

CAUSE NO. D-1-GN-17-006543

<b>FREDERICK “CORK” GRAHAM</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>V.</b>	§	
	§	
<b>DISCOVERY COMMUNICATIONS, INC.,</b>	§	<b>TRAVIS COUNTY, TEXAS</b>
<b>DISCOVERY COMMUNICATIONS, LLC,</b>	§	
<b>DISCOVERY TALENT SERVICES, LLC,</b>	§	
<b>MAK PICTURES, INC., MARK KADIN,</b>	§	
<b>JEREMY WHALEN, and BRETT TUTOR.</b>	§	
	§	
<b>Defendants.</b>	§	<b>261ST JUDICIAL DISTRICT</b>

**DEFENDANT DISCOVERY TALENT SERVICES LLC’S SPECIAL APPEARANCE**

COMES NOW Defendant Discovery Talent Services LLC’s (“DTS” or “Defendant”) and, pursuant to Texas Rule of Civil Procedure 120a, files this, its Special Appearance, and in support hereof would respectfully show the Court as follows:

1. This Court does not have jurisdiction over DTS. DTS is not a resident of Texas. DTS is organized under the laws of Delaware, with its principal place of business in Maryland. DTS attaches to this Special Appearance an Affidavit to establish that it is not a resident of Texas. See Exhibit A, Affidavit of Carrie Storer (“Storer Affidavit”), at ¶ 3.

2. Texas courts may only assert jurisdiction over a nonresident defendant if the nonresident defendant purposefully established “minimum contacts” with the State of Texas. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474-76 (1985); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569 (Tex. 2007); *BMC Software Belg. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002).

3. The Court must determine whether the nonresident defendant has purposefully established minimum contacts with the State of Texas, and that exercise of personal jurisdiction

**DISCOVERY TALENT SERVICES, LLC’S SPECIAL APPEARANCE**

over the nonresident defendant would not offend traditional notions of fair play and substantial justice. *Moki Mac*, 221 S.W.3d at 575-77; *see also CSR Ltd. v. Link*, 925 S.W.2d 591, 596 (Tex. 1996). Minimum contacts are not established unless the Court finds that it has either specific jurisdiction or general jurisdiction over the nonresident defendants. *BMC Software*, 83 S.W.3d at 795; *see also Moki Mac*, 221 S.W.3d at 576-77.

4. Plaintiff bears the initial burden to plead sufficient allegations to bring the defendant within the reach of the jurisdiction of a Texas court. *Moncrief Oil Int'l Inc. v. OAO Gazprom*, 414 S.W.3d 142, 149 (Tex. 2013); *Kelly v. General Interior Constr., Inc.*, 301 S.W.3d 653, 658 (Tex. 2010); *Moki Mac*, 221 S.W.3d at 574. If a plaintiff alleges facts sufficient to bring a nonresident defendant within the scope of the Texas long-arm statute, a defendant filing a special appearance then bears the burden to negate all bases for jurisdiction alleged by Plaintiff. *Kelly v. General Interior Constr., Inc.*, 301 S.W.3d at 658. Defendant can do so on a factual or legal basis. *Id.* at 659.

5. Here, Plaintiff makes no allegations concerning why a Texas court can properly exercise personal jurisdiction over DTS. Plaintiff has therefore failed to meet his initial burden. “If the plaintiff fails to plead facts bringing the defendant within reach of the long-arm statute . . . the defendant need only prove that it does not live in Texas to negate jurisdiction.” *Kelly v. Gen. Interior Const., Inc.*, 301 S.W.3d 653, 658–59 (Tex. 2010). Here, Defendant has established that it is a nonresident of Texas through the Affidavit of Carrie Storer, thereby negating jurisdiction. *See Kelly v. General Interior Constr., Inc.*, 301 S.W.3d 653, 658-659 (Tex. 2010); *see also Storer Affidavit* at ¶ 3.

6. Further, even if the Court could find that it has personal jurisdiction over DTS, it must decline to exercise that jurisdiction because it would offend traditional notions of fair play

and substantial justice. A party's liberty interest under the Fourteenth Amendment of the United States Constitution "protects it from being subjected to binding judgments of a forum with which the party has not established meaningful contacts, ties or relations." *Burger King Corp.*, 471 U.S. at 472; *International Shoe v. Washington*, 326 U.S. 310, 319 (1945). Due process requires that a foreign defendant have "minimum contacts" with the forum state such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Fielding v. Hubert Burda Media, Inc.*, 415 F.3d 419, 425 (5th Cir. 2005). Factors that Texas courts evaluate in determining whether maintenance of the suit will offend traditional notions of fair play and substantial justice include (1) the burden on the defendant, (2) the interests of the forum state in adjudicating the dispute, (3) the plaintiff's interest in obtaining convenient and effective relief, (4) the interstate or international judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several nations or states in furthering fundamental substantive social policies. *Spir Star AG v. Kimich*, 310 S.W.3d 868, 878 (Tex. 2010). These factors weigh in favor of finding no jurisdiction.

7. In particular, Texas generally has no interest in adjudicating cases between non-residents concerning incidents that took place outside of Texas. *Waterman Steamship Corp. v. Ruiz*, 355 S.W.3d at 426. Here, the underlying incidents took place in South America. See Pl's Petition at ¶¶ 15-31. As acknowledged in his Petition, Plaintiff is a resident of Alaska. See Pl's Petition at ¶ 3. As further admitted by Plaintiff, Defendants are residents of California, Washington, and Delaware. See Pl's Petition at ¶¶ 4-10. While one Defendant, Brett Tutor, whose involvement appears to be limited to trying to break up the fight that is the subject of the underlying lawsuit, is a resident of Texas, the real individual who is a resident of Texas and who has an interest in adjudicating this case in Texas is not a party, but Plaintiff's attorney,

Christopher Gabel, who has repeatedly threatened DTS with filing a lawsuit against it in Texas and has now made good on his threat.

8. In short, Plaintiff has not shown, nor even alleged, that DTS has minimum contacts with the State of Texas to justify a Texas court's assumption of jurisdiction.<sup>1</sup> Thus, DTS has met its burden to negate all bases of jurisdiction by its Affidavit of Carrie Storer, which established that DTS is a non-resident of Texas. *See* Exhibit A, Storer Affidavit. If this Court assumes jurisdiction over DTS, it will offend traditional notions of fair play and substantial justice in violation of DTS's due process rights. *Id.*

WHEREFORE PREMISES CONSIDERED, Defendant DTS prays that a hearing be had hereon and that, upon such hearing, this Court judicially find and order that Defendant's Special Appearance is Granted, that Defendant is not amenable to service in the above-styled and numbered cause and grant all such other and further relief to which the Defendant is justly entitled at law and in equity.

---

<sup>1</sup> Furthermore, even if Plaintiff had alleged any jurisdictional allegations as to DTS, as is discussed in the Special Appearances of Discovery Communications, LLC and Discovery Communications, Inc., the Talent Agreement entered into by Plaintiff Graham contains a forum selection clause designating Maryland as the exclusive jurisdiction for any and all claims, matters, or disputes relating to the Agreement.

Respectfully submitted,

HAYNES AND BOONE, LLP

By: /s/ Catherine L. Robb

Laura Lee Prather

State Bar No. 16234200

Laura.prather@haynesboone.com

Catherine L. Robb

State Bar No. 24007924

Catherine.robbs@haynesboone.com

600 Congress Avenue, Suite 1300

Austin, Texas 78701

Telephone: (512) 867-8400

Telecopier: (512) 867-8470

**ATTORNEYS FOR DEFENDANTS  
DISCOVERY COMMUNICATIONS, INC.,  
DISCOVERY COMMUNICATIONS, LLC,  
AND DISCOVERY TALENT SERVICES,  
LLC'S**

**CERTIFICATE OF SERVICE**

The above signed certifies that a true and correct copy of the foregoing was served *via* e-service on the 16<sup>th</sup> day of January, 2018 to:

Chip Evans  
The Evans Law Firm  
The Park at Eanes Creek  
4407 Bee Caves Road, Suite 611  
Austin, TX 78746

Guy Fisher  
Provost Umphrey Law Firm, LLP  
4490 Park Street  
Beaumont, TX 77701

Christopher Augustine Gabel  
Roy & Gabel, PLLC  
1001 West Loop South, Suite 809  
Houston, TX 77027

**COUNSEL FOR PLAINTIFFS**

*/s/ Catherine L. Robb*  
Catherine L. Robb

# **EXHIBIT A**



3. DTS is not a Texas resident. DTS is a limited liability company organized under the laws of Delaware and has its principal place of business in Maryland.

*CD Storer*

Carrie Storer

SWORN TO AND SUBSCRIBED before me on the 12<sup>th</sup> day of January, 2018.

[Seal]

*Selina T. Riley*

Notary Public, State of Maryland

*Selina T. Riley*

[printed name]

My Commission Expires:

Jan. 28, 2020

