

IN THE SUPREME COURT OF MISSOURI

No. SC98454

STATE EX REL. VVP SERVICES, LLC,

Relator,

v.

THE HONORABLE JOHN M. TORRENCE,

Respondent.

Original Proceeding in Prohibition

OPENING BRIEF OF RELATOR VVP SERVICES, LLC

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JURISDICTIONAL STATEMENT

This is an original petition for Writ of Prohibition requesting that this Court issue a permanent writ to Respondent preventing the Sixteenth Judicial Circuit of Jackson County, Missouri, and the Honorable John M. Torrence, from exercising personal jurisdiction over Relator, VVP Services, LLC.

This Court has jurisdiction pursuant to Article V, Section 4.1 of the Missouri Constitution, which provides that “[t]he Supreme Court shall have general superintending control over all courts and tribunals” and “may issue and determine original remedial writs.” Section 530.020 of the Missouri Revised Statutes further states this Court “shall have power to hear and determine proceedings in prohibition.” Mo. Rev. Stat. § 530.020.

STATEMENT OF FACTS

On October 4, 2018, Plaintiffs Sandy Miller (“Miller”), Susan Shriver (“Shriver”), Scott Asner (“Asner”), Michael Gortenburg (“Gortenburg”) and AG613, LLC (“AG613”) filed a lawsuit in the Circuit Court of Jackson County, Missouri, Case No. 1816-CV26329, against Amit Raizada (“Raizada”) and Richart Ruddie (“Ruddie”) (the “Underlying Lawsuit”). The Underlying Lawsuit asserts claims arising out of allegedly false and defamatory blogs posted anonymously on the Internet in October 2017 (the “Blogs”). (A1-A26). The Circuit Court subsequently compelled Asner, Gortenburg and AG613’s claims against Raizada to arbitration and stayed all claims pending arbitration. (A2, fn.2). Accordingly, only Miller and Shriver’s claims are at issue here.

On September 30, 2019, Miller and Shriver filed a Corrected First Amended Petition (“CAP”), adding Relator, Raizada Group, LLLP (“TRG”), Haley Hey (“Hey”)¹ and SEO Profile Defender Network, LLC (“SEO Profile Defender”) as defendants (A1-A26). Miller and Shriver, both of whom reside in Kansas (A9, ¶¶39 & 40), assert claims for defamation and conspiracy, alleging they suffered reputational injury and other damages from the Blogs. (A9, ¶35; A18-20, ¶¶97-106; A24-25, ¶¶126-138). Miller and Shriver do not allege that Relator or anyone else posted the Blogs in Missouri. (A1-A26).

Miller and Shriver admit Relator is a foreign company organized under the laws of the state of Florida. (A10, ¶48). Relator’s principal place of business is in Beverly Hills, California, and all of its business was conducted in California. (A27, ¶3 & 6). Relator is

¹ Plaintiffs dismissed all claims against Hey on June 23, 2020.

not registered to do business in Missouri and does not conduct business in Missouri. (A28, ¶10). Relator performs no services in Missouri, has no employees in Missouri, does not advertise in Missouri, and sends no tangible products into Missouri. (A28, ¶11). Relator does not own property in Missouri, has no bank accounts or other assets in Missouri, and does not pay taxes to the State of Missouri. (A28, ¶12). Relator did not provide services to Miller or Shriver, and had no contact with them in Missouri, or elsewhere. (A28, ¶¶11,15).

The CAP focuses primarily on alleged actions and motivations of Raizada. (A1-A18). Miller and Shriver baldly allege that Raizada coordinated with Relator and others to post the Blogs. (A2-A3, ¶1). The only facts alleged as to Relator are: (1) “[Relator] owned the electronic devices Amit Raizada had access to during the time period relevant to this litigation [in California] and also employed Haley Hey [in California]. [Relator] also employed David Diamond as General Counsel [in California]” (A10-11, ¶48); (2) Relator engaged SEO Profile Defender [a Florida company] to perform work on Relator’s behalf (A14, ¶71); (3) On July 28, 2017, a call occurred between Ruddle [in Florida] and Relator’s offices [in California] (A15, ¶73); and (4) Relator employed Raizada and Hey [in California]. (A16-17, ¶88). None of these facts show Relator had Missouri contacts.

Because Relator has no contacts with Missouri, Miller and Shriver rely on a “targeting” theory of personal jurisdiction based on bare conclusions, which impermissibly lump all defendants together: “the conduct at issue was targeted at inflicting commercial and reputational harm in Missouri, the defamatory statements concern activities or events that purportedly occurred within the State of Missouri, the defamatory statements make specific reference to Missouri and actions within Missouri, Defendants obtained

information related to the statements within Missouri, Defendants' conduct was performed for the purpose of having its consequences felt in Missouri, and Plaintiffs were in fact injured and felt consequences in Missouri...." (A11, ¶49).

Miller and Shriver do not allege facts showing Relator targeted them, or anyone else, in Missouri. (*Id.*) Rather, they allege all "defendants" targeted a lawsuit pending in Missouri with the Blogs: "As the timing shows, this smear campaign was intended to influence the PHC Litigation trial pending in Jackson County, Missouri, through smearing the corporate representative of PHC Holding, its Manager, as well as other trial witnesses, in hope of tainting the jury pool against the PHC Litigation plaintiffs and their witnesses, and impact the willingness of Asner, Gortenburg, and AG613 to proceed with the trial." (A7, ¶28). The PHC Litigation refers to *PHC Holding Company, LLC, et al. v. Amit Raizada, et al.*, Circuit Court of Jackson County, Case No. 1416-CV14245. (A2, ¶1). Relator was not a party to and had no involvement in the PHC Litigation. (A28, ¶17).

The CAP contains no facts showing Relator took any action to influence the PHC Litigation. Nor can Miller and Shriver's claims possibly arise out of that litigation as they were not parties to, witnesses in, or involved with those proceedings. (A5, ¶¶14-17). Relator did not direct any acts at Miller and Shriver, the PHC Litigation, or any person located in Missouri. (A28, ¶16-17). Relator did not create or post the Blogs and did not authorize anyone else, including Raizada or Hey, to do so. (A28, ¶¶13-16).

On December 30, 2019, Relator filed a Motion to Dismiss the CAP with Suggestions in Support, contesting the trial court's jurisdiction. (A30-A50). Relator sought dismissal because it is a foreign entity with its principal place of business outside the state of

Missouri, it does not meet the requirements of Missouri's long-arm statute, and it lacks minimum contacts with Missouri and these claims necessary to satisfy due process considerations. (*Id.*) In support, Relator presented the Affidavit of Stratton Sclavos, its operational manager, who testified that Relator has no contacts with Missouri or with Plaintiffs' claims and did not authorize anyone to post the Blogs. (A27-A29).

On January 21, 2020, Miller and Shriver filed their Suggestions in Opposition to the Motion to Dismiss. (A51-A72). Miller and Shriver rely solely on specific jurisdiction, (A57), arguing the allegations in the CAP make a prima facie showing of personal jurisdiction over Relator. (A59). Miller and Shriver did not offer evidence rebutting Relator's evidence, or otherwise demonstrating Relator had any contacts with Missouri generally, or with their claims, specifically. (A51-A72). Miller and Shriver rely primarily on Relator's relationship with Raizada and Hey (A59, fn.1), even though the CAP does not assert vicarious liability (A1-A26), arguing Relator's lack of contacts with Missouri is irrelevant in a "targeting" theory under *Calder v. Jones*, 465 U.S. 783, 790 (1984). (A65).

On February 12, 2020, Relator filed a Reply in Support of its Motion to Dismiss, distinguishing the authorities cited by Miller and Shriver, which involved claims of Missouri residents, and pointing out the lack of any evidence showing Relator itself targeted them in Missouri. (A73-A78).

On February 19, 2020, Respondent denied Relator's Motion to Dismiss, finding:

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 [sic] 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.

(A79) (emphasis added).

Relator filed a Petition for Writ of Prohibition and Suggestions in Support with the Missouri Court of Appeals, Western District, on February 28, 2020. (A81-A112). The Court of Appeals summarily denied Relator's Petition on March 18, 2020. (A113).

Relator filed this Petition and Suggestions in Support on March 31, 2020. On April 28, 2020, the Court issued its Preliminary Writ of Prohibition, requiring Respondent to answer the Petition and commanding Respondent take no further action in the Underlying Lawsuit. Miller and Shriver filed an Answer to Relator's Petition on May 28, 2020.

As discussed herein, Respondent exceeded his authority in denying Relator's Motion to Dismiss because the Circuit Court of Jackson County, Missouri cannot exercise personal jurisdiction over Relator under either the long-arm statute or due process. As a result, this Court must make its Preliminary Writ of Prohibition permanent, prohibiting Respondent from exercise jurisdiction over Relator and requiring Respondent to dismiss all claims against Relator for lack of personal jurisdiction.

POINTS RELIED ON

POINT I

- I. **A WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND RESPONDENT THE HONORABLE JOHN M. TORRENCE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATOR BECAUSE MISSOURI COURTS LACK SPECIFIC PERSONAL JURISDICTION OVER RELATOR IN THAT THE CLAIMS ASSERTED BY MILLER AND SHRIVER DO NOT ARISE FROM OR RELATE TO RELATOR’S ACTIVITIES IN MISSOURI, AND RELATOR LACKS CONTACTS WITH MISSOURI REQUIRED TO SATISFY DUE PROCESS.**

State ex rel. LG Chem, Ltd. v. McLaughlin, __S.W.3d __, 2020 WL 2845764, at *2 (Mo. banc June 2, 2020)

State ex rel. PPG Indus., Inc. v. McShane, 560 S.W.3d 888, 890 (Mo. banc 2018)

State ex rel. Norfolk S. Ry. Co. v. Dolan, 512 S.W.3d 41, 45 (Mo. banc 2017)

Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cty., __ U.S. __, 137 S. Ct. 1773, 1779-80, 198 L.Ed.2d 395 (2018)

STANDARD OF REVIEW

“Prohibition is the proper remedy to prevent further action of the trial court where personal jurisdiction of the defendant is lacking.” *State ex rel. LG Chem, Ltd. v. McLaughlin*, __S.W.3d __, 2020 WL 2845764, at *2 (Mo. banc, June 2, 2020) (“*LG Chem*”) (quoting *State ex rel. PPG Indus., Inc. v. McShane*, 560 S.W.3d 888, 890 (Mo. banc 2018) (“*PPG*”) and *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 45 (Mo. banc 2017) (“*Norfolk*”)). Prohibition issues to: (1) prevent a court from acting in excess of its jurisdiction; (2) remedy a court acting in excess of its jurisdiction; or (3) avoid irreparable harm to a party. *PPG*, 560 S.W.3d at 890 (citing *State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 230 (Mo. banc 2017) (“*Bayer*”)). That is particularly true where, as here, nonresident plaintiffs bring claims against a nonresident defendant who lacks minimum contacts with Missouri. *See id.* at 894.

When personal jurisdiction is challenged, the plaintiff bears the burden of establishing the defendant’s contacts with the forum are sufficient. *Bayer*, 536 S.W.3d at 231. Each plaintiff must establish sufficient minimum contacts for her own claims as against each defendant. *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, __ U.S. __, 137 S. Ct. 1773, 1779-80, 198 L.Ed.2d 395 (2018) (“*BMS*”). “A 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.” *State ex rel. Cedar Crest Apartments, LLC v. Grate*, 577 S.W.3d 490, 496 n.5 (Mo. banc 2019) (“*Cedar Crest*”). The court may also consider affidavits and depositions, *Andra v.*

Left Gate Prop. Holding, Inc., 453 S.W.3d 216, 224 (Mo. banc 2015), and the plaintiff must respond with contrary evidence as opposed to merely relying on her pleadings. *See Chromalloy Am. Corp. v. Elyria Foundry Co.*, 955 S.W.2d 1, 3-4 (Mo. banc 1997), *abrogated on other grounds in State ex rel. Henderson v. Asel*, 566 S.W.3d 596, 599 n.6 (Mo. banc 2019). Whether the plaintiff made “a prima facie showing that the trial court may exercise personal jurisdiction is a question of law,” which “this Court reviews *de novo*.” *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 231 (Mo. banc 2010).

ARGUMENT AND AUTHORITY

II. A WRIT OF PROHIBITION SHOULD ISSUE PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI, AND RESPONDENT THE HONORABLE JOHN M. TORRENCE, FROM EXERCISING PERSONAL JURISDICTION OVER RELATOR BECAUSE MISSOURI COURTS LACK SPECIFIC PERSONAL JURISDICTION OVER RELATOR IN THAT THE CLAIMS ASSERTED BY MILLER AND SHRIVER DO NOT ARISE FROM OR RELATE TO RELATOR’S ACTIVITIES IN MISSOURI, AND RELATOR LACKS CONTACTS WITH MISSOURI REQUIRED TO SATISFY DUE PROCESS.

“Personal jurisdiction is a court’s power over the parties in a given case.” *LG Chem*, 2020 WL 2845764, at *2. Where, as here, Respondent seeks to exercise specific jurisdiction over a nonresident defendant, “‘the suit’ must ‘arise out of or relate to the defendant’s contacts with the forum.’ ” *Id.* (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)). “[T]here must be an ‘affiliation between the forum and the underlying

controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *BMS*, 137 S.Ct. at 1780 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (“*Goodyear*”). Specifically, the suit must arise from activities specified in Missouri’s long-arm statute; and Relator must have sufficient minimum contacts with Missouri to satisfy due process. *Andra*, 453 S.W.3d at 225. Here, Miller and Shriver cannot meet either prong of this test.

A. Miller And Shriver Cannot Rely On Their Conclusory Allegations

Relator supported its Motion to Dismiss with a sworn affidavit showing Relator lacks any contacts with Missouri. (A27-29). Miller and Shriver did not refute this testimony, and Respondent relied solely on the conclusory allegations in the CAP in denying Relator’s Motion to Dismiss. But even a liberal construction of the CAP reveals there are no facts from which Respondent could find Miller and Shriver’s claims arise out of contacts Relator itself had with Missouri. The CAP is replete with boilerplate allegations that impermissibly lump all defendants and alleged conduct together (A7-A25¶¶ 25, 26, 30, 36, 49, 98, 103, 104, 106, 127, 128, 134, 135, 137, 138), rely on “information and belief” (*id.*, ¶¶ 2, 34, 45, 48, 49, 70, 71, 72, 84, 85, 90, 92, 131), and intermingle all claims and damages. (*Id.* ¶¶ 20, 22, 27, 29, 32, 35, 55, 97, 98, 101, 102, 126, 127, 128). This Court has flatly rejected such generic pleading. *Cedar Crest*, 577 S.W.3d at 497, n.5 (noting plaintiffs made “no allegations regarding Relators individually—but instead refer to ‘Defendants’ as a whole, which include various Missouri corporations and residents as well as Relators,” which is insufficient “as a matter of law to establish personal jurisdiction.”).

B. Missouri's Long-Arm Statute is Not Satisfied

Miller and Shriver rely on section 506.500.1(3) of Missouri's long arm statute, claiming Relator engaged in extraterritorial acts that produced consequences in the state. To meet their burden to bring Relator's alleged conduct within that provision, Miller and Shriver were required to set forth facts showing that Relator itself engaged in conduct deliberately designed to enter Missouri and injure Miller and Shriver here. *Capitol Idem. Corp. v. Citizens Nat. Bank*, 8 S.W.3d 893, 903 (Mo. Ct. App. 2000). The mere fact that some consequences might be felt in the state is not sufficient to find a nonresident defendant committed a tortious act in Missouri. *PPG*, 560 S.W.3d at 892. Moreover, "[a] plaintiff may not invoke tortious long-arm jurisdiction consistent with due process where the nonresident defendant had no contact with Missouri besides the extraterritorial acts having consequences in Missouri." *Peabody Holding Co. v. Costain Group PLC*, 808 F. Supp. 1425, 1437 (E.D. Mo. 1992). "Instead, Plaintiffs must present some evidence that [the defendant] had other contacts with Missouri, and intentionally aimed their tortious activities at Missouri so their effect would be felt here." *Clockwork IP, LLC v. Clearview Plumbing & Heating Ltd.*, 127 F. Supp. 3d 1020, 1027 (E.D. Mo. 2015). Miller and Shriver have not met their burden here.

There 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. Notably, the websites on which the Blogs appeared were accessible nationwide. That some consequences from the Blogs may have been felt here, because Missouri residents may have viewed them, does not satisfy the targeting requirement of

Bryant. PPG, 560 S.W.3d at 892. That is particularly true where Miller and Shriver do not reside in Missouri and could not have felt the brunt of harm from defamation here. *Elmore v. Owens-Illinois, Inc.*, 673 S.W.2d 434, 437 (Mo. 1984) (“[D]efamation produces a special kind of injury that has its principal effect among one’s friends, acquaintances, neighbors and business associates in the place of one’s residence. An injury from defamation, therefore, does have a center in one’s place of domicile.”); *see also Fuqua Homes, Inc. v. Beattie*, 388 F.3d 618, 622 (8th Cir. 2004) (same). Thus, as a matter of law, Miller and Shriver felt the brunt of purported harm from the Blogs in Kansas, not in Missouri.

Finally, Miller and Shriver’s targeting theory fails because they concede that Relator had no contacts with Missouri other than the unsupported conclusion that Relator coordinated with others to post the Blogs on the Internet. Unlike *Bryant*, Relator had no direct or individual contacts with anyone in Missouri, let alone Shriver and Miller. Absent such other contacts, personal jurisdiction will not lie, even under a targeting theory.

C. Respondent’s Exercise of Personal Jurisdiction Violates Due Process

The second prong of the jurisdictional test focuses on whether (1) the nonresident defendant’s contacts with Missouri are created by the defendant (not third parties), and (2) there is such a substantial connection with this state that the exercise of jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’ ” *Goodyear*, 564 U.S. at 923. Due process requires “minimum contacts” even when intentional torts are involved. *Walden v. Fiore*, 571 U.S. 277, 286 (2014)). It is “insufficient to rely on a defendant’s random, fortuitous, or attenuated contacts or on the unilateral activity of a plaintiff.” *Id.*

Specific jurisdiction only exists if the defendant purposefully directs its activities at Missouri residents and the claims arise out of those activities. *PPG*, 560 S.W.3d at 891. Mere foreseeability is not enough; “it is the defendant’s actions, not [its] expectations, that empower a [s]tate’s courts to subject [it] to judgment.” *LG Chem*, 2020 WL 2845764, at *3 (quoting *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 881 (2011)). The contacts “must proximately result from actions by the defendant himself that create a substantial connection with the forum State,” *Andra*, 453 S.W.3d at 226, and each defendant’s contacts must be sufficient to create jurisdiction on their own. *BMS*, 137 S.Ct. at 1783. Similarly, a nonresident plaintiff may not establish personal jurisdiction simply by joining her claims to a resident’s pleading. *Id.* at 1781. Rather, **each** plaintiff must independently establish a basis for personal jurisdiction for that plaintiff’s claims against **each** defendant. *Id.*

To determine whether sufficient minimum contacts exist between each plaintiff’s claims and each defendant’s contacts with Missouri, courts look to five factors: (1) the nature and quality of the defendant’s contacts with Missouri; (2) the quantity of the contacts; (3) the relationship of the cause of action to the contacts; (4) Missouri’s interest in providing a forum for its residents; and (5) the convenience of the forum to the parties. *Bryant*, 310 S.W.3d at 233 n.4. The first three factors have primary importance. *Consol. Elec. & Mechanicals, Inc. v. Schuerman*, 185 S.W.3d 773, 776 (Mo. Ct. App. 2006). Application of these factors here reveals Respondent violated Relator’s due process rights.

1. ***The Nature and Quality of Relator’s Contacts with Missouri***

Miller and Shriver do not allege facts showing Relator had any contacts with them in Missouri, nor have they refuted Relator’s evidence establishing a complete lack of any

contacts. Miller and Shriver merely seek to impute to Relator third parties' contacts with Missouri, a tactic that this Court recently rejected, holding "[a] plaintiff may not use the actions of a third party to satisfy the due process requirement of the specific personal jurisdiction analysis." *LG Chem*, 2020 WL 2845764, at *3 (citing *PPG*, 560 S.W.3d at 893 n.5). Even if such theory did exist, Miller and Shriver have not plead that Raizada or Hey posted the Blogs in the course and scope of their employment. (A1-A26). To the contrary, Relator never directed, approved, or authorized anyone to post the Blogs. (A28). Accordingly, agency jurisdiction cannot arise here. See *Romak USA, Inc. v. Rich*, 384 F.3d 979, 985 (8th Cir. 2004) (holding a principal cannot be subjected to personal jurisdiction based on the actions of an agent acting *outside* the scope of his or her authority).

2. *The Quantity of Relator's Contacts with Missouri*

As set forth above, Relator has no contacts whatsoever with Missouri.

3. *The Relationship of Miller and Shriver's Claims to the Contacts*

Miller and Shriver baldly allege that all "Defendants" targeted the Blogs at Missouri by posting them on websites that may have been viewed in Missouri, and that they suffered reputational harm as a result. But personal jurisdiction over a nonresident defendant based on alleged in-state effects of its extraterritorial tortious acts is allowed only if those acts "(1) were intentional; (2) were uniquely or expressly aimed at the forum, and (3) caused harm, the brunt of which was suffered – and which the defendant knew was likely to be suffered – [in the forum state]." See *Viasystems, Inc. v. EBM–Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 596 (8th Cir. 2011) (citing *Calder*, 465 U.S. at 790). Although specific jurisdiction can arise from a single contact with the forum state, that contact must

still directly relate to the plaintiff's claims in order to satisfy due process. *Fulton v. Chicago, R.I. & P.R. Co.*, 481 F.2d 326, 335 (8th Cir. 1973). Miller and Shriver cannot satisfy the *Calder* effects test as to Relator here.

Missouri courts have expressly rejected Respondent's construction of *Calder* that tortious conduct need only be aimed at the forum state. See *Baldwin v. Fischer-Smith*, 315 S.W.3d 389, 397 (Mo. Ct. App. 2010). Rather, the defendant's conduct must be aimed ***at a Missouri resident and intended to cause injury in Missouri***, rather than conduct generally directed at the forum state itself. *Id.* Notably, the Missouri cases discussing "targeting" involved claims asserted by ***resident*** plaintiffs, who suffered injury in Missouri. That link is wholly absent here. There is absolutely no basis upon which Respondent could conclude that Miller and Shriver, who live in Kansas, actually suffered the brunt of their claimed harm from the Blogs in Missouri. *Elmore*, 673 S.W.2d at 437.

The facts presented here could not be more different than in *Calder* and *Bryant*, where (1) the plaintiffs were residents of the forum state and felt the harm there, and (2) the defendants had substantial contacts with the forum state other than the mere allegations of extraterritorial targeting. Specifically, in *Bryant*, the defendant had multiple contacts with Missouri, sending physical mail and emails and making phone calls directly to the Missouri plaintiff, who was harmed in Missouri. 310 S.W.3d at 232. Similarly, in *Calder*, the plaintiff felt the brunt of her harm where she lived and worked in California, and the defendant engaged in other contacts with California, including frequent trips for business, direct phone calls to California residents in furtherance of the tort, and a high circulation of the National Enquirer in California. 465 U.S. at 784-87. Those facts do not exist here.

This Court has rejected similar efforts to drag nonresident defendants into Missouri based on claimed internet defamation when neither the defendant nor the plaintiff has any contacts with Missouri. *See PPG*, 560 S.W.3d at 891 (holding information posted on a nationwide website did not subject the nonresident defendant to specific jurisdiction, even where a Missouri plaintiff relied on it and claimed injury here); *Johnson*, 614 F.3d at 797 (“Posting on the internet from Colorado an allegedly defamatory statement including the name ‘Missouri’ in its factual assertion does not create the type of substantial connection between Heineman and Missouri necessary to confer specific personal jurisdiction.”)

The court’s ruling in *Johnson v. Gawker Media*, No. 4:15-CV-1137 CAS, 2016 WL 193390 (E.D. Mo. Jan. 1, 2016) (“*Gawker Media*”), is also instructive. There, a California plaintiff filed a defamation action in Missouri against a Delaware publishing company with its principal place of business in New York arising out of blogs posted on nationally-accessible websites. The court dismissed for lack of personal jurisdiction, finding, “[t]he mere fact that Gawker Media’s websites are accessible in Missouri or that they provide the possibility a Missouri resident might have contact with the defendants by leaving comments to an article is not sufficient, alone, to confer personal jurisdiction.” *Id.* at *8 (citing *Johnson*, 614 F.3d at 796-97). The court rejected conclusory allegations like those made here, finding no facts showing the defendants knew the plaintiff would suffer injury from the blogs in Missouri, ***as he was not even a resident of Missouri.*** *Id.* at *9-10.

4. ***Missouri's Interest in Providing a Forum for its Residents***

Missouri has no interest here because Relator does no business in Missouri and has no contacts with Missouri; and Miller and Shriver do not live in Missouri and did not suffer

harm from alleged defamation here. Respondent's reliance on alleged targeting of persons involved in the PHC Litigation is misplaced, as Miller and Shriver were not parties to or otherwise involved in that litigation. Respondent was required to consider whether there are sufficient facts to find that Relator intentionally targeted the Blogs at Miller and Shriver in Missouri with the intent to cause them harm here. Based on the facts and binding legal precedent, the answer to that question is clearly "no."

5. *The Convenience of the Forum to the Parties*

This factor is neutral in the jurisdictional analysis.

CONCLUSION

There is no basis in fact or law for Respondent to exercise personal jurisdiction over Relator, a nonresident defendant with no Missouri contacts, in connection with defamation claims asserted by Kansas plaintiffs for injuries they necessarily suffered in Kansas. Respondent's exercise of personal jurisdiction violates the Missouri long-arm statute and Relator's due process rights. Accordingly, this Court should make its Preliminary Writ of Prohibition permanent, prohibiting the Sixteenth Judicial Circuit of Jackson County, and the Honorable John M. Torrence, from exercising jurisdiction over Relator and requiring Respondent to enter an order dismissing Relator for lack of personal jurisdiction.

Dated: June 29, 2020

Respectfully submitted,

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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 5,477 words exclusive of the sections exempted by Rule 84.06(b) based on the word count that is part of Microsoft Word 2016.

/s/ James M. Humphrey IV
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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June 2020, I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Missouri by using the Missouri eFiling System. Participants in the case who are registered users will be served by the Missouri eFiling System. I also certify that on the 29th day of June 2020, I served the foregoing via electronic mail on the following:

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