IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

FIRECLEAN LLC,	)	
Plaintiff,	)	
v.	)	Civil No. 1:16-cv-294-JCC-MSN
ANDREW TUOHY, et al.,	)	
Defendants.	)	

MEMORANDUM OPINION & ORDER

This matter is before the Court on Plaintiff's Motion for Leave to Conduct Limited Jurisdictional Discovery (Dkt. No. 21). Having reviewed the pleadings and heard the arguments of counsel, the Court will deny the Motion for the reasons set forth below.

I. Background

Plaintiff is a Virginia company that makes FireClean—a product it markets as a high-end gun lubricant. In early 2015, rumors began to circulate in the firearms community that FireClean is in fact common vegetable oil.

Defendant Tuohy, a resident of Arizona, maintains an online publication called Vuurwapen Blog through which he reported extensively on the FireClean controversy. Most notably, Defendant Tuohy arranged for volunteer experts to test the chemical properties of FireClean and published commentary regarding their findings on Vuurwapen Blog. Defendant Baker is a college student attending Worcester Polytechnic Institute in New Hampshire, who grew up in Massachusetts, and who performed his own tests on FireClean. Defendant Baker maintains a blog called Granite State Guns, which he used to report on the results of his

experiments. Both Defendants published statements claiming the tests demonstrate that Plaintiff's product is chemically similar or identical to vegetable oil.

In March of 2016, Plaintiff filed suit against Defendants contending that these statements regarding FireClean's chemical properties are defamatory. Plaintiff's Complaint alleges that this Court has jurisdiction over Defendants because Defendants communicated with and criticized a Virginia company, obtained FireClean from a Virginia company, made statements available on the internet that Virginia residents may view and interact with, and used computer networks in Virginia to communicate with Virginia readers. *See* Compl. (Dkt. No. 1) ¶¶ 6-20.

Defendants both filed Motions to Dismiss, arguing in relevant part that this Court lacks personal jurisdiction over Defendants because they are not Virginia residents, have no regular contact with this state, and manifested no intent to target a Virginia audience with their blogs. A hearing on Defendants' Motions is set for July 14, 2016.

On May 27, 2016, Plaintiff filed the instant Motion for Leave to Conduct Limited Jurisdictional Discovery, seeking leave of the Court to take discovery on a variety of topics in advance of briefing Defendants' Motions to Dismiss. Plaintiff describes these topics as falling into four categories: "(1) [Defendant Tuohy's] T-shirt sales and marketing; (2) subscriber lists; (3) Communications with Virginia Residents, including FireClean; and (4) Use of servers located in Virginia." Pl. Rep. (Dkt. No. 31) at 4 n.1.

II. Legal Standard

"[T]he decision of whether or not to permit jurisdictional discovery is a matter committed to the sound discretion of the district court." *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 216 n.3 (4th Cir. 2002). The Fourth Circuit, however, has spoken approvingly of courts denying such discovery when "the plaintiff simply wants to

conduct a fishing expedition in the hopes of discovering some basis of jurisdiction." *Id.* "[W]here a plaintiff's claim of personal jurisdiction appears to be both attenuated and based on bare allegations in the face of specific denials by the defendant, a court may refuse jurisdictional discovery." *Intercarrier Commc'ns, LLC v. Kik Interactive, Inc.*, No. 3:12-cv-771, 2013 WL 4061259, at *6 (E.D. Va. Aug. 9, 2013).

At the hearing on this matter, Plaintiff's counsel stated that Plaintiff seeks discovery as to both general and specific personal jurisdiction. Hrg. Audio 10:15:23. General personal jurisdiction is "all-purpose jurisdiction" over a defendant in the forum state, which is "limited" in its availability. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). "Absent exceptional circumstances, [a] defendant is only subject to the general jurisdiction of the forum state if it is the defendant's domicile." *KMLLC Media, LLC v. Telemetry, Inc.*, No. 1:15-cv-432 JCC/JFA, 2015 WL 6506308, at *4 (E.D. Va. Oct. 27, 2015). If not domiciled in the forum state, a defendant may be subject to general jurisdiction only if its "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (U.S. 2011).

Specific jurisdiction, on the other hand, permits a state to exercise jurisdiction over a defendant with respect to a specific cause of action because the defendant's acts giving rise to that cause of action were either committed in or directed to the forum state. "In determining whether specific jurisdiction exists, [courts] consider (1) the extent to which the defendant has purposefully availed itself of the privilege of conducting activities in the state; (2) whether the plaintiffs' claims arise out of those activities directed at the state; and (3) whether the exercise of personal jurisdiction would be constitutionally 'reasonable.'" *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 397 (4th Cir. 2003). Notably, "mere injury to a

forum resident is not a sufficient connection to the forum. Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State." *Walden v. Fiore*, 134 S. Ct. 1115, 1125 (2014).

The Fourth Circuit recognizes that cases involving the internet can present unique complications with respect to specific jurisdiction. "'[A] person's act of placing information on the Internet' is not sufficient by itself to 'subject[ ] that person to personal jurisdiction in each State in which the information is accessed.' Otherwise, a 'person placing information on the Internet would be subject to personal jurisdiction in every State,' and the traditional due process principles governing a State's jurisdiction over persons outside of its borders would be subverted." *Young v. New Haven Advocate*, 315 F.3d 256, 263 (4th Cir. 2002) (quoting *ALS Scan, Inc. v. Digital Serv. Consultants, Inc.*, 293 F.3d 707, 712 (4th Cir. 2002)). Accordingly, the Fourth Circuit has adapted the traditional analysis, holding that courts may exercise specific personal jurisdiction over a defendant based on his or her internet activity only if "that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts." *ALS Scan, Inc.*, 293 F.3d at 714.

Against this backdrop, the question becomes whether the jurisdictional discovery Plaintiff requests appears reasonably calculated to lead to evidence that would support a finding of personal jurisdiction in this matter, or whether the discovery requests amount to a mere "fishing expedition." *Base Metal Trading, Ltd.*, 283 F.3d at 216 n.3.

III. Discussion

As an initial matter, the Court notes that virtually all of Plaintiff's proposed discovery requests appear relevant only to general, as opposed to specific, jurisdiction.[1] Plaintiff, however, has not set forth a sufficient basis for the Court to grant discovery as to whether Defendants are subject to general personal jurisdiction in Virginia. There is no indication in the record that Defendants have any regular contacts with Virginia, much less "affiliations with the State [that] are so 'continuous and systematic' as to render [Defendants] essentially at home in [Virginia]." *Goodyear Dunlop Tires Operations, S.A.*, 564 U.S. at 919.

Moreover, Plaintiff's discovery requests appear incapable of establishing connections between Defendants and Virginia that would be legally sufficient to justify the exercise of general personal jurisdiction. Even if, for example, a large number of Virginians "Like" Defendants' respective Facebook pages, *see* Pl. Rep. (Dkt. No. 31) at 9, that is not the kind of contact that would render Defendants "essentially at home" in this state. *See, e.g.*, *KMLLC Media, LLC*, 2015 WL 6506308, at *4-5. To hold otherwise would subject anyone with an established presence on the internet to general personal jurisdiction throughout the United States, and thereby "subvert[ ]" the "traditional due process principles governing a State's jurisdiction over persons outside of its borders." *Young*, 315 F.3d at 263.

Indeed, Plaintiff appears to recognize the weakness of its general personal jurisdiction argument. At the hearing on this matter Plaintiff's counsel conceded that even if Plaintiff is granted the discovery it seeks, it would be a "tough argument to make" that Defendants are subject to general personal jurisdiction in Virginia. Hrg. Audio 10:16:40. Plaintiff's counsel

[1] Plaintiff, for example, seeks information regarding Defendant Tuohy's t-shirt sales. Neither Defendant Tuohy's t-shirts sales, nor the comments he made in connection with those sales, gave rise to Plaintiff's cause of action. Accordingly, those sales are relevant only to establishing general, as opposed to specific, personal jurisdiction over Defendant Tuohy.

stated further that Plaintiff does not believe Defendant Baker is subject to general personal jurisdiction in this state, Hrg. Audio 10:21:54, and that Plaintiff intends to pursue a theory of specific personal jurisdiction as to Defendant Tuohy, but is "simply not entirely ruling out" making a general jurisdiction argument. Hrg. Audio 10:17:47.

In light of the above, it is clear that any discovery regarding whether Defendants are subject to general personal jurisdiction in Virginia would amount to a mere "fishing expedition." *Base Metal Trading, Ltd.*, 283 F.3d at 216 n.3. As such, the Court declines to permit jurisdictional discovery with respect to general jurisdiction. All that remains, then, is to assess whether any of Plaintiff's proposed discovery requests may be viewed as relevant to establishing specific personal jurisdiction over Defendants for purposes of this case.

Three cases in particular are instructive as to the kinds of evidence that may serve to establish specific personal jurisdiction over Defendants here. In the first of these, *Young v. New Haven Advocate*, 315 F.3d 256, 258 (4th Cir. 2002), the Fourth Circuit considered whether two Connecticut newspapers "subjected themselves to personal jurisdiction in Virginia by posting on the Internet news articles that . . . allegedly defamed the warden of a Virginia prison." The Court noted that establishing specific personal jurisdiction with respect to allegedly defamatory articles "in the Internet context requires proof that the out-of-state defendant's Internet activity is expressly targeted at or directed to the forum state." *Id*. at 262-63. Accordingly, in determining that the defendants were not subject to personal jurisdiction in Virginia, the Court focused its analysis on "the pages from the newspapers' websites that [the plaintiff] placed in the record," examining "their general thrust and content." *Id*. at 263.[2]

[2] At the hearing on this matter Plaintiff's counsel attempted to distinguish *Young* by arguing the newspapers' websites were merely passive, as opposed to the semi-interactive websites at issue here. Hrg. Audio 10:24:36. It is unclear, however, that the websites in *Young* were less interactive than Defendants' in any meaningful way. Indeed, the features of Defendants' websites to which Plaintiff points in making this argument—the ability of users to

Similarly, in *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 393 (4th Cir. 2003), the Fourth Circuit considered "whether an Illinois organization subjected itself to personal jurisdiction in Maryland by operating an Internet website that allegedly infringed the trademark rights of a Maryland insurance company." First, the Court examined whether the defendant had "acted with the 'manifest intent' of targeting" the forum state, which the Court found could "be determined only from the character of the website at issue." *Id*. at 400. Concluding that the website did not appear to deliberately target the forum state in content, the Court then considered the defendant's "relationship with [an] in-forum web hosting company" in connection with the website at issue. *Id*. at 401-02. The Court dismissed that relationship as irrelevant, characterizing as "'de minimis' the level of contact created by the connection between an out-of-state defendant and a web server located within a forum." *Id*. at 402. Finally, the Court affirmed the district court's denial of jurisdictional discovery and decision to rule based upon the information above. *See id*. at 402-03.

Most recently, in *KMLLC Media, LLC v. Telemetry, Inc.*, No. 1:15CV432 JCC/JFA, 2015 WL 6506308 (E.D. Va. Oct. 27, 2015), this Court considered whether a London corporation had subjected itself to personal jurisdiction in Virginia by authoring an allegedly defamatory report regarding a Virginia corporation. The Court turned first to the content of the report itself and found that it had no Virginia-specific focus, but rather "targeted the entire online advertising industry; an industry that spans the Internet, not just Northern Virginia." *Id*. at *10. The Court then addressed the plaintiff's claim that other evidence served to establish specific personal jurisdiction over the defendant. Most notably, the Court held that the defendant's activities

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comment and to subscribe via email—have been common since before the time *Young* was decided. What the Court did say about the websites at issue in *Young* indicate that they were, if anything, more "interactive" than Defendants' websites. For example, the websites in *Young* invited the submission of advertisements from readers. *See id*. at 260. That the opinion does not comment on the interactivity of the newspapers' websites suggests that this issue was of far less concern to the Court than whether the websites' content appeared directed to a Virginia audience.

undertaken while researching the report—which included communicating with the plaintiff via telephone and email, as well as using the plaintiff's product—were neither of the quantity nor quality that would "justify subjecting Defendants to specific jurisdiction." *Id.* While those activities might have had some relationship to the plaintiff's claim, they were not unlawful activities giving rise to plaintiff's claim and so were irrelevant to specific jurisdiction. *See id.* The Court further discounted evidence that the defendant had "sent the Report . . . to two executives employed by two separate Virginia corporations," finding that this did not demonstrate the defendant's purposeful availment of the forum state. *See id*. at *11. In light of the above, the Court held that the defendant was not subject to personal jurisdiction in Virginia.

These cases teach that whether a defendant is subject to specific personal jurisdiction in connection with an internet publication is determined largely by examining the publication itself. Nevertheless, this principle has not been treated as a bright line test, and courts have considered other evidence beyond the publication—albeit with a skeptical eye. With this in mind, the Court now turns to Plaintiff's proposed discovery to determine whether it is probative with respect to the matter at hand.[3]

A. Defendant Tuohy's T-Shirts & Defendants' Other Blog Income

Plaintiff first seeks discovery regarding Defendant Tuohy's sale of Vuurwapen Blog t-shirts, including "the location of the parties that [sic] purchased t[-]shirts," to determine whether any shirts were sold in Virginia. Mem. in Supp. of Mot. (Dkt. No. 22) at 7. Plaintiff justifies this discovery request by reference to comments Defendant Tuohy made regarding FireClean in

[3] The Court notes that Plaintiff initially sought discovery regarding Defendant Baker's whereabouts when he wrote and published his allegedly defamatory blog posts. Mem. in Supp. of Mot. (Dkt. No. 22) at 10. Plaintiff appears, however, to have to have abandoned that request in light of Defendant Baker's specific representations on that topic. *See* Baker Decl. (Dkt. No. 26-1) ¶¶ 4-7. Whether or not Plaintiff intended to abandon its request to take discovery on that topic, the Court finds that the request is moot given Defendant Baker's representations and that jurisdictional discovery would serve no purpose. Accordingly, to the extent Plaintiff still seeks it, the Court will deny jurisdictional discovery on that topic.

connection with the t-shirt sales, as well as Defendant Tuohy's offer to include a free sample of FireClean with the purchase of a t-shirt. *See id*. at 6-7.[4]

As discussed above, however, *see n.1, supra*, neither Defendant Tuohy's comments, nor his sale of the t-shirts, constituted unlawful conduct giving rise to Plaintiff's cause of action. Indeed, neither is even mentioned in Plaintiff's Complaint, although Plaintiff's counsel represented at the hearing on this matter that Plaintiff may seek to amend its Complaint to add allegations regarding Defendant Tuohy's t-shirt sales. As such, Defendant Tuohy's t-shirt sales cannot serve as the basis for specific personal jurisdiction in this matter, as they did not "create[ ], in [Plaintiff], a potential cause of action cognizable in [Virginia's] courts." *ALS Scan*, 293 F.3d at 714; *see also Reynolds & Reynolds Holdings, Inc. v. Data Supplies, Inc.*, 301 F. Supp. 2d 545, 553 (E.D. Va. 2004) (where "commercial transactions made via [the defendant's] website are not related to the [plaintiff's] claims . . . . the cause of action does not 'arise out of'" that activity "and the court cannot properly exercise specific personal jurisdiction over [the defendant] on th[at] basis"). The sales are at best relevant to general, as opposed to specific, jurisdiction over Defendant Tuohy. And for the reasons discussed above, the Court will not grant discovery regarding general personal jurisdiction in this matter.

Moreover, the point is largely moot. Defendant Tuohy has already volunteered the information Plaintiff seeks, representing in his opposition that he sold 38 shirts total, only one of which was shipped to a Virginia address. *See* Tuohy Opp. (Dkt. No. 25) at 7 n.2. Thus even were t-shirt sales legally relevant to personal jurisdiction in this instance, they did not occur in probative numbers. *See, e.g.*, *Carefirst of Maryland, Inc.*, 334 F.3d at 400-01 (single donation to

[4] Defendant Tuohy characterizes his invocation of Plaintiff's name in connection with the sales as "parod[y] and sarcasm." *See* Tuohy Opp. (Dkt. No. 25) at 6 n.1.

the defendant organization through its website from the forum state did not support personal jurisdiction).

Plaintiff also requests discovery related to other income Defendants Tuohy and Baker may have received in connection with their blogs. Like Defendant Tuohy's t-shirt sales, however, any such income—even if received from Virginia—is relevant at best only to general personal jurisdiction. Moreover, there is no reason to believe either Defendant has in fact derived any significant revenue from his blog. Indeed, Defendant Baker represents in his declaration that he has "never received *any* income related to" his blog. Baker Decl. (Dkt. No. 26-1) ¶ 8 (emphasis added). And Defendant Tuohy's counsel indicated at the hearing on this matter that his client's blog-related income has so far been limited to the negligible revenue from his t-shirt sales—a total of roughly $400. *See* Tuohy Opp. (Dkt. No. 25) at 7 n.2.

In short, the Court finds that permitting discovery regarding income Defendants may have earned from their blogs would not lead to any evidence relevant to establishing specific personal jurisdiction over Defendants. As such, the Court denies Plaintiff's requested discovery on that topic.

B. The Location of the Servers Hosting Plaintiffs' Content

Plaintiff further seeks "subpoenas to third parties such as Google, YouTube, FaceBook [sic], Wordpress.com, and GoDaddy to determine the location of the servers on which Defendants [sic] websites and social media accounts reside." Pl. Rep. (Dkt. No. 31) at 2. Plaintiff's rationale is that "when a computer server located in the Commonwealth of Virginia is used for publication of defamatory statements, personal jurisdiction here is proper." *Id.*[5]

[5] It is worth noting that this rationale does not justify the breadth of Plaintiff's discovery request. Plaintiff seeks discovery regarding internet accounts through which Defendants are not alleged to have published defamatory statements. For example, neither Defendant is alleged to have published such statements via YouTube or Google.

Plaintiff, however, overstates the significance of a server's physical location in cases like the one at bar. The Fourth Circuit has "described as 'de minimis' the level of contact created by the connection between an out-of-state defendant and a web server located within a forum." *Carefirst of Maryland, Inc.*, 334 F.3d at 402.[6] It has further stated that "[i]t is unreasonable to expect that, merely by utilizing servers owned by" a company based in the forum state, a defendant "should . . . foresee[ ] that it could be haled into [that state's] court and held to account for the contents of its website." *Id*. This comports with common sense; the physical location of a server where information published to the internet is stored will often be a matter of happenstance, known neither to the writer nor the reader. That is in fact the case here. *See* Pl. Rep. (Dkt. No. 31) at 5 (noting that Defendant Tuohy "may not be capable of providing" the location of the servers hosting his web content).

The connection between user and server is particularly attenuated where, as here, the internet services in question have servers distributed throughout the world.[7] As Plaintiff appears to acknowledge, *see* Pl. Rep. (Dkt. No. 31) at 5-6, the ultimate physical location of information a user uploads to such a service is chosen by the service, not the user. It is therefore impossible for a user to intentionally direct the information he or she uploads to a server in a specific state, region, or even country. Such services can be secretive about the locations of their servers, leaving users unaware of the range of possible locations where their data may be stored. *See* Pl. Rep. Exh. 4 (Dkt. No. 31-4) (noting that "Google [is] secretive" about its data centers and "says

[6] While the servers in *Carefirst* were ultimately found to reside outside of the forum state, the broad and unequivocal language of the Fourth Circuit's holding demonstrates that the result would have been the same even had this not been the case.

[7] *See* Pl. Rep. Exh. 1 (Dkt. No. 31-1) (GoDaddy has "data centers located in Arizona, California, Illinois, Virginia, the Netherlands, and Singapore"); Pl. Rep. Exh. 2 (Dkt. No. 31-2) (discussing Facebook's lease of server space in Ashburn, Virginia, as well as in San Jose, Santa Clara, and Palo Alto, California, and "at least one" unknown European city); Pl. Rep. Exh. 4 (Dkt. No. 31-4) (discussing Google's data centers located in 19 cities around the United states, as well as 17 located outside of the United States).

as little as possible about these facilities," so "[n]obody knows for sure" how many exist). Indeed, the service may potentially change the location where such information is stored from one day to the next without the user's knowledge or action. It would eviscerate traditional notions of due process to exercise personal jurisdiction over a defendant based on such a contact with the forum state. *See Walden*, 134 S. Ct. at 1122 (the only relevant contacts for purposes of specific jurisdiction are those the "'defendant himself' creates with the forum State"); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quotation marks omitted) ("[The] purposeful availment requirement [of due process] ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person."); *Young*, 315 F.3d at 263 ("'[A] person's act of placing information on the Internet' is not sufficient by itself to 'subject[ ] that person to personal jurisdiction in each State in which the information is accessed.' Otherwise, a 'person placing information on the Internet would be subject to personal jurisdiction in every State,' and the traditional due process principles governing a State's jurisdiction over persons outside of its borders would be subverted.").

The cases Plaintiff cites are not to the contrary. For example, in *Bochan v. La Fontaine*, 68 F. Supp. 2d 692, 702 (E.D. Va. 1999), this Court found, as a matter of *statutory interpretation*, that Virginia's personal jurisdiction statute reached defamatory statements published via AOL due to the physical presence of AOL's servers in the district. *See id*. at 699. The Court did not, however, hold that the servers' location was dispositive, or even relevant, as to the *constitutional dimensions* of specific personal jurisdiction—the issue presented by Defendants' Motions to Dismiss, and by extension, the instant Motion. Rather, the Court undertook a separate analysis of constitutional due process that entirely discounted the physical

location of the server where the information was stored. *See id*. at 702-03. The same is true of the second case Plaintiff cites for this proposition, *TELCO Commc'ns v. An Apple A Day*, 977 F. Supp. 404, 408 (E.D. Va. 1997). *See id*. at 405 ("Defendants do not assert that this Court's exercise of jurisdiction would offend Due Process. Accordingly, the subject of the Court's focus is the Virginia long-arm statute."). Accordingly, these cases—which were decided before the Fourth Circuit's opinion in *Carefirst*—have little bearing on the issues now before the Court.

Plaintiff further cites *Aitken v. Commc'ns Workers of Am.*, 496 F. Supp. 2d 653, 660 (E.D. Va. 2007), for the proposition that transmitting communications through a server located in this district establishes personal jurisdiction here over the transmission's sender. *Aitkin* involved an action against defendants who were encouraging Verizon employees to unionize by spamming "@verizonbusiness.com" email addresses, the servers for which were located in Virginia. *See id*. at 658. Notwithstanding the fact that the defendants didn't know where the servers were located, the Court found that the Defendants "purposefully availed themselves of the privilege of conducting affairs in Virginia by (i) intentionally sending scores of emails to '@verizonbusiness.com' email addresses, the servers for which are located in Virginia, and (ii) transmitting the emails to the targeted Verizon employees, including some employees located in Virginia." *Id*. at 660.

The Court explained, however, that its holding was based on the unique nature of the offense, as "[s]pamming is intentional conduct essentially directed at, among others, servers and their owners." *Id*. at 668 n.4. In other words, where spamming is concerned, the server itself is the object of the tort to which the Defendant's conduct is directed no matter where it lies. The Court distinguished cases involving the general publication of articles on the internet from "spam

cases" because the former does not "involve the active, intentional conduct of sending emails to a specific internet address and server." *Id*. at 660.[8]

Finally, setting aside the issue of relevance, Plaintiff has no basis for believing the servers hosting Defendants' blog posts are located in Virginia, as opposed to California, Amsterdam, or elsewhere. In contrast to the cases upon which Plaintiff relies, none of the internet services in question are headquartered in Virginia or principally locate their servers in the Commonwealth. Plaintiff simply hopes that the servers in question are located here. This amounts at best to a mere "fishing expedition." *Base Metal Trading, Ltd.*, 283 F.3d at 216 n.3. In light of the above, the Court will not permit discovery on this topic.

C. Defendants' Contacts with Plaintiff

Plaintiff also seeks discovery regarding Defendants' interactions with Plaintiff. As an initial matter, it is unclear why that discovery should be necessary. One would expect Plaintiff to have knowledge of its own communications with Defendants. Plaintiff's response that it "does not possess any of the discovery that it seeks by this Motion," Pl. Rep. (Dkt. No. 31) at 7, does not help the Court to understand its position.

Regardless, this Court's opinion in *KMLLC Media, LLC* makes clear that Plaintiff's requested discovery has no bearing on this Court's ability to exert specific personal jurisdiction over Defendants in Virginia.[9] In *KMLLC Media, LLC*, the defendant likewise contacted the Virginia plaintiff while researching its allegedly defamatory report. 2015 WL 6506308, at *10.

[8] This case may be distinguished even further in that, as discussed above, the web content at issue was uploaded to nationwide web services, which in turn chose where in the world the content would be stored. Defendants were thus incapable of targeting their content for publication on a specific server.

[9] Plaintiff makes the point that the Court in *KMLLC Media, LLC* permitted limited jurisdictional discovery. Mem. in Supp. of Mot. (Dkt. No. 22) at 4. While that may be true, the Court ultimately found that all evidence brought to light through that discovery was irrelevant to specific personal jurisdiction. *See KMLLC Media, LLC*, 2015 WL 6506308, at *10-12. Moreover, that case presented a more complicated factual situation than the instant matter, which arises out of the self-publication of statements on personal blogs.

Moreover, just as Defendants procured FireClean from Plaintiff, the defendant in *KMLLC Media, LLC* made use of the plaintiff's product in advance of authoring its allegedly defamatory report. *See id.* at *10. The Court, however, found that because such contacts were "both cursory in quality and did not give rise to Plaintiff's cause of action, . . . they [were] not sufficient to support an exercise of specific jurisdiction by this Court over Defendants." *Id.*

Such is the case here. Defendants' research regarding Plaintiff is not a relevant contact with Virginia; "the plaintiff cannot be the only link between the defendant and the forum." *Walden*, 134 S. Ct. at 1122. Plaintiff's argument to the contrary "improperly attributes . . . [P]laintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis." *Id.* at 1125; *see also KMLLC Media, LLC*, 2015 WL 6506308, at *7; *cf. Knight v. Doe*, No. 1:10-CV-887, 2011 WL 2471543, at *3 (E.D. Va. June 21, 2011) (directing activity to the plaintiff "is not synonymous" with directing activity to the forum state).

Plaintiff attempts to make Defendants' research relevant by characterizing it as part of Defendants' tortious "course of conduct." Pl. Rep. (Dkt. No. 31) at 7. But lawful activity that might bear some relationship to tortious activity cannot serve as the basis for specific personal jurisdiction. For example, imagine that a defendant drives from his home state of Maine to North Carolina and is forced to stop for gas in Virginia. The defendant then crosses into North Carolina and shortly thereafter gets into a car accident with the Virginia-based owner of the very gas station where the defendant earlier bought gas. But-for the defendant's act of filling up his tank in Virginia at the plaintiff's gas station, the defendant could not have committed the tort in question—indeed, he would have been unable to continue his drive to North Carolina. But no one would argue that this entirely lawful act would support specific personal jurisdiction in Virginia over a Maine-based defendant for a tort committed in North Carolina. *See, e.g., Gaines*

v. Dickerson, No. 15-cv-7173, 2016 WL 1529896, at *2 (E.D.N.Y. Apr. 14, 2016). The defendant's "course of conduct" leading up to the tort may have involved the plaintiff and resulted in incidental, if intentional, contact with Virginia, but that is irrelevant for purposes of specific personal jurisdiction.

In short, neither Defendants' communications with Plaintiff, nor Defendants' lawful purchase of FireClean, can serve as the basis for personal jurisdiction in this case. As such, the Court will not permit jurisdictional discovery on this topic. [10]

D. Defendants' Subscriber Lists & Contacts With Virginia Readers

Finally, Plaintiff seeks information regarding Defendants' "subscriber lists" and interactions with Virginia readers in connection with their blogs. Plaintiff argues that this "discovery will show that Defendants' contacts with Virginia residents are not sporadic, but rather are repeated, continuous, and persistent." Pl. Rep. (Dkt. No. 31) at 9. Plaintiff states that Plaintiff "should be permitted to investigate, for example, whether Defendants have Virginia subscribers to their blogs and Facebook pages, and whether Virginia readers have interacted with the defamatory postings in particular." *Id*.

As an initial matter, Plaintiff provides no basis for its claim that Virginia residents read or interact in large numbers with Defendants' blogs. Indeed, the record before the Court strongly suggests that this is not the case. Defendant Baker states that he has never interacted with a Virginia resident through his blog, *see* Baker Decl. (Dkt. No. 26-1) ¶ 9-10, and Defendant Tuohy claims that when he sold Vuurwapen Blog t-shirts, only one was purchased by a Virginia reader. Tuohy Opp. (Dkt. No. 25) at 7 n.2.

[10] The Court notes further that the issue of discovery regarding how Defendants obtained FireClean is largely moot in light of Defendants' decision to volunteer that information in their respective replies.

Regardless, the information Plaintiff seeks cannot serve as the basis for specific, as opposed to general, personal jurisdiction over Defendants. A defendant "does not 'consciously' or 'deliberately' target a forum if a[n] [internet] user [in that forum] unilaterally" views or interacts with something the defendant posted online. *Intercarrier Commc'ns, LLC v. Kik Interactive, Inc.*, No. 3:12-CV-771-JAG, 2013 WL 4061259, at *4 (E.D. Va. Aug. 9, 2013). "Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Walden*, 134 S. Ct. at 1123. To that end, the due process analysis "looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id*. at 1122.

Plaintiff seeks evidence that Virginia residents have shown interest in Defendants' blogs. But that is not the same thing as showing that Defendants *intended* Virginia residents in particular to have such an interest. The relevant inquiry is whether the defendant "manifested an intent to target Virginia readers." *Knight*, 2011 WL 2471543, at *3. Generally speaking, that is determined by looking to the content of the website at issue, *see Carefirst of Maryland, Inc.*, 334 F.3d at 400, not by examining the unilateral actions of third parties, which cannot serve as the basis for personal jurisdiction. *See Burger King Corp.*, 471 U.S. at 475. Plaintiff does not explain why the latter would be relevant in this case. Whether Defendants' contact with readers in Virginia is, as Plaintiff claims, "repeated, continuous, and persistent" is beside the point where specific personal jurisdiction is concerned.

Finally, regardless of what interactions Defendants might have had with Virginia residents in connection with their respective blogs, those interactions did not give rise to Plaintiff's cause of action. For that reason as well, Defendants' blog-related interactions with

Virginian readers cannot serve as the basis for specific personal jurisdiction. *See ALS Scan*, 293 F.3d at 714.

Plaintiff's allegation that Virginians read and interact with Defendants' blogs in large numbers is speculative at best. Moreover, Defendants' purported Virginia readership cannot serve as the basis for specific personal jurisdiction. In light of the above, the Court will not permit jurisdictional discovery on this topic.

IV. Conclusion

As demonstrated by a long line of cases decided both by the Fourth Circuit and this Court, the universe of information relevant to establishing specific personal jurisdiction over a defendant in a case such as this is relatively narrow. *See, e.g.*, *ALS Scan, Inc.*, 293 F.3d 707; *Young*, 315 F.3d 256; *Carefirst of Maryland, Inc.*, 334 F.3d 390; *KMLLC Media, LLC*, 2015 WL 6506308; *Knight*, 2011 WL 2471543. Here, that information is already before the Court. Furthermore, Plaintiff has not established a realistic possibility that this Court might properly exercise general personal jurisdiction over Defendants, such that a broader set of facts might become relevant. Finally, even were the information Plaintiff seeks relevant, Plaintiff has not shown that granting discovery would likely produce probative evidence—that the requests at issue amount to more than a mere "fishing expedition." *Base Metal Trading, Ltd.*, 283 F.3d at 216 n.3. In light of the above, granting jurisdictional discovery in this matter would not aid the Court in ruling upon Defendants' Motions to Dismiss. Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Leave to Conduct Limited Jurisdictional Discovery (Dkt. No. 21) is DENIED.

ENTERED this 14th day of June, 2016.

/s/
Michael S. Nachmanoff
United States Magistrate Judge

Alexandria, Virginia