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.	:	**MOTION OF DEFENDANTS SIDLEY AUSTIN LLP AND DAVID HOFFMAN TO DISMISS FOR LACK OF PERSONAL JURISDICTION OR FORUM NON CONVENIENS**
DAVID HOFFMAN, *et al.*,	:	
Defendants.	:	
	:	

The use of "enhanced interrogation techniques" on national security detainees is one of the most contentious public issues to arise after 9/11. Central to the controversy are longstanding public allegations that the American Psychological Association ("APA"), the leading U.S. professional organization for psychologists, secretly colluded with the government to support the techniques. APA engaged the law firm of Sidley Austin LLP to attempt to ascertain the truth of those allegations. A team from Sidley, led by partner David Hoffman, investigated for 8 months, conducted more than 200 interviews and reviewed more than 50,000 documents. Following the investigation, the team prepared a 542-page report. Hoffman delivered that report to APA, which is headquartered in Washington, D.C. APA then made the report publicly available on its website. Given the polarizing issues involved, it is understandable that not everyone agreed with its conclusions and opinions. Plaintiffs, five individuals discussed in the report, have sued APA, Sidley, and Hoffman for defamation and, as to three Plaintiffs, the related tort of false light invasion of privacy.

Under Ohio R. Civ. P. 12(B)(2), Defendants Sidley Austin LLP and David Hoffman move to dismiss Plaintiffs' Complaint for lack of personal jurisdiction. Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, a state's courts cannot exercise personal jurisdiction over nonresident defendants with only random, fortuitous, or attenuated contacts with the state. Here, the only relevant contact Sidley and Hoffman have with Ohio is that Hoffman and an associate visited the state once for six hours to interview Plaintiff Larry James during the investigation. They did so as a matter of convenience to James. In other words, James chose Ohio; Sidley and Hoffman did not. That limited connection is insufficient to support personal jurisdiction.

Alternatively, Sidley and Hoffman move the Court to dismiss this case under the doctrine of forum non conveniens. Ohio courts, including in a case affirmed by the Second District Court of Appeals, do not hesitate to dismiss under the doctrine if another forum is more convenient and Ohio's only connection to the case is that litigants reside here. That is exactly the situation here. Other than James living here, this case has nothing to do with Ohio. None of the events covered in the report happened here, and no other party lives here or claims to have been injured here. And there is a more convenient forum—Washington, D.C. The District is more convenient because the lion's share of the parties are already there, including two of five plaintiffs, APA's headquarters, and one of Sidley's offices. The District is also home to many third-party witnesses, including APA members, and government and military officials. With three major airports, the District is also convenient for out-of-town witnesses, parties, and lawyers. The District, of all possible fora, is the most convenient and has the most significant connection to this case.

A proposed order granting this motion is attached as Exhibit 1.

Respectfully submitted,

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BACKGROUND

According to the Complaint ("Compl."), *New York Times* journalist James Risen, among others, made claims that "in the aftermath of 9/11, the APA colluded with the Bush administration, the Central Intelligence Agency (CIA) and the U.S. military to support torture." Compl. ¶ 2. APA engaged Sidley to investigate these allegations. Report at 1.[1] APA asked the Sidley team, led by partner David Hoffman, to investigate and report on "what happened and why." *Id.* The Sidley team reviewed more than 50,000 documents and conducted more than 200 interviews of 148 people in 14 different cities and 10 different states. *Id.* at 6-7. The resulting report (the "Report") is a single-spaced, 542-page work with more than 2,500 footnotes and 7,600 pages of publicly available exhibits. Compl. n.1.

Sidley delivered the Report to APA, which is headquartered in Washington, D.C. Compl. ¶¶ 47, 245, 295, 359. Neither Sidley nor Hoffman directly made the Report available to the general public, though they and APA contemplated that APA would make the Report public and, indeed, APA published the Report on its website. *Id.* ¶ 247. The Report and its conclusions became the subject of news articles across the country. *Id.* ¶ 36.

Five psychologists mentioned in the report have now filed suit in Ohio against Sidley, Hoffman, and APA for defamation and false light based on statements made in the Report. Compl. § X. The only contact asserted in the Complaint between either Sidley or Hoffman and Ohio is this: "As part of [his] investigation, Hoffman and one of his associates traveled to Dayton. They were picked up [ ] by Plaintiff James and then interviewed him for

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[1]All citations to "Report" are to the revised version of the Hoffman Report available at http://www.apa.org/independent-review/revised-report.pdf and attached as Exhibit 2-A to the concurrently filed Special Motion to Dismiss.

approximately six hours at his office in Ohio." *Id.* ¶ 61. According to the Complaint, "[t]hat interview forms the basis for Hoffman and Sidley's false and defamatory statements about Plaintiff James [and he] has suffered harm in Ohio as a result of the defamatory statements." *Id.* ¶ 62. The Complaint alleges no connection between any parties' conduct in Ohio and the allegedly false statements made regarding any of the other four plaintiffs.

Two of those four plaintiffs live in Washington, D.C. *Id.* ¶¶ 40-41. A third plaintiff is married to one of the D.C.-resident plaintiffs. *Id.* ¶¶ 41-42, 44. APA is also based in the District of Columbia. *Id.* ¶ 47. Its "daily operations are overseen by its senior staff at the APA headquarters [there, where it] has 500 staff members and is incorporated as a non-profit ... ." *Id.* Like APA, Sidley has an office in the District. *Id.* ¶ 46.

ARGUMENT

I. The Court Should Dismiss All Claims Against Sidley and Hoffman for Lack of Personal Jurisdiction.

When a defendant moves to dismiss for lack of personal jurisdiction, the burden is on the plaintiff to establish a prima facie case of personal jurisdiction. *Joffe v. Cable Tech, Inc.*, 163 Ohio App. 3d 479, 486 (10th Dist. 2005). Plaintiffs must make this showing as to each of their claims independently. *Seiferth v. Helicopteros Atuneros, Inc.*, 472 F.3d 266, 274 (5th Cir. 2006) ("Is specific personal jurisdiction a claim-specific inquiry? We conclude that it is. A plaintiff bringing multiple claims that arise out of different forum contacts of the defendant must establish specific jurisdiction for each claim."); *Addelson v. Sanofi*, 2016 WL 6216124, at *3 (E.D. Mo. Oct. 25, 2016) (same) (collecting cases). If the Court decides the motion "without holding an evidentiary hearing, the trial court must view allegations in the pleadings and the documentary evidence in a light most favorable to the plaintiff and resolve all reasonable competing inferences in favor of the plaintiff." *Joffe*, 163 Ohio App. at 486 (internal quotations and citation omitted).

Plaintiffs assert personal jurisdiction under Ohio's Long-Arm Statute, R.C. 2307.382. That statute is restricted by "[t]he Due Process Clause of the Fourteenth Amendment[, which] constrains a State's authority to bind a nonresident defendant to a judgment of its courts." *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). This constraint protects nonresident defendants unless "either general or specific" jurisdiction is present over the claims against them. *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 87 (2015). General jurisdiction allows a forum's courts to hear "any and all claims" against a defendant if that defendant is "essentially at home in the forum state." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (internal quotation marks and citation omitted). Specific jurisdiction, on the other hand, covers only claims that arise out of a defendant's activities in the forum. *Id.* at 754-55. Here, neither type of jurisdiction is available over the claims against Sidley and Hoffman.

A. The Court Lacks General Jurisdiction Over Sidley and Hoffman.

"The United States Supreme Court has recently revisited the issue of general jurisdiction" in two decisions. *Fern Exposition Serv., LLC v. Lenhof*, 1st Dist. Hamilton No. C-130791, 2014-Ohio-3246, ¶ 19 (citing *Goodyear Dunlop Tires v. Brown*, 131 S. Ct. 2846 (2011) and *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014)). "In both cases, the court clarified that the proper inquiry is whether a nonresident defendant's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State.'" *Lenhof*, 2014-Ohio-3246 at ¶ 19 (quoting *Daimler*, 134 S. Ct. at 754). The Supreme Court has never held that general jurisdiction applies to individual, as opposed to corporate, non-resident defendants. *See Burnham v. Superior Court of California, Cty. of Marin*, 495 U.S. 604, 610 n.1 (1990). The two recent Supreme Court decisions suggest that general jurisdiction is available only in the individual's domicile. *Daimler*, 134 S. Ct. at 754. Whether applicable at all, and no matter what the standard, there is no doubt that general jurisdiction over an individual requires more than that

the individual enter the forum once. *Lenhof*, 2014-Ohio-3246 at ¶ 19 (rejecting general jurisdiction over individual defendant who visited Ohio several times on business and for personal reasons, worked with a company there, and grew up there). Here, the only Ohio contact that Plaintiffs allege regarding Hoffman is that he entered the state once. Compl. ¶ 61. Accordingly, this Court lacks general jurisdiction over Hoffman.

This Court also lacks general jurisdiction over Sidley. For corporate entities, general jurisdiction exists only when the defendant is "essentially at home" in the forum. *Daimler*, 134 S. Ct. at 760. A corporate entity is at home in its place of incorporation or principal place of business. *Id.*; *see also PNY Techs., Inc. v. Miller, Kaplan, Arase & Co., LLP*, 2015 WL 1399199, at *11 (D.N.J. Mar. 24, 2015). To Sidley, Ohio is neither—the firm does not even have an office in the state. Compl. ¶ 46. It is not subject to general jurisdiction here. *Roxane Labs., Inc. v. Vanda Pharm., Inc.*, 2016 WL 7371267, at *4 (S.D. Ohio Dec. 20, 2016) (rejecting general jurisdiction because defendant "maintains no offices" in Ohio).

B. The Court Lacks Specific Jurisdiction Over Sidley and Hoffman.

"[S]pecific jurisdiction 'is permissible only if a defendant's contacts with Ohio satisfy" every part of "the three-part test … established in *Southern Machine Company v. Mohasco Industries, Inc.*, 401 F.2d 374, 381 (6th Cir. 1968).'" *Kauffman*, 126 Ohio St. 3d at 87 (quoting *Bird v. Parsons*, 289 F.3d 865, 873 (6th Cir. 2002)). The *Southern Machine* test requires that: "First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Id.* (emphasis added). The third part of the test is a catch-all assessing fundamental fairness. *Bird*, 289 F.3d at 875. But a court need not reach that

question if either of the first two requirements are not met. *Id.* And here, Plaintiffs satisfy neither of the first two requirements. Plaintiffs assert no connection between Ohio and the claims of Plaintiffs Banks, Behnke, Dunivin, and Newman. As to James—the only plaintiff who resides in Ohio—the only asserted connections fall well below what *Southern Machine* requires.

1. The Court Lacks Specific Jurisdiction Over the Claims of the Four Plaintiffs Who Reside Outside Ohio.

The claims of Plaintiffs L. Morgan Banks, III, Stephen Behnke, Debra L. Dunivin, and Russell Newman have nothing to do with Ohio. These four psychologists do not live in Ohio, and their 100-page Complaint spares not one paragraph to allege that their claims "arise" from Sidley or Hoffman's "activities" in Ohio. *Southern Machine*, 401 F.2d at 381. They do not claim to have suffered any injury in Ohio. And even if the Complaint were construed to allege that these four Plaintiffs had suffered reputational harm in Ohio, the uniform caselaw discussed below makes clear that such an allegation, standing alone, does not establish specific jurisdiction over a defamation claim that otherwise lacks contacts with the forum. *See infra* Section I.B.2.b. Accordingly, the Court should not exercise specific jurisdiction over their claims.

2. The Court Lacks Specific Jurisdiction Over James's Claims.

Plaintiff Larry C. James is the only Plaintiff whose claim has anything to do with Ohio. The Complaint alleges two sets of relevant allegations. First, that James lives in Ohio, Compl. ¶ 38, that, as "part of [his] investigation, Hoffman and one of his associates traveled to Dayton [and] interviewed [James]," *id.* ¶ 61, that the "interview forms the basis for Hoffman and Sidley's false and defamatory statements about Plaintiff James," *id.* ¶ 62. And second, that the "statements were published in the *New York Times* and on the APA's website to be circulated, viewed, and read nationwide, including by residents of Montgomery County, Ohio," *id.*, that Sidley and Hoffman knew APA was likely to publish the statements, *id.* ¶ 35, and that "Plaintiff

James has suffered harm in Ohio as a result" of the statements," *id.* ¶ 62. Neither set of allegations satisfies *Southern Machine*.[2]

a. The James Interview.

The James interview does not satisfy *Southern Machine*'s purposeful availment requirement or its "arise from" requirement.

Purposeful Availment. For two independent reasons, the James interview did not create the "substantial connection" necessary for purposeful availment. *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a substantial connection with the forum State.").

First, the James interview did not create a substantial connection because the only reason it occurred in Ohio was that James chose to live there and be interviewed there. A defendant's contact with an in-forum plaintiff does not create a substantial connection between the defendant and the forum if the only reason for the contact is that the plaintiff located himself in that forum. *Calphalon Corp. v. Rowlette* illustrates the point. 228 F.3d 718, 723 (6th Cir. 2000). *Calphalon* affirmed a dismissal for lack of personal jurisdiction, finding that the defendant's "phone, mail, and fax contact with [the plaintiff] in [the forum] and [the defendant's] physical visits there" did not create a substantial connection because they "occurred solely because [the plaintiff] chose to be headquartered in Ohio." *Id.*

That same principle applies here. Sidley and Hoffman traveled to Ohio to interview James only because James chose to live there. Sidley and Hoffman did not choose Ohio, James

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[2] There is no need to consider Sidley or Hoffman's contacts with Ohio that are unrelated to this case. Any such contacts cannot satisfy *Southern Machine*'s "arise from" requirement precisely because they are unrelated. 401 F.2d at 381.

did. *Walden*, 134 S. Ct. at 1122 ("[T]he relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State."). If James had preferred to talk on the phone or meet in Chicago or Washington, there is no reason to believe Sidley and Hoffman would have insisted on meeting in Ohio. *See Means v. United States Conference of Catholic Bishops*, 836 F.3d 643, 649-50 (6th Cir. 2016) (affirming dismissal for lack of personal jurisdiction because the only thing that "connect[s] [the defendant] to [the forum] are the actions ... of [a third party] (in being ... in the [forum])."). The interview of James in Ohio is a quintessential example of the "random, fortuitous, or attenuated" contacts the Supreme Court has stressed cannot give rise to specific jurisdiction. *Walden*, 134 S. Ct. at 1123 (quoting *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Second, the James interview was, in the context of this case, too insignificant an event to generate a substantial connection. It was one interview of one person in one city in an investigation that involved "well over 200 interviews of 148 people" in 14 different cities. Report at 6-7. Under these circumstances, holding that Sidley and Hoffman purposefully availed themselves of Ohio would be inconsistent with the many decisions recognizing that single, isolated, in-forum interactions—including interviews—are insufficient to create a substantial connection. *See, e.g., Roth v. Garcia Marquez*, 942 F.2d 617, 621 (9th Cir. 1991) ("[I]t should be borne in mind that 'temporary physical presence' in the forum does not suffice to confer personal jurisdiction."); *Johnston v. Frank E. Basil, Inc.*, 802 F.2d 418, 420 (11th Cir. 1986) (sending agent to Alabama to interview job applicant "does not satisfy the principles espoused by the Supreme Court or the requisites of due process"); *Novak v. NanoLogix, Inc.*, 2014 WL 991119, at *4 (N.D. Cal. Mar. 11, 2014) ("[E]ven if it could be inferred that Mr. Barnhizer entered California with the intent to interview and hire Mr. Novak, that single meeting alone would not

suffice ... ."); *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 (finding jurisdiction because "[w]e are not dealing with a situation in which jurisdiction is premised on a single, isolated transaction"); *AlixPartners, LLP v. Brewington*, 836 F.3d 543, 551 (6th Cir. 2016) (finding jurisdiction where "[t]he facts of this case establish that [the defendant] knowingly created a connection with [the plaintiff's in-forum office] that was intended to be ongoing in nature, as opposed to a one-shot affair") (internal quotation marks and citations omitted).

Arise From. James's claims do not arise out of his interview for two reasons. First, defamation claims "'do[] not arise out of' [any prior] interview but [rather] out of the ensuing publication of the allegedly defamatory remarks." *McNell v. Hugel*, 1994 WL 264200, at *14 (D.N.H. May 16, 1994), *aff'd*, 77 F.3d 460 (1st Cir. 1996). *McNell* granted a defendant's motion to dismiss for lack of personal jurisdiction under circumstances materially identically to those here. The defendant interviewed the plaintiff in the forum and later published allegedly defamatory remarks. *Id.* Here as there, because the later defamation claims do not arise out of the interview, personal jurisdiction is absent.

Second, James's claims do not arise out of the interview because the interview is not an important or material element of proof for any of his claims. The "arise out of" requirement, though "lenient," nonetheless requires "that the cause of action, of whatever type, have a substantial connection with the defendant's in-state activities." *Bird*, 289 F.3d at 875 (internal quotations and citations omitted). To create a substantial connection in this context, "the defendant's in-state conduct must form an important, or at least material, element of proof in the

plaintiff's case." *United Elec. Workers. v. 163 Pleasant Street Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (internal quotations and citation omitted). Here, the Complaint offers only one conclusory sentence on this critical topic: "[The] interview forms the basis for Hoffman and Sidley's false and defamatory statements about Plaintiff James." Compl. ¶ 62. As the Second District Court of Appeals has held, conclusory allegations like this cannot withstand a motion to dismiss. *See, e.g.*, *Sacksteder v. Senney*, 2nd Dist. Montgomery No. 24993, 2012-Ohio-4452, ¶¶ 40-41 ("[T]he rule is not new that unsupported conclusions of a complaint are not ... sufficient to withstand a motion to dismiss") (internal citations and quotation marks omitted) (collecting cases).

b. James's alleged injury in Ohio from allegedly defamatory statements made available to an Ohio audience.

Without the interview, all that remains to James to satisfy *Southern Machine* are allegations that Sidley and Hoffman knew that APA planned to make the the Report available to readers in Ohio and that, when it did, James suffered injury in the state. These allegations cannot satisfy the purposeful availment requirement of *Southern Machine*. To establish purposeful availment based on allegedly defamatory statements and the resulting harm, the plaintiff must show that the defendant intentionally targeted the forum, not just the plaintiff. *Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1120 (6th Cir. 1994) (reversing trial court's denial of motion to dismiss for lack of personal jurisdiction because the defamation plaintiff failed to establish that the defendant intentionally targeted Ohio) (distinguishing *Calder v. Jones*, 465 U.S. 783 (1984)). Here, the allegations are insufficient to show that Sidley and Hoffman intentionally targeted Ohio for three reasons.

First, the complaint alleges that APA—not Sidley and not Hoffman—made the Report available to readers in Ohio. Compl. ¶ 62. This is critical. *Reynolds* reversed the trial court's

finding of purposeful availment because "the defendant *itself* did not publish or circulate the report in Ohio; [others] disseminated the report [in Ohio]." 23 F.3d at 1120 (emphasis added). This makes sense. The question is whether the defendant intentionally targeted the forum (not just the plaintiff). *Walden*, 134 S. Ct. at 1123. If the defendant does not himself publish in the forum, no inference that the defendant intentionally targeted that forum can reasonably be drawn. It makes no difference that Sidley and Hoffman knew APA would "ma[k]e [the report] public." Compl. ¶ 35. "The fact that the [defendant] could foresee that the report would be circulated and have an effect in Ohio is not, in itself, enough to create personal jurisdiction." *Reynolds*, 23 F.3d at 1120.

Second, the inference of intentional targeting necessary to find purposeful availment from defamation arises only if the allegedly defamatory publication is "directed at [forum] readers as distinguished from readers in other states." *Clemens v. McNamee*, 615 F.3d 374, 380 (5th Cir. 2010) (refusing to find purposeful availment because statements were not "directed to [forum] residents any more than residents of any state"); *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) ("[T]hat the [defendants'] websites could be accessed anywhere, including [the forum], does not by itself demonstrate that the [defendants] were intentionally directing their website content to a [forum] audience."). Here, the complaint alleges only that the statements were published in "the *New York Times* and on the APA's website to be circulated, viewed, and read *nationwide*, including by residents of Montgomery County, Ohio." Compl. ¶ 62 (emphasis added). They do not allege that APA or the *New York Times* targeted an Ohio audience specifically, much less that Sidley or Hoffman did.

Even if Sidley and Hoffman had themselves published the report to an audience in Ohio, there would still be no purposeful availment. A finding of purposeful availment based on the

publication of defamatory statements requires that the statements concern Plaintiffs' activities in the forum. *Reynolds*, 23 F.3d at 1120. Again *Reynolds* is on point. It rejected purposeful availment because the allegedly defamatory "press release concerned [the plaintiff's] activities in Monaco, not Ohio." *Id.*; *see also Clemens*, 615 F.3d at 380 (affirming dismissal based on lack of personal jurisdiction because "the statements did not concern activity in [the forum]"); *Cadle Co. v. Schlichtmann*, 123 F. App'x 675, 679 (6th Cir. 2005) (affirming dismissal for lack of personal jurisdiction because, "while the 'content' of the publication was about an Ohio resident, it did not concern that resident's Ohio activities"); *Revell v. Lidov,* 317 F.3d 467, 473 (5th Cir. 2002) (affirming grant of motion to dismiss for lack of personal jurisdiction) ("the article written by [the defendant] contains no reference to [the forum], nor does it refer to the [in-forum] activities of [the plaintiff]"). The Report never says anything about what James—or any other Plaintiff for that matter—did in Ohio.

Ultimately, all James has is his conclusory allegation that he suffered harm in Ohio. This is not enough. Courts, including the Sixth Circuit, routinely refuse to find purposeful availment based solely on the allegation that the defendant defamed a forum-resident and the resident suffered reputational harm in the forum. *Reynolds*, 23 F.3d at 1120 ("The fact that the [defendant] could foresee that the report would be circulated and have an effect in [the forum] is not, in itself, enough to create personal jurisdiction."); *see also Clemens*, 615 F.3d at 380 ("[The plaintiff] points to the harm he suffered in [the forum] and to [the defendant's] knowledge of the likelihood of such damage in the forum. Yet …, [the plaintiff] has not made a prima facie showing that [defendant] made statements in which [the forum] was the focal point … ."); *IMO Indust. v. Kiekert AG*, 155 F.3d 254, 263 (3d Cir. 1998) ("[T]he mere allegation that the plaintiff feels the effect of the defendant's tortious conduct in the forum because the plaintiff is located

there is insufficient … ."); *Young*, 315 F.3d at 262 ("[Plaintiff] argues [for] a finding of jurisdiction in this case simply because the [defendants] posted articles on their Internet websites that discussed the [plaintiff] … and [because the plaintiff] would feel the effects of any libel in [the forum], where he lives and works. [Specific jurisdiction] does not sweep that broadly … ."). Indeed, "[e]ven if the majority of the claimed harm is felt in the forum state, [courts] decline[] to find personal jurisdiction when the statements focus on activities and events outside the forum state." *Herman v. Cataphora, Inc.*, 730 F.3d 460, 465 (5th Cir. 2013).

II. The Court Should Dismiss This Case Under the Doctrine of Forum Non Conveniens.

The doctrine of forum non conveniens "allows a court having proper jurisdiction to dismiss an action when to do so would further the ends of justice and promote the convenience of the parties … ." *Chambers v. Merrell-Dow Pharm., Inc.*, 35 Ohio St. 3d 123, 125-27 (1988) (affirming dismissal based on the doctrine). The analysis in "each case turn[s] on its own facts," and the court must consider "the private interests of the litigants and factors of public interest involving the courts and citizens of the forum." *Id.* "Important private interests include: 'the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; … and all other practical problems that make trial of a case easy, expeditious and inexpensive.'" *Id.* (quoting *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). Relevant public interest factors include "the administrative difficulties and delay to other litigants caused by congested court calendars, the imposition of jury duty upon the citizens of a community which has very little relation to the litigation, a local interest in having localized controversies decided at home, and the appropriateness of litigating a case in a forum familiar with the applicable law." *Id.*

A. Ohio Courts Dismiss Under Forum Non Conveniens if Ohio's Only Connection to the Case is a Resident Party and Another Forum is More Convenient.

Even if the Court were to find personal jurisdiction, it should still dismiss this case under the doctrine of forum non conveniens. The Second District and other Ohio appellate courts have affirmed dismissals under the doctrine 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. *Mitrovich v. Hammer*, 8th Dist. Cuyahoga No. 86211 & 86236, 2005-Ohio-5451, ¶ 2 (affirming forum non conveniens dismissal where all parties resided in Ohio but relevant events occurred in New York); *Watson v. Driver Mgmt., Inc.*, 97 Ohio App. 3d 509, 514 (2d Dist. 1994) (affirming forum non conveniens dismissal of claims brought by Ohio resident because "all the events" occurred in Nebraska). That is exactly the case here. Ohio's only connection to this controversy is that one Plaintiff, James, lives in Dayton. Compl. ¶ 38; *see Watson*, 97 Ohio App. 3d at 514 (affirming dismissal because "the only real argument that the appellant has for Ohio retaining jurisdiction of his case is that he is located here."). Further, the District of Columbia is the more convenient forum. Both the private and public interests at issue here heavily favor the District over Ohio.

B. The Private Factors Favor the District of Columbia Over Ohio.

The private factors weigh in favor of the District of Columbia. The majority of the parties, witnesses, and documents are already there. Plaintiffs Behnke and Dunivin live there, Compl. ¶¶ 40-41, Plaintiff Newman is married to a resident of the District (Plaintiff Dunivin), *id.* ¶ 46, APA is headquartered there, *id.* ¶ 47, and Sidley has an office there. *Chambers*, 35 Ohio St. 3d at 125-27 ("Important private interests include ... the relative ease of access to sources of proof ... ."). The District also hosts APA's files and is almost certainly home to more third-party witnesses than any other state. Most third-party witnesses are affiliated with District-based

organizations like the government and APA. *See* Report at 532-541 (listing witnesses by affiliation). Another factor weighing in the District's favor is that many, perhaps most, of these third-party witness would not be subject to compulsory process in Ohio. *Chambers*, 35 Ohio St. 3d at 125-27 ("availability of compulsory process" is an "important private interest"). On the other side of the scale, Ohio has only James.

C. The Relevant Public Factors Favor the District of Columbia Over Ohio.

A critical public interest factor is "the imposition of jury duty upon the citizens of a community which has very little relation to the litigation." *Id.* This factor weighs heavily against keeping the case in Ohio. Other than being James's home and site of his interview, this case has nothing to do with Ohio. That tenuous link does not justify imposing this case upon this Court and an Ohio jury. This is especially true given the case's scope and complexity. The Complaint is more than 100 pages and comes with more than 80 pages of exhibits, including a list of more than 200 allegedly false statements. Those allegedly false statements come from a 542-page report. That Report has over 2,500 footnotes, more than 7,000 pages of exhibits, and is based on more than 50,000 documents and 200 interviews with 148 different witnesses. There are other witnesses, those who declined Sidley's interview requests, who, now that subpoena-power is available, may also become witnesses in the case. Report at 540-41 (listing those who declined to be interviewed). The imbalance between the burden this litigation will impose and this case's connection to Ohio is conspicuous.

That this Court would need to apply District of Columbia law also weighs in favor of dismissal. *Chambers*, 35 Ohio St. 3d at 125-27 (courts to consider "the appropriateness of litigating a case in a forum familiar with the applicable law."). As argued in Sidley and Hoffman's concurrently filed Special Motion to Dismiss, Ohio's choice of law rules dictate that the District of Columbia's Anti-SLAPP statute, D.C. St. § 16-5502, applies here. That an Anti-

SLAPP statute is implicated is particularly significant because Ohio does not have one. Thus, this Court may be less familiar with the anti-SLAPP law than a District of Columbia court. *See Murray v. Chagrin Valley Publ'g Co.*, 8th Dist. Cuyahoga No. 101394, 2014-Ohio-5442, ¶ 40 ("This case illustrates the need for Ohio to join the majority of states in this country that have enacted [anti-SLAPP] statutes ... .").

Under less compelling circumstances, Ohio courts have not hesitated to dismiss under the doctrine of forum non conveniens. *Mitrovich*, 2005-Ohio-5451 at ¶ 13 ("The only connection to Ohio are the parties involved. Therefore, imposing on an Ohio jury to decide this matter ... weighs against" keeping the case in Ohio); *Commercial Union Ins. Co. v. Great Am. Ins. Co.*, 124 Ohio App. 3d 1, 8 (2d Dist. 1997) ("[W]e believe that the trial court acted properly within its discretion with respect to the ease and expense in procuring witnesses, and in assuring access to proof, and in determining that the burden of empaneling a Miami County jury would be unreasonable [because Ohio has] 'only tenuous links with the underlying facts and circumstances of this action and' is 'further away from witnesses relating to the interpretation of the contract than the alternate forums.'") (quoting trial court opinion).

CONCLUSION

For the foregoing reasons, the Court should dismiss the claims against Sidley and Hoffman for lack of personal jurisdiction or forum non conveniens.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 7th day of April, 2017, I electronically filed the foregoing 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 or U.S. mail the document to the parties not participating in the electronic filing system.

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EXHIBIT 1

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.	:	**[PROPOSED] ORDER GRANTING MOTION OF DEFENDANTS**
DAVID HOFFMAN, *et al.*,	:	**SIDLEY AUSTIN LLP AND DAVID HOFFMAN TO DISMISS**
Defendants.	:	**FOR LACK OF PERSONAL JURISDICTION**
	:	

The Motion of Defendants Sidley Austin LLP and David Hoffman to dismiss for lack of personal jurisdiction is GRANTED. All claims against Sidley and Hoffman are dismissed without prejudice because this Court cannot exercise personal jurisdiction over either Defendant consistent with the Due Process Clause of the Fourteenth Amendment.

General jurisdiction is not available over either Sidley or Hoffman. As to Hoffman, general jurisdiction is inappropriate because Hoffman is not domiciled in Ohio and, according to the Complaint, only entered the state once. *Fern Exposition Servs. LLC v. Lenhof*, 1st Dist. Hamilton No. C-130791, 2014-Ohio-3246 at ¶ 19. As to Sidley, Ohio is neither its principal place of business nor its place of incorporation. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).

Specific jurisdiction is likewise inappropriate. As to the four Plaintiffs who do not reside in Ohio, specific jurisdiction over their claims is inappropriate because they do not allege that their claims arose from anything that Sidley or Hoffman did in Ohio. *Kauffman Racing Equip., L.L.C. v. Roberts*, 126 Ohio St. 3d 81, 87 (2010) (citing *Southern Machine Company v. Mohasco*

Industries, Inc., 401 F.2d 374, 381 (6th Cir. 1968)). As to Plaintiff James and his claims, specific jurisdiction is also unavailable. The Complaint alleges that Sidley and Hoffman interviewed James in Ohio, but that interview is the kind of one-off, fortuitous, attenuated connection that is insufficient to establish personal jurisdiction. *Walden v. Fiore*, 134 S. Ct. 1115, 1123 (2014) (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 475 (1985)). Further, Sidley and Hoffman's role in the publication of the Report does not establish purposeful availment because their actions do not show that they intentionally targeted Ohio. *Reynolds v. Int'l Amateur Athletic Fed'n*, 23 F.3d 1110, 1120 (6th Cir. 1994). The Report does not discuss Plaintiff's Ohio activities and Sidley and Hoffman did not publish it to an Ohio audience. *Id.*

Because the Court is dismissing for lack of personal jurisdiction, Defendant Sidley and Hoffman's alternative motion, for dismissal under the doctrine of forum non conveniens, is DENIED as moot.

IT IS SO ORDERED.

Judge Timothy N. O'Connell

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.	:	**[PROPOSED] ORDER GRANTING MOTION OF DEFENDANTS**
DAVID HOFFMAN, *et al.*,	:	**SIDLEY AUSTIN LLP AND DAVID HOFFMAN TO DISMISS**
Defendants.	:	**FOR FORUM NON CONVENIENS**
	:	

The Motion of Defendants Sidley Austin LLP and David Hoffman to dismiss for lack of personal jurisdiction is DENIED. The motion to dismiss under the doctrine of forum non conveniens is GRANTED. All claims are dismissed without prejudice to refiling in Washington, D.C.

The application of forum non conveniens is appropriate here because an alternative forum, Washington, D.C., presents a more convenient option and Ohio's only connection to this controversy is that one party, Plaintiff James, lives here. *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). Moreover, the Court finds that imposing the burden of resolving this substantial matter on an Ohio Court and an Ohio jury is not justified given the case's and the parties' limited contacts with the state and the necessity of applying Washington,

D.C.'s unique Anti-SLAPP law.

IT IS SO ORDERED.

Judge Timothy N. O'Connell

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