

IN THE SUPREME COURT OF THE STATE OF MONTANA

Case No. OP 22-0587

MELISSA GROO,

Petitioner,

v.

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

Respondent.

PETITIONER'S REPLY 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*

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I. Introduction and Summary

This case is an important opportunity for this Court to affirm that its well-established personal jurisdiction standard for intentional torts allegedly committed outside of Montana by non-residents applies regardless of the method of communication used.

Plaintiffs unsuccessfully attempt to distinguish *Tackett v. Duncan*, 2014 MT 253, 376 Mont. 348, 334 P.3d 920, *Bi-Lo Foods Inc. v. Alpine Bank*, 1998 MT 40, 287 Mont. 367, 955 P.2d 154, and *Milky Whey, Inc. v. Dairy Partners, LLC*, 2015 MT 18, 378 Mont. 75, 342 P.3d 13. Plaintiffs fail to articulate any difference between these cases and this case other than the method of communication, which cannot alone justify a different personal jurisdiction standard. Plaintiffs wrongly rely on *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 2019 MT 115, 395 Mont. 478, 443 P.3d 407. Plaintiffs ignore defendant's significantly greater Montana contacts in *Ford*, and the fact that it involved a products liability negligence claim, not an intentional tort.

Ample Montana caselaw prohibits personal jurisdiction under Mont. R. Civ. P. 4(b)(1)(B) on much closer intentional tort cases than this one. Finding personal jurisdiction here would require overturning *Tackett*, *Milky Whey* and *Bi-Lo Foods*. The place of defendant's alleged activities and defendant's contacts with the forum state determine personal jurisdiction for alleged intentional torts, not the method of

communication used by a defendant. As technology continues to change and social media proliferates, making the method of communication dispositive would quickly erode the well-established Montana standard for personal jurisdiction in intentional tort cases.

With regard to due process, Plaintiffs unsuccessfully attempt to distinguish only three of the cases that Melissa cited in which courts found no personal jurisdiction over nonresident defendants for internet or social media-based contacts. Plaintiffs do not address most of the large body of federal and non-Montana caselaw finding no personal jurisdiction in similar cases. Plaintiffs rely only on *Majumdar v. Fair*, 567 F.Supp.3d 901 (N.D. Ill. 2021), which has qualitatively different facts and legal claims.

The key question is did Melissa intentionally target Montana or a Montana audience? This is a very different question than whether Melissa intentionally targeted a Montana resident or business, which is irrelevant. The answer to the first question is no. Melissa's posts and the individuals she tagged were specific to the wildlife photography industry – not specific to Montana. The fact that a minority of the individuals she tagged in a single comment to Heather Keeper's post are believed to reside in Montana does not mean she targeted the state of Montana or a Montana audience. She has no other ties to Montana and conducts no business here. As such, exercising personal jurisdiction over her violates due process.

II. Facts in the record, not the District Court's order, are dispositive for this Court's *de novo* review.

Plaintiffs do not dispute that Melissa has no ties to Montana. Opening Brief, p. 4-6; Response, p. 2-3. Plaintiffs do not dispute the facts excerpted from the record in Melissa's Opening Brief, but instead rely on the District Court's recitation of facts. The record establishes only one comment by Melissa to a public Facebook post by Heather Keepers, who was not a Montana resident at the time. Melissa tagged 11 individuals on her comment, three of whom were allegedly Montana residents. Appx. 5, Ex. D, Ex. F, ¶16(b)-(f); Ex. G, ¶16(b)-(f). All other alleged social media activity is commenting on or posting publicly available information. Appx. 5, Ex. B & C. The record contains no additional evidence of Melissa tagging other Montana residents. The remainder of the record is only speculative allegations without evidentiary support. Appx. 5, Ex. F, ¶16(a), ¶16(g), ¶17-18; Ex. G, ¶16(a), ¶16(g), ¶17-18.

Plaintiffs argue that Melissa is Plaintiffs' competitor and "stands to gain financially by eliminating Triple D as one of her competitors in the wildlife photography business." Response, p. 7-8. Melissa leading photography tours and selling photographs does not make her a competitor of Plaintiffs, who run a photography game park. Plaintiffs losing customers would not positively impact Melissa financially. This argument is a "red herring" and creates no factual or legal benefit for Plaintiffs.

This Court reviews the district court’s order *de novo*. *Buckles v. Cont’l Res., Inc.*, 2020 MT 107, ¶10, 400 Mont. 18, 462 P.3d 223. “De novo” means “anew” and is a “nondeferential standard.” *Cole v. Valley Ice Garden, LLC*, 2005 MT 115, ¶4, 327 Mont. 99, 133 P.3d 275. *See Citizens for a Better Flathead v. Bd. of Cnty Comm’rs*, 2016 MT 325, ¶14, 385 Mont. 505, 386 P.3d 567 (“A de novo review is one that is ‘anew’ from beginning to end”). *De novo* review of the district court order requires analyzing the facts in the record to determine whether the district court’s findings of fact were correct in addition to *de novo* review of the district court’s legal conclusions.

The district court incorrectly interpreted the record by finding Melissa sent a message to multiple individuals, one-quarter of whom were located in Montana, and also “tagged or contacted photographers and others” disparaging Triple D, “a third of which were from Montana.” Appx. 8, p. 5, interpreting Diest Affs., Appx. 5, Ex. F & G. The record shows only one comment in which Melissa tagged 11 individuals, three of whom are allegedly Montana residents. Appx. 5, Ex. D. There is no second post or comment and “tagging” of individuals, one-third of whom were Montana residents by Melissa in the record.

III. Melissa is not subject to personal jurisdiction under Mont. R. Civ. P. 4(b)(1)(B).

a. Under *Ford*, no personal jurisdiction exists over Melissa.

Plaintiffs double down on the district court's erroneous reliance on *Ford*. Plaintiffs allege two intentional torts against Melissa – Tortious Interference with Contractual Relations and Tortious Interference with Prospective Economic Advantage (Business Relations). Appx. 1, p. 18. *Tackett, Milky Whey* and *Bi-Lo Foods* also involve intentional torts. *Ford* is a products liability negligence case that based jurisdiction on “stream of commerce plus” purposeful availment. *Ford*, ¶17. *Ford* does not overrule or question *Tackett, Milky Whey* and *Bi-Lo Foods*, but distinguishes them. *Id.*, ¶11, n. 1. *Ford* discusses the relevance of the particular cause of action, noting “[f]ocusing on the relationship between the defendant (Ford), the forum (Montana), **and the litigation (Lucero’s design defect, failure to warn, and negligence claims arising from a vehicle accident that occurred in Montana)**, we conclude Lucero’s claims relate to Ford’s in-state activities.” *Ford*, ¶27 (emphasis added). The distinction between *Ford* as a products liability negligence claim and *Tackett, Milky Whey* and *Bi-Lo Foods* as intentional tort cases mattered to this Court in *Ford* and it matters in this case. These intentional tort cases, not *Ford*, are controlling.

Even if *Ford* were applicable, the personal jurisdiction test it sets forth is not met. *Ford* affirms the requirement in *Walden v. Fiore*, 571 U.S. 277 (2014), that

“[t]he defendant’s relationship with the forum and the litigation must relate to the contact the defendant itself created with the forum.” *Ford*, ¶9. *Ford* held “exercising specific personal jurisdiction over a defendant is only appropriate when both the defendant and the underlying controversy are appropriately affiliated with Montana.” *Id.* *Ford* affirmed *Walden*’s holding that “it is the defendant’s conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction.” *Id.*, ¶26.

Ford observed “[u]nlike in *Walden*, where the plaintiffs were the only connection between the defendant and the forum state, here, [Plaintiff] is by no means the only connection between Ford and Montana.” *Id.* ¶27. *Ford* “systematically served a market in Montana,” and “did substantial business in the State – among other things including advertising, selling, and servicing the model of vehicle the suit claims is defective.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S.Ct. 1017, 1022, 1028 (2021); *Id.*, ¶23, 27. This included “wide-ranging promotional activities, including television, print, online and direct-mail advertisements,” providing “original parts to auto supply stores and repair shops across the country,” and offering “an array of maintenance and repair services thus fostering an ongoing relationship between Ford and its customers” through its 36 dealerships in Montana. *Id.* at 1022-23; *Ford*, ¶17. Melissa has none of these

contacts with Montana. Melissa's alleged actions were not commercial, did not target Montana consumers, or the state of Montana.

b. *Tackett, Milky Whey, and Bi-Lo Foods* are applicable precedent.

Plaintiffs unsuccessfully try to distinguish *Tackett, Milky Whey* and *Bi-Lo Foods*. The only distinction between those cases and this case is the method of communication. Technological advances do not change the personal jurisdiction standard. Opening Brief, p. 22-24.

Plaintiffs attempt to distinguish *Tackett* by arguing the defendant's only link to Montana was the plaintiff, defendant had no connection to Montana, and no part of defendants' course of conduct forming the basis for plaintiff's claims occurred in Montana. Response, p. 16. In *Tackett, Duncan*, a Florida resident transferred property to Grayson Tackett, a Kentucky resident whose son, Brian Tackett, resided in Montana. After damage to the property, Brian hired Tutwiler, a Florida adjusting company, to file a property damage claim with Citizens, a Florida insurer. *Tackett*, ¶¶3-8. Brian alleged "he reached an agreement" with Tutwiler and based on that agreement, wired Tutwiler's adjusting fees with the understanding that his father Grayson would receive 100% of the property damage proceeds from Citizens. *Id.*, ¶8. Citizens issued the proceeds to Grayson and Duncan jointly. Brian sued Duncan, Citizens and Tutwiler, alleging multiple intentional torts.

Despite the fact that Brian alleged fraudulent inducement, the record is silent as to who initiated communications that led to Brian and Tutwiler's agreement, or the methods of communication used. After analyzing U.S. Supreme Court and Montana cases involving personal jurisdiction, *Tackett* reiterated that "interstate communication is an almost inevitable accompaniment to doing business in the modern world, and cannot by itself be considered a 'contact' for justifying the exercise of personal jurisdiction." *Id.*, ¶30. *Tackett* necessitates dismissal of Plaintiffs' claims against Melissa. Melissa has no connection to Montana and none of the actions that Plaintiffs allege against her occurred in Montana.

Plaintiffs attempt to distinguish *Milky Whey* on the grounds 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." Response, p. 15. In *Milky Whey*, defendant Dairy Partners, a Minnesota company entered into "nine purchase orders through telephone, fax, or email, valuing over \$181,000" with Milky Whey, a Montana company, for dairy products. *Milky Whey*, ¶4. Contrary to Plaintiffs' argument, "most of these previous sales involved Dairy Partners contacting Milky Whey in Montana." *Id.*, ¶4. Milky Whey would wire Dairy Partners money, and Dairy Partners would ship the product to Utah, where Milky Whey picked it up.

In fact, the transactions *were* initiated by the non-resident Defendant. Just like here, defendant took no actions in Montana, but plaintiff alleged it felt the

negative effects of defendant's actions in Montana. This Court held that was insufficient. If a non-resident defendant initiating "most" of nine direct communications via telephone, fax and email with a Montana company selling \$181,000.00 worth of product to the Montana company is insufficient to establish personal jurisdiction, the scant Montana contacts alleged here cannot establish personal jurisdiction.

Plaintiffs attempt to distinguish *Bi-Lo Foods* by arguing "the defendant's only connection to Montana . . . was the plaintiff resided in Montana when the plaintiff reached out from Montana to contact the defendant." Response, p. 16. Bi-Lo Foods, a Montana company "entered into negotiations for the purchase of refrigeration equipment" with Donald Hermann, a Colorado resident. *Bi-Lo Foods*, ¶6. Assumedly, these negotiations occurred by some medium of communication, either in person, telephone, fax or email. "As part of these negotiations, Hermann instructed Bi-Lo to deposit earnest money into an escrow account at Alpine [Bank]'s offices in Grand Junction Colorado." *Id.* Bi-Lo Foods mailed a \$10,000.00 check to Alpine Bank, which deposited it in Hermann's account. Negotiations between Bi-Lo and Hermann broke down, Bi-Lo demanded its money back, Alpine and Hermann refused, and Bi-Lo filed suit alleging negligence and multiple intentional torts. Nothing in the decision supports Plaintiff's argument that Bi-Lo Foods "reached out from Montana to contact the defendant." Response, p. 15. The parties

negotiated from different states, and the defendant took actions in Colorado that the Montana plaintiff alleged negatively affected it in Montana. If alleged fraudulent inducement through “negotiations” with a Montana company leading to a loss of \$10,000 is insufficient to establish personal jurisdiction, no personal jurisdiction can lie here.

Plaintiffs’ attempt to distinguish these cases on the basis that a Montana resident initiated an interstate communication that led to the alleged tortious conduct by defendant fails for multiple reasons. First, the non-resident defendant initiated most of the sales orders in *Milky Whey*, and the court still found no jurisdiction. Neither *Bi-Lo Foods* nor *Tackett* address which party initiated the communication, meaning this simply is not a salient fact. The salient fact in these cases is the defendants’ actions occurred outside of Montana. Similarly, all of Melissa’s alleged acts occurred outside of Montana. Based on this well-established precedent, the district court erred in finding personal jurisdiction over Melissa.

IV. Personal jurisdiction over Melissa would violate due process.

Because no personal jurisdiction exists over Melissa under Mont. R. Civ. P. 4(b)(1)(B), the Court need not reach the question of whether exercising personal jurisdiction over Melissa violates due process. Should the Court reach this question, Plaintiffs’ arguments are unsuccessful in overcoming the significant applicable

precedent establishing personal jurisdiction would violate Melissa's due process rights.

Plaintiffs do not dispute the importance of interstate federalism, the liberty interest at issue in the due process personal jurisdiction analysis, or the continued applicability of these principles in cases involving new technologies. Plaintiffs (1) unsuccessfully attempt to distinguish *Blessing v. Chandrasekhar*, 988 F.3d 889 (6th Cir. 2021), *Torre v. Kardooni*, 2022 U.S. Dist. LEXIS 227622 (D.N.J. Dec. 19, 2022), and *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064 (9th Cir. 2017); and (2) rely on *Majumdar v. Fair*, 567 F.Supp.3d 901. Plaintiffs do not address the more than 20 other applicable federal cases cited by Melissa. *Majumdar* is a non-binding unpersuasive drop in an ocean of nationwide precedent which finds no jurisdiction for social media activity where social media activity is not targeted at a state, as opposed to a plaintiff. The relationship between the defendant and the forum state and the defamation claim in *Majumdar* distinguish it from this intentional tort case in which Melissa has no relationship with Montana.

a. *Axiom Foods, Blessing* and *Torre* are applicable.

Plaintiffs attempt to distinguish *Axiom* by arguing the facts do not indicate that the defendant mentioned Plaintiff in its newsletter or “was requesting or pressuring the recipients of the newsletter to take action against the plaintiff in California.” Response, p. 28. *Axiom* was a copyright infringement case, so the facts

relevant to the cause of action were distribution of the infringing materials, not pressuring anyone to take action against the plaintiff. The relevant fact relating to personal jurisdiction was whether defendant took acts infringing Plaintiff's copyright in the forum state. *Axiom* held a defendant sending an email containing infringing material to 343 email addresses, 69 of which were associated with California residents, ten of whom were physically located in California, was not sufficient to establish personal jurisdiction.

Similarly, Melissa's comments on one public post tagging 11 wildlife photographers, including three alleged Montana residents, is insufficient to establish personal jurisdiction because Melissa did not target Montana or Montana residents, but instead targeted an industry which included some Montana residents. The record is silent as to how many of the Montana residents tagged actually viewed Melissa's comment, acted on her comment, or were geographically present in Montana when they viewed her comment. Without more, "[t]he foreseeability of injury in a forum 'is not a "sufficient benchmark" for exercising personal jurisdiction.'" *Axiom*, 874 F.3d at 1070 (citations omitted).

Blessing analyzed personal jurisdiction of an out-of-state defendant under both the Kentucky long-arm statute and due process. Melissa cited *Blessing*'s long-arm analysis recognizing that while Kentucky's long-arm statute language is different from Mont. R. Civ. P. 4(b)(1)(B), as interpreted by this Court in the cases

cited above, the functional rule is the same – an intentional tort cannot accrue in Montana where all of the defendant’s acts occurred outside of Montana. With that understanding, Melissa noted *Blessing*’s holding that “merely causing a ‘consequence’ in Kentucky” is insufficient and is instructive in interpreting Mont. R. Civ. P. 4(b)(1)(B). Opening Brief, p. 15. Additionally, *Blessing*’s due process analysis is directly on point – an out-of-state defendant engaging in social media activity outside the forum state that plaintiff alleges caused it harm in the forum state, without more, is insufficient to establish jurisdiction.

Plaintiffs allege that *Blessing* is distinguishable because defendant took no affirmative steps to communicate with plaintiff or anyone else in the forum state and did not avail herself of Kentucky laws, and there was no evidence that defendant hoped her tweets would reach Kentucky as opposed to her Twitter followers generally. Response. p. 29. Similarly, there is no evidence that Melissa took affirmative steps to communicate with Plaintiffs or Heather. Heather, a non-resident, reached out to her and they communicated privately. Melissa intended her public posts to reach the national and international wildlife photography community. The mere fact that a small number of individuals tagged in one comment that Melissa made to a post by Heather Keepers allegedly included a small number of Montana residents does not qualify as Melissa targeting Montana or a Montana audience. If

that were enough, then tagging anyone would automatically trigger jurisdiction in the tagged person's place of residence.

Plaintiffs attempt unsuccessfully to distinguish *Torre*. Response, p. 31-32. In *Torre*, Defendant tagged multiple people associated with Plaintiff's career in an attempt to damage his professional reputation. Plaintiff was a New York resident, but had partnered with a New Jersey-based wrestling promotion company and his career was based in New Jersey. 2022 U.S. Dist. LEXIS 228356, *2-7. The plaintiff alleged "Defendants expressly targeted their defamatory social media posts at residents of New Jersey, knowing that Plaintiff would suffer the brunt of the harm there." *Id.* at *6. The plaintiff further alleged "at least one New Jersey resident has perceived Defendants' defamatory statements as truthful, and thus acted upon Defendants' defamatory statements to cause injury to Plaintiff." *Id.* Even in a defamation case, this did not establish personal jurisdiction over defendant in New Jersey because "although Plaintiff's Declaration may establish that Kardooni sought to harm Plaintiff's reputation, it does not establish that Kardooni directed her activities at New Jersey." *Id.* at *20.

Plaintiffs allege that Melissa's actions were distinguishable from these cases because "rather than making statements to a general audience, Ms. Groo 'tagged' and referenced Triple D's clients, including specific individuals and entities in Montana." Response, p. 31. Plaintiffs reason "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.” *Id.* Plaintiffs continue to misstate the relevant analysis. Melissa’s opening brief provided extensive caselaw establishing that the fact that the subject of her comment and posts was in Montana is insufficient to establish personal jurisdiction over her. The *Blessing* plaintiffs were Kentucky residents, the *Axiom* plaintiffs were in California, and the *Torre* plaintiff’s wrestling career was in New Jersey – and in each case the court found no personal jurisdiction. In *Blessing* and *Torre* no personal jurisdiction existed despite defendants’ social media activity targeting plaintiffs specifically. *Torre* made this conclusion despite defendant tagging individuals in the forum state and individuals associated with Plaintiff’s wrestling career, and the allegation that one of them took steps in the forum state as a result of defendants’ social media activity. These cases are persuasive precedent that show exercising personal jurisdiction over Melissa violates due process. The evidence in the record establishes Melissa was publicly posting to anyone in the world. Her tags on one comment to Heather Keeper’s post were to a specific industry – wildlife photographers – not to a Montana audience.

b. No jurisdiction over Melissa exists under a purposeful availment or purposeful direction test.

The parties agree that the due process analysis requires all three of the following elements are met:

- (1) Defendant's contacts with the forum state must show that it purposefully availed itself of the privilege of conducting business in the forum state or purposefully directed its activities at the state,
- (2) The plaintiff's alleged injuries must arise out of the defendant's forum-related activities, and
- (3) Any exercise of personal jurisdiction must comport with traditional notions of fair play and substantial justice.

Ford, ¶12; *Axiom Foods, Inc.*, 874 F.3d at 1068.

Regarding the first element, the parties agree that a plaintiff must establish that the defendant (1) committed an intentional act, (2) expressly aimed at the forum state, and (3) causing harm that the defendant knows is likely to be suffered in the forum state. Response, p. 19. Sometimes this is referred to as “the *Calder* effects test,” and sometimes it is referred to as “purposeful direction” as distinguished from purposeful availment. See *Calder v. Jones*, 465 U.S. 783 (1984); *Cameron v. Thomson Int’l.*, 2021 U.S. Dist. LEXIS 147111, *10 (D. Mont. July 19, 2021) (“purposeful direction test is typically reserved for intentional torts”); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (“We evaluate purposeful direction under the three-part ‘effects’ test traceable to . . . *Calder*”).

Walden clarified that the *Calder* effects test requires more than alleged actions by a defendant intending to harm a resident defendant in the forum state. *Majumdar v. Fair*, the main case relied on by Plaintiffs, stated “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.” 567 F.Supp.3d at 909.

The *Calder* effects test, as clarified by *Walden*, is the dominant approach courts use when analyzing personal jurisdiction in internet contacts or social media activity cases. Melissa cites many cases applying the *Calder* effects test before and after *Walden* analyzing personal jurisdiction based on internet contacts or social media activity. These cases found no personal jurisdiction for lack of defendant’s targeting the forum state or its residents with its internet activity or social media activity. See Opening Brief, pp. 29-40.

c. *Majumdar v. Fair* is distinguishable and not controlling.

Plaintiffs provide one case in response to the significant federal caselaw provided by Melissa – *Majumdar v. Fair*, 567 F.Supp.3d 901. *Majumdar* is a Northern District of Illinois case that is not controlling on this Court. Plaintiffs’ reliance on *Majumdar* is not persuasive for two reasons. First, defendants’ contacts with the forum state in *Majumdar* are much more significant than Melissa’s contacts

with Montana. Second, *Majumdar* involved a defamation claim, not the causes of action at issue here.

In *Majumdar*, Plaintiff Rochona Majumdar sued Defendant Christine Fair. Majumdar was a University of Chicago professor and Illinois resident. Fair attended University of Chicago and studied with Plaintiff's husband, who was also a professor. Fair graduated and began making public statements critical of Majumdar and her husband. Fair wrote a letter to the University's Title IX Coordinator, alleging plaintiff was hired because her husband exploited his position and that Majumdar made disparaging, homophobic and caste-based remarks about students. Zain Jamshaid, another former student made allegations that Majumdar had sexually harassed and assaulted him. Fair posted a piece to her blog entitled "The University of Chicago is a Predator Protection Racket" in which she posted her letter to the Title IX coordinator, and reposted the blog post on Twitter, tweeting that "plaintiff 'sexually assaulted' Jamshaid, 'mocked him for being gay, Muslim, low caste . . . plagiarized him . . . mocked his national origins and held his visa status over him.'" *Id.* at 904-905.

Fair posted many tweets with negative statements about Majumdar over the next year. In several tweets, Fair included correspondence between Fair and the University's Title IX coordinator and correspondence between Jamshaid and the University's Title IX coordinator. Fair tagged @UChicago, the University's handle,

in these tweets, and criticized the University for employing professors' spouses and allowing Majumdar and her husband to continue working at the University. In one Facebook post, Defendant "tagged" a number of people including at least one person in Illinois. Alleging reputational damage, Majumdar sued Fair for defamation and false light. *Id.* at 907.

The court analyzed the *Calder* effects test as clarified in *Walden*, noting the personal jurisdiction standard "is not satisfied merely because the defendant deliberately caused an injury to a person whom he knows to be a resident of the forum state." *Id.* at 908. *Majumdar* held "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 (emphasis added). *Majumdar* noted that *Walden* distinguished *Calder* in part based on the fact that *Calder* was a libel case, and reputational injury was a unique type of injury relative to other intentional torts. *Id.* at *15-17. *See Walden*, 571 U.S. at 287 (the "strength of the connection" between the defendants' acts and the forum state was "largely a function of the nature of the libel tort").

The Court considered that the reputational injury alleged is relative to "members of the University of Chicago community in Illinois," and that "the University of Chicago – and therefore, its home state of Illinois – is plainly the 'focal point both of the story and of the harm suffered.'" *Id.* at 910. *Majamdur* reasoned

“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. . . . [T]he letter also exists in a public forum where anyone else with interest in the community can read it by searching Twitter for ‘@UChicago’ mentions.” *Id.* at 911. Fair had lived in Illinois and the underlying acts leading to her posts occurred while she lived there directly interacting with Plaintiff and Plaintiff’s husband.

Plaintiffs did not allege slander, libel or defamation in this case. One can assume this is because the elements of defamation claims could not be met, including the fact that Melissa’s posts were true. § 27-1-802, MCA (“Libel is a false and unprivileged publication); § 27-1-803, MCA (“Slander is a false and unprivileged publication”); *State v. Helfrich*, 277 Mont. 452, 459, 922 P.2d 1159 (1996) (“truth is an absolute defense to . . . a civil defamation suit”). Plaintiffs alleged Tortious Interference with Contractual Relations and Tortious Interference with Prospective Economic Advantage (Business Relations), which require intentional actions calculated to cause damage to plaintiff’s business with the unlawful purpose of causing damage or loss without a justifiable cause, resulting in actual damages. *Grenfell v. Anderson*, 2002 MT 225, ¶64, 311 Mont. 385, 56 P.3d 326. These are not reputational torts such as libel, slander or defamation, and therefore, the

reputational damage alleged in *Calder* and *Majumdar* is distinguishable and not an element of Plaintiffs' claims against Melissa.

Even if Plaintiffs alleged defamation here, no personal jurisdiction exists because Melissa's posts did not target Montana or a Montana audience. Melissa's Opening Brief cites numerous defamation cases finding no personal jurisdiction based on internet and social media activity. Like those cases, Melissa did not target Montana or a Montana audience. Melissa has never interacted with Plaintiffs, never lived in Montana or visited the county in which Plaintiffs' reside and has no other contacts with Montana. Melissa's posts and comment did not tag Plaintiffs' handle or accounts. Melissa's public posts were focused on an industry-wide issue – photography game parks – not on Montana. She tagged people when commenting on a post based on their participation in this industry, not based on their residence. The fact that three out of 11 individuals tagged in Melissa's comment are allegedly Montana residents does not create a sufficient connection with Montana to find she has purposefully availed herself or purposefully directed her actions to Montana.

d. Personal jurisdiction would not be reasonable.


Plaintiffs recycle their purposeful availment and injury-related arguments to assert personal jurisdiction is reasonable. For reasons already discussed this argument fails. Plaintiffs do not counter caselaw presented by Melissa that convenience to Plaintiff does not mean personal jurisdiction is reasonable.

V. Conclusion

This Court should grant Melissa's Petition and reverse the District Court's order finding personal jurisdiction over Melissa.

DATED this 7th day of March 2023.

COTNER RYAN LAW, PLLC

By: 
David B. Cotner

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is proportionately spaced typeface of 14 points and does not exceed 5,000 words.



David B. Cotner

CERTIFICATE OF SERVICE

I, certify that on March 7, 2023 a true and correct copy of the foregoing was filed with the Montana Supreme Court. Additionally, a copy was provided to the following through the Montana Court Filing System:

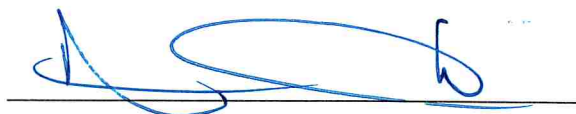
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I, David Brian Cotner, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellant's Reply to the following on 03-07-2023:

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