

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

Marcia Mei-Lee Liu, individually and on)
Behalf of a class of all others similarly situated)
)
Plaintiff,)
)
v.)
)
AMERCO; U-Haul International, Inc.)
)
Defendants.)
)

C.A. No.: 10-11221

**DEFENDANT AMERCO’S MEMORANDUM IN SUPPORT OF ITS
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

Defendant AMERCO submits this brief in support of its motion, pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, to dismiss this action because this Court lacks personal jurisdiction over AMERCO.

INTRODUCTION

Plaintiff brought this action against U-Haul International, Inc. (“UHI,”) and AMERCO, the publicly traded holding company which owns the stock of UHI, for allegedly violating Massachusetts law proscribing unfair methods of competition and trade practices. Mass. Gen. Laws ch. 93A, §§ 2, 9; Compl. ¶¶90-96. Defendants both have moved to dismiss this case for failure to state a claim against them because the Complaint is based solely upon an alleged invitation to collude, which is not a cognizable right of action under either Massachusetts law or the Federal Trade Commission (“FTC”) Act upon which it is based.

In addition to failing to state a claim, Plaintiff’s claims against AMERCO must also be dismissed for lack of personal jurisdiction. The vague, unsupported allegations and legal conclusions set forth in the Complaint do not establish a basis for the assertion of personal

jurisdiction over AMERCO. Plaintiff erroneously treats AMERCO and UHI as a single, indivisible entity throughout the Complaint and never provides any factual allegations supporting jurisdiction over AMERCO in Massachusetts. (*See* Compl. ¶8) (“References herein to “U-Haul” should be read as references to U-Haul International, Inc. and AMERCO, collectively.”). But AMERCO is a separate and distinct holding company; it does not conduct business within the Commonwealth of Massachusetts; and it does not have contacts with the Commonwealth of Massachusetts sufficient to support the exercise of personal jurisdiction – either general jurisdiction or specific jurisdiction – in this Court. For that reason, the Court should grant AMERCO’s motion to dismiss it from this action.

FACTUAL BACKGROUND

AMERCO is a Nevada corporation with its principal place of business in Reno, Nevada. (*See* Declaration of George Olds, attached hereto as Exhibit “A” and incorporated by reference herein (“Olds Decl.”), ¶3.) AMERCO is a stock holding company which has no significant operating functions. (Olds Decl. ¶4.) As set forth in the attached declaration of George Olds, AMERCO does not conduct business in the Commonwealth of Massachusetts. (Olds Decl. ¶5.) In fact, AMERCO:

- Has no offices in Massachusetts;
- Has no franchises in Massachusetts;
- Has no employees in Massachusetts;
- Has no agents in Massachusetts;
- Does not own or manage any real property in Massachusetts;
- Does not advertise in Massachusetts;
- Solicits no business in Massachusetts;

(Olds Decl. ¶¶6-13.) Based upon these facts, AMERCO lacks “minimum contacts” (or, for that matter, any material contacts) with the Commonwealth of Massachusetts sufficient for this Court to exercise jurisdiction over that corporate entity. As a matter of law, the presence of subsidiary entities within Massachusetts is not a sufficient basis for the exercise of jurisdiction over AMERCO. Apart from a single teleconference held by AMERCO Chairman Joe Shoen – a call that was open to the public and was in no way directed toward Massachusetts – nothing in the Complaint suggests any involvement by AMERCO in this action.

ARGUMENT

1. Legal Standard

On a motion to dismiss under Rule 12(b)(2), Plaintiff bears the burden of persuading this Court that jurisdiction exists. *Mass. Sch. of Law at Andover, Inc. v. Am. Bar Assn.*, 142 F.3d 26, 34 (1st Cir. 1998). “A district court deciding a motion to dismiss for want of personal jurisdiction should apply the prima facie standard, under which the district court considers ‘only whether the plaintiff has proffered evidence that, if credited, is enough to support findings of all facts essential to personal jurisdiction.’” *Negron-Torres v. Verizon Comms., Inc.*, 478 F.3d 19, 23 (1st Cir. 2007) (*quoting Boit v. Gar-Tec Prods., Inc.*, 967 F.2d 671, 675 (1st Cir. 1992)). Hence, the plaintiff is commanded to go beyond mere allegations and offer affirmative proof of jurisdiction. *Id.* A district court may also consider the uncontradicted facts put forward by the defendant. *Mass. Sch. of Law*, 142 F.3d at 34.

2. AMERCO Must Be Dismissed Because of a Lack of “Minimum Contacts” with the Commonwealth of Massachusetts Sufficient to Satisfy Constitutional Due Process Requirements.

Massachusetts’ long-arm statute authorizes courts within the Commonwealth to exercise jurisdiction over parties who reside in other states but engage in certain transactions or conduct

relating to Massachusetts. Mass. Gen. Laws ch. 223A, § 3. The Due Process Clause of the 14th Amendment to the United States Constitution, however, provides an absolute limit to the extent to which a state can exercise personal jurisdiction over non-residents. *See Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). In reviewing Massachusetts' long-arm statute, the Supreme Judicial Court of Massachusetts determined that the statute asserts "jurisdiction over the person to the limits allowed by the Constitution of the United States." *Daynard v. Ness, Motley, Loadholt, Richardson & Poole, P.A.*, 290 F.3d 42, 52 (1st Cir. 2002) (quoting *Automatic Sprinkler Corp. of Am. v. Seneca Foods Corp.*, 361 Mass. 441, 280 N.E.2d 423, 424 (1972)); *see also Sawtelle v. Farrell*, 70 F.3d 1381, 1388 (1st Cir. 1995) ("[W]hen a state's long-arm statute is coextensive with the outer limits of due process, the court's attention properly turns to the . . . constitutional standards."). The strictures of the Constitution thus define the boundaries of a Massachusetts court's jurisdiction over non-resident defendants.

In the landmark decision in *International Shoe*, the Supreme Court began to define those constitutional boundaries on personal jurisdiction by requiring that a defendant have sufficient "minimum contacts" with the forum state such that the exercise of personal jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice. 326 U.S. at 319-20. The Supreme Court explained that personal jurisdiction over an out-of-state defendant is only appropriate where the defendant's conduct and connection with the forum state are such "that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

The "minimum contacts" requirement provides individuals and businesses both assurance and guidance in the course of conducting their affairs:

The Due Process Clause, by ensuring the “orderly administration of the laws,” *International Shoe Co. v. Washington*, 326 U.S., at 319, 66 S.Ct., at 159, gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.

Id. Indeed, the Court found that the Due Process Clause forbids the attainment of a judgment “against an individual or defendant with which the state has no contacts, ties, or relations.” *Int’l Shoe*, 326 U.S. at 319.

The requirements of jurisdiction are well-founded, but vary depending upon the type of jurisdiction asserted. For “general” jurisdiction, in which the cause of action may be unrelated to the defendant’s contacts, the non-resident defendant must have continuous and systematic contacts with the forum state. “Specific” jurisdiction, by contrast, looks to the relationship between defendant’s contacts and the claim alleged. “Second, for either type of jurisdiction, the defendant’s contacts with the state must be purposeful. Lastly, the exercise of jurisdiction must be reasonable under the circumstances.” *Harlow v. Children’s Hosp.*, 432 F.3d 50, 57 (1st Cir. 2005) (citing *Cambridge Literary Props., Ltd. v. W. Goebel Porzellanfabrik G.m.b.H & Co. Kg.*, 295 F.3d 59, 63 (1st Cir. 2002)).

Here, the Complaint purports to invoke both general and specific jurisdiction over AMERCO, but Plaintiff offers only a single, conclusory allegation in support:

This Court has personal jurisdiction over the Defendants because they have regularly transacted business in this District, have had substantial contacts in this District and/or were engaged in an

illegal attempted price-fixing conspiracy that was directed at and had the intended effect of causing injury primarily and substantially to persons in this District.

(Compl. ¶12.) As a threshold matter, Plaintiff fundamentally fails to distinguish between the conduct of AMERCO and UHI. More importantly, as discussed below, this Court cannot exercise either general or specific jurisdiction over AMERCO because the corporation lacks sufficient contacts with Massachusetts to support such jurisdiction under the constitutional due process analysis.

A. This Court Has No General Jurisdiction Over AMERCO.

The Olds Declaration illustrates that AMERCO lacks any regular or systematic contacts with Massachusetts sufficient to confer general jurisdiction over it. To permit a finding of general jurisdiction, a plaintiff must show that the defendant engaged in substantial, continuous, and systematic business operations within the state. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984); *see also Harlow v. Children's Hosp.*, 432 F.3d at 57 (defendant must have continuous and systematic contacts with the state). Indeed, the standard for evaluating whether a defendant's contacts with the forum state satisfy the constitutional general jurisdiction test "is considerably more stringent than that applied to specific jurisdiction questions." *Noonan v. Winston Co.*, 135 F.3d 85, 93 (1st Cir. 1998) (internal quotation omitted).

The Olds Declaration clearly establishes that AMERCO has not engaged and does not engage in substantial, continuous, or systematic business operations in the Commonwealth of Massachusetts. Plaintiff does not and cannot allege any facts to support its contention that AMERCO has "substantial contacts in this District." (Compl. ¶12.) The facts overwhelmingly support the opposite conclusion. AMERCO does no business in Massachusetts; has no

franchises or offices in Massachusetts; does not own or manage real estate in Massachusetts; has no employees or agents in Massachusetts; and does not solicit business or advertise in Massachusetts. (Olds Decl. at ¶¶5-13.) Consequently, Plaintiffs cannot satisfy this fundamental requirement of general jurisdiction.

Nor is Plaintiff permitted to simply lump AMERCO together with UHI or any other U-Haul-related entity as it does in the Complaint. *See Negron-Torres v. Verizon Comms., Inc.*, 478 F.3d 19, 26 (1st Cir. 2007) (“Negrón refers to defendant merely as ‘Verizon,’ making no effort to clarify which of the various Verizon-affiliated entities is at issue.”). The sharing of a similar name, or even the use of a common trademark or logo, is not enough to satisfy the minimum contacts requirements of constitutional due process. *Id.* Plaintiff makes no attempt to distinguish AMERCO as a separate entity. (*See* Compl. ¶8.) AMERCO is an entirely separate and distinct holding company that conducts no business in Massachusetts. (Olds Decl. ¶¶4-5.)

As a matter of law, jurisdiction over a wholly-owned subsidiary does not automatically confer jurisdiction over the parent corporation. *United Elec., Radio and Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1091 (1st Cir. 1992); *see also Platten v. HG Bermuda Exempted Ltd.*, 437 F.3d 118, 139 (1st Cir. 2006) (“The mere fact that a subsidiary company does business within a state does not confer jurisdiction over its nonresident parent, even if the parent is sole owner of the subsidiary.”); *Barrett v. H & R Block, Inc.*, 652 F. Supp. 2d 104, 114-15 (D. Mass. 2009) (same). AMERCO is entitled to a “presumption of corporate separateness that must be overcome by clear evidence” *Platten*, 437 F.3d at 139 (1st Cir. 2006) (quoting *Escude Cruz v. Ortho Pharm. Corp.* 619 F.2d 902, 905 (1st Cir.1980)). Plaintiff cannot overcome this presumption and consequently AMERCO cannot be subject to jurisdiction based

upon the activities of its subsidiary.

B. This Court Has No Specific Jurisdiction Over AMERCO.

To find specific jurisdiction over an out-of-state defendant, a plaintiff must show that the cause of action arises directly out of, or relates to, the defendant's forum-based contacts. *United Elec., Radio & Mach. Workers of Am.*, 960 F.2d at 1088-89. To determine whether plaintiff has alleged facts sufficient to support a finding of specific personal jurisdiction, courts in this Circuit “divide[] the constitutional analysis into three categories: relatedness, purposeful availment, and reasonableness.” *Platten*, 437 F.3d at 135 (1st Cir. 2006) (internal quotation marks omitted). Critically, “[a]n affirmative finding on each of the three elements of the test is required to support a finding of specific jurisdiction.” *Phillips Exeter Academy v. Howard Phillips Fund*, 196 F.3d 284, 288 (1st Cir. 1999).

Although no connection between AMERCO and Massachusetts is set out anywhere in the Complaint, the only feasible connection would arise from AMERCO’s third quarter 2008 investor conference call held on February 7, 2008. (See Transcript of Q3 2008 AMERCO Earnings Conference Call, Olds Decl. at Ex. 1.) During this routine earnings call, AMERCO Chairman Joe Shoen discussed AMERCO’s performance and answered questions from analysts and investors. This telephonic conference was not directed to anyone in Massachusetts, but was open to the public as a component of AMERCO’s compliance with SEC regulations.¹ As demonstrated below, this lone teleconference cannot satisfy two key constitutional criteria set forth in *Platten* needed to exercise specific jurisdiction over AMERCO.

¹ See Defs.’ Joint Mem. in Support of their Mot. to Dismiss for Failure to State a Claim, at Sec. 3.

(1) Purposeful Availment

AMERCO did not purposefully avail itself of Massachusetts' laws or privileges in any way. To satisfy this requirement, a defendant's contacts with the forum state must demonstrate "a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable." *Astro-Med, Inc. v. Nihon Kohden Am., Inc.*, 591 F.3d 1, 10 (1st Cir. 2009) (internal quotations omitted). Analysis of purposeful availment focuses in particular upon the defendant's "intentionality." *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 623 (1st Cir. 2001) (citation omitted).

Nothing in Mr. Shoen's conference call indicates any attempt or intention by AMERCO to purposefully avail itself of Massachusetts laws. Mr. Shoen was simply participating in a public teleconference designed to offer pertinent company and industry information to investors. He spoke from Phoenix, Arizona, and none of his remarks referenced or were directed toward Massachusetts or its residents. As such, a finding of specific jurisdiction is not appropriate where, as here, the defendant did not direct its efforts toward the forum state. *See, e.g., Chaiken v. VV Pub. Corp.*, 119 F.3d 1018, 1029 (2d Cir. 1997) (finding personal jurisdiction wanting where defendant did not "expressly aim" its actions at Massachusetts).

This type of unintentional presence in the forum state presents a similar analysis of jurisdiction to that found in advertising cases. There, Massachusetts courts have refused to find jurisdiction based upon communications like trade magazine advertisements that "happen to circulate in the forum state." *Gunner v. Elmwood Dodge, Inc.*, 24 Mass. App. Ct. 96, 506 N.E.2d 175, 176 (1987). AMERCO could not reasonably expect to be haled into court in Massachusetts based solely upon this telephone call.

(2) Relatedness

Although the purposeful availment inquiry alone is dispositive of the jurisdictional issue, the relatedness requirement also favors against finding jurisdiction over AMERCO. The First Circuit in *Harlow* explained the proper approach to the relatedness doctrine:

The relatedness requirement is not an open door; it is closely read, and it requires a showing of a material connection. This court “steadfastly reject[s] the exercise of personal jurisdiction whenever the connection between the cause of action and the defendant's forum-state contacts seems attenuated and indirect.”

Harlow, 432 F.3d at 61 (citations omitted) (*quoting Pleasant St. I*, 960 F.2d at 1089).

Plaintiff's claim of jurisdiction here suffers multiple problems. First, the only “contact” with Massachusetts are Mr. Shoen's responses to questions during the teleconference, which were plainly indirect to Massachusetts. Second, to the extent that the Complaint attempts to draw a connection between those responses and a cause of action arising in Massachusetts, none of those responses even mentioned the state. Third, much of the Complaint focuses on a wholly separate theory of the case involving memoranda and contacts not associated with AMERCO. As a consequence, Mr. Shoen's lone teleconference responses are simply too “attenuated and indirect” to the cause of action described in the Complaint.

CONCLUSION

Massachusetts law squarely rejects the attempt to extend personal jurisdiction over AMERCO in this case. Plaintiff makes no attempt to distinguish AMERCO from UHI in the Complaint and cannot show that finding jurisdiction here comports with longstanding

constitutional requirements of due process. Thus, AMERCO should be dismissed for lack of personal jurisdiction.

Respectfully submitted,

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Dated: September 17, 2010

CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on September 17, 2010.

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