IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

John Doe's 1-6	§	
Plaintiffs,	§	
	§	
v.	§	**C.A. 01-20525**
	§	
LANDOVER BAPTIST, INC.,	§	
LANDOVER BAPTIST I, LTD.,	§	
WEXLER OFFSHORE HOLDINGS,	§	
P.L.L.C., et al,	§	
Defendants.	§	

ORDER

On the 25th day of June, 2001, the Court considered Defendants' Motion to Dismiss or, in the alternative, to Transfer Venue and Plaintiffs' Motion for a Temporary Restraining Order. After considering the motions, responses, evidence on file and argument of counsel, the Court concludes Defendants' motion should be denied in its entirety and Plaintiffs' motion should be granted as outlined below.

Summary of Relevant Facts

Defendant, Landover Baptist, Inc., is a Delaware corporation with its principal place of business in the State of Iowa. Defendant, Landover Baptist I, Ltd., is a private association of underwriters, all of whom are residents of the State of Iowa. Defendant, Wexler Offshore Holdings, P.L.L.C., is a resident of the Commonwealth of the Bahamas and is a creature of Bahamian statute. Defendants' business centers around a religious institution in the Township of Freehold, Iowa called "Landover Baptist Church." Each month, Defendants publish a newsletter on the worldwide web, under the name "Landover Baptist Church," which contains news articles, typically of a religious nature.

Plaintiffs are six well-known members of the entertainment industry. In light of the harsh allegations made against them in the proposed publication which forms the basis of this action, Plaintiffs wish to keep their identities undisclosed. Pursuant to long-standing federal precedent, the Court previously granted Plaintiffs' motion to seal the record and conceal their genuine identities for purpose of written orders of the Court which become matters of public record. *See, e.g., Doe v. Delaware*, 445 U.S. 949, 949 (1980). Plaintiffs originally filed this lawsuit in the 127th Judicial District Court of Los Angeles County, California. Defendants removed the lawsuit to this Court pursuant to 28 U.S.C. § 1441(b). This Court has subject matter jurisdiction because Plaintiffs and Defendants maintain complete diversity of citizenship and the amount in controversy greatly exceeds $75,000.00.

Plaintiff, John Doe I, is a well-known actor who has starred in a variety of movies. While he was a mere teen idol in his early career, starring in a television sitcom and movies about disco and country dancing in the late '70's and early '80's, he has since become a respected dramatic actor. According to Plaintiff, from the outset, his career has been marred by persistent rumors regarding his sexuality. He claims this has undermined his career, causing him to lose high profile work and thereby preventing him from gaining the acclaim he would otherwise have. According to Plaintiff, the rumors have reached such a crescendo that he is now forced to accept roles such as that of a space alien in B-level science fiction films.

Plaintiff, John Doe II, is likewise a well-known actor who began his career in movies appealing to teenagers but has since become a respected dramatic actor. He, too, has faced continuous rumors regarding his sexuality. Those rumors intensified when he divorced his high-profile wife and was accused of a long-term affair with an international gay porn star. As a result of the gossip, Plaintiff contends he has not been offered any viable movie roles in several years and has considered accepting a permanent role on a television game show called the "Hollywood Squares."

John Doe III is a former soap opera star turned pop singer whose ethnic music and suggestive dancing techniques have earned him international acclaim. When his record sales and audience attendance were at an all-time high, Plaintiff declined to reveal his sexual orientation. When his popularity plummeted, he denied any homosexual inclinations and vehemently asserted his "absolute heterosexuality." He claims that suggestions he is a homosexual are responsible for his tapering career and denies critics' claims that his highly limited vocal range and repetitive song arrangements are responsible.

Defendants plan to report, in an article in the upcoming July, 2001 issue of their website newsletter, that each Plaintiff is a practicing homosexual. Due to a glitch in the security measures of their website, an advance copy of the newsletter was obtained by a Hollywood insider who sent copies to each Plaintiff. In the lengthy article, replete with quotations from witnesses in Los Angeles, Puerto Rico and Australia, Defendants' article attributes conduct to each Plaintiff so depraved that this judge had to read the article in segments. Additionally, Defendants intend to publish photographs depicting John Doe III as the active party in an episode of rectal intercourse and, more disturbing, photos of him, afterward, engaging in an act the article calls "felching." The article attributes "passive" roles to the remaining John Doe's.

Defendants' Motion to Dismiss or, in the alternative, to Transfer Venue

Defendants contend this Court has no personal jurisdiction over them because their contacts with the State of California are nonexistent or minimal. For this reason, they argue the Court should dismiss the action. *See* F.R.C.P. 12(b)(2). In the alternative, say Defendants, the Court must at least transfer the lawsuit to a court of proper venue, such as a federal district court in Iowa, a state of residence of two of the Defendants. *See* 28 U.S.C. § 1406(a). Again in the alternative, Defendants argue the Court should transfer the lawsuit on convenience grounds. *See Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 467 (1062).

Defendants initially claim their contacts with the State of California are nonexistent or too minimal to confer personal jurisdiction. California's long-arm statute extends to the full limits of the Due Process Clause of the United States Constitution. *See* Cal. Civ. P. Code 410.10 (West 1997); *Vons Cos., Inc. v. Seabest Foods, Inc.*, 14 Cal. 4th 434, 444 (1996). Our analysis therefore centers on whether Defendants have minimum contacts with the state such that fundamental considerations of fairness are satisfied by our exercise of jurisdiction over them. *See International Shoe Co. v. Washington*, 326 U.S. 31,0, 316 (1945). The key inquiry is whether Defendants "ha[ve] purposefully directed [their] activities at residents of the forum and the litigation results from alleged injuries that arise out of or relate to those activities." *Burger King Corp. v. Rudzewicz*, 471 S.W.2d 462, 471-76 (1985).

We conclude Defendants' contacts are more than sufficient. Defendants are engaged in multiple businesses, all of which center around a place of worship in Freehold, Iowa called "Landover Baptist

Church." According to Defendants, the by-laws, rules and regulations of the church apply equally to all of Defendants' business endeavors. The church prohibits travel to any state west of Wyoming by any of its members without special approval from church's chief pastor or the executive committee of the board of deacons. Further, the church does not recognize California as a legitimate state of the United States of America and, according to Defendants, "has condemned all citizens of that Satanic wasteland to an everlasting home in flames."

While the Court finds Defendants' rhetoric interesting, it cannot countenance the argument. Defendants operate a website advertising the church, its beliefs and its recitation of news items. That website is one of the most popular on the worldwide web, attracting millions of visitors a month, including several hundred thousand from California, alone. This is not merely a passive website, but one which permits readers to interact with church members, via e-mail and message boards, and which sells religious merchandise nationwide. Extensive sales have been made to California residents. Under such circumstances, the Court concludes Defendants have purposely availed themselves of California law such that it is not fundamentally unfair to subject them to the jurisdiction of courts in this state. *See, e.g., CoolSavings.com, Inc. v. IQ.Commerce Corp.*, 53 F. Supp. 1000, 1002-03 (N.D. Ill. 1999)(forum residents utilized service offered by website); *Mieczhowsky v. Masco Corp.*, 997 F. Supp. 782, 787-88 (E.D. Tex. 1998)(interactive website plus extensive local sales); *Maritz, Inc. v. Cybergold, Inc.*, 947 F. Supp. 1328, 1330 (E.D. Mo. 1996)(12,000 local residents requested information from site).

The Court similarly rejects Defendants' request for transfer based on convenience grounds. The very fact that Defendants' church members are forbidden to leave the State of Iowa means it is unlikely much, if any, of the evidence needed to dispute Plaintiffs' claims will be obtained in Iowa. Indeed, the website articles at issue quote witnesses in places far from Freehold. For instance, most of the allegations against John Doe II are based on interviews with residents of Australia who claim Doe II's ex-wife's repeated claimed their marriage was a sham designed to protect Doe II's career. There appears to be no reason for this lawsuit to be litigated in Iowa rather than California.

Plaintiffs' request for a temporary restraining order

Plaintiffs assert that the claims of the articles are untrue and, if published, would severely undermine or destroy their already precarious and plummeting careers. They argue the outrageousness of the article's claims, coupled with the irreparable nature of the harm its publication would impose, justifies prior restraint. Defendants, by contrast, point to the eyewitness testimony and extensive circumstantial evidence suggesting each Plaintiff is a practicing homosexual, as claimed. They note that the evidence in the article is more than sufficient to disprove any claim of actual malice. *See New York Times v. Sullivan*, 376 U.S. 254, 279-80 (1964).

At the outset, this Court notes that an injunction preventing publication of a news story should only be granted in the most extraordinary of circumstances. Prior restraint is always disfavored given the preeminence of First Amendment concerns. *See, e.g., Citizens Against Rent Control/Coalition for Fair Housing v. Berkeley*, 454 U.S. 290, 300 (1981). This is especially true in defamation cases involving public figures, because, in such cases, the plaintiff must prove the defendant knew its statements were false or acted in reckless disregard as to their truth or falsity. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323,

351-52 (1974).

An injunction is an appropriate remedy to correct or prevent injury only if the harm asserted is irreparable and there is no adequate remedy at law. *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982). A court must balance the competing claim of injury versus the harm to proscribing the complained-of conduct *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 541 (1987).

That Defendants' article, if untrue, would constitute defamation is beyond dispute, given the incredibly deviant conduct Defendants attribute to each Plaintiff in the article. *See, e.g., Burnett v. National Enquirer*, 144 Cal. App. 3d 991 (1993)(tabloid report implying Carol Burnett was publicly drunk). The particular acts alleged are so deviant that they could not properly be described in any court opinion that the public might read. While ordinarily, the Court would require Plaintiffs to prove the falsity of the statements and that their proposed publication would be made with actual malice, the Court declines to do so here. The Court concludes that the harm to Plaintiffs if these incredible allegations are published would be so great that an injunction is appropriate notwithstanding that Plaintiffs have failed to prove the likelihood of success on the merits. *See Miller v. California Pacific Medical Center*, 991 F.2d 536, 543 (9th Cir. 1993)(strong showing on other relevant factors militates against requiring proof of likelihood of success). The Court concludes that, because the articles involve conduct that allegedly has occurred for years, there is little or no harm in restraining immediate publication until a full evidentiary hearing can be held. Given the graphic nature of the conduct alleged, that hearing will be closed to minors.

Conclusion and Order

For the reasons stated, the Court issues a temporary restraining order prohibiting Defendants from publishing their July, 2001 newsletter with prior approval of this Court. The Court orders a hearing on Plaintiffs' request for a temporary injunction for August 8, 2001 at 9:00 a.m.. In light of the Plaintiffs' fading careers, the Court orders Defendants to brief the defamation issues both assuming Plaintiffs are public figures and assuming they have lost public figure status by the time a trial on Plaintiffs' request for a permanent injunction takes place.

Signed this 25th day of June, 2001.

Presiding Judge