

APPELLATE COURT CASE NO. A08-2105

STATE OF MINNESOTA
IN THE COURT OF APPEALS

C.H. Robinson Worldwide, Inc.,)
)
 Plaintiff/Respondent,)
)
 v.)
)
 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 RESPONDENT C.H. ROBINSON WORLDWIDE, INC.

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 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: Did Appellants consent to jurisdiction in Minnesota based upon their execution of agreements with Respondent containing mandatory 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 United States District Court for the District of Minnesota, and I hereby consent to the jurisdiction of those Courts”?

The district court ruled: The district court correctly held that the forum selection clauses in the agreements of Appellants Arlien Cassilas, Kenton Geghan, and Jody Winkler are valid and enforceable, and that Appellants consented to the jurisdiction of the district court by virtue of signing agreements containing mandatory forum selection clauses.

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. App. 2002)

Medtronic, Inc. v. Endologix, Inc., 530 F. Supp. 2d 1054 (D. Minn. 2008)

ELA Medical, Inc. v. Arrhythmia Mgmt Assoc., 2007 WL 892517 (D. Minn. Mar. 21, 2007)

Guidant Sales Corp. v. George, 2001WL 1491317 (D. Minn. Nov. 19, 2001)

B. Are the remaining Appellants “closely related parties” to the dispute such that they are therefore bound by the forum selection clauses contained in the agreements of their Co-Appellants where the remaining Appellants knew of the forum selection clauses prior to engaging in the alleged tortious activities, where the complaint alleges

breach of the agreements containing forum selection clauses, where the remaining claims, including tortious interference with those agreements, are inextricably intertwined with the breach of contract claims, and where the Appellants all share common interests and common counsel?

The district court ruled: The district court correctly held that Appellants FLS Transportation Services, Inc., Domenic Di Girolamo, Michael Flinker, Scott Helton and Peter Katai are “closely related parties” to the dispute and are therefore bound by the forum selection clauses contained in the agreements of Appellants Casillas, Geghan, and Winkler.

Authorities:

Medtronic, Inc. v. Endologix, Inc., 530 F. Supp. 2d 1054 (D. Minn. 2008)
ELA Medical, Inc. v. Arrhythmia Mgmt Assoc., 2007 WL 892517 (D. Minn. Mar. 21, 2007)
Hy Cite Corp. v. Advanced Mktg. Int’l, 2006 WL 3377861 (W.D. Wis. April 10, 2006)
Marano Enterps. of Kansas v. Z-Teca Rest., L.P., 254 F.3d 753, 757-58 (8th Cir 2001)

C. Do the following contacts, when considered together, constitute sufficient “Minnesota contacts” to create personal jurisdiction over non-resident former employee Appellants in a cause of action arising out of their employment by Respondent:

(1) entering into agreements with Respondent employer providing that Minnesota law will govern the agreements; (2) entering into agreements with Respondent employer containing forum selection clauses; (3) accessing Respondent employer’s confidential and proprietary information through a computer network based in Minnesota; (4) visiting Minnesota at least once during the course of employment in order to attend training

provided by Respondent employer; (5) conducting business on behalf of Respondent employer with customers located in Minnesota; (6) communicating with Respondent employer throughout their employment via numerous phone and e-mail communications and access through the computer network; (7) receiving software upgrades from Respondent employer's Minnesota headquarters; (8) being paid from Respondent employer's Minnesota headquarters; (9) having employee benefits administered from Respondent employer's Minnesota headquarters; (10) having ultimate Managers located in Minnesota; (11) making travel arrangements and filing paperwork with Respondent employer's Minnesota headquarters; and (12) addressing personnel issues through and with individuals in Minnesota?

The district court ruled: The district court correctly held that Appellants Casillas, Geghan, Winkler, Helton, and Katai are subject to personal jurisdiction in Minnesota based upon their numerous and substantial contacts with the state, which contacts are related to the instant cause of action.

Authorities:

West Publ'g Corp. v. Stanley, 2004 WL 73590 (D. Minn. Jan. 7, 2004)
ComputerUser.com, Inc. v. Tech. Pub'n, LLC, 2002 WL 1634119 (D. Minn. July 20, 2002)
RDO Foods Co. v. United Brands Int'l, Inc., 194 F. Supp. 2d 962 (D.N.D. 2002)
U.S. Surgical Corp. v. Imagyn Med. Technologies, Inc., 25 F. Supp. 2d 40 (D. Conn. 1998)
Blue Beacon Int'l, Inc. v. Am. Truck Washes, Inc., 866 F. Supp. 485 (D. Kan. 1994)

D. Did the district court err in holding that Appellants are not subject to personal jurisdiction in Minnesota based upon the “conspiracy theory” where Respondent included well-pleaded claims of conspiracy in its Complaint, where one of the defendants, who did not object to the district court’s jurisdiction, was indicted on Federal criminal charges in Minnesota for unauthorized access and use of Respondent’s confidential information located in Minnesota, and where two other defendants, who also did not object to the district court’s jurisdiction, submitted affidavits confirming Respondent’s allegations of conspiracy?

The district court ruled: The district court erroneously ruled that Appellants were not subject to personal jurisdiction of the Court under the “conspiracy theory.”

Authorities:

Hunt v. Nevada State Bank, 172 N.W.2d 292 (Minn. 1969)

Personalized Brokerage Svcs v. Lucius, 2006 WL 208781 (D. Minn. Jan. 26, 2006)

Hardrives, Inc. v. City of LaCrosse, Wis., 240 N.W.2d 814 (Minn. 1976)

E. Did the district court err in holding that Appellants are not subject to personal jurisdiction in Minnesota based upon the *Griffis/Calder* “Effects” test where the Appellants: (1) were parties to a conspiracy to misappropriate intellectual property located in Minnesota; and (2) recruited Respondent’s former employees in violation of those employees’ non-competition agreements with Respondent, with full knowledge that those employees’ non-competition agreements contain forum selection clauses designating Hennepin County, Minnesota, as the forum in which disputes arising out of the agreements are to be litigated?

The district court ruled: The district court erroneously ruled that Appellants FLS, Di Girolamo, Kummer, and Flinker were not subject to personal jurisdiction of the Court under the *Griffis/Calder* “Effects” test.

Authorities:

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

F. Did the district court correctly exercise its discretion in refusing to dismiss Respondent’s claims against Appellants under the doctrine of *forum non conveniens*?

The district court ruled: The district court correctly exercised its discretion in holding that the doctrine of *forum non conveniens* does not apply.

Authorities:

Bergquist v. Medtronic, 379 N.W.2d 508 (Minn. 1986)

Valspar Corp. v. Lukken Color Corp., 495 N.W.2d 408 (Minn. 1992)

Reid-Walen v. Hansen, 933 F.2d 1390 (8th Cir. 1991)

Gulf Oil Corp. v. Gilbert, 330 U.S. 501 (1947)

II. STATEMENT OF THE CASE

Respondent C.H. Robinson Worldwide, Inc. (“C.H. Robinson” or the “Company”), headquartered in Eden Prairie, Minnesota, filed this action to stop eight former employees, their new employer, and three officers of their new employer, from further misappropriating the Company’s confidential, proprietary information, trade secrets, and customer goodwill. Such confidential, proprietary information, trade secrets, and goodwill are all stored, maintained and located in Minnesota. The former employees named in this action are: Arlien Casillas, Kenton K. Geghan, W. Russell Harp, Scott Helton, Peter Katai, Jarrod Marinello, Fred Rand, and Jody Winkler (sometimes referred to herein as the “Ex-Employee Defendants”). Their “new employer” is FLS Transportation, Inc. (“FLS”). The FLS officers named as defendants are Dominic Di Girolamo, Michael Flinker, and Mark Kummer (sometimes referred to collectively herein as the “FLS Officers”).

Some (not all) of the Defendants in the action moved to dismiss, principally claiming that exercise of jurisdiction over them violates their due process rights. Importantly, of the eight Ex-Employee Defendants, only Casillas, Geghan, Helton, Katai, and Winkler (the “Ex-Employee Appellants”) contested the district court’s jurisdiction; the others (Harp, Marinello, and Rand) did not. By consent of the parties, final injunctive relief already has been issued against Marinello and Harp, and the district court below retains jurisdiction to enforce those orders. Defendant Fred Rand – who did not challenge the district court’s jurisdiction over him and whose case will therefore proceed before the district court below – has been indicted on Federal criminal charges *in*

Minnesota for unauthorized access and use of C.H. Robinson's confidential information. Complaint ¶ 59 (App. 24); Rand Indictment (Respondent's App. 1-2). Moreover, although FLS, as well as all of the FLS officers, initially moved to dismiss the case, former FLS officer Mark Kummer does not join in the instant appeal. Thus, jurisdiction has already been established for four of the twelve defendants in this action.

The district court held that it has jurisdiction over all of the Appellants. October 8 Order, pp. 1, 20-21 (Add. 1, 20-21). The Appellants filed this appeal, challenging the district court's rulings that: (1) Appellants Casillas, Geghan, and Winkler consented to the jurisdiction of the district court by executing agreements containing mandatory forum selection clauses designating Hennepin County as the forum in which disputes arising out of the agreements are to be brought; (2) the remaining Appellants are bound to the forum selection clauses in the agreements of Appellants Casillas, Geghan, and Winkler as "closely related parties"; (3) the Ex-Employee Appellants had sufficient contacts with Minnesota to render them subject to the specific personal jurisdiction of Minnesota courts; and (4) the doctrine of *forum non conveniens* does not apply. See Appellants' Statement of the Case, p. 6 (App. 123); Appellants' Mem. of Law, pp. 1-2. Importantly, Appellants do not challenge any of the other district court holdings. Namely, they do not challenge the district court's rulings that: Appellants Geghan and Winkler "did not revoke their consent to personal jurisdiction in Minnesota when they signed...Separation Agreements" with C.H. Robinson, nor do they challenge the district court's ruling that it has jurisdiction over the Appellants with respect to the tort claims alleged against them given that those claims "arise out of the same set of operative facts" as the breach of

contract claims. *Compare* Appellants' Statement of the Case, p. 6 (App. 123) with October 8 Order, p. 8, 20 (Add. 8, 20).

III. STATEMENT OF FACTS

A. The Parties

Respondent C.H. Robinson is a broker and service provider for all types of logistical and transportation services. Complaint ¶ 19 (App. 9). Appellants characterize C.H. Robinson as a "large and major player in the transportation logistics industry." Appellants' Mem. of Law, p. 4. While C.H. Robinson is certainly a major player, due in large part to its valuable confidential and proprietary information and systems, it nonetheless has only about two to three percent of the market in the United States and an even smaller portion abroad. Affidavit of Christopher O'Brien ("O'Brien Aff."), ¶ 2 (App. 99-100).

C.H. Robinson does not own any of the means of transportation itself. Instead, it has built a network of carriers with whom it has developed a relationship to move goods for its other customers who have shipping needs. Complaint ¶ 20 (App. 9). Through these carriers, C.H. Robinson facilitates the transportation of thousands of customer shipments each day. Complaint ¶ 21 (App. 9). C.H. Robinson has developed and utilizes a sophisticated, proprietary system located in Minnesota and accessible by its employees around the country to match customers' needs with carrier availability at the best available price. *Id.*; O'Brien Aff., ¶ 4 (App. 100). That system contains highly confidential, proprietary, trade secret information at issue in this case. *See* O'Brien Aff., ¶¶ 4-5 (App. 100-01).

Appellant FLS, like C.H. Robinson, also operates as a broker and service provider for transportation services. Although FLS is headquartered in Montreal, it has operating centers across the United States and does business in the state of Minnesota. *See* Appellants' Mem. of Law, p. 6. Appellant Di Girolamo is a principal and CEO of FLS and Appellant Flinker is a principal and President of FLS. Complaint, ¶¶ 14-16 (App. 7-8).

The Ex-Employee Appellants were all employed by C.H. Robinson as sales employees or branch managers. *See* Complaint, ¶¶ 5-12; 25-32 (App. 3-7, 11-12). During the course of their employment with C.H. Robinson, each of the Ex-Employee Appellants had access to confidential and proprietary information and trade secrets stored and maintained in Minnesota relating to C.H. Robinson's business. *Id.*, ¶ 50 (App. 21-22); O'Brien Aff., ¶¶ 4-5 (App. 100-01). Further, C.H. Robinson expended significant resources facilitating contacts and relationships between the Ex-Employee Appellants and actual or prospective C.H. Robinson customers. Complaint, ¶ 52 (App. 22-23). Because of the Ex-Employee Appellants' access to C.H. Robinson's confidential and proprietary information and trade secrets in Minnesota, and because the Ex-Employee Appellants built relationships with customers and carriers on behalf of C.H. Robinson, each of the Ex-Employee Appellants entered into various agreements with the Company protecting that information and those relationships, which they have breached. *See id.*, ¶¶ 34-49 (App. 13-21). Following their departures from the Company, each of the Ex-Employee Appellants joined FLS. *Id.*

B. The Appellants All Have Significant Contacts With Minnesota.

1. The Ex-Employee Appellants Have Significant Contacts With Minnesota.

The Ex-Employee Appellants had sufficient Minnesota contacts to warrant the exercise of personal jurisdiction over them. First, all of the Ex-Employee Appellants entered into agreements with the Respondent C.H. Robinson *in Minnesota* and agreed that Minnesota law would govern their agreements. Complaint, ¶¶ 8-9, 45 (App. 4-5, 19).

Second, Appellants Casillas, Geghan, and Winkler each entered into a Confidentiality and Noncompetition Agreement with C.H. Robinson expressly consenting to the jurisdiction of the District Court below with respect to “any legal action brought to enforce the terms of [the Confidentiality and Noncompetition Agreement].” *Id.*, ¶¶ 5-6, 12, 39-44 (App. 3-4, 6-7, 16-19).

Third, as mentioned above, C.H. Robinson’s confidential, proprietary information at issue in this lawsuit is located at its Minnesota headquarters, and each of the Ex-Employee Appellants frequently accessed that information through C.H. Robinson’s computer network. O’Brien Aff., ¶¶ 4-5 (App. 100-01). Defendant Rand¹ has been indicted on Federal criminal charges *in Minnesota* for unlawfully accessing C.H. Robinson’s computer system. *See* Complaint ¶ 59 (App. 24); Rand Indictment (Respondent’s App. 1-2); Affidavit of Robert J. Cameron (“Cameron Aff.”), ¶¶ 9-19 (Respondent’s App. 8-13). Ex-Employee Defendants Harp and Marinello both confirmed

¹ Defendant Rand did not join the motions to dismiss for lack of jurisdiction and is not a party to this appeal.

that they were pressured by other defendants – especially the FLS Officers – to misappropriate C.H. Robinson’s client relationships and goodwill. *See* Harp. Aff. ¶¶ 10-12 (Respondent’s App. 25-26); Marinello Aff. ¶¶ 10-17, 23 (Respondent’s App. 28-31). Defendants in this action, including the Ex-Employee Appellants, are parties to a conspiracy to misappropriate and use the Company’s confidential information, located on the Company’s computer system in Minnesota. *See* Complaint ¶¶ 112-114. (App. 35).

Fourth, the Ex-Employee Appellants all admit that they visited Minnesota during the course of their employment with C.H. Robinson for training. *See, e.g.*, Helton Aff., ¶ 6 (App. 73); Winkler Aff., ¶ 7 (App. 78); Geghan Aff., ¶ 7 (App. 71); Casillas Aff., ¶ 6 (App. 69); and Katai Aff., ¶ 5 (App. 76). Such training enabled them to perform their duties and learn what they needed to know to work in this industry. O’Brien Aff., ¶ 8 (App. 101-02).

Fifth, Appellants Casillas, Geghan, and Winkler (and possibly others) did business on C.H. Robinson’s behalf with the Company’s customers and/or carriers located in Minnesota. O’Brien Aff., ¶ 10 (App. 102-03).

Sixth, throughout the course of their employment with C.H. Robinson, all of the Ex-Employee Appellants developed customer and carrier goodwill on behalf of the Company, which goodwill is located in Minnesota. *See id.*, ¶ 7 (App. 101).

Finally, the Ex-Employee Appellants all had on-going, regular contact with Minnesota more than sufficient to warrant this Court’s exercise of personal jurisdiction over them, including:

A) Each of the Ex-Employee Appellants communicated with C.H. Robinson headquarters in Minnesota throughout their employment with the Company via numerous phone and e-mail communications and access through the computer network. *Id.*, ¶ 11 (App. 103).

B) The compensation for each of the Ex-Employee Appellants was dependent upon the business they (and others in their branch offices) were able to obtain with carriers and customers. Such carriers and customers are subject to credit review before C.H. Robinson agrees to do business with them. Additionally, C.H. Robinson enters into contracts with the carriers and customers with whom they work. The credit review, contract formation and administration, and other financial and administrative processes and procedures relating to customers and carriers are handled in C.H. Robinson's Minnesota headquarters. The Ex-Employee Appellants would rely and depend upon such activities in the Minnesota headquarters to perform their own duties and to earn a substantial portion of their compensation. Consequently, the Ex-Employee Appellants also would be in regular and frequent contact with legal, financial, and administrative personnel in Minnesota to handle the legal, financial, and administrative issues relating to C.H. Robinson's business with carriers and customers. *Id.*, ¶ 9 (App.102).

C) The Company's Minnesota headquarters provided each of the Ex-Employee Appellants with software upgrades and other proprietary, confidential, and trade secret information through downloads from C.H. Robinson's computer system located in Minnesota. *Id.*, ¶ 6 (App. 101).

D) Each of the Ex-Employee Appellants were paid from C.H. Robinson's Minnesota payroll department. *Id.*, ¶ 12 (App. 103).

E) The Ex-Employee Appellants' benefits were administered from Minnesota. *Id.*, ¶ 13 (App. 103).

F) The Ex-Employee Appellants' ultimate managers were in located Minnesota. *Id.*, ¶ 14 (App. 103).

G) To the extent required for the performance of their duties with C.H. Robinson, the Ex-Employee Appellants made travel arrangements, filed paperwork (including, without limitation, customer and carrier information and annual Corporate Compliance Certifications), obtained expense reimbursement, and addressed personnel issues through and with individuals in Minnesota. *Id.*, ¶ 15 (App. 103-04).

H) Other contacts between the Appellants and Minnesota will undoubtedly be developed in discovery, which had barely begun when Appellants' motion was decided. Thereafter, the district court granted Appellants' motion for stay.

2. FLS and the FLS Officer Appellants Also Have Significant Contacts With Minnesota.

Both FLS and the FLS Officer Appellants also have sufficient contacts with Minnesota to establish jurisdiction. Importantly, FLS and the FLS Officer Appellants deliberately targeted their tortious actions to steal C.H. Robinson's confidential information, trade secrets, and customer goodwill that are in Minnesota, thereby causing harm to C.H. Robinson in Minnesota. For example, FLS and the FLS Officer Appellants encouraged the Ex-Employee Defendants to solicit C.H. Robinson's customers with full

knowledge that the Ex-Employee Defendants have agreements with C.H. Robinson prohibiting such conduct, *which agreements contain forum selection clauses designating Minnesota as the forum in which disputes related to those agreements must be litigated.* See, e.g., Affidavit of W. Russell Harp (“Harp Aff.”), ¶ 5 (Respondent’s App. 25); Affidavit of Jarrod Marinello (“Marinello Aff.”), ¶¶ 9, 11, 13 (Respondent’s App. 28-29); Complaint ¶¶ 13-16 (App. 7-8). Indeed, the Ex-Employee Defendants were repeatedly pressured by FLS and the FLS Officer Appellants to target exactly those C.H. Robinson customers that they were contractually prohibited from soliciting for business. See, e.g., Marinello Aff., ¶¶ 10-17 (Respondent’s App. 28-29); Harp Aff., ¶ 10-13 (Respondent’s App. 25-26).

In addition, FLS and the FLS Officer Defendants conspired with and among the Ex-Employee Defendants, including but not limited to Fred Rand, to misappropriate C.H. Robinson’s confidential, trade secret information by, among other things, unlawfully accessing C.H. Robinson’s computer system containing such information, which computer system is located in Minnesota. See Complaint, ¶¶ 59, 112-16 (App. 35); Marinello Aff., ¶¶ 26-27 (Respondent’s App. 32); Cameron Aff., ¶¶ 9-19 (Respondent’s App. 8-13).

FLS also admits that it does business in Minnesota and each of the FLS Officer Appellants concede that they have visited Minnesota for business and personal purposes in the last few years. See Appellants’ Mem. of Law, p. 6. C.H. Robinson believes that FLS has additional contacts with Minnesota through the operation of its business – as will

surely be revealed in the course of discovery – that will further support this Court’s jurisdiction over FLS and the FLS officer Appellants. *See* Complaint, ¶ 13 (App. 7).

C. This Action

The Complaint includes allegations that the Ex-Employee Defendants have violated their contractual obligations to the Company; FLS and the FLS Officer Defendants have tortiously interfered with those contractual obligations; and FLS and its Officer Defendants have conspired with and among the Ex-Employee Defendants to usurp and misappropriate C.H. Robinson’s confidential, proprietary trade secret information and customer goodwill, which is located in Minnesota.² As such, C.H. Robinson’s claims against Appellants flow directly out of Appellants’ contacts with this state.

IV. ARGUMENT

As the district court correctly held, C.H. Robinson appropriately brought this suit in Minnesota because: (1) mandatory forum selection clauses contained in five of the eight Ex-Employee Defendants’ agreements mandated litigation in Minnesota³ and (2) each of the Appellants had sufficient contacts with Minnesota to establish personal

² The Complaint contains nine causes of action: (1) breach of contract; (2) misappropriation of trade secrets in violation of Minn. Stat. § 325C.01, *et seq.*; (3) tortious interference with contractual relations; (4) tortious interference with prospective contractual relations; (5) breach of duty of loyalty and fiduciary duties; (6) inducing, aiding and abetting breaches; (7) unfair competition; (8) unjust enrichment; and (9) conspiracy. Complaint, ¶¶ 67-116 (App. 27-35).

³ Non-appealing Defendants W. Russell Harp and Jarrod Marinello have forum selection clauses in their agreements, as well as Appellants Arlien Casillas, Kenton K. Gehan, and Jody Winkler.

jurisdiction here. The Appellants should be held subject to the district court's jurisdiction for the additional reasons that the effects of Defendants' conspiracy were suffered here and, moreover, Minnesota is the most convenient, reasonable, logical locale for an efficient adjudication of this dispute. Appellants' arguments, if accepted, would splinter this case into multiple, separate cases in up to ten jurisdictions, with obvious inefficiency, much greater costs, and the possibility of inconsistent outcomes. There is no other forum in which this suit could be more reasonably litigated, nor have Appellants suggested one.

Appellants contend in this appeal that the district court erroneously denied their motion to dismiss for lack of personal jurisdiction. In the instant appeal, Appellants make essentially the same arguments considered and rejected by the district court in a well-reasoned Memorandum Opinion and Order. Under the applicable law, and given the allegations contained in the Complaint (which must be accepted as true on a Rule 12 motion), the district court's October 8 Order should be affirmed.⁴

⁴ Appellants make much of the fact that the district court explained, at the conclusion of its Order, that "[a]pplying 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 (Add. 21) (cited in Appellants Mem. of Law at 12; emphasis added by Appellants). Despite Appellants suggestion to the contrary, the district court specifically and carefully found independent grounds for personal jurisdiction over each of the Appellants in its Order; the sentence obviously represents a simple linguistic choice by the court utilized to describe why all of the Appellants are subject to personal jurisdiction in Minnesota, given that certain grounds applied to some Appellants, while other grounds applied to other Appellants.

A. General Standards Regarding the Appeal of a Motion to Dismiss for Lack of Personal Jurisdiction.

This Court reviews *de novo* whether C.H. Robinson has established a *prima facie* case of personal jurisdiction over the Appellants in Minnesota. *Dakota Indus., Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384, 1387 (8th Cir. 1991). To determine whether C.H. Robinson has established a *prima facie* case of personal jurisdiction, this Court must view the evidence in the light most favorable to C.H. Robinson, resolve all factual conflicts in C.H. Robinson's favor, and "take the allegations contained in [C.H. Robinson's] complaint and supporting affidavits as true." *Hardrives, Inc. v. City of LaCrosse, Wis.*, 240 N.W.2d 814, 816 (Minn. 1976); *see also Stanek v. A.P.I., Inc.*, 474 N.W.2d 829, 832 (Minn. App. 1991), *rev. denied* (Minn. Oct. 31, 1991), *cert. denied*, 503 U.S. 977 (1991); *West Publ'g Corp. v. Stanley*, 2004 WL 73590, at *4 (D. Minn. Jan. 7, 2004) (Respondent's Add. 63). Indeed, "a determination on a rule 12.02(e) motion to dismiss must be confined to the pleadings," *Doyle v. Kuch, D.M.D.*, 611 N.W.2d 28, 32-33 (Minn. App. 2000), and "a claim in a complaint will withstand a motion to dismiss if it would be *possible* to grant relief based on any evidence that could be produced consistent with the pleading." *Milavetz, Gallop & Milavetz, P.A. v. Hill, et. al.*, 1998 WL 422229, at * 1 (Minn. App. July 28, 1998) (Respondent's Add. 52) (citing *Northern States Power Co. v. Franklin*, 122 N.W.2d 26, 29 (1963) (emphasis supplied)). Further, "[i]n doubtful cases, the court should resolve the jurisdiction question in favor of retaining jurisdiction." *KSTP-FM v. Specialized Communications, Inc.*, 602 N.W.2d 919, 923 (Minn. App. 1999) (citing *Hardrives, Inc.*, 240 N.W.2d at 816).

Because Minnesota's long-arm statute "extend[s] the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows," Minnesota's long-arm statute is satisfied when due process requirements are satisfied. *Valspar Corp. v. Lukken Color Corp.*, 495 N.W.2d 408, 410-11 (Minn. 1992). *See also Wessels, Arnold & Henderson v. Nat'l Med. Waste, Inc.*, 65 F.3d 1427, 1431 (8th Cir. 1995). Given this standard, "when analyzing most personal jurisdiction questions, Minnesota courts may simply apply the federal case law." *Valspar Corp.*, 495 N.W.2d at 411.

Due process permits a court to exercise personal jurisdiction over a nonresident defendant having "certain minimum contacts with [the state] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citation and quotation marks omitted). The key to the minimum contacts analysis is that "[t]he defendant's conduct and connection with the state must be such that the defendant *should reasonably anticipate being haled into court there.*" *Wessels*, 65 F.3d at 1432 (internal citation and quotation marks omitted, emphasis added). "The defendant's actual presence in the forum state is not necessary" to establish personal jurisdiction. *Davis v. MN Mining and Manuf. Co.*, 590 N.W.2d 159, 162 (Minn. App. 1999). Indeed, "the contacts themselves may be minimal," *id.*, and, in fact, "[a] single contact with the forum can be sufficient if the cause of action arises out of that contact." *Domtar, Inc. v. Niagara Fire Ins. Co.*, 533 N.W.2d 25, 31 (Minn. 1995). *See also, e.g., Fulton v. Chicago, Rock Island & P.R.R Co.*, 481 F.2d 326, 334-35 (8th Cir. 1973), *cert. denied* 414 US 1040 (1973) ("reject[ing][the]

contention [that] exercise of jurisdiction upon a 'single act' is constitutionally impermissible"); *Sanders v. U.S.*, 760 F.2d 871 (8th Cir. 1985) ("the minimum contacts requirement may be met by a single act if the cause of action arises from that act"); *McGee v. Int'l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (a single contract, entered into via mail with a forum resident, could meet the minimum contacts test in a claim on the contract). Further, Minnesota has a strong interest in providing a forum for its citizens to address harmful conduct. *See, e.g., Marshall v. Inn on Madeline Island*, 610 N.W.2d 670, 676 (Minn. App. 2000) (noting that Minnesota has a strong interest in providing a forum for its citizens to address tortious conduct); *Humphrey v. Granite Gate Resorts, Inc.*, 568 N.W.2d 715, 721 (Minn. App. 1997) (same).

B. The District Court Correctly Held That Appellants Casillas, Geghan, and Winkler Waived Any Objection to Personal Jurisdiction by Executing Agreements Containing Valid Forum Selection Clauses.

The district court correctly held that Appellants Casillas, Geghan, and Winkler consented to the jurisdiction of the district court by executing Confidentiality and Noncompetition Agreements ("CNA") with C.H. Robinson, all of which include mandatory forum selection clauses providing that Hennepin County is the proper forum for any disputes arising out of those contracts. *See* October 8 Order, pp. 4-5 (Add. 4-5); Complaint, ¶¶ 5-6, 12 (App. 3-4, 6-7). Objections to lack of personal jurisdiction can indisputably be waived through contracts with valid forum selection clauses. *See, e.g., ELA Med., Inc. v. Arrhythmia Mgmt Assoc.*, 2007 WL 892517, at * 3 (D. Minn. Mar. 21, 2007) (Add. 45) (citing *Rykoff-Sexton, Inc. v. Am. Appraisal Assoc., Inc.*, 469 N.W.2d 88,

89-90 (Minn. 1991)); *N.I.S. Corp. v. Swindle*, 724 F.2d 707, 709 (8th Cir. 1984)).

Casillas, Geghan, and Winkler thus waived their objections to the personal jurisdiction of the district court.

Appellants have failed to cite even a single decision in which a court refused to enforce a forum selection clause on facts similar to those in this case. Appellants' failure in this regard is unsurprising given that there are several Minnesota cases in which forum selection clauses have been enforced in circumstances similar to those here, including *Medtronic, Inc. v. Endologix, Inc.*, 530 F. Supp. 2d 1054, 1058-59 (D. Minn. 2008) (enforcing a forum selection clause in a non-competition agreement between an employer and employee), *ELA Med., Inc.*, 2007 WL 892517, at * 4 (Add. 45) (same), and *Guidant Sales Corp. v. George*, 2001WL 1491317, at * 4, 6 (D. Minn. Nov. 19, 2001) (Respondent's Add. 40) (same). Ignoring such relevant precedent, Appellants Casillas, Geghan, and Winkler offer a flawed argument that the forum selection clause in their CNAs is unreasonable and hence unenforceable. *See* Appellants' Mem. of Law at 35. There is no merit to this position.

Under applicable Minnesota law, forum selection clauses such as those executed by Casillas, Geghan, and Winkler are presumptively valid, and "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." *Hauenstein & Bermeister, Inc. v. Met-Fab Indus., Inc.*, 320 N.W.2d 886, 890 (Minn. 1982); *see also Alpha Systems Integration, Inc. v. Silicon Graphics, Inc.*, 646 N.W.2d 904, 909 (Minn. App. 2002) ("When parties agree to bring contract disputes in a particular forum, courts generally enforce that agreement unless the

party seeking to avoid the contractual forum shows that the agreement is unfair or unreasonable.”) A party seeking to avoid the enforcement of such a clause bears the burden of demonstrating that: “(1) the chosen forum is a seriously inconvenient place for trial; (2) the choice of forum agreement is one of adhesion; [or] (3) the agreement is otherwise unreasonable.” *Interfund Corp. v. O’Byrne*, 462 N.W.2d 86, 88 (Minn. App. 1990) (quoting *Hauenstein*, 320 N.W.2d at 890). This burden is very high; indeed, the United States Supreme Court upheld a forum selection clause set forth in fine print on the back of a cruise ticket as fundamentally fair. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991). Here, Appellants Casillas, Geghan, and Winkler have not met their burden.

Seeking to avoid the unambiguous forum selection clauses in their agreements, Casillas, Geghan, and Winkler contend, based upon facts outside the Complaint, that the clause in their CNAs is one of “adhesion” and hence is unenforceable. Not true. “A contract of adhesion is a contract which is ‘drafted unilaterally by a business enterprise’ and presented to the public on a ‘take it or leave it’ basis.” *Schmidt v. Midwest Family Mut. Ins.*, 413 N.W.2d 178, 181 (Minn. App. 1987) (citing *Schlobohm v. Spa Petite, Inc.*, 326 N.W.2d 920, 924 (Minn. 1982)). In order for a contract to be one of adhesion, “there must be a showing that the parties were greatly disparate in bargaining power, that there was no opportunity for negotiation *and* that the services could not be obtained elsewhere.” *AEI Net Lease Income & Growth Fund XX Ltd. P’ship v. Alvarez*, 2001 WL 710587, at * 3 (Minn. App. June 26, 2001) (Respondent’s Add. 1) (emphasis in original) (citing *Schlobohm*, 326 N.W.2d at 934-35). As such, “the two essential inquiries for

determining whether a contract is one of adhesion are: (1) whether the contract is the result of the superior bargaining power of one of the parties; and (2) whether the contractual service involved a public necessity.” *Id.* (citing *Osgood v. Med., Inc.*, 415 N.W.2d 896, 899 n. 1 (Minn. App. 1987)).

To support their position that the forum selection clause in their CNAs is one of “adhesion,” Casillas, Geghan, and Winkler argue that: (1) the CNAs are “identical boilerplate agreements” demonstrating that the parties were of unequal bargaining power; (2) the CNAs were not signed at the inception of Appellants’ employment relationship with C.H. Robinson; and (3) the CNAs were required for Appellants Casillas, Geghan, and Winkler to retain their jobs. *See* Appellants’ Mem. of Law at 37-40. As an initial matter, several of these arguments involve fact issues which must be decided in Respondent’s favor on this Rule 12 motion. *See Hardrives, Inc.*, 240 N.W.2d at 816. Moreover, even taken as true, none of these arguments demonstrates that the forum selection clause is one of “adhesion” under applicable Minnesota law set forth above. Indeed, as the district court properly noted, and as Judge Davis stated in assessing whether a noncompete agreement was a contract of “adhesion” in *Guidant Sales Corp.*, an employment agreement cannot be a contract of “adhesion” given that it is not for a “public service.” *See* 2001 WL 1491317, at * 6 (Respondent’s Add. 40) (“[T]he authority relating to contracts of adhesion [has] no application to an agreement between private parties.”).

With respect to Appellants’ first argument, Minnesota courts have unambiguously held that, “[b]oilerplate language alone does not create an adhesion contract.” *Interfund*

Corp., 462 N.W.2d at 88-89 (citing *Personalized Mktg. Serv., Inc. v. Stotler & Co.*, 447 N.W.2d 447, 451 (Minn. App. 1989)). Moreover, the fact that one party is “unsophisticated” compared to the other party is not evidence of an “adhesion contract.” See *Cell v. Moore & Schley Securities Corp.*, 449 N.W.2d 144, 147 (Minn. 1989) (holding that there was no indicia of an “adhesion contract” even where plaintiff alleged he was “unsophisticated”).⁵

Appellants’ second argument – that the CNAs were not signed at the inception of Appellants’ employment relationship with C.H. Robinson – is irrelevant to whether the forum selection clauses contained therein constitute “adhesion” contracts. Appellants have cited no authority for the proposition that this fact is relevant to the inquiry, nor is Respondent aware of any. If the assertion implicit therein is that the Appellants did not receive sufficient consideration for the agreements, at this stage in the litigation, the Court must accept C.H. Robinson’s well-pleaded allegations as true and C.H. Robinson has alleged (with good reason) that the CNAs entered into by each of Casillas, Geghan,

⁵ Appellants rely upon *Nelson v. Master Lease Corp.*, in support of their argument that the forum selection clause should not be enforced – a case which is inapposite to the instant action. See Appellants’ Mem. of Law at 38 (citing 759 F. Supp. 1397, 1401-02 (D. Minn. 1991)). In *Nelson*, the court considered a motion to change venue under 28 U.S.C. § 1404(a), not a motion to dismiss for lack of personal jurisdiction. 759 F. Supp. 1397. Importantly, on a motion to dismiss for change of venue, under federal law, a forum selection clause is not dispositive; rather it is only “one factor to be considered in reviewing a section 1404(a) motion.” See *id.* at 1399. As such, the court in *Nelson* did not apply the *Hauenstein* test as mandated by Minnesota law and, based upon the particular facts of that case – including the convenience of the parties and witnesses, factors which would weigh in favor of hearing the instant action in Minnesota – denied the motion to transfer venue to the locale specified in the forum selection clause. See *Nelson*, 759 F. Supp. 1397 at 1403.

and Winkler are supported by sufficient consideration. *See Hardrives, Inc.*, 240 N.W.2d at 816; Complaint, ¶ 39 (App. 16). Moreover, the issue of whether a non-competition agreement is enforceable is irrelevant to whether a forum selection clause in such an agreement is enforceable. *See ELA Med., Inc.*, 2007 WL 892517 at * 4 (Add. 45) (rejecting Defendants' position that a choice of forum clause contained in a noncompetition agreement was unenforceable because the agreement in which it was located was unenforceable under California or Minnesota law).

The fact that Appellants Casillas, Geghan, and Winkler may have been required to sign the CNAs in order to retain their jobs with C.H. Robinson is also not relevant to the inquiry. Again, Appellants have cited no authority to support their contention, nor is Respondent aware of any. However, non-competition agreements are routinely a condition to continued employment. As such, were this fact a basis for finding that the forum selection clauses were contracts of "adhesion," it would be tantamount to a holding that forum selection clauses in noncompete agreements are *per se* invalid. That is not the law in Minnesota. *See, e.g., ELA Med., Inc.*, 2007 WL 892517 at * 4 (Add. 45) (enforcing a forum selection clause in a non-competition agreement); *Medtronic, Inc.*, 530 F. Supp. 2d at 1058-59 (same); *Guidant Sales Corp.*, 2001WL 1491317, at * 4, 6 (Respondent's Add. 40) (same).

Further, there is no merit to the argument that the chosen forum is a "seriously inconvenient place for trial" or that the forum is "otherwise unreasonable." In order for the chosen forum to be " 'seriously inconvenient,' one party would have to be 'effectively deprived of a meaningful day in court.'" *Hauenstein*, 320 N.W.2d at 890

(quoting *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 19 (1972)). Location and convenience of witnesses are generally not considered a “serious inconvenience.” *Id.* Here, there is no evidence that the present forum would be “seriously inconvenient” for the Defendants. To the contrary, it would be patently unreasonable for the suit to be situated elsewhere, as it would require C.H. Robinson to incur extreme expenses in bringing multiple suits against various litigants in disparate locales, all with the same operative nucleus of facts. Further, even if the Court grants Appellants’ appeal, the case will still proceed in Hennepin County District Court because some of the Defendants – namely, Defendants Marinello, Harp, Rand, and Kummer – do not dispute the district court’s personal jurisdiction over them.

Likewise, there is no evidence that the forum selection clause is “otherwise unreasonable.” A forum selection clause is “otherwise unreasonable” only where “enforcement of the clause would contravene a strong public policy of the forum in which the suit is brought” or would seriously undermine the interest of judicial economy. *Interfund Corp.*, 462 N.W.2d at 89 (quoting *Hauenstein*, 320 N.W.2d at 891)). Notwithstanding Appellants’ meritless argument to the contrary, the fact that the forum selection clauses are contained in non-compete agreements does not render those clauses “otherwise unreasonable”; to hold otherwise would, yet again, be tantamount to a holding that forum selection clauses in noncompete agreements are *per se* invalid, which is not the law in Minnesota. *See, e.g., ELA Med., Inc.*, 2007 WL 892517, at * 4 (Add. 45); *Medtronic, Inc.*, 530 F. Supp. 2d at 1058-59; *Guidant Sales Corp.*, 2001 WL 1491317, at * 4, 6 (Respondent’s Add. 40). Indeed, as the United States District Court for the District

of New Jersey aptly stated, “there is nothing to indicate that the inequality here is any greater than the average employer-employee situation, which has existed from time immemorial.” *Aull v. McKeon-Grano Assoc., Inc.*, 2007 WL 655484, at * 7 (D.N.J. Feb. 26, 2007)

Simply put, given the lack of evidence that the forum selection clause contained in the CNAs is “unfair or unreasonable” as defined under applicable Minnesota law, Casillas, Geghan, and Winkler⁶ must abide by their contractual obligation to litigate this case in the district court.

C. The District Court Correctly Held That FLS, the FLS Officer Appellants, Helton, and Katai Are Bound By Forum Selection Clauses in the Agreements of Casillas, Geghan, and Winkler.

The district court correctly held that Appellants Helton, Katai, and the FLS Appellants are bound by the forum selection clauses contained in the CNAs signed by defendants Casillas, Geghan, and Winkler, and hence subject to the jurisdiction of the district court. In making this determination, the district court explained that:

⁶ Winkler’s argument that her agreement is unenforceable under Louisiana law is misguided and without merit. *See* Appellants’ Mem. of Law at 43. Whatever the differences between Minnesota and Louisiana law may be with respect to the enforceability of non-competition covenants, *Minnesota law* governs whether this Court has personal jurisdiction over the Defendants – including the question of whether the forum selection clause in Winkler’s CNA agreement is valid. *See ELA Med., Inc.*, 2007 WL 892517 at * 4 (rejecting defendants’ argument that California law applied to the question whether a Minnesota forum selection clause, in a noncompete agreement providing for the application of Minnesota law, was enforceable) (Add. 45). Moreover, the CNAs contain Minnesota choice of law clauses, further supporting the application of Minnesota law to the enforceability of the forum selection clauses. *See id.*; Complaint, ¶ 45 (App. 19).

Helton, Katai, and the FLS defendants undertook a concerted effort to solicit Casillas, Geghan, and Winkler, with knowledge that the ex-employees were subject to the CNAs. Additionally, Casillas, Geghan, Winkler, the FLS Defendants, Helton, and Katai, are represented by a common attorney, share a common interest in asserting that neither improper use of C.H. Robinson information nor improper solicitation of C.H. Robinson customers occurred.

October 8, Order, p. 19 (Add. 19). Therefore, “[t]he Court [found] that Helton, Katai, and the FLS Appellants are sufficiently closely related to the Plaintiff’s cause of action regarding the CNAs such that they are bound by forum selection clauses in the CNAs.”

Id.

In their Memorandum of Law, the Appellants make much of the fact that “[n]o Minnesota *appellate court* has ever held that jurisdiction by one party may be properly relied on – even in part – to create personal jurisdiction over a non-signatory defendant.” Appellants’ Mem. of Law at 17 (emphasis added). While it is true that Respondent could not locate any Minnesota appellate case addressing the issue, courts that have done so – including the United States District Court for the District of Minnesota and the Eighth Circuit Court of Appeals – have consistently found that a non-party to an agreement may be bound by a forum selection clause where the party is “‘closely related’ to the dispute such that it is foreseeable that it will be bound.” *Medtronic, Inc.*, 530 F. Supp. 2d at 1056; *ELA Med., Inc.*, 2007 WL 892517 at * 6 (Add. 45) (citing *Marano Enterps. of Kansas v. Z-Teca Restaurants, L.P.*, 254 F.3d 753, 757-58 (8th Cir 2001)). See also, e.g., *Hugel v. Corp. of Lloyd’s*, 999 F.2d 206, 209 (7th Cir. 1993); *Manetti-Farrow, Inc. v. Gucci Am. Inc.*, 858 F.2d 509, 514 n. 5 (9th Cir. 1988); *Coastal Steel Corp. v. Tilghman Wheelabrator, Ltd.*, 709 F.2d 190, 202-03 (3d Cir. 1983); *Tech USA, Inc. v. Evans, et al.*,

592 F. Supp. 2d 852, 857-58 (D. Md. 2009); *CFirstclass Corp. v. Silverjet PLC*, 560 F. Supp. 2d 324, 327-28 (S.D.N.Y. 2008). That is the case here as well.⁷ Moreover, since Minnesota's long arm statute reaches as far as allowed under the U.S. Constitution, reliance on such Federal precedent is appropriate.

In particular, the district court correctly relied upon two closely analogous decisions of the United States District Court for the District of Minnesota – *ELA Medical* and *Medtronic*⁸ – in making its determination that the non-signatory Appellants are bound by the forum selection clauses in Casillas, Geghan, and Winkler's CNAs. *See*

⁷ For the position that courts outside of Minnesota have rejected the argument that a non-party may be held to a forum selection clause in a contract, Appellants cite inapposite cases, each of which is easily distinguishable from the present situation: *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. 3 (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); *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 *Berclain Am. Latina v. Baan Co.*, 74 Cal. App. 4th 401, 407 (Cal. Ct. App. 1999). Appellants' Mem. of Law at 17-18. In *Slaihen*, the court was applying Florida's long-arm statute, which is substantially more restrictive than Minnesota's, and under the particular facts and circumstances of that case, the court found that the non-party was not sufficiently "closely related" to the clause to be bound. *See* 148 F. Supp. 2d 1343; 1347-51. In *Pacific Rollforming LLC*, the argument that a non-signatory was bound to a forum selection clause was not made and in *First ATM, Inc.* the plaintiff conceded that the non-signatory was not bound to the forum selection clause unless it was a "party" to the contract. *See* 2008 WL 4183916 and 2009 WL 349164, at * 3-4, respectively. Finally, in both *Long John Silver's Inc.* and *Berclain Am. Latina*, companies tangentially involved in complex contractual relationships were held not bound to a forum selection clauses in agreements they did not sign where, under the particular facts and circumstances of those cases, the companies were not "so closely related" to the contractual relationships at issue so as to justify holding them to the forum selection clauses. *See* 2009 WL 127651, at *13-15 and 74 Cal. App. 4th at 407-08.

⁸ The Appellants mistakenly claim that *Medtronic* is an unpublished decision. Appellants' Mem. of Law at 19. It is not.

October 8 Order, p. 19 (Add. 19). In *ELA Medical*, Judge Ericksen considered circumstances that are remarkably similar to those at hand in this matter:

Biotronik, the non-party to the Contract, is not just the new employer of the individual who agreed to venue in Minnesota and the exercise of personal jurisdiction over her by the Minnesota courts in the Contract with her former employer. It appears that Biotronik actively sought the employ of Whitkey knowing that she was then employed by ELA under the Contract containing the clauses at issue.

2007 WL 892517 at * 6 (Add. 45). Therefore, Judge Ericksen found that the new employer, Biotronik, was “sufficiently closely related to the transaction so as to foresee being bound by the forum-selection clause in the Contract,” and denied Biotronik’s motion to dismiss, transfer, or stay the action. *See id.* at * 7. Similarly, in *Medtronic, Inc.*, Judge Kyle held that the defendant new employer was bound by forum selection clauses in non-solicitation agreements signed by defendants/former employees, because the new employer could foresee it would be bound by those clauses. 530 F. Supp. 2d at 1056-57.

Courts in other jurisdictions have come to the same conclusion. For example, in *Hy Cite Corp. v. Advanced Mktg. Int’l*, the United States District Court for the West District of Wisconsin held that the plaintiff corporation – seeking a declaratory judgment action that it did not tortiously interfere with non-competition agreements of its new employees – was bound by the forum selection clauses in those contracts. 2006 WL 3377861, *5 (W.D. Wis. April 10, 2006) (Respondent’s Add. 47). *See also, e.g., In re EGL Eagle Global Logistics, L.P.* 89 S.W.3d 761, 764-766 (Tex. App. 2002) (allowing defendant new employer to compel arbitration pursuant to an arbitration clause contained

in the co-defendant new employee's contract with plaintiff former employer because "[plaintiff former employer's] claims against [defendant new employer were] intertwined and dependent upon [defendant employee's] employment agreement"); *Gatz Mgmt Services, LLC v. Weakland*, 171 F. Supp. 2d 1159, 1165-67 (same).

Further, a finding that the non-signatory Appellants are bound by the forum selection clauses in no way offends the constitutional underpinnings of personal jurisdiction jurisprudence. Compare Appellants' Mem. of Law at 18-19. Indeed, the very crux of the personal jurisdictional analysis, addressed more fully below, is that a party's "conduct and connection with the forum State are such that [it] should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. at 295). Here, the non-signatory Appellants actively recruited defendants Casillas, Geghan, and Winkler with express knowledge of the CNAs, containing forum selection clauses, signed by each of those Appellants. See, e.g., Marinello Aff., ¶¶ 9, 11, 13 (Respondent's App. 28-29); Harp Aff., ¶ 5 (Respondent's App. 25); Complaint ¶¶ 13-16 (App. 7-8). Given these facts, there is no question that the non-signatory Appellants should have "reasonably anticipate[d] being haled into court" here.

The Appellants also seem to argue that, in order for the district court to exercise jurisdiction over them, it was required to find that the non-signatories to the CNAs are subject to its jurisdiction under the *Griffis/Calder* tests *in addition to* being bound to the forum selection clauses in the CNAs as "closely related" parties. See Appellants' Mem. of Law at 20. This argument is entirely without merit. The *Griffis/Calder* "Effects" test

– which may be employed in the *absence* of a forum selection clause – does not override the “closely related” analysis. *See Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002); *Calder v. Jones*, 465 U.S. 783 (1984); *see also, e.g., Medtronic, Inc.*, 530 F. Supp. 2d at 1056; *ELA Med., Inc.*, 2007 WL 892517 at * 6 (Add. 45); *Marano Enterps. of Kansas*, 254 F.3d at 757-58; *Hugel*, 999 F.2d at 209; *Tech USA, Inc.*, 592 F. Supp. 2d at 857-58.

Here, just as in *ELA Medical*, the FLS Appellants “actively sought the employ” of Casillas, Geghan, and Winkler with knowledge that they were subject to agreements with C.H. Robinson containing forum selection clauses. *See, e.g., Marinello Aff.*, ¶¶ 9, 11, 13 (Respondent’s App. 28-29); *Harp Aff.*, ¶ 5 (Respondent’s App. 25); *Complaint* ¶¶ 13-16 (App. 7-8). Helton and Katai also solicited certain of the Ex-Employee Defendants to work for FLS with knowledge of their agreements with C.H. Robinson containing forum selection clauses. *See, e.g., Marinello Aff.*, ¶ 6 (Respondent’s App. 28); *Harp Aff.*, ¶¶ 3-6 (Respondent’s App. 24-25); *Complaint* ¶¶ 61, 64 (App. 25, 26). Given these facts and circumstances, there is no question that the district court correctly held that FLS, the FLS Officer Appellants, Helton and Katai are sufficiently closely related to the transaction so as to foresee being bound by the forum-selection clause in Casillas’, Geghan’s, and Winkler’s agreements, and therefore, are subject to jurisdiction in Minnesota. *See* October 8, Order, p. 19 (Add. 19).

D. The District Court Correctly Held That the Ex-Employee Appellants Had Sufficient Contacts With Minnesota to be Subject to the Jurisdiction of the District Court.

The district court also correctly held that all of the Ex-Employee Appellants had sufficient “minimum contacts” with Minnesota to warrant the district court’s exercise of

personal jurisdiction over them. See October 8 Order, p. 12 (Add. 12); see also *TRWL Fin. Establishment v. Select Intern, Inc.*, 527 N.W.2d 573, 576 (Minn. App. 1995) (citing *Int'l Shoe Co.*, 326 U.S. at 316)).

Minnesota courts consider five factors in determining personal jurisdiction over a defendant: (1) the nature and quality of a defendant's contacts with the forum state; (2) quantity of contacts; (3) source and connection of the cause of action with those 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; *Dent-Air, Inc. v. Beech Mountain Air Serv.*, 332 N.W.2d 904, 907 (Minn. 1983) The first three factors are most significant and generally are considered together. *Dent-Air*, 332 N.W.2d at 907.

1. An Analysis of the First Three *Wessels* Factors Clearly Demonstrates That the Ex-Employee Appellants Are Subject to the Jurisdiction of the District Court.

Initially, Appellants argue that each of the contacts that the Ex-Employee Appellants had with Minnesota “must, of course, be analyzed separately.” Appellants’ Mem. of Law at 22. It is unclear what the Appellants mean by this statement and no case law is given in support of it, but let there be no confusion on this point: “[p]ersonal jurisdiction depends upon a ‘defendant’s contacts with the forum *in the aggregate, not individually*’ and the ‘*totality of the circumstances.*’” *Northwest Airlines v. Astraea Aviation Servs., Inc.*, 111 F.3d 1386, 1390 (8th Cir. 1997) (quoting *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1388 (8th Cir. 1995)) (emphasis added). As such, the appropriate way to analyze the Ex-Employee

Appellants' contacts with Minnesota is to look at those contacts *in totality*, as the district court correctly did. See October 8 Order, p. 12 (Add. 12).

Here, applying the first three factors,⁹ the district court correctly found that the Ex-Employee Appellants' contacts with Minnesota "are of a quantity, nature, and quality which supports a finding of personal jurisdiction." October 8 Order, pp. 10-12 (Add. 10-12). As the district court explained:

[T]he [Ex-Employee Appellants] 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's Minnesota office, and each had an ultimate supervisor in Minnesota.

Id., p. 12. These facts are more than sufficient to establish personal jurisdiction (or at least defeat a Rule 12 motion before discovery has been conducted). See, e.g., *Marquette Nat'l Bank of Minneapolis v. Norris*, 270 N.W.2d 290, 295 (Minn. 1978) (specific jurisdiction can arise from even a single contact with the forum); *West Publ'g Corp.*, 2004 WL 73590, at *4 (Respondent's Add. 63) (noting that "the mere act of entering into the Separation Agreement might be sufficient to support jurisdiction").

The Appellants first argue that the Minnesota choice-of-law provisions in the CNAs do not create personal jurisdiction. Appellants' Mem. of Law at 22-23. While it is true that a choice-of-law provision *alone* will not typically warrant a finding of personal jurisdiction, courts regularly consider choice-of-law provisions as a factor weighing in favor of finding personal jurisdiction when assessing the quantity, nature and quality of

⁹ The fourth and fifth factors are also easily satisfied. See *infra* pp. 39-41.

an individual's contacts with a forum state. *See, e.g., Primus Corp. v. Centreformat Ltd.*, 221 Fed. Appx. 492 (8th Cir. 2007); *Northwest Airlines, Inc.*, 111 F.3d at 1390; *Digi-Tel Holdings, Inc. v. Proteq Telecomm. (PTE) Ltd.*, 89 F.3d 519 (8th Cir. 1996). In fact, in the landmark case of *Burger King Corp. v. Rudzewicz*, the United States Supreme Court emphasized the importance of a choice-of-law provision as a factor to consider in assessing whether a party to a contract had sufficient minimum contacts to justify personal jurisdiction, explaining:

Nothing in our cases...suggests that a choice-of-law provision should be ignored in considering whether a defendant has 'purposefully invoked the benefits and protections of a State's laws' for jurisdictional purposes. Although such a provision *standing alone* would be insufficient to confer jurisdiction, we believe that, when combined with [the other facts and circumstances of the case], it reinforced [defendant's] deliberate affiliation with the forum State and the reasonable foreseeability of possible litigation there.

Burger King, 471 U.S. at 482 (emphasis supplied). *See also ComputerUser.com, Inc. v. Tech. Publ'n, LLC*, 2002 WL 1634119, * 6 (D. Minn. July 20, 2002) (Respondent's Add. 5) ("Although [a choice of law] provision standing alone would be insufficient to confer jurisdiction,' [Minnesota courts must give such a provision] sufficient weight when combined with the relationship" between the parties.) (citing *Burger King*, 471 U.S. at 482 (1985)).

The Appellants also argue that the Ex-Employee Appellants' many contacts with Minnesota through the course of their employment with C.H. Robinson – which contacts are set forth *supra*, pp. 10-13 – were insufficient to create personal jurisdiction.

Appellants' Mem. of Law at 23-33.¹⁰ Again, rather than examining all of their contacts with Minnesota in totality as mandated by applicable law, Appellants compartmentalize each contact, and then assert that the particular contact *standing alone* is insufficient to confer jurisdiction. Compare Appellants' Mem. of Law at 27-30 with, e.g., *Northwest Airlines*, 111 F.3d at 1390. Based upon this flawed logic, Appellants cite case law for the propositions that: (1) remote access of a computer database is insufficient to confer jurisdiction; and (2) communication via phone, mail, or email is insufficient to confer jurisdiction. See Appellants' Mem. of Law at 27-30. The opinions cited by Appellants on this points are inapposite, however, because none of them are factually analogous. We do not deal here with a non-resident simply accessing a computer database located elsewhere, as was the case in *Pres-Kap, Inc. v. System One, Direct Access, Inc.* or *Jewish Defense Org., Inc. v. Superior Ct.*, cited by Appellants on page 27 of their Memorandum

¹⁰ Appellants claim that statements made by Chris O'Brien in an affidavit submitted with Respondent's opposition to Appellants' motion to dismiss were "conclusory," and hence insufficient for C.H. Robinson to make its *prima facie* case of personal jurisdiction. Appellants' Mem. of Law at 24, n. 13. Not so. Appellants rely upon *Neiberger & Assoc. v. WVK Inc.* in support of this statement – a case which is highly distinguishable. In *Neiberger*, the plaintiff submitted an affidavit in which he claimed that the defendant was in Minnesota on "numerous" occasions. No. 05-2865, 2006 WL 2670095, *4 (D. Minn. Sept. 18, 2006) (Add. 29). The defendant submitted his own affidavit attesting, to the contrary, that he had never personally visited Minnesota. *Id.* at **4-5. Here, on the other hand, the Appellants do not challenge the statements made by Chris O'Brien in his affidavit. Moreover, and importantly, in *Neiberger* the defendant had served discovery requests upon plaintiff relating to personal jurisdiction – requests to which the plaintiff failed to respond. *Id.* at * 4, n. 6. Here, Appellants brought their motion to dismiss before much discovery has taken place. At this stage of the litigation, where the Court must "take the allegations contained in [C.H. Robinson's] complaint and supporting affidavits as true," there is no question that C.H. Robinson had made its *prima facie* case. *Hardrives*, 240 N.W.2d at 816.

of Law. Nor is this a situation where a party simply maintained a website, or utilized software out of state, as in *Bible & Gospel Trust, and Brethren v. Richard Wyman* and *Superior Edge, Inc. v. Maricopa County Community College Dist.*, respectively, also cited by Appellants on page 27 of their Memorandum of Law. Nor is this a situation where the only contact between a non-resident and the forum state was phone, email, or facsimile communications as in *S.B. Schmidt Paper Co. v. A to Z Paper Co., Inc.*, *Leoni v. Wells*, *Porter v. Berall*, or *Mountaire Feeds, Inc. v. Agro Impex S.A.*, cited on page 29 of their Memorandum of Law. Rather, the Ex-Employee Appellants had a variety of contacts with Minnesota, including the facts that they each signed agreements with Respondent containing choice-of-law clauses and they each visited Minnesota at least once to attend training provided by Respondent. See October 8 Order, p. 11 (Add. 11); see also *infra*, pp. 10-13. When viewing these contacts in totality, there is no question that the district court correctly held the Ex-Employee Appellants are subject to personal jurisdiction in Minnesota.

Courts in a variety of jurisdictions have found personal jurisdiction in situations very similar to those in this case. For example, in *West Publ'g Corp.*, Judge Tunheim found jurisdiction over a Minnesota-based company's former employee, a California resident, in a case alleging, *inter alia*, breach of a noncompete agreement. 2004 WL 73590 at *4 (Respondent's Add. 63). The court relied heavily on the fact that the defendant voluntarily entered into a contract with the Minnesota company. *Id.* at *4-5. Similarly, in *ComputerUser.com, Inc.*, Judge Davis rejected defendants' motion to dismiss for lack of personal jurisdiction where the parties entered into a license

agreement governed by Minnesota law and the lawsuit grew out of that relationship. The court found that this “deliberate affiliation with the forum state makes it reasonably foreseeable that... [the defendants]... could be haled into court in Minnesota.” 2002 WL 1634119, at *6 (Respondent’s Add. 5). *See also, e.g., RDO Foods Co. v. United Brands Int’l, Inc.*, 194 F. Supp. 2d 962, 967-68 (D.N.D. 2002) (denying a motion to dismiss for lack of personal jurisdiction where, as part of a sales agency agreement between the plaintiff and the individual defendant’s employer, the individual defendant had communicated with the plaintiff’s manager, had visited the plaintiff’s plant one to two times per year, and had fostered a relationship with the plaintiff that enabled him to gain confidential information about plaintiff’s business operations); *U.S. Surgical Corp. v. Imagyn Med. Technologies, Inc.*, 25 F. Supp. 2d 40, 44-45 (D. Conn. 1998) (finding jurisdiction over out-of-state former employee who attended a training session and sporadic sales strategy meetings in the state, made telephone calls to the state, received his salary from the state, and submitted expenses for reimbursement to the state); *Blue Beacon Int’l, Inc. v. Am. Truck Washes, Inc.*, 866 F. Supp. 485, 490-91 (D. Kan. 1994) (finding personal jurisdiction over an out-of-state former employee where the employee had entered into an employment contract that was governed by Kansas law, received salary checks and benefits from Kansas, traveled to Kansas for training sessions, and was subject to ultimate supervision from Kansas).

Further, as the district court correctly held, the cases cited by Appellants to oppose personal jurisdiction are readily distinguishable from the present situation. For example, in *Smart Carte, Inc. v. Tran*, the former employee’s “alleged wrongdoing occurred

outside Minnesota and *had no connection*” with his contacts with Minnesota. 1996 WL 689782, at * 2 (Minn. App. Dec. 3, 1996) (emphasis supplied). Here, on the other hand, the Ex-Employee Appellants wrongful conduct is directly related to Minnesota. Similarly, in *S.B. Schmidt Paper Co. v. A to Z Paper*, the non-resident corporation “never sent a representative to Minnesota” and the only contact it had with Minnesota “was through telephone inquiries and orders and sending payments to Minnesota.” 542 N.W.2d 485, 489 (Minn. App. 1990). Appellants’ contacts with Minnesota are more substantial than the non-residents’ contacts with the forum state in *Smart Carte, Inc.* and *S.B. Schmidt*, and in neither *Smart Carte, Inc.* nor *S.B. Schmidt*, had the non-resident party agreed to resolve the party’s disputes in Minnesota, as most of the Ex-Employee Appellants have here. See generally *Smarte Carte, Inc.*, 1996 WL 689782 at * 2 and *S.B. Schmidt Paper Co.*, 542 N.W.2d 485.

Likewise, *Addison Ins. Marketing, Inc. v. Evans*, relied upon by Appellants on appeal, is also unpersuasive because it is easily distinguishable, as well as non-binding upon this Court. See 2002 WL 31059806 (N.D. Tex. Sept. 12, 2002) (Add. 35). Unlike the Ex-Employee Appellants, the defendant in *Addison* was an “independent agent” rather than an employee. *Id.* at * 1. Further, *Addison*, a Texas company, solicited the defendant to work for it *at defendant’s home* in Pennsylvania and all of defendant’s training was conducted in *Addison’s* Pittsburgh office. *Id.* at * 1, 5. Here, on the other hand, the Ex-Employee Appellants all attended at least one training session in Minnesota whereas the defendant in *Addison* had “never even been to the state of Texas.” *Id.* at * 5. Moreover, the defendant in *Addison* had not consented to the jurisdiction of Texas, as

many of the Appealing Ex-Employee Appellants have done in this case, as addressed *supra*. Simply put, the Ex-Employee Appellants contacts with Minnesota in this case are far more extensive than those of the defendant in *Addison*. See generally, *id.* To the extent there is a conflict between *Addison* and the cases relied upon by the district court, this Court should reject the reasoning of the court in *Addison* and rely instead upon the well-reasoned decisions of Judge Tunheim and Judge Davis in *West Publ'g Corp.* and *ComputerUser.com, LLC*, respectively, as well as the courts in *United States Surgical Corp. v. Imagyn Med. Technologies, Inc.* and *Blue Beacon Int'l, Inc. v. Am. Truck Washes, Inc.*

Given the contacts the Ex-Employee Appellants had with Minnesota, there is no question they should have reasonably anticipated being haled into court in Minnesota and that the high threshold for granting a motion to dismiss has not been met. See *West Publ'g Corp.*, 2004 WL 73590 at *4; *ComputerUser.com, Inc.*, 2002 WL 1634119 at *6; see also *Hardrives, Inc.*, 240 N.W.2d at 816. Indeed, this conclusion is confirmed by the fact that three other Ex-Employee Defendants (Harp, Marinello, and Rand) did not dispute jurisdiction, and one of the FLS Officers, Kummer, does not join in the instant appeal.

2. Minnesota's Interest and the Parties' Convenience Further Supports this Court's Exercise of Personal Jurisdiction Over the Defendants.

This district court's jurisdiction over the Appellants is further supported by Minnesota's interest and the parties' convenience. See *Northrup King Co.*, 51 F.3d at 1389. Minnesota's interest in this case is abundant. The *Burger King* Court observed

that “[a] State generally has a ‘manifest interest’ in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors.” *Burger King*, 471 U.S. at 473. *See also Jenson v. R.L.K. & Co.*, 534 N.W.2d 719, 724 (Minn. App. 1995) (concluding that “Minnesota’s strong interest in allowing injured residents to sue within its borders weighs in favor of finding jurisdiction”); *Cyberoptics Corp. v. Yamaha Motor Corp.*, 1996 WL 673161, * 9 (D. Minn. Jul. 29, 1996) (Respondent’s Add. 14). C.H. Robinson is a Minnesota company and a major contributor in terms of jobs, taxes, revenue, and otherwise, to Minnesota. As such, Minnesota clearly has an interest in ensuring that parties like the Appellants, who injure Minnesota companies, who breach contracts governed by Minnesota law, and who steal confidential, trade secret information located in Minnesota and then use it for their own unlawful gains, can be haled into Minnesota court.

Minnesota also affords the most convenient, logical forum available to the parties. Each of the Ex-Employee Appellants entered into agreements with C.H. Robinson in Minnesota containing Minnesota choice of law provisions, and all of the Appellants had sufficient contacts with Minnesota to support jurisdiction. *See e.g.*, Complaint, ¶¶ 34-49 (App. 13-21). Further, this is not a case in which any forum other than Minnesota is plausible. Because of the disparate residences of the various Appellants and the other Defendants in the instant action, if the instant litigation is not venued here in Minnesota, there will be unnecessary expense and inefficiency of separate lawsuits in up to ten different locations, but all addressing the same issues. Indeed, since the case against Defendants Harp, Marinello, Rand, and Kummer will all proceed in the district court

below, the convenience of litigating the case against *all* of the Appellants' in the district court below is even more evident. Such a result would not only be unfair, expensive, and unduly prejudicial to Respondent – it would also be inconvenient and expensive for the *other parties* to this litigation – which is not in anyone's interest.

E. The District Court Erred in Holding That the Defendants' Conspiracy to Misappropriate C.H. Robinson's Confidential Proprietary Information, Trade Secrets and Customer Goodwill Did Not Render Them Subject to the District Court's Jurisdiction.

The district court erred in finding that the Defendants' conspiracy to misappropriate C.H. Robinson's confidential proprietary information, trade secrets, and customer goodwill did not render Appellants' subject to the district court's jurisdiction. *See* October 8 Order, p. 15-16 (Add. 15-16). Minnesota courts have unambiguously held that once a party has pleaded a claim of conspiracy, the effect of which is felt in this state, "actual physical presence of each of the alleged conspirators is not essential to a valid assertion of jurisdiction." *Hunt v. Nevada State Bank*, 172 N.W.2d 292, 311 (Minn. 1969). Indeed, the "conspiracy theory" of personal jurisdiction is widely accepted by the courts" and "Minnesota has endorsed the conspiracy theory of personal jurisdiction." *Personalized Brokerage Svcs v. Lucius*, 2006 WL 208781, at * 4-5 (D. Minn. Jan. 26, 2006) (Respondent's Add. 57) (internal citations omitted).

All of the Defendants have engaged in a conspiracy. *See* Complaint, ¶¶ 112-16 (App. 35). More specifically, C.H. Robinson believes that FLS and the FLS Officer Defendants conspired with and among the Ex-Employee Defendants, including but not limited to Fred Rand, to misappropriate C.H. Robinson's confidential, trade secret

information, as well as the Company's customer goodwill, located in Minnesota. *See* Complaint, ¶¶ 59, 112-16 (Add. 24, 35); Marinello Aff., ¶¶ 26-27 (Respondent's App. 32). Indeed, Defendant Rand unlawfully accessed C.H. Robinson's computer system, *located in Minnesota*, containing the Company's confidential information; Rand has been indicted for such conduct on Federal criminal charges *in Minnesota* because C.H. Robinson's computer system is in Minnesota. *See* Complaint ¶ 59 (Add. 24); Cameron Aff., ¶¶ 9-19 (Respondent's App. 8-13); Marinello Aff., ¶ 26 (Respondent's App. 32). Moreover, FLS and the FLS Officer Defendants recruited the Ex-Employee Defendants and encouraged those Defendants to solicit C.H. Robinson's customers. *See, e.g.*, Marinello Aff., ¶¶ 9, 11, 13 (Respondent's App. 28-29); Harp Aff., ¶ 5 (Respondent's App. 25); Complaint ¶¶ 13-16 (Add. 7-8). Two of the non-appealing Ex-Employee Defendants, Marinello and Harp, were repeatedly pressured by FLS and the FLS Officer Defendants to target exactly those C.H. Robinson customers that they were contractually prohibited from soliciting for business and to use C.H. Robinson's confidential information and trade secrets to steal business from C.H. Robinson. *See, e.g.*, Marinello Aff., ¶¶ 10-17 (Respondent's App. 28-29); Harp Aff., ¶ 10-13 (Respondent's App. 25-26). Additional facts undoubtedly will come to light in discovery to further evidence the Defendants' conspiracy in this matter.

The District Court mistakenly held that Respondent "failed to allege a legitimate overt act in Minnesota." October 8 Order, p. 15 (Add. 15). Not so. As C.H. Robinson pleaded in its Complaint, the Company's confidential and proprietary information, trade secrets, and customer goodwill are stored, maintained, and located *in Minnesota*. *See*

Complaint, ¶¶ 59, 112-16 (Add. 24, 35); Marinello Aff., ¶¶ 26-27 (Respondent's App. 32). The fact that Defendant Fred Rand has been indicted on Federal criminal charges *in Minnesota* for unauthorized access and use of C.H. Robinson's confidential information underscores that an act *was taken* in Minnesota. See Complaint ¶ 59 (Add. 24); Rand Indictment (Respondent's App. 1-2).

On a Rule 12 motion such as this, the Court must view the evidence in the light most favorable to C.H. Robinson and "take the allegations contained in plaintiffs' complaint and supporting affidavits as true." *Hardrives, Inc*, 240 N.W.2d at 816. C.H. Robinson's well-pleaded Complaint contains a claim that each of the Defendants participated in a conspiracy, the effects of which are felt by C.H. Robinson in Minnesota. Therefore, the district court has personal jurisdiction over all of the Appellants. See *Personalized Brokerage Svcs*, 2006 WL 208781 at * 5 (holding that the plaintiff had "made a *prima facie* case of jurisdiction based on conspiracy" where the plaintiff had alleged conspiracy as a count in its complaint).

F. The District Court Erred in Holding That FLS and the FLS Officer Appellants Are Not Subject to the District Court's Jurisdiction Based Upon the *Griffis/Calder* "Effects" Test.

The district court also erred in finding that the Appellants FLS, Di Girolamo, Kummer, and Flinker are not subject to personal jurisdiction under the *Griffis/Calder* "Effects" test. See October 8 Order, p. 16-18 (Add. 16-18). FLS and the FLS Officer Defendants deliberately targeted their tortious actions to effect harm upon C.H. Robinson in Minnesota, as contemplated by the Minnesota Supreme Court in *Griffis v. Luban*. In *Griffis*, the Minnesota Supreme Court held that a nonresident defendant is subject to a

foreign court's jurisdiction where: (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum state such that the forum state was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum state such that the forum state was the focal point of the tortious activity. 646 N.W.2d 527, 534 (Minn. 2002).

Here, FLS and the FLS Officer Defendants recruited the Ex-Employee Defendants and encouraged those Defendants to solicit C.H. Robinson's customers – with full knowledge that the Ex-Employee Defendants had agreements with C.H. Robinson that prohibit such conduct, which agreements contain forum selection clauses designating Minnesota as the forum in which disputes related to those agreements must be litigated – and with full knowledge that C.H. Robinson is headquartered in Minnesota. *See* Marinello Aff., ¶¶ 9, 11, 13 (Respondent's App. 28-29); Harp Aff., ¶ 5 (Respondent's App. 25); Complaint ¶¶ 13-16 (App. 7-8). In addition, FLS and the FLS Officer Defendants conspired with and among the Ex-Employee Defendants to misappropriate C.H. Robinson's confidential, trade secret information by, among other things, unlawfully accessing C.H. Robinson's computer system containing such information, which computer system is located in Minnesota. *See* Complaint, ¶¶ 59, 112-16 (App. 24, 35); Marinello Aff., ¶¶ 26-27 (Respondent's App.32); Cameron Aff., ¶¶ 9-19 (Respondent's App.8-13). These activities constitute intentional tortious conduct aimed at Minnesota by FLS and the FLS Officer Appellants, and C.H. Robinson has felt the brunt of these harms in this state. *See Griffis*, 646 N.W.2d at 534. The fact that the

Federal criminal charges have been filed in Minnesota reaffirms this. *See Cameron Aff.*, ¶¶ 9-19 (Respondent's App.8-13).

G. The District Court Correctly Exercised its Discretion in Holding That the Doctrine of *Forum Non Conveniens* Does Not Apply.

The district court correctly exercised its discretion in finding that the doctrine of *forum non conveniens* does not apply in this case. *See Bergquist v. Medtronic*, 379 N.W.2d 508, 512 (Minn. 1986). Appellants bear the “burden of persuasion in proving all elements necessary for the court to dismiss a claim based on *forum non conveniens*.” *Reid-Walen v. Hansen*, 933 F.2d 1390, 1393 (8th Cir. 1991). The Appellants’ burden is substantial and “unless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum should rarely be disturbed.” *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947)). Indeed, only in rare cases may a trial court legitimately refuse to hear a case when the constitutional due process requirements have been met. *See Valspar Corp.*, 495 N.W.2d at 412.

Four factors should be considered in assessing whether the doctrine of *forum non conveniens* applies: (1) the administrative burdens placed on courts *unrelated to the forum*; (2) the practical difficulties of sorting through choice of law analyses and applying the substantive law of multiple other states; (3) the unfair imposition of jury duty on community members who have no connection to the litigation; and (4) the local interest in having cases decided closest to their origin. *Gulf Oil*, 330 U.S. at 508-09 (emphasis supplied).

Taken together, consideration of the first, third and fourth factors all illustrate without question that the doctrine of *forum non convenience* does not apply to this case. Despite Appellants' contention to the contrary, this case is not "unrelated to [this] forum." Rather, as discussed above, Minnesota is not only related to this litigation, it has a strong interest in allowing C.H. Robinson to bring suit here. *E.g., Jenson*, 534 N.W.2d at 724 (concluding that "Minnesota's strong interest in allowing injured residents to sue within its borders weighs in favor of finding jurisdiction"). While C.H. Robinson has operations in other states, Minnesota is the focal point of this litigation. Courts do not refuse to exercise personal jurisdiction where, as here, a defendant merely wishes to shift the inconvenience of litigating away from home. *See, e.g., Bell Paper Box, Inc. v. U.S. Kids, Inc.*, 22 F.3d 816, 820 (8th Cir. 1994); *Papchristou v. Turbines, Inc.*, 902 F.2d 685, 686-87 (8th Cir. 1990).

To be sure, administrative burdens, including the potential expense of trial, are placed upon the district court *whenever* litigation is brought before it; but that fact, standing alone, cannot support dismissal based upon the doctrine of *forum non conveniens*. Were that the case, courts would regularly dismiss actions based on the doctrine of *forum non conveniens* in order to alleviate the pressures no doubt placed upon them by full dockets. That is not the intent of the doctrine.

Consideration of the second factor also weighs against dismissal. As explained *supra*, each of the Ex-Employee Appellants have entered into agreements with the Company containing Minnesota choice-of-law clauses. *See* Complaint, ¶¶ 34-49. Further, this is not a case where Minnesota has only "insignificant contact" with the

parties, and as such, there is no basis for the Court to apply the substantive law of states other than Minnesota with respect to Plaintiff's statutory and common law claims against the Defendants. *Compare* Appellants' Mem. of Law at 48 (citing *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 310-11 (1981) for the proposition that "if a State has only insignificant contact with the parties and the occurrence of transaction, application of its law is unconstitutional"). To the contrary, as explained *supra*, each of the Appellants has sufficient contacts with Minnesota to justify jurisdiction. Taken as a whole, Appellants' conclusory assertions concerning the purported "non conveniens" of Minnesota have no basis, and Respondent's choice of forum should not be disturbed. *See Gulf Oil Corp.*, 330 U.S. at 508 ("unless the balance is strongly in favor of the defendant, the plaintiff's choice of forum should rarely be disturbed").

Moreover, it would be more burdensome – for Respondent *as well as the* Appellants – to have multiple cases in numerous different jurisdictions. As noted *supra*, Defendants Rand, Marinello, Harp and Kummer have not objected to the district court's jurisdiction and, as such, their cases will go forward in the district court below. To have those cases go forward but require C.H. Robinson to litigate contemporaneous and duplicative actions against the Appellants in each of the Appellants' home states (as suggested by Appellants on page 45 of their Memorandum of Law) would work a substantial injustice not only upon C.H. Robinson, but also upon the district court below and the courts in Appellants' home states. Indeed, if that were ordered, multiple and undoubtedly duplicative depositions and hearings would assuredly take place, requiring at least some of the *Appellants themselves* to incur duplicative costs as well. Such a

result could hardly be called “convenient.” In short, the Appellants have failed to demonstrate that the district court abused its discretion holding that doctrine of *forum non conveniens* does not apply.

V. CONCLUSION

As the district court below correctly held, Appellants failed to meet their high burden on a Rule 12 motion to obtain dismissal of C.H. Robinson’s case against them. Indeed, there are multiple bases for personal jurisdiction with respect to each Appellant including, *inter alia*, the facts that: (1) Appellants Casillas, Geghan, and Winkler entered into mandatory forum selection clauses with the Company, which clauses bind not just Casillas, Geghan, and Winkler, but the remaining Appellants as well; (2) all of the Ex-Employee Appellants have sufficient additional contacts with Minnesota to justify this Court’s jurisdiction over them; (3) the Appellants have engaged in a conspiracy to misappropriate C.H. Robinson’s confidential information, trade secrets, and customer goodwill – all located in Minnesota – the effect of which conspiracy is felt by C.H. Robinson in the state; and (4) Minnesota has a strong interest in allowing C.H. Robinson to seek redress here and is the most reasonable locale for this case. That personal jurisdiction is appropriate in this matter is especially evident given the mandate that “[i]n doubtful cases, the court should resolve the jurisdiction question in favor of retaining jurisdiction.” *KSTP-FM*, 602 N.W.2d at 923 (citing *Hardrives, Inc.*, 240 N.W.2d at 816).

Dated: April 8, 2009

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CERTIFICATION OF BRIEF LENGTH

I hereby certify that this brief conforms with the requirements of Minn. R. Civ. App. P. 132.01, subd. 3(a) for a brief produced with proportional font and typeface 13-point Times New Roman using Microsoft Word 2003.

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