

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

RONALD W. ROUSH and JAMES
H. HUNTER,

Plaintiffs,

v.

AKAL GROUP OF COMPANIES,
LLC, doing business as Akal
Security, Inc.,

Defendant.

NO: 2:17-CV-358-RMP

ORDER DENYING DEFENDANT’S
MOTION TO DISMISS

BEFORE THE COURT is a “Motion to Dismiss for Lack of Personal
Jurisdiction, and in the Alternative, to Transfer to the United States District Court
for the District of New Mexico,” ECF No. 26, by Defendant Akal Group of
Companies, LLC (“Akal”). Akal is represented by counsel in this matter, while
Plaintiffs Ronald Roush and James Hunter are proceeding *pro se*. Having carefully
considered the parties’ briefing addressing Defendant’s motion, the Court finds that
it may exercise specific personal jurisdiction over Akal and, thus, denies Akal’s
motion to dismiss or transfer the matter to another District.

1 **BACKGROUND**

2 *Jurisdictional Facts*

3 Plaintiffs claim that Defendant tortiously misappropriated their professional
4 identities to obtain a contract to provide screening services for the United States
5 Transportation Security Administration (the “TSA”) at the Kansas City International
6 Airport. Plaintiffs also seek damages for intentional infliction of emotional distress
7 by Defendants.

8 Defendant Akal is a security services company based in Espanola, New
9 Mexico. In or around 2012, Akal submitted a bid to the TSA, in Virginia, to provide
10 aviation security services at the Kansas City International Airport (“MCI”) in
11 Missouri. ECF No. 26-2. AWD Management Services, Inc. (“AWD”) is an
12 administrative services company that was to serve as subcontractor in the event that
13 Akal secured the MCI contract from TSA. Plaintiffs allege that they each received
14 telephone calls, on approximately September 5, 2012, from two individuals
15 identifying themselves as representing Akal and AWD, respectively, who offered
16 Plaintiffs employment with AWD contingent upon contract award. ECF Nos. 31-1
17 and 31-2. Plaintiffs further allege that the Akal and AWD representatives requested
18 a resume from Mr. Roush and information from Mr. Hunter detailing his
19 “experience handling classified contracts and materials.” *Id.* Also on approximately
20 September 5, 2012, AWD sent Plaintiffs letters expressing an intent to hire Plaintiffs
21

1 contingent upon the award of the MCI contract, and subject to
2 [Plaintiffs'] satisfactory completion of all standard hiring requirements
3 and procedures, including but not limited to verification of all
4 employment and personal references, verification of licensure (where
5 appropriate), fulfillment of health assessment procedures (where
6 applicable), and [sic] successful completion of testing for the illegal use
7 of drugs (where applicable), and background check.

8 ECF Nos. 26-3 (Intent to Hire letter to Mr. Roush) and 26-4 (Intent to Hire letter to
9 Mr. Hunter).

10 In approximately February 2014, TSA awarded the MCI contract to
11 Defendant Akal. ECF No. 20 at 6. However, another bidder for the MCI contract
12 challenged Akal's successful bid. *Id.* By that point, Synergy Solutions, Inc.
13 ("Synergy"), instead of AWD, was in charge of hiring and payroll for the positions
14 that Plaintiffs had been offered on a contingency basis. *See* ECF Nos. 26-5

15 In approximately October 2014, in-house counsel for Synergy Solutions, Inc.
16 sent a letter to Plaintiffs rescinding the offers of employment made through AWD's
17 September 2012 "Intent to Hire" letters. ECF No. 26 at 4; 26-7.

18 ***Additional Jurisdictional Discovery***

19 At Plaintiffs' request, the Court allowed limited discovery on the issue of
20 whether Defendant Akal is subject to personal jurisdiction in Washington. ECF No.
21 37. Specifically, the Court allowed discovery to proceed with respect to two
requests for production from Plaintiffs:

- (1) "One copy of Akal's contract with AWD Management Services related to
the Kansas City International Airport bid"; and

1 (2)“All documents, including correspondence, e-mail or data in electronic
2 form that relates to communications between Akal and AWD from the
3 period August 1, 2012 to December 31, 2013 that identify or make
4 reference to Plaintiffs.”

5 ECF No. 32 at 2.

6 After receiving the above-referenced discovery, pursuant to a protective order,
7 Plaintiffs submitted a copy of a bid proposal referring to Plaintiffs as well as a third
8 Washington resident as the “Key Personnel” for the work to be performed under the
9 contract, in the event the bid was accepted. ECF No. 41 at 17. An “Akal Program
10 Management Organizational Chart” lists Plaintiffs and two other Eastern
11 Washington residents as four of six personnel in the chart. ECF No. 41 at 19.

12 Plaintiffs also submitted copies of three additional “Intent to Hire” letters that
13 AWD allegedly sent to Eastern Washington residents other than Plaintiffs after
14 calling those individuals and requesting from them documentation of their aviation
15 security qualifications. ECF No. 41 at 3.

16 **LEGAL STANDARD**

17 Plaintiffs bear the burden of demonstrating that the Court may exercise
18 specific jurisdiction over Defendant. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151,
19 1154 (9th Cir. 2006). “Where, as here, the defendant’s motion is based on written
20 materials rather than an evidentiary hearing, the plaintiff need only make a prima
21 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Mavrix*

1 *Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). “The
2 plaintiff cannot ‘simply rest on the bare allegations of its complaint,’ but
3 uncontroverted allegations in the complaint must be taken as true.” *Id.* (quoting
4 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). To
5 withstand a motion to dismiss, a plaintiff “need only demonstrate facts that if true
6 would support jurisdiction over the defendant.” *Harris Rutsky & Co. Ins. Servs.,*
7 *Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir. 2003).

8 The exercise of personal jurisdiction must satisfy the requirements of the
9 long-arm statute of the state in which the Court sits and the constitutional
10 requirements of due process. *See Omeluk v. Langsten Slip and Batbyggeri A/S*, 52
11 F.3d 267 (9th Cir. 1995). Washington’s long-arm statute, RCW 4.28.185, extends
12 personal jurisdiction over nonresident defendants and foreign corporations to the
13 limits of federal due process. *Schute v. Carnival Cruise Lines*, 113 Wn.2d 763, 766–
14 67 (Wash. 1989). Constitutional due process is satisfied when a nonresident
15 defendant has “certain minimum contacts with the forum such that the maintenance
16 of the suit does not offend traditional conceptions of fair place and substantial
17 justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). The minimum
18 contacts must be of a nature that a defendant “should reasonably anticipate being
19 haled into court” in the forum state. *World-Wide Volkswagen Corp. v. Woodson*,
20 444 U.S. 286, 297 (1980).

1 The central inquiry for purposes of federal due process is the nature of the
2 relationship between the defendant, the forum, and the litigation. *Shaffer v. Heitner*,
3 433 U.S. 186, 204 (1977). Minimum contacts may establish personal jurisdiction
4 through two approaches: general and specific. *See Easter v. American West Fin.*,
5 381 F.3d 948, 960 (9th Cir. 2004).

6 A court may subject a non-resident defendant to general personal jurisdiction
7 when “continuous corporate operations with a state [are] thought so substantial . . .
8 as to justify suit against it on causes of action arising from dealings entirely distinct
9 from those activities.” *Int’l Shoe*, 326 U.S. at 318. Defendant’s contacts with the
10 forum state must “approximate physical presence.” *Schwarzenegger v. Fred Martin*
11 *Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004) (noting that the minimum contacts test
12 “is an exacting standard, as it should be, because a finding of general jurisdiction
13 permits a defendant to be haled into court in the forum state to answer for any of its
14 activities anywhere in the world.”).

15 If general personal jurisdiction is absent, a court may exercise specific
16 personal jurisdiction upon satisfaction of the following test:

- 17 (1) The non-resident defendant must purposefully direct his activities or
18 consummate some transaction with the forum or resident thereof; or
19 perform some act by which he purposefully avails himself of the
20 privilege of conducting activities in the forum thereby invoking the
21 benefits and protections of its laws;
- 20 (2) the claim must be one which arises out of or relates to the
21 defendant’s forum-related activities; and
- 21 (3) the exercise of jurisdiction must comport with fair play and
 substantial justice, i.e. it must be reasonable.

1 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The
2 plaintiff bears the burden of satisfying the first two prongs of the test.” *Id.* If the
3 plaintiff meets that burden, the burden shifts to the defendant to make a “compelling
4 case” that the exercise of jurisdiction is unreasonable. *Id.* (quoting *Burger King*
5 *Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (internal quotation marks omitted)).

6 DISCUSSION

7 *General Jurisdiction*

8 Plaintiffs assert that the Court has general personal jurisdiction over
9 Defendant because “Akai has had a substantial business presence in Washington for
10 a number of years.” ECF No. 31 at 5. Plaintiffs offer as support:

- 11 • Akai’s entry into a collective bargaining agreement with a security officers’
12 union in Seattle, Washington, in 2002;
- 13 • a contract awarded to Akai by the United States Department of Defense in
14 2003 to provide security guard services in Fort Lewis, Washington and Fort
15 Riley, Kansas, until 2004;
- 16 • contracts awarded to Akai by the United States Marshals for security services
17 in Washington state for each year from 2007 to 2014, with six of those
18 contract awards listing Spokane as the primary place of performance; and
- 19 • citations to three cause numbers for lawsuits, filed in 2002, 2006, and 2008, in
20 which Akai was named as a Defendant in the Western District of Washington

1 and did not move to dismiss the actions on the basis of lack of personal
2 jurisdiction.

3 ECF No. 31 at 5–6.

4 Without reviewing each docket for the Western District of Washington, the
5 Court finds that the mere absence of motions to dismiss for lack of personal
6 jurisdiction does not support a finding of general jurisdiction here. Plaintiffs have
7 not shown that personal jurisdiction over Akal, in cases that were filed over ten
8 years ago, was premised on general, rather than specific personal jurisdiction in
9 those cases or that there was any determination in those cases that Akal’s contacts
10 with Washington were substantial enough to “approximate physical presence.” *See*
11 *Schwarzenegger*, 374 F.3d at 801.

12 The Court further finds that the other contacts recited by Plaintiffs are
13 insufficient to support general jurisdiction. Even marketing efforts combined with
14 hiring a non-exclusive sales agent in California were insufficient contacts to
15 establish general personal jurisdiction. *Congoleum Corp. v. DLW*
16 *Aktiengesellschaft*, 729 F.2d 1240, 1243 (9th Cir. 1984) (holding that “no court has
17 ever held that the maintenance of even a substantial sales force within the state is a
18 sufficient contact to assert [general] jurisdiction.”). Therefore, the Court does not
19 find that Defendant’s contacts with Washington were so pervasive as to
20 “approximate physical presence” in the state to support the exercise of personal
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1 jurisdiction in an action unrelated to those contacts. *See Schwarzenegger*, 374 F.3d
2 at 801.

3 ***Specific Jurisdiction***

4 At the first part of the specific jurisdiction test, courts in the Ninth Circuit ask,
5 in cases sounding in tort, whether the nonresident defendant purposely directed
6 activity at the forum. *Washington Shoe Co. v. A-Z Sporting Goods, Inc.*, 704 F.3d
7 668, 672–73 (9th Cir. 2012).

8 Defendant emphasizes that the Supreme Court held in *Walden v. Fiore* that,
9 “[r]egardless of where a plaintiff lives or works, an injury is jurisdictionally relevant
10 only insofar as it shows that the defendant has formed a contact with the forum
11 State.” 571 U.S. 271, 290 (2014); ECF No. 35 at 10. “The proper question is not
12 where the plaintiff experienced a particular injury or effect but whether the
13 defendant’s conduct connects him to the forum in a meaningful way.” *Id.*

14 While the Court recognizes that conduct that merely affects plaintiffs with ties
15 to the forum state is not enough to create jurisdiction, Defendant did not rebut
16 Plaintiff’s allegation that an Akal employee, as well as an AWD employee,
17 specifically reached out by telephone to Plaintiffs and other individuals in Eastern
18 Washington to interview them for potential employment and solicit materials from
19 them demonstrating their qualifications and experience. Plaintiffs and Defendant
20 then dispute the propriety of Akal’s use of those materials related to securing the
21 TSA contract. The common thread connecting the “Key Personnel” listed in the

1 contract bid is that more than half of them, or all of them, depending on which
2 document accurately reflects what Akal submitted to TSA, are individuals who were
3 allegedly contacted in Eastern Washington by Akal and AWD and from whom Akal
4 and AWD allegedly solicited documentation of their qualifications.

5 The Court further finds that the second factor in determining specific
6 jurisdiction is met because Plaintiffs' claims of intentional wrongdoing by
7 Defendant results from those initial September 2012 contacts. Defendant allegedly
8 solicited from Plaintiffs the information that Plaintiffs allege Defendant misused; the
9 solicitation of the information was an activity related to this forum. *See Hanson v.*
10 *Denckla*, 357 U.S. 235, 250–53 (1958) (holding that the cause of action must “arise
11 out of or have a substantial connection to the defendant’s contacts with the forum).

12 Finally, the Court finds that Defendant does not present a compelling case that
13 the exercise of jurisdiction would be unreasonable. Rather, Plaintiffs have made a
14 persuasive argument that, having reached out to approximately five individuals in
15 Eastern Washington to hire in the event that the contract bid was accepted,
16 Defendant was in a position to anticipate being brought into this forum to defend
17 against claims by two of those individuals of wrongdoing directly connected to those
18 contacts.

19 The Court finds that the exercise of specific personal jurisdiction over
20 Defendant is supported by law.

