

SC98494

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IN THE  
Supreme Court of Missouri

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**STATE EX REL. RAIZADA GROUP, LLLP,**

*Relator,*

**V.**

**THE HONORABLE JOHN M. TORRENCE,**

*Respondent.*

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Original Proceeding in Prohibition

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**OPENING BRIEF OF RELATOR,  
RAIZADA GROUP, LLLP**

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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, Raizada Group, LLLP.

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.” RSMo § 530.020 further states this Court “shall have power to hear and determine proceedings in prohibition.” RSMo § 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 Petition in the Circuit Court of Jackson County, Missouri, Case No. 1816-CV26329, against Amit Raizada (“Raizada”) and Richart Ruddie (“Ruddie”). The Petition asserted claims arising out of allegedly false and defamatory blogs posted anonymously on the Internet in October 2017 (the “Blogs”). (A2-A27.) The claims asserted by Asner, Gortenburg, and AG613 against Raizada were compelled to arbitration and stayed. (A3, n.2.) The only claims at issue here are those asserted by Miller and Shriver.

On September 30, 2019, Miller and Shriver filed a Corrected First Amended Petition (“CAP”) naming Relator, VVP Services, LLC (“VVP Services”), Haley Hey (“Hey”), and SEO Profile Defender Network, LLC (“SEO Profile Defender”) as defendants (A2-A27)<sup>1</sup>. Miller and Shriver, who reside in Kansas (A10, ¶¶ 39, 40), seek to recover for reputational harm they allegedly suffered as a result of the Blogs. (A9, ¶ 35; A19-20, ¶¶ 97-106; A23-25, ¶¶ 126-138.)

Miller and Shriver acknowledge that Relator is a foreign limited liability partnership organized under the laws of the state of Florida. (A11, ¶ 46.) Relator is an investment holding company, whose business and investments are managed by its general partner,

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<sup>1</sup> All claims asserted against Relator by AG613 were also compelled to arbitration. (A2, n.2). Those claims have now been dismissed by the arbitrator.

Everglades One, LLC, in and from California. (A29, ¶¶ 4-7.) Neither Relator nor its general partner are registered to do business in Missouri, and Relator has not transacted any business in Missouri since at least 2013. (A29-A30, ¶¶ 8-10, 13.) Relator performs no services in Missouri, has no employees in Missouri, does not advertise in Missouri, and sends no tangible products into Missouri. (A30, ¶ 13.) Relator owns no property in Missouri, has no bank accounts or other assets in Missouri, and does not pay taxes to the State of Missouri. (A30, ¶¶ 12, 14.) The only contact Relator had with Missouri in 2017 was Relator's status as a party in litigation pending in the Circuit Court of Jackson County, Missouri, styled *PHC Holding Company, LLC, et al. v. Amit Raizada, et al.*, Case No. 1416-CV14245 (the "PHC Litigation"). (A30, ¶ 15.)

The CAP baldly alleges that Raizada coordinated with Relator and others to post the Blogs. (A2-A3, ¶ 1.) The only facts alleged as to Relator pertinent to Miller and Shriver's claims are: (1) "Additionally, on July 28, 2017, a \$10,000 wire was sent from Raizada Group to SEO Profile" (A16, ¶ 74); (2) Raizada Group paid a credit card charge incurred by Michael Wolf for a membership to Scribd.com (A16, ¶ 75); and (3) "On August 30, 2017, Raizada Group wired an additional \$10,000 to SEO Profile" (A16, ¶ 76.) None of these facts establish any contacts that Relator allegedly had with Missouri.

The jurisdiction allegations of the CAP are 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 . . . ." (A12, ¶ 49.) Miller and Shriver do not allege any facts showing Relator targeted them or any other person in Missouri. (*Id.*) Rather, they allege that "defendants," lumped together, targeted the PHC Litigation 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." (A8, ¶ 28.)

Miller and Shriver do not plead any acts allegedly taken by Relator to target or influence the PHC Litigation. Nor do they explain how their claims could possibly arise out of or relate to the PHC Litigation. Neither Miller nor Shriver were parties to, witnesses in, or had any legal interest in the PHC Litigation. (A6, ¶¶ 14-17.) Relator did not direct any acts at Miller and Shriver, the PHC Litigation, or any person located in Missouri. (A31, ¶¶ 20-27.) Relator did not create or post the Blogs and did not retain, authorize, direct, or coordinate with anyone else to do so. (A31, ¶¶ 20-27.)

On December 18, 2019, Relator filed a Motion to Dismiss the CAP with Suggestions in Support, contesting the trial court's jurisdiction because Relator lacks any contacts with the state of Missouri. (A34-A52). Relator attached the Affidavit of Ravi Srivastava,

the manager of Relator's General Partner, who testified that with the exception of being a party to the PHC Litigation, Relator has no contacts with Missouri or with Plaintiffs' claims. (A29-A32.) Srivastava further testified that Relator's two payments to SEO Profile Defender were made on behalf of Spectrum Business Ventures, Inc. ("SBV"), which had borrowed the funds from Relator, and that Relator had never hired or paid SEO Profile Defender to do any work for Relator or anyone else. (A30-A31, ¶¶ 16-21.)

On January 21, 2020, Miller and Shriver filed their Suggestions in Opposition to the Motion to Dismiss. (A54-A77.) Miller and Shriver conceded they were relying only on specific jurisdiction (A60), arguing that the CAP set forth a prima facie showing of personal jurisdiction over Relator. (A61-64.) Miller and Shriver did not offer competent evidence rebutting Relator's evidence, nor did they present facts showing Relator had any contacts with Missouri out of which their claims arose. (A54-A77.) Rather, Miller and Shriver attached irrelevant materials and inadmissible hearsay in an effort to attack Srivastava's credibility. (A64-65.) Miller and Shriver also speculated that since Relator's controller, who initiated the wire payments to SEO Profile, lived in Missouri in 2017, Relator must have been doing business in Missouri. (A56-57, ¶¶ 13-16.)

On February 7, 2020, Relator filed a Reply in Support of its Motion to Dismiss. (A79-A97.) Relator attached the Affidavit of Angela Correll, Relator's controller, who testified that she was in the process of moving to California in 2017, she has actually worked in California since March of 2017, all communications about the payments made

by Relator to SEO Profile Defender occurred in California, and she initiated those payments from Relator to SEO Profile from California. (A82; A96-A97, ¶¶ 3-8.) Thus, Relator did not do business in Missouri and had had no contacts with Missouri from which Miller and Shriver's claims could arise.

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

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 16<sup>th</sup> 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 Raizada Group, LLLP.

(A99) (emphasis added).

Relator filed a Petition for Writ of Prohibition and Suggestions in Support with the Missouri Court of Appeals, Western District, on February 24, 2020. (A102-A110.) The Court of Appeals summarily denied Relator's Petition on March 18, 2020. (A111.)

Relator filed its Petition for Writ of Prohibition with this Court on April 24, 2020, with accompanying Suggestions in Support. On April 28, 2020, this Court issued its Preliminary Writ of Prohibition, requiring Respondent to respond to the Petition within 30 days and ordering Respondent to take no further action in the Underlying Lawsuit. Miller and Shriver filed an Answer and Return to Relator's Petition on May 28, 2020.

Relator asks this Court to make its Preliminary Writ of Prohibition permanent, prohibiting Respondent from exercising jurisdiction over Relator and requiring Respondent to dismiss all claims against Relator for lack of personal jurisdiction.

**POINTS RELIED ON**

**POINT I**

- I. THIS COURT SHOULD MAKE PERMANENT ITS WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI AND 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.2d \_\_, 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.2d \_\_\_\_, 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, non-resident plaintiffs bring claims against a non-resident 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**

**I. THIS COURT SHOULD MAKE PERMANENT ITS WRIT OF PROHIBITION PROHIBITING THE SIXTEENTH JUDICIAL CIRCUIT OF JACKSON COUNTY, MISSOURI AND 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 MINIMUM 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 non-resident 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. Respondent Erred by Allowing Plaintiffs to Rest on Their Conclusory Allegations in Disregard of the Evidence, Thereby Improperly Relieving Them of Their Burden to Make a Prima Facie Showing of Personal Jurisdiction.**

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Relator offered uncontroverted evidence that: 1) Relator is a Florida entity managed by its General Partner in and from California; (2) Relator does no business in Missouri, owns no property in Missouri, and pays no taxes to Missouri; (3) Relator had no contact with Miller or Shriver here, and engaged in no conduct in Missouri from which Miller and Shriver’s claims arose; (4) Relator did not post or assist in posting the Blogs and did not intentionally direct any act toward Miller and Shriver in Missouri; and (5) Miller and Shriver live and work in Kansas, would not have been targeted with alleged defamation in Missouri, and could only have felt any alleged harm from the Blogs in Kansas.

Miller and Shriver did not refute these facts with admissible evidence, falling back on the bare conclusions of the CAP. Respondent then improperly accepted those bald conclusions as sufficient to confer personal jurisdiction without consideration of the evidence. As this Court has made clear, Miller and Shriver cannot meet their burden of showing personal jurisdiction by simply resting on the pleadings:

When the defendant contests personal jurisdiction, however, it is the plaintiff who bears the burden of establishing the defendant's contacts with the forum state are sufficient. Thus, when the defendant presents evidence refuting personal jurisdiction, the plaintiff must respond with contrary evidence or otherwise refute the evidence presented by the defendant as opposed to merely relying on his or her pleadings . . . .

*Cedar Crest*, 577 S.W.3d at 497 n.5 (internal citations omitted).

Even construed liberally in Miller's and Shriver's favor, the CAP fails to plead any non-conclusory jurisdictional facts relating specifically to Relator or showing that Relator engaged in any conduct within the long-arm statute. Rather, the CAP contains only boilerplate allegations and legal conclusions that come nowhere close to adequately pleading personal jurisdiction over Relator. For example, Miller and Shriver: (a) plead myriad allegations on mere "information and belief" (*id.*, ¶¶ 2, 34, 45, 48, 49, 70, 71, 72, 84, 85, 90, 92, 131); (b) improperly lump all six "Defendants" together as a whole without identifying any conduct specific to Relator (*id.*, ¶¶ 25, 26, 30, 36, 49, 98, 103, 104, 106, 127, 128, 134, 135, 137, 138); and (c) consistently lump themselves into allegations involving other plaintiffs (Asner, Gortenburg, and AG613, LLC), whose claims against Relator are not even before the trial court. (*Id.* ¶¶ 20, 22, 27, 29, 32, 35, 55, 97, 98, 101, 102, 126, 127, 128.) This Court has flatly rejected such generic pleading as insufficient as a matter of law to establish personal jurisdiction. *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.").

Not only did Miller and Shriver fail to plead sufficient jurisdictional facts as to Relator, but they then failed to refute Relator's evidence with competent evidence of their own as required to overcome Relator's Motion to Dismiss. *Cedar Crest*, 577 S.W.3d at 497 n.5. Respondent inexplicably disregarded Relator's evidence and denied the Motion to Dismiss based only on the conclusory averments in the CAP. In so doing, Respondent effectively relieved Plaintiffs of their burden to establish personal jurisdiction. For this reason alone, prohibition should issue.

**B. The Evidence Shows Relator Did Not Engage in Conduct Within Missouri's Long-Arm Statute.**

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Miller and Shriver rely on RSMo § 506.500.1(3) of Missouri's long-arm statute, which states, in pertinent part:

Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

\* \* \* \*

(3) The commission of a tortious act within the state.

RSMo § 506.500.1(3). Although such torts can include "[e]xtraterritorial acts that produce consequences in the state, such as fraud," *Bryant v. Smith Interior Design Grp., Inc.*, 310 S.W.3d 227, 232 (Mo. banc 2010), Miller and Shriver have not pled facts sufficient to bring Relator's alleged conduct within this provision of the long-arm statute.

Miller and Shriver were required to set forth facts showing that Relator engaged in conduct deliberately designed to enter Missouri and injure them here. *Capitol Indem. Corp. v. Citizens Nat. Bank*, 8 S.W.3d 893, 903 (Mo. App. 2000). That is because personal jurisdiction over a non-resident 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].” *Viasystems, Inc. v. EBM–Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 594 (8th Cir. 2011) (citing *Calder v. Jones*, 465 U.S. 783, 790 (1984)). Even if such facts are alleged, “[a] plaintiff may not invoke tortious long-arm jurisdiction consistent with due process where the non-resident 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).

The only fact-based allegations as to Relator are that it made two payments to SEO Profile Defender before the Blogs were posted. (A16, ¶¶ 74-76.) But it is uncontroverted that those payments had nothing to do with the Blogs or with Miller or Shriver. (A30, ¶¶ 16 18, 22 24.) Nor were those payments made from Missouri or directed to anyone in

Missouri. (A30, ¶¶ 12, 16; A96-A97, ¶¶ 3-8.) The remaining allegations are bald conclusions of conspiracy among all Defendants, which are insufficient to invoke the tortious conduct provisions of the long-arm statute here.

Miller and Shriver allege no facts whatsoever that show Relator directed any action toward Missouri residents, let alone that Relator intentionally targeted them in Missouri with the intent to cause them harm here by allegedly posting the Blogs. Nor can they, as both Miller and Shriver live in Kansas. Missouri courts recognize that an injury from alleged defamation is suffered in one's place of domicile. *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). That the Blogs might have been viewed in Missouri or some consequences might have been felt here by persons other than Miller and Shriver does not satisfy the targeting requirement of *Bryant. PPG*, 560 S.W.3d at 892.

Finally, the failure to plead facts specific to Relator extends beyond “jurisdictional” allegations because “[a] party relying on a defendant's commission of a tort within [Missouri] to invoke long-arm jurisdiction must make a prima facie showing of the validity of [its] claim.” *State ex rel. William Ranni Assoc., Inc. v. Hartenbach*, 742 S.W.2d 134, 139 (Mo. 1987); *Peabody*, 808 F. Supp. at 1435 (noting that “[b]ecause the jurisdictional facts, where jurisdiction is based upon a single tort, are identical to the merits of the claim, plaintiffs

must make a prima facie showing that defendant has in fact committed the tort alleged in the complaint.”) Here, the CAP fails to plead facts making a prima facie showing that Relator engaged in defamation by posting the Blogs.

Because Miller and Shriver cannot meet the first prong of the jurisdictional test, their claims against Relator should be dismissed.

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

Under the required due process analysis, the only questions are whether the defendant’s contacts with Missouri are created by the defendant (rather than third parties) and whether those contacts represent such a substantial connection with this state that the exercise of jurisdiction “does not offend ‘traditional notions of fair play and substantial justice.’” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (internal quotations omitted). Due process requires “minimum contacts” even when alleged intentional torts are involved. *Walden v. Fiore*, 571 U.S. 277, 286 (2014).

Specific jurisdiction over a non-resident defendant only exists if the defendant has purposefully directed its activities at the forum state’s residents in a suit that arises out of or relates to these 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)). *See also Walden*, 571 U.S. at 284 (noting the Supreme Court has “consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the

forum State”). Each plaintiff must independently establish, as to each defendant, both minimum contacts and a connection between those contacts and her claims. *BMS*, 137 S. Ct. at 1781-83 (dismissing non-resident plaintiff’s claims against non-resident defendant where there was no showing of connection between that plaintiffs’ claims and the forum).

Missouri courts consider the following factors in determining whether a nonresident defendant has sufficient minimum contacts with Missouri to find personal jurisdiction: (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. Where, as here, the claim is one for defamation, courts may also consider whether and to what extent the defendant’s statement was “targeted” at the plaintiff in the forum state under the *Calder* “effects” test. Even under *Calder*, however, a plaintiff must still show sufficient minimum contacts that comport with due process. *See, e.g. Wallace v. Herron*, 778 F.2d 391, 395 (7th Cir. 1985) (noting *Calder* did not obviate the need for a defendant to maintain minimum contacts with the forum state).

Application of these factors demonstrates Respondent’s error in denying Relator’s Motion to Dismiss. The record is devoid of any facts showing that Relator had any contacts with Missouri, other than its status as a party to the PHC Litigation in 2017. That single transient and isolated contact does not help Miller and Shriver, as the PHC Litigation has nothing to do with Miller or Shriver or their claims arising from the Blogs. Miller and Shriver were not parties to, witnesses in, or otherwise connected to the PHC Litigation. The

Blogs do not mention the PHC Litigation; Miller and Shriver's claims have nothing to do with the PHC Litigation; nor did Miller and Shriver feel the brunt of any harm from the Blogs in Missouri. There simply is no relationship between Miller and Shriver's claims and Relator's participation in the PHC Litigation. Moreover, Missouri has no interest in providing a forum for its residents in this case because Miller and Shriver are not residents of Missouri – they live in Kansas. Finally, the convenience of the forum is neutral, as all parties would be similarly inconvenienced by a trial in the state of the other's residence.

At bottom, Miller and Shriver try to haul Relator into a Missouri court based solely on conclusory allegations of group targeting of the PHC Litigation with the Blogs, without any facts as to anything Relator itself supposedly did to target them in Missouri (other than making two payments in 2017 to SEO Profile Defender from California to Florida on behalf of SBV for work unrelated to the Blogs). These blanket allegations do not show the requisite minimum contacts Relator had with Missouri or Miller and Shriver's claims and cannot support the exercise of personal jurisdiction over Relator here. As set forth above, each defendant must have independent minimum contacts with Missouri based on its own conduct – jurisdiction cannot bootstrap on acts of third parties. *LG Chem*, 2020 WL 2845764 at \*3. Bare legal conclusions about alleged conduct of others are insufficient.

Courts applying Missouri law have rejected similar efforts to drag non-resident defendants in Internet defamation cases into Missouri where neither the defendant nor the plaintiffs have any contacts. *See PPG*, 560 S.W.3d at 891 (making writ permanent and finding no personal jurisdiction based on allegations non-resident defendant posted

statements on national website); *Johnson v. Arden*, 614 F.3d 785, 797 (8th Cir. 2010) (“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.”); *Johnson v. Gawker Media*, No. 4:15-CV-1137 CAS, 2016 WL 193390 at \*8 (E.D. Mo. Jan. 1, 2016) (dismissing non-resident plaintiff’s claims against non-resident defendant, holding “[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.”)

The facts here are even more attenuated than *Gawker Media*, *Johnson*, and *PPG*. Miller and Shriver have failed to put forth prima facie evidence that Relator uniquely or expressly aimed the Blogs at them in Missouri with the intent to cause them harm here. Accordingly, as in *Gawker Media*, *Johnson*, and *PPG*, personal jurisdiction does not lie.

**D. Respondent Erred in Applying *Calder*.**

Respondent decided to exercise personal jurisdiction over Relator based solely on allegations that all “Defendants” collectively “targeted” Missouri with defamatory statements purportedly intended to influence the outcome of the PHC Litigation. Respondent’s conclusion misapplies the *Calder* “effects” test in several fundamental ways. Specifically, Missouri courts have expressly rejected the notion that one can simply target the forum state. Rather, Missouri looks to whether the defendant’s conduct was aimed *at a Missouri resident and intended to cause injury in Missouri*. See *Baldwin v. Fischer-Smith*, 315

S.W.3d 389, 397 (Mo. App. 2010). Notably, the Missouri cases discussing “targeting” all involved *Missouri* plaintiffs. Those key facts do not exist here.

Moreover, unlike *Calder*, in which the court found personal jurisdiction in California for a California resident’s claims, Shriver and Miller do not live in Missouri; they were not involved in the PHC Litigation in Missouri; and they did not suffer their claimed harm from the Blogs in Missouri.<sup>2</sup> And, unlike the defendant *Calder*, which made frequent trips to the forum for business, made direct phone calls to forum residents in furtherance of the tort, and engaged in other business in California, there are no other contacts between Missouri and Relator from which Respondent could conclude Relator had sufficient minimum contacts to satisfy due process.

Because Miller and Shriver cannot meet the basic elements of the *Calder* “effects” test, Respondent erred in applying that test to find personal jurisdiction over Relator here.

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<sup>2</sup> Shriver’s only relevant allegation is that she “regularly travels to and interacts with residents of Kansas City, Missouri.” (A10, ¶ 40.) Similarly, Miller alleges her only connection with Missouri is that she conducts some unspecified portion of her business here. (*Id.* ¶ 39.) Allowing a Kansas resident to assert jurisdiction in a metropolitan, bi-state area such as Kansas City based solely on her claim of sporadically traveling to Missouri and interacting with people (other than the defendant) there is a very slippery slope indeed.


## CONCLUSION

The issue presented here is whether Kansas plaintiffs who allegedly suffered reputational harm in Kansas from statements anonymously posted in Internet blogs can, within the Missouri long-arm statute and constitutional due process, haul a non-resident defendant into court in Missouri based solely on bald conclusions that several defendants collectively “targeted” unrelated litigation in Missouri that has nothing whatsoever to do with these plaintiffs or their claims. Relator respectfully submits that the answer to that question is “no.”

Miller and Shriver alleged no facts showing any conduct by Relator falling within the ambit of Missouri’s long-arm statute or demonstrating Relator has sufficient minimum contacts with Missouri to permit the exercise personal jurisdiction over Relator here. Respondent has exceeded his authority in denying Relator’s motion to dismiss and exercising personal jurisdiction over Relator. Accordingly, this Court should make permanent its Writ of Prohibition requiring Respondent to dismiss these claims against Relator for lack of personal jurisdiction.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original was signed by the attorney of record in this matter, that this document contains 5,939 words, and that on this 29th day of June, 2020, the foregoing document was sent via e-mail to the following:

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