

APPENDIX

APPENDIX

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APPENDIX A

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

No. 81538

[Filed January 15, 2021]

RALPH LEWIS,)
Petitioner,)
vs.)
THE SECOND JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
IN AND FOR THE COUNTY OF WASHOE;)
AND THE HONORABLE SCOTT N.)
FREEMAN, DISTRICT JUDGE,)
Respondents,)
and)
POWER RESEARCH, INC.; AND)
WANDA DAVIDSON,)
Real Parties in Interest.)
)

ORDER DENYING PETITION

This original petition for a writ of prohibition challenges a district court order denying a motion to dismiss in a tort action. The underlying action arises out of a dispute between two corporations engaged in the business of fuel additives. Real parties in interest's (RPIs) first amended complaint alleged that petitioner, a former employee of RPI Power Research, Inc. (Power

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Research), formed a separate company, Newport Fuel Solutions, Inc. (Newport), to directly compete with Power Research after he was fired from Power Research. The complaint further alleges that petitioner induced key Power Research employees to breach their confidentiality and non-compete agreements by offering them ownership interest in Newport and then used information¹ obtained from these key employees to sell a product based on the “core chemistry” developed by Power Research at more competitive prices. RPIs allege that such actions violated a confidentiality and non-compete agreement petitioner signed as part of a divorce agreement between himself and Wanda Davidson, who owns Power Research. RPIs claim they lost business and clients as a result of petitioner’s actions.

The district court denied petitioner’s motion to dismiss for lack of personal jurisdiction, finding that as a Nevada owner, director, and officer purposely directing harm toward a Nevada corporation, petitioner was subject to personal jurisdiction in Nevada. It further found that petitioner should have reasonably anticipated being subject to personal jurisdiction in Nevada based on Nevada choice-of-law provisions in the confidentiality and non-compete agreements at issue. Petitioner now seeks a writ of prohibition, arguing that the district court acted in excess of its

¹ This information allegedly includes Power Research’s formulas and blending methods for its products, marketing strategies and analyses, sales tactics, as well as confidential information related to its customers, including information regarding pricing, contacts, and sale history that it stores in a confidential database.

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jurisdiction by denying his motion to dismiss and finding that he is subject to personal jurisdiction in Nevada.

“A writ of prohibition is available to arrest or remedy district court actions taken without or in excess of jurisdiction.” *Viega GmbH v. Eighth Judicial Dist. Court*, 130 Nev. 368, 373, 328 P.3d 1152, 1156 (2014). Writ relief is an extraordinary remedy, and this court typically exercises its discretion to consider a writ petition only when there is no plain, speedy, and adequate remedy in the ordinary course of law. *Id.* While an appeal is generally considered to be an adequate legal remedy precluding writ relief, *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004), the right to appeal is inadequate to correct an invalid exercise of personal jurisdiction, *Fulbright & Jaworski v. Eighth Judicial Dist. Court*, 131 Nev. 30, 35, 342 P.3d 997, 1001 (2015). Because petitioner challenges the district court’s ruling regarding personal jurisdiction, we elect to exercise our discretion and consider this writ petition.²

Petitioner argues that the district court does not have personal jurisdiction over him because neither he nor any of Power Research’s former employees have any contacts with or performed any work in Nevada, and none of the operative facts occurred in Nevada. He further argues that owning and operating a Nevada

² Because the district court has not yet entered a written order resolving RPIs’ pending motion for leave to file a second amended complaint, and because we reject this petition on other grounds, we need not address RPIs’ arguments regarding this issue.

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corporation is insufficient on its own to establish personal jurisdiction, and that his corporation being incorporated in Nevada had no bearing on the claims against him. Lastly, petitioner argues that the Nevada choice-of-law provisions are insufficient on their own to establish jurisdiction in the absence of minimum contacts.

Upon a challenge to personal jurisdiction, a plaintiff has the burden of establishing a *prima facie* showing of personal jurisdiction. *Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692, 857 P.2d 740, 743 (1993). In determining whether a *prima facie* showing has been made, the district court accepts properly supported proffers of evidence by a plaintiff as true and does not act as a fact finder. *Id.* at 693, 857 P.2d 744. “[W]hen factual disputes arise in a proceeding that challenges personal jurisdiction, those disputes must be resolved in favor of the plaintiff.” *Levinson v. Second Judicial Dist. Court*, 103 Nev. 404, 407, 742 P.2d 1024, 1026 (1987). “As a question of law, the district court’s determination of personal jurisdiction is reviewed *de novo*, even in the context of a writ petition.” *Viega GmbH*, 130 Nev. at 374, 328 P.3d at 1156.

“[S]pecific jurisdiction is proper only where the cause of action arises from the defendant’s contacts with the forum.” *Fulbright*, 131 Nev. at 37, 342 P.3d at 1002 (internal quotation marks omitted). In analyzing whether specific personal jurisdiction exists in a tort action, such as here, courts apply the “effects test” derived from *Calder v. Jones*, 465 U.S. 783 (1984), which considers whether the defendant “(1) committed an intentional act, (2) expressly aimed at the forum

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state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. 87, 91, 440 P.3d 645, 650 (2019) (quoting *Picot v. Weston*, 780 F.3d 1206, 1213-14 (9th Cir. 2015)). The proper focus of this test is “on the relationship between the defendant, the forum, and the litigation, and ‘the defendant’s suit-related conduct,’ which ‘must create a substantial connection with the forum.’” *Id.* at 92, 440 P.3d at 650 (quoting *Walden v. Fiore*, 571 U.S. 277, 283-84 (2014)).

We conclude that the district court correctly determined that real parties in interest have established a *prima facie* showing of personal jurisdiction under *Calder*. By incorporating Newport in Nevada and using an ownership interest in the company to induce employees from Power Research to breach their confidentiality and non-compete agreements, petitioner committed intentional acts expressly aimed at Nevada that caused harm that petitioner knew was likely to be suffered in the forum state. *See Tricarichi*, 135 Nev. at 91, 440 P.3d at 650; *see also Levinson*, 103 Nev. 407, 742 P.2d 1026 (noting that courts should resolve disputed facts resolved in favor of plaintiff on personal jurisdiction issues). And, while not dispositive on its own, the Power Research employees’ contracts all had Nevada choice-of-law provisions, and petitioner knew of the provisions because he signed them either on behalf of Power Research or as a witness during the time he was employed by the company. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 482 (1985) (holding that while choice-of-law provisions do not establish personal jurisdiction, they should not be ignored as part of

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personal jurisdictional analyses). This is dissimilar to cases finding no personal jurisdiction under the *Calder* test, as real parties in interest here are not petitioner's sole contact with the forum, *see, e.g., Walden v. Fiore*, 571 U.S. 277, 285 (2014) ("[T]he plaintiff cannot be the only link between the defendant and the forum. Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him."), and thus, petitioner is subject to personal jurisdiction in Nevada.

The district court improperly denied petitioner's motion to dismiss based on *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 282 P.3d 751 (2012) (concluding that an officer or director who intends to harm a Nevada corporation is subject to personal jurisdiction in Nevada), because petitioner was not sued in his capacity as an officer or director of Newport. However, for the reasons outlined above, we ultimately conclude that the district court did not err by denying the motion to dismiss. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason."). Accordingly, we

ORDER the petition DENIED.

/s/ Parraguirre, J.
Parraguirre

/s/ Stiglich, J.
Stiglich

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/s/ Silver, J.
Silver

cc: Hon. Scott N. Freeman, District Judge
Holley Driggs/Reno
Bohreer Law Firm PLLC
Holley Driggs/Las Vegas
Fennemore Craig P.C./Reno
Burford Perry, LLP
Washoe District Court Clerk

APPENDIX B

CODE: 3370

**IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

**Case No.: CV18-02401
Dept. No.: B9**

[Filed: May 1, 2020]

POWER RESEARCH, INC., A NEVADA)
CORPORATION; AND WANDA DAVIDSON,)
AN INDIVIDUAL,)
)
Plaintiffs,)
)
v.)
)
NEWPORT FUEL SOLUTIONS, INC., A)
NEVADA CORPORATION; AND)
RALPH LEWIS, AN INDIVUDAL,)
)
Defendant.)
)

**ORDER DENYING MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED COMPLAINT**

This matter came on for hearing February 26, 2020. At the time of the hearing, the Court was in receipt of Defendant RALPH LEWIS' (hereinafter "Lewis")

Motion to Dismiss Plaintiff's First Amended Complaint filed September 9, 2019. Plaintiffs POWER RESEARCH, INC., and WANDA DAVIDSON (hereinafter "PRI" and "Davidson") filed their *Opposition to Motion to Dismiss Plaintiff's First Amended Complaint* on October 3, 2019. Lewis thereafter filed a *Reply* on October 14, 2019. This motion was submitted to the Court for decision on October 14, 2019.

BACKGROUND

This matter involves a dispute between two corporations that engage in the business of manufacturing and selling fuel additives. Specifically, this matter arises (1) from an alleged tortious interference with Michael H., Kalliope H., and Tony Y.'s employment with PRI and (2) from an alleged tortious interference with the confidentiality and non-compete agreements between PRI and Michael H., Kalliope H., and Tony Y.

In 1985, Davidson formed Power Research Inc. ("PRI"). *Opp'n.* p. 2:26. On November 3, 1992, Davidson incorporated PRI as a Nevada for-profit corporation. *Id.* p. 2:28 and 3:1. In 1985, Davidson and Lewis married, and Lewis subsequently joined PRI as an employee. In 1986 and 2015 Lewis signed confidentiality and non-compete agreements which included a Nevada choice-of-law clause. *Id.* p. 3:1-4.

As part of his job responsibilities, Lewis had PRI's Sale Team, which included, Michael H., Kalliope H., and Tony Y., sign confidentiality and non-compete agreements. Each of the confidentiality and non-

compete agreements included a Nevada choice-of-law clause and Lewis signed each these agreements on behalf of PRI or as a witness. *Id.* p. 3:5-10.

Lewis was fired from PRI on August 29, 2016. *Id.* p. 3:10. In October 2017, Davidson and Lewis entered into an Agreement Incident to Divorce which adopted and extended his November 2015 confidentiality and non-compete agreement. *Id.* p. 4:4-14.

In early 2018, Lewis created a Nevada Corporation, Newport Fuel Solutions, Inc. (“Newport”). *Opp’n.* p. 2:2-3. Following the formation of Newport, Lewis began receiving confidential information from Michael H., Kalliope H., and Tony Y regarding PRI. All three PRI employees thereafter resigned from their positions at PRI and began to work for Newport. *Id.* p. 6:11-17 and 7:1-4.

In the initial Complaint, Davidson and PRI alleged claims of tortious interference with contracts, tortious interference with prospective economic advantage, trade secret violation, and unfair competition claims against Newport. Davidson and PRI then filed their First Amended Complaint (“FAC”), alleging the same claims, but added Lewis as a party to the instant suit.

Lewis’ Motion to Dismiss Plaintiff’s First Amended Complaint followed. Upon careful review of the record and pleadings, the Court DENIES Lewis’ Motion to Dismiss Plaintiffs First Amended Complaint.

STANDARD OF REVIEW

A plaintiff has a burden to produce evidence establishing “a *prima facie* showing of jurisdiction”

when a defendant challenges personal jurisdiction. *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 457 (2012). The Plaintiff bears the burden of proving that a defendant is subject to jurisdiction in accordance with Nevada's long-arm statute and principles of due process. *Tricarichi v. Coop. Rabobank, U.A.*, 135 Nev. Adv. Op. 11, 440 P.3d 645, 649 (2019). Pursuant to NRS 14.065(1), Nevada's long-arm statute permits a court to exercise personal jurisdiction over a nonresident defendant to the extent the exercise of jurisdiction does not violate constitutional due process.

Constitutional due process “requires ‘minimum contacts’ between the defendant and the forum state ‘such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Trump v. District Court*, 109 Nev. 687, 698 (1993). “[T]he defendant’s conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there.” *Id.*

Furthermore, “a district court can exercise personal jurisdiction over nonresident officers and directors who directly harm a Nevada Corporation.” *Consipio*, 128 Nev. at 457.

DISCUSSION

The issue before this Court is whether it has personal jurisdiction over Lewis. Davidson asserts the Court’s exercise of personal jurisdiction over Lewis is proper because Lewis has sufficient minimum contacts with Nevada and her claims arise from those contacts. However, Lewis contends no specific jurisdiction exists over him in Nevada because (1) the operative facts of

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the claim occurred outside of Nevada; (2) ownership in a Nevada Corporation does not confer jurisdiction; (3) the choice-of-law provisions do not confer jurisdiction; and (4) Newport's Nevada citizenship does not confer jurisdiction.

A court may exercise specific jurisdiction over a nonresident defendant where the cause of action "arises from the defendant's contacts with the forum." *Trump v. District Court*, 109 Nev. 687, 699. The Ninth Circuit established a three-part test to determine whether specific personal jurisdiction is appropriate:

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

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004). In contract actions, a plaintiff must show a defendant purposefully availed himself of the benefits and protections of the forum state's laws. *Id.* However, when specific jurisdiction is based upon a tort claim, the Nevada Supreme Court will look to the "effects test" outline in *Calder v. Jones*, 465 U.S. 783 (1984). Under Calder, a nonresident defendant is subject to personal jurisdiction based on intentional conduct committed outside of the forum that was

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calculated to cause injury to the plaintiff within the forum. *Id.* at 791. Calder requires that a defendant has “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

Davidson argues Lewis purposefully availed himself of conducting activities in Nevada by forming Newport and becoming an owner, officer, and director of the Nevada corporation. *Opp’n*. p. 10:15-19. Davidson further argues that Lewis used the stock in his Nevada corporation to induce Michael H., Kalliope H., and Tony Y. to terminate their employment with PRI in addition to violating their confidentiality and non-compete agreements. *Id.* p. 10:19-21. Davidson asserts Lewis’ tortious interference with the contractual and employment relationships of Michael H., Kalliope H., and Tony Y., was for the sole purpose of causing injury to a Nevada Corporation. *Id.* p. 10:21-24.

Lewis argues the claims at issue in this case did not occur in Nevada and as such, he cannot be subject to personal jurisdiction in this state. Specifically, Lewis asserts that Michael H., Kalliope H., and Tony Y. live in Greece and China. *Mot.* p. 6:24-26. Lewis contends that these individuals were “recruited/solicited/contacted” in Greece and China and none of them live, work or were ever contacted in the state of Nevada. *Id.* p. 6:27-28. Lewis further argues that the same is true for the claims relating to his contacts with customers. Lewis asserts that Newport sells to customers who are located in Greece and China, not Nevada, and

therefore, absent a Nevada nexus, no specific jurisdiction in Nevada exists. *Id.* p. 7:1-10. Lewis next argues the information pertaining to the trade secrets and proprietary information allegedly stolen, were not disclosed, used, modified or sold in Nevada. *Id.* p. 7:11-15. Lewis posits that as no Nevada nexus exists, there are no minimum contacts that subject him to jurisdiction in Nevada.

The court in *Consipio* reasoned that because Nevada corporations are Nevada citizens, purposefully directing harm toward a Nevada corporation establishes sufficient minimum contacts with Nevada for the exercise of personal jurisdiction. *Consipio Holding, BV v. Carlberg*, 128 Nev. 454, 459 (2012).

In this case, the facts as alleged, Lewis is the owner, officer and director of Newport, a Nevada corporation, whom purposefully directed harm toward another Nevada corporation. In his former role as vice president of PRI, Lewis obtained confidential trade secret information. Through the use of shares in Newport, Lewis induced PRI's employees to breach their own non-compete and confidentiality agreements with PRI. Therefore, this Court finds that Lewis established sufficient minimum contacts with Nevada for the exercise of personal jurisdiction through his role as an officer and director of Newport, and as a former employee of PRI.

Furthermore, this Court's exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice. When determining whether the exercise of personal jurisdiction is

reasonable the court looks to the following factors enumerated in *Consipio*:

(1) “the burden on the defendant” of defending an action in the foreign forum, (2) “the forum state’s interest in adjudicating the dispute,” (3) “the plaintiffs interest in obtaining convenient and effective relief,” (4) “the interstate judicial system’s interest in obtaining the most efficient resolution of controversies,” and (5) the “shared interest of the several States in furthering fundamental substantive social policies.”

Id. at 459. (quoting *Emetrio v. Clint Hurt and Assocs.*, 114 Nev. 1031, 1036-37 (1998)).

The Court finds (1) Lewis is already indirectly defending against Plaintiffs claims in this lawsuit as an owner, officer, and director of Newport; (2) the state of Nevada has an interest in protecting its corporate citizens in adjudicating these types of disputes; (3) Plaintiffs have a clear interest in obtaining convenient and effective relief in one forum; (4) the interstate judicial system has an interest in promoting judicial economy and having Plaintiffs claims heard in one forum; and (5) the dispute lies between two Nevada corporations and owners, officers and directors of those corporations, as such, there are no social policies that differ between the states of Nevada and California that would be negatively impacted by Nevada exercising personal jurisdiction in this case.

Moreover, the confidentiality and non-compete agreements that Lewis signed on his behalf, as a witness, and on behalf of PRI all contained a Nevada

choice-of-law provision. In *Trump v. Eighth Judicial Dist. Court of State of Nev. In and for County of Clark*, 109 Nev. 687 (1993), a trust agreement contained a Nevada choice-of-law clause. In creating a Nevada trust with a Nevada choice-of-law provision, the Court found that Trump should have reasonably anticipated being hauled into court in Nevada. *See Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir.1984), *cert. denied*, 471 U.S. 1066, 105 S.Ct. 2143, 85 L.Ed.2d 500 (1985).

Following that precedent, this Court finds after signing two of his own confidentiality and non-compete agreements and, signing in his role as Vice President of PRI, the confidentiality and non-compete agreements of Michael H., Kalliope H., and Tony Y., Lewis should have reasonably anticipated that he would be subject to personal jurisdiction in Nevada.

Accordingly, and good cause appearing, the Court's order is as follows:

IT IS HEREBY ORDERED that Defendants NEWPORT FUEL SOLUTIONS, INC., and RALPH LEWIS' *Motion to Dismiss Plaintiff's First Amended Complaint* is DENIED.

IT IS SO ORDERED.

DATED: This 1st day of May, 2020.

/s/
DISTRICT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 1st day of May, 2020, I deposited for mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:

[NONE]

Further, I certify that on the 1st day of May, 2020, I electronically filed the foregoing with the Clerk of the Court electronic filing system, which will send notice of electronic filing to the following:

JOHN TENNERT, ESQ. for POWER RESEARCH, INC. et al

CLARK VELLIS, ESQ. for NEWPORT FUEL SOLUTIONS, INC., RALPH LEWIS

JAMES PUZEY, ESQ. for NEWPORT FUEL SOLUTIONS, INC., RALPH LEWIS

/s/
Judicial Assistant

APPENDIX C

**IN THE SUPREME COURT OF THE
STATE OF NEVADA**

No. 81538

[Filed: April 5, 2021]

RALPH LEWIS,)
Petitioner,)
vs.)
THE SECOND JUDICIAL DISTRICT)
COURT OF THE STATE OF NEVADA,)
IN AND FOR THE COUNTY OF WASHOE;)
AND THE HONORABLE SCOTT N.)
FREEMAN, DISTRICT JUDGE,)
Respondents,)
and)
POWER RESEARCH, INC.; AND)
WANDA DAVIDSON,)
Real Parties in Interest.)
)

***ORDER DENYING EN BANC
RECONSIDERATION***

Having considered the petition on file herein, we have concluded that en banc reconsideration is not warranted. NRAP 40A. Accordingly, we

ORDER the petition DENIED.

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/s/ **Hardesty, C.J.**
Hardesty

/s/ Cadish, J. /s/ Silver, J.
Cadish Silver

/s/ Pickering, J.
Pickering

/s/ Herndon, J.
Herndon

cc: Hon. Scott N. Freeman, District Judge
Holley Driggs/Reno
Bohreer Law Firm PLLC
Holley Driggs/Las Vegas
Fennemore Craig P.C./Reno
Burford Perry, LLP
Washoe District Court Clerk