

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

_____)	
CVS PHARMACY, Inc.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-070 WES
)	
TIMOTHY M. BROWN)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

Along with its Complaint, Plaintiff CVS Pharmacy filed an Emergency Motion for a Temporary Restraining Order and a Motion for Preliminary Injunction, ECF No. 3. In addition to his Opposition, ECF No. 12, Defendant Timothy Brown filed Motion to Dismiss or Transfer Venue, ECF No. 10. For the reasons that follow, the Motion to Dismiss or Transfer Venue is GRANTED, and the case is transferred to the Western District of Washington to cure lack of personal jurisdiction.

I. Background

In 2017, Timothy Brown began working at Aetna, which is headquartered in Connecticut. Compl. ¶ 4, ECF No. 1; Notice of Suppl. Authority 8 n.2, ECF No. 15. He served first as a Medicare General Manager and later as a Chief Medicare Officer for the Northwest and Mountain regions of the United States. Compl. ¶¶ 4, 28. In November 2018, Aetna was acquired by CVS. Id. ¶ 3.

After receiving \$97,750 in restricted stock units from CVS, Brown signed a noncompete agreement, promising that he would not do certain types of work for any competitor for one year after leaving CVS. Id. ¶¶ 29-36. The contract stated that the stock options were contingent on his acceptance of the agreement. See Restrictive Covenant Agreement ¶ 1, ECF No. 1-1. In January 2021, Brown gave notice that he was leaving Aetna/CVS and accepted a position as Medicare Advantage Performance Officer, Managing Director, for Cigna, which competes with Aetna in the Medicare Advantage field. Compl. ¶¶ 37, 105. After failed negotiations between the parties and Cigna, CVS sued, seeking to enjoin Brown from working for Cigna in the Medicare Advantage field for twelve months. Id. ¶ 106 and page 33. CVS argues that Brown has confidential information regarding Aetna's business plans in the Medicare Advantage market. Id. ¶¶ 52-100.

On February 11, 2021, the Court held a conference and set an expedited briefing schedule. Brown then filed his Motion to Dismiss or Transfer Venue, as well as an Opposition to the Motion for Temporary Restraining Order. CVS filed a Reply to Defendant's Opposition to Emergency Motion for Temporary Restraining Order ("Reply"), ECF No. 13, responding to both the Opposition and the Motion to Dismiss or Transfer.¹

¹ In its Reply, CVS states that it "reserves the right to file a brief in opposition to Defendant's Motion to Dismiss and/or

II. Discussion

Brown argues that the case should be dismissed based on lack of personal jurisdiction. Def.'s Mem. Supp. Mot. to Dismiss or Transfer Venue 5-11, ECF No. 11. "In determining whether a non-resident defendant is subject to its jurisdiction, a federal court exercising diversity jurisdiction is the functional equivalent of a state court sitting in the forum state." Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A., 290 F.3d 42, 51 (1st Cir. 2002). "Rhode Island's long-arm statute claims jurisdiction to the maximum extent permitted by the Fourteenth Amendment." Dennett v. Archuleta, 915 F. Supp. 2d 248, 251 (D.R.I. 2013). Thus, the sole question presented is whether personal jurisdiction over Brown would comport with the Due Process Clause. See id.

Transfer Venue" and that it "understood its reply brief was to be limited to the issues raised by Brown in his opposition to Plaintiff's Emergency Motion for Temporary Restraining Order." Reply 13 n.4, ECF No. 13. There is no need for further briefing. At the conference on February 11th, Brown's counsel requested time to brief the issue of the temporary restraining order, stating that he wanted to argue that this Court lacks personal jurisdiction and that venue is improper in Rhode Island. CVS's counsel requested the opportunity to respond to the jurisdictional and venue arguments; that opportunity was granted in the form of the Reply brief. Indeed, given the emergency nature of the Motion for a Temporary Restraining Order, a reply would not have been warranted if it were not for the Motion to Dismiss or Transfer Venue. The Court's decision to transfer this case is based on lack of personal jurisdiction, and CVS's arguments regarding personal jurisdiction are fully developed, spanning nine pages of its Reply. See Reply 13-21. Thus, the issue is ripe.

Because the basic facts underlying CVS's claim of jurisdiction are not disputed, the Court will utilize the prima facie method of determining personal jurisdiction. See Foster-Miller, Inc. v. Babcock & Wilcox Canada, 46 F.3d 138, 145 (1st Cir. 1995) (noting that prima facie method is ill-suited to cases "that feature conflicting versions of the facts").² "Under this standard, the court need only 'consider . . . whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction.'" Adelson v. Hananel, 510 F.3d 43, 48 (1st Cir. 2007) (quoting Foster-Miller, 46 F.3d at 145).

CVS claims that this Court has specific (as opposed to general) jurisdiction over Brown. See Reply 14. The First Circuit has identified three requirements for specific jurisdiction: "First, the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities. Second, the defendant's in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable. Third, the exercise of

² The parties seem to agree that the prima facie method should be used. See Pl.'s Reply 13; Def.'s Mem. Supp. Mot. to Dismiss or Transfer Venue 6, ECF No. 11.

jurisdiction must . . . be reasonable.” PREP Tours, Inc. v. Am. Youth Soccer Org., 913 F.3d 11, 17 (1st Cir. 2019) (citation and quotations omitted). Brown focuses his arguments on the second prong: purposeful availment. Def.’s Mem. Supp. Mot. to Dismiss or Transfer Venue 10-11. The Court agrees that this requirement has not been met.³

For a court to exercise personal jurisdiction over an out-of-state defendant, “it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” United Elec., Radio and Mach. Workers of Am. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1088 (1st Cir. 1992) (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)); see also Asahi Metal Indus. Co. v. Superior Court of California, Solano Cty., 480 U.S. 102, 112 (1987) (requiring “an action of the defendant personally directed toward the forum State.”). This requirement is “akin to a rough quid pro quo, that is, when a defendant deliberately targets its behavior toward the society or economy of a particular forum, the forum should have the power to subject the defendant to judgment regarding that behavior.” Bluetarp Fin., Inc. v. Matrix Const. Co., Inc., 709

³ Due to this conclusion, there is no need to analyze relatedness or reasonableness. See PREP Tours, Inc. v. Am. Youth Soccer Org., 913 F.3d 11, 19 & n.5 (1st Cir. 2019).

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