CASE NO. 13LF-CV00461

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| William M. Windsor | § | IN THE CIRCUIT COURT |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | |
| | § | 15th JUDICIAL CIRCUIT |
| Allie Loraine Yager Overstreet, | § | |
| Mark Supanich. Brenda Williamson | § | |
| And John Does 1-1000, | § | |
| | § | |
| Defendants | § | LAFAYETTE COUNTY, MISSOURI |

**PLAINTIFFS RESPONSE TO MOTION TO DISMISS**

**BY DEFENDANT MARK SUPANICH**

Comes Now, William M. Windsor ("Windsor" or "Plaintiff") and files this PLAINTIFFS RESPONSE TO MOTION TO DISMISS DUE TO LACK OF JURISDICTION IMPROVER VENUE, STAY THE PROCEEDINGS UNTIL JURISDICTION IS ESTABLISHED AND RESERVE ANY CROSS CLAIMS THE DEFENDANT MAY SEEK ("MOTION TO DISMISS") by DEFENDANT MARK SUPANICH ('DEFENDANT SUPANICH"). PLAINTIFF shows the Court as follows:

1. DEFENDANT SUPANICH'S MOTION TO DISMISS is wholly inadequate. It is largely incomprehensible, fails to cite statutes or case law to support what may be claims, makes outlandish comments about the PLAINTIFF that are absolutely false, presents a number of points that are not in the pleadings, and even misspells the PLAINTIFF'S name.

## PURPORTED MOTION TO DISMISS MUST BE CONVERTED TO A MOTION FOR SUMMARY JUDGMENT

2. The purported MOTION TO DISMISS must actually be considered a Motion for Summary Judgment. DEFENDANT SUPANICH has presented many matters outside the pleadings in his MOTION TO DISMISS, in his so-called MOTION FOR AN ALL WRITS INJUNCTION, in his MOTION TO TAKE JUDICIAL NOTICE, and in his ANSWER, to which he even has exhibits and which he signed under penalty of perjury as if a sworn affidavit.

> A motion to dismiss must be based solely on matters contained in the pleading at issue. If matters outside the pleading are presented, it must be considered to be a motion for summary judgment. "...any oral or written evidence not already "in the record" — public or court, physically or by reference — is regarded as "extrinsic" and will spur a conversion." (See ***Bryant v. Avado Brands, Inc.***, 187 F.3d 1271, 1278 (11th Cir. 1999).)

3. When matters outside the pleadings are presented with a motion to dismiss, the court must notify the parties that it intends to treat the motion as one for summary judgment. (***Counts v. Morrison-Knudsen, Inc.***, 663 S.W.2d 357, 363 (Mo. App. 1983); ***Lee v. Osage Ridge Winery***, 727 S.W.2d 218, 224 (Mo.App. 1987).) Under Rule 55.27 (b), "on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 74.04, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by Rule 74.04."

4. At 5:00 am on July 9, 2013, the PLAINTIFF filed PLAINTIFF'S MOTION TO CONVERT DEFENDANT MARK SUPANICH'S MOTION TO DISMISS TO A MOTION FOR SUMMARY JUDGMENT, referenced and incorporated herein as if attached hereto.

5. When the trial court converts a matter into a motion for summary judgment, the court must place the parties on notice, and the parties must comply with the procedural requirements of Rule 74.04. (***Mitchell v. McEvoy***, 237 S.W.3d 257, 259 (Mo. App. E.D. 2007).)

6. The law generally favors trials upon the merits, and the criteria by which the sufficiency of petitions is judged have been developed to promote this purpose. ***Collins v. Swope***, 605 S.W.2d 538, 540 (Mo. App. S.D. 1980).

> The grant of "summary judgment for a defendant is an extreme remedy because it denies a plaintiff his day in court and, hence, is proper only if the court determines from the pleadings . . . and affidavits on file that there are no material issues of fact and that the movant is entitled to a judgment as a matter of law." ***Butcher v. Ramsey Corp.***, 628 S.W.2d 912, 914 (Mo.App. 1982). Great caution must be exercised in granting a motion for summary judgment because it "borders on denial of due process." ***Olson v. Auto Owners Ins. Co.***, 700 S.W.2d and 882, 884 (Mo.App. 1985). Summary judgment may be granted only when the pleadings, depositions, admissions and affidavits on file show that there is no genuine issue as to any material fact. Rule 74.04(c). ***Kilgore v. Kilgore***, 666 S.W.2d 923, 928 (Mo.App. 1984); ***Olson v. Auto Owners Ins. Co.***, supra, 700 S.W.2d at 885. A genuine issue of fact exists where there is the slightest doubt as to the facts and summary judgment is therefore precluded so long as any facts are in doubt and are material and have legal probative force and effect as to any controlling issue. ***Peer v. MFA Milling Co.***, 578 S.W.2d 291, 292 (Mo.App. 1979).
>
> An issue of fact is material if it has ". . . legal probative force as to a controlling issue in the litigation," ***Tatum v. General Motors Acceptance Corp.***, 732 S.W.2d 591, 592 (Mo.App. 1987), and is said to exist when there is the ". . . slightest doubt about a fact." ***Gast***, 739 S.W.2d at 546. *fn2 Summary judgment is appropriate only when the record discloses no theory that would permit recovery and the moving party is entitled to summary judgment as a matter of law. ***Zafft***, 676 S.W.2d at 244; ***Signature Pool & Court v. City of Manchester***, 743 S.W.2d 538, 540 (Mo.App. 1987; Rule 74.04(c)).

7. In this case, the only affidavits on file are those of the PLAINTIFF, and DEFENDANT MARK SUPANICH denied 200 of the 205 paragraphs in the

VERIFIED COMPLAINT, so there is essentially no agreement on the facts. The PLAINTIFF swore before a notary that the VERIFIED COMPLAINT was true and correct based upon his person al knowledge, but neither of the DEFENDANTS filed a verified answer.

**THE SO-CALLED MOTION TO DISMISS MAY NOT BE CONSIDERED UNTIL THE PLAINTIFF IS GIVEN AMPLE TIME TO CONDUCT DISCOVERY**

8. A response to this so-called MOTION TO DISMISS requires discovery. The PLAINTIFF has been denied needed discovery. As a result, the PLAINTIFF filed a MOTION TO ORDER CLERK OF THE COURT TO ISSUE SIGNED SUBPOENAS on June 10, 2013 seeking an order to compel the Clerk of the Court to issue subpoenas to the PLAINTIFF and seeking a continuance on motions such as this until the discovery can be conducted. This MOTION TO ORDER CLERK OF THE COURT TO ISSUE SIGNED SUBPOENAS is scheduled of July 16, 2013 as is the EMERGENCY MOTION FOR EXTENSION OF TIME TO RESPOND TO FILINGS BY DEFENDANTS, each referenced and incorporated herein as if attached hereto.

9. DEFENDANT SUPANICH's so-called MOTION TO DISMISS is not one that can be considered based upon the law alone. The personal jurisdiction issue that he raises is a fact-specific issue that requires discovery. The only affidavits before the Court are those of the PLAINTIFF. DEFENDANT Supanich failed to respond to INTERROGATORIES, has not produced any documents, and has not filed any affidavits.

> "... motions to dismiss under Fed.R.Civ.P. 12 "should be granted sparingly," and only "where adequate time is given to complete discovery and all the jurisdictional facts are fully developed and placed before the Court." ***Martin v. Morgan Drive Away, Inc., 665 F.2d 598, 602 n. 1 (5th Cir. Unit A 1982) (quoting Chatham Condominium Associations v. Century Village, Inc.***, 597 F.2d 1002, 1012-13 (5th Cir. 1979).)
>
> "A motion under 12(b)(1) should be granted only if it appears certain that the plaintiff cannot prove any set of facts in support of his claim that would entitle him to relief." (***Home Builders Association of Mississippi, Inc. v. City of Madison, Mississippi***, 143 F.3d 1006, 1010 (5th Cir. 1998). "...in determining jurisdiction the court "may evaluate (1) the complaint alone (2) the complaint supplemented by undisputed facts evidenced in the record, or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts," (***Den Norske Stats Oljeselskap As v. HeereMac Vof***, 241 F.3d 420, 424 (5th Cir. 2001),) but "[n]evertheless, [the court] must accept all factual allegations in the plaintiff's complaint as true." Id.

**THE PLAINTIFF REQUESTS A CONTINUANCE ON THIS MOTION BEFORE THE JURISDICTION ISSUE IS TO BE CONSIDERED**

## AND/OR IF THIS SO-CALLED MOTION TO DISMISS IS CONVERTED TO A MOTION FOR SUMMARY JUDGMENT

10. Late in the evening on July 8, 2013, the PLAINTIFF received notice of a hearing on this so-called MOTION TO DISMISS set for 9:45 am on July 16, 2013, prior to the hearing that the PLAINTIFF set several weeks ago. This matter cannot be heard on July 16, 2013 as the PLAINTIFF has been denied discovery, denied subpoenas, has thus far been unable to locate one key witness (DEFENDANT BRENDA WILLIAMSON), and is unable to compel witnesses from other states to come to Lexington Missouri in a week to testify. The PLAINTIFF requests a continuance on this MOTION TO DISMISS until the essential fact issues can be fully explored through discovery.

## PLAINTIFF MOVES THE COURT TO ALLOW HIM TO AMEND THE VERIFIED COMPLAINT IF THE COURT FEELS ANY ASPECT OF THE PLEADING IS INADEQUATE

11. Because the PLAINTIFF is pro se and has had no legal assistance whatsoever, the PLAINTIFF moves this Court to allow him to amend the

VERIFIED COMPLAINT should the Court feel that there is any merit whatsoever to this so-called MOTION TO DISMISS.

12. As the VERIFIED COMPLAINT details, this matter has to do with Defamation, Infliction of Emotional Distress, Tortious Interference with Contractual or Business Relations, Invasion of Privacy, Conspiracy to Commit Defamation, as well as stalking and harassment on the Internet. Unlike the bricks and mortar world, postings on the Internet are distributed globally within a nanosecond. The PLAINTIFF has been injured worldwide. The PLAINTIFF first learned of the initial injuries when in Georgia. The PLAINTIFF has clearly been damaged in Lafayette County, Missouri, and the PLAINTIFF seeks leave to amend the PLEADINGS to elaborate on this.

> "In comparison to attorney prepared pleadings, a pro se petition is held to a less rigorous standard and 'is subject to summary dismissal if it is patently and irreparably frivolous or malicious on its face so that, as pleaded, the plaintiff could prove no set of facts entitling him to relief'." ***Watley v. Missouri Bd. of Probation and Parole***, 863 S.W.2d 337, 338 (Mo. App. 1992)(quoting ***Howard v. Pettus***, 745 S.W.2d 821, 822 (Mo. App. 1988)).
>
> Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed ." ***Tannenbaun v. United States***, 148 F .3d 1262, 1 263 (11th Cir. 1998) (per curiam); ***Haines v. Kerner***, 404 U.S. 519, 92 S .Ct. 594, 30 L . Ed.2d 652 (1972).
>
> "... **a pro se litigant must be given the opportunity to amend his complaint to correct any deficiencies**." (***Noll v. Carlson***, 809 F.2d 1446, 1448 (9th Cir. 1987); ***Benjamin O. Mays v. Wyandotte County Sheriff's***

***Department***, No. 10-3194 (10th Cir. 03/15/2011); ***Bazrowx v. Scott***, 136 F.3d 1053, 1054 (5th Cir. 1998); ***Troville v. Venz***, 303 F.3d 1256, 1260 n.5 (11th Cir. 2002) (per curiam).) [**emphasis added**.]

**THERE IS NO DOUBT THAT THE VERIFIED COMPLAINT INCLUDES ENOUGH FACT TO RAISE A REASONABLE EXPECTATION THAT DISCOVERY WILL REVEAL EVIDENCE TO SUPPORT THE CLAIMS, SO THE MOTION TO DISMISS MUST BE DENIED**

13. It is long settled that a complaint should not be dismissed unless it appears beyond doubt that the plaintiff could prove no set of facts in support of his claim which would entitle him to relief. (See ***Lovelace v. Long John Silver's, Inc.***, 841 S.W.2d 682, 684 (Mo. App. 1992).)

14. Each of the causes of action presented in the VERIFIED COMPLAINT is valid under Missouri law, and the PLAINTIFF has extensive evidence with much more expected from discovery if people are honest. The DEFENDANTS have been given fair notice of the causes of action and some of the facts that resulted in these causes of action.

> "...in determining whether a plaintiff has made appropriate allegations concerning jurisdiction so as to survive a motion to dismiss, all facts are deemed true and the plaintiff is given the benefit of every reasonable intendment." ***Shouse***, 10 S.W.3d 192.

To survive a 12(b)(6) motion to dismiss, the complaint "does not need detailed factual allegations," ***Bell Atlantic Corp. v. Twombly***, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964 (2007), but must "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests," ***Conley v. Gibson***, 355 U.S. 41, 47, 78 S.Ct. 99, 103 (1957). (***Randall v. Scott***, 610 F.3d 701 (11th Cir. 06/30/2010).)

**THIS SO-CALLED MOTION TO DISMISS**

**SHOULD BE VIEWED WITH DISFAVOR**

15. The PLAINTIFF deserves a jury trial. The evidence will be overwhelming. There is no valid basis for a motion to dismiss.

"A motion to dismiss ... is viewed with disfavor and is rarely granted." (***Harrington v. State Farm Fire & Casualty Co.***, 563 F.3d 141 (5th Cir. 03/20/2009); ***FEDERAL TRADE COMMISSION v. CITIGROUP INC.***, 239 F.Supp.2d 1302 (N.D.Ga. 12/27/2001); ***Gary C. Walker v. Pelican Publishing Company, Inc. et al***, No. CIVIL ACTION NO: 10-4389 (E.D.La. 07/21/2011); ***Coach, Inc., et al v. Shanghai Boutique, et al***, No. H-10-4693 (S.D.Tex. 04/07/2011).)

**THE VENUE IS PROPER**

16. RSMo. § 508.010 (14) provides that "A plaintiff is considered first injured where the trauma or exposure occurred rather than where symptoms are first manifested." In an action for defamation, proper venue lies in the county

where the "cause of action accrued"; the cause of action is deemed to have accrued in the county in which the defamation was first published, § 508.101(6) ***State ex rel. Cozean v. Meyer***, 449 S.W.2d 377, 379 (Mo.App. 1969); see note, 41 Mo.L.Rev. 199, 212-213 (1976).

> In this state, it is well settled that in an action for defamation, the cause of action accrued in the county in which the defamation was first published. ***Houston v. Pulitzer Pub. Co.***, 155 S.W. at 1068; ***Jones v. Pulitzer Pub. Co.***, 256 Mo. 57, 165 S.W. 304 (1914); ***Davidson v. Pulitzer Pub. Co.***, 178 S.W. 68 (Mo. 1915); ***McClung v. Pulitzer Pub. Co.***, 279 Mo. 370, 214 S.W. 193 (banc 1919); ***Litzinger v. Pulitzer Publishing Company***, 356 S.W. at 84. cert. denied, 374 U.S. 831, 83 S.Ct. 1872, 10 L.Ed.2d 1053 (1963); See annot. 37 A.L.R. 908, 148 A.L.R. 477, 50 Am.Jur.2d, ***Libel and Slander, Venue***, § 387, p. 909. (***STATE EX REL. JOHN M. ALLEN v. HONORABLE CHARLES V. BARKER***, 1979.MO.201, 581 S.W.2d 818 (03/13/79).)

17. In this action, this is Missouri. This is reflected in the VERIFIED COMPLAINT in paragraphs 78-83. This is the first date cited in the VERIFIED COMPLAINT for the commission of a tort:

> 78. On or about February 20, 2013, Overstreet began communicating to the Plaintiff's supporters that she had been "banned from Lawless America."
> 79. Banning refers to a Facebook procedure that denies someone any access to a Facebook page.
> 80. This claim that she had been banned was false. Overstreet had no information to indicate that her statements were true.
> 81. Brian Long received a Facebook message from the account of Overstreet indicating that she had been banned by the Plaintiff.
> 82. Overstreet denied that she had sent such a message.

83. Overstreet has been active in defamation, harassment, and libel directed at the Plaintiff.

18. RSMo. § 508.010 (8) provides that "In any action for defamation or for invasion of privacy, the plaintiff shall be considered first injured in the county in which the defamation or invasion was first published." In this action, there is defamation, and the county where the defamation was first published is Lafayette County Missouri. DEFENDANT OVERSTREET posted libelous, slanderous, false, defamatory comments from Lexington County Missouri.

19. RSMo. § 508.010 (4) provides "Notwithstanding any other provision of law, in all actions in which there is any count alleging a tort and in which the plaintiff was first injured in the state of Missouri, venue shall be in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in the action." In this action, there is defamation, and the county where the defamation was first published is Lafayette County Missouri.

## PERSONAL JURISDICTION EXISTS FOR DEFENDANT SUPANICH

20. As the number of John Doe Defendants should indicate, this matter is about a conspiracy and cyberstalking by a large number of people. The

VERIFIED COMPLAINT indicates this by saying this in the John Doe Parties paragraph 10: "All of the Defendants may be jointly referred to as 'Defendants' or 'Stalkers.'"

21. The elements for civil conspiracy under Missouri law include: (1) Two or more people; (2) an object to be accomplished; (3) a meeting of minds on the object or course of action; (4) one or more unlawful overt acts; and (5) damages. *Dickey v. Johnson*, 532 S.W.2d 487, 502 (Mo. Ct. App. 1975). ***State Farm Mutual Automobile Insurance Co. v. Weber***, 767 S.W.2d 336, 338 (Mo.App.1989); ***Mackey v. Mackey***, 914 S.W.2d 48, 50 (Mo.App.1996); Sequa Corp. v. Cooper, 128 S.W.3d 69, 76 (Mo. Ct. App. 2003).

> A civil conspiracy is an agreement between two or more persons to perform an unlawful act, or to use unlawful means to do an act which is lawful. ***Mark VII, Inc. v. Barthol***, 926 S.W.2d 128, 131 (Mo.App.1996).

22. A conspiracy existed. The VERIFIED COMPLAINT identifies three of the people and indicates there may be many more. (See VERIFIED COMPLAINT, paragraphs 7, 8, 9, 10, and 226-230:

> COUNT V – CONSPIRACY TO COMMIT DEFAMATION
>
> 226. Defendants conspired to defame the Plaintiff.
> 227. Defendants formed and operated the conspiracy.
> 228. Damage resulted to the Plaintiff from acts done in furtherance of the common design.

229. There was an agreement between two or more persons with the intent to commit an unlawful act.
230. Unlawful acts were committed.

23. DEFENDANT SUPANICH was a member of the conspiracy with DEFEDANT ALLIE OVERSTREET and probably others. The object to be accomplished was to defame, libel, slander, harass, cyberstalk, falsely charge the PLAINTIFF with felonies, commit perjury in court before Judge John Frerking, and damage the PLAINTIFF. Evidence shows that DEFENDANT SUPANICH and DEFENDANT OVERSTREET had a meeting of the minds and actively worked together toward this objective. (See VERIFIED COMPLAINT paragraphs 116-198, 202-205; especially note paragraphs 202, 204, 205, 115, 118, 133, 138, 139, 145, and 191.) Multiple overt acts were committed. (See VERIFIED COMPLAINT paragraphs 116-198; 202-205.) A substantial act or substantial effect from the conspiracy occurred in Missouri. (See VERIFIED COMPLAINT paragraphs 116-198; 202-205.) DEFENDANT SUPANICH knew of the acts to be committed in Missouri and the impact in Missouri of acts done elsewhere in furtherance of the conspiracy. The act in, and effect on, Missouri was a direct and foreseeable result of the conduct in furtherance of the conspiracy. VERIFIED COMPLAINT, paragraph 8 states: "Defendant Mark Supanich ('Supanich') is the boyfriend of Overstreet...."

24. Jurisdiction over an individual may be appropriate based on the actions of other defendants involved in a civil conspiracy when there is clear jurisdiction over those other parties. It is undisputed that DEFENDANT OVERSTREET lives in Lexington County Missouri, and the PLAINTIFF has presented that DEFENDANT OVERSTREET has committed torts in Lexington County Missouri. (See paragraph 7 of DEFENDANT OVERSTREET'S ANSWER TO PLAINTIFF'S ORIGINAL VERIFIED COMPLAINT.)

25. In deciding whether to exercise personal jurisdiction over a non-resident defendant under the conspiracy theory, many courts cite to principles first enumerated in ***Gemini Enterprises, Inc. v. WFMY Television Corp.***, 470 F. Supp. 559 (D. N. C. 1979). The ***Gemini*** court stated that:

> "while the mere presence of a conspiracy within the forum state is not sufficient to permit personal jurisdiction over co-conspirators, certain additional connections between the conspiracy and the forum state will support an exercise of jurisdiction. Id. at 564. The "additional connections exist where substantial acts in furtherance of the conspiracy were performed in the forum state and the co-conspirators knew or should have known that acts would be performed in the forum state." Id.

26. Jurisdiction need not be proved by a preponderance of the evidence until trial or until the court holds an evidentiary hearing.

> ***Epps v. Stewart Info. Servs. Corp.***, 327 F.3d 642, 642 (8th Cir. 2003). To defeat a Motion to dismiss for lack of personal jurisdiction, the nonmoving party need only make a prima facie showing of jurisdiction. ***Watlow Elec.***

***Mfg. Co. v. Patch Rubber Co.***, 838 F.2d 999, 1000 (8th Cir. 1988); ***Falkirk Min. Co. v. Japan Steel Works, Ltd.***, 906 F.2d 369, 373 (8th Cir. 1990). The district court must consider the facts contained in the pleadings and affidavits in the light most favorable to the nonmoving party, ***Watlow Elec. Mfg.***, 838 F.2d At 1000, And resolve all factual conflicts in favor of that party. ***Lakin v. Prudential Secs., Inc.***, 348 F.3d 704, 706 (8th Cir. 2003).

27. Telephone and e-mail communications between parties have been held to form a sufficient basis for personal jurisdiction, ***Products Plus, Inc. v. Clean Green, Inc.***, 112 S.W.3d 120, 125 (Mo. Ct. App. 2003).

28. The PLAINTIFF is quite confident that discovery will reveal significant phone calls, emails, and Facebook messages between DEFENDANT SUPANICH and DEFENDANT OVERSTREET.

Under Missouri law, commission of a tortious extraterritorial act having consequences in Missouri is sufficient to invoke tortious long-arm jurisdiction." ***Vanliner v. All Risk Services, Ltd.***, 990 F.Supp.1145. 1150 (E.D.Mo.1997). Because jurisdiction is based on whether or not a tort was committed, the "plaintiffs must make a prima facie showing that defendant has in fact committed the tort alleged in the complaint." ***Peabody Holding Co.***, 808 F.Supp. at 1433. This requires more than a mere allegation that the defendant committed a tort; facts must be alleged that could satisfy the elements of the tort. Id. To establish a prima facie case for tortious interference with a contract, the plaintiff must plead facts satisfying these elements: (1) a contract...; (2) defendant's knowledge of the contract...; (3) intentional interference by the defendant inducing or causing a breach of the contract...; (4) absence of justification; and (5) damages resulting from defendant's conduct." Id.

The principles of personal jurisdiction under the Due Process Clause are well established. Jurisdiction is appropriate where a defendant has sufficient "minimum contacts" with the forum state that are more than random.

fortuitous, or attenuated, such that summoning the defendant would not offend traditional notions of fairplay and substantial justice. ***Digi-Tel Holdings, Inc. v. Proteq Telecommunications (PTE) Ltd.***, 89F.3d [519,] 522 [(8thCir.1996)] (citing ***Burger King Corp. v. Rudzewicz***, 471 U.S. 462, 475...(1985); ***Int'l Shoe Co. v. Washington***, 326 U.S. 310, 316...(1945); and ***Milliken v. Meyer***, 311 U.S. 457, 463. . . (1940)). The central question is whether a defendant has purposefully availed itself of the privilege of conducting activities in the forum state and should, therefore, reasonably anticipate being haled into court there. ***Burger King***, 471 U.S. at 475...; ***World-Wide Volkswagen Corp. v. Woodson***, 444 U.S. 286, 297...(1980). Minimum contacts must exist either at the time the cause of action arose, the time the suit is filed, or within a reasonable period of time immediately prior to the filing of the lawsuit. ***Clune v. Alimak AB***, 233 F.3d 538, 544 n.8 (8th Cir. 2000). With these principles in mind, [the court] look[s] at five distinct factors: (1) the nature and quality of the defendant's contacts with the forum state; (2) the quantity of contacts; (3) the relationship between the cause of action and the contacts; (4) the forum state's interest in providing a forum for its residents; and (5) the convenience of the parties. ***Digi-Tel***, 89 F.3d at 522-23. The first three factors are closely related and are of primary importance, while the last two factors are secondary. Id.at 523. ***Pecoraro v. Sky Ranch for Boys, Inc.***, 340 F.3d 558, 561-62 (8thCir.2003)
Mo. Section 506.500 provides: 1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any such acts: (1) **The transaction of any business within this state**; (2) **The making of any contract within this state**; (3) **The commission of a tortious act within this state**; (4) The ownership, use, or possession of any real estate situated in this state; (5) The contracting to insure any persons, property or risk located within this state at the time of contracting. [**emphasis added**.]

29. DEFENDANT SUPANICH has transacted business in Missouri.

Discovery will show that DEFENDANT SUPANICH had numerous contacts with

DEFENDANT OVERSTREET in Lafayette County Missouri in regard to working with Lawless America; contracting with Lawless America for Washington Families United, an organization that he has served as President, with DEFENDANT OVERSTREET; by serving as Montana State Coordinator for Lawless America and working with DEFENDANT OVERSTREET in that regard; and by arranging participation in Meet Me in DC. an event that he participated in, through the coordinator of that event, DEFENDANT OVERSTREET. And perhaps most important, DEFENDANT SUPANICH provided an affidavit for DEFENDANT OVERSTREET to file in Judge John Frerking's court, and he came to Lexington County Missouri to support DEFENDANT OVERSTREET in this tortious and criminal activity. (See VERIFIED COMPLAINT, paragraphs 202-205 and Exhibit 555.) The Court is also asked to take judicial notice of the transcript/recording in 13LF-CV00289, which provides that DEFENDANT SUPANICH came to Lexington County Missouri. The PLAINTIFF will show that DEFENDANT SUPANICH committed criminal acts and torts in so doing. DEFENDANT SUPANICH came to Lexington County Missouri to damage the PLAINTIFF with an outrageous lie hatched and pursued by DEFENDANT OVERSTREET and himself.

30. DEFENDANT SUPANICH has committed tortious acts in Missouri. DEFENDANT SUPANICH conspired with DEFENDANT OVERSTREET and perhaps others to defame the PLAINTIFF. DEFENDANT SUPANICH committed defamation of the PLAINTIFF and perjury in an affidavit that he provided to DEFENDANT OVERSTREET for use in Missouri. DEFENDANT SUPANICH participated in a criminal scheme by DEFENDANT OVERSTREET in which she lied to Judge John Frerking claiming that the PLAINTIFF had published his intent to kill her and a group of people. DEFENDANT SUPANICH knew there was absolutely no proof of this, but he came to Missouri of his own free will in an attempt to have the PLAINTIFF be judged guilty of being a would-be mass murderer. PLAINTIFF'S cause of action is the result of a conspiracy between DEFENDANT SUPANICH and DEFENDANT OVERSTREET and the defamation, invasion of privacy, libel, slander, cyberstalking, and more that followed.

31. DEFENDANT SUPANICH has sufficient contacts with Missouri that it would not offend due process to compel him to defend himself in Missouri courts with respect to the underlying cause.

> The Court in ***State ex rel. Deere & Co. v. Pinnell***, 454 S.W.2d 889, 892 (Mo. banc 1970), declared that, in enacting § 506.500, "the ultimate objective was to extend the jurisdiction of the courts of this state over non-

resident defendants to that extent permissible under the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States." ***Accord State ex inf. Danforth v. Reader's Digest Association, Inc.***, 527 S.W.2d 355, 358 (Mo. banc 1975); ***M & D Enterprises, Inc. v. Fournie***, 600 S.W.2d 64, 68 (Mo.App. 1980). Pursuant to this objective, Missouri courts have interpreted the words "transaction of any business within this state" or "commission of a tortious act within this state" broadly so as not to deny jurisdiction under § 506.500 in situations in which the due process clause would permit the assertion of personal jurisdiction. ***Simpson v. Dycon International, Inc.*** 618 S.W.2d 455 (Mo.App. 1981); ***State ex rel. Caine v. Richardson***, 600 S.W.2d 82 (Mo. App. 1980); ***State ex rel. Farmland Industries, Inc.***, 560 S.W.2d 60 (Mo.App. 1977); ***State ex rel. Peoples Bank of Bloomington v. Stussie***, 536 S.W.2d 934 (Mo.App. 1976); ***Ponder v. Aamco Automatic Transmission, Inc.***, 536 S.W.2d 888 (Mo.App. 1976). See also ***Connelly v. Uniroyal, Inc.***, 389 N.E.2d 155, 158-60 (Ill. 1979). cert. denied, appeal dismissed, ***Uniroyal Englebert Belgique, S.A. v. Connelly***, 444 U.S. 1060 (1980); ***Marquette National Bank v. Norris***, 270 N.W.2d 290, 294-95 (Minn. 1978).

32. DEFENDANT SUPANICH did not provide affidavits to support any of his claims, and any statements in his motion that might be considered "facts" must be disregarded by the Court.

Our inquiry is limited to whether the exercise of personal jurisdiction over the defendant comports with the requirements imposed by the due process clause of the Fourteenth Amendment to the United States Constitution. The proper focus for analyzing the sufficiency of the defendant's contacts with the forum state is whether the contacts represent an effort by the defendant to purposefully "avail himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." ***Hanson v. Denckla***, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L. Ed. 2d 1283 (1958); see also ***Peabody Holding Co., Inc. v. Costain Group PLC***, 808 F. Supp. 1425, 1436 (E.D. Mo. 1992).

A defendant must have certain minimum contacts with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial Justice." ***International Shoe Co. v. Washington***, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945). This "minimum contacts" test is not susceptible to mechanical application; rather, "the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present." ***Kulko v. Superior Court of California***, 436 U.S. 84, 92, 98 S. Ct. 1690, 1697, 56 L. Ed. 2d 132, 141 (1978) (citing Hanson, 357 U.S. at 246, 78 S. Ct. at 1235, 2 L. Ed. 2d at 1293 (1958)); see also ***Burger King Corp. v. Rudzewicz***, 471 U.S. 462, 485-86, 105 S. Ct. 2174, 2189, 85 L. Ed. 2d 528, 549-50 (1985). The defendant's contacts with the forum state also must be purposeful and such that the defendant "should reasonably anticipate being hauled into court there." ***World-Wide Volkswagen Corp. v. Wo***odson, 444 U.S. 286, 297, 100 S. Ct. 559, 567, 62 L. Ed. 2d 490, 501 (1980); see also ***Hanson***, 357 U.S. at 253, 78 S. Ct. at 1240. In reviewing minimum contacts to satisfy the due process requirements, a court focuses on the relationship among the defendant, the forum, and the litigation. ***Shaffer v. Heitner***, 433 U.S. 186, 204, 97 S. Ct. 2569, 2579-80, 53 L. Ed. 2d 683 (1977).

We are concerned with "traditional notions of fair play and substantial Justice." ***William Ranni Assocs.***, 742 S.W.2d at 137. Factors to be considered in the due process analysis are: (1) the nature and quality of the contacts with the forum state, (2) the quantity of the contacts with the forum state, (3) the relation of the cause of action to the contacts, and of secondary importance, (4) the interest of the forum state in providing a forum for its residents, and (5) the convenience to the parties. ***Mead v. Conn***, 845 S.W.2d 109, 112 (Mo. App. 1993).

33. When a defendant raises the issue of lack of personal jurisdiction in a motion to dismiss, the plaintiff has the burden of making a prima facie showing that the trial court has personal jurisdiction over defendant. The plaintiff must show that the defendant engaged in one of the acts listed in Missouri's long arm

statute and that sufficient minimum contacts with Missouri exist to justify the exercise of jurisdiction. ***Medicine Shoppe Int'l v. J-Pral Corp.***, 662 S.W.2d 263, 268, 271 (Mo. App. 1983).

34. DEFENDANT SUPANICH has engaged in three of the acts listed in Missouri's long-arm statute, and this Court does have personal jurisdiction.

35. DEFENDANT SUPANICH took acts in filing an affidavit in 13LF-CV00289 and traveling to Missouri to testify in that matter. He was not subpoenaed; he made the decision to come and assist DEFENDANT OVERSTREET in her criminal attempt to obtain a protective order against the PLAINTIFF on outrageous, false allegations that she swore were true.

> It is essential that defendant take some act by which it "'purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws.'" Id. at 137-38 (quoting ***Hanson v. Denckla***, 357 U.S. 235, 253, 78 S. Ct. 1228, 1240, 2 L.Ed.2d 1283, 1298 (1958); ***State ex rel. William Ranni Associates***, 742 S.W.2d at 137-38 (citing ***Hanson v. Denckla***, 357 U.S. 235, 253, 78 S.Ct. 1228).

36. The commission of a tortious act within this state § 506.500.1 (3). Section 506.500 is construed "to extend the jurisdiction of the courts of this state over nonresident defendants to that extent permissible under the Due Process clause." ***State ex rel. Deere***, 454 S.W.2d at 892. "[E]xtraterritorial acts that produce consequences in the state," such as fraud, are subsumed under the tortious

act section of the long-arm statute. ***Longshore v. Norville***, 93 S.W.3d 746, 752 (Mo. App. 2002); ***Schwartz & Assocs. v. Elite Line, Inc.***, 751 F. Supp. 1366, 1369 (E.D. Mo. 1990) (allegation of extraterritorial tortious act that yields consequences in state is "sufficient to support the exercise of personal jurisdiction under the Missouri long-arm statute").

37. DEFENDANT SUPANICH sent false and misleading documents to Missouri making him subject to jurisdiction here for claims arising out of that act. (See ***Bryant v. Smith Interior,*** 310 S.W.3d 227 (Mo. 03/09/2010).)

38. Numerous cases from other jurisdictions have held that the sending of fraudulent documents into a state constitutes a purposeful availment of the privilege of conducting activities within the forum state and provides the minimum contacts necessary to support personal jurisdiction in that state when the claim arises out of those contacts, as it does here. Strikingly similar in relevant respects is ***Murphy v. Erwin-Wasey, Inc.***, 460 F.2d 661 (1st Cir. 1972)

> Where a defendant knowingly sends into a state a false statement, intending that it should there be relied upon to the injury of a resident of that state, he has, for jurisdictional purposes, acted within that state. The element of intent also persuades us that there can be no constitutional objection to Massachusetts asserting jurisdiction over the out-of-state sender of a fraudulent misrepresentation, for such a sender has thereby "purposefully avail [ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." ***Hanson v. Denckla***, 357 U.S. 235, 253, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958).

39. In ***Oriental Trading Co. v. Firetti***, 236 F.3d 938, 941-42 (8th Cir. 2001), defendant corporate officers made telephone calls and sent faxes into Nebraska to convince the plaintiff to provide funds to pay estimated duties, but then refused to refund these sums after United States Customs declared there would be no duties.

> The Eighth Circuit held that by "purposely directing their fraudulent communications at residents of Nebraska, the defendants should have realized that the brunt of the harm would be felt there. and they should have reasonably anticipated being haled into court there." Id. at 943; accord, ***Lewis v. Fresne***, 252 F.3d 352, 359 (5th Cir. 2001) ("The 'actual content' of [the defendants'] communications to [the plaintiff] shows purposeful availment of the benefits and protections of Texas law"); ***Lebel v. Everglades Marina, Inc.***, 558 A.2d 1252, 1257 (N.J. 1989) ("In this case, defendant's alleged phone calls to New Jersey and use of the mails to solicit the contract would satisfy the minimum-contacts requirement"); ***Shrout v. Thorsen***, 470 So.2d 1222, 1226 (Ala. 1985).

40. The DEFENDANTS made false statements that they knew were false, and they made those false statements to damage the PLAINTIFF. The DEFENDANTS had a duty to not libel, slander, defame, harass, stalk, invade the privacy, or conspire with others to damage the PLAINTIFF, and they did all of the above. The DEFENDANTS had a duty to protect PLAINTIFF from injury. The DEFENDANTS failed to protect the PLAINTIFF. The PLAINTIFF was injured as

a result. The DEFENDANTS have an obligation to abide by the law, and she failed to do so. The PLAINTIFF'S injuries were caused by the DEFENDANTS.

> "In appraising the sufficiency of the complaint we follow... the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." ***Conley v. Gibson***, 355 U.S. 41 at 45-46, 78 S.Ct. 99 at 100-101, 2 LED.2d 80 (1957); as cited in ***Kush v. Rutledge***, 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983)

41. DEFENDANT SUPANICH states in his so-called MOTION TO DISMISS that he is joining in DEFENDANT OVERSTREET'S MOTION TO DISMISS. The PLAINTIFF'S RESPONSE TO DEFENDANT OVERSTREET'S MOTION TO DISMISS and the PLAINTIFF'S VERIFIED COMPLAINT and all amendments and proposed amendments to the VERIFIED COMPLAINT are referenced and incorporated herein as if attached hereto.

42. WHEREFORE, PLAINTIFF prays that this Court enter an order denying the MOTION TO DISMISS BY DEFENDANT MARK SUPANICH; and grant such other relief as the Court deems appropriate.

Submitted this 10th day of July, 2013,

**William M. Windsor**
514 America's Way #4841, Box Elder, SD 57719-7600
Email: nobodies@att.net, Phone: 770-578-1094, Fax: 770-234-4106

CASE NO. 13LF-CV00461

| | | |
|---|---|---|
| William M. Windsor | § | IN THE CIRCUIT COURT |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | |
| | § | 15th JUDICIAL CIRCUIT |
| Allie Loraine Yager Overstreet, | § | |
| Mark Supanich, Brenda Williamson | § | |
| And John Does 1-1000, | § | |
| | § | |
| Defendants | § | LAFAYETTE COUNTY, MISSOURI |

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing by delivering a copy

by email to:

**Allie Loraine Yager Overstreet** – 1208 N Main, Higginsville, Missouri 64037 – loverstreet@yahoo.com and mjoc@workingforjustice.com
**Brenda Williamson** -- 210 Chestnut – Apartment A, Belton, MO 64012 -- brendaawilliamson@gmail.com
**Mark Supanich** -- 1826 Lucky Strike Road, Helena, Montana 59602 -- markamw@yahoo.com

Submitted this 10th day of July, 2013,

William M. Windsor

**William M. Windsor**
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