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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

EMARKER, LLC,	)	
	)	
Plaintiff,	)	
	)	F09TT
VS.	)	**NO. 15-858-BC**
	)	
CAESARS ENTERTAINMENT CORPORATION,	)	
	)	
Defendant.	)	

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MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR LACK OF GENERAL AND SPECIFIC PERSONAL JURISDICTION

This lawsuit has been filed by the developer and holder of copyrights and trademarks for "eMarker," a system which processes cash and credit advances to players of casino games through the use of proprietary technology. The Plaintiff asserts that its system has no competition and is unique in eliminating paper-issued casino markers, yet remaining compliant with gaming laws and regulations.

The Plaintiff's claim in this lawsuit is that the Defendant has violated the confidentiality of the Plaintiff's eMarker system. The Plaintiff seeks a declaratory judgment as to the confidential, trade secret status of the information in issue, and an injunction and damages for misrepresentation, conversion, unfair competition, violation of the Tennessee Trade Secrets Act, breach of contract implied in fact and breach of confidence.

The matter which brings this case before the Court is the Defendant's motion to dismiss. While the Defendant has stated in its filings that it denies the Plaintiff's claims on the merits, the Defendant is presently making a special appearance in this case to contest jurisdiction. Although, the Plaintiff is a Nevada LLC whose principal place of business is the jurisdiction of this Court: Nashville, Tennessee, the Defendant is a Delaware corporation whose headquarters are in Nevada. The Defendant asserts that neither it nor its affiliates, Caesars Entertainment Operating Company ("CEOC") and Caesars Enterprise Services, LLC ("CES"), who are not parties but who have been identified in the limited discovery on jurisdiction, has the extensive contacts with Tennessee to establish general jurisdiction nor have they purposefully formed some contact with the State of Tennessee to establish specific personal jurisdiction.

On this issue of personal jurisdiction, the parties have engaged in limited discovery, and have filed, in support and in opposition, affidavits and briefs of legal analysis. These the Court has read as well as studying the pertinent parts of the cases cited by counsel. The Court has determined it has the information it needs. The Court has not searched for additional case law, and it has a sufficient factual record upon which to rule.

Based upon the factual and legal analysis provided below, the Court concludes that the contacts with Tennessee of the Defendant and/or its affiliates are insufficient for this

Court to exercise jurisdiction. Without such contacts, this Court is not authorized to proceed with this case, and it must be dismissed.

It is therefore ORDERED that the Defendant's motion to dismiss for lack of personal jurisdiction is granted. Court costs are taxed to the Plaintiff.

Momentarily digressing, the Court notes that the Plaintiff makes a good point in its briefing about the expenditure in this dispute of cost and time. The Plaintiff points out that it is only a matter of time and effort for the Plaintiff to file a similar lawsuit (1) against any necessary and/or implicated affiliate of Defendant and/or (2) in Nevada. The Plaintiff states that if the Defendant were to produce, "(1) all of Caesars internal communications since January 2011 related to the development of an alternative electronic marker system; and (2) all communications with third-party vendors related to the development of an alternative electronic marker system," the Plaintiff would know whether litigation, at all, is necessary and/or the dispute can be narrowed or resolved.

The Defendant replies that producing the foregoing discovery is not a solution because, in the first instance, this Court lacks jurisdiction. Moreover, the Defendant asserts that the "Plaintiff may not conduct *any* discovery into Caesars' confidential business information without first identifying with specificity the purported trade secrets at issue. *See e.g., Black & Decker (U.S.) Inc., v. Smith*, No. 1:07-cv-01201-JDB (W.D. Tenn. May 14, 2009). The required trade secret identification ensures that a plaintiff does not attempt to

mold its claimed secrets around the discovery it receives from defendant. The discovery requests impose an undue burden on Caesars. They call for production of all communications regarding any alternative electronic marker system from anywhere within one of the largest casino entertainment companies in the world from 2011 to present. Plaintiff's self-serving characterization of these requests as 'efficient,' 'discrete,' and 'limited' does not comport with facts." *Specially Appearing Defendant Caesars Entertainment Corporation's Reply Brief in Support of Motion to Dismiss for Lack of Personal Jurisdiction*, September 23, 2015.

The Defendant is correct that, absent jurisdiction, the Court can not order production of information. Nevertheless, in consideration of the time and expense already incurred in this case, there is the potential that agreed upon voluntary production by the Defendant, at this time, more narrow in scope than that suggested above by Plaintiff, could be productive in cutting costs and in narrowing or eliminating disputes for both parties in the future inevitable refiling of this case in another forum. For example, the Defendant could voluntarily produce the manuals/documents Clayton Behrman testified Caesars had compiled and had given to two vendors, and had given to its internal team.

To accomplish this voluntary production, the already agreed to provisions of the September 2, 2015 Protective Order could be used to provide that the parties have agreed to some voluntary post-dismissal production under the auspices of paragraph 3 of the Protective Order. Such voluntary disclosure can be worked out by Counsel.

If for some reason Counsel wish to conduct this voluntary disclosure within this case, they would have to file an agreed order to extend, from the date of entry of this Order of Dismissal, the commencement for the time any post-judgment motions and/or Notice of Appeal must be filed. Further, the agreed order would have to provide that neither side waives any claims or defenses and, in particular, that the Defendant's special appearance and contesting of jurisdiction is preserved. Already in place is a recent extension of the Standstill Agreement. It is ORDERED that if the parties wish to engage in this post-dismissal voluntary disclosure within this case, a proposed agreed order, containing the foregoing components, must be filed on or before October 30, 2015.

Having completed its digression, the Court provides below its analysis on which dismissal of the Defendant is based.

Context for the analysis that follows is that the Plaintiff claims that it engaged in confidential discussions, beginning in January 2011 and tapering off by 2014, about the potential implementation of the eMarker system in various casinos the Defendant and/or its affiliates (hereinafter, when referred to collectively, it shall be "Caesars") operate. It was understood, assured and agreed, the Plaintiff claims, that the trade secrets and confidentiality of the eMarker system were being furnished to Caesars for the sole and limited purpose of evaluating whether to implement the system, and that the trademarks and confidentiality would be preserved.

The Plaintiff has since learned that Caesars is developing or is having a third-party develop a system, competitive to the Plaintiff's eMarker system. The Plaintiff alleges that the Caesars' system is copied from the Plaintiff's upon misappropriating the trade secrets and confidential information the Plaintiff furnished during Caesars' evaluation of eMarker.

Now, turning to the record, the Court makes these findings.

1. The Plaintiff is a Nevada LLC with its principal place of business in Tennessee.

2. Defendant is a Delaware corporation whose headquarters are in Nevada. Neither it, CEOC, CES, or any Caesars entity has its principal place of business in Tennessee or is incorporated in Tennessee. The Defendant maintains no headquarters in Tennessee and conducts no executive function. The Defendant is qualified to do business in Tennessee.

3. Prior to 1999 Defendant's predecessor, Harrah's Entertainment, Inc., had its headquarters in Memphis, Tennessee, and had a presence there through 2010. In 2005 Harrah's acquired Caesar's Entertainment, Inc. and relocated the remainder of its Tennessee operations to Las Vegas in 2009—two years before the communications in issue between the parties.

4. Prior to the events in issue, Harrah's sold its Memphis office in January 2010, moved out of Memphis, sold its building, and has no substantial operations in the state.

5. Remaining in Tennessee is a Memphis office that CEOC leases. The Defendant is listed on the lease as the entity to receive notice. The office is used by two

CEOC (now CES) employees; whereas employees of the Caesars entities outside Tennessee total 60,000.

6. The Defendant advertises in Tennessee, including the expenditure of $4.5 million focused on Tennessee residents. This, however, is a small fraction of its national advertising budget.

7. Through 20 or more emails and telephone calls in 2011 and 2013, CEOC employees requested Plaintiff's alleged confidential and proprietary information from which the lawsuit arises.

8. The Plaintiff signed and returned to CEOC a Non-Disclosure Agreement ("NDA") which had been emailed to the Plaintiff.

9. The NDA the Plaintiff executed identifies the Plaintiff as a Nevada LLC and specifies New Jersey law. The NDA states that its purpose is the evaluation of use of technology in Caesars properties, none of which are located in Tennessee.

10. Using access information obtained from the Plaintiff of client and server requirements for the Plaintiff's central server and a temporary link, the Defendant and/or CEOC accessed links to the Plaintiff's website and downloaded information.

11. Through numerous communications between the parties, there was notice and identification that the Plaintiff was located in Tennessee.

12. Physical meetings and presentations regarding the eMarker system took place in Las Vegas, Nevada, and Atlantic City, New Jersey. None took place in Tennessee.

Also, related to these findings is the Court's recognition that a number of the communications in the record, which the Plaintiff relies upon as establishing Defendant's contacts with the Plaintiff in Tennessee, are from Caesars Entertainment Operating Company, Inc. n/k/a Caesars Enterprise Services, LLC ("CEOC"), a separate corporation affiliated with the Defendant. The Plaintiff characterizes the present record on the relationships among various Caesars entities as unclear and as showing the existence of the "Caesars umbrella." In support of this Court's jurisdiction over the person of the Defendant, the Plaintiff asserts that CEOC is an agent of the Defendant, and CEOC's contacts can be imputed to the principal/Defendant. As a matter of law and fact, the Defendant disputes this. It is, however, unnecessary, the Court concludes, for it to decide these issues for, as provided herein, the Court finds the contacts of the Plaintiff and CEOC, even if combined and considered as one total, are insufficient to establish jurisdiction.

As well explained in the briefs of each party, for this Court's jurisdiction over the Defendant to comport with due process, the Plaintiff must show that the Defendant has sufficient minimum contacts with Tennessee such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945); *Youn v. Track, Inc.* 324 F.3d 409, 417 (6th Cir. 2003). Where sufficient minimum contacts exist, a defendant has no basis to complain because, by invoking the benefit and protections of the state's law, the

defendant "should reasonably anticipate being haled into court there." *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. 286, 297 (1980).

Where the Court considers a motion for lack of personal jurisdiction based upon the pleadings, affidavits, and other written submissions of the parties, a plaintiff's showing is a *prima facie* showing of jurisdiction. *See Carrier Corp. v. Outokumpu Oyj,* 673 F.3d 430, 449 (6th Cir. 2012). This is a fairly "relaxed standard." *Smartvue Corp. v. Mistral Software PVT. LTD.,* 2012 WL 3000144, at *2 (M.D. Tenn. July 23, 2012). Minimum contacts exist where a defendant purposefully avails itself of the privilege of conducting activities within the forum state. *See Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

The contacts required for personal jurisdiction may occur in two ways, general and specific:

> Federal and state courts now recognize two varieties of personal jurisdiction—specific jurisdiction and general jurisdiction. The United States Supreme Court first distinguished between specific and general jurisdiction in *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 104 S. Ct. 1868, 80 L. Ed. 2d 404 (1984). This Court followed suit in 1992 in *J.I. Case Corp. v. Williams,* 832 S.W.2d at 532.
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> Specific jurisdiction may be asserted when the plaintiff's cause of action arises from or is related to the nonresident defendant's activities in or contacts with the forum state. To invoke specific jurisdiction, a plaintiff must show (1) that the nonresident defendant has purposely established significant contact with the forum state and (2) that the plaintiff's cause of action arises out of or is related to these activities or contacts. *Burger King Corp. v. Rudzewicz,* 471 U.S. at 472, 105 S. Ct. 2174. The nonresident defendant's contacts with the forum state must be sufficient to enable a court to conclude that the defendant "should reasonably anticipate being haled into court [in the

> forum state]." *Lindsey v. Trinity Commc'ns, Inc.*, 275 S.W.3d 411, 418 (Tenn. 2009) (quoting *World–Wide Volkswagen Corp. v. Woodson,* 444 U.S. at 297, 100 S. Ct. 559). If the plaintiff can make that showing, the defendant will have the burden of showing that the exercise of specific jurisdiction would be unfair. *Burger King Corp. v. Rudzewicz,* 471 U.S. at 477, 105 S. Ct. 2174; 16 *Moore's Federal Practice* §§ 108.42[1], at 108–54, 108.42[6], at 108–77.
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> In contrast to specific jurisdiction, general jurisdiction may be asserted when the plaintiff's cause of action does not arise out of and is not related to the nonresident defendant's activities in the forum state. The threshold for satisfying the requirements for general jurisdiction is substantially higher than the requirements for establishing specific jurisdiction. 4 Charles Alan Wright & Arthur R. Miller *Federal Practice and Procedure* § 1067.5, at 517.10 An assertion of general jurisdiction must be predicated on substantial forum-related activity on the part of the defendant. The nonresident defendant's contacts with the forum state must be sufficiently continuous and systematic to justify asserting jurisdiction over the defendant based on activities that did not occur in the forum state. *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. at 416, 104 S. Ct. 1868; *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. at 448, 72 S. Ct. 413; *Lindsey v. Trinity Commc'ns, Inc.*, 275 S.W.3d at 417; see also 4 *Federal Practice and Procedure* § 1067.5, at 507.

Gordon v. Greenview Hosp., Inc., 300 S.W.3d 635, 647-48 (Tenn. 2009).

Beginning with the analysis of general jurisdiction, the Court has used the following principles to evaluate the pending motion:

> The general jurisdiction inquiry is very different from the specific jurisdiction inquiry. The United States Court of Appeals for the Fifth Circuit has pointed out that "[u]nlike the specific jurisdiction analysis, which focuses on the cause of action, the defendant and the forum, a general jurisdiction inquiry is dispute blind, the sole focus being on whether there are continuous and systematic contact between the defendant and the forum." *Dickson Marine, Inc. v. Panalpina, Inc.,* 179 F.3d 331, 339 (5th Cir. 1999). In order to warrant the exercise of general jurisdiction over a nonresident defendant, "the defendant must be engaged in longstanding business in the forum state, such as marketing or shipping products, or performing services or maintaining

one or more offices there; activities that are less extensive than that will not qualify for general in personam jurisdiction." 4 *Federal Practice and Procedure* § 1067.5, at 507.

The proper analysis for determining whether a defendant's contacts are "continuous and systematic" enough to warrant an assertion of general jurisdiction requires ascertaining whether "the continuous corporate operations within a state [are] so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities." *Lindsey v. Trinity Commc'ns, Inc.*, 275 S.W.3d at 417 (quoting *Int'l Shoe Co. v. Washington,* 326 U.S. at 318, 66 S. Ct. 154).

Questions involving whether a nonresident's contacts with the forum state are sufficient to warrant the exercise of general jurisdiction are extremely fact dependent. 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1069.4, at 164, 185 (3d ed. 2002) (hereinafter "4A *Federal Practice and Procedure*"). Determining whether it is appropriate to exercise general jurisdiction entails a careful, non-mechanical evaluation of the facts with particular focus on the nonresident defendant's contacts with the forum state. *Int'l Shoe Co. v. Washington,* 326 U.S. at 319, 66 S. Ct. 154.

Lest the distinction between the basis for specific jurisdiction and general jurisdiction be overlooked, we emphasize that the assertion of specific jurisdiction is appropriate only when the plaintiff's cause of action arises from or is related to the defendant's contacts with the forum state. However, general jurisdiction is appropriate when the plaintiff's cause of action does not arise from and is not related to the defendant's contacts with the forum state. Thus, when a plaintiff's cause of action is based on the defendant's activities in or contacts with the forum state, specific jurisdiction, as opposed to general jurisdiction, applies. Therefore, consistent with the due process requirements of the federal and state constitutions, when a nonresident defendant's contacts with a forum state are substantial, systematic, and continuous, and the exercise of general jurisdiction satisfies the fairness requirement, the cause of action need not arise out of or relate to those contacts.

Id. at 648-649.

Additionally, the Court has used the principle cited in Defendant's brief from *Daimler AG v. Bauman*, 134 S. Ct. 746, 762 n. 20 (2014) that:

> [T]he general jurisdiction inquiry does not focus solely on the magnitude of the defendant's in-state contacts. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them. Otherwise, "at home" would be synonymous with "doing business" tests framed before specific jurisdiction evolved in the United States.

Applying these principles regarding general jurisdiction to the record in this case, the Court finds that the contacts with Tennessee of the Defendant, its affiliate CEOC, or the combination of all these, are not continuous and systematic, and do not constitute the kind of activities that place the Defendant "at home" in Tennessee. In so concluding, the Court relies upon the facts above numbered 2-6. The above facts establish that the connections of Defendant's predecessor of headquarters in Memphis no longer exist. Those tapered off as of 2009. The facts are that following Harrah's acquisition of Caesars Entertainment, Inc., in 2005, relocation of the remainder of its operations from Tennessee to Las Vegas occurred in 2009. This was two years before the Plaintiff provided the eMarker information to Caesars in issue in this case. Then, in 2010, the sale of Harrah's Memphis office and the sale that same year of a vacant lot in Memphis ended ownership of real property by a Caesars entity in Tennessee. That was a year prior to the events in issue. Now only a shell of two CES employees in rented office space in Memphis remains. As for advertising, only a small fraction of the Caesars' national advertising budget is spent in Tennessee. These facts do not

establish the continuous, systematic, at-home contacts necessary to demonstrate general jurisdiction.

With respect to specific jurisdiction, the Court quotes the legal citations of Tennessee U.S. Middle District Judge Kevin Sharp and his application of these to illustrate the kinds of contacts necessary for specific jurisdiction and to contrast to the facts of this case:

> The Court looks to three criteria to determine whether specific jurisdiction may be exercised constituent with due process: "(1) purposeful availment 'of the privilege of acting in the forum state or causing a consequence in the forum state,' (2) a 'cause of action . . . aris[ing] from activities' in the state, and (3) a 'substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.'" *Schneider v. Hardesty,* 669 F.3d 693, 702 (6th Cir. 2012) (quoting *S. Machine Co. v. Mohasco Indus., Inc.,* 401 F.2d 374, 381–82 (6th Cir. 1968)).
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> The first criteria, purposeful availment, is "'essential' to a finding of personal jurisdiction," *Intera,* 428 F.3d at 616, and the question of whether a defendant availed itself of the privilege of acting in a state is determined by reference to the defendant's actions rather than the plaintiff's actions. *See Nationwide Mut. Ins. Co. v. TRYG Intern. Ins. Co.,* 91 F.3d 790, 795–96 (6th Cir. 1996). "Parties who reach out beyond one state and create continuing relationships and obligations with citizens of another state are subject to regulation and sanctions in the other State for the consequences of their activities." *Burger King Corp.,* 471 U.S. at 473.
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> In the current case, Plaintiff has satisfied the "relatively slight" burden to make a *prima facie* showing of jurisdiction. *Smartvue Corp.,* 2012 WL 3000144, at *2 (citing *Carrier Corp.,* 673 F.3d at 449). As for the first element, the Court finds Defendants' assertion that "HTG has no connection to Tennessee" entirely implausible. (Docket No. 37 at 9) (emphasis in original).
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> HTG, a "person" within the meaning of Tennessee's long-arm statute, T.C.A. § 20–2–214(a)(1), purposefully availed itself of the privilege of acting in Tennessee by forming a limited liability company with Vireo, a Tennessee

corporation, and Mr. O'Neill, a Tennessee resident, both of whom signed the ProMera Operating Agreement in the forum. Plaintiff provides a laundry list of Defendants' subsequent transaction of business within Tennessee. (Docket No. 43 at 9). For instance, Mr. Faulkner asserts that Defendants placed telephone calls regarding ProMera to him in Tennessee "on nearly a daily basis" between 2007 and 2012. (Docket No. 44–1 at ¶ 3 & 4). Defendants also travelled to Tennessee to meet with Mr. Faulkner regarding ProMera's business on more than one occasion. (*Id.* at ¶ 8). The Capital Contribution Notice at issue was drafted by Defendants and sent to Plaintiff in Tennessee. Finally, ProMera products are sold at retail outlets in Tennessee, presumably through marketing and distribution efforts overseen by HTG, from which Defendants receive financial benefits. (*Id.* at ¶ 10).

* * *

Defendants claim HTG's only "arguable tie to Tennessee is through the ProMera Operating Agreement," but that this is insufficient to constitute "purposeful availment" for purposes of personal jurisdiction, citing *Pease Constr., Inc. v. Crowder–Gulf Joint Venture, LLP,* 2011 WL 2118662 (W.D. Tenn. May 27, 2011), for the contention that the mere act of entering into a contract in the forum state does not establish minimum contacts. (*Id.* at 9).

Defendant is correct that "entering into a contract with an out-of-state party alone does not automatically establish sufficient minimum contacts." *Air Prods. and Controls, Inc. v. Safetech Int'l, Inc.,* 503 F.3d 544, 551 (6th Cir. 2007) (emphasis in original) (citing *Burger King,* 471 U.S. at 473, 478–79). It is one factor that, considered with "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing," may indicate purposeful availment. *Id.* However, the business relationship between the parties in *Pease* is easily distinguishable from the current case and, in comparison, illustrative of why this Court's exercise of jurisdiction in this case is reasonable.

In *Pease,* an Alabama contractor engaged a Tennessee corporation as subcontractor to haul debris on a single construction project located in Texas. The subcontractor later filed suit for breach of contract in the Western District of Tennessee. The court granted the defendant contractor's motion to dismiss for lack of personal jurisdiction, noting that "[c]ourts in this circuit have concluded that defendants do not purposefully avail themselves of the privilege of acting or causing a consequence in a forum state based on one-

time, project-based contractual relationships." *Pease*, 2011 WL 2118662, at *6. Absent any suggestion that the parties "intended to create business relationship lasting beyond" the single project, the court concluded the exercise of personal jurisdiction over the defendant "would not comport with federal due process." *Id.* at 8.

The current case is far more analogous to *Air Products*, where the Sixth Circuit reversed a district court in Michigan and found personal jurisdiction existed where the defendant, a Kansas corporation, engaged in a "continuing business relationship that lasted a period of many years" with a Delaware corporation whose principle place of business was in Michigan. 503 F.3d at 551. The court emphasized "several hundred" correspondences between the parties, many of which were initiated by defendant. *Id.* While " '[a] numerical count of the calls and letters has no talismanic significance,' " the court found they were "the type of contacts that demonstrated purposeful availment" because they were made in furtherance of the business relationship between the parties. *Id.* (citing *LAK, Inc. v. Deer Creek Enters.*, 885 F.2d 1293, 1301 (6th Cir. 1989)).

The record in the current case is replete with examples of HTG's "deliberate conduct that amounts to purposeful availment." *Id.* at 551. HTG formed ProMera with a Tennessee corporation and a Tennessee resident. In furtherance of this business relationship, Defendants directed near-daily communications at Plaintiff in Tennessee over the course of many years and attended business meetings in Tennessee. These are the same "type of contacts" that the Sixth Circuit found satisfied the purposeful availment requirement of the personal jurisdiction inquiry. *Id.* at 552.

* * *

The second element, that Plaintiff's claims must "arise from" Defendants' contacts with Tennessee, is also satisfied here. This is a "lenient standard" as "a cause of action need not 'formally' arise from defendant's contacts." *Air Products*, 503 F.3d 544 at 553 (citing *Bird v. Parsons*, 289 F.3d 865, 875 (6th Cir. 2002)). In similar circumstances, the Sixth Circuit has concluded this element is satisfied when the alleged harm would not have occurred if Defendants had not "engaged in a long-term business relationship" with Plaintiff. *Id.*

> For the final element of the personal jurisdiction inquiry, reasonableness, the Court looks to a number of factors including "the burden on the defendant, the interest of the forum state, the plaintiff's interest in obtaining relief, and the interest of other states in securing the most efficient resolutions of controversies." *American Greetings Corp.*, 839 F.2d at 1169–70 (citing *Asahi Metal Indus. Co. Ltd. v. Superior Court of California, Solano County,* 480 U.S. 102, 113, 107 S. Ct. 1026, 94 L. Ed. 2d 92 (1987)). The minimum contacts established in the first element are "considered in light of [the] factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.' " *Burger King Corp.*, 471 U.S. at 476 (citing *Int'l Shoe Co.*, 326 U.S. at 320). "[W]here a defendant who has purposefully directed his activities at forum residents seeks to defeat jurisdiction, he must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King,* 471 U.S. at 477.
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> The Court's review of HTG's contacts with Tennessee in light of the factors listed above does not uncover any concerns that outweigh the "inference of reasonableness" arising where the preceding elements of the personal jurisdiction inquiry are met. *Theunissen v. Matthews,* 935 F.2d 1454, 1461 (6th Cir. 1991) (citing *Am. Greetings Corp. v. Cohn,* 839 F.2d 1164, 1170 (6th Cir. 1988)); *see also Air Products,* 503 F.3d at 555 (finding the travel burden on defendants litigating in a foreign forum did not outweigh Michigan's clear interest in "protecting a company whose principle place of business is located in Michigan.").

Vireo Sys., Inc. v. HTG Ventures, LLC, No. 3:14-CV-2359, 2015 WL 1893461, at *6-9 (M.D. Tenn. Apr. 27, 2015)

In addition, the Court has studied *Walden v. Fiore*, 134 S. Ct. 1115 (2014); *Fastpath, Inc. v. Anbela Technologies Corp.*, 760 F.3d 816 (8th Cir. 2014); and *Rockwood Select Asset Fund XI(6)-1, LLC v. Devine, Millimet & Branch*, 750 F.3d 1178 (10th Cir. 2014), cited by the Defendant. As to these cases, the Court adopts the Defendant's analysis that foreseeable effects in Tennessee from the use by Defendant or its affiliates of telephone and emails

directed to a Tennessee recipient is not the test of specific personal jurisdiction. The relevant contacts are ones with the forum, not the party. Accordingly, if the facts of the emails and phone calls are removed (facts numbered 7 and 9 above), little, if anything, remains with respect to the Tennessee forum. None of the physical meetings occurred in Tennessee. The NDA references Nevada and New Jersey. All that is left is that the out-of-forum Defendant was evaluating a system for potential use in casinos outside of Tennessee which system was developed by a Nevada entity whose principal place of business was known by the Defendant to be Tennessee. Under these circumstances, the Court finds from the facts numbered 7-12 above that the two specific jurisdiction criteria of: (1) purposeful availment and (2) a cause of action arising from activities in the state, are not established by the record. That makes it unnecessary to analyze the third criterion, of a substantial connection to the forum to make the exercise of jurisdiction reasonable.

Lastly, after reviewing the discovery conducted by the Defendant in this case, the Court concludes the discovery stayed within the confines of the preliminary issue of jurisdiction. Neither the content of Defendant's discovery nor its request to take discovery exceeded or waived the jurisdictional issue.

Based upon the foregoing analysis, the Court has dismissed this case for lack of personal jurisdiction over the Defendant.

ELLEN HOBBS LYLE
BUSINESS COURT JUDGE

cc: John Jacobson
Timothy Warnock
Robb Harvey
Jedediah Wakefield
Todd Gregorian

RULE 58 CERTIFICATION

A Copy of this order has been served by U. S. Mail upon all parties or their counsel named above.

CS 10/22/15

Deputy Clerk and Master
Chancery Court

Date