IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-00210-RBJ

LIST INTERACTIVE, LTD. D/B/A UKNIGHT INTERACTIVE,
LEONARD S. LABRIOLA,

Plaintiffs,

v.

KNIGHTS OF COLUMBUS,
THOMAS P. SMITH, JR.,
MATTHEW A. ST. JOHN,

Defendants.

DEFENDANTS MATTHEW ST. JOHN AND THOMAS SMITH'S REPLY IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION PURSUANT TO FED. R. CIV. P. 12(b)(2)

Defendants Matthew A. St. John and Thomas P. Smith, Jr., through Lewis Roca Rothgerber Christie LLP, submit this reply in support of their Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(2) filed February 22, 2017 [Doc. 20] ("Motion").

I. RICO cannot "expand" the due process limits on the Court's exercise of personal jurisdiction.

For this Court to exercise personal jurisdiction over Mr. St. John and Mr. Smith, Plaintiffs must surmount two hurdles with respect to each of their claims. They must show, first, that "the applicable statute potentially confers jurisdiction by authorizing *service of process* on the defendant," *Niemi v. Lasshofer*, 770 F.3d 1331, 1348 (10th Cir. 2014) (emphasis added), and second, that "the exercise of jurisdiction comports with due process," *id*. For Plaintiffs' state law

claims, which are subject to Colorado's long-arm statute, "the first, statutory, inquiry effectively collapses into the second, constitutional, analysis." *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1070 (10th Cir. 2008).

But the same is not true of the RICO claim. Under the first (statutory) inquiry, RICO authorizes nationwide service of process only if "personal jurisdiction can be established over at least one defendant" and nationwide service on other defendants is "required by the ends of justice." *Cory v. Aztec Steel Bldg., Inc.*, 468 F.3d 1226, 1231 (10th Cir. 2006). If the "ends of justice" standard is not satisfied for statutory service of process, the Court does not even proceed to the constitutional due process inquiry. *See id.* at 1233; *Goodwin v. Bruggeman-Hatch*, 2014 WL 3882183, at *7 (D. Colo. 2014).

Plaintiffs are confused about this. They seem to think RICO authorizes "nationwide jurisdiction" (as opposed to nationwide *service of process*), and they incorrectly treat the "ends of justice" and "minimum contacts" inquiries as alternative bases for personal jurisdiction. (*See* Pls.' Resp. to Defs.' Mot. to Dismiss for Lack of Personal Jurisdiction [Doc. 35] at 2-5 ("Response").) Indeed, Plaintiffs argue that "traditional notions of personal jurisdiction are substantially expanded" in RICO cases. (*Id.*) Of course, no statute can "expand" the due process limitations imposed by the Constitution. For this Court to exercise personal jurisdiction over Messrs. St. John and Smith with respect to the RICO claim, Plaintiffs must show *both* that nationwide service of process on these Defendants is required by the "ends of justice" *and* that they have sufficient "minimum contacts" with Colorado to justify haling them into court here. *Cory*, 468 F.3d at 1229; *see also Peay v. BellSouth Med. Assistance Plan*, 205 F.3d 1206, 1209

(10th Cir. 2000) ("While service of process and personal jurisdiction both must be satisfied before a suit can proceed, they are distinct concepts that require separate inquiries.")

The first requirement – the statutory requirement – is not met for the simple reason that Plaintiffs offer nothing to satisfy it. Plaintiffs acknowledge, as they must, that the "mere existence of damages and litigation costs incurred by plaintiff[s]" in this district is not enough. (Response at 4.) Their only argument is that, since the Knights of Columbus (the "Order") is subject to personal jurisdiction in Colorado, the "ends of justice" standard is automatically satisfied for Messrs. St. John and Smith. (*See id*. at 5.) This obviously is wrong. *Cory* says that "where personal jurisdiction can be established over at least one defendant [here, the Order], summonses can be served nationwide on other defendants *if required by the ends of justice*." 468 F.3d at 1231 (emphasis added). The "ends of justice" is an *additional* element that must be met *assuming* there is already personal jurisdiction over at least one RICO defendant. But there is no allegation in the First Amended Complaint and no argument in the Response that might satisfy this element.

Plaintiffs have not carried their burden to show that RICO authorizes nationwide service of process on Messrs. St. John and Smith. "Without federal statutory authorization for nationwide service, [the Court] need not proceed to the Fifth-Amendment inquiry" on the RICO claim. *Id*. at 1232-33.

II. Messrs. St. John and Smith do not have the requisite minimum contacts with Colorado to satisfy due process.

A. No general jurisdiction

Plaintiffs begin their due process argument by pointing to the "several contacts" that Mr. St. John and Mr. Smith have had with Colorado. (Response at 5-6.) But those contact are not

even close to the "continuous and systematic general business contacts" necessary to establish general personal jurisdiction over either Defendant. Indeed, Plaintiffs do not even try to argue the contrary, and make no attempt to distinguish the general jurisdiction cases cited in the Motion – *Trierweiler v. Croxton & Trench Holding Corp.*, 90 F.3d 1523, 1543-44 (10th Cir. 1996), and *Schneider v. Cate*, 405 F. Supp. 2d 1254, 1259 (D. Colo. 2005) – where the defendants' contacts with Colorado were far more extensive yet still insufficient. Given their lack of continuous and systematic general business contacts, there is no basis for exercising general personal jurisdiction over Messrs. St. John and Smith in this state.

B. No specific jurisdiction

Neither is there a basis for specific personal jurisdiction. Plaintiffs make the facile assertion that Messrs. St. John and Smith "intentionally directed" their conduct toward Colorado (Response at 6-7), but nothing in the First Amended Complaint or in controlling Tenth Circuit precedent supports their argument.

It bears repeating how minimal Colorado's connection to this case is. Mr. Labriola lives here, and he organized List Interactive, Ltd. ("UKnight") in this state. (*See* Am. Compl. ¶¶ 3-4.) But the two other members of UKnight reside in Texas. (*Id.* ¶ 3.) And as set forth in detail in the Motion (pp. 7-9, 14-16), all of the activities giving rise to Plaintiffs' claims – business meetings, business trips, the alleged misappropriation of trade secrets, the alleged slander, and the Order's insurance activities – occurred in either Texas or Connecticut. The First Amended Complaint's allegations about Colorado are noticeably sparse. Plaintiffs do not allege, for example, that they carry on any business activity in this state; that they direct or control UKnight's activities from Colorado; that their alleged trade secrets were developed or are maintained here; or that they

suffered any harm here, such as reputational injury or loss of customers. A defendant cannot "purposefully direct" his activities at a state when there is nothing of substance to aim at. Colorado was in no sense the "focal point" of any of the wrongdoing that Plaintiffs allege. *See Dudnikov*, 514 F.3d at 1074 (quoting *Calder v. Jones*, 465 U.S. 783, 789 (1984)) (internal quotation marks omitted).

Plaintiffs' Response does nothing to shore up the jurisdictional deficiencies in the First Amended Complaint. Indeed, it only brings them into sharper relief.

First, Plaintiffs say that "[t]he fraudulent scheme to inflate the membership numbers of the Knights of Columbus was directed by Mr. Smith and Mr. St. John, and directed at Colorado (as well as all other states), from which the instant claims directly arise." (Response at 7.) For this, they generically cite ¶¶ 31-47 of their First Amended Complaint. Those paragraphs span nine pages. Not a single one mentions Colorado – there is no allegation about membership numbers in Colorado, or activities by any person in or directed toward Colorado, or any effect in Colorado whatsoever. Nothing about Plaintiffs' claims is even related to Colorado, much less "directly arise[s]" out of Defendants' supposed activities here.

Second, Plaintiffs say that "Mr. Smith and Mr. St. John engaged in the intentional misappropriation of trade secrets owned by UKnight, a Colorado company, from which Plaintiff's [sic] trade secret claim directly arises." (Response at 7). For this, they generically cite ¶¶ 56-59, 69-78, 88(c)-(g), and 116-121 of their First Amended Complaint. Yet again, not a single one of these allegations mentions Colorado. The alleged trade secrets were not developed here, maintained here, accessed here, transported here, or stolen from here, and Plaintiffs do not allege any effect here as a result of the alleged theft.

Finally, Plaintiffs say that "Mr. Smith intentionally directed his slanderous and fraudulent statements toward UKnight, a Colorado company, and Mr. Labriola, a Colorado resident, from which Plaintiffs' slander, fraudulent misrepresentation, and negligent misrepresentation claims directly arise." (Response at 7.) For this, they generically cite ¶¶ 48-49 and 126-143 of their First Amended Complaint. These allegations, like all the others, are totally devoid of any hint of a Colorado connection. Indeed, while Plaintiffs emphasize their presence in this state, they do not even claim to have suffered injury here. They have lost no customers in Colorado (if they even had any). Their reputation did not suffer in Colorado (to the extent they have a reputation here). Colorado is simply not connected to Plaintiffs' claims at all.

In the end, Plaintiffs want this Court to exercise personal jurisdiction over two out-of-state individuals based solely on *Plaintiffs'* own presence in the forum. (*See* Response at 7 ("Defendants knew that UKnight was located in Colorado."); *id*. at 8 (alleging that Defendants "knew that UKnight was a Colorado company" and that "Mr. Labriola . . . lived in Colorado").) This plainly is insufficient to satisfy the demands of due process. *See Shrader v. Biddinger*, 633 F.3d 1235, 1245 (10th Cir. 2011) ("[P]laintiff's residence in the forum state, and hence suffering harm there, does not alone establish personal jurisdiction over a defendant who has not purposefully directed his activities at the state."); *Shell v. Am. Family Rights Ass'n*, 899 F. Supp. 2d 1035, 1053 (D. Colo. 2012) ("[N]one of the activities purportedly giving rise to the harm alleged here was directed at Colorado, and the mere fortuity that [plaintiff] resides in Colorado (and thus suffers harm here) is insufficient to create personal jurisdiction.").

III. An evidentiary hearing is not warranted.

In their concluding paragraph, Plaintiffs request an evidentiary hearing on personal jurisdiction. (Response at 8.) However, because the relevant facts are undisputed, an evidentiary hearing is not necessary to resolve the Motion. *See SpaceCo Bus. Sols., Inc. v. Mass Engineered Design, Inc.*, 942 F. Supp. 2d 1148, 1152 (D. Colo. 2013) (Jackson, J.) (granting defendants' motion to dismiss for lack of personal jurisdiction and denying evidentiary hearing as unnecessary "because the relevant facts appear to be undisputed"), *aff'd,* 553 F. App'x 1008 (Fed. Cir. 2014). Nonetheless, Defendants do not oppose Plaintiffs' suggestion of an oral argument, if the Court believes it would be helpful.

CONCLUSION

Messrs. St. John and Smith respectfully request that they be dismissed from this case pursuant to Fed. R. Civ. P. 12(b)(2), as there is no basis for exercising personal jurisdiction over them in Colorado.

DATED: March 22, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of March 2017, a copy of the foregoing was filed with the Clerk of the Court using the CM/ECF System, which will send notification to the following:

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