

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI

ADAM BEHRENDT,

Plaintiff,

*v.*

UNITEDLEX CORP.,

Defendant.

Case No. 4:23-cv-00434-SRB

**PLAINTIFF'S SUGGESTIONS IN OPPOSITION TO DEFENDANT'S RULE 12(B)(2)  
MOTION TO DISMISS COMPLAINT FOR LACK OF PERSONAL JURISDICTION  
OR, IN THE ALTERNATIVE, TO TRANSFER VENUE [ECF No. 12-13]**

Plaintiff Adam Behrendt, through the undersigned counsel, hereby submits his Suggestions in Opposition to Defendant's Rule 12(b)(2) Motion to Dismiss Complaint for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue, stating as follows:

**I. INTRODUCTION**

Defendant UnitedLex Corp. ("Defendant" or "ULX") is a business that specializes in technology-intensive litigation-support services. It promotes its data-security abilities and makes recommendations in that regard to corporate clients, in a legal context. In theory, then, ULX should be as well-placed as anyone to not only prevent a data breach but also, in case of a breach, understand its subsequent legal responsibilities.

However, as Plaintiff has described in his pleadings, ULX not only failed to prevent a hack but was also egregiously lax in containing it and notifying victims in its wake. Such allegations – as to lack of timely *notification* – entail an essential component of both of Plaintiff's claims, which fact, among many others, is completely ignored by Defendant in its instant motion. Likewise, ULX, *finally* acknowledging the breach alleged

by Plaintiff and averring that it became aware of that breach on March 6, 2023, sent Plaintiff a notice letter on July 11<sup>th</sup>—nearly two months after Plaintiff filed this lawsuit.<sup>1</sup>

Defendant now moves to dismiss this action under Fed. R. Civ. P. 12(b)(2), thereby predicating its request on the assertion that this Court lacks personal jurisdiction.<sup>2</sup> Notably, the Motion avers, "Here, specific jurisdiction over UnitedLex is conspicuously lacking."<sup>3</sup> What is *actually* conspicuously lacking is a discussion by Defendant of Missouri's Long-Arm Statute, whereunder "extraterritorial acts of negligence producing actionable consequences in Missouri" satisfy that statute's requirement for commitment of a tortious act within Missouri.<sup>4</sup> Defendant's lead citation, made only in passing, regarding Plaintiff's suffering of injury in Missouri is to an unpublished case from *Hawaii* within a cursory paragraph, suggesting that even it realizes binding law in this regard is not in its favor.<sup>5</sup>

Defendant instead dedicates the entirety of the relevant portion of its brief to arguing that jurisdiction in this Court would violate due process, for the reasons proffered.<sup>6</sup> In so arguing, the Motion simply ignores that Plaintiff performed the great bulk of his work for Defendant *while in Missouri*.<sup>7</sup> For the reasons provided at length

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<sup>1</sup> See **EXHIBIT 1** (Notice Letter) (highlights added).

<sup>2</sup> Memorandum of Law in Support of Defendant UnitedLex Corporation's Rule 12(b)(2) Motion to Dismiss Complaint for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue (July 11, 2023) (ECF No. 13) (the "Motion").

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 910 (8th Cir. 2012) (internal citation omitted).

<sup>5</sup> See Motion at 9 (citing *Patao v. Equifax, Inc.*, 2020 WL 5033561, \*1 (D. Haw. Aug. 25, 2020)).

<sup>6</sup> See Motion at 2-9.

<sup>7</sup> See, e.g., *id.* at 8; **EXHIBIT A** (Behrendt Decl.) at ¶¶ 11-21.

below, it can hardly be argued, at least rationally, that haling Defendant into this Court would offend, in any way, traditional notions of fair play and substantial justice. Even though the Motion proper simply ignores the fact that Plaintiff worked almost exclusively from Missouri, Defendant is good enough to submit to the record, via its attached declaration, evidence that Plaintiff's work at ULX occurred on an "occasional on-site" and "fully remote" basis.<sup>8</sup>

Something else "conspicuously lacking" in the Motion is application of Eighth Circuit law to the predominant issue of specific personal jurisdiction; indeed, there is none applied.<sup>9</sup> This is a fundamental failure for multiple reasons, including the Motion's total neglect of what it means for claims to "relate to" forum-directed contacts. As detailed below, binding precedent renders evident that strict proximate causation relative to Plaintiff's claims and ULX's Missouri-directed actions is *not* required here.<sup>10</sup> Instead, the Court should maintain a "flexible approach" that considers the "totality of the circumstances" vis-à-vis the due-process requirement that Defendant's purposeful actions directed at Missouri "relate to" Plaintiff's claims.<sup>11</sup> Under such an approach, Eighth Circuit law is abundantly clear that, given the facts here, this Court may quite properly exercise specific personal jurisdiction over Defendant.

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<sup>8</sup> Motion, Ex. A (Jamison Decl.) at ¶¶ 13-15.

<sup>9</sup> See Motion at 5-9.

<sup>10</sup> See, e.g., *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012). Defendant, in the context of completely ignoring the notice-related and employment aspects of Plaintiff's pleadings, impliedly attempts to invoke the strictest of proximate-causation standards by "relating" Plaintiff's claims to nothing beyond the data breach *qua* data breach—i.e., the location of the servers and executive decision-making. See Motion at 6-9. As detailed, binding precedent clearly states that Defendant's approach is inappropriate.

<sup>11</sup> See *Myers*, 689 F.3d at 913.

For these reasons, and others, as detailed below, the Motion should be DENIED.

## II. LEGAL STANDARD

When a defendant challenges personal jurisdiction, the burden shifts to the plaintiff to make a *prima facie* showing that personal jurisdiction exists.<sup>12</sup> Such a *prima facie* showing may rely on the pleadings and affidavits;<sup>13</sup> its requirements are thereby "minimal."<sup>14</sup> Further, at the motion-to-dismiss stage, well-pled allegations must be taken as true and reasonable inferences drawn therefrom must be liberally construed in the plaintiff's favor.<sup>15</sup>

When a federal court sitting in Missouri considers whether it has personal jurisdiction over an out-of-state defendant, it must conduct a two-part analysis: whether its exercise of personal jurisdiction over the defendant would be proper under Missouri's Long-Arm Statute and, if so, whether that exercise of personal jurisdiction would comport with the Fourteenth Amendment's Due Process clause.<sup>16</sup> Missouri's Long-Arm Statute extends jurisdictional reach to out-of-state defendants to the fullest extent permissible under the Fourteenth Amendment and has thereby been interpreted "broadly" by Missouri courts.<sup>17</sup> Missouri's Long-Arm Statute expressly confers jurisdiction to those courts over out-of-state defendants who commit tortious acts within

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<sup>12</sup> E.g., *Fastpath, Inc. v. Arbela Tech. Corp.*, 760 F.3d 816, 820 (8th Cir. 2014).

<sup>13</sup> E.g., *Epps v. Stewart Info. Seros. Corp.*, 327 F.3d 642, 646 (8th Cir. 2003).

<sup>14</sup> *Willnerd v. First Nat. Neb., Inc.*, 558 F.3d 770, 778 (8th Cir. 2009) (internal citation omitted).

<sup>15</sup> E.g., *Davenport v. Farmers Ins. Grp.*, 378 F.3d 839, 842 (8th Cir. 2004).

<sup>16</sup> E.g., *Bryant v. Smith Interior Design Group, Inc.*, 310 S.W.3d 227, 232 (Mo. banc 2010).

<sup>17</sup> *Clune v. Alimak AB*, 233 F.3d 538, 541 (8th Cir. 2000).

Missouri.<sup>18</sup> As stated, such "tortious acts" include extraterritorial acts of negligence where foreseeable, actionable consequences are felt in Missouri.<sup>19</sup>

Should jurisdiction in Missouri be proper pursuant to the Long-Arm Statute, the Court must then proceed to confirm, as stated, that such jurisdiction would satisfy the Due Process clause.<sup>20</sup> This analysis invokes consideration of well-known principles from the Supreme Court's *International Shoe* line of cases—e.g., that due process demands "minimum contacts" so that exercise of personal jurisdiction does not "offend 'traditional notions of fair play and substantial justice'"<sup>21</sup> and exercise of specific personal jurisdiction requires litigation that is "related to or 'arises out of'" a defendant's forum-directed activities.<sup>22</sup>

The Eighth Circuit adheres to a five-factor test, where the first three factors are of primary importance, in determining whether the exercise of personal jurisdiction satisfies due process.<sup>23</sup> Those three primary factors are: (1) the quantity of a defendant's contacts with the relevant forum; (2) the nature and quality of those contacts; and (3) the relation of those contacts to the cause of action.<sup>24</sup> It's this third factor that addresses the "related to," or "arises out of," requirement endemic to specific jurisdiction vis-à-vis litigation, and

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<sup>18</sup> R.S.Mo. § 506.500.1(3).

<sup>19</sup> *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 910-11 (8th Cir. 2012).

<sup>20</sup> E.g., *id.* at 909.

<sup>21</sup> *Int'l Shoe v. Wash.*, 326 U.S. 310, 316 (1945) (internal citations omitted).

<sup>22</sup> *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984) (internal citations omitted).

<sup>23</sup> E.g., *Precision Const. Co. v. J.A. Slattery Co., Inc.*, 765 F.2d 114, 118 (8th Cir. 1985) (citing *Aftanase v. Econ. Baler Co.*, 343 F.2d 187 (8th Cir. 1965)).

<sup>24</sup> *Id.*

the federal circuits interpret this critical requirement differently.<sup>25</sup> The Eighth Circuit has, again, adopted a "flexible approach" that considers the "totality of the circumstances" when ascertaining whether litigation relates to, or arises out of, a defendant's activities in a given forum.<sup>26</sup>

### III. ARGUMENT

#### A. This Court Clearly Has Specific Personal Jurisdiction Over Defendant

Because the Motion effectively ignores Missouri's Long-Arm Statute<sup>27</sup> and binding precedent concerning, as described, negligence and its foreseeable effects vis-à-vis "tortious acts," it simply fails to address that Plaintiff has plausibly alleged that he suffered foreseeable injury in Missouri from Defendant's negligence.<sup>28</sup> Nonetheless, Plaintiff articulates below why personal jurisdiction in this Court satisfies, as a matter of law, the Long-Arm Statute. Then, given that the Motion also completely neglects to acknowledge both Eighth Circuit holdings regarding due process and the many, long-running, and related actions Defendant directed at Missouri, Plaintiff provides such crucial context and shows that there can be no reasonable doubt that the Court's exercise of specific personal jurisdiction over ULX is proper here.

##### i. The Court Has Personal Jurisdiction Under Missouri's Long-Arm Statute

###### a. Plaintiff has pleaded negligence, and injuries therefrom, against Defendant; his allegations must be taken as true.

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<sup>25</sup> *E.g.*, *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 911-12 (8th Cir. 2012).

<sup>26</sup> *Id.* at 913.

<sup>27</sup> *See* Motion at 6, fn. 3.

<sup>28</sup> *See, e.g.*, Notice of Removal (June 20, 2023) (Doc. 1), Ex. A (the "Petition") at, *e.g.*, ¶¶ 41-42.

Plaintiff has clearly asserted a state-law negligence claim against ULX.<sup>29</sup> Plaintiff has asserted that he suffered injuries, including a fraudulent tax return, fraudulent bank charges, and emotional distress, as a result of Defendant's negligence.<sup>30</sup> Plaintiff averred that he was and is a resident of Lee's Summit, Missouri.<sup>31</sup> These allegations must be taken as true at this stage of litigation.<sup>32</sup> These allegations are, without question, sufficient to establish that Plaintiff has suffered actionable injuries from negligence while residing in Missouri. Further, Defendant effectively acknowledged as much by sending Plaintiff notice of the hack and related harms to his address in Lee's Summit, Missouri.<sup>33</sup>

**b. Plaintiff was a resident of Missouri when he was hired by Defendant such that his injury in Missouri was entirely foreseeable.**

Plaintiff was a resident of Lee's Summit, Missouri when Defendant hired him in February 2019.<sup>34</sup> Plaintiff has continuously resided in Lee's Summit, Missouri, since that time.<sup>35</sup> Defendant obviously knew that Plaintiff lived in Missouri when it hired him. Defendant obviously hired Plaintiff of its own volition knowing he lived in Missouri. Defendant obviously knew that Plaintiff had provided it sensitive personal information, such as his Social Security number<sup>36</sup> and bank-account number.<sup>37</sup> There is simply no rational argument that Plaintiff's alleged injury, given Defendant's alleged failure to

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<sup>29</sup> *Id.* at ¶¶ 36-44.

<sup>30</sup> *Id.* at, e.g., ¶¶ 1, 8-14, 16, 18, 21, 23, 39-44.

<sup>31</sup> *Id.* at ¶ 2.

<sup>32</sup> E.g., *Davenport v. Farmers Ins. Grp.*, 378 F.3d 839, 842 (8th Cir. 2004).

<sup>33</sup> See EXHIBIT 1.

<sup>34</sup> EXHIBIT A at ¶ 6; EXHIBIT 2 (Employee Profile) (highlights added).

<sup>35</sup> EXHIBIT A at ¶¶ 4-7.

<sup>36</sup> See EXHIBIT 1; EXHIBIT 2; Petition at ¶¶ 1, 29, 38.

<sup>37</sup> See EXHIBIT A at ¶ 26; EXHIBIT 1; Petition at ¶¶ 1, 11-12, 21, 29, 38;

protect such private information, in Missouri was not *completely* foreseeable under these facts. Again, ULX has de facto acknowledged as much via the notice letter it sent to Plaintiff in Missouri.<sup>38</sup> Therefore, "because it was foreseeable that [ULX's] actions could have consequences felt in Missouri, jurisdiction is authorized under Missouri's Long-Arm Statute."<sup>39</sup>

**ii. This Court's Exercise of Specific Personal Jurisdiction Over Defendant Does Not Offend Due Process**

**a. Defendant maintained, incident to Plaintiff's employment, *many* contacts with Missouri.**

Despite submitting to the record that Plaintiff was a largely, then "fully," remote worker,<sup>40</sup> ULX in the Motion simply concludes, in incredibly cursory fashion, that Plaintiff was employed "in" Defendant's Kansas office.<sup>41</sup> Remarkably, despite acknowledging that Plaintiff worked remotely, the Motion baldly states, "Any information provided by Plaintiff to UnitedLex in the context of his employment with UnitedLex would have occurred there [in Kansas]."<sup>42</sup> This statement is so wildly, obviously false as to be sanctionable. In keeping with the fact that Plaintiff overwhelmingly worked for Defendant from his home in Missouri, he hereby submits evidence describing, albeit only in part, the *many* contacts<sup>43</sup>—i.e., vastly more than the requisite "minimum" contacts—that ULX maintained with him in Missouri.

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<sup>38</sup> See **EXHIBIT 1**.

<sup>39</sup> See *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 911 (8th Cir. 2012).

<sup>40</sup> Motion, Ex. A (Jamison Decl.) at ¶¶ 13-15.

<sup>41</sup> See Motion at 8.

<sup>42</sup> See *id.*

<sup>43</sup> See **EXHIBIT A** at ¶¶ 6-7, 9, 11-28.



These contacts, easily numbering somewhere in the tens of thousands,<sup>44</sup> comprised, during the natural course of employment for over three years, Defendant sending information to Plaintiff in Missouri as well as accepting information from Plaintiff.<sup>45</sup> They included Plaintiff's eventual hiring manager at ULX proactively reaching out to Plaintiff to gauge his interest in working for Defendant.<sup>46</sup> They included Defendant providing Plaintiff with equipment so that he could directly connect to ULX's private company network on a continual basis.<sup>47</sup> Because a meaningful number of *other* ULX employees were working remotely from Missouri, they included a large number of ULX exchanges occurring *wholly* in Missouri, as well as between Missouri and Kansas.<sup>48</sup> They included Defendant's vendors sending work-related samples to Plaintiff in Missouri.<sup>49</sup> When Defendant separated from Plaintiff, it sent an empty box and shipping label to him in Missouri so that he could return his work equipment.<sup>50</sup> And, when ULX finally got around to notifying Plaintiff of the data breach, it did so by sending a letter to Missouri.<sup>51</sup> The density of these contacts, by which ULX purposely availed itself of Missouri as a forum during all relevant times, is beyond sufficient for the purpose of establishing *specific* personal jurisdiction,<sup>52</sup> and may be substantial enough to confer *general* personal

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<sup>44</sup> *Id.* at ¶ 18.

<sup>45</sup> *Id.* at, e.g., ¶¶ 14, 18-19, 22.

<sup>46</sup> *Id.* at ¶ 9.

<sup>47</sup> *Id.* at ¶ 25.

<sup>48</sup> *See id.* at ¶ 22.

<sup>49</sup> *Id.* at ¶ 23.

<sup>50</sup> *Id.* at ¶ 24.

<sup>51</sup> *Id.* at ¶ 28; **EXHIBIT 1**.

<sup>52</sup> *See, e.g., Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 691-92 (Mo. Ct. App. E.D. 2020) (affirming finding of specific jurisdiction over Johnson & Johnson were it contracted to manufacture, package, and label baby product at issue even though none of the non-

jurisdiction.

**b. The nature and quality of Defendant's contacts with Missouri were beyond sufficient to satisfy due process.**

In *Burger King Corp. v. Rudzewicz*, the Supreme Court held that a defendant who has deliberately engaged in "**significant activities**" in a forum or has created "**continuing obligations**" between itself and residents of the forum thereby purposely avails itself of that forum's laws.<sup>53</sup> There can be, again, no reasonable doubt that Defendant maintained, at all relevant times, qualitatively substantial contacts with Missouri such that it deliberately availed itself of Missouri as a forum. And ULX, again, effectively acknowledged as much—i.e., the existence of a "continuing obligation" between itself and Plaintiff—when it sent him the notice letter in Missouri.<sup>54</sup>

Turning to the Eighth Circuit, the appeals court found, in *Myers v. Casino Queen, Inc.*, that the defendant's Missouri-directed contacts were of sufficient quality and nature to satisfy due process because the defendant, a casino enterprise, targeted Missouri residents with marketing campaigns, operated a shuttle service catering to Missouri residents, and sponsored a fan section in Busch Stadium.<sup>55</sup> In *K-V Pharmaceutical Co. v. J. Uriach & CIA, S.A.*, the Eighth Circuit held that this factor was satisfied where the

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resident plaintiffs purchased, obtained, or used the baby product in Missouri). Here, Defendant contracted with Plaintiff for performance in Missouri *and* Plaintiff actually performed in Missouri, such that the nature and quality of the contact was *bilateral* (i.e., giving *to* Missouri and agreeing to receive *from* Missouri), continuous, and prolonged, making it even richer than the defendant's contact in *Ingham*.

<sup>53</sup>*Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985) (internal citations omitted) (emphasis added).

<sup>54</sup> See **EXHIBIT 1**.

<sup>55</sup> *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012).

defendant, a Barcelona-based firm, sent officials to Missouri to renegotiate a contract, paid money to the Missouri-based plaintiff, and exchanged "many letters, emails, and telephone calls" with the Missouri-based plaintiff.<sup>56</sup>

Here, the nature and quality of ULX's contacts with Plaintiff readily exceeds those of the defendants in these binding cases. As evidenced, Defendant's contact with Missouri was multifarious; continuous; and qualitatively important.<sup>57</sup> It included, over the course of several years, proactively reaching out to Plaintiff in Missouri regarding possible employment;<sup>58</sup> providing Plaintiff with equipment so that he could utilize ULX's private network in Missouri on a continuous basis;<sup>59</sup> exchanging tens of thousands of work-related communications from Missouri to Kansas, Kansas to Missouri, and Missouri to Missouri;<sup>60</sup> and sending wage payments to Plaintiff's Missouri-based UMB account.<sup>61</sup> In these ways, and others, the nature and quality of ULX's contacts with Missouri—which included, generally, hiring people in Missouri; paying them in Missouri; communicating with them in Missouri; enabling them to connect, all the time, from Missouri; and, generally, fomenting a work situation whereby many workers could, and did, perform much or all of their contracts from Missouri<sup>62</sup>—easily exceed the

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<sup>56</sup> *K-V Pharmaceutical Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 594-95 (8th Cir. 2011).

<sup>57</sup> See generally **EXHIBIT A**.

<sup>58</sup> *Id.* at ¶ 9.

<sup>59</sup> *Id.* at ¶ 25.

<sup>60</sup> See *id.* at ¶ 18.

<sup>61</sup> *Id.* at ¶ 26.

<sup>62</sup> See *K-V Pharmaceutical*, 648 F.3d at 594 ("we must consider the terms of the contract and its contemplated future consequences in deciding whether personal jurisdiction over an out-of-state defendant exists.")(citing *Burger King Corp. v. Rudzewicz*, 471 U.S. at 478-79). As described, Plaintiff performed nearly his entire contract while in Missouri; Defendant not only agreed to such performance but actively enabled it.

respective defendants' contacts with the forum state in *Myers*<sup>63</sup> and *K-V Pharmaceutical*,<sup>64</sup> each of which also happened to comprise a reversal of the lower court.

**c. Defendant's Missouri-directed activities clearly relate to Plaintiff's claims.**

Even though this Court sits in the Eighth Circuit and the key issue here is its exercise of specific personal jurisdiction over ULX, Defendant completely declines to examine Eighth Circuit cases with regard to that issue.<sup>65</sup> While Supreme Court cases are obviously binding, Defendant's citation of well-trod, general truisms from cases like *Helicopteros*, *World-Wide Volkswagen*, and *Goodyear* does absolutely nothing to clarify an, if not *the*, essential point here: what it means for litigation to relate to, or arise out of, a defendant's forum-directed activities.<sup>66</sup>

Here, there's no genuine question that this matter is related to and arose from Defendant's contacts with Missouri under the law of this Circuit. As pleaded, the basis of ULX's duty of care to Plaintiff was the employer-employee relationship.<sup>67</sup> It was also employment that caused Plaintiff to provide his private information to Defendant in the first place.<sup>68</sup> And it was via this relationship that Plaintiff formed an implied contract with Defendant, whom he alleged breached that contract.<sup>69</sup>

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<sup>63</sup> See *Myers*, 689 F.3d at 913.

<sup>64</sup> See *K-V Pharmaceutical*, 648 F.3d at 593-94.

<sup>65</sup> See Motion at 5-9.

<sup>66</sup> See *id.* at, e.g., 6. For example, Defendant is fond of quoting *Goodyear*, which, like many other high-profile cases about personal jurisdiction, concerned a defendant who was *outside of the United States*, such that the issue was one of *general* personal jurisdiction over an *out-of-country* defendant.

<sup>67</sup> See Petition at ¶¶ 38, 40.

<sup>68</sup> *Id.* at ¶ 37.

<sup>69</sup> *Id.* at ¶¶ 45-53.

Plaintiff's employment at ULX was initially fomented by Mark Nordike, Plaintiff's eventual hiring manager, reaching out to Plaintiff in Missouri to gauge his interest in working for Defendant.<sup>70</sup> Crucially, Defendant not only entered the underlying employment contract with Plaintiff knowing that he'd perform much of the contract *in Missouri* but also proactively enabled that performance by sending him networking equipment so that he *could* perform in Missouri.<sup>71</sup> As stated and evidenced, Defendant actively reached out, on effectively a continuous basis, for over three years, *to Missouri* in order to establish and maintain that employment relationship.<sup>72</sup> Thereby, when that relationship ended, Defendant sent an empty box and shipping label to Plaintiff's Missouri home so that he could return company-owned equipment.<sup>73</sup> Again, that equipment included a device that directly connected Plaintiff to Defendant's private company network from Missouri.<sup>74</sup> There's no reasonable way to argue that Plaintiff's negligence and breach claims don't "relate to" this employment relationship, which constantly traversed the Missouri-Kansas boundary.

Further, Plaintiff also pleaded that ULX's negligence included a failure to timely *notify* him of the breach.<sup>75</sup> Defendant, for obvious reasons, simply ignores this aspect of the negligence pleadings, instead focusing exclusively on the location of ULX's headquarters, servers, and executive decision-making.<sup>76</sup> That these things would be

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<sup>70</sup> **EXHIBIT A** at ¶ 9.

<sup>71</sup> *Id.* at ¶ 25.

<sup>72</sup> *Id.* at, e.g., ¶¶ 11, 16, 18-19, 21, 24.

<sup>73</sup> *Id.* at ¶ 24.

<sup>74</sup> *Id.* at ¶ 25.

<sup>75</sup> Petition at, e.g., ¶¶ 1, 16, 18, 40; *see also* **EXHIBIT A** at ¶ 28.

<sup>76</sup> *See* Motion at 7-9.

located primarily in Kansas is to be expected as that's where Defendant claims *general* personal jurisdiction. Defendant's analysis, however, does nothing to address the many contacts, as described and evidenced here, that ULX maintained in Missouri incident to Plaintiff's *employment*, including any "continuing obligations" pursuant thereto.<sup>77</sup> Thus, when ULX *finally* notified Plaintiff of the breach, it was done via a letter sent to Missouri.<sup>78</sup>

Even further, it's not as if Plaintiff were a one-off situation: ULX's headquarters, in Overland Park, are located just over *three miles* from the Missouri state line; naturally, employees other than Plaintiff lived in, and worked from, Missouri.<sup>79</sup> Thereby, Defendant has been on continuous notice that a number of its employees reside *in* Missouri and often work *from* Missouri, as well as of its duty to safeguard their private information.<sup>80</sup> Under these facts, that ULX might be haled into a Missouri court was completely foreseeable.

Again, the circumstances here compare favorably, if not very favorably, to cases in which the Eighth Circuit has found specific personal jurisdiction. Again, this Circuit employs a "flexible," case-specific, "totality of the circumstances" framework in evaluating whether a cause of action relates to a defendant's activities in a forum.<sup>81</sup> For example, in *Myers*, the causes of action were negligence and premises liability where a Missouri resident got drunk and won a significant amount of money at the defendant casino; was followed home from the casino; and was then beaten and robbed in

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<sup>77</sup>See Petition at, e.g., ¶¶ 38-40; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985)(internal citations omitted).

<sup>78</sup> See EXHIBIT A at ¶ 28; EXHIBIT 1.

<sup>79</sup> See EXHIBIT A at ¶ 22.

<sup>80</sup> See *id.*; EXHIBIT 2; Petition at, e.g., ¶¶ 1, 16, 18-19.

<sup>81</sup> *Myers v. Casino Queen, Inc.*, 689 F.3d 904, 913 (8th Cir. 2012).

Missouri.<sup>82</sup> Like here, the *Myers* defendant was located just across the state line – in that case, in East St. Louis, Illinois.<sup>83</sup> The fact that the casino consistently advertised in Missouri and ran a shuttle service to Missouri, even though the plaintiff took a taxi back from the casino<sup>84</sup> and there was no analysis whatsoever of whether the plaintiff relied on defendant's Missouri advertising,<sup>85</sup> was sufficient for the Eighth Circuit, in a reversal of the district court, to find that specific personal jurisdiction existed.<sup>86</sup>

In *K-V Pharmaceutical*, the cause of action was breach of contract stemming from the improper retention of trade secrets by the plaintiff's Spanish business partner.<sup>87</sup> Like here, that breach came after the contract had terminated.<sup>88</sup> However, because the defendant had engaged in contract negotiations via emails, letters, and phone calls to Missouri; had sent officials to Missouri to foster contract renegotiations; and had wired payments to Missouri, the Eighth Circuit, in another reversal of the lower court, held that specific personal jurisdiction over the defendant existed.<sup>89</sup> The facts here are both similar and substantially more robust: here, for example, Plaintiff has claimed breach of implied contract stemming from his employment; like in *K-V Pharmaceutical*, the defendant proactively exchanged communications with the plaintiff in Missouri and sent payments to Missouri; however, here, the great bulk of Plaintiff's contractual performance – i.e., his

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<sup>82</sup> *Id.* at 908.

<sup>83</sup> *Id.* at 907.

<sup>84</sup> *See id.* at 908.

<sup>85</sup> *See id.*

<sup>86</sup> *Id.* at 913.

<sup>87</sup> *K-V Pharmaceutical Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 591 (8th Cir. 2011).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at 593-95.

work – was undertaken in Missouri *with the continuous, proactive enablement and consent of Defendant*.<sup>90</sup> Further, Plaintiff clearly exchanged vastly more contract-related communications with ULX than did the defendant with the plaintiff in *K-V Pharmaceutical*.<sup>91</sup>

In contrast to this binding precedent, the Motion, in improperly reductive fashion, unilaterally reconstrues Plaintiff's claims and underlying allegations as relating to nothing beyond the data breach *qua* data breach.<sup>92</sup> As described, Plaintiff has clearly alleged an *employment*-related breach of implied contract and negligence stemming from that employment relationship,<sup>93</sup> including "continuing obligations" pursuant thereto.<sup>94</sup> These claims clearly "relate to," in the strongest fashion, Defendant's purposeful availment of Missouri as a forum by forming an employment contract for remote work with a Missouri-based employee.

## **B. There's No Basis for a Transfer of Venue**

As described throughout, this Court clearly has specific personal jurisdiction over this matter such that it should confidently deny the Motion in that regard. However, Defendant includes what is little more than a throwaway argument by requesting, in the alternative, that the Court transfer this action to the District of Kansas, pursuant to 28 U.S.C. § 1404(a).<sup>95</sup>

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<sup>90</sup> **EXHIBIT A** at, *e.g.*, ¶¶ 11-21.

<sup>91</sup> *See id.* at ¶ 18; *K-V Pharmaceutical*, 648 F.3d at 593.

<sup>92</sup> *See* Motion at 5-9.

<sup>93</sup> *See* Petition at ¶¶ 39-53.

<sup>94</sup> *See id.* at ¶¶ 38, 46; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475-76 (1985) (internal citations omitted).

<sup>95</sup> *See* Motion at 9-11.



The Eighth Circuit has held that "[i]n general, federal courts give considerable deference to a plaintiff's choice of forum and thus the party seeking a transfer under section 1404(a) typically bears the burden of proving that a transfer is warranted."<sup>96</sup> Setting aside the argument that Defendant consented to personal jurisdiction in this Court by removing from state court, where it could have presented the same arguments it makes here relative to Missouri's Long-Arm Statute, Plaintiff clearly chose to file this action in Missouri, rather than Kansas. For this reason, he deserves "considerable deference" to his choice of forum.<sup>97</sup> Even if that were not the case, Defendant utterly fails to meet its "burden of proving that a transfer is warranted."<sup>98</sup>

Defendant, with headquarters located just over three miles from the Kansas-Missouri state line, presents the Court with two convenience factors (parties and witnesses) and the locus-of-operative-facts consideration in that regard.<sup>99</sup> Anyone reasonably familiar with the geography of metro Kansas City knows how truly inane ULX's "convenience" points are: Defendant's corporate headquarters on Sprint Parkway in Overland Park are effectively equidistant relative to the Whittaker Courthouse in Kansas City, Missouri (~15.5 miles) and Dole Courthouse in Kansas City, Kansas (~16 miles).<sup>100</sup> Indeed, ULX is actually a bit closer to this Court than it is the nearest District of Kansas venue. Thus, even according to Defendant's consideration, its argument is devoid of all merit. Further, as described, Plaintiff largely performed his work for Defendant in

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<sup>96</sup> *In re Apple, Inc.*, 602 F.3d 909, 913 (8th Cir. 2010) (internal citation omitted).

<sup>97</sup> *See Apple*, 602 F.3d at 913.

<sup>98</sup> *See id.*; Motion at 9-11.

<sup>99</sup> *See* Motion at 10-11.

<sup>100</sup> The Court may take judicial notice of these distances.

Missouri and was injured by ULX's negligence in Missouri so that there are multiple loci of operative facts<sup>101</sup> and even that final, lingering, throwaway point is, at best, neutral relative to the Motion. For these reasons, and more, the Court should also conclusively deny Defendant's request to transfer venue.

#### IV. CONCLUSION

For the foregoing reasons, the Motion should be DENIED.

Respectfully submitted,

/s/ Jenilee V. Zentrich

Bryce B. Bell MO#66841

Jenilee V. Zentrich MO#72781

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<sup>101</sup> See, e.g., *Everlast World's Boxing Headquarters Corp. v. Ringside, Inc.*, 928 F.Supp.2d 735, 745-46 (S.D.N.Y. 2013).

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**ADAM BEHRENDT,**

Plaintiff,

*v.*

**UNITEDLEX CORP.,**

Defendant.

**Case No. 4:23-cv-00434**

**DECLARATION OF ADAM BEHRENDT**

I, Adam Behrendt, declare as follows:

1. I am over the age of eighteen and have personal knowledge of the following facts. All facts stated are true to the best of my present knowledge and belief.
2. I am the Plaintiff in this matter, captioned Case Number 4:23-cv-00434, pending in the United States District Court for the Western District of Missouri.
3. I submit this affidavit in support of my Suggestions in Opposition to Defendant's Rule 12(b)(2) Motion to Dismiss Complaint for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue.
4. I am a resident of Lee's Summit, Missouri.
5. I was employed by Defendant UnitedLex Corp. ("ULX") from February 2019 until August 2022.
6. When I was retained by ULX in February 2019, I was a resident of Lee's Summit, Missouri.

7. During that period of employment by ULX, I continued to reside in Lee's Summit, Missouri.

8. My hiring manager at ULX was Mark Nordike. Mr. Nordike was my supervisor at a former employer, Sedgwick LLP, in its Kansas City, Missouri office. At ULX, Mr. Nordike then reported to ULX's current declarant, Aaron Jamison. Sedgwick LLP, which declared bankruptcy in 2018, was long an important, if not the most important, client of ULX.

9. After departing Sedgwick LLP, Mr. Nordike and I retained some contact. Such contact included Mr. Nordike's reaching out to me, via electronic message, at my residence in Missouri and asking whether I was interested in working at ULX.

10. Eventually, I informed Mr. Nordike that I was interested in working at ULX and subsequently interviewed with him and Mr. Jamison.

11. When ULX hired me in 2019, it did so with the understanding that I would frequently be working from home, which is what actually occurred.

12. Because much of my work at ULX was to be done remotely from inception – i.e., when I was retained in 2019 – this arrangement was agreed upon before the outbreak of COVID.

13. During this initial period, I worked remotely, from my home in Missouri, for 16-24 hours per week.

14. That arrangement persisted for approximately one year. Thus, during my first year of ULX employment, I worked exclusively from home on something over one-hundred

days. Thereby, I had many exchanges – presumably numbering in the thousands – with ULX, from my home in Missouri, during that first year alone.

15. Additionally, in 2019, I worked approximately sixty straight hours on a special, time-sensitive issue from my home in Missouri.

16. Upon the onset of COVID, during the first quarter of 2020, ULX determined that I would work remotely on a nearly exclusive basis. I understand that, in his declaration, Mr. Jamison demarcated this arrangement between "occasional on-site" and "fully remote" bases.

17. I estimate that I came to Kansas-based ULX facilities no more than twenty times from February 2020 until my departure in August 2022. Those visits were geared towards things like team lunches; I performed, again, nearly all my work in Missouri during that period.

18. During this "occasional on-site" and "fully remote" period, I necessarily had many exchanges, presumably numbering in the tens of thousands, with ULX from my home in Missouri.

19. These exchanges, which naturally entailed me sending information to other ULX employees and receiving information from other ULX employees, occurred primarily via electronic messaging and email.

20. Sometimes, including after standard working hours, an issue would be "escalated" and my working team would have a phone call in that regard; I participated in such calls from my home in Missouri.

21. I thereby performed the great majority of my work for ULX, from February 2019 until August 2022, remotely, from my home in Missouri.
22. Because many ULX employees were, generally, working on a largely remote basis, a significant number of my aforementioned exchanges occurred with other employees who lived in Missouri and were thereby working for ULX in Missouri.
23. I also received ULX-work-related vendor samples at my home in Missouri.
24. In early October 2022, following my departure from the company, ULX requested that I return work equipment owned by ULX. To facilitate that return, ULX sent an empty shipping box and shipping label to my home in Missouri.
25. ULX also provided equipment that extended ULX's network to my house so that I was directly connected to ULX's network on a continuous basis.
26. During the period of my employment, ULX deposited wage payments to me via direct deposit to my bank account, which is a Missouri-based UMB account. That is also, as I have alleged, the account in which numerous fraudulent charges appeared following the data breach at ULX.
27. As I have pleaded in my allegations against ULX, I have suffered injuries because of the data breach described in my allegations. Because I have continuously resided in Missouri, I overwhelmingly suffered those injuries while physically located in Missouri.
28. I did not receive formal notice of the breach from ULX until July 2023. That notice was sent to my home in Missouri. **EXHIBIT 1** to my declaration represents a true and correct copy of that notice.

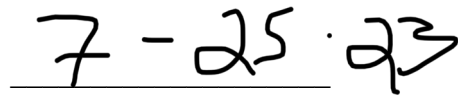
29. **EXHIBIT 2** to my declaration represents a true and correct copy of the employee-profile form I completed before working at ULX.

FURTHER DECLARANT SAYETH NAUGHT.

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

A handwritten signature in black ink, appearing to read "Adam Behrendt", written over a horizontal line.

Adam Behrendt

A handwritten date "7-25-23" in black ink, written over a horizontal line.

Date



# EXHIBIT 1

July 11, 2023



14 1 4879 \*\*\*\*\*"AUTO"ALL FOR AADC 640

ADAM BEHRENDT

LEES SUMMIT, MO 64064-7986

## Notice of Security Incident

Dear Adam Behrendt,

UnitedLex is writing to notify you of a recent data security incident. Although our investigation is ongoing, we have determined that your personal information was most likely impacted. We take the privacy and security of your information seriously, and sincerely apologize for any concern or inconvenience this may cause you. This letter contains information about steps you can take to help protect your information and resources we are making available to help you.

### What happened:

On March 6, 2023, UnitedLex discovered suspicious network activity, immediately implemented its incident response protocols, and engaged cybersecurity experts to assist with determining what occurred and whether any data was compromised. The investigation found that an unauthorized actor gained access to the UnitedLex corporate environment and took some data stored on the system. We are in the process of working with a vendor to review this data to identify what personal information, specifically, may have been impacted.

### What information was involved:

The information stored in the system may have included a combination of the following: your name, Social Security number, financial account number for payroll purposes, and benefits information. If you provided UnitedLex with information for your dependents, such as names and Social Security numbers, this information may also have been affected.

### What we are doing:

We have taken steps to secure our system, such as changing all passwords, deploying additional 24/7 system monitoring, and conducting a thorough investigation. We have arranged for you to receive identity monitoring services offered by Kroll at no cost to you for 24 months. Kroll is a global leader in risk mitigation and response, and their team has extensive experience helping people who have sustained an unintentional exposure of confidential data.

Your identity monitoring services from Kroll will include Credit Monitoring, Fraud Consultation, and Identity Theft Restoration.

### What you can do:

Please review the enclosed "Additional Resources" section included with this letter. This section describes additional steps you can take to help protect yourself, including recommendations by the Federal Trade Commission regarding identity theft protection and details on how to place a fraud alert or a security freeze on your credit file. You should also regularly review your credit reports and financial statements, and immediately report any suspicious activity.

Visit <https://enroll.krollmonitoring.com> to activate and take advantage of your identity monitoring services.

You have until **September 28, 2023** to activate your identity monitoring services.

Membership Number: [REDACTED]

For more information about Kroll and your Identity Monitoring services, you can visit [info.krollmonitoring.com](http://info.krollmonitoring.com).

Additional information describing your services is included with this letter.



**For more information:**

If you have questions, please call (866) 373-7156, Monday through Friday from 9:00 a.m. to 6:30 p.m. Eastern Time, excluding major U.S. holidays. Please have your membership number ready. Your trust is a top priority for us, and we deeply regret any inconvenience or concern that this matter may cause you.

Sincerely,



Mason Argiropoulos  
UnitedLex

## EMPLOYEE PROFILE FORM

## Employee Information

Date of Hire: 02/25/2019

First Name, MI: Adam, C

Last Name: Behrendt

Preferred Name: Adam

Date of Birth: [REDACTED]

Social Security #: [REDACTED]

Marital Status: [REDACTED]

Address: [REDACTED]

City, State: Lees Summit, MO

Zip Code: 64064

Personal Email: [REDACTED]

Phone (Home): [REDACTED]

Phone (Mobile): [REDACTED]

T-Shirt Size (Unisex): [REDACTED]

Jacket Size (Unisex): [REDACTED]

## Emergency Contact Information

Name: [REDACTED]

Relationship: [REDACTED]

Phone (Home): [REDACTED]

Phone (Mobile): [REDACTED]