IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

ARTHUR SAWYER; JARRET DRAKE; ERIC MESCHINO; and BILL SOUZA on behalf of themselves and those similarly situated,	)	Case No. 23-cv-796
	)	**CLASS ACTION**
Plaintiffs,	)	
v.	)	
MONTEREY BAY AQUARIUM FOUNDATION and MARINE STEWARDSHIP COUNCIL,	)	
Defendants.	)	

MEMORANDUM IN OPPOSITION TO MOTION TO TRANSFER DUE TO IMPROPER VENUE, OR, IN THE ALTERNATIVE, LACK OF PERSONAL JURISDICTION

Plaintiffs Sawyer, Drake, Meschino, and Souza, on behalf of themselves and those similarly situated ("Plaintiffs") oppose Defendant Monterey Bay Aquarium Foundation's ("MBA" or "Defendant") motion to transfer the above-captioned case. Both personal jurisdiction and venue are proper in this case. MBA's arguments to the contrary misstate the standard applicable to the publication of defamatory material that causes harm. Accordingly, Plaintiffs respectfully request this Court deny Defendant's Motion to Transfer and alternative Motion to Dismiss for Lack of Personal Jurisdiction.

BACKGROUND

Plaintiffs are a collection of Massachusetts-based lobstermen. (Pl.'s Compl. at ¶¶ 8-11.) Defendant Monterey Bay Aquarium Foundation is a 501(c)(3) nonprofit corporation incorporated under the laws of the State of California and headquartered in Monterey, California. (MBA's Memorandum in Support of Motion to Transfer at 1.) MBA runs an online publication by the name

of Seafood Watch, which it uses to publish its opinions on the sustainability of various seafoods. (Pl.'s Compl. at ¶ 12.) MBA also provides resources to businesses and individuals who seek to follow MBA's opinions via the Seafood Watch website. (*Id.*) Via the Seafood Watch program, companies may enter into "partnerships" with MBA, whereby they agree to follow instructions on the purchasing and sale of seafood provided to them by MBA. (Pl.'s Compl. ¶¶ 25-26.) On September 5, 2022, MBA issued a press release via the Seafood Watch website, claiming that American Lobster fisheries are an ongoing threat to the survival of the endangered North Atlantic right whale, and marking American Lobster fisheries as "red," meaning that consumers should avoid the product. (Pl.'s Compl. at ¶ 34.) This red-listing led MBA partner companies HelloFresh, Blue Apron, and Whole Foods to discontinue their purchasing and sale of American Lobster. (Pl.'s Compl. at ¶ 40.) This boycott led to a swift decline in the value of American Lobster, with prices dropping by 30%, resulting in substantial financial detriment to Plaintiffs in the form of decreased income. (Pl.'s Compl. at ¶ 43, 44.) Plaintiffs subsequently sued MBA as well as co-defendant Marine Stewardship Counsel in this Court. MBA has now filed a Motion to Transfer based on improper venue, or in the alternative, a lack of personal jurisdiction.[1]

LEGAL STANDARD

To survive a motion to transfer or dismiss for lack of personal jurisdiction, Plaintiff need "only make a *prima facie* case that jurisdiction is proper." *See, e.g.*, *Quick Techs., Inc. v. Sage Group, PLC*, 313 F.3d 338, 343 (5th Cir. 2002). When evaluating such a case, the Court "must accept the uncontroverted allegations in the plaintiff's complaint as true, and all factual conflicts contained in the parties' affidavits must be resolved in favor of the plaintiff." *Bally Gaming, Inc.*

[1] Marine Stewardship Counsel has not yet made an appearance in this matter, and, accordingly, does not join in MBA's motion.

v. Caldwell, 12 F.Supp.3d 907, 911 (S.D. Miss. 2014) (citing *Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990)).

Furthermore, venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred[.]" 28 U.S.C. § 1391(b)(2). "Substantiality for venue purposes is more of a qualitative than a quantitative inquiry, determined by assessing the overall nature of the plaintiff's claims and the nature of the specific events or omissions in the forum, and not by simply adding up the number of contacts." *White Hat v. Landry*, 475 F.Supp.3d 532, 551 (M.D. La. 2020) (quoting *Univ. Rehab. Hosp., Inc., v. Int'l Co-op. Consultants, Inc.*, No. 05-1827, 2006 WL 1098905 (W.D. La. Apr. 24, 2006) (internal quotation marks omitted)). In defamation cases specifically, "the [c]ourt may consider the venue of where the defamation occurred and the venue of where the harm was felt to determine the location of 'a substantial part of the events' under 1391(b)(2)." *Hawbecker v. Hall*, 88 F.Supp.3d 723, 731 (W.D. Tex. 2015). Additionally, "[v]enue may be proper in multiple locations." *Id.*, citing 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3806 n. 10 (4th ed.). "While a plaintiff's residence in a particular judicial district may be an indicator of where the harm was felt, that fact, without more, may not be dispositive in determining where the events or injury occurred." *Immanuel v. Cable News Network, Inc.*, No. 4:21-CV-00587, 2022 WL 1748252, at *5 (E.D. Tex. May 31, 2022) (citing *Nuttal v. Juarez*, 984 F.Supp.2d 637, 646 (N.D. Tex. 2013)). The job of a plaintiff, then, is to connect the facts, allegations, and injuries suffered to the particular district in which he or she seeks to bring the suit. *Id.* at *6.

ARGUMENT

I. Plaintiff has made a *prima facie* case that personal jurisdiction is proper.

Courts employ a two-step process in determining personal jurisdiction over nonresident defendants in diversity cases: the first step focuses on the state long-arm statute, and the second addresses whether jurisdiction would offend notions of fairness and justice. *Johnston v. Multidata Systems Intern. Corp.*, 523 F.3d 602, 609 (5th Cir. 2008) (citing *Cycles, Ltd. v. W.J. Digby, Inc.*, 889 F.2d 612, 616 (5th Cir. 1989)). Because Louisiana's long-arm statute extends as far as constitutional due process permits the salient question before this Court then is whether Defendant purposefully availed itself to the forum by manipulating its commercial ties in Louisiana. *See* La. Rev. Stat. § 13:3201; *see also Se. Wireless Network, Inc. v. U.S. Telemetry Corp.*, 954 So.2d 120, 124 (La. 2007) (finding Louisiana's long-arm statute "coextensive" with constitutional due process limits thus meeting the first requirement for courts). In other words, the question is whether MBA reasonably anticipated being haled into court in Louisiana. *Id.* (citing *Ruckstuhl v. Owens Corning Fiberglas Corp.*, 731 So.2d 881 (La. 1999)). The facts of the case and the precedent in this district strongly suggest the affirmative, that when MBA manipulated the commitments many of its business partners to MBA's unconditioned word, it reasonably anticipated the harm that would occur in Louisiana, exposing it to this lawsuit.

A. Personal Jurisdiction Exists Over MBA by Virtue of Its Control over Its Corporate Partners

At the outset, it is necessary to clarify MBA's contacts with the forum state. Plaintiffs are not alleging, as Defendant argues, that personal jurisdiction over MBA is established *solely* through the website operated by Seafood Watch. (*See* Def.'s Mot. Transfer, 4–5.) While Plaintiffs' Complaint refers to MBA's website, including its accessibility in Louisiana, the website does not constitute MBA's only contact with Louisiana. (Pls.' Compl. ¶ 15.) In arguing that the website was the sole contact through which personal jurisdiction is established, MBA mischaracterizes the allegations in Plaintiffs' Complaint. Specifically, it is the entire national Seafood Watch Program

which MBA maintains, including the commitments given to MBA by its many business partners to follow its every word, and the actions resulting from those commitments in Louisiana, that caused the harm suffered by Plaintiffs. Because MBA misinterprets the facts underlying Plaintiffs' claims, their reliance on *Johnson v. TheHuffingtonPost.com, Inc.* is misplaced. 21 F.4th 314 (5th Cir. 2021); (*see* Def.'s Mem. in Supp. Mot. Transfer 4.)

Plaintiff's argument for personal jurisdiction is as follows. "[A] publisher who distributes magazines in a distant State may fairly be held accountable in that forum for damages resulting there from an allegedly defamatory story." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 (1985) (citing *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984) and *Calder v. Jones*, 465 U.S. 783 (1984)). The rationale behind this exercise of personal jurisdiction over nonresidents is because:

> . . . where individuals purposefully derive benefit from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed.

Burger King Corp., *supra*, 471 U.S. at 473-74 (quoting *Kulko v. California Superior Court*, 436 U.S. 84 (1978) (internal quotation marks omitted)). As previously noted, a defendant will be subject to a foreign court's personal jurisdiction when its course of conduct and engagement is such that it can reasonably anticipate being haled into that court; in determining whether a defendant should "reasonably anticipate" litigation in a foreign state, the court must ask whether "there [is] some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). "This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated

contacts." *Burger King Corp.*, *supra*, 471 U.S. at 475 (citing *Keeton*, *supra*, 465 U.S. at 774 and *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980)). As further discussed below, Defendant's Seafood Watch site serves as the mechanism by which MBA accomplishes its mission to compel its corporate partners into selling/purchasing only those products approved by Defendant. Indeed, it is by exerting control over businesses who operate in Louisiana that Defendant has purposefully availed itself of doing business in Louisiana.

The other facet of Plaintiff's argument arises out of agency theory. Under Louisiana law, "[w]hether an agency relationship exists between parties is a question of fact and must be determined on the particular circumstances in each case." *Legros v. Great American Ins. Co. of New York*, 865 So.2d 792 (La. Ct. App. 2003). The classical agency calculation is the well-known "ABC": assent, benefit, and control. "Essential to the existence of an actual agency relationship is (1) acknowledgement by the principal that the agent will act for him, (2) the agent's acceptance of the undertaking, and (3) control by the principal over the actions of the agent." *In re Chinese-Manufactured Drywall Products Liability Litigation*, 753 F.3d 521, 530 (5th Cir. 2014) (quoting *Goldschmidt v. Holman*, 571 So.2d 422, 424 n.5 (Fla. 1990) (internal quotation marks omitted)). "The essential element of an agency relationship is the right of control. The alleged principal must have the right to control both the means and the details of the process by which the alleged agent is to accomplish his task." *Matter of Carolin Paxson Advertising, Inc.*, 938 F.2d 595, 598 (5th Cir. 1991) (internal citations omitted), *accord Aupied v. Joudeh*, 694 So.2d 1012, 1015 (La. Ct. App. 1997).

In the present case, MBA may *on its own* lack a presence in Louisiana, but MBA is anything but alone. Through its Seafood Watch program, it has successfully created a network of powerful market players in the food sale industry, and its finger rests on the proverbial "big red

button." With each corporate pledge that a new partner business takes, MBA gains an unwaveringly loyal follower, one prepared to follow directions given by MBA regarding the sale or boycott of products according to MBA's wishes. This ability to control its partners' businesses through its so-called "recommendations"—which appear to be binding on partner businesses—makes the relationship between MBA and these other businesses not a partnership, as the Seafood Watch program claims, but rather an agency relationship, whereby the business agrees to subject itself to the control of MBA. The critical element of control, at least in this case, manifests itself in MBA's ability to dictate what products its agents will remove from their product lines.

MBA's control over its partners' business operations is not a speculative accusation on Plaintiff's part. MBA's Seafood Watch program proudly publicizes its control over its agents, asserting that nearly every single "partner" business has "made a commitment" to purchase or sell only seafood that comes from "certified sustainable" or "environmentally responsible" fisheries—*as determined by Seafood Watch*.[2] As such, MBA has an ironclad grip over the businesses that have committed themselves to MBA's cause, and is able to block certain fisheries' ability to sell their products to certain companies by unilaterally labeling those fisheries as unsustainable or irresponsible.

The enormous degree of control exercised by MBA means that the companies that choose to follow MBA's guidelines are not free to make their own purchasing decisions; thus, they are best defined as market-participant agents of MBA. MBA's portrayal of this relationship as a "partnership" or "collaboration" is immaterial; after all, "[h]ow the parties to a transaction choose to characterize their relationship is not the controlling factor in determining the legal nature of the relationship." *Patrick v. Miss New Mexico-USA Universe Pageant*, 490 F.Supp. 833, 839 (W.D.

[2] *See generally* https://www.seafoodwatch.org/collaborations/businesses.

Tex. 1980). Given the true nature of the relationship between MBA and its "partner" companies, the next question is whether the "partner" companies' contacts with the forum may be fairly attributed to MBA.

It is well established in this jurisdiction that "[a]ctions by an agent can be used to establish jurisdiction over the principal." *Williamson v. Petrosakh Joint Stock Co. of the Closed Type*, 952 F.Supp. 495, 498 (S.D. Tex. 1997) (citing *O'Quinn v. World Indus. Constructors, Inc.*, 874 F.Supp.143, 145 (E.D. Tex. 1995), *aff'd*, 68 F.3d 471 (5th Cir. 1995)). Indeed, "a corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there[.]" *Daimler AG v. Bauman*, 571 U.S. 117, 135 n.13 (2014). Although the Supreme Court in *Daimler AG* rejected agency theory as grounds for general jurisdiction, it explicitly recognized the usefulness of agency relationships in the area of specific jurisdiction. *Id., see also In re Chinese-Manufactured Drywall Products Liability Litigation*, 753 F.3d 521, 531 (5th Cir. 2014). In the *Chinese-Manufactured Drywall* case, this Circuit held that an agent's contacts would be imputed to the principal for purposes of the specific jurisdiction analysis, because the principal demonstrated "control over its agent . . . [and] pervaded [the agent's] dealings with the forum[.]"753 F.3d at 532.

Here, the agency relationship between MBA and its partner companies means that the partner companies' contacts with the forum should be imputed to MBA. Not only does MBA exercise considerable control over the purchasing decisions of its partners, as previously explained, but that control was conclusively demonstrated when MBA red-listed the Gulf of Maine Lobster and its associated fisheries, and its partners, HelloFresh, Blue Apron, and Whole Foods, immediately complied with MBA's directive to cease purchase and sale of Gulf of Maine Lobster. (Pl.'s Compl. at ¶ 40.) MBA's power to control some of the food industry's largest players by

unilaterally disapproving of particular product lines necessarily pervades those players' dealings with the states in which they operate. Because of the extent of MBA's influence over these companies, the companies' contacts should be imputed to MBA. Moreover, because these companies each have presence and contacts in the forum, and because those companies' presence and contacts in the forum directly caused the harm suffered by Plaintiffs, this Court has specific jurisdiction over MBA.

Additionally, while Plaintiff does not contest the 5th Circuit's holding in *Johnson*, the facts at issue in *Johnson* are readily distinguishable from those in the present case. In *Johnson*, the plaintiff alleged that defendant HuffingtonPost libeled him by calling him a white nationalist and a Holocaust denier. 21 F.4th at 316. He opted to sue defendant in the Southern District of Texas. While plaintiff himself was a resident of Texas, the defendant had no ties to the state beyond its nationally available website, through which it marketed ads, merchandise, and an "ad-free experience." *Id.* The published story itself also lacked ties to Texas, as it neither mentioned the state nor relied on any sources or conduct in Texas. *Id.* Thus, plaintiff's argument for personal jurisdiction was solely based on visibility and accessibility of the website in Texas, and collaborations with Texas advertisers, which he argued satisfied the "purposeful availment" test for jurisdiction. *Id.* at 317. The trial court granted defendant's motion to dismiss on the grounds that "the story did not concern Texas, did not use Texas sources, and was not directed at Texas residents more than residents from other states." *Id.* (internal quotation marks omitted). The 5th Circuit affirmed, holding that specific personal jurisdiction may only be found when (1) the defendant purposefully avails itself to the forum, achieved when the defendant itself purposely forges ties to the forum; (2) the plaintiff's claim arises out of or relates to those purposeful contacts; and, (3) the exercise of jurisdiction is fair and reasonable to the defendant. *Id.* at 317-18. The court

went on to analyze the interactivity of defendant's website, coming to the conclusion that despite the interactivity of the website, the tortious conduct was not aimed at Texas any more than any other state, and therefore jurisdiction was not warranted. *Id.* at 318.

Unlike the plaintiff in *Johnson*, Plaintiffs here do not argue that jurisdiction in this case rises and falls purely on the publishing of defamatory statements on MBA's website. Rather, it is the entire ecosystem created by Defendant—the industry ties and control over corporate partners that it enjoys, in addition to the maintenance of the website—that justify jurisdiction in the matter. Unlike HuffPost, MBA does no conventional "business" with the state of Louisiana, though the Aquarium's website does feature merchandise and tickets available for purchase by Louisiana residents. Nonetheless, MBA enjoys substantial control of seafood sales in Louisiana by maintaining control over the products sold by its corporate partners. Further, the Seafood Watch page does, in fact, offer interactive resources for individuals seeking to tailor their seafood consumption to a particular viewpoint. MBA lauds its "collaboration" efforts, through which businesses may reach out to MBA via the Seafood Watch website to "ma[ke] a commitment to serve environmentally responsible seafood following the Seafood Watch recommendations." MBA knows, when it partners with these businesses, that the businesses will follow the purchasing instructions it issues. In fact, this is exactly what MBA *wants*, and it proudly celebrates the brands that partner with it on its website. MBA knows how much power it has over its partnered businesses: for example, regarding the Whole Foods collaboration described in Plaintiffs' Complaint, Seafood Watch writes: "**Whole Foods has made a commitment to only sell wild-caught seafood from fisheries that are** certified sustainable by the Marine Stewardship Council (MSC) or **rated as Best Choice or Good Alternative by Seafood Watch.**"[3] Also discussed in

[3] https://www.seafoodwatch.org/collaborations/businesses (emphasis added).

Plaintiffs' Complaint: "HelloFresh [has] made a commitment to only offer customers seafood that is rated Best Choice or Good Alternative, or has been eco-certified to a standard that Seafood Watch recognizes." *Id.* As such, when MBA issues a publication, it acts with *certainty* that its partners will follow its recommendations. To that end, companies like Whole Foods and HelloFresh are more than just corporate allies; they are agents of MBA, having agreed to operate (at least when it comes to purchasing seafood) under MBA's control, for the benefit of MBA's environmental pursuits. *See In re Chinese-Manufactured Drywall Products Liability Litigation*, *supra*, at 530. With the understanding, then, that the presence of these seafood distributors in Louisiana should be imputed to Monterey Bay Aquarium, the *Johnson* framework actually works in favor of Plaintiffs, rather than against them.

Moreover, MBA purposely availed itself of the forum state by "deliberately engag[ing]in significant activities within" Louisiana. *Se. Wireless Network, Inc.*, 954 So.2d at 124. MBA's transactions with its business partners were more than "isolated occurrences" and were in fact deliberate actions taken with foreseeable harm resulting in multiple jurisdictions, including Louisiana. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) (citation omitted). MBA entered into agency relationships with several companies, including but not limited to the distributors listed in Plaintiffs' Complaint, with full knowledge that it had and continues to have the ability to dictate those companies' seafood-purchasing decisions. By doing so, it adopted those companies, and their respective contacts with the forum, as its own. It also knew or should have known that if it perpetuated tortious conduct, and that tortious conduct was parroted by one of its "partners," it would likely be sued wherever that partner happened to be located. Moreover, the present suit certainly arose out of MBA's contacts with the forum: it was MBA's agent's stores, warehouses, and distribution centers that made the affirmative move of obeying MBA's defamatory press

release and "red-listing." Had those agents not acted in accordance with MBA's direction, Plaintiffs would not have suffered the economic harm that they did. However, because MBA disparaged Plaintiffs' product, knowing full well that its agents would be bound to cease purchases of that product, and knowing that as a result, Plaintiffs would suffer economic harm in every forum in which the agents acted, MBA is subject to the specific jurisdiction of those courts. Louisiana, as one such forum in which MBA's agents injured the financial interests of Plaintiffs, may properly exercise specific personal jurisdiction over MBA.

B. *MBA Does, In Fact, Maintain an Interactive Website*

Defendant's argument to the contrary misconstrues the acts underlying Plaintiffs' claims. MBA focuses the brunt of its argument on the District Court for the Western District of Pennsylvania's famous sliding scale test in *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997). Citing to *Johnson*, MBA argues that because MBA's Seafood Watch website is passive, "it posts information but does not allow for interactive dialogue with individuals who access the site," personal jurisdiction is unavailable. (Defendant MBA's Memorandum in Support of Motion to Transfer at 4.) This statement is demonstrably false, as even a casual visitor to the Seafood Watch web page can interact with MBA by signing up for a newsletter, requesting the Seafood Watch "sustainability guide,"[4] which includes "[s]teps your business can take to improve the sustainability of the seafood you buy or sell" and "[i]nvitations to educational webinars, information about regional events, and much more," and, as has been mentioned above, filling out a "partnership inquiry"[5] whereby a business can request to form a relationship with MBA. Nevertheless, the fact that interactivity of MBA's website is present in this case still not crucial to the determination of personal jurisdiction, as *Zippo* is applicable only

4 https://www.seafoodwatch.org/for-businesses/subscribe

5 https://www.seafoodwatch.org/collaborations/businesses/partnership-inquiry

when the defendant's sole connection to the forum is its website; thus, the website itself must be analyzed to determine whether it is sufficiently interactive with the forum to be treated as a contact for purposes of the minimum-contacts inquiry. Here, Plaintiffs do not argue that the Seafood Watch website is the *only* contact with the forum. Rather, as explained above, MBA's partner businesses represent additional contacts to Louisiana that support a finding of personal jurisdiction. MBA's Motion ignores these other, more salient contacts in favor of focusing exclusively on the Seafood Watch website. Even if *Zippo* were the applicable test, the interactivity of the Seafood Watch website is extensive, making a "full stop" on the personal jurisdiction inquiry inappropriate. Regardless, since Seafood Watch is not MBA's only contact with the forum, this Court does not need to engage in a *Zippo* analysis.

C. *MBA Misconstrues Cited Case Law, as there is No Affirmative Requirement that the Forum Must be the Focal Point of Harm*

MBA then shifts gears to the Supreme Court's holding in *Calder v. Jones*, 465 U.S. 783 (1984), in which the Court wrote that because California was the focal point of the libelous story and the harm suffered, California could properly exercise personal jurisdiction over Florida reporters who had edited an article later published in California. MBA cites *Calder* as standing for the proposition that the forum state *must* be the focal point of the libel and the harm, but *Calder*'s holding sets forth no such explicit requirement. Instead, *Calder* held that jurisdiction is proper in a forum if the effects of the defendant's tort are felt there. *Calder*, *supra*, at 789 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-97 (1980) (articulating the proper standard for anticipation of litigation to be the purposeful availment test)). While MBA cites to *Calder* in support of the proposition that since Whole Foods, Blue Apron, and HelloFresh's Louisiana sales make up only part of their nationwide revenue stream, they lack sufficient connections to the forum (Defendant MBA's Memorandum in Support of Motion to Transfer at 4-5), in *Calder*, jurisdiction

was found to be proper despite California sales making up a little over 11% of the defendants' publication's sales. *Calder*, *supra*, at 785 n2. As such, and contrary to MBA's position, *Calder* stands for the proposition that the focal point may be sufficient for personal jurisdiction, but the opinion does not compel a reading that the focal point is necessarily the only place (other than the defendant's home) in which a suit may be brought.

D. *Republishing of MBA's Press Release in Louisiana was Foreseeable and Resulted in Significant Harm to Plaintiffs, such that a Finding of Personal Jurisdiction is Proper*

Additionally, the opinion of the United States District Court for the Eastern District of Virginia in *TELCO Communications v. An Apple A Day* is instructive. 977 F.Supp. 404 (1997). In that case, defendants issued two press releases that allegedly defamed plaintiff and resulted in a drop in plaintiff's stock price. *TELCO Communications*, 977 F.Supp. at 405. The defendants wrote the press release in Missouri and it was subsequently republished in Business Wire, an online press-release distribution site, for limited distribution into Connecticut, New York, and New Jersey, although Business Wire also published the press releases to several other outlets that included several Virginia consumer information facilities. *Id.* at 407. The court held that the defendants should have reasonably known that the press release would be received in Virginia, as the Business Wire advertisement made that clear, and therefore defendants could have reasonably anticipated being haled into court in Virginia. *Id.*, *see also Thompson v. Handa-Lopez, Inc.*, 998 F.Supp.738, 744 n.2 (W.D. Tex. 1998) (recognizing the *TELCO Communications* court as having held defendants subject to the court's personal jurisdiction despite their posting to a "strictly passive web site").

While it is important to note that Courts generally require "something more" than a passive website to establish personal jurisdiction, the foreseeable republishing and reporting of the press release in Louisiana qualifies as "something more." *See, e.g., Fix My PC, L.L.C. v. N.F.N.*

Associates, Inc., 48 F.Supp.2d 640, 642 (N.D. Tex. 1999) ("Plaintiff urges the court to adopt [the *TELCO Communications* position]. The federal courts in Texas, however, have held that more than a website is required to expose a non-resident to personal jurisdiction here."); *Origin Instruments Corp. v. Adaptive Computer Systems, Inc.*, No. CIV.A. 397CV2595-L, 1999 WL 76794, at *2 (N.D. Tex. Feb. 3, 1999) ("[T]he posting, without more, of an ordinary website homepage on the world wide web is insufficient to expose distant parties to in personam jurisdiction even though accessible by Texas residents.") Here, the relevant factors of *TELCO Communications* are present, as well as the "something more" sought by courts in this circuit. Here, MBA issued a press release directed at the seafood-buying public. A press release, by its very nature, invites republishing and reporting of the information contained in the release by the media in other media outlets, separate and apart from its original publication on the Seafood Watch website. MBA knew this press release would make waves, given MBA's own sizeable following, the popularity of lobster in the consumer market, and MBA's own business ties, through its agents, to Louisiana. As a result, MBA should have reasonably known that the press release would be received and republished in Louisiana, as it indeed was republished and reported by news outlets in Louisiana.[6] *See also Giordano v.* Tuller, 139 So.2d 15, 19 (La. Ct. App. 1962) (holding that an exception to the general rule against an original author's liability for republication exists "where the republication is the natural and probable consequence of the defendant's act"). Given MBA's understanding, it should reasonably have anticipated being haled into court in this jurisdiction. Again, the requisite "something more" is present here in the form of the business relationships and agency ties that MBA enjoys with businesses transacting in Louisiana. Between the issued press

[6] *See, e.g.,* https://wgno.com/news/nmw/retailers-pull-lobster-from-menus-after-red-list-warning/; https://wgno.com/news/nmw/whole-foods-decision-to-pull-lobster-divides-environmentalists-politicians/

release, which was clearly designed to have a broad impact and to affect Plaintiffs' business interests in the state of Louisiana, and MBA's other business ties to that forum, there exists sufficient evidence for this Court to exercise personal jurisdiction over MBA without upsetting the constitutional considerations under the Due Process Clause.

Because MBA purposefully availed itself of conducting activities in the State of Louisiana by creating ties with businesses that transact in the State, and because MBA manipulated those businesses' purchasing decisions, directly causing financial harm to Plaintiffs, this Court has specific personal jurisdiction over MBA.

II. The Eastern District of Louisiana is a valid venue.

Venue is proper in the Eastern District of Louisiana because a civil action may be brought in "a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located." 28 U.S.C. § 1391(b)(1). The same statute defines residency, for the purposes of a business entity, as "any judicial district in which such defendant is subject to the court's personal jurisdiction with respect to the civil action in question." 28 U.S.C. § 1391(c)(2). Because MBA is an entity "with the capacity to sue and be sued in its common name under applicable law, whether or not incorporated," see *id.*, it is deemed to be a resident of any judicial district in which it is subject to personal jurisdiction for the instant action. Since, as previously established, this Court has specific personal jurisdiction over MBA, it is therefore also a resident of this judicial district, making venue proper under 28 U.S.C. § 1391(b)(1).

Additionally, venue is proper under 28 U.S.C. § 1391(b)(2). That subsection provides, in pertinent part, that a civil action may be brought in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." It is important to note that "[a]n act committed outside [a] district resulting in a loss of revenue to a party in the district is not itself an

event in the district giving rise to a claim." *Triple Crown America, Inc. v. Biosynth AG*, No. 96-7476, 1997 WL 611621, at *4 (E.D. Pa. Sept. 17, 1997). However, "[i]njury in conjunction with another event . . . may make a district proper venue. In defamation cases, for example, courts have repeatedly held that venue is proper in a district in which the allegedly defamatory statement was published, particularly if injury was suffered in the same district." *DaimlerChrysler Corp. v. Askinazi*, No. CIV.A. 99-5581, 2000 WL 822449, at *6 (E.D. Pa. June 26, 2000) (citing *Miracle v. N.Y.P. Holdings, Inc.,* 87 F.Supp.2d 1060, 1072-73 (D.Haw. 2000); *Wachtel v. Storm,* 796 F.Supp. 114, 116 (S.D.N.Y.1992); *Comaford v. Wired USA, LTD.,*No. 94-2615, 1995 WL 324564, at *3 (N.D.Ill. May 26, 1995). Further, the Fifth Circuit has adopted this position before: in *Nunes v. NBCUniversal Media, LLC*, the Court stated that, "[t]o determine where a substantial part of the events occurred for a defamation case under § 1391(b)(2), the court may consider where the defamation occurred and where the harms were felt." 582 F.Supp.3d 387, 403-04 (E.D. Tex. 2022) (citing *S. U.S. Trade Ass'n v. Unidentified Parties*, No. 10-1669, 2011 WL 245859, at *13 (E.D. La. June 16, 2011)).

This case distinguishes itself from similar libel and defamation cases because unlike those cases, reputational harm is not the only harm Plaintiffs have suffered. Here, Plaintiffs have undoubtedly suffered reputational harm, as MBA's website claims, without evidence, that Plaintiffs are responsible for the endangerment of the North Atlantic Right Whale. However, such reputational harm does not represent the full extent, or even the lion's share, of Plaintiffs' injuries. Rather, Plaintiffs suffered the vast majority of their harm when MBA's agents, under the influence of their individual pledges to MBA, elected to cease purchasing Plaintiffs' lobster because of MBA's defamatory and disparaging press release and red-listing. MBA's press release and red-listing, both posted to the Seafood Watch website, are accessible in Louisiana. Since both of the

factors to be considered under the *Nunes* case, publication and harm, occurred in Louisiana, a substantial part of the claim occurred in the forum; therefore, 28 U.S.C. § 1391(b)(2) supports a finding that venue is proper in this forum.

III. Plaintiffs Request that the Court Permit Further Jurisdictional Discovery.

Plaintiffs further submit that, in the event the Court is inclined to grant Defendant's motion on jurisdictional issues, Plaintiffs be permitted to pursue jurisdictional discovery on the interactivity of Plaintiff's website, any revenues it may derive from Louisiana, as well as its contacts with businesses operating in Louisiana. While a court hearing a motion to dismiss for lack of venue or personal jurisdiction takes the nonmovant's pled factual assertions as true, *Galderma Laboaratories, L.P. v. Teva Pharmaceuticals USA, Inc.*, 290 F.Supp. 3d 599, 605 (N.D. Tex. 2017) (motion to dismiss for improper venue); *Tutus, L.L.C. v. JLG Industries, Incorporated*, No. 21-20383, 2022 WL 1517044, at *2, (5th Cir. 2022) (motion to dismiss for lack of personal jurisdiction), to the extent that this Court finds it appropriate, Plaintiffs submit that jurisdictional discovery exploring the ties between MBA and the state of Louisiana may yet yield additional contacts to the forum state. If the Court finds that the instant Motion creates questions of fact, such discovery would be appropriate. *See, e.g., Republic Business Credit, LLC v. Greystone & Co.*, No. 13-5535, 2013 WL 6388657, at *4 (E.D. La. Dec. 6, 2013) (quoting *Roman v. Western Mfg., Inc*., No. 07-1516, 2013 WL 5533695, at *11 (W.D. La. Oct. 4, 2013)) ("Jurisdictional discovery is appropriate when a motion to dismiss raises factual questions."); *Ricks v. Rolls-Royce Corp*., 16-2593, 2016 WL 9582818, at *2 (E.D. La. June 29, 2016) (quoting *Kelly v. Syria Shell Petroleum Dev. B.V*., 213 F.3d 841, 855 (5th Cir. 2000)) ("Only when 'the lack of personal jurisdiction is clear' should the Court find that 'discovery would serve no purpose and should not be permitted.'")

CONCLUSION

This Court may properly exercise specific jurisdiction over Defendant MBA in this case because of MBA's deliberate contacts with the forum, by nature of its agency relationship with those contacts, because the harm claimed directly arose from those contacts, and because MBA's actions should have caused it to reasonably anticipate being haled into this Court, making the exercise of jurisdiction fair to MBA. Moreover, venue is proper in this forum because MBA is subject to this Court's personal jurisdiction, and a significant part of the events underlying the dispute occurred here. For the foregoing reasons, Plaintiffs respectfully request that Defendant's Motion to Transfer and alternative Motion to Dismiss be denied.

Respectfully submitted,

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