

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

JEROMY HEDGES and KAYLA )  
HEDGES, Husband and Wife, )  
Individually, and as the Parents and )  
Next Friends of E.H., a minor, )

Plaintiffs, )

v. )

Case No. CIV-14-1145-R

TRAILER EXPRESS, INC. d/b/a )  
TRAILER EXPRESS )  
MANUFACTURING, INC., )

Defendant. )

**DEFENDANT TRAILER EXPRESS, INC. d/b/a TRAILER EXPRESS  
MANUFACTURING, INC.'S MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION WITH BRIEF IN SUPPORT**

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COMES NOW the Defendant, Trailer Express, Inc. d/b/a Trailer Express Manufacturing, Inc. ("Trailer Express"), by and through the undersigned, pursuant to Fed. R. Civ. P. 12(b)(2), and respectfully moves this Court to dismiss this action. Plaintiffs' claims against Trailer Express must be dismissed because Trailer Express lacks the requisite minimum contacts with the State of Oklahoma for this Court to exercise personal jurisdiction over it consistent with Due Process. Trailer Express respectfully submits the following in support:

### INTRODUCTION

This action arises out of the manufacture and sale of a trailer by Trailer Express in Sikeston, Missouri. Plaintiffs allege their minor child, E.H., was injured because a failed weld on the trailer's gate caused it to fall on him. (Pet. [Doc. 1-1] ¶ 2.) Specifically, they allege that E.H.'s injuries were caused by the defective design, manufacture, distribution, and/or sale of the trailer. (Pet. [Doc. 1-1] ¶ 4.) Plaintiffs allege that E.H.'s great grandfather purchased the trailer new from Trailer Express in approximately May of 2014. (Pet. [Doc. 1-1] ¶¶ 2-3.) However, Plaintiffs have alleged no facts that support this Court exercising personal jurisdiction over Trailer Express.

Plaintiffs filed their Petition in the District Court of Oklahoma County on September 25, 2014. (Pet. [Doc. 1-1].) Trailer Express filed its Answer on October 16, 2014, asserting defenses that included "lack of personal jurisdiction." (Ans. [Doc. 1-2] Defenses & Affirmative Defenses ¶ 2). Trailer Express then removed this action to the District Court for the Western District of Oklahoma on October 20, 2014 [Doc. 1]. Because Trailer Express lacks the minimum contacts with the State of Oklahoma required

by due process, Trailer Express now respectfully moves this Court to dismiss this action pursuant to Fed. R. Civ. P. 12(b)(2).

### **FACTS SUPPORTING DISMISSAL**

The following facts warrant dismissal of Plaintiffs' Petition against Trailer Express for lack of personal jurisdiction:

1. Trailer Express is a corporation organized under the laws of Missouri, and its principal and only place of business is located in Sikeston, Missouri. (Affidavit of Lewis May, ¶ 2, attached hereto as Exhibit "1".)
2. Trailer Express does not conduct business in Oklahoma, and has no license to do so. (May Aff. ¶ 3.)
3. All of Trailer Express's shareholders and employees work and reside in Missouri. (May Aff. ¶ 4.)
4. Trailer Express does not recruit employees in Oklahoma and does not maintain any offices, agents, bank accounts, or telephone or fax listings in Oklahoma. (May Aff. ¶ 5.)
5. Trailer Express does not travel to Oklahoma by way of salespersons or other representatives or otherwise visit potential customers in Oklahoma. (May Aff. ¶ 6.)
6. Trailer Express does not own, lease, or control any property or assets in Oklahoma, nor does it pay any taxes in Oklahoma. (May Aff. ¶ 7.)
7. Trailer Express does not generate a substantial portion of its sales or income through revenue generated from Oklahoma customers. (May Aff. ¶ 8.)

8. Trailer Express's records for the past five years show that it only made sales on three occasions to customers who provided an Oklahoma address, including once in 2014 and twice in 2011. All three of those sales were made in Sikeston, Missouri. Trailer Express made no sales to customers who provided an Oklahoma address in 2009, 2010, 2012, or 2013. (May Aff. ¶ 9.)

9. The only advertising conducted by Trailer Express is through its website and two online posts that reference its website. Trailer Express does not directly advertise or solicit business in or from Oklahoma. (May Aff. ¶ 10.)

10. Trailer Express's website, at <http://www.trailerexpressmfg.com>, has not been updated or otherwise modified in any way since November, 2010. (May Aff. ¶ 11.)

11. No transactions whatsoever can be conducted on Trailer Express's website or its two online posts, and Trailer Express has never conducted any such transactions. (May Aff. ¶ 12.)

12. Trailer Express's two online posts are on websites that it does not own or operate. Both of these online posts existed in a substantially similar format before, during, and after April, 2014. (May Aff. ¶ 13.)

### **STANDARD OF REVIEW**

The plaintiff has the burden of establishing personal jurisdiction over the defendant. *Benton v. Cameco Corp.*, 375 F.3d 1070, 1074 (10th Cir.2004); *Intercon, Inc. v. Bell Atl. Internet Solutions*, 205 F.3d 1244, 1247 (10th Cir.2000). If a Rule 12(b)(2) motion is decided without an evidentiary hearing on the basis of affidavits and written materials, Plaintiff need only make a *prima facie* showing that personal jurisdiction

exists. *Id.* See also *Employers Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1159 (10th Cir. 2010); *Rusakiewicz v. Lowe*, 556 F.3d 1095, 1100 (10th Cir. 2009).

The Court must accept uncontroverted factual allegations as true and must resolve all factual disputes in Plaintiff's favor. *Bartile Roofs*, 618 F.3d at 1159; *Rusakiewicz*, 556 F.3d at 1100; *Benton*, 375 F.3d at 1074–75; *Intercon*, 205 F.3d at 1247. However, “even well-pleaded jurisdictional allegations are not accepted as true once they are controverted by affidavit.” *Shrader v. Biddinger*, 633 F.3d 1235, 1248 (10th Cir. 2011). Thus, when a defendant with direct access to operative facts submits an affidavit based on personal knowledge, the opposing party must create a genuine issue “through specific averments, verified allegations, or other evidence.” *Id.* Once they have been controverted, the mere conclusory allegations of a complaint are no longer accepted as true, and the plaintiff must submit competent evidence to establish personal jurisdiction. *Ten Mile Indus. Park v. Western Plains Serv. Corp.*, 810 F. 2d 1518, 1524 (10th Cir. 1987).

### ARGUMENT AND AUTHORITIES

Plaintiffs have not alleged sufficient facts in their Petition to make a *prima facie* showing that this Court has personal jurisdiction over Trailer Express. Indeed, the only allegation in Plaintiffs’ Petition that appears directed to that end is that the subject trailer was “designed, manufactured, sold, distributed and/or placed into the stream of commerce” by Trailer Express. (Pet. [Doc. 1-1] ¶ 3.) Even if accepted as true, the allegations in the Petition do not establish personal jurisdiction. Plaintiffs have the burden of submitting competent evidence that this Court has personal jurisdiction.



**I. This Court lacks personal jurisdiction over Trailer Express**

**A. The standard for personal jurisdiction**

In order to establish personal jurisdiction over Trailer Express in Oklahoma, Plaintiffs must show that personal jurisdiction is legitimate under Oklahoma's long-arm statute and that the exercise of personal jurisdiction does not offend the Due Process Clause of the Fourteenth Amendment. *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1074 (10th Cir. 1995). Oklahoma's long-arm statute extends to the limits of constitutional due process. Okla. Stat. tit. 12 § 2004(F). Consequently, Plaintiffs must satisfy the constitutional limitations imposed by the Due Process Clause for this Court to have personal jurisdiction over Trailer Express. *Nat'l Occupational Health Serv., Inc. v. Advanced Indus. Care*, 50 F. Supp. 2d 1111, 1116 (N.D. Okla. 1998).

By requiring that nonresidents have fair warning that a particular activity may subject them to the jurisdiction of a foreign state, the Due Process Clause 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. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). Due Process protects defendants from being subject to binding judgments from a forum with which they have established no meaningful contacts or ties. *Id.* at 471-72; *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1090 (10th Cir. 1998). "Therefore, a 'court may exercise personal jurisdiction over a nonresident defendant only so long as there exists 'minimum contacts' between the defendant and the forum state.'" *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980)).

A court's assertion of personal jurisdiction over a non-resident defendant comports with the Due Process Clause of the Federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate "traditional notions of fair play and substantial justice." *Burnham v. Superior Court*, 495 U.S. 604, 618 (1990); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). As a matter of fairness, a defendant should not be "haled into a jurisdiction solely as the result of 'random,' 'fortuitous,' or 'attenuated' contacts." *Burger King*, 471 U.S. at 475.

A court may assert two types of personal jurisdiction: (1) general personal jurisdiction, where the foreign defendant's contacts with the forum state are "continuous and systematic," wide-ranging and extensive, *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984); or (2) specific personal jurisdiction, where the action arises out of the foreign defendant's conduct within the forum state, provided that the exercise of such jurisdiction is reasonable given the relationship between the defendant, the forum, and the litigation, *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). If the court's jurisdiction is general, it may decide claims against the defendant regardless of whether they arise out of the defendant's forum contacts. If the court's jurisdiction is specific, it may decide claims against the defendant only if they arise out of the defendant's forum contacts.

**B. Trailer Express does not have continuous and systematic contact with the State of Oklahoma to support general jurisdiction**

A court may exercise general personal jurisdiction over a non-resident defendant if the defendant's general business contacts with the forum state are so "continuous and

systematic” that the non-resident defendant “should reasonably anticipate being haled into court there,” even if the lawsuit is unrelated to those contacts. *Helicopteros*, 466 U.S. at 414-16; *World-Wide Volkswagen*, 444 U.S. at 297; *Trierweiler v. Croxton & Trench Holding Corp.*, 90 F. 3d 1523, 1533 (10th Cir. 1996) (“In order for general jurisdiction to lie, a foreign corporation must have a substantial amount of contacts with the forum state.”). A non-resident’s contacts with the forum must be so wide-ranging that they are tantamount to having a physical presence in the forum. *Burnham*, 495 U.S. at 618. The standard to impose general jurisdiction is so high that even purchasing goods and services at regular intervals from Oklahoma is not enough by itself to subject a non-resident to all claims in the forum. *Helicopteros*, 466 U.S. at 411-12.

When evaluating whether general personal jurisdiction exists as to a non-resident corporation, courts have applied the following factors: (1) whether the defendant conducts business in the state; (2) whether the defendant is licensed to conduct business in the state; (3) whether the defendant owns, leases, or controls property or assets in the state; (4) whether the defendant maintains employees, offices, agents, or bank accounts in the state; (5) whether the defendant’s shareholders reside in the state; (6) whether the defendant maintains phone or fax listings in the state; (7) whether the defendant advertises or otherwise solicits business in the state; (8) whether the defendant travels to the state by way of salespersons or other representatives; (9) whether the defendant pays taxes in the state; (10) whether the defendant visits potential customers in the state; (11) whether the defendant recruits employees in the state; and (12) whether the defendant generates a substantial portion of its national sales or income through revenue generated

from in-state customers. *Smith v. Basin Park Hotel, Inc.*, 178 F. Supp. 2d 1225, 1231 (N.D. Okla. 2001) (citing *Soma Med. Int'l. v. Standard Chartered Bank*, 196 F.3d 1292, 1295–96 (10th Cir. 1999)).

All of the factors outlined above are answered in the negative as to Trailer Express. It is a corporation organized under the laws of Missouri, and its principal and *only* place of business is located in Sikeston, Missouri. Exhibit “1,” Affidavit of Lewis May, ¶ 2. It does not conduct business in Oklahoma, and has no license to do so. *Id.* at ¶ 3. All of its shareholders and employees work and reside in Missouri. *Id.* at ¶ 4. It does not recruit employees in Oklahoma and does not maintain any offices, agents, bank accounts, or telephone or fax listings in Oklahoma. *Id.* at ¶ 5. Trailer Express does not travel to Oklahoma by way of salespersons or other representatives or otherwise visit potential customers in Oklahoma. *Id.* at ¶ 6. It does not own, lease, or control any property or assets in Oklahoma, nor does it pay any taxes in Oklahoma. *Id.* at ¶ 7.

Trailer Express does not generate a substantial portion of its sales or income through revenue generated from Oklahoma customers. *Id.* at ¶ 8. Indeed, Trailer Express’s records for the past five years show that it only made sales on three occasions to customers who provided an Oklahoma address, including once in 2014 and twice in 2011. *Id.* at ¶ 9. All three of those sales were made in Sikeston, Missouri. *Id.* Trailer Express made no sales to customers who provided an Oklahoma address in 2009, 2010, 2012, or 2013. *Id.* The only advertising conducted by Trailer Express is through its website and two online posts that reference its website, as discussed below. *Id.* at ¶ 10. Trailer Express does not directly advertise or solicit business in or from Oklahoma. *Id.*

Courts that have specifically considered whether a defendant's website will subject them to general personal jurisdiction have held that it will do so only when the defendant has actually and deliberately used its website to conduct commercial transactions on a sustained basis with a substantial number of residents of the forum. *Smith*, 178 F. Supp. 2d at 1235. In *Smith*, the defendant was an Arkansas corporation that operated a hotel in Arkansas. *Id.* at 1227. The plaintiff, a resident of Oklahoma, sued the hotel for negligence after she fell and injured herself while she was a guest there. *Id.* The hotel maintained a website, accessible by anyone with access to the Internet. *Id.* at 1228. The website provided general information about the hotel, including its telephone number and e-mail address, which users could contact for information. *Id.* It also contained a link that users could follow to an online form available for requesting additional information from the hotel. *Id.* If submitted by a user, the form was transmitted electronically to the hotel via e-mail, and the user would receive a response e-mail from the hotel. *Id.*

The plaintiff in *Smith* argued that the hotel's website was a vehicle through which the hotel advertised and solicited business within Oklahoma, and therefore constituted the type of substantial and continuous local activity which is sufficient for the court to exercise general personal jurisdiction over the hotel. *Id.* at 1232. The court disagreed, and compared the hotel's website to the defendant's website in *Soma Medical International v. Standard Chartered Bank*, 196 F.3d 1292 (10th Cir.1999). *Smith*, 178 F. Supp. 2d at 1232, 1234. The court held that, "if the bank's website in *Soma* was insufficient to establish the type of 'substantial and continuous local' activity necessary to subject the

bank to general personal jurisdiction in Utah, [the hotel's] website is also insufficient to subject [the hotel] to general personal jurisdiction in Oklahoma." *Id.* at 1234.

The *Smith* court highlighted the Tenth Circuit's finding in *Soma* that the defendant bank's website in that case was "a passive website that did little more than make information available to those interested; one in which the bank simply posted information accessible to users in foreign jurisdictions." *Id.* at 1234 (*citing Soma*, 196 F.3d at 1297). The *Soma* court held that such activity, along with the filing of a small number of UCC statements and lawsuits in the forum state, were not the type of "substantial and continuous local" activity necessary to subject the defendant bank to general personal jurisdiction in that state. *Id.*

Trailer Express's website is located at <http://www.trailerexpressmfg.com>. Exhibit "1," ¶ 11. It displays their telephone numbers, address, and hours of operation, as well as a list of the equipment it sells. A website visitor can click on the listed equipment items to view other internal pages that contain photos and additional descriptions of the items. It states "we are here to assist you with any questions you may have," and requests that visitors call for more information. It does not specifically mention or target residents of Oklahoma. Pricing information for their equipment is not provided on the website, and visitors cannot purchase anything on the website. Indeed, no transactions whatsoever can be conducted on the website, and Trailer Express has never conducted any such transactions. *Id.* at ¶ 12. Trailer Express's website has not been updated or otherwise modified in any way since November, 2010. *Id.* at ¶ 11. As with the defendants' websites in *Smith* and *Soma*, Trailer Express's website is passive, does little more than make

information available to those interested, and is insufficient to establish the type of “substantial and continuous local” activity necessary to subject Trailer Express to general personal jurisdiction.

Trailer Express’s two online posts are on websites that it does not own or operate. Exhibit “1,” ¶ 13. They are simply static images that do nothing more than make information available to whomever views them, and they contain substantially less information than Trailer Express’s website. They do not specifically mention or target residents of Oklahoma, and viewers cannot interact with the posts in any way. The first is posted on “SI Trader,” which is an online classified listing for buying, selling, or trading all manner of items, located at <http://www.sitraders.com>. The second is posted on “Midwest Truck Shopper,” which is an online classified listing for trucks and trailers, located at <https://www.midwesttruckshopper.com>. No transactions whatsoever can be conducted on these two online posts, and Trailer Express has never conducted any such transactions. *Id.* at ¶ 12. Copies of these online posts as they appeared in April, 2014 are attached hereto as Exhibit “2.” Both of them existed in a substantially similar format before, during, and after April, 2014. Exhibit “1,” ¶ 13.

None of the factors courts consider in the general personal jurisdiction analysis support this Court exercising jurisdiction over Trailer Express. To the extent that it has any contacts with Oklahoma, they are far from “continuous and systematic,” and Trailer Express could not have reasonably anticipated being haled into court in Oklahoma.

**C. Trailer Express lacks the minimum contacts necessary to impose specific jurisdiction in this case.**

Under the specific jurisdiction inquiry, the court must determine whether the defendant has such minimum contacts with the forum state “that he should reasonably anticipate being haled into court there.” *World-Wide Volkswagen*, 444 U.S. at 297. Within this inquiry, the court determines whether the defendant purposefully directed its activities at residents of the forum, *Burger King*, 471 U.S. at 472, and whether the plaintiff’s claim arises out of or results from “actions by the defendant *himself* that create a substantial connection with the forum state.” *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 109 (1987) (internal quotations omitted; emphasis in the original) (plurality op.). *See also OMI Holdings, Inc.* 149 F.3d at 1091. Under this “purposeful availment” analysis, a court has specific jurisdiction when “there is some act by which the defendant purposely avails itself of the privileges of conducting activities within the forum state, thus invoking the benefits and protections of its laws.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Trierweiler*, 90 F.3d at 1532.

To determine whether specific personal jurisdiction may be exercised over Trailer Express, the Court must engage in a “two-step inquiry” to ensure that due process is satisfied. *Grimes v. Cirrus Indus., Inc.*, 712 F. Supp. 2d 1256, 1261 (W.D. Okla. 2010) (citing *Pro Axess, Inc. v. Orlux Distribution, Inc.*, 428 F.3d 1270, 1276–77 (10th Cir. 2005)). First, the Court examines the nature and the quality of Trailer Express’s contacts with Oklahoma to determine if they are sufficient to show it “purposefully availed” itself of the benefits of doing business here, thereby invoking the benefits and protections of



Oklahoma law. *Id.* If there is sufficient evidence to support that conclusion, the Court must then consider whether exercising personal jurisdiction over Trailer Express “offends traditional notions of fair play and substantial justice.” *Id.*

The “purposeful availment” requirement precludes personal jurisdiction where the defendant’s contacts are “random, fortuitous, or attenuated.” *Burger King*, 471 U.S. at 475 (citations and internal quotation marks omitted). “Specific jurisdiction must be based on actions by the defendant and not on events that are the result of unilateral actions taken by someone else.” *Bell Helicopter Textron, Inc. v. Heliquest Int’l, Ltd.*, 385 F.3d 1291, 1296 (10th Cir. 2004). “Where a nonresident defendant relinquishes control over the ultimate location of a product and allows a third party to exercise that control, the nonresident defendant cannot be said to have purposefully directed its activities at the forum state in which the product is later found.” *Pro-Fab, Inc. v. Marton Precision Mfg., Inc.*, No. CIV-07-1147-M, 2008 WL 2705459, \*4 (W.D. Okla. July 9, 2008) (unreported). Even “the mere foreseeability that a customer will unilaterally move a chattel into a given state does not create jurisdiction over the vendor of the chattel.” *Bell Helicopter*, 385 F.3d at 1297 (citing *World-Wide Volkswagen*, 444 U.S. at 298).

In *World-Wide Volkswagen*, the respondents brought a products-liability action in Oklahoma to recover for injuries they sustained in an automobile accident that occurred while they were driving through Oklahoma. *World-Wide Volkswagen*, 444 U.S. at 286. The respondents were New York residents and had purchased the subject vehicle in New York before driving it through Oklahoma. *Id.* The Court found a complete absence of “those affiliating circumstances that are a necessary predicate to any exercise of state-

court jurisdiction” and noted “[i]n short, respondents seek to base jurisdiction on one, isolated occurrence and whatever inferences can be drawn therefrom: the fortuitous circumstance that a single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma.” *Id.* at 295.

The Court noted that “foreseeability” alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause, and rejected the argument that, because an automobile is mobile by its very design and purpose, it was therefore “foreseeable” that the subject automobile would cause injury in Oklahoma. *Id.* The Court explained:

[i]f foreseeability were the criterion, a local California tire retailer could be forced to defend in Pennsylvania when a blowout occurs there; a Wisconsin seller of a defective automobile jack could be haled before a distant court for damage caused in New Jersey; or a Florida soft-drink concessionaire could be summoned to Alaska to account for injuries happening there.

*Id.* at 286 (internal citations omitted). “Every seller of chattels would in effect appoint the chattel his agent for service of process. His amenability to suit would travel with the chattel.” *Id.* The Court held that the Petitioners had no “contacts, ties, or relations” with the State of Oklahoma, and that the Oklahoma trial court lacked *in personam* jurisdiction over them. *Id.* at 286, 299.

In contrast with other jurisdictions addressing how the placement of products in the stream of commerce may impact personal jurisdiction, the Tenth Circuit takes a more restrictive view with respect to the requisite “foreseeability” analysis:

In the context of products liability the minimum contacts requirement turns, in some measure, on foreseeability. The Supreme Court has explained that the foreseeability that is critical to due process analysis is not the mere

likelihood that a product will find its way into the forum State [but] that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.

*Grimes*, 712 F. Supp. 2d, at 1261-62 (citing *Bell Helicopter*, 385 F.3d at 1295-96) (internal quotation marks omitted). *But see, e.g., Vermeulen v. Renault, U.S.A., Inc.*, 985 F.2d 1534, 1549-50 (11th Cir. 1993) (foreign vehicle manufacturer's distribution of vehicle into United States conferred specific jurisdiction); *Oswalt v. Scripto, Inc.*, 616 F.2d 191, 199-200 (5th Cir. 1980) (product manufacturer's maintaining of distribution network in United States created a market for product in Texas, allowing jurisdiction). This Court has previously declined to depart from the Tenth Circuit's view. *See de la Paz v. DBS Mfg., Inc.*, No. CIV-07-669-D, 2008 WL 2329126, \*7 (W.D. Okla. June 3, 2008) (unreported); *see also Grimes*, 712 F. Supp. 2d, at 1262. This Court should likewise decline to do so in this case.

Plaintiffs have alleged that the subject trailer was "designed, manufactured, sold, distributed and/or placed into the stream of commerce" by Trailer Express. (Pet. [Doc. 1-1] ¶ 3). However, "[t]he placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State." *Asahi Metal*, 480 U.S. at 112. As shown above, Trailer Express's contacts with Oklahoma are remote. Indeed, to the extent that it has any contacts with Oklahoma, they exist only because an Oklahoma resident traveled to Missouri, purchased a trailer from Trailer Express, and then transported it back to Oklahoma. They are the result of unilateral action taken by someone else, and not the result of any actions taken by Trailer Express to invoke the benefits and protection of Oklahoma law. Here, as in *World-Wide*

*Volkswagen*, “the mere ‘unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State.’” *World-Wide Volkswagen*, 444 U.S. at 298 (citing *Hanson*, 357 U.S. at 253). Trailer Express had no control over the ultimate location of the trailer that it sold in Missouri, and even if it could foresee that the trailer would be transported to Oklahoma, it would not be sufficient grounds for this Court to exercise jurisdiction over Trailer Express.

### CONCLUSION

Due Process requires that Trailer Express have requisite minimum contacts with the State of Oklahoma such that it should reasonably expect being haled into this Court by virtue of those contacts. Plaintiffs bear the burden of proving to this Court that Due Process is satisfied, but the facts in this case demonstrate that they cannot meet that burden. Trailer Express does not have any direct contact, specific or general, with the State of Oklahoma, nor do Plaintiffs allege it does. The action of placing the subject trailer into the stream of commerce, alone, does not amount to Trailer Express purposely directing its activities toward Oklahoma residents and does not satisfy the due process requirements for this Court to exercise personal jurisdiction over Trailer Express. Thus, dismissal of this action is proper.

WHEREFORE, Defendant Trailer Express, Inc. d/b/a Trailer Express Manufacturing, Inc., pursuant to Fed. R. Civ. P. 12(b)(2), respectfully moves this Court to dismiss this action, and for any other and further relief this Court deems just and proper in the premises.

Respectfully submitted,

TRAILER EXPRESS, INC. d/b/a TRAILER  
EXPRESS MANUFACTURING, INC.

- Defendant

By:           /s/Gregory D. Winningham            
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**CERTIFICATE OF SERVICE**

I certify that on December 23<sup>RD</sup>, 2014, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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