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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

NOV 04 2011

8 **IN THE SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF RIVERSIDE**
10

11 **JEFFRY M. KAATZ, JAMES W. BEACH, and**)
GARY L. BRADLEY,)

12 Plaintiffs,)

13 v.)

14 **RICARDO GRAHAM; PACIFIC UNION**)
15 **CONFERENCE OF SEVENTH-DAY**)
16 **ADVENTISTS, a not-for-profit corporation;**)
17 **DANIEL R. JACKSON; LARRY BLACKMER;**)
18 **NORTH AMERICAN DIVISION**)
19 **CORPORATION OF SEVENTH-DAY**)
20 **ADVENTISTS, a not-for-profit corporation; and**)
21 **LA SIERRA UNIVERSITY, a not-for-profit**)
22 **corporation; and DOES 1-100,**)

23 Defendants.)

Case No.: RIC 1112557

**PLAINTIFFS' REQUEST FOR
CONTINUANCE OF HEARING AND
OPPOSITION TO MOTION TO QUASH
SERVICE OF SUMMONS OF COMPLAINT
FOR LACK OF PERSONAL JURISDICTION
BROUGHT BY DEFENDANTS LARRY
BLACKMER AND DANIEL R. JACKSON**

Hearing Date: November 18, 2011

Hearing Time: 8:30 a.m.

Judge: Commissioner Paulette Durand-Barkley

Department: 2

Judge Assigned: Hon. Craig G. Riemer

Complaint Filed: July 28, 2011

23 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

24 Plaintiffs JEFFRY M. KAATZ, JAMES W. BEACH, and GARY L. BRADLEY (collectively,
25 "Plaintiffs"), hereby submit their request to continue the hearing and opposition to Motion to Quash
26 Service of Summons of Complaint ("Defendants' Motion") brought by Defendants Larry Blackmer and
27 Daniel R. Jackson (collectively "nonresident Defendants").
28

1 The request and opposition are based on the attached Memorandum of Points and Authorities,
2 Declaration of Richard D. McCune, the Court's file in this matter and such other evidence or argument
3 as may be presented at oral argument on Defendants' motion.

4 Dated: November 4, 2011

MCCUNEWRIGHT LLP

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7 By:

 FOR

Richard D. McCune
Attorneys for Plaintiffs

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I

INTRODUCTION

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3 Plaintiffs filed an action against North American Division Corporation of Seventh-Day
4 Adventists, Pacific Union Conference of Seventh-day Adventists La Sierra University, and certain
5 individual employees of these entities, arising out of the wrongful termination of Plaintiffs, three life-
6 long employees of La Sierra University and senior members of the administration and faculty. Plaintiffs
7 alleged that, in addition to wrongful termination, Defendants' conduct also involved intentional
8 interference with contractual rights, intentional infliction of emotional distress, and violation of
9 Plaintiffs' privacy rights ("intentional claims"). Plaintiffs' intentional claims against Defendants Larry
10 Blackmer and Daniel R. Jackson, respectively the Vice President of Education and President of
11 Defendant North American Division Corporation of Seventh-day Adventists, allege that these
12 Defendants unlawfully used a surreptitiously recorded audio recording of a private conversation between
13 Plaintiffs as a basis to entirely forgo the appropriate and legally required personnel protocol to force
14 Plaintiffs' resignations.

15 In filing a motion to quash service of summons of the Complaint, nonresident Defendants
16 Blackmer and Jackson attempt to exempt themselves from liability for their intentional unlawful conduct
17 committed in California, a state in which they otherwise conduct substantial and continuous business, on
18 the basis that the Court lacks personal jurisdiction over them because they reside in Maryland. To
19 support this claim Defendants submit a self-serving, vague, and incomplete declaration claiming they
20 did not directly instruct other Defendants to fire Plaintiffs.

21 However, even without discovery, these declarations fail to overcome known or suspected facts
22 of significant contact with California including serving on significant board positions in Californian
23 organizations that would require regular personal visits, and continuous and regular contact with
24 California, including setting policy for major California institutions. In addition, as is tacitly admitted in
25 the declarations, these Defendants were directly involved in the decision-making process to wrongfully
26 discharge Plaintiffs – even if Defendants now claim that they did not instruct other Defendants to carry
27 out the termination. Discovery will go to that issue, but their admitted involvement in the process of
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1 obtaining and using the illegal taping of Plaintiffs' private conversations for purposes of terminating
2 Plaintiffs is undisputed.

3 Accordingly, these Defendants have more than the necessary contacts with California under
4 general personal jurisdiction, and the overwhelming factors favor the Court's exercise of personal
5 jurisdiction over them. However, should the Court determine that more evidence is needed to establish
6 minimum contacts, Plaintiffs must be given an opportunity to engage in formal discovery on this issue in
7 order to provide the Court with admissible evidence on this issue. As the case is still in the pleadings
8 stage, and nonresident Defendants' motion constitutes their first appearance in this action, Plaintiffs
9 have yet to have an opportunity to conduct formal discovery on personal jurisdiction issues regarding
10 the nonresident Defendants. Based on information obtained by Plaintiffs' counsel, given an opportunity
11 to conduct formal discovery on the matter, Plaintiffs will likely succeed in providing the Court with
12 overwhelming facts to further support the Court's authority to exercise general and specific personal
13 jurisdiction over these nonresident Defendants in this matter.

14 However, to provide a complete record, and to allow Plaintiffs an opportunity to submit
15 admissible evidence, Plaintiffs request that the Court continue the hearing for four months to allow
16 Plaintiffs to conduct discovery on the jurisdiction issue. It is also requested that all other discovery be
17 stayed during this four month period, as proceeding with discovery against Plaintiffs and the other
18 Defendants, could result in duplication and waste depending on the ultimate rulings by the Court on this
19 issue. In the alternative, Plaintiffs respectfully request that the Court deny nonresident Defendants'
20 motion in its entirety and exercise personal jurisdiction over them.

21 II

22 STATEMENT OF FACTS

23 A. The Complaint Alleges Intentional, Unlawful Conduct Engaged in California by 24 Nonresident Defendants Blackmer and Jackson as the Basis for Plaintiffs' Claims

25 The Complaint alleges that on June 10, 2011, Plaintiffs were individually summoned by
26 Defendant Ricardo Graham, Chair of the Board of Trustees of La Sierra University by virtue of his
27 position as President of the Pacific Union Conference of Seventh-day Adventists, and informed that he
28 was in possession of an audio recording of a conversation made in a private home at which Plaintiffs

1 were present but made without their knowledge or consent. (Complaint at ¶¶ 1-2.) The conversation
2 included comments by Plaintiffs that were critical of Defendants Larry Blackmer and Daniel Jackson,
3 respectively the Vice President for Education and President of Defendant North American Division
4 Corporation of Seventh-day Adventists, and Defendant Graham for their defense of a recent decision of
5 an accrediting organization to issue a negative accrediting finding with respect to La Sierra University at
6 a meeting at La Sierra University where Defendants Blackmer and Jackson addressed the faculty and
7 staff to explain their decisions relating to accreditation. (*Id.* at ¶ 2.)

8 This surreptitious recording was subsequently delivered to Blackmer who directed that a
9 transcript of the private conversation be prepared, and then distributed both the audio recording of the
10 private conversation and the transcript to Jackson and Graham. (*Id.* at ¶ 3.) After inappropriately
11 receiving, listening to, and distributing the non-consensual recording of Plaintiffs' private conversation,
12 Blackmer and Jackson, to whom Graham reports in his role as President of the Pacific Union
13 Conference of Seventh-day Adventists but who have no operational or legal authority over the
14 governance of La Sierra University, plotted with Defendant Graham to use the recording as an excuse to
15 terminate Plaintiffs' employment at La Sierra University. (*Id.* at ¶ 4.) In consultation with, and at the
16 behest of Blackmer and Jackson, Graham misrepresented the contents of the recording of their private
17 conversation and threatened Plaintiffs that if they did not immediately sign letter of resignations, they
18 would be fired from their positions and the audio recording would be made public, causing shame and
19 great harm to Plaintiffs, their colleagues, their families, and the University they had faithfully served for
20 their entire careers. (*Id.* at ¶ 5.)

21 In taking such action without advising or consulting with the President of La Sierra University
22 and without the authority of any action taken by the Board of Trustees, this action violated the La Sierra
23 University Bylaws, Trustees Handbook, and Faculty Handbook, and exceeded the authority of Graham
24 as Chair of the Board of Trustees. His actions taken in furtherance of his loyalty to his employer (as
25 explicitly or implicitly directed by Defendants Blackmer and Jackson) breached the fiduciary duty he
26 owed to La Sierra University by putting the interests of his own employer above the interests of the
27 University. (*Id.* at ¶ 6.) In so doing, Defendants caused Plaintiffs to suffer the loss of their occupations,
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1 exposed Plaintiffs to hatred, contempt, ridicule, and shame, and discouraged others in the Seventh-day
2 Adventist community from associating or dealing with them. (*Id.* at ¶ 7.)

3 Nonresident Defendants Blackmer and Jackson have been named under several causes of action.
4 They are included in the sixth, seventh and eighth causes of action for intentional interference with
5 contractual relations, intentional interference with prospective economic advantage, and inducing breach
6 of contract. (*Id.* at ¶¶ 158-76.) The bases for these claims is that although the nonresident Defendants
7 had knowledge of Plaintiffs' valid contract with La Sierra University, they intentionally disregarded the
8 organizational, procedural and administrative structure at La Sierra University, and through their special
9 relationship with board members, exerted improper and unjustified influence over the University by
10 inducing the University to breach the contractual relationships with Plaintiffs without prior knowledge
11 of La Sierra University Board of Trustees and administration, thereby acting to govern and control the
12 University. (*Ibid.*)

13 The nonresident Defendants were also named in the ninth cause of action for intentional
14 infliction of emotional distress for their outrageous and intentional conduct directed at Plaintiffs in
15 illegally obtaining, distributing and publishing nonconsensual recording of Plaintiffs' private
16 conversation and using such information to wrongfully terminate Plaintiffs. (*Id.* at ¶¶ 177-82.) Further,
17 they were named in the tenth cause of action for violation of California common-law right to privacy for
18 intentionally intercepting and disclosing contents of private communication between Plaintiffs in
19 violation of federal and state statutes. (*Id.* at ¶¶ 183-87.) Finally, they were included in the eleventh
20 cause of action for violation of the Unfair Competition Laws, Bus. & Prof. Code section 17200, based
21 on all of the above-mentioned conduct. (*Id.* at ¶¶ 188-91.)

22 With respect to jurisdiction, the Complaint alleges that all Defendants have conducted and
23 continue to conduct business in the state of California and committed acts and omissions complained of
24 in the state of California. (*Id.* at ¶ 9.) Defendants Pacific Union Conference of Seventh-day Adventists
25 ("PUC"), La Sierra University ("LSU") and Ricardo Graham are residents of California. (*Id.* at ¶¶ 17,
26 18, 21.) The remaining Defendants reside in Maryland but do substantial business in California.
27 Defendants Larry Blackmer and Daniel R. Jackson are high officials employed by Defendant North
28 American Division Corporation of Seventh-day Adventists ("NAD"), which operates, directs, supervises

1 and/or controls numerous entities in California. (*Id.* at ¶ 16.) Furthermore, all Plaintiffs are residents of
2 California. (*Id.* at ¶¶ 13-15.)

3 **B. Known and Discoverable Facts Demonstrating that Nonresident Defendants Engaged in**
4 **Extensive and Continuous Business in California**

5 Plaintiffs' counsel has conducted investigations into this matter, including speaking with
6 individuals that profess personal knowledge of events and documents, which indicate that it is likely that
7 discovery would reveal the following facts as set forth below (and in the Declaration of Richard D.
8 McCune filed in Support of Plaintiffs' Opposition to Motion to Quash Service of Summons of
9 Complaint for Lack of Personal Jurisdiction ("McCune Decl."), at ¶ 2 (a)-(h)):

10 Defendants Jackson and Blackmer were regularly engaged in continuous business in California
11 with La Sierra University and other major California institutions. With respect to facts that form the
12 basis of this litigation, Blackmer and Jackson admit that they obtained the private audio recording,
13 distributed the recording to others, including Defendant Graham, and discussed the matters that are the
14 basis for this case with Defendant Graham leading up to Plaintiffs terminations. (Declaration of Daniel
15 R. Jackson ("Jackson Decl.") in Support of Defendants' Motion at ¶¶ 3-5; Declaration of Larry
16 Blackmer ("Blackmer" Decl.) in Support of Defendants' Motion at ¶¶ 4-7.)

17 However, that is just a small part of their involvement with setting and enforcing policies at La
18 Sierra University. They were both involved in the accreditation of La Sierra University by the Seventh-
19 day Adventist church organization. Based on information and belief, for Defendant Blackmer, that is
20 believed to have involved a personal site visit. For both Defendants Blackmer and Jackson, it is
21 believed that they had numerous communications with La Sierra University personnel about that
22 accreditation, which culminated with both of them personally visiting La Sierra University on April 20,
23 2011, to attempt to explain to the faculty and staff why La Sierra University received negative
24 accreditation. (Jackson Decl. at ¶ 3; Blackmer Decl. at ¶ 4.)

25 In addition, since 2009, Defendants Jackson and Blackmer have been very active in setting
26 policy for La Sierra University relating to the academic curriculum for the religion and science
27 departments. That activity has included frequent and regular contacts with board of trustee members,
28 administration, and faculty. It is also believed to include Defendant Blackmer recently flying to

1 California to meet with certain faculty members of La Sierra University. It is also believed that
2 Defendant Blackmer has personally attended, directed and participated in La Sierra University's
3 constituency meetings, which is the group that meets for the purpose of selecting the board of trustees
4 that determines policy for La Sierra University.

5 But it is not only Defendants' heavy involvement with La Sierra University that supports
6 jurisdiction, Defendants Jackson and Blackmer are also heavily involved in other business activity in
7 California. Defendant Jackson is board vice chair of Loma Linda University Medical Center and Loma
8 Linda University, two large organizations in California, and two of the largest employers in the Inland
9 Empire. (Loma Linda University website listing for Boards of Trustees for Loma Linda University
10 Medical Center Board of Trustees and Loma Linda University Board of Trustees.¹⁾ A vice chair is
11 responsible for regularly attending and directing board meetings and participating in major decisions
12 while in California, and as such sets policy for these major California institutions. As president of the
13 NAD, (Jackson Decl. at ¶ 1), Jackson is also in charge of oversight of Pacific Union Conference, another
14 large employer, which is located in the city of Westlake Village, State of California. As such,
15 Defendant Graham as PUC president directly reports to Jackson. Jackson is responsible for setting
16 policy, participating in major decisions, supervising executives who carry out policy, and personally
17 visiting PUC in California.

18 Defendant Blackmer, as vice president of NAD, is responsible for educational institutions.
19 (Blackmer Decl. at ¶ 1; NAD website biography page.²⁾ Dozens of those schools are located in
20 California. It is believed that he has had numerous visits to California and regular contacts with these
21 California schools in carrying out these responsibilities. He is also an advisor to the board of trustees of
22 Loma Linda University, (*see* Loma Linda University website³), where he is involved in recommending
23 and directing major policy decisions. Further, both Defendants serve on the board of trustees for
24 Adventist Media Center, Inc., and as such have visited California and are actively involved in setting
25 policy and communicating with the executives of this California resident.

27 ¹ "<http://www.llu.edu/central/directory/bot/bot.page>";
28 "<http://www.llu.edu/central/directory/mcbot/mcbot.page>"
² "<http://www.nadadventist.org/article.php?id=112>"
³ "<http://www.llu.edu/central/directory/bot/bot.page>"

1 Finally, Defendant North American Division, the employer of these individuals, argued in its
2 demurrer, on the basis of the First Amendment, that La Sierra University, a California organization with
3 a separate charter, bylaws and operating policies, is not really a separate entity, but rather just an alter-
4 ego organization of North American Division. (Defendants' Pacific Union Conference of Seventh-day
5 Adventists and North American Division Corporation of Seventh-day Adventists' Notice of Demurrer
6 and Demurrer to Plaintiffs' Sixth, Seventh, and Eighth Causes of Action, filed September 13, 2011, at
7 p.7.) While this argument is heavily contested by the facts, it is patently inconsistent with the argument
8 Defendants Jackson and Blackmer are now advancing on jurisdiction. If in fact La Sierra University is
9 simply the alter-ego of NAD, then Jackson as president and Blackmer as vice president of North
10 American Division have actual control over setting, implementing, and enforcing policy at California
11 resident Defendant La Sierra University.

12 **C. Nonresident Defendants' Vague, Self-Serving Declarations Purportedly Denying Liability**
13 **and Contacts with California**

14 In response to what Defendants know is overwhelming evidence of California contacts, they
15 have submitted declarations in which they focus on the merits of the case rather than the issue of
16 California contacts. A glaring hole in nonresident Defendants' declarations is that although they attempt
17 to state their innocence in Plaintiffs' claim that they induced Graham to force Plaintiffs' resignation,
18 nonresident Defendants nevertheless state that they distributed the private audio recording to Graham
19 and discussed "this matter" prior to Graham forcing the resignations. The nature of these vaguely and
20 insufficiently described discussions is subject to appropriate discovery. It is also telling that Defendants
21 do not state how often they travel to California for business purposes, their communications with
22 California residents, their part in setting policies for California entities, their involvement as board
23 members of important California organizations, or a host of other facts that actually relate to the
24 jurisdiction issues. It can be inferred by this silence that factual discovery will likely show significant
25 California contacts.

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III

ARGUMENT

A. The Broad Reach of California’s “Long Arm” Statute Authorizes the Court to Exercise Personal Jurisdiction Over Defendants Blackmer and Jackson

Due process permits state courts to exercise personal jurisdiction over nonresidents who have “minimum contacts” with the forum state, *i.e.*, the existence of a relationship between the nonresident and the forum state such that the exercise of jurisdiction does not offend “traditional notions of fair play and substantial justice” under the U.S. Constitution’s Fourteenth Amendment Due Process Clause. (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316 [66 S.Ct. 154, 158].) California has the broadest kind of “long arm” statutes, as local courts are authorized to exercise jurisdiction over parties “... on any basis not inconsistent with the Constitution of the state or of the United States.” (Code Civ. Proc., § 410.10; *see Sanders v. CEG Corp.* (1979) Cal.App.3d 779, 783 [157 Cal.Rptr. 252, 255] (California courts can assert power over residents and nonresidents alike to the outer limits of constitutional due process).)

Personal jurisdiction may be either general or specific. General jurisdiction may lie for all purposes if a defendant has established a presence in the forum state by virtue of activities in the state which are “extensive or wide-ranging,” (*Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, 898-99 [80 Cal.Rptr. 113]), or “substantial ... continuous and systematic.” (*Perkins v. Benquet Consolidated Mining Co.* (1952) 342 U.S. 437, 446-47 [72 S.Ct. 413, 418-19]; *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147 [127 Cal.Rptr. 352, 354].) In such a case, “it is not necessary that the specific cause of action alleged be connected with the defendant’s business relationship to the forum.” (*Cornelison, supra*, 16 Cal.3d at 147 [127 Cal.Rptr. 352].)

If a nonresident defendant’s “activities in the state are not sufficient to allow the forum state to exercise general jurisdiction for all purposes, the state may nonetheless exercise specific jurisdiction if: 1) the out-of-state defendant purposefully established contacts with the forum state; 2) the plaintiff’s cause of action “arises out of” or is “related to” the defendant’s contacts with the forum state; and 3) the forum’s exercise of personal jurisdiction in the particular case is reasonable and comports with “fair play and substantial justice.” (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 477-78 [105 S.Ct. 2174,

1 2184-85]; *Vons Cos., Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446 [58 Cal.Rptr.2d 899, 906].)
2 Once a court decides that a defendant has purposefully established contacts with the forum state and that
3 the plaintiff's cause of action arose out of those forum-related contacts, the final step in the analysis
4 involves balancing the convenience of the parties and the interests of the state in order to determine
5 whether the exercise of personal jurisdiction is fair and reasonable under all circumstances. (*Burger*
6 *King, supra*, 471 U.S. at 477-78 [105 S.Ct. 2174, 2184-85]; *Vons, supra*, 14 Cal.4th 434, 447-48 [58
7 Cal.Rptr.2d 899].)

8 Once the facts showing minimum contacts with the forum state are established, it becomes the
9 nonresident defendant's burden to demonstrate that the exercise of personal jurisdiction would be
10 unreasonable." (*Burger King, supra*, 471 U.S. at 476-77 [105 S.Ct. 2174, 2184-85]; *Vons, supra*, 14
11 Cal.4th 434, 449 [58 Cal.Rptr.2d 899].)

12 Before the Court rules on jurisdictional issues, Plaintiffs are entitled to continue the hearing on a
13 motion to quash service of summons for lack of personal jurisdiction to conduct discovery on
14 jurisdictional issues. (*Omega Video Inc. v. Superior Court* (1983) 146 Cal.App.3d 470, 481 [194
15 Cal.Rptr. 574] ("[i]t is well established in the area of motions to quash service of summons for lack of
16 personal jurisdiction that a plaintiff is entitled to conduct discovery on the jurisdictional issues.");
17 *Goehring v. Superior Court (Bernier)* (1998) 62 Cal.App.4th 894, 911 [73 Cal.Rptr.2d 105] ("[a
18 plaintiff is generally entitled to conduct discovery with regard to a jurisdictional issue before a court
19 rules on a motion to quash"); *HealthMarkets, Inc. v. Superior Court* (2009) 171 Cal.App.4th 1160,
20 1173-74 [90 Cal.Rptr.3d 527] (same).)

21 Here, Plaintiffs have established sufficient contacts to warrant the Court's exercise of general
22 jurisdiction. However, to provide an undisputed record on this issue, Plaintiffs request that the Court
23 continue the hearing on Defendants' motion for four months to permit Plaintiffs to conduct discovery on
24 personal jurisdiction issues to more firmly establish general and specific personal jurisdiction in
25 California.

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1 **1. Defendants Blackmer and Jackson Are Subject to General Personal Jurisdiction in**
2 **California**

3 As discussed in the factual section, known and discoverable facts will show that nonresidents
4 Blackmer and Jackson have engaged in substantial, continuous and systematic business in California to
5 warrant the Court's exercise of general personal jurisdiction over them. This includes actions taken in
6 setting and implementing policy at La Sierra University, participating in the firing of Plaintiffs, and
7 directing policy of other major California institutions through their employment role or serving on
8 boards of directors. As a result of these extensive business relationships in California and control and
9 oversight of California entities, Blackmer and Jackson are subject to general personal jurisdiction in
10 California. (*See e.g., In re Automobile Antitrust Cases I and II*, 135 Cal.App.4th 100, 120 [27
11 Cal.Rptr.3d 258] (general jurisdiction exists where the nonresident defendant has control over a local
12 entity); *Davis v. Metro Productions, Inc.* (9th Cir. 1989) 885 F.2d 515, 521 (officers and employees who
13 are subject to local jurisdiction are not immune because they acted on behalf of their corporation, *i.e.*, no
14 "fiduciary shield" protects corporate employees from local jurisdiction in actions in which they
15 otherwise can be sued individually).)

16 **2. The Court's Exercise of Personal Jurisdiction Over Defendants Is Reasonable**

17 In determining whether California has a sufficient relationship with the nonresident defendant
18 and the litigation to make it reasonable to require the defendant to defend the action in California courts,
19 the following factors are usually considered: 1) the extent to which the lawsuit relates to the defendant's
20 activities or contacts with California; 2) the availability of evidence and the location of witnesses; 3) the
21 availability of an alternative forum in which the claim could be litigated (the defendant's amenability to
22 suit elsewhere); 4) the relative costs and burdens to the litigants of bringing or defending the action in
23 California rather than elsewhere; and 5) any state policy in providing a forum for this particular
24 litigation (*e.g.*, the protection of California residents, or assuring applicability of California law). (*See*
25 *World Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292 [100 S.Ct. 559, 564]; *Fisher*
26 *Governor Co. v. Sup. Ct. (Prestwich)* (1959) 53 Cal.2d 222, 225-26 [1 Cal.Rptr. 1, 3-4].)

27 If the plaintiff is a local resident, the forum state may have more interest in the matter, making it
28 easier to justify such exercise of jurisdiction. (*See Keeton v Hustler Magazine, Inc.* (1984) 465 U.S.

1 770, 780 [104 S.Ct. 1473, 1481]; *Ford Motor Co. v. Insurance Co. of No. America* (1995) 35
2 Cal.App.4th 604, 610-11 [41 Cal.Rptr.2d 342, 346].) Further, corporate agents or employees who are
3 primary participants in intentional wrongdoing causing injury locally can be sued individually along
4 with their employer. (*Calder v. Jones* (1984) 465 U.S. 783, 789-90 [104 S.Ct. 1482, 1487].) Intentional
5 tortfeasors must be prepared to defend themselves wherever their acts cause injury. (*Id.* at pp. 789-90
6 [104 S.Ct. at p. 1487] (corporate agents or employees who are primary participants in intentional
7 wrongdoing causing injury locally can be sued along with their employer).)

8 Here, all of the above factors support the Court's exercise of personal jurisdiction over the
9 nonresident Defendants. First, this lawsuit relates entirely to these nonresident Defendants' California
10 contacts relating to their conduct in attending a meeting in California, unlawfully receiving and
11 distributing an audio recording of private conversations in California, and intentionally inducing the
12 breach of Plaintiffs' employment contracts in California. Second, as alleged in the complaint, and not
13 disputed by nonresident Defendants, most of the evidence and witnesses are located in California.
14 Plaintiffs and their employer, Defendant La Sierra University, are California residents. Their job
15 responsibilities were in California. Defendants Pacific Union Conference and Ricardo Graham are
16 located in California. The activities giving rise to the illegal taping of private conversations involved
17 California residents and occurred in California. The decision to terminate using the illegally taped
18 private conversations included a California Defendant. The meeting where Defendants terminated
19 Plaintiffs occurred in California. The issues surrounding the resignation versus termination issue
20 involved California residents and the actions occurred in California. The evidence related to ongoing
21 damages will involve witnesses in California.

22 Third, it would be unfeasible to separate the litigation to have the portions relating to the
23 nonresident Defendants' conduct litigated outside of California, as all relevant events in this action are
24 interwoven and occurred almost entirely in California. Nonresident Defendants have certainly not
25 expressed any amenability to having their claims resolved in another state. Fourth, the relative costs
26 and expenses to Plaintiffs in another state, such as Maryland, when the overwhelming majority of
27 evidence and witnesses are located in California far exceeds any costs and expenses for nonresident
28

1 Defendants to participate in this action in California, whose expenses would be more limited to travel
2 time for attending depositions and trial.

3 Fifth, California has the greatest interest in having this litigation proceed within its jurisdiction in
4 order to protect the employment and privacy rights of California citizens, and to have the litigation
5 resolved entirely in one proceeding as opposed to splitting the litigation and having a portion decided by
6 another state's court, which not only wastes resources but risks conflicting findings and rulings. Further,
7 both California and Plaintiffs have a strong interest in keeping nonresident Defendants in this case
8 because if it is found by the trier of fact that these Defendants engaged in intentional and despicable
9 conduct subjecting them to punitive damage, it must be assessed against the nonresident Defendants, and
10 not against their employer NAD, a non-profit organization

11 **3. Discovery Will Provide Further Facts Establishing General and Specific Personal**
12 **Jurisdiction**

13 Should the Court determine that there is insufficient evidence at this juncture to evoke personal
14 jurisdiction over the nonresident Defendants, Plaintiffs are entitled to discovery prior to a ruling on the
15 issue. Plaintiffs have fully set forth above what evidence will likely be produced by discovery that is
16 relevant to the issues of both general and specific personal jurisdiction. Indeed, the courts in the two
17 cases most heavily relied by Defendants in their motion permitted discovery prior to a ruling on personal
18 jurisdiction. (*Serafini v. Superior Court of El Dorado County (Khadir)* (1998) 68 Cal.App.4th 70, 76
19 [80 Cal.Rptr.2d 159]; *Goehring v. Superior Court (Bernier)*, *supra*, 62 Cal.App.4th at p. 911 [73
20 Cal.Rptr.2d 105].)

21 In addition, although much of Defendants' motion inappropriately goes to the merits of the case,
22 such focus actually reveals the inapplicability of *Serafini* and *Goehring* to this case. The court in
23 *Serafini* granted the defendant's motion to quash for lack of personal jurisdiction because the claim
24 against the defendant was made for wrongful termination, but the plaintiff could not produce *any*
25 evidence of any involvement of the defendant in the factual basis of that claim other than to point out the
26 defendant's managerial role in the parent company. (*Serafini, supra*, 68 Cal.App.4th at p. 81.) This is
27 critically contrasted from the case at hand because Plaintiffs' claims against the nonresident Defendants
28 is not for wrongful termination, but instead for intentional interference of contractual employment

1 rights, and there is undisputed evidence, as supported by even nonresident Defendants' self-serving
2 declarations, that the nonresident Defendants *were* involved in interfering with Plaintiffs' employment
3 status by distributing the nonconsensual audio recording and having a full discussion about the matter
4 with the person who ultimately did force Plaintiffs' resignations. Unlike in *Serafini*, Plaintiffs here are
5 not simply relying on the nonresident Defendants' positions within the parent company to infer that the
6 decision to wrongfully terminate an employee of a subsidiary establishes specific personal jurisdiction.
7 Rather, it is the nonresident Defendants' admitted involvement in Plaintiffs' forced resignations that
8 creates the minimum contacts for Plaintiffs' claims of intentional interference of contractual
9 employment rights. The nonresident Defendants' assertion of innocence in inducing Defendant Graham
10 to force Plaintiffs' resignations goes to the merits of the case. That nonresident Defendants actually
11 contributed to the decision of Graham to force Plaintiffs' resignation within the California-based
12 University is undisputed and admitted, and suffices to constitute the minimum contacts with California.

13 Likewise, in *Goehring*, the court granted the defendant's motion to quash for lack of personal
14 jurisdiction because while the defendants' conduct caused an effect in California, there was no evidence
15 that the defendants acted with "the intention or expectation" that such conduct would affect California.
16 (62 Cal.App.4th at p. 909.) To the contrary, the nonresident Defendants here cannot credibly argue that
17 their acts of distributing the audio recording to, and having a conversation on such matters with, the
18 person authorized to fire Plaintiffs were done with no intention or expectation that such involvement
19 would affect the employment of California residents, namely Plaintiffs, with a California entity, LSU.

20 Although Plaintiffs submit that they have adequately established jurisdiction over the
21 nonresident Defendants, Plaintiffs request leave to conduct discovery on the matter, if the Court
22 determines further evidence is necessary.

23 IV


24 CONCLUSION

25 Based on the foregoing, Plaintiffs respectfully request that the Court grant a four month
26 continuance of the hearing to allow Plaintiffs to conduct discovery on the personal jurisdiction issue. It
27 is also requested that all other discovery be stayed during this period, as proceeding with discovery
28 against the other Defendants and Plaintiffs discovery, could result in duplication and waste depending

1 on the ultimate rulings by the Court on this issue. In the alternative, Plaintiffs request that the Court
2 deny nonresident Defendants' motion in its entirety and exercise personal jurisdiction over them.

3 DATED: November 4, 2011

MCCUNEWRIGHT LLP

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5 By:  FOR
6 Richard D. McCune
7 Attorneys for Plaintiffs
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA
3 COUNTY OF SAN BERNARDINO

4 I am employed in the County of San Bernardino, State of California. I am over the age of 18
5 years and not a party to the within action; my business address is 2068 Orange Tree Lane, Suite 216,
6 Redlands, California, 92374.

7 On November 4, 2011, I served the foregoing document described as **PLAINTIFFS' REQUEST**
8 **FOR CONTINUANCE OF HEARING AND OPPOSITION TO MOTION TO QUASH SERVICE**
9 **OF SUMMONS OF COMPLAINT FOR LACK OF PERSONAL JURISDICTION BROUGHT BY**
10 **DEFENDANTS LARRY BLACKMER AND DANIEL R. JACKSON** on the interested parties through
11 their respective attorneys of record in this action, by placing a true copy or original thereof enclosed
12 in sealed envelopes addressed as follows:

13 Michael W. Connally, Esq.
14 Madonna L. Devling, Esq.
15 Sean Paisan, Esq.
16 LEWIS BRISBOIS
17 BISGAARD & SMITH, LLP
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21 Attorneys for Defendants, La Sierra University, Pacific
22 Union Conference of Seventh-day Adventists, and North
23 American Division Corporation of Seventh-day
24 Adventists


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Attorneys for Defendants, Ricardo Graham, Daniel R.
Jackson, and Larry Blackmer

29 **METHOD OF SERVICE PURSUANT TO CCP SECTION 1013:**

- 30 [] (BY MAIL) I am readily familiar with the firm's business practice for collection and processing
- 31 of correspondence for mailing. Under that practice, I caused such envelopes with
- 32 postage thereon fully prepaid to be placed in the United States mail at Redlands,
- 33 California.
- 34 [] (BY FACSIMILE) I caused such documents to be transmitted by facsimile to the offices of
- 35 the addressee(s) to the facsimile number(s) listed above.
- 36 [] (BY PERSONAL SERVICE) I caused such envelope(s) to be delivered by hand to the offices
- 37 of the addressee(s).
- 38 [X] (BY OVERNIGHT DELIVERY) I caused such document to be delivered by overnight delivery
- to the offices of the addressee(s).

39 I declare under penalty of perjury under the laws of the State of California that the above is true and
40 correct. Executed on the above-referenced date at Redlands, California.

41 
42 _____
43 Ann Marie Smith