

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, not
individually
but solely in his capacity as Receiver
for OASIS INTERNATIONAL
GROUP, LIMITED, et al.,

No. 21-cv-1317

Plaintiffs,

v.

ATC BROKERS LTD., DAVID
MANOUKIAN, and SPOTEX
LLC,

Defendants.

**ATC BROKERS LTD.’S RULE 12(b)(2) MOTION TO DISMISS
PLAINTIFF’S COMPLAINT FOR LACK OF PERSONAL JURISDICTION**

ATC Brokers Ltd. (“ATC UK”) moves to dismiss Plaintiff’s Complaint under Federal Rule of Civil Procedure 12(b)(2) because this Court lacks personal jurisdiction over ATC UK, a company incorporated, operating in, and regulated in the United Kingdom.

INTRODUCTION

ATC UK is a British company. It is registered in the U.K. Its operations are in the U.K. Its principal place of business is in the U.K. It is regulated in the U.K. Indeed, ATC UK provides brokerage services and solutions in non-U.S. markets.

The Receiver has tried—and failed—for nearly two years to conflate two separate corporations and tie ATC UK to the operations of a U.S. company with

common ownership, ATC Brokers (“ATC US”), which provides technical support to ATC UK through a Service Level Agreement. The Receiver has been threatening to bring litigation against the entities in various jurisdictions including the U.K., for more than a year. Receiver’s Fourth Interim Report, Doc. 266 at 34, *CFTC v. Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF (M.D. Fla. Sept. 14, 2020) (“It is clear that the Receiver will have to litigate with ATC either in this Court, California, the United Kingdom, or some combination thereof.”).¹

Now the Receiver has instead determined that it more convenient to sue ATC UK in the wrong jurisdiction where, as a foreign corporation, it could have never anticipated defending itself. Because ATC UK is incorporated and based in the U.K., U.S. courts lack general jurisdiction over it. And because its only relation to this matter was conducting foreign business with foreign companies, U.S. courts also lack specific jurisdiction over it. Haling a British company providing a regulated service in non-U.S. markets into a U.S. court offends traditional notions of fair play and substantial justice. Accordingly, this Court must dismiss the action against ATC UK.

¹ Although this and other filings referenced here are outside the Complaint, they are public record and the Court may take judicial notice of their content to decide a motion to dismiss. *Mitchell v. McManus*, No. 8:14-cv-1822-T-27JSS, at *6 n.3 (M.D. Fla. Apr. 19, 2017) (“In ruling on a motion to dismiss, a district court may take judicial notice of certain facts, including public records, without converting a motion to dismiss into a motion for summary judgment because they are capable of accurate and ready determination.” (citing *Harvey v. United States*, 2017 U.S. Dist. LEXIS 4152, at *23 (S.D. Fla. Jan. 10, 2017))).

BACKGROUND

I. ATC UK is a British company, incorporated, operating, and regulated in the U.K.

ATC UK was incorporated in the U.K. in 2012 to serve as a broker for trading on London-based foreign exchange (“FOREX”) markets. Declaration of Jack Manoukian ¶ 4 (Exhibit A). ATC UK is regulated by the Financial Conduct Authority, a U.K. agency tasked with regulating the financial service industry in that country. *Id.* ¶ 5. ATC UK maintains its only business address at No 1 Poultry, London, EC2R 8EJ. Declaration of Jennifer Claudio ¶ 5 (Exhibit B).

Jen Claudio, the Chief Operations Officer, manages the day-to-day operations of ATC UK. *Id.* ¶ 7. Ms. Claudio lives and works in the U.K. *Id.* ¶¶ 4–5. Jack Manoukian, the managing director of ATC UK, travels to the U.K. quarterly to manage strategic concerns for the company. Ex. A ¶ 11. The former CEO, Michael Mirarchi also lived and worked in the U.K. *Id.* ¶ 14. Other key operational functions such as compliance reside in the U.K. as well. Ex. B ¶¶ 10–21.

ATC UK offers brokerage solutions for companies and individuals in non-U.S. markets. Ex. A ¶ 4; Ex. B ¶ 14. It currently has no plans to expand its business into the U.S. or seek registration with the CFTC. *Id.* ¶ 17. In fact, Jack Manoukian is working on a second renewal of his entrepreneur visa in the U.K., which will be his third entrepreneur visa. Ex. A ¶ 15.

II. Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) used legitimate omnibus trading services and software provided by ATC UK to undertake an unlawful Ponzi scheme.

It is uncontroverted that two licensed, overseas Oasis entities, Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) opened omnibus trading accounts at ATC UK, a London-based brokerage, to engage in foreign exchange (“FOREX”) trading through foreign financial institutions. Amended Complaint, Doc. 110 ¶ 28, *CFTC v. Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF (M.D. Fla. Sept. 14, 2020). The Oasis entities used a white label brokerage solution provided by ATC UK that allowed the licensed entities to act as FOREX brokers for their underlying clients.² Ex. A ¶ 6; Report and Recommendation, Doc. 316 at 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. All of ATC UK’s omnibus broker clients receive the same setup and back office software. Ex. A ¶ 6. The omnibus broker clients’ underlying clients have no relationship with ATC UK. Ex. A ¶ 6; Report and Recommendation, Doc. 316 at 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

Oasis Global FX, Limited, a New Zealand entity, was the first Oasis entity to contact ATC UK. Ex. B ¶ 23. It opened an omnibus trading account with ATC UK and at that time, ATC UK confirmed that it was a New Zealand entity registered with

² A “white label” software solution refers to software provided by one company (i.e., ATC UK) that other companies (i.e., the Oasis entities) rebrand to make it appear as if it were their own. In this case, the Oasis entities used legitimate software and omnibus trading accounts provided by ATC UK to conduct legitimate FOREX trading and then report results to their underlying clients, which the Ponzi scheme insiders later admitted to altering to disguise trading losses. This is similar to a business using QuickBooks to manage its accounting and generate statements available to third parties with the business’s name on the document.

the New Zealand authorities as a licensed broker. *Id.* ¶¶ 23–24. Sometime later, Oasis Global FX, Limited became deregistered, and ATC UK requested that it become registered again or the business be moved. *Id.* ¶ 25. Following that, Oasis Global FX, S.A. opened an omnibus trading account with ATC UK. *Id.* ¶ 26. Oasis Global FX, S.A. was a Belize entity registered with the Belize authorities as a licensed broker. *Id.* ¶ 27.

The Oasis entities that undertook the Ponzi scheme were owned or controlled by Joseph Anile, Michael DaCorta, and Raymond Montie, who traded FOREX through the Oasis entities' omnibus trading accounts using ATC UK's white label brokerage software. Amended Complaint, Doc. 110 ¶ 28, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. These principals of the Oasis entities controlled the FOREX trading, which they conducted using omnibus trading accounts and white label software. *See id.* ¶¶ 38–39; Anile Plea Agreement, Doc 1-4 at 26–27, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; DaCorta Indictment, Doc 1-5 at 7–8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Declaration, Doc. 295-2 ¶¶ 6–7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The principals of the Oasis entities managed their underlying customers without involvement from ATC UK. *See* Amended Complaint, Doc. 110 ¶¶ 38–39, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Plea Agreement, Doc 1-4 at 26–27, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-

VMC-SPF; DaCorta Indictment, Doc 1-5 at 7–8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Declaration, Doc. 295-2 ¶¶ 6–7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

When the Ponzi scheme was discovered, the U.K.’s National Crime Agency requested that ATC UK freeze the funds in any Oasis entities’ omnibus trading accounts, which ATC UK did, thus terminating any additional trading by the Oasis entities through accounts at ATC UK. Ex. B ¶ 28; Receiver’s First Interim Report, Doc. 113 at 11, Receiver’s Second Interim Report, Doc. 195 at 9, Receiver’s Third Interim Report, Doc. 229 at 9, Receiver’s Fourth Interim Report, Doc. 266 at 9, Receiver’s Fifth Interim Report, Doc. 294 at 9, Receiver’s Sixth Interim Report, Doc. 327 at 9, Receiver’s Seventh Interim Report, Doc. 367 at 11, Receiver’s Eighth Interim Report, Doc. 393 at 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

III. The CFTC Action

In April 2019, the CFTC sued the Oasis entities, their principals, and several companies associated with the Oasis entities. Complaint, Doc. 1, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Neither ATC UK nor any of its principals were named as a defendant or a relief defendant by the CFTC. *Id.* The CFTC alleged that the Oasis entities placed trades and lost almost all the money placed for trading through the ATC UK omnibus accounts. *Id.* ¶¶ 37–39; Amended Complaint, Doc. 110 ¶¶ 38–40, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The CFTC never then or at any point thereafter alleged any wrongdoing by ATC UK or any of its

principals—because there was never any wrongdoing on the part of ATC UK or any of its principals. *See generally* Amended Complaint, Doc. 110, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. In fact, to this day ATC UK is assisting the CFTC by providing information related to the Oasis entities.

ATC UK has always cooperated with the government investigation into the Oasis Entities. The CFTC has contacted ATC UK through its regulator, the U.K.’s Financial Conduct Authority, on November 8, 2018, and July 19, 2021, requesting documents related to the Oasis Entities. Ex. B ¶¶ 31, 33. ATC UK responded to the first request from FCA and is in process of responding to the second request. *Id.* ¶ 33. The Department of Justice contacted ATC UK through the U.K.’s National Crime Agency on October 24, 2019, and ATC UK designated its COO, Jen Claudio, to answer questions about the Oasis Entities. *Id.* ¶ 32.

Since the First Interim Report on June 14, 2019, the Receiver has repeatedly represented to the court that appointed him that ATC UK is a U.K. entity and that it has cooperated with U.S. law enforcement through U.K. regulators:

On April 18, 2019, the Receiver served London-based ATC Brokers LTD (“**ATC**”) with a copy of the TRO and requested that ATC freeze all accounts associated with the defendants and relief defendants. In cooperation with domestic law enforcement and the United Kingdom’s National Crime Agency, ATC identified and froze one account in the name of Oasis Global FX, S.A., which contained \$2,005,368.29. The repatriation of that money has been complicated by jurisdictional issues, including international treaties and other agreements. The Receiver understands that the DOJ has assumed the responsibility of repatriating the money for the ultimate benefit of the Receivership Estate. The Receiver will cooperate with the DOJ, the National Crime Agency, the CFTC, and ATC to facilitate that process within the scope of the

Receivership Orders. At present, the Receiver believes the money is secure and will not be dissipated pending the resolution of these issues.

See, e.g., Doc. 113 at 14, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

IV. The Receiver's history of improper demands.

ATC UK also cooperated with the Receiver and held several voluntary meetings with his counsel in spring 2019 to explain the trading undertaken by the Oasis entities. Response in Opposition, Doc. 284 at 7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. But in his apparent zeal to reach trading commissions paid by the Oasis entities to ATC UK to which he was not entitled, the Receiver unilaterally ceased communication with ATC UK and in October 2019 demanded that ATC UK documents be provided to him through a separate U.S.-based company, ATC US. Doc. 278-2, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. When counsel for ATC US informed the Receiver that it was the incorrect recipient of a document request and that such documents could not be provided by a distinct corporate entity, the Receiver threatened to subpoena the owners of ATC US and ATC UK personally. Doc. 284-4 at 2–3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. When ATC US pushed back against the Receiver's overreach, the Receiver issued a subpoena to Mr. Manoukian in his personal capacity. Doc. 278-3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Mr. Manoukian timely objected and the Receiver did not contest the objection. Doc. 284-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Instead, the Receiver waited months and then demanded documents from ATC UK, ATC US, and Mr. Manoukian under the

threat of a sanction for contempt. Doc. 278-5, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The Receiver, however, refused to send his demand letter to ATC UK and instead addressed the letter only to counsel for ATC US and Mr. Manoukian. *Id.* Counsel for ATC US and Mr. Manoukian informed the Receiver's counsel that the letter had not been sent to a representative of ATC UK. Doc. 278-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Yet the Receiver never corrected his conduct. *Id.*

To provide additional cooperation, counsel for ATC US offered arranging a videoconference between the Receiver, counsel for ATC UK, counsel for ATC US and Mr. Manoukian, *and the CFTC*, which the Receiver rejected. *Id.* Instead, the Receiver tried to have the court hold ATC UK, ATC US, and Mr. Manoukian in contempt of the order appointing him. Doc. 278, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Only just before filing his motion, did the Receiver finally ask who represented ATC UK, which at the time did not have U.S. counsel, it had only U.K. counsel. Doc. 284-8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

The court rejected the Receiver's argument that the order appointing gave him any such power to reach third-party documents without following and respecting the Rules of Civil Procedure. Doc. 316, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The court also noted that there were "issues regarding this Court's jurisdiction over ATC Brokers Ltd., a non-party located in the United Kingdom," which the Receiver also failed to address. *Id.* at 2 n. 1. Accordingly, the court denied the Receiver's motion. *Id.*

The Receiver is now overreaching again by suing David Manoukian, a California resident, and ATC UK, a London-based, foreign business in a district without jurisdiction over ATC UK.³

STANDARD

“In a motion to dismiss for lack of personal jurisdiction, a court must accept the facts alleged in plaintiff’s complaint as true, to the extent they are not contradicted by defendant’s affidavits.” *Kim v. Keenan*, 71 F. Supp. 2d 1228, 1231 (M.D. Fla. 1999) (citing *Cable/Home Comm. Corp. v. Network Prods., Inc.*, 902 F.2d 829, 855 (11th Cir. 1990)). The defendant may challenge plaintiffs allegations with affidavits or other pleadings. *Carmouche v. Carnival Corp.*, 36 F. Supp. 3d 1335, 1338 (S.D. Fla. 2014), *aff’d sub nom.*, *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201 (11th Cir. 2015). “[W]here the defendant challenges the court’s exercise of jurisdiction over its person, the plaintiff bears the ultimate burden of establishing personal jurisdiction is present.” *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1217 (11th Cir. 2009).

ARGUMENT

I. Because no receivership property exists in Central District of California—nor does the Receiver allege any such property in California—28 U.S.C. § 754 does not extend jurisdiction to that district.

First, the Receiver overreaches his authority by improperly seeking to leverage the federal receivership statute to expand his reach outside the U.S. to encompass a foreign entity. This effort fails for two reasons. First, 28 U.S.C. § 754 allows only for

³ Mr. Manoukian has filed a separate motion to dismiss.

nationwide—not foreign—jurisdiction, and then only if certain procedures are followed. ATC UK, however, is not an American corporation and maintains no place of business within the U.S. Ex. A ¶ 7; Ex. B ¶ 5. In fact, a sister court previously made a similar determination in a related dispute in which this Receiver was similarly seeking to overreach the authority granted to him in his appointment order:

ATC US is a U.S. company regulated by the CFTC with its own employees and customers. It services clients in U.S. markets that are authorized to trade in foreign currency exchanges by U.S. regulators. ATC UK is registered with and regulated by the government of the United Kingdom. It has separate employees and clients from ATC US. ATC UK does not have authorization to service clients or assist with trading in American markets.

Report and Recommendation, Doc. 316 at 4, n. 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The expansion of the Receiver’s reach to sue in “each district in which [receivership] property is located” simply does not expand his reach to ATC UK—a foreign entity.⁴

Second, the Receiver fails to allege that any receivership property *is located* in the Central District of California. The Receiver does not allege in his Complaint that any such property exists. Moreover, even accepting the Receiver’s allegations as true, any receivership property is located in the U.K., not in California. To the extent the Receiver alleges that the receivership property at issue is the funds placed with ATC UK for FOREX trading, that money has either been lost in the market, (Doc. 1

⁴ In multiple Interim Reports, the Receiver noted that he was considering suing ATC UK in the United Kingdom. *See, e.g.*, Receiver’s Eighth Interim Report, Doc. 393 at 37, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The Receiver, however, appears to have abandoned that option in favor of attempting to pursue ATC UK in the U.S.

¶ 56), or is in an account frozen by the U.K.'s National Crime Agency, *id.* ¶ 93. The Receiver has represented this repeatedly to the court that appointed him. Receiver's First Interim Report, Doc. 113 at 11, Receiver's Second Interim Report, Doc. 195 at 9, Receiver's Third Interim Report, Doc. 229 at 9, Receiver's Fourth Interim Report, Doc. 266 at 9, Receiver's Fifth Interim Report, Doc. 294 at 9, Receiver's Sixth Interim Report, Doc. 327 at 9, Receiver's Seventh Interim Report, Doc. 367 at 11, Receiver's Eighth Interim Report, Doc. 393 at 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

To the extent the Receiver believes commissions earned by ATC UK are receivership property, that money also resides in ATC UK's bank account in the U.K. Ex. B ¶ 18. The Receiver's allegation that ATC UK property is in the Central District of California is belied by his repeated representations to the court that appointed him. Because the Receiver has failed to plausibly allege the existence of any receivership property in the Central District of California, 28 U.S.C. § 754 cannot expand his jurisdiction to reach ATC UK and his claim fails.

II. The Receiver has failed to establish that any U.S. court has jurisdiction over ATC UK.

Although the Receiver sidesteps whether he is asserting either general or specific jurisdiction, he still fails to allege sufficient facts to establish either. "[W]here the defendant challenges the court's exercise of jurisdiction over its person, the plaintiff bears the ultimate burden of establishing personal jurisdiction is present." *Oldfield*, 558

F.3d at 1217. Because the Receiver fails to allege any facts sufficient to establish jurisdiction his claims must be dismissed for lack thereof.

A. General jurisdiction fails as ATC UK is incorporated and maintains its principal place of business in London.

General jurisdiction is highly limited. “For an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). With respect to a corporation, the place of incorporation and principal place of business are the “paradig[m] . . . bases for general jurisdiction.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (quoting Brilmayer et al., A General Look at General Jurisdiction, 66 Texas L. Rev. 721, 735 (1988)). The Receiver admits that ATC UK is incorporated in the U.K. (Doc. 1 ¶ 19). Accordingly, the only other basis for general jurisdiction could be ATC UK’s principal place of business.

ATC UK’s only place of business is in the U.K., not as the Receiver claims in California. Ex. B ¶ 5. The Supreme Court has held that a “‘principal place of business’ is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. It is the place that Courts of Appeals have called the corporation’s ‘nerve center.’” *Hertz Corp. v. Friend*, 559 U.S. 77, 92–93 (2010). “A corporation’s “nerve center,” usually its main headquarters, is a single place.” *Id.* at 93.

ATC UK's corporate headquarters are located at No. 1 Poultry, London, EC2R 8EJ in the United Kingdom. Ex. B ¶ 5. The Chief Operating Officer, Jen Claudio, controls and coordinates the day-to-day operations of the company from that location. *Id.* ¶ 7. The managing director, Jack Manoukian, travels there quarterly to direct the long term strategy of the company. Ex. A ¶ 11. The office houses the accounts management, client treasury, compliance, and operations functions. Ex. B ¶ 7. Moreover, a London headquarters is necessary for such a business. ATC UK trades on FOREX markets using London-based financial institutions. Ex. A ¶ 4; Ex. B ¶ 12. It is regulated by British authorities and uses a British bank. Ex. B ¶¶ 13, 18. It is a British company operating in the U.K. from an office in London.

The Receiver's only rejoinder is that David Manoukian, a director and part owner of ATC UK, lives and works in California. Oddly, the Receiver cites an old Companies House⁵ registration that lists David Manoukian's residence as evidence that ATC UK is at home in California. But the residence of an owner, even one involved in the operation of the business, does not establish a principal place of business. *See Datatron Int'l Corp. v. Jung Jin Kim*, Civ. Action No. 12-cv-01678-AW, at *6 (D. Md. Sep. 5, 2012) ("Adopting Plaintiffs' position, however, would require this Court to treat the personal residence of a corporation's owner as the corporation's principal place of business in virtually all cases, as most business owners are likely to make business decisions, use a computer for business, and maintain business records

⁵ Companies House is a United Kingdom corporate registry.

at their residences. The Court believes that such a result ‘would readily permit jurisdictional manipulation,’ and is therefore improper under 28 U.S.C. § 1332.” (quoting *Hertz Corp.*, 130 S. Ct. at 1195)) Accordingly, general jurisdiction over ATC UK does not exist.

B. Specific jurisdiction fails as the bank account, trading activity, and know-your-customer procedures at the core of the Complaint all reside or occurred in London.

The Receiver also fails to establish that this Court has specific jurisdiction over ATC UK. To establish specific jurisdiction, a plaintiff must demonstrate that the “in-state activities of the corporate defendant ‘had not only been continuous and systematic, but also gave rise to the liabilities sued on.’” *Daimler*, 571 U.S. at 126 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). For this reason, “specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1780 (2017).

The Receiver, however, alleges conduct that occurred in the U.K. as underlying the allegations in the Complaint. For instance, the Receiver repeatedly asserts—albeit wrongly⁶—that the accounts held by Oasis Global FX, Limited and Oasis Global FX,

⁶ Oasis Global FX, Limited, and Oasis Global FX, S.A. did not always lose money as evident from the Receiver’s own Complaint. The Receiver alleges that Oasis Global FX, Limited, and Oasis Global FX, S.A. deposited approximately \$20 million for trading, but lost over \$60 million trading, (Doc. 1 ¶ 56). Simple arithmetic shows that, to lose more than \$40 million more than one deposits, one must have made some money trading. The Receiver makes no allegation that the Oasis entities made losses exceeding their deposits. Indeed, although Oasis Global FX, Limited, and Oasis Global FX, S.A. ultimately lost money, it was not a continuous pattern of losses and Oasis Global FX, Limited, and Oasis Global FX, S.A. made money on some trades before eventually losing most of it.

S.A. always lost money. These losses form a core component of the Receiver's Complaint as without the losses, there would have been no need to conceal them. These losses did not occur in Florida. The funds were held in a bank in the U.K. Ex. B ¶ 18. The trades were facilitated through foreign-based financial institutions. *Id.* ¶ 12. And the companies that suffered any loss were foreign entities based in New Zealand and Belize. To the extent any injury occurred, it occurred outside the U.S.

Further, other key events occurred outside the U.S. as well. The account opening and initial compliance functions occurred in the U.K., not in Florida or California. *Id.* ¶ 7. Indeed, the Receiver alleges that Michael Mirarchi, ATC UK's former CEO, first brought Oasis entities to ATC UK. Mr. Mirarchi lived and worked in the U.K. Ex. A ¶ 14.

The only contact with the U.S. relevant to ATC UK is the communication between employees of foreign corporations sitting in the U.S. However, email and telephone communications between individuals working on behalf of foreign corporations to facilitate foreign operations and transactions do not alone create contact with the forum state. *See Aviation One of Fla., Inc. v. Airborne Ins. Consultants (Pty), Ltd.*, 722 Fed. App'x 870, 882 (11th Cir. 2018) ("The fact that Airborne communicated with and represented a Florida-based entity in that foreign dispute does not establish that Airborne had 'fair warning' that its activities related to this matter would subject it to the jurisdiction of Florida."); *Corigliano v. Classic Motor, Inc.*, 611 Fed. App'x 77, 80 (3d Cir. 2015) (holding a non-solicitation email insufficient to establish minimum contacts on its own); *Hylland v. Flaum*, 4:16-CV-04060-RAL,

2016 WL 6901267, at *3 (D.S.D. Nov. 22, 2016) (stating that emails, telephones calls, and even gifts “do not establish personal jurisdiction by themselves”).

Where courts have found a connection to a state through email communications by employees, those employees have used the email communication to further *conduct* in the state. *See e.g., Roper v. Trissl Sports Cars*, No. 3:16-cv-00441-HGD, 2017 WL 476541, at *5 (N.D. Ala. Feb. 6, 2017) (“If the contract between Grove and Trissl were the subject of this litigation, there might be cause to delve further into the number of contacts between Grove and Trissl, the initiator of the contacts and other such issues, to determine whether the minimum contacts have been shown.”); *see also Power Rental OP CO, LLC v. Virgin Islands Water & Power Auth.*, 3:20-cv-1015-TJC-JRK, 2021 WL 2809630, at *4 (M.D. Fla. July 6, 2021) (holding email communications *combined* with the fact that the defendant “was required to make payments due under the Rental Agreement and the Note [at issue] in Florida” was sufficient for personal jurisdiction). ATC UK contracted with Oasis Global FX, Limited, and Oasis Global FX, S.A.—all foreign entities. Moreover, the conduct at issue—i.e., the opening, maintenance, and use of two omnibus brokerage accounts to trade money held in a foreign bank account through foreign financial institutions—occurred overseas. Simple communications between U.K. employees to U.S. employees to provide technical support does not create jurisdiction.

III. ATC UK does not have minimum contacts with the U.S., let alone Florida, such that it would satisfy traditional notions of fair play and substantial justice necessary to hale it into a U.S. court.

ATC UK is foreign company with exclusively foreign operations. The entities controlled by the Receiver now suing ATC UK were also foreign entities. Accordingly, ATC UK does not have minimum contracts with the U.S. necessary to satisfy traditional notions of fair play and substantial justice to establish jurisdiction. Courts in the Eleventh Circuit analyze whether a defendant meets all of the following requirements when analyzing minimum contacts:

- (1) whether the plaintiff's claims arise out of or relate to at least one of the defendant's contacts with the forum;
- (2) whether the nonresident defendant purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and
- (3) whether the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice.

Dean v. Easterling, No. 3:19-cv-566-J-32JRK, 2020 WL 1665482, at *5 (M.D. Fla. Apr. 3, 2020) (citing *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1355 (11th Cir. 2013)).

A. Plaintiffs' claims arise out of conduct in the U.K., not the U.S.

As explained above, the claimed conduct occurred in the U.K., not the U.S. At issue is the use of money by the Receivership entities and ATC UK's alleged role in that use. The Receiver alleges that ATC UK either (1) aided and abetted a Ponzi scheme by facilitating FOREX trading (Counts I and II); (2) fraudulently transferred receivership funds (Counts III–V); or (3) was negligent in some way to the Ponzi-

scheme entities (Counts VI and VII). Regardless of cause of action, however, the relevant conduct occurred in the U.K. To establish minimum contacts, “the contact must be a ‘but-for’ cause of the tort, yet the causal nexus between the tortious conduct and the purposeful contact must be such that the out-of-state resident will have ‘fair warning that a particular activity will subject [it] to the jurisdiction of a foreign sovereign. . . .’” *Oldfield*, 558 F.3d at 1222–23 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). This is a high bar: “the relatedness element demands a closer and more substantial causal relationship between the relevant contacts and the alleged tort” *Id.* at 1224.

As for the aiding and abetting claims, the exact conduct that supposedly helped the scheme was providing the ability to trade FOREX through omnibus accounts at ATC UK. (Doc. 1 ¶ 115). First, the entities trading FOREX through ATC UK were foreign entities—based in New Zealand initially and later in Belize. Second, it is uncontested that the trading occurred outside the U.S. Accordingly, any contact between ATC UK and the Receivership entities relevant to the aiding and abetting claims occurred outside the U.S.

As for the fraudulent transfer claims, all relevant financial transactions occurred in the U.K. ATC UK banks in the U.K. Ex. B ¶ 18. It also holds client funds in the U.K. *Id.* Accordingly, any transfer by ATC UK occurred on foreign soil in a foreign bank.

Finally, although Plaintiffs do not clearly state what duty they allege ATC UK purportedly breached, any conceivable duty relating to the Receivership entities

attached in the U.K. ATC UK onboarded the foreign-based and foreign-licensed Oasis entities through compliance functions based in the U.K. Ex. B ¶ 7. And any operations related to the trading by foreign-based Oasis entities occurred in the U.K. through foreign financial institutions. *Id.* Accordingly, all FOREX trades placed were subject to the jurisdiction of a foreign regulator. *Id.* ¶ 13.

As none of the conduct at the core of Plaintiffs' Complaint occurred in the U.S., the first requirement for minimum contacts is not met and ATC UK is not subject to personal jurisdiction in the U.S.

B. ATC UK conducted business with foreign financial institutions subject to foreign regulators and with foreign companies. Accordingly, it did not avail itself of the privilege of conducting activities in the U.S.

ATC UK targeted its business at the U.K. and other foreign markets. It did not solicit U.S. business or otherwise fulfill the requirement that it purposefully availed itself of this forum. “[The] ‘purposeful availment’ requirement 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’” *Burger King Corp.*, 471 U.S. at 475–76 (internal citations omitted). ATC UK provided the foreign-based and foreign-licensed Oasis entities a FOREX trading platform for use in transactions cleared by foreign financial institutions. That those foreign clients of ATC UK solicited, collected, and allegedly misused funds of their own U.S.-based clients does not mean ATC UK “create[d] a ‘substantial connection’ with the forum” or “‘deliberately’ has engaged in significant

activities within [the forum]” through the clients of the Oasis entities with whom ATC UK has no relationship. *Id.* (internal citations omitted).

ATC UK never conducted or sought to conduct business subject to U.S. laws or regulators. Indeed, ATC UK is registered with and regulated by the U.K.’s Financial Conduct Authority, not the American CFTC. Ex. B ¶¶ 13–17. ATC UK does not seek to trade FOREX in markets or methods subject to American jurisdiction, it targets trading subject to British jurisdiction. Accordingly, it has not “created ‘continuing obligations’ between [itself] and residents of the forum,” has not “manifestly [] availed [itself] of the privilege of conducting business there,” nor has it sought to have its “activities [] shielded by ‘the benefits and protections’ of the forum’s laws” *Burger King Corp.*, 471 U.S. at 476. ATC UK merely provided third-party white label software and facilitated trading on non-U.S. markets by licensed foreign entities.

Indeed, ATC UK opened omnibus brokerage accounts for a New Zealand entity and a Belizean entity. While those entities may have availed themselves of the U.S., if ATC UK has not “purposefully directed activities inside” the U.S., it could not have availed itself of the forum regardless of what the Oasis entities did. *See Aviation One of Fla., Inc.*, 722 Fed. App’x at 882. Rather, ATC UK’s contacts are “too attenuated to establish ‘a substantial connection with the forum State.’” *Id.* (citing *Walden v. Fiore*, 571 U.S. 277, 282 (2014)). Indeed, in *Aviation One* where the Eleventh Circuit did not find jurisdiction, an African company agreed to procure insurance for a plane flying in Africa it knew to be owned by an American company. *Id.* at 880.

Here, in an even more attenuated connection, ATC UK agreed to facilitate FOREX trading outside the U.S. by companies it knew to be licensed, foreign entities with American employees. Again, like in *Aviation One*, the actual underlying conduct involved what all parties agreed were foreign transactions conducted by foreign entities.

Nor is it sufficient to argue that ATC UK should have known that the Oasis entities were using its software to avail themselves of the stream of commerce within the U.S. In the foundational opinion on stream-of-commerce analysis, the Supreme Court rejected the idea that a manufacturer of a part used in a larger product later sold in the U.S. had purposefully availed itself of the forum, because: “Asahi does not do business in California. It has no office, agents, employees, or property in California. It does not advertise or otherwise solicit business in California. It did not create, control, or employ the distribution system that brought its valves to California.” *Asahi Metal Indus. Co. Ltd. v. Superior Court*, 480 U.S. 102, 112 (1987).

ATC UK put a financial product into a foreign stream of commerce: the ability to manage an omnibus trading account and trade FOREX through a white label software solution. ATC UK did not create, control, or employ the distribution system that the Oasis entities presented to U.S. customers. ATC UK, while it has American ownership, maintains the overwhelming majority of its employees, decision making, and operations in the U.K., which includes its only office where its operations occur. Ex. B ¶¶ 7–11. And in the modern age of telework, an employee, even when that employee is also an owner, sitting in California cannot be determinative of a company

registered overseas, with a business targeting foreign markets “availing” itself of the U.S.

Indeed, in one case, a court found that a Company with a product specifically tested for use in conditions like those found in Florida and sold by a regional distributor into Florida had not availed itself of the forum because it had not purposefully directed its products there. *Smith v. Poly Expert, Inc.*, 186 F. Supp. 3d 1297, 1303 (N.D. Fla. 2016). ATC UK has never even availed itself of the U.S. It offers a trading service to foreign entities specifically designed for use *outside* the U.S.

C. Plaintiff only cites contacts between Oasis and the U.S., which cannot establish ATC UK’s contacts with the U.S.

The only effort the Receiver makes to connect ATC UK to the U.S. is by alleging its Ponzi-schemer contacts with the forum. (Doc. 1 ¶ 39). It is axiomatic that a plaintiff’s contacts with the forum are irrelevant in a minimum contacts analysis: “Put simply, however significant the plaintiff’s contacts with the forum may be, those contacts cannot be ‘decisive in determining whether the defendant’s due process rights are violated.’” *Walden*, 571 U.S. at 285 (quoting *Rush v. Savchuk*, 444 U.S. 320, 332, (1980)). Whether the Oasis entities or their principals committed wrongs in Florida, whether the CFTC sued Oasis and its principals in Florida, or whether the Receiver was appointed to serve as a receiver in Florida is irrelevant. The only inquiry is whether ATC UK had minimum contacts with Florida, which it did not.

D. The CFTC and DOJ have recognized that traditional notions of fair play and substantial justice establish ATC UK as a foreign entity, not subject to U.S. jurisdiction.

Finally, ATC UK is not the only entity to recognize it is a foreign corporation subject to foreign jurisdiction. Indeed, Magistrate Judge Flynn noted the jurisdictional concerns of ATC UK in refusing to hold it in contempt for opposing this same Receiver's overreaching demands for documents. Report and Recommendation, Doc. 316 at 2 n. 1, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. CFTC and DOJ both sought documents or information from ATC UK in connection with the underlying actions against the Oasis entities and its principals that led to the Receiver's appointment. Yet CFTC has twice sought documents from ATC UK and twice made its request through the U.K.'s Financial Conduct Authority. The DOJ too has sought information from ATC UK in connection with criminal prosecution of the Oasis principals, but rather than ask questions of the company directly, it relayed its questions to ATC UK's COO through the U.K.'s National Crime Agency. ATC UK has willingly complied with all such requests from U.K. agencies. The only party here refusing to respect ATC UK's jurisdiction is the Receiver.

CONCLUSION

"Considering the international context, the heavy burden on the alien defendant, and the slight interests of the plaintiff and the forum State, the exercise of personal jurisdiction . . . in this instance would be unreasonable and unfair." *Asahi Metal Indus.*, 480 U.S. at 116. The Receiver has failed to establish that this Court, or any other, had general or specific jurisdiction over the foreign defendant corporation

ATC UK. Moreover, ATC UK does not meet any of the requirements necessary for this Court to find that it has minimum contacts under the due process clause. Accordingly, this Court must dismiss the action against ATC UK for lack of personal jurisdiction.

Because these arguments have been made to the Receiver in great detail (1) over the last two years of being forced to resist the Receiver's efforts to overreach his discovery authority, which this District denied, Doc. 316, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF, (2) in various meet and confers, including most recently a one-hour meet and confer on July 21, 2021, and (3) a detailed follow-up letter addressing many of the Receiver's failures argued here, which the Receiver refused to correct in an amended pleading, ATC UK requests that the Receiver's Complaint now be dismissed with prejudice.

[Attorney signature and certifications follow.]

Dated: August 9, 2021

Respectfully submitted,

/s/ Christopher Torres
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*Counsel for ATC Brokers Ltd. and David
Manoukian*

RULE 3.01(g) CERTIFICATION

The undersigned certifies that he conferred with Plaintiff's counsel, who does not oppose the requested relief.

/s/ Christopher Torres
Attorney

CERTIFICATE OF SERVICE

I certify that on August 9, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Christopher Torres
Attorney

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, not
individually
but solely in his capacity as Receiver
for OASIS INTERNATIONAL
GROUP, LIMITED, et al.,

No. 21-cv-1317

Plaintiffs,

v.

ATC BROKERS LTD., DAVID
MANOUKIAN, and SPOTEX
LLC,

Defendants.

DECLARATION OF JACK MANOUKIAN

Under 28 U.S.C. § 1746, I declare as follows:

1. My name is Jack Manoukian. I am over 18 and have personal knowledge of the facts stated in this declaration.
2. I am the Director of ATC Brokers, Ltd. and have served in this role since 2012.
3. I attended California State University Northridge, where I received my Bachelor of Science degree in Business Administration, emphasis in Finance.
4. ATC Brokers, Ltd. is a company formed and based in London, United Kingdom. Its purpose is to serve as a broker for trading on London-based foreign exchange (“FOREX”) markets.

5. As a FOREX broker in the United Kingdom, ATC Brokers, Ltd. is regulated by its Financial Conduct Authority.

6. ATC UK provides third-party software that omnibus broker clients can use to engage in overseas FOREX trading on behalf of the omnibus brokers' own clients. All of ATC UK's omnibus broker clients receive the same setup and back office software. The omnibus broker clients' underlying clients have no relationship with ATC UK.

7. ATC Brokers, Ltd. has three employees in London and maintains office space at 1 Poultry, London, EC2R 8EJ, UK.

8. For the purpose of operating ATC Brokers, Ltd., I have obtained an Entrepreneur Visa to enter the United Kingdom.

9. The requirements for a U.K. Entrepreneur Visa are substantial. They can be viewed at <https://www.gov.uk/government/publications/guidance-on-application-for-uk-visa-as-tier-1-entrepreneur>.

10. A copy of my Entrepreneur Visa is attached as **Exhibit A**.

11. In my role as Director of ATC Brokers, Ltd., I travel to the United Kingdom, on average, for two weeks every quarter. During that time, I focus on managing the business of ATC Brokers, Ltd. and the strategy for growing the company.

12. As a Director of ATC Brokers, Ltd., I administer and maintain compliance related matters to abide by the United Kingdom's Financial Conduct Authority regulations. I prepare and submit company monthly Client Money and

Assets Return financial report, quarterly GABRIEL financial reports. and annual audited reports to the Financial Conduct Authority. I complete daily reconciliation of client money to abide by the Financial Conduct Authority's Client Money rule. I also establish and maintain ongoing communication with ATC Brokers, Ltd.'s banks and prime broker relations, which are all foreign entities.

13. When I am not in the United Kingdom, the Chief Operating Officer, Jen Claudio, manages ATC Brokers, Ltd.

14. The principal who preceded me at ATC Brokers, Ltd., Michael Mirarchi, lived and worked in the United Kingdom full time. Mr. Mirarchi was CEO from 2014 to 2015.

15. Although the increased ability to telework has made it possible for me to conduct some aspects of ATC Brokers, Ltd.'s business remotely, I still find it necessary to travel to the United Kingdom to manage the business there. Accordingly, I am currently seeking a second renewal of my Entrepreneur Visa, which will be my third Entrepreneur Visa for the United Kingdom.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 6th, 2021



Jack Manoukian

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, not
individually
but solely in his capacity as Receiver
for OASIS INTERNATIONAL
GROUP, LIMITED, et al.,

No. 21-cv-1317

Plaintiffs,

v.

ATC BROKERS LTD., DAVID
MANOUKIAN, and SPOTEX LLC,

Defendants.

DECLARATION OF JENNIFER CLAUDIO

Under 28 U.S.C. § 1746, I declare as follows:

1. My name is Jennifer Claudio. I am over 18 and have personal knowledge of the facts stated in this declaration.
2. I am a Director and Chief Operating Officer of ATC Brokers, Ltd. and have served in this role since 2016.
3. I attended California State University Northridge where I received my Human Resources Management Certificate and Bachelor of Arts Degree in Child and Adolescent Development.
4. I currently live in London, United Kingdom and am a citizen of United States.

5. I work in the London office of ATC Brokers, Ltd. located at No 1 Poultry, London, EC2R 8EJ. This is the only office for ATC Brokers, Ltd.

6. I am giving this declaration in my capacity as Chief Operating Officer of ATC Brokers, Ltd., in support of its application to contest jurisdiction. For the avoidance of doubt ATC Brokers, Ltd., does not consent or submit to the Florida court's jurisdiction and it is not making an appearance in such proceedings and so the giving of this declaration is not intended to prejudice its contention or waive any defenses that ATC Brokers, Ltd., may have that the Plaintiffs or the Florida courts may not exercise jurisdiction over it.

7. As COO, I manage the operations of ATC Brokers, Ltd., including accounts management, client treasury, compliance, and operations.

8. ATC Brokers, Ltd.'s compliance functions reside in its London office.

9. My compliance oversight includes keeping up to date with and understanding relevant laws and regulations and how they pertain to our internal policies.

10. ATC Brokers, Ltd.'s Money Laundering Reporting Officer ("MLRO"), held by Prajakta Agashe, resides in its London office.

11. The MLRO provides oversight for the firm's anti-money laundering (AML) systems, and acts as a focal point for related inquiries.

12. ATC Brokers, Ltd. serves as a broker for trading on London-based foreign currency exchange and related contract for difference (CFD) markets ("FOREX").

13. As a FOREX broker in the United Kingdom, ATC Brokers, Ltd. is registered with, and regulated by, the Financial Conduct Authority.

14. ATC Brokers, Ltd. does not trade on U.S. markets.

15. ATC Brokers, Ltd. is not registered with, or regulated by the U.S. Commodity Futures Trading Commission.

16. It is my understanding that a registration with CFTC would be necessary to serve as a brokerage firm for U.S. markets.

17. ATC Brokers, Ltd. has never held such a registration and has no plans to seek such a registration.

18. ATC Brokers, Ltd maintains its bank account in London at Barclays Bank. It uses this bank account for all company and client-held funds.

19. ATC Brokers, Ltd maintains a website with a U.K.-specific domain name: <https://atcbrokers.co.uk/>.

20. ATC Brokers, Ltd maintains a phone number with a U.K. based country code phone number: +44 (0)20 3318 1399.

21. ATC Brokers, Ltd. retains the firm of Charles Russell Speechlys LLP in London to provide legal advice. ATC Brokers, Ltd. had not retained U.S. counsel in relation to this matter until doing so for the purpose of opposing jurisdiction in this lawsuit.

22. Regarding Oasis International Group, Limited, ATC Brokers, Ltd. had contact with three subsidiaries or affiliates based in New Zealand, Nevis, and Belize.

23. Oasis Global FX, Limited opened an omnibus trading account with ATC Brokers, Ltd.

24. At that time, Oasis Global FX, Limited was a New Zealand entity registered with the New Zealand authorities as a licensed broker.

25. When Oasis Global FX, Limited became deregistered, ATC Brokers, Ltd. requested that it become registered again or the business be moved.

26. Following that, Oasis Global FX, S.A. opened an omnibus trading account with ATC Brokers, Ltd.

27. At that time, Oasis Global FX, S.A. was a Belize entity registered with the Belize authorities as a licensed broker.

28. ATC Brokers, Ltd. froze any accounts associated with an Oasis subsidiary or affiliate when it received a request from the National Crime Agency in the United Kingdom.

29. It is my understanding that U.S. authorities are working with authorities in the United Kingdom to take possession of those funds.

30. ATC Brokers, Ltd. has responded to voluntary requests for information relating to Oasis subsidiaries or affiliates made through the Financial Conduct Authority.

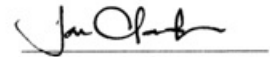
31. ATC Brokers, Ltd. received a voluntary request for documents from the Financial Conduct Authority on 8th November 2018. I believe this request originated with the CFTC.

32. ATC Brokers, Ltd. also received a request for an interview with the National Crime Agency on 24th October 2019. I believe this request originated with the U.S. Department of Justice, but I only spoke with U.K. authorities.

33. On 19th July 2021, ATC Brokers, Ltd. received a supplemental request for documents from the Financial Conduct Authority. Again, I believe this request originated with the CFTC, but ATC Brokers, Ltd. must receive and respond to such requests through its U.K. regulator.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 9th, 2021

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Jen Claudio

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

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individually
but solely in his capacity as Receiver
for OASIS INTERNATIONAL
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No. 21-cv-1317

Plaintiffs,

v.

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MANOUKIAN, and SPOTEX
LLC,

Defendants.

DECLARATION OF JACK MANOUKIAN

Under 28 U.S.C. § 1746, I declare as follows:

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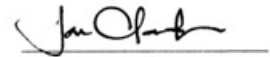
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Jen Claudio