

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ELIS PACHECO,	:	
<i>Plaintiff,</i>	:	CIVIL ACTION
	:	
v.	:	
	:	No. 16-3625
SANDRA PADJAN,	:	
<i>Defendant.</i>	:	

PRATTER, J.

JULY 28, 2017

MEMORANDUM

Elis Pacheco moves for entry of default judgment against Sandra Padjan on Counts I (defamation) and II (false light) of Mr. Pacheco’s Complaint. Because the Court finds that it does not have personal jurisdiction over Ms. Padjan, the Court must deny Mr. Pacheco’s Motion and dismiss his Complaint without prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

Mr. Pacheco filed a Complaint against Ms. Padjan and Xcentric Ventures, LLC on July 1, 2016 seeking monetary damages for defamation, false light (invasion of privacy), and tortious interference in business relations. Mr. Pacheco also sought an injunction requiring Defendants to remove the alleged defamatory statements from the Internet.

Mr. Pacheco’s Complaint alleges that Ms. Padjan posted false and defamatory statements about him on websites operated by Xcentric. Mr. Pacheco alleges that these websites operate as forums for posters to lodge complaints against individuals and business entities. The statements allegedly made by Ms. Padjan included statements that Mr. Pacheco is “nothing but a filthy criminal” and “steals from others.” Compl. ¶ 9 (Doc. No. 1). Due to Ms. Padjan’s statements,

Mr. Pacheco claims he suffered irreparable damage to his reputation and lost prospective business opportunities.

Mr. Pacheco subsequently entered into a stipulation of dismissal with Xcentric as to Xcentric only on December 20, 2016.

Mr. Pacheco was initially unable to effectuate service on Ms. Padjan because Mr. Pacheco could not locate Ms. Padjan or identify an active address for Ms. Padjan. At the Court's direction, Mr. Pacheco detailed his efforts to serve Ms. Padjan. Mr. Pacheco first hired a professional process server to effectuate personal service at Ms. Padjan's last known place of business in Orange County, California. After repeated efforts to serve Ms. Padjan and inquiries with neighbors, the process server concluded Ms. Padjan was no longer located at the suspected address. Mr. Pacheco then attempted to locate Ms. Padjan by searching the Internet, telephone directories, and property tax records. Mr. Pacheco also enlisted the assistance of a collection law firm to locate Ms. Padjan. These efforts did not result in identifying an address for Ms. Padjan. The Court, determining that Mr. Pacheco demonstrated due diligence in his efforts to locate Ms. Padjan, accepted Mr. Pacheco's service on Ms. Padjan by publication pursuant to Fed. R. Civ. P. 4(e)(1) and Cal. R. Civ. P. 415.50.

Mr. Pacheco moved the Clerk of Court for entry of default after Ms. Padjan failed to respond to the Complaint. The Clerk of Court entered default on March 16, 2017 due to Ms. Padjan's failure to appear, plead, or otherwise defend this action. Mr. Pacheco then moved for entry of default judgment against Ms. Padjan. After receiving Mr. Pacheco's motion for default judgment, the Court ordered Mr. Pacheco to submit a brief detailing, among other items, the Court's basis of personal jurisdiction over Ms. Padjan.

II. LEGAL STANARDS

Federal Rule of Civil Procedure 55 governs the procedure a plaintiff must follow to obtain a default judgment against a nonresponsive defendant. First, if the plaintiff shows the defendant's "fail[ure] to plead or otherwise defend, . . . the clerk must enter [the defendant's] default," Fed. R. Civ. P. 55(a), which is only valid if the defendant was properly served. *See Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1304 (3d Cir. 1995).

The plaintiff may then "apply to the court for a default judgment." Fed. R. Civ. P. 55(b)(2). The court's initial inquiry is "whether the unchallenged facts constitute a legitimate cause of action." 10A Charles Alan Wright, Arthur R. Miller, et al., *Federal Practice and Procedure* § 2688.1 (4th ed.) (citing cases). As at the motion to dismiss stage, the court accepts as true the well-pleaded factual allegations in the plaintiff's complaint, except those relating to damages, as though they were admitted or established by proof, *Comdyne I, Inc. v. Corbin*, 908 F.2d 1142, 1149 (3d Cir. 1990), as well as all reasonable inferences that can be drawn from the complaint, *see Yang v. Hardin*, 37 F.3d 282, 286 (7th Cir. 1994). Conclusory allegations and the parties' legal theories or "conclusions of law" are not entitled to the same presumption and are not deemed admitted. *See, e.g., Wright & Miller, supra*, § 2688.1.

Before a court may enter default judgment, the court must ensure "that it has personal jurisdiction over the party against whom default judgment is requested." *D'Onofrio v. Il Mattino*, 430 F. Supp. 2d 431, 437 (E.D. Pa. 2006); *see also Allaham v. Naddaf*, 635 F. App'x 32, 36 (3d Cir. 2015) ("While unlike subject matter jurisdiction, a court generally may not raise personal jurisdiction *sua sponte*, when a default judgment is requested, a court is required to make a threshold determination regarding any jurisdictional defects."). A judgment entered against a defendant over whom a court does not have personal jurisdiction is void. *Budget*

Blinds, Inc. v. White, 536 F.3d 244, 258 (3d Cir. 2008). Accordingly, when faced with a motion for default judgment against a defendant over whom the court cannot exercise personal jurisdiction, a court “has discretion to dismiss the action *sua sponte*.” *D’Onofrio*, 430 F. Supp. 2d at 436 (citing cases).

When considering a motion for default judgment, a court must “accept as true the jurisdictional allegations in the complaint,” as a plaintiff is only required to make a “*prima facie* showing of personal jurisdiction.” *Id.* at 439.

III. DISCUSSION

Mr. Pacheco argues that this Court has personal jurisdiction over Ms. Padjan because Ms. Padjan created the necessary minimum contacts with the forum by posting the alleged defamatory statements on the Internet. Mr. Pacheco also argues that Ms. Padjan should have reasonably anticipated being sued in this District so that the Court’s exercise of personal jurisdiction over Ms. Padjan would comport with “traditional notions of fair play and substantial justice,” *see Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945), because: (i) Mr. Pacheco’s principle place of business is New York, (ii) Mr. Pacheco resides in New Jersey, and (iii) Mr. Pacheco conducts business in Pennsylvania. The Court does not agree.

A. Principles of Personal Jurisdiction

A court looks to the law of the jurisdiction in which it sits when determining whether it has personal jurisdiction over a defendant. *O’Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 316 (3d Cir. 2007) (citing Fed. R. Civ. P. 4(k)(1)(A)). Pennsylvania’s long-arm statute permits personal jurisdiction over a defendant “based on the most minimum contact with th[e] Commonwealth allowed under the Constitution of the United States.” *Id.* (quoting 42 Pa. C.S. § 5322(b)). Thus, federal courts in Pennsylvania can exercise personal jurisdiction over

nonresident defendants in accordance with the Fourteenth Amendment’s Due Process Clause. *Mellon Bank (East) PSFS, Nat’l Ass’n v. Farino*, 960 F.2d 1217, 1221 (3d Cir. 1992). The exercise of personal jurisdiction over a defendant comports with the Fourteenth Amendment when the nonresident defendant has “certain 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*, 326 U.S. at 316 (internal quotation marks omitted).

There are two types of personal jurisdiction that a court can exercise over a defendant: general jurisdiction and specific jurisdiction. *O’Connor*, 496 F.3d at 317. Here, Mr. Pacheco does not appear to argue that this Court has general jurisdiction over Ms. Padjan.¹ Accordingly, the Court’s analysis will focus on whether it can exercise specific jurisdiction over Ms. Padjan.

When faced with the question of whether to exercise specific personal jurisdiction over a nonresident defendant who made allegedly defamatory statements, courts look to the “effects test” set forth in *Calder v. Jones*, 465 U.S. 783 (1984). *Marten v. Godwin*, 499 F.3d 290, 298 (3d Cir. 2007); *IMO Indus. v. Kiekert AG*, 155 F.3d 254, 260-61 (3d Cir. 1998); *Gorman v. Jacobs*, 597 F. Supp. 2d 541, 546 (E.D. Pa. 2009).² The “effects test” requires a plaintiff to show that:

(1) The defendant committed an intentional tort; (2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; [and] (3) The defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity[.]

¹ “General jurisdiction is based upon the defendant’s ‘continuous and systematic’ contacts with the forum.” *Remick v. Manfredy*, 238 F.3d 248, 255 (3rd Cir. 2001). Mr. Pacheco has presented no facts that could plausibly lead to the conclusion that Ms. Padjan has, or had, continuous and systematic contacts with Pennsylvania.

² The Court notes that the brief submitted by Plaintiff’s counsel in response to the Court’s specific request to address the propriety of personal jurisdiction in this case fails to cite *Calder* (United States Supreme Court precedent), *Marten* (Third Circuit Court of Appeals Precedent), or *IMO* (Third Circuit Court of Appeals precedent), which all bear directly on this issue.

IMO Indus., 155 F.3d at 265-66. A plaintiff can only satisfy the effects test by pointing “to contacts which demonstrate that the defendant *expressly aimed* its tortious conduct at the forum, and thereby made the forum the focal point of the tortious activity.” *Id.* at 265 (emphasis in original). A plaintiff cannot satisfy *Calder* merely by demonstrating that “the harm caused by the defendant’s intentional tort is primarily felt within the forum.” *Id.*

When a court applies the “effects test” in the context of Internet usage, the jurisdictional framework set out in *Zippo Mfg. Co. v. Zippo Dot Com., Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), is widely accepted as the best approach to assess whether a nonresident defendant’s Internet usage justifies the exercise of personal jurisdiction. *Gorman*, 597 F. Supp. 2d at 547. In the context of a *user* of an Internet website, courts in this District have interpreted the *Zippo* analysis to focus on whether a defendant’s use of a website “was expressly aimed at the forum state.” *Id.*; *see also Patchen v. McGuire*, No. 11-5388, 2012 WL 4473233, at *5 (E.D. Pa. Sept. 27, 2012).

B. *Calder* Test Application

Even taking all of Mr. Pacheco’s non-conclusory allegations as true,³ Mr. Pacheco has not satisfied the *Calder* effects test. While Mr. Pacheco satisfactorily pleaded that Ms. Padjan committed an intentional tort, he failed to demonstrate that he “felt the brunt of the harm” in Pennsylvania or that Ms. Padjan “expressly aimed [her] tortious conduct” towards Pennsylvania.⁴

³ Mr. Pacheco’s Complaint states in a conclusory fashion that Ms. Padjan “does business in the United States and within this District.” Compl. ¶ 4. Mr. Pacheco has presented no facts to the Court to support this conclusory allegation.

⁴ The Court notes that a plaintiff’s failure to satisfy the third *Calder* factor is alone sufficient to find that personal jurisdiction does not exist. *See Marten*, 499 F.3d at 297 (“Only if the ‘expressly aimed’ element of the effects test is met need [a court] consider the other two elements.”). The Court will nonetheless consider the entire *Calder* test.

1. Calder Factor 2 – “focal point of the harm”

Mr. Pacheco does not allege that he felt the “brunt of the harm” in Pennsylvania. Mr. Pacheco readily admits in his filings that his principle place of business is in New York and that he resides in New Jersey. The fact that Mr. Pacheco conducts some business in Pennsylvania and can identify a single client that has stopped doing business with him after reading the allegedly defamatory comments, *see* Rosen Declaration ¶¶ 6, 8 (Doc. No. 26), is not sufficient to establish personal jurisdiction pursuant to the *Calder* effects test. The Third Circuit Court of Appeals explicitly stated that a plaintiff cannot satisfy *Calder* by demonstrating that “the harm caused by the defendant’s intentional tort is primarily felt within the forum.” *IMO Indus.*, 155 F.3d at 265. Accordingly, the fact that Mr. Pacheco experienced *some* harm in Pennsylvania is certainly not sufficient to satisfy the second prong of the effects test, let alone establish specific jurisdiction over Ms. Padjan. *See Marten*, 499 F.3d at 297 (“[T]he effects test prevents a defendant from being haled into a jurisdiction solely because the defendant intentionally caused harm that was felt in the forum state if the defendant did not expressly aim his conduct at that state.”).

2. Calder Factor 3 – “focal point of the tortious activity”

Mr. Pacheco does not argue that Ms. Padjan’s use of the subject websites to allegedly defame Mr. Pacheco was specifically targeted at Pennsylvania. Rather, Mr. Pacheco argues that Ms. Padjan should have reasonably anticipated being sued in this District because Mr. Pacheco’s place of business and residence are in states *adjacent* to Pennsylvania. Not only does Mr. Pacheco fail to address the jurisdictional analysis most relevant to this case (the *Calder* test), but he incorrectly focuses on his own contacts to Pennsylvania rather than Ms. Padjan’s contacts with Pennsylvania. *See Pennzoil Prods. Co. v. Colelli & Assocs.*, 149 F.3d 197, 201 (3rd Cir.

1998) (explaining that the first step in the specific jurisdiction analysis is determining “whether the *defendant* [has] the minimum contacts with the forum necessary for the defendant to have ‘reasonably anticipate[d] being haled into court there’ (emphasis added) (citation omitted)); *see also Marten*, 499 F.3d at 296-98 (explaining the difference between the *Calder* effects test and the traditional specific jurisdiction analysis). As far as the Court can tell, Ms. Padjan has no contacts with Pennsylvania for her to reasonably anticipate being sued in this District.⁵ Nor do the facts contained in Mr. Pacheco’s Complaint or subsequent briefing demonstrate that Ms. Padjan expressly aimed her conduct at Pennsylvania.

There is no single formula for triggering a personal jurisdiction finding under *Calder*. A plaintiff can demonstrate that an Internet post targeted a specific forum by, for example, demonstrating that (i) that the website itself focused on a specific geographic area or (ii) the content of the post targeted a specific geographic area. *Gorman*, 597 F. Supp. 2d at 548.

Courts are reluctant to exercise personal jurisdiction over a nonresident Internet user without evidence that the alleged tortious activity was explicitly directed at the forum. *Gorman* is instructive here. In *Gorman*, a Pennsylvania doctor sued defendants for defamation based on comments posted to a website. *Id.* at 543. The court found that it had no personal jurisdiction over the defendants because the website itself was not Pennsylvania-specific and the content of the postings were not specifically targeted at Pennsylvania. *Id.* at 550-51. The court emphasized that the defendants’ mere knowledge that the plaintiff resided or worked in Pennsylvania was not sufficient to establish specific personal jurisdiction over the defendants. *Id.*

⁵ When a plaintiff alleges that a nonresident defendant has committed an intentional tort and that defendant does not have sufficient “minimum contacts” with the forum state, the plaintiff must meet the *Calder* test to establish personal jurisdiction. *See IMO Indus.*, 155 F.3d at 260 (“Generally speaking, under *Calder* an intentional tort directed at the plaintiff and having sufficient impact upon it in the forum may suffice to enhance otherwise insufficient contacts with the forum such that the ‘minimum contacts’ prong of the Due Process test is satisfied.”).

Here, there is nothing about the websites on which Ms. Padjan allegedly posted that is specific to Pennsylvania. *See Barrett v. Catacombs Press*, 44 F. Supp. 2d 717, 727 (E.D. Pa. 1999) (noting that information posted on a website that is available worldwide does not show an intent to target Pennsylvania residents with such information). Furthermore, the contents of the posts allegedly authored by Ms. Padjan do not specifically target, mention, or reference Pennsylvania.

No facts have been presented to the Court to suggest that Ms. Padjan was aware that Mr. Pacheco conducted business in Pennsylvania. In fact, the evidence Mr. Pacheco presented to the Court suggests quite the opposite—the content of Ms. Padjan’s posts specifically state that Mr. Pacheco conducts business in New York and New Jersey. The posts do not mention Pennsylvania. *See, e.g., Marks v. Alpha Grp.*, No. 08-5651, 2009 WL 1838358, at *6 (E.D. Pa. June 25, 2009) (finding no personal jurisdiction over defendants when their Internet activity described plaintiffs as operating in the U.S., U.K., and Russia, but not Pennsylvania). Even if Mr. Pacheco could establish that Ms. Padjan knew that he conducted business in Pennsylvania, such knowledge would not suffice to establish this *Calder* factor. *See Gorman*, 597 F. Supp. 2d at 550 (explaining that the defendant’s knowledge that the plaintiff lived and worked in Pennsylvania was not enough to establish personal jurisdiction under *Calder*).

Simply put, nothing about the websites themselves or Ms. Padjan’s alleged posts demonstrate that Pennsylvania was the “focal point” of Ms. Padjan’s alleged conduct or that Ms. Padjan knew Mr. Pacheco would feel the effects of her statements in Pennsylvania. Accordingly, Mr. Pacheco has not satisfied that third *Calder* factor.

IV. CONCLUSION

For the foregoing reasons, the Court will deny Plaintiff’s Motion for Default Judgment.

* * *

An appropriate Order follows.

BY THE COURT:

S/Gene E.K. Pratter
GENE E.K. PRATTER
United States District Judge