IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

DOUGLAS FINK, as a Qualified Beneficiary of the Norman Fink 2001 Irrevocable Trust and as a Qualified Beneficiary of the Norman Fink 1999 Revocable Trust; ASHLEY FINK, N/K/A ASHLEY LIEBOWITZ, as a Qualified Beneficiary of the Norman Fink 2001 Irrevocable Trust and as a Qualified Beneficiary of the Norman Fink 1999 Revocable Trust; AND ERIKA FINK, N/K/A ERIKA BEYERSDORF, as a Qualified Beneficiary of the Norman Fink 2001 Irrevocable Trust and as a Qualified Beneficiary of the Norman Fink 1999 Revocable Trust, PLAINTIFFS, VS. STEVEN A. MEYER, as Co-Trustee of the Norman Fink 2001 Irrevocable Trust and as Co-Trustee of the Norman Fink 1999 Revocable Trust; STEVEN MICHAEL LABRET, as Co-Trustee of the Norman Fink 2001 Irrevocable Trust; MICHAEL FINK, as Co-Trustee of the Norman Fink 1999 Revocable Trust; and POSTERNAK BLANKSTEIN & LUND, LLP, DEFENDANTS.	CASE NO.: 2017-CA-002315 DIVISION: 37

DEFENDANTS STEVEN A. MEYER AND POSTERNAK BLANKSTEIN & LUND, LLP'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Defendants Steven A. Meyer ("Meyer") and Posternak Blankstein & Lund, LLP ("Posternak"), pursuant to Rule 1.140(b)(2), Florida Rules of Civil Procedure, hereby request that this Court enter an order dismissing Plaintiffs' claims against Meyer and Posternak for lack of personal jurisdiction and state as follows in support thereof:

I. INTRODUCTION

Plaintiffs assert wide-ranging claims against Meyer, a Massachusetts resident, and Posternak, a Boston-based law firm, for alleged mismanagement of two trusts established by Plaintiffs' deceased father. Lacking any proper basis to plead personal jurisdiction, Plaintiffs allege only vague and insubstantial contacts with Florida and cannot show jurisdiction under either the long-arm statute or the Due Process Clause. Accordingly, and for the reasons stated more fully herein, this Court should dismiss the claims against Meyer and Posternak.

II. BACKGROUND

A. Plaintiffs' Inadequate Jurisdictional Allegations

In 1999, Norman Fink established the Norman Fink 1999 Revocable Trust (the "1999 Trust"), as a "pour over trust" to receive his residuary estate assets. (Compl., Ex. A). In 2001, he created a second trust, the Norman Fink 2001 Irrevocable Insurance Trust (the "2001 Trust"), to receive life insurance proceeds. (*Id.*, Ex. B). Norman Fink funded both trusts with a nominal sum and named beneficiaries that included, among others, Plaintiffs Douglas Fink, Ashley Fink Liebowitz, and Erika Fink Beyersdorf. (*Id.*, Ex. A, § 6.3 & Sch. A; Ex. B, § 4.6 & Sch. A). The trust instrument for the 1999 Trust named Norman Fink and Meyer as cotrustees and originally named Stephen Fink as successor cotrustee after Norman Fink's death. (*Id.*, Ex. A, pp. 1-2). The trust instrument for the 2001 Trust named Stephen Fink and Meyer as cotrustees. (*Id.*, Ex. B, p. 1). Norman Fink later replaced Stephen Fink with Michael Fink as successor trustee of the 1999 Trust and with Steven LaBret ("LaBret") as cotrustee of the 2001 Trust. (*Id.*, Exs. C & D). Since Norman Fink's death in 2006, Meyer and Michael Fink have served as cotrustees of the 1999 Trust, and until recently, Meyer and LaBret served as cotrustees of the 2001 Trust.[1]

[1] LaBret resigned his cotrustee position on March 31, 2017, making Meyer the sole trustee of the 2001 Trust pending appointment of a replacement trustee.

Plaintiffs have apparently become dissatisfied with their distributions and the manner in which the trusts are being administered. As a result, they demanded (and received) trust accountings, (Compl. ¶¶ 20-21), and then filed this lawsuit against Meyer, Michael Fink, and LaBret and also against Meyer's law firm, Posternak. Plaintiffs assert a broad array of alleged grievances over the past decade, including purported failures to provide trust accountings and valuation deficiencies for business entities, (*id.* ¶¶ 19-27); lack of information regarding a lawsuit filed in 2008 in which the 1999 Trust later joined as a party plaintiff, (*id.* ¶¶ 28-33); vague concerns about loans to Norman Fink's estate for the payment of estate tax obligations in 2007, (*id.* ¶ 46); distributions that Plaintiffs believe to be too small, (*id.* ¶¶ 51-53); Meyer's receipt of reward points when paying expenses by credit card, (*id.* ¶ 54); and claims of improper attorney and trustee fees, (*id.* ¶¶ 57-79). Based on these allegations, Plaintiffs seek damages for breach of fiduciary duty against Meyer, Michael Fink, and LaBret (Count I); removal of Meyer, Michael Fink, and LaBret as cotrustees (Count II); disgorgement of fees from Posternak for work allegedly unrelated to Meyer's trustee duties (Count III); and a series of accountings (Count IV).

Although Meyer is a Massachusetts resident and Posternak is a Boston-based law firm, Plaintiffs say little about personal jurisdiction. They cite the long-arm statute in the Florida Trust Code – Section 736.202, Florida Statutes – but do not identify the statutory language on which they rely. (*Id.* ¶ 10). Plaintiffs then point out that "Norman Fink died in Florida," and Plaintiffs "lived" in Florida at unspecified times, although only one of them (Ashley Fink Liebowitz) currently resides in Florida. (*Id.* ¶¶ 11, 13). They note that another beneficiary – Maria Baker – "was a resident of Florida" and the trust instruments contain Florida choice of law provisions. (*Id.* ¶¶ 12, 72). Finally, they insist without explanation that "the transactions alleged in this complaint occurred primarily in Florida," and Meyer had "significant, ongoing and repetitive

contacts . . . with Florida in administering the trust." (*Id.* ¶¶ 11, 72, 77). Apart from these paltry allegations, Plaintiffs make no effort to plead personal jurisdiction over Meyer and Posternak.

B. Meyer's and Posternak's Lack of Florida Contacts

Meyer is a Massachusetts-licensed attorney who has maintained his domicile in Massachusetts and has practiced at Massachusetts law offices since his admission to the Massachusetts Bar in 1973. (**Ex. 1** ¶¶ 2-3, 5).[2] He has never resided or practiced law in Florida and does not affirmatively advertise, market, or solicit business in Florida. (*Id.* ¶¶ 4, 6-7).

Norman Fink met with Meyer in Massachusetts in or about 1999 to discuss his estate plan and retained Meyer and his former firm to prepare various estate-related documents and to provide associated legal advice and services. (*Id.* ¶ 9). Meyer did not travel to Florida in connection with the consultation or engagement process and prepared the trust instruments for the 1999 and 2001 Trusts in Massachusetts. (*Id.* ¶¶ 9, 11). At no time did Meyer ever solicit Plaintiffs to serve as co-trustee of the 1999 and 2001 Trusts, or to perform other trust-related services. (*Id.* ¶ 8). Meyer made only two trust-related trips to Florida since 1999 – the first in late 2006 or early 2007 for Norman Fink's memorial service and to address estate-related matters, and the second in 2012 to assist Douglas Fink with his various needs as a beneficiary and also with a criminal matter in which Douglas Fink was represented by counsel named Aaron Delgado. (*Id.* ¶ 19).

Meyer has maintained the original trust instruments and other significant trust records, overseen the trusts' accounts, handled distributions and payments from the trusts, prepared and distributed accountings, overseen the preparation of trust tax returns, and conducted or

[2] Although this Court should dismiss the claims against Meyer and Posternak based on Plaintiffs' deficient jurisdictional allegations alone, (*see* Part III.B, *infra*), Meyer and Posternak submit the Affidavits of Steven Meyer (**Exhibit 1**) and Rosanna Sattler (**Exhibit 2)** to further demonstrate the lack of personal jurisdiction over them.

supervised the other major administrative activities of the 1999 and 2001 Trusts in Massachusetts. (*Id.* ¶¶ 13-14). The principal assets of the 1999 Trust have always been (1) bank and investment accounts opened at the Massachusetts branches of the relevant institutions, and (2) minority interests in closely held Massachusetts entities, Nomist Realty & Construction, LLC, SX Industries, Inc. (before its sale), and Mistno, Inc. (*Id.* ¶ 15). The 2001 Trust has always been comprised entirely of bank and investment accounts opened at the Massachusetts branches of the relevant institutions. (*Id.* ¶ 16). The 1999 and 2001 Trusts do not hold accounts or other property located in Florida. (*Id.* ¶¶ 15-16).

Meyer has never owned real property or maintained a bank account, telephone number, or mailing address in Florida. (*Id.* ¶¶ 20-22). He has never been an officer, director, member, manager, partner, or shareholder of a Florida-based entity, except for share ownership of public companies. (*Id.* ¶ 23). Meyer has never filed tax returns or paid taxes in Florida and has never registered to vote, registered a vehicle, or maintained a license or permit in Florida. (*Id.* ¶¶ 24-25).

Similarly, Posternak is a Massachusetts limited liability partnership with its only office in Boston. (**Ex. 2** ¶ 5). The firm has never had a Florida office and does not advertise, market, or solicit business in Florida apart from maintaining a website viewable by persons in any location. (*Id.* ¶¶ 6-7). No Posternak attorney or employee has ever been based in Florida, and Posternak has never had a Florida mailing address or registered agent. (*Id.* ¶¶ 8-9). Only one of Posternak's sixty-one attorneys is licensed to practice law in Florida – although that attorney has not rendered legal services to a Florida client for at least two years – and no Posternak attorneys have appeared as counsel of record in Florida cases over the past five years. (*Id.* ¶¶ 10-11). Posternak has only 28 active clients with Florida billing addresses (out of approximately 14,522

clients marked as active), and only 0.5% of Posternak's revenues have been derived from clients with Florida billing addresses over the past five years. (*Id.* ¶¶ 12-13).

III. ARGUMENT

A. Standard of Review

To establish personal jurisdiction, Plaintiffs must (1) "allege sufficient jurisdictional facts to bring the action within the ambit of . . . Florida's long arm statute," and (2) show that Meyer and Posternak each have "certain minimum contacts with the state so as to justify [their] being subject to suit in [Florida]." *Grogan v. Archer*, 669 So. 2d 289, 292 (Fla. 5th DCA 1996). Plaintiffs can meet their initial pleading burden either by "tracking the language of [the long-arm statute] without pleading supporting facts . . . or by alleging specific facts that demonstrate that the defendant's actions fit within one or more subsections of [the long-arm statute]." *Hilltopper Holding Corp. v. Estate of Cutchin ex rel. Engle*, 955 So. 2d 598, 601 (Fla. 2d DCA 2007). The pleading analysis is limited to "examining the four corners of the complaint." *Covenant Trust Co. v. Guardianship of Ihrman*, 45 So. 3d 499, 502 (Fla. 4th DCA 2010). If Plaintiffs fail to meet their initial pleading burden, this Court should dismiss their claims regardless of any affidavits. *See Crownover v. Masda Corp.*, 983 So. 2d 709, 712-13 (Fla. 2d DCA 2008).

If Plaintiffs adequately plead jurisdiction, Meyer and Posternak may challenge the jurisdictional allegations or assert a lack of minimum contacts by "fil[ing] affidavits in support of [their] position." *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). The burden then shifts to Plaintiffs "to prove by affidavit the basis upon which jurisdiction may be obtained." *Id.* If the essential facts are undisputed, this Court "can resolve the legal issue on the basis of the affidavits." *Grogan*, 669 So. 2d at 292. Otherwise, there must be "an evidentiary hearing to resolve all disputed facts essential to determining the jurisdictional issue." *Id.* If

Plaintiffs fail to offer "sworn proof" that refutes the affidavits and establishes personal jurisdiction, the claims must be dismissed. *Extendicare, Inc. v. Estate of McGillen*, 957 So. 2d 58, 63 (Fla. 5th DCA 2007). In determining whether there is personal jurisdiction, this Court must strictly construe the applicable long-arm statute in favor of Meyer and Posternak. *See Pluess-Staufer Indus., Inc. v. Rollason Eng'g & Mfg., Inc.*, 635 So. 2d 1070, 1072 (Fla. 5th DCA 1994); *Ferguson v. Estate of Campana*, 47 So. 3d 838, 842 (Fla. 3d DCA 2010). For the reasons stated below, Plaintiffs have not adequately pleaded – and cannot prove – personal jurisdiction over Meyer and Posternak under either the long-arm statute or the Due Process Clause.

B. Plaintiffs Have Failed to Plead Long-Arm Jurisdiction

Plaintiffs claim that there is "personal jurisdiction over the trustees and beneficiaries pursuant to § 736.0202, Fla. Stat.," and fail to cite any long-arm statute as a basis for personal jurisdiction over Posternak, which is not a trustee. (Compl. ¶ 10). Section 736.0202 is a trust-specific statute that became effective on July 1, 2007. In its original form, the statute provided that a trustee "submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust" by "accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state." FLA. STAT. § 736.0202(1) (2007). Effective October 1, 2013, the Legislature adopted a completely rewritten version of Section 736.0202. The amended statute sets forth a list of enumerated activities that may subject trustees and other persons to jurisdiction in Florida largely focusing on the trust's "principal place of administration." FLA. STAT. § 736.0202(2) (2013).

Plaintiffs make no effort to "track[] the language" of Section 736.0202 that supposedly applies, *Hilltopper*, 955 So. 2d at 601, nor do they even bother to identify the version of the statute on which they rely. The timing of Section 736.0202's enactment and later amendment

makes specificity on these points particularly important. The Florida Supreme Court has "long refused to apply long arm statutes retroactively" because doing so "would violate the requirement of fair notice." *Fibreboard Corp. v. Kerness*, 625 So. 2d 457, 458-59 (Fla. 1993). As a result, "[t]he statute in effect at the time of the acts subjecting one to long-arm jurisdiction is the applicable one." *Id.* at 459; *see also Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1287 (S.D. Fla. 2014) ("[T]he applicable long-arm statute is the one in effect at the time of the [conduct at issue] rather than the statute in effect when [the] cause of action accrues.").

Because long-arm statutes are not retroactive, the current version of Section 736.0202 does not apply to conduct before October 1, 2013, and the original version of the statute only applies to conduct between July 1, 2007 and September 30, 2013. Yet Plaintiffs base their claims on trust instruments executed in 1999 and 2001 and a flurry of alleged acts and omissions dating back to Norman Fink's death in December 2006. (*See, e.g.*, Compl. ¶ 1 (creation of trust); ¶ 3 (death of Norman Fink); ¶¶ 19-22 (alleged failure to provide accountings from 2007 to 2015), ¶¶ 23-27 (alleged accounting and valuation issues for business entities from 2007 to present), ¶¶ 28-33 (alleged failure to provide information for litigation commenced in 2008); ¶ 46 (alleged issue with loans to Norman Fink's estate in 2007); ¶¶ 51-54 (allegations regarding small amount of distributions and acquisition of credit card points for unspecified number of years, including examples from 2011 to 2014); ¶¶ 57-79 (alleged issues with attorney and trustee fees and invoices from 2007 to present)). Given this multitude of allegations over a decade-long period, Meyer, Posternak, and this Court should not be required to simply guess at which provision or version of Section 736.0202 Plaintiffs have in mind for the various portions of their claim.

Plaintiffs have also failed to "alleg[e] specific facts" demonstrating that Meyer's or Posternak's "actions fit within one or more subsections of [Section 736.0202]." *Hilltopper*, 955

So. 2d at 601. Attempting to cobble together generic ties to Florida, Plaintiffs assert: (1) Plaintiffs "lived" in Florida at unspecified times, (2) "Norman Fink died in Florida," (3) "the transactions alleged in this complaint occurred primarily in Florida," (4) "both trusts specify that they are to be governed by Florida law," (5) Maria Baker, a beneficiary who is not a party to this case, "was a resident of Florida," and (6) the legal "invoices evidence the significant, ongoing and repetitive contacts [Meyer] had with Florida in administering the trust." (Compl. ¶¶ 10-12, 72, 77).

No long-arm statute in Florida subjects a trustee or law firm to personal jurisdiction simply because beneficiaries live or lived in Florida or the settlor died in Florida, and choice-of-law provisions do not create personal jurisdiction regardless of whether Plaintiffs believe them to be "critical[]" to their claim of jurisdiction. (*Id.* ¶ 12). *See, e.g.*, *deMco Techs., Inc. v. C.S. Engineered Castings, Inc.*, 769 So. 2d 1128, 1131-32 (Fla. 3d DCA 2000) (finding lack of personal jurisdiction despite contract with Florida corporation, payment obligation in Florida, and Florida choice of law provision); *McRae v. J.D./M.D., Inc.*, 511 So. 2d 540, 541 (Fla. 1987) (holding that Florida choice of law and forum selection provision did not establish personal jurisdiction). Highly generic allegations of "transactions" occurring "primarily" in Florida and "significant, ongoing and repetitive contacts" with Florida, (Compl. ¶¶ 72, 77), are likewise not "specific facts" meeting "one or more subsections" of the operative long-arm statute. *Hilltopper*, 955 So. 2d at 601. And, although Section 736.0202 focuses almost entirely on the principal place of administration of trusts, Plaintiffs do not allege that either trust at issue has a principal place of administration in Florida – presumably because they cannot plead ultimate facts to support any such claim. (*See* Part III.C, *infra*). Because Plaintiffs have not recited the statutory

language on which they rely or pleaded specific facts satisfying Section 736.0202, this Court should dismiss the claims against Meyer and Posternak without reaching any affidavits.

C. Meyer and Posternak Have Submitted Affidavits Establishing That They Are Not Subject to Statutory Long-Arm Jurisdiction

Both versions of Section 736.0202 focus on the "principal place of administration" of the trust. *See* FLA. STAT. § 736.0202(1) (2007) (providing for jurisdiction where a trustee "accept[s] the trusteeship of a trust having its principal place of administration in this state" or "mov[es] the principal place of administration to this state"); FLA. STAT. § 736.0202(2)(a) (2013) (providing for jurisdiction where trustee or other person takes enumerated actions as to "a trust having its principal place of administration in this state"). If the trust instrument does not specify the principal place of administration, Section 736.0108, Florida Statutes, provides:

> In the case of cotrustees, the principal place of administration is
>
> * * *
>
> (b) The usual place of business or residence of the individual trustee who is a professional fiduciary, if there is only one such person and no corporate cotrustee; or otherwise
> (c) The usual place of business or residence of any of the cotrustees as agreed on by the cotrustees.

FLA. STAT. § 736.0108(2)(b)-(c).[3] To move the principal place of administration, the trustee must send advance written notice to all qualified beneficiaries with the proposed site of transfer, new contact information, an explanation of the reason for the proposed transfer, the date of the proposed transfer, and a date by which objections can be made. *See id.* § 736.0108(6).

The trust instrument for the 1999 Trust appointed Norman Fink and Meyer as cotrustees, (Compl., Ex. A at p. 1), and the trust instrument for the 2001 Trust appointed Meyer and Stephen

[3] Although the Florida Trust Code did not become effective until 2007, the predecessor to Section 736.0108 in effect at the time of settlement of the 1999 and 2001 Trusts contained an identical definition of principal place of administration for trusts with cotrustees. *See* FLA. STAT. § 737.101(2) (1999).

Fink as cotrustees, (*Id*., Ex. B at p. 1). Only one of these individuals – Meyer – was a professional fiduciary.[4] Neither trust instrument designated a principal place of administration, and the cotrustees did not agree that Florida would be the principal place of administration. (Compl., Exs. A & B; **Ex. 1** ¶ 17). Although the trust instruments both contain Florida choice of law provisions, such provisions do not establish a Florida principal place of administration. *See Meyer v. Meyer*, 931 So. 2d 268, 270-71 (Fla. 5th DCA 2006) (holding that predecessor to Section 736.0108 established sole trustee's residence as principal place of administration where "the trust agreement contain[ed] a [Florida] choice of law provision," but did not "designate Florida as the principal place for administration of the trust"). To the contrary, the choice of law provisions expressly envision the 1999 and 2001 Trusts being "administered elsewhere within the United States or abroad" despite Florida law applying. (Compl., Exs. A & B § 12.1).

Under these circumstances, the principal place of administration at the time of both trusts' settlement was Massachusetts, where Meyer, the only cotrustee who was a professional fiduciary, resides and works. *See* FLA. STAT. § 736.0108(2)(b). (**Ex. 1** ¶¶ 3, 5, 13-14). Since that time, the original and successor cotrustees never agreed to relocate the principal place of

[4] The statute itself does not define "professional fiduciary," and there appear to be no cases analyzing the term in Section 736.0108 or the predecessor statute. Accordingly, the term should be construed according to its "plain and ordinary meaning" based on common dictionary definitions. *Lowe v. Broward Cnty.*, 766 So. 2d 1199, 1209 (Fla. 4th DCA 2000) (reviewing dictionary definitions of "dependent" to interpret statute). Accepted dictionary definitions of "professional" focus on whether the relevant activity is performed as part of a paid occupation. *See, e.g.*, OXFORD ENGLISH DICTIONARY, vol. XII, at 573 (2d Ed. 1989) (defining "professional" as, among other things, "[p]ertaining to, proper to, or connected with a or one's profession or calling" and "[t]hat follows an occupation at his (or her) profession, life-work, or means of livelihood"); AM. HERITAGE DICTIONARY 1406 (5th Ed. 2000) (defining "professional" as, among other things, "[e]ngaging in a given activity as a source of livelihood or as a career" and "[p]erformed by persons receiving pay"); RANDOM HOUSE WEBSTER'S UNABRIDGED DICTIONARY 1544 (2d Ed. 2001) (defining "professional" as, among other things, "following an occupation as a means of livelihood or for gain" and "undertaken or engaged in as a means of livelihood or for gain"). Meyer is thus a professional fiduciary in both the broader sense that he provides attorney-client services and in the narrower sense that he regularly performs trustee services as part of his paid profession. (**Ex. 1** ¶ 10). Indeed, attorneys holding property in trust or providing compensated trustee services are commonly referred to as professional fiduciaries in Florida and elsewhere. *See, e.g.*, FLA. R. PROF. CONDUCT 5-1.1, comment (explaining that "[a] lawyer must hold property of others with the care required of a professional fiduciary"); *Ky. Bar Ass'n v. Dixon*, 373 S.W.3d 444, 448 (Ky. 2012) (discussing "professional fiduciary services" provided by lawyers, including service "as trustee, guardian, personal representative of an estate, attorney-in-fact, and escrow agent").

administration, nor did they provide the statutory notice required to do so. (*Id.* ¶¶ 17-18). Accordingly, the principal place of administration has remained Massachusetts throughout the existence of the 1999 and 2001 Trusts notwithstanding any replacement or successor cotrustees. *Cf. In re Stanley A. Seneker Trust*, No. 2013-348544-TV, 2015 WL 847129, at *2-*3 (Mich. Ct. App. Feb. 26, 2015) (applying Florida law) (holding that principal place of administration did not change when corporate successor trustee assumed administration of trust after death of initial trustee and did not provide statutory notice required to relocate principal place of administration).

Because the principal place of administration of the 1999 and 2001 Trusts has always been Massachusetts, the various provisions of Section 736.0202 basing personal jurisdiction on a Florida principal place of administration cannot apply to Meyer or Posternak.[5] Thus, the Complaint would be subject to dismissal for lack of jurisdiction over Meyer and Posternak even if Plaintiffs had properly pleaded long-arm jurisdiction under Section 736.0202.

D. Meyer and Posternak Do Not Have Minimum Contacts with Florida

The Due Process Clause imposes a "more restrictive" test for personal jurisdiction than Florida's long-arm statute. *Execu-Tech Bus. Sys., Inc. v. New Oji Papers Co. Ltd.*, 752 So. 2d 582, 584 (Fla. 2000). It requires that Meyer and Posternak "maintain[] certain minimum contacts with [Florida] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Id.* The touchstone of the constitutional analysis is purposeful action directed to Florida, and "[t]he unilateral activity of those who claim some

[5] The only basis for jurisdiction under Section 736.0202 not requiring a Florida principal place of administration is "[s]erv[ing] as trustee of a trust created by a settlor who was a resident of [Florida] at the time of creation of the trust." FLA. STAT. § 736.0202(2)(a)3 (2013). This provision cannot retroactively subject Meyer to personal jurisdiction because he commenced service as cotrustee of the 1999 and 2001 Trusts several years before the provision became effective on October 1, 2013. *See Fibreboard*, 625 So. 2d at 458-59; *Peruyero*, 83 F. Supp. 3d at 1287. The provision cannot apply to Posternak at all because Posternak has never been a trustee of either trust.

relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958). While "application of that rule will vary" depending on the "quality and nature" of the contacts, "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." *Id.*

There are two varieties of personal jurisdiction: (1) specific jurisdiction, and (2) general jurisdiction. Specific jurisdiction applies only when "the suit arises out of or relates to the defendant's contacts with the forum," while general jurisdiction subjects nonresident defendants to "any and all claims" in the forum because their contacts are "so continuous and systematic as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (internal quotes and alteration omitted). Even if Plaintiffs could allege or prove that Meyer and Posternak fall within Florida's long-arm statute, they cannot establish minimum contacts to sustain either specific or general jurisdiction under the Due Process Clause.

(1) <u>Specific Jurisdiction</u>

Specific jurisdiction has three elements: (1) "the defendant must have contacts related to or giving rise to the plaintiff's cause of action," (2) "the defendant must, through those contacts, have purposefully availed itself of forum benefits," and (3) "the defendant's contacts with the forum must be such that it could reasonably anticipate being haled into court there." *Fraser v. Smith*, 594 F.3d 842, 850 (11th Cir. 2010). Under this test, it "is not, by itself, dispositive" that "the trust was created in [Florida] by a [Florida] settlor." *Norton v. Bridges*, 712 F.2d 1156, 1161 (7th Cir. 1983); *see also Hoag v. French*, 357 P.3d 153, 158 (Ariz. Ct. App. 2015) (finding lack of specific personal jurisdiction over nonresident trustee in Arizona even though settlor "resided in Arizona"). Nor are Meyer and Posternak subject to specific jurisdiction merely

because some of the beneficiaries reside or previously resided in Florida and claim to have suffered injury there. *See Rose v. Firstar Bank*, 819 A.2d 1247, 1254-55 (R.I. 2003) (finding lack of personal jurisdiction over nonresident trustee that was alleged to have "mismanaged the trust and failed to adequately communicate with" beneficiaries residing in forum state).

As with Florida's long-arm statute, a significant consideration is whether the trusts were "administered in the state claiming jurisdiction." *Norton*, 712 F.2d at 1161. Courts have thus focused heavily on the place of administration in evaluating specific jurisdiction. *Compare id.* (finding specific jurisdiction primarily because forum was trust's place of administration) *with Vadasz v. Vadasz*, No. 10CA0084-M, 2011 WL 4790053, at *4 (Ohio Ct. App. Oct. 11, 2011) (holding that beneficiaries failed to establish specific jurisdiction in Florida absent "evidence regarding the place of administration of the trust"). Indeed, allegations of a nonresident trustee's "unresponsiveness and insufficient contacts" with beneficiaries only confirm that the proper forum is the place of administration, which is where the purported "mismanagement and lack-of-communication decisions necessarily must have occurred." *Rose*, 819 A.2d at 1254.

In *Hoag*, the court found no personal jurisdiction over a nonresident trustee even though the settlor was an Arizona resident and initially "served as the trustee and administered the [trusts] in Arizona." 357 P.3d at 155. The principal place of administration was later moved from Arizona when the settlor delivered the trust records to the new nonresident trustee. *See id.* at 158. The new trustee had "no offices or employees in Arizona," did not "transact, advertise or solicit business in Arizona," and "administer[ed] the [trusts] from its offices in the Bahamas." *Id.* Following appointment of the new trustee, the "trust assets [were] not located in Arizona." *Id.* Under those circumstances, the court found that the nonresident trustee "did not purposely

avail itself of Arizona," regardless of whether it "periodically communicat[ed] with the [settlor and beneficiary] in Arizona" and sent "trust payments and documents to Arizona." *Id.*

Although Meyer and Posternak dispute Plaintiffs' allegations that Meyer mismanaged the 1999 and 2001 Trusts, the activities underlying their claims can only have occurred in Massachusetts, where Meyer administered the trusts. *Cf. Phillips Exeter Acad. v. Howard Phillips Fund*, 196 F.3d 284, 291 (1st Cir. 1999) (finding that "[a] breach of fiduciary duty occurs where the fiduciary acts disloyally," which was the state where the nonresident trustee "allegedly computed the payments in artificially low amounts," and the beneficiaries' "receipt of payment" in the forum state "was merely an in-forum effect of an extra-forum breach"). By statute, the principal place of administration of the 1999 and 2001 Trusts has always been Massachusetts, (*see* Section III.C, *supra*), and Meyer in fact conducted or supervised the primary administrative activities in Massachusetts. Those activities include: (1) storing the original trust documents and other significant trust-related records, (2) maintaining and overseeing the trusts' accounts, (3) handling distributions and payments on behalf of beneficiaries, (4) preparing and distributing accountings, and (5) overseeing the preparation and filing of tax returns. (**Ex. 1 ¶¶** 13-14). The 2001 Trust has always been comprised entirely of bank and investment accounts opened at the Massachusetts branches of the relevant institutions and has never held accounts or other property located in Florida. (*Id.* ¶ 16). The 1999 Trust likewise does not contain any accounts or other property located in Florida and has always been comprised primarily of bank and investment accounts opened at the Massachusetts branches of the relevant institutions and minority interests in closely held Massachusetts entities. (*Id.* ¶ 15). As in *Hoag*, these factors establish that Meyer and Posternak lack minimum contacts with Florida.

Plaintiffs point out that Meyer communicated with and made distributions and payments to persons in Florida, but *Hoag* and other cases have repeatedly rejected such contacts as too insubstantial. In *Rose*, for example, the court found the trustee's "communications with and . . . distribution of money to the trust beneficiaries who lived [in the forum state]" did not create personal jurisdiction, even though "these contacts spanned twenty-seven years and are continuing to this day." 819 A.2d at 1251. The court distinguished such contacts from those that can create personal jurisdiction, such as active solicitation of "new or additional trust business" or "solicit[ing] or deliberately seek[ing] out the beneficiaries" for business. *Id.* at 1252.

Because appointment as a trustee does not require "solicit[ing] or obtain[ing] the beneficiaries' approval," a trustee does not purposefully avail himself or herself of the privilege of doing business in the forum merely by sending "periodic mailings of trust-account statements and checks to the beneficiaries, together with any occasional telephone calls that related thereto." *Id.*; *see also Matter of Estate of Ducey*, 787 P.2d 749, 752-53 (Mont. 1990) (holding that trustee could not be sued in Montana for claim of mismanagement even though "periodic trust payments were made to [the settlor] throughout her Montana residency," trustee communicated "telephonically with [the settlor] in Montana to allow the assets to go to certain beneficiaries she desired in Montana," and beneficiaries resided in Montana); *Hanson*, 357 U.S. at 252 (finding no personal jurisdiction in Florida even though nonresident trustee "remitted the trust income to [the settlor] in [Florida]" and settlor "carried on several bits of trust administration" in Florida).

Regardless of occasional communications with or payments to persons in Florida, Meyer was not required to – and did not – solicit Plaintiffs to serve as trustee or take other action from which Plaintiffs' claims of mismanagement could have arisen to purposefully avail himself of the privilege of doing business in Florida. (**Ex. 1** ¶ 8). In fact, it was in Massachusetts, not

Florida, where Norman Fink met with Meyer and engaged him to assist with the estate plan that ultimately included creation and administration of the 1999 and 2001 Trusts. (*Id.* ¶ 9, 11). Like the trustees in *Hoag*, *Rose*, *Ducey*, and *Hanson*, Meyer is not subject to specific jurisdiction.

The case for personal jurisdiction over Posternak is even more attenuated. Plaintiffs' only claim against Posternak is for disgorgement of fees "for 'work' completely unrelated to Meyer's role as co-trustee of either the 1999 Trust or the 2001 Trust." (Compl. ¶ 97). Posternak intends to disprove this claim in the appropriate forum, but Posternak by definition cannot have engaged in trust-related activity directed to Florida by receiving payment for services "completely unrelated" to the trusts. Because Posternak was paid from funds held in Massachusetts for services performed in Massachusetts for trusts principally administered in Massachusetts, Plaintiffs have failed to establish specific jurisdiction over Posternak.

(2) <u>General Jurisdiction</u>

General jurisdiction requires more than minimum, or even "continuous and systematic," contacts. *Daimler*, 134 S. Ct. at 761. General jurisdiction does not arise "in every State in which [the defendant] engages in a substantial, continuous, and systematic course of business," but only where the contacts "are so continuous and systematic as to render [the defendant] essentially at home." *Id.* at 760-61. The "paradigm forum" for general jurisdiction over an individual is his or her "domicile." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). For corporations, "it is an equivalent place" where "the corporation is fairly regarded as at home." *Id*. These "affiliations have the virtue of being unique – that is, each ordinarily indicates only one place – as well as easily ascertainable," so that they "afford plaintiffs recourse to at least one clear and certain forum in which a [party] may be sued on any

and all claims." *Daimler*, 134 S. Ct. at 760.[6] Although it is conceivably possible to establish general jurisdiction outside the states of domicile, incorporation, and principal place of business under *Goodyear* and *Daimler*, it is "incredibly difficult" to do so. *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 432 (5th Cir. 2014); *see also Reich v. Lopez*, 858 F.3d 55, 63 (2d Cir. 2017) (explaining that "the Second Circuit has yet to find . . . a case" where "an individual's contacts with a forum [are] so extensive as to support general jurisdiction notwithstanding domicile elsewhere"). This is not such a case because Meyer and Posternak are Massachusetts-based defendants who are in no sense "at home" in Florida.

Meyer has been a domiciliary of Massachusetts and has practiced at a Massachusetts law office his entire career. (**Ex. 1 ¶¶** 3, 5). He (1) has made only two business trips to Florida since 1999, (2) has never owned real property in Florida, (3) has never been an officer, director, member, manager, partner, or shareholder of a Florida-based entity, except for share ownership of public companies, (4) has never maintained an office in Florida, (5) has never filed tax returns or paid taxes in Florida, (6) has never registered to vote, registered a vehicle, or maintained a license or permit in Florida, (7) has never maintained a bank account in Florida, and (8) has never had a telephone number or mailing address in Florida. (*Id.* ¶¶ 6, 19-25).

Posternak is a Massachusetts limited liability partnership with its principal (and only) office in Boston. (**Ex. 2** ¶ 5). It has never had an office, mailing address, attorney, employee, or registered agent in Florida. (*Id.* ¶¶ 6, 8-9). Only one of Posternak's sixty-one attorneys is licensed in Florida, and that attorney has not rendered legal services to a Florida client for at least two years. (*Id.* ¶ 10). No Posternak attorneys have appeared as counsel of record in Florida

[6] Although *Goodyear* and *Daimler* involved foreign corporations, their analysis applies equally to domestic defendants, *see Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 630 (2d Cir. 2016), and other types of business entities, *see Magna Powertrain De Mexico S.A. De C.V. v. Momentive Performance Materials USA LLC*, 192 F. Supp. 3d 824, 828 (E.D. Mich. 2016) and *Douglas v. Norwood*, 132 F. Supp. 3d 834, 842 n.2 (N.D. Miss. 2015).

cases over the past five years. (*Id.* ¶ 11). A very small proportion of Posternak's clients (0.19% - 28 active clients out of 14,522 total clients marked as active) and revenues (0.5%) came from Florida over the past five years. (*Id.* ¶¶ 12-13). Even under pre-*Goodyear* and *Daimler* precedent, these *de minimis* contacts could not establish general jurisdiction. *See, e.g., Caiazzo v. Am. Royal Arts Corp.*, 73 So. 3d 245, 259 (Fla. 4th DCA 2011) (holding that "a company's level of business in Florida may be insufficient to constitute 'continuous and systematic business activities' when only a *de minimis* percentage of the total sales is derived from its sales to Florida"). They certainly do not show that Posternak is "at home" in Florida under *Goodyear* and *Daimler*.

IV. CONCLUSION

Plaintiffs have failed to plead and cannot prove any basis for personal jurisdiction under the long-arm statute or the Due Process Clause. Accordingly, this Court should dismiss Plaintiffs' complaint against Meyer and Posternak for lack of personal jurisdiction.

WHEREFORE, Defendants Steven A. Meyer and Posternak Blankstein & Lund, LLP respectfully request this Court to enter its order granting this Motion, dismissing all claims for lack of personal jurisdiction, and granting such other relief as is just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 26, 2017, I filed the foregoing with the Clerk of the Court using the State of Florida ePortal Filing System, which will serve an electronic copy via e-mail to all counsel listed on the Service List below.

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