction is established simply because specific jurisdiction may exist as to [one Plaintiff's] claims."); *Turi v. Main St. Adoption Servs., LLP*, 2009 WL 2923248, at *13 (E.D. Mich. Sept. 9, 2009), *aff'd in part, rev'd in part and remanded*, 633 F.3d 496 (6th Cir. 2011).

Tulsa Cancer Inst., PLLC v. Genentech Inc. is a good example. 2016 WL 141859, at *4 (N.D. Okla. Jan. 12, 2016). There, an in-state plaintiff bought a product from the defendant and sued, bringing claims related to the purchase. *Id*. at *1. Later, the plaintiff sought leave to file an amended complaint. *Id*. at *1. The amended complaint added "six Proposed Plaintiffs [] scattered throughout the country" with claims about buying the same product in their own states. *Id*. at *1. The defendant opposed the motion for leave and lost. *Id*. at *1. It then sought reconsideration, arguing that the non-resident plaintiffs could not establish specific personal jurisdiction over their claims. The court agreed: "Specific jurisdiction 'confers power upon the

court to enter personal judgments against the defendant only upon claim(s) which arise out of the acts establishing the jurisdictional connection between the defendant and the forum. … *Each Plaintiff*, therefore, must show that its claim arises out of or is related to the defendant's contacts with the forum." *Id*. at *3 (emphasis added).

Nothing Plaintiffs cite is to the contrary. First, Plaintiffs cite *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). Pls.' Br. at 26-27. *Goodyear* is a general jurisdiction case. If a state has general jurisdiction over a defendant then any plaintiff can sue the defendant in that state on any claim. 564 U.S. at 919 ("A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them."). It offers no authority for "ancillary" *specific* jurisdiction, as Plaintiffs suggest. *U.S. Sprint Commc'ns Co. v. Mr. K's Foods, Inc.*, 68 Ohio St. 3d 181, 188 (1994), is equally unhelpful. It involved a single plaintiff, so it cannot help Plaintiffs establish that one plaintiff can obtain personal jurisdiction based on another plaintiff's claims. Pls.' Br. at 26-27. Moreover, the case acknowledges that "due process" limits courts' ability to entertain factually related claims under joinder rules like Civil Rule 18, on which Plaintiffs rely. *U.S. Sprint*, 68 Ohio St. 3d at 185. *Sprint*'s reference to "due process" refers to the need for specific or general personal jurisdiction. *Id*. at 184. Thus, before the Civil Rules will allow joinder, there first must be personal jurisdiction consistent with the Constitution. *Id*.

Plaintiffs say they need some kind of joinder because without it there may be "no single jurisdiction where the Defendants would be amenable to jurisdiction in a lawsuit brought by these Plaintiffs." Pls.' Br. at 28. That is not true. Having asked this Court to dismiss on forum non conveniens, Defendants have shown that they have no objection to Plaintiffs bringing this case in Washington, D.C. Moreover, even if there was no single forum in which all five

Plaintiffs could sue all three Defendants, that would not matter for personal jurisdiction, which is a constitutional doctrine that "limits [] the State's adjudicative authority principally [to] protect the liberty of nonresident defendant[s] – not [for] the convenience of plaintiffs or third parties." *Walden*, 134 S. Ct. at 1122. It therefore necessarily trumps the joinder-friendly statutes and rules referenced by Plaintiffs.

III. If the Court Finds Personal Jurisdiction, It Should Still Dismiss Under the Doctrine of Forum Non Conveniens.

As Sidley and Hoffman explained in their opening brief, "the Second District and other Ohio appellate courts have affirmed dismissals under [forum non conveniens] where an alternative forum presents a more convenient option and Ohio's only connection to the controversy is that a party, or even all the parties, live here." Sidley Br. at 13 (citing *Mitrovich v. Hammer*, 8th Dist. Cuyahoga No. 86211 & 86236, 2005-Ohio-5451, ¶ 2; *Watson v. Driver Mgmt., Inc.*, 97 Ohio App. 3d 509, 514 (2d Dist. 1994)). Plaintiffs make no effort to distinguish these cases. The Court should therefore dismiss for forum non conveniens if it finds personal jurisdiction, allowing Plaintiffs to refile in the District of Columbia.

Rather than contend with *Mitrovich* and *Watson*, Plaintiffs repeatedly assert that their choice of forum is entitled to deference. Pls.' Br. at 41-42 (citing *Chambers v. Merrell-Dow Pharm., Inc.*, 35 Ohio St. 3d 123, 125-27 (1988)). But they do not mention that out-of-state plaintiffs, like four of the five here, deserve far less deference, *Chambers*, 35 Ohio St. at 127 ("[A] foreign plaintiff's choice deserves less deference."), or that even the deference owed to an in-state plaintiff like James is far from absolute. *Watson*, 97 Ohio App. 3d at 514 (affirming dismissal under forum non conveniens of Ohio-resident's claims). Plaintiffs' arguments on the public and private factors that bear on forum non conveniens are equally unconvincing.

A. Plaintiffs' Private-Factor Arguments Do Not Support Ohio.

Plaintiffs' arguments on the private factors do not support keeping the case in Ohio. First, Plaintiffs' argument that Ohio is more convenient because it hosts 5 of the 30 witnesses that Plaintiffs wish to depose all but refutes itself. Pls.' Br. at 42. First, the list ignores any witnesses that Sidley, Hoffman, or APA might wish to depose and Sidley and Hoffman's arguments about the substantial likelihood that most third-party witnesses reside in Washington, D.C. Sidley Br. at 13-14. Second, it shows a margin of just one witness between Washington, D.C. and Ohio, so even if the list were a good proxy for all the witnesses likely to be involved in this case, it would still not provide grounds for distinguishing the two forums.

Plaintiffs' remaining arguments similarly fail to distinguish Ohio from Washington, D.C. Plaintiffs' speculation that most of the evidence will be electronic does not support Ohio over Washington, D.C. Pls.' Br. at 42. The same goes for Plaintiffs' argument about their home states—now, both Ohio and Washington, D.C. are each home to just one Plaintiff. *Id.* Likewise, Plaintiffs' argument that an Ohio court "can just as easily compel witnesses across the country" as a Washington, D.C. court fails to distinguish the two forums. Finally, Plaintiffs' argument about Defendants' "East Coast bias" is misplaced. Pls.' Br. at 43. Because the majority of third-party witnesses and parties are in Washington, D.C. or have connections there, the District is the more convenient forum.

B. Plaintiffs' Public-Factor Arguments Do Not Support Ohio.

Plaintiffs' two public-factor arguments do not help them. Plaintiffs argue that Ohio's interest in James's reputation justifies imposing this case on an Ohio jury. Pls.' Br. at 41-42. While states do have a legitimate interest in alleged injuries to their residents, that interest is minimal here because almost all the events giving rise to this litigation occurred outside the state and four of the five Plaintiffs are not Ohio residents. Ohio has no interest in those four Plaintiffs'

claims. Moreover, given that the lawsuit concerns Department of Defense interrogation policies and the Department's collaboration with APA, the District of Columbia, which is home to both organizations, has a far more substantial interest in this litigation than Ohio. Plaintiffs' other point is an attack on Defendants' choice-of-law analysis in their anti-SLAPP motion. Plaintiffs' assertion that the District of Columbia's anti-SLAPP statute is merely procedural is baseless. Case law and legislative history make clear the District of Columbia intended the statute to enact forceful, substantive safeguards for free speech. Sidley Special Mot. at 11-12. The applicability of the District of Columbia's anti-SLAPP law weighs in favor of the District of Columbia as a more convenient forum.

C. Plaintiffs' Other Arguments Do Not Support Ohio.

Plaintiffs make two additional arguments, both run counter to the facts. First, there is nothing to Plaintiffs' claim that, if the case is dismissed, they will have no alternative forum because their claims will be time barred. Pls.' Br. at 41-42. Plaintiffs have failed to argue, let alone establish, that tolling would not apply under these circumstances. Even if tolling would not preserve Plaintiffs' claims, Sidley and Hoffman will not assert a statute of limitations defense if the Court dismisses the case and Plaintiffs re-file the claims alleged in their Complaint in Washington, D.C. within 60 days of this Court's order of dismissal.

Second, Plaintiffs complain about the expense and difficulty of hiring local counsel in Washington, D.C., Pls.' Br. at 41, even though Plaintiff Stephen Behnke's lawyer is based in the District of Columbia and two of the three lawyers on Plaintiffs' brief were admitted in Ohio *pro hac vice*. There is no reason to believe that Plaintiffs' counsel would have a harder time litigating this case in Washington, D.C., than in Ohio.

IV. The Court Should Reject Plaintiffs' Footnoted Request for Jurisdictional Discovery, the Request to Lift the Discovery Stay, and the Unexplained Request for Discovery in Their Proposed Order.

In their response, Plaintiffs make three almost-hidden requests related to discovery. In their proposed order, Plaintiffs ask that Court to lift the "Stay on Discovery" and order Sidley and Hoffman "to produce the notes and other documents generated during Defendants Hoffman and Sidley's investigation and previously requested by Plaintiffs." Exh. 1, Proposed Order at 2. Neither request is appropriate. If Sidley and Hoffman's personal jurisdiction and forum non conveniens motion is denied, the discovery stay should remain in place pending the anti-SLAPP motion's resolution. And, in any event, the Court should not compel discovery in the absence of a discovery request compliant with the Civil Rules and without giving Sidley or Hoffman the opportunity to object.

Finally, in a footnote, Plaintiffs seek jurisdictional discovery in the event the Court grants Sidley and Hoffman's motion. Pls.' Br. at 8, n.4. But jurisdictional discovery is inappropriate here because Plaintiffs have rested their case for jurisdiction, not on disputed facts, but on mistaken interpretations of law. Therefore, there is no reason to expect discovery will help them and no reason to burden Sidley or Hoffman with it. *See Enquip Techs. Grp., Inc. v. Tycon Technoglass, S.r.l.*, Second Dist., 2010-Ohio-6100, ¶ 34 ("[J]urisdictional discovery is not required in every case involving a Civ.R. 12(B)(2) motion … Rather, a trial court may determine jurisdiction without ordering discovery or holding an evidentiary hearing."). Notably, Plaintiffs' footnote does not explain what discovery they would take or how it would bear on personal jurisdiction. The Court should not impose discovery on Sidley or Hoffman when Plaintiffs do not even appear to have a plan for conducting it or a credible explanation for why it is necessary.

CONCLUSION

For the foregoing reasons, and those stated in its opening brief, the Court should grant Sidley and Hoffman's motion to dismiss for lack of personal jurisdiction or, in the alternative, forum non conveniens.

Respectfully submitted,

/s/ Erin E. Rhinehart
D. Jeffrey Ireland (00110443)
Erin E. Rhinehart (0078298)
Christopher C. Hollon (0086480)
FARUKI IRELAND COX
RHINEHART & DUSING P.L.L.
110 North Main Street, Suite 1600
Dayton, OH 45402
Telephone: (937) 227-3710
Telecopier: (937) 227-3717
Email: djireland@ficlaw.com
erhinehart@ficlaw.com
chollon@ficlaw.com

John K. Villa, PHV-15083
(*pro hac vice*)
Thomas G. Hentoff, PHV-15081
(*pro hac vice*)
Eli S. Schlam, PHV-15089
(*pro hac vice*)
Krystal R. Commons, PHV-15093
(*pro hac vice*)
Alexander J. Kasner, PHV-15084
(*pro hac vice*)
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 434-5804
Telecopier: (202) 434-5029
Email: jvilla@wc.com
thentoff@wc.com
eschlam@wc.com
kcommons@wc.com
akasner@wc.com

Attorneys for Defendants
Sidley Austin LLP and David Hoffman

CERTIFICATE OF SERVICE

I certify that on June 2, 2017, I electronically filed the foregoing Reply in Support of Motion of Defendants Sidley Austin LLP and David Hoffman to Dismiss for Lack of Personal Jurisdiction or Forum Non Conveniens with the Clerk of Courts using the Court's electronic filing system, which will send electronic notification of such filing to participants in the filing system, and I certify that I have served by electronic mail the document to the parties not participating in the electronic filing system.

James E. Arnold, Esq.
Gerhardt A. Gosnell, Esq.
JAMES E. ARNOLD & ASSOCIATES, LPA
115 West Main Street
Fourth Floor
Columbus, Ohio 43215
Email: jarnold@arnlaw.com
ggosnell@arnlaw.com

Attorneys for All Plaintiffs

Bonny J. Forrest, Esq.
555 Front Street
Suite 1403
San Diego, California 92101
Email: bonforrest@aol.com

Attorney for Plaintiffs Larry James, L. Morgan Banks, Debra Dunivin, and Russell Newman

Louis J. Freeh, Esq.
2550 M St. NW
Second Floor
Washington, DC 20037

Attorney for Plaintiff Stephen Behnke

J. Steven Justice
Glen R. McMurry, Esq.
DUNGAN & LeFEVRE CO., L.P.A.
210 W Main St.
Troy, OH 45373
Email: justice@dunganattorney.com
gmcmurry@dunganattorney.com

Barbara S. Wahl, Esq.
Karen E. Carr, Esq.
ARENT FOX LLP
1717 K Street, NW
Washington, DC 20006
Email: barbara.wahl@arentfox.com
karen.carr@arentfox.com

Attorneys for Defendant American Psychological Association

/s/ Christopher C. Hollon
Christopher C. Hollon

1176834.1