No. 16-

IN THE

Supreme Court of the United States

MONEYMUTUAL LLC, *Petitioner,*

v.

SCOTT RILLEY, ET AL., *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO
THE SUPREME COURT OF MINNESOTA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner MoneyMutual LLC operates an automated website that allows potential borrowers to electronically submit loan applications for consideration by independent third-party lenders. MoneyMutual is not a lender and is not a party to any loans, including the short-term "payday" loans that form the crux of Respondents' claims. MoneyMutual is not involved in setting loan terms and is not informed of whether a loan agreement is ultimately completed or the terms of any such agreement.

Respondents are four Minnesota residents who used MoneyMutual's website. The Minnesota Supreme Court held that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even in the absence of any proximate causal nexus between its electronic communications and the actual harm upon which Respondents base their claims: loan transactions between Respondents and third-party lenders, the terms of which allegedly violate Minnesota law. The Minnesota Supreme Court acknowledged that the state and federal courts have adopted conflicting legal standards for determining the requisite causal nexus to establish specific personal jurisdiction, and conflicting positions as to whether electronic communications, without more, can be sufficient "minimum contacts" for specific personal jurisdiction in a non-defamation, tort context.

The Question Presented is whether a proximate causal nexus between a defendant's forum contacts and a plaintiff's claim is required as part of the "relatedness" test for specific personal jurisdiction as

a matter of due process, and whether that standard is met by the electronic contacts here.

PARTIES TO THE PROCEEDING

Petitioner, defendant-appellant below, is MoneyMutual LLC. Respondents, plaintiffs-appellees below, are Scott Rilley, Michelle Kunza, Linda Gonzales, Michael Gonzales, and a putative class of all other similarly situated persons.

CORPORATE DISCLOSURE STATEMENT

MoneyMutual LLC is a Nevada limited liability company. Its sole member is Selling Source LLC. No publicly held corporation owns 10 percent or more of an interest in either MoneyMutual LLC or Selling Source LLC.

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CASES:

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OTHER AUTHORITIES:

Jonathan Spencer Barnard, Note, *A Brave New Borderless World: Standardization Would End Decades of Inconsistency in Determining Proper Personal Jurisdiction in Cyberspace Cases*, 40 SEATTLE U. L. REV. 249 (2016) 34

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PETITION FOR A WRIT OF CERTIORARI

Petitioner MoneyMutual LLC ("MoneyMutual") respectfully petitions this Court for a writ of certiorari to review the judgment of the Supreme Court of Minnesota in this case.

OPINIONS BELOW

The opinion of the Minnesota Supreme Court (Pet. App. 1a) is reported at 884 N.W.2d 321 (2016). The opinion of the Minnesota Court of Appeals (Pet. App. 33a) is reported at 863 N.W.2d 789 (2015). The order and memorandum of the Minnesota District Court (Pet. App. 47a) are unreported.

JURISDICTION

The Minnesota Supreme Court issued its decision on August 24, 2016. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The Due Process Clause of the Fourteenth Amendment provides in relevant part "nor shall any state deprive any person of life, liberty, or property, without due process of law."

STATEMENT

The traditional principles of personal jurisdiction are familiar. The Due Process Clause of the Fourteenth Amendment prohibits a state court from exercising personal jurisdiction over a nonresident defendant unless that defendant has "minimum contacts" with the state and maintaining the lawsuit "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted). "Minimum contacts" exist when the

defendant "purposefully avails itself" of the privileges, benefits, and protections of the forum state, such that the defendant "should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985) (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *World–Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)).

To demonstrate "specific" personal jurisdiction, a plaintiff must demonstrate that the plaintiff's claims "arise out of or relate to" the defendant's contacts with the forum state. *Burger King*, 471 U.S. at 472 & n. 15 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011).

However, the precise nature of the requisite causal nexus between the plaintiff's claims and the defendant's forum contacts is uncertain. *What sort of tie* must the plaintiff's claims have to the defendant's contacts with the forum in order for a court to conclude that the plaintiff's claims "arise out of or relate to" the defendant's forum contacts? The lower courts have offered three different answers to this question, with some adopting a "proximate cause" standard, others a broader "but for" standard, and still others (including the Minnesota court below) a malleable "substantial connection" test. Only a proximate cause test supplies the necessary clarity and predictability to allow a defendant reasonably to anticipate its jurisdictional exposure based on its own actions.

This case represents an ideal vehicle for this Court to address a fundamental question of law and

to do so in the important and timely context of electronic communications in the Internet age.

1. Background.

MoneyMutual is a Nevada limited liability company. Pet. App. 59a. It has no employees or operations but exists only to maintain the *www.moneymutual.com* website. *Id.* at 59a-60a. It has no office, P.O. box, or telephone number in Minnesota, no employees or agents in Minnesota, no bank or financial accounts in Minnesota, and no real property in Minnesota. *Id.* at 60a. It is not a lender and has never been a party to any of Respondents' loans. *Id.* at 61a. It owns no interest in any lender, and no lender owns any interest in MoneyMutual. *Id.* Respondents have not alleged that MoneyMutual is a party to any loan transaction with them or the putative class, or that MoneyMutual is in privity with any of the parties to the subject loans.

Rather, MoneyMutual is a marketing and advertising "lead generator" and maintains its *www.moneymutual.com* website for that purpose. *Id.* at 59a-60a.[1] Individuals can use the website by submitting information to MoneyMutual and requesting that their application be transmitted to

[1] Lead generation is a widespread, indeed pervasive, marketing technique used across the spectrum of American business. It has grown exponentially with the dramatic expansion of e-commerce. *See* James B. Oldroyd, Kristina McElheran, & David Elkington, *The Short Life of Online Sales Leads*, HARVARD BUSINESS REVIEW, March 2011 ("Companies in financial services, automobiles, education, software, health care, professional services, and many other industries have increasingly turned to the internet to generate sales leads.") (available at https://hbr.org/2011/03/the-short-life-of-online-sales-leads).

prospective third-party lenders. *Id.* at 62a. Through its affiliate PartnerWeekly, MoneyMutual circulates the application in real-time to lenders who may (in their discretion) accept and pay MoneyMutual for a "lead." *Id.* at 62a-63a. MoneyMutual is compensated by lenders on the basis of such "leads" accepted, without regard for whether a loan is consummated and regardless of the terms of any loan. *Id.* at 63a. If a lender buys the "lead," MoneyMutual then emails the applicant to advise that a prospective lender is interested in discussing a loan with him or her. *Id.* at 62a. MoneyMutual provides the lender's contact phone and website information. *Id.*

Thereafter, the lender and the consumer may (at their respective discretion) enter into an entirely separate transaction in the form of a loan agreement. *Id.* at 62a-63a. MoneyMutual itself has nothing further to do with, or any knowledge of, any such loan transaction. *Id.* at 63a. It has no involvement in deciding whether the loan is offered to the consumer or in setting any of the terms of the loan. *Id.* It is not informed of whether a loan agreement is reached, the terms of any agreement, or whether the loan is repaid. *Id.*

2. The Decisions of the Minnesota District Court and Court of Appeals.

Respondents filed a putative class-action complaint alleging that MoneyMutual introduced respondents to "payday" lenders that were unlicensed in Minnesota. *Id.* at 3a. The complaint also alleged that the terms of the loans Respondents ultimately entered into were illegal under Minnesota law. *Id.*

MoneyMutual moved to dismiss the complaint for lack of personal jurisdiction. In response, Respondents submitted affidavits and exhibits alleging three categories of contacts with Minnesota. First, Respondents alleged that MoneyMutual sent emails to Minnesota residents in connection with its website. *Id.* at 4a-5a. Second, Respondents alleged that MoneyMutual bought television advertisements that appeared in Minnesota. *Id.* at 5a. Third, Respondents alleged that MoneyMutual conducted a Google AdWords campaign, and they submitted an affidavit purporting to show that MoneyMutual purchased online ads that would appear when an individual searched Google for the terms "payday loan Minnesota" and "payday loan Minneapolis." *Id.* at 5a-6a.

The District Court denied MoneyMutual's motion to dismiss. *Id.* at 6a. The Court of Appeals affirmed the decision of the District Court, noting "the increased tendency for commerce to take place via the Internet." *Id.* at 43a-44a.

3. The Minnesota Supreme Court's Decision.

The Minnesota Supreme Court affirmed. It acknowledged that "MoneyMutual never extended a loan" and that "respondents in this case never paid MoneyMutual." *Id.* at 14a n.8. It further acknowledged that "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users." *Id.* at 19a n.12. The court nonetheless held that MoneyMutual was subject to specific personal jurisdiction in Minnesota.

The Minnesota Supreme Court noted "the 'connection' requirement for specific jurisdiction" and

the requirement that "the harm resulting in litigation 'arise out of or relate to' the defendant's contacts with the forum." *Id.* at 27a. The court acknowledged that "[c]ourts disagree about how to apply this connection requirement (also referred to as the 'relatedness' or 'nexus' requirement) for specific personal jurisdiction." *Id.* at 27a-28a (citing *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 912–13 (8th Cir. 2012)).

The Minnesota court identified "three major approaches": "a strict 'proximate cause' standard; a 'but for' standard; and a more lenient 'substantial connection' standard." *Id.* at 28a. It explained that, "[i]n many courts, the connection requirement does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.*

The Minnesota Supreme Court applied this third standard – whether a defendant's forum contacts "are 'substantially connected' or 'related to' the litigation" (*id.* at 28a) – to find specific personal jurisdiction on the basis of two types of forum contacts: (1) MoneyMutual's email communications – which, the court held, were sufficient in and of themselves to find specific personal jurisdiction – and (2) as also relevant, MoneyMutual's alleged Google AdWords campaign.[2]

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[2] The Minnesota Supreme Court concluded that MoneyMutual's television advertisements not targeted at Minnesota could not be a basis for specific jurisdiction pursuant to *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 886 (2011) (plurality opinion). Pet. App. 20a-25a.

First, the Minnesota Supreme Court considered MoneyMutual's email communications to Minnesota residents. The court noted a conflict of authority in the lower courts on the weight (if any) to be accorded to emails in the personal jurisdiction analysis and explained that "three approaches to email-based contacts have developed in federal courts." *Id.* at 16a. The court observed that "some courts reject any consideration of email-based contacts," while others "hold that email communications alone are insufficient but that emails are 'secondary' contacts that can be added to other types of contacts to support personal jurisdiction." *Id.*

The Minnesota Supreme Court rejected both those approaches: "Having considered the body of persuasive authority on this point, we conclude that the third approach, which considers emails just like any other contact with the forum, is the appropriate rule of law." *Id.* at 18a. It added that "[t]he most reasonable approach" is to ask "whether those contacts establish a '*substantial connection*' between the defendant, the forum, and the litigation, such that the defendant 'purposefully availed' himself of the forum and 'reasonably anticipate[d] being haled into court' there." *Id.* (emphasis added and citations omitted).

The court held that, under this standard, MoneyMutual's email communications by themselves established specific personal jurisdiction:

> MoneyMutual sent over 1,000 emails to known Minnesotans, soliciting them to apply for payday loans. These emails were the culmination of transactions between MoneyMutual and Minnesota residents

> through which Minnesota residents provided their personal information to MoneyMutual in return for being matched with a payday lender.

Id. at 30a.

The Minnesota Supreme Court also deemed relevant a Google "AdWords" campaign in which MoneyMutual had allegedly engaged: "Respondents submitted an affidavit purporting to show that MoneyMutual purchased online ads that would appear when an individual searched Google for the terms 'payday loan Minnesota' and 'payday loan Minneapolis.'" *Id.* at 5a. The court acknowledged that "none of the respondents or class members indicated that they actually came into contact with MoneyMutual's website as a result of a Google search or one of MoneyMutual's AdWords advertisements." *Id.* at 6a. Nonetheless, the court opined that, under the malleable causation standard it was adopting (whether a defendant's forum contacts "are 'substantially connected' or 'related to' the litigation" (*id.* at 28a)), the Google AdWords campaign could support a finding of personal jurisdiction: "Although at this early stage of the litigation there is no evidence that the Google Ads actually *caused* any of the claims, the Google Ads are sufficiently *related* to the claims of respondents to survive a motion to dismiss." *Id.* at 29a (emphasis in original). "MoneyMutual's use of Google AdWords . . . further buttress[es] the conclusion that sufficient minimum contacts exist for the exercise of personal jurisdiction over MoneyMutual." *Id.* at 30a-31a.

Accordingly, the Minnesota Supreme Court affirmed the denial of MoneyMutual's motion to dismiss for lack of personal jurisdiction.

REASONS FOR GRANTING THE WRIT

This case presents an important legal question under the test for "specific" personal jurisdiction: What is the requisite degree of *causal nexus* between a defendant's jurisdictional contacts and a plaintiff's claim? The lower courts are divided on this question, with some adopting a "proximate cause" standard, others a "but for" standard, and still others (including the Minnesota court below) a less predictable "substantial connection" or "related to" standard. The Minnesota Supreme Court held that a jurisdictional contact is relevant to the "minimum contacts" analysis for specific personal jurisdiction even in the absence of any evidence that the contact "actually *caused* any of the claims," so long as that contact is "sufficiently *related*" to the plaintiff's claims. *Id.* at 29a (emphasis in original).

This Court should grant review to establish that the proper jurisdictional test is the proximate cause standard. Only that standard provides the requisite predictability and reliability to allow a defendant reasonably to foresee its jurisdictional exposure based on its own actions, which is an essential purpose of the "relatedness" element of the specific jurisdiction inquiry. This Court's review is warranted for the additional reason that this case arises in an important and timely context: electronic communications in the modern Internet age. This Court should ensure that due process protections for nonresident defendants, as well as fundamental limits on the extraterritorial projection of state

authority, are not eliminated by technological advances and new means of electronic communication that have become a prevalent, if not dominant, personal and commercial choice for interstate communications.

This Court has recognized the need to address the application of traditional rules of personal jurisdiction in the information economy. In *Walden v. Fiore*, 134 S. Ct. 1115, 1125, n.9 (2014), this Court cited and reserved for future decision the "questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State." Similarly, in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), Justice Breyer, joined in a concurring opinion by Justice Alito, identified key questions raised by the intersection of cutting-edge technologies and familiar jurisdictional principles:

> [W]hat do those standards mean when a company targets the world by selling products from its Web site? And does it matter if, instead of shipping the products directly, a company consigns the products through an intermediary (say, Amazon.com) who then receives and fulfills the orders? And what if the company markets its products through popup advertisements that it knows will be viewed in a forum?

Id. at 890 (Breyer, J., concurring). The instant case represents an ideal vehicle to address such questions.

I. This Court Should Grant Review To Make Clear That The Specific-Jurisdiction Test Requires A Proximate Causal Nexus Between Forum-Targeted Conduct and the Plaintiff's Claims.

The Minnesota Supreme Court held that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even though its jurisdictional contacts were not the proximate cause of Respondents' claims. MoneyMutual is not a lender and is not a party to any loans, including the short-term "payday" loans that form the crux of Respondents' claims. MoneyMutual is not involved in setting any of the terms of the loan and is not even informed of whether a loan agreement is ultimately completed or the terms of any such agreement. It does not receive any payment or other compensation from loan applicants such as Respondents.

In fact, the Minnesota court acknowledged that:

- "MoneyMutual never extended a loan," Pet. App. 14a n.8;

- "[R]espondents in this case never paid MoneyMutual," *id.*;

- "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users," *id.* at 19a n.12; and

- Emails were sent only after contact was initiated by persons submitting information through the website; the emails either (a) informed applicants of the interest expressed by a lender; (b) advised a website user that they had not completed

the form; or (c) invited a prior applicant to submit a new application. *Id.* at 11a-12a.

Nevertheless, the court opined that MoneyMutual was subject to specific personal jurisdiction in Minnesota, even in the absence of any proximate causal nexus between its communications and the actual harm upon which Respondents base their claims: the culmination of a loan transaction whose terms allegedly violate Minnesota law.

The Minnesota Supreme Court opined that the nexus requirement of the "specific" personal jurisdiction test "does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.* at 28a.

Thus, with respect to MoneyMutual's email communications, the Minnesota Supreme Court asked "whether those contacts establish a '*substantial connection*' between the defendant, the forum, and the litigation." *Id.* at 18a. Similarly, the court applied the same "substantial connection" standard to the Google "AdWords" campaign, rather than a "proximate cause" or "but for" standard. The Minnesota court acknowledged that "none of the respondents or class members indicated that they actually came into contact with MoneyMutual's website as a result of a Google search or one of MoneyMutual's AdWords advertisements." *Id.* at 6a. But the Minnesota court insisted that a causal nexus was not necessary: "Although at this early stage of the litigation there is no evidence that the Google Ads actually *caused* any of the claims, the Google Ads are sufficiently *related* to the claims of

respondents to survive a motion to dismiss." *Id.* at 29a (emphasis in original).

This Court should grant review to decide whether a proximate causal nexus is required as part of the "relatedness" test for specific personal jurisdiction.

A. This Court Has Twice Noted And Reserved The Question Of The Precise Causal Nexus Required To Establish Specific Personal Jurisdiction.

This Court has instructed that, to establish specific personal jurisdiction over a nonresident defendant, a plaintiff must establish "minimum contacts" resulting from the defendant's conduct "targeting" the forum state (and not just its residents), and also that the plaintiff's claims "arise out of or [be] connected with the activities within the state." *Int'l Shoe*, 326 U.S. at 319.

In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), this Court affirmed three essential limits on specific jurisdiction. First, the defendant must have established "contacts with the *forum State* itself, not . . . contacts with persons who reside there." *Id.* at 1122 (emphasis added). Thus, "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* at 1123.

Second, the contacts between the defendant and the forum state must be "contacts that the 'defendant himself' creates." *Id.* at 1122 (quoting *Burger King*, 471 U.S. at 475). Conversely, specific jurisdiction may not be based on the "'unilateral activity'" of persons other than the defendant. *See id.*

at 1123 (quoting *Burger King*, 471 U.S. at 475). This Court has "consistently rejected attempts to satisfy the defendant-focused 'minimum contacts' inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State." *Id.* at 1122.

Third, the contacts upon which specific jurisdiction is based must be "suit-related." *Id.* at 1121. Contacts that have nothing to do with the "underlying controversy" in the litigation are irrelevant to specific jurisdiction. *Id.* at 1121 n.6. Indeed, this requirement is the core of what distinguishes specific jurisdiction from general jurisdiction. *Id.* at 1121 n.6.

However, this Court has never defined the precise nature of the requisite causal nexus between a plaintiffs' claims and a defendant's jurisdictional contacts. Numerous lower courts have noted the need for clarification by this Court. *See*, *e.g.*, *Tamburo v. Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) ("The Supreme Court has not elaborated on this [arise out of or relate to] requirement, and the occasional difficulty in applying it has led to conflict among the circuits."); *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 318 (3d Cir. 2007) ("Unfortunately, the Supreme Court has not yet explained the scope of this requirement. State and lower federal courts have stepped in to fill the void, but their decisions lack any consensus."); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 579 (Tex. 2007) ("To support specific jurisdiction, the Supreme Court has given relatively little guidance as to how closely related a cause of action must be to the defendant's forum activities.").

In *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984), this Court noted the issue but declined to resolve it:

> The dissent suggests that we have erred in drawing no distinction between controversies that "relate to" a defendant's contacts with a forum and those that "arise out of" such contacts. . . .
>
> We do not address the validity or consequences of such a distinction because the issue has not been presented in this case. Respondents have made no argument that their cause of action either arose out of or is related to [defendant's] contacts with the State of Texas. Absent any briefing on the issue, we decline to reach the questions (1) whether the terms "arising out of" and "related to" describe different connections between a cause of action and a defendant's contacts with a forum, and (2) what sort of tie between a cause of action and a defendant's contacts with a forum is necessary to a determination that either connection exists. *Nor do we reach the question whether, if the two types of relationship differ, a forum's exercise of personal jurisdiction in a situation where the cause of action "relates to," but does not "arise out of," the defendant's contacts with the forum should be analyzed as an assertion of specific jurisdiction.*

Id. at 415 n. 10 (emphasis added). The instant Petition presents the very question raised by the italicized language in *Helicopteros*.

Seven year later, in *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991), this Court again declined to decide the meaning of the "relatedness" test for specific personal jurisdiction, even though it had granted certiorari on the issue. *Id.* at 589.

The instant case presents the ideal vehicle for resolving the question twice reserved by this Court.

B. The Lower Courts Are Divided On The Question, and the Minnesota Supreme Court's Decision Conflicts With Cases In Numerous Other Jurisdictions.

1. The Minnesota Supreme Court Recognized The Conflict Among The Lower Courts.

The Minnesota Supreme Court acknowledged that "[c]ourts disagree about how to apply this connection requirement (also referred to as the 'relatedness' or 'nexus' requirement) for specific personal jurisdiction." *Id.* at 30a. The court identified "three major approaches": "a strict 'proximate cause' standard; a 'but for' standard; and a more lenient 'substantial connection' standard." *Id.* The Minnesota court adopted the third approach, explaining that, "[i]n many courts, the connection requirement does not require proof that the litigation was strictly caused by or '[arose] out of' the defendant's contacts; rather, it is sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation." *Id.*

Other decisions have identified the same division in the lower courts and the emergence of the three different approaches described by the Minnesota court. In *Myers v. Casino Queen, Inc.*, 689 F.3d 904

(8th Cir. 2012), for example, the Eighth Circuit explained that "[t]he various circuits interpret the 'arise out of or relate to' requirement differently, and three domina[nt] approaches have emerged." *Id.* at 912.

> The first interpretation is referred to as the proximate cause standard. This standard requires the defendant's contacts with the forum state to be the "legal cause," (i.e., proximate cause) of the plaintiff's injuries. The second interpretation is more relaxed and "requires only 'but for' causation. As the name indicates, this standard is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts." The third standard, referred to as the "substantial connection" standard, examines "whether the tie between the defendant's contacts and the plaintiff's claim is close enough to make jurisdiction fair and reasonable."

Id. (citations omitted).[3] Other cases affirm the existence of a circuit split. *E.g.*, *Chew v. Dietrich*,

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[3] S*ee also O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 318-20 (3d Cir. 2007) ("Three approaches predominate. The most restrictive standard is the 'proximate cause' or 'substantive relevance' test. . . . A second, more relaxed test requires only 'but-for' causation. As the name indicates, this standard is satisfied when the plaintiff's claim would not have arisen in the absence of the defendant's contacts. . . . A third standard looks for a 'substantial connection' or 'discernible relationship.' Unlike the but-for test, causation is of no special importance. The critical question is whether the tie between the defendant's contacts and the plaintiff's claim is close enough to make jurisdiction fair and reasonable."); *Nowak v. Tak How Invs., Ltd.*, 94 F.3d 708, 713–

143 F.3d 24, 29 (2d Cir. 1998) ("[T]here appears to be a split in the Circuits on the standard to be applied in determining if a tort claim 'relates' to the defendant's activities within the state. Some Circuits have held that in order for the defendant to be subject to the jurisdiction of a state the conduct within the state must be a proximate cause of the plaintiff's injury. Others have held that it is sufficient if the defendant's conduct in the state is a 'but for' cause of the plaintiff's injury."); *Tamburo v. Dworkin*, 601 F.3d 693, 708 (7th Cir. 2010) ("The First Circuit has held that at least with respect to intentional tort claims, the defendant's contacts with the forum must constitute both the cause in fact and the proximate cause of the injury. The Ninth and Fifth Circuits, on the other hand, require only that the contacts constitute a but-for cause of the injury.").

2. The Minnesota Supreme Court's Decision Conflicts With Judgments In The First and Sixth Circuits.

The Minnesota Supreme Court's judgment conflicts with decisions in the First and Sixth Circuits adopting a proximate cause test.

The First Circuit has opined that the defendant's contacts must be the "legal cause" of the plaintiff's injury "i.e., the defendant's in-state conduct [must] g[i]ve birth to the cause of action." *Mass. Sch. of Law*

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715 (1st Cir. 1996) (same); *Moki Mac River Expeditions*, 221 S.W.3d at 579–86) (same); Charles W. Rhodes, *The Predictability Principle in Personal Jurisdiction Doctrine: A Case Study On The Effects of a "Generally" Too Broad But "Specifically" Too Narrow Approach to Minimum Contacts*, 57 BAYLOR L. REV. 135, 201-07 (2005) (same).

at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 35 (1st Cir. 1998) (quotation marks omitted). The First Circuit has explained that, to determine "relatedness," a court "must probe the causal nexus between the defendant's contacts and the plaintiff's cause of action" and the "relatedness requirement is not met merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly arise out of the specific contacts between the defendant and the forum state." *Phillips Exeter Academy v. Howard Phillips Fund*, 196 F.3d 284, 289-290 (1st Cir. 1999).

The First Circuit has explained that "proximate or legal cause clearly distinguishes between foreseeable and unforeseeable risks of harm. Foreseeability is a critical component in the due process inquiry, particularly in evaluating purposeful availment, and we think it also informs the relatedness prong." *Nowak*, 94 F.3d at 715. In addition, "[a]dherence to a proximate cause standard is likely to enable defendants better to anticipate which conduct might subject them to a state's jurisdiction than a more tenuous link in the chain of causation." *Id.* (citation omitted). The First Circuit continued: "we think the proximate cause standard better comports with the relatedness inquiry because it so easily correlates to foreseeability, a significant component of the jurisdictional inquiry." *Id.*

Similarly, in *Sawtelle v. Farrell*, 70 F.3d 1381 (1st Cir. 1995), the First Circuit rejected the assertion of jurisdiction over a nonresident defendant, opining that "[t]he relatedness requirement is not met merely because a plaintiff's cause of action arose out of the general relationship between the parties; rather, the action must directly

arise out of the specific contacts between the defendant and the forum state." *Id.* at 1389. The court acknowledged that "[t]he transmission of information into New Hampshire by way of telephone or mail is unquestionably a contact for purposes of our analysis," but found that it would be "illogical to conclude that those isolated recommendations constituted the negligent conduct that caused the [plaintiff's] injury and thus were in-forum acts sufficient to establish specific personal jurisdiction in New Hampshire." *Id.* at 1389-90. *See also Fournier v. Best Western Treasure Island Resort*, 962 F.2d 126, 127 (1st Cir. 1992) (where plaintiff had made vacation arrangements in Massachusetts but was injured out-of-state, cause of action did not "arise from" the defendant resort operator's contacts with Massachusetts within the meaning of the state long-arm statute); *United Elec. Workers v. 163 Pleasant Street Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992) (forum contacts must be both cause in fact and legal cause of plaintiff's injury in order to support specific jurisdiction and "the defendant's in-state conduct must form an 'important, or [at least] material, element of proof' in the plaintiff's case"); *Pizarro v. Hoteles Concorde Int'l, C.A.*, 907 F.2d 1256, 1259 (1st Cir. 1990) (no personal jurisdiction where defendant's "contacts with Puerto Rico are not the legal or proximate cause of the personal injury suffered by" plaintiff); *Marino v. Hyatt Corp.*, 793 F.2d 427, 430 (1st Cir. 1986) (no jurisdiction because in-state conduct "would hardly be an important, or perhaps even a material, element of proof" in the cause of action).[4]

[4] The Minnesota Supreme Court miscited (Pet. App. 28a-29a n.18) the First Circuit's decision in *Ticketmaster-New*

In addition, the Sixth Circuit has held that "only consequences that *proximately* result from a party's contacts with a forum state will give rise to jurisdiction." *Beydoun v. Watamiya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 508 (6th Cir. 2014) (emphasis in original). In *Beydoun*, the Sixth Circuit held that a nonresident defendant (a Qatari corporation operating restaurant franchises in the Middle East and North Africa) was not subject to personal jurisdiction in Michigan. The plaintiff alleged several contacts with the state, including the defendant's targeting the Detroit area for its CEO candidates, corresponding with the plaintiff to be its CEO, selecting plaintiff to be its CEO, and subsequently making more than ten business trips to Michigan and numerous purchases of equipment from Michigan companies. *Id.* at 506. The Sixth Circuit opined that, under the proximate cause standard, such contacts were insufficient to establish jurisdiction in Michigan:

> Essentially, plaintiffs argue that their causes of action arose from [defendant's] initial contact with Michigan because but for the initial contact with Michigan, [plaintiff] would never have moved to Qatar, and if [plaintiff] had never moved to Qatar, he could not have been wrongfully blamed for

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York, Inc. v. Alioto, 26 F.3d 201 (1st Cir. 1994), which did not reach the relatedness issue as part of its holding. *Id.* at 207 ("we do not have occasion today to give fuller content to the relatedness requirement"). Moreover, the First Circuit emphasized that "relatedness is the divining rod that separates specific jurisdiction cases from general jurisdiction cases [and] ensures that the element of causation remains in the forefront of the due process investigation." *Id.*

> [defendant's] financial losses and wrongfully detained for them.
>
> We disagree because more than mere but-for causation is required to support a finding of personal jurisdiction. To the contrary, the plaintiff's cause of action must be *proximately caused* by the defendant's contacts with the forum state.

Id. at 507-08 (emphasis added); *see also Pickens v. Hess*, 573 F.2d 380, 386 (6th Cir. 1978) (no personal jurisdiction over defendants under state long-arm statute which extends to limits of due process when "the cause of action between the parties did not arise from any acts of the defendants in [the forum state]").[5]

3. The Minnesota Supreme Court's Decision Departs From Other Cases In The Lower Courts.

The standard adopted by the Minnesota Supreme Court departs from the approaches of other courts. It differs from the "but-for" causation test adopted by the Fifth and Ninth Circuits.[6] It differs from the approach of other circuits, which have refrained from choosing between the "proximate cause" and "but for" causation standards, because

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[5] In *City of Virginia Beach v. Roanoke River Basin Assn.*, 776 F.2d 484, 487 (4th Cir. 1985), the Fourth Circuit held that jurisdiction was lacking because "the activities that support the jurisdictional claim must coincide with those that form the basis of the plaintiff's substantive claim."

[6] *E.g.*, *Mattel, Inc. v. Greiner and Hauser GmbH*, 354 F.3d 857, 867 (9th Cir. 2003); *Shute v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1988); *Prejean v. Sonatrach, Inc.*, 652 F.2d 1260, 1270 n. 21 (5th Cir. 1981).

the courts have found that the defendant's contacts with the forum were both a cause-in-fact and proximate cause of the plaintiff's claim.[7]

Further, the Minnesota Supreme Court's judgment conflicts with decisions of other courts flatly rejecting the "substantial connection" or "related to" test – even if those courts have not definitively settled on an alternative test:

- *O'Connor v. Sandy Lane Hotel Co., Ltd.*, 496 F.3d 312, 321 (3d Cir. 2007) ("[W]e must state that the 'sliding scale,' 'substantial connection,' and 'discernible relationship' tests are not the law in this circuit. By any name, these 'hybrid' approaches allow courts to vary the scope of the relatedness requirement according to the 'quantity and quality' of the defendant's contacts. . . . General and specific jurisdiction merge, and the result is a freewheeling totality-of-the-circumstances test. Our cases, however, have always treated general and specific jurisdiction as analytically distinct categories, not two points on a sliding scale.");

[7] *E.g.*, *Employers Mutual Casualty Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1160-1161 (10th Cir.); *Tamburo*, 601 F.3d at 708; *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1078-1079 (10th Cir.); *see also Advanced Tactical Ordnance Systems, LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 801-802 (7th Cir. 2014) (plaintiff failed to connect in-forum sales to defendant's litigation-specific activity of alleged trademark infringement, in absence of evidence that in-state purchasers actually saw internet post at issue; even large number of sales to Indiana residents inadequate to show specific jurisdiction: "Specific jurisdiction must rest on the litigation-specific conduct of the defendant in the proposed forum state.").

- *Employers Mutual Casualty Co. v. Bartile's Roofs, Inc.*, 618 F.3d 1153, 1161 (10th Cir. 2010) ("we have rejected the substantial-connection approach outright");

- *Dudnikov v. Chalk & Vermillion Fine Arts, Inc.*, 514 F.3d 1063, 1078-1079 (10th Cir. 2008) ("We agree with our sister circuit that the 'substantial connection' test inappropriately blurs the distinction between specific and general personal jurisdiction. . . . A relatedness inquiry that varies the required connection between the contacts and the claims based on the number of the contacts improperly conflates these two analytically distinct approaches to jurisdiction. By eliminating the distinction between contacts that are sufficient to support any suit and those that require the suit be related to the contact, it also undermines the rationale for the relatedness inquiry: to allow a defendant to anticipate his jurisdictional exposure based on his own actions.") (internal citations omitted).

- *Robinson v. Harley-Davidson Motor Co.*, 316 P.3d 287, 298 (Or. 2013) ("[W]e conclude that the amount of flexibility [the substantial connection test] allows fails to provide the 'degree of predictability to the legal system' that the Due Process Clause requires. As a result, nonresidents are less able to 'structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.' Moreover, that approach tends to reduce itself to 'a freewheeling totality-of-the-circumstances test' that conflates the separate analyses required for general and specific jurisdiction.") (citations omitted).

• *Moki Mac River Expedition*, 221 S.W. 3d at 583 ("Most significantly, deciding jurisdiction based on a sliding continuum blurs the distinction between general and specific jurisdiction that our judicial system has firmly embraced and that provides an established structure for courts to analyze questions of in personam jurisdiction. . . . In sum, 'this tradeoff does not fulfill the underlying goals of either general or specific jurisdiction' and 'may raise far more difficult questions than it resolves.'") (citations omitted).

Other jurisdictions have adopted Minnesota's approach of dispensing with some form of causal nexus to connect a defendant's jurisdictional-relevant contact with the plaintiff's claim.[8]

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[8] *See Bristol-Myers Squibb Company v. Superior Court*, 1 Cal 5th 783, 802-06 (Cal. 2016) (using "sliding scale" approach to find California could exercise specific personal jurisdiction over defendant on behalf of non-resident drug product liability plaintiffs because of defendant's numerous purposeful contacts with state, including California manufacturing, distribution, and marketing, notwithstanding no evidence that the product used by non-resident plaintiffs was manufactured in California or distributed from California, or that they saw advertising or were exposed to marketing in or from California); *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 467-468 (Cal. 1996) (opining that this Court "has not been concerned with causation in this context" but instead "has spoken of a relationship between the cause of action and the contacts in the forum, and has used relatively broad terms to describe the necessary relationship"); *Shoppers Food Warehouse v. Moreno*, 746 A.2d 320, 336 (D.C. 2000) (holding that "extensive and repeated" advertising activity had a "discernible relationship" to plaintiff's slip and fall accident at store despite no evidence plaintiff shopped at store in response to advertising, because defendant could foresee being sued on a similar claim).

C. The Question Presented Is An Important Issue Of Federal Law.

This Court should grant review to resolve the circuit split and division in the lower courts regarding the "casual nexus" requirement for specific personal jurisdiction. This issue is an important question of federal constitutional law that governs the due process analysis in both state and federal courts.

The Minnesota Supreme Court's standard – that specific personal jurisdiction "does not require proof" that a plaintiff's claim was "strictly caused by or '[arose] out of' the defendant's contacts; rather, it is

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Further, the legal standard in the Second Circuit is unclear. In *Gelfand v. Tanner Motor Tours, Ltd.*, 339 F.2d 317 (2d Cir. 1964), the Second Circuit held that personal jurisdiction was lacking where plaintiffs sued a tour bus company for injuries sustained during a motor vehicle crash. *Id.* at 318. The court held that the sale of bus tickets in New York was an insufficient basis to establish personal jurisdiction over the non-resident defendant because the claim did not arise from the sale. *Id.* at 321–22. However, in *Chew v. Dietrich*, 143 F.3d 24 (2d Cir. 1998), the Second Circuit sustained personal jurisdiction and opined "[w]here the defendant's contacts with the jurisdiction that relate to the cause of action are more substantial, however, it is not unreasonable to say that the defendant is subject to personal jurisdiction even though the acts within the state are not the proximate cause of the plaintiff's injury." *Id.* at 29. Subsequent courts have explained that Second Circuit cases "upholding specific personal jurisdiction on the basis of limited contacts with the forum have involved no less than a 'but for' connection between the defendant's forum-directed activities and the claim. We are not aware that any federal appellate court has upheld specific personal jurisdiction on the basis of a lesser showing of relationship." *In re Libor-Based Financial Instruments Litigation*, No. MDL 2262 NRB, 2015 WL 4634541, *22-23 (S.D.N.Y. 2015).

sufficient to show that the contacts are 'substantially connected' or 'related to' the litigation," Pet. App. 28a – improperly expands the forums in which nonresident defendants are subject to suit. Such expansion violates this Court's instruction in *Walden* that "[d]ue process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant — not the convenience of plaintiffs or third parties." 134 S. Ct. at 1122.

Further, the Minnesota Supreme Court's test conflates general and specific jurisdiction and substitutes a subjective standard for what ought to be a predictable test. Asking whether contacts are "related to" the litigation provides little practicable guidance; as this Court has observed, a "related to" standard "would never run its course, for '[r]eally, universally, relations stop nowhere.'" *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655 (1995) (citation omitted).

This Court should establish a "proximate cause" standard for specific personal jurisdiction.

II. The Online Nature Of The Electronic Contacts In This Case Heightens The Need For This Court's Review.

This Court's review is particularly warranted because the Question Presented arises in an important and timely context: electronic commerce and online communications. In *Walden v. Fiore*, 134 S. Ct. 1115 (2014), this Court went out of its way to pose the "questions whether and how a defendant's virtual 'presence' and conduct translate into 'contacts' with a particular State." *Id.* at 1125 n.9.

Similarly, in *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011), Justice Breyer, joined in a concurring opinion by Justice Alito, asked, "[W]hat do those standards [of personal jurisdiction] mean" in the context of e-commerce? *Id.* at 890 (Breyer, J., concurring). This case provides an excellent vehicle to address that question.

A. The Minnesota Supreme Court's Decision Conflicts With Seventh Circuit And Other Precedent.

In the decision below, the Minnesota Supreme Court noted a conflict of authority in the lower courts on the significance of email contacts for assessing specific personal jurisdiction and explained that "three approaches to email-based contacts have developed in federal courts." Pet. App. 16a. The Minnesota Supreme Court refused to follow the first two approaches, under which "some courts reject any consideration of email-based contacts" and other courts "hold that email communications alone are insufficient but that emails are 'secondary' contacts that can be added to other types of contacts to support personal jurisdiction." *Id.*

Thus, the Minnesota Supreme Court recognized that it was departing from precedent in other courts, in particular the Seventh Circuit. *Id.* at 16a-17a nn.9, 10. The Minnesota court cited (as a decision it was rejecting) the Seventh Circuit's decision in *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796 (7th Cir. 2014).[9]

[9] The Minnesota Supreme Court also cited other decisions it was declining to follow, including: *KG Funding, Inc. v. Partridge*, No. 12–2155, 2012 WL 5904439, at *2 (D.Minn. Nov.

In *Advanced Tactical Ordnance Sys.*, the Seventh Circuit held that a California company was not subject to personal jurisdiction in Indiana even though it operated an interactive website accessible from Indiana and sent two allegedly misleading emails to a list of subscribers that included Indiana residents. The Seventh Circuit held that the interactive website did not create personal jurisdiction:

> The interactivity of a website is also a poor proxy for adequate in-state contacts. We have warned that "[c]ourts should be careful in resolving questions about personal jurisdiction involving online contacts to ensure that a defendant is not haled into court simply because the defendant owns or operates a website that is accessible in the forum state, even if that site is 'interactive.'" This makes sense; the operation of an interactive website does not show that the defendant has formed a contact with the forum state. And, without the defendant's

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26, 2012) ("[T]he [email] receivers' location alone should not determine specific jurisdiction. Partridge purposefully communicated with a resident who lived in Minnesota, but there is no evidence that Partridge purposefully availed himself of the Minnesota legal forum."); *Hearst Corp. v. Goldberger*, No. 96 CIV. 3620, 1997 WL 97097, at *12 (S.D.N.Y. Feb. 26, 1997) (holding that "e-mails are analogous to letters to or telephone communications with people in New York," which "are not sufficient to establish personal jurisdiction"); *Yellow Brick Rd., LLC v. Childs*, 36 F. Supp. 3d 855, 872 (D.Minn.2014) ("[E]mail/telephone/fax communications may only be used to support the exercise of personal jurisdiction—'they do not themselves establish jurisdiction.'") (quoting *Digi–Tel Holdings, Inc. v. Proteq Telecomms. (PTE), Ltd.*, 89 F.3d 519, 523 (8th Cir. 1996)).

> creating a sufficient connection (or "minimum contacts") with the forum state itself, personal jurisdiction is not proper.

Id. at 803 (quoting *be2 LLC v. Ivanov*, 642 F.3d 555, 558 (7th Cir. 2011) (in turn citing *Illinois v. Hemi Grp., LLC*, 622 F.3d 754, 760 (7th Cir. 2010))).

Next, the Seventh Circuit held that the email contacts were insufficient to establish minimum contacts:

> The fact that [the defendant] ... shower[ed] past customers and other subscribers with company-related emails does not show a relation between the company and Indiana.... [E]mail ... bounces from one server to another ... it winds up wherever the recipient happens to be at that instant. The connection between the place where an email is opened and a lawsuit is entirely fortuitous.

Id.

The decision in *Advanced Tactical Ordnance Sys.*, followed Seventh Circuit precedent. In *be2 LLC v. Ivanov*, 642 F.3d 555 (7th Cir. 2011), the Seventh Circuit held that Illinois could not exercise personal jurisdiction over an online dating service based on an interactive website on which Illinois residents had registered. *Id.* at 559 ("All that [plaintiff] submitted regarding Ivanov's activity related to Illinois is the Internet printout showing that just 20 persons who listed Illinois addresses had at some point created free dating profiles on be2.net. The printout shows only the nickname and age of each user, the city the user then called home, and the type of relationship the user was seeking. Even if

these 20 people are active users who live in Illinois, the constitutional requirement of minimum contacts is not satisfied simply because a few residents have registered accounts on be2.net. To the contrary, these are attenuated contacts that could not give rise to personal jurisdiction without offending traditional notions of fair play and substantial justice.").

The Minnesota Supreme Court's decision holding personal jurisdiction proper based on emails to Minnesota residents generated by an automated website after plaintiffs initiated contact thus conflicts with Seventh Circuit precedent. It also conflicts with decisions by other courts of appeals holding email communications and interactive websites to be an inadequate basis for personal jurisdiction:

- *Fastpath, Inc. v. Arbela Technologies Corp.*, 760 F.3d 816, 823 (8th Cir. 2014) ("'[T]he plaintiff cannot be the only link between the defendant and the forum.' To find otherwise would 'improperly attribute[] a plaintiff's forum connections to the defendant and make[] those connections decisive in the jurisdictional analysis.' . . . Arbela directed some emails and phone calls to Fastpath in Iowa, but the district court correctly determined that this activity was insufficient to establish personal jurisdiction.") (quoting *Walden*, 134 S. Ct. at 1125);[10]

- *Ackourey v. Sonellas Custom Tailors*, 573 Fed. Appx. 208, 212 (3d Cir. 2014) (interactive website listing a travel schedule and allowing potential

[10] The conflict between the approaches of the Eighth Circuit and Minnesota Supreme Court mean that a litigant could receive a different jurisdictional result depending on whether it is in state or federal court.

customers to email requests for appointments did not support personal jurisdiction);

- *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003) (interactive commercial website did not support jurisdiction because it was not directed at New Jersey and only two sales were consummated);

- *Carefirst of Maryland v. Carefirst Pregnancy Centers*, 334 F.3d 390, 400 (4th Cir. 2003) (no jurisdiction over "semi-interactive" website that accepted donations from Maryland because it "must have acted with the 'manifest intent' of targeting Marylanders") (citation omitted);

- *Revell v. Lidov*, 317 F.3d 467, 475 (5th Cir. 2002) (post on "interactive" site did not support jurisdiction in Texas because "the post to the bulletin board here was presumably directed at the entire world, or perhaps just concerned U.S. citizens . . . it was not directed especially at Texas");

- *Shrader v. Biddinger*, 633 F.3d 1235, 1240 (10th Cir. 2011) (no jurisdiction where defendant does not "*intentionally direct[]* his/her/its activity or operation *at* the forum state rather than just having the activity or operation accessible there") (emphasis added).

B. Specific Personal Jurisdiction Based On Electronic Contacts Presents An Important Legal Question.

There is an urgent need for this Court to address the rules of personal jurisdiction as they apply to Internet contacts. Scholars have identified "vast inconsistencies in the way that online activities are analyzed for purposes of determining personal

jurisdiction," pointing out that "a split exists among the circuits."[11] The uncertainty is debilitating for companies doing business on the Web, which cannot predict when and where they will be haled into remote jurisdictions based on tenuous connections. "[C]ourts, including the U.S. Courts of Appeals and state supreme courts, regularly interpret purposeful availment expansively to envelop a wide range of contacts," so that "would-be defendants — particularly those using the Internet — cannot rely on [purposeful availment] to protect them from excessive exercise of jurisdiction."[12]

Jurisdictional rules should be clear and predictable. The law of Internet personal jurisdiction has proven to be neither. As Judge Nancy Gertner observed:

> In the era of Facebook, where most websites now allow users to "share" an article, choose to "like" a particular page, add comments, and e-mail the site owners, the ... reasoning may now extend to moderately interactive sites as well. If virtually every website is now interactive in some measure, it cannot be that every website subjects itself to litigation in any forum - unless Congress

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[11] Yasmin R. Tavakoli & David R. Yohannan, *Personal Jurisdiction in Cyberspace: Where Does it Begin, And Where Does it End?* 23 INTELL. PROP. & TECH. L.J. 3 (Jan. 2011).

[12] Note, *No Bad Puns: A Different Approach to the Problem of Personal Jurisdiction and the Internet*, 116 HARV. L. REV. 1821, 1832 (2003).

> dictates otherwise. Interactivity alone cannot be the linchpin for personal jurisdiction.[13]

This case presents an excellent vehicle to examine the personal jurisdiction question. The Minnesota Supreme Court acknowledged that "MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users." Pet. App. 19a n.12. But this Court has made clear that "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." *Walden*, 134 S. Ct. at 1122 (emphasis added) (citing *Burger King*, 471 U.S. at 478)). Specific jurisdiction may not be based on the "'unilateral activity'" of persons other than the defendant. *Id.* at 1123 (quoting *Burger King*, 471 U.S. at 475). An interactive website whose operations depend on the user's input does not meet this test.

Further, the decision below threatens to create "universal" jurisdiction for websites that are widely available throughout the U.S. Such a sweeping result would chill e-commerce and run afoul of the fundamental limits on personal jurisdiction

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[13] *Sportschannel New England, LLP v. Fancaster, Inc.*, 2010 WL 3895177, *5 (D. Mass., Oct. 1, 2010); *see also* Jonathan Spencer Barnard, Note, *A Brave New Borderless World: Standardization Would End Decades of Inconsistency in Determining Proper Personal Jurisdiction in Cyberspace Cases*, 40 SEATTLE U. L. REV. 249, 266-67 (2016) ("[W]ith the advent of the Internet, confusion emanated from how to handle purposeful availment in cyberspace (i.e., interactive versus passive websites). It is necessary to define a contemporary set of actions that are sufficient to satisfy the 'purposeful availment' prong of the minimum contacts requirement for personal jurisdiction.").

established by this Court. *See J. McIntyre Machinery, Ltd.*, 564 U.S. at 889 (rejecting a "stream of commerce" theory that would have led to universal jurisdiction). Mere awareness that a nonresident's activities will inevitably touch a forum state should not be a sufficient basis for the exercise of specific personal jurisdiction. *See Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 105 (1987) (Japanese company's "mere awareness . . . that the components it manufactured, sold, and delivered outside the United States would reach the forum State in the stream of commerce" held insufficient to support personal jurisdiction).

This Court's review is necessary to establish greater uniformity and certainty in determining specific personal jurisdiction with respect to Internet contacts in the Information Age and allow businesses to reasonably predict where they can be haled into court.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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Dated: November 22, 2016

APPENDIX

Appendix A

884 N.W.2d 321
Supreme Court of Minnesota.

Scott RILLEY, et al., Respondents,

v.

MONEYMUTUAL, LLC, Appellant.

No. A14–1307.

|Aug. 24, 2016.

Attorneys and Law Firms

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Syllabus

Appellant's electronic communications and web-based advertising sufficiently targeted Minnesota and established contacts with Minnesota to make it reasonable and consistent with notions of fair play and substantial justice to exercise specific personal jurisdiction over appellant. The district court, therefore, did not err by denying appellant's motion to dismiss for lack of personal jurisdiction.

OPINION

ANDERSON, Justice.

This case raises the question of what contacts a defendant must have with Minnesota before our courts can exercise specific personal jurisdiction over that defendant. Appellant MoneyMutual, LLC, claims that the district court erred when it concluded that it could exercise specific personal jurisdiction over MoneyMutual based on MoneyMutual's email correspondence with Minnesota residents and advertising in Minnesota. The court of appeals affirmed the district court's decision, concluding that specific personal jurisdiction existed. We granted MoneyMutual's petition for review and now affirm the court of appeals.

I.

MoneyMutual operates a website that allows individuals to apply for short-term loans, commonly known as "payday loans." After an individual

submits a loan application through MoneyMutual's website, MoneyMutual "matches" the applicant with a payday lender in its network. For each matched applicant, MoneyMutual receives a "lead" fee from the lender. Respondents are four Minnesota residents who used MoneyMutual's website to obtain payday loans.

Respondents filed a class-action complaint, alleging that MoneyMutual matched respondents with payday lenders that were unlicensed in Minnesota. The complaint also alleged that the terms of the payday loans respondents received were illegal under Minnesota's payday-lending statutes because, among other claims, the annual percentage rates (APRs) advertised by MoneyMutual—which ranged "between 261% and 1304% for a 14 day loan"—exceeded the maximum allowable APRs under Minnesota law.[1] Respondents also claimed that MoneyMutual's website and advertising contained misrepresentations that violated Minnesota's consumer protection statutes, Minn.Stat. §§ 325D.44, 325F.67, 325F.69, (2014).[2] Finally, the complaint alleged that MoneyMutual unjustly enriched itself; that MoneyMutual participated in a civil conspiracy; and that MoneyMutual aided and abetted unlicensed lenders in making illegal loans to Minnesota residents.

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[1] Respondents' complaint cites Minn.Stat. §§ 47.60, subd. 2, 47.601, subd. 2(a)(3)(ii) (2014), for these propositions.

[2] For example, respondents alleged that MoneyMutual's website falsely represents to potential borrowers that "MoneyMutual carefully chooses its network of lenders and requires each of them to follow a strict code of conduct, including abiding by all applicable state and federal laws."

MoneyMutual moved to dismiss the complaint for lack of personal jurisdiction.[3] *See* Minn. R. Civ. P. 12.02(f). In response to this motion, respondents submitted affidavits and exhibits alleging three categories of contacts connecting MoneyMutual with Minnesota.[4] First, respondents alleged that MoneyMutual sent several emails to Minnesota residents in connection with generating business. For instance, respondents alleged that MoneyMutual emailed loan applicants once it had "matched" the applicant with a particular payday lender. Significantly, respondents note that these emails were sent *after* the applicant had supplied MoneyMutual with valid physical address information as part of the application process. Additionally, respondents alleged that MoneyMutual sent emails to applicants who started but did not

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[3] MoneyMutual also moved to dismiss the complaint for failure to join certain payday lenders as indispensable parties. *See* Minn. R. Civ. P. 12.02(f), 19.01. The district court denied this motion and the court of appeals affirmed. MoneyMutual did not raise this issue in its petition for review or in its brief to our court; thus, the issue is not before us.

[4] Although several affidavits were submitted by the parties and considered by the district court, the motion at issue here remained a motion to dismiss and was not converted to a motion for summary judgment. This is because the motion sought dismissal due to lack of jurisdiction, not failure to state a claim. *See* Minn. R. Civ. P. 12.02 ("If, on a motion asserting the defense that the *pleading fails to state a claim upon which relief can be granted,* matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment...." (emphasis added)); *see Marquette Nat'l Bank of Minneapolis v. Norris,* 270 N.W.2d 290, 292 (Minn.1978) ("For purposes of a Rule 12.02, Rules of Civil Procedure, pretrial motion to dismiss for lack of personal jurisdiction, the factual allegations in the complaint and supporting affidavits are to be taken as true.").

finish their online application. These emails urged the applicant to complete the application in order to be matched with a payday lender. Finally, respondents alleged that MoneyMutual sent emails to prior loan applicants inviting them to apply for additional loans.

Second, respondents alleged that MoneyMutual bought television advertisements that appeared in Minnesota. Respondents submitted several affidavits from class members who claimed to have seen advertisements featuring a celebrity, Montel Williams, promoting the MoneyMutual website. MoneyMutual denies that it ever placed television advertising on local Minnesota broadcasts. According to MoneyMutual, its television advertising campaigns are purely national in scope. Respondents were unable to recall the specific broadcasts or channels featuring the MoneyMutual television advertisements.

Third, respondents alleged that MoneyMutual established contacts with Minnesota through its online advertising. Specifically, respondents claimed that MoneyMutual targeted Minnesota residents through a Google AdWords campaign. Respondents submitted an affidavit purporting to show that MoneyMutual purchased online ads that would appear when an individual searched Google for the terms "payday loan Minnesota" and "payday loan Minneapolis."[5] At no point during the present

[5] Respondents submitted an affidavit from a law clerk employed by one of the law firms representing respondents. The affiant claimed experience with website marketing and Google AdWords and alleged that upon initiating a search Google with the phrase "payday loan Minnesota" and "payday loan Minneapolis," the MoneyMutual website appears in the

litigation has MoneyMutual denied using Google AdWords to present its online advertisements when a user searched for "payday loan Minnesota" or "payday loan Minneapolis." But MoneyMutual did note that none of the respondents or class members indicated that they actually came into contact with MoneyMutual's website as a result of a Google search or one of MoneyMutual's AdWords advertisements.

After considering all of the affidavits and the arguments of the parties, the district court denied MoneyMutual's motion to dismiss. MoneyMutual

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"Ads" column. Clicking the information symbol and the "Ad Settings" link next to MoneyMutual's ads produced separate pages that explained: "This ad matches the *exact search* you entered: 'payday loans Minnesota'"; and "This ad matches the *exact search* you entered: 'payday loans Minneapolis.'" The "Ad Settings" page is an explanation of how Google matched the search terms to the ads that appeared. Respondents allege that the Google AdWords service "allows advertisers to use 'keyword matching options' to control which searches trigger their ads," which include an "exact match" option. With the "exact match" option, an advertisement will "appear only when someone searches for your exact keyword," or "close variations," including "misspellings, singular and plural forms, acronyms, stemmings ... abbreviations, and accents." Based on these searches and the Ad Settings page, and other test searches "to rule out alternative explanations," the affidavit alleges that "it appears that MoneyMutual, or a person or entity acting on its behalf, is specifically paying to advertise for the terms 'payday loans Minnesota' and 'payday loans Minneapolis,' or close variations of those terms. Based on [the law clerk's] experience with PPC [pay-per-click] advertising and website marketing, [the affiant] can think of no other plausible explanation for why Google's Ads Settings for MoneyMutual's ads read, 'This ad matches the exact search you entered: 'payday loans Minnesota' or 'This ad matches the exact search you entered: 'payday loans Minneapolis.'"

appealed, and the court of appeals affirmed the decision of the district court. *See Rilley v. MoneyMutual LLC,* 863 N.W.2d 789 (Minn.App.2015). We granted MoneyMutual's petition for review on the issue of personal jurisdiction.

II.

"Whether personal jurisdiction exists is a question of law, which we review de novo." *Juelich v. Yamazaki Mazak Optonics Corp.,* 682 N.W.2d 565, 569 (Minn.2004). When reviewing a motion to dismiss for lack of personal jurisdiction, we determine whether, taking all the factual allegations in the complaint and supporting affidavits as true, the plaintiff has made a prima facie showing of personal jurisdiction. *Marquette Nat'l Bank v. Norris,* 270 N.W.2d 290, 292 (Minn.1978); *Hardrives, Inc. v. City of LaCrosse,* 307 Minn. 290, 293, 240 N.W.2d 814, 816 (1976).

Minnesota's long-arm statute, Minn.Stat. § 543.19 (2014), provides that personal jurisdiction shall not be found over a nonresident defendant if it would "violate fairness and substantial justice." We have held that Minnesota's long-arm statute "extend[s] the personal jurisdiction of Minnesota courts as far as the Due Process Clause of the federal constitution allows." *Valspar Corp. v. Lukken Color Corp.,* 495 N.W.2d 408, 410 (Minn.1992). Therefore, "when analyzing most personal jurisdiction questions, Minnesota courts may simply apply the federal case law."[6] *Id.* at 411.

[6] MoneyMutual has framed its arguments entirely in terms of Due Process Clause jurisprudence and thus it is

The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits a state court from exercising personal jurisdiction over a nonresident defendant unless that defendant has "minimum contacts" with the state and maintaining the lawsuit "does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945) (internal quotation marks omitted). "Minimum contacts" exist when the defendant "purposefully avails itself" of the privileges, benefits, and protections of the forum state, such that the defendant "should reasonably anticipate being haled into court there." *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 474–75, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985) (quoting *Hanson v. Denckla,* 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958); *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)).

The "minimum contacts" necessary to support specific[7] personal jurisdiction over the defendant

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unnecessary to address the specific text of the Minnesota long-arm statute.

[7] Respondents allege only specific personal jurisdiction applies here, which requires that the litigation "arise out of or relate to" the defendant's contacts with the forum state. *Burger King,* 471 U.S. at 472 & n. 15, 105 S.Ct. 2174 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 414, 104 S.Ct. 1868, 80 L.Ed.2d 404 (1984)). By contrast, general personal jurisdiction may be exercised based on contacts unrelated to the litigation, e.g., domicile or "continuous and systematic" contacts with the forum state. *Daimler AG v. Bauman,* ——U.S. ——, 134 S.Ct. 746, 754, 187 L.Ed.2d 624 (2014); *see also Walden v. Fiore,* —— U.S. ——, 134 S.Ct. 1115, 1121, n. 6, 188 L.Ed.2d 12 (2014).

must focus on "the relationship among the defendant, the forum, and the litigation," and the "defendant's suit-related conduct must create a substantial connection with the forum state," *Walden v. Fiore,* —— U.S. ——, 134 S.Ct. 1115, 1121, 188 L.Ed.2d 12 (2014) (internal quotation marks omitted), such that the litigation results from alleged harms that "arise out of or relate to" the defendant's contacts with the forum, *Burger King,* 471 U.S. at 472, 105 S.Ct. 2174. This minimum-contacts inquiry must "look[ ] to the defendant's contacts with the forum State itself" and not the defendant's " 'random, fortuitous, or attenuated' contacts" with "persons affiliated with the State" or "persons who reside there." *Walden,* —— U.S. at ——–, 134 S.Ct. at 1122–23 (quoting *Burger King,* 471 U.S. at 480, 105 S.Ct. 2174). But in some cases, "a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties." *Id.* at ——, 134 S.Ct. at 1123.

Although physical presence by the defendant in the forum state is not required for specific personal jurisdiction, minimum contacts may exist when an out-of-state defendant "purposefully direct[s]" activities at the forum state, and the litigation "arises out of or relate[s] to" those activities. *Burger King,* 471 U.S. at 472, 105 S.Ct. 2174; *Wessels, Arnold & Henderson v. Nat'l Med. Waste, Inc.,* 65 F.3d 1427, 1432–34 (8th Cir.1995); *Real Props., Inc. v. Mission Ins. Co.,* 427 N.W.2d 665, 668 (Minn.1988). The United States Supreme Court has recognized that "a substantial amount of business is transacted solely by mail and wire communications across state lines." *Burger King,* 471 U.S. at 476, 105 S.Ct. 2174. As a result, the Court has "consistently

rejected the notion that an absence of physical contacts can defeat personal jurisdiction" when "a commercial actor's efforts are 'purposefully directed' toward residents of another State." *Id.*

If minimum contacts are established, we must consider the "reasonableness" of personal jurisdiction according to traditional notions of "fair play and substantial justice," weighing factors such as the convenience of the parties and the interests of the forum state. *See id.* at 476–77, 105 S.Ct. 2174 (citing *World–Wide Volkswagen Corp.,* 444 U.S. at 292, 100 S.Ct. 559). We analyze five factors to determine whether the exercise of personal jurisdiction is consistent with federal due process: "(1) the quantity of contacts with the forum state; (2) the nature and quality of those contacts; (3) the connection of the cause of action with these contacts; (4) the interest of the state providing a forum; and (5) the convenience of the parties." *Juelich,* 682 N.W.2d at 570. This five-factor test is simply a means for evaluating the same key principles of personal jurisdiction established by the United States Supreme Court—namely, whether exercising jurisdiction over a defendant is consistent with "traditional concepts of fair play and substantial justice." *See K–V Pharm. Co. v. J. Uriach & CIA, S.A.,* 648 F.3d 588, 592 (8th Cir. 2011) (quoting *Burger King,* 471 U.S. at 464, 105 S.Ct. 2174); *Dent–Air, Inc. v. Beech Mountain Air Serv., Inc.,* 332 N.W.2d 904, 907 (Minn.1983).

"The first three factors [of this test] determine whether minimum contacts exist and the last two factors determine whether jurisdiction is reasonable according to traditional notions of fair play and substantial justice." *Juelich,* 682 N.W.2d at 570–71.

Although the key inquiry is whether minimum contacts have been established, a strong showing on the reasonableness factors may "serve to fortify a borderline showing" of minimum-contacts factors. *Id.* at 570–51 (quoting *Ticketmaster–N.Y., Inc. v. Alioto,* 26 F.3d 201, 210 (1st Cir.1994)); *see Burger King,* 471 U.S. at 477, 105 S.Ct. 2174 ("These [reasonableness] considerations sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required.").

III.

In light of the test for establishing specific personal jurisdiction, we now evaluate whether MoneyMutual has the necessary minimum contacts with Minnesota to support a finding of personal jurisdiction. Respondents argue that MoneyMutual has three categories of contacts with Minnesota: (1) emails sent to Minnesota residents, (2) television advertisements that appeared in Minnesota, and (3) Google AdWords advertisements that targeted the Minnesota market. We address each in turn.

A.

Respondents assert that MoneyMutual made contact with more than 1,000 Minnesotans via email. Specifically, respondents identify three types of emails that MoneyMutual sent to known Minnesota residents. First, after an applicant completed the online application process on MoneyMutual's website, MoneyMutual sent the applicant an email "matching" the applicant with a payday lender in MoneyMutual's network. Second, MoneyMutual sent emails to encourage applicants to complete an

unfinished loan application. Finally, MoneyMutual sent emails soliciting prior loan applicants to apply for additional loans.

MoneyMutual argues that these email contacts are irrelevant to the minimum contacts analysis. To support this argument, MoneyMutual and its amici rely heavily on the United States Supreme Court's decision in *Walden* to argue that its interactions with known Minnesota *residents* are per se insufficient to establish minimum contacts with a Minnesota *forum.* But *Walden*'s holding is not as broad as MoneyMutual contends, and its facts are easily distinguishable. *Walden* merely held that a defendant's "random, fortuitous, or attenuated" contact with a forum resident in an airport—while the resident was outside of the forum—was insufficient to support personal jurisdiction. —— U.S. at ——, 134 S.Ct. at 1122–23 (quoting *Burger King,* 471 U.S. at 480, 105 S.Ct. 2174); *see MRL Dev. LLC v. Whitecap Inv. Corp.,* Civil No. 2013–48, 2014 WL 5441552, at *4 (D.Vi. Oct. 26, 2014) (rejecting an overly broad reading of *Walden* and stating that "*Walden* stands for the proposition that a defendant's contact with a resident of the forum state, outside of the forum state, is insufficient to establish minimum contacts with the forum state"). *Walden* does not disturb numerous, long-established precedents allowing courts to exercise personal jurisdiction over defendants based in part on commercial contacts with businesses or residents that are located inside the forum. *See, e.g., Burger King,* 471 U.S. at 472–77, 105 S.Ct. 2174; *McGee v. Int'l Life Ins. Co.,* 355 U.S. 220, 223, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957); *Travelers Health Ass'n v. Virginia,* 339 U.S. 643, 647–48, 70 S.Ct. 927, 94 L.Ed. 1154 (1950).

Indeed, even *Walden* explained that in some cases "a defendant's contacts with the forum State may be *intertwined* with his transactions or interactions with the plaintiff." —— U.S. at ——, 134 S.Ct. at 1123 (emphasis added). Here, MoneyMutual's commercial solicitations of over 1,000 loan applicants with known Minnesota addresses were not "random, fortuitous, or attenuated" contacts with forum residents, but rather constitute "intertwined" contacts with both Minnesota residents and the state of Minnesota.

MoneyMutual next argues that the emails are not relevant to the jurisdictional analysis because long-distance communications between a plaintiff and defendant—and particularly email communications—cannot establish personal jurisdiction. But in *Marquette National Bank* we clearly stated: "The fact that the nonresident appellants were never physically present in the state in the course of their transaction, which was accomplished entirely by telephone and mail, is clearly of no significant consequence." 270 N.W.2d at 295.

The United States Supreme Court also has recognized that "a substantial amount of business is transacted solely by mail and wire communications across state lines." *Burger King,* 471 U.S. at 476, 105 S.Ct. 2174. And the Court has "consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction" when "a commercial actor's efforts are 'purposefully directed' toward residents of another State." *Id.* In this case, Minnesota residents provided MoneyMutual with their personal information and, in return, MoneyMutual matched those residents with

potential lenders. That these transactions[8] were accomplished over long distance "is clearly of no significant consequence." *See Marquette Nat'l Bank of Minneapolis,* 270 N.W.2d at 295.

Nonetheless, MoneyMutual argues that these contacts should be disregarded because they occurred via email. Historically, courts have been willing to find minimum contacts based in part on communications by out-of-state defendants with forum residents, such as phone calls, faxes, and letters. *See, e.g., Grand Entm't Grp. v. Star Media Sales, Inc.,* 988 F.2d 476, 482 (3d Cir.1993) ("Mail and telephone communications sent by the defendant into the forum may count toward the

[8] MoneyMutual argues that it never engaged in any "transactions" with Minnesota residents and asserts that the court of appeals was mistaken when it characterized the events in question as three-sided transactions between borrowers, lenders, and MoneyMutual. *See Rilley v. MoneyMutual, LLC,* 863 N.W.2d 789, 794 (Minn.App.2015) ("The interaction between the respondents, MoneyMutual, and the lenders is better described as a three-sided transaction with each party taking action before the loan is made, rather than a series of unilateral acts by the respondents."). But even if MoneyMutual were correct and the court of appeals incorrectly characterized MoneyMutual's relationship with lenders and borrowers, MoneyMutual itself still engaged in transactions with Minnesota residents. The mere fact that MoneyMutual never extended a loan or that respondents in this case never paid MoneyMutual does not refute the existence of a transaction. Respondents clearly provided their personal information to MoneyMutual and, in return for that information, MoneyMutual matched respondents with various lenders in MoneyMutual's network. Although there was no monetary consideration, this exchange of information still constitutes a transaction. And, significantly, the emails sent by MoneyMutual to Minnesota residents matching them with a lender represent the culmination of that transaction.

minimum contacts that support jurisdiction."); *Marquette Nat'l Bank of Minneapolis,* 270 N.W.2d at 295. But the proliferation of email has created additional questions regarding the role that electronic long-distance communications should play in establishing personal jurisdiction.

The primary problem with relying on emails to establish personal jurisdiction is that, unlike a letter, the sender of an email may not know the geographic destination of the message. *See, e.g., Shrader v. Biddinger,* 633 F.3d 1235, 1247–48 (10th Cir.2011) ("Although email is directed to particular recipients, email addresses typically do not reveal anything about the geographic location of the addressee."); *Rice v. Karsch,* 154 Fed.Appx. 454, 462 (6th Cir.2005) ("There is nothing about this email address which indicates that Rice would have accessed his yahoo.com email account or otherwise read this email in Tennessee."); *Watiti v. Walden Univ.,* No. 07–4782, 2008 WL 2280932, at *10 (D.N.J. May 30, 2008) ("Unlike a 'snail mail' address (i.e., U.S. Mail) or even a telephone number, there is usually nothing about an email address that would indicate to the sender the location of the recipient."). This reality is particularly troublesome because the personal-jurisdiction inquiry must focus on the defendant's contacts with the forum and not merely "random, fortuitous, or attenuated" connections with residents of a forum. *Walden,* —— U.S. at ——, 134 S.Ct. at 1123 (quoting *Burger King,* 471 U.S. at 480, 105 S.Ct. 2174); *see Aaron Ferer & Sons Co. v. Atlas Scrap Iron & Metal Co.,* 558 F.2d 450, 455 n. 6 (8th Cir.1977); *W. Am. Ins. Co. v. Westin, Inc.,* 337 N.W.2d 676, 678–79 (Minn.1983). If the sender of an email does not know the physical location of the recipient, the fact that the recipient happens to be

located in a particular state is the definition of a "random, fortuitous, or attenuated" connection.

As a result of these challenges, three approaches to email-based contacts have developed in federal courts. First, for the above reasons, some courts reject *any* consideration of email-based contacts.[9] Under a second approach, courts hold that email communications *alone* are insufficient but that emails are "secondary" contacts that can be *added* to other types of contacts to *support* personal jurisdiction.[10] Finally, under a third approach,

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[9] *See, e.g., Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.,* 751 F.3d 796, 803 (7th Cir.2014) ("The fact that [the defendant] ... shower[ed] past customers and other subscribers with company-related emails does not show a relation between the company and Indiana.... [E]mail ... bounces from one server to another ... it winds up wherever the recipient happens to be at that instant. The connection between the place where an email is opened and a lawsuit is entirely fortuitous."); *KG Funding, Inc. v. Partridge,* No. 12–2155, 2012 WL 5904439, at *2 (D.Minn. Nov. 26, 2012) ("[T]he [email] receivers' location alone should not determine specific jurisdiction. Partridge purposefully communicated with a resident who lived in Minnesota, but there is no evidence that Partridge purposefully availed himself of the Minnesota legal forum."); *Hearst Corp. v. Goldberger,* No. 96 CIV. 3620, 1997 WL 97097, at *12 (S.D.N.Y. Feb. 26, 1997) (holding that "e-mails are analogous to letters to or telephone communications with people in New York," which "are not sufficient to establish personal jurisdiction").

[10] *See, e.g., Yellow Brick Rd., LLC v. Childs,* 36 F.Supp.3d 855, 872 (D.Minn.2014) ("[E]mail/telephone/fax communications may only be used to *support* the exercise of personal jurisdiction—'they do not themselves establish jurisdiction.'") (quoting *Digi–Tel Holdings, Inc. v. Proteq Telecomms. (PTE), Ltd.,* 89 F.3d 519, 523 (8th Cir.1996)); *Nicollet Cattle Co. v. United Food Grp., LLC,* No. 08–5899, 2009 WL 2218792, at *4 (D.Minn. July 23, 2009) ("[M]ail and

courts suggest that email-based contacts may establish personal jurisdiction, provided that the context of the email, or other relevant evidence, indicates that the sender knew or had reason to know that the recipient was located, and would receive the email within, a certain forum—or more generally, the plaintiff makes a prima facie showing that the sender "purposefully directed" the email at the forum.[11]

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telephone contacts—and presumably email contacts as well—'remain a consideration in determining whether the defendant purposefully availed [it]self of the privilege of doing business in Minnesota.'" (quoting *Wessels,* 65 F.3d at 1433)).

[11] *See Watiti,* 2008 WL 2280932, at *10–11 ("Email correspondence ... will not trigger personal jurisdiction unless the communications show such 'purposeful availment'.... [The] threshold question [regarding purposeful availment] ... is whether there is any indication in the substance of the emails, the email address itself, or other facts incident to the communications that the sender of the emails was aware that the recipient was located in or would be accessing the emails from the forum state."); *see, e.g., Am. Bd. of Internal Med. v. Rushford,* No. 14–6428, 2015 WL 5164791, at *5 (D.N.J. Sept. 2, 2015) ("Before he sent his first email to Arora, Salas Rushford knew that the company was based in New Jersey"); *Valley Nat'l Bank v. Corona–Norco Unified Sch. Dist.,* No. 15–CV–0282, 2015 WL 5023252, at *5 (N.D.Okla. Aug. 24, 2015) ("[D]efendant's e-mails ... do evidence reaching out to Oklahoma because his signature block, which would have been visible following his first communication, clearly demonstrates his presence in Oklahoma."); *Doe v. Hofstetter,* No. 11–CV–02209, 2012 WL 2319052, at *5 (D.Colo. June 13, 2012) ("The emails demonstrate that Defendant purposefully directed tortious activity at Colorado—as long as Defendant knew that John Doe was located in this state."); *see also Shrader,* 633 F.3d at 1248 ("[I]f the plaintiff does not show that the defendant otherwise knew where the recipient was located, the email itself does not demonstrate purposeful direction of the message to the forum state....").

Having considered the body of persuasive authority on this point, we conclude that the third approach, which considers emails just like any other contact with the forum, is the appropriate rule of law. In the modern digital era, with ubiquitous e-commerce and electronic communication, it would be arbitrary to exclude emails from consideration in a minimum contacts analysis, or to limit email to an exclusively supplemental role.

The most reasonable approach is to simply apply the traditional minimum contacts analysis by considering the quantity, nature, and quality of the email contacts, and whether those contacts establish a "substantial connection" between the defendant, the forum, and the litigation, such that the defendant "purposefully availed" himself of the forum and "reasonably anticipate[d] being haled into court" there. *Walden,* —— U.S. at ——, 134 S.Ct. at 1121 (quoting *World–Wide Volkswagen,* 444 U.S. at 297, 100 S.Ct. 559); *Burger King,* 471 U.S. at 472–74, 105 S.Ct. 2174; *Wessels,* 65 F.3d at 1432. The unique characteristics of email as a form of communication necessarily require a district court to consider whether the defendant was aware of the plaintiff's location or at least had reason to believe that the email would be received in a particular jurisdiction.

Here, MoneyMutual's solicitation of and transactions with over 1,000 Minnesotan loan applicants via email demonstrates a "purposeful direction" of litigation-related conduct at Minnesota. Significantly, when MoneyMutual sent emails matching applicants to lenders in its network, those applicants had already completed an online application that showed they were Minnesota

residents. Thus, MoneyMutual clearly knew or should have known that emails to these applicants likely would be opened in Minnesota.[12] Similarly, when MoneyMutual sent follow-up emails encouraging prior applicants to seek additional loans, MoneyMutual had sufficient information to know that the applicants were Minnesota residents and that the emails likely were to be opened in Minnesota.[13]

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[12] It is no excuse that MoneyMutual's website and email-solicitation systems are automated and depend solely on unilateral activity by users, because MoneyMutual or others under its direction programmed these systems. *See uBID, Inc. v. GoDaddy Grp., Inc.,* 623 F.3d 421, 428 (7th Cir.2010) ("No more persuasive is GoDaddy's argument that its sales to Illinois residents are automated transactions unilaterally initiated by those residents. GoDaddy tells us that its customers enter into most transactions without any human action on GoDaddy's end. But of course the customers ... are not simply typing their credit card numbers into a web form and hoping they get something in return. GoDaddy itself set the system up this way. It cannot now point to its hundreds of thousands of customers in Illinois and tell us, 'It was all their idea.'"); *Illinois v. Hemi Grp. LLC,* 622 F.3d 754, 758 (7th Cir.2010) ("Characterizing the sales [from Hemi's website] as unilateral is misleading, however, because it ignores several of Hemi's own actions that led up to and followed the sales. Hemi created several commercial, interactive websites through which customers could purchase cigarettes from Hemi.").

[13] The record is admittedly less clear regarding emails sent reminding applicants to finish a partially completed application form. To begin with, as MoneyMutual argues, the only evidence of these "unfinished application" emails comes from a private investigator who received the emails after he was hired by respondents' counsel to test MoneyMutual's website. Indeed, no respondents alleged that they received "unfinished application" emails. Additionally, that the loan application was incomplete at the time these emails were sent raises questions regarding whether MoneyMutual was aware of the applicant's state of

Despite the electronic, email-based nature of these relationships, these contacts demonstrate "purposeful direction" toward Minnesota and a "purposeful availment" of the benefits of doing business in a Minnesota forum—namely, a profitable pool of low-income Minnesota residents that MoneyMutual could match with its payday-lending network to generate lead fees. In other words, MoneyMutual availed itself of a Minnesota forum because it profited by selling lead information to payday lenders about Minnesota residents. These facts, demonstrating a "purposeful availment" of the Minnesota forum, should have caused MoneyMutual to reasonably anticipate being haled into court in Minnesota. Thus, MoneyMutual's emails to respondents are contacts with Minnesota that support the exercise of personal jurisdiction.

B.

Respondents next allege that MoneyMutual had contact with Minnesota through television advertisements. Respondents submitted affidavits alleging that they saw advertisements for MoneyMutual's website on television while in their homes in Minnesota. MoneyMutual has argued that its television advertisement campaign was "purely national in scope" and specifically denies that it placed television advertisements with any "Minnesota-based ... television stations." MoneyMutual also has averred that "[n]o advertising of any kind is targeted specifically to Minnesota or

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residence at the time the emails were sent. Because the record provides no clear answers to these questions, we decline to consider the "unfinished application" emails as part of our minimum contacts analysis.

Minnesotans. Nor is any advertising content targeted specifically at Minnesota or Minnesotans."

Relying on its decision in *Humphrey v. Granite Gate Resorts, Inc.,* 568 N.W.2d 715, 719–20 (Minn.App.1997), *aff'd,* 576 N.W.2d 747 (Minn.1998), the court of appeals held that, even with its national scope, MoneyMutual's television campaign supported personal jurisdiction in Minnesota. The court of appeals essentially concluded that, because Minnesota was included within the national scope of MoneyMutual's advertising, MoneyMutual had "targeted" Minnesota and, therefore, the television advertisements were relevant contacts for establishing personal jurisdiction in Minnesota. *Rilley,* 863 N.W.2d at 795.

Whether a national advertising campaign is a relevant contact for the purpose of establishing specific personal jurisdiction is a question of first impression in our court. Some courts have relied in part on purely national advertising to establish minimum contacts in support of personal jurisdiction.[14] But numerous other courts—perhaps

[14] *See, e.g., uBID, Inc.,* 623 F.3d at 428 (disagreeing with the defendant's argument that "[a]lthough its ads can be seen on Illinois television sets ... these are only parts of a national advertising campaign and [the defendant] does not target ... Illinois residents in particular," because it was "easy to infer" that GoDaddy "intended to reach as large an audience as possible, including [Illinois]" and because the national marketing campaign "created substantial business" for the defendant in Illinois); *Morris v. SSE, Inc.,* 843 F.2d 489, 494 (11th Cir.1988) (holding that minimum contacts were established in part by "a reasonable inference that SSE advertised in Alabama" because "[i]t is undisputed that SSE advertised in national trade magazines"; "such advertisements were a major source of business for SSE"; and "SSE presented

a majority—have rejected purely national advertising as a contact supporting personal jurisdiction because such activity is not purposefully directed at the forum state.[15]

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no evidence and did not argue that the magazines were not sold or did not appear in Alabama during this period"); *Henderson v. Laser Spine Inst.,* 815 F.Supp.2d 353, 377 (D.Me.2011) (holding that minimum contacts with Maine supported personal jurisdiction based in part on "significant national sales" and "extensive national advertising" in magazines and catalogs, which was "intended to reach a large national audience, including potential customers in Maine"); *Rostad v. On–Deck, Inc.,* 372 N.W.2d 717, 721 (Minn.1985) ("On–Deck's distribution contracts and marketing efforts were calculated attempts to create a national market for his product, a market which specifically includes Minnesota.").

[15] *See, e.g., Federated Rural Elec. Ins. Corp. v. Kootenai Elec. Coop.,* 17 F.3d 1302, 1305 (10th Cir.1994) ("[M]ere placement of advertisements in nationally distributed papers or journals does not rise to the level of purposeful contact with a forum required ... to exercise personal jurisdiction."); *Wines v. Lake Havasu Boat Mfg., Inc.,* 846 F.2d 40, 43 (8th Cir.1988) ("The sole contact between Lake Havasu, this lawsuit, and Minnesota is Lake Havasu's advertising of its product in a nationally distributed trade publication which is circulated in Minnesota. It does not appear ... that Lake Havasu's advertising represents a purposeful availment of the benefits and protections of Minnesota law."); *Scheidt v. Young,* 389 F.2d 58, 60 (3d Cir.1968) (holding that "advertisements in an out of state newspaper circulated in [the forum state], ... [is a] peripheral occurrence[ ] and do[es] not constitute some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State" (internal quotation marks omitted)); *Royalty Network Inc. v. Dishant.com, LLC,* 638 F.Supp.2d 410, 421 (S.D.N.Y.2009) (holding that defendant's "selling [of] advertisements on its website to national advertisers" was insufficient to confer personal jurisdiction because there was insufficient evidence of any "purposeful attempt to take advantage of the New York

Most significantly, relying on purely national marketing activity to support minimum contacts appears to be in tension with the United States Supreme Court's holding in *J. McIntyre Mach., Ltd. v. Nicastro,* 564 U.S. 873, 886, 131 S.Ct. 2780, 180 L.Ed.2d 765 (2011) (plurality opinion) (holding that national "marketing and sales efforts" did not support personal jurisdiction; although it " may reveal an intent to serve the U.S. market," "it is petitioner's purposeful contacts with New Jersey, not with the United States, that alone are relevant"). *Nicastro* may be distinguishable here because the "marketing efforts" in that case consisted solely of attending several national trade shows outside of New Jersey, rather than advertising content that actually appeared in the forum state. *Id.* Ultimately, however, *Nicastro* provides a guiding principle that efforts to target the national market of the United States do not equate to contacts with a particular state simply because that state is a part of the national market. *Id.*

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market"); *Seitz v. Envirotech Sys. Worldwide Inc.,* 513 F.Supp.2d 855, 864 (S.D.Tex.2007) ("[N]ational advertising that may include circulation in the forum state is generally insufficient to show jurisdiction over a nonresident defendant in that state."); *Decker v. Circus Circus Hotel,* 49 F.Supp.2d 743, 748–49 (D.N.J.1999) (holding that "television advertisement[s] ... on a national cable network"; "advertisements in national magazines and newspapers"; and the "mailing of [information] to former guests in New Jersey and New Jersey citizens who directly request information," without more, were "not enough to establish minimum contacts to the forum state" because "the record does not reflect that the defendant ever specifically targeted New Jersey for its advertisements"); *Polaroid Corp. v. Feely,* 889 F.Supp. 21, 27 (D.Mass.1995) ("[N]ational advertisements not aimed specifically at Massachusetts residents cannot subject a defendant to jurisdiction in this state....").

In light of this principle, we hold that a purely national advertising campaign that does not target Minnesota specifically cannot support a finding of personal jurisdiction. To the extent that *Humphrey v. Granite Gate Resorts, Inc.,* 568 N.W.2d 715 (Minn.App.1997), *aff'd,* 576 N.W.2d 747 (Minn.1998), is inconsistent with this holding, it is overruled.

Because MoneyMutual denied engaging in any television advertising that was specific to or targeted the Minnesota market, and supported this denial with an affidavit, respondents cannot rely on general statements for a prima facie showing of personal jurisdiction—rather, specific evidence must be alleged. *Hoff v. Kempton,* 317 N.W.2d 361, 363 n. 2 (Minn.1982) ("[I]f [the defendant's] motion to dismiss is supported by affidavits, the nonmoving party cannot rely on general statements in his pleading."). Here, there is no evidence that MoneyMutual's television advertisements were directed at or tailored for any Minnesota markets.[16] Respondents did not allege on which specific programs these

[16] One respondent alleged that, when he saw MoneyMutual's television ads, he "did not have cable TV at the time, and saw the advertisements on either a network or local station." But this averment is still insufficient to establish that the television ads were targeted at Minnesota. According to MoneyMutual, their "purely national" advertising was distributed on national cable programs or nationally syndicated network programs. The respondent's affidavit stated that he saw the ads on "*either* a network or local station." Thus, MoneyMutual's ads may have appeared on a nationally syndicated program, rather than a local broadcast. In light of MoneyMutual's affidavit, and because respondents do not provide evidence of the specific channels, networks, or programs on which the ads appeared, there is no prima facie showing that MoneyMutual targeted Minnesota with its television ads.

advertisements appeared and provide no other evidence that indicates that MoneyMutual's television advertising campaign specifically targeted Minnesota. As a result, MoneyMutual's television advertisements are not relevant contacts for the purpose of our minimum contacts analysis.

C.

Finally, respondents argue that MoneyMutual targeted the Minnesota market and established contacts with Minnesota through its Google AdWords advertising campaign. Respondents submitted an affidavit indicating that MoneyMutual had purchased advertisements that appeared when a Google user searched for "payday loans Minnesota" or "payday loans Minneapolis." According to respondents, Google's "Ad Settings" page indicated that MoneyMutual's ads matched the *exact search* that the user had entered—in other words, MoneyMutual paid to display those ads to customers who specifically searched for "payday loans Minnesota" or "payday loans Minneapolis." Respondents argue that these advertising purchases show an intent on MoneyMutual's part to target the Minnesota market.

Throughout the proceedings, MoneyMutual has never specifically denied using the Google AdWords service or paying for the use of the exact keywords "payday loans Minnesota" and "payday loans Minneapolis."[17] Instead, MoneyMutual makes

[17] MoneyMutual generally affirms that "[n]o advertising of any kind is targeted specifically to Minnesota or Minnesotans." This general denial is troubling in light of the allegations in respondents' affidavits and exhibits regarding the Google AdWords campaign.

several legal arguments. First, MoneyMutual argued, in a reply brief on the motion to dismiss, that the affidavit submitted by respondents "proves nothing" and "does not show MoneyMutual specifically targeted Minnesota" because the affidavit does not prove that "*only* Minnesota" was the target of a Google AdWords campaign. MoneyMutual reiterated the same argument at the motion hearing, stating that "nowhere does the affiant ... say that, well, she checked to see if exactly the same thing happened when she tried other states and other locales. So it's not proof of anything."

This argument fails because it is not necessary to rule out the targeting of other forums, in addition to Minnesota, in order to establish Minnesota's personal jurisdiction over a particular defendant. Hypothetically, if MoneyMutual paid for AdWords directed at other states, such as "payday loan New York," it would not diminish the conclusion that MoneyMutual targeted Minnesota with its AdWords campaign. Rather, it would tend to establish contacts with *both* Minnesota and New York. In the absence of any evidence to the contrary, we must accept as true respondents' prima facie allegations related to these Google Ads, including that there is no "plausible explanation" for MoneyMutual's ads to appear as an "exact match" for "payday loan Minnesota" other than MoneyMutual "specifically paying to advertise" those exact keywords. Certainly MoneyMutual has not offered any plausible explanation for the exact match. Nor has MoneyMutual specifically denied the existence of such an exact match.

Second, MoneyMutual argues that the Google AdWords allegation is "irrelevant, speculative, [and]

lack[s] foundation." Specifically, MoneyMutual argues that the allegation lacks foundation and is speculative because the affiant was a "clerk employed by Respondents' law firm who speculate[d] as to how Google operates and what advertising MoneyMutual purchased." But the affidavit submitted by respondents is detailed and consists primarily of quotes and screenshots from Google's website that explain how Google AdWords, the Ad Settings page, and the "exact match" option functioned. MoneyMutual does not provide any evidence to contradict respondents' account and does not allege that the affidavit is somehow fraudulent or wrong. At this early stage of the litigation, we must take all of the allegations contained in the complaint and the supporting affidavits as true. *Hardrives, Inc.,* 307 Minn. at 293, 240 N.W.2d at 816. Respondents have provided a sufficient basis for considering the Google AdWords evidence.

Third, MoneyMutual argues that the Google AdWords allegation is "irrelevant because no Respondent alleges that they actually performed a Google search." This relevance argument presumably refers to the "connection" requirement for specific jurisdiction. *See Burger King,* 471 U.S. at 472–73, 105 S.Ct. 2174 (requiring that the harm resulting in litigation "arise out of or relate to" the defendant's contacts with the forum); *Wessels,* 65 F.3d at 1432–34. In other words, MoneyMutual argues that respondents have failed to provide evidence that a respondent or class member saw the Google Ad, clicked on it, and that it caused him or her to apply for a loan at the MoneyMutual website.

Courts disagree about how to apply this connection requirement (also referred to as the

"relatedness" or "nexus" requirement) for specific personal jurisdiction. *Myers v. Casino Queen, Inc.,* 689 F.3d 904, 912–13 (8th Cir.2012) (describing the three major approaches: a strict "proximate cause" standard; a "but for" standard; and a more lenient "substantial connection" standard). In many courts, the connection requirement does not require proof that the litigation was strictly caused by or "[arose] out of" the defendant's contacts; rather, it is sufficient to show that the contacts are "substantially connected" or "related to" the litigation. For example, in *S.E.C. v. Carrillo,* 115 F.3d 1540, 1544 (11th Cir.1997), the court rejected the defendant's argument that personal jurisdiction was lacking because the SEC failed to show that advertisements actually caused investors to purchase securities. That argument "misconstrue[ed]" the relatedness prong, under which "the contacts must be *related* to the plaintiff's cause of action *or* have given rise to it." *Id.* at 1544. The relatedness prong was satisfied as "the advertisements were 'related to' the causes of action because the advertisements were a means by which [the defendant] offered and sought to sell its unregistered securities to potential American investors." *Id.* A number of other courts have adopted this reasoning.[18]

[18] *See, e.g., Myers,* 689 F.3d at 912–13 (rejecting the "proximate cause" approach and appearing to follow a more "flexible approach" to the relatedness inquiry); *Ticketmaster–N.Y., Inc.,* 26 F.3d at 206 ("[W]e think it significant that the [two halves of the relatedness requirement are] disjunctive in nature, referring to suits 'aris[ing] out of, *or* relat[ing] to,' in-forum activities. We believe that this added language portends added flexibility and signals a relaxation of the applicable

Although at this early stage of the litigation there is no evidence that the Google Ads actually *caused* any of the claims, the Google Ads are sufficiently *related* to the claims of respondents to survive a motion to dismiss. Respondents allege that MoneyMutual's website and advertising violated consumer protection statutes on false advertising and deceptive trade practices and that MoneyMutual conspired with, aided, and abetted, unlicensed payday lenders that extended loans under terms that violated Minnesota law. MoneyMutual's Google Ads, which were targeted at searches including "Minnesota" and "Minneapolis," solicited viewers to apply for these allegedly illegal payday loans by stating, for example: "Apply Online Now www.moneymutual.com Fast Payday Loan—Apply Online! Safe & Bad Credit OK Up to $1,000."

As in the *Carrillo* case discussed above, these ads are sufficiently "related to" the cause of action because they were a means by which MoneyMutual solicited Minnesotans to apply for the allegedly illegal loans. *Carrillo,* 115 F.3d at 1544. As a result, MoneyMutual's use of Google AdWords advertising that was specifically designed to target Minnesota residents is a relevant contact with the Minnesota forum for the purpose of the minimum contacts analysis.

D.

Having reviewed the various categories of contacts that MoneyMutual had with Minnesota, we must determine whether sufficient minimum

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standard. A number of other courts share this belief." (citations omitted)).

contacts exist to support the existence of personal jurisdiction here. In determining whether a defendant has sufficient "minimum contacts," we consider the contacts alleged by the plaintiff in the aggregate and not individually, by looking at the totality of the circumstances." *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.,* 51 F.3d 1383, 1388 (8th Cir.1995). After a thorough review, we conclude that minimum contacts with Minnesota exist and support the exercise of personal jurisdiction in this case.

MoneyMutual sent over 1,000 emails to known Minnesotans, soliciting them to apply for payday loans. These emails were the culmination of transactions between MoneyMutual and Minnesota residents through which Minnesota residents provided their personal information to MoneyMutual in return for being matched with a payday lender. By engaging in these transactions and knowingly matching Minnesota residents with payday lenders, MoneyMutual purposefully availed itself of the Minnesota market and Minnesota forum and should have "reasonably anticipate[d] being haled into court" in Minnesota. *Burger King,* 471 U.S. at 474, 105 S.Ct. 2174. These contacts alone are sufficient to support a finding of personal jurisdiction.

MoneyMutual also engaged with the Minnesota market through the use of Google AdWords, specifically designed and calibrated to target potential Minnesota customers. Unlike its national television advertising campaign, MoneyMutual's use of Google AdWords was specific to Minnesota and, once again, demonstrates that MoneyMutual purposefully directed its conduct toward Minnesota, further buttressing the conclusion that sufficient

minimum contacts exist for the exercise of personal jurisdiction over MoneyMutual.

IV.

Finally, in light of our conclusion that sufficient minimum contacts exist, we must consider whether exercising personal jurisdiction over MoneyMutual in this case comports with "traditional notions of fair play and substantial justice." *Juelich,* 682 N.W.2d at 570 (citing *Int'l Shoe,* 326 U.S. at 316, 66 S.Ct. 154); *see Burger King,* 471 U.S. at 476–78, 105 S.Ct. 2174. This "reasonableness" determination requires us to consider two factors: the interests of the forum state and the convenience of the parties. *Juelich,* 682 N.W.2d at 570.

Here, the reasonableness factors also point toward the exercise of personal jurisdiction over MoneyMutual. Minnesota has a strong interest in protecting its residents from predatory lending, enforcing consumer protection laws, and providing a forum for litigating violations of its payday-lending statutes. *See, e.g., SoftBrands Mfg., Inc. v. Missing Link Consulting, Inc.,* No. Civ. 04–3900, 2004 WL 2944112, at *7 (D.Minn. Dec. 20, 2004) ("Minnesota has an interest in providing a forum for its citizens to ... enforce consumer protection suits."); *Kopperud v. Agers,* 312 N.W.2d 443, 445 (Minn.1981) ("Minnesota has an obvious interest in providing a forum since Minnesotans were defrauded."). In addition, Minnesota is a convenient forum for the respondents and class members, as they reside in Minnesota, their financial harm was suffered in Minnesota, and requiring them to travel outside of the state could exacerbate their difficult financial situation. MoneyMutual, on the other hand, does not

present any arguments or evidence that litigating the class-action claims in Minnesota would be inconvenient (likely because it argues that convenience is not a relevant factor under Minnesota law).

V.

In conclusion, MoneyMutual had sufficient minimum contacts with Minnesota to support the exercise of personal jurisdiction in this case. Additionally, subjecting MoneyMutual to suit in a Minnesota forum is reasonable and consistent with traditional notions of fair play and substantial justice. As a result, the district court did not err when it denied MoneyMutual's motion to dismiss for lack of personal jurisdiction. We remand this case for further proceedings consistent with this opinion.[19]

Affirmed.

LILLEHAUG, CHUTICH, JJ., took no part in the consideration or decision of this case.

[19] Although we conclude that there is a sufficient basis to assert personal jurisdiction in this case, we express no opinion as to the ultimate merit of respondents' claims.

Appendix B

863 N.W.2d 789
Court of Appeals of Minnesota.

Scott RILLEY, et al., Respondents,

v.

MONEYMUTUAL, LLC, Appellant.

No. A14–1307.
|
May 18, 2015.
|
Review Granted Aug. 11, 2015.

Syllabus by the Court

A nonresident defendant creates sufficient contacts to establish personal jurisdiction in Minnesota when it solicits Minnesota residents via television advertising and e-mails and generates revenue from known Minnesota residents through its website.

Attorneys and Law Firms

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Considered and decided by SMITH, Presiding Judge; RODENBERG, Judge; and CHUTICH, Judge.

OPINION

SMITH, Judge.

We affirm the district court's denial of appellant MoneyMutual's motion to dismiss because the respondents alleged sufficient minimum contacts to establish personal jurisdiction. The district court also did not abuse its discretion when it determined that the lenders were not indispensable parties.

FACTS

Appellant MoneyMutual, LLC, a Nevada corporation, operates a website that allows individuals to apply for short-term loans, commonly known as "payday loans." Once an application is submitted, MoneyMutual offers the application to its lender network. After a lender selects the application, MoneyMutual notifies the applicant via e-mail and receives a fee from the lender. To promote its services, MoneyMutual advertises its website through television commercials. In addition, MoneyMutual e-mails marketing offers to people who have previously started or submitted a loan application.

Respondents, four Minnesota residents who used the MoneyMutual website to obtain loans, filed a class-action complaint against MoneyMutual. Respondents allege that MoneyMutual's website and advertising contained false and misleading statements, that MoneyMutual matched them with lenders that were unlicensed in Minnesota, and that

their loans were illegal under Minnesota law. Respondents claim that MoneyMutual violated Minnesota's consumer-protection statutes, Minn.Stat. §§ 47.60, .601 (2014), 325D.44 (2014), 325F.67 (2014), 325F.69 (2014), breached its duty "not to engage in or facilitate ... illegal conduct," unjustly enriched itself, participated in a civil conspiracy, and aided and abetted unlicensed lenders.

On April 28, 2014, MoneyMutual moved to dismiss the complaint for lack of personal jurisdiction and for failure to join indispensable parties. In response, respondents submitted additional evidence alleging that they submitted MoneyMutual applications with their Minnesota contact information from computers in Minnesota after seeing MoneyMutual advertisements in Minnesota. In addition, they submitted affidavits detailing MoneyMutual's advertising in Minnesota. The district court denied MoneyMutual's motion, concluding that "MoneyMutual has sufficient contacts with Minnesota" because of its advertising and regular communication with Minnesota loan applicants. The district court also concluded that the lenders were not indispensable parties because it could provide complete relief for the claims in their absence.

ISSUES

I. Did the district court err in concluding that MoneyMutual had sufficient contacts for personal jurisdiction in Minnesota?

II. Did the district court abuse its discretion in concluding that the lenders were not indispensable parties?

ANALYSIS

I.

MoneyMutual argues that the district court erred by denying its motion to dismiss for lack of personal jurisdiction. We review de novo whether personal jurisdiction exists. *Volkman v. Hanover Invs., Inc.,* 843 N.W.2d 789, 794 (Minn.App.2014). To establish personal jurisdiction, the plaintiff must make a prima facie showing of jurisdiction, and the complaint and supporting evidence will be taken as true. *Hardrives, Inc. v. City of LaCrosse,* 307 Minn. 290, 293, 240 N.W.2d 814, 816 (Minn.1976). The court must view the evidence in the light most favorable to the plaintiff. *Fastpath, Inc. v. Arbela Techs. Corp.,* 760 F.3d 816, 820 (8th Cir.2014). Doubts should be resolved in favor of retaining jurisdiction. *Hardrives,* 307 Minn. at 296, 240 N.W.2d at 818.

A Minnesota court may exercise personal jurisdiction over an out-of-state defendant as long as jurisdiction is authorized by the long-arm statute and comports with the constitutional due-process requirement. *Juelich v. Yamazaki Mazak Optonics Corp.,* 682 N.W.2d 565, 570 (Minn.2004). Because Minnesota's long-arm statute extends to the limits of due process, *see* Minn.Stat. § 543.19, subd. 1 (2014), the inquiry turns on whether the defendant has sufficient minimum contacts with Minnesota so that exerting personal jurisdiction over the defendant "does not offend traditional notions of fair play and substantial justice," *Int'l Shoe Co. v. Washington,*

326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945) (quotation omitted). Because our ultimate conclusion depends on the Due Process Clause of the United States Constitution, we apply federal caselaw in examining this issue. *Valspar Corp. v. Lukken Color Corp.,* 495 N.W.2d 408, 411 (Minn.1992).

To exercise personal jurisdiction consistent with due process, the out-of-state defendant must have purposefully availed itself of the privilege of conducting activities within the forum state. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475, 105 S.Ct. 2174, 2183, 85 L.Ed.2d 528 (1985). A court must focus "on the relationship among the defendant, the forum, and the litigation." *Griffis v. Luban,* 646 N.W.2d 527, 532 (Minn.2002) (quotation omitted). To determine if minimum contacts exist, a court considers five factors: (1) the quantity of the defendant's contacts with Minnesota; (2) the nature and quality of the defendant's contacts with Minnesota; (3) the connection between the claims and the defendant's contacts; (4) Minnesota's interest in providing a forum; and (5) the convenience of the parties. *Volkman,* 843 N.W.2d at 795. The first three factors are given greater weight than the last two. *Id.*

The third factor determines which form of personal jurisdiction may exist. General jurisdiction exists when the defendant's contacts are "continuous and systematic," so the forum may assert jurisdiction regardless of whether the claims are related to the contacts. *Id.* at 795. For specific jurisdiction to exist, the defendant must have "purposefully directed" its actions at the forum state, and the claims must "arise out of or relate to" the contacts. *Burger King,* 471 U.S. at 472, 105 S.Ct. at

2182 (quotations omitted). Respondents assert that specific jurisdiction exists here because MoneyMutual conducted business activities in Minnesota and their claims arise from those activities.

MoneyMutual argues that personal jurisdiction cannot be based on: (1) any contact it had with the respondents because those contacts are based on the "fortuitous" presence of the respondents in Minnesota; (2) its television commercials that aired in Minnesota because they were not targeted solely at Minnesota; or (3) its website, which is accessible from Minnesota, because it is not targeted solely at Minnesota. We agree that personal jurisdiction would not exist if we disregarded these items; however, we are not persuaded by MoneyMutual's contention that we must ignore the plethora of contacts alleged by respondents.

MoneyMutual first argues that the district court relied on the respondents' contacts with Minnesota, not its own. MoneyMutual contends that its contacts with Minnesota were limited to the respondents' "'fortuitous' presence in the forum and 'unilateral activities.'" MoneyMutual's argument appears to be that any contact involving a plaintiff cannot also be a contact of the defendant's, but one does not preclude the other. Caselaw makes clear that when a resident of a forum state leaves that state, his residency alone cannot establish personal jurisdiction. *Walden v. Fiore,* —— U.S. ——, 134 S.Ct. 1115, 1122–23, 188 L.Ed.2d 12 (2014). But this is not one of those cases. Here, MoneyMutual reached into Minnesota through its advertising and communications. The respondents were in Minnesota at all times: when they saw

MoneyMutual advertising, when they interacted with MoneyMutual, when they submitted applications indicating they were Minnesota residents, and when MoneyMutual sold the respondents' applications to lenders for profit. Mere residency of the respondents is not the sole basis for personal jurisdiction here; rather, MoneyMutual's efforts to reach the respondents and conduct business with them are the bases.

MoneyMutual also states that each respondent initiated communication with MoneyMutual by visiting its website and submitting an application and that its e-mails responding to the applications were automated. Therefore, according to MoneyMutual, the respondents acted unilaterally. This argument fails. First, it disregards MoneyMutual's active solicitation of Minnesota residents, without which the respondents might never have become aware of MoneyMutual or its services. Second, MoneyMutual disregards its own actions to ensure that a loan is created, such as encouraging inquiring customers via phone conversations and e-mail to submit an application online. The interaction between the respondents, MoneyMutual, and the lenders is better described as a three-sided transaction with each party taking action before the loan is made, rather than a series of unilateral acts by the respondents. In order to obtain a loan, respondents submitted applications to MoneyMutual. MoneyMutual then offered each application to its lender network. Each time a lender selected an application, MoneyMutual notified the respondent who had submitted the application via e-mail and received a fee from the lender. Given this business model, the contacts are not based on the respondents' unilateral acts; MoneyMutual took

independent action by selling the contact information to lenders *after* it knew that the applicant was a Minnesota resident, thus generating its own profit in the second step of the overall transaction.

Additionally, MoneyMutual analyzes each named respondent separately, giving no weight to the allegation that MoneyMutual received more than 1,000 loan applications from Minnesota residents. The sheer volume of loan applications indicates that MoneyMutual's contacts with Minnesota were not limited to those who "fortuitously" happened to be Minnesota residents, but rather the result of a business strategy that included a Minnesota market. *See Zippo Mfg. Co. v. Zippo Dot Com, Inc.,* 952 F.Supp. 1119, 1126 (W.D.Pa.1997) (theorizing that it would be "fortuitous" if a subscription-based Internet news service with no Pennsylvanian subscribers found itself sued in Pennsylvania because an Ohio subscriber downloaded a message and forwarded it to a Pennsylvanian). Furthermore, MoneyMutual is capable of blocking its advertisements from jurisdictions where it does not do business, and it has done so in some jurisdictions. MoneyMutual's e-mails also indicate that its services may not be available in all areas, implying that its automated replies connecting applicants with lenders confirm that the resident lives in a market where MoneyMutual offers its services. *See Lakin v. Prudential Sec., Inc.,* 348 F.3d 704, 712 (8th Cir.2003) (holding that a website that accepts online loan applications and provides electronic responses may form the basis of personal jurisdiction if the plaintiffs demonstrate that forum residents actually accessed the website).

Next, MoneyMutual argues that specific jurisdiction does not exist because its advertisements were not "expressly aimed" at Minnesota. When an intentional tort is at issue, a court may exert personal jurisdiction over a foreign defendant if the effects of the tort were felt in the forum state. *Calder v. Jones,* 465 U.S. 783, 789–90, 104 S.Ct. 1482, 1487, 79 L.Ed.2d 804 (1984). The Minnesota Supreme Court has adopted a three-prong effects test requiring the plaintiff to show that:

> (1) the defendant committed an intentional tort; (2) the plaintiff felt the brunt of the harm caused by that tort in the forum such that the forum was the focal point of the plaintiff's injury; and (3) the defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity.

Griffis, 646 N.W.2d at 534.

The respondents alleged sufficient targeting of the Minnesota market. First, the respondents alleged that MoneyMutual television commercials have been broadcast in Minnesota since at least 2010. MoneyMutual denies that it placed ads with any Minnesota-based or local stations, but does not deny using national advertising that includes Minnesota, that its services are available in Minnesota, or that its advertisements were intentionally broadcast in Minnesota. MoneyMutual appears to argue that advertising is not expressly aimed at Minnesota unless it specifically mentions

Minnesota, airs only in Minnesota, or is otherwise customized to the Minnesota market. But we have previously affirmed a finding of personal jurisdiction based on national advertising and marketing where the intended market merely included Minnesota. *See, e.g., State by Humphrey v. Granite Gate Resorts, Inc.,* 568 N.W.2d 715, 719–20 (Minn.App.1997), *aff'd,* 576 N.W.2d 747 (Minn.1998).[1]

Second, MoneyMutual's communications with the respondents evinced a willingness to offer its services to Minnesota residents. The respondents allege that when one Minnesota resident called MoneyMutual from her Minnesota phone number after seeing a television commercial broadcast in Minnesota, a MoneyMutual representative directed her to its website to complete a loan application. Then, after respondents submitted applications confirming that they were Minnesota residents, MoneyMutual e-mailed respondents to notify them that MoneyMutual had matched them with a lender. In addition, MoneyMutual sent follow-up e-mails,

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[1] MoneyMutual argues that *Granite Gate* is distinguishable from the present case and "utterly inconsistent" with subsequent caselaw. MoneyMutual distinguishes this case from *Granite Gate* because it does not profit directly from Minnesota residents; it profits only from the sale of Minnesota residents' applications information to lenders. The distinction does not affect the analysis under *Granite Gate,* and the use of three-sided transactions does not insulate MoneyMutual from suit in states where it advertises its services and profits from residents. *Granite Gate,* 568 N.W.2d at 720 ("A defendant cannot hide behind the structuring of its distribution system when the defendant's intent was to enter the market in the forum state and profit thereby." (quotation omitted)). Furthermore, *Granite Gate* is compatible with current caselaw, and no Minnesota cases have treated it negatively.

called "offers," encouraging past Minnesota customers to use its services again.

Finally, MoneyMutual argues that its website also was not expressly aimed at Minnesota and that basing personal jurisdiction on a website would subject website operators to "universal jurisdiction" because they could be sued anywhere the website is accessed. MoneyMutual's "universal jurisdiction" argument is somewhat hyperbolic because personal jurisdiction continues to be bounded by due process, even when based on Internet contacts. For example, a website that can be accessed from anywhere cannot provide the sole basis for personal jurisdiction if it has never been visited by a forum resident. *Johnson v. Arden,* 614 F.3d 785, 797 (8th Cir.2010).

Furthermore, we find it unwise to disregard contacts through an openly accessible website given the increased tendency for commerce to take place via the Internet, particularly when the website is used to circumvent Minnesota law. Minnesota has expressed a clear intent to regulate payday lending and to protect its residents from predatory practices by enacting statutes that govern not just lenders, but also those who arrange payday loans. *See* Minn.Stat. §§ 47.60–.601 (2014). Moreover, Minnesota's long-arm statute extends to the limits of due process, and nothing here would "offend traditional notions of fair play and substantial justice." *Int'l Shoe,* 326 U.S. at 316, 66 S.Ct. at 158 (quotation omitted). The MoneyMutual website contributes to the required minimum contacts because it is a commercial website that was visited repeatedly by customers known by MoneyMutual to be Minnesotans to submit applications for payday

loans. When considered alongside MoneyMutual's advertising, acceptance of and profit from more than 1,000 loan applications from Minnesotans, and e-mail communications with Minnesota residents, we hold that the district court did not err when it denied MoneyMutual's motion to dismiss for lack of personal jurisdiction.

II.

MoneyMutual also challenges the district court's denial of its motion to dismiss for failure to join indispensable parties. MoneyMutual argues that, because it did not make any loans and is not a short-term lender, the actual lenders must be joined. The district court held that the lenders were not indispensable parties because: (1) the respondents' claims were "probably" akin to torts and there is no requirement that a plaintiff join all tortfeasors in a single suit; (2) MoneyMutual owed duties to the respondents independent of duties that the lenders owed; and (3) the claims were based on alleged misrepresentations made by MoneyMutual, not the lenders.

Denial of a motion to dismiss for failure to join indispensable parties is reviewed for abuse of discretion. *Hoyt Props., Inc. v. Prod. Res. Grp., L.L.C.,* 716 N.W.2d 366, 377 (Minn.App.2006), *aff'd,* 736 N.W.2d 313 (Minn.2007). First, MoneyMutual must show that the lenders were necessary. A party is necessary if complete relief cannot be granted in its absence or it claims an interest in the subject of the litigation. Minn. R. Civ. P. 19.01. Then, MoneyMutual must show that the lenders are "parties without whom the action could not proceed

in equity and good conscience." *Hoyt Properties,* 716 N.W.2d at 377 (quotation omitted).

MoneyMutual's argument that the lenders must be joined is unpersuasive. Respondents essentially allege that they were harmed because MoneyMutual facilitated illegal loans and misrepresented the loans as being compliant with Minnesota law. MoneyMutual argues that, when a claim involves a contract, all contracting parties must be joined. In breach-of-contract cases, we have affirmed dismissal of cases for failure to join all contracting parties. *See, e.g., Potter v. Engler,* 130 Minn. 510, 512–13, 153 N.W. 1088, 1089 (1915). But we have also allowed cases to proceed even when all contracting parties were not joined, particularly when complete relief could be granted and there was minimal risk of multiple suits. *See, e.g., Hoyt Props.,* 716 N.W.2d at 378; *Murray v. Harvey Hansen–Lake Nokomis, Inc.,* 360 N.W.2d 658, 661–62 (Minn.App.1985). Furthermore, with torts and analogous statutory claims, it is well-established that a plaintiff is not required to join all tortfeasors in a single suit. *See, e.g., Harrison ex rel. Harrison v. Harrison,* 733 N.W.2d 451, 456 (Minn.2007).

None of respondents' claims allege that MoneyMutual is liable under the loan contracts themselves, and MoneyMutual does not dispute that the claims at issue here allege duties that are separate from those owed by the lenders under the contracts and the consumer-protection statutes. MoneyMutual provides no other reasons why complete relief could not be accorded in the lenders' absence or why the lenders would claim an interest in the subject of this litigation. The district court

therefore did not abuse its discretion in denying MoneyMutual's motion to dismiss.

DECISION

Because the respondents alleged sufficient minimum contacts to establish personal jurisdiction over MoneyMutual, the district court did not err by denying MoneyMutual's motion to dismiss for lack of personal jurisdiction. In addition, because MoneyMutual has not demonstrated that complete relief cannot be accorded in the absence of the lenders, the district court did not abuse its discretion by denying MoneyMutual's motion to dismiss for failure to join an indispensable party.

Affirmed.

Appendix C

District Court of Minnesota.
First Judicial District
Civil Division
Dakota County

Scott RILLEY, Michelle Kunza, Linda Gonzales and Michael Gonzales, Plaintiffs,

v.

MONEYMUTUAL, LLC, Defendant.

No. 19HA-CV-14-858.
July 17, 2014.

Order

Martha M. Simonett, Judge.

The above-entitled matter came on before the undersigned on June 20, 2014 on Defendant's motions to dismiss for lack of personal jurisdiction and failure to join necessary and indispensable parties and to stay discovery pending the ruling on the motion to dismiss. Mark Heaney, Esq. and Daniel Bryden, Esq., appeared on behalf of Plaintiffs, and Donald Putterman, Esq., and Joseph Windier, Esq., appeared on behalf of Defendant.

Now, therefore, based upon all the files, records and proceedings herein, the Court makes the following:

ORDER

1. Defendant's motions are **denied;**

2. The accompanying Memorandum shall constitute the Court's rationale.

BY THE COURT:

DATED: July 16, 2014

<<signature>>

Martha M. Simonetti

Judge of District Court

MEMORANDUM

Defendant MoneyMutual, LLC (MoneyMutual), moves the Court to dismiss Plaintiffs' class action Complaint for lack of personal jurisdiction and failure to join necessary and indispensable parties under Rules 12.02 (a)(f) of the Minnesota Rules of Civil Procedure.

JURISDICTIONAL FACTS and CASE LAW

MoneyMutual is a Nevada corporation that arranges payday loans between individuals and online payday lenders. It is well-known because it advertises on television broadcasts into Minnesota, and elsewhere, using celebrity spokesperson Montel Williams. Affidavit testimony provided by Plaintiffs indicates that MoneyMutual has been advertising on Minnesota television since at least 2010. (Aff. of Michelle Kunza.) Three of the Plaintiffs in this case recall seeing MoneyMutual's advertisements on television, and Plaintiff Rilley saw the advertisements multiple times. (Kunza, Rilley, Gonzales Affs.) In addition to television, MoneyMutual reaches Minnesotans with its online

Google "ad words" marketing campaign. Google allows a company marketing its wares online to be a "sponsored" result when someone searches for certain words or phrases online. Here, MoneyMutual apparently has purchased this form of advertising from Google for the phrases "payday loans Minnesota" and "payday loans Minneapolis" because it is a "sponsored result" when such a search is done on Google and is also an "exact match" for those terms.

In addition to advertising contacts, Plaintiffs argue that MoneyMutual routinely sends communications to individuals who indicated in their online loan application that they live, work and bank in Minnesota. If the Minnesotan completes the application and MoneyMutual approves it, MoneyMutual then arranges a payday loan between the Minnesotan and an online payday lender in its network by selling "leads". (Aff. of Tim Madsen .) MoneyMutual sends an email to approved borrowers that provides: "Congratulations! You have been matched with [lender] one of the lenders in the MoneyMutual network." (Rilley Aff.) Using the bank account and routing information provided on the MoneyMutual loan application, the loan is deposited directly into the Minnesotan's bank account through an electronic transaction. The lender then begins taking payments on the loan directly from the borrower's bank account, also by means of an electronic transaction that debits the borrower's bank account. MoneyMutual also markets to Minnesotans after they pay off their loan. For example, it sent Ms. Olson 42 emails in a three-month period after she received her first payday loan through MoneyMutual. (*See* Olson Aff.)

MoneyMutual has arranged such payday loans to over one thousand Minnesotans.

Plaintiffs argue that these loans violate Minnesota law. Pointing to the vulnerability of many recipients and the debt treadmill many are unable to escape, Plaintiffs observe that Minnesota caps the interest and other fees that may be lawfully charged on payday loans. *See, e.g., Minn. Stat. § 47.60, subd. 2. See also, Minn. Stat. § 47.601, subd. 2.* In addition, Minnesota law restricts the number of times a payday loan can be rolled over to prevent borrowers from becoming trapped in the downward cycle of debt. Minnesota also requires payday lenders to obtain a license from the Department of Commerce and provide certain reports. *Minn. Stat. § 47.601, subd. 2.* It maintains a list of payday lenders licensed to lend in Minnesota, publically available on its website. In this case, Plaintiffs' claim that MoneyMutual is in violation of Minnesota law by arranging loans that violate many of these substantive restrictions on payday lending. For example, MoneyMutual's website indicates that the typical APR range is somewhere between 261 percent and 1,304 percent for a 14-day loan. These APRs are far in excess of the interest payday lenders may charge under Minnesota law.

In response, MoneyMutual argues that Plaintiffs' Complaint is critically flawed because it fails to sue the lenders with whom the Plaintiffs entered into loan contracts, or other lenders who have contracted with members of the purported class that Plaintiffs claim to represent. MoneyMutual insists that it does not make or arrange payday loans, but simply maintains an internet website to which persons interested in obtaining loans can

provide and submit information to payday lenders who have contracted with MoneyMutual's affiliate, PartnerWeekly, LLC, for the opportunity to review and potentially obtain such leads from the MoneyMutual website. It argues that neither it nor its affiliate, PartnerWeekly, has any physical or financial presence in Minnesota, enters into contracts with Minnesota residents, has employees visit Minnesota for business purposes, sells goods or services to Minnesotans or receives any payments from Minnesota residents. On the contrary, it points out that the MoneyMutual website is accessible wherever the internet reaches, and has no reference to or focus on Minnesota. Moreover, its radio and television advertising is national in scope and does not target Minnesotans in any respect. MoneyMutual argues that it has no involvement in the loan agreement itself, the negotiation of the terms or whether the loan is made. It has no knowledge of the terms and conditions offered by specific lenders, no knowledge or receipt of payments and simply receives a fee for each lead purchased and nothing more.

On these facts, MoneyMutual argues that Minnesota law precludes this Court from exercising either general or specific personal jurisdiction over it. Relying on the Minnesota Supreme Court case in *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002), it argues that the exercise of personal jurisdiction over non-residents accused of committing intentional torts over the internet is legitimate only when the website, posting or other communication is shown to be "expressly aimed" at Minnesota. The forum must be shown to be the discrete "focus" of the website by more than just the impact on a forum resident to distinguish the forum from any other jurisdiction in

which the communication might be read. MoneyMutual also argues that the alleged illegality of the loan contracts is an issue that must be adjudicated and that such adjudication would require the participation of the lenders in the lawsuit. The lenders are, therefore, necessary and indispensable parties and MoneyMutual asks the Court to order Plaintiffs to join them in this case.

MoneyMutual urges this Court to apply the *Griffis* analysis, which focused on *Calder v. Jones*, 464 U.S. 783 (1984). The *Calder* Court established the so-called "effects" test which allowed long-arm jurisdiction for intentional torts based on the "effect within the forum of tortious conduct outside the forum." In *Griffis*, the Minnesota Supreme Court noted that many courts have construed *Calder* narrowly, refusing to find jurisdiction merely because Plaintiff was located in the forum state. The best analysis, the Court concluded, was that of the Third Circuit Court of Appeals in *IMO Industries, Inc. v Kiekert. A.G.*, 155 F.3D 254 (3rd Cir. 1998), which held that the *Calder* effects test was not satisfied by the mere allegation that the Plaintiff feels the effect of the Defendant's conduct in the forum because the Plaintiff is located there. 646 N.W2d at 534. The Minnesota Supreme Court then described that the test that it would require a plaintiff to meet was to show that defendant committed an intentional tort, plaintiff felt the brunt of the harm caused by that tort in the forum, defendant expressly aimed the tortious conduct at the forum such that the forum state was the focal point of the tortious activity, 646 N.W.2d at 534-535.

MoneyMutual argues that there is no basis for the exercise of general jurisdiction under the

Griffis/Calder analysis. It argues that neither MoneyMutual nor PartnerWeekly has a physical presence in Minnesota, neither entity contracts with any Minnesota resident in connection with loans, and neither entity directs advertising specifically at Minnesota or participates directly in loan negotiations. Moreover, MoneyMutual argues that there is no "specific jurisdiction" that may be exercised over it with regard to Plaintiffs' claims. It emphasizes that it is sufficiently distinct and separate from the entities that actually make the loans. It argues that it does not "arrange" loans, as that term is defined in the Miriam-Webster Dictionary as bringing about "an agreement or understanding".

It argues that Plaintiffs' reliance on *State by Humphrey v. Granite Gate Resort, Inc.*, 568 N.W.2d 715 (Minn. Ct. App. 1997) (aff'd without opinion, 576 N.W.2d 747 (Minn. 1998)), is misplaced. MoneyMutual argues that exercising jurisdiction based upon *Granite Gate* would be elevating *Granite Gate* significantly beyond the facts to which the Court of Appeals limited its decision. Moreover, MoneyMutual argues that extending *Granite Gate* would be inconsistent with *Griffis*, which is now controlling Minnesota law on the issue of jurisdiction over non-residents for internet torts. MoneyMutual argues that even limited to its own facts, *Granite Gate* cannot be reconciled with *Griffis* and is therefore no longer the law of Minnesota on the subject of personal jurisdiction for internet torts committed by non-residents.

Finally, MoneyMutual argues that Plaintiffs have failed to name necessary and indispensable parties, specifically, the lenders whose contracts the

Plaintiffs now claim are illegal and void. MoneyMutual points the Court to Minnesota Rule of Civil Procedure 19, which requires joinder of a missing person as a party to the action if that person has an interest in the subject matter of the action, and if the disposition of the matter in the person's absence may as a practical matter impair or impede that person's ability to protect that interest.

In considering a motion to dismiss for lack of personal jurisdiction, the Court assumes that the facts in the Complaint and supporting affidavits are true. *Marquette Nat'l Bank of Mpls v. Norris*, 270 N.W.2d 290 (Minn. 1978). The Minnesota Supreme Court has also emphasized that "doubt should be resolved in favor of retention of jurisdiction." *Valspar Corp, v. Lukken Color Corp., 495* N.W.2d 408 (Minn. 1992). Plaintiffs argue that regardless of the analytical framework used by the Court to address this jurisdictional issue, MoneyMutual has more than sufficient contacts for this Court to exercise jurisdiction. It points the Court to the five-factor test originally set forth in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and quoted in *Griffis v. Luban*, 646 N.W.2d 527 (Minn. 2002). *International Shoe* directs the trial Court to consider the quantity of contacts with the forum state, the nature and quality of the contacts, the connection of the cause of action with these contacts, the interest of the state providing a forum and the convenience of the parties. In addition, the District Court should consider whether exercising personal jurisdiction would offend traditional notions of fair play and substantial justice.

In this case, the Court is persuaded by Plaintiffs' argument that MoneyMutual has sufficient contacts

with Minnesota to invoke this Court's jurisdiction under any of the three tests discussed by the parties in their briefs. It has been advertising on television since 2009, it has arranged loans to over one thousand Minnesotans, and it has routinely communicated with Minnesota loan applicants by email. *See, e.g., State by Humphrey v. Granite Gate Resort, Inc.*, 568 N.W.2d 715 (Minn. Ct. App. 1997). The Court also concludes that by the aforementioned contacts with Minnesota, and by generating profits by selling leads consisting of Minnesota residents seeking loans, MoneyMutual "purposefully availed itself of the benefits and protections of Minnesota" such that exercising personal jurisdiction comports with due process. *See also Zippo Manufacturing Co. v. Zippo dot com, Inc.*, 952 F.Supp. 1119 (WDPA 1997). The Court finds MoneyMutual's efforts to distance itself from the lenders and Partner Weekly and to describe itself as distinct and separate unpersuasive. Its prominent role in attracting borrowers and its activities and compensation for matching borrowers to lenders in its network is sufficient to refer to it as an entity that arranges loans under Minnesota law. The Court also notes that MoneyMutual could have chosen not to arrange loans to Minnesotans as, for example, the consent decree with the State of Pennsylvania precludes Pennsylvania residents from accessing the website. These facts provide further support that MoneyMutual has targeted Minnesotans in a manner that would fairly subject it to personal jurisdiction here. Jurisdiction is proper where the contacts proximately result from actions by the Defendant that create a substantial connection with the forum state. Here, there is a direct connection between MoneyMutual's contacts with Minnesota and the payday loans MoneyMutual arranged

Minnesotans. The Court is also persuaded that Minnesota does have a strong interest in providing a forum for Minnesotans harmed by the violation of payday lending laws. Moreover, Courts in Minnesota have consistently held that the state has a strong interest in protecting its consumers and providing a forum for residents to litigate tortious conduct. The Court also notes that there is a presumption existing in favor of Plaintiff's choice of forum and notes that all Plaintiffs and potential class members are Minnesotans.

It appears to the Court that an exercise of jurisdiction would be appropriate under the *Calder/Griffis* test as well. As explained in *Griffis*, instead of focusing only on the Defendant's conduct within or contacts with the forum, the so-called "effects test" approved in *Calder* allowed long-arm jurisdiction to be based on the effects within the forum of tortious conduct outside the forum.

The *Colder* effects test is a "slightly refined" version of the traditional test for specific jurisdiction that makes it easier, not more difficult, to establish personal jurisdiction. *O'Connor v. Sandy Lane Hotel Co., Ltd., 496* F.3D 312; *IMO Industries, supra.* Here, the Court agrees with Plaintiffs that this particular case is not an "effects only" case but rather, MoneyMutual has significant direct contacts with Minnesota and its residents. Further, the Court agrees with Plaintiffs that MoneyMutual expressly aimed its conduct at Minnesota and Minnesotans by targeting advertising here, communicating with and soliciting people who lived in Minnesota, and profiting from Minnesotans' personal information, including address information.

Finally, it seems to the Court that the lenders in MoneyMutual's network are not necessary parties. Under a Rule 19 analysis, the Court must first determine whether a person or entity is a necessary party. A party is necessary if its absence means that complete relief cannot be accorded among already existing parties or the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may impair or impede the person's ability to protect that interest or leave anyone already a party subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the person's claimed interest. Rule 19.01. Even if the Court finds that a party is necessary, the party must be joined only if feasible and if the party cannot feasibly be joined, the Court should dismiss the case only if the missing party is indispensable - one without whom the action could not proceed in equity and good conscience. Here, it appears that complete relief can be afforded without the presence of the payday lenders in the Defendant's network. The Court notes that Plaintiffs' statutory and common law claims are probably more analogous to tort than breach of contract claims, and it is well established that a plaintiff is not required to join every tortfeasor if it chooses to bring suit against one. *See, e.g., Kisch v. Skow*, 233 N.W.2d 732 (Minn. 1975). Moreover, Plaintiffs' claims are for violations of Minnesota law that impose duties on MoneyMutual separate from duties placed on the lenders themselves. The Minnesota payday loan statute specifically contemplates that entities who arrange loans can be liable under the statute with no requirement that the Defendant be a party to the loan contract. Minn. Stat. § 47.601(e). Similarly, Plaintiffs' consumer protection statutory claims all

relate to misrepresentations made by MoneyMutual rather than the lenders. For all of the above reasons, the Court declines to order that the lenders be added as necessary parties.

Finally, Defendant has also asked the Court to stay discovery while the motion to dismiss is pending. Given the Court's ruling herein, the Court declines to order such a stay.

Appendix D

District Court of Minnesota.
First Judicial District
Civil Division
Dakota County

Scott RILLEY, Michelle Kunza, Linda Gonzales and Michael Gonzales, Plaintiffs,

v.

MONEYMUTUAL, LLC, Defendant.

No. 19HA-CV-14-858.

AFFIDAVIT OF TIM MADSEN

STATE OF MISSOURI)

) ss:

COUNTY OF JACKSON)

TIM MADSEN, being first duly sworn upon oath, states as follows:

1. I am the Executive Vice President of Sales for PartnerWeekly, LLC. I have personal knowledge of the facts stated herein and, if required, could and would testify competently under oath thereto. As a result of my work, I am knowledgeable about the scope of the business activities of PartnerWeekly and the relationship between PartnerWeekly and Money Mutual.

2. MoneyMutual, LLC is a Nevada LLC. Its purpose is to maintain the www.moneymutual.com website. MoneyMutual itself has never had

employees or officers; 'leads' generated through the MoneyMutual website are only presented to those short-terms lenders who have contractual relationships with PartnerWeekly.

3. PartnerWeekly is a Nevada LLC with its business offices located in Las Vegas, Nevada. It has no offices, employees or agents in Minnesota. It owns no property in Minnesota. It pays no taxes of any kind in Minnesota. It has no bank or other financial accounts of any kind in Minnesota. PartnerWeekly employees have made no trips for business purposes to Minnesota and conducts no business in Minnesota on behalf of MoneyMutual, or on its own behalf. The same is true for Money Mutual itself. None of the aforementioned entities have entered into any contracts relating to any aspect of PartnerWeekly's or MoneyMutual's business with any consumer located in Minnesota.

4. During the period from 2009 to the present day, PartnerWeekly has not contracted for or placed advertising with any Minnesota-based radio or television station, nor does it contract or place advertising with any local radio or television station in a surrounding state which specifically serves any Minnesota market. No advertising of any kind is targeted specifically to Minnesota or Minnesotans. Nor is any advertising content targeted specifically at Minnesota or Minnesotans.

5. No state has ever required that MoneyMutual or PartnerWeekly obtain a license pursuant to that state's laws governing payday or consumer short-term lending, and neither MoneyMutual nor PartnerWeekly has ever applied for such a license. Neither the Minnesota attorney general nor the

Minnesota Department of Commerce has ever taken any action against either MoneyMutual or PartnerWeekly in connection with any consumer short-term lender, short-term loan or MoneyMutual's own operations.

6. Neither Partner Weekly nor Money Mutual makes any consumer loans of any kind. Indeed, as is expressly stated on the website example attached as Exhibit H to the Class Action Complaint, neither PartnerWeekly nor MoneyMutual is a lender and does not "broker" loans on behalf of individual consumers. Neither Partner Weekly nor Money Mutual receives any payment of any kind from any consumer. Neither PartnerWeekly nor MoneyMutual owns a financial interest in any lender, and no lender owns a financial interest in either of them.

7. Other than helping prospective borrowers obtain access to prospective lenders, neither PartnerWeekly nor MoneyMutual has anything to do with the loan contracts between borrowers and lenders, participates in any way in "arranging" loans and in fact, does not see and is not informed of the terms of any such loans. PartnerWeekly enters into contracts with lenders (in which, among other things, the lenders warrant that they comply with all applicable state and federal laws), in connection with which the lenders and PartnerWeekly also enter into riders for specific programs, pursuant to which the lenders request 'leads' with certain general characteristics and exclusions. No such contract or rider has ever specifically requested 'leads' targeting Minnesota or Minnesotans. Neither PartnerWeekly nor MoneyMutual formulates any such programs for any lender.

8. Prospective borrowers who are interested in applying for a short term loan provide their information on MoneyMutual's website and then submit it to be presented to a short term lender through PartnerWeekly's electronic system. PartnerWeekly's electronic system then presents the 'lead,' at the consumer's request, electronically and in real-time to the lenders with which PartnerWeekly has contracted. It is then in the lender's sole discretion to evaluate and accept or reject a 'lead' distributed to it, in real-time. If a lender accepts a 'lead,' MoneyMutual automatically redirects the consumer to the lender's website and sends an email to the consumer, such as that reproduced in Paragraph 68 of the Class Action Complaint, informing the prospective borrower that he or she has been matched with a specific lender and provides the lender's contact information in the form of the lender's website or telephone number. Thereafter, neither MoneyMutual nor PartnerWeekly has any insight, control or involvement in the loan process or with the prospective loan; they do not participate in any negotiations or agreement; and they are not informed of the course or content of any negotiations or agreement and are not aware of any specific terms of any loan ultimately consummated between the borrower or lender. Upon purchasing a lead, the lender may verify the lead data, ask for additional information from the consumer, and perform various underwriting methodologies or credit checks. If the lender so chooses, it offers a loan agreement to the consumer, and if the consumer agrees to the loan terms and signs the contract, the lender funds the loan. The lender is under no obligation to fund a loan to the consumer based on their decision to purchase the lead, and a consumer is under no obligation to

accept a loan or the loan terms offered by the lender. Neither MoneyMutual nor PartnerWeekly has any insight into whether or not a specific lead results in a funded loan, or the terms and rates of such funded loans.

9. Partner Weekly is paid by lenders on the basis of 'leads' accepted by each lender, without regard for the specific terms associated with any loan contract that has ultimately resulted. That is the sole payment received. Neither MoneyMutual nor PartnerWeekly is ever informed of the terms of any such contract, whether the loan has been paid off or not, how much money has been paid to the lender for any reason, or about any bank arrangements between the borrower or lender or anything else. Neither MoneyMutual nor PartnerWeekly receives any payment of any kind based upon any of the foregoing, nor do any of them have any role in administering loans or collecting payments on loans.

10. Neither PartnerWeekly nor MoneyMutual has involvement in any contract forms used by any payday lender, and is not informed of the terms (including, *inter alia,* fees and interest) being offered at any time by any specific lender. They have only general information about the range of interest and other terms generally offered within the consumer short-term loan industry, which, as reflected on Exhibit H to the Class Action Complaint, are disclosed on the MoneyMutual website. Also as reflected on Exhibit H, the MoneyMutual website cautions consumers about the need to review any loan agreement carefully, to be sure they understand the terms and to ask questions of the lender. The website also warns consumers of the importance of paying off loans when due and

encourages consumers to use short terms loan responsibly.

11. Neither PartnerWeekly nor MoneyMutual has ever entered into any contract with any Minnesotan concerning, in any respect, consumer short-term loans or otherwise. Neither MoneyMutual nor PartnerWeekly sells any goods or services to any Minnesota resident, or receives payments from any Minnesota resident for goods and services.

I declare under penalty of perjury under the laws of Missouri that the foregoing is true and correct.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

<<signature>>

TIM MADSEN

Subscribed and sworn to before me
this 22nd of May, 2014.

<<signature>>
Jeremy McGrail
Notary Public – Notary Seal
State of Missouri
Commissioned for Jackson County

My Commission Expires: March 16, 2018
Commission Number: 14948667