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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

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Appellate Case No. 2024-002067

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Thorne HealthTech, Inc. and Thorne  
Research, Inc.,

Appellants,

v.

Stephen H. Ross,

Respondent.

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INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN HOLDING THAT IT LACKED SPECIFIC PERSONAL JURISDICTION OVER MR. ROSS?
2. DID THE TRIAL COURT ERR IN HOLDING THAT THE COMPLAINT SHOULD BE DISMISSED UNDER THE DOCTRINE OF *FORUM NON CONVENIENS*?

## STATEMENT OF THE CASE

This case involves a series of disputes between an employer and its former employee. Appellants Thorne HealthTech, Inc. (“**Thorne HealthTech**”) and Thorne Research, Inc. (“**Thorne Research**”) (collectively, “**Thorne**”)<sup>1</sup> filed their Summons and Complaint on January 12, 2024. The Complaint included causes of action for breach of contract, breach of fiduciary duty, violations of the South Carolina Unfair Trade Practices Act, and declaratory judgement. Broadly, Thorne alleged that its former employee, Respondent Stephen H. Ross (“**Mr. Ross**”), violated his legal and contractual obligations by, *inter alia*, accessing and disseminating confidential and proprietary information. The Complaint also sought a declaration of the parties’ rights and obligations under his employment agreement.

Mr. Ross filed a Motion to Dismiss the Complaint on February 22, 2024. Mr. Ross argued that Thorne’s action should be dismissed for lack of personal jurisdiction and pursuant to the doctrine of *forum non conveniens*. Thorne countered that its causes of action relate to Mr. Ross’s South Carolina contacts; that Mr. Ross’s in-state contacts were extensive; and that application of *forum non conveniens* is inappropriate in this case.

The circuit court held a hearing on May 23, 2024. It entered a July 23, 2024 Order dismissing all causes of action, finding that it lacked personal jurisdiction over Mr. Ross and that

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<sup>1</sup> Appellant Thorne Research is a wholly owned subsidiary of Thorne HealthTech. Compl., ¶ 1–3, Jan. 8, 2024.

*forum non conveniens* favored dismissal. After its Motion for Reconsideration was denied, Thorne filed its Notice of Appeal on December 4, 2024. Thorne respectfully requests that the Court of Appeals reverse the trial court’s order because: **(1)** Thorne made a *prima facie* showing that Mr. Ross is subject to personal jurisdiction in South Carolina; and **(2)** dismissing the case under the doctrine of *forum non conveniens* was improper.

**FACTS**

Thorne is a company focusing on innovative solutions to health and wellness. Compl., ¶ 4, Jan. 8, 2024. Thorne hired Mr. Ross to serve as Director of Business Development for Onegevity Health, LLC, a wholly-owned subsidiary of Thorne HealthTech. *Id.* at ¶ 6.

Thorne’s primary facilities for purposes of medical affairs, sales and marketing, research and development, manufacturing capacity and efficiencies, in-house laboratory and testing, materials management, and shipping are located in Berkeley County at 620 Omni Industrial Boulevard, Summerville, South Carolina. Compl., ¶ 7; Mem. of Law in Opp. to Mot. to Dismiss, Ex. A, Aff. of Holly Walter, SHRM-CP ¶¶ 3–4 (“**Walter Affidavit.**”). The overwhelming majority of Thorne’s workforce are in Summerville, South Carolina. Walter Affidavit, ¶ 5–6. Mr. Ross is a Georgia resident. Compl., ¶ 5. Although Mr. Ross had office space in Thorne’s New York office, the Complaint alleges that he routinely conducted business in South Carolina, entered into contracts to be performed in the State, and was involved in the production, manufacture, or distribution of goods with the reasonable expectation that those goods were to be used or consumed in South Carolina. *Id.* at ¶¶ 8–10; *see also* S.C. Code Ann. § 36-2-803. The Complaint also alleges that Mr. Ross routinely collaborated with Thorne’s South Carolina-based research and development staff, its clinical trial analysis staff, and its sales and marketing staff. Compl., ¶ 9; S.C. Code Ann. § 36-2-803. Thorne submitted a multitude of affidavits showing his extensive

contacts with Thorne's South Carolina professionals. Mem. of Law in Opp. to Mot. to Dismiss, Ex. A, C–E. Finally, the Complaint alleges that Thorne suffered damages as a result of Mr. Ross's actions. Compl., ¶ 16; S.C. Code Ann. § 36-2-803.

Mr. Ross's employment with Thorne ended in December of 2023. Mem. of Law in Supp. of Mot. to Dismiss, Ex. 2. Following termination of Mr. Ross's employment, the parties took varying interpretations as to the parties' respective rights and obligations. Compl., ¶ 40. Thorne's Complaint includes a declaratory judgment cause of action to that effect, seeking a judicial decree defining the parties' rights, duties, status, and legal relationship. *Id.* at ¶¶ 38–41. The Complaint also included causes of action for breach of contract, breach of fiduciary duties, and violations of the South Carolina Unfair Trade Practices Act. *Id.* at ¶¶ 17–37; S.C. Code Ann. § 39-5-10 *et seq.* Although varying in their scope, these causes of action generally focused on Mr. Ross improperly accessing and disseminating confidential and propriety information regarding Thorne's business dealings. *Id.* Thorne alleges that Mr. Ross misused his position with Thorne for his own personal benefit or the benefit of others. *Id.*

Mr. Ross moved to dismiss the Complaint on February 22, 2024. Mot. to Dismiss, Feb. 22 2024. In his Memorandum of Law, he argued that the trial court lacked personal jurisdiction. Mem. of Law in Supp. of Mot. to Dismiss, 7–15, May 22, 2024. Specifically, Mr. Ross insisted that he was a New York-based employee and that his contacts with South Carolina were nominal. *Id.* Mr. Ross also urged the trial court to dismiss Thorne's action based on the doctrine of *forum non-conveniens*. *Id.* at 16. In support of his argument, Mr. Ross argued that the circuit court should dismiss Thorne's Complaint in favor of a New York forum. *Id.* Despite the fact that Mr. Ross resides in Georgia, he claimed that it would be more convenient for the parties to litigate in

New York than in South Carolina. *Id.* Thorne filed a Memorandum in Opposition to the Motion. Mem. in Opp. to Mot. to Dismiss, May 21, 2024.

The trial court held a hearing on May 23, 2024. Tr. of Mot. to Dismiss Hearing, May 23, 2024<sup>2</sup>. The parties filed supplemental briefs on May 28, 2024 and June 3, 2024. Supp. Mem. in Opp. to Mot. to Dismiss, May 28, 2024; Response to Supp. Mem., June 3, 2024. The court entered an Order on July 23, 2024 granting Mr. Ross’s Motion to Dismiss. Order Granting Mot. to Dismiss, July 23, 2024 (the “**Order**”). The court held that it lacks specific jurisdiction over Mr. Ross<sup>3</sup> and that Thorne’s action should be dismissed under the doctrine of *forum non conveniens*. Order, 5–12. After its Motion for Reconsideration was denied, Thorne filed a Notice of Appeal on December 4, 2024. Order Denying Mot. for Reconsideration, Nov. 6, 2024; Notice of Appeal, Dec. 4, 2024. No discovery has been taken in this case.

## ARGUMENTS

### **I. MR. ROSS IS SUBJECT TO PERSONAL JURISDICTION IN SOUTH CAROLINA.**

The trial court’s Order should be reversed because the Court has specific personal jurisdiction over Mr. Ross. The Court has the power to exercise personal jurisdiction because Mr. Ross knowingly entered a long-term employment contract with a South Carolina company and all four causes of action in Thorne’s Complaint relate to his employment. Moreover, personal jurisdiction is fair and reasonable in this case. Mr. Ross reaped a variety of benefits through his

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<sup>2</sup> The Motion to Dismiss for this case, as well as a similar motion to dismiss in *Thorne HealthTech, Inc., and Thorne Research, Inc. v. Mary Kay*, Case No. 2023CP0802553, Court of Common Pleas, Berkeley County (Appellate Case No. 2024-002053) were heard together. Thus, the two hearings share the same transcript. Although there is some degree of overlap, the oral argument for the *Mary Kay Ross* case can be found at pages 4 through 51 of the transcript and oral argument associated with this case can be found at pages 51 through 60.

<sup>3</sup> The court also held that it lacked general jurisdiction over Mr. Ross. Thorne does not appeal the trial court’s holding with respect to general jurisdiction.

employment with a South Carolina company, interacted extensively with his peer South Carolina employees, and should have reasonably anticipated that he may be summoned to appear in a South Carolina court.

### **A. Standard of Review**

A trial court's personal jurisdiction decision should be affirmed unless unsupported by the evidence or influenced by an error of law. *Engineered Prods. v. Cleveland Crane & Eng'g*, 262 S.C. 1, 4, 201 S.E.2d 921, 922 (1974); *Hammond v. Cummins Engine Co.*, 287 S.C. 200, 204, 336 S.E.2d 867, 869 (1985). As outlined in the sections that follow, the trial court's Order was both unsupported by the evidence and influenced by errors of law.

Personal jurisdiction determinations must be resolved based upon the facts of each particular case. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 88, 666 S.E.2d 218, 221 (2008). “[A] *prima facie* showing of personal jurisdiction at the pre-trial stage is all that is required to continue [a] civil action.” *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780–81 (1993). Affidavits may be submitted in support of the court exercising jurisdiction, but they are not required as the allegations of the complaint will ordinarily suffice. *Brown v. Invest. Mgmt. & Res., Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996). Factual disputes must be resolved in favor of the plaintiff. *M.B. Kahn Const. Co. v. Three Rivers Bank & Tr. Co.*, 354 S.C. 412, 415, 581 S.E.2d 481, 482 (2003) (emphasis added).

### **B. Legal Standards**

#### 1. Specific Jurisdiction

In this case, the Court has specific jurisdiction over Mr. Ross pursuant to our State's long-arm statute. Section 36-2-803 provides that the court may exercise personal jurisdiction where, *inter alia*, a cause of action is related to a party transacting business, entering into contracts, or

causing injury in the State. S.C. Code Ann. § 36-2-803. The long-arm statute extends to the outer limits of federal due process, and therefore “the sole question becomes whether the exercise of personal jurisdiction would violate due process.” *Leggett v. Smith*, 386 S.C. 63, 72, 686 S.E.2d 699, 704 (Ct. App. 2009).

Due process requires the defendant possess sufficient minimum contacts with the forum state such that he could reasonably anticipate being summoned to its courts. The specific jurisdiction analysis consists of two prongs: (1) the “power prong” that examines whether the defendant has sufficient minimum contacts with the forum state and (2) the “fairness prong” that assesses whether the court’s exercise of jurisdiction is reasonable or fair. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 331, 594 S.E.2d 878, 884 (Ct. App. 2004) (citing *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992)).

## 2. The Power Prong

The power prong focuses on minimum contacts, specifically, whether “the defendant directed its activities to a resident of this State and that the cause of action arises out of or relates to those activities.” *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 260–61, 423 S.E.2d 128, 131 (1992). “[A] plaintiff need not show that her claim ‘came about because of the defendant’s in-state conduct.’ Instead, the specific jurisdiction test is more expansive, supporting a court’s exercise of jurisdiction over an out-of-state defendant where that defendant’s in-state contacts ‘relate to’ the plaintiff’s claim.” *Elec. Buffalo, LLC v. Kuhmute, Inc.*, No. 2:21-CV-02764-DCN, 2021 WL 5597860, at \*5 (D.S.C. Nov. 30, 2021) (emphasis in original) (internal citations omitted). Indeed, a “causation-only approach finds no support in this Court’s requirement of a ‘connection’ between a plaintiff’s suit and a defendant’s activities.” *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 352, 141 S. Ct. 1017, 1019, 209 L. Ed. 2d 225 (2021).

Even a single act that causes harm in this State may create sufficient minimum contacts where the harm arises out of or relates to that act. *Moosally v. W.W. Norton & Co.*, 358 S.C. 320, 331, 594 S.E.2d 878, 884 (Ct. App. 2004); *see also Berkeley PG Corp. v. Southbank Inv. Grp., Inc.*, 291 S.C. 315, 320, 353 S.E.2d 305, 308 (Ct. App. 1987) (holding that, “The cases are legion that a single contact with the forum state is sufficient transacting of business to give its courts personal jurisdiction over a nonresident if the contact gives rise to, or figures prominently in the cause of action under consideration.”) Importantly, “[P]hysical presence in the State is not required to establish personal jurisdiction.” *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222 (2008). “Courts have routinely found that breach of contract claims arise from or relate to the act of entering the contract at issue and that the exercise of specific jurisdiction over a defendant-party to the contract is proper in connection to those claims.” *Elec. Buffalo, LLC v. Kuhmute, Inc.*, No. 2:21-CV-02764-DCN, 2021 WL 5597860, at \*5 (D.S.C. Nov. 30, 2021); *see also Choice Hotels Int'l, Inc. v. Madison Three, Inc.*, 23 F. Supp. 2d 617, 621 (D. Md. 1998); *Ramada Franchise Sys., Inc. v. Hanna Hotel Enterprises, LLC*, 147 F. Supp. 2d 840, 846 (N.D. Ohio 2001).

### 3. The Fairness Prong

The fairness prong examines whether exercising jurisdiction would be fair or reasonable. The Court must consider: **(1)** the duration of activity of the nonresident within the state; **(2)** the character and circumstances of the commission of the nonresident’s acts; **(3)** the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and **(4)** the State’s interest in exercising jurisdiction.” *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 91, 666 S.E.2d 218, 223 (2008).

**C. The Exercise of Personal Jurisdiction over Mr. Ross Comports with the Power Prong of the Due Process Analysis.**

The Court has the power to exercise personal jurisdiction over Mr. Ross because Thorne's causes of action relate to his South Carolina contacts. All claims in this case relate to Mr. Ross's employment relationship with Thorne. The Complaint and affidavits submitted to the trial court support personal jurisdiction.

Thorne is a South Carolina company, and Mr. Ross knew of its predominant presence in the State when he accepted his long-term employment offer. Offer Letter, Aug. 14, 2021; Compl., ¶ 11. Both Plaintiffs, Thorne HealthTech, Inc. and Thorne Research, Inc.<sup>4</sup>, are registered to do business in South Carolina. Compl., ¶¶ 1–3, Jan. 8, 2024. Thorne's primary facility for purposes of medical affairs, sales and marketing, research and development, manufacturing capacity and efficiencies, in-house laboratory and testing, materials management, and shipping is located at 620 Omni Industrial Boulevard, Summerville, South Carolina. *Id.* at ¶ 7. Thorne also has a large secondary distribution center located at 558 Omni Industrial Boulevard, Summerville, South Carolina. Walter Affidavit, ¶ 4. As of August 2023, Thorne had approximately 689 employees. *Id.* at ¶ 5. The vast majority of Thorne's workforce – 571 employees or 82.9% – are located in South Carolina. *Id.* at ¶ 6. Where such a significant portion of Thorne's business operations lie in South Carolina, it is reasonable for Mr. Ross to have understood that that he would have extensive contacts with the State.

When Mr. Ross accepted an offer of employment with a company that has nearly 83% of its employees in South Carolina, including virtually all of its core business teams, there was a reasonable expectation that he would be doing business here, availing himself of the laws of the

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<sup>4</sup> Thorne Research, Inc., a wholly owned subsidiary of Thorne HealthTech, Inc. Compl., ¶¶ 1-3. Thorne Research, Inc. is organized under the laws of South Carolina. *Id.*

State, and having extensive contacts with South Carolina. The written job descriptions provided to Mr. Ross included a number of professional responsibilities inherently tied to Thorne's South Carolina operations. Mem. of Law in Opp. to Mot. to Dismiss, Ex. B, Job Descriptions. For example, the Job Description calls for Mr. Ross to regularly work in tandem with the sales, marketing, and manufacturing teams. Job Descriptions, 2, 3. Virtually all of Thorne's sales, marketing, and manufacturing staff are located in South Carolina. Compl., ¶ 7. All team building, collaboration, and development efforts to that end were South Carolina-focused. Job Descriptions, 3–4. He accepted a three-year employment contract with that knowledge. Offer Letter, 1–2.

Turning to the Complaint, Thorne asserted four causes of action. The declaratory judgment action requests a declaration of the parties' rights and obligations under the employment contract.<sup>5</sup> The breach of contract claim concerns a breach of the employment contract by virtue of Mr. Ross improperly accessing and disseminating Thorne's confidential business information. The breach of fiduciary claim relates to Mr. Ross's violations of his fiduciary duties as a director of Thorne. The Unfair Trade Practices Act claim relates to statutory violations by Mr. Ross while working for Thorne. Simply put, all of the alleged wrongdoing and underlying facts that will demonstrate his culpability relate to Mr. Ross's employment with Thorne. Without the employment relationship between Mr. Ross and Thorne, this lawsuit would never have been filed.

The case law supports personal jurisdiction where a plaintiff's claims relate to a defendant's employment. In *Belimed, Inc. v. Bleecker*, a South Carolina supplier of medical products filed suit against its former employee ("**Bleecker**") for breach of contract and violations of the state and federal trade secrets acts. No. 2:22-CV-00891-DCN, 2022 WL 939819 (D.S.C.

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<sup>5</sup> The declaratory judgment requests an interpretation of an agreement involving a South Carolina party and provides the Court with an independent basis to reverse the trial court's Order.

Mar. 29, 2022). Bleecker worked in Arizona and moved to dismiss for want of personal jurisdiction. The *Belimed* facts draw several parallels to our case. Both cases involved defendant employees based in another state (Bleecker in Arizona and Mr. Ross in New York) who regularly communicated with their employers' South Carolina professionals. Mr. Ross claims he traveled to South Carolina one time in just under two years. Bleecker traveled to South Carolina "two times per year to South Carolina from 2015 to 2019, zero times in 2020, and only once in 2021." *Id.* at \*4. The court denied Bleecker's motion to dismiss, holding that, "This action, at its core, concerns the terms of Bleecker's employment with a South Carolina-based company and, therefore, arises out of Bleecker's connections with South Carolina." *Id.* at \*5. Similarly, every single cause of action in this case relates to Mr. Ross's employment with Thorne.

Thorne respectfully requests that the Court also consider *Tekway, Inc. v. Agarwal*, No. 19-CV-6867, 2020 WL 5946973 (N.D. Ill. Oct. 7, 2020) and *Env't 360, Inc. v. Walker*, 713 F. Supp. 3d 442 (M.D. Tenn. 2024). In *Tekway*, an Illinois employer filed suit against an out-of-state employee ("**Agarwal**") for violation of non-competition agreements. The Court denied Agarwal's motion to dismiss for lack of personal jurisdiction, finding that she knowingly accepted employment with a forum state company, entered into a multi-year employment contract that foreshadowed a long-term relationship with the state, and engaged in constant communications with the employer's in-state professionals – all facts that are present in the instant case. The Court concluded that Agarwal's motion to dismiss:

[P]laces too much weight on the fact that she never physically crossed the state boundaries. Personal jurisdiction does not require physical presence in the forum state. It is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a state in which business is conducted. Personal jurisdiction cannot be avoided simply because a defendant did not physically enter the forum state.

*Tekway, Inc.*, 2020 WL 5946973 at \*7 (internal citations omitted). The *Tekway* court’s holding echoes that of the *Belimed* court: “Agarwal entered into an employment relationship with an Illinois company, and the claims at issue arise out of that relationship.” *Id.* at \*8.

In *Env’t 360, Inc. v. Walker*, the court began its opinion by asking, “In an age where remote work has become increasingly common, this case presents a prescient question: does this Court have specific personal jurisdiction over an employee who accepts employment with a Tennessee corporation, remotely works for that corporation for several years, and then harms that corporation by allegedly violating the noncompete provision of his employment agreement?” *Env’t 360, Inc. v. Walker*, 713 F. Supp. 3d 442, 444 (M.D. Tenn. 2024). The court ultimately answered “YES.” The case involved a Tennessee-based employer filing suit against a former employee (“**Walker**”) to enforce the terms of a noncompetition agreement. Similar to the instant case, *Env’t 360* involved an out-of-state employee who knowingly accepted a long-term employment contract with a company he knew had the majority of its operations in another state. Like Mr. Ross, Walker filed a motion to dismiss arguing that he was approached with the employment opportunity while living out of state, he was out of state when he signed the employment agreement, his employment terminated while he was out of state, and the conduct alleged in the complaint had nothing to do with his Tennessee contacts. *Id.* at \*4. The court denied Walker’s motion to dismiss, holding that he could have reasonably anticipated being hailed into a Tennessee court.

Thorne’s Complaint and affidavits make a *prima facie* showing of personal jurisdiction. Even though the operative complaint includes specific factual allegations that support personal jurisdiction, the trial court, contrary to South Carolina law, ignored those factual allegations and ruled in Mr. Ross’s favor. The circuit court also made errors of law in its analysis. The trial court’s Order focuses on physical presence and injects a causation element into its analysis, both of which

have been rejected by our courts. *State v. NV Sumatra Tobacco Trading, Co.*, 379 S.C. 81, 90, 666 S.E.2d 218, 222 (2008) (holding that physical presence is not required to establish personal jurisdiction); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1026 (2021) (holding that, “[n]one of our precedents has suggested that only a strict causal relationship between the defendant’s in-state activity and the litigation will do”); *S. Plastics Co. v. S. Com. Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992) (holding that the claim must merely relate to the alleged conduct). In the end, the correct standard is whether the claim *relates to* the in-state contacts. Here, all four of Thorne’s causes of action relate to or arise out of Mr. Ross’s employment relationship with a South Carolina company and the professional misconduct in which he engaged.

**D. The Exercise of Personal Jurisdiction over Mr. Ross Comports with the Fairness Prong of the Due Process Analysis.**

1. The duration of Mr. Ross’s activity in South Carolina supports personal jurisdiction.

Mr. Ross was not a transitory or short-term employee at Thorne. He was a highly paid professional who signed a three-year employment contract. Offer Letter, 2. He was employed for over two years. Mr. Ross knowingly accepted employment with a South Carolina company, entered into a multi-year contract that foreshadowed a long-term relationship with the State, and engaged in extensive contacts with South Carolina. The “duration” factor of the fairness prong analysis supports personal jurisdiction.

2. The character and circumstances of Mr. Ross’s South Carolina acts created a reasonable expectation of litigation in South Carolina.

*i. Thorne’s Complaint and affidavits show that Mr. Ross routinely conducted business in South Carolina and conducted business inherently related to Thorne’s interests in the State.*

Mr. Ross regularly conducted business, carried out his professional responsibilities, and interacted with the South Carolina facility’s research and development staff, clinical trial analysis

staff, and sales and marketing staff. Thorne’s Complaint and affidavits establish a *prima facie* showing of personal jurisdiction.

The Complaint alleges that Mr. Ross routinely conducted business in South Carolina and conducted business inherently related to Thorne’s interests in the State; carried out his professional responsibilities and interacted with the various South Carolina teams; contracted to supply services or things in South Carolina; entered into contract(s) to be performed in whole or in part in South Carolina; was involved in the production, manufacture, or distribution of goods with the reasonable expectation that those goods were to be used or consumed in South Carolina and were so used or consumed; and, caused tortious injury to Thorne. Compl., ¶¶ 8–10, 16; *see also* S.C. Code Ann. § 36-2-803. The Complaint, alone, sets forth sufficient facts to confer personal jurisdiction.

The affidavits submitted by Thorne provide an even more detailed set of facts to support personal jurisdiction. Rob Monteleone, Thorne’s Senior Vice President for Professional Sales, submitted an affidavit underscoring the fact that Mr. Ross – as Director of Business Development – routinely worked with Thorne’s Professional Sales team, located in South Carolina. Mem. of Law in Opp. to Mot. to Dismiss, Ex. C, Aff. of Rob Monteleone ¶¶ 4–7 (“**Monteleone Affidavit.**”) He stated that Mr. Ross and Thorne’s Professional Sales team led an initiative to increase sales of SynaQuell<sup>6</sup>, one of Thorne’s nutritional supplements. *Id.* Mr. Ross and Thorne’s South Carolina professionals communicated extensively to advance the initiative. *Id.*

Mr. Ross also worked with Stephen Phipps, ND, Ph.D. (Thorne’s Chief Innovation Officer) and other South Carolina team members on a number of other projects. Mem. of Law in Opp. to Mot. to Dismiss, Ex. D, Aff. of Stephen Phipps, ND, Ph.D., ¶¶ 9–12 (“**Phipps Affidavit**”). For

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<sup>6</sup> SynaQuell is a multi-ingredient nutritional supplement that supports healthy brain structure and cognitive function. <https://www.thorne.com/products/dp/synaquell>, last visited on May 15, 2024.

example, Dr. Phipps also cites the SynaQuell project in his affidavit. *Id.* He stated that Mr. Ross, members of Thorne’s South Carolina R&D and medical teams, and he worked together on an initiative to increase sales. *Id.* During that time, there were communications between Mr. Ross and Thorne’s South Carolina professionals, including Dr. Phipps. *Id.* Dr. Phipps also stated that he and Mr. Ross collaborated in several instances to work through various technical projects in areas where their professional responsibilities intersected. *Id.*

Holly Walter, Thorne’s Vice President for Human Resources, also submitted an affidavit. Mem. of Law in Opp. to Mot. to Dismiss, Ex. A, Aff. of Holly Walter, SHRM-CP (“**Walter Affidavit**”). Ms. Walter is located in Thorne’s Summerville facility. *Id.* at ¶¶ 2–3. Ms. Walter stated in her affidavit that she and Mr. Ross communicated on multiple occasions regarding onboarding, human resources matters, and other administrative matters. *Id.* at ¶ 7.

Finally, Thorne’s affidavits demonstrate that the initiatives Mr. Ross led, or was otherwise involved in as Director of Business Development, ultimately flowed through South Carolina such that the products and services were ultimately developed, tested, marketed, manufactured, sold, and distributed through the South Carolina facility – as are virtually all of Thorne’s products. Monteleone Affidavit, ¶ 7; Phipps Affidavit, ¶ 11. For each project, Mr. Ross and Thorne’s South Carolina professionals participated in meetings, exchanged emails, and worked in tandem to further Thorne’s sales initiatives. Given the nature of Thorne’s South Carolina business, the overwhelming presence of its professionals in South Carolina, and its stream of commerce through the South Carolina facility, all of Mr. Ross’s professional responsibilities in one way or another touched South Carolina.

A significant portion of Mr. Ross’s professional time was spent interacting with a variety of different South Carolina professionals to develop strategies for wellness products that would be

designed, marketed, and manufactured in South Carolina. Although he had office space in New York, Mr. Ross was a South Carolina employee working for a South Carolina company. Personal jurisdiction should attach.

*ii. Mr. Ross visited South Carolina to familiarize himself with his new colleagues and the Summerville facility.*

Mr. Ross traveled to South Carolina and attended a meeting with Rob Monteleone and Mr. Mario Roxas, Thorne's Director of Research and Development, on or about September 9, 2022. Monteleone Affidavit, ¶¶ 8–11. Mr. Monteleone unequivocally stated in his affidavit that the purpose of the meeting was to strategize about implementing Thome's campaign to increase brain health product sales to its health-care practitioner customer base. *Id.* at ¶ 11.

During his time in South Carolina, Mr. Ross also met with Dr. Phipps. Phipps Affidavit, ¶¶ 4–8. In his affidavit, Mr. Phipps explained that the purpose of their meeting was to discuss areas of professional collaboration. *Id.* The next day, Mr. Ross was given a tour of the Summerville facility. *Id.* Mr. Phipps stated in his affidavit that the purpose of the tour was to allow Mr. Ross to learn how Thorne utilizes medical sciences to develop and implement its products from the research and development stages to manufacturing. *Id.* After the facility tour, Mr. Ross spent the remainder of the day in Summerville meeting several onsite operational groups with whom he would be working. *Id.*

*iii. Dr. Ross even held himself out as a South Carolina employee.*

Mr. Ross held himself out as being a member of the South Carolina team. The telephone number in his email signature block begins with a South Carolina area code:

**Stephen Ross**

Director of Clinical Business Development

office 843-310-2481

Thorne | Facebook | Instagram

Mr. Ross never requested that he be assigned a New York telephone number, nor did he request any change to the signature block that would identify him as being based in New York. The signature block includes no information that would lead one to believe Mr. Ross was based anywhere but South Carolina.

*iv. Mr. Ross Enjoyed the Benefits and Protections of his Employment with a South Carolina Company.*

Mr. Ross was employed with Thorne for over two years. Offer Letter, 2. During that time, he accepted a variety of benefits pursuant to the Offer Letter. He was paid a significant annual salary, plus commissions. *Id.* He received other benefits such as the right to participate in a 401(k) plan, medical plan, dental plan, vision plan, life insurance plan, short and long term disability plans, and paid leave. *Id.* In short, Mr. Ross reaped the benefits of his employment with a South Carolina company and protections under the State's law.

*v. The Trial Court Failed to Resolve Issues of Fact in Thorne's Favor.*

Despite the allegations of Thorne's Complaint and the numerous affidavits offered in opposition to Mr. Ross's motion to dismiss, the trial court refused to decide questions of fact in Thorne's favor as is required at the Rule 12 stage of any case. The trial court's findings that Mr. Ross only had "minimal," "limited," or "non-essential" interactions and "[i]solated emails and calls" with Thorne's South Carolina professionals are factual conclusions that are inconsistent with Thorne's Complaint and affidavits. Order, 4, 7, 9 10. Moreover, the trial court's Order depicts Mr. Ross's visit to the Berkeley County facility as a "non-commercial facility visit and [having] a communal meal, absent of any form of business dealings or negotiations." *Id.* at 7. This finding

conflicts with the affidavits by Mr. Phipps and Mr. Monteleone stating the clear business purposes underlying his visit.

Rather than resolving issues of fact in favor of the non-moving party as is required by our Rule 12 standards, the trial court relied almost exclusively on two affidavits filed by Mr. Ross. The first was an affidavit he prepared. The thesis of Mr. Ross's affidavit was that his office was located in New York, and he only traveled to South Carolina once. Def.'s Mot to Dismiss, Ex. 2, Aff. of Stephen H. Ross, Feb. 22, 2024. The trial court's Order's reliance on physical presence is misplaced and completely ignores his extensive South Carolina contacts. *See e.g.*, Order, 5–12.

The second affidavit was by Bryan Conley, a disgruntled former Thorne employee who was represented by the same counsel as Mr. Ross in a separate dispute with Thorne. Def.'s Mot to Dismiss, Ex. 1, Aff. of Bryan Conley, Feb. 7, 2024; *Thorne HealthTech, Inc. v. Bryan Conley*, Case No. 2023-CP-10-0694, Ninth Judicial Circuit, South Carolina, Complaint (the “**Conley Complaint**”). In that case, Thorne was forced to file a motion for preliminary injunction to prevent Mr. Conley from violating a confidentiality agreement. Conley Complaint, ¶ 2–3. Specifically, Mr. Conley threatened to make public certain confidential and proprietary information to which he had access solely through his employment at Thorne. *Id.* To say that Mr. Conley might be partial is an understatement. Turning to the substance of his affidavit, Mr. Conley does not offer anything new. He talks about Mr. Ross's physical presence in New York. The statements provided by Mr. Conley are biased, redundant, and duplicative.

Taken together, Mr. Ross's affidavits show that **(1)** his entire jurisdictional argument hinges on the fact he was assigned an office in New York and **(2)** a disgruntled former Thorne employee has decided to inject himself into the case to offer redundant information. Notwithstanding the fact that the court must resolve issues of fact in Thorne's favor, Mr. Ross's

affidavits are far less persuasive than the jurisdictional information Thorne presented. The Court of Appeals should reverse the trial court's Order.

3. Mr. Ross, residing in a neighboring state, will suffer no inconvenience from litigation in South Carolina.

Upon information and belief, Mr. Ross is a resident of Georgia. Compl., ¶ 5. He was served in Tybee Island, Georgia. Aff. of Service, Jan. 25, 2024. Thorne is a South Carolina company. South Carolina is much more central to the parties, despite the trial court's suggestion that the case should be litigated in New York. Order, 10–11.

Further, Mr. Ross secured counsel in South Carolina. In *Belimed, Inc. v. Bleecker, supra*, the court held that although a defendant residing in Arizona might be inconvenienced by litigating in South Carolina, that factor was allayed by the fact that he retained local counsel to defend him. No. 2:22-CV-00891-DCN, 2022 WL 939819 at \*5 (D.S.C. Mar. 29, 2022). Unlike the defendant in *Belimed* who lived across the country, Mr. Ross resides in Georgia. Any theoretical burden would be even less given his proximity.

4. South Carolina has a strong interest in exercising jurisdiction over Mr. Ross.

South Carolina has a strong interest in hearing this case because of Thorne's significant presence in the Berkeley County community, with a local workforce of approximately 571 employees. Walter Affidavit, ¶¶ 5–6. The allegations Thorne makes against Mr. Ross are serious. Thorne contends that its rights were violated when Mr. Ross improperly accessed and disseminated confidential and proprietary information regarding Thorne's business dealings. Compl., ¶ 15. Thorne maintains that Mr. Ross misused his position with Thorne for his own personal benefit or the benefit others. *Id.* at ¶ 16.

The Complaint's allegations all relate to Mr. Ross's employment relationship with Thorne. In *Belimed*, the court concluded that South Carolina has an interest in "resolving controversies

arising from contracts concerning the state's commerce and its interest in applying the state's own laws." *Belimed, Inc. v. Bleecker*, No. 2:22-CV-00891-DCN, 2022 WL 939819, at \*5 (D.S.C. Mar. 29, 2022). Berkeley County and the State have a strong interest in hearing an action by a local company that employs hundreds of South Carolina citizens and claims its rights were violated under South Carolina law.

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Thorne's Complaint, three affidavits, and job descriptions it filed provide ample grounds to support the exercise of personal jurisdiction over Mr. Ross. The Court has the power to exercise jurisdiction because all of Thorne's causes of action relate to Mr. Ross's employment with Thorne. Mr. Ross entered into a long-term employment contract with a South Carolina company having approximately 83% of its workforce based in South Carolina. Mr. Ross's entry into a contract to be performed in South Carolina, on its own, places him within the jurisdiction of South Carolina courts. When he accepted the position, and certainly when he committed the wrongful acts alleged in the Complaint, there was a reasonable expectation he may be asked to appear in a South Carolina Court. Thorne's filings also demonstrate that exercising personal jurisdiction over Mr. Ross is fair and reasonable in light of the duration and nature of his contacts, coupled with the practicalities and interests associated with litigating the case in South Carolina.

In its filings with the trial court, Thorne provided, by way of affidavit, detailed examples of Mr. Ross's South Carolina contacts, including the names of individuals with whom Mr. Ross communicated and descriptions of specific projects on which Mr. Ross worked. Unfortunately, the circuit court declined to include these facts in its Order, much less resolve the factual disputes

in Thorne’s favor for the purposes of the Rule 12 motion.<sup>7</sup> For these reasons, Thorne respectfully requests that the Court of Appeals reverse the trial court’s decision.

## **II. THE DOCTRINE OF *FORUM NON CONVENIENS* DOES NOT SUPPORT DISMISSAL.**

The trial court erred in dismissing Thorne’s action based on *forum non conveniens*. The court failed to assess the appropriate factors and reached conclusions inapposite with the facts and circumstances of the case. Its Order should be reversed.

### **A. Standard of Review**

A *forum non conveniens* ruling by the trial court is reviewed under an abuse of discretion standard. “The decision to invoke the doctrine of forum non conveniens is within the discretion of the trial court.” *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 179, 355 S.E.2d 293, 297 (Ct. App. 1987). For the reasons set forth below, the trial court abused its discretion in dismissing Thorne’s action as *forum non conveniens*.

### **B. Legal Standards**

*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. *Id.* at 179, 297. In determining the applicability of *forum non conveniens*, the court must assess public and private considerations, including: **(1)** the relative ease of access to the sources of proof; **(2)** witness availability and costs of obtaining witness’ attendance; **(3)** the possibility of viewing premises, if applicable to the action; **(4)** ease,

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<sup>7</sup> The Court must take as true the nonmoving party’s allegations and resolve all factual disputes in its favor, including affidavits, which may be submitted – but are not required – to establish personal jurisdiction. *Brown v. Invest. Mgmt. & Res., Inc.*, 323 S.C. 395, 399, 475 S.E.2d 754, 756 (1996); *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993).

time efficiency, and expense incurred trying the case; (5) enforceability of a judgment, if one is obtained; (6) administrative difficulties for South Carolina courts; [7] local interests in the trial; and [8] difficulties for South Carolina courts arising from conflict of laws and interpretation of foreign law. *Macaulay v. Wachovia Bank of S.C., N.A.*, 333 S.C. 201, 206, 508 S.E.2d 46, 49 (Ct. App. 1998) (renumbered) citing *Braten Apparel Corp. v. Bankers Trust Co.*, 273 S.C. 663, 259 S.E.2d 110 (1979).

The party asserting *forum non conveniens* has a heavy burden of proof. *Nienow v. Nienow*, 268 S.C. 161, 169, 232 S.E.2d 504, 508 (1977). Courts should not dismiss actions under this doctrine unless the balance is strongly in favor of the defendant. *Id.* (Emphasis added); *Santa Fe Eng'rs, Inc. v. Carolina Door Prods., Inc.*, 275 S.C. 215, 216–17, 268 S.E.2d 581, 582 (1980) (holding that, “[T]he plaintiff’s choice of forum should be left undisturbed unless the balance of factors strongly favor the defendant’s motion”) (emphasis added); *Fed. Land Bank of Columbia*, 292 S.C. at 179–80, 355 S.E.2d at 297 (holding that where the amounts of defendant’s North Carolina and South Carolina debt were unresolved, granting a *forum non conveniens* motion would not be “promoting the ends of justice, it appears to us that it would frustrate justice.”) Many courts have also come to acknowledge the reality that “documentary and testimonial evidence” is “more conveniently available now through electronic storage and transfer and through remote discovery and hearing proceedings,” and that physical distance is “not necessarily a determinative factor.” *Lehram Cap. Invs., Ltd. v. Baker & McKenzie Int’l*, 2024 IL App (1st) 230095, ¶ 33, 241 N.E.3d 1022, 1031, *appeal denied*, 244 N.E.3d 256 (Ill. 2024); *Mil-Ray v. EVP Int’l, LLC*, No. 3:19-CV-00944-YY, 2021 WL 2903224, at \*12 (D. Or. July 8, 2021).

**C. The Trial Court’s Order Dismissing Thorne’s Complaint is Unsupported by the *Forum Non Conveniens* Considerations.**

1. The relative ease of access to sources of proof

The relative ease of access to the sources of proof in this case supports a South Carolina forum. Thorne submitted affidavits showing that its two main facilities and approximately 83% of its workforce are located in South Carolina. Mr. Ross is in Georgia. Documents are stored electronically and can easily be made available in discovery without regard for where physical copies (if any) may be stored. The first factor favors a South Carolina forum.

2. Witness availability and costs of obtaining witness' attendance

Witness availability and costs of attendance also supports a South Carolina forum. No discovery has taken place in this case, so it would be premature to identify primary trial witnesses. However, as noted above, the parties are located in the southeast; *i.e.*, South Carolina and Georgia. The small Thorne team located in New York would voluntarily appear at trial in South Carolina as needed. The second factor favors a South Carolina forum.

3. The possibility of viewing premises, if applicable to the action

There is no need to view the premises in this case. Thorne's Complaint requests a declaration of the parties' rights under the contracts and a finding that Mr. Ross improperly accessed and disseminated confidential and proprietary information. Given the nature of this action, viewing the premises seems inapplicable.

4. Ease, time efficiency, and expense incurred trying the case

For many of the same reasons already discussed, the ease, time efficiency, and expense to be incurred in trying the case supports a South Carolina forum. Both parties are located in the southeast. Trying the case in South Carolina is much more efficient than doing so in New York. The majority of Thorne's workforce and its witnesses are in South Carolina. And its witnesses who may be located in New York will certainly cooperate with the court's trial schedule. Thorne

sees no delay or complication in that regard. Thorne – the only party who still has any presence in New York – is ready and willing to litigate in South Carolina. The fourth factor favors a South Carolina forum.

5. Enforceability of a judgment, if one is obtained

Judgment enforceability favors a South Carolina forum. Whether the case is heard in South Carolina or New York, Thorne may be required to domesticate the judgment in Mr. Ross’s home state of Georgia.

Georgia’s Uniform Enforcement of Foreign Judgments Law permits the enforcement of a foreign judgment in Georgia so long as the state from which the judgment originates has adopted substantially similar legislation. O.C.G.A. § 9-12-138. Both South Carolina and New York have enacted similar laws. In 1993, South Carolina passed its Uniform Enforcement of Foreign Judgments Act. S.C. Code Ann. § 15-35-900 *et seq.* Likewise, in 1970, New York enacted Article 54 of its Civil Practice Law and Rules, known as the “Enforcements of Judgments Entitled to Full Faith and Credit Summary of Article.” N.Y. C.P.L.R. 5401 (McKinney) *et seq.* In examining the applicable statutes, it appears judgment enforceability is neutral between South Carolina and New York. The Court should therefore leave Thorne’s choice of forum undisturbed. *Mil-Ray v. EVP Int’l, LLC*, No. 3:19-CV-00944-YY, 2021 WL 2903224, at \*12 (D. Or. July 8, 2021) (denying defendants’ *forum non conveniens* motion given that “a judgment could be enforced in either jurisdiction” and the “factors do not favor defendant over plaintiff”); *Santa Fe Eng’rs, Inc. v. Carolina Door Prods., Inc.*, 275 S.C. 215, 216–17, 268 S.E.2d 581, 582 (1980) (holding that, “[T]he plaintiff’s choice of forum should be left undisturbed unless the balance of factors strongly favor the defendant’s motion.”)

6. Administrative difficulties for South Carolina courts

There are no administrative difficulties for South Carolina courts in adjudicating this case. Both parties are represented by counsel licensed in the State. Both sides' attorneys are familiar with the Berkeley County Court as well as local custom and norm. Counsel for both parties have offices located just a short drive from the courthouse. All papers submitted to the court are filed and served electronically. Notices from the court are similarly served electronically. The sixth factor favors a South Carolina forum.

7. Local interests in the trial

Section II(D), *supra*, details the significant state and local interests in this action. Thorne employs hundreds of Berkeley County residents and has alleged serious misconduct by Mr. Ross affecting its confidential and proprietary interests. The community has an interest in South Carolina courts hearing claims made by its residents, including Thorne. The seventh factor favors a South Carolina forum.

8. Difficulties for South Carolina courts arising from conflict of laws and interpretation of foreign law

There are no conflict of law or interpretation of foreign law issues in this case. The Complaint consists of four causes of action. The declaratory judgment and unfair trade practices claims stem from South Carolina statutory law. The breach of contract and breach of fiduciary duty claims are rooted in South Carolina common law. The eighth factor favors a South Carolina forum.

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The trial court's Order fails to examine the eight *forum non conveniens* factors articulated by our appellate courts. Thorne's Complaint and affidavits demonstrate that Mr. Ross's contacts with the State were extensive and that he availed himself of the protections and benefits of South

Carolina law. Although Mr. Ross contests Thorne's allegations, when a defendant's ties to South Carolina cannot be determined with precision, the court should deny a motion to dismiss based on *forum non conveniens*. *Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 179, 355 S.E.2d 293, 297 (Ct. App. 1987). The trial court's *forum non conveniens* analysis is fundamentally flawed. Thorne respectfully requests that the Court of Appeals reverse the trial court's Order.

### CONCLUSION

The Court of Appeals should reverse the Order granting Mr. Ross's Motion to Dismiss based on the trial court's errors in its findings of fact, application of legal standards, and conclusions of law. Thorne was required to and did make a *prima facie* showing of personal jurisdiction. Unfortunately, the trial court ignored the allegations of the Complaint and the three affidavits filed by Thorne employees and, instead, decided factual questions in Mr. Ross's favor – all in violation of established Rule 12 jurisprudence.

All four of Thorne's causes of action relate to its employment relationship with Mr. Ross, as well as Mr. Ross's contacts with the State. The trial court's Order, however, fixates on physical presence. The court's analysis is, at best, incomplete. The notion that Mr. Ross's New York office was somehow siloed off from the rest of the company belies the realities of his employment and the sworn statements of Thorne's affiants. The trial court's personal jurisdiction holding must be reversed.

The doctrine of *forum non conveniens* is not applicable in this case. Both parties are located in the southeast. The parties and their counsel are well equipped to litigate in South Carolina, and doing so will be much more convenient than trying the case hundreds of miles away in New York. Berkeley County and the State have a meaningful interest in hearing serious claims of misconduct asserted by a South Carolina company who employs hundreds of South Carolina citizens.

For the reasons set forth herein, Thorne respectfully requests that the Court of Appeals reverse the trial court's Order granting Mr. Ross's Motion to Dismiss and remand the case for proceedings consistent with this Court's Opinion.

January 29, 2025

Respectfully submitted,

*s/ Kevin A. Hall*

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