STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
THORNE HEALTHECH, INC., and THORNE RESEARCH, INC. Plaintiffs, vs. STEPHEN H. ROSS, Defendant.	Case No. 2024-CP-08-00077 **ORDER GRANTING DEFENDANT'S MOTION TO DISMISS**

This matter comes before the Court on Motion of Defendant Stephen H. Ross ("Defendant"), to dismiss the Complaint of Plaintiffs Thorne Healthtech, Inc. and Thorne Research, Inc. (collectively, "Plaintiffs") pursuant to South Carolina Rule of Civil Procedure 12(b)(2) on the grounds that this Court does not have personal jurisdiction over Defendant and South Carolina is not the proper venue for this matter ("Defendant's Motion to Dismiss"). The Court heard Defendant's Motion to Dismiss on May 23, 2024. All parties were represented by counsel. Based on a review of the pleadings, arguments of counsel, and applicable law, the Court hereby **GRANTS** Defendant's Motion to Dismiss as outlined below.

I. Background

This matter arises from a dispute between Thorne HealthTech, Inc., a Delaware corporation with a principal place of business in New York ("Thorne HealthTech"), and Defendant, its former employee. Thorne HealthTech, along with its subsidiary, Thorne Research, Inc. ("Thorne Research"), specializes in the development of personalized health and wellness solutions. This case primarily concerns allegations against Defendant, who served as the Director of Business Development of Onegevity Health, LLC ("Onegevity"), a New York based company and a wholly-

owned subsidiary of Thorne HealthTech, beginning on or around August 14, 2021. (Def.'s Mem. in Support of Mot. to Dismiss, at 2 (May 22, 2024). Thereafter, following the dissolution of Onegevity and its merger into Thorne HealthTech, Defendant transitioned to the role of Director of Business Development at Drawbridge Health, which operated under Thorne HealthTech. (*Id.*). In 2023, Defendant's job title changed to Director of Operations in the Drawbridge Health department, continuing to work out of Thorne HealthTech's headquarters in New York.

According to Plaintiffs' Complaint, Defendant was engaged in business activities that included interactions with Thorne Research's manufacturing facility in Summerville, South Carolina. Despite these allegations, the location of Defendant's employment and the performance of his duties were centered at Thorne HealthTech's headquarters in New York. (*Id.* at 3 – 4).

In contradiction to these claims, Defendant maintains that his interactions with the South Carolina facility were minimal and non-substantive. Defendant affirms that his sole visit to South Carolina did not involve access to sensitive or proprietary information and thus did not establish significant business ties to the state. (*Id.* at 4). The Offer Letter from Thorne HealthTech clearly stipulated that Defendant was to report directly to an executive based in New York, further supported by provisions for his relocation to New York to fulfill his job responsibilities, emphasizing the New York-centric nature of his role. (*Id.* at 3).

Further affidavits corroborate Defendant's limited engagement with South Carolina. According to his own Affidavit and that of Bryan Conley, Defendant's professional activities and responsibilities were anchored in New York. (*Id.* at 3 – 5). Mr. Conley, in his Affidavit, confirms that Defendant had no employment obligations at the South Carolina facility and that his interactions were primarily with personnel and operations based in New York.

II. Legal Standard

When a court's personal jurisdiction is challenged under Rule 12(b)(2) the burden is on the plaintiff to establish that a ground for jurisdiction exists. *Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir. 1989). When the court resolves the motion on written submissions (as opposed to an evidentiary hearing), the plaintiff need only make a "prima facie showing of a sufficient jurisdictional basis." *Id.* However, the plaintiff's showing must be based on specific facts set forth in the record. *Magic Toyota, Inc. v. S.E. Toyota Distribs.*, Inc., 784 F. Supp. 306, 310 (D.S.C. 1992). The Court may consider the parties' pleadings, affidavits, and other supporting documents but must construe them "in the light most favorable to plaintiff, drawing all inferences and resolving all factual disputes in his favor, and assuming plaintiff's credibility." *Sonoco Prods. Co. v. ACE INA Ins.*, 877 F. Supp. 2d 398, 404–05 (D.S.C. 2012) (internal quotation and alteration marks omitted); *see also Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003) ("In deciding whether the plaintiff has made the requisite showing, the court must take all disputed facts and reasonable inferences in favor of the plaintiff"). However, a court "need not credit conclusory allegations or draw farfetched inferences." Sonoco, 877 F. Supp. 2d at 205 (internal quotation marks omitted). Whenever a defendant's sworn affidavit contests the allegations in the complaint, the plaintiff can no longer rest on those allegations. *Callum v. CVS Health Corp.*, 137 F. Supp. 3d 817, 835 (D.S.C. 2015). Instead, the plaintiff bears the burden to present an affidavit or other evidence showing jurisdiction exists over the non-resident defendant. *Id.*

To meet their burden, Plaintiffs must show (1) that South Carolina's long-arm statute authorizes jurisdiction, and (2) that the exercise of personal jurisdiction complies with the constitutional due process requirements. *ESAB Group, Inc. v. Zurich Ins. PLC*, 685 F.3d 376, 391

(4th Cir. 2012). *E.g., Christian Sci. Bd. of Dirs. of First Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 215 (4th Cir. 2001). South Carolina has interpreted its long-arm statute to extend to the constitutional limits of due process. *See S. Plastics Co. v. S. Commerce Bank*, 423 S.E.2d 128, 130–31 (S.C. 1992). Thus, the first step is collapsed into the second, and the only inquiry before the court is whether the due process requirements are met. E*SAB Group, Inc. v. Centricut, LLC*, 34 F. Supp. 2d 323, 328 (D.S.C. 1999); *Sonoco*, 867 F. Supp. at 352.

Due process requires that a defendant have sufficient "minimum contacts with [the forum] 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) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). This standard can be met in two ways: "by finding specific jurisdiction based on conduct connected to the suit or by finding general jurisdiction." *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 711–12 (4th Cir. 2002) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)).

As detailed below, this Court lacks both general and specific jurisdiction over Defendant because he has never resided in South Carolina, nor has he conducted any business activities within the state, thereby negating the basis for general jurisdiction. Furthermore, specific jurisdiction cannot be established as the alleged claims against Defendant arise solely from his activities in New York, with no significant events or transactions occurring in South Carolina. Defendant's professional responsibilities were confined to Thorne HealthTech's headquarters in New York, and Defendant's minimal interactions with South Carolina entities were incidental, directed by Defendant's employer, and unrelated to the allegations at issue.

III. Discussion

A. THIS COURT LACKS GENERAL JURISDICTION OVER DEFENDANT.

General jurisdiction is the State's right to exercise personal jurisdiction over a defendant even though the suit does not arise out of or relate to the defendant's contacts with the forum; general jurisdiction is determined under S.C. Code Ann. § 36–2–802. *Coggeshall v. Reprod. Endocrine Assocs. of Charlotte*, 376 S.C. 12, 16, 655 S.E.2d 476, 478 (2007) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473 n. 15, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)). Under South Carolina law, "[a] court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in, this State as to any cause of action." S.C. CODE ANN. § 36-2-802.

In this instant case, as Defendant asserted, he has never conducted business in South Carolina or maintained any form of business in South Carolina. Moreover, Defendant was exclusively employed in New York and fulfilled all of his employment duties in New York. Prior to, during, and after his employment with Thorne, Defendant has never conducted business in South Carolina.

Furthermore, it is apparent that Defendant's responsibilities were expected to be undertaken in New York. The directives stated in the Offer Letter, which unmistakably necessitated Defendant's relocation to New York reinforce the centrality of his role within the New York locale. This assertion is substantiated by Bryan Conley's Affidavit—he held the office of Vice President and Chief Financial Officer at Thorne Research—asserting that not once did he encounter Defendant in South Carolina; interactions with him were solely in New York at the corporate offices of Thorne HealthTech. (*Id.* at 4 – 5). Moreover, Mr. Conley corroborates that Defendant was engaged exclusively with Thorne HealthTech, New York, where Defendant

executed all his employment responsibilities, devoid of any duties obligating Defendant's presence at Thorne Research's South Carolina manufacturing facility. (*Id.*) Thereby, it firmly underlines that the professional engagements and duties of Defendant were anchored in New York, diluting any claims of his conducting business in South Carolina.

While Plaintiffs point to supposed collaborative efforts between Defendant and Thorne Research's South Carolina based staff to argue Defendant's business conduct in South Carolina, along with his singular trip to the Summerville facility as evidence for jurisdiction, such interactions were not of a business nature but merely incidental, occurring at the behest of New York based Thorne employees. Defendant's single trip to South Carolina consisted solely of social visits and dinners with his wife, Dr. Mary Kay Ross, who is also a former employee of Thorne HealthTech. These visits lacked any independent business purposes initiated by Defendant. Further, during his brief sojourn, he undertook no business activities in South Carolina. The nature of these activities—socializing and touring—cannot feasibly be interpreted as business conduct or the formation of a substantial link with this State. As such, this Court lacks general jurisdiction over Defendant.

B. THIS COURT LACKS SPECIFIC JURISDICTION OVER DEFENDANT.

Regarding specific jurisdiction, the "determination of whether a court may exercise personal jurisdiction over a nonresident involves a two-step analysis . . . [f]irst, the trial judge must determine that the South Carolina long-arm statute applies . . . [s]econd, the trial judge must determine that the nonresident's contacts in South Carolina are sufficient to satisfy due process requirements." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 259, 423 S.E.2d 128, 130 (1992) (internal citations omitted). In assessing minimum contacts, the Court must find that there

are sufficient minimum contacts to give it power to adjudicate the action and that the exercise of jurisdiction is "reasonable" or "fair." *Id.* (internal citations omitted).

i. The South Carolina Long-Arm Statute does not confer jurisdiction over Defendant.

South Carolina's long-arm statute enumerates eight acts which would bring an out-of-state defendant under a South Carolina court's personal jurisdiction:

> A court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; (3) commission of a tortious act in whole or in part in this State; (4) causing tortious injury or death in this State by an act or omission outside this State if he 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 State; (5) having an interest in, using, or possessing real property in this State; (6) contracting to insure any person, property, or risk located within this State at the time of contracting; (7) entry into a contract to be performed in whole or in part by either party in this State; or (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed. S.C. CODE ANN. § 36-2-803.

Plaintiffs' causes of action against Defendant do not arise from any of the acts enumerated in South Carolina's long-arm statute.

Under the provisions of the statute relating to transacting any business within this State, Defendant's limited engagements in South Carolina do not fulfill the requisite threshold. As delineated in his Affidavit, Defendant's vocational endeavors were New York-centric, where critical employment-related proceedings, such as interviews and the acceptance of his job offer, were conducted. (*Id.* at 3). Defendant's solitary and brief excursion to South Carolina, spanning merely a day and a half, was characterized solely by a non-commercial facility visit and a communal meal, absent of any form of business dealings or negotiations (*Id.* at 3 – 4). Such an

episodic event does not amount to "transacting business" as prescribed by the tenets of South Carolina's long-arm statute.

In the context of contracting to provide services or goods within the State, Defendant's circumstance falls short of satisfying such stipulations. The Offer Letter, the sole contract he enacted, unequivocally expects that Defendant's professional responsibilities would be fulfilled at the New York office of Thorne HealthTech, thereby geographically distancing his work duties from South Carolina.

Regarding the legal application to committing a tortious act within this State, the litigation against Defendant originates from and is based upon alleged actions strictly taken in New York. As substantiated by Defendant's Affidavit, any decision or act pertinent to the alleged dissemination of classified information or insider trading—despite being contested—would have transpired exclusively at Thorne's New York headquarters. (*Id.* at 14). This sworn testimony was undisputed by Plaintiffs' affidavit submissions.

Finally, this Court finds that no other provisions of the South Carolina long-arm statute would confer jurisdiction over Defendant. Accordingly, the South Carolina long-arm statute does not lend support to this Court's jurisdictional claim over Defendant.

ii. Defendant Lacks Minimum Contacts with South Carolina.

A minimum contacts analysis requires a court to find that the defendant directed its activities to a resident of [South Carolina] and that the cause of action arises out of or relates to those activities." *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131 (citing *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 508, 402 S.E.2d 177, 180 (1991). "A single act that causes harm in [South Carolina] may create sufficient minimum contacts where the harm arises out of or relates to that act." *Id.* at 260–61, 423 S.E.2d at 131 (citing *Colite Indus. v. G.W.*

Murphy Const. Co., 297 S.C. 426, 377 S.E.2d 321 (1989)). "In addition, the defendant's activities directed to a resident of [South Carolina] must be its own and not the unilateral activities of some other entity." *Id.* at 261, 423 S.E.2d at 131 (citing *Aviation,* 303 S.C. at 507, 402 S.E.2d at 180). "The defendant must purposefully avail itself of the privileges of conducting activities in [South Carolina], thus invoking the benefits and protections of our laws." *Id.*

Here, Defendant has not established sufficient contacts with South Carolina to warrant the exercise of personal jurisdiction. Defendant's limited interactions with South Carolina were incidental and non-essential to his roles as Director of Business Development and Director of Operations of Thorne HealthTech and its affiliates. As previously stated, he did not establish residency, engage in business, or maintain employment ties that involved direct interactions with South Carolina entities or markets, as evidenced by affidavit testimony. Defendant's sole physical presence in the state was a brief one-and-a-half-day visit to a manufacturing facility, which was arranged by his employer and devoid of any decision-making or business-related transactions that could be interpreted as purposefully availing himself of the jurisdiction of South Carolina.

Importantly, Plaintiffs have not provided any evidence showing that Defendant directed his activities towards South Carolina or that his limited interactions within the state are related to the cause of action asserted against him, thereby failing to demonstrate that specific jurisdiction over Defendant is appropriate. *S. Plastics*, 310 S.C. at 260, 423 S.E.2d at 131 (citing *Aviation Assocs. & Consultants, Inc. v. Jet Time, Inc.*, 303 S.C. 502, 508, 402 S.E.2d 177, 180 (1991). The legal claims against Defendant, particularly those alleging the dissemination of confidential insider information, stem from activities purportedly conducted entirely in New York, where critical employment decisions and interactions took place. These claims are neither derived from nor connected to any act Defendant undertook in South Carolina during his brief visit. This insufficient

connection does not meet the legal threshold that the cause of action must arise from or relate to activities he directed toward the State.

Moreover, South Carolina law requires that a defendant's activities in the state be personal and not merely the unilateral actions of another party. Defendant's isolated emails and calls with South Carolina employees, while Defendant was in New York, and his brief visit to South Carolina was entirely orchestrated by his employer, without any initiative or direct involvement from him that could imply an intentional establishment of contacts with the state. (*Id.* at 17). Therefore, these activities cannot be attributed to Defendant in a manner that would invoke the jurisdiction of this Court. In conclusion, isolated communications such as emails and phone calls between Defendant and Thorne Research's employees in South Carolina, which were directed by Plaintiffs, do not alone meet the jurisdictional threshold.

C. THE DOCTRINE OF FORUM NON CONVENIENS FAVORS DISMISSAL.

The Court, as an independent and alternative ground for dismissal, finds that the convenience of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum under the doctrine of *forum non conveniens*.

> The doctrine of *forum non conveniens* is a well established doctrine which allows a court with proper jurisdiction to dismiss an action when the convenience of the parties and the ends of justice would be better served if the action were tried elsewhere. *Braten Apparel Corp. v. Bankers Trust Company,* 273 S.C. 663, 259 S.E.2d 110 (1979); *Del Rio v. Ballenger Corp.,* 391 F.Supp. 1002 (D.S.C.1975). The decision to invoke the doctrine of *forum non conveniens* is within the discretion of the trial court. *Braten, supra.* The doctrine is generally invoked whenever the forum has little or no relationship to a cause of action. *Nienow v. Nienow,* 268 S.C. 161, 232 S.E.2d 504 (1977).

Fed. Land Bank of Columbia v. Davant, 292 S.C. 172, 179, 355 S.E.2d 293, 297 (Ct. App. 1987).

Here, the Court finds that South Carolina has little to no relationship to Plaintiffs' causes of action. Specifically, Defendant's employment and relevant interactions occurred in New York, where both Thorne HealthTech's headquarters and the primary parties involved are based. Plaintiffs' causes of action are grounded in actions that took place in New York. Defendant's direct supervisors, the key witnesses, and the pertinent documents are all located in New York, further emphasizing New York's central role in this dispute. The Court finds that granting a dismissal would not prejudice Plaintiffs. Rather, it would require them to initiate their action in New York—the state where nearly every witness resides; where Plaintiffs' law firm has an office; where Defendant and his wife, Dr. Mary Kay Ross, were employed during their tenure with Plaintiffs; and where convening this action would substantially benefit all parties involved due to convenience and proximity. As such, the convenience of the parties and the interests of justice are better served by dismissing this action in favor of a New York forum.

IT IS HEREBY ORDERED that Defendant's Motion to Dismiss is hereby **GRANTED** for the reasons stated above.

AND IT IS SO ORDERED.

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Berkeley Common Pleas

Case Caption: Thorne Healthtech, Inc. , plaintiff, et al VS Stephen H Ross

Case Number: 2024CP0800077

Type: Order/Dismissal

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134