



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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RETIRED JUDGES

Re: *Shahrokh Mireskandari v. Daily Mail & General Trust PLC, et al.*
Case No. CL-2019-9418

OPINION LETTER

Dear Counsel:

In this defamation case, a United Kingdom (“UK”) news publication allegedly defamed a UK solicitor¹ practicing in the UK at a UK law firm, involving actions that occurred in the UK, through news stories of parochial interest to UK readers, to gain favor with UK police. (See Am. Compl. ¶¶ 1-2, 4, 6-8.) The distilled question before the Court is, why is this case in Fairfax, Virginia, USA? The legal question is, can the Court properly exercise personal jurisdiction over the UK Defendants under Virginia’s Long Arm Statute² and the Due Process Clause of the United States Constitution?³

Plaintiff has not facially demonstrated that the Court can exercise personal jurisdiction over the Defendants.⁴ He has not shown within the four corners of his thrice Amended Complaint that there was any injury in Virginia, any causally connected tortious conduct in Virginia, or any causally connected substantial business in Virginia. Because he failed, as a matter of law, to plead any of the necessary grounds for Virginia to hail the UK Defendants into Virginia court, the Court dismisses the case for lack of personal jurisdiction.

I. BACKGROUND: A UK SOLICITOR AND NOW CALIFORNIA RESIDENT, ALLEGEDLY DEFAMED IN THE UK BY UK COMPANIES ABOUT MATTERS THAT OCCURRED IN THE UK INVOLVING UK POLICE WHILE HE WAS PRACTICING LAW IN THE UK, CHOOSES FAIRFAX COUNTY, VIRGINIA, USA, TO MAKE HIS STAND.

Plaintiff Shahrokh Mireskandari (“Plaintiff” or “Mr. Mireskandari”), a California resident, asserts defamation and unjust enrichment claims against Defendants Daily Mail & General Trust PLC and DMG Media Limited d/b/a Associated Newspapers (U.S.A.) Limited⁵ (collectively, “Defendants” or “Daily Mail”⁶), UK companies, based on two articles published in 2018 in Defendants’ newspaper,⁷ *Daily Mail*, claiming he was a “bogus solicitor” with “bogus legal qualifications.” (See Am. Compl. ¶¶ 1-4, 6-8.)

In support of personal jurisdiction, Plaintiff points to three grounds, citing Virginia Code § 8.01-328.1(A)(3) and (4) (“Virginia’s Long Arm Statute”):

¹ A UK solicitor is akin to a lawyer in the United States. See *Rahmema v. Ralmema*, No. 1199-05-1, 2006 WL 616071, at *5 (Va. Ct. App. Mar. 14, 2006).

² VA. CODE ANN. § 8.01-328.1.

³ U.S. CONST. amends. V, XIV.

⁴ The Court treats as true all the allegations in the Amended Complaint for the purpose of this Opinion Letter. It does not make these its own findings of fact.

⁵ Defendants’ Notices of Special Appearance assert that the name “DMB Media Limited d/b/a Associated Newspapers (U.S.A.) Limited” is incorrect. At this stage, the Court makes no comment on misnomers.

⁶ For ease and readability, the Court may refer to Defendants as “Daily Mail” (unitalicized), although the Court recognizes that is not the official name of either Defendant. References to the publication will be italicized appropriately.

⁷ In addition to print publication, the news articles were posted online via the website www.dailymail.com.uk.

- (1) Defendants “knowingly committed tortious acts in the Commonwealth of Virginia by fraudulently obtaining access to Mr. Mireskandari’s educational records held in Virginia by a Virginia company, the Student Clearinghouse, and because those tortious acts were committed in furtherance of and as part of the newsgathering process for Defendants’ publication of their libelous statements against [Plaintiff]” (“Basis 1”);
- (2) Defendants “published their defamatory articles about [Plaintiff] in the Commonwealth of Virginia, those articles were accessible in and actually accessed by persons in Virginia, and those articles caused injury to [Plaintiff] and his reputation in Virginia” (“Basis 2”); and
- (3) Defendants “caused tortious injury to [Plaintiff] in the Commonwealth of Virginia . . . and Defendants have engaged in a persistent course of conduct or regularly do or solicit business or derive substantial revenue from goods used or consumer [sic] or services rendered in Virginia by distributing their news products to Virginia residents on the Daily Mail website that is accessible to Virginia residents 24 hours a day and is actually accessed by Virginia residents, and by selling advertising space on the Daily Mail website to and/or publishing advertisements on the Daily Mail website for Virginia entities and companies that target Virginia residents. An example of two such advertisements published on the Daily Mail website—one for Virginia Tech University and one for Virginia company MyEyeDr[.]—are reproduced below and in Exhibit C [herein]” (“Basis 3”).

(Am. Compl. ¶¶ 12-16; Pl.’s Mem. Opp. Mot. Dismiss.)

Plaintiff conceded, both in briefings and at oral argument, that general jurisdiction is not possible. (Jurisdiction Hr’g Tr. 30:11-15.) He relies on specific jurisdiction through the Virginia Long Arm Statute and due process.

Daily Mail moved to dismiss by special appearance.⁸

⁸ On July 13, 2020, after the jurisdictional hearing, Plaintiff filed a “Supplement to His Opposition to Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction” arguing that Defendants waived personal jurisdiction when they filed objections to this Court’s June 26, 2020, Order regarding Plaintiff’s Motion for Leave to Amend Complaint. (The Court originally dismissed the case for a signature defect, and then reconsidered the dismissal, and instead, allowed leave to amend. Defendants filed objections to the Order granting reconsideration and granting Plaintiff leave to amend his Complaint.) The Court disagrees that Defendants entered a general appearance by filing these objections. First, the objections were not “on the merits.” Va. Code Ann. § 8.01-277.1 (providing a non-exhaustive list of related and unrelated “on the merits” conduct). *Cf. Johnson v. Williams*, 568 U.S. 289, 302 (2013) (defining “merits” as “the intrinsic rights and wrongs of a case as determined by matters of substance, in distinction from matters of form . . . unobscured by procedural details [or] technicalities”) (internal quotations and citations removed)). The objections related to Plaintiff’s Motion for Leave to Amend Complaint, and the related reconsideration, which has nothing to do with the underlying cause of action of defamation and unjust enrichment. This involved a procedural matter involving an improper signature by Plaintiff’s counsel and Plaintiff’s request to amend his Complaint. It is very dissimilar to actions enumerated in Virginia Code § 8.01-277.1(A). Indeed, Defendants have never filed a demurrer, answer, counterclaim, etc. The objection was that such reviving was futile *because there is no personal jurisdiction*. Second, the objections came after the Court already rendered its decision

Because Plaintiff brings his dispute in Virginia instead of in one of the more obvious fora for this litigation—California (where he lives) or the UK (the base for the facts of this case)—the Court held a hearing on July 7, 2020, to determine whether the Amended Complaint facially establishes this Court’s jurisdiction over Daily Mail.⁹

II. PLAINTIFFS MUST PLEAD WITH SUFFICIENT DEFINITENESS.

For the purposes of this Opinion Letter, the Court assumes the Amended Complaint and all reasonable inferences therein as true. The Court has not taken evidence because it is not necessary to address the jurisdictional grounds Mr. Mireskandari has raised. Even if supported in fact, his grounds do not support personal jurisdiction as a matter of law. To understand why, consider an extreme hypothetical: had Mr. Mireskandari asserted Virginia jurisdiction over this UK-centric dispute because Fairfax County’s namesake, Thomas Fairfax, 6th Lord Fairfax of Cameron, was a British subject, the Court can plainly assume the allegation as true, decline to accept evidence proving or expanding upon it, and dismiss the case for lack of jurisdiction as a matter of law. In that hypothetical, the Court does not need evidence to know it lacks jurisdiction on that basis. For the reasons stated in this Opinion, Mr. Mireskandari’s grounds are similarly subject to dismissal as a matter of law because even if factually correct they do not support personal jurisdiction.

Jurisdiction is a threshold matter. While Mr. Mireskandari is correct that Virginia adheres to a “notice pleading” standard, he is not absolved from pleading “essential facts.” VA. SUP. CT. R. 1:4.¹⁰ Plaintiffs must allege facts to support each element necessary to their claim. *See, e.g., Young-Allen v. Bank of America, N.A.*, 839 S.E.2d 897, 901 (Va. 2020) (holding that failure to allege the ability to cure a default is fatal to a foreclosure rescission claim even though defendant is on notice of the subject of the claim). A pleading must be of “sufficient definiteness.” *Tingler v. Graystone Home, Inc.*, 298 Va. 63, 73 n.2 (2019). This “‘sufficient definiteness’ requirement has long anchored [the Supreme Court of Virginia’s] application of notice-pleading principles.” *Id.* (quoting *A.H. ex rel. C.H. v. Church of God in Christ, Inc.*, 297 Va. 604, 613 n.1 (2019)). A tension will always exist “‘between a pleader’s duty to state succinctly the ‘essential facts’ supporting his claim, Rule 1:4(j), and the absence of any need to detail ‘the particulars’ of a

on Plaintiff’s Motion for Reconsideration: therefore, it in no way affected the Court’s decision (the objections were not addressed pre- or post-decision). The objections were endorsement objections for possible preservation purposes. Third, Defendants never asked for a hearing, filed a substantive brief, or moved for a re-reconsideration. Fourth, the objections themselves contained no detail or supporting facts or law. Lastly, Defendants’ jurisdiction challenge (via Motion to Dismiss) was the first and only response; in other words, it preceded the objections. Moreover, Plaintiff relies on *Gilpin v. Joyce*, 257 Va. 579 (1999), to support his argument that Defendants made a general appearance through their objections. However, that decision issued ten years before a substantial legislative enactment, Virginia Code § 8.01-277.1. It seems obvious the General Assembly relaxed the *Gilpin* rule by its new law. Plaintiff’s reliance on *Gilpin* is overstated.

⁹ Sched. Conf. Order (Feb. 13, 2020).

¹⁰ Rule 1:4(d): “Every pleading shall state the facts on which the party relies”; Rule 1:4(j): “Brevity is enjoined as the outstanding characteristic of a good pleading. In any pleading a simple statement . . . of the essential facts is sufficient.” VA. SUP. CT. R. 1:4(d), (j) (emphasis added).

negligence claim, Rule 3:18(b).” *Id.* (quoting *A.H. ex rel. C.H.*, 297 Va. at 613 n.1).¹¹ Allegations asserted in “mere conclusory language,” devoid of articulated facts and inferences “not fairly and justly drawn” therefrom are subject to demurrer. *Bowman v. State Bank of Keysville*, 229 Va. 534, 541 (1985). See also *Eastern Direct Mfg. v. Coolidge Co.*, 26 Va. Cir. 282, 283 (Arlington 1992) (“[In his complaint, [t]]he plaintiff simply lifts this [(A)(4)] language from the Code. The plaintiff never affirmatively asserts any facts which would support these allegations. The plaintiff’s conclusory pleading does not satisfy the requirements for the exercise of personal jurisdiction under the long-arm statute.”). Additionally, plaintiffs are not ethically permitted to “plead by guesswork.” See VA. CODE ANN. § 8.01-271.1 (attorneys filing a pleading certify that “to the best of [their] knowledge, information[,] and belief, formed after reasonable inquiry, [the pleading] is well grounded in fact and is warranted by existing law or a good faith argument [for a change in the law], and [] it is not interposed for any improper purpose . . .”).

In this case, Mr. Mireskandari pled few suitable facts---definite or not. And although Plaintiff is correct that at this stage the view is in the light most favorable to him, the Court finds that it cannot derive reasonable and fair inferences from those pled facts.

III. THIS VIRGINIA COURT MUST HAVE PERSONAL JURISDICTION OVER THE UK DEFENDANTS VIA VIRGINIA’S LONG ARM STATUTE AND WITHOUT OFFENDING DUE PROCESS.

Determining whether a court may exercise personal jurisdiction over out-of-state defendants involves a two-part test. Part one is the state’s long arm statute; part two is the US Constitution.

A. Part One: Virginia’s Long Arm Statute.

The first part, Virginia’s Long Arm Statute, is arguably broad and powerful. Critically, however, it requires that the “*cause of action aris[es] from*” conduct within one of the enumerated categories. VA. CODE ANN. § 8.01-328.1(A) (emphasis added). Applicable here are subsections (A)(1),¹² (A)(3), and (A)(4).

Subsection (A)(1): “Transacting any business in this Commonwealth.” *Id.* Indicators include having an office, owning real property, having employees, or paying taxes in Virginia.

Subsection (A)(3): “Causing tortious injury by an act or omission *in* this Commonwealth.” *Id.* (emphasis added).

¹¹ This case is not one of failing to plead the particulars of a negligence claim. See VA. SUP. CT. R. 3:18(b). This is not a negligence action.

¹² Mr. Mireskandari does not cite this prong of the statute. However, it seems related to his claims and thus, the Court addresses it anyway in the spirit of thoroughness.

Subsection (A)(4): “Causing tortious injury *in* this Commonwealth by an act . . . *outside* this Commonwealth if [the defendant] *regularly* does or solicits business, or engages in any other *persistent* course of conduct, or derives *substantial* revenue from goods used or consumed or services rendered, *in* this Commonwealth.” *Id.* (emphasis added). Note a condition precedent is that the injury occurred in Virginia.¹³ Generally, the brunt of the injury in defamation cases is where the plaintiff lives and works. See *Calder v. Jones*, 465 U.S. 783, 788-90 (1984) (discussing where the “focal point” is).

If a plaintiff fails part one of the jurisdiction test, the inquiry ends. If a plaintiff passes part one, however, that is not necessarily the end—the plaintiff must also satisfy part two, due process.

B. Part Two: Due Process.

For the second part, *International Shoe* provides the constitutional framework for personal jurisdiction. The inquiry asks: Does a defendant have sufficient minimum contacts with the forum and did the defendant purposefully avail itself of the privileges of the forum state such that 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, 320 (1945). A court must analyze personal jurisdiction under the lens of either general jurisdiction¹⁴ or specific jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473-74 (1985). *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014); *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 292 n. 15 (4th Cir. 2009). Because Plaintiff conceded that general jurisdiction is not applicable in this case, the Court will only focus on specific jurisdiction.

Specific jurisdiction for due process relates to personal jurisdiction where “[the minimum] contacts form the basis for the suit.” *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 397 (4th Cir. 2003). “In determining whether specific jurisdiction exists, [the court] consider[s] (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs’ claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally ‘reasonable.’” *Carefirst of Md.*, 334 F.3d at 397 (citing *ALS Scan, Inc. v.*

¹³ This condition precedent is manifest based on the plain language of Section (A)(4); it is not so obvious, however, for Section (A)(3). Two interpretations are possible for (A)(3): (1) both the injury and the act occurred in Virginia; or (2) the injury could have occurred anywhere, but the act must have occurred in Virginia. The Court was unable to find binding precedent as to which interpretation is correct for (A)(3). It is persuaded by *Nathan v. Takeda Pharmaceuticals America, Inc.*, 83 Va. Cir. 216, 2011 WL 8947650, at *9-10 (Fairfax Aug. 2, 2011). See also *Williams v. Microbilt Corp.*, No. 3:19cv085, 2019 WL 7988583, at *11 (E.D. Va. Sept. 23, 2019); Robert E. Draim, *Virginia Practice Series: Products Liability* § 12:1 (July 2019 ed.).

¹⁴ General jurisdiction relates to personal jurisdiction over a defendant in a suit not arising out of or related to the defendant’s contacts with the forum. *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n. 9 (1984). “A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011); see also *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014).

Digital Serv. Consultants, Inc., 293 F.3d 707, 711-12 (4th Cir. 2002), *cert. denied*, 537 U.S. 1105 (2003)). The basis for specific jurisdiction must be rooted in the connection between the defendants and the forum state, and not simply the plaintiff's contacts. *See Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1779-80 (2017). When a plaintiff's claims would have been exactly the same even had the defendant had no forum state contacts, there is no basis for specific jurisdiction because the case does not sufficiently arise out of or relate to the defendant's forum activities. *See id.*

C. The Internet Does Not Grant Virginia a License to Exert Unlimited Extraterritorial Jurisdiction.

The Internet (generally) has no borders. Does that mean plaintiffs can sue anywhere one may access material on the Internet? No. The Fourth Circuit has persuasively fashioned some reins on jurisdiction via internet connections through the following test: (1) Did the defendant "manifest an intent to direct [its] website content . . . to a Virginia audience," *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002), such that the defendant "should reasonably anticipate being haled into court" in Virginia; and (2) did "that activity create[, in a person within the State, a potential cause of action" under Virginia law? *Id.* (quoting *ALS Scan, Inc.*, 293 F.3d at 714).

The defendant must have directed electronic activity into the state with the manifest intent to target and focus on Virginia and not an undefined audience of internet users around the world. *See ALS Scan, Inc.*, 293 F.3d at 714. The fact that a defendant's website can "be accessed anywhere, including Virginia, does not by itself demonstrate that the [defendant was] intentionally directing [its] website content to a Virginia audience." *Young*, 315 F.3d at 263. "Something more than posting and accessibility is needed"—the general thrust and content of the online publications must have been "designed to attract or serve" Virginia readers. *Id.* Otherwise, "principles governing a State's jurisdiction over persons outside of its borders would be subverted." *Id.* (internal citation omitted).

For example, in *KMLLC Media, LLC v. Telemetry, Inc.*, the Eastern District of Virginia held that a UK defendant was not subject to jurisdiction based on allegations that it interacted with a Virginia-based website in investigating an allegedly defamatory report about a Virginia resident. 2015 WL 6506308, at *10 (E.D. Va. Oct. 27, 2016). Such contact was basically *de minimis*. *Id.* *See also Carefirst of Md.*, 334 F.3d at 402 (holding that mere contact between an out-of-state defendant and a web server in the forum is inadequate for jurisdiction); *FireClean, LLC v. Tuohy*, No. 1:16-cv-0294, 2016 WL 3952093 (E.D. Va. July 21, 2016) (Virginia plaintiff sued Arizona gun blogger in Virginia for calling its gun-cleaning oil nothing more than Crisco. In rejecting personal jurisdiction on the basis that the content passed through servers in Virginia, the court stated that when the blogger posted articles, he was targeting a nationwide audience of gun enthusiasts, and the defamatory article never mentioned the word Virginia.). Importantly, in both those cases, unlike here, the plaintiffs were Virginia residents.

The defamatory articles in the present case are clearly not directed to a Virginia audience. The articles involved a UK solicitor, who does not live in Virginia, who is not licensed to practice law in Virginia, and involved lawsuits he brought in the UK involving the UK police and Parliament. There is nothing about these articles that would interest a Virginian in that capacity. So, the fact the articles were accessible on the Internet does mean they were targeted at Virginia where the subject matter so obviously shows they were not.

IV. VIRGINIA LACKS JURISDICTION OVER DAILY MAIL BASED ON ALL OF MR. MIRESKANDARI'S BASES.

Facially, Virginia's Long Arm Statute provides no basis for Virginia to reach across the Atlantic Ocean, grab the UK Defendants, and hale them into the Circuit Court of Fairfax, Virginia, USA, under all of Mr. Mireskandari's jurisdictional theories and facts as pled. And, even assuming the Virginia Long Arm Statute would provide a basis, exercising personal jurisdiction would nevertheless offend due process.

A. Mr. Mireskandari Suffered No Injury in Virginia.

As a threshold—and dispositive—matter, Mr. Mireskandari must plead facts to support his conclusion that he suffered injury in Virginia. He did not. The facts he does allege are either plainly insufficient or are simply legal conclusions. (See Am. Compl. ¶¶ 6, 12-16.) To wit, he states the following phrases: “causing tortious injury,” “caused injury,” and “harm . . . was felt in Virginia”—and those phrases are not followed by anything like “by” or “because” to give an example of *what* harm. He pleads two categories of injury.

First, he lived here over three decades ago. (Am. Compl. ¶ 34; Jurisdiction Hr'g.) Indeed, he only lived in Virginia to attend three years of undergraduate school, and then he moved to California to finalize his bachelor's degree. (Am. Compl. ¶¶ 34-35.) He did not get his law degree from a Virginia law school. (Am. Compl. ¶¶ 36-37.) Time issues aside, his former residence here in the 1980s has nothing at all to do with the injury alleged.

He relatedly makes a bald assertion that he “frequently travels” to Virginia. (Am. Compl. ¶ 6; Jurisdiction Hr'g.) Almost anyone who travels from the UK to the Washington, DC, area could say the same thing, as it is common knowledge Dulles International Airport in Reston, Virginia, is a major hub for international flights. (Jurisdiction Hr'g.) Air travel has nothing to do with this defamation case.

Second, he makes a conclusory statement that “his reputation [was injured] in Virginia.” (Am. Compl. ¶ 14.) But every *fact* leads to the opposite conclusion: he lives in California, the subject matter underlying the defamation occurred when he was a UK solicitor, practicing in the UK, at a UK law firm, involving UK matters and the UK police. Not a single paragraph references, for example, him having Virginia clients or a Virginia law firm office, a loss of clientele because of the defamatory articles, or ostracization by Virginia friends.

At the jurisdictional hearing, the Court gave Mr. Mireskandari every opportunity to point to concrete facts in his Amended Complaint to support his injury conclusion. He could not. He, instead, reiterated the standard of review or offered unreasonable inferences that the text of the facts pled do not fairly spawn.

His failure to allege legitimate injury in Virginia ends the inquiry. However, the Court will address Mr. Mireskandari's other points to show that even had he legitimately pled injury, his bases fail as a matter of law.

B. Daily Mail's Purported Access of Mr. Mireskandari's Education Records in Virginia Provides No Basis for Personal Jurisdiction—Fraudulent or Not.

As Basis 1, Mr. Mireskandari alleges Daily Mail “knowingly committed tortious acts in the Commonwealth of Virginia by fraudulently obtaining access to [his] educational records held in Virginia by a Virginia company, the Student Clearinghouse, and because those tortious acts were committed in furtherance of and as part of the newsgathering process for Defendants’ publication of their libelous statements against Mr. Mireskandari.” (Am. Compl. ¶ 13.) His “tortious newsgathering” or “fraudulent access” theory—which appears to be the one on which he most relies—does not grant the Court personal jurisdiction over Daily Mail.

Assuming the “fraudulent access” allegation is actionable, the proper plaintiff would be the National Student Clearinghouse (as it was its system that was improperly accessed), or if a crime, the Commonwealth. Here, Mr. Mireskandari's Amended Complaint contains no trespass or theft-type count or a privacy invasion count (*see generally* Am. Compl. ¶¶ 125-160 – consisting of three counts, two for libel per se and one for unjust enrichment), nor could he. This is a defamation case, plain and simple.

Furthermore, the allegedly tortious newsgathering was not the “last act” in the defamation chain. *See infra* Section V. This newsgathering occurred in 2007-09, approximately ten years¹⁵ before the articles’ publication. (Am. Compl. ¶¶ 3-4, 80-102.)

Looking first to Virginia's Long Arm Statute, personal jurisdiction requires that the “cause of action ar[ose] from” conduct within one of the enumerated categories. VA. CODE ANN. § 8.01-328.1(A). Here, the true cause of action is defamation. (*See, e.g.* Am. Compl. ¶ 1.) The defamation “arose from” the publication, not the “tortious” education record research. The cause of action is not trespass or theft. The alleged tort has little to do with the alleged defamation. The research behind the publication of a defamatory statement does not create the harm—the publication of the statement does. None of the defamatory statements referred to material in the Virginia database. For example, Daily Mail did not report that, based on records from the National Student Clearinghouse, it learned Mr. Mireskandari lied about his education credentials. Put differently, Daily Mail did not cite the database as authority or a source of proof for its assertion. It could not: Mr. Mireskandari specifically pleads “[t]hose records did *not* show, nor

¹⁵ The Court does not reach the issue of the statute of limitations in this decision.

could any record show, that Mr. Mireskandari lacked the educational credential to practice as a solicitor in the UK or that he somehow falsified his educational records to the Law Society.” (Am. Compl. ¶ 3 (emphasis in original).) So even assuming Daily Mail illegally accessed the education records, the most it could do was confirm Mr. Mireskandari’s education credentials. At the hearing, Plaintiff emphasized that such confirmation proves one of the elements of a defamation cause: recklessly publishing knowingly false information. But this is of no moment for jurisdiction. It is irrelevant for personal jurisdiction that ten years prior to making the alleged defamatory statements the National Student Clearinghouse “servers that were fraudulently accessed by the Daily Mail [were] located in Virginia.” (Am. Compl. ¶ 101.) Taken to the extreme, a defendant could be haled into court anywhere he conducts research. Mr. Mireskandari mentions the search and server in his Amended Complaint in a transparent attempt to hail Daily Mail into a foreign country to defend itself. The Court cannot exercise jurisdiction over Daily Mail based on this ground for personal jurisdiction.

The bottom line is the *access* of the records did not injure Mr. Mireskandari in any way as pled. He brought a cause of action for defamation and unjust enrichment, not computer trespass or a violation of any right to privacy.

Finally, turning to due process, as with the Long Arm Statute, the basis of the suit is the defamation in the UK, not the improper access of a database. This is especially so where the access occurred during a journalistic investigation that was not even used or cited in its reporting. The isolated act by Daily Mail of accessing a Virginia database a decade ago is nowhere near the sufficient minimum contacts with the forum or purposeful availment of the privileges of the forum such that maintenance of the suit would not offend traditional notions of fair play and substantial justice. *Int’l Shoe Co.*, 326 U.S. at 320.

The allegation that Daily Mail improperly accessed the National Student Clearinghouse database does not confer on this Court personal jurisdiction over Daily Mail.¹⁶ The Court rejects jurisdiction on Basis 1.

C. The Court has No Personal Jurisdiction Over Daily Mail Merely Because Allegedly Libelous Statements Were Accessible and Consumed in Virginia Over the Internet.

As Basis 2, Mr. Mireskandari alleges Daily Mail “published their defamatory articles in the Commonwealth of Virginia, those articles were accessible in and actually accessed by persons in Virginia, and those articles caused injury to [him] and his reputation in Virginia.” (Am. Compl. ¶ 14.)

As discussed in Section IV(A), *supra*, there is no rational factual allegation of injury to support the conclusory statements. If true, for example, he could have pled: “I had clients in Virginia who read in *Daily Mail* I was a ‘bogus solicitor’ and fired me.” This omission, alone,

¹⁶ See Virginia’s limits to notice pleadings discussed at the end of Section II, *supra*.

halts further inquiry into this prong of the Long Arm Statute. Even if injury was alleged, operating a generally accessible foreign news website is not a sufficient “act” or “persistent course of conduct.” To find otherwise would effectively make any foreign newspaper with a website subject to jurisdiction in the courts of all fifty states, rendering the personal jurisdiction constraint meaningless.

The Court finds the persuasive authority discussed in Section III(C), *supra*, from the United States Court of Appeals for the Fourth Circuit compelling. Particularly, it accepts the concept that the contact need be designed to attract or serve a Virginia audience or that the general “thrust” of the content involve Virginia. *See Young*, 315 F.3d at 263. The news stories in the present case all involve a UK solicitor and the UK police and the UK Parliament obviously published to a UK audience. The “focal point” (*see Calder*) is clearly the UK. There is nothing at all in the Amended Complaint that would interest a Virginian as a Virginian. Mr. Mireskandari’s plea that any Virginian could access or consume it could be argued in any state court in the United States. The ubiquitous nature of the Internet does not provide unlimited forum shopping. Accordingly, even assuming Mr. Mireskandari was injured in Virginia, the Court rejects personal jurisdiction on Basis 2 because the accessibility and consumption argument is without merit.

D. Website Advertisements for Virginia Businesses Do Not Establish Daily Mail Conducts Substantial Business in Virginia and Do Not Sufficiently Relate to the Cause of Action.

As Basis 3, Mr. Mireskandari claims “Defendants have engaged in a persistent course of conduct or regularly do or solicit business or derive substantial revenue from goods used or consumer [sic] or services rendered in Virginia by distributing their news products to Virginia residents on the Daily Mail website that is accessible to Virginia residents 24 hours a day and is actually accessed by Virginia residents, and by selling advertising space on the Daily Mail website to and/or publishing advertisements on the Daily Mail website for Virginia entities and companies that target Virginia residents.” (Am. Compl. ¶ 15.)

Plaintiffs must plead with sufficient definiteness. *See* discussion Section II, *supra*. As with the other bases of his Amended Complaint, Mr. Mireskandari repeats the statutory language but does not offer the facts to support his conclusions. By pleading in the disjunctive that Daily Mail “engaged in a persistent course of conduct *or* regularly do or solicit business *or* derive substantial revenue” (Am. Compl. ¶ 15 (emphasis added)), it appears Mr. Mireskandari does not really know whether Daily Mail engages in business in Virginia sufficient to support jurisdiction. Otherwise, he would have picked one or two of the verbs from his disjunctive conclusory string and added more than one fact for support. For example, he points to no Virginia satellite office or states that Daily Mail’s reporter who wrote the defamatory article lives here. In this context, maintaining a generally accessible website does not rise to the level of the statutory adjectives (“regular,” “persistent,” “substantial”). *See* discussion Section III(C), *supra*.

Instead, the only fact Mr. Mireskandari points to supporting his allegation that Daily Mail targets Virginia are advertisements for MyEye Dr. and Virginia Tech University on the *Daily*

Mail website. (Am. Compl. Ex. C.) At the jurisdictional hearing, the Court noted that the screenshots of those advertisements were taken recently (per the Exhibit's timestamp). They were not contemporaneous to the alleged defamatory publication. The Court asked Mr. Mireskandari whether he could establish that those advertisements were present on the defamatory article when first published two years ago.¹⁷ Plaintiff could not say.¹⁸ Thus, he does not allege in his Amended Complaint nor in oral argument that Daily Mail advertised in Virginia at the time of the defamatory articles. Rather, he admitted that this advertising basis was really just a "plus factor" and conceded it could "not [serve] as the basis for a specific application of jurisdiction here." (Jurisdiction H'rg Tr. 36:20-22.) He continued, "If the after-the-fact advertisements were the only fact before the Court, I do not believe that that would be sufficient to establish specific jurisdiction for this claim." (Jurisdiction H'rg Tr. 38:6-11.) "The advertisements are, I would say, a very small part of the basis for our assertion of personal jurisdiction." (Jurisdiction H'rg Tr. 40:4-7.)

Instead, "[t]he specific application of jurisdiction is based on the tortious conduct in Virginia and the impact that it had on Mr. Mireskandari." (Jurisdiction H'rg Tr. 36:23-25.) If "we wipe away the tortious conduct and we wipe away all of the other allegations in the [Amended] Complaint, I do not believe that that would be sufficient to confer specific jurisdiction." (Jurisdiction H'rg Tr. 39:18-22.) As discussed in Section IV(B), *supra*, the "tortious newsgathering" argument does not persuade this Court. Since there are no other factual allegations supporting specific jurisdiction, everything but the advertisements are wiped away.

His lack of reliance on these advertisements makes sense. First, they have nothing to do with the alleged tortious conduct; the advertisements were not defamatory. Second, the advertisements do not advertise *Daily Mail*. They are dissimilar to an occurrence where *Defendants* have an advertisement for *Daily Mail*, its product, in a Virginia business's publication. In that instance, Daily Mail would be soliciting business targeted to Virginia. By analogy, in *Vape Guys, Inc. v. Vape Guys Distribution*, the court held personal jurisdiction over the defendant was proper due to the *defendant's products* being advertised in defendant's *direct* solicitations. *Vape Guys, Inc. v. Vape Guys Distrib.*, No. 3:19cv298, 2020 WL 1016443, at *8 (E.D. Va. Mar. 2, 2020). The advertisement examples Mr. Mireskandari cites in his Amended

¹⁷ Daily Mail made a factual functionality argument: the cited advertisements are merely the result of a passive website cookie; ads change based on where the viewer accesses the website. (Jurisdiction H'rg.) Mr. Mireskandari did not challenge or object at the hearing to Daily Mail's assertion on this point. *See Vape Guys, Inc. v. Vape Guys Distrib.*, No. 3:19cv298, 2020 WL 1016443, at *5 (E.D. Va. Mar. 2, 2020) ("[A] court need not 'ignore undisputed factual representations of the defendant which are consistent with the representations of the plaintiffs.'" (internal citations omitted)). However, the Court's holding in the present case is not based on this factual concession. Rather, it serves as an alternative basis to reach the same holding.

¹⁸ The Court observes that this case has been pending for over a year. The initial Complaint and attachments consisted of 123 pages. Mr. Mireskandari offered two amendments to his Complaint to add to his jurisdiction allegations. While the defamatory statements at issue in this case occurred in 2018, he complains Daily Mail started defaming him over a decade ago—in 2008—with the same statements. (Am. Compl. ¶ 3.) He certainly had ample time and motivation to investigate whether Defendants did substantial business in Virginia before choosing this Commonwealth for his lawsuit.

Complaint, by contrast, are not of Daily Mail advertising its product; rather, Daily Mail is the host.

With the limited facts pled, the Court considers statutory and constitutional jurisdiction in sequence.

Virginia's Long Arm Statute grants the Court jurisdiction over a foreign defendant who transacts any business in the Commonwealth. *See* VA. CODE ANN. § 8.01-328.1(A)(1) (interpreted as a "single-act" statute). But recall the condition precedent: the cause of action *arose from* that business. Depending on what Daily Mail does to transact business in Virginia, the Court could have personal jurisdiction over it. However, under Virginia's Long Arm Statute, the alleged defamation must have some causal link with that business. VA. CODE ANN. § 8.01-328.1(A). So, for example, evidence that Daily Mail purchased Virginia peanuts as employee gifts the same year as it published its allegedly defamatory articles would not satisfy that prong of the Long Arm Statute. *See Triple Up Ltd. v. Youku Tudou Inc.*, 235 F. Supp. 3d (D.D.C. 2017). In *Triple Up*, plaintiff sued a Chinese internet television company for copyright infringement in the District of Columbia. *Id.* at 18. The court granted defendant's motion to dismiss for lack of personal jurisdiction. *Id.* at 31. In so doing, the court stated it "need not decide whether Youku's hosting of English-language advertisements for American audiences rises to the level of purposeful availment, however, because Triple Up's lawsuit does not 'aris[e] out of or relate[] to' those third-party advertisements, as specific jurisdiction requires." *Id.* at 26 (citing *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8. (1984))). "The existence of geographically-targeted advertisements is therefore causally independent of the alleged availability of the films at issue." *Id.* at 28.¹⁹ In the present case, the defamation did not arise from the advertising. Critically, Plaintiff conceded this point at the hearing when he stated, "We are not making the

¹⁹ But see *UMG Recordings Inc. v. Kurbanov*, __ F.3d __, 2020 WL 3476993 (4th Cir. June 26, 2020). In *UMG Recordings*, twelve US record companies sued a Russian defendant for copyright infringement (music piracy). *Id.* at *1. Like Daily Mail, operated from the UK, Kurbanov's work was performed outside the United States, entirely in Russia. *See id.* The district court granted Kurbanov's motion to dismiss for lack of personal jurisdiction, finding that the websites were merely "semi-interactive, non-commercial in nature, and that no other acts established purposeful targeting in Virginia." *Id.* at *3. The Fourth Circuit reversed, finding facts sufficient to support a true, substantial commercial relationship, to wit: Virginia represented a significant number of the website's US traffic; the nature of the repeated interaction between the website and visitors such as downloading media; the website's requirement for visitors to sign and agree to a terms of use contract before downloading the files; the website using the visitors' personal data to fund his "free" website (what made his site appealing); his registering a Digital Millennium Copyright Act agent qualifying the website for certain safe harbor defenses; and registering the websites with US-based domain registers relying on US-based servers. *See id.* While discussing the advertisements, the court noted, "Far from being indifferent to geography, any advertising displayed on the Websites is directed towards specific jurisdictions like Virginia. Kurbanov profits from visitors by selling directed advertising space and data collected to third-party brokers, thus purposefully availing himself of the privilege of conducting business in Virginia." *Id.* at *6. Nevertheless, the court emphasized that this was "not a situation where a defendant merely made a website that happens to be accessible in Virginia." *Id.* at *7. Unlike in the present case, the facts in *UMG* demonstrated a causal link between the contact and the genesis of the dispute: the music piracy occurred, at least in substantial part, in Virginia, when it was downloaded. Here, however, reading an article accessible in Virginia is much more causally attenuated to the defamation claim.

argument that the claims arise out of these advertisements. They don't." (Jurisdiction H'rg Tr. 36:16-18.)

Similarly, the Court's due process analysis shows exercising personal jurisdiction on this advertisement basis would not be constitutional under the *Carefirst of Maryland* test.²⁰ First, the Court considered the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state. Here, the allegation consists of advertisements for products other than the Defendant's that Mr. Mireskandari concedes do not, alone, support personal jurisdiction. Second, it considered whether the plaintiffs' claims arise out of those activities directed at the state. Here, the "bogus lawyer" defamation did not arise from the ads. Third, it considered whether the exercise of personal jurisdiction would be constitutionally "reasonable." It is objectively unreasonable to subject a foreign company to a Virginia court because there were advertisements on its website advertising a Virginia business completely unrelated to the alleged defamation.

Mr. Mireskandari really relies on the advertising basis, not for the statutory test of jurisdiction, but rather, due process—that the advertisements show it would not be unfair to force Daily Mail into this Commonwealth Court. (Jurisdiction H'rg Tr. 34:14-23; 37:12-21.) This concession highlights the flaw. His statement rings more in general jurisdiction, which he already conceded was inapplicable to this case—whether a defendant is essentially "at home."

Comparing the allegations in this case with the facts of *Nan Ya Plastics Corp. v. DeSantis*, 237 Va. 255 (1989), helps clarify Mr. Mireskandari's situation. In *Nan Ya*, the defendant "aggressively reached into Virginia" and recruited a Virginia resident, the plaintiff, for employment elsewhere. *Id.* at 260. The plaintiff was in Virginia when he participated in the telephonic negotiations. *Id.* Written communications were sent to and received in Virginia. *Id.* Plaintiff acknowledged those communications in Virginia. *Id.* The ensuing employment contract was formed in Virginia. *Id.* As a result, the Supreme Court of Virginia held it had *in personam* jurisdiction to adjudicate the case because, *inter alia*, the contract was truly consummated in Virginia.

Thus, for *Nan Ya*'s breach of employment contract allegation, the contract's consummation was a sufficient "single act" giving rise to the cause of action of the complaint, the breach of contract. Here, by contrast, nothing legitimately related to Mr. Mireskandari's defamation claim occurred in Virginia. No party lives in Virginia. No story was written in Virginia. The UK story was not first published in Virginia. Injury was not felt in Virginia because injury is traditionally felt where the victim lives and works. *See Calder*, 465 U.S. 783. Since Mr. Mireskandari is a California resident and has not lived in Virginia since the 1980s (*see* Am. Compl. ¶¶ 6, 34), Virginia does not meet this test. He does not even allege any facts to support an injury in Virginia. Even assuming people in Virginia read the article, and even assuming that constitutes a single act (i.e., Daily Mail "published" in Virginia by communicating it to a Virginian), that would still offend due process. Virginia is the wrong place for this lawsuit.

²⁰ *Carefirst of Md., Inc.*, 334 F.3d at 397.

Mr. Mireskandari has complained that he would offer necessary facts if granted an evidentiary hearing. However, the Court did not draft his three Complaints and did not direct him to offer broad, conclusory statements in lieu of “essential facts.” VA. SUP. CT. R. 1:4. As to the one fact he does raise—website advertisements—they are insufficient to support personal jurisdiction. Of course, plaintiffs need not offer all their evidence in a complaint, nor anticipate discovery. However, even if Mr. Mireskandari offered 1,000,000 advertisements similar to the two he mentions in his Amended Complaint, and proves Daily Mail generates substantial revenue from those ads, the result does not change for three reasons. First, he conceded at oral argument the advertisements are insufficient to support personal jurisdiction and are merely a “plus factor.” The Court relies on and agrees with his concession that the advertisements alone do not support jurisdiction. Second, the defamation does not “arise from” the ads, as discussed above. He may argue the advertisements financially support the platform for the defamatory statements, the newspaper and website itself. But that logic would eviscerate the constitutional principle that plaintiffs’ claims arise out of those activities directed at the forum state. *Care first of Md.*, 334 F.3d at 397. It would change that principle to an “any business” principle. Effectively, it would turn a specific jurisdiction due process analysis into a general jurisdiction one. However, Mr. Mireskandari concedes his allegations do not support general jurisdiction. Consistent with this, no evidentiary hearing would establish 1,000,000 advertisements and substantial revenue from them. Were it otherwise, he would be asserting general jurisdiction, which he is not. Third, he failed to offer facts supporting his claim he suffered harm in Virginia. See discussion Section IV(A), *supra*.

Because Mr. Mireskandari did not plead sufficient injury in Virginia, because of the attenuation between the advertisements to the substantial business to the cause of action, and because Mr. Mireskandari conceded this would not alone support personal jurisdiction, Basis 3 fails.

V. FAIRFAX COUNTY, VIRGINIA, USA, IS NOT THE WORLD’S DEFAMATION COURT.

Some may have misread the *Johnny Depp v. Amber Heard* Opinion Letter, wherein another judge of this Court held Virginia was the proper forum for actor Johnny Depp’s defamation suit against his ex-wife, actress Amber Heard, despite the seemingly thin connection of the parties and the cause of action to Virginia. *John C. Depp, II v. Amber Laura Heard*, 102 Va. Cir. 327, 2019 WL 8883669 (Fairfax July 25, 2019).

For starters, the issue in *Depp* was of *forum non conveniens* and venue—not *in personam* jurisdiction. Nevertheless, any jurisdictional or locational ruling in *Depp* expressed a *limiting* principle, not an expansive invitation to forum shop in Fairfax County. The Court held under the *lex loci delicti* rule that the cause of action in a defamation case arises where the last act for publishing the allegedly defamatory statement took place. In *Depp*, the last act was when *The Washington Post* uploaded the statement in an article to the Internet from servers located in

Virginia.²¹ Stated differently, *Depp* stands for the principle that Virginia is one of the *few* places where that defamation action may be adjudicated.

The logical extension of *Depp* is that the Daily Mail case may be brought where the last link of the publication of the defamatory statements occurred. If that last link was in Virginia, Mr. Mireskandari has not realistically pled that. Merely being *accessible* is not synonymous with where something is published. Although in paragraph 14, Plaintiff avers Daily Mail “published” the defamatory articles in Virginia, that statement is belied by the rest of the Amended Complaint. Defendants are UK companies operating a UK news publication. (Am. Compl. ¶¶ 7-8.) And even assuming the place of publication is where the article was first uploaded onto a server, Mr. Mireskandari has not pled that Virginia was the place. The only reference to something even remotely analogous is the National Student Clearinghouse’s headquarters in Herndon, Virginia. (Am. Compl. ¶ 9.) But the Court has already written that the “tortious newsgathering” occurring in Virginia does not confer personal jurisdiction over Daily Mail. See Section IV(B), *supra*.

The only real similarity between *Depp* and this case is that Virginians sitting in Virginia can access both *The Washington Post* and *Daily Mail* online. The differences are remarkable: *The Washington Post* is a US company with offices in Virginia, is printed in Virginia, and its digital platform is created and routed through servers in Virginia. Conversely, Daily Mail is a UK company and has the “.co.uk” web address of UK domains. Unlike in *Depp* where the alleged defamatory op-ed was first printed and/or uploaded *in Virginia*, Mr. Mireskandari has not alleged the Daily Mail’s alleged defamatory article was *first* published in Virginia, as opposed to elsewhere, such as the UK.

²¹ “The last event necessary for an individual to become liable for defamation in online, multi-jurisdictional cases occurs when the defamatory statement is uploaded to the internet. Therefore, the place of the wrong . . . is where the act of publication . . . to the internet occurred.” *Depp*, 2019 WL 8883669, at *5.

VI. CONCLUSION.

Mr. Mireskandari has not facially alleged facts supporting this Court's personal jurisdiction over Daily Mail. The Circuit Court of Fairfax does not sit as *praetor peregrinus*.²² Daily Mail's Motion to Dismiss is granted.

Mr. McGavin will please prepare a sketch order consistent with and referencing this Opinion Letter, obtain all the appropriate endorsements and objections by circulating it to all counsel, and submit it to Chambers no later than August 7, 2020.

Kind regards



David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

²² In ancient Rome, a *praetor* was a judicial officer, who generally handled matters of equity. A *praetor urbanus* was an arbiter over disputes between citizens; a *praetor peregrinus* handled suits in which one or both parties were foreigners. *Praetor*, ENCYCLOPAEDIA BRITANNICA (Nov. 13, 2019), <https://www.britannica.com/topic/praetor>.