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IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT,
MIAMI-DADE, FLORIDA

LIPSCOMB, EISENBERG & BAKER, PL, a
Florida professional limited liability
company, and MICHAEL KEITH
LIPSCOMB, an individual,

Plaintiffs,

vs.

MALIBU MEDIA, LLC, a California
limited liability company, PILLAR LAW
GROUP, PLLC, a California professional
law corporation, DIGITAL CONTENT,
INC., an administratively dissolved
Wyoming corporation, DATA
ANALYTICS, INC., a foreign corporation,

Defendants.

Case No. 2016-014947-CA-01

**Defendant Pillar Law Group, PLLC's Motion to
Dismiss Complaint for Lack of Personal Jurisdiction**

Defendant, Pillar Law Group, PLLC, erroneously sued as Pillar Law Group, PLLC ("Pillar"), by and through their counsel, appearing specially for the limited purpose of this motion only, moves pursuant to Fla. R. Civ. P. 1.140 to dismiss the Confidential Complaint for lack of personal jurisdiction.¹ In support, Pillar states:

¹ Pillar appears specially for contesting jurisdiction by way of this motion. Pillar reserves the right to move to dismiss Plaintiffs' Confidential Complaint for its failure to state a cause of action against it should such motion become necessary.



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Introduction

Plaintiffs filed their confidential Complaint on or about June 29, 2016 against all defendants. Plaintiffs have alleged Defamation (County V); Declaratory Judgment (Count VII), and Violation of the Computer Fraud and Abuse and Data Recovery Act (Count IX) against Pillar. Plaintiffs fail to allege sufficient facts to bring this action against Pillar within the scope of Florida's long-arm statute. Plaintiffs further fail to allege sufficient facts to demonstrate that Pillar possesses the minimum contacts in Florida necessary to comport with constitutional norms of due process required for this Court to exercise personal jurisdiction over Pillar. Accordingly, the claims against Pillar should be dismissed for lack of personal jurisdiction.

Legal Standard for Personal Jurisdiction

A court may only exercise personal jurisdiction over a nonresident defendant if the plaintiff satisfies a two-part test. *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989). *First*, the plaintiff must show that the defendant's conduct falls within the reach of Florida's long-arm statute (Fla. Stat. § 48.193). *Id.* at 502. *Second*, the plaintiff must also show that the defendant possesses sufficient minimum contacts with the State so as to satisfy the due process requirements of the United States Constitution and not offend "traditional notions of fair play and substantial justice." *Id.* "Both parts must be satisfied for a court to exercise personal jurisdiction over a non-resident defendant. "*Russo v. Fink*, 87 So. 3d. 815, 818 (Fla. 4th DCA 2012). "Florida's long-arm statute is strictly construed, and the Plaintiff has the burden of proving facts sufficient to satisfy the statutory criteria."

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Insight Instruments, Inc. v. Advanced Visual Instruments, Inc., 44 F. Supp. 2d 1269, 1271 (M.D. Fla. 1999). *See also Shefer v. Shefer*, 440 So. 2d 1319 (Fla. 3d DCA 1983) (emphasizing that Florida's long-arm statute is to be strictly construed).

The plaintiff bears the burden of proving facts that satisfy both elements of the personal jurisdiction test. *Venetian Salami*, 554 So. 2d at 502. If the defendant challenges any of the plaintiff's jurisdictional allegations, the burden shifts back to the plaintiff to prove the basis by which jurisdiction may be obtained. *Id.* The plaintiff may not just parrot the language of the long-arm statute. "Where the defendant has filed one or more affidavits supporting a meritorious challenge, the plaintiff is required to rebut the affidavits with opposing affidavits, testimony or documents rather than simply allege facts which show only a 'possibility of jurisdiction.' " *Viking Acoustical Corp v. Monco Sales Corp.*, 767 So. 2d 632, 634 (Fla. 5th DCA 2000) (internal citations omitted).

Argument

1. Pillar Does Not Fall Within the Reach of Florida's Long-Arm Statute

Florida's long-arm statute - Fla. Stat. § 48.193 - provides for personal jurisdiction over a nonresident defendant under two sets of circumstances. The first, contained in Fla. Stat. § 48.193(1), is for specific personal jurisdiction. *Alternate Energy Corp., v. Redstone*, 328 F.Supp.2d 1379, 1382 (S.D. Fla. 2004). "Specific" personal jurisdiction involves claims that arise from the defendant's forum-related contacts. *Id.* at 1382. Fla. Stat. §



48.193(1) enumerates certain acts through which a nonresident may be subjected to "specific" jurisdiction in a court of this State, including:

- (a) Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.
- (b) Committing a tortious act within this state.
- (c) Owning, using, possessing, or holding a mortgage or other lien on any real property within this state.
- (e) With respect to a proceeding for alimony, child support, or division of property in connection with an action to dissolve a marriage or with respect to an independent action for support of dependents, maintaining a matrimonial domicile in this state at the time of the commencement of this action or, if the defendant resided in this state preceding the commencement of the action, whether cohabiting during that time or not. This paragraph does not change the residency requirement for filing an action for dissolution of marriage.
- (f) Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
 - 1. The defendant was engaged in solicitation or service activities within this state; or
 - 2. Products, materials, or things processed, serviced or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade or use.
- (g) Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.



(h) With respect to a proceeding for paternity, engaging in the act of sexual intercourse within this state with respect to which a child may have been conceived.

It is unclear what facts Plaintiffs are alleging to support their contention that Pillar falls within the scope of Florida's long-arm statute. The Confidential Complaint is devoid of any facts regarding personal jurisdiction. Plaintiffs simply lump all defendants together and allege a conclusory statement in paragraph 7 of their Complaint that "*this Court has personal jurisdiction over each of the Defendants because each of the Defendants either.....*" Defendants are left to guess and surmise as to the facts regarding personal jurisdiction.

Pillar deduces that Plaintiffs are alleging it committed a tortious act within the state of Florida. Fla. Stat. § 48.193(1)(b). In Count V of their Complaint, Plaintiffs allege the following:

"41. Pillar defamed LEB and Lipscomb by falsely accusing LEB of never sending Malibu a statement for services rendered and by falsely claiming that LEB and Lipscomb acted unethically and violation of the Florida Bar Rules.

42. Pillar, through its attorneys, published a false statement about LEB and Lipscomb to a third party and the falsity of the statement caused injury to both LEB and Lipscomb."

In order for a Florida court to exercise personal jurisdiction over a nonresident defendant, the defendant or the defendant's conduct must satisfy one of the elements of the long-arm statute. *Garrett v. Garrett*, 668 So. 2d 991, 994 (Fla. 1996). Pillar has not committed any acts to confer



specific jurisdiction, as alleged, under Florida's long-arm statute. Plaintiffs' Complaint fails to allege that any of the alleged defamatory statements attributable to Pillar took place or occurred in Florida. In fact, Plaintiffs fail to allege that the alleged defamatory statements purportedly published by Pillar were received by persons in Florida. Plaintiffs fail to allege when the alleged defamatory statements were made; where the defamatory statements were made; by whom the defamatory statements were made, and to whom the defamatory statements were made.

Fla. Stat. § 48.193(1) requires that the defendant personally commit a tortious act within the state for specific jurisdictional purposes. *Two Worlds United v. Zylstra*, 46 So. 3d 1175, 1177 (Fla. 2d 2010)(affirming order granting motion to dismiss for lack of jurisdiction). Since Pillar is a California Professional Law Corporation, as has been alleged by Plaintiffs, this Court can safely assume that any statements made by Pillar were made in California and not in Florida. Furthermore, Plaintiffs fail to show any connection between the purported statements by Pillar and the forum state of Florida.

As to Count IX, Plaintiffs perhaps allege that its employee's act of accessing computer files from Florida in Florida constitutes a violation of Florida's Computer Abuse and Data Recovery Act ("CADRA") (Fla. Stat. §§668.801-668.805), justifying bringing Pillar within the purview of Florida's long-arm statute. Florida enacted this statute and made certain acts of accessing private business computers and data theft a tort subject to monetary damages.



A person violates this Act when “a person who knowingly and with intent to cause harm or loss: (1) Obtains information from a protected computer without authorization and, as a result, causes harm or loss; (2) Causes the transmission of a program, code, or command to a protected computer without authorization and, as a result of the transmission, causes harm or loss; or (3) Traffics in any technological access barrier through which access to a protected computer may be obtained without authorization. Fla Stat. § 668.803. “Without authorization” means access to a protected computer by a person who: (a) is not an authorized user; (b) has stolen a technological access barrier of an authorized user; or (c) Circumvents a technological access barrier on a protected computer without the express or implied permission of the owner, operator, or lessee of the computer or the express or implied permission of the owner of information stored in the protected computer. The term does not include circumventing a technological measure that does not effectively control access to the protected computer or the information stored in the protected computer. Fla Stat. § 668.802(9).

Furthermore, under the Act, “Authorized user” means a director, officer, **employee**, third-party agent, contractor, or consultant of the owner, operator, or lessee of the protected computer or the owner of information stored in the protected computer if the director, officer, employee, third-party agent, contractor, or consultant is given express permission by the owner, operator, or lessee of the protected computer or by the owner of information stored in the protected computer to access the protected



computer through a technological access barrier. Fla Stat. § 668.802(1), emphasis added.

By Plaintiffs' own admission, the person who purportedly accessed its computer was an employee of Plaintiffs. Under the express language of CADRA, no tort or civil wrong is committed when an employee accesses the computers of an employer as has been alleged here. If no tortious act occurred under CADRA, no tortious act occurred to justify assertion of personal jurisdiction over Pillar under Florida's long-arm statute.

2. The Assertion of Jurisdiction Over Pillar Would Violate Due Process.

Even if specific jurisdiction were proper pursuant to Florida's long-arm statute, Pillar possesses insufficient contacts with the State of Florida to satisfy the Fourteenth Amendment's due process requirement.

Courts must examine three factors to determine whether a defendant has established sufficient minimum contacts with the forum state to comport with the Fourteenth Amendment's due process requirement: (1) whether the defendant has purposefully availed itself of the benefits of doing business in the forum state; (2) whether the cause of action arose out of the activities through which the defendant did so; and (3) whether the defendant could have reasonably anticipated being hauled into court in the forum state. *Alternate*, 328 F.Supp.2d at 1382 (S.D. Fla. 2004).

Plaintiffs' Complaint against Pillar is based on the alleged defamatory statements by Pillar published to unknown third person or persons. Complaint ¶ 41,42. Personal jurisdiction is proper only when the alleged



defamatory publication was "expressly aimed" at the forum state. *Alternate*, at 1383. This impels the conclusion that the defendant reasonably anticipated being hauled into court there. *Id.* In the instant case, Plaintiffs' allegation that the alleged defamatory statements were simply allegedly published to an unknown person in an unknown place is insufficient to invoke jurisdiction against Defendants. *Id.*

To establish required minimum contacts, a nonresident must engage in some act in which it "purposefully availed itself of the privilege of conducting some type of activity within Florida, thus invoking its benefits and protections." *Viking*, 767 So. 2d at 633. Pillar has not engaged in any such activity. Plaintiffs have failed to allege any such necessary minimum contacts, at all, such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The test prevents a defendant from being hauled into a foreign forum as a result of "random", "fortuitous", or "attenuated" contacts, or because of the unilateral activity of a third person. *Segal v. Russell*, 553 So. 2d 346, 348 (Fla. 4th DCA 1989); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984). The due process clause does not contemplate that a state may make binding a judgment *in personam* against an individual or corporate defendant with which the state has no contacts, ties or relations. *Maschinenfabrik Seydelmann v. Altman*, 468 So. 2d 286, 288 (Fla. 2d 1985). A plaintiff's residence in the forum, and suffering of alleged harm there, will not alone support jurisdiction. *Bioheart, Inc. v. Peschong*, 2013 WL 1729278 (S.D. Fla.).



Plaintiffs' Complaint should be dismissed as Defendants do not have the requisite minimum contacts to support this Court's exercise of personal jurisdiction.

WHEREFORE, Defendant Pillar respectfully request that Plaintiffs' Complaint be dismissed for lack of *in personam* jurisdiction, and that the Court award such further relief as it may deem just and proper.

Certificate of Service

I certify that on July 20, 2016, the foregoing document was filed with the Clerk's e-filing portal and a copy served via electronic notification on: M. Keith Lipscomb, Esq., Lipscomb, Eisenberg & Baker, PL, 2 Biscayne Blvd., Penthouse 3800, Miami, FL 33131; klipscomb@lebfirm.com.

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