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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 SOUTHERN DIVISION

11
12 **KEITH JUDD, et al.**
13
14 Plaintiffs,
15
16 **BARAK OBAMA, et al.**
17 Defendants.

Case No. SACV 12-CV-01507 DOC
**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS GEORGIA SECRETARY
OF STATE BRIAN KEMP**
Date: November 12, 2012
Time: 8:30 a.m.
Courtroom: 9D
Judge: The Honorable C. David
O. Carter

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19 Pursuant to Fed. R. Civ. P. 12(b)(2), Brian Kemp (“Secretary Kemp”),
20 Secretary of State of the State of Georgia, by and through counsel, files this
21 Memorandum of Law in Support of Motion to Dismiss of Georgia Secretary of
22 State Brian Kemp based on lack of personal jurisdiction. Throughout this
23 memorandum of law, the First Amended Complaint will be referred to as the
24 “Complaint.”
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1 **I. INTRODUCTION**

2 This case presents another chapter in a long series of lawsuits filed by Orly
3 Taitz (“Dr. Taitz”) to disqualify President Barack Obama from appearing on state
4 ballots for President of the United States for the 2012 election cycle. Dr. Taitz is
5 both the lawyer for the plaintiffs in this case and a plaintiff herself.¹ In this lawsuit,
6 among several other public officials and citizens, Dr. Taitz has sued the Secretary
7 of State of Georgia, Brian Kemp, in the Central District of California for acts that,
8 even as pled, were all taken by Secretary Kemp in the State of Georgia. The
9 Complaint in this case asserts several causes of action, but none of them establish
10 that Secretary Kemp has minimum contacts with the State of California, and for
11 that reason, this lawsuit must be dismissed.
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27 ¹ The plaintiffs in this case are: Keith Judd, Orly Taitz, Thomas G.
28 MacLeran, Leah Lax, David Farrar, Larry Rappaport, Lucien Vita, and Carol Vita
(collectively, “the Plaintiffs”). Complaint, at pp. 1-4.

II. STATEMENT OF FACTS

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Plaintiffs filed their Complaint alleging a litany of claims in the Central District of California against a host of defendants, including Secretary Kemp. See Complaint. Secretary Kemp is the Secretary of State of Georgia. Complaint, at p. 4, ¶ 12. The first claim against Secretary Kemp sounds in fraud, alleging that Secretary Kemp “received [. . .] evidence [. . .] showing that Obama being [sic] a foreign national . . .” and that, despite of this, Secretary Kemp did not remove President Obama from the Georgia ballot. Complaint, at p. 31, ¶ 40. The second, third, fourth, fifth and sixth claims are brought under the federal RICO statute², and are based on the same basic allegations. Complaint, at pp. 39-45. The seventh and eighth claims are based on alleged violations of Plaintiffs’ First and Fourteenth Amendment rights. Complaint, at pp. 45-48. The ninth claim is based on alleged violations of Plaintiffs’ Fifth and Fourteenth Amendment rights. Complaint, at p. 49. The tenth claim is based on the alleged defamation of Dr. Taitz by members of the media, but this count does not make any allegations against Secretary Kemp related to this claim. Complaint, at pp. 49-62. The eleventh and twelfth claims are claims brought under federal and California law for alleged violations during the 2012 United States Senate election in California, and these claims do not make any allegations regarding Secretary Kemp. Complaint, at pp. 62-89. The thirteenth

² Dr. Taitz invokes 18 U.S.C. §§ 1961-1968, otherwise known as the Racketeering Influenced and Corrupt Organizations Act, in these counts. She invokes other sections of the federal criminal code in her complaint as well.

1 claim specifically alleges that Secretary Kemp “received evidence that Barack
2 Hussein Obama is not eligible on the ballot” and was negligent in “knowingly
3 allowing a foreign national who is using forged identification papers . . . to be
4 placed on the ballot in the State of Georgia.” Complaint, p. 92, ¶¶ 170-173. The
5 harm³ alleged in this count is that “Plaintiffs were forced to participate in unlawful
6 election [sic].” See id. Finally, the fourteenth claim is based on alleged breaches of
7 fiduciary duties by various federal officials, but not Secretary Kemp. Complaint, at
8 pp. 95-100. Dr. Taitz also seeks to become the class representative pursuant to Fed.
9 R. Civ. P. 23 of a putative class who have been harmed by the allegedly wrongful
10 conduct of the Defendants. Complaint, at pp. 100-103.
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14 Nevertheless, in the context of these several claims, Plaintiffs only allege that
15 Secretary Kemp acted wrongfully in his capacity as the Secretary of State of
16 Georgia. See Complaint. Secretary Kemp is authorized by Georgia law to make
17 decisions regarding the qualifications of candidates in Georgia state and federal
18 elections. See O.C.G.A. § 21-2-50(a)(1)-(15). Each claim relating to Secretary
19 Kemp concerns the election challenge previously filed in Georgia by Dr. Taitz. See
20 Complaint. Each of Secretary Kemp’s allegedly wrongful acts occurred in
21 Georgia. See id. There are no allegations whatsoever that Secretary Kemp directed
22 any of these acts to any other state than Georgia. See id.
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³ Only Plaintiff David Farrar is a resident of Georgia and is eligible to vote in Georgia. Complaint, p. 2, ¶ 5.

1 long-arm statute is “coextensive with federal [constitutional] standards.” Id. As
2 such, the only inquiry for the district court is whether there is personal jurisdiction
3 over a defendant according to federal constitutional standards. Id.

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5 **(b) Personal Jurisdiction**

6 The United States Constitution requires that “[f]or a court to exercise
7 personal jurisdiction over a nonresident defendant, that defendant must have at least
8 minimum contacts with the relevant forum ‘such that the exercise of jurisdiction
9 does not offend traditional notions of fair play and substantial justice.’”
10 Schwarzenegger, 374 F.3d at 800 (citing Int’l Shoe Co. v. Washington, 326 U.S.
11 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945)).

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13 The first step in the constitutional inquiry measures the contacts that the
14 defendant has with the forum state. Id. The second step measures whether the
15 overall assertion of personal jurisdiction “does not offend traditional notions of fair
16 play and substantial justice.” Int’l Shoe, 326 U.S. at 316. See also Asahi Metal
17 Indus. Co. Ltd. v. Superior Court, 480 U.S. 102, 105, 107 S. Ct. 1026, 94 L. Ed. 2d
18 92 (1987). Where a court examines this second step, the court weighs several
19 reasonableness factors including “the burden on the defendant, the interests of the
20 forum State, and the plaintiff’s interest in obtaining relief.” Asahi, 480 U.S. at 113.
21 The court “must also weigh [. . .] the interstate judicial system’s interest in
22 obtaining the most efficient resolution of controversies; and the shared interest of
23 the several States in furthering fundamental substantive social policies.” Id. Courts

1 recognize two types of personal jurisdiction: general and specific personal
2 jurisdiction. See Boschetto, 539 F.3d at 1016.

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4 **(i) General Personal Jurisdiction**

5 General personal jurisdiction exists where a defendant has contacts with the
6 forum state that are “continuous and systematic.” See Helicopteros Nacionales De
7 Colombia v. Hall, 466 U.S. 408, 416, 104 S. Ct. 1868, 80 L. Ed. 2d. 404 (1984).

9 The standard for general personal jurisdiction is high, and it will only be found
10 where the defendant has essentially “[sat] down and [made] [himself] at home.”
11 Tuazon v. R.J. Reynolds Tobacco Co., 433 F.3d 1163, 1169 (9th Cir. 2006). When
12 a court has general personal jurisdiction over a defendant, the defendant can be
13 sued in that court without offending the Constitution even where the defendant’s
14 continuous and systematic contacts with the forum state are not related to the
15 lawsuit itself. See Helicopteros, 466 U.S. at 414. Further, for general jurisdiction,
16 courts require more than that some economic impact is felt in the forum state. See
17 Collegesource Inc. v. Academyone Inc., 653 F.3d 1066, 1075-77 (9th Cir. 2011).

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21 **(ii) Specific Personal Jurisdiction**

22 Specific personal jurisdiction exists where the defendant’s contacts with the
23 forum state “arise out of” or relate to the pending lawsuit itself and the defendant
24 “purposefully avails itself of the privilege of conducting activities within the forum
25 State, thus invoking the benefits and protections of its laws.” See Burger King
26 Corp. v. Rudzewicz, 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d. 528 (1985).

1 The United States Court of Appeals for the Ninth Circuit applies a three-part
2 test to determine whether there is specific jurisdiction over a nonresident defendant,
3 like Secretary Kemp: “(1) The non-resident defendant must purposefully direct his
4 activities or consummate some transaction with the forum or resident thereof; or
5 perform some act by which he purposefully avails himself of the privilege of
6 conducting activities in the forum, thereby invoking the benefits and protections of
7 its laws; (2) the claim must be one which arises out of or relates to the defendant's
8 forum-related activities; and (3) the exercise of jurisdiction must comport with fair
9 play and substantial justice, i.e. it must be reasonable.” See Schwarzenegger, 374
10 F.3d at 802 (citing Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)).

14 **IV. ARGUMENT AND CITATION OF AUTHORITY**

15 **A. There is no general personal jurisdiction over Secretary Kemp**

16 Secretary Kemp simply does not have, nor has the Complaint pled that he
17 has, “continuous and systematic” contacts with the State of California.
18 Helicopteros, 466 U.S. at 414. In fact, the Complaint does not allege that Secretary
19 Kemp ever directed any activity whatsoever towards the State of California. See
20 Complaint. He certainly has not “[sat] down and [made] [himself] at home” in
21 California. Tuazon, 433 F.3d at 1169. For general jurisdiction, courts require more
22 than that some impact is felt in the forum state, see Collegesource Inc., 653 F.3d at
23 1075-77, and this Complaint is bereft of any allegations other than that Plaintiffs
24 disagree with Secretary Kemp’s application of Georgia law. See Complaint.
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1 **B. There is no specific personal jurisdiction over Secretary Kemp**

2 There is no specific personal jurisdiction in this case either. Applying the
3 first prong of the three part test articulated in Schwarzenegger, there are no
4 allegations in the Complaint that establish that Secretary Kemp has “purposefully
5 directed his activities” towards California or performed “some act by which he
6 purposefully avails himself of the privilege of conducting activities in [California],
7 thereby invoking the benefits and protections of its laws.” 374 F.3d at 802.
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9 At most, each of the claims against Secretary Kemp argues that he allegedly
10 erred when he denied the election challenge against President Obama which Dr.
11 Taitz commenced in Georgia on behalf of David Farrar. See Complaint. Even
12 assuming that the allegations in the Complaint are true, the Complaint does not
13 allege that Secretary Kemp acted in any way whatsoever toward the State of
14 California. See id. As such, the first prong of the Schwarzenegger test fails
15 because Secretary Kemp has not purposefully directed any activity towards the
16 State of California or its residents. 374 F.3d at 802. Accordingly, because the first
17 prong fails, “the jurisdictional inquiry ends and the case must be dismissed.”
18 Boschetto, 539 F.3d at 1016 (citing Pebble Beach Co. v. Caddy, 453 F.3d 1151,
19 1155 (9th Cir. 2006)).
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1 **C. The fairness factors also weigh against this Court finding personal**
2 **jurisdiction over Secretary Kemp**

3 Even if this Court were to find that Secretary Kemp has contacts with the
4 State of California, the assertion of personal jurisdiction over Secretary Kemp
5 would be unreasonable under the fairness factors articulated in Asahi. 480 U.S. at
6 113. For one, to hail Secretary Kemp into court in California on these claims
7 would be a heavy “burden on the defendant.” Id. Further, the State of California
8 has little “interest” in Secretary Kemp’s role in overseeing Georgia elections. Id.
9 Finally, the “interstate judicial system’s interest in obtaining the most efficient
10 resolution of controversies” weighs against finding personal jurisdiction in this case
11 because Dr. Taitz has already filed several lawsuits⁴ in Georgia based on the same
12 underlying allegations. Id. It is an inefficient use of this Court’s time to rehash
13 claims in this case that have already been heard and denied in Georgia courts.
14 While Secretary Kemp does not doubt that Plaintiffs have an “interest in obtaining
15 relief,” this interest, standing alone, cannot outweigh the other interests that support
16 a finding of no personal jurisdiction over Secretary Kemp. Id.

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25 ⁴ For example, Dr. Taitz filed the case of David Farrar, et al. v. Barack
26 Obama, OSAH- SECSTATE-CE-1215136-60-MALAH (Fulton County Superior
27 Court Civil Action File No. 2012-CV-211398), an election qualification challenge
28 brought under O.C.G.A. § 21-2-5, in the Georgia Office of State Administrative
 Hearings. The administrative law judge (“ALJ”) denied this challenge on February
 3, 2012, and Secretary Kemp adopted the ALJ’s findings on February 7, 2012.
 There are several other cases as well.

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V. CONCLUSION

For the foregoing reasons, the Complaint should be dismissed as against Secretary Kemp pursuant to Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction. Under the facts alleged in the Complaint, there is neither general nor specific personal jurisdiction against the Secretary of State of Georgia in the Central District of California for acts taken in Georgia according to Georgia election law. Accordingly, Secretary Kemp requests that this Court DISMISS the Complaint.

Respectfully submitted this 9th day of October, 2012 by:

/s/ Richard Rojo
Richard Rojo
California Bar No. 250277
Deputy Attorney General
California Department of Justice

Counsel for Defendant Brian Kemp

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CERTIFICATE OF SERVICE

This is to certify that on this day I served the foregoing document using the CM/ECF filing system at the Central District of California which generates a Notice of Electronic Filing to all parties and constitutes service of electronically filed documents for the purposes of the Federal Rules of Civil Procedure.

Respectfully submitted this 9th day of October, 2012 by:

/s/ Richard Rojo
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Deputy Attorney General
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