

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. )  
\_\_\_\_\_

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

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Payday Financial, LLC (“Payday Financial”) and John Paul Reddam (“Mr. Reddam”), by and through their attorneys, respectfully submit this memorandum of law in support of their motion to dismiss the Second Amended Complaint (“SAC”) pursuant to Fed R. Civ. P. 12(b)(2) on the basis that this Court lacks jurisdiction over them.<sup>1</sup>

### **PRELIMINARY STATEMENT**

Plaintiffs allege a series of claims arising out of consumer installment loans that were issued by Western Sky Financial, LLC (“Western Sky”), assigned to WS Funding, LLC (“WS Funding”) and serviced by CashCall, Inc. (“CashCall”) and Delbert Services Corporation (“Delbert”). In addition to bringing these claims against Western Sky, WS Funding, CashCall, and Delbert—none of which are domiciled in North Carolina, *see* SAC ¶¶ 18, 20, 22-23—Plaintiffs sue Mr. Reddam, a domiciliary of California who has an ownership interest in CashCall and Delbert, and Payday Financial, a limited liability corporation headquartered on a tribal reservation within South Dakota and which was once the sole member of Western Sky.

Rather than pleading specific facts tying Mr. Reddam and Payday Financial to the purported injuries resulting from the loans, the SAC fails altogether to allege facts that could plausibly establish personal jurisdiction over either defendant. Plaintiffs instead attempt to set aside bedrock principles of corporate law with vague and conclusory

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<sup>1</sup> This Memorandum of Law is filed alongside a separate omnibus motion to dismiss all claims against all defendants, including Mr. Reddam and Payday Financial, on the bases of *form non conveniens*, the tribal exhaustion doctrine, the Federal Arbitration Act, and for failure to state a claim.

allegations that Mr. Reddam, Payday Financial and the other defendants are somehow inextricably interrelated.

For Mr. Reddam, Plaintiffs' primary allegations linking him to this lawsuit are that he "controlled" CashCall and Delbert despite any allegation of how he did so; and that he used Western Sky as a "front" despite any allegation that he had any ownership in the lender. *Id.* ¶¶ 4, 21, 174, 207-09, 211, 243.

For Payday Financial, Plaintiffs allege that it was once the sole member of Western Sky, but offer no plausible facts suggesting the two entities' corporate form should be disregarded. SAC ¶ 19. Plaintiffs also assert, without any plausible allegation, that Mr. Reddam and Payday Financial entered into an agreement with the other defendants, and that personal jurisdiction is proper based on a vast conspiracy involving all defendants. *Id.* ¶¶ 217-19.

All of these allegations fall woefully short of what Plaintiffs must allege in order to establish personal jurisdiction. Plaintiffs' claims against Payday Financial and Mr. Reddam must therefore be dismissed.

### **FACTUAL BACKGROUND**<sup>2</sup>

Plaintiffs are North Carolina residents who seek to represent a nationwide class of borrowers who sought and obtained consumer installment loans from defendant Western Sky between 2010 and 2012. *Id.* ¶¶ 71-108.

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<sup>2</sup> The allegations in the SAC are detailed more fully in Defendants' Memorandum of Law in Support of Omnibus Motion to Dismiss the Second Amended Complaint.

Mr. Reddam is the sole owner of two entities, CashCall and Delbert, which service Western Sky loans. *Id.* ¶¶ 21, 23. Neither CashCall nor Delbert are domiciled in North Carolina. *Id.* ¶¶ 20, 23. Mr. Reddam has never visited North Carolina, does not have an ownership interest in any North Carolina real (or other) property, and does not hold any ownership interest in any business enterprise based in North Carolina or incorporated under North Carolina law. Declaration of J. Paul Reddam (“Reddam Decl.”) ¶ 4. Plaintiffs’ principal allegation connecting Mr. Reddam to this dispute is that he “dominated and controlled the CashCall entities and Western Sky” and used “Western Sky as a front to engage in illegal internet lending.” SAC ¶¶ 207, 208.

Payday Financial is a South Dakota limited liability company headquartered on the Cheyenne River Sioux Tribal Reservation in South Dakota. *Id.* ¶ 19; Declaration of Kimberly Lawrence (“K. Lawrence Decl.”) at ¶ 6. It does not maintain an office or mailing address in North Carolina; nor does it own, lease manage, or maintain any real property in the State. *Id.* ¶¶ 7-8. Payday Financial is not alleged to have issued any loans to Plaintiffs or to have any connection to Plaintiffs’ claims other than its one-time status as the sole member of Western Sky. SAC ¶ 19.

### **ARGUMENT**

A plaintiff bears the burden of showing that the Court may exercise personal jurisdiction over each defendant. *See Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 n.13 (1984); *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). “It is axiomatic that, in order for a district court to validly assert personal jurisdiction over a non-resident defendant, two conditions must be satisfied.

First, the exercise of jurisdiction must be authorized by the long-arm statute of the forum state, and second, the exercise of personal jurisdiction must also comport with Fourteenth Amendment due process requirements.” *Christian Sci. Bd. of Dirs. of the First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 215 (4th Cir. 2001). Because North Carolina’s long-arm statute, N.C. Gen. Stat. § 1-75.4, authorizes jurisdiction coextensive with the limitations imposed by the Due Process Clause, the two-part inquiry “collapse[s] into a single inquiry as to whether the [non-resident] defendant has such ‘minimal contacts’ with the forum state that maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Christian Sci. Bd. of Dirs.*, 259 F.3d at 215 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

The minimum contacts necessary for personal jurisdiction may be premised upon a theory of specific or general jurisdiction. A court may exercise *specific* jurisdiction where: “(1) . . . the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) . . . the plaintiffs’ claims arise out of those activities directed at the state; and (3) . . . the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *Carefirst*, 334 F.3d at 397 (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002), *cert. denied*, 537 U.S. 1105 (2003)). Although *general* jurisdiction does not require a connection between the cause of action at issue and the defendant’s contacts with the forum, it must be supported by a more rigorous set of “‘continuous and systematic’” contacts with the State. *Id.* See also *Goodyear Dunlop Tires Operations, SA v. Brown*, 131 S. Ct. 2846, 2851 (2011) (clarifying that a state may exercise general personal jurisdiction over foreign

corporations “when their affiliations with the State are so ‘continuous and systematic’ as to render them *essentially at home in the forum State*” (emphasis added; quotation omitted)).

Where, as here, a defendant contests and denies personal jurisdiction, the plaintiff must then “point[] to affidavits or other relevant evidence” that would support jurisdiction over the defendant. *See Wince v. Easterbrooke Cellular Corp.*, 681 F. Supp. 2d 688, 691(N.D. W. Va. 2010) (citing *Carefirst*, 334 F.3d at 396; *New Wellington Fin. Corp. v. Flagship Resort Dev. Corp.*, 416 F.3d 290, 294 (4th Cir. 2005)). Plaintiffs fail to do so and also fail to plead any facts justifying their claim of jurisdiction over Mr. Reddam and Payday Financial. *See id.*

#### **I. Mr. Reddam Is Not Subject to This Court’s Jurisdiction**

Plaintiffs’ primary contention that personal jurisdiction is proper over Mr. Reddam rests on the conclusory allegation that he operated CashCall, Delbert and Western Sky as his alter ego. *See, e.g.*, SAC ¶¶ 21, 209 (“personally directed, dominated and controlled”); *id.* ¶ 174 (“participated in and aided and abetted”); *id.* ¶¶ 174, 207 (“front”); *id.* ¶ 211 (“received funds from the operations of the enterprise in North Carolina”). These allegations fail because they amount to nothing more than “the mere allegation that [a corporate officer] is the alter ego of [a corporation].” *Mike’s Train House, Inc. v. Broadway Ltd. Imps., LLC*, 708 F. Supp. 2d 527, 534 (D. Md. 2010) (dismissing claim for lack of personal jurisdiction against corporation’s president); *see also Anderson v. Dobson*, No. 1:06CV2, 2006 WL 1431667, at \*7 (W.D.N.C. May 22, 2006) (holding that “the ‘alter ego’ theory d[id] not provide a basis for personal jurisdiction” over corporate

vice president where the only allegations supporting that theory were that the corporation “is a nominal Massachusetts corporation: it has no employees, no physical assets, no outstanding stock,” and that the vice president was its “one officer, one director and one registered agent for service” (internal quotations omitted)). Given the absence of sufficient factual allegations that Mr. Reddam did anything to actually control any of the defendants, personal jurisdiction cannot be supported on an alter-ego theory. *Cf. Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 276 (4th Cir. 2005) (“[I]t is generally the case that the contacts of a corporate subsidiary cannot impute jurisdiction to its parent entity.”).

Separate and apart from an alter-ego theory, personal jurisdiction may not rest upon Mr. Reddam’s officer status with or ownership interest in CashCall and Delbert. “[C]orporate employees are not subject to personal jurisdiction, even as to the employee’s corporate activities” unless that employee himself has minimum contacts with the forum State. *May Apparel Grp., Inc. v. Ava Imp.-Exp., Inc.*, 902 F. Supp. 93, 97 (M.D.N.C. 1995). The SAC, however, contains no allegations that Mr. Reddam himself has any contacts with North Carolina that could support personal jurisdiction. Nor could it, given that Mr. Reddam does not and has never lived in the State, has no ownership interest in any North Carolina real (or other) property, and holds no ownership interest in any business enterprise based in North Carolina or incorporated under North Carolina law. Reddam Decl. ¶ 4. Accordingly, without any personal contacts between Mr. Reddam and North Carolina, the fact that Mr. Reddam is an owner or agent of any other defendant is insufficient to establish personal jurisdiction. *See May Apparel Grp.*, 902 F.

Supp. at 97-98; *D’Addario v. Geller*, 264 F. Supp. 2d 367, 380-81 (E.D. Va. 2003) (“A corporate agent is not subject to personal jurisdiction in his individual capacity . . . solely based upon his status as a corporate officer or agent.”).

Substantially more plausible facts are required in order to establish personal jurisdiction over Mr. Reddam, and Plaintiffs’ failure to plead any mandates dismissal of their claims against Mr. Reddam.

## **II. Payday Financial Is Not Subject to This Court’s Jurisdiction**

Defendant Payday Financial likewise lacks the minimum requisite contacts with the State to allow this Court to exercise personal jurisdiction over it. Payday Financial, which is headquartered on an Indian reservation thousands of miles outside North Carolina, does not have a presence in North Carolina. It does not maintain an office or mailing address in this State, nor does it own, lease, manage, or maintain any real property in North Carolina. K. Lawrence Decl. ¶¶ 7-8. Payday Financial does not have a registered agent for service appointed in this State. *Id.* ¶ 9. In short, Payday Financial is “in no sense at home” in North Carolina. *Goodyear Dunlap Tires Op.*, 131 S. Ct. at 2857.

Although Plaintiffs allege that Payday Financial is the sole owner of Western Sky, such ownership is insufficient to subject Payday Financial to jurisdiction. Corporate affiliation, without more, is not enough to establish the minimum contacts necessary for personal jurisdiction. *See Keeton*, 465 U.S. at 781 n.13. Where, as here, various defendants are distinct corporate entities, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Id.*; *see also Setra of N. Am., Inc. v. Motorcoach*

*Fin., Inc.*, 367 F. Supp. 2d 853, 859 (M.D.N.C. 2005) (“[T]he Court notes that it is settled law that the mere presence of a subsidiary in North Carolina, standing alone, is not enough to impute personal jurisdiction over the parent corporation.”); *Gallaher v. KBR, Inc.*, No. 5:09CV69, 2010 WL 2901626, at \*9-10 (N.D. W. Va. July 21, 2010) (analyzing each company’s contacts separately, where plaintiff failed to establish that “the subsidiary has no separate dignity from its parent” (internal quotation omitted)). Plaintiffs allege no jurisdictional contacts between Payday Financial and this State other than those directly attributable to Western Sky. As a matter of law, such allegations are insufficient to subject Payday Financial to personal jurisdiction in North Carolina.

### **III. Personal Jurisdiction Over Mr. Reddam and Payday Financial Would Offend Traditional Notions of “Fair Play and Substantial Justice”**

Not only do Plaintiffs fail to establish minimum contacts between Mr. Reddam and Payday Financial and the State, but exercising jurisdiction over those two defendants would offend “traditional notions of fair play and substantial justice.” *Christian Sci. Bd. of Dirs.*, 259 F.3d at 217 (internal quotation omitted). None of the five factors to be examined under this analysis—(1) the burden on the defendant; (2) the forum state’s interest in resolving the dispute; (3) the plaintiffs’ interest in receiving convenient and effective relief; (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and (5) the shared interest of the several states in furthering fundamental substantive social policies, *see id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985))—supports the exercise of jurisdiction here:

- Plaintiffs have alleged no jurisdictional contacts between Mr. Reddam and Payday Financial with North Carolina nor any contacts with the Plaintiffs, and thus the burden of litigating here is significant;
- Because Plaintiffs have not alleged Mr. Reddam and Payday Financial to have any connection to the instant dispute, North Carolina has no interest in resolving claims against them here; and
- Plaintiffs have no justification for any relief against Mr. Reddam and Payday Financial, and thus any “convenience” or “efficiency” is not relevant.

Accordingly, not only can Plaintiffs not make a colorable showing of minimum contacts with North Carolina, but exercising jurisdiction over Mr. Reddam and Payday Financial would be unreasonable and violate traditional notions of fair play and substantial justice. *See Christian Sci. Bd. of Dirs.*, 259 F.3d at 217 (explaining that the “fair play and substantial justice” requirement focuses on whether it is “constitutionally reasonable” to exercise jurisdiction over a non-resident defendant).

#### **IV. Plaintiffs’ Conclusory “Conspiracy” Allegations Are Insufficient To Establish Personal Jurisdiction**

As noted above, it is exceedingly difficult to evaluate Plaintiffs’ allegations with respect to Mr. Reddam and Payday Financial *individually* due to the conclusory nature of the allegations; indeed, Plaintiffs’ pleadings—again and again—refer collectively to all “Defendants” without distinguishing among them. *See, e.g.*, SAC ¶ 8. Nevertheless, reading the SAC in a light most favorable to establishing personal jurisdiction, Plaintiffs appear to rely either upon the aggregated contacts of the group or upon a “conspiracy” among the defendants. *See, e.g., id.* ¶¶ 42, 47, 51, 217, 218, 219. Both attempts fail.

First, personal jurisdiction cannot be established based upon generalized allegations or aggregated contacts. As the Supreme Court has recognized, where there are two distinct corporations, “[e]ach defendant’s contacts with the forum State must be assessed individually.” *Keeton*, 465 U.S. at 781 n.13. The defendants cannot simply be lumped together for purposes of establishing jurisdiction. *See WLC, LLC v. Watkins*, 454 F. Supp. 2d 426, 434 (M.D.N.C. 2006) (refusing to aggregate the contacts of “affiliated” companies based upon conclusory allegations); *Kennelsource, Inc. v. Barking Hound Vill., LLC*, No. 05 C 1788, 2006 WL 2578975, at \*5 (N.D. Ill. Sept. 5, 2006) (rejecting attempt to “lump all of the moving defendants together” because “[e]ach defendant’s contact with the forum state must be assessed individually” (citing *Keeton*, 465 U.S. at 781 n.13)); *Grow Grp., Inc. v. Jandernoa*, No. 94 Civ. 5679, 1996 WL 31848, at \*5 (S.D.N.Y. Jan. 26, 1996) (“It is well settled that in determining personal jurisdiction each individual’s contact with the forum must be evaluated individually . . . . Indeed considering the defending parties by *group* and aggregating their forum contacts in determining jurisdiction is plainly unconstitutional.” (emphasis in original)). Therefore, due to the absence of any particularized allegations against Mr. Reddam and Payday Financial, both must be dismissed.

Second, Plaintiffs cannot avoid dismissal by invoking a conspiracy theory of jurisdiction. The Fourth Circuit has acknowledged that a district court may exercise personal jurisdiction based on the existence of a conspiracy and acts taken in furtherance of the conspiracy by a co-conspirator in the forum state. *See Lolavar v. de Santibañes*, 430 F.3d 221, 229 (4th Cir. 2005). To exercise personal jurisdiction based on a

conspiracy theory, however, the plaintiff must offer more than “bare allegations.” *Id.* The plaintiff must introduce specific facts that plausibly support a *prima facie* claim “that a conspiracy existed and that the defendants participated therein.” *Id.* (citing *McLaughlin v. McPhail*, 707 F.2d 800, 807 (4th Cir. 1983)).

Plaintiffs’ general “conspiracy” allegations are the sort of “bare allegations” that are insufficient to establish specific jurisdiction over either Mr. Reddam or Payday Financial. *See id.* at 229-30. Plaintiffs merely allege that “[a]ll Defendants named in this complaint share liability because they entered into a conspiracy to violate North Carolina law and other law by agreeing to perform acts in violation of North Carolina law” and that “the Defendants entered into an agreement to do an unlawful act.” SAC ¶¶ 217-218. There is no allegation of a meeting of the minds involving Mr. Reddam or Payday Financial, much less any pleading of the requisite particularized facts to show an agreement of any kind or of some overt act taken by either in furtherance of such a conspiracy. *See A Society Without a Name v. Virginia*, 655 F.3d 342, 346 (4th Cir. 2011) (a complaint “must plausibly suggest agreement, rather than being merely consistent with agreement” (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007))). The SAC therefore falls far short of establishing a factual basis for asserting personal jurisdiction over Mr. Reddam and Payday Financial here in North Carolina.

### CONCLUSION

For the foregoing reasons, Mr. Reddam and Payday Financial respectfully request that their motion to dismiss the SAC for lack of personal jurisdiction be granted.

This the 10th day of February, 2014.

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**CERTIFICATE OF SERVICE**

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

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