Jeffrey J. Pyle (*pro hac vice pending*)
jpyle@princelobel.com
Aaron S. Jacobs (Cal. Bar No. 214953)
ajacobs@princelobel.com
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
tel. (617) 456-8000
fax (617) 456-8100

Matthew Vella (Cal. Bar No. 314548)
mvella@princelobel.com
PRINCE LOBEL TYE LLP
357 S Coast Highway, Suite 200
Laguna Beach, CA 92651
tel. (949) 232-6375
fax (949) 861-9133

Attorneys for Defendant Matthew J. Weymouth

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

MATTHEW HOGAN,

Plaintiff,

v.

MATTHEW J. WEYMOUTH, PATRICK C. CHUNG, PRO SPORTORITY (ISRAEL) LTD., KARL RASMUSSEN, BEASLEY BROADCAST GROUP INC., MELISSA EANNUZZO, and DOES 1-10,

Defendants.

No. 2:19-cv-02306-MWF-AFMx

NOTICE OF MOTION AND MOTION TO DISMISS BY DEFENDANT MATTHEW WEYMOUTH

Date: September 9, 2019
Time: 10:00 a.m.
Location: Courtroom 5A
Judge: Michael W. Fitzgerald

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on September 9, at 10:00 a.m. or as soon thereafter as this matter may be heard in Courtroom 5A of the above-entitled court, located at 350 West 1st Street, Los Angeles, CA 90012, Matthew Weymouth will and hereby does move to dismiss all claims against him by plaintiff Matthew Hogan, for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), and for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

Defendant Matthew Weymouth is a resident of Massachusetts with no contacts in California. He is not alleged to have committed any acts in California, and did not purposefully direct any activity toward California. Weymouth accordingly lacks sufficient "minimum contacts" for this court to sustain personal jurisdiction over him consistent with constitutional principles of due process.

Even if jurisdiction existed, all claims against Weymouth must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because they fail to state a claim upon which relief may be granted. In particular:

(1) Plaintiff's "public disclosure of private facts" claim fails because plaintiff has not alleged "publication" of intimate details—or even "private" facts—about his life, and because there is a public interest in the texts;

(2) Plaintiff's intentional infliction of emotional distress ("IIED") claim fails because Weymouth's conduct was not extreme and outrageous as a matter of law, and because plaintiff has not alleged that he suffered severe emotional distress; and

(3) Plaintiff's "Civil Harassment" claim fails to allege facts showing that harassment "exists" or that it is likely to recur, both of which are requirements for the restraining order contemplated in the California statute on which the claim is based.

This Motion is made following the conference of counsel pursuant to Local Rule 7-3, which took place on July 24, 2019.

This Motion is based on this Notice; on the attached Memorandum of Points and Authorities; on the Declarations of Matthew Weymouth and Patrick Chung; on any other matters of which this Court may take judicial notice; on all pleadings, files and records in this action; and on such argument as may be received by this Court at the hearing on this Motion.

Dated: August 5, 2019

Respectfully submitted,

/s/ Aaron S. Jacobs

Jeffrey J. Pyle (*pro hac vice pending*)
Aaron S. Jacobs (Cal. Bar No. 214953)
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
tel. (617) 456-8000
fax (617) 456-8100

Matthew Vella (Cal. Bar No. 314548)
PRINCE LOBEL TYE LLP
357 S Coast Highway, Suite 200
Laguna Beach, CA 92651
tel. (949) 232-6375
fax (949) 861-9133

Attorneys for Defendant Matthew J. Weymouth

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I. SUMMARY OF ARGUMENT

Defendant Matthew Weymouth, a resident of Massachusetts, has been sued in this Court based solely on actions he took in Georgia and Massachusetts. Weymouth has no connection to the state of California, did not direct any activities at California, and would suffer undue burden and expense if he were required to litigate this action 2,600 miles from his home. Accordingly, the claims against Weymouth must be dismissed for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).

Even if jurisdiction over Weymouth were proper, plaintiff Matthew Hogan has failed to state a claim against him. Hogan's claim for disclosure of intimate private facts fails because the subject matter disclosed—Hogan's text messages to his acquaintance Weymouth—were not intimate details of Hogan's private life, were not "private," and were the subject of a legitimate public interest. Hogan's claim for intentional infliction of emotional distress fails because Weymouth's alleged actions are not sufficiently "outrageous" to qualify for that cause of action and because Hogan has alleged no severe emotional distress. Finally, Hogan's claim for "civil harassment" fails to allege facts showing the existence of harassment or that any alleged harassment is likely to recur.

II. STATEMENT OF FACTS

Defendant Matthew J. Weymouth ("Weymouth") is a citizen of Massachusetts. (Compl. ¶ 3; Weymouth Dec. ¶ 2). Weymouth owns no assets in California, and does not do business of any kind in California. (Weymouth Dec. ¶ 4). He has visited California once, seven years ago. (*Id.*)

Plaintiff Matthew Hogan ("Hogan") is a resident of California. (Compl. ¶ 2). Hogan alleges that he met Weymouth "through mutual friends during college." (Compl. ¶ 12). Weymouth went to college in Rhode Island and met Hogan in Massachusetts. (Weymouth Dec. ¶ 3).

In early 2019, Hogan was working for the Los Angeles Rams as an "account executive." (Compl. ¶ 2). The Rams were scheduled to play the New England Patriots in Super Bowl LIII on February 3, 2019. Hogan alleges that in the days leading up to the Super Bowl, he learned through social media that his acquaintance Weymouth would be attending the event in Atlanta, Georgia. (Compl. ¶¶ 16-21). Hogan also planned to attend the game, and he communicated with Weymouth in the days leading up to it. Weymouth and Hogan also met up for drinks in Atlanta in the days leading up to the game. (Compl. ¶ 22).

Hogan acknowledges that he knew that Weymouth was a Patriots fan and that Weymouth had a social relationship with Patriots' defensive player Patrick C. Chung, also a defendant in this action. (Compl. ¶ 15). Hogan also knew that Weymouth was traveling on the Patriots' charter airplane to Atlanta. (*Id*.; Ex. A).

During the third quarter of the Super Bowl, Patrick Chung was seriously injured in the midst of a tackle, breaking his right forearm. (Compl. ¶ 31). Immediately after this injury, Hogan texted Weymouth: "Patrick Chung is a bitch." (Compl. ¶ 27). Hogan alleges that he intended the statement as a joke, but Weymouth, concerned about his injured friend Chung, did not find it funny, and sent a text to Hogan rebuking him for this comment. (Compl. ¶ 34 and Ex. A). Hogan responded by mocking Weymouth, further angering him. (Compl. Ex. A). The text exchange took place while Hogan and Weymouth were both in Atlanta, Georgia. (Weymouth Dec. ¶ 6).

Hogan alleges that after the game, Weymouth took screenshots of parts of the text exchange and shared them with Chung, including the disparaging comment Hogan made about Chung after his injury. (Compl. ¶ 32). Chung then posted the screenshots on his Instagram and Facebook pages, along with a comment criticizing Hogan for disrespectfully mocking an injured player. (Dec. of Patrick Chung ¶ 5).

Hogan alleges, solely "[o]n information and belief," that "Weymouth composed and posted the Instagram and Facebook posts on Chung's behalf," but

provides no factual basis for this assertion. (Compl., ¶ 37). Hogan further alleges, also on information and belief, that "Weymouth manages these accounts for Chung and sometimes posts to them on Chung's behalf," but again provides no facts supporting that assertion. (Compl. ¶ 4). As set forth in the Declarations of Matthew Weymouth and Patrick Chung, neither of these allegations is true. Weymouth neither composed nor posted the Facebook or Instagram postings, nor has he ever "manage[d]" or posted content to Chung's social media accounts. (Weymouth Dec. ¶ 7; Chung Dec. ¶¶ 5-6).

Hogan filed the instant Complaint on March 28, 2019. As the Court has aptly summarized, "The crux of the Complaint is that Plaintiff's 'playful trash talk' with Defendant Weymouth—concerning co-Defendant Patrick Chung's injuries during the Superbowl LIII game—resulted in harm to Plaintiff's reputation, various forms of harassment on social media, and loss of economic opportunities." (Order, June 12, 2019, Doc. 21 at 1). Hogan alleges three claims against Weymouth: "Disclosure of Private Facts," "Intentional Infliction of Emotional Distress," and "Civil Harassment." (Compl. Counts 2, 4 and 5).

Along with his complaint, Hogan filed an *ex parte* motion for an order prohibiting "harassment" by Weymouth. On March 29, 2019 the Court summarily denied the request on the grounds that the motion failed to meet federal standards for a temporary restraining order, and because Weymouth had not yet been served. (Order, March 29, 2019, Doc. No. 9). On May 6, 2019, Hogan filed a substantively identical motion, again without having served Weymouth. (Doc. No. 11). The Court denied the second motion on June 12, 2019, on the grounds that it "simply restates some of the allegations in the Complaint, and there appears to be no indication of ongoing threats apart from texts and social media posts in February 2019." (Order, June 12, 2019, Doc. 21 at 2).

On June 15, 2019, Weymouth was served with process.

III. THIS COURT LACKS PERSONAL JURISDICTION OVER WEYMOUTH

"Due process requires that the defendant have certain minimum contacts with the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (internal quotations omitted). Defendant Matthew Weymouth has no "contacts" with California at all, is not alleged to have committed any acts in California, and did not purposefully direct any activity toward California. Accordingly, the Court lacks jurisdiction over Weymouth, and the claims against him must be dismissed.

On a motion such as this, "the plaintiff bears the burden of establishing that jurisdiction is proper."[1] *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (internal quotations omitted). There are two types of personal jurisdiction, "general" and "specific." Plaintiff alleges no facts remotely suggesting that Weymouth could be subjected to "general jurisdiction," which requires that the defendant's "affiliations with the State in which suit is brought [be] so constant and pervasive as to render [him] essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). Moreover, as Weymouth states in his declaration, he has no California contacts at all, let alone "constant and pervasive" contacts. (Weymouth Dec. ¶ 4). Accordingly, the balance of this section will address whether the Court has "specific jurisdiction," meaning jurisdiction that derives from the facts alleged in this case.

[1] The discussion below will be confined to the question of whether jurisdiction is proper under the due process clause of the 14th Amendment to the U.S. Constitution, and will not separately address the California "long arm" statute. The long-arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with federal due process requirements, and therefore the jurisdictional analyses under state law and federal due process are the same. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011); *Rosen v. Terapeak, Inc.*, No. CV-15-00112-MWF (EX), 2015 WL 12724071, at *2 (C.D. Cal. Apr. 28, 2015).

This Circuit applies a three-part test to determine whether specific jurisdiction exists over a non-resident defendant:

(1) the non-resident defendant must purposefully direct his activities to or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;

(2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and

(3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). Hogan bears the burden of proof on prongs (1) and (2)—if he carries it, then Weymouth may establish that the exercise of jurisdiction would be unreasonable pursuant to prong (3). In this process, "[t]he parties may submit, and the court may consider, declarations and other evidence outside the pleadings in determining whether it has personal jurisdiction." *Kellman v. Whole Foods Mkt., Inc.*, 313 F. Supp. 3d 1031, 1042 (N.D. Cal. 2018) (citing *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001)).

As explained below, Hogan cannot satisfy either the "purposeful direction" standard, nor can he show that his claims against Weymouth arise out of Weymouth's California-related activities. And, even if he could do both of these things, the exercise of jurisdiction against Weymouth would still be unreasonable.

A. Weymouth Did Not Purposefully Direct his Actions at California.

Hogan's claims sound in tort, and therefore he must show that Weymouth "purposefully direct[ed]" his activities toward California. *Schwarzenegger*, 374 F.3d at 802; *Perry v. Brown*, No. CV 18-9543-JFW(SSX), 2019 WL 1452911, at *6 (C.D. Cal. Mar. 13, 2019) ("the purposeful direction concept applies in tort cases").

A showing of purposeful direction "requires that the defendant . . . have (1) committed an intentional act; (2) expressly aimed at the forum state; and (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger*, 374 F.3d at 803. Here, Weymouth is alleged to have committed intentional acts, but none of them was "expressly aimed at the forum state."

The Supreme Court has held that to satisfy due process, "there must be 'an affiliation between the forum," here, California, "and the underlying controversy, principally, [an] activity or an occurrence that takes place *in the forum State* and is therefore subject to the State's regulation.'" *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty*., 137 S. Ct. 1773, 1780 (2017) (emphasis supplied) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781; *see also Daimler AG*, 571 U.S. at 127 (specific jurisdiction over a non-resident defendant may exist where a suit "arises out of or relates to the defendant's contacts *with the forum*") (internal citations omitted) (emphasis supplied).

Here, no "activity or . . . occurrence . . . [took] place in the forum State." *Bristol-Myers Squibb Co*., 137 S. Ct. at 1780. Weymouth did not engage in any actions in California, or direct any activity into California. Rather, the sum total of Weymouth's actions amounts to: (1) sending text messages to Hogan while both Weymouth and Hogan were in Atlanta, Georgia, and (2) sharing screenshots of the texts with Chung in Massachusetts. (Compl., ¶¶ 30-39; Weymouth Dec., ¶¶ 6-7; Chung Dec., ¶¶ 5-6).[2]

[2] Contrary to Hogan's allegations on mere "information and belief," Weymouth did not post any of the allegedly actionable content on social media. (Chung Dec. ¶¶ 5-6; Weymouth Dec. ¶ 7). The declarations of both Chung and Weymouth confirm as much, *id.*, and on a motion to dismiss for lack of personal jurisdiction, the courts "accept as true any facts contained in the defendant's affidavits that remain unrefuted by the plaintiff." *GCIU-Employer Ret. Fund v. Goldfarb Corp*., 565 F.3d 1018, 1020 n. 1 (7th Cir. 2009). Likewise, the Complaint's conclusory assertion "on

The mere fact that Hogan happens to reside in California is insufficient to establish personal jurisdiction over Weymouth, because the "'minimum contacts' analysis looks to the defendant's contacts with *the forum State itself*, not the defendant's contacts with persons who reside there." *Walden v. Fiore*, 571 U.S. 277, 285 (2014) (emphasis supplied). Further, any injury Hogan claims to have suffered in California "is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact *with the forum State*." *Id.* at 290 (emphasis supplied); *see Picot*, 780 F.3d at 1214. "The plaintiff," in other words, "cannot be the only link between the defendant and the forum." *Walden*, 571 U.S. at 285.

The Supreme Court's decision in *Walden* is particularly instructive. In that case, Anthony Walden, a Georgia law enforcement officer working at the Atlanta Hartsfield-Jackson Airport, seized $97,000 belonging to Gina Fiore and Keith Gipson, residents of Nevada, who were in the process of catching a connecting flight to Las Vegas. *Walden*, 571 U.S. at 280-281. The suit, filed in federal court in Nevada, alleged that Walden violated the plaintiffs' Fourth Amendment rights by seizing the money in Atlanta without probable cause, and by preparing false affidavits to justify the seizure, knowing the plaintiffs lived in Nevada. *Id.* at 281. The plaintiffs argued that the Georgia officer was subject to suit in Nevada because his actions, including the swearing out of a false affidavit, were "expressly aimed" at them and caused them foreseeable harm in their home state.

The Supreme Court unanimously rejected personal jurisdiction. *Walden*, 571 U.S. at 291. The court held that "the defendant's suit-related conduct must create a substantial connection with the forum State" for jurisdiction to be "consistent with due process." *Id.* at 284. In deciding whether such a connection exists, the proper

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information and belief" that Weymouth made unidentified false statements to Chung about the text messages is also refuted by Weymouth's declaration, (Weymouth Dec. ¶ 6), and such vague "labels and conclusions" cannot raise an entitlement to relief in any event. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). More to the point, any such misstatements are not alleged to have been made into California, and therefore cannot satisfy the "purposeful direction" test.

analysis "looks to the defendant's contacts with *the forum State itself*, not the defendant's contacts with persons who reside there." *Id.* at 285 (emphasis supplied). Thus, even where the parties have had extensive dealings and the plaintiff resides in the forum state, "the relationship must arise out of contacts that the 'defendant himself' creates with the forum State"—"mere injury to a forum resident is not a sufficient connection to the forum." *Id*. at 284, 290. Stated differently, "it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 285.

So, the Court held that Walden, who "never traveled to, conducted activities within, contacted anyone in, or sent anything or anyone to Nevada," had formed "no jurisdictionally relevant contacts with Nevada," and thus jurisdiction over him in that state was improper. *Id.* at 289, 291. As this Court later summarized, *Walden* holds that the "analysis must focus on the defendant's wrongful acts directed at the forum, rather than the effect those acts have on a plaintiff in their place of residence." *Rosen v. Terapeak, Inc*., No. CV-15-00112-MWF (EX), 2015 WL 12724071, at *6 (C.D. Cal. Apr. 28, 2015).

Like Officer Walden, Weymouth has no "jurisdictionally relevant" contacts with California. He did not commit any act in California or direct any activity into California. Per *Walden,* the mere fact that Hogan allegedly suffered "effect[s]" in California from Weymouth's alleged acts elsewhere is insufficient, because it does not show any connection between Weymouth and California *itself*. *Walden*, 571 U.S. at 290; *Rosen,* 2015 WL 12724071, *6.

Hogan cannot carry his burden of showing "purposeful direction" by pointing to the fact that parties other than Weymouth published material online. Notably, Hogan has not included Weymouth in his causes of action for defamation or false light invasion of privacy, the primary publication-related torts at issue. (Compl. Claims 1 and 3). Rather, he has sued Weymouth solely for disclosure of intimate private facts (presumably for sharing the texts with Chung); "harassment" (based on

text messages sent within Georgia); and intentional infliction of emotional distress (for the above actions). (Compl. Claims 2, 4 and 5).

However, even if Hogan were suing Weymouth based on the social media posts, his claims would run into two insurmountable obstacles. First, the declarations establish that Weymouth did not post any of the relevant social media content, notwithstanding Hogan's bare and unsupported allegation "on information and belief" to the contrary. (Weymouth Dec. ¶ 7; Chung Dec. ¶¶ 5-6); *In re Cathode Ray Tube (CRT) Antitrust Litig.*, 27 F. Supp. 3d 1002, 1008 (N.D. Cal. 2014) (on a motion to dismiss for lack of personal jurisdiction, "[t]he Court may not assume the truth of allegations [in a complaint] that are contradicted by affidavit").

Second, a non-resident's mere act of uploading information to a website that is available for all to see is insufficient to establish nationwide personal jurisdiction. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1229 (9th Cir. 2011) ("[W]e have made clear that 'maintenance of a passive website alone,'" without "something more," "'cannot satisfy the express aiming prong.'") (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010)); *see also, e.g.*, *Remick v. Manfredy*, 238 F.3d 248 (3rd Cir. 2001) ("[T]he mere posting of information or advertisements on an Internet website does not confer nationwide personal jurisdiction."); *Edwards v. Schwartz*, 378 F. Supp. 3d 468, 492 (W.D. Va. 2019) ("[M]ere injury to a [forum state] resident is not a sufficient connection," and therefore "posting defamatory statements on social media, without more, does not constitute purposeful availment."); *Sec. Alarm Fin. Enterprises, L.P. v. Nebel*, 200 F. Supp. 3d 976, 985 (N.D. Cal. 2016) (defendant's "social media posts are insufficient to establish personal jurisdiction."); *Professional's Choice Sports Med. Prod., Inc. v. Hegeman*, No. 15-CV-02505-BAS(WVG), 2016 WL 1450704, at *5 (S.D. Cal. Apr. 12, 2016) (holding no personal jurisdiction over Utah resident who made allegedly false statements on Facebook page, because, "the Facebook page was, in essence, a passive posting of information available for all to see").

Accordingly, Hogan cannot sustain his burden of demonstrating that Weymouth purposefully directed any activity toward California, and personal jurisdiction must be deemed improper on this basis alone.

B. This Case Does Not Arise out of Weymouth's Contacts with California.

As shown above, Hogan's claims against Weymouth do not "arise[] out of or relate[] to the defendant's forum-related activities." *Schwarzenegger*, 374 F.3d at 802. None of Weymouth's alleged acts took place in California, nor were they directed at California. For this additional reason, personal jurisdiction is improper.

C. The Exercise of Personal Jurisdiction Over Weymouth Would Be Unreasonable.

Hogan cannot demonstrate that his claims are based on Weymouth's California-related activities, and therefore analysis of the third prong of specific jurisdiction, the "fairness" factors identified in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985), is unnecessary. *Schwarzenegger*, 374 F.3d at 802. However, even if those factors were considered, they cut in Weymouth's favor.

"The extent of a defendant's purposeful interjection." *Burger King Corp.*, 471 U.S. at 475. "Even if there is sufficient 'interjection' into the state to satisfy the purposeful availment prong, the degree of interjection is a factor to be weighed in assessing the overall reasonableness of jurisdiction under the reasonableness prong." *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488 (9th Cir. 1993), quoting *Insurance Company of North America v. Marina Salina Cruz*, 649 F.2d 1266, 1271 (9th Cir.1981)). Here, Weymouth directed no actions at all toward California, so this factor cuts in Weymouth's favor.

"The burden on the defendant in defending in the forum." *Panavision Int'l.,* 141 F.3d at 1323. The burden on Weymouth, a resident of Massachusetts, to appear in California for this lawsuit would be substantial. Weymouth has no assets

in California and no meaningful connection to California that would mitigate the unfairness of requiring him to appear here.

"The extent of conflict with the sovereignty of the defendant's state" and **"the forum state's interest in adjudicating the dispute."** *Id.* California may have an interest in affording its residents a remedy for tortious harm, but none of the acts in this case took place in California, whereas some of them took place in Massachusetts. Accordingly, Massachusetts has at least as great an interest in this action as California does.

"The most efficient judicial resolution of the controversy." *Id.* Hogan's claims against Weymouth could be handled efficiently in Massachusetts. Two of the three obvious witnesses in Hogan's case against Weymouth—Weymouth himself and Chung—live in Massachusetts. (Weymouth Dec. ¶ 2; Chung Dec. ¶ 2).

"The importance of the forum to the plaintiff's interest in convenient and effective relief." *Id.* While Hogan may find it more convenient to sue Weymouth in California, Hogan's convenience is not of paramount concern. *Dole Food Co. v. Watts*, 303 F.3d 1104, 1116 (9th Cir. 2002) ("[T]he plaintiff's convenience is not of paramount importance.")

"The existence of an alternative forum." Again, Hogan may sue Weymouth in a Massachusetts court.

Accordingly, even if Hogan could somehow establish that Weymouth purposefully directed his activities toward California, the exercise of jurisdiction over him would violate norms of fair play and substantial justice. This action should be dismissed for lack of personal jurisdiction.

IV. HOGAN FAILS TO STATE A CLAIM AGAINST WEYMOUTH.

Even if Hogan were able to establish personal jurisdiction over Weymouth, his complaint must be dismissed pursuant to Fed. R. Civ. P. 12(b)(6) because it fails to state any claim upon which relief may be granted.

A. Hogan Has Failed to State a Claim for Public Disclosure of Intimate Private Facts.

The California Supreme Court has "set forth the elements of the public-disclosure-of-private-facts tort as follows: '(1) public disclosure, (2) of a private fact, (3) which would be offensive and objectionable to the reasonable person, and (4) which is not of legitimate public concern.'" *Karimi v. Golden Gate Sch. of Law*, 361 F. Supp. 3d 956, 980 (N.D. Cal. 2019) (quoting *Taus v. Loftus*, 40 Cal. 4th 683, 717 (2007)). To meet this test, the disclosure at issue must reveal "intimate details of plaintiffs' lives." *Taus*, 40 Cal. 4th at 718 (2007) (noting that the "public-disclosure-of-private-facts tort applies to 'the unwarranted publication by defendant of intimate details of plaintiffs' lives'"), quoting *Coverstone v. Davies*, 38 Cal.2d 315, 323 (1952); *Sipple v. Chronicle Publ'g Co*., 154 Cal. App. 3d 1040, 1047 (Ct. App. 1984) (defining "public disclosure of private facts" as "the unwarranted publication of intimate details of one's private life which are outside the realm of legitimate public interest.").

The text messages that Weymouth disclosed to Chung did not reveal "intimate private details" of Hogan's life. *Karimi*, 361 F. Supp. 3d at 980 (statement that plaintiff had been required to leave law school for period of time did not reveal intimate details). Rather, they merely showed that Hogan made an insensitive remark in a text message about a professional football player. The claim fails for this reason alone.

Even if the text messages could somehow be deemed "intimate details," however, the texts are of "legitimate public concern" because they involve an employee of the Los Angeles Rams making disrespectful and mocking comments about a seriously injured player on the opposite team in the midst of the biggest game of the year. *Karimi*, 361 F. Supp. 3d at 980. The posts led to significant media attention, demonstrating the public interest behind them. *See, e.g.*, Compl. ¶¶ 46 & 48, and Exs. B-F. This interest extended to social media as well: Exhibit D

to the Complaint shows that Chung's Instagram post revealing the text messages had garnered 4,693 "likes" and 357 comments by the time defendant Beasley published its article concerning the post. *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 695 (2012) (the "fact that [defendant's] posts drew numerous comments" showed "considerable public interest"); *Hecimovich v. Encinal School Parent Teacher Organization*, 203 Cal. App. 4th 450, 467 (2012) (statements criticizing a volunteer fourth grade basketball coach's treatment of his players a matter of public interest because of broad importance of child safety in sports.) Accordingly, the disclosure of the texts was outside the scope of the "private facts" tort. *Shulman v. Grp. W Prods., Inc.*, 18 Cal. 4th 200, 225 (1998), as modified on denial of reh'g (July 29, 1998) ("[A] publication is newsworthy if some reasonable members of the community could entertain a legitimate interest in it.")

Finally, Hogan fails to plausibly allege that his deliberately provocative text message to Weymouth was "private" in any meaningful sense. Hogan has alleged no facts showing that Weymouth promised to keep his text communications with Hogan private. Hogan may be embarrassed by his words now, but he has not alleged facts showing a reasonable expectation of privacy in the texts. Hogan has thus failed to state a claim against Weymouth for public disclosure of intimate private facts.

B. Hogan Has Failed to State a Claim for Intentional Infliction of Emotional Distress.

"A claim for Intentional Infliction of Emotional Distress ('IIED') requires a showing of the following: '(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct.'" *Plater v. United States*, 359 F. Supp. 3d 930, 942 (C.D. Cal. 2018) (quoting *Christensen v. Superior Court*, 54 Cal. 3d 868, 903 (1991)). For

purposes of this tort, "extreme and outrageous conduct" generally "does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities, but only to conduct so extreme and outrageous as to go beyond all possible bonds of decency." *Ankeny v. Lockheed Missiles & Space Co*., 88 Cal. App. 3d 531, 537 (1979) (citation omitted) (demurrer with respect to claim for intentional infliction of emotional distress); *Braunling v. Countrywide Home Loans Inc*., 220 F.3d 1154, 1158 (9th Cir. 2000) ("Conduct which exhibits mere rudeness and insensitivity does not rise to the level required for a showing of intentional infliction of emotional distress.").

Here, Weymouth's alleged conduct did not come close to exceeding "all bounds of reasonable decency." At most, the complaint shows that Weymouth became upset when Hogan mocked his injured friend, Chung, and became more upset when Hogan responded to Weymouth's rebuke of his insensitive words with further mockery. (Compl. Ex. A, e.g. correcting Weymouth's use of "your" to "you're" and writing, "Oh my God! That's so nice of you."). After Hogan deliberately triggered a reaction from Weymouth, he threatened to share Weymouth's angry messages with his employer. (*Id.*) Hogan, in other words, chose to taunt Weymouth and Chung, predictably making Weymouth angry. Indeed, Hogan admitted in the text exchange that his "bitch" remark was an "asshole comment." (Compl., Ex. A). Hogan has failed to allege facts showing that Weymouth's emotional reaction, under the circumstances of a serious injury to his friend, was "so extreme and outrageous as to go beyond all possible bonds of decency." *Ankeny*, 88 Cal. App. 3d at 537.

Even if Hogan could meet this hurdle, however, his claim of IIED should be dismissed because he has failed to allege facts showing *severe* emotional distress. "'With respect to the requirement that the plaintiff show severe emotional distress, this court has set a high bar. Severe emotional distress means emotional distress of such substantial quality or enduring quality that no reasonable person in civilized

society should be expected to endure it.'" *Duronslet v. Cty. of Los Angeles*, 266 F. Supp. 3d 1213, 1220 (C.D. Cal. 2017) (quoting *Hughes v. Pair*, 46 Cal. 4th 1035, 1051 (2009) (allegation that the plaintiff suffered "discomfort, worry, anxiety, upset stomach, concern, and agitation" insufficient)). In *Duronslet,* the court dismissed an IIED claim where the plaintiff alleged that she suffered "shock, embarrassment, and emotional distress" as a result of the defendant's conduct, because these were "simply insufficient allegations" of severe emotional distress. Here, Hogan has merely alleged, in purely conclusory fashion, that he suffered "severe emotional distress." (Compl. ¶¶ 59, 88). This is plainly insufficient, and his IIED claim must therefore be dismissed.

C. Hogan Has Failed to Allege Facts that Meet the "Civil Harassment" Standard.

Hogan's fifth cause of action, titled "Civil Harassment," alleges that Weymouth made "credible threats of violence" toward Hogan, and "engaged in a knowing and willful course of conduct directed at the plaintiff that: (a) seriously alarms, annoys, and harasses the plaintiff; (b) serves no legitimate purpose; and (c) has caused substantial emotional distress to the plaintiff." These allegations track the language of Cal. Code Civ. Proc. Section 527.6, which "provides a person who has suffered harassment the right to seek an injunction." *Bolbol v. Brown*, 120 F. Supp. 3d 1010, 1013 (N.D. Cal. 2015). Under the statute, "'the court must hold a hearing, receive relevant testimony, and issue the injunction if it finds, by clear and convincing evidence, that harassment *exists*.'" *Id.* (emphasis supplied), quoting *Nora v. Kaddo*, 116 Cal. App. 4th 1026, 1028 (2004). However, "[a]n injunction is authorized only when it appears that wrongful acts are likely to recur." *Russell v. Douvan*, 112 Cal. App. 4th 399, 402 (2003).

Hogan's complaint fails to allege facts that could justify an injunction under this standard. As the Court observed in its June 12, 2019 Order, "there appears to be no indication of ongoing threats apart from texts and social media posts in February

2019." (Order, June 12, 2019, Doc. 21 at 2). Indeed, all alleged acts that supposedly constituted "harassment" occurred by February 6, 2019, yet plaintiff waited until March 28, 2019, to file his complaint and motion to prevent "harassment," demonstrating that he did not believe such further acts were likely to recur during the intervening six weeks. As of today's date, August 5, 2019, Hogan has not amended his complaint or otherwise alleged facts showing that any supposed "harassment" has occurred since early February, or is likely to recur again. Accordingly, plaintiff has failed to allege facts showing that "unlawful harassment *exists*" today, nor that the allegedly "wrongful acts are likely to recur"—and certainly not facts that could satisfy his burden of "clear and convincing evidence" under Section 527.6. *Russell*, 112 Cal. App. 4th at 402; Cal. Code Civ. Proc. Section 527.6(i).

V. CONCLUSION

For the foregoing reasons, Defendant Matthew Weymouth respectfully requests that this action be dismissed for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2), and for failure to state a claim upon which relief may be granted pursuant to Fed. R. Civ. P. 12(b)(6).

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Respectfully submitted,

/s/ Aaron S. Jacobs

Jeffrey J. Pyle (pro hac vice pending)
jpyle@princelobel.com
Aaron S. Jacobs (Cal. Bar No. 214953)
ajacobs@princelobel.com
PRINCE LOBEL TYE LLP
One International Place, Suite 3700
Boston, MA 02110
tel. (617) 456-8000
fax (617) 456-8100

Matthew Vella (Cal. Bar No. 314548)
mvella@princelobel.com
PRINCE LOBEL TYE LLP
357 S Coast Highway, Suite 200
Laguna Beach, CA 92651
tel. (949) 232-6375
fax (949) 861-9133

Attorneys for Defendant Matthew J. Weymouth