

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:13-CV-00255-WO-JLW

THOMAS BROWN, *et al.*,)
)
)
 Plaintiffs,)
 v.)
)
 WESTERN SKY FINANCIAL, LLC, *et*)
al.,)
)
 Defendants.)

**REPLY MEMORANDUM OF DEFENDANTS JOHN PAUL REDDAM AND
PAYDAY FINANCIAL, LLC IN FURTHER SUPPORT OF
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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Mr. Reddam¹ and Payday Financial, by and through their attorneys, respectfully submit this reply memorandum of law in further support of their motion to dismiss the SAC pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction.²

PRELIMINARY STATEMENT

Plaintiffs allege injuries caused by loans that Mr. Reddam and Payday Financial did *not* market, issue or service. Plaintiffs nevertheless assert that personal jurisdiction over Mr. Reddam and Payday Financial can be exercised based solely upon their ownership stake in, and corporate-officer status with, other named defendants that actually marketed, issued and serviced the loans. Plaintiffs are incorrect. Without any allegations or evidence that Plaintiffs' injuries arise from Mr. Reddam's or Payday Financial's contacts with North Carolina, this Court may not exercise personal jurisdiction over either defendant, and Plaintiffs' suit against them must be dismissed.

ARGUMENT

I. Plaintiffs Allege No In-State Conduct by Mr. Reddam

Personal jurisdiction cannot be asserted over Mr. Reddam because the only jurisdictional contacts alleged by Plaintiffs are unsupported by well-pled allegations or

¹ Capitalized terms not otherwise defined herein have the meanings ascribed to them in Defendants' Memorandum of Law in Support of Motion to Dismiss for Lack of Personal Jurisdiction.

² Defendants file alongside this brief a reply brief in further support of their omnibus motion to dismiss ("Omnibus Brief") and a brief in opposition to Plaintiffs' Motion Requesting Discovery on Preliminary Issues and in support of Defendants' Cross-Motion To Stay Discovery ("Discovery Brief"). Defendants address Plaintiffs' request for jurisdictional discovery as to Mr. Reddam and Payday Financial in the Discovery Brief.

evidence, and in any event lack even a tenuous connection to Plaintiffs' alleged injuries. Having abandoned any claim that Mr. Reddam can be subject to this Court's jurisdiction based on an alter-ego theory (Pls. PJ Br. 11), Plaintiffs now rest their argument entirely on Mr. Reddam's corporate officer status with defendants WS Funding, CashCall and Delbert (*id.* at 10-12).³

With regard to Mr. Reddam's role as an officer of WS Funding, Plaintiffs argue that Mr. Reddam should be subject to personal jurisdiction in North Carolina because he signed three contracts on behalf of WS Funding that WS Funding entered with Western Sky. *Id.* at 7-8, 11-12. The contracts obligate WS Funding to provide certain services to Western Sky and govern Western Sky's assignment of loans to WS Funding.⁴ SAC Ex. 6. The contracts were not executed in North Carolina, do not mention the State, and do not expressly confer any right or privilege upon any North Carolina domiciliary (including Plaintiffs) or any North Carolina domiciliary's privy. *Id.*

Plaintiffs also point to Mr. Reddam's conduct taken in his capacity as an officer of CashCall and Delbert. Specifically, Plaintiffs argue that jurisdiction over Mr. Reddam can rest on his telephone calls and emails—made and sent from outside North Carolina

³ Under controlling Fourth Circuit precedent, Plaintiffs cannot meet their burden to establish personal jurisdiction over Defendants by putting forth no evidence that rebuts Defendants' declarations denying related forum-state contacts. *Brooks v. Motsenbocker Advanced Devs., Inc.*, 242 F. App'x 889, 890 (4th Cir. 2007); *see also Uniprop Manufactured Hous. Cmities. Income Fund II v. Home Owners Funding Corp. of Am.*, 753 F. Supp. 1315, 1319-21 (W.D.N.C. 1990) (denying personal jurisdiction based on defendants' uncontroverted affidavits denying forum-state contacts).

⁴ The process by which the subject loans were issued by Western Sky, assigned to WS Funding, and then serviced by CashCall and Delbert is described at pages 3-5 of the Omnibus Brief.

on behalf of CashCall and Delbert—to North Carolina financial institutions. Pls. PJ Br. 13.

As a matter of law, Mr. Reddam’s out-of-state conduct cannot sustain personal jurisdiction over him. Personal jurisdiction “must arise out of contacts that the ‘defendant *himself*’ creates” with the forum state and not through the conduct of third parties. *Walden v. Fiore*, 134 S. Ct. 1115, 1122 (2014) (emphasis in original); *see also* *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (“The requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdiction.”). In line with this principle, a corporate officer such as Mr. Reddam can only be subject to personal jurisdiction “if he committed a tort *within the forum state* or if he had some connection with the commission of a tort and that connection occurred *in the forum state*.” *Rich Food Servs., Inc. v. Rich Plan Corp.*, No. 5:99-CV-677-BR, 2001 WL 36210598, at *5 (E.D.N.C. May 12, 2001) (emphasis added) (citing *Columbia Briargate Co. v. First Nat’l Bank in Dallas*, 713 F.2d 1052, 1065 (4th Cir. 1983)); *see also* Defs. PJ Br. 6 (citing *May Apparel Grp., Inc. v. Ava Imp.-Exp., Inc.*, 902 F. Supp. 93, 97 (M.D.N.C. 1995)). At minimum, then, personal jurisdiction over Mr. Reddam must be based on his own in-state conduct, and not that of third parties or the out-of-state conduct upon which Plaintiffs rely.⁵

⁵ Indeed, all of the cases Plaintiffs cite for the proposition that personal jurisdiction may be based on contractual contacts involved a contract in which one contracting party was an in-forum corporation, in-forum resident, or manufactured goods in the forum, which is not the case with any of the WS Funding contracts which Plaintiffs cite. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) (cited at Pls. PJ Br. 8) (in Florida forum, Florida corporation was party to contract); *Tom Togs, Inc. v. Ben Elias Indust. Corp.*, 318 N.C.

A similar rationale precludes exercising personal jurisdiction over Mr. Reddam based on a “stream-of-commerce” theory. Pls. PJ Br. 12-13. Even assuming the continued vitality of such a theory,⁶ it cannot be applied to subject Mr. Reddam to personal jurisdiction when he has not entered the State to advertise, sell, or service any of the loans upon which Plaintiffs sue. All that Plaintiffs have alleged is that their injuries are a product of the unilateral conduct of parties other than Mr. Reddam: WS Funding, which is alleged to have provided certain services to Western Sky; Western Sky and its employees, which issued loans to Plaintiffs; and Plaintiffs themselves, who took affirmative steps in North Carolina to acquire loans from Western Sky. This alleged chain of events (even if true), is utterly insufficient to support a claim of personal jurisdiction over Mr. Reddam.⁷ See *J. McIntyre Mach. Ltd.*, 131 S. Ct. at 2788 (“[A]s a

361, 367, 348 S.E.2d 782, 786 (1986) (cited at Pls. PJ Br. 7) (North Carolina clothing manufacturer was party to contract); *Barclays Leasing, Inc. v. Nat’l Bus. Sys., Inc.*, 750 F. Supp. 184, 187 (W.D.N.C. 1990) (cited at Pls. PJ Br. 8) (North Carolina corporation was party to contract); *Gen. Time Corp. v. Eye Encounter, Inc.*, 50 N.C. App. 467, 471, 274 S.E.2d 391, 393-94 (1981) (cited at Pls. PJ Br. 8) (North Carolina manufacturer was party to contract); *Goldman v. Parkland of Dallas, Inc.*, 277 N.C. 223, 176 S.E.2d 784 (1970) (cited at Pls. PJ Br. 8) (North Carolina individual resident was party to contract).

⁶ See *J. McIntyre Mach. Ltd. v. Nicastro*, 131 S. Ct. 2780, 2789 (2011) (plurality opinion) (“Justice Brennan’s concurrence, advocating a rule based on general notions of fairness and foreseeability, is inconsistent with the premises of lawful judicial power.”).

⁷ The North Carolina state court cases cited by Plaintiffs in which personal jurisdiction rested on a “stream of commerce” theory are inapposite. None involved an assertion of personal jurisdiction over an individual. *Warzynski v. Empire Comfort Sys., Inc.*, 102 N.C. App. 222, 229, 401 S.E.2d 801, 805 (1991) (discussing jurisdiction over manufacturer and seller of defective heater); *Bush v. BASF Wyandotte Corp.*, 64 N.C. App. 41, 50, 306 S.E.2d 562, 568 (1983) (discussing jurisdiction over manufacturer of defective washing machine); *Tart v. Prescott’s Pharmacies, Inc.*, 118 N.C. App. 516, 456 S.E.2d 121 (1995) (discussing jurisdiction over drug manufacturer). Moreover, while state court cases “may be helpful by way of analogy” for assessing personal jurisdiction,

general rule, it is not enough that the defendant *might have predicted* that its goods will reach the forum state.” (emphasis added)); *ESAB Grp., Inc v. Zurich Ins. PLC*, 685 F.3d 376, 392 (4th Cir. 2012) (“A defendant’s actions that are directed at the forum state in only a random, fortuitous, or attenuated way are insufficient to support jurisdiction.” (internal quotation omitted)).

The cases cited by Plaintiffs in which personal jurisdiction was found over corporate officers “involved in payday lending schemes” lend no support to their argument. *See* Pls. PJ Br. 10-11. In all of them, the lending businesses at issue operated through brick-and-mortar lending stores located within the forum state, making it foreseeable that a corporate officer’s conduct would affect North Carolina residents. *See Gunnings v. Internet Cash Enter. of Asheville, LLC*, No. 5:06CV98, 2007 WL 1931291, at *1 n.1 (W.D.N.C. July 2, 2007) (nine storefronts in North Carolina); *McQuillan v. Check ‘n Go of N.C., Inc.*, No. 04-CVS-2858, 2009 WL 7786579, at ¶ 3 (N.C. Sup. Ct. July 15, 2009) (Hooks, J.) (sixty-four loan offices in North Carolina); *Hager v. Check Into Cash of N.C., Inc.*, No. 04-CVS-2859, 2009 WL 7786582, at ¶ 2 (N.C. Sup. Ct. June 29, 2009) (Hooks, J.) (forty-six loan offices in North Carolina).⁸

Moreover, unlike Mr. Reddam, the officers in question in those cases were all found to have substantial in-state contacts related to the claims asserted that are not

they are of no significance to an analysis of whether “Defendants have sufficient minimum contacts under the Constitution.” *AARP v. Am. Family Prepaid Legal Corp.*, 604 F. Supp. 2d 785, 798 n.12 (M.D.N.C. 2009) (citing *ISI Int’l, Inc. v. Borden Ladner Gervais LLP*, 256 F.3d 548, 551 (7th Cir. 2001)).

⁸ As noted, *see* note 7, *supra*, for purposes of analyzing personal jurisdiction, the state court cases cited by Plaintiffs are of limited value.

present here. For example, in *Gunnings*, the corporate officers over whom jurisdiction was deemed appropriate had made in-state visits to attend seminars related to their business and emailed, called and written letters to their in-state stores in North Carolina.⁹ *Gunnings*, 2007 WL 1931291, at *1; *see also McQuillan*, 2009 WL 7786579, at ¶¶ 16, 17, 39 (evidence that officer directly approved decision to create an LLC specifically to issue loans to North Carolina residents); *Hager*, 2009 WL 7786582, at ¶¶ 9, 13, 14 (officers personally registered as lobbyists in North Carolina on behalf of the corporation and attended a payday lending industry meeting in the state).

Finally, contrary to Plaintiffs' disingenuous assertion, it is of no moment that Mr. Reddam "has been *named* as a defendant or respondent in actions in other jurisdictions alleging unlawful conduct by his lending [sic] concerns." Pls. PJ Br. 14 (emphasis added). Motions to dismiss for lack of personal jurisdiction by Mr. Reddam have been filed in each of those actions, and no court has yet to rule on them. Mr. Reddam's status as a defendant in other actions is therefore irrelevant to whether this Court may exercise personal jurisdiction over him.¹⁰

II. Plaintiffs Fail To Allege a Connection between Payday Financial's Contacts with North Carolina and the Subject Matter of the Litigation

Plaintiffs' only argument against dismissing Payday Financial for lack of personal jurisdiction is that Payday Financial was at one time the sole member of Western Sky, an

⁹ Significantly, the court in *Gunnings* also denied jurisdiction over one of the LLC's owners on the basis that the owner, like Mr. Reddam, made no trips to North Carolina. 2007 WL 1931291, at *5.

¹⁰ Of course, a finding of personal jurisdiction over Mr. Reddam in any of those cases will have no controlling force in this Court.

LLC. See SAC ¶ 19, Defs. PJ Br. at 15. But the mere fact that Western Sky and Payday Financial had a corporate relationship is insufficient to subject Payday Financial to jurisdiction for Western Sky's contacts with North Carolina. *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984) (cited at Defs. PJ Br. 7-8) (where defendants are distinct corporate entities, “[e]ach defendant’s contacts with the forum State must be assessed individually”); *Gallaher v. KBR, Inc.*, No. 5:09CV69, 2010 WL 2901626, at *9-10 (N.D. W. Va. July 21, 2010) (cited at Defs. PJ Br. 8) (analyzing each company’s contacts separately, where plaintiff failed to establish that “the subsidiary has no separate dignity from its parent” (internal quotations omitted)).

Plaintiffs attempt to get around this bedrock principle of corporate law by arguing—without citation to any well-pled facts—that Payday Financial is subject to personal jurisdiction because “Payday Financial was involved in Western Sky loans and collections.” See Pls. PJ Br. 16. Without any explanation of what the “involvement” was, and without any other support for its conclusion, Plaintiffs’ *ipse dixit* cannot sustain any exercise of personal jurisdiction over Payday Financial.

In addition, the fact that a federal court in South Dakota found Payday Financial liable for conduct relating to its own—and not Western Sky’s—lending operation is entirely irrelevant to whether any of the injuries alleged in this case arise from Payday Financial’s conduct. See SAC ¶ 168, Ex. 16. The court in that case did not find, as Plaintiffs suggest it did, that Payday Financial and Western Sky functioned as a common enterprise. See SAC Ex. 16 at 11-12 (concluding that “which Defendants and whether all Defendants are part of a common enterprise is a matter left open for trial”).

Accordingly, Plaintiffs have not controverted Payday Financial's denials of involvement in the Western Sky loans at issue in this case, and Payday Financial should be dismissed. K. Lawrence Decl. ¶¶ 5, 10.

III. Plaintiffs' Conclusory "Conspiracy" Allegations are Insufficient to Establish Personal Jurisdiction

Plaintiffs' reliance on generalized allegations of conspiracy are just as unpersuasive in their opposition brief as they are in the SAC. Plaintiffs continue to assert that "Defendants conspired and acted together to intentionally set up and market a loan scheme meant to try to evade North Carolina's ban on payday loans." Pls. PJ Br. 16. But Plaintiffs offer nothing other than bare allegations to support this claim, falling far short of their burden "to make a threshold showing that a conspiracy existed and that the defendants participated therein." *Lolavar v. de Santibañes*, 430 F.3d 221, 229 (4th Cir. 2005) (cited at Defs. PJ Br. 10-11). Defendants have now refuted Plaintiffs' conspiracy allegations, Reddam Decl. ¶¶ 5-6; K. Lawrence Decl. ¶¶ 5, 10; T. Lawrence Decl. ¶ 8, and Plaintiffs have offered no evidence to support them. Plaintiffs' speculative assertions are entitled to no weight. *Wolf v. Richmond Cnty. Hosp. Auth.*, 745 F.2d 904, 908 (4th Cir. 1984).

CONCLUSION

For the aforementioned reasons, as well as those set forth in their opening brief, Mr. Reddam and Payday Financial respectfully request that the Court grant their motion to dismiss the SAC pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction.

This 31st day of March, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **REPLY MEMORANDUM OF DEFENDANTS JOHN PAUL REDDAM AND PAYDAY FINANCIAL, LLC IN FURTHER SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** with the Clerk of Court using the CM/ECF, which will send notification of such filing to the following:

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