

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

1 JOHN MASON - State Bar No. 51116
jmason@glaserweil.com
2 PATRICIA L. GLASER - State Bar No. 55688
pglaser@glaserweil.com
3 ADAM LEBERTHON - State Bar No. 145226
aleberthon@glaserweil.com
4 LISA M. ZEPEDA – State Bar No. 231125
lzepeda@glaserweil.com
5 GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
6 10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
7 Telephone: (310) 553-3000
Facsimile: (310) 556-2920
8

9 Attorneys for Plaintiff Zhang Ziyi

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 ZHANG ZIYI, an individual,

14
15 Plaintiff,

16 v.

17
18 CHINA FREE PRESS, INC., a North
Carolina non-profit corporation doing
19 business as BOXUN NEWS; WEICAN
NULL MENG, an individual also known
20 as WATSON MENG and also known as
WEICAN “WATSON” MENG; DOES 1-
21 25, inclusive,

22 Defendants.
23
24
25
26
27
28

CASE NO.: cv 12-5216-DMG (PLAx)

**OPPOSITION OF PLAINTIFF
ZHANG ZIYI TO DEFENDANT
WEICAN NULL MENG’S MOTION
TO DISMISS COMPLAINT FOR
LACK OF PERSONAL
JURISDICTION PURSUANT TO
RULE 12(B)(2)**

**[Declarations of Zhang Ziyi, Ling
Lucas, Michael Parks, Stanton L.
Stein, and Adam LeBerthon Filed
Concurrently Herewith]**

Date: January 25, 2013
Time: 9:30 a.m.
Courtroom: 7

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND 4

III. ARGUMENT 7

 A. Meng Has Waived Any Right to Challenge Personal Jurisdiction
 And/Or Venue. 7

 B. This Court May Exercise Personal Jurisdiction Over Meng. 8

 C. By Publishing The Defamatory Articles in California, Meng
 Purposefully Directed His Conduct In the Forum. 11

 1. Meng Committed An Intentional Act By Publishing The
 Defamatory Articles..... 12

 2. Meng’s Acts Were Expressly Aimed At California. 13

 3. Plaintiff’s Harm Was Likely To Be Suffered In California. 14

 D. Plaintiff’s Lawsuit Arises Out Of Meng’s Forum-Related
 Activities. 15

 E. Meng Has Have Failed To Satisfy His Burden To Present A
 Compelling Case That the Exercise of Jurisdiction Would Not Be
 Reasonable. 16

 1. Defendant Has Purposefully Interjected Himself In
 California By Publishing The Defamatory Articles Here. 17

 2. Meng Cannot Show That He Would Be Unduly Burdened
 By Defending This Action In California. 17

 3. California Has A Greater An Interest In Adjudicating This
 Dispute 18

IV. CONCLUSION 19

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Brayton Purcell LLP v. Recordon & Recordon,
606 F.3d 1124 (9th Cir. 2010) 8

Calder v. Jones,
465 U.S. 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984)..... 12, 13, 15

Corporate Inv. Bus. Brokers v. Melcher,
824 F.2d 786 (9th Cir. 1987) 17

CYBERsitter, LLC v. P.R.C.,
805 F. Supp. 2d 958 (C.D. Cal. 2011) 2, 3, 8, 9, 12, 13, 14, 15, 16, 17

Gator.com Corp. v. L.L. Bean, Inc.,
366 F.3d 789 (9th Cir. 2004) 10

Gator.com Corp. v. L.L. Bean, Inc.,
398 F.3d 1125 (9th Cir. 2005) 10

Gator.com v. L.L. Bean, Inc.,
341 F.3d 1072 (9th Cir. 2003) 10

Honor Plastic Indus. Co. v. Silverstein v. E360 Insight, LLC,
2007 U.S. Dist. LEXIS 57695, 7 (C.D. Cal. Aug. 6, 2007)..... 10

Int’l Shoe Co. v. Washington,
326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945)..... 9

Mavrix Photo, Inc. v. Brand Techs., Inc.,
647 F.3d 1218 (9th Cir. 2011) 14, 15

Panavision Int’l, L.P. v. Toebben,
141 F.3d 1316 (9th Cir. 1998) 11

Panavision Int’l, L.P. v. Toebben,
938 F. Supp. 616 (C.D. Cal. 1996), *aff’d*, 141 F.3d 1316 (9th Cir. 1998) .. 13, 14, 15

Rio Props., Inc. v. Rio Int’l Interlink,
284 F.3d 1007 (9th Cir. 2002) 8, 12, 14, 15

Zippo Mfg. Co. v. Zippo DOT Com, Inc.,
952 F. Supp. 1119 (W.D. Pa. 1997)..... 10

STATE STATUTES

Cal. Bus. & Prof. Code §§ 17200, *et seq.*..... 6

Cal. Code Civ. P. § 410.10 8

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

OTHER AUTHORITIES

Joint Report of Fed. R. Civ. P. 26(f) Conference, Document No. 22, filed on
8/17/12, p. 4:1-20 6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

1 **I. INTRODUCTION**

2 Plaintiff Zhang Ziyi (“Plaintiff”), a well-respected and highly acclaimed
3 international motion picture actress, brings this defamation action in order to restore
4 her reputation and to vindicate her right not to be falsely accused of being a
5 prostitute, which is a crime in California, where Plaintiff regularly conducts business
6 in the entertainment industry. Defendants China Free Press, Inc. (“CFP”), doing
7 business as Boxun News, and Weican Null Meng (“Meng”) (collectively,
8 “Defendants”) have repeatedly published defamatory statements in articles on their
9 website, Boxun News, an online internet newspaper (the “Articles”). The Articles
10 allege that Plaintiff has earned over \$110 million for having sexual relations with
11 Chinese government officials and others. By publishing the Articles, Defendants’
12 misconduct was intentionally aimed at Plaintiff (a movie star and celebrity) in
13 California, the center of the entertainment industry. Defendants’ actions were also
14 targeted at Plaintiff in California. In that regard, Defendants knew that the forum
15 state has a substantial Chinese population (which, as Meng admits, is the “intended
16 audience” of the Boxun News website), and is home to a significant Boxun News
17 website user base and readership. Due to their actions in California, Defendants
18 could have reasonably anticipated defending a lawsuit in connection with the Articles
19 here in California. For these reasons, as well as those demonstrated below, this Court
20 may exercise personal jurisdiction over Defendants.

21 As a preliminary matter, Meng has waived any right to challenge personal
22 jurisdiction and/or venue. In the instant case, Meng has filed a Motion for Order
23 Requiring Plaintiff to Post an Undertaking Pursuant to California Code of Civil
24 Procedure section 1030 (the “Bond Motion”), as well as a Motion to Strike under
25 California Code of Civil Procedure section 425.16 (the “Motion to Strike”). By filing
26 these motions, which request relief from this Court under California state law on the
27 presumption that the Court has authority to hear the underlying action, Meng has
28 submitted to the jurisdiction of this Court and made a general appearance here. *See*

1 *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (“An appearance ordinarily is an
2 overt act by which the party comes into court and submits to the jurisdiction of the
3 court. This is an affirmative act involving knowledge of the suit and an intention to
4 appear.”) Notably, “[n]othing in the Federal Rules of Civil Procedure requires a
5 plaintiff to post a security for defendants’ costs and attorney’s fees.” *Susilo v. Wells*
6 *Fargo Bank, N.A.*, 2012 U.S. Dist. LEXIS 166638 (C.D. Cal. Nov. 19, 2012)
7 (denying bond motion). By filing the Bond Motion and the Motion to Strike, Meng
8 seeks to potentially benefit from California statutes, which require this Court to
9 evaluate the merits of the case. Thus, Meng has waived any defense based on lack of
10 personal jurisdiction and/or improper venue by filing these additional Motions and,
11 therefore, submitting to the jurisdiction of this Court. *See Benny*, 799 F.2d at 492.
12 Meng’s Motion to Dismiss the Complaint for Lack of Personal Jurisdiction Pursuant
13 to Federal Rule of Civil Procedure 12(b)(6) (the “Motion to Dismiss”) should be
14 denied for this reason alone.

15 Furthermore, in his Motion to Strike, Meng fundamentally mischaracterizes the
16 Boxun News website as an “informational and passive website.” (Motion, p. 26:11-
17 14.) Contrary to Meng’s contention, the Boxun News website does not merely post
18 information on its website. Rather, the Boxun News website allows users to post
19 their own comments and information on the website, hosts forums for discussion,
20 allows users to rate the information and articles posted on the website, and even
21 allows users to make monetary contributions to Boxun News through the website. In
22 that regard, Meng concedes that the website “has some level of activity due to its
23 forums.” (Motion, p. 17:5-6.) Thus, the Boxun News website actually functions as
24 an interactive website—not a passive website, as Meng contends.

25 To determine whether a district court can exercise specific personal jurisdiction
26 over a nonresident defendant, the Ninth Circuit applies a three-part test.
27 *CYBERSitter, LLC v. P.R.C.*, 805 F. Supp. 2d 958, 967 (C.D. Cal. 2011). First, “[t]he
28 nonresident defendant must purposefully direct his activities or consummate some

1 transaction with the forum or resident thereof; or perform some act by which he
2 purposefully avails himself of the privilege of conducting activities in the forum,
3 thereby invoking the benefits and protections of its laws.” *Id.* Second, “the claim
4 must be one which arises out of or relates to the defendant’s forum-related activities.”
5 *Id.* Third, “the exercise of jurisdiction must comport with fair play and substantial
6 justice, *i.e.* it must be reasonable.” Although the plaintiff bears the burden of
7 satisfying the first two prongs of the test, “the burden then shifts to the defendant to
8 ‘present a compelling case’ that the exercise of jurisdiction would not be reasonable.”
9 *Id.*

10 Under the first prong, also known as the “purposeful availment” requirement,
11 the Ninth Circuit “evaluates purposeful direction using the three-part ‘*Calder-effects*’
12 test.” *Id.* at 968. Under this test, the defendant allegedly must have: (1) committed
13 an intentional act; (2) expressly aimed at the forum state; and (3) causing harm that
14 the defendant knows is likely to be suffered in the forum state. *Id.* Each of the three
15 requirements under the *Calder-effects* test have been met here. First, it is clear that
16 Defendants committed an intentional act by publishing the defamatory statements in
17 the Articles. Second, Defendants’ misconduct was expressly aimed at the forum
18 state. California is undisputedly the “world-wide center of the entertainment
19 industry.” (Complaint, ¶ 1.) Defendants aimed their conduct at Plaintiff, knowing
20 that she regularly conducts business in the entertainment industry and maintains a
21 business office in California. (*Id.*) Moreover, Defendants targeted their conduct at
22 Plaintiff in California, the home to a significant Chinese-American population, which
23 Meng admits is the “intended audience” of the Boxun News website. (Motion, p.
24 20:14-16.) Third, it was entirely foreseeable that Plaintiff would be harmed by the
25 Articles in California, due to Plaintiff’s involvement in the entertainment industry
26 here and the substantial Boxun News website user population which resides in
27 California.

28 With respect to the second requirement, Plaintiff’s defamation action arises out

1 of Defendants’ forum-related activities. The allegations in the Complaint
 2 demonstrate that “but for” the defamatory statements in the Articles, Plaintiff would
 3 not have “suffered loss of her reputation, shame, mortification, and hurt feelings,” her
 4 business relationships with third parties would not have been disrupted, and the
 5 goodwill associated with Plaintiff and the products and brands she endorses would
 6 not have been reduced. (*See e.g.* Complaint, ¶¶ 23, 36, 46.)

7 As to the third requirement, Meng has failed to meet his burden to present a
 8 compelling case that the exercise of jurisdiction in California would be unreasonable.
 9 In that regard, Meng contends that he should not be forced to defend a lawsuit here
 10 simply because he is a North Carolina resident. Meng’s contention should be
 11 rejected. The instant action involves witnesses located around the world. Thus,
 12 whether the case is litigated in California or North Carolina (as Meng contends), the
 13 parties and witnesses will necessarily incur costs and other non-financial burdens
 14 associated with travel. Notably, Meng’s own counsel is not located in North Carolina
 15 and both Meng and Plaintiff’s counsel had to travel to Meng’s counsel’s office in Las
 16 Vegas, Nevada for both his recent deposition and that of one of his designated experts
 17 in this case. Indeed, Meng’s burden would not be disproportionate to anyone else’s
 18 burden here if this case is litigated in California. Moreover, California clearly has a
 19 greater interest in adjudicating this dispute than North Carolina since it is home to
 20 both the entertainment industry, where Plaintiff conducts business, and a substantial
 21 Chinese American population, which is the intended audience of the Boxun News
 22 website. Thus, Meng has failed to present any compelling case that the exercise of
 23 jurisdiction in California would not be reasonable.

24 **II. FACTUAL BACKGROUND**

25 On or about May 28, 2012, Defendants published an article on the Boxun
 26 News website that provided extensive details of payments allegedly made to Plaintiff
 27 for having sexual relations with a former Chinese official, a Chinese billionaire, and
 28 unnamed “other senior officials” in China. (Complaint, ¶ 10, Exhibit A.) These

1 statements were all false and defamatory. As set forth in the Complaint, as well as in
2 the declarations of Zhang Ziyi (“Zhang Decl.”) and Ling Lucas (“Lucas Decl.”) filed
3 concurrently herewith, the statements about Plaintiff are false. (Complaint, ¶ 15;
4 Zhang Decl., ¶¶ 6 & 8; Lucas Decl., ¶ 5.)

5 On or about May 30, 2012, Defendants published another article on the Boxun
6 News website that allegedly “confirmed” that Plaintiff had a “sexual relationship”
7 with a former Chinese official and wrongfully stated that she was being questioned
8 by Chinese authorities who had banned her from leaving mainland China.
9 (Complaint, ¶ 11, Exhibit B.) These statements were also false and defamatory.

10 On or about June 3, 2012, Defendants published yet another article on the
11 Boxun News website, threatening to retaliate against Plaintiff if she attempted to
12 defend herself against the false and malicious accusations. For example and without
13 limitation, Defendants stated that “if [Plaintiff] continues to act, [they] will continue
14 to massively disclose the details of the dates she had with several billionaires.”
15 (Complaint, ¶ 12, Exhibit C.)

16 In connection with the aforementioned three articles, dated May 28, May 30
17 and June 3, 2012 (collectively, the “Articles”), it is undisputed that Defendants never
18 contacted Plaintiff before publishing the libelous statements. (Complaint, ¶ 16.)
19 Furthermore, the Articles never disclosed the source of any of the libelous statements
20 about Plaintiff. (*Id.*) Instead, the Articles were published anonymously and
21 attributed to unnamed sources such as “intelligence” and “different sources of
22 information.” (*Id.*)

23 Following their publication, the Articles were picked up and promptly
24 republished by other media outlets around the world, including but not limited to
25 Apple Daily (Hong Kong), Apple Daily (Taiwan), Next Magazine, AsiaOne, Yahoo!
26 Hong Kong, Yahoo! Taiwan, CNN, Variety, Entertainment Television, The
27 Huffington Post, and countless others. (*Id.* at 14.)

28

1 On or about June 6, 2012, Plaintiff’s counsel served Defendants with a letter
2 specifically notifying them that the Articles contained false statements. (*Id.* at ¶ 18,
3 Exhibit D.) The letter also demanded, among other things, that Defendants remove
4 the Articles from the Boxun News website, publish a full and complete retraction,
5 and apologize for the harm they caused Plaintiff. (*Id.*) Notwithstanding the June 6,
6 2012 letter, Defendants failed and refused to retract the defamatory statements
7 contained in the Articles. (*Id.*) Instead, in response to Plaintiff’s demand, counsel
8 for Defendants issued a letter dated June 6, 2012, denying that the Articles contained
9 any “defamatory words” about Plaintiff and saying that Boxun News “merely
10 published what it believed to be true.” (*Id.* at ¶ 18, Exhibit E.) In addition,
11 Defendants published on the Boxun News website, yet another article which is
12 substantially similar to the letter issued by Defendants’ counsel stating that the
13 defamatory statements contained in the Articles are “believed to be true.” (*Id.* at ¶ 18,
14 Exhibit F.)

15 On or about June 14, 2012, Plaintiff filed the operative complaint, which
16 contains five causes of action against Defendants for: (1) libel per se; (2) false light
17 invasion of privacy; (3) intentional interference with prospective economic
18 advantage; (4) negligent interference with prospective economic advantage; and
19 (5) unlawful business practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.*

20 In connection with this litigation, Defendants have refused to reveal the
21 identities of their “confidential sources,” and instead, contend that such sources are
22 entitled to blanket anonymity. Plaintiffs, however, have offered to enter into an
23 appropriate protective order in an effort to assuage Defendants’ concerns about
24 confidentiality, but Defendants continue to refuse to disclose the identity of these
25 witnesses. *See* Joint Report of Fed. R. Civ. P. 26(f) Conference, Doc. No. 22, filed
26 on August 17, 2012, p. 4:1-20; *see also* Declaration of Adam LeBerthon (“LeBerthon
27 Decl.”), ¶ 3; Exhibit B, Deposition of Weican “Watson” Null Meng, dated October
28 17, 2012, pp. 22:5-25:9).

1 **III. ARGUMENT**

2 **A. Meng Has Waived Any Right to Challenge Personal Jurisdiction**
 3 **And/Or Venue.**

4 As a threshold matter, Meng has waived any right to challenge personal
 5 jurisdiction and/or venue and, therefore, his Motion to Dismiss for lack of personal
 6 jurisdiction should be denied. As discussed above, Meng has filed both a Bond
 7 Motion and a Motion to Strike in this lawsuit. These motions request relief from *this*
 8 *Court* under *California law* which acknowledges that *this Court* has authority to hear
 9 the underlying action. *See Benny*, 799 F.2d at 492 (“An appearance ordinarily is an
 10 overt act by which the party comes into court and submits to the jurisdiction of the
 11 court. This is an affirmative act involving knowledge of the suit and an intention to
 12 appear.”) “Nothing in the Federal Rules of Civil Procedure requires a plaintiff to post
 13 a security for defendants’ costs and attorney’s fees.” *Susilo*, 2012 U.S. Dist. LEXIS
 14 at *1 (denying bond motion). “Although district courts often look to state practice to
 15 determine whether it is appropriate to require plaintiff to post a security, *there is no*
 16 *requirement that federal courts do so.*” *Id.* at *2 (emphasis added). The Ninth
 17 Circuit has explained that a court considering whether to require a plaintiff to post an
 18 undertaking must balance “(i) the degree of probability/improbability of success on
 19 the merits, and the background and purpose of the suit; (ii) the reasonable extent of
 20 the security to be posted, if any, viewed from the defendant’s perspective; and (iii)
 21 the reasonable extent of the security to be posted, if any, viewed from the
 22 nondomiciliary plaintiff’s perspective.” *Id.* at 576. Any bond required must be “fair
 23 in the light not only of the case itself and of the exigencies faced by the defendant,
 24 but also fair when illuminated by the actual financial situation of the plaintiff.” *Id.*
 25 By filing the Bond Motion and Motion to Strike, Meng seeks to benefit from
 26 California statutes, which require this Court to evaluate the merits of the case. Thus,
 27 Meng has waived any defense based on lack of personal jurisdiction and/or improper
 28 venue by filing the Bond Motion and, therefore, submitting to the jurisdiction of this

1 Court. *See Benny*, 799 F.2d at 492. Meng’s Motion to Dismiss should be denied for
 2 this reason alone.

3 **B. This Court May Exercise Personal Jurisdiction Over Meng.**

4 Contrary to Plaintiffs’ contention, this Court may exercise personal jurisdiction
 5 over Meng. In connection with a motion to dismiss for lack of personal jurisdiction,
 6 “the plaintiff need only make a prima facie showing of jurisdictional facts to
 7 withstand the motion to dismiss.” *Brayton Purcell LLP v. Recordon & Recordon*,
 8 606 F.3d 1124, 1127 (9th Cir. 2010); *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d
 9 1007, 1019 (9th Cir. 2002) (“*Rio*”). The “uncontroverted allegations in [the
 10 plaintiff’s] complaint must be taken as true, and conflicts between the facts contained
 11 in the parties’ affidavits must be resolved in [the plaintiff’s] favor.” *Rio*, 284 F.3d at
 12 1019. In other words, “for the purpose of this prima facie demonstration, the court
 13 resolves all disputed facts in favor of the plaintiff.” *CYBERSitter, LLC v. P.R.C.*, 805
 14 F. Supp. 2d 958, 967 (C.D. Cal. 2011) (“*CYBERSitter*”) (quoting *Pebble Beach Co. v.*
 15 *Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)).

16 “In evaluating the appropriateness of personal jurisdiction over a nonresident
 17 defendant, [courts] ordinarily examine whether such jurisdiction satisfies the
 18 ‘requirements of the applicable state long-arm statute’ and ‘comports with federal due
 19 process.’” *CYBERSitter*, 805 F. Supp. at 967 (citing *Bauman v. DaimlerChrysler*
 20 *Corp.*, 644 F.3d 909, 2011 U.S. App. LEXIS 10010, 2011 WL 1879210, at *7 (9th
 21 Cir. May 18, 2011)). California permits the exercise of personal jurisdiction to the
 22 full extent permitted by due process. Thus, courts need only determine whether
 23 jurisdiction over a defendant comports with due process.” *Id.*; *see* Cal. Code Civ. P.
 24 § 410.10 (“A court of this state may exercise jurisdiction on any basis not
 25 inconsistent with the Constitution of this state or of the United States.”). For due
 26 process to be satisfied, a defendant, if not present in the forum, must have “minimum
 27 contacts’ with the forum state such that the assertion of jurisdiction “does not offend
 28

1 traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*,
 2 326 U.S. 310, 315, 66 S. Ct. 154, 90 L. Ed. 95 (1945)).

3 There are two types of personal jurisdiction—general and specific.
 4 *CYBERSitter*, 805 F. Supp. at 967 (citing *Ziegler v. Indian River Cnty.*, 64 F.3d 470,
 5 473 (9th Cir. 1995)). “Specific jurisdiction is only relevant if the defendant’s
 6 ‘contacts with the forum give rise to the cause of action before the court.’” *Id.*
 7 (quoting *Bauman*, 2011 U.S. App. LEXIS 10010, 2011 WL 1879210 at *7. “By
 8 contrast, ‘when the cause of action does not arise out of or relate to the foreign
 9 corporation’s activities in the forum State,’ the State is exercising ‘general
 10 jurisdiction over the defendant.’” *Id.* (quoting *Helicopteros Nacionales de Colombia*,
 11 *S.A. v. Hall*, 466 U.S. 408, 414, 415 n.9, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984)).

12 In his Motion to Dismiss, Meng contends that this Court lacks either general or
 13 specific jurisdiction over him. Meng’s contention is without any legal or factual
 14 basis. As demonstrated below, Defendants’ actions, by intentionally publishing the
 15 defamatory statements in the Articles on the Boxun News website, give this Court
 16 specific jurisdiction over Defendants.

17 As a preliminary matter, Meng fundamentally mischaracterizes the Boxun
 18 News website as an “informational and passive website.” (Motion, p. 26:11-14.)
 19 Contrary to Meng’s contention, the Boxun News website does not simply post
 20 information on its website. Rather, the Boxun News website is interactive – it allows
 21 users to post their own comments and information, hosts forums for discussion, and
 22 allows users to rate the information and articles posted on the website. Indeed, Meng
 23 even admits that the website “does have some level of activity due to its forums.”
 24 (Motion, p. 17:5-6.) Moreover, the Boxun News website is set up to accept monetary
 25 donations from users through PayPal, Inc. (a subsidiary of eBay, Inc.), which is based
 26 in San Jose, California. (*See LeBerthon Decl.*, ¶ 3, Exhibit B, p. 12:4-22) According
 27 to Meng, the Boxun News website has even received donations from several
 28 California residents. (*LeBerthon Decl.*, ¶ 3, Exhibit B, Exhibit 26.)

1 Meng's reliance on *Zippo Mfg. Co. v. Zippo DOT Com, Inc.*, 952 F. Supp.
2 1119 (W.D. Pa. 1997) ("*Zippo*") is misplaced. As demonstrated above, the Boxun
3 News website is not a "passive website that does little more than make information
4 available to those who are interested in it." (Motion, p. 12:11-21). Rather, the Boxun
5 News website is an interactive website where users can exchange information, engage
6 in forum discussions, and provide commentary and make donations. Moreover, the
7 Court in *Zippo* determined that the defendant was an interactive website, like the one
8 at issue here. The Court therefore denied defendant's motion to dismiss for lack of
9 personal jurisdiction, holding that it had personal jurisdiction over the defendant.
10 Accordingly, *Zippo* fails to support Meng's position and in fact supports the exercise
11 of personal jurisdiction in this case.

12 In his Motion to Dismiss, Meng also relies on *Gator.com v. L.L. Bean, Inc.*,
13 341 F.3d 1072, 1079 (9th Cir. 2003) ("*Gator.com*") extensively to suggest that,
14 among other things, "[n]o court has exercised general personal jurisdiction over a
15 defendant based solely on that defendant's Internet presence in the forum state."
16 (Motion, p. 14:22-23). Plaintiff's reliance on *Gator.com* is improper. In *Gator.com*,
17 the Ninth Circuit agreed to rehear the case *en banc*, and vacated the decision
18 erroneously relied upon by Meng. *Gator.com Corp. v. L.L. Bean, Inc.*, 366 F.3d 789
19 (9th Cir. 2004). The parties subsequently informed the Ninth Circuit that they had
20 reached a settlement agreement, which led the *en banc* majority to find the appeal to
21 be moot and state that "we must await another opportunity to resolve the important
22 issues of personal jurisdiction originally raised by this appeal" because the panel
23 decision "no longer has the force of law." *See Gator.com Corp. v. L.L. Bean, Inc.*,
24 398 F.3d 1125, 1143 (9th Cir. 2005). Thus, *Gator.com Corp. v. L.L. Bean, Inc.*, 341
25 F.3d 1072 (9th Cir. 2003), is not precedent and is not binding this Court. *See Honor*
26 *Plastic Indus. Co. v. Silverstein v. E360 Insight, LLC*, 2007 U.S. Dist. LEXIS 57695,
27 7-9 (C.D. Cal. Aug. 6, 2007) (holding that *Gator.com* is not precedent and may not be
28 relied upon as authority binding on the district court).

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

1 As demonstrated below, this Court may exercise specific personal jurisdiction
2 over Meng.¹ The Ninth Circuit applies a three-part test to determine whether a
3 district court can exercise specific personal jurisdiction over a nonresident defendant:

- 4 1. The nonresident defendant must purposefully direct his
- 5 activities or consummate some transaction with the
- 6 forum or resident thereof; or perform some act by which
- 7 he purposefully avails himself of the privilege of
- 8 conducting activities in the forum, thereby invoking the
- 9 benefits and protections of its laws;
- 10 2. The claim must be one which arises out of or relates to
- 11 the defendant’s forum-related activities; and
- 12 3. The exercise of jurisdiction must comport with fair play
- 13 and substantial justice, i.e. it must be reasonable.

14 *CYBERSitter, LLC v. P.R.C.*, 805 F. Supp. 2d at 967 (citing *Schwarzenegger v. Fred*
15 *Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)).

16 The plaintiff bears the burden of satisfying the first two prongs of the test. *Id.*
17 “If the plaintiff succeeds in satisfying both of the first two prongs, the burden then
18 shifts to the defendant to ‘present a compelling case’ that the exercise of jurisdiction
19 would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S.
20 462, 477, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985)).

21 **C. By Publishing The Defamatory Articles in California, Meng**
22 **Purposefully Directed His Conduct In the Forum.**

23 The purposeful availment requirement “ensures that a nonresident defendant
24 will not be haled into court based upon ‘random, fortuitous or attenuated’ contacts
25 with the forum state.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th
26 Cir. 1998) (quoting *Burger King*, 471 U.S. at 475). The phrase “purposeful
27

28 ¹ Defendant CFP has not challenged personal jurisdiction.

1 availment” includes both purposeful availment and purposeful direction, which are
 2 distinct concepts. *CYBERSitter*, 805 F. Supp. at 968. While a purposeful availment
 3 analysis is used in suits sounding in contract, a purposeful direction analysis is used
 4 in suits sounding in tort. *Id.* The instant lawsuit involves causes of action for libel
 5 *per se*, false light invasion of privacy, intentional interference with prospective
 6 economic advantage, negligent interference with prospective economic advantage,
 7 and unlawful business practices. Accordingly, the instant action is a tort action and
 8 “[p]urposeful direction is therefore the proper analytical framework in this case.” *See*
 9 *id.*

10 The Ninth Circuit “evaluates purposeful direction using the three-part ‘*Calder-*
 11 *effects*’ test, taken from the Supreme Court’s decision in *Calder v. Jones*, 465 U.S.
 12 783, 104 S. Ct. 1482, 79 L. Ed. 2d 804 (1984).” *Id.* “Under this test, ‘the defendant
 13 allegedly must have (1) committed an intentional act, (2) expressly aimed at the
 14 forum state, (3) causing harm that the defendant knows is likely to be suffered in the
 15 forum state.’” *Id.* (quoting *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
 16 *L’Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc)).

17 **1. Meng Committed An Intentional Act By Publishing The**
 18 **Defamatory Articles.**

19 Courts “construe ‘intent’ in the context of the ‘intentional act’ test as referring
 20 to an intent to perform an actual, physical act in the real world, rather than an intent
 21 to accomplish a result or consequence of that act.” *CYBERSitter*, 805 F. Supp. at 969
 22 (citing *Schwarzenegger*, 374 F.3d at 806). In the instant case, Plaintiff clearly
 23 satisfies the intentional act requirement. As a matter of law, by publishing the
 24 defamatory statements in the Articles, the Defendants acted intentionally. *See e.g.*,
 25 *Rio Props.*, 284 F.3d at 1020 (concluding that operating a passive website was an
 26 intentional act); *see also Schwarzenegger*, 374 F.3d at 806 (holding that placing a
 27 newspaper advertisement was an intentional act).
 28

1 **2. Meng’s Acts Were Expressly Aimed At California.**

2 As the Ninth Circuit has recognized, “*Calder* stands for the proposition that
3 purposeful availment is satisfied even by a defendant whose only ‘contact’ with the
4 forum state is the ‘purposeful direction’ of a foreign act having effect in the forum
5 state.” *CYBERSitter*, 805 F. Supp. at 970 (quoting *Dole Food Co., Inc. v. Watts*, 303
6 F.3d at 1104, 1111 (9th Cir. 2007)). In *Calder*, the Supreme Court held that
7 defendants’ actions were “expressly aimed at California” because defendants wrote
8 and edited an article “that they knew would have a potentially devastating impact
9 upon [plaintiff]” and “they knew the brunt of that injury would be felt by [plaintiff] in
10 the State in which she lives and works and in which the *National Enquirer* has its
11 largest circulation.” *Calder*, 465 U.S. at 789-90. Under those circumstances, the
12 Supreme Court held that defendants must “reasonably anticipate being haled into
13 court there.” *Id.* at 790 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S.
14 286, 297, 100 S. Ct. 559, 62 L. Ed. 2d 490 (1980)).

15 Similarly, in *Panavision Int’l, L.P. v. Toeppen*, 938 F. Supp. 616, 621-22 (C.D.
16 Cal. 1996), *aff’d*, 141 F.3d 1316 (9th Cir. 1998), the Court determined that defendant,
17 an Illinois resident, “has harmed Panavision, the brunt of which Panavision has borne
18 in California, which [defendant] knew would likely happen because Panavision’s
19 principal place of business and *the heart of the theatrical motion picture and*
20 *television camera and photographic equipment business are in California.*” *Id.*
21 (emphasis added). Accordingly, the Court held that “[j]urisdiction is proper because
22 [defendant’s] out of state conduct was intended to, and did, result in harmful effects
23 in California. Panavision should not now be forced to go to Illinois to litigate its
24 claims.” *Id.*

25 In the instant case, Meng aimed his conduct at Plaintiff—a movie star and
26 celebrity—knowing that she regularly conducts business in the entertainment industry
27 and maintains a business office in California. (Complaint, ¶ 1.) The Complaint
28 specifically alleges, and Meng does not dispute, that “as a world-wide center of the

1 entertainment industry, much of the business conducted by Plaintiff around the world
2 is handled in Los Angeles.” (*Id.*)

3 Meng also aimed his conduct at Plaintiff in California, the home to a
4 significant Chinese-American population, which Meng admits is the “intended
5 audience” of the Boxun News website. (Motion, p. 20:14-16.) In that regard, the
6 Complaint alleges that “Boxun News is an international publication targeted towards
7 Chinese readers around the world, including readers located in the State of
8 California.” (Complaint, ¶ 3.) Moreover, the Complaint alleges that “[t]he Articles
9 were seen and read by countless persons around the world and in Los Angeles,
10 California, which is the world-wide center of the entertainment industry.” (*Id.* at ¶
11 21.) Although Meng argues that “California has no presence among the top 10 cities
12 to view Boxun,” the evidence demonstrates that, during an approximately four-month
13 period in 2012, the Boxun News website was visited and/or viewed by approximately
14 285,000 people in California. (Motion, p. 15:15-16; LeBerthon Decl., ¶ 2, Exh. A.)
15 In contrast, the Boxun News website was only viewed by approximately 85,000
16 people in North Carolina. (*Id.*) Thus, Defendants’ actions were intentional, tortious,
17 and aimed at Plaintiff in California. *See Panavision*, 938 F. Supp. at 621-22 (C.D.
18 Cal. 1996); *see also Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230-32
19 (9th Cir. 2011) (“*Mavrix*”).

20 **3. Plaintiff’s Harm Was Likely To Be Suffered In California.**

21 To satisfy the third part of the *Calder*-effects test, “the ‘brunt’ of the harm need
22 not be suffered in the forum state,” but only “a jurisdictionally sufficient amount of
23 harm.” *CYBERSitter*, 805 F. Supp. 2d at 973 (quoting *Yahoo! Inc.*, 433 F.3d at 1207)
24 “This element is satisfied when defendant’s intentional act has ‘foreseeable effects’ in
25 the forum.” *Id.* (quoting *Brayton*, 606 F.3d at 1131).

26 In *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1012 (9th Cir. 2002)
27 (“*Rio*”), for example, the defendant was the operator of a passive website that “allows
28 customers throughout the United States and the world to place wagers on sporting

1 events.” Despite Meng’s argument that operating a passive website cannot confer
 2 personal jurisdiction, the Court in *Rio Props* specifically recognized that “operating
 3 even a passive website in conjunction with ‘something more’--conduct directly
 4 targeting the forum--is sufficient to confer personal jurisdiction.” *Id.* at 1020. The
 5 Court concluded that the purposeful availment requirement for the exercise of
 6 personal jurisdiction was satisfied because, among other things, defendant
 7 “knowingly injured [plaintiff] in Nevada its principal place of business and *the*
 8 *capital of the gambling industry.*” *Id.* at 1020 (emphasis added).

9 In the instant case, Meng knowingly injured Plaintiff in California, the capital
 10 of the entertainment industry. The Complaint specifically alleges that “as a world-
 11 wide center of the entertainment industry, much of the business conducted by
 12 Plaintiff around the world is handled in Los Angeles.” (Complaint, ¶ 1.) The
 13 Complaint also alleges that “[t]he Articles were seen and read by countless persons
 14 around the world and in Los Angeles, California, which is the world-wide center of
 15 the entertainment industry.” (*Id.* at ¶ 21.) Based on the foregoing, it was foreseeable
 16 that Plaintiff would be harmed by the defamatory statements in California—the very
 17 heart of the entertainment industry. *See Panavision*, 938 F. Supp. at 621-22; *see also*
 18 *Mavrix*, 647 F.3d at 1230-32. Accordingly, Plaintiff has satisfied the third and final
 19 element of the *Calder*-effects test and, therefore, has demonstrated purposeful
 20 direction as to Meng.

21 **D. Plaintiff’s Lawsuit Arises Out Of Meng’s Forum-Related Activities.**

22 The second requirement for specific personal jurisdiction is that plaintiff’s
 23 action arises out of or relates to the defendant’s forum-related activities.
 24 *CYBERSitter*, 805 F. Supp. 2d at 973. In this analysis, a court “must determine if the
 25 [plaintiff] would not have been injured ‘but for’ the [defendant’s] conduct directed
 26 toward [plaintiff] in California.” *Id.* (quoting *Panavision*, 141 F.3d at 1322.)

27 In the instant case, the allegations in the Complaint demonstrate that “but for”
 28 the defamatory statements in the Articles that were published by Defendants, Plaintiff

1 would not have been harmed and/or injured. For example and without limitation, the
2 Complaint alleges, among other things:

- 3 • “As a direct and proximate result of the publication of the Articles, Plaintiff
4 has suffered loss of her reputation, shame, mortification, and hurt feelings,
5 all to her general damage.” (Complaint, ¶ 23.)
- 6 • “As a direct and proximate result of Defendants’ wrongful conduct as
7 alleged herein, Plaintiff’s business relationships with third parties have been
8 disrupted and Plaintiff has been damaged, and Defendants’ wrongful
9 conduct . . . was a substantial factor in causing Plaintiff’s harm.” (*Id.* at
10 ¶ 36.)
- 11 • “Plaintiff has been and is likely to continue to be injured as a result of
12 Defendants’ actions which undermine and reduce the goodwill associated
13 with Plaintiff and the products and brands she endorses, for which Plaintiff
14 has no adequate remedy at law.” (*Id.* at ¶ 46.)

15 Moreover, as set forth in the accompanying Declarations of Zhang Ziyi and
16 Ling Lucas, the defamatory statements in the Articles caused her to lose at least two
17 potential jobs as a spokesperson representing multinational companies and luxury
18 brands. (*See* Zhang Decl., ¶¶ 11-12, Exhibits D and E; Lucas Decl., ¶¶ 6-7, Exhibits
19 A and B.) Accordingly, Plaintiff has satisfied this element.

20 **E. Meng Has Failed To Satisfy His Burden To Present A**
21 **Compelling Case That the Exercise of Jurisdiction Would Not Be**
22 **Reasonable.**

23 As demonstrated above, Plaintiff satisfied the first two elements for specific
24 jurisdiction. Thus, the burden shifts to Meng to “present a compelling case that the
25 exercise of jurisdiction would not be reasonable.” *CYBERSitter*, 805 F. Supp. 2d at
26 973 (internal quotations omitted). “The exercise of jurisdiction is reasonable if it
27 comports with traditional notions of fair play and substantial justice.” *Id.* (quoting
28 *Rio*, 284 F.3d at 1021). Courts consider seven factors in making this determination:

1 (1) the extent of a defendant’s purposeful interjection; (2) the
 2 burden on the defendant in defending in the forum; (3) the
 3 extent of conflict with the sovereignty of the defendant’s state;
 4 (4) the forum state’s interest in adjudicating the dispute; (5) the
 5 most efficient judicial resolution of the controversy; (6) the
 6 importance of the forum to the plaintiff’s interest in convenient
 7 and effective relief; and (7) the existence of an alternative
 8 forum. *Id.*

9 For the reasons demonstrated below, Meng has not met his burden to “present a
 10 compelling case that the exercise of jurisdiction would not be reasonable.” *See id.*

11 **1. Defendant Has Purposefully Interjected Himself In California**
 12 **By Publishing The Defamatory Articles Here.**

13 The first factor, purposeful interjection, “is analogous to the purposeful
 14 direction analysis,” which was discussed above in Section III.A. *Id.* (quoting *Sinatra*
 15 *v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988)); *see also Corporate Inv.*
 16 *Bus. Brokers v. Melcher*, 824 F.2d 786, 790 (9th Cir. 1987) (noting that the “Ninth
 17 Circuit cases give the ‘purposeful interjection’ factor no weight once it is shown
 18 that the defendant purposefully directed its activities to the forum state” and that “the
 19 Supreme Court does not include this factor in its list of relevant factors at all”).
 20 Accordingly, for the reasons stated above, Meng has purposefully directed and
 21 interjected his activities to California. *See id.*

22 **2. Meng Cannot Show That He Would Be Unduly Burdened By**
 23 **Defending This Action In California.**

24 In his Motion, Meng argues that “because he has no contacts with California,
 25 he would suffer severe hardship in terms of cost and asymmetries of information if
 26 forced to defend a lawsuit in the Central District of California.” (Motion, p. 26:24-
 27 27:5.) Meng’s contention is unavailing. In the instant case, witnesses are scattered
 28 around the globe and whether the case is tried in California or North Carolina (as

1 Meng suggests), the parties will necessarily incur costs and other non-financial
 2 burdens associated with travel and with transporting witnesses and evidence.
 3 Notably, Meng’s own counsel and one of the experts who submitted a declaration in
 4 support of his anti-SLAPP motion are located in Las Vegas, Nevada. Consequently,
 5 Meng and Plaintiff’s counsel both traveled to Nevada for Meng’s recent deposition
 6 and the deposition of expert witness Mary Hausch in this case. In addition, since
 7 Meng refuses to disclose the identities of his so-called “confidential sources” for the
 8 defamatory statements in the Articles, the location of many of the witnesses in this
 9 case is not currently known with any certainty. Accordingly, Meng cannot show that
 10 his burden would be disproportionate to Plaintiff’s burden if this case is heard in
 11 California, rather than North Carolina.

12 Notably, defendant China Free Press, Inc. did not challenge personal
 13 jurisdiction in the instant action and withdrew its anti-SLAPP motion. Accordingly,
 14 if Meng’s motion to dismiss is granted and part of the case transferred to North
 15 Carolina, there will be two lawsuits pending—both of which arise out of the same
 16 facts and involve the same issues in two different forums—one in California and one
 17 in North Carolina. That result is contrary to the law and Meng’s Motion should be
 18 denied. *See Lens.com, Inc. v. 1-800 Contacts, Inc.*, 2012 U.S. Dist. LEXIS 48209
 19 (D. Nev. Apr. 4, 2012) (emphasizing that “[litigation of related claims in the same
 20 tribunal is strongly favored because it facilitates efficient, economical and
 21 expeditious pre-trial proceedings and discovery and avoids duplic[ative] litigation
 22 and inconsistent results”).

23 **3. California Has A Greater An Interest In Adjudicating This** 24 **Dispute**

25 Meng contends that California “can only have a minimal interest (if any) in
 26 adjudicating this dispute” because the parties do not actually reside here. (Motion, p.
 27 27:23-24.) He then argues that North Carolina has a greater interest in adjudicating
 28 this lawsuit merely because Meng is a North Carolina resident. For all the reasons

1 demonstrated above, California has a greater interest in adjudicating this dispute.
2 Meng purposefully directed the conduct at issue here to California, which is the
3 center of the entertainment industry and where a substantial Chinese population (and
4 Boxun News website readership) resides. Accordingly, Meng could reasonably
5 anticipate defending a lawsuit in California in connection with the Boxun publication
6 of the defamatory statements about Plaintiff in the Articles.

7 **IV. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court deny
9 the Motion to Dismiss.

10
11 DATED: January 4, 2013

GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP

12
13
14 By: /s/ Adam LeBerthon

JOHN MASON
PATRICIA L. GLASER
ADAM LEBERTHON
LISA M. ZEPEDA
Attorneys for Plaintiff Zhang Ziyi

Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

15
16
17
18
19
20
21
22
23
24
25
26
27
28