

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

GLEN K. ALLEN,

Plaintiff,

v.

HEIDI BEIRICH, *et al.*,

Defendants.

Case No.: 1:18-cv-03781-CCB

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
BY DEFENDANT MARK POTOK**

Defendant Mark Potok submits this Memorandum of Law in Support of his Motion to Dismiss Plaintiff Glen K. Allen’s Complaint and states as follows:

INTRODUCTION

This sprawling, nine-count lawsuit against the Alabama-based Southern Poverty Law Center (“SPLC”), its employee Heidi Beirich, and former employee Mark Potok, is premised almost entirely on the reporting and publication of an August 17, 2016 article (“the Article”) that allegedly caused damages to Allen. Compl. ¶ 76. Although Potok was employed as a Senior Fellow by the SPLC when the Article was published, he had no involvement in the investigation, drafting, editing or publishing of the Article. *See* Decl. of Mark Potok (“Potok Decl.”) ¶ 3.

Potok lives in Alabama and has no jurisdictionally relevant ties to Maryland. *Id.* ¶¶ 6-15. Potok is not subject to general jurisdiction in Maryland and, because he had no role preparing the Article at the center of this case, much less purposefully directing any activities toward Maryland with regard to it, he is not subject to specific jurisdiction in Maryland. Both Maryland law and

the Due Process Clause of the U.S. Constitution thus require that the claims against Potok be dismissed pursuant to Rule 12(b)(2) for lack of personal jurisdiction.

Alternately, Potok joins the arguments made in a contemporaneously filed SPLC motion to dismiss the Complaint under Rule 12(b)(6) because it fails to state a claim for which relief can be granted.

FACTUAL AND PROCEDURAL HISTORY

Potok hereby incorporates the background set forth in the SPLC Defendants' Memorandum of Law in Support of Motion to Dismiss, ECF Dkt. 9-1 ("Mem."), at 3-9, and sets forth below only a brief summary and the jurisdictionally relevant additional background.

I. The Parties

A. Plaintiff

Plaintiff Glen Allen is an attorney and a resident of Maryland, residing in Baltimore. His claims against Defendants arise from the SPLC's receipt and publication of information about Plaintiff's connections to and interactions with neo-Nazi or racist organizations.

B. Defendant Potok

Potok is a resident of Alabama. Potok Decl. ¶ 6. He does not own property in Maryland, has never lived in Maryland, and has no business dealings in Maryland. *Id.* ¶¶ 7-16. In August 2016, he was employed with the SPLC as a Senior Fellow, but he was not involved in the investigation, drafting, or editing of the Article. *Id.* ¶ 3. Potok is not currently employed by the SPLC. *Id.* ¶ 2.

C. The Challenged Publications

On August 17, 2016, the SPLC published the Article on its *Hatewatch* blog under the headline "Neo-nazi lawyer represents Baltimore suit over wrongful arrest and 19-year

imprisonment.” Compl. ¶ 76. The Article remains online at <https://www.splcenter.org/hatewatch/2016/08/17/neo-nazi-lawyer-represents-baltimore-suit-over-wrongful-arrest-and-19-year-imprisonment>. *Id.* ¶¶ 76, 181. SPLC also published a “hate map flyer” in 2017, which included a reference to Allen. *Id.* ¶ 113. Like the Article, Potok was not involved in the drafting, editing, or publication of the hate map flyer. *See* Potok Decl. ¶ 5.

D. Plaintiff’s Complaint

Allen filed this complaint on December 8, 2018, naming as defendants SPLC, Potok and Beirich. *See* Compl. The Complaint asserts nine claims and alleges that the conduct of the defendants caused him to suffer damages exceeding \$1,500,000, plus punitive damages. *See id.* at 81. Four of those nine counts are lodged against Potok: Counts II and III, which are RICO claims; Count VIII, for defamation; and Count IX, Aiding and Abetting Breach of Contract.

Count II includes conclusory allegations that the SPLC, “including Beirich, Potok, and others” formed a RICO enterprise known as the Intelligence Project. Compl. ¶ 138. It further alleges that the Intelligence Project and the SPLC, “through and by the leadership and management of Beirich and Potok,” knowingly received stolen property, *see id.* ¶ 143, engaged in commercial bribery of a fiduciary, *see id.* ¶ 144, and violated the mail fraud statute by executing a scheme to deprive the National Alliance of the services of Randolph Dilloway, a former accountant for the NA, *see id.* ¶ 145, by distributing hate maps falsely stating that Allen had “infiltrated” the Baltimore City Law Department, *see id.* ¶ 146, distributing publications intentionally inflating their “hate group” tallies, *see id.* ¶ 147, using a definition of “hate groups” at odds with its widely accepted connotation, *see id.* ¶ 148, publishing intentionally false statements about Maajid Nawaz, *see id.* ¶ 149, communicating false statements in an IRS Form 990 about its political campaign activities, *see id.* ¶ 150, and making numerous intentionally

false statements about Charles Murray, *see id.* ¶ 151. The Complaint points to paragraphs 34, 58-71, and 95-117 as providing the factual support for these conclusory allegations.

These factual allegations, however, fail to include any specific facts regarding Potok's personal involvement in the alleged bribery of Dilloway to steal private documents from the National Alliance, the delivery of those documents to the SPLC, or the SPLC's use of them in publishing the Article. Paragraphs 34 and 95-117 of the Complaint contain no mention of Potok at all. Paragraphs 58- 71 contain two unspecific references to Potok: one in paragraph 61, where it is alleged that the SPLC and the Intelligence Project, "including . . . Potok," knew these documents were stolen, and the other in paragraph 71, where it is alleged that "an article . . . published in the SPLC's Intelligence Project Intelligence Report (of which Potok was the editor in chief) on May 20, 2015, . . . presented a lurid, self-serving account of Diloway's [sic] theft of the confidential National Alliance documents." *See* Compl. ¶ 71. The complaint fails to include any other facts identifying when or how Potok allegedly participated in any conspiracy to bribe Dilloway to remove the documents from the National Alliance, came into possession of the documents, or had any involvement with the drafting and publishing of the Article.

Count III is similarly unspecific with regard to Potok's personal involvement in any of the alleged conduct by the SPLC related to the publishing of the Article. This count makes a formulaic assertion devoid of factual content that "Beirich . . . and Potok . . . conducted the affairs of the Intelligence Project RICO enterprise and the SPLC RICO enterprise through a pattern of racketeering activity. Inherent in Beirich's and Potok's relationships with these enterprises was dialogue, coordination collaboration, and agreement between Beirich and Potok as to the actions, policies, and values of the enterprises." *See* Compl. ¶ 156. The Complaint further asserts that "Beirich and Potok conspired with each other." *See id.* ¶ 157. No other facts

are included, or referred to, in support of these bald assertions. Moreover, none of these allegations refer to any conduct by Potok specifically directed towards, or in contact with, Maryland.

Count VII alleges that a “hate map” published in 2017 defamed Allen because, in a three sentence blurb, it implied that he “infiltrated” the Baltimore City Law Department, and otherwise implicitly accused him of “professional ethics violations and incompetence.” *See id.* ¶¶ 184-87.

Count IX alleges that Dilloway breached his confidentiality agreement by stealing thumb drives and transmitting them to Beirich, Potok and the SPLC; and by cooperating with Beirich, Potok and the SPLC in publishing the information in the stolen documents. *See id.* ¶¶ 194-195. The Complaint asserts that Beirich, Potok and the SPLC aided and abetted these breaches, but neither includes nor refers to any specific facts regarding when or how Potok allegedly accomplished such “aiding and abetting.” *See id.* ¶ 196.

ARGUMENT

Plaintiff’s efforts to force an out-of-state, former SPLC employee to defend reporting relating to Allen done by someone else cannot succeed because, under straightforward application of settled doctrine, Potok is not subject to this Court’s jurisdiction, and he should be dismissed from this case for that reason.

I. POTOK IS NOT SUBJECT TO PERSONAL JURISDICTION IN MARYLAND FOR CLAIMS ARISING FROM THE ARTICLE

A federal court sitting in diversity must engage in a two-step inquiry when considering a motion to dismiss for lack of personal jurisdiction over a non-resident defendant, to determine whether, “(1) an applicable state long-arm statute confers jurisdiction and (2) [whether] the assertion of that jurisdiction is consistent with constitutional due process.” *Gold v. Gold*, Civ. No. JKB-17-483, 2017 WL 2061480, at *2 (D. Md. May 15, 2017) (quoting *Perdue Foods LLC*

v. BRF S.A., 814 F.3d 185, 188 (4th Cir. 2016)). Because the Maryland long-arm statute is coextensive with the Due Process clause of the United States Constitution, “the statutory inquiry merges with [the] constitutional examination.” *Id.* However, the Maryland Court of Appeals has clarified that “it is still necessary to address the long-arm statute when analyzing personal jurisdiction.” *Cleaning Auth., Inc. v. Neubert*, 739 F. Supp. 2d 807, 810 (D. Md. 2010) (citing *Dring v. Sullivan*, 423 F. Supp. 2d 540, 545 (D. Md. 2006)). “In some instances, constitutional due process may be satisfied even though the long-arm statute is not.” *Id.* (citations omitted).

Personal jurisdiction can be either general or specific, depending on the relationship between the defendant and the forum state. A court will have general jurisdiction “where the defendant’s contacts with the forum are continuous, systematic and fairly extensive.” *Neubert*, 739 F. Supp. 2d at 812 (citing *Cole-Tuve, Inc., v. Am. Mach. Tools Corp.*, 342 F. Supp. 2d 362, 366 (D. Md. 2004)). Where there are insufficient contacts for general jurisdiction, the court may exercise specific jurisdiction if:

- (1) the defendant purposely directed its activities toward residents of Maryland or purposely availed itself of the privilege of conducting activities in the state;
- (2) the plaintiff’s cause of action arises out of or results from the defendant’s forum-related contacts; and
- (3) the forum’s exercise of personal jurisdiction in the case is reasonable, that is, consistent with traditional notions of fair play and substantial justice.

Id. at 812 (internal marks omitted). Maryland’s long-arm statute provides personal jurisdiction over any person who, “transacts any business or performs any character of work or service in Maryland or causes tortious injury in Maryland by an act or omission in Maryland.” *Gold*, 2017 WL 2061480, at *2 (internal marks omitted) (citing Md. Code Ann., Courts & Jud. Proc. § 6-103(b)).

The claims against Potok should be dismissed because exercising personal jurisdiction over him would not satisfy constitutional due process requirements. This is a necessary result of

the recent Supreme Court decision in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017). In that case, the Court made clear that specific jurisdiction can only arise from purposeful contact with the forum *arising from the conduct at issue in the claim*:

In order for a court to exercise specific jurisdiction over a claim, there must be an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State. When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's *unconnected* activities in the State.

Id. at 1781 (emphasis added) (alterations, internal marks and citations omitted); *see also Walden v. Fiore*, 571 U.S. 277, 290 (2014) (defendant's conduct must connect him to the forum).

Because the Complaint does not allege any actions by Potok in Maryland related to Allen, and because in fact there were none, Potok Decl. ¶¶ 3-5, as a matter of law he is not subject to specific jurisdiction in Maryland.

The result is the same by application of Maryland's long-arm statute. The statute provides:

- (b) A court may exercise personal jurisdiction over a person, who directly or by an agent:
 - (1) Transacts any business or performs any character of work or service in the State;
 - (2) Contracts to supply goods, food, services, or manufactured products in the State;
 - (3) Causes tortious injury in the State by an act or omission in the State;
 - (4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State;
 - (5) Has an interest in, uses, or possesses real property in the State; or
 - (6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation, or agreement located, executed, or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

Md. Code Ann., Cts. & Jud. Proc. § 6-103.

Potok has not engaged in any conduct that would subject him to personal jurisdiction under Maryland's long-arm statute. He does not transact business in Maryland, he does not contract to supply goods, food, services or manufactured products in Maryland, or to insure or act as a surety for any contract or obligation in Maryland, and he does not have an interest in or use or possess any real property in Maryland. *See* Potok Decl. ¶¶ 6-15. Plaintiff alleges that he has been tortuously harmed in Maryland, but he alleges that this harm occurred as a result of a publication issued by the SPLC, which Defendant had no personal involvement in reporting or publishing. *Id.* ¶¶ 3-4. Even if he had been involved, that would be insufficient without some purposeful contacts created by Potok with Maryland with a nexus to Allen. *Walden*, 571 U.S. at 287-88. Under these circumstances, the exercise of personal jurisdiction over Potok by this Court would not be consistent with traditional notions of fair play and substantial justice.

At bottom, the Complaint pleads no facts that would create any dispute of material jurisdictional fact, much less that might support personal jurisdiction over Defendant. Nor can it. Defendant should be dismissed.

II. EVEN WERE THIS COURT TO EXERCISE JURISDICTION OVER POTOK, ALLEN'S CLAIMS AGAINST HIM SHOULD BE DISMISSED

Even were this Court to exercise jurisdiction over Potok, such claims are properly dismissed on their merits for the reasons set forth in SPLC's separate motion to dismiss, which Potok joins in the alternative. *See* SPLC Defendants' Memorandum of Law in Support of Motion to Dismiss, ECF Dkt. 9-1.

CONCLUSION

For the foregoing reasons, Defendant Potok respectfully requests that the Court dismiss all claims against him for lack of personal jurisdiction or for failure to state a claim for which

relief can be granted as a matter of law, and grant such other relief as the Court deems just and proper.

Dated: March 4, 2019

Respectfully submitted,

/s/ Chad R. Bowman

Chad R. Bowman (Fed. Bar No. 18305)
Elisabeth R. Connell (Fed. Bar No. 19480)
BALLARD SPAHR LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
Phone: (202) 508-1120
Facsimile: (202) 661-2299
Email: bowmanchad@ballardspahr.com
connelle@ballardspahr.com

Counsel for Defendant Mark Potok