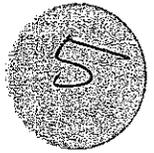


APPELLATE COURT CASE NO. A08-2105



STATE OF MINNESOTA
IN THE COURT OF APPEALS

C.H. Robinson Worldwide, Inc.,)
)
 Plaintiff/Respondent,)
)
 vs.)
)
 FLS Transportation, Inc., Domenic Di)
 Girolamo, Michael Flinker, Arlien Casillas,)
 Kenton K. Geghan, Scott Helton, Peter)
 Katai, and Jody Winkler,)
)
 Defendants/Appellants)
)
 and)
)
 Mark Kummer, W. Russell Harp, Jerrod)
 Marinello, and Fred Rand,)
)
 Defendants.)

BRIEF AND ADDENDUM
OF APPELLANTS FLS TRANSPORTATION SERVICES, INC., DOMENIC DI
GIROLAMO, MICHAEL FLINKER, ARLIEN CASILLAS, KENTON GEGHAN,
SCOTT HELTON, PETER KATAI, AND JODY WINKLER

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 INC., DOMENIC DI GIROLAMO,
 MICHAEL FLINKER, ARLIEN CASILLAS,
 KENTON GEGHAN, SCOTT HELTON,
 PETER KATAI, AND JODY WINKLER

The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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I. STATEMENT OF ISSUES

A. May forum selection clauses contained in agreements signed by some defendants be properly relied upon to exert personal jurisdiction over other out-of-state defendants who did not sign the agreements nor were otherwise parties to the agreements?

The district court ruled: The district court erroneously ruled that personal jurisdiction could be properly exercised over Appellants FLS Transportation Services, Inc., its officers (Domenic Di Girolamo and Michael Flinker), and Appellants Scott Helton and Peter Katai based upon forum selection clauses contained in agreements executed by Appellants Arlien Casillas, Kenton Geghan, and Jody Winkler.

Authorities:

Minnesota Statutes Section 543.19 subdivision 1(b)

World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980)

Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985)

KSTP-FM, LLC, v. Specialized Communications, Inc., 602 N.W.2d 919 (Minn. Ct. App. 1999)

Griffis v. Luban, 646 N.W.2d 527 (Minn. 2002)

Slaihen v. Ceatow Bahamas, Ltd., 148 F. Supp. 2d 1343 (S.D. Fla. 2001)

B. Do the provision of administrative services and the use of remote communication systems by a Minnesota-based company to administer its out-of-state employees constitute sufficient "Minnesota contacts" to create personal jurisdiction over employees employed and living outside of Minnesota?

The district court ruled: The district court erroneously ruled that specific jurisdiction existed over non-Minnesota resident Appellants Helton, Katai, Casillas, Geghan, and Winkler, based primarily upon actions taken by Respondent and/or actions taken by those Appellants outside of Minnesota.

Authorities:

Smarte Carte, Inc. v. Tran, No. C4-96-1022, 1996 WL 689782 (Minn. Ct. App. Dec. 3, 1996)

Addison Ins. Marketing, Inc. v. Evans, No. 03-02-0994, 2002 WL 31059806 (N.D. Tex. Sept. 12, 2002)

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Pres-Kap, Inc. v. System One, Direct Access, Inc., 636 So.2d 1351 (Fla. Dist. Ct. App. 1994)

C. Did Appellants Casillas, Geghan, and Winkler consent to jurisdiction in Minnesota based upon their execution of employment-related agreements containing forum selection clauses?

The district court ruled: The district court erroneously ruled that the forum selection clauses were enforceable and constituted consent to jurisdiction by Appellants Casillas, Geghan, and Winkler.

Authorities:

Hauenstein & Bermeister, Inc. v. Met-Fab, Indus., Inc., 320 N.W.2d 886 (Minn. 1982)
Alpha Systems Integration, Inc. v. Silicon Graphics, Inc., 646 N.W.2d 904 (Minn. Ct. App. 2002)
Hague v. Allstate Ins. Co., 289 N.W.2d 43 (Minn. 1978)
Nelson v. Master Lease Corp., 759 F. Supp. 1397 (D. Minn. 1991)

D. Did the district court abuse its discretion by refusing to dismiss Respondent's claims against Appellants under the doctrine of *forum non conveniens*?

The district court ruled: The district court refused to dismiss the claims against Appellants under the doctrine of *forum non conveniens*.

Authorities:

Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1946)
Bergquist v. Medtronic, 379 N.W.2d 508 (Minn. 1986)
Aware v. Ramirez-Mireles, No. 011134BLS, 2001 WL 755822 (Mass. Super. 2001)

II. STATEMENT OF THE CASE

Plaintiff/Respondent C.H. Robinson Worldwide, Inc. ("C.H. Robinson" or "Respondent"), commenced this action in Minnesota, in Hennepin County District Court,

alleging breaches of various employment related agreements that had been executed by eight of its former sales employees (including Appellants Arlien Casillas, Kenton Geghan, Scott Helton, Peter Katai, and Jody Winkler) when they had been employed by Respondent. In addition to suing its former employees, Respondent also sued Appellant FLS Transportation Services, Inc. ("FLS"), two of its officers (Domenic Di Girolamo and Michael Flinker), and one of its managers (Mark Kummer), alleging various causes of action based upon the hiring by FLS of the former sales employees of Respondent.¹ FLS, a Canadian company, hired those persons at various points in time over a two year period to work in various branch offices across the country (all outside of Minnesota).

The Appellants collectively moved the district court to dismiss this action due to the lack of personal jurisdiction in this state over all of the Appellants (Appellants also alternatively moved to dismiss under the doctrine of *forum non conveniens* and on other grounds). The district court subsequently issued an order, on October 8, 2008 (the "October 8 Order"), in which the court denied the motions in their entirety. (Add. 1- 26.) The Appellants now jointly appeal from the October 8 Order.²

III. STATEMENT OF FACTS

A. The Parties

Respondent C.H. Robinson is a corporation with its principal place of business in

¹ Di Girolamo and Flinker are both Appellants, but Kummer (who is no longer employed by FLS) has not joined in this appeal.

² On January 13, 2009, the district court issued a further order staying all proceedings in the district court as to the Appellants during the pendency of this appeal. (App. 112.)

Minnesota. (Complaint ¶ 4 (App. 3).) The defendants in this case, all of whom reside outside Minnesota, are: (1) FLS, which is the only corporate defendant; (2) Domenic Di Girolamo (“Di Girolamo”), Michael Flinker (“Flinker”), and Mark Kummer (“Kummer”) (collectively “FLS officers”), who are corporate officers or managers of FLS and have never been employed by Respondent; (3) Arlien Casillas (“Casillas”), Kenton Geghan (“Geghan”), Scott Helton (“Helton”), Peter Katai (“Katai”), and Jody Winkler (“Winkler”), who are former employees of Respondent who are currently employed by FLS and were formerly employed by Respondent (sometimes collectively referred to herein as the “former employee Appellants”); and (4) Jarrod Marinello, W. Russell Harp, and Fred Rand, who are former employees of Respondent and former employees of FLS.

B. The Dispute

This is a noncompete/misappropriation of trade secrets case brought by a very large and major player in the transportation logistics industry against a smaller competitor and several of Respondent’s former employees. Respondent operates worldwide through a network of branch offices and advertises that it is one of North America’s largest third party logistics companies, with approximately 7300 employees. (Complaint ¶ 19 (App. 9); Affidavit of Casey Nolan (“Nolan Aff.”) Ex. 1 (App. 81 and 98).) In its Complaint, Respondent alleges that Appellant FLS has competed unfairly against it by recruiting and employing eight of Respondent’s former employees, who worked in various of Respondent’s branch offices across the country, and who were either fired from or quit their employment with Respondent at various points in time between 2005 through 2007. (Complaint ¶¶ 25-32 (App. 11-12).) Two of the ex-employee defendants, Marinello and

Rand, were not working for C.H. Robinson immediately prior to accepting jobs with FLS. (Flinker Aff., ¶ 7 (App. 66-67).) Three other of the former employee Appellants (Casillas, Geghan and Winkler) had been fired by C.H. Robinson. (See Affidavit of Arlien Casillas, ¶ 3; Affidavit of Kenton Geghan, ¶ 3; and Affidavit of Jody Winkler, ¶ 3) (App. 68, 70, and 77).) Respondent alleges that the employment by FLS of the former employee Appellants violates various restrictive covenants between Respondent and the former employees, and that FLS and the former employees have misappropriated confidential, trade secret information. (Complaint ¶¶ 33-116 (App. 12-35).) Appellants FLS, Di Girolamo, Flinker, Helton, Katai, Casillas, Geghan, and Winkler all answered the Complaint and have denied any liability to Respondent.

C. Appellants Have Extremely Limited Contacts With Minnesota

1. FLS's Contacts With Minnesota

FLS is a Canadian corporation, with its principal place of business in Montreal, Canada. (Flinker Aff., ¶ 3 (App. 65-66).) FLS offers a variety of transportation services to its clients, primarily trucking. (*Id.*) FLS began operations in 1987, and since then, the company has steadily grown. (*Id.*) In addition to its corporate headquarters, FLS has operating centers in Calgary and Toronto, Canada, and in Atlanta, Georgia, Troy, Michigan, Shreveport, Louisiana, Cincinnati, Ohio, Huntersville, North Carolina, Overland Park, Kansas, Chicago, Illinois, Shelton, Connecticut, Springfield, Missouri, Greensboro, North Carolina, and Reno, Nevada. (*Id.*)

FLS is not registered to do business in Minnesota. (Flinker Aff., ¶ 4 (App. 66).) FLS does not have an office in Minnesota, does not have an agent who is authorized to

receive service in Minnesota, does not own or lease property in Minnesota and does not keep records in Minnesota. (*Id.*) FLS does not have a mailing address, telephone listing or facsimile number in Minnesota. (*Id.*) FLS does not have any employees or shareholders in Minnesota. (*Id.*)

FLS presently has only one Minnesota-based customer, does not regularly conduct business in Minnesota and FLS employees only sporadically visit Minnesota in relation to this customer or other FLS business. (Flinker Aff., ¶ 5 (App. 66); Affidavit of Mark Kummer (“Kummer Aff.”), ¶ 4 (App. 79-80).) FLS only had one other Minnesota-based customer within the last five years, but that company is no longer an active customer. (Flinker Aff., ¶ 5 (App. 66).) The services provided by FLS to the current Minnesota-based customer and the former customer were all provided in states outside of Minnesota. (*Id.*; Kummer Aff., ¶ 4 (App. 79-80).) Most contact with FLS’s single Minnesota customer is by telephone, e-mail, or other written correspondence. (*Id.*)

Respondent’s Complaint is devoid of any specific allegations regarding the connections between Minnesota and FLS’s allegedly wrongful conduct. (Complaint ¶¶ 54-116 (App. 23-35).) None of the former employee Appellants worked for Respondent in Minnesota and none of them have lived or worked, or currently live or work, in Minnesota. (Complaint ¶¶ 25-32 (App. 11-12); Flinker Aff., ¶ 7 (App. 66-67).) Respondent has not alleged that FLS took any action with regard to the recruitment and/or hire of the sales employees in Minnesota. Indeed, FLS presently has only one employee whom FLS hired from Minnesota and that person had not been an employee of C.H. Robinson. (Flinker Aff., ¶ 6 (App. 66).) Respondent does not allege that FLS

learned or acquired any of Respondent's alleged trade secrets or confidential information in connection with any conduct by FLS that took place in Minnesota.

2. The FLS Officer Appellants' Contacts With Minnesota

a) Domenic Di Girolamo

Appellant Di Girolamo is the corporate Vice President of FLS. (Affidavit of Domenic Di Girolamo ("Di Girolamo Aff."), ¶ 1 (App. 63).) He has held that position since he founded the business in 1987. *Id.* He lives and works in Montreal, Quebec, Canada. (*Id.*, ¶ 2.) He has never lived or been employed in Minnesota. (*Id.*, ¶ 3.) He does not own or lease property in Minnesota. (*Id.*) He has had extremely limited contacts with Minnesota over at least the last five years, including only one customer visit approximately four years ago. (*Id.*, ¶ 4.) That visit did not have any connection to the allegations against Di Girolamo in C.H. Robinson's Complaint. (*Id.*) Di Girolamo has never traveled to Minnesota on any other occasion over at least the last five years. (*Id.*, ¶ 5 (App. 64).)

b) Michael Flinker

Appellant Flinker is the corporate Secretary of FLS and has held that position since he founded the company in 1987. (Flinker Aff., ¶ 1 (App. 65).) He resides and works in Montreal, Quebec, Canada. (*Id.*, ¶ 2.) He has never lived or been employed in Minnesota. (*Id.*) He does not own property in Minnesota. (*Id.*) He has visited Minnesota on only very limited occasions over the last five years, with no more than five visits during that time. (*Id.*, ¶ 8 (App. 67).) None of Flinker's visits had any connection to the allegations against him in the Complaint. (*Id.*) Flinker has never traveled to

Minnesota on any other occasion over at least the last five years. (*Id.*, ¶ 9.)

3. The Former C.H. Robinson Employees' Contacts With Minnesota

None of the five former C.H. Robinson employees included among the Appellants, reside in Minnesota.³ None of these Appellants work for FLS in Minnesota⁴, nor did they work for C.H. Robinson in this state.⁵ The former employee Appellants had only between one and three visits each to the Minnesota headquarters of Respondent.⁶

a) Helton's Contacts With Minnesota

Appellant Helton was employed with Respondent as a transportation sales employee, in several different branch offices, from on or about June 5, 1996, to on or about March 7, 2003, when he voluntarily resigned his employment. (Complaint ¶ 28

³ Helton lives in North Carolina. (Affidavit of Scott Helton ("Helton Aff."), ¶ 2 (App. 72).) Katai lives in Illinois. (Affidavit of Peter Katai Aff. ("Katai Aff."), ¶ 2 (App. 75).) Casillas lives in Nevada. (Affidavit of Arlien Casillas ("Casillas Aff."), ¶ 2 (App. 68).) Geghan lives in Connecticut. (Affidavit of Kenton Geghan ("Geghan Aff."), ¶ 2 (App. 70).) Winkler lives in Louisiana. (Affidavit of Jody Winkler ("Winkler Aff."), ¶ 2 (App. 77).)

⁴ Helton works in North Carolina. (Helton Aff., ¶ 2 (App. 72).) Katai works in Illinois. (Katai Aff., ¶ 2 (App. 75).) Casillas works in Nevada. (Casillas Aff., ¶ 2 (App. 68).) Geghan works in Connecticut. (Geghan Aff., ¶ 2 (App. 70).) Winkler works in Louisiana. (Winkler Aff., ¶ 2 (App. 77).) *See also* Respondent's Complaint, ¶¶ 25-32 (App. 11-12).

⁵ Respondent's Complaint admits that these Appellants worked at all times in Plaintiff's branch offices outside of Minnesota. (Complaint ¶¶ 25-32 (App. 11-12). Helton worked for C.H. Robinson in North Carolina, New Jersey and Virginia. (Helton Aff., ¶¶ 3 and 4 (App. 72-73).) Katai worked for C.H. Robinson in Illinois. (Katai Aff., ¶ 3 (App. 75).) Casillas worked for C.H. Robinson in Nevada. (Casillas Aff., ¶ 3 (App. 68).) Geghan worked for C.H. Robinson in Connecticut. (Geghan Aff., ¶ 3 (App. 70).) Winkler worked for C.H. Robinson in Louisiana. (Winkler Aff. ¶ 3 (App. 77).)

⁶ Helton, Katai, and Winkler each made one visit, Geghan made two visits, and Casillas made three visits. (Helton Aff., ¶ 6; Katai Aff., ¶ 5; Winkler Aff., ¶ 7; Geghan Aff., ¶ 7; Casillas Aff., ¶ 6 (App. 73, 76, 78, 71, and 69).)

(App. 12); Helton Aff., ¶ 3 (App. 72).) Helton was subsequently rehired by Respondent on or about July 6, 2004, and continued to work for C.H. Robinson until he terminated his employment a second time, on or about April 27, 2005. (Complaint ¶ 28 (App. 12); Helton Aff., ¶ 4 (App. 73).) Helton began his employment with FLS later in April 2005. (Helton Aff., ¶ 2 (App. 72).) Helton did not sign any contracts related to his employment with Respondent in the state of Minnesota. (Helton Aff., ¶ 5 (App. 73).) During the course of his employment with Respondent and during the course of his employment with FLS, Helton has not worked with any customers in Minnesota. (*Id.*, ¶¶ 2 and 7 (App. 72-73).) Helton does not own or lease any property in Minnesota. (*Id.*, ¶ 8 (App. 73).) He does not have an office, mailing address, telephone listing or facsimile number in Minnesota. (*Id.*) He has not visited Minnesota for any other purpose beyond his single work-related visit while employed with Respondent. (*Id.*, ¶ 6.)

b) Katai's Contacts With Minnesota

Appellant was employed by Respondent from January 1, 2000, to on or about April 1, 2005, when he resigned. (Katai Aff., ¶ 3 (App. 75).) Katai began his employment with FLS in April 2005. (*Id.*, ¶ 2.) Any employment related agreements Katai had with Respondent were signed by Katai in Illinois. (*Id.*, ¶ 4.) He does not own, lease, or rent any property in Minnesota. (*Id.*, ¶ 6 (App. 76).) He does not have an office, mailing address, telephone listing or facsimile number in Minnesota. (*Id.*) He has not visited Minnesota for any other purpose beyond his single work-related visit while employed with Respondent. (*Id.*, ¶ 5)

c) Casillas's Contacts With Minnesota

Appellant Casillas was employed by Respondent from November 15, 2001, to on or about May 16, 2006, when her employment was terminated by Respondent. (*Id.*, ¶ 3 (App. 68).) Casillas began her employment with FLS in September 2006. (*Id.*, ¶ 2.) Any employment related agreements Casillas had with Respondent were signed by Casillas in Nevada. (*Id.*, ¶ 4.) Casillas has no contacts with Minnesota other than her three work related visits while employed with Respondent. (*Id.*, ¶ 6 (App. 69).) She does not own, lease, or rent any property in Minnesota. (*Id.*, ¶ 7.) She does not have an office, mailing address, telephone listing or facsimile number in Minnesota. (*Id.*) She has not visited Minnesota for any other purpose. (*Id.*, ¶ 6.)

d) Geghan's Contacts With Minnesota

Appellant Geghan worked for Respondent from July 28, 1997, to on or about September 5, 2007, when Respondent terminated his employment. (Geghan Aff., ¶ 3 (App. 70).) Geghan began his employment with FLS in November 2007. (*Id.*, ¶ 2.) Any employment related agreements Geghan had with Respondent, were signed by Geghan in Connecticut. (Geghan Aff. ¶ 5 (App. 71).) Geghan has no other contacts with Minnesota other than his two work related visits. He does not own, lease, or rent any property in Minnesota. (*Id.*, ¶ 8.) He does not have an office, mailing address, telephone listing or facsimile number in Minnesota. (*Id.*) He has not visited Minnesota for any other purpose. (*Id.*, ¶ 7.)

e) Winkler's Contacts With Minnesota

Appellant Winkler was employed by Respondent from March 1, 1999, until April

2006, when Respondent terminated his employment. (Winkler Aff., ¶ 3 (App. 77).) Winkler began his employment with FLS in May 2006. (*Id.*, ¶ 2.) Any employment related agreements Winkler had with Respondent, were signed by Winkler in Louisiana. (Winkler Aff., ¶ 5 (App. 78).) Winkler has no other contacts with Minnesota other than his one work related visit. (*Id.*, ¶ 7.) He does not own, lease, or rent any property in Minnesota. (*Id.*, ¶ 9.) He does not have an office, mailing address, telephone listing or facsimile number in Minnesota. (*Id.*)

IV. ARGUMENT

A. **The District Court Committed Legal Error in Finding the Existence of Personal Jurisdiction Over Each of the Appellants**

Personal jurisdiction is lacking with respect to all of the Appellants and the district court committed legal error when ruling to the contrary. The district court's rulings as to the various jurisdictional grounds do not comport with Minnesota law and, accordingly, must be reversed.

The district court collectively relied upon three different grounds to find that jurisdiction existed over each of the Appellants, including:

- Three of the Appellants (Casillas, Geghan, and Winkler) signed Confidentiality and Noncompetition Agreements (“CNAs”) with Respondent which contained forum selection clauses identifying Minnesota as the forum for any litigation concerning those agreements. (October 8 Order, pp. 4-8 (Add. 4-8).)
- The former employee Appellants (Casillas, Geghan, Winkler, Helton, and Katai) had supposed minimum contacts with Respondent’s Minnesota headquarters during and as part of their employment with Respondent. (October 8 Order, pp. 10-13 (Add. 10-13).)
- The claims against the non-signatory Appellants (FLS, its officers (Di

Girolamo and Flinker), Helton, and Katai) are, supposedly, sufficiently intertwined with the claims against the former employee Appellants who signed the employment agreements containing the forum selection clauses. (October 8 Order, pp. 18-19 (Add. 18-19).)

With respect to Appellants FLS and its officers, the district court based its jurisdiction finding solely on the third ground identified above. With respect to Appellants Helton and Katai, the district court based its finding of jurisdiction on both the second and third grounds identified above. With respect to Appellants Casillas, Geghan, and Winkler, the district court based its jurisdiction finding on both the first and second grounds identified above. The district court ultimately concluded broadly – and collectively – as follows: “Applying the consent to jurisdiction, minimum contacts, ‘closely-related’ party and ‘same set of operative facts’ theory *in combination*, the Court finds that it has jurisdiction over all of the defendants in this case.” (October 8 Order, p. 21 (emphasis added) (Add. 21).)

In analyzing the existence of personal jurisdiction care must be taken to separately analyze each claim and each defendant at issue. “When multiple claims are raised, personal jurisdiction must be established for each claim.” *Blume Law Firm v. Pierce*, 741 N.W.2d 921, 925 (Minn. Ct. App. 2007). Moreover, when multiple parties are named as defendants, “each defendant’s contacts with the forum state must be assessed individually.” *Minnesota Mining and Mfg. Co. v. Rauh Rubber, Inc.*, 943 F. Supp. 1117, 1122 (D. Minn. 1996); *see also Rush v. Savchuk*, 444 U.S. 320, 331-32 (1980).

A careful analysis of each of the specific grounds relied on by the district court for its conclusion as to each Appellant demonstrates that none of those factors properly

supports the exercise of personal jurisdiction over any of the Appellants. In addition, because none of the factors relied on by the district court, when analyzed individually, constitutes a legally valid basis for the exertion of jurisdiction, those factors may not be validly cobbled together to collectively create personal jurisdiction over any of the groups of Appellants.

1. General Principles Regarding Jurisdiction and Standard of Review

To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must state sufficient facts in the complaint to support a reasonable inference that defendants may be subjected to jurisdiction in the forum state. *Dever v. Hentzen Coatings, Inc.*, 380 F.3d 1070, 1072 (8th Cir. 2004). When a defendant challenges jurisdiction, the burden is on the plaintiff to prove the minimum contacts necessary to satisfy due process. *All Lease Co. Inc. v. Betts*, 199 N.W.2d 821 (Minn. 1972); *Burlington Indus., Inc. v. Maples Indus., Inc.*, 97 F.3d 1100, 1102 (8th Cir. 1996); *see also Mountaire Feeds, Inc. v. Agro Impex, S.A.*, 677 F.2d 651, 653 (8th Cir. 1982).

A court looks at two factors to determine whether it may exercise personal jurisdiction over a nonresident defendant: (1) whether the exercise of jurisdiction is permitted under the forum state's long-arm statute; and (2) whether the exercise of jurisdiction by the courts of the forum state would comport with constitutional due process. *Wessels, Arnold, & Henderson v. Nat'l Med. Waste, Inc.*, 65 F.3d 1427, 1431 (8th Cir. 1995). The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful "contacts, ties, or relations." *International Shoe Co. v. Washington*, 326 U.S.

310, 319 (1945). Because Minnesota interprets its long-arm statute, Minnesota Statutes Section 543.19 subdivision 1(b), to extend personal jurisdiction to the extent permitted by due process, if the other requirements of the long-arm statute are satisfied, the inquiry collapses into a single question of whether exercising personal jurisdiction comports with due process. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 411 (Minn. 1992); *Wessels*, 65 F.3d at 1431; *Bell Paper Box, Inc., v. U.S. Kids, Inc.*, 22 F.3d 816, 818 (8th Cir. 1994).

The Due Process Clause requires that a nonresident defendant have sufficient “minimum contacts” with the forum state before being subject to personal jurisdiction there. *Bell Paper*, 22 F.3d at 818. Sufficient contacts exist only when “the defendant’s conduct and connection with the forum state are such that [it] should reasonably anticipate being haled into court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). The “reasonable anticipation” requirement is not satisfied unless the defendant has engaged in “some act by which [it] purposefully avails itself of the privilege of conducting activities with the forum state, thus invoking the benefits and protections of its laws.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) (quoting *Hanson v. Denkla*, 357 U.S. 235, 253 (1958)); *Wessels*, 65 F.3d at 1432. In addition, even where sufficient contacts may exist, due process requires that “maintenance of the suit . . . not offend traditional notions of fair play and substantial justice.” *International Shoe Co.*, 326 U.S. at 320 (quoting *Milliken v. Meyer*, 311 U.S. 457 (1940)); see also *Burger King*, 471 U.S. at 476. “Great care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.” *Asahi Metal*

Industry Co., Ltd. v. Superior Court of California, Solano County, 480 U.S. 102, 1115 (1987).

A five-factor test is employed to assess the fairness of exercising personal jurisdiction over a nonresident defendant, considering the following factors:

- (1) the nature and quality of the contacts with the forum state;
- (2) the quantity of the contacts with the forum state;
- (3) the relation of the cause of action to the contacts;
- (4) the interest of the forum state in providing a forum for its residents; and
- (5) the convenience of the parties.

Wessels, 65 F.3d at 1432; *Land-O-Nod Co. v. Bassett Furniture Industries, Inc.*, 708 F.2d 1338, 1340 (8th Cir. 1983). Even if the minimum contacts threshold is established, personal jurisdiction may be defeated if its exercise would be unreasonable considering such factors as (a) the burden on the defendant; (b) the interest of the forum state; (c) the plaintiff's interest in obtaining relief; (d) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (e) the shared interest of the several states in furthering fundamental substantive social policy. *Asahi Metal Industry Co., Ltd.*, 480 U.S. at 113-14.

Personal jurisdictional analysis also distinguishes between two types of jurisdiction: general jurisdiction and specific jurisdiction. *KSTP-FM, LLC, v. Specialized Communications, Inc.*, 602 N.W.2d 919, 923 (Minn. Ct. App. 1999); *Helicopteros Nacionales De Columbia v. Hall*, 466 U.S. 408, 416, 418-19 (1984).

General jurisdiction exists when a nonresident has such "substantial" or "systematic and

continuous” contacts with the forum state that the state may exert jurisdiction over the nonresident in any action, even if the action at issue is unrelated to those contacts.

Helicopteros, 456 U.S. at 415. Specific jurisdiction, on the other hand, exists when there are minimal contacts, but there is a direct, causal relationship between the defendant’s forum state activities and the plaintiff’s claim. *KSTP-FM, LLC*, 602 N.W.2d at 923.

In this case, the district court ruled that general jurisdiction did not exist over any of the Appellants, finding that only specific jurisdiction existed. For a court to find specific jurisdiction over a defendant, “a plaintiff must show a . . . direct connection between his alleged injury and the defendant’s contacts with the forum state.” *Lorix v. Crompton Corp*, 680 N.W.2d 574, 579 (Minn. Ct. App. 2004), *rev. denied* (Sept. 21, 2004). A nonresident’s contacts must be with the forum state itself, not simply with residents of the forum state, for the court to exert personal jurisdiction. *KSTP-FM, LLC*, 602 N.W.2d at 923. For a specific jurisdiction inquiry, the Court must determine if the defendant “purposefully availed [itself] of the benefits and protection of Minnesota law.” *Id.* While Minnesota may have an interest in providing a forum to its residents, “[t]his interest has been ‘de-emphasized’ in an attempt to slow the inexorable expansions of jurisdiction in the state courts.” *S.B. Schmidt Paper Co. v. A to Z Paper*, 452 N.W.2d 485, 489 (Minn. Ct. App. 1990) (internal citation omitted).

The existence of personal jurisdiction is a question of law to be reviewed *de novo* on appeal and, accordingly, “[t]his court need not defer to the trial court’s decision.” *Stanek v. A.P.I., Inc.*, 474 N.W.2d 829, 832 (Minn. Ct. App. 1991), *rev. denied* (Minn. Oct. 31, 1991), *cert. denied*, 503 U.S. 977 (1992). *See also Janssen v. Johnson*, 358

N.W.2d 117, 120 (Minn. Ct. App. 1984) (“appellate courts need not defer to the trial court in reviewing questions of law”).

2. The District Court Committed Legal Error in Ruling that the Existence of Forum Selection Clauses Contained Within Employment Agreements for Some Appellants Creates Personal Jurisdiction Over the Non-Signatory Appellants

The district court committed legal error when ruling that personal jurisdiction may be created over a defendant solely by resort to a forum selection clause contained in a third-party contract to which the defendant was not bound. Specifically, the district court erroneously ruled as follows:

The Court finds that Helton, Katai, and the FLS defendants are sufficiently closely related to the Plaintiff’s cause of action regarding the [Confidentiality and Noncompetition Agreements of Casillas, Geghan and Winkler] such that they are bound by forum selection clauses in the [Agreements].

(October 8, Order, p. 19 (Add. 19).) This legal ruling is not supported by any Minnesota appellate court decision and also offends basic constitutional due process principles. Accordingly, to the extent that the district court’s October 8 Order relies on this ground as a basis for finding personal jurisdiction over FLS, its officers, Helton and/or Katai, it must be reversed.

No Minnesota appellate court has ever held that consent to jurisdiction by one party may be properly relied on – even in part – to create personal jurisdiction over a non-signatory defendant. Several courts outside of Minnesota have rejected this argument as a basis for personal jurisdiction. *See, e.g., Slaihen v. Ceatow Bahamas, Ltd.*, 148 F. Supp. 2d 1343, 1348-50 (S.D. Fla. 2001); *Pacific Rollforming, LLC v. Trackloc*

Int'l, LLC, No. 07cv1897-L(JMA), 2008 WL 4183916, *1, n.2 (S.D. Cal., Sept. 8, 2008) (Add. 80); *First ATM, Inc. v. Onedoz, Inc.*, No. 03-08-00286-CV, 2009 WL 349164, *3 (Tex. Ct. App., Feb. 13, 2009) (Add. 60). Even when a guarantor agreed “to be bound by every provision of the Franchise Agreement that required a payment or performance[,]” the Eastern District of Kentucky found that the guarantor was not bound by the agreement’s otherwise enforceable forum selection clause. *Long John Silver’s, Inc., v. Diwa III, Inc.*, No. 5:08-CV-14, 2009 WL 127651, *15 (E.D.Ky. Jan. 15, 2009) (Add. 64). And as the California Court of Appeals noted when refusing a non-signatory’s effort to enforce a forum selection clause, it is unfair to bind a party to an agreement “which it did not sign, and which could not have been intended to benefit it since it did not enter the picture until several years after the agreement was made.” *Berclain America Latina v. Baan Co.*, 74 Cal.App.4th 401, 407 (Cal. Ct. App. 1999).

A finding of personal jurisdiction on this basis would offend the constitutional principle that in order for a court to exercise jurisdiction, there must be evidence that a defendant “purposefully avail[ed] itself of the privilege of conducting activities within the forum state” *Burger King Corp.*, 471 U.S. at 472; *see also KSTP-FM, LLC*, 602 N.W.2d at 923. The purposeful availment requirement ensures that a defendant will not be subjected to jurisdiction solely as a result of attenuated contacts or because of the activity of another party or a third person. *Burger King*, 471 U.S. at 475; *Wessels*, 65 F.3d at 1432. The non-signatory Appellants cannot be said to have “purposefully availed” themselves of the privilege of doing business in Minnesota based solely on contracts to which they are not parties.

The only case law relied upon by the district court for its ruling are two unpublished decisions from the Minnesota federal district court, *ELA Medical, Inc. v. Arrhythmia Mgmt. Assoc.*⁷ and *Medtronic, Inc. v. Endologix, Inc.*,⁸ neither of which applied Minnesota law. More importantly, in neither of those cases did the court actually rule that personal jurisdiction over a non-Minnesota defendant may properly be founded upon a forum selection clause contained in a third-party contract to which the out-of-state defendant was not a signatory. *ELA Medical* is a federal magistrate judge decision and only involved a challenge to venue.⁹ In *Medtronic*, the court only examined the question of whether a non-signatory could be deemed to have given up its right to remove that action from state court to federal court as a result of a clause contained in a contract entered into between the plaintiff and another defendant. 530 F. Supp. 2d at 1056-1057.

Neither *Medtronic* nor *ELA Medical*, accordingly, constitute legal authority that the existence of personal jurisdiction may be constitutionally exerted over FLS, its officers (Di Girolamo and Flinker), Helton, or Katai merely because of the existence of forum selection clauses in the contracts between C.H. Robinson and Appellants Casillas, Geghan, and Winkler. Moreover, even if those two decisions were, for the sake of argument, considered to be on point, they should be rejected as unsound and in conflict with the controlling constitutional considerations.

⁷ No. 06-3480, 2007 WL 892517 (D. Minn. March 21, 2007) (Add. 45).

⁸ 530 F. Supp.2d 1054 (D. Minn. 2008).

⁹ In *ELA Medical*, the federal district court summarily adopted the Report and Recommendation issued by a magistrate judge. 2007 WL 892517, *1. The magistrate

In addition, the district court's ruling is both internally inconsistent and in direct conflict with Minnesota law. Under Minnesota law, when a court is asked to exercise jurisdiction over a defendant based on intentional torts committed out of state, as in this case, the framework for analyzing jurisdiction is the *Griffis/Calder* test. See *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002); see also *Calder v. Jones*, 465 U.S. 783 (1984). The *Griffis/Calder* effects test allows Minnesota courts to exercise of jurisdiction over an out-of-state defendant when intentional tortious conduct is purposely aimed at Minnesota and the brunt of harm is felt by the plaintiff in this state. The district court correctly ruled that the *Griffis/Calder* effects test was not satisfied in this case because Minnesota was not the focal point of the tortious activity, the brunt of Respondent's harm was not felt in Minnesota, and the Appellants did not aim their conduct at Minnesota.¹⁰

The district court's decision that the *Griffis/Calder* test was not satisfied should have been dispositive of the issue of whether jurisdiction existed over the non-signatory defendants for claims of intentional torts committed out of state. Rather than follow the *Griffis/Calder* test, however, the district court created a new basis for jurisdiction – the supposed close relationship between the CNAs signed by Casillas, Geghan and Winkler and the alleged tortious conduct of the non-signatory Appellants. (October 8 Order, pp.

judge expressly noted that the moving defendant “does not expressly raise a personal jurisdiction objection based on its status as a non-signatory.” 2007 WL 892517, *4.

¹⁰ The district court concluded: “[T]he Court cannot find that the FLS defendants aimed their alleged tortious acts at Minnesota. To adopt Plaintiff's argument that the ‘Effects’ test subjects the FLS defendants to jurisdiction in this case would amount to extending jurisdiction to any party causing injury to a Minnesota resident.” (October 8 Order, p. 17-18 (Add. 17-18).)

18-19 (Add. 18-19).) The *Griffis/Calder* analytical framework may not be properly skirted by utilizing instead a “closely related parties” analysis that is both inconsistent with the *Griffis/Calder* test and which has never been adopted (or even acknowledged) by any Minnesota appellate court.

Accordingly, even if this Court determines that the forum selection clauses in the agreements signed by Casillas, Geghan, and Winkler are valid and legally enforceable (which they are not, as is explained below in section IV(A)(4)), the existence of those contract clauses do not create personal jurisdiction against the non-signatory Appellants.¹¹

3. The District Court Committed Legal Error in Ruling that Sufficient Minnesota Contacts Existed to Create Personal Jurisdiction Over Persons Employed Outside of Minnesota

The district court also committed legal error in ruling that sufficient Minnesota contacts existed to create specific jurisdiction over the five former C.H. Robinson employee Appellants. To the extent that the district court’s ruling was premised upon

¹¹ The “closely related parties” theory is the only ground expressly relied upon by the district court to find personal jurisdiction over FLS and its officers. Although the October 8 Order also contains a discussion about a theory referred to by the district court as the “same set of operative facts theory” (which concerns the application of forum selection clauses to claims beyond breach of contract claims) it is unclear as to whether the district court relied upon this theory as an additional ground for finding jurisdiction over FLS and its officers. (October 8 Order, pp. 19-20 (Add. 19-20).) Nevertheless, none of the court decisions cited by the district court on this point apply the “same set of operative facts” theory to assert jurisdiction *over non-signatories to a contract* containing a forum selection clause (as opposed to expanding jurisdiction to cover additional claims *against a signatory* to such a contract). Accordingly, the “same set of operative facts” theory does not provide an alternative basis for asserting jurisdiction over FLS or its officers.

those contacts, therefore, it must be reversed.

In reaching its “minimum contacts” conclusion, the district court ultimately ruled:

[T]he defendants each attended at least one training session in Minnesota, each signed one or more agreements which contained a Minnesota choice of law provision, each had regular contact with C.H. Robinson’s Minnesota office, each was paid from C.H. Robinson’ [sic] Minnesota office, and each had an ultimate supervisor in Minnesota. The Court finds these contacts are of a quantity, nature, and quality which support a finding of personal jurisdiction.

(October 8 Order, p. 12 (Add. 12).)

In order to determine whether the supposed “Minnesota contacts” collectively relied upon by the district court in finding that jurisdiction existed may form the proper foundation for the constitutional exercise of personal jurisdiction, each of those “contacts” must, of course, be analyzed separately. A careful analysis of these factors discloses that they do not, in fact, provide an adequate basis to create personal jurisdiction.

a) Signing Agreements with Choice-of Law Provisions does not Create Jurisdiction

The choice of law provisions (designating the law of Minnesota as controlling) included in agreements signed by the former C.H. Robinson employees do not create personal jurisdiction. “A choice of law clause is not sufficient to confer personal jurisdiction, particularly where the clause is part of a standard form.” *S.B. Schmidt Paper Co.*, 452 N.W.2d at 489 (internal citation omitted). *See also Smarte Carte, Inc. v. Tran*, No. C4-96-1022, 1996 WL 689782, *1-2 (Minn. Ct. App. Dec. 3, 1996) (Add. 33) (holding that choice of law provision in employment contract along with the fact that

non-resident employee visited Minnesota 2-3 times was insufficient basis for exercise of personal jurisdiction); *Dent-Air Inc. v. Beech Mountain Air Service*, 332 N.W.2d 904, 908 (Minn. 1983). Accordingly, this factor does not support the district court's ultimate jurisdictional ruling with respect to any of the former employee Appellants.¹²

b) The District Court Committed Legal Error in Ruling that Administrative Actions Taken Out of the Minnesota Headquarters of a Nation-Wide Company Constitute "Minnesota Contacts" Creating Personal Jurisdiction Over Persons Employed Outside of Minnesota

Actions taken by C.H. Robinson – as a nation-wide company headquartered in Minnesota – to administer its out-of-state employees from its Minnesota office are also an inadequate basis to create personal jurisdiction. The "Minnesota contacts" relied on by the district court primarily consisted of actions *taken by Respondent*, including certain human resources activities (payroll and benefits administration) and the provision of other support services out of the Minnesota office of C.H. Robinson (including making available electronic information necessary to perform their jobs, which was stored on computer servers housed at headquarters). More specifically, the district court characterized these contacts as follows:

[A]lthough none of the defendants worked in Minnesota, all had on-going, regular contact with Minnesota during their employment. The defendants communicated with C.H. Robinson's Minnesota headquarters via phone and email and

¹² Nor does the fact that a representative of C.H. Robinson executed the employment agreements in Minnesota create specific jurisdiction over the former employee Appellants. "Merely entering into a contract with a forum resident does not provide the requisite contacts between a [nonresident] defendant and the forum state." *S.B. Schmidt Paper Co.*, 452 N.W.2d at 489.

through C.H. Robinson's computer network. Their compensation was dependent upon the business they procured for C.H. Robinson and C.H. Robinson's Minnesota personnel would handle the credit review, contract formation, and administrative matters necessary to enter into the business deals the ex-employees procured. The ex-employee defendants were provided with software upgrades and other proprietary, confidential, and trade secret information through downloads from C.H. Robinson's Minnesota offices, were paid from C.H. Robinson's Minnesota payroll department, and relied on C.H. Robinson's Minnesota headquarters to arrange travel, file paperwork, obtain expense reimbursement, and address personnel issues during the course of their employment. The ex-employees' benefits were administered from Minnesota, and their ultimate supervisors were located in Minnesota.

(October 8 Order, p. 11 (Add. 11).)¹³

The district court, in essence, ruled that the conduct of routine administrative activity and the use of a centralized computer system by a nation-wide company out of its Minnesota headquarters constitute "Minnesota contacts" sufficient to create personal

¹³ Respondent's Complaint does not make reference to any such activity. In responding to Appellants' motions to dismiss, Respondent submitted a very conclusory affidavit (with no supporting documentation) from one of its employees, Chris O'Brien, alleging that Respondent's Minnesota corporate headquarters provided all of its out-of-state employees with services such as payroll administration, software upgrades, email and electronic document computer networks, customer credit reviews, processing of expense reimbursement and travel paperwork, and completion of customer contracts. (O'Brien Aff., ¶¶ 5, 6, 9, and 12 (App. 99-103).) "A party may not establish a prima facie case of specific personal jurisdiction on conclusory allegations." *Neiberger & Assocs., v. WVK Inc.*, No. 05-2865, 2006 WL 2670095 *4 (D. Minn. Sept. 18, 2006) (Add. 29, 31-32), citing *Johnson v. Woodcock*, 444 F.3d 953, 956 (8th Cir. 2006). The district court also noted that the Appellants "each had an ultimate supervisor in Minnesota." (October 8 Order, p. 12 (Add. 12).) The only record information on that point is a generic claim in the O'Brien Affidavit that the "Ex-Employee Defendants' ultimate managers were located in Minnesota." (O'Brien Aff., ¶ 14 (Add. 103).) No explanation is given for that broad claim, such as whether the "ultimate manager" was the national sales director/vice

jurisdiction over every out-of-state employee concerning any employment related claims. The implications of such a ruling are quite broad, because the activities administered out of C.H. Robinson's headquarters for all of its far-flung and numerous employees are indistinguishable from the administrative activities routinely undertaken by most national companies. No opinion of any Minnesota appellate court has ever upheld such an expansive exercise of personal jurisdiction.¹⁴ Indeed, this Court has clearly pronounced to the contrary that "[a]n employment relationship between a nonresident employee and a Minnesota corporation does not, alone, satisfy minimum contact requirements." *Smarte Carte, Inc.*, 1996 WL 689782, at *2 (Add. 34). The district court's ruling (and Respondent's argument below) is directly at odds with this clear point of law.

Rather than rely upon *Smarte Carte*, and other Minnesota case law, the district court cited two non-Minnesota cases, which are distinguishable. In *Surgical Corp. v. Imagyn Med. Techs, Inc.*, the court found jurisdiction was appropriate in Connecticut because the defendant employee signed his employment agreement in Connecticut, attended a 6-week training session in Connecticut, and attended various strategy meetings in that state. 25 F. Supp.2d 40, 44-45 (D. Conn. 1998). In contrast, the former employee Appellants had very limited visits to Minnesota (addressed below) and did not sign their employment agreements in this state. The second case cited by the district court, *Blue*

president. Nor did Respondent provide any evidence of any actual contact in Minnesota between any "ultimate manager" and the Appellants.

¹⁴ In its decision, the district court indeed acknowledged: "a factually analogous case has not been decided by the Minnesota appellate courts . . ." (October 8 Order, p. 11 (Add. 11).)

Beacon Int'l, Inc. v. Am. Truck Washers, Inc., 866 F. Supp. 485, 490-91 (D. Kan. 1994), involved an employee who worked in three different states on behalf of his Kansas-based employer, not in a single out-of-state branch office like each of the former employee Appellants. In addition to being factually distinguishable, the decisions in *Surgical Corp.* and *Blue Beacon Int'l* are poorly reasoned and are inconsistent with Minnesota law and more sound decisions from other jurisdictions.

The district court was misguided when placing such emphasis on the administrative and communications systems put in place by C.H. Robinson for its ease in administering its out-of-state employees. There is an ample body of law (as discussed below) establishing that the specific components of Respondent's administrative contacts with its out-of-state employees do not support the creation of personal jurisdiction.

Numerous court decisions have recognized that remote contact in the form of the use of a computer network, telephone communications, regular mail, and e-mail are not adequate forum state contacts to create personal jurisdiction. First, routine use by non-Minnesota employees of a computerized document management system and database ultimately maintained on a computer server located in Minnesota does not create jurisdiction in this state. The district court cites no case law in support of this proposition, which is not surprising because there does not appear to be any Minnesota case law standing for that point. Courts in other jurisdictions have, however, been reluctant to attach jurisdictional significance to the use of computer databases, or the access of computer-based information. For example, a Florida state court held that a New York resident's remote accessing of a computer database located in Florida did not

suffice to create personal jurisdiction. *Pres-Kap, Inc. v. System One, Direct Access, Inc.*, 636 So.2d 1351, 1353 (Fla. Dist. Ct. App. 1994). In reaching that decision, the court noted that “a contrary decision would, we think, have far-reaching implications for business and professional people who use on-line computer services.” *Id.*; *see also, e.g., Jewish Defense Org., Inc. v. Superior Ct.*, 85 Cal.Rptr.2d 611, 621-22 (Cal. Ct. App. 1999) (“defendant’s conduct of contracting via computer, with Internet service providers, which may be California corporations, or which may maintain offices or databases in California, is insufficient to constitute ‘purposeful availment’ and does not satisfy the first prong of the three-part test for specific jurisdiction.”).

Likewise, Minnesota’s federal courts have also found personal jurisdiction absent in situations involving a defendant’s access of computerized information supposedly located in this state, both in the form of remote maintenance of a website and in the form of improper use of computer software licensed in Minnesota. *See Bible & Gospel Trust, and Brethren v. Richard Wyman*, 354 F.Supp. 2d 1025, 1029-32 (D. Minn. 2005) (defendant’s “acts” in maintaining an allegedly defamatory website were deemed committed in Canada, the cite of defendant’s computer, not in Minnesota (from where the website had initially been hosted), and were thus insufficient contacts to form personal jurisdiction); *Superior Edge, Inc. v. Maricopa County Community College Dist.*, 509 F. Supp.2d 786, 795 (D. Minn. 2007) (“the use in Arizona of the Software licensed by a Minnesota company . . . is not sufficient under traditional notions of fair play and substantial justice to justify compelling [a non-resident defendant] to respond to [plaintiff’s] allegations in Minnesota.”)

It is, of course, a legal fiction to say that business information that happens to be maintained on a computer database contained on a computer server located in Minnesota is actually located in Minnesota. Beyond being ultimately stored on Respondent's server in Minnesota, the business information is also located in every state in which one of Respondent's employees accesses and uses the information, prints off the information, or simply learns and retains the information. Any such use of the information necessarily took place in the states where the employees actually work and live – not in Minnesota. A contrary ruling would have far-reaching implications for employees given the rapidly expanding use of on-line technologies in business. For example, if the tills used at Target stores exchange information regarding sales with a computer server located in Minnesota, is a non-resident Target cashier who steals from the till subject to jurisdiction in Minnesota? In conclusion, the location of Respondent's computer server does not provide this Court with valid grounds for exercising jurisdiction over the former employee Appellants.

Second, the fact that C.H. Robinson chose to centralize its communications systems and have employees in its branch offices routinely use those systems to communicate with the Minnesota headquarters also fails to create personal jurisdiction in this state.¹⁵ Minnesota appellate courts have long acknowledged that communication

¹⁵ The district court determined that the collective "Minnesota contacts" of the former employee Appellants included unspecified "regular contact with C.H. Robinson's Minnesota office." (October 8 Order, p. 12.) The only record information on that point is again the O'Brien Affidavit, in which it was generally claimed that all "C.H. Robinson employees regularly and frequently communicate with personnel in C.H. Robinson's

with a Minnesota company or resident emanating from outside of the state, such as via telephone and mail contacts, is insufficient to establish personal jurisdiction. *See S.B. Schmidt Paper Co. v. A to Z Paper Co., Inc.*, 452 N.W.2d 485, 488 (Minn. Ct. App. 1990) (“Phone and mail contacts alone have been held to be insufficient to confer personal jurisdiction under the Minnesota longarm statute”) (citing *Dent-Air Inc. v. Beech Mountain Air Service*, 332 N.W.2d 904, 908 (Minn. 1983) and *Leoni v. Wells*, 264 N.W.2d 646, 647 (Minn. 1978)). *See also Porter v. Berall*, 293 F.3d 1073, 1076 (8th Cir. 2002) (“Contact by phone or mail is insufficient to justify exercise of personal jurisdiction under the due process clause.”); *Mountaire Feeds, Inc. v. Agro Impex S.A.*, 677 F.2d 651, 655 (8th Cir.1982) (extensive use of telephone, mail and banking not sufficient to confer personal jurisdiction).

No legitimate distinction can be drawn between computerized communications occurring over the internet, such as email, and more conventional forms of communication, such as telephone calls or mail.¹⁶ As this Court aptly noted in rejecting a claim that “‘the phenomenon and power’ of the Internet justify[d] a different result”:

[Plaintiff] has failed to demonstrate why that should be so in this case. This case involves “one or more” individually sent and received e-mails, which, as the district court cogently observed, are “just electronic mail.” [Plaintiff] has provided no reason why the fact that the letters in this case were sent by e-mail should cause a different result than if they were sent by traditional mail.

headquarters . . . via numerous phone and e-mail communications and computer network connections.” (O’Brien Aff., ¶ 11 (App. 103).)

¹⁶ Nor, in turn, may any legitimate distinction be drawn between computerized communications via the internet, in the form of email, and remote computer access of a computer server, also via the internet.

Northwest Airlines, Inc. v. Friday, 617 N.W.2d 590, 594-95 (Minn. Ct. App. 2000); *see also Neiberger & Associates v. WVK Inc.*, No. 05-2865, 2006 WL 2670095, *4 (D. Minn. Sept. 18, 2006) (Add. 29, 31-32) (rejecting claim of jurisdiction based on telephone, e-mail and facsimile communication).

Moreover, it is misguided to focus on the communications made by the former employee Appellants to C.H. Robinson headquarters, because it is, again, a defendant's contact *with the forum itself*— not with residents of the forum — that is necessary for the exercise of personal jurisdiction. *KSTP-FM, LLC*, 602 N.W.2d at 923; *see also West Am. Ins. Co. v. Westin, Inc.*, 337 N.W.2d 676, 679 (Minn. 1983). It is pure fiction to consider these various remote contacts emanating from outside of the state to be *Minnesota contacts*. *See, e.g., Northwest Airlines, Inc.*, 617 N.W.2d at 594 (sending e-mail is an act taken from the state wherein the defendant was located at the time — not an act within the resident state of the recipient).

As to the broader issue of administering out-of-state employees from a centralized headquarters, the case of *Addison Ins. Marketing, Inc. v. Evans*, No. 03-02-0994, 2002 WL 31059806 (N.D. Tex. Sept. 12, 2002) (Add. 35), is analogous to the instant case and is quite instructive. In that decision, from a federal district court in Texas, the court dismissed the plaintiff's action alleging breaches of non-compete and confidentiality agreements due to the lack of personal jurisdiction over the defendant insurance agent who had been hired by a Dallas-based insurance company. 2002 WL 31059806 at *1. The plaintiff insurance company conducted significant administration regarding the out-

of-state defendant from the Texas headquarters, including: processing completed insurance forms and premium payments that were forward to it by the defendant agent; requiring that the agent provide regular notice to the Dallas office (via telephone) whenever he made a sale; sending the processed policies to the agent in Pennsylvania for his delivery to the customers; providing the agent with a list of potential customers that was developed at the Dallas office; providing an email system and communicating with the agent via that system to set up appointments; providing business cards to the agent that listed a toll-free number connecting customers with personnel in the Texas office; and issuance of commission checks for the agent. *Id.* In addition, the agency agreement executed by the parties included a choice-of-law provision identifying Texas law and also included a venue provision stating that venue for any dispute would be in a court of “proper jurisdiction” in Dallas County, Texas. *Id.* The court ultimately found jurisdiction to be lacking, because these administrative actions taken by the plaintiff company were not evidence that the out-of-state agent had *availed himself* of the benefits of the forum state, noting:

[This activity] merely represent[s] the particular administrative procedures [plaintiff] required of its agents in selling insurance policies . . . Such contacts do not demonstrate any purposeful tortious activity directed towards Texas by [the defendant] sufficient for him to anticipate being hailed into a Texas court . . . Rather, *these contacts*, regardless of any regularity, *appear to be nothing more than requirements* [plaintiff] imposed [defendant] for his conduct of business within Pennsylvania.

2002 WL 31059806 at *5 (emphasis added).

The well-reasoned decision in *Addison Ins. Marketing, Inc.* is also consistent with this Court’s ruling in the *Smarte Carte* case, which involved allegations that an employee

working outside of Minnesota had violated a noncompete agreement with a company based in this state. In *Smarte Carte*, this Court found personal jurisdiction to be lacking over the out-of-state employee, even though he had made two to three visits to Minnesota and had executed an employment agreement containing a Minnesota choice-of-law provision. 1996 WL 689782, at *2 (Add. 34); *see also Pavlo v. James*, 437 F.Supp. 125, 128 (S.D.N.Y. 1977) (finding insufficient contacts even when evidence showed defendant was in “charge of plaintiff’s Kentucky ‘branch office’, . . . [had] frequent telephone conversations and . . . correspondence with plaintiff in New York, and . . . ‘came to New York on business connected with his employment.’”); *see generally* Robert C. Casad and William M. Richman, *Service and Employment Contracts*, Jurisdiction in Civil Actions § 8-11 (3d ed. 2004) (“In suits by an employer against an employee for breach of the employment contract . . . [w]here the employee’s performance was to take place outside the forum state, jurisdiction usually has been denied . . .”)

The rationale of the courts in *Smarte Carte* and *Addison Ins. Marketing* should be followed in this case. If personal jurisdiction may be validly premised upon activities such as the use by an out-of-state employee of a computer (or email) system maintained in Minnesota, or the receipt of pay by such employees that gets administered from a Minnesota headquarters, then Minnesota courts will be extraordinarily expanding their jurisdiction. Such a broad exercise of jurisdiction would in essence mean that every person employed anywhere within the United States who happens to work for a company headquartered in Minnesota may be properly deemed to have sufficient “Minnesota contacts” so as to be subject to being hailed into the courts of this state. By its conduct of

various administrative activities at its Twin Cities headquarters, *C.H. Robinson has surely availed itself* of the laws of Minnesota, but those actions by Respondent cannot be validly characterized as somehow being contacts *by the Appellants* with this state through which they purposefully availed themselves of the benefits and protection of Minnesota law. To consider such activities by a Minnesota-based employer to constitute jurisdictional contacts with this state *by the out-of-state employees* turns the proper jurisdictional analysis on its head and would violate constitutional due process requirements. To rule as such would also represent a significant expansion of Minnesota law.

c) The Appellants Very Limited Visits to Minnesota are not Sufficient to Create Personal Jurisdiction

The fact that the Appellants, on very limited occasions, visited Minnesota during the course of their employment with C.H. Robinson is also insufficient to establish personal jurisdiction. *See Smarte Carte, Inc.*, 1996 WL 689782 at * 1-2 (Add. 33-34) (two to three visits to Minnesota did not subject out-of-state employee to jurisdiction here). Three of the former employee Appellants visited the Minnesota headquarters of Respondent only one time each. (Helton Aff., ¶ 6; Katai Aff., ¶ 5; and Winkler Aff., ¶ 7 (App. 73, 76, and 78).) The other two former employee Appellants made two visits and three visits, respectively, to Respondent's headquarters. (Geghan Aff., ¶ 7; Casillas Aff., ¶ 6 (App. 71 and 69).) The Appellants' limited – and wholly immaterial¹⁷ – visits to Respondent's Minnesota headquarters do not supply the foundation necessary to exert

¹⁷ The lack of a causal connection between these visits are addressed below, in section IV(A)(4)(d).

jurisdiction over the Appellants. It was, accordingly, legal error for the district court to rule otherwise.

d) The Contacts Relied on by the District Court to Find Jurisdiction Lack an Adequate Causal Connection to Respondent's Claims

Even assuming, for the sake of argument, that all of the contacts relied on by the district court may properly be considered "Minnesota contacts," personal jurisdiction may not be constitutionally exercised over any of the former employee Appellants because there is no causal relationship between those contacts and Respondent's purported causes of action. *See Lorix*, 680 N.W.2d at 579 (a "direct connection" is required between the alleged injury the forum state contacts). The Complaint asserts various tort and contract claims against the former employee Appellants based on conduct they have allegedly engaged in outside of Minnesota. The only relationship here between any of the "Minnesota contacts" relied on by the district court and Respondent's claims is the very general connection that Respondent is asserting employment related claims against former employees who (like all of Respondent's employees around the country) were managed from C.H. Robinson's Minnesota headquarters. This is not an adequate connection under Minnesota law. *Smarte Carte, Inc.*, 1996 WL 689782 at *2 (Add. 34).

The decision of this Court in *Smarte Carte, Inc.*, which also involved a dispute by an employer against its employee, is directly on point here. In that case, the Court affirmed the trial court's determination that personal jurisdiction did not exist, because there was "no connection [between] the Minnesota [contacts]" with the employer and the

alleged wrongdoing of the employee.¹⁸ In the instant case, the quality of the alleged “Minnesota contacts” for the former employee Appellants are similarly inadequate to create specific jurisdiction over Appellants Helton, Katai, Casillas, Geghan, and Winkler.

4. The District Court Committed Legal Error in Finding the Existence of Personal Jurisdiction Over Appellants Casillas, Geghan and Winkler Pursuant to Forum Selection Clauses Contained in Their Employment Agreements

The district court also created legal error in ruling that personal jurisdiction was created over Appellants Casillas, Geghan, and Winkler, as a result of the inclusion of forum selection clauses in the CNAs that they signed when employed by Respondent.¹⁹ It was error for the district court to rule that these Appellants consented to personal jurisdiction by signing these agreements, because under the particular circumstances here, the forum selection clauses in the CNAs are unreasonable and not legally enforceable.

“Whether to enforce a contract’s forum selection clause lies within the sound discretion of the district court.” *Alpha Systems Integration, Inc. v. Silicon Graphics, Inc.*, 646 N.W.2d 904, 909 (Minn. Ct. App. 2002). “When parties agree to bring contract disputes in a particular forum, courts generally enforce that agreement unless the party

¹⁸ 1996 WL 689782 at *2. The district court ineffectively attempted to distinguish the *Smarte Carte* decision by conclusorily claiming that the former employee Appellants’ “contacts” are “all sufficiently related to Plaintiff’s causes of action to support a finding of jurisdiction.” (October 8 Order, p. 13; *see also* n. 2, pp. 11-12 (Add. 11-13).) The district court, however, fails to identify any evidentiary record (or even allegations of Respondent) supporting the claimed causal nexus.

¹⁹ The standard form agreement signed by these three Appellants contain forum selection clauses providing: “I understand that any legal action brought to enforce the terms of this Agreement shall be brought in Hennepin County District Court, State of Minnesota or the

seeking to avoid the contractual forum shows that the agreement is unfair or unreasonable.” *Id.* (citing *Hauenstein & Bermeister, Inc. v. Met-Fab, Indus., Inc.*, 320 N.W.2d 886, 890 (Minn. 1982)). A forum-selection clause is unfair or unreasonable if: (1) the chosen forum is a seriously inconvenient place for trial; (2) the agreement containing the forum-selection clause is a contract of adhesion; or (3) the agreement is otherwise unreasonable. *Id.* “[A]ny test of reasonableness necessarily requires a case-by-case determination.” *Hauenstein*, 320 N.W.2d at 890.

The district court abused its discretion in enforcing the forum selection clauses because it failed to engage in a fact-specific, case-by-case analysis of reasonableness. Of the three *Hauenstein* factors, the court “only address[ed] whether the CNAs are contracts of adhesion.” (October 8 Order, p. 6 (Add. 6).) In confining its analysis this way, the district court wrongly ignored Casillas, Geghan, and Winkler’s arguments about the factors that made the forum selection clauses “otherwise unreasonable.” In addition, the district court too narrowly interpreted the phrase, “contract of adhesion,” as that term is used in the *Hauenstein* test.

The Minnesota Supreme Court has stated that “[f]orum selection clauses in contracts which are termed adhesion – ‘take it or leave-it’ – contracts and which are the product of unequal bargaining power between the parties are unreasonable.” *Hauenstein*, 320 N.W.2d at 891. “A contract’s inclusion of boilerplate language is only one factor tending to point to an adhesion contract.” *Alpha Systems Integration, Inc. v. Silicon*

United States District Court for the District of Minnesota, and I hereby consent to the jurisdiction of those Courts.” (Complaint Exs. 2, 3, 12 (App. 39, 42, 44, 47, 59, and 62).)

Graphics, Inc., 646 N.W.2d 904, 909 (Minn. Ct. App. 2002). “Other factors include the parties’ sophistication, bargaining power disparity, opportunity for negotiation, opportunity to obtain the product elsewhere, and the product’s status as a public necessity.” *Id.* at 909-910.

The factors indicating a contract of adhesion under the *Hauenstein* test are present in this case. The CNAs signed by Casillas, Geghan, and Winkler are identical boilerplate agreements, indicating that they did not have the opportunity to bargain for different terms. There was a significant disparity between the sophistication and bargaining power of the parties. Casillas, Geghan and Winkler were not executives of the company, nor did they possess any other high-level position – rather they were “transportation sales employee[s]” who worked in C.H. Robinson’s branch offices. (Complaint ¶¶ 25, 26, and 32 (App. 11-12).) They were required to sign the CNAs as a condition of employment, yet the CNAs were not presented to them until several years after their employment began. (*Compare* Complaint ¶ 25, 26, and 32 (App. 11-12) (alleging that Casillas, Geghan, and Winkler began employment in 2001, 1997 and 1999 respectively) *with* Exs. 2, 3, and 12 (App. 39, 42, 44, 47, 59, and 62) (agreements signed in November or December 2005 and state that the employees were signing the agreements “in consideration for their employment” with Respondent)); *see also* Complaint ¶ 39 (App. 16) (CNAs were “a condition of” employment).²⁰ The Minnesota Supreme Court has held that “[t]he practice of not telling prospective employees all of the conditions of

²⁰ *See also* Geghan Aff., ¶ 6; and Winkler Aff., ¶ 6 (App. 71 and 78).

employment until after the employees have accepted the job ... takes undue advantage of the inequality between the parties.” *National Recruiters, Inc. v. Cashman*, 323 N.W.2d 736, 741 (Minn. 1982).

In analyzing whether a contract is a contract of adhesion under the *Hauenstein* test, Minnesota courts have specifically distinguished employment contracts from business contracts. *Alpha Systems Integration, Inc.*, 646 N.W.2d at 910 (the employer-employee relationship is different from a business-to-business relationship). In *Nelson v. Master Lease Corp.*, the court refused to enforce a forum selection clause in an employment contract where the employer was a large corporation with the ability to protect its interests in any forum. 759 F. Supp. 1397, 1401-02 (D. Minn. 1991). The court accepted the employee’s argument that the forum selection clause was unreasonable and unenforceable because the clause was “not fairly negotiated and [was] a product of [the employer’s] unfair bargaining power.” *Id.* Similarly, in this case, the CNAs were a product of a Fortune 500 company’s unfair bargaining power and were not fairly negotiated.

In rejecting the argument that the CNAs were adhesion contracts, the district court did not analyze the *Hauenstein* considerations indicating a contract of adhesion or even mention the disparity in bargaining power between the parties. Rather, the district court summarily held that the CNAs were not contracts of adhesion because they did not relate to services that could not be obtained elsewhere and did not involve a public necessity. (October 8 Order, p. 6 (Add. 6).) This analysis is misplaced and ignores economic reality. Although the term “contract of adhesion” is sometimes defined as a contract

“drafted unilaterally by a business enterprise and forced upon an unwilling and often unknowing public for services that cannot readily be obtained elsewhere,”²¹ *Hauenstein* does not appear to narrowly limit its application to contracts that meet this technical definition. The *Hauenstein* Court listed several factors to be considered in determining whether a contract is a contract of adhesion in which a forum selection clause will not be enforced. *Hauenstein*, 320 N.W.2d at 889, 891. Furthermore, the context of the *Hauenstein* decision demonstrates that whether a contract is freely negotiated is a key factor in this analysis. *Hauenstein* overruled Minnesota case law that had applied the traditional rule of not enforcing forum selection clauses that relate to future litigation. *Hauenstein*, 320 N.W.2d at 888-890 (discussing and overruling *Detwiler v. Lowden*, 198 Minn. 185, 269 N.W. 367 (1936)). In place of the traditional rule, *Hauenstein* adopted the modern rule that “when parties to a contract agree that actions arising from that contract will be brought in a particular forum, the agreement should be given effect unless it is shown by the party seeking to avoid the agreement that to do so would be unfair or unreasonable.” *Id.* at 889. In adopting the modern rule, the Court noted that “persuasive public policy reasons exist for enforcing a forum selection clause in a contract freely entered into by parties who have negotiated at arm’s length.” *Hauenstein*, 320 N.W.2d at 889.

The district court abused its discretion in enforcing the forum selection clause without even considering whether the contract was freely entered into and negotiated at

²¹ *Schlubohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 924 (Minn. 1982).

arms length.²² Compare October 8 Order, p. 6, with *Hauenstein*, 320 N.W.2d at 891 (holding that choice of forum was not part of a contract of adhesion only after determining that the “choice of forum was made in an arm’s length transaction between persons having business experience”) and *Alpha Systems Integration, Inc.*, 646 N.W.2d at 910 (determining that forum selection clause in a business-to-business relationship was enforceable only after analyzing opportunity for negotiation and sophistication of the parties).

More importantly, the district court’s decision ignores economic reality. The CNAs, in fact, concerned a necessity that could not readily be obtained elsewhere. Casillas, Geghan, and Winkler were required to sign these agreements as a condition of their continued employment. (Complaint ¶ 39; Exs. 2, 3, and 12 (App. 16, 39, 44, and 59).) The ability to continue working in one’s job is, for most people, an economic necessity. Although these Appellants may have eventually been able to find other employment, similar employment is, generally, not *readily* available. The district court erred by presuming that these Appellants, after working for four years or more with Respondent, could have simply and freely chosen to lose their jobs and go find other employment rather than signing the CNAs. The CNAs satisfy the requirements of a

²² The district court also mistakenly relied on an unpublished U.S. District Court case for the proposition that “legal authority related to contracts of adhesion has no application to agreements between private parties” (October 8 Order, p. 6 (Add. 6).) This statement contradicts Minnesota law, which has held that certain contracts between private parties, such as insurance contracts, are contracts of adhesion. *Vierkant v. Amco Ins. Co.*, 543 N.W.2d 117, 120 (Minn. Ct. App. 1996) (“Insurance contracts are contracts of adhesion between parties not equally situated.”); *Canadian Universal Ins. Co. v. Fire Watch, Inc.*, 258 N.W.2d 570, 574-75 (Minn. 1977).

contract of adhesion under *Hauenstein*, and the forum selection clauses contained therein are unreasonable and unenforceable.

The district court also abused its discretion by not considering whether the CNAs were “otherwise unreasonable,” the third *Hauenstein* factor.²³ In describing this catch-all factor, the Minnesota Supreme Court has stated that “other indications of unreasonableness in forum selection agreements are sure to arise where for reasons other than those enumerated above, to enforce the agreement would be unfair or unreasonable.” 320 N.W.2d at 891. One example is where the enforcement of the forum selection clause contravenes public policy. *Id.*

The forum selection clauses at issue in this case violate the public policy that a “plaintiff may not, by choice of an inconvenient forum, ‘vex,’ ‘harass,’ or ‘oppress’ the defendant by inflicting upon him expense or trouble not necessary to his own right to pursue his remedy.” *Hague v. Allstate Ins. Co.*, 289 N.W.2d 43, 45 (Minn. 1978). The CNAs unnecessarily require Casillas, Geghan, and Winkler to litigate employment disputes in an inconvenient forum. These Appellants did not work for Respondent in Minnesota. They worked in three of Respondent’s many different branch offices across the country, and they rarely traveled to Minnesota. Nonetheless, Respondent chose a

²³ The district court wrongly stated that Casillas, Geghan, and Winkler did not argue that the CNAs were otherwise unreasonable. (October 8 Order, p. 6 (Add. 6)). To the contrary, these Appellants argued that the CNAs were unfair and unreasonable for a variety of reasons, including the fact that they violate Minnesota public policy. (Defendants Casillas, Geghan, and Winkler’s Mem. of Law in Support of Motion to Dismiss (App. 105-111).) These arguments fall under the third catch-all *Hauenstein* factor.

litigation forum more than 900 miles from their homes and workplaces.²⁴ This was unnecessary and an abuse of Respondent's unequal bargaining power. C.H. Robinson has operations across the country and has submitted itself to the jurisdiction of the state courts in the states in which it has branch offices. There is no reason for requiring mid-level employees who work for those branch offices to litigate employment disputes in Minnesota.²⁵

Another factor which weighs against enforcing the forum selection clauses, as otherwise unreasonable, is the fact that they are part of a noncompetition agreement. Noncompetition agreements are partial restraints on trade and are disfavored by courts and must be carefully scrutinized. *National Recruiters, Inc.*, 323 N.W.2d at 740. They are only enforced to the extent that they are not broader than necessary to protect the employer's legitimate business interest and do not pose an undue burden on the covenantor. *Walker Employment Service, Inc. v. Parkhurst*, 219 N.W.2d 437, 441 (Minn. 1974). In this case, the forum selection clause is unnecessary to protect Respondent's business interests, and it poses significant burdens on Casillas, Geghan, and Winkler who, compared to Respondent, are significantly less able to bear such burdens.

²⁴ Hennepin County, Minnesota is over 900 miles away from Shreveport, Louisiana, where Winkler lives and works, over 1000 miles away from Shelton, Connecticut, where Geghan works, and over 1700 miles away from Reno, NV, where Casillas works. (*See Nolan Aff.*, ¶ 2-4, and Exs. 1-3 thereto (App. 81-96).)

²⁵ Another equitable factor that should be considered is that, despite their long employment histories, Respondent fired Casillas, Geghan, and Winkler within one to two years after asking them to sign the CNAs. (*Casillas Aff.* ¶ 3, *Geghan Aff.* ¶ 3, *Winkler Aff.* ¶ 3 (App. 68, 70, and 77).)

Furthermore, enforcement of the forum selection clause in Winkler's CNA would contravene Louisiana law, which provides that choice of law and choice of forum clauses in employment contracts are null and void unless ratified by the employee after the dispute arises. L.A. Rev. Stat. Ann. § 23:921(A)(2). Winkler worked for Respondent's Shreveport, Louisiana branch office. The fact that Winkler's alleged consent to jurisdiction is legally null and void under Louisiana law demonstrates that enforcement of the forum selection clause should be considered "otherwise unreasonable" under the *Hauenstein* test.

A review of all the circumstances demonstrates that the district court abused its discretion in holding that the forum selection clauses in the CNAs were enforceable. Respondent required Casillas, Geghan and Winkler to sign boilerplate CNAs as a condition of their continued employment. The CNAs require these sales employees to litigate disputes related to their employment more than 900 miles from where they work and live. The forum selection clause is not part of an agreement freely-entered into and negotiated by two parties in an arms length transaction. It resulted from an abuse, by Respondent, of its disparate bargaining power. The forum selection clauses are unenforceable and are not a valid consent to this court's jurisdiction.

B. The District Court Committed Legal Error When Refusing to Dismiss the Claims Against Appellants Pursuant to the Doctrine of *Forum Non Conveniens*

Assuming that the Court, for the sake of argument, was to rule that personal jurisdiction could be constitutionally exercised over one or more of the Appellants, it would make little sense and would also be extremely inequitable to litigate those claims

in Minnesota. Accordingly, the district court abused its discretion by not dismissing the Complaint pursuant to the doctrine of *forum non conveniens*.

A trial court's application of *forum non conveniens* is reviewed for an abuse of discretion. *Bergquist v. Medtronic*, 379 N.W.2d 508, 512 (Minn. 1986). The doctrine of *forum non conveniens* permits a court to "resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 507 (1946). The doctrine recognizes that venue and long-arm statutes "are drawn with a necessary generality and usually give a plaintiff a choice of courts, so that he may be quite sure of some place in which to pursue his remedy" but that they also "may admit those who seek not simply justice but perhaps justice blended with some harassment." *Id.*

Under the doctrine of *forum non conveniens*, a plaintiff's choice of forum must be weighed against the public interest of a judicial system in serving its own citizens, and the private interests of the litigants. With regard to private interests of the litigants, the Court must consider, in part, "the ease of access to sources of proof; availability of compulsory process for attendance of the unwilling, and the cost of obtaining willing witnesses." *Berquist*, 379 N.W.2d at n. 4. "There may also be questions as to the enforceability of a judgment if one is obtained." *Id.*

In this case, the private interest of the litigants favors the application of *forum non conveniens*. All of the conduct the Appellants are alleged to have engaged in took place outside of Minnesota. Most of the sources of proof and witnesses to such conduct, such as customers, are also outside of Minnesota. There are also questions as to enforceability

of any judgment a Minnesota court may enter because many states do not favor the enforcement of noncompete agreements. For example, under Louisiana law, noncompetition agreements are “null and void” unless they comply with specific statutory requirements. LA. Rev. Stat. Ann. § 23:921(A)(1). Choice of law and choice of forum provisions in employment agreements are also null and void under Louisiana law. As to Winkler, who lives and works in Louisiana, there is a fair chance that any judgment Respondent may obtain in Minnesota will be unenforceable in Louisiana.

The more convenient forums for trials against the former employee Appellants are the states in which those employees worked for Respondent.²⁶ The Superior Court of

²⁶ Appellants believe that dismissal on the grounds of *forum non conveniens* is particularly appropriate if some, but not all, of the Appellants are dismissed for lack of jurisdiction. If, for example, Respondent’s claims were dismissed on jurisdictional grounds against all of the Appellants who were not signatories to the agreements containing forum selection clauses, then the home states of Appellants Casillas, Geghan, and Winkler would be the most appropriate forums for the specific claims against them. Although this court recently held in *Paulownia Plantations de Panama Corp. v. Rajamannan*, 757 N.W.2d 903, 907 (Minn. Ct. App. 2008), that “a foreign forum is not available unless all parties can come within the jurisdiction of that forum,” a requirement of a single alternative forum should not be a prerequisite to the application of *forum non conveniens* in this case. Unlike *Paulownia Plantations*, this case does not involve deferring to the jurisdiction of a foreign country’s courts. Furthermore, although there is not a single state that would have jurisdiction over all of the Appellants, the requirement of a single alternative forum should not apply, because the Complaint is not, in reality, a single lawsuit. This litigation is in actuality eight separate lawsuits against eight former employees of Respondent, who worked for Respondent in different offices, in different states and who similarly work in different offices and in different states for FLS. Respondent chose to consolidate all of these cases together, solely for its convenience, even though Respondents’ Complaint makes clear that the former employee Appellants’ employment with Respondent ended at different times over a two year period, between 2005 and 2007, and that the changes in employment were not the product of some orchestrated mass departure. Moreover, several of the former employee Appellants were fired by Respondent (including Casillas, Geghan, and Winkler), while others resigned from their employment. The witnesses and documents needed to prove alleged violations

Massachusetts has dismissed, on *forum non conveniens* grounds, a case like this, brought by a former employer in its home state of Massachusetts, against an employee who worked the employer's California office. The court reasoned, "All of what [the employee] did for [his old employer] was in California, all of what he is doing now at [his new employer] is in California, he resides in California now and did so throughout his employment by [his old employer], and many witnesses are located in California. *Aware v. Ramirez-Mireles*, No. 011134BLS, 2001 WL 755822, *1 (Mass. Super. 2001) (Add. 43). Similarly, in this case, all of what Casillas, Geghan, Helton, Katai, and Winkler did for Respondent was performed in Nevada, Connecticut, North Carolina, Illinois and Louisiana, respectively. They currently live and work for FLS in these same states. Many of the witnesses will be located in these states. The private interest factors favor dismissal on *forum non conveniens* grounds.

Public interest factors also favor dismissal on *forum non conveniens* grounds. Courts generally consider four public interest factors when evaluating a *forum non conveniens* motion, including: (1) the administrative burdens placed on already-congested courts by litigation unrelated to the forum; (2) the practical difficulties of sorting through dozens of choice of law analyses and applying the substantive law of multiple other states and foreign countries; (3) the unfair imposition of jury duty on community members who have no connection to the litigation; and (4) the local interest

of their separate employment agreements will differ with each Appellant. Under these circumstances, *forum non conveniens* should not be limited to circumstances in which a single alternative forum is available.

in having cases decided closest to their origin. *Gulf Oil*, 330 U.S. at 508-09; *Bergquist*, 379 N.W.2d at 511-12.

The first and third public interest factors favor dismissal. Allowing Respondent to proceed with its claims in Minnesota will increase the administrative burden on Minnesota courts, undoubtedly at the expense of very limited local judicial resources and Hennepin County citizens, whose own claims will not be heard expeditiously as a result of unnecessary court congestion. See, e.g., *Myers v. Gov't Employees Ins. Co.*, 225 N.W.2d 238, 244 (Minn. 1974). In addition, Respondent has requested a 15 day jury trial. As the Supreme Court observed in *Gulf Oil*, “[j]ury duty is a burden that ought not to be imposed upon the people of the community which has no relation to the litigation.” 330 U.S. at 508-09. Although Respondent is headquartered in Minnesota, it has chosen to engage in business throughout the country and has the resources to enforce its legal rights in the places it does business. Hennepin County Courts, citizens, and taxpayers should not have to bear the financial and administrative burden of litigation that is based on Respondent’s non-Minnesota activities.

The second public interest factor is also satisfied. In order to adjudicate Respondent’s non-contract claims against the Appellants, the district court will be required to examine complex choice of law principles with regard to six other jurisdictions. In *Bongards’ Creameries v. Alfa-Laval, Inc.*, 339 N.W.2d 561, 563 (Minn. 1983), the Court found that a *forum non conveniens* dismissal was appropriate where a Minnesota court would have to interpret and apply the laws of one other state and one other country to the dispute at hand. The case for *forum non conveniens* dismissal is even

more compelling in this case. Although the CNAs state that Minnesota law applies to the enforcement of the agreements, the court will have to determine whether the choice of law provision is enforceable against Appellants who worked in states that disfavor noncompetition agreements.²⁷ More importantly, the court will have to determine whether Canadian, Illinois, North Carolina, Nevada, Connecticut, and Louisiana law, respectively, apply to the eight non-contract claims Respondent has alleged against the Appellants. There is no contractual choice of law provision regarding these claims. The Supreme Court has held that “if a State has only an insignificant contact with the parties and the occurrence or transaction, application of its law is unconstitutional.” *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 310-11 (1981).

Finally, the only local interest evident on the face of the Complaint is the fact that Respondent has its principal place of business in Eden Prairie, Minnesota. Although Respondent may have its headquarters here, Respondent operates worldwide through a series of branch offices, including offices throughout the country. The alleged wrongful

²⁷ “The intention of the parties as to which law shall govern their contract is, ordinarily, decisive.... However the power of the parties to choose the governing law is not without limits. That chosen must be the law of the place which has a substantial connection with the contract, and in exercising their choice, the parties must act in good faith and without intent to evade the law.” *Travelers Ins. Co. v. American Fidelity & Casualty Co.*, 164 F.Supp. 393, 398 (D. Minn. 1958) (holding that “an insurer may not adopt as governing law the law of another state if the ensuing contract is repugnant to the law of the state of issuance.”); *see also* Restatement (Second) of Conflict of Laws § 187(b) (noting that choice of law provisions will generally be given legal effect “unless application of the law of the chosen state would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which ... would be the state of the applicable law in the absence of an effective choice of law by the parties.”)

conduct of Appellants is not connected to Respondent's business in Minnesota; rather, it is connected to Respondent's business in North Carolina, Illinois, Nevada, Connecticut, and Louisiana, respectively. There is no strong local interest that warrants Hennepin County providing a venue for litigation of Respondent's disputes related to its former employees in other states.

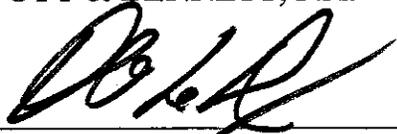
This Court should, accordingly, reverse the district court's ruling refusing to dismiss these claims under the doctrine of *forum non conveniens*.

V. CONCLUSION

For all of the reasons stated herein, the Appellants respectfully request that this Court reverse the decision of the district court and direct that Respondent's Complaint be dismissed as to all Appellants due to the lack of personal jurisdiction.

Dated: March 9, 2009.

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132 for a brief produced with proportional font and typeface in 13-point Times New Roman using Microsoft Word 2003.

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