IN THE SUPREME COURT OF THE STATE OF MONTANA
No. OP 22-0587

MELISSA GROO,

Petitioner,

v.

THE MONTANA ELEVENTH JUDICIAL DISTRICT COURT FLATHEAD COUNTY, THE HONORABLE AMY EDDY,

Respondent.

PLAINTIFFS' RESPONSE BRIEF

Original Proceeding Arising from the District Court of Montana's Eleventh Judicial District, Flathead County, Honorable Judge Amy Eddy, Presiding
Cause No. DV-15-2022-0000087

David B. Cotner
Brian T. Geer
Cotner Ryan Law, PLLC
2700 Radio Way
Missoula, MT 59808
Phone: (406) 541-1111
Email: dcotner@cotnerlaw.com

Attorneys for Defendant-Petitioner Melissa Groo

Kris A. McLean
Tyson A. McLean
Jordan A. Pallesi
Kris A. McLean Law Firm, PLLC
2315 McDonald Ave., Ste. 106
Missoula, MT 59801
Phone: (406) 396-9367
Email: kris@krismcleanlaw.com

Attorneys for Plaintiffs

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

I. Statement of the Case

On January 25, 2022, Kimberly and Jay "Lorney" Deist, and the Triple D Game Farm, Inc. (hereinafter "Triple D") filed their Complaint against Heather Keepers, Melissa Groo (hereinafter "Ms. Groo"), Justine Hayes, and Jeanette Tartaglino. Triple D's Complaint asserts claims against Keepers, Hayes and Tartaglino for breach of contract (Count 1), Ms. Groo, Keepers, Hayes and Tartaglino for tortious interference with contractual relations (Count 2), and Ms. Groo, Keepers, Hayes and Tartaglino for tortious interference with prospective economic advantage (business relations) (Count 3). app. 1, Complaint.

On April 18, 2022, Ms. Groo filed her Motion to Dismiss the Complaint pursuant to Mont. R. Civ. P. 12(b)(2) and (12)(b)(6) arguing lack of personal jurisdiction and failure to state a claim upon which relief can be granted. apps. 2-4. On July 22, 2022, the Flathead County District Court denied Ms. Groo's Motion to Dismiss in all respects finding that Ms. Groo's "social media campaign resulted in the accrual within Montana of Triple D's claims against her, and Montana's long-arm statute applies." app. 8, p. 7. The District Court also correctly found Ms. Groo had the requisite minimum contacts with Montana and the Court's exercise of personal jurisdiction over Ms. Groo comports with due process. app. 8, p. 8.

On August 5, 2022, after the Court denied her Motion to Dismiss, Ms. Groo filed her Answer. (Doc. 34). On August 24, 2022, Ms. Groo agreed to holding a

scheduling conference. (Doc. 36.10). On August 25, 2022, the District Court issued a scheduling order. (Doc. 36.20) Then, almost two months later, on October 13, 2022, Ms. Groo filed her Writ of Supervisory Control to this Court with respect only to the personal jurisdiction issue.

II. Statement of Facts

In its Order denying Petitioner Ms. Groo's Motion to Dismiss, the District Court set forth the following detailed factual background for its ruling drawn from the record before it as follows:

> For over 45-years, Plaintiff Triple D Game Farm, Inc. (hereinafter "Triple D") in Flathead County, Montana "has offered wildlife enthusiasts the exceptional opportunity to observe trained wildlife in their natural environment and capture their beauty with the lens or brush." *Compl.,* p. 3, P11 [app. 1, Complaint., p. 3, ¶11]. Triple D has thousands of clients and approximately 21,000 followers on its Facebook page, which it uses to promote its business. *Compl.,* p. 3, P13 [app. 1, Complaint, p. 3, ¶13]. Triple D "employs experienced animal trainers and staff to care for Triple D's wildlife and accommodate Triple D's clientele." *Compl.,* p. 3, P14 [app. 1, Complaint, p. 3, ¶14]. In 2011, Triple D hired Heather Keepers as an animal trainer. Keepers worked for Triple D until leaving in July of 2020, representing she was relocating to pursue a personal relationship. Keepers was contacted by B.M., a group leader and client of Triple D, asking if she had "left for a guy." Keepers responded in August of 2020 and told B.M. a story of poor animal welfare at Triple D. B.M. recommended Keepers contact Melissa Groo. Melissa Groo (hereinafter "Groo") is a citizen and resident of the State of New York. She has never been a citizen or resident of the State of Montana, nor domiciled within the State of Montana. She has never been an owner, operator or employee of a Montana business, had a registered agent in Montana, or owned any property or assets in Montana. Groo has never received mail, opened a bank account, paid taxes, initiated litigation or maintained a phone account in Montana. In fact, Groo has only visited

Montana four times since 2018, and only once since August of 2020. In June of 2021, she stayed at the home of an owl researcher and personal friend in Charlo, Montana for 12 days to photograph wildlife in the Charlo area.

Groo is a self-employed photographer whose business is located in New York. She is also a "well-known expert and leader in the field of ethics in wildlife photography and [has] written a number of articles criticizing the practice of photography game farms like Triple D Game Farm", although she has not visited Triple D. *Aff. Groo*, p. 2, P5, p. 3, P18 [app. 4, Declaration of Melissa Groo, p. 2, ¶ 5, p. 3, ¶ 18]. Groo has had articles published by the National Wildlife Federation and is: represented by Nat Geo Creative, a contributing editor to Audubon magazine and an Associate Fellow with the International League of Conservation Photographers. She advises the National Audubon Society on ethical photography, and has also counseled National Wildlife magazine and NANPA (North American Nature Photography) on guidelines for ethical wildlife photography. She also serves as a member of NANPA's Ethics Committee. In 2017, Melissa received the Katie O'Brien Lifetime Achievement Award from Audubon Connecticut, for demonstrating exceptional leadership and commitment to the conservation of birds, other wildlife and their habitats. She also received the NANPA 2017 Vision Award, given to a photographer every two years in recognition of early career excellence, vision and inspiration to others in nature photography, conservation and education.

Aff. Groo, Exs. A and B [app. 3, Ex. B].

In August of 2020, Groo was contacted by Keepers via Facebook Messenger at 8:47 p.m. with the following message:

> Hello Melissa. As I am not a big fan of yours, this message is difficult for me to send. But someone mentioned your name yesterday when I filled them in in [sic] some information. And I got to thinking. While you and I are not friends, we do have a common enemy...for slightly different reasons, but also for many of the same. Triple D. My time spent there was heaven and hell all wrapped in one. I love those animals more than anyone could love anything. And I gave them the best I could

> with what I was provided with. I worked there for 9 years under the false pretense that I would soon be taking it over. I held onto that idea Bc I wanted to change so much of what it was. And is. Many things you are wrong about but many things you are right about. I will not disclose any information to you yet. Other than I have ENDLESS information and evidence and knowledge of evidence of many things. Illegal, unethical, and just absolutely morally wrong and dishonest. My goal in reaching out to you is simple. Those animals need to be "saved" from Jay Deist.
>
> Those animals deserve so much better. And especially now that I'm not there to provide half of what they deserve, a lot of them are now just sitting and rotting. Some have even died suddenly since I left. (I left July 9). I am obviously desperate to save them. And well....it'll take someone who hates the Triple D as much as I do to do that. And I don't mean some animals and then Jay can get more. I mean ALL
> animals. And his operation stops entirely. Forever. Is this something that interests you?

Doc. 17, Ex. A [app. 5, Ex. A].

Less than an hour later, at 9:41 p.m., Groo responded:

> Absofuckinglutely.
>
> You are writing me at a very opportune time. i would love to get your help on taking him down. The things that I have uncovered from lots of research haunt me more than you can know. Or maybe you can know. I know we have clashed in the past, but if your first concern is the animals, we have that in common, and that is HUGE. Let's try to collaborate to make a better future for them. I am incredibly grateful you reached out. I know how terribly difficult it must be.
>
> In advance of us speaking more, I want you to know that i am sorry if you feel attacked by me. It's just that I was horrified by what I had learned about Jay Deist and the fate of many of the animals, and you were the very public face of Triple D. So you got my anger. I felt you were complicit. But now I see you were

> not. And that you really do care. I'm sorry to have misjudged you.
>
> I can't tell you how grateful I am to hear from you. I have a very special opportunity for you to speak out and to help make a big change but I can't say more about it now. Let's figure out how to move forward on this. I am away from home right now, and short on time, but will be back home as of this weekend.
>
> I seriously want to weep with gratitude I want very much for Triple D and all game farms to be done. i am with you 200%.

Doc. 17, Ex. A [app. 5, Ex. A].

Approximately an hour later, Keepers replied:

> Perfect. Look forward to talking. Disclaimer: my biggest hesitation is that I signed a nondisclosure agreement upon employment. (Who tf has animal professionals sign a nondisclosure???) Anyway. I'd lose every penny from here on out if it meant ridding him of any and all animals now and future. But I'd rather not get sued. I'm not sure the total legality of everything. But I am working on understanding it.

Doc. 17, Ex. A [app. 5, Ex. A].

Groo later sent Keepers the following text message:

> Heather, I was just doing some reading, and in advance of our talking, thought you might like to look over this info too:
>
> When an NDA can be broken:
> https://law.stackexchange.com/questions/ 4339/when-can-an-nda-be-legaybroken
>
> Animal Welfare Act enforcement:
> https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare/awaenforcements

> For violations of Endangered Species Act (which might just apply to the leopards?)
> https://www.animallaw.info/article/briefsummary-endangered-species-act
>
> You are probably way ahead of me on this, but in case it's helpful!
>
> I also wanted to mention that I am well connected to many kinds of folks we could seek out to help guide you. I know animal lawyers, am friends with Dan Ashe who was head of USFWS for years, I know a Montana FWP legal counsel, and am friends with the folks that lead captive wildlife programs at leading animal conservation and welfare orgs. So just know there is lots of support out there for you if you want it and I can help you connect to your choice.
>
> M.

Doc. 17, Ex. I [app. 5, Ex. I].

Although Groo and Keepers were discussing driving Triple D, a Montana business, out of business, and breaching a NDA entered into in Montana and applicable to a Montana business, neither individual was located in Montana when these conversations occurred.

Groo then went on to make various public Facebook posts about Deist, including:

> "There are no words to describe how deeply cruel this man is. He has caused unspeakable suffering for so many animals. I am at a loss."

Doc. 17, Ex. B [app. 5, Ex. B].

On August 6, 2020, Groo shared on her Facebook page an article entitled "*Photography game farm Triple D Wildlife cited 6 times for keeping animals in squalor*", with the comment:

> More on Triple D photo game farm. What a disgrace to treat these magnificent animals so poorly. It's time for these wildlife brothels to be done. Photo by Susan Fox from a visit years ago to Triple D. Please share.

Doc. 17, Ex. C [app. 5, Ex. C].

On August 2-4, 2021, Groo sent the following through Facebook Messenger to a number of photography Group Leaders about Triple D:

> I hope very much that those photographers/artists and companies listed as holding future workshops there would cancel them immediately. It would be unconscionable to continue to support this facility.
>
> Doc. 17, Ex. D [app. 5, Ex. D].

Approximately one-quarter of the individuals and companies target [sic] by the above message were located in Montana.

Doc 17, Ex. F, P14; Doc. 19, Ex. A-I [app. 5, Ex. F, ¶ 14; app. 6, Ex. A-I].

Groo also tagged or contacted photographers and others with disparaging remarks about Triple D and encouraging them not to support Triple D, approximately a third of which were from Montana. *Id*.

Some of these online comments were made while the photographer was hosting a workshop at Triple D.

Doc 17, Ex. F, PP16-17 [app. 5, Ex. F, ¶¶ 16-17].

In addition to the District Court's factual background provided above, Ms. Groo stands to gain financially by eliminating Triple D as one of her competitors in the wildlife photography business. Ms. Groo charges at least $14,500 per person to lead photography tours to Patagonia to take photos of "wild" pumas. (Accessed

online at: https://catexpeditions.com/all-cat-photography-tours/pumas-patagonia-photography-tour/ (last accessed on May 2, 2022); screenshot of webpage filed as app. 5, Ex. H[1]). At the time this lawsuit was filed, Ms. Groo charged at least $16,495 to lead photography tours in Africa but that link on her website has been changed since briefing was filed with the District Court on this issue. (Accessed online at:https://www.imagesafaris.com/tours/2023-september-big-cats-elephants-and-migration-photo-safari-to-samburu-masai-mara-amboseli-kenya/ (last accessed on February 9, 2023); screenshot of webpage taken on May 2, 2022 filed as app. 5, Ex. H). The tours Ms. Groo leads are for the elite and wealthy as accommodations are supplemental and begin at $4,000. *Id.* Ms. Groo also charges a minimum price of $122 for an 8.5" x 11" print. (Accessed online at: https://www.melissagroo.com/purchasing.php (last accessed on May 2, 2022); screenshot of webpage filed as app. 5, Ex. H; app. 5, Ex. E, Groo Photograph taken in Montana). Ms. Groo's prices increase from there. *Id.* Ms. Groo, a wildlife photographer and group leader for wildlife photography, has financial motivations to take out her competition, Triple D, that offers wildlife photographers, and group leaders for wildlife photography, a venue to photograph wild animals.

[1] app. 5, Ex. H has converting errors from the website format to .pdf format but is offered to show the evidence as it existed as of May 2, 2022.

Now, after Ms. Groo purposefully inflicted damage to Montanans in Montana, she argues that Montana Courts do not have jurisdiction to hear Triple D's claims against her.

III. Standard of Review

a. Motion to Dismiss for Lack of Personal Jurisdiction

This Court reviews a district court's decision on a motion to dismiss for lack of personal jurisdiction *de novo*, construing the complaint "in the light most favorable to the plaintiff." *Gateway Hosp. Grp. Inc. v. Philadelphia Indem. Ins. Co.,* 2020 MT 125, ¶ 12, 400 Mont. 80, 89–90, 464 P.3d 44, 51 (quoting *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, ¶ 7, 378 Mont. 75, 342 P.3d 13) (quoting *Grizzly Sec. Armored Express, Inc. v. Armored Grp., LLC*, 2011 MT 128, ¶ 12, 360 Mont. 517, 255 P.3d 143)) (internal quotations omitted).

Additionally, motions to dismiss "should not be granted unless, taking all well-pled allegations of fact as true, it appears beyond a doubt that the plaintiffs can prove no set of facts in support of their claim which would entitle them to relief." *Gateway Hosp. Grp. Inc.,* ¶ 12 (quoting *Buckles v. Cont'l Res., Inc. (Buckles I)*, 2017 MT 235, ¶ 9, 388 Mont. 517, 402 P.3d 1213 (citing *Threlkeld v. Colorado*, 2000 MT 369, ¶ 7, 303 Mont. 432, 16 P.3d 359).

b. Supervisory Control

This Court has supervisory control over Montana courts. *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.,* 2019 MT 115, ¶ 5, 395 Mont. 478, 483, 443 P.3d 407, 411, *aff'd,* 209 L. Ed. 2d 225, 141 S. Ct. 1017 (2021) (citing Mont. Const. art. VII, § 2(2); *see also Great Falls Clinic LLP v. Mont. Eighth Judicial Dist. Court*, 2016 MT 245, ¶ 6, 385 Mont. 95, 381 P.3d 550. Supervisory control is an extraordinary remedy exercised by the Supreme Court of Montana on a case-by-case basis. *Ford Motor Co.*, ¶ 5 (citing M. R. App. P. 14(3)). This Court may exercise supervisory control when "urgency ... mak[es] the normal appeal process inadequate," "the case involves purely legal questions," and "[c]onstitutional issues of state-wide importance are involved." *Ford Motor Co.*, ¶ 5 (quoting Mont. R. App. P. 14(3)(b)).

IV. Summary of Argument

In her brief to this Court, Ms. Groo creates an alternate fact reality of her contacts within the State of Montana. Then Ms. Groo applies this alternate fact reality in legal analyses based on largely inapplicable caselaw and selective quotes from court holdings to argue that a Montana Court lacks personal jurisdiction requiring her to defend Triple D's tort claims in this State.

When the actual factual background alleged in Triple D's Complaint and found in the record before the District Court described above is correctly applied in

Montana's two-part test, Montana Courts properly exercise personal jurisdiction of Ms. Groo. That is, Ms. Groo committed a series of acts resulting in accrual of Triple D's tort claims in Montana and exercising personal jurisdiction comports with traditional notions of fair play and substantial justice embodied in the Due Process Clause. Therefore, this Court should deny Ms. Groo's Petition for Supervisory Control.

V. Argument

Ms. Groo's request for a Writ of Supervisory Control presents the issue whether a Montana Court can exercise jurisdiction over Ms. Groo, a nonresident defendant, for her targeted social media campaign that purposefully reached into Montana to harm Montanans and a Montana business. The answer to that question is yes.

This Court applies a two-part test to determine whether a Montana court may exercise personal jurisdiction over a nonresident defendant. *Tackett v. Duncan*, 2014 MT 253, ¶ 22, 376 Mont. 348, 360, 334 P.3d 920, 929 (citing *Threlkeld,* ¶ 10). First, the Court determines "whether personal jurisdiction—general or specific—exists pursuant to Rule 4(b)(1)." *Tackett,* ¶ 22. Specific personal jurisdiction exists when the suit itself "arises from the specific circumstances set forth in Montana's long-arm statute, M. R. Civ. P. 4(b)(1)." *Ford Motor Co.*, ¶ 9 (quoting *Buckles*, ¶ 15). Montana's long-arm statute provides, in pertinent part, "…any person is subject

to the jurisdiction of Montana courts as to any claim for relief arising from the doing personally, or through an employee or agent, of any of the following acts: *** (B) the commission of any act resulting in accrual within Montana of a tort action." Mont. R. Civ. P. 4(b)(1)(B).

In the second step, if personal jurisdiction exists pursuant to Rule 4(b)(1), "the Court then determines whether exercising such jurisdiction would comport with traditional notions of fair play and substantial justice embodied in the Due Process Clause." *Tackett,* ¶ 22 (citing *Threlkeld,* ¶ 9; *Nasca v. Hull,* 2004 MT 306, ¶ 26, 323 Mont. 484, 100 P.3d 997). For the exercise of personal jurisdiction to be constitutional "a defendant must have 'certain minimum contacts [with Montana] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Ford Motor Co.*, ¶ 12. A finding of specific jurisdiction "focuses on the relationship among the defendant, the forum, and the litigation, and depends on whether the defendant's suit-related conduct created a substantial connection with the forum state." *Gateway Hosp. Grp. Inc.*, ¶ 20 (quoting *Tackett,* ¶ 19). "In other words, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Gateway Hosp. Grp. Inc.,* ¶ 37 (citing *Buckles,* ¶ 17; *Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.,* 198 L. Ed. 2d 395, 137 S. Ct. 1773, 1780 (2017)).

To determine if exercising personal jurisdiction over a defendant comports with due process, the Court considers whether:

> (1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws;
>
> (2) the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of personal jurisdiction is reasonable.
>
> *Ford Motor Co.,* ¶ 12 (citing *Simmons v. State*, 206 Mont. 264, 276, 670 P.2d 1372, 1378 (1983)).

Once the plaintiff demonstrates that the first element is satisfied—that the defendant purposefully availed itself of the privilege of conducting activities in Montana—a presumption of reasonableness arises, which the defendant can overcome only by presenting a compelling case that jurisdiction would be unreasonable. *Ford Motor Co.,* ¶ 12 (citing *B.T. Metal Works v. United Die & Mfg. Co.*, 2004 MT 286, ¶ 34, 323 Mont. 308, 100 P.3d 127; *Simmons Oil Corp. v. Holly Corp.*, 244 Mont. 75, 85, 796 P.2d 189, 195 (1990).

A. Ms. Groo's Purposeful, Targeted Social Media Campaign Resulted in the Accrual Within Montana of Triple D's Claims Against Her.

Triple D's Complaint alleges that Ms. Groo's purposeful, targeted social media campaign tortiously interfered with their contractual and business relations. Ms. Groo argues that because she was not physically present in Montana when she

undertook her wrongful actions in this case, Triple D's tort claims did not "accrue" in Montana pursuant to Mont. R. Civ. P. 4(b)(1)(B).

Ms. Groo selectively quotes from the opinions of this Court in *Milky Whey, Inc. v. Dairy Partners, LLC*; *Bi-Lo Foods, Inc, v. Alpine Bank;* and *Tackett v. Duncan* in support of her claim that the tort action did not accrue in Montana. Petitioner's Opening Brief, pp. 13-14; *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18 ¶24, 378, Mont. 75, 342 P.3d 13; *Bi-Lo Foods, Inc. v. Alpine Bank, Clifton,* 1998 MT 40, ¶ 19, 287 Mont. 367, 375, 955 P.2d 154, 159; *Tackett*, ¶ 36, 376. However, this Court made clear in *Ford Motor Company* that this oversimplified reading of Montana case law is not correct.

> Ford selectively quotes from our prior case law in *Tackett* and *Milky Whey* to support its contention that its conduct here does not satisfy subsection (b)(1)(B) of Montana's long-arm statute. *See Tackett*, ¶ 31 (accrual turns "on where the events giving rise to the tort claims occurred, rather than where the plaintiffs allegedly experienced ... their injuries"), ¶ 34 ("[N]o part of [the defendant's] course of conduct forming the basis of [the plaintiff's] claims occurred in Montana."), ¶ 35 ("Mere injury to a forum resident is not a sufficient connection to the forum, however."); *Milky Whey*, ¶ 24 ("[A] tort does not accrue in Montana when all acts giving rise to the claims occur in another state.").
>
> Those cases, however, are factually distinguishable—*Tackett* involved a monetary dispute where the only connection to Montana was a party's transfer of funds from his Montana bank account, and *Milky Whey* involved a dispute over the delivery of a product where the product never physically entered Montana. *See Tackett*, ¶ 24; *Milky Whey*, ¶¶ 22-24. In this case, the tort undoubtedly accrued in Montana: the accident occurred while Gullett was driving on a Montana

> roadway. Lucero's claims of design defect, failing to warn, and negligence against Ford, if proven, resulted in the accrual of a tort in Montana and, accordingly, M. R. Civ. P. 4(b)(1)(B) is satisfied in this case.

Ford Motor Co., Fn. 1.

Like *Ford Motor Company*, this case is factually distinguishable from the cases cited by Ms. Groo. In *Milky Whey,* a Montana company reached out *from* Montana to order dairy products from a company in Minnesota. *Milky Whey,* ¶ 26. The products were to be delivered to a warehouse in Utah for pickup. *Id*. The Court in *Milky Whey* noted that the transaction that was the subject of the lawsuit was not initiated by the non-resident defendant and was not to be performed in Montana. *Id*. The only connection the suit had to Montana was that the Plaintiff happened to live here.

Similarly, in *Bi-Lo Foods, Inc.,* the plaintiff, a Montana company, reached out *from* Montana to engage with the defendant. *Bi-Lo Foods, Inc.,* ¶ 19. The Court in that case held that the defendant's "activities did not result in the accrual of a tort action" reasoning, "[a]ll acts giving rise to Bi–Lo's claims of negligence and breach of warranty occurred in Colorado. Bi–Lo sent its check to Alpine in Colorado. Alpine deposited the check into the account of one of its customers in Colorado. Alpine's alleged mishandling of the check occurred in Colorado." *Id.* at ¶ 31. Like *Milky Way*, the defendant's only connection to Montana in *Bi-Lo Foods, Inc.* was

the plaintiff resided in Montana when the plaintiff reached out from Montana to contact the defendant. *Bi-Lo Foods, Inc.* ¶ 19; *Milky Whey,* ¶ 26.

In *Tackett,* the defendants' only link to Montana was the Plaintiff. *Tackett,* ¶ 34. The defendants had "no connection with [Montana], other than the connection that [the plaintiff] himself ha[d] created. No part of the Defendants' course of conduct forming the basis of [the plaintiff's] claims occurred in Montana. Defendants never traveled to, conducted activities within, or sent anything or anyone to Montana." *Id*.

Ms. Groo's actions in this case differ markedly from *Milky Whey, Bi-Lo,* and *Tackett*. Rather than the Triple D *reaching out from Montana,* as occurred in Ms. Groo's cited authority, here, *Ms. Groo reached into Montana*. Ms. Groo, made an agreement with her co-conspirator, defendant Heather Keepers to "take[ ] [Jay Deist] down." app. 5, Ex A. Then, Ms. Groo, executing her intentional social media campaign, reached *into* Montana and targeted Montanans, and Triple D, a Montana family-owned business. app. 5, Ex. D; app. 5, Ex. F, ¶¶ 14, 16. Ms. Groo systematically and purposefully contacted Triple D's clients, many who are residents of Montana, and pressured them to take action *in Montana* against Triple D by canceling their contracts and ending their business relationships with Triple D. Ms. Groo took these actions in accordance with her agreement with Keepers to "take[] [Jay Deist] down" and destroy Triple D. Ms. Groo was with Keepers

"200%." App. 5, Ex D; app. 8, p. 4 and 7 (District Court Order finding, "Approximately one-quarter of the individuals and companies target [sic] by the above message were located in Montana. Doc 17, Ex. F, P14 [app. 5, Ex F, ¶14]; Doc. 19, Ex. A-I [app. 6, Ex. A-I]. Groo also tagged or contacted photographers and others with disparaging remarks about Triple D and encouraging them not to support Triple D, approximately a third of which were from Montana." *Id.*).

This case starkly contrasts with *Milky Whey, Tackett* and *Bi-Lo,* where the "harm" allegedly occurred in Montana merely because that was the where the plaintiffs in those cases happened to be located. In this case, the harm to Triple D occurred in Montana not only because that is where they reside, but also because Ms. Groo calculated her actions to reach into Montana, and in fact did reach into Montana, to harm Triple D. Ms. Groo's social media communications show a clear plan to incite Triple D's Montanan clients, and other clients, to stop doing business with the Triple D in Montana. app. 5, Ex. A and Ex. D.

It is precisely because Ms. Groo intentionally sent her communications into Montana, and they were received as she intended by individuals in Montana, that Triple D's business relationships were damaged in Montana. Thus, this Court should find Ms. Groo committed acts "resulting in accrual within Montana of a tort action." *Gateway Hosp. Grp. Inc.*, ¶ 12; Mont. R. Civ. P. 4(b)(1)(B).

B. The Exercise of Personal Jurisdiction over Ms. Groo Comports with Due Process.

Once the Court finds that Triple D's tort claims accrued in Montana under Mont. R. Civ. P. (4)(b)(1)(B), the second step is to determine whether exercising personal jurisdiction over Ms. Groo comports with traditional notions of fair play and substantial justice embodied in the Due Process Clause. *Tackett,* ¶ 22; *Ford Motor Co.*, ¶ 12.

As provided earlier, to determine if exercising personal jurisdiction over a defendant comports with due process, this Court considers whether:

> (1) the nonresident defendant purposefully availed itself of the privilege of conducting activities in Montana, thereby invoking Montana's laws;
>
> (2) the plaintiff's claim arises out of or relates to the defendant's forum-related activities; and
>
> (3) the exercise of personal jurisdiction is reasonable.
>
> *Ford Motor Co.,* ¶ 12.

"A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum." *Id.* at ¶ 13.

In deciding whether Triple D have established the first element of the Court's due process analysis, this Court seems to be considering an issue of first impression: whether Ms. Groo's documented social media campaign against Triple

D amounts to "purposely availing" herself of the privilege of conducting activities in Montana. In their effort to provide this Court with the "more comprehensive and in-depth analysis" requested, Triple D will address the "purposeful direction" test also utilized by Courts to analyze whether exercising personal jurisdiction over a nonresident defendant comports with due process in tort actions. Ms. Groo asserts the *Walden* approach is "more useful" for courts analyzing social media contacts than *Zippo or Calder.* But that is not the case in the Ninth, Seventh or Third[2] Circuits.

In the context of intentional torts, the Ninth Circuit and Seventh Circuit - utilize the purposeful direction test. In the Ninth Circuit, the purposeful direction test requires a showing that the defendant "(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Will Co. v. Lee*, 47 F.4th 917, 922 (9th Cir.

[2] Courts in the Third Circuit apply a similar *Calder* effects test where personal jurisdiction is predicated on a defendant's tortious conduct. *Torre v. Kardooni*, No. CV224693SDWMAH, 2022 WL 17813069, at *4 (D.N.J. Nov. 29, 2022), *report and recommendation adopted,* No. 22-4693 (SDW)(MAH), 2022 WL 17812193 (D.N.J. Dec. 19, 2022). To establish minimum contacts under the *Calder* effects test, a plaintiff must show that the: (i) defendant committed an intentional tort; (ii) plaintiff felt the brunt of the harm of the intentional tort in the forum state; and (iii) defendant expressly aimed the tortious conduct at the forum state, making the forum state the focal point of the tortious activity. *Id.* (citing *Marten v. Godwin,* 499 F.3d 290, 297 (3d Cir. 2007)).

2022) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004); *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)); *see also Calder v. Jones*, 465 U.S. 783 (1984). The Seventh Circuit uses a similar "purposeful direction" test for tort claims. In the Seventh Circuit, to determine whether the defendant's conduct was "purposefully directed" at the forum state, the Seventh Circuit has derived from *Calder* 465 U.S. at 104, three requirements: "(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." *Majumdar v. Fair,* 567 F. Supp. 3d 901, 908 (N.D. Ill. 2021) (quoting *Felland v. Clifton*, 682 F.3d 665, 675 (7th Cir. 2012)).

Plaintiffs have not found a case where this Court specifically adopted the purposeful direction test. *See DeWitt v. Best Buy Stores, L.P.,* No. CV-22-75-H-BMM, 2022 WL 17340258, at *2 (D. Mont. Nov. 30, 2022) (describing two separate tests, "the purposeful availment—rather than the purposeful direction—analysis applies…" *Id.*). However, the difference between the two tests appears more a function of the differences in terminology used in tort and contract actions, rather than a substantive difference in the degree of contact with the forum state required. The more descriptive language in the purposeful direction standard more accurately reflects the elements of intentional tort claims than the more general

language used in the purposeful availment test. (requiring "voluntary action designed to have an effect in the forum.")

As shown below, Ms. Groo's social media conduct in this case satisfies both standards. This Court should find that Montana's exercise of personal jurisdiction over Ms. Groo comports with due process.

1. Ms. Groo Purposefully Directed Her Activities at Montana.

Ms. Groo purposefully directed her activities at Montana. As was clarified in *Walden,* to satisfy the *Calder* effects test, it is the defendant's actions directed at the forum state that are relevant, not merely direction at a plaintiff who happens to reside there. *Walden v. Fiore*, 571 U.S. 277, 285 (2014). But this does not mean that the defendant's actions toward forum residents are irrelevant. *Walden* further stated "to be sure, a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties. But a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id* at 286. The plaintiffs' claims in *Walden* arose from a police officer's seizure of the plaintiffs' cash when they landed at the airport in Atlanta, Georgia, and subsequent drafting of a probable cause affidavit that the defendant officer sent to the US Attorney's office in Georgia. *Id* at 279-281.

Considering the facts of that case, the distinction drawn in *Walden* makes sense. The defendant in *Walden* took actions against the plaintiffs while both he and

they were physically present in Georgia. *Id.* His actions were not directed at Nevada, or even persons physically located in Nevada when the contacts occurred. The only connection to Nevada was that the plaintiffs happened to have their residence in the state and filed suit there after returning home. *Id.* The facts that gave rise to the suit centered on interactions that occurred while the plaintiffs and the defendant were all in Georgia. *Id.* That the plaintiffs in *Walden* were residents of Nevada is exactly the kind of "random, fortuitous, or attenuated" contacts that do not satisfy due process. *Id.* at 286. A defendant is not subject to personal jurisdiction in a foreign state simply because the defendant committed a tort against the plaintiff when the plaintiff happened to be traveling for vacation in the defendant's forum where the tort accrued. However, if the defendant reaches out beyond their state and into the plaintiff's forum, due process is satisfied. The United States Supreme Court has,

> upheld the assertion of jurisdiction over defendants who have purposefully "reach[ed] out beyond" their State and into another by, for example, entering a contractual relationship that "envisioned continuing and wide-reaching contacts" in the forum State or by circulating magazines to "deliberately exploi[t]" a market in the forum State. And although physical presence in the forum is not a prerequisite to jurisdiction, physical entry into the State—either by the defendant in person or through an agent, goods, *mail, or some other means—is certainly a relevant contact.*
>
> *Id.* at 285 (emphasis added) (internal citations omitted).

While the court in *Walden* discussed physical entry or presence in the forum state, it noted that its decision in that case did not address the *very different* question of whether and how a defendant's *virtual presence* and conduct translate in to contacts with a particular State. The court expressly left that question to be decided on another day. *Id*. at Fn. 9.

Since the Supreme Court's ruling in *Walden,* that very question was addressed in *Majumdar v. Fair*, 567 F. Supp. 3d 901, 911 (N.D. Ill. 2021). In *Majumdar,* a federal district court in Illinois, applying the purposeful direction test, analyzed whether Illinois could exercise personal jurisdiction over an out of state social media user who made defamatory statements on Twitter and Facebook about an Illinois university professor. *Id.* at 908. The Court in *Majumdar* recognized the impact of *Walden* on personal jurisdiction, stating:

> "It is true that, after *Walden*, it is no longer possible, if it ever was, to interpret *Calder* to mean that, when a plaintiff suffers a tort injury in a particular state, the fact that he suffered the injury in that state necessarily suffices to permit the exercise of personal jurisdiction over the accused defendant there… But *Walden* does not hold that the location of the injury is irrelevant. To the contrary, it explained that, depending on the nature of the plaintiff's claim, and particularly for defamation claims, the location of the injury may be a critical contact."
>
> *Id.* at 909 (internal citations omitted).

The defendant in *Majurmdar* argued*,* similar to Ms. Groo's argument here, "that the contacts out of which the claim arises consist only of statements posted on the

internet, where any person can read them wherever the person happens to be located; they are not specifically directed at any individual [residents of the forum state]." *Id.* Finding that argument unpersuasive, the *Marjurmdar* Court determined that the defendant, as Ms. Groo did here, directed her online statements to forum residents by "tagging" them in the posts. While the following quotation is quite long, the Court's analysis of the functional impact of social media "tagging" is instructive and relevant to the present case. The *Marjurmdar* Court explained,

> In response, plaintiff argues that defendant frequently mentioned the University of Chicago in her Twitter posts by using the "@UChicago" handle, and in a Facebook post, she tagged at least two Illinois residents, including one of plaintiff's current SALC colleagues at the University of Chicago. According to plaintiff, "tagging" someone on Facebook or "mentioning" them on Twitter is "the functional equivalent of sending that person a letter." *Cardno Chemrisk, LLC v. Foytlin*, No. 2014-3932 BLS1, 2015 WL 9275648, at *2 (Mass. Super. Oct. 26, 2015). Defendant replies that the two are not equivalent because including a tag or a mention does not make the post a direct communication between only a sender and a tagged or mentioned recipient; instead, the post is made publicly for all to see.
>
> Defendant's distinction makes no difference. The fact that a Twitter mention or Facebook tag is a means of addressing a public rather than private communication to a particular user does not make it any less an intentional, direct contact. When a Facebook user is tagged or a Twitter user is mentioned, the user receives a notification directing his or her attention to the post, just as an email user receives a notification when he or she receives an email. Defendant does not dispute that numerous courts have found emails to people in the forum state to be relevant contacts for jurisdictional purposes. *See, e.g.*, *Sunny Handicraft (H.K.) Ltd. v. Edwards*, No. 16 C 4025, 2017 WL 1049842, at *7 (N.D. Ill. Mar. 20, 2017) (distinguishing *Advanced Tactical* because it was "not merely fortuitous that the recipients of [defendant's] emails were located in Illinois; rather, [defendant] directed her e-mails deliberately

> and specifically at Illinois by sending personal messages to her Illinois-based business contacts"). At least in the context of this case, a mention on Twitter or a tag on Facebook strikes the Court as akin to an email for purposes of personal jurisdiction. By using the "@UChicago" handle in her Twitter posts, it is as if defendant sent open letters to the University of Chicago and posted copies on campus bulletin boards for all to see. The University of Chicago receives the "letter" by receiving a notification about it, and the letter also exists in a public forum where anyone else with interest in the community can read it by searching Twitter for "@UChicago" mentions.
>
> Indeed, the fact that these contacts were public rather than private may strengthen, rather than weaken, the argument that they are sufficiently substantial contacts to permit the exercise of personal jurisdiction. It is difficult to accept defendant's argument that she did not purposefully direct or expressly aim her posts at Illinois, not only because she specifically directed many of them at Illinois-based users such as "@UChicago," but also for the independent reason that the content of the posts suggests that pressuring the University of Chicago to take action against plaintiff and in favor of Jamshaid was the goal of her social media campaign.
>
> *Majumdar,* 567 F. Supp.3d at 911.

The court elaborated, stating:

> Had defendant simply written in her various Twitter and blog posts about events in Illinois from her home in Virginia, that may not, by itself, have sufficed to create a substantial relationship with Illinois. *See Saah v. Levine*, No. 3:20-CV-01682 (KAD), 2021 WL 3679305, at *6 (D. Conn. Aug. 19, 2021) (citing cases for the proposition that "merely alleg[ing] that Defendant posted allegedly defamatory material concerning out-of-state conduct online ... is not enough to hale the poster into the state where the plaintiff resides") (internal quotation marks omitted). But some decisions have recognized that internet posts that are "intended to cause others to engage in some action in the forum" may create contacts that satisfy due process.
>
> *Id.* at 913.

The court ultimately concluded that the "defendant reached out into Illinois by making allegedly defamatory statements that targeted Illinois Twitter and Facebook users, and it is reasonable to infer from the allegations that defendant's statements were intended to cause people in Illinois to take action against plaintiff." *Id.* at 913–14.

Inference is not necessary to glean Ms. Groo's intention to reach out to Montana and harm Triple D—she made her intentions very clear in her social media communications. After forming an agreement with Ms. Keepers to work together to destroy Montana Plaintiff Jay Deist and Montana Plaintiff Triple D, Ms. Groo targeted individuals, many of whom were Montana residents, that advertised upcoming group workshops at Triple D ("Group Leaders") and pressured them to cancel their business relationships with Triple D. Ms. Groo "tagged" these Group Leaders in public posts as part of her social media campaign against Triple D to bully and intimidate the Group Leaders into no longer doing business with Triple D. app. 1, ¶78; app. 5, Ex. D, app. 5, Ex F, ¶¶ 14, 16-18. Unfortunately, Ms. Groo's intimidation tactics worked. Group Leaders have told Triple D that they will no longer bring clients to Triple D's business because they are fearful of what actions Ms. Keepers and Ms. Groo will take against them and their businesses on social media. app. 1, ¶¶ 77-81; app. 5, Ex. F, ¶ 18.

These actions by Ms. Groo establish that she created sufficient minimum contacts to satisfy the requirements of due process. Like the defendant in *Majumdar*, Ms. Groo sent messages into Montana by "tagging" Montana residents in her social media posts. *Majumdar,* 567 F. Supp.3d at 911; app. 5, Ex. D; app. 5, Ex. F, ¶ 16. As was also the case in *Majumdar,* Ms. Groo did not simply send messages to individuals in the forum, but was actively attempting to get those individuals to take action in the forum against Triple D. *Majumdar,* 567 F. Supp.3d at 913-914; app. 5, Ex. D. These are not "random, fortuitous, [or] attenuated" contacts with Montana, but contacts that Ms. Groo intentionally sought out and aimed at Montana residents with the purpose of causing those persons to act in Montana against Triple D. app. 5, Ex. D; app. 5, Ex. F, ¶ 16. Accordingly, the Court should determine that Ms. Groo purposefully directed her activities into Montana establishing sufficient minimum contacts and the exercise of personal jurisdiction over her comports with due process.

a. Ms. Groo's Reliance on *Axiom, Torre,* and *Blessing* is Misplaced.

Ms. Groo's reliance on *Axiom, Blessing,* and *Torre* as authority applicable to her argument that she took no action in Montana and, therefore, this Court lacks personal jurisdiction of her is misplaced.

In *Axiom,* the plaintiff, a California company, brought suit in California against a United Kingdom company alleging copyright infringement. *Axiom Foods,*

Inc. v. Acerchem Int'l, Inc., 874 F.3d 1064, 1067 (9th Cir. 2017). The claims of copyright infringement were based upon the UK company allegedly using two of the plaintiff's logos in a newsletter that the UK company sent out promoting a new product. *Id.* The newsletter was emailed to 343 email addresses. *Id.* The majority of the email addresses that received the newsletter appeared to have no connection at all to the plaintiff. *Id.* at 1070. No more than ten of the newsletter's 343 recipients were physically located in California. *Id.* at 1070. Nowhere in the factual background of that case is there any indication that the defendant in Axiom was requesting or pressuring the recipients of the newsletter to take action against the plaintiff in California. *Axiom* at 1067. Indeed, there is no indication that the defendant even mentioned the plaintiff in the newsletter. *Id*. Ultimately, because the defendant only sent "one newsletter to a maximum of ten recipients located in California, in a market where [the defendant] has no sales or clients[,]" the Court concluded that the copyright infringement claim was not connected to California. *Id* at 1071.

Ms. Groo also attempts to draw analogies between the present case and *Blessing v. Chandrasekhar,* a Sixth Circuit case involving allegedly tortious twitter posts. 988 F.3d 889, 901 (6th Cir. 2021). However, *Blessing* is clearly distinguishable from the present case. The *Blessing* court found that there was no personal jurisdiction over the defendant, in part, because Kentucky's long arm

statute did not confer jurisdiction. Kentucky's long arm statute specifically required the tortious "act" to have occurred in Kentucky in order to allow jurisdiction. (stating: "The plaintiffs invoke only one provision of Kentucky's longarm statute to establish jurisdiction over Griffin and Chandrasekhar, KRS 454.210(2)(a)(3), which provides for personal jurisdiction over a defendant who causes "tortious injury by an act or omission in this Commonwealth." *Id.* at 901. The court relied on a previous Kentucky case in which a Kentucky court found that the statute did not confer jurisdiction over a claim arising from an "out-of-state defendant's mailing of a letter to a Kentucky resident, containing allegedly tortious information about another Kentucky resident. While the letter caused a consequence in Kentucky, it was "clear" that the defendant "ha[d] not acted in the Commonwealth of Kentucky." *Id.* at 902 (internal citations omitted). As the social media posts in *Blessing* were also sent while the defendants were outside the state, the court concluded that the longarm statute did not confer jurisdiction. *Id*. at 903.

The *Blessing* court then turned to due process concerns. Unlike Ms. Groo, the defendants in *Blessing* "took no affirmative steps to direct any communications to the plaintiffs or to anyone else in [the forum state], and they did not otherwise avail themselves of the benefits and protections of [the forum's] laws. There is no evidence that the defendants posted the tweets hoping to reach Kentucky as opposed to their Twitter followers generally." *Id.* at 906. The plaintiffs' complaints

in *Blessing* did not even "allege that either defendant ha[d] any Twitter followers in Kentucky or that anyone in Kentucky actually read the tweets." *Id.*

Finally, in *Torre,* the court analyzed personal jurisdiction using the *Calder* effects test. *Torre v. Kardooni*, No. CV224693SDWMAH, 2022 WL 17813069, at *3 (D.N.J. Nov. 29, 2022), *report and recommendation adopted,* No. 22-4693 (SDW)(MAH), 2022 WL 17812193 (D.N.J. Dec. 19, 2022) (citations omitted). None of the parties in *Torre* resided in New Jersey where plaintiff filed his suit. Defendant Kardooni was "a permanent resident of Vancouver, Canada, who also maintain[ed] her parents' residence in California" and "posted allegedly defamatory statements on social media about Plaintiff, a New York resident." *Id.* at *7. In finding the New Jersey Court lacked personal jurisdiction over defendant Kardooni, the U.S. Magistrate found it dispositive that,

> None of the posts mention New Jersey. Instead, the posts are directed at Plaintiff, and largely describe the parties' tumultuous relationship, which ended in 2014, and which largely took place in New York. Kardooni's Decl., D.E. 16-1, ¶¶ 10-14. Additionally, Kardooni posits that the social media posts reference individuals and businesses *outside* of New Jersey. Kardooni's Reply, D.E. 19, at 9-10 (stating that the posts reference: (i) Marquez and Romero, whose businesses are based in California and Japan, respectively; and (ii) wrestling organizations located in Pennsylvania (Dragon Gate USA) and Connecticut (Evolve)). Unlike *Calder*, where the out-of-state defendant expressly targeted California because it was "the focal point both of the story and of the harm suffered," 465 U.S. 789, New Jersey is not the focal point of the allegedly defamatory statements.
>
> *Id.* at *7 (emphasis in original).

The *Torre* Court also determined it could not exercise personal jurisdiction over defendant Coulter because,

> Coulter, a Massachusetts resident, posted allegedly defamatory statements on the Internet, purportedly about Plaintiff, a New York resident. Unlike Kardooni's posts, Coulter's posts do not tag Plaintiff. Coulter's posts do not reference Plaintiff by name, nor do they seem to target New Jersey, or Plaintiff's activities *vel non* in New Jersey.
>
> *Id.* at *8.

The Court found that defendant Coulter's Twitter post aimed at the general public. *Id.*

Unlike the defendants in *Torre, Blessing,* and *Axiom*, Ms. Groo targeted Montana in her intentional social media campaign to destroy the Triple D and "take[] [Jay Deist] down." Rather than making statements to a general audience, Ms. Groo "tagged" and referenced Triple D's clients, including specific individuals and entities in Montana, to pressure them to cancel contracts with the Triple D in Montana. Triple D's only place of business is in Montana and it exclusively conducts business in Montana. By targeting Triple D's clients and pressuring them to take action against Triple D in Montana, Ms. Groo directed her activities at the forum. Triple D has pointed to at least eight (8) Montanan clients that Ms. Groo selected and tagged in her posts about the Montana plaintiff, Triple D, and pressured those Montana clients to stop doing business with the Triple D. app. 5, Exhibit F, Affidavit of Jay Diest ¶ 16 a–h; app. 5, Exhibit G, Affidavit of Kimberly

Deist, ¶ 16, a–h. The Montana contacts created by Ms. Groo were not random, fortuitous, or attenuated, but specifically calculated to achieve her goal of destroying Triple D—she purposefully directed her actions at Montana.

2. Ms. Groo Purposefully Availed Herself of the Privilege of Conducting Activities in Montana.

Ms. Groo also purposefully availed herself of the privilege of conducting activities in Montana.

> A nonresident defendant purposefully avails itself of the benefits and protections of the laws of the forum state when it takes voluntary action designed to have an effect in the forum. Conversely, a defendant does not purposefully avail itself of the forum's laws when its only contacts with the forum are random, fortuitous, attenuated, or due to the unilateral activity of a third party.
>
> *B.T. Metal Works & Daryl Boyd, D.B.A.*, ¶ 35.

A nonresident defendant purposefully avails itself of the laws of the forum state "when it takes voluntary action designed to have an effect in the forum." *DeWitt,* 2022 WL 17340258, at *3 (quoting *Buckles v. Cont'l Res., Inc.*, 400 Mont. 18, 462 P.3d 223, 231–32 (Mont. 2020)). A defendant must take "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State." *DeWitt* 2022 WL 17340258, at *3 (quoting *Ford Motor Co. v. Mont. Eighth Judicial Dist.*, 592 U.S. ——, 141 S. Ct. 1017, 1025, 209 L.Ed.2d 225 (2021) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). "The contacts must be the defendant's own choice and not 'random, isolated, or fortuitous.'" *DeWitt* 2022 WL

17340258, at *3 (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984).

For the same reasons argued above in the discussion of "purposeful direction," Ms. Groo purposefully availed herself of the privilege of conducting activities in Montana. When Ms. Groo tagged Montanans in Facebook posts where she pressured and intimidated them into cancelling their business with Triple D she took voluntary actions designed to have an effect in Montana. The Court does not need to speculate as to Ms. Groo's intentions when taking those actions, we know from Ms. Groo's own statements that her goal was to destroy Triple D's business in Montana. app. 5, Ex. D. Further, Triple D's affidavits show that Ms. Groo's actions did indeed have their desired effect, as Triple D lost business as a direct result of Ms. Groo's public intimidation of their clients. app. 5, Ex F, ¶¶ 14, 16-18. Thus, the Court should determine Ms. Groo purposefully availed herself of the privilege of conducting activities in Montana.

3. Triple D's Claims Arise Out of or Relate to Ms. Groo's Forum-Related Activities.

Triple D's claims arise out of or relate to Ms. Groo's forum-related activities. The second element of this Court's due process analysis requires a plaintiff to show a connection between a defendant's in-state actions and a plaintiff's claim: "the suit must arise out of or relate to the defendant's contacts with the forum." *Ford Motor Co.,* ¶ 18, (quoting *Bristol-Myers Squibb Co.,* 137 S. Ct. at 1780). Put another way,

there must be "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co.,* 137 S.Ct. at 1780 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S. Ct. 2846, 2851, 180 L. Ed. 2d 796 (2011).

Triple D's claim for interference with contractual or business relations requires Triple D to show Ms. Groo's actions:

> (1) were intentional and willful,
>
> (2) were calculated to cause damage to the plaintiff in his or her business,
>
> (3) were done with the unlawful purpose of causing damage or loss, without right or justifiable cause on the part of the actor, and
>
> (4) that actual damages and loss resulted.
>
> *Grenfell v. Anderson,* 2002 MT 225, ¶ 64, 311 Mont. 385, 401, 56 P.3d 326, 336 (citing *Bolz v. Myers* (1982), 200 Mont. 286, 295, 651 P.2d 606, 611) (citations omitted in original).

Here, Ms. Groo sent Facebook messages into Montana as part of a targeted social media campaign directed at specific Montanans and a Montana business. The purpose of Ms. Groo's social media campaign was to "take[] [Jay Deist] down" and end Triple D's business. Ms. Groo's messages were received in Montana and had their desired effect—Ms. Groo intimidated Triple D's clients into cancelling their contracts with the Triple D. Ms. Groo's forum related activities directly relate to Triple D's claims. This Court should find the second element satisfied.

4. The Exercise of Personal Jurisdiction Over Ms. Groo is Reasonable.

The exercise of personal jurisdiction over Ms. Groo is reasonable. "Once the plaintiff demonstrates…that the defendant purposefully availed itself of the privilege of conducting activities in Montana—a presumption of reasonableness arises, which the defendant can overcome only by presenting a compelling case that jurisdiction would be unreasonable." *Ford Motor Co.*, ¶ 12. Triple D has established that Ms. Groo purposefully availed herself of the privilege of conducting activities in Montana. It is Ms. Groo's burden to present a compelling case that jurisdiction in Montana would be unreasonable. Ms. Groo is unable to meet that burden.

The reasonableness analysis generally depends on an examination of factors that illustrate the concept of fundamental fairness, such as: (1) the extent of the defendant's purposeful interjection into Montana; (2) the burden on the defendant of defending in Montana; (3) the extent of conflict with the sovereignty of the defendant's state; (4) Montana's interest in adjudicating the dispute; (5) the most efficient resolution of the controversy; (6) the importance of Montana to the plaintiff's interest in convenient and effective relief; and (7) the existence of an alternative forum. *Ford Motor Co.*, ¶ 29.

The majority of these factors weigh strongly in favor of finding the exercise of jurisdiction by Montana reasonable. With respect to the first factor, Ms. Groo

purposely injected herself into Montana to contact Montana citizens and disrupt business relationships and contracts in Montana. app. 5, Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; app. 5, Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; app. 5, Ex. D, Facebook Message to Group Leaders. Ms. Groo was acting in accordance with her agreement with Ms. Keepers as part of a concerted effort to destroy a family-owned Montana business. app. 5, Ex. A, Message between Ms. Groo and Ms. Keepers. Ms. Groo publicly targeted Montana residents when she called them out by name in a successful effort to intimidate them and stop them from doing business with Plaintiffs. app. 5, Ex. F, Affidavit of Jay Deist ¶¶ 14, 16-19; app. 5, Ex. G, Affidavit of Kimberly Deist ¶¶ 14, 16-19; app. 5, Ex. D, Facebook Message to Group Leaders.

With respect to the third factor, the conflict with Ms. Groo's state is minimal. New York does not have a legitimate interest in allowing its citizens to tortiously harm a legal and licensed business in Montana.

With respect to the fourth factor, the Plaintiffs are Montana citizens running a small family-owned Montana business. app. 5, Ex. F, Affidavit of Jay Deist ¶¶ 2, 4-6; app. 5, Ex. G, Affidavit of Kimberly Deist ¶¶ 2, 4-6. Montana has a strong and legitimate interest in protecting its citizens and businesses from tortious interference, particularly from tortious interference from a business competitor such as Ms. Groo, who reach into Montana to cause harm here.

With respect to the fifth factor, Montana provides the most efficient resolution of the controversy. The Plaintiffs, their business, their facility, and their records are all located in Montana. The Plaintiffs have also brought suit against Ms. Groo's co-defendants in Montana. Triple D would not be able to join all the defendants in a lawsuit in New York where Ms. Groo resides. Montana presents the only forum where all defendants are subject to jurisdiction and therefore presents the only forum where this case can be brought in a single action.

Finally, the sixth factor weighs strongly in favor of allowing Triple D to litigate in Montana. Plaintiffs are long-term residents of Montana, who have built up a family business in the state over the past forty-five (45) years. Plaintiffs have already suffered significant financial strain as a result of Ms. Groo's and the other Defendant's actions. Forcing the Plaintiffs to travel to New York to litigate their cause of action against Ms. Groo would impose a significant burden and unfairly prejudice Triple D. Ms. Groo is the one who reached into Montana with the intention to destroy Triple D's business. Fairness dictates that she now come back to Montana to answer for her actions.

Ms. Groo cannot "present a compelling case" to overcome the presumption that Montana is a reasonable forum for this case. Jurisdiction is properly in Montana.

VI. Conclusion

For the reasons cited above, Triple D respectfully request that the Court deny Ms. Groo's petition for a Writ of Supervisory Control.

DATED this 20th day of February 2023.

KRIS A. MCLEAN LAW FIRM, PLLC

Kris A. McLean
Kris A. McLean
Tyson A. McLean
Jordan A. Pallesi
Attorneys for Plaintiffs

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I hereby certify that the Appellant's Opening Brief is printed with proportionately-spaced Times New Roman typeface of 14 points; is double spaced except for lengthy quotations, footnotes, and argument headings; and does not exceed 10,000 words. The exact words count is 9,760 words as calculated by my Microsoft Word software excluding the Table of Contents, Table of Authorities, Certificate of Service, and Certificate of Compliance.

DATED this 20th day of February, 2023.

KRIS A. MCLEAN LAW FIRM, PLLC

Kris A. McLean
Kris A. McLean
Tyson A. McLean
Jordan A. Pallesi
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Tyson Allen McLean, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 02-21-2023:

David Brian Cotner (Attorney)
2700 Radio Way
Missoula MT 59808
Representing: Melissa Groo
Service Method: eService

Brian Geer (Attorney)
2700 Radio Way
Missoula MT 59808
Representing: Melissa Groo
Service Method: eService

William Edward Rideg (Attorney)
PO Box 701
Missoula MT 59806
Representing: Heather Lynn Keepers, Justine Hayes Glasman
Service Method: eService

Kris A. McLean (Attorney)
PO Box 1136
Florence MT 59833
Representing: Kimberly Deist, Lorney Jay Deist, Triple D Game Farm, Inc.
Service Method: eService

Jordan Anthony Pallesi (Attorney)
2315 McDonald Ave
Suite 106
Missoula MT 59801
Representing: Kimberly Deist, Lorney Jay Deist, Triple D Game Farm, Inc.
Service Method: eService

Amy Eddy (Respondent)
920 S. Main, Ste. 310
Kalispell MT 59901
Service Method: Conventional

Electronically Signed By: Tyson Allen McLean
Dated: 02-21-2023