

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION**

GLEN K. ALLEN,

Plaintiff,

v.

**HEIDI BEIRICH, MARK POTOK,
and THE SOUTHERN POVERTY
LAW CENTER, INC.**

Defendants

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CIVIL ACTION NO. CCB 18-3781

HON. CATHERINE C. BLAKE

**PLAINTIFF GLEN K. ALLEN’S MEMORANDUM IN OPPOSITION
TO THE MOTION TO DISMISS FILED BY DEFENDANT MARK POTOK**

In accordance with FRCP 7 and Local Rule 105, Plaintiff Glen K. Allen submits this memorandum in opposition to the motion to dismiss filed by Defendant Mark Potok.

PRELIMINARY STATEMENT AND BACKGROUND

Defendant Potok is named in four of Allen’s claims, namely, Count II (RICO – Section 1962(c)); Count III (RICO – Section 1962(d)); Count VIII (defamation); and Count IX (Aiding and Abetting Breach of Contract). Potok has filed a motion to dismiss on grounds that this Court lacks personal jurisdiction over him. Attached to Potok’s supporting memorandum is a two page affidavit in which he denies meaningful contacts with Maryland. Potok’s memorandum, however, does not discuss or even mention the law, settled in the Fourth Circuit, that the RICO statute provides for nationwide service of process and that, accordingly, traditional minimum contacts personal jurisdiction analysis is unnecessary and inappropriate. Moreover, where a RICO claim that is at least colorable has been filed the Court may take pendent personal

jurisdiction over a plaintiff's non-RICO claims. The only limitation is the Due Process Clause of the Fifth Amendment, which applies only in extraordinary circumstances not present here.

Potok's motion, therefore, must be denied.

ARGUMENT

The law in the Fourth Circuit regarding the RICO statute and personal jurisdiction was summarized by this Court in *Swarey v. Desert Capital REIT, Inc.*, 2012 WL 4208057 (D. Md. Sep. 20, 2012). As the Court there noted (*id.* at *7-8), when personal jurisdiction over a nonresident defendant is challenged by a Rule 12(b)(2) motion, if jurisdiction turns on disputed facts, the challenge may be resolved after a separate evidentiary hearing, or the ruling may be deferred pending the introduction of evidence at trial relevant to the jurisdictional question. *See Combs v. Bakker*, 886 F.2d 673, 676 (4th Cir.1989). Where a ruling is issued without conducting an evidentiary hearing and based solely on the complaint, affidavits, and discovery materials, "the plaintiff need only make a prima facie showing of personal jurisdiction." *Carefirst of Md., Inc. v. Carefirst Pregnancy Ctrs., Inc.*, 334 F.3d 390, 396 (4th Cir. 2003). In deciding whether the plaintiff has proved a prima facie case, all reasonable inferences arising from the proof must be drawn in favor of the plaintiff, and all factual disputes must be resolved in his or her favor. *Mylan Labs., Inc. v. Akzo, N.V.*, 2 F.3d 56, 60 (4th Cir.1993).

As the *Swarey* decision also noted, under FRCP Rules 4(k)(1)(A) and (C) a federal court may exercise jurisdiction over a defendant's person in the manner provided by state law or when otherwise authorized by federal statute. In this case, as with the plaintiffs in *Swarey*, Allen asserts that personal jurisdiction is proper based on both the federal RICO statute and the Maryland long-arm statute. Section 1965(d) of RICO provides that "[a]ll other process in any action or proceeding under this chapter may be served on any person in any judicial district in

which such person resides, is found, has an agent, or transacts his affairs.” The Fourth Circuit has construed section 1965(d) as “authoriz[ing] nationwide service of process and, thus, the exercise of personal jurisdiction in any district court.” *D’Addario v. Geller*, 264 F.Supp.2d 367, 386 (E.D. Va. 2003) (citing *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 671, 626 (4th Cir. 1997)).

Because RICO thus provides a basis for exercising personal jurisdiction over Potok and the other SPLC Defendants, making it permissible to assert pendent personal jurisdiction also as to Allen’s state law claims at the threshold of this litigation, the Maryland long-arm statute need not be reached. *See, e.g., Sadighi v. Daghighfekr*, 36 F.Supp.2d 267, 271 (D.S.C.1999) (declining to reach the “traditional personal jurisdiction analysis” where jurisdiction was proper under RICO).

Hence, service of process on a RICO defendant in a judicial district where that defendant resides establishes personal jurisdiction. Potok was so served. He can defeat personal jurisdiction only by showing the due process would be violated or that Allen’s RICO claim is not even colorable. *Swarey*, 2012 WL 4208057 at *7. Because a federal statute confers personal jurisdiction in this case, the Due Process Clause of the Fifth Amendment—rather than that of the Fourteenth Amendment—applies to protect “the liberty interests of [the defendant] against unfair burden and inconvenience.” *ESAB Grp.*, 126 F.3d at 626. Where a defendant is located within the United States, “it is only in highly unusual cases that inconvenience will rise to a level of constitutional concern.” *id.* at 627; *see also D’Addario*, 264 F.Supp.2d at 387 (“The burden is on the defendant to demonstrate that the assertion of jurisdiction in the forum will make litigation so gravely difficult and inconvenient that he unfairly is at a severe disadvantage in comparison to his opponent.”) (internal quotation marks omitted).

Exercising personal jurisdiction over Potok manifestly comports with due process. His resume, available online here: <https://www.markpotok.net/resume-page> indicates that he has

spoken in Washington, D.C., 50 miles from Baltimore, ten times in the last 20 years and wrote a foreword for a book that was published in Lanham, Maryland in 2012, i.e., *Right-Wing Resurgence: How a Domestic Terrorist Threat is Being Ignored*, Daryl Johnson (Lanham, Maryland: Rowman & Littlefield Publishers, 2012). The law firm representing him in this litigation, Ballad Spahr, is a large D.C. – based firm that is also representing the other SPLC Defendants. Potok has not shown and cannot show that litigating in Maryland “would be so extremely inconvenient or so unfair as to outweigh the Congressional policy of permitting the exercise of personal jurisdiction pursuant to RICO’s nationwide service of process provisions.” Sadighi, 36 F.Supp.2d at 274 (citing *ESAB Grp.*, 126 F.3d at 626).

Potok also cannot demonstrate that Allen’s RICO claim is wholly without color. A RICO claim is without color where it is “insubstantial, implausible, ... or otherwise devoid of merit.” Sadighi, 36 F.Supp.2d at 271. By contrast, a RICO claim is colorable “if it is arguable and nonfrivolous, whether or not it would succeed on the merits.” *Id.* (internal quotation marks and citations omitted). Allen’s complaint and his opposition to the SPLC Defendants’ motion to dismiss show that his RICO claims are well-founded factually and legally.

Thus, personal jurisdiction properly can be asserted over the Potok as to Allen’s RICO counts. It is also proper for the Court to exercise pendent personal jurisdiction in connection with Allen’s state law claims. When a federal statute authorizes nationwide service of process and the remaining state law claims arise from the same nucleus of operative facts, pendent personal jurisdiction may be exercised to adjudicate state claims that are properly within the court’s subject matter jurisdiction. *Swarey*, 2012 WL 4208057 at *8; *ESAB Grp.*, 126 F.3d at 627–28. Here, the state law claims asserted against Potok arise out of a common nucleus of operative fact. Thus, pendent personal jurisdiction is proper as to Allen’s state law claims, and a

separate personal jurisdiction analysis as to those claims need not be conducted. *See Sadighi*, 36 F.Supp.2d at 274–75. Potok’s motion to dismiss, accordingly, should be denied.

Alternatively, if the Court believes RICO nationwide jurisdiction inapplicable, Allen respectfully requests that he be allowed jurisdictional discovery. Potok’s affidavit is highly skeletal and conclusory. Pertinent facts that merit inquiry include Potok’s relationship with persons and organizations in Maryland, the Intelligence Project’s activities in Maryland, and his relationship with Defendant Beirich with regard to the decisions and actions of the Intelligence Project. *See, e.g., Beyond Systems, Inc. v. Keynetics, Inc.*, 422 F. Supp.2d 523, 530 (D. Md. 2006) (allowing jurisdictional discovery); *Burns & Russell Co of Baltimore v. Oldcastle, Inc.*, 166 F. Supp.2d 432, 442 (D. Md. 2001) (same).

CONCLUSION

For the reasons stated, Plaintiff Glen Allen requests that Defendant Mark Potok’s motion to dismiss be denied.

Respectfully submitted,

_____/s _____

Glen K. Allen, Bar No. 06150

_____/s _____

Fred C. Kelly, Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2019, I caused a true and correct copy of the foregoing Memorandum in Opposition to Defendant Mark Potok's Motion to Dismiss to be served via the court's Electronic Case Filing system on: Chad R. Bowman, Esq. and Elizabeth R. Connell, Esq., counsel for all defendants.

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Glen K Allen, Esq. and Pro Se