NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

DIVISION ONE
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BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

THERMOLIFE INTERNATIONAL, LLC, an Arizona limited liability company; RON KRAMER, an Arizona resident,	1 CA-CV 11-0807
Plaintiffs/Appellants,	DEPARTMENT B
v.	**MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)
ANTHONY CONNORS aka ANTHONY ROBERTS and JANE DOE CONNORS,	
Defendants/Appellees.	

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-051273

The Honorable Linda H. Miles, Judge

AFFIRMED

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P O R T L E Y, Judge

¶1 We are asked to decide whether the trial court erred when it dismissed the lawsuit filed by Ron Kramer, an Arizona resident, and ThermoLife International, LLC, an Arizona limited liability corporation (collectively "Kramer/TL"), against Anthony Connors ("Connors") for publishing allegedly defamatory statements using the internet and allegedly tortiously interfering with business relationships. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Kramer/TL sued Connors, a New Jersey resident who operates anthonyroberts.info, a website dedicated to reporting news about steroids and nutritional supplements. The verified amended complaint alleges that Connors posted allegedly defamatory articles on his website about Kramer and/or ThermoLife from 2008 to 2010, which caused them damage. The complaint also sought damages for tortious interference with a business relationship because Connors allegedly contacted ThermoLife's customers by registered mail and conveyed false information about one of its patents.

¶3 Connors filed a special appearance and moved to dismiss for lack of personal jurisdiction pursuant to Arizona Rule of Civil Procedure ("Rule") 12(b)(2). After briefing, the court granted the motion and dismissed the complaint.

DISCUSSION

I

¶4 Kramer/TL argues that the trial court erred by dismissing their complaint for lack of personal jurisdiction. They contend that the United States Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984), requires that the court exercise jurisdiction.

A

¶5 We review the ruling de novo and generally examine whether the "non-moving party [made] a prima facie showing of jurisdiction." *A. Uberti & C. v. Leonardo*, 181 Ariz. 565, 569, 892 P.2d 1354, 1358 (1995) (quoting *Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 611 (8th Cir. 1994)) (internal quotation marks omitted). We look only to the pleading and consider the well-pled factual allegations, *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008), construing "the facts alleged in the complaint . . . in a light most favorable to the plaintiff." *Goddard v. Fields*, 214 Ariz. 175, 177, ¶ 6, 150 P.3d 262, 264 (App. 2007) (quoting *Douglas v. Governing Bd. of the Window Rock Sch. Dist. No. 8*, 206 Ariz. 344, 346, ¶ 4, 78 P.2d 1065, 1067 (App. 2003)) (internal quotation marks omitted). Moreover, because we evaluate a complaint's well-pled facts, mere conclusory statements are insufficient if the complaint does not also

contain "supporting factual allegations." *Cullen*, 218 Ariz. at 419, ¶ 7, 189 P.3d at 346. Similarly, we will not "speculate about hypothetical facts that might entitle the plaintiff to relief." *Id.* at 420, ¶ 14, 189 P.3d at 347.

B

¶6 Kramer/TL concedes that Arizona does not have general jurisdiction over Connors. As a result, we have to determine whether a superior court may exercise specific jurisdiction over a particular claim against Connors. *See Planning Grp. of Scottsdale, L.L.C. v. Lake Mathews Mineral Props., Ltd.*, 226 Ariz. 262, 265, ¶ 13, 246 P.3d 343, 346 (2011). Specific jurisdiction may be exercised over a nonresident defendant "who has sufficient contacts with the state to make the exercise of jurisdiction reasonable and just with respect to that claim." *Id.* (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945) (internal quotation marks omitted)); *Austin v. Crystaltech Web Hosting*, 211 Ariz. 569, 574, ¶ 18, 125 P.3d 389, 394 (App. 2005). Mindful of the admonition that "jurisdictional contacts are to be analyzed not in isolation, but rather in totality," *Planning Grp.*, 226 Ariz. at 269, ¶ 29, 246 P.3d at 350 (citing *Burger King v. Rudzewicz*, 471 U.S. 462, 482 (1985)), we examine all the circumstances surrounding the relationship between the parties to determine whether Connors purposefully

directed his conduct to Arizona. *Id.* at ¶¶ 31-32, 246 P.3d at 350.

¶7 In examining whether California defendants who never set foot in Arizona could be sued here for contract and tort claims, our supreme court, in *Planning Group*, posed the question of "whether the aggregate of the defendants' contacts with this state makes it fair and reasonable to hale them into court here with respect to claims arising out of those contacts." *Id.* at 268, ¶ 25, 246 P.3d at 349. The court then stated that the Supreme Court's jurisprudence "embod[ies] a holistic approach which in the end poses a single . . . question: Considering all of the contacts between the defendants and the forum state, did those defendants engage in purposeful conduct for which they could reasonably expect to be haled into that state's court with respect to that conduct?" *Id.* As a result, the court determined that the totality of the e-mails, faxes and letters directed to the Arizona plaintiffs seeking to persuade them to invest in a California mining venture was sufficient to exercise personal jurisdiction over the California defendants engaged in the communication. *Id.* at 269-71, ¶¶ 28, 30-32, 34-36, 39, 40-41, 246 P.3d at 350-52.

¶8 Although our supreme court found that a holistic look was appropriate in light of the communications with Arizona residents to assert jurisdiction over certain California

defendants, the court also found that, if a complaint alleged only tort claims, the "purposeful direction" analysis is appropriate. *Id.* at 268, ¶ 23, 246 P.3d at 349. The analysis requires courts to examine the location of the effects of a defendant's conduct in determining whether Arizona was the focal point of the alleged wrongdoing. *Id.; see also Cohen v. Barnard, Vogler & Co.*, 199 Ariz. 16, 19, ¶ 14, 13 P.3d 758, 761 (App. 2000) (explaining that Arizona was not the focal point of the defendant's wrongdoing, so jurisdiction would be improper).

¶9 *Planning Group* is consistent with *Calder.* There, a reporter and the editor of the National Enquirer decided to do a story on Shirley Jones.[1] 465 U.S. at 785. The reporter, who was a Florida resident, traveled to California on business, called his sources in California, and called Ms. Jones and her husband before publication to get their comments. *Id.* at 785-86. After the story was published, the editor declined to print a retraction and sought to quash the service of process from the California courts. *Id.* at 786. The trial court denied the motion, and the California Court of Appeals reversed "on the theory that petitioners intended to, and did, cause tortious injury to [Ms. Jones] in California." *Id.* at 787. After the California Supreme Court refused review, the editor and reporter

[1] Ms. Jones was Mrs. Partridge on "The Partridge Family" from 1970-1974. *See* IMDB, http://www.imdb.com/name/nm0429250/ (last visited Oct. 16, 2012).

successfully sought review in the United State Supreme Court. *Id.* at 787-88.

¶10 The Supreme Court unanimously determined that the appellate court properly focused on "the relationship among the defendant, the forum, and the litigation." *Id.* at 788 (internal quotation marks omitted) (citing *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)). The Court then found that the "allegedly libelous story concerned the California activities of a California resident[,] [i]t impugned the professionalism of an entertainer whose television career was centered in California[,] [t]he article was drawn from California sources, and the brunt of the harm . . . was suffered in California." *Id.* at 788-89. As a result, the Court concluded that "[j]urisdiction over petitioners is therefore proper in California based on the 'effects' of their Florida conduct in California." *Id.* at 789.

¶11 Here, Connors posted information on his website for the whole world to see. Kramer saw the articles. He e-mailed Connors seeking a retraction, and Connors was eventually sued in the superior court. Although Kramer/TL alleged that jurisdiction was proper because Connors knowingly

directed his conduct at them in Arizona,[2] they did not allege that Connors knew that Kramer lived and worked here or that Arizona was ThermoLife's principal place of business. They did not allege that the internet postings identified that Kramer/TL were located in Arizona. They alleged that Connors said Kramer was involved in the BALCO scandal, that baseball fans will recognize allegedly involved Barry Bonds in California.[3] Finally, they made no allegations that Connors came to Arizona for research; contacted Kramer, ThermoLife or anyone else in Arizona before posting his allegedly defamatory articles; or otherwise aimed his conduct at Arizona. *See*, *e.g.*, *Xcentric Ventures, LLC v. Bird*, 683 F. Supp. 2d 1068, 1075 (D. Ariz. 2010) (holding that the plaintiffs did not meet their burden of proving that the defendants "expressly aimed the allegedly defamatory [internet] article at Arizona" because "the [p]laintiffs . . . alleged no connection between the allegedly defamatory article and the forum other than that the article was about [p]laintiffs and [d]efendants knew [p]laintiffs resided in Arizona"). Consequently, Connors did not aim his allegedly defamatory articles towards Arizona.

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[2] The amended complaint alleged that Connors directed his conduct at Arizona. We cannot rely on a conclusory allegation. *See Cullen*, 218 Ariz. at 419, ¶ 7, 189 P.3d at 346.

[3] Connors submitted an affidavit that admitted that he contacted two people by telephone in California.

C

¶12 We turn to whether Kramer/TL has sufficiently alleged that Connors directed his actions towards Arizona when he allegedly tortiously interfered with ThermoLife's current or prospective business relationships. Kramer/TL argued that *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010), and *Baldwin v. Fischer-Smith*, 315 S.W.3d 389 (Mo. App. 2010), support their argument that Connors directed his activities towards them in Arizona.

¶13 In *Tamburo*, the plaintiff operated a dog-breeding software business and developed a dog pedigree software program by lifting data from the defendants' website. *Tamburo*, 601 F.3d at 697. Despite the plaintiff's claim that the information was in the public domain, the defendants retaliated by blast e-mails as well as postings on their websites accusing him of stealing their data and urging "dog enthusiasts to boycott his products" — actions that the plaintiff believed were defamatory and tortiously interfered with his business. *Id.* The trial court dismissed the case against all defendants because they lived outside of Illinois or the United States. *Id.*

¶14 The Seventh Circuit reversed the dismissal for the intentional torts. *Id.* After analyzing *Calder* and its progeny, the court found that the case involved "both a forum-state injury and tortious conduct specifically directed at the forum,

making the forum state the focal point of the tort[.]" *Id.* at 706. Specifically, the court found that the defendants, whether in their blast emails or on their websites, encouraged readers to "boycott [the plaintiff]'s products," that his "Illinois address was supplied and readers were urged to contact and harass him," that the defendants knew he lived in and conducted his business in Illinois, and that one defendant emailed the plaintiff, accusing him of theft and threatening to expose Tamburo to the "online dog-pedigree community" if he did not remove the stolen information. *Id.* As a result, the court found that the "defendants specifically aimed their tortious conduct at [the plaintiff] and his business in Illinois with the knowledge that he lived, worked, and would suffer the brunt of the injury there" and the "allegations suffice to establish personal jurisdiction over these defendants." *Id.* (internal quotation marks omitted). Moreover, the court found no unfairness if the lawsuit proceeded in the federal district court. *Id.* at 709.

¶15 In *Baldwin*, the defendants were competitors of the plaintiffs' kennel and dog-breeding business. 315 S.W.3d at 392. They bought a website designed to "malign and damage plaintiffs and their business" entitled "STOP-WHISPERING LANE KENNEL," which named the plaintiffs as owners and listed the kennel's location. *Id.* Plaintiffs sued, and the trial court

dismissed the complaint for lack of personal jurisdiction. *Id.* The Missouri appellate court reversed, relying on *Calder* and *Tamburo, id.* at 392-97, finding that the defendants specifically targeted Missouri in the website by complaining that Missouri was a puppy mill and that "[c]ommercial dog breeders . . . relocate to Missouri to make their living off of dogs and puppy sales as there are few laws to force them to raise the animals in a clean, healthy environment." *Id.* at 398. And, before the court found that fair play and substantial justice would not be offended by forcing the defendants to defend in Missouri, it noted that "if you pick a fight in Missouri, you can reasonably expect to settle it here." *Id.*

¶16 Although *Tamburo* and *Baldwin* suggest that Arizona could assert specific personal jurisdiction over the interference with business relationships, ThermoLife did not allege that Connors knew it was principally doing business in Arizona or allege that he provided their Arizona address to others or told them to contact ThermoLife in Arizona. Although Kramer/TL argued to the trial court that Connors knew or should have known of its principal place of business, our review of the amended complaint shows no such allegation. Consequently, the trial court did not err by dismissing the complaint.

¶17 Because Kramer/TL did not specifically allege that Connors purposefully directed his conduct towards Arizona,

Connors does not possess the minimum contacts necessary to constitutionally exercise personal jurisdiction over him. *Planning Grp.*, 226 Ariz. at 270, ¶ 37, 246 P.3d at 351. Therefore, we need not examine whether "substantial justice and fair play" would be violated by asserting jurisdiction over Connors. *See, e.g., id.* (stating that a finding of "minimum contacts with the forum state do[es] not end the personal jurisdiction constitutional analysis") (citing *Asahi Metal Indus. Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987)).

II.

¶18 Kramer/TL argue that the trial court should have allowed them to conduct additional discovery on the issue of jurisdiction. The court did not directly deny the request, but tacitly denied it by granting the Rule 12(b) motion. We review the trial court's ruling for an abuse of discretion. *Cohen*, 199 Ariz. at 21, ¶ 24, 13 P.3d at 763.

¶19 In their response to Connors's motion to dismiss the complaint for lack of personal jurisdiction, Kramer/TL requested the opportunity to conduct additional jurisdictional discovery. Kramer/TL hoped that the discovery would allow them to demonstrate that Connors directed his attacks at them in Arizona and suggested that additional discovery might reveal that Connors used or had used a server located in Arizona to host his website. They also suggested that discovery might allow them to

demonstrate that Connors was paid by ThermoLife’s competitors to cause harm to Kramer and ThermoLife.

¶20 Although Kramer submitted a declaration with his response to Connors’s motion, we presume that the court considered it and decided that the additional discovery was a fishing expedition in the hopes that some reason would appear to allow Arizona to exercise jurisdiction. Accordingly, we find no abuse of discretion.

CONCLUSION

¶21 Based on the foregoing, we affirm the ruling on the Rule 12(b) motion and the denial of discovery.

/s/
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MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/
____
PATRICIA A. OROZCO, Judge

/s/
____
RANDALL M. HOWE, Judge