
IN THE
Supreme Court of Missouri

STATE EX REL. RAIZADA GROUP, LLLP,

Relator,

v.

THE HONORABLE JOHN M. TORRENCE,

Respondent.

Original Proceeding in Prohibition

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

R. PETE SMITH, Missouri Bar No. 35408
WILLIAM C. ODLE, Missouri Bar No. 38571
MCDOWELL, RICE, SMITH & BUCHANAN, P.C.
605 West 47th Street, Suite 350
Kansas City, MO 64112

816/753-5400 | 816/753-9996 (Telefax)

petesmith@mcdowellrice.com

wodle@mcdowellrice.com

and

LINDA C. McFEE, Missouri Bar No. 45410
AIM LAW GROUP, PC

27472 Portola Parkway, #205401

Foothill Ranch, CA 92610

816/674-7950 | 866/422-3113 (Telefax)

linda@aimlawgroup.com

ATTORNEYS FOR RELATOR

RAIZADA GROUP, LLLP

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INTRODUCTION

This Court should make its Writ permanent because Plaintiffs have not met their burden to make a prima facie case of personal jurisdiction over Relator:

1. Plaintiffs utterly failed to refute Relator's sworn testimony that Relator has no contacts with Missouri, Relator did not create or post the blogs, the two payments to SEO Profile were not made in or to Missouri, and those payments were for unrelated work. Plaintiffs cannot simply fall back on their improper, conclusory allegations;
2. Plaintiffs cannot use the acts of third parties to establish the required minimum contacts for Relator in Missouri -- this Court has rejected an agency- or conspiracy-based theory of personal jurisdiction;
3. Plaintiffs cannot base personal jurisdiction on alleged targeting of the PHC Litigation, in which they were neither parties nor witnesses, and they misstate and misapply the *Calder* "effects" test as applied in Missouri;
4. Plaintiffs were not the "target" of any alleged acts directed toward Missouri, and they did not suffer the brunt of any alleged harm from the blogs in Missouri -- any alleged harm was suffered in Kansas, where they live and work;
5. Plaintiffs cannot show a connection between their alleged damages and Relator's alleged contacts with Missouri; and
6. Exercise of personal jurisdiction over Relator would be unreasonable.

Because Relator lacks sufficient minimum contacts with Missouri to satisfy due process, and Respondent's exercise of personal jurisdiction over Relator would be unreasonable, this Court should make its Writ of Prohibition permanent.

ARGUMENT AND AUTHORITY

I. PLAINTIFFS HAVE NOT MET THEIR BURDEN TO SHOW THAT RELATOR HAS SUFFICIENT MINIMUM CONTACTS WITH MISSOURI TO PERMIT RESPONDENT TO EXERCISE PERSONAL JURISDICTION

A. Plaintiffs Failed to Present Competent Evidence in Response to Relator's Evidence Contesting the Jurisdictional Allegations of the Complaint, and They Cannot Fall Back on Their Bare Allegations

Plaintiffs point this Court to what they claim are "specific factual allegations" about Relator sufficient to establish minimum contacts for specific personal jurisdiction. (Raizada Group Appendix, pp. 2-26, ¶¶ 1, 3, 18-20, 22-23, 28, 38-42, 49, 74, 76-77, 83-85, 103, 126, 133 [hereinafter "A"]). Closer examination of those allegations, however, reveals they are remarkably devoid of facts showing Relator's own alleged conduct, as opposed to the alleged conduct of others.¹ Plaintiff's Complaint actually contains essentially only *two facts* about any alleged conduct of Relator itself that could even arguably

¹ Only paragraphs 74, 75, 76, and 133 state any facts about anything Relator itself supposedly did in connection with Plaintiffs' claims. (A16, A25.) The remaining allegations either do not refer to Relator, contain no facts, or impermissibly lump Relator with the other defendants:

- Paragraphs 1, 19, and 126 state a broad conclusion, with no facts, that Amit Raizada coordinated with each of the other Defendants to post the blogs. (A3, A5, A24);
- Paragraphs 3, 18, 20, 22, 23, 28, 38, 39, 40, 41, 42, 83, 84, and 85 do not mention Relator in any fashion. (A4, A6-A8, A10-A11, A17);

relate to Plaintiffs' claims: (1) Relator made two payments to SEO Profile Defender in July and August of 2017 (A16, ¶¶ 74, 76, and 133); and (2) Relator paid a credit card charge made by Michael Wolf for a Scribd account (A16, ¶ 75). Plaintiffs then baldly allege, with no facts or support, that those payments were made by Relator as part of some conspiracy to post the blogs.

Relator provided *uncontroverted* evidence challenging Plaintiffs' bald allegations. Relator submitted sworn testimony from its General Partner and Controller that none of these payments were made *by* Relator in Missouri; they were not made *to* anyone in Missouri; they had *nothing whatsoever to do with the blogs* -- they were actually a loan made by Relator to another company that had hired SEO Profile to provide unrelated work; and Relator did not authorize, create, pay for, or post the blogs. (A29-31, A95-96.) Relator also presented evidence that it has no contacts with Missouri -- it does no business, performs no services, and has no offices, employees, or property here. (A29-31.)

In the face of Relator's evidence, Plaintiffs were required to respond with admissible evidence, rather than simply relying on the allegations of the Complaint.² *State ex rel. Cedar Crest Apartments, LLC v. Grate*, 577 S.W.3d 490, 496 n.5 (Mo. banc 2019)

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- Paragraphs 49 and 103 lump all "Defendants" together with no delineation as to which of the Defendants actually engaged in the alleged conduct. There are no facts specific to Relator. (A12, A20.)

² Plaintiffs' claim they were not required to respond to Relator's evidence with competent evidence is unsupported by legal authority and flies in the face of this Court's mandates.

(“*Cedar Crest*”). Plaintiffs did not do so. Rather, they offered a hodgepodge of inadmissible evidence that lacked foundation, was speculative, constituted hearsay, was incomplete and misleading, and is completely irrelevant to the jurisdictional facts at issue.³ Notably, Plaintiffs did not provide any evidence to refute Relator’s sworn testimony that Relator did not create, pay for, or post the blogs and that the payments to SEO Profile were not for the blogs but for unrelated work being performed for another company. Rather, Plaintiffs focused solely on where those payments originated, suggesting that they were made in Missouri because Relator’s controller lived here in 2017. That suggestion was put to rest by Correll’s affidavit submitted by Relator in reply. (A95-96.) Plaintiffs did not seek leave to present, and did not present, any evidence refuting Correll’s testimony.

Respondents’ insistence that they refuted Relator’s evidence with their own evidence is belied by their Response Brief. Indeed, with the exception of the Affidavit of Haley Hey, every citation about Relator’s alleged conduct is to the Complaint, the blogs, or to Plaintiffs’ briefing below. (Response Brief, pp. 2-5.) As they continue to do here, Plaintiffs simply fell back on the allegations in their pleading. (*Id.*) This Court has recognized that allegations in the Complaint are only taken as true to the extent they are uncontroverted by the Defendant’s affidavits. When the defendant presents evidence refuting the

³ Exhibits 1, 2, 5, 6, 7, 8, and 9 (Plaintiffs’ Appx., pp. 15-23, 33-58, 64-168) lack foundation, constitute inadmissible hearsay, and are irrelevant here. Contrary to Plaintiffs’ assertion, they did not attach judicial findings -- only a recommendation of a special master never adopted by the court. Plaintiffs went so far as to attach unverified complaints filed by nonparties against Amit Raizada in California based on allegations unrelated to this case or with Relator’s contacts in Missouri. (*Id.*, pp. 71-168.)

alleged bases for 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 496 n.5. *See also Mello v. Giliberto*, 73 S.W.3d 669, 676-77 (Mo. App. 2002) (affirming dismissal where defendants contested the jurisdictional allegations in the complaint with affidavits, and the plaintiff failed to refute such evidence with competent admissible evidence).

Plaintiffs cannot ignore Relator's evidence, ignore their obligations to come forward with controverting evidence, and satisfy their burden to make a prima facie showing of personal jurisdiction over Relator by relying only on the same bare allegations of the Complaint that Relator has refuted. Nor can Plaintiffs avoid Relator's evidence by claiming it is "merits" evidence. Where, as here, the allegations of alleged targeting -- i.e., posting or paying for the blogs -- wholly overlap with the substantive elements of Plaintiffs' defamation cause of action, evidence demonstrating that Relator did not pay for or post the blogs falls squarely within the Court's determination of "the limited question of personal jurisdiction" and must be considered.

B. Respondent Did Not Consider Any Evidence, But Relied Solely on Plaintiffs' Allegations in the Complaint

Contrary to Plaintiffs' speculation, Respondent did not consider any evidence in connection with Relator's Motion to Dismiss. Rather, like Plaintiffs, Respondent fell back on and relied solely upon the allegations in Plaintiffs' Complaint. Respondent's Order is devoid of any factual analysis, let alone any determination about Relator's evidence.

(A79.) To the contrary, Respondent's Order makes clear that he denied Relator's Motion to Dismiss based on the allegations in Plaintiffs' Petition. (*Id.*)

To the extent Respondent arguably 'implicitly' considered Plaintiffs' evidence in ruling on the Motion to Dismiss, Respondent erred. That "evidence" is inadmissible, irrelevant, and inflammatory,⁴ designed to advance improper and unpled alter ego theories and impugn Amit Raizada under the guise of attacking Relator's credibility.⁵ It is beyond question that "[b]efore a document may be received in evidence, it must meet a number of foundational requirements, including relevancy, authentication, best evidence rule, and hearsay." *Asset Acceptance v. Lodge*, 325 S.W.3d 525, 528 (Mo. App. 2010).

II. PLAINTIFFS HAVE NOT SHOWN *RELATOR* TARGETED *THEM* IN MISSOURI WITH THE INTENT TO CAUSE THEM HARM HERE

A. Plaintiffs Cannot Rely on the Alleged Conduct of Others to Establish Minimum Contacts Required to Exercise Jurisdiction Over Relator

It is clear from both the Complaint and Plaintiffs' Response Brief that Plaintiffs base both their claims and their arguments for personal jurisdiction over Relator on alleged conduct of *persons other than Relator* by impermissibly lumping all Defendants together and then vaguely alleging some conspiracy. Plaintiffs cannot do so.

⁵ Although the court may make credibility determinations concerning affidavits submitted on personal knowledge, any inferences drawn or credibility determinations based on isolated snippets of testimony in unrelated proceedings or otherwise based on inadmissible and speculative allegations would be an abuse of discretion. But again, here the court made no credibility findings and based his order solely on Plaintiffs' allegations.

This Court has flatly rejected the same type of generic pleading found in Plaintiffs' Complaint. *Cedar Crest*, 577 S.W.3d at 497, n.5 (rejecting as insufficient allegations that simply refer to "defendants" as a whole). Plaintiffs have not, because they cannot, distinguish their improper reference to unidentified acts supposedly committed by all "Defendants" from the allegations about all "Defendants" this Court found insufficient in *Cedar Crest*. Plaintiffs' arguments are a distinction without a difference.

This Court has also rejected various efforts to base personal jurisdiction on the acts of third parties under some form of conspiracy or agency theory. *See State ex rel. LG Chem, Ltd. v. McLaughlin*, ___ S.W.2d ___, 2020 WL 2845764 at *3 (Mo. banc June 2, 2020) ("LG Chem") (rejecting agency theory of personal jurisdiction) (citing *State ex rel. PPG Indus., Inc. v. McShane*, 560 S.W.3d 888, 893 n.5 (Mo. banc 2018)). The United States Supreme Court is in accord. *See 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") (holding each plaintiff must establish sufficient minimum contacts with the forum for her claims as against each defendant). *See also Mongler v. Knight*, No. 2:17 CV 6 CDP, 2017 WL 2931369 *5 (W.D. Mo. July 10, 2017) (rejecting conspiracy theory of jurisdiction because due process requires each individual defendant, on its own, have sufficient minimum contacts with the forum state); *Viasystems, Inc. v. EBM-Papst St. Georgen GmbH & Co., KG*, 646 F.3d 589, 596 (8th Cir. 2011) (rejecting jurisdiction based on agency). Plaintiffs cite inapposite and non-binding cases to support their arguments, wholly ignoring the

recent contrary authority of this Court and of the United States Supreme Court. Plaintiffs' arguments should be rejected.

B. Plaintiffs Cannot Rely on Alleged Targeting of the PHC Litigation

Plaintiffs concede that they allege the "target" of the blogs was the PHC Litigation, as opposed to any Missouri resident, let alone Plaintiffs. Plaintiffs then argue that although they were not involved in the PHC Litigation at all, their claims are connected to that alleged "targeting" because they supposedly suffered collateral harm from the blogs. Plaintiffs' arguments misstate and misapply Missouri law.

Plaintiffs rely on the "effects" test espoused by *Calder v. Jones*, 465 U.S. 783, 788-89 (1984). Plaintiffs correctly note that *Baldwin v. Fischer-Smith*, 315 S.W.3d 389 (Mo. App. 2010), analyzed that test, ***but then wrongly elevate that decision to one handed down by this Court.*** (Response Brief, p. 18.) Contrary to Plaintiffs' assertions, this Court has not yet considered or applied the *Calder* "effects" test under similar facts and circumstances.

Moreover, contrary to Plaintiffs' assertions, the Missouri Court of Appeals did not wholesale "embrace" the *Calder* effects test. Rather, *Baldwin* adopted and applied a variation of that test that contradicts the very arguments lodged by Plaintiffs here. Specifically, the court expressly rejected the notion that one can simply target the forum state (*i.e.*, a Missouri lawsuit) to establish personal jurisdiction. Rather, Missouri looks to whether the defendant's conduct was aimed ***at a Missouri resident and intended to cause***

injury in Missouri. Baldwin, 315 S.W.3d at 397. Clearly, the PHC Litigation is not a Missouri resident, and was not and could not be harmed by the alleged conduct.

Plaintiffs' reliance on *Calder* and *Baldwin* is further misplaced because the facts upon which those courts found jurisdiction are entirely lacking here. In both *Calder* and *Baldwin*, the plaintiffs were residents of the forum state and their primary places of business were in the forum state. In each case, the plaintiffs were the targets of allegedly defamatory publications made in the forum and they were actually harmed in the forum. Unlike the plaintiffs in *Calder* and *Baldwin*, Plaintiffs do not live in Missouri, their primary places of business are not 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.

Similarly, unlike the defendants in *Calder* and *Baldwin*, Relator did not target Plaintiffs in Missouri; Relator has not made frequent trips to Missouri for business; Relator has not made phone calls to or had other contacts with Plaintiffs or other forum residents in furtherance of any tort; nor has Relator engaged in other business or activities in Missouri. The facts here are vastly different and do not justify application of the *Calder* effects test to establish minimum contacts between Relator and Missouri as required for due process.

C. Plaintiffs Cannot Show *They* Were Targeted or Harmed in Missouri

As set forth above, to establish an minimum contacts under some targeting theory of personal jurisdiction, Plaintiffs were required to set forth facts showing that Relator targeted its actions at Missouri residents, causing Plaintiffs harm here. Similarly, to bring alleged extraterritorial acts within Missouri's long-arm statute, Plaintiffs must demonstrate

that Relator aimed tortious conduct *at Plaintiffs in Missouri with the intent to cause them harm here*. See *Capitol Idem. Corp. v. Citizens Nat. Bank*, 8 S.W.3d 893, 903 (Mo. App. 2000) (holding to show out-of-state acts within the long-arm statute, “[t]he defendant must have set in motion some course of action which was deliberately designed to move into Missouri and injure the plaintiff”).

Plaintiffs cannot make such a showing because they live and work in Kansas, the blogs were not directed at Plaintiffs in Missouri, and if Plaintiffs were harmed from defamation, the alleged harm occurred in Kansas. See *Turntine v. Peterson*, No. 4:19-CV-107 RLW, 2019 WL 2076047 *3 (E.D. Mo. May 10, 2019) (citing *Elmore v. Owens-Illinois, Inc.*, 673 S.W.2d 434, 437 (Mo. 1984) and concluding “[t]he effects of Defendants’ purportedly defamatory statements would primarily be felt in Missouri, where Plaintiffs reside and conduct substantial portions of their business”), *reversed on other grounds*, 959 F.3d 873 (8th Cir. 2020). Plaintiff cannot haul Relator into court in Missouri for harm they allegedly suffered in Kansas simply by alleging they travel to or interact with others in Missouri. See *PPG*, 560 S.W.3d at 892; *LG Chem*, 2020 WL 2845764 at *3 (“‘foreseeability’ alone has never been a sufficient benchmark for personal jurisdiction . . .”).

D. Plaintiffs Cannot Show a Connection Between Their Alleged Damages and Relator’s Alleged Contacts with Missouri

Contrary to Plaintiffs’ assertions, Relator has not taken the position that only Missouri residents can bring defamation actions in Missouri courts. The problem with Plain-

tiffs' targeting theory of personal jurisdiction is that Plaintiffs must show a substantial connection between their claimed damages and Relator's contacts with Missouri residents. Plaintiffs also must be able to demonstrate that Missouri has a substantial interest in providing a forum for Plaintiffs' claims. Plaintiffs have not and cannot do so.

As set forth above, this Court's conclusion in *Elmore* that one suffers the brunt of harm from defamation where one lives, was not mere *dicta* and has been recognized and applied as Missouri law by other courts. Plaintiffs' arguments otherwise are unavailing.

Plaintiffs' reliance on *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 780 (1984) is similarly misdirected. In *Keeton*, the court found personal jurisdiction existed over claims asserted by a nonresident plaintiff against nonresident Hustler because Hustler was carrying on a "part of its general business" in New Hampshire, *id.*, and "continuously and deliberately exploited the New Hampshire market" by regularly publishing more than 10,000 copies of its magazine there. That significant forum activity was more than sufficient for Hustler to reasonably anticipate being haled into court in New Hampshire for claims arising out of its publications there. *Id.* at 781. Those facts do not exist here.

Moreover, subsequent decisions have distinguished *Keeton*, refused to extend it, or substantively held otherwise. For example, the Supreme Court recently refused to find personal jurisdiction over a nonresident defendant for claims asserted by nonresident plaintiffs who did not suffer injury in the forum state, even though those claims were joined with claims of forum residents. *BMS*, 137 S. Ct. at 1781-83. This Court has also refused to find personal jurisdiction over a nonresident defendant in connection with claims

asserted by nonresident plaintiffs who failed to plead facts showing they suffered damages in Missouri connected to the defendant's Missouri activities. *See State ex rel. Bayer Corp. v. Moriarty*, 536 S.W.3d 227, 230 (Mo. banc 2017); *State ex rel. Norfolk S. Ry. Co. v. Dolan*, 512 S.W.3d 41, 45 (Mo. banc 2017) (finding no personal jurisdiction over nonresident defendant where nonresident plaintiff suffered injuries in another state).

As in *BMS*, *Bayer* and *Norfolk*, Plaintiffs were not injured in Missouri by and from activities that Relator directed toward them in Missouri. Accordingly, there is no basis for Respondent to exercise personal jurisdiction over Relator as to Plaintiffs' claims.

III. EXERCISE OF PERSONAL JURISDICTION OVER RELATOR WOULD BE UNREASONABLE

As set forth above and in Relator's Opening Brief, Plaintiffs have not established sufficient minimum contacts between Relator and Missouri to meet the first prong of the jurisdictional analysis. Even if such contacts could be shown, Respondent's exercise of personal jurisdiction over Relator would be unreasonable.

While not required to do so, this Court and lower Missouri courts have routinely applied the five-factor test utilized by the Eighth Circuit in analyzing whether a defendant has sufficient minimum contacts to confer personal jurisdiction. *See, e.g., Conway v. Royalite Plastics, Ltd.*, 12 S.W.3d 314, 318 (Mo. banc 2000); *Mello v. Giliberto*, 73 S.W.3d 669 Mo. App. 2002); *Getz v. TM Salinas, Inc.*, 412 S.W.3d 441, 448 (Mo. App. 2013). Contrary to Plaintiffs' arguments, this Court has described this test "useful" and "simply a tool to assist . . . in resolving the ultimate issue whether the defendant purposefully availed itself of the privilege of doing business in this state" *Bryant v. Smith Interior Design*

Grp., Inc., 310 S.W.3d 227, 233 n.4 (Mo. banc 2010). Plaintiffs' apparent fear of that test -- because they clearly cannot bear their burden under it -- speaks volumes. As the five-factor test provides valuable guidance in this analysis, this Court should utilize it here.

Even applying the factors Plaintiffs are willing to discuss demonstrates exercise of personal jurisdiction over Relator for Plaintiffs' claims is unreasonable and violates due process. First, Relator, which is a Florida entity with its principal place of business in California, will unquestionably be burdened by having to litigate Plaintiffs' claims in Missouri. Second, Missouri has no substantial interest in adjudicating a dispute for claims asserted by Kansas residents against a Florida resident for damages that were necessarily suffered in Kansas. Alleged theoretical harms to nonparties and nonpersons do not justify Missouri jurisdiction, as Plaintiffs have no standing to seek redress for any alleged harm to others. *Daniele v. Mo. Dept. of Conservation*, 282 S.W.3d 876, 880 (Mo. App. E.D. 2009) (holding "real party in interest" is the one having a "justiciable interest susceptible of protection through litigation."). Finally, there is no reason Plaintiffs cannot efficiently pursue their claims against Relator in Florida or in California where jurisdiction lies.

CONCLUSION

For these reasons, and those set forth in Relator's Opening Brief, this Court should make its Preliminary Writ of Prohibition permanent.

Respectfully submitted,

McDOWELL, RICE, SMITH & BUCHANAN,
a Professional Corporation



By: _____
R. Pete Smith #35408
William C. Odle #38571

605 West 47th Street, Suite 350
Kansas City, MO 64112
816/753-5400 | 816/753-9996 (Telefax)
petesmith@mcdowellrice.com
wodle@mcdowellrice.com

and

AIM LAW GROUP, PC

By: /s/ Linda C. McFee
Linda C. McFee #45410

27472 Portola Parkway, #205401
Foothill Ranch, CA 92610
816/674-7950 | 866/422-3113 (Telefax)
ATTORNEYS FOR RESPONDENT
RAIZADA GROUP, LLLP

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original was signed by the attorney of record in this matter, that this document contains 4,282 words, and that on this 30th day of July, 2020, the foregoing document was sent via e-mail to the following:

The Honorable John M. Torrence
Division 14,
16th Judicial Circuit Court of Missouri, Jackson County
415 East 12th Street, 5th Floor
Kansas City, MO 64106
816/881-3614
john.torrence@courts.mo.gov
RESPONDENT JUDGE

Daniel E. Blegen, Esq.
dblegen@spencerfane.com
Spencer Fane LLP
Breanna Spackler, Esq.
bspackler@spencerfane.com
1000 Walnut Street, Suite 1400
Kansas City, MO 64106
816/292-8823
ATTORNEYS FOR PLAINTIFFS
AG613, LLC, SUSAN SHRIVER,
SANDY MILLER, SCOTT ASNER,
AND MICHAEL GORTENBURG

Lynn W. Hursh, Esq.
lhursh@armstrongteasdale.com
Lauren H. Navarro, Esq.
lnavarro@armstrongteasdale.com
Armstrong Teasdale, LLP
2345 Grand Boulevard, Suite 1500
Kansas City, MO 64108
816/221-3420
ATTORNEYS FOR DEFENDANT
AMIT RAIZADA

William Ray Price, Esq.
rprice@atllp.com
Armstrong Teasdale, LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, MO 63105
314/259-4703
ATTORNEYS FOR DEFENDANT
AMIT RAIZADA

Jeffrey D. Morris, Esq.
jmorris@berkowitzoliver.com
James Morrison Humphrey, IV, Esq.
jhumphrey@berkowitzoliver.com
Berkowitz Oliver LLP
2600 Grand Boulevard, Suite 1200
Kansas City, MO 64108
816/561-7007
ATTORNEYS FOR DEFENDANT
VVP SERVICES, LLC



Attorney for Relator