

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

RECEIVED

2009 NOV 13 PM 3:00

IN RE:

SHOW CAUSE PROCEEDING  
AGAINST HEALTHCARE ADVANTAGE LLC/  
THE SELECT GROUP/CHRIS WIGGINS

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T.R.A. DOCKET ROOM

DOCKET NO.  
09-00036

(Oral Argument Requested)

**CHRIS WIGGINS' MOTION TO DISMISS**

Respondent, Chris Wiggins ("Respondent"), respectfully moves to dismiss the Show Cause Order against Respondent on the basis of lack of personal jurisdiction and insufficiency of service of process, pursuant to Rule 12.02(2) and (5) of the Tennessee Rules of Civil Procedure and the Uniform Administrative Procedures Act. In support of this Motion, Respondent states as follows:

1. There is no basis for Tennessee Regulatory Authority's ("TRA") assertion of personal jurisdiction of Respondent in Tennessee.

2. TRA's cause of action does not arise from any activity of Respondent in the State of Tennessee. Respondent does not have continuous and systematic contacts with the State that would justify the assertion of personal jurisdiction. Respondent is domiciled in the State of South Carolina, and has never even been to the State of Tennessee. Further Respondent did not send the advertisements in question. He does not transact, and never has transacted, business in the State of Tennessee.

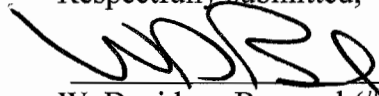
3. Accordingly, requiring Respondent to defend this action in Tennessee would offend traditional notions of fair play and substantial justice, and Respondent respectfully requests dismissal of the claims against him.

4. In further support of the Motion, Respondent relies on his Affidavit, attached hereto as Exhibit 1.

5. In further support of the Motion, Respondent also submits a Memorandum of Facts and Law in Support of his Motion to Dismiss detailing the basis for this Motion.

WHEREFORE, Respondent respectfully requests his Motion to Dismiss be granted and for such other, and further and general relief as is just and appropriate.

Respectfully submitted,



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Counsel for Respondent

#### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing CHRIS WIGGINS' MOTION TO DISMISS has been served on the following by hand delivering same to their office address, on this the 13<sup>th</sup> day of November, 2009:

Mr. Gary Hotvedt  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505



W. Davidson Broemel (#3606)  
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700 Two American Center  
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**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

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T.R.A. DOCKET ROOM

**IN RE:**

**SHOW CAUSE PROCEEDING  
AGAINST HEALTHCARE ADVANTAGE LLC/  
THE SELECT GROUP/CHRIS WIGGINS**

**DOCKET NO.  
09-00036**

**MEMORANDUM OF FACTS AND LAW IN SUPPORT OF CHRIS WIGGINS'  
MOTION TO DISMISS**

The Respondent, Chris Wiggins ("Respondent"), respectfully submits this Memorandum of Facts and Law in support of his Motion to Dismiss the Show Cause Order for lack of personal jurisdiction and insufficiency of service of process, pursuant to Rule 12.02(2) and (5) of the Tennessee Rules of Civil Procedure and the Uniform Administrative Procedures Act ("UAPA").

**I. INTRODUCTION**

There is no basis for Tennessee Regulatory Authority ("TRA") assertion of personal jurisdiction over Respondent in Tennessee. On October 9, 2009, TRA filed its Show Cause Order against Respondent asserting: strict liability claims; misrepresentation claims; food contamination; violations of the "do not fax law," T.C.A. § 65-4-501 through 506 arising from Respondent's alleged facsimile advertisements. TRA's Order fails to make any specific allegations regarding the basis for personal jurisdiction over Respondent.

TRA's cause of action does not arise from any activity of Respondent in the State of Tennessee. Respondent does not have continuous and systematic contacts with the State that would justify the assertion of personal jurisdiction. Respondent is domiciled in the State of South Carolina, and has never even been to the State of Tennessee. Further, Respondent did not send the advertisement in question. He does not transact, and never has transacted, business in

the State of Tennessee. Accordingly, requiring Respondent to defend this action in Tennessee would offend traditional notions of fair play and substantial justice, and Respondent respectfully requests the TRA to dismiss the claims against him.

## **II. STATEMENT OF FACTS**

Respondent resides at 4173 Club Course Drive, North Charleston, South Carolina 39420. Affidavit of Chris Wiggins ("Respondent Aff.") ¶ 2.<sup>1</sup> Respondent has never been to the State of Tennessee or transacted business in the State of Tennessee. *Id.* at ¶ 3. Respondent also has not had any officers, employees, agents, offices, places of business, books, records, bank accounts or telephone listings in Tennessee. *Id.* at ¶ 4. Respondent has never had employees travel to Tennessee for business purposes. *Id.* at ¶ 5. Respondent has not incurred or paid taxes to the State of Tennessee, nor has he owned any real property in Tennessee. *Id.* at ¶ 6. Further, Respondent was not served the summons in this action in the State of Tennessee. *Id.* at ¶ 7.

Respondent has only had a corporate relationship with Respondents Healthcare Advantage LLC and The Select Group (actually The Select Company, Inc.), the alleged violators in question. *Id.* at ¶¶ 8,9. Respondent never received pay checks, W2s or any employment benefits from Healthcare Advantage LLC and The Select Group except as detailed in the Affidavit. *Id.* at ¶¶ 11,12. Respondent has never advertised or solicited orders from entities or persons located in Tennessee. *Id.* at ¶ 13.

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<sup>1</sup> The Tennessee Regulatory Authority can consider Respondent's affidavit on a motion to dismiss based on the lack of personal jurisdiction without converting the motion to a motion for summary judgment. *See Chenault v. Walker*, 36 S.W.3d 45, 55 (Tenn. 2001) (citation omitted).

### III. ARGUMENT

#### A. TENNESSEE REGULATORY AUTHORITY HAVE THE BURDEN OF ESTABLISHING PERSONAL JURISDICTION.

Pursuant to Rule 12.02(2) of the Tennessee Rules of Civil Procedure and the UAPA, the TRA should dismiss this action against Chris Wiggins because there is no basis for personal jurisdiction over Respondent.

It is well-established that the plaintiff has the burden of demonstrating the existence of personal jurisdiction over a defendant. See Yuon v. Track, Inc., 324 F.3d 409, 417 (6th Cir. 2003) (citation omitted); Law Offices of Hugo Harmatz v. Durrough, 182 S.W.3d 326, 329 (Tenn. Ct. App. 2005) (citations omitted). Accordingly, when a "defendant challenges the trial court's personal jurisdiction over him by filing a properly supported motion to dismiss, the 'plaintiff may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction.'" Mfrs. Consolidation Serv., Inc. v. Rodell, 42 S.W.3d 846, 854-55 (Tenn. Ct. App. 2000) (citations omitted).

To establish personal jurisdiction, TRA must show the court's exercise of jurisdiction over each Respondent would comply with the Due Process Clause of the Fourteenth Amendment of the United States Constitution. See Chenault, 36 S.W.3d at 53; Int'l Shoe Co. v. Washington, 326 U.S. 310, 313, 316 (1945) (the Due Process Clause imposes certain limitations on a court's exercise of personal jurisdiction). The Due Process Clause of the U.S. Constitution requires "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" Int'l Shoe, 326 U.S. at 316 (citations omitted); see also Calder v. Jones, 465 U.S. 783, 788 (1984) (quoting Int'l Shoe). Due process further requires "there be some act by which the defendant purposely avails [him]self of

the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." Hanson v. Denckla, 357 U.S. 235, 253 (1958) (citing Int'l Shoe).

General jurisdiction, jurisdiction unrelated to the contacts relating directly with the causes of action themselves, requires "continuous and systematic general business contacts" with the forum. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984) (citing Int'l Shoe). As demonstrated below, Respondent has not had continuous and systematic contact with Tennessee.

Specific jurisdiction, jurisdiction arising out of the relationship between the causes of action and the defendant's contacts, requires:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable.

S. Machine Co., Inc. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968); Bridgeport Music, Inc. v. Still N The Water Publ'g, 327 F.3d 472, 477-78 (6th Cir. 2003) (quoting Mohasco); Calphalon Corp. v. Rowlette, 228 F.3d 718, 721 (6th Cir. 2000) (quoting Mohasco). At minimum, for a court to assert specific personal jurisdiction over a defendant, there must be deliberate contact with the forum state relating to the cause of action.<sup>2</sup> See Burger King Corp. v. Rudzewicz, 471 U.S. 462, 472-73 (1985). As demonstrated below, TRA cannot satisfy this test for establishing specific jurisdiction with regard to Respondent.

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<sup>2</sup> An exception exists to "contact" analysis where a defendant is personally served process in the forum state. See Burnham v. Sup. Court of California, 495 U.S. 604, 610 (1990). Because Respondent was not served the summons in the State of Tennessee, Respondent Aff. at ¶ 7, this exception does not apply.

Because TRA cannot satisfy their burden in establishing either general or specific personal jurisdiction over Respondent in Tennessee, Respondent respectfully requests dismissal of TRA's claims against him.

**B. RESPONDENT NOT SUBJECT TO PERSONAL JURISDICTION IN TENNESSEE.**

**1. TRA Has Not Established General Jurisdiction Over Respondent.**

TRA has failed to meet their burden of establishing general jurisdiction over Respondent. TRA has not made a single jurisdictional allegation directed specifically at Respondent, and TRA has no basis for asserting jurisdiction over Respondent. The closest the Order comes to making any jurisdictional allegations regarding Respondent is in footnotes, where TRA makes the assertion that Chris Wiggins is the registered agent for service of process and an officer of Respondent companies. This allegation does not, nor does any other allegation in the Order, provide a sufficient basis for general jurisdiction over Respondent in Tennessee. In addition, there is no proof in the record of personal service in the State of Tennessee or any return on other summons.

As the Tennessee Supreme Court in Chenault held, "whichever section of the long-arm statute is employed, the exercise of jurisdiction must comport with the United States Constitution." 36 S.W.3d at 53; see also Humphreys v. Selvey, 154 S.W.3d 544, 550 (Tenn. Ct. App. 2004). As the record undeniably demonstrates, Respondent lacks sufficient contacts with Tennessee to establish general jurisdiction. Specifically, the record shows Respondent is domiciled in South Carolina. Respondent Aff. at ¶ 2. Respondent has never even been to the State of Tennessee, or transacted business in the State of Tennessee. Id. at ¶ 3. Respondent also does not have any officers, employees, agents, offices, places of business, books, records, bank accounts or telephone listings in Tennessee. Id. at ¶ 4. Respondent has never had employees

travel to Tennessee for business purposes. Id. at ¶ 5. Respondent has not incurred or paid taxes to the State of Tennessee, nor does he own any real property in Tennessee. Id. at ¶ 6. In light of these facts, it is apparent Respondent does not have the "continuous and systematic general business contacts" with Tennessee required for the exercise of general jurisdiction. See Helicopteros, 466 U.S. at 416.

## **2. TRA has not Established Specific Jurisdiction Over Respondent.**

Similarly, the record demonstrates there is no basis for specific jurisdiction. As stated above, the Sixth Circuit has adopted a three-part test to determine if a court has specific jurisdiction over a non-resident defendant:

First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have substantial enough connection with the forum to make the exercise of jurisdiction over the defendant reasonable.

Mohasco, 401 F.2d at 381; Bridgeport Music, 327 F.3d at 477-78 (quoting Mohasco); Calphalon, 228 F.3d at 721 (quoting Mohasco). Because TRA cannot establish any of these elements, TRA's claims against Respondent should be dismissed for lack of personal jurisdiction.

- a. Respondent has not purposefully availed himself of the benefits and protections of Tennessee's laws.

"The purposeful availment prong of the ... test is essential to a finding of personal jurisdiction." Calphalon, 228 F.3d at 721 (citation omitted). As the Sixth Circuit has stated:

This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts. There is a difference between what World-Wide Volkswagen calls a mere "collateral relation to the forum State," and the kind of substantial relationship with the forum state that invokes, by design, "the benefits and protections of its laws." An understanding of this difference is



important to the proper application of the "purposeful availment" test.

LAK, Inc. v. Deer Creek Enters., 885 F.2d 1293, 1300 (6th Cir. 1989) (citations omitted) (emphasis added). As the record demonstrates, Respondent has no substantial relationship with the State of Tennessee that invokes the benefits and protections of the state's laws. Respondent is domiciled in South Carolina. Respondent Aff. at ¶ 2. Respondent has never even been to the State of Tennessee or transacted any business in the State of Tennessee. Id. at ¶ 3. Respondent also does not have any officers, employees, agents, offices, places of business, books, records, bank accounts or telephone listings in Tennessee. Id. at ¶ 4. Respondent has never had employees travel to Tennessee for business purposes. Id. at ¶ 5. Respondent has not incurred or paid taxes to the State of Tennessee, nor does he own any real property in Tennessee. Id. at ¶ 6. In short, Respondent has not purposefully availed himself of Tennessee's laws and could not reasonably anticipate being haled into court in Tennessee. See World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980) (citations omitted).

b. TRA's cause of action does not arise from activities performed by Respondent in Tennessee.

Even if TRA had some way to establish purposeful availment, they still could not establish specific jurisdiction over Respondent because they cannot satisfy the second element required for specific jurisdiction; namely, that their cause of action arises from Respondent activities in Tennessee. See Mohasco, 401 F.2d at 381; Bridgeport, 327 F.3d at 477-78; Calphalon, 228 F.3d at 721. "The 'arising from' requirement ... is satisfied when the operative facts of the controversy arise from the defendant's contacts with the state." Calphalon, 228 F.3d at 723 (citation omitted).

The undisputed record shows Respondent has not had any contacts with Tennessee related to TRA's cause of action. Respondent has never advertised, solicited orders or

maintained an office or employees in Tennessee. Respondent Aff. at ¶¶ 4,13. Respondent also has never had employees travel to Tennessee for business purposes. Id. at ¶ 5. Accordingly, even if TRA's claims are construed as true, none of Respondent's alleged actions were performed in Tennessee. Respondent's activities as officer in companies and registered agent for service of process are not related to the alleged violations.

Davis Kidd Booksellers, Inc. v. Day-Impex, Ltd., 832 S.W.2d 572 (Tenn. Ct. App. 1992), controls the result in this case. There, the plaintiffs pursued claims against, *inter alia*, an out-of-state distributor of an automatic sprinkler system. Id. at 574. In Davis Kidd, the distributor had an exclusive right to sell the product in the United States on behalf of a foreign manufacturer, but the distributor did not: (1) sell the product directly to anyone in Tennessee; (2) never advertised, solicited orders or maintained an office or employees in Tennessee; and (3) never had employees travel to Tennessee for business purposes or otherwise have any type of physical contact with Tennessee. Id. at 576. After analyzing these facts, the court determined that it lacked personal jurisdiction over the distributor, finding the distributor could not "reasonably have anticipated that [it] would be haled into Tennessee's courts." Id. at 577 (citations omitted).

**The court's holding in Davis Kidd demonstrates the claims against Respondent must be dismissed.** Respondent simply does not have any contacts with the State of Tennessee that make it reasonable to require him to defend a suit here. Just as the court found in Davis Kidd that it lacked personal jurisdiction over the out-of-state distributor who did not sell its product directly to anyone in Tennessee, This court lacks personal jurisdiction over similarly placed out-of-state Respondent, whose conduct cannot be considered activities in Tennessee.

- c. Respondent has not substantial contacts with Tennessee that makes the exercise of jurisdiction reasonable.

Finally, even if the TRA were somehow able to demonstrate purposeful availment and that their cause of action arises from Respondent's activities in Tennessee (and they cannot), they cannot establish jurisdiction because they cannot prove Respondent's actions have a substantial enough connection with Tennessee to make the exercise of jurisdiction reasonable. Mohasco, 401 F.2d at 381; Bridgeport, 327 F.3d at 477-78; Calphalon, 228 F.3d at 721. Respondent is domiciled in South Carolina, and has never even been to the State of Tennessee. Respondent Aff. at ¶¶ 2,3. As such, the exercise of personal jurisdiction would "offend 'traditional notions of fair play and substantial justice,'" (Int'l Shoe, 326 U.S. at 316 (citations omitted), and Respondent respectfully requests dismissal of TRA's claims against him for lack of personal jurisdiction.

#### IV. CONCLUSION

For the aforementioned reasons, Chris Wiggins respectfully requests dismissal of the Order against him.

Respectfully submitted,



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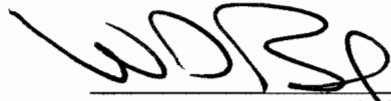
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Telephone: (615) 724-3212  
Facsimile: (615) 724-3290  
Email: DBroemel@burr.com

Counsel for Respondents

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF HEALTHCARE ADVANTAGE LLC, THE SELECT GROUP AND CHRIS WIGGINS TO SHOW CAUSE ORDER OF OCTOBER 9, 2009 has been served on the following by hand delivering same to their office address, on this the 15<sup>th</sup> day of November, 2009:

Mr. Gary Hotvedt  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, TN 37243-0505



W. Davidson Broemel (#3606)  
Burr & Forman LLP  
700 Two American Center  
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Nashville, TN 37203  
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BEFORE THE TENNESSEE REGULATORY AUTHORITY

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NASHVILLE, TENNESSEE

T.R.A. DOCKET ROOM

IN RE:

SHOW CAUSE PROCEEDING  
AGAINST HEALTHCARE ADVANTAGE LLC/  
THE SELECT GROUP/CHRIS WIGGINS

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DOCKET NO.  
09-00036

AFFIDAVIT OF CHRIS WIGGINS

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

Chris Wiggins having been first duly sworn, states:

1. I am over eighteen years old and competent to testify. The following statements are based on my personal knowledge.
2. I am a resident of the State of South Carolina, domiciled at 4173 Club Course Drive, North Charleston, South Carolina 39420.
3. I have never been to the State of Tennessee or transacted business in the state of Tennessee.
4. I have not had any officers, employees, agents, offices, places of business, books, records, bank accounts or telephone listings in Tennessee.
5. I have never had employees travel to Tennessee for business purposes or otherwise.
6. I have not incurred or paid taxes to the State of Tennessee, or owned any real property in Tennessee.
7. I was not served the summons in this action in the State of Tennessee.

8. My only connection with Healthcare Advantage, LLC was in a corporate capacity, and the company was duly organized under the laws of the State of South Carolina at all times relevant to this Order.

9. My only connection with The Select Company, Inc. was in a corporate capacity, and the company was duly organized under the laws of the State of Nevada at all times relevant to this Order.

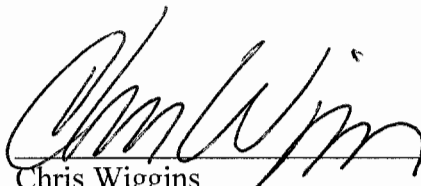
10. The Order has mistakenly named The Select Group as a Respondent when in fact my relationship has never been with them, but with The Select Company, Inc.

11. I received some wages from The Select Company, Inc., but never received any other employment benefits.

12. I never received any pay checks, W2s or any employment benefits from Healthcare Advantage, LLC, instead I only received 1099 payments.

13. I never advertised or solicited orders from entities or persons located in Tennessee.

Further the Affidavit sayeth not.

  
Chris Wiggins

STATE OF SOUTH CAROLINA                    )

COUNTY OF DORCHESTER                    )

Personally appeared before me, Jean M. Wiggins a Notary Public of this county and state, Chris Wiggins, the within named affiant, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the Affidavit for the purposes therein contained.

Witness my hand and seal, at office, this 12<sup>th</sup> day of November, 2009.

Jean M. Wiggins  
NOTARY PUBLIC

[SEAL]

My Commission Expires: Jan. 12, 2010