

IN THE SUPREME COURT OF MISSOURI

No. SC 98454

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STATE EX REL. VVP SERVICES, LLC

Relator,

v.

THE HONORABLE JOHN M. TORRENCE,

Respondent.

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Original Proceeding in Prohibition

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RESPONDENT'S BRIEF

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Respectfully submitted,

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On behalf of Respondent the Honorable John M. Torrence (“Judge Torrence”), Susan Shriver and Sandy Miller (collectively “Plaintiffs”), two of the five plaintiffs in the underlying action, submit these Suggestions in Opposition to the Petition for a Writ of Prohibition filed by Relator VVP Services, Inc. (“VVP Services”).

## INTRODUCTION

VVP Services participated in a conspiracy targeting Missouri by posting defamatory articles in an attempt to influence a Jackson County jury and, in doing so, harmed two women’s reputations who live in the Kansas City metropolitan area and travel to and do business in Missouri. “[I]f you pick a fight in Missouri, you can reasonably expect to settle it here.” *Baldwin v. Fischer-Smith*, 315 S.W.3d 389, 398 (Mo. Ct. App. 2010). Consistent with this statement, Judge Torrence found personal jurisdiction over VVP Services because Plaintiffs’ claims “arise[] out of defamatory postings that allegedly targeted Missouri, its residents, and most particularly, persons involved in a lawsuit pending in this very 16th Judicial Circuit Court of Jackson County, Missouri.” *VVP Services’ App.*, p. A79.<sup>1</sup>

The key question is thus whether Judge Torrence rightly concluded that a Missouri court has personal jurisdiction over a party that attempted to influence a Jackson County jury and harm Plaintiffs’ business reputations through defamatory internet postings, especially when the Plaintiffs in this lawsuit conduct business in Kansas City, Missouri and felt the brunt of the injury in Missouri.

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<sup>1</sup> All citations to “App.” are to the page numbers in the respective parties’ exhibit appendices.

For the reasons stated below, Judge Torrence reached the correct conclusion.

## STATEMENT OF FACTS

### **VVP Services Participated in a Conspiracy to Defame Plaintiffs**

In June 2014, Raizada and Raizada Group filed a lawsuit in Jackson County, Missouri against Scott Asner and others (the “PHC Litigation”). Corrected Amended Petition (“CAP”), *VVP Services’ App.*, p. A5 at ¶ 14. The case eventually proceeded to trial. *Id.* at ¶¶ 15-16. But before the trial, VVP Services, along with the other codefendants in this lawsuit, undertook a conspiracy to influence the Jackson County jury and to harm Plaintiffs’ business reputations in Kansas City, Missouri through an internet smear campaign. *Id.*, pp. A5-A6 at ¶¶ 19-20.

At a high level, that smear campaign consisted of: (1) Raizada, an employee of VVP Services, directing former codefendant Haley Hey, an employee of VVP Services, to draft at least two of the defamatory articles that are the subject of this lawsuit (*Plaintiffs’ App.*,<sup>2</sup> p. 26 at ¶ 13); (2) Raizada, through his company Raizada Group, paying \$20,000 to co-defendant SEO Profile Defender (*VVP Services’ App.*, p. A15 at ¶¶ 74-77); (3) in exchange, SEO Profile Defender, acting through its principal, co-defendant Richart Ruddie, modifying the defamatory articles using search-engine optimization techniques to boost the articles’ presence on the internet (*id.*, p. A16 at ¶¶ 84-86); and (4) Raizada and Raizada

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<sup>2</sup> “Plaintiffs’ App.” refers to the “Appendix to Respondent’s Brief” filed contemporaneously with this brief.

Group, in coordination with the other defendants, causing the posts to be made on the internet (*id.*, p. A17 at ¶ 92).

Raizada and the other defendants, including VVP Services, planned and are responsible for this smear campaign. *Id.*, p. A14 at ¶ 70. Raizada and Raizada Group's attorneys received the proposed witness list for the PHC Litigation trial on September 28, 2017. *Id.*, p. A5 at ¶ 17. David Diamond, general counsel for VVP Services, "was directly involved in the preparation of the defense strategy for the PHC Litigation." *Id.*, p. A10 at ¶ 48. The PHC Litigation trial began on October 16, 2017. *Id.*, p. A57 at ¶ 57. The defamatory articles were published in the few days between Raizada and Raizada Group receiving the witness list and the trial commencing. *Id.*, p. A12 at ¶ 56 (alleging that the articles were published between October 5 and October 8, 2017).

The articles contained defamatory content about witnesses in the PHC Litigation trial, including Scott Asner, with the goal of painting him and his business partner, Michael Gortenburg, not only as an unsavory businessmen, but also as unsavory persons in general. *Id.*, p. A7 at ¶ 27 (the defamatory articles included "allegations of business crimes, scandals, infidelity, drug dealing, substance abuse, and other illegal and fraudulent conduct."). With respect to Plaintiffs, the defamatory articles falsely claimed that Plaintiffs Susan Shriver and Sandy Miller were mistresses to Asner. *Id.* p. A7 at ¶ 25; *see also Plaintiffs' App.*, p. 12-13 (falsely claiming that Miller and Asner were a "classic story of sleeping with the personal trainer and longtime family friend" and falsely claiming that "one of [Anser's] more interesting mistresses was Susan Shriver"). Several nonparties

identified in the witness list were also specifically referenced and discussed unfavorably in the articles, including David Vittor, Isaac Gortenburg, Jeff Gibbs, and John Kennyhertz. *VVP Services' App.*, pp. A5 at ¶ 17 and A6 at ¶ 23. In so doing, the articles made specific reference to Missouri, Kansas City, and the Country Club Plaza in Missouri. *See generally Plaintiffs' App.* at pp. 1-18.

Moreover, portions of the articles contained confidential information, known by only a few individuals, including Raizada, who was a VVP Services employee. *VVP Services' App.*, p. A7 at ¶ 27. And metadata from some of the articles led back to Haley Hey (another VVP Services employee, who was identified as the author) and Richart Ruddie (identified as the person who last modified the document). *Id.*, p. A16 at ¶ 86.

The defamatory articles were posted on Scribd.com, among other places. *Id.*, p. A14 ¶ 72. An affiliate of VVP Services, Vision Venture Partners, LLC, purchased an account at Scribd.com in July 2017. *Id.* pp. A14 at ¶ 72 and A16 at ¶ 81. VVP Services processed the payments used to purchase the Scribd.com account. *Id.*, p. A16 at ¶ 81. The timing of the Scribd.com account purchase is important. The original trial setting for the PHC litigation was July 31, 2017. *Id.*, p. A14 at ¶ 69. That Defendants purchased the Scribd.com account in July 2017, the same month as the original trial date, but delayed posting until the month of the continued trial date, furthers Plaintiffs' claim that a principal object of the conspiracy was to influence the Jackson County jury.

Like the timing of the purchase of the Scribd.com account, the timing and content of the posts show that Defendants were attempting to smear "the corporate representative



of PHC Holding [Scott Asner], its Manager, as well as other trial witnesses, in hope of tainting the jury pool against the PHC Litigation plaintiffs”, *id.*, p. A7 at ¶ 28, and to “harass Plaintiffs, to damage Plaintiffs’ reputation in the community, to interfere with Plaintiffs’ personal and professional business relationships, and to bring shame and humiliation to Plaintiffs regarding private matters in which the public has no legitimate interest,” *id.*, pp. A7-A8 at ¶ 29. The articles were viewed over 200 times within a few weeks of their posting. *Id.*, p. A12 at ¶ 57.

At the same time, Defendants issued positive press releases about Raizada, “praising Amit Raizada, his charity work, and his new business ventures through Vision Ventures Partners, LLC, an entity affiliated with VVP Services.” *Id.*, p. A8 at ¶ 33. In doing so, Defendants were “attempting to increase [Raizada’s] positive internet presence while simultaneously harming the reputations of Plaintiffs.” *Id.* at ¶ 34.

In response to Defendants’ tortious conduct, which is described more fully in the Corrected Amended Petition (“CAP”), five plaintiffs filed this lawsuit: Scott Asner, Michael Gortenburg, AG613, LLC, Susan Shriver, and Sandy Miller. Asner, Gortenburg, and AG613 are arbitrating their claims against Raizada and Raizada Group but remain as plaintiffs against VVP Services, Ruddle, and SEO Profile Defenders. Shriver and Miller maintain their claims against all defendants in this action. VVP Services has conceded personal jurisdiction in Missouri as to the claims by Asner, Gortenburg, and AG613, as they never moved to dismiss those claims on personal jurisdiction grounds.

Plaintiffs Susan Shriver and Sandy Miller assert claims against VVP Services for defamation and conspiracy. Susan Shriver is a resident of Kansas who “regularly travels to and interacts with residents of Kansas City, Missouri.” *Id.*, p. A9 at ¶ 40. Sandy Miller is a resident of Kansas “who conducts business in Kansas City, Missouri.” *Id.* at ¶ 39. And both of them “were in fact injured and felt consequences in Missouri.” *Id.*, p. A11 at ¶¶ 49-50.

### **VVP Services’ Self-Serving Affidavit**

To support its motion to dismiss for lack of personal jurisdiction, VVP Services presented a single affidavit from Stratton Sclavos, the “primary operational manager for VVP Services and its operations.” *VVP Services’ App.*, p. A27 at ¶ 5. Sclavos admitted that both Raizada and Haley Hey were employed by VVP Services in 2017. *Id.*, p. A28 at ¶¶ 7-8. But he denied that VVP Services “creat[ed] or post[ed]” the defamatory articles. *Id.*, p. A28 at ¶ 13. He also generally denied doing business in Missouri or having contact with the Plaintiffs. *Id.* at ¶¶ 10-18.

VVP Services’ self-serving affidavit required no evidentiary rebuttal because: (1) specific jurisdiction does not require the defendant to do business in Missouri; and (2) the affiant never claimed to have knowledge of Raizada’s and Haley Hey’s actions with respect to the allegations in the CAP and, therefore, provided no evidence relevant to the question before the court or inconsistent with the allegations in the Petition. Even still, Plaintiffs in reply challenged the veracity of the Sclavos affidavit and the personal knowledge of Sclavos to make the broad denials in the affidavit. *Id.*, p. A59, fn. 1. For example, the Sclavos affidavit claims VVP Services “had no involvement” in the PHC Litigation,

despite the fact that it's General Counsel, David Diamond, "was directly involved in the preparation of the defense strategy for the PHC Litigation," and that Sclavos himself testified at the trial on Raizada's behalf. *See id.*

**Judge Torrence Denied VVP Services' Motion to Dismiss**

After weighing the credibility of VVP Services' self-serving affidavit, and evaluating the facts and law before him, Judge Torrence issued the following order:

Missouri has significant interest in adjudicating this dispute based on the factual averments that the above captioned matter arises out of defamatory publications that allegedly targeted Missouri, its residents, and most particularly, persons involved in a lawsuit pending in this very 16th Judicial Circuit Court of Jackson County, Missouri. In addition, the allegations set forth in Plaintiff's Petition make it clear that Defendant(s) engaged in behavior in the State of Missouri which reasonably confers personal jurisdiction over Defendant VVP Services LLC.

*VVP Services' App.*, p. A79.

The Missouri Court of Appeals denied VVP Services' request for the writ, and now this Court takes up its request.

**Haley Hey, an Employee of VVP Services,  
Now Admits to Drafting Two of the Defamatory Articles**

On May 29, 2020, former codefendant Haley Hey filed an affidavit admitting that, while she was employed by VVP Services, Raizada, another VVP Services employee, directed her to draft at least two of the defamatory articles and she did, in fact, draft those articles. *Plaintiffs' App.*, p. 26 at ¶ 13. Her affidavit belies the Defendants' general denials about their involvement in the internet defamation campaign, and specifically rebuts VVP Services' self-serving affidavit in which it claims that it had nothing to do with the internet

smear campaign. While this evidence goes to the heart of the liability case, it nevertheless provides further evidence that VVP Services engaged in a scheme to target Missouri.

### STANDARD OF REVIEW

“A writ of prohibition does not issue as a matter of right,” rather it is a matter of discretion. *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. 1985). “A court should only exercise its discretionary authority to issue this extraordinary remedy when the facts and circumstances of the particular case demonstrate unequivocally that there exists an extreme necessity for preventive action.” *Id.* “Prohibition is the proper remedy to prevent further action of the trial court where personal jurisdiction of the defendant is lacking.” *Id.* However, “[p]rohibition will issue only when the lower court’s usurpation of jurisdiction is ‘clearly evident.’” *Id.* (denying issuance of writ of prohibition because the circuit court’s usurpation was not “clearly evident” as facts were adequately pleaded to establish personal jurisdiction). “Relator has the burden of showing that respondent will usurp or act in excess of his jurisdiction; respondent is presumptively correct in determining that he has jurisdiction.” *State ex rel. Missouri Ozarks Econ. Opportunity Corp. v. Long*, 763 S.W.2d 381, 382-83 (Mo. Ct. App. 1989).

### ARGUMENTS AND AUTHORITIES<sup>3</sup>

In a 138-paragraph Complaint, Plaintiffs allege in painstaking detail VVP Services’ involvement in the conspiracy, along with its motives for engaging in that conduct. VVP Services and its other codefendants targeted and intended for the brunt of their internet

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<sup>3</sup> Pursuant to Rule 84.04(f), all Plaintiffs’ arguments are in response to the single point relied on in VVP Services’ brief.

smear campaign to be experienced in Missouri, but VVP Services now attempts to argue the very court with which it sought to interfere does not have jurisdiction over this dispute.

The Court should reject VVP Services' arguments. *First*, Judge Torrence's factual determinations, including his weighing of the factual assertions in VVP Services' affidavit, were his exclusive prerogative. A writ may not issue merely because Judge Torrence did not accept VVP Services' self-serving claims.

*Second*, VVP Services' affidavit, for the most part, speaks only to general jurisdiction and otherwise denies in conclusory fashion that it committed the tortious conduct alleged. VVP Services cannot rely on its own summary assertions that it is not liable on the merits to attack jurisdiction before Plaintiffs receive discovery.

*Third*, Plaintiffs' well-pleaded allegations place VVP Services' conduct under Missouri's long-arm statute, and the *Calder* effects test supports jurisdiction in Missouri. VVP Services' contention that Plaintiffs cannot maintain this action in Missouri because they are Kansas residents is simply wrong. Plaintiffs travel to and do business in Missouri, and the brunt of their harm was experienced in Missouri. They can therefore assert claims here.

**I. Prohibition is Not a Proper Remedy Because the Jurisdictional Determination Turned on Facts Before the Trial Court.**

A trial judge "is presumptively correct in determining that he has jurisdiction." *State ex rel. Missouri Ozarks Econ. Opportunity Corp.*, 763 S.W.2d at 383. "Where jurisdiction turns upon facts to be determined by the trial court, its ruling that it has jurisdiction, if wrong, is simply error for which prohibition is not the proper remedy." *Id.*

VVP Services submitted a self-serving affidavit in its motion to dismiss for lack of personal jurisdiction. *See VVP Services' App.*, pp. A27-A29. In response, Plaintiffs explained how those self-serving averments did not affect the Court's jurisdictional analysis. *See generally id.* pp. A51-A72. Judge Torrence implicitly rejected VVP Service's evidence and relied on Plaintiffs' well-pleaded allegations. *Id.*, p. A79.

Judge Torrence has "sole discretion to believe or disbelieve any statement made within the affidavits." *Good World Deals, LLC. v. Gallagher*, 554 S.W.3d 905, 910 (Mo. Ct. App. 2018). He properly exercised this discretion when electing not to believe VVP Services' self-serving statements. Therefore, Judge Torrence's ruling cannot be disturbed through a writ proceeding. *State ex rel. Missouri Ozarks Econ. Opportunity Corp.*, 763 S.W.2d at 383.

## **II. Plaintiffs Sufficiently Allege Facts to Support Personal Jurisdiction over VVP Services.**

"To establish specific personal jurisdiction over a foreign corporation, a two-prong test must be met: (1) the defendant's conduct must fall within the long-arm statute, § 506.500; and (2) the court must then determine if the foreign corporation has the requisite minimum contacts so as not to offend due process." *State ex rel. Key Ins. Co. v. Roldan*, 587 S.W.3d 638, 641 (Mo. banc 2019), *reh'g denied* (Dec. 24, 2019).

The reviewing court evaluates personal jurisdiction "by considering the allegations contained in the pleadings to determine whether, if taken as true, they establish facts adequate to invoke Missouri's long-arm statute and support a finding of minimum contacts with Missouri sufficient to satisfy due process." *Bryant v. Smith Interior Design Grp., Inc.*,

310 S.W.3d 227, 231 (Mo. 2010). “[T]he allegations of the petition are given an intendment most favorable to the existence of the jurisdictional fact.” *Good World Deals, LLC*, 554 S.W.3d at 910 (quoting *Moore v. Christian Fid. Life Ins. Co.*, 687 S.W.2d 210, 211 (Mo. Ct. App. 1984)).

#### **A. Plaintiffs’ Allegations are not Conclusory or Boilerplate.**

VVP Services argues, with little explanation, that Plaintiffs’ factual allegations in the CAP regarding jurisdiction are “boilerplate” and “conclusory.” *See Sugg. In Supp. of Writ* at 10. Rule 55.05 requires that a pleading contain “a short and plain statement of the facts showing that the pleader is entitled to relief,” and the CAP is consistent with that requirement. Mo. Sup Ct. R. 55.05.

Plaintiffs included specific factual allegations against VVP Services. A few examples include:

- 1) VVP Services’ general counsel was directly involved in the defense strategy of the PHC Litigation (the jury with which Defendants sought to interfere) (*VVP Services App.*, pp. A10-A11 at ¶ 48);
- 2) “Raizada . . . directly and through VVP Services” coordinated with the other defendants “a plan to defame Plaintiffs,” (*id.*, p. A14 at ¶ 70);
- 3) the metadata associated with the articles identify the author as Haley Hey – the former VVP Services employee who now admits she drafted the articles (*id.*, p. A16 at ¶ 86; *Plaintiffs’ App.*, p. 26 at ¶ 13);

- 4) the defamatory articles were drafted, revised, and printed to PDF on electronic devices owned by VVP Services (*VVP Services' App.*, p. A11 at ¶48 );
- 5) VVP Services processed the payments for the purchase of the Scribd.com account in which the defamatory articles were posted (*id.*, p. A14 at ¶ 72); and
- 6) This conduct was “targeted at inflicting commercial and reputational harm in Missouri” and meant to influence that Jackson County jury in the PHC Litigation (*id.*, p. A11 at ¶ 49 and A5-A6 at ¶ 19).

The notion that these types of allegations are “boilerplate” lacks credibility. Plaintiffs’ allegations are a far cry from cases like *ClaimSolution, Inc. v. US Ins. Claim Solutions, Inc.*, No. 4:18-00770-CV-RK, 2019 WL 1938812 (W.D. Mo. April 30, 2019), where the jurisdictional allegations were bare-bones statements that the defendant “engaged in acts or omissions outside this State resulting in injury within this State and has otherwise made or established contacts with this State sufficient to permit the exercise of personal jurisdiction.” *Id.* at \*4.

VVP Services is also mistaken in claiming that a pleading is deficient simply because, in some instances, the allegations refer to all Defendants. In *State ex rel. Cedar Crest Apartments, LLC v. Grate*, the case cited by VVP Services, the court’s *dicta* was addressing limited generic statements about all defendants having conducted business in Missouri. 577 S.W.3d 490, 497 n.5 (Mo. banc 2019). By comparison, the CAP explains how each defendant, including VVP Services, participated in the publication of the defamatory articles.



Further, that some allegations rely on “information and belief” does not undercut the validity of the allegations, and there is nothing improper with pleading something based on information and belief.

In sum, Plaintiffs’ allegations are adequately pleaded and are not conclusory or boilerplate.

**B. VVP Services’ Conduct Falls Under Missouri’s Long-Arm Statute.**

Under Missouri’s long-arm statute, a defendant that commits a tortious act within Missouri is subject to the jurisdiction of a Missouri court as to any cause of action arising from that act. *See* Mo. Rev. Stat. Ann. § 506.500.1(3). Missouri’s long-arm statute “is construed ‘to extend the jurisdiction of the courts of this state over nonresident defendants to that extent permissible under the Due Process clause.’” *Bryant*, 310 S.W.3d at 232 (citation omitted).

**1. Plaintiffs Made a Prima Facie Showing that VVP Services Engaged in Tortious Conduct, But this Court Shall Not Consider the Merits of the Claim.**

When a party relies on the commission of a tort to invoke the long-arm statute, it must make a prima facie showing that a tort was committed. *Peabody Holding Co. v. Costain Grp. PLC*, 808 F. Supp. 1425, 1433 (E.D. Mo. 1992). That only requires, however, that the plaintiff “allege facts from which it could be found that all the elements of the tort are met,” as opposed to alleging in conclusory fashion that “the defendant committed the tort.” *Id.* at 1433.

In challenging jurisdiction, VVP Services inexplicably contends “[t]here are no facts showing that Relator itself-as opposed to one or more other defendants-directed any

action toward Miller or Shriver in Missouri with the intent to cause them harm here.” *See* Sugg. In Supp. of Writ at 10. This is blatantly incorrect. Repeating the litany of express allegations against VVP Services for a third time would serve no useful purpose. Plaintiffs direct the Court to pages 2-7 in the Statements of Fact and pages 10-11 in the section above for the allegations and citations. Along with the well-pleaded allegations of falsity and harm, these allegations are more than enough to state a prima facie case that VVP Services engaged in defamation and conspiracy. *See Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. 2000) (setting forth the elements of defamation); *Mackey v. Mackey*, 914 S.W.2d 48, 50 (Mo. Ct. App. 1996) (setting forth the elements of conspiracy).

It is a question for the jury, and another day, whether Plaintiffs can ultimately prove their claims. VVP Services attempts to avoid Plaintiff being able to do so, however, with a self-serving affidavit summarily denying involvement in the conspiracy.

This is a premature argument on the merits, *see Andra v. Left Gate Prop. Holding, Inc.*, 453 S.W.3d 216, 224 (Mo. banc 2015) (explaining that the “merits of the underlying case are not considered”), especially before discovery has been completed. And as was his exclusive prerogative, *State ex rel. Missouri Ozarks Econ. Opportunity Corp.*, 763 S.W.2d at 382–83, Judge Torrence was properly not persuaded by VVP Services’ affidavit at this early stage of litigation. That one person from VVP Services (who is not even alleged to have participated in this conspiracy) denies involvement says nothing about whether Plaintiffs’ allegations support jurisdiction based on the conduct of other VVP Services employees, like Raizada and Haley Hey. To be sure, though VVP Services denies all

involvement in its December 2019 affidavit, Haley Hey later filed an affidavit admitting that she did, in fact, draft at least two of the defamatory articles on Raizada's orders. *Plaintiffs' App.*, p. 26 at ¶ 13. That goes to show that VVP Services' personal jurisdiction argument is nothing more than a desperate attempt to avoid discovery, which will likely unearth substantial additional evidence of VVP Services' culpability. It also shows that Judge Torrence was correct in disregarding VVP Services' self-serving affidavit.

In short, Plaintiffs' allegations are sufficient and are not negated by the affidavit.

## **2. The Defamatory Articles were Targeted at a Missouri Jury and Plaintiffs' Business Reputations in Missouri.**

VVP Services engaged in tortious conduct based on its employees directing and drafting the defamatory articles, and paying for at least one online account in which the defamatory articles were published. These articles were targeted at Missouri and the consequences were felt in Missouri. *See, e.g., VVP Services' App.*, p. A11 at ¶ 49 and A5-A6 at ¶ 19. The nexus to Missouri is evident: the defamatory articles were published with the intent to influence a Jackson County, Missouri jury (*id.*, p. A1 at ¶ 1); and Plaintiffs, who were defamed, travel to and do business in Missouri and their business reputations were harmed in Missouri (*id.*, p. A11 at ¶¶ 49-50).

No case cited by VVP Services says that such conduct fails to satisfy Missouri's long-arm statute. The closest VVP Services gets is citing to *Peabody Holding Co.*, 808 F. Supp. at 1437 and *Clockwork IP, LLC v. Clearview Plumbing & Heating Ltd.* 127 F. Supp. 3d 1020, 1027 (E.D. Mo. 2015) for the proposition that a plaintiff may not invoke Missouri's long-arm statute for extraterritorial acts "where the nonresident defendant had

no contact with Missouri besides the extraterritorial acts having consequences in Missouri.” *See Sugg. In Support of Pet. for Writ* at 11. But those cases lacked direct targeting in Missouri, which, as described above, is expressly alleged here. *See, e.g., Clockwork IP*, F. Supp. 3d at 1027 (“Further, there is no evidence that Defendants directly targeted any action at Missouri, knowing it would be felt here.”).

All that is required is a connection between the forum (Missouri) and VVP Services’ tortious conduct (targeting a Missouri jury and harming Plaintiffs’ reputation in Missouri). Plaintiffs’ well-pleaded allegations on those points place VVP Services’ conduct squarely within a Missouri court’s authority under the long-arm statute. *See* Mo. Rev. Stat. Ann. § 506.500.1(3).

### **3. Plaintiffs Need Not Be Missouri Residents to Sue in Missouri.**

In a last ditch effort, VVP Services contends that only Missouri residents can bring a defamation action in Missouri. *See Sugg. In Support of Pet. for Writ* at 12. But the U.S. Supreme Court rejected that type of argument in 1984. In *Keeton v. Hustler Magazine, Inc.*, the Court recognized that, in a libel action, a “plaintiff’s residence is not . . . completely irrelevant to the jurisdictional inquiry[,]” but explained that “plaintiff’s residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant’s contacts.” 465 U.S. 770, 780 (1984).

The case cited by VVP Services in support of this contention, *Elmore v. Owens-Illinois, Inc.*, was an asbestos case about choice-of-law in which this Court, in *dicta*, posited that defamation causes a “special kind of injury” among a person’s acquaintances in “the

place of one's residence." 673 S.W.2d 434, 437 (Mo. banc 1984). Even assuming that observation was binding (instead of *dicta*) or applicable to this Court's jurisdictional analysis (instead of choice-of-law analysis), the authority the Court cited for that proposition goes on to explain that, in multistate defamation, "[a] state, which is not the state of the plaintiff's domicile, may be that of most significant relationship if it is the state where the defamatory communication caused plaintiff the greatest injury to his reputation." Restatement (Second) of Conflict of Laws § 150 (1971), cmt. e. So even if *Elmore* were addressing a jurisdictional question related to defamation, the authority *Elmore* relied on recognized that a plaintiff's residence or domicile is not dispositive.

This Court should therefore reject VVP Services' contention that Plaintiffs' residency in Kansas is dispositive. Instead, VVP Services' targeting Missouri is all that is required.

**C. VVP Services' Tortious Conduct was Targeted at Missouri, Satisfying the "Minimum Contacts" Requirement.**

**1. The *Calder* Effects Test Supports a Finding of Sufficient "Minimum Contacts" to Satisfy Due Process.**

Where, as here, a party's conduct targets a jurisdiction, such conduct satisfies the minimum contacts requirement of the due process analysis. *See, e.g., Calder v. Jones*, 465 U.S. 783, 788-89 (1984). "The Due Process Clause of the Fourteenth Amendment to the United States Constitution permits personal jurisdiction over a defendant in any State with which the defendant has 'certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Id.* at 788. "In judging minimum contacts, a court properly focuses on 'the relationship among the

defendant, the forum, and the litigation.’ The plaintiff’s lack of ‘contacts’ will not defeat otherwise proper jurisdiction.” *Id.* (internal citations omitted). This due process analysis is typically referred to as the *Calder* effects test, which this Court embraced in *Baldwin*. 315 S.W.3d at 392-93, 396.

In *Calder*, the Supreme Court held that an out-of-state author of an article published in a national magazine was subject to jurisdiction in California when the article was aimed at California. 465 U.S. at 788-89. The Court explained that it is not the plaintiff’s contacts with the forum that control whether jurisdiction is proper, instead the focus is on the defendant’s relationship with the forum and the litigation. *Id.* at 789. This is further supported by *Keeton*, another Supreme Court case that was decided the same day as *Calder*.

In *Keeton*, the Court held that a New York resident could properly maintain an action brought in New Hampshire arising out of defamatory statements published by an Ohio company, even when the bulk of the harm occurred outside of New Hampshire. 465 U.S. at 780. The *Keeton* Court emphasized how a state has a significant interest in protecting its residents from reading false statements, as such statements harm both the subject of the falsehood and the readers. *Id.* at 776. Along the same lines, a Jackson County court has a significant interest in protecting its juries from improper influence.

Finally, in *Baldwin*, this Court found that when out-of-state defendants posted libelous internet postings about a Missouri resident with statements that specifically referenced Missouri and Missouri residents had viewed the postings, such conduct constituted committing a tort in Missouri and satisfied minimum contacts necessary under

a due process analysis. 315 S.W.3d at 392, 398. *Baldwin* embraced the *Calder* “effects” test for determining jurisdiction and explained that in the context of intentional torts “the inquiry focuses on whether the conduct underlying the claims was purposely directed at the forum state.” *Id.* at 392-93, 396 (citations omitted).

This Court recognized the possibility of “internet activities exposing a defendant to jurisdiction in many forums,” but explained that does not mean a defendant should not be so exposed:

A tortfeasor who mails a thousand bombs to recipients in one state, and one to recipients in each of the other forty-nine states, should not be relieved from geographic responsibility for the consequences of his actions in each of those states simply because he is subject to suit everywhere, or because his conduct has a uniquely intensive relationship with a single state.

*Id.*

*Baldwin* went on to explain how *Calder* suggests three requirements for personal jurisdiction: “(1) intentional conduct (or ‘intentional and allegedly tortious’ conduct); (2) expressly aimed at the forum state; (3) with the defendant’s knowledge that the effects would be felt—that is, the plaintiff would be injured—in the forum state.” *Id.* at 393. All three are satisfied in this action.<sup>4</sup>

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<sup>4</sup> Much of VVP Services’ briefing focuses on analyzing a five-factor test for minimum contacts. But VVP Services’ own authority recognizes that this is not the test required. See *Bryant*, 310 S.W.3d at 233 n.4; *Andra*, 453 S.W.3d at 226 n.9; *Sugg. In Support of Pet. for Writ* at 13 (citing to footnote 4 in *Bryant*). In *Bryant*, this Court explained that while some appellate courts have utilized a five-factor test, the Missouri Supreme Court does not require it. 310 S.W.3d at 233 n.4 (“defendant has purposely availed itself of the privilege of doing business in this state,” then it may so use it, but “[t]o the extent

First, there was intentional conduct in causing the defamatory articles to be drafted and processing the payment for the purchase of the account in which the articles were posted. *See VVP Services' App.*, pp. A1-A26 at ¶¶ 1, 74, 76-79, 83-84, 98, 103, 135; *Plaintiffs' App.*, p. 26 at ¶ 13.

Second, the articles were specifically directed at Missouri based on the content of the articles and their timing. *See VVP Services' App.*, pp. A1-A26 at ¶¶ 22-24, 69, 77; *see Plaintiffs' App.*, pp. 1-18. The articles were published in an effort to try and influence a potential jury, which is evident by the timing and content of the articles, including the focus on Asner and other trial witnesses. *VVP Services' App.*, p. A6 at ¶¶ 22-23 and A7 at ¶ 28. Further, a resident was targeted, as well as individuals who have reputations in Missouri, including Plaintiffs. *See id.*, pp. A9-A10 at ¶¶ 38-42, p. A11 at ¶¶ 49-50.

Third, it is foreseeable that making false statements about someone in a publication that also makes specific reference to Missouri will cause them to suffer an injury in Missouri, including Plaintiffs Miller and Shriver. In order to satisfy due process, Plaintiffs need not show that VVP Services knew in advance that these specific Plaintiffs would suffer injury in Missouri, rather the fact that such was foreseeable is sufficient to satisfy

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that court of appeals cases suggest that this five-factor approach is required in Missouri ... they are in error.”). Therefore, Plaintiffs do not address factors that are not required to be analyzed in order to prove sufficient minimum contacts based on *Calder*. Even if analyzed under this five-factor test, however, that VVP Services launched a defamation attack on a legal proceeding in Jackson County, Missouri that injured Plaintiffs – who live in the Kansas City metropolitan area and regularly interact with Kansas City, Missouri for work and other purposes – would satisfy the five-factors discussed and disregarded in *Bryant*.



due process. *See Baldwin*, 315 S.W.3d at 396 (discussing how minimum contacts is satisfied when a party “should reasonably anticipate being hailed into court” in the jurisdiction). VVP Services cannot contend it did not know the location of the jury it attempted to meddle with: its general counsel, David Diamond, directly participated in the defense strategy of the PHC Litigation in Jackson County, Missouri. *VVP Services’ App.*, p. A10-A11 at ¶ 48.

The allegations here are simply of a different kind and character from those found lacking in other cases. For example, in *State ex Rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899, 901 (Mo. 2020), this Court made permanent a writ of prohibition because the defendant, LG Chem, was a Korean manufacturer whose products were sold in Missouri through a third-party distributor. But LG Chem did not “direct[ ]” the third-party distributor to sell the batteries in Missouri, nor did LG Chem have “any influence over the third party’s distribution” of batteries in Missouri. *Id.* at 904. Said another way, LG Chem simply put a product in commerce that happened upon Missouri through the actions of a third party. Whereas, here, VVP Services participated in a conspiracy with the object of influencing a Jackson County jury and defaming women who conduct business in Missouri. And it cannot be emphasized enough: It was a VVP Services employee who directed the drafting of the defamatory articles, and a VVP Services employee who drafted them. The actions and intentions here are in stark contrast to the passive activities of defendants like *LG Chem*, and highlight precisely why jurisdiction is proper.

By participating in the preparation and publication of articles targeted at Missouri,

VVP Services has sufficient contacts with Missouri to be sued here.<sup>5</sup>

## 2. Exercise of Jurisdiction over VVP Services is Reasonable.

“Once it has been established that a defendant has sufficient minimum contacts with the forum state, the court must assess the reasonableness of its assertions of personal jurisdiction over a defendant.” *Andra*, 453 S.W.3d at 233 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476-77 (1985)). In doing so, courts consider: “the burden on the defendant, the forum’s interest in adjudicating the dispute, and the plaintiff’s interest in obtaining convenient and effective relief.” *Andra*, 453 S.W.3d at 233 (citation omitted).

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<sup>5</sup> Though the minimum contacts test is satisfied based on VVP Services’ actions alone, this Court may also consider VVP Services’ participation in the broader conspiracy. When defendants act together jointly, “[t]he existence of a conspiracy and the acts of a co-conspirator within the forum may, in some cases, subject another co-conspirator to the forum’s jurisdiction.” *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1069 (10th Cir. 2007). This so-called conspiracy theory of personal jurisdiction is “based on the time honored notion that the acts of [a] conspirator in furtherance of a conspiracy may be attributed to the other members of the conspiracy.” *Textor v. Bd. Of Regents of N. Illinois Univ.*, 711 F.2d 1387, 1392 (7th Cir. 1983) (internal quotations omitted).

Plaintiffs know of no case holding that the *Calder* effects test does not apply in cases involving conspiracy-based jurisdiction. And it would make no sense for that to be true. As the Tenth Circuit observed, for example, “[i]f three Kansans conspired to fire a cannonball into Oklahoma, we do not believe the Constitution would foreclose Oklahoma courts from exercising jurisdiction over the conspirators simply because they confined themselves to Kansas.” *Newsome v. Gallacher*, 722 F.3d 1257, 1265-66 (10th Cir. 2013).

Moreover, a Missouri appellate court interpreted Mississippi’s long-arm statute to allow conspiracy-based jurisdiction, while characterizing it as “similar to Missouri’s.” *See Murphree v. Baykowski*, 615 S.W.2d 463, 466 (Mo. App. E.D. 1981) (holding exercise of jurisdiction over co-conspirators “does not offend any traditional notions of fair play and substantial justice” where the conspiracy “wherever it took place, had a definite and foreseeable injurious effect on respondents in the State....”).

First, VVP Services has not articulated any burden in the case being adjudicated here and recognizes that the convenience of this forum is neutral. *See Sugg. In Support of Pet. for Writ* at 17.

Second, as Judge Torrence emphasized in his order that jurisdiction was proper because the defamatory statements targeted “persons involved in a lawsuit pending in this very 16th Judicial Circuit Court of Jackson County, Missouri.” *VVP Services’ App.*, p. A79. VVP Services’ brief largely ignores this. The undisputed allegations that the articles targeted judicial proceedings pending in the State of Missouri are evidence that the tortious conduct was directed at Missouri. The fact that Miller and Shriver were not plaintiffs in the PHC Litigation does not mean that the articles were not targeted at Missouri. Judge Torrence’s order was absolutely correct in finding that the basis for jurisdiction was supported by the attempts to interfere with a Missouri jury trial.

Missouri has a significant interest in adjudicating this dispute. These articles were an attempt to improperly influence Missouri citizens who were potential jurors in a case pending in this district. Missouri clearly has a public interest in protecting its courts from out-of-state conduct that attempts to improperly influence jurors. Further, Missouri has an interest in protecting its citizens from reading false statements and from being defamed. *See, e.g., Keeton*, 465 U.S. at 776. The articles make specific mention of Missouri and Missouri has an interest in preventing false statements targeted at it from being published.

Third, having these claims proceed as part of the already pending action is the most convenient and effective method of resolution. It would be burdensome to require Plaintiffs

to pursue their claims against VVP Services in a different jurisdiction, especially since their claims against other defendants are already proceeding in this Court.

In addition, VVP Services did not move to dismiss other plaintiffs' claims, like Scott Asner's, based on lack of personal jurisdiction. So VVP Services will already be forced to defend itself against the same claims in this forum regardless whether Plaintiffs Shriver's and Miller's are dismissed. Any "burden" or "reasonableness" arguments made by VVP Services therefore carries little weight – they are already going to be defending these claims in Missouri. This also raises a larger point: If VVP Services were serious in its challenges to personal jurisdiction, it would have lodged these arguments as to the other plaintiffs' claims. It did not.

### **CONCLUSION**

In light of the standard of review, the weight to be given to Plaintiffs' allegations, and the irrelevance of VVP Services' affidavit, this Court should not exercise its discretionary authority and should decline to issue the extraordinary writ of prohibition. Plaintiffs alleged facts sufficient to support Judge Torrence's denial of VVP Services' Motion to Dismiss. At bottom, Judge Torrence's exercise of jurisdiction is presumptively correct, and it is not "clearly evident" that it was erroneous for him to do so.

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**Certificate of Compliance**

I hereby certify pursuant to Rule 84.06(c) that this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations of Rule 84.06(b); and (3) contains 6,793 words based on the word count that is part of Microsoft Word 2016.

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**CERTIFICATE OF SERVICE**

On July 21, 2020, a copy of this document was filed with the Court's e-filing system, generating notice and sending a copy to all counsel of record.

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