

IN THE SUPREME COURT OF MISSOURI

No. SC 98494

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STATE EX REL. THE RAIZADA GROUP, LLLP,

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 (“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 Raizada Group, LLLP (“Raizada Group”).

## INTRODUCTION

Raizada Group targeted 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 Raizada Group 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.” *Raizada Group’s App.*,<sup>1</sup> p. A98.

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.

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

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

## STATEMENT OF FACTS

### **Raizada Group 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”), Raizada Group’s App.*, p. 6 at ¶ 14. The case eventually proceeded to trial. *Id.* at ¶¶ 15-16. But before the trial, Raizada Group, 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.*, p. 6-7 at ¶¶ 19-20.

That smear campaign consisted of: (1) Raizada directing former co-defendant Haley Hey, an employee of co-defendant VVP Services, to draft at least two of the defamatory articles that are the subject of this lawsuit (*Plaintiffs’ App.*,<sup>2</sup> p. 211 at ¶ 13) (2) Raizada, through his company Raizada Group, paying \$20,000 to co-defendant SEO Profile Defender (*Raizada Group’s App.*, p. 16 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. 17 at ¶¶ 84-86); and (4) Raizada and Raizada Group, in coordination with the other defendants, causing the posts to be made on the internet (*id.*, p. 18 at ¶ 92).

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<sup>2</sup> Citations to “Plaintiffs’ App.” refers to the Appendix to Respondent’s Brief.

Raizada and the other defendants, including Raizada Group, planned and are responsible for this smear campaign. *Id.*, p. 15 at ¶ 70. Raizada and Raizada Group’s attorneys received the proposed witness list for the PHC Litigation trial on September 28, 2017. *Id.*, p. 6 at ¶ 17. The PHC Litigation trial began on October 16, 2017. *Id.*, p. 13 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.* 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 as his business partner, Michael Gortenburg, not only as unsavory businessmen, but also as an unsavory persons in general. *Id.*, p. 8 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.* at ¶ 25; *see also Plaintiffs’ App.*, pp. 16-17 (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. *Raizada Group’s App.*, p. 6 at ¶ 17 and p. 7 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.*, pp. 1-18.

Moreover, portions of the articles contained confidential information, known by only a few individuals, including Raizada. *Raizada Group's App.*, p. 8 at ¶ 27. And metadata from some of the articles led back to Haley Hey (identified as the author) and Richart Ruddie (identified as the person who last modified the document). *Id.*, p. 17 at ¶ 86.

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. 8 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. 8-9 at ¶ 29. The articles were viewed over 200 times within a few weeks of their posting. *Id.*, p. 13 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. 9 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. The plaintiffs brought claims against Raizada, Raizada Group, Haley Hey, VVP Services, Richart Ruddie, and SEO Profile. As relevant here, the claims of Asner, Gortenburg, and AG613,



LLC against Raizada Group were compelled to arbitration, leaving only Shriver and Miller as plaintiffs as to Raizada Group.<sup>3</sup> Shriver and Miller assert claims against Raizada Group for defamation and civil conspiracy.

Susan Shriver is a resident of Kansas who “regularly travels to and interacts with residents of Kansas City, Missouri.” *Id.*, p. 10 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. 12 at ¶¶ 49-50.

### **Raizada Group’s Self-Serving Affidavit**

To support its motion to dismiss for lack of personal jurisdiction, Raizada Group presented a single affidavit by Raizada’s brother-in-law, Ravi Srivastava, that focused on: (1) Raizada Group not conducting business in Missouri (*Raizada Group’s App*, pp. 29-30 at ¶¶ 3-15); (2) acknowledging that Raizada Group did in fact make \$20,000 in payments to SEO Profile as alleged but claiming that the payments were for some other unidentified SEO work (*id.*, pp. 30-31 at ¶¶ 16-21); and (3) denying any personal involvement by Ravi Srivastava in the publication of the articles (*id.*, p. 31 at ¶¶ 22-27).

### **Plaintiffs’ Rebuttal Evidence**

Raizada Group’s self-serving affidavit required no evidentiary rebuttal because: (1) specific jurisdiction does not require the defendant to do business in Missouri; (2) Raizada

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<sup>3</sup> The claims of Asner, Gortenburg, and AG613, LLC against VVP Services, LLC, Richart Ruddle, and SEO Profile Defender Network, LLC remain in this matter, as is addressed in Plaintiffs’ opposition brief filed in the VVP Services writ proceeding, *State ex Rel. VVP Services, LLC v. the Hon. John. M. Torrence*, No. SC98454.

Group's alternative explanation for the \$20,000 payment is a fact-based question on the merits; and (3) Srivastava's lack of involvement says nothing about others' involvement acting on behalf of Raizada Group (including Raizada himself). Even still, Plaintiffs in reply challenged the self-serving allegations in the Srivastava affidavit. Plaintiffs challenged the idea that Raizada Group did no business in Missouri by providing evidence that Angela Correll, the controller for Raizada Group who initiated the \$10,000 wires, lived and worked in Lee's Summit, Missouri, and that Raizada Group's mailing address in 2017 was Lee's Summit, Missouri. *Compare Plaintiffs' App.*, p. 5 at ¶ 5 (affidavit claiming she lived in Beverly Hills by March 2017) *with id.*, p. 32 at ¶¶ 13-16 (trial transcript from October 2017 in which Ms. Correll admits to living in Lee's Summit).<sup>4</sup> Further, Plaintiffs challenged the veracity of Srivastava in general by providing prior judicial findings in the related PHC Litigation that raised questions about Srivastava's veracity, specifically with regard to ownership and management of Raizada Group and another Raizada-related entity. *Raizada Group's App.*, pp. 64-65; *Plaintiffs' App.* at pp. 34-58, and pp. 65-70. Plaintiffs highlighted that the alleged documents that would support Raizada Group's alternative explanation for the \$20,000 payment were conveniently destroyed. *Raizada Group's App.*, p. 57 at ¶ 15. Finally, Plaintiffs challenged the idea that Srivastava's affidavit about his personal involvement is credible by providing evidence of other lawsuits by former

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<sup>4</sup> In its Exhibits in this proceeding, Raizada Group included Plaintiffs' opposition to Raizada Group's motion to dismiss for lack of personal jurisdiction, but failed to include Plaintiffs' exhibits to its opposition to the motion to dismiss. Plaintiffs therefore included those Exhibits in its Answer/Return.

business partners of Raizada that allege Raizada directs and controls Srivastava's conduct. *Id.*, p.12; *Plaintiffs' App.*, pp. 72-125 and pp. 127-168.

### **Judge Torrence Denied Raizada Group's Motion to Dismiss**

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

After a review of the relevant points and authorities, the Court finds and concludes that this Court should exercise jurisdiction over the Defendant for the following reasons: Missouri has a significant interest in adjudicating this dispute based on the factual averments that the above captioned matter arises 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. In addition, the allegations set forth in Plaintiff's Petition make it clear that the Defendant engaged in behavior in the State of Missouri which confers personal jurisdiction over the Defendant.

*Raizada Group's App.*, p. A98.

The Missouri Court of Appeals denied Raizada Group's request for the writ, and now this Court takes up Raizada Group's request.

### **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>5</sup>**

In a 138-paragraph Complaint, Plaintiffs allege in painstaking detail Raizada Group’s tortious conduct, along with its motives for engaging in that conduct. Raizada Group and its other codefendants targeted and intended for the brunt of their internet smear campaign to be experienced in Missouri, but Raizada Group now attempts to argue the very court in which it brought suit and with which it sought to interfere does not have jurisdiction over this dispute.

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

*Second*, Raizada Group’s affidavit, for the most part, speaks only to general jurisdiction and otherwise denies in conclusory fashion that it committed the tortious

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<sup>5</sup> Pursuant to Rule 84.04(f), all Plaintiffs’ arguments are in response to the single point relied on in Raizada Group’s brief.

conduct alleged. Raizada Group cannot rely on summary assertions that it is not liable on the merits to attack jurisdiction before Plaintiffs receive discovery.

*Third*, Plaintiffs' well-pleaded allegations place Raizada Group's conduct under Missouri's long-arm statute, and the *Calder* effects test supports jurisdiction in Missouri. Raizada Group's 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.*

Raizada Group submitted a self-serving affidavit in support of its motion to dismiss for lack of jurisdiction. *Raizada Group's App*, pp. 29-32. In addition to Plaintiffs' well-pleaded complaint, Plaintiffs submitted rebuttal evidence that undermined Raizada Group's self-serving affidavit. *Plaintiffs' App.*, pp. 22-208. Judge Torrence implicitly rejected Raizada Group's evidence and credited Plaintiffs' well-pleaded allegations. *See Raizada Group's App.*, p. A98.

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 Srivastava’s 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 Alleged Facts to Support Personal Jurisdiction over Raizada Group.**

“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*, 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.**

Raizada Group argues in conclusory fashion that Plaintiffs' factual allegations in the CAP regarding jurisdiction are "boilerplate" and simply "legal conclusions." 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 that Raizada Group is alleged to have caused the articles to be published, to have paid for SEO Profile/Ruddie's involvement with their publication, and describe how and why the conduct was directed at Missouri. *Raizada Group's App.*, pp. 2-26 at ¶¶ 1, 3, 18-20, 22-23, 28, 38-42, 49, 74, 76-77, 83-85, 103, 126, 133; *Plaintiffs' App.*, pp. 1-18. 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.

Raizada Group 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 Raizada Group, 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 Raizada Group, participated in the publication of the articles

and explains Raizada Group’s motivation for its participation, given its relationship to the PHC Litigation. *See Raizada Group’s App.*, pp. 3-4 at ¶¶ 1-2 (discussing how Raizada Group used public relations knowledge and SEO knowledge “to implement the internet smear campaign”), *id.*, pp. 6-8 at ¶¶ 14-25 (discussing the PHC Litigation as motivation for publishing the articles), *id.*, p. 16 at ¶¶ 74-77 (explaining defamatory articles appeared online after Raizada Group paid SEO Profile).

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.<sup>6</sup>

#### **B. Raizada Group’s 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).

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<sup>6</sup> Raizada Group also takes issue with the fact that additional plaintiffs make allegations in the CAP and falsely states that the other plaintiffs’ claims are “not even before the trial court.” *Sugg. In Support of Pet. for Writ* at 16. That is not so: Asner, Gortenburg, and AG613’s claims are still pending against some of Raizada Group’s codefendants, including Ruddle, SEO Profile Defender, and VVP Services.



**1. Plaintiffs Made a Prima Facie Showing that Raizada Group Engaged in Tortious Conduct.**

Raizada Group correctly contends that 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. *Sugg. In Support of Pet. for Writ* at 19 (citing *Peabody Holding Co. v. Costain Grp. PLC*, 808 F. Supp. 1425, 1433 (E.D. Mo. 1992)). But that simply requires the plaintiff to “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.” *Peabody*, 808 F. Supp. at 1433. Even still, Raizada Group’s principal argument is not that Plaintiffs’ allegations fail to establish the required elements of defamation and conspiracy. Rather, Raizada Group contends, based on its own self-serving affidavit, that it did not actually commit the tortious conduct alleged.

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. Plaintiffs make specific allegations that Raizada, acting through Raizada Group, as well as Raizada Group itself, used the anonymity of the internet to prepare and publish defamatory articles that caused injury and did so in coordination with codefendants Richart Ruddie, SEO Profile, VVP Services, and VVP Services’ employee Haley Hey. *See Raizada Group’s App.*, pp. 2-26 at ¶¶ 1, 2, 49, 88, 97-106.<sup>7</sup> Raizada Group cannot short circuit this litigation with a

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<sup>7</sup> The undisputed facts to date show that: (1) Amit Raizada and a Raizada Group entity (which defendant claims to be the same entity) were parties to contentious litigation that was set to be tried in October 2017 (*Raizada Group’s App.*, p. 30 at ¶ 15); (2) in July

self-serving affidavit summarily claiming that one person at its organization (the affiant, who is not even a defendant in his individual capacity) did not participate.

Raizada Group’s factual contentions fall flat even if this Court were to address their substance. Plaintiffs allege that Raizada Group paid SEO Profile Defender \$20,000 to “optimize” the defamatory articles so that the articles were top search hits. *Raizada Group’s App.*, p. 16 ¶¶ 77 and p. 17 at ¶ 84-85. Raizada Group admits it paid SEO Profile Defender \$20,000, but claims without any documentary support that it paid SEO Profile Defender for some other, “unrelated search engine optimization work[.]” *Id.*, p. 30 at ¶ 16.

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and August 2017, prior to that trial and the articles being published, Raizada Group paid SEO Profile \$20,000 (*id.*, p. 16 at ¶¶ 74 and 76-77); (3) SEO Profile’s managing member is Richart Ruddie (*id.*, p. 10 at ¶ 44); (4) metadata from the defamatory publications, including a copy of the article discussing Plaintiffs that was obtained from Scribd, identifies the articles as being “Last Modified By” “Richart Ruddie,” i.e. the individual affiliated with the company that Raizada Group paid in the months immediately preceding the publication (*id.*, p. 17 at ¶ 86; *Plaintiffs’ App.*, p. 19); and (5) Raizada personally directed Haley Hey to draft at least two of the defamatory articles. *Plaintiffs’ App.*, p. 211 at ¶ 13. It is logical to conclude based on these facts that Raizada Group made payments to Ruddie’s company for the purpose of causing the defamatory posts to be made and to do so in a way that maximized search engine optimization, especially given that Richart Ruddie’s name appears in the metadata associated with the defamatory articles. This conclusion is further supported by the fact that upon publication the articles were at the top of search results, evidencing search engine optimization work was employed in their publication. *See Raizada Group’s App.*, p. 9 at ¶¶ 30-31. At a minimum, these allegations satisfy the elements of defamation and conspiracy. *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. 2000) (“The elements of defamation in Missouri are: 1) publication, 2) of a defamatory statement, 3) that identifies the plaintiff, 4) that is false, 5) that is published with the requisite degree of fault, and 6) damages the plaintiff’s reputation.”); *Mackey v. Mackey*, 914 S.W.2d 48, 50 (Mo. Ct. App. 1996) (conspiracy requires “(1) two or more persons, (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful overt acts, and (5) resulting damages”).

In fact, Raizada Group was ordered to produce any evidence of this alleged “unrelated search engine optimization work” and has confirmed that there is no such evidence. *See Plaintiffs’ App.*, p. 206 (Raizada Group confirming that “None means none.”). Raizada Group essentially admits everything but the last piece of the puzzle, and wants this Court to dismiss this action before discovery can be had so Plaintiffs can prove it.

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 that Razaida Group’s self-serving affidavit was dispositive in light of the significant credibility issues Plaintiffs raised as to Raizada Group and its affiant, Ravi Srivastava, along with Raizada Group’s convenient claim that the records that would supposedly prove its alternate explanation were destroyed. *See Raizada Group’s App.*, p at 62-66; *Plaintiffs’ App.*, p. 27 at ¶ 13 (explaining “a hard drive failure which caused all QuickBooks data for both companies to be irretrievably lost.”).

Ultimately, it is a question for another day whether Raizada Group’s post-hoc explanation about the purpose of its payments will persuade the trier of fact that it was not involved in this defamation campaign. Plaintiffs’ allegations make a prima facie showing that a tort was committed and that is all that is required.<sup>8</sup>

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<sup>8</sup> The affidavit also generally sets forth how Raizada Group does not do business in Missouri. Raizada Group is well aware that Plaintiffs’ theory of jurisdiction is specific – not general – and therefore those averments are irrelevant.

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

Missouri's long-arm statute covers "extraterritorial acts that produce consequences in the state[.]" *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 594 (8th Cir. 2011). A non-resident defendant is not required to act in Missouri for the court to have personal jurisdiction over the defendant. *See, e.g., State ex rel. Key Ins. Co.*, 587 S.W.3d at 640, 643. Rather, so long as there is a connection between the forum and the specific claims at issue, the long-arm statute is satisfied. *See State ex rel. PPG Industries, Inc. v. McShane*, 560 S.W.3d 888, 893 (Mo. banc 2018) (quoting *Bristol-Myers Squibb Co. v. Sup. Ct of Calif*, 137 S.Ct. 1773, 1781 (2017)).

Raizada Group engaged in tortious conduct aimed at Missouri by paying for, and causing to be published, defamatory internet postings that were targeted at a Missouri jury with consequences that were felt in Missouri. *See, e.g., Raizada Group's App.*, pp. 2-26 at ¶¶ 1, 49-50, 74, 76-77; *Plaintiffs' App.*, pp. 1-18. The consequences, as relevant here, were the harm to Plaintiffs: they have reputations in Missouri that were damaged by the defamatory postings. *Raizada Group's App.*, p. 10 at ¶¶ 39-40 and p. 12 at ¶ 49-50. Raizada Group did not challenge those allegations with evidence (nor could it) and, importantly, those facts are to be "given an intendment most favorable to the existence of the jurisdictional fact." *Good World Deals*, 554 S.W.3d at 910.

Thus, there is a connection between the forum (Missouri) and Raizada Group's tortious conduct (targeting a Missouri jury and harming Plaintiffs' reputation in Missouri),

placing Raizada Group's 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, Raizada Group contends that only Missouri residents can bring a defamation action in Missouri. *See Sugg. In Support of Pet. for Writ* at 19. 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 Raizada Group 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 Raizada Group’s contention that Plaintiffs’ residency in Kansas is dispositive. Instead, Raizada Group’s targeting Missouri is all that is required.

**C. Raizada Group’s Tortious Conduct was Targeted at Missouri, Satisfying the “Minimum Contacts” Requirement of Due Process.**

**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>9</sup>

First, there was intentional conduct in causing the publications to be made, including Raizada Group’s participation in the alleged internet smear campaign along with the other co-defendants and, specifically, paying an SEO company to assist in the preparation and publication of the articles so that they would have a more significant impact. *Raizada Group’s App.*, pp. 2-26 at ¶¶ 1, 74, 76-79, 83-84, 98, 103, 135.

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<sup>9</sup> Much of Raizada Group’s briefing focuses on analyzing a five-factor test for minimum contacts. But Raizada Group’s 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 21 (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 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 Raizada Group 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*.



Second, the articles were specifically directed at Missouri. *Id.*, p. 6 at ¶¶ 22-24, p. 15 at ¶ 69, and p. 16 at ¶ 77; *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. *Raizada Group's App.*, p. 7 at ¶¶ 22-23, p. 8 at ¶ 28. Further, a resident was targeted, as well as individuals who have reputations in Missouri, like Plaintiffs. *See id.*, pp. 8-9 at ¶ 29, pp. 10-11 at ¶ 38-42, p. 12 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. What is more – and this is a point that cannot be stressed enough – it is entirely foreseeable that Raizada Group would be brought back to Missouri to answer for its attempts to interfere with a Missouri jury in the PHC Litigation when ***Raizada Group was the one who initiated the lawsuit in Missouri.*** It defies belief that Raizada Group claims it cannot be hauled into a Missouri court after it voluntarily brought itself into a Missouri Court and attempted to meddle with the jury.

By filing a lawsuit in Missouri, and then participating in the preparation and publication of defamatory articles targeted at a Missouri jury and plaintiffs' reputations in Missouri, Raizada Group has sufficient contacts with Missouri to be sued here.<sup>10</sup>

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<sup>10</sup> Though the minimum contacts test is satisfied based on Raizada Group's actions alone, this Court may also consider Raizada Group's 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

## 2. Exercise of Jurisdiction over Raizada Group 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).

First, Raizada Group 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 22.

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(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).

Plaintiff knows 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....”).

*Second*, as Judge Torrence emphasized in his order, the defamatory statements targeted “persons involved in a lawsuit pending in this very 16th Judicial Circuit Court of Jackson County, Missouri.” *Raizada Group’s App.*, p. A98. 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 generally 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.<sup>11</sup>

*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 Raizada Group in a different jurisdiction, especially since their claims against other defendants are already proceeding in this Court.

## CONCLUSION

In light of the standard of review, the weight to be given to Plaintiffs’ allegations, and the irrelevance and questionable veracity of Srivastava’s affidavit, this Court should not exercise its discretionary authority and should decline to issue the extraordinary writ of

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<sup>11</sup> This type of conduct, highlighted through the brief, shows that Raizada Group’s conduct is a different kind and character than that of defendants in other cases that have recently prevailed on personal jurisdiction arguments in front of this Court. For example, in *State ex Rel. LG Chem, Ltd. v. McLaughlin*, 599 S.W.3d 899, 901 (Mo. 2020), LG Chem simply put a product in commerce that happened upon Missouri through the actions of a third party. That is starkly different than Raizada Group’s targeted actions here.

prohibition. Plaintiffs alleged facts sufficient to support Judge Torrence's denial of Raizada Group's 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.

Respectfully submitted,

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**Certificate of Compliance**

I hereby certify pursuant to Rule 84.06(c) that this brief contains the information required by Rule 55.03; (2) complies with the limitations of Rule 84.06(b); and (3) contains 6,203 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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