

of objecting to the jurisdiction of the Court over their person and property. Subject to this Court's ruling first on the Special Appearance, Defendants file their Original Answer.

2. This Special Appearance is filed prior to any Answer, other pleading of Defendants and the Answer is made subject to the Special Appearance.

II. ARGUMENT & AUTHORITIES

A. Standards for the Exercise of Personal Jurisdiction

Burdens of Proof

1. In order to prevail on a special appearance, a defendant must negate all grounds of personal jurisdiction alleged in the plaintiff's petition. *See BMC Software v. Marchand*, 83 S.W.3d 789,793 (Tex 2002); *CSR Ltd v Link*, 925 S.W.2d 591, 596 (Tex. 1996). If the defendant produces sufficient evidence negating jurisdiction, the burden shifts to the plaintiff to show that the court has jurisdiction over the defendant. *See M.G.M. Grand Hotel v Castro*, 8 S.W.3d 403,406 (Tex. App. - Corpus Christi 1999, no pet.).

B. Defendants are Non-Resident Defendants without Minimum Contacts

1. Plaintiffs have alleged jurisdiction exists over Defendants pursuant to Tex. Civ. Prac. & Remedies Code 17.042(1) (contracts with a Texas resident and performance of agreement in whole or in part thereof was to occur in Texas).

2. As admitted in Plaintiffs' Amended Petition, Defendants Sky View and WFFL entities with their registered agent and principal place of Business in Utah. Further, none of the Defendants have currently transacted or transact business in Texas.

Further, wholly absent from any portion of the Amended Petition is any discussion or allegation that either party is to perform in whole or in part per any agreement in Texas. Plaintiff is attempting to hide the absence of this required factual allegation. As this Court is aware, entering into an agreement with a Texas resident is not enough to satisfy the Texas Long Arm Statute or the Federal “minimum contacts” requirement. *Televitures, Inc. v. International Game Technology*, 12 S.W.3d 900, 908 (Tex. App.—Austin 2000). Performance in whole or in part in Texas is required. *Id.* In this regard, Sky View is an association of the WFFL, a football league for children in Utah. Sky View contracted in Utah to use Plaintiff’s service (software) from Utah for the League’s parents to register and pay online in Utah for their kids’ season fee and uniforms. All payments were either electronic transfers or credit card payments entered and made in Utah. Plaintiff was then to forward payments to Sky View less a fee Plaintiff was to receive. Defendant could receive that fee in Texas or anywhere. Nothing requires performance in Texas .

3. Finally, Sky View, WFFL, and the individual Defendants are non-resident defendants which did not in the past and does not currently transact business in Texas. Defendants were at all times not located in Texas and took any actions related to this matter in Utah. As a result, there is no basis for the exercise of general jurisdiction over the Defendants. The Affidavit of Jared Ferguson is attached hereto as **Exhibit A**, Affidavit of David Saxton is attached hereto as **Exhibit B**, Affidavit of Breanne Young is

attached hereto as **Exhibit C**, Declaration of Matthew Blake is attached hereto as **Exhibit D**, Declaration of Brandt Helstern is attached hereto as **Exhibit E**, Declaration of Jenni Radford is attached hereto as **Exhibit F**, and incorporated as if set forth in full herein.

C. Exercising Personal Jurisdiction Over Defendants Would Offend Traditional Notions of Fair Play & Substantial Justice

1. Separate and apart from the minimum contacts portion of the test is the issue of whether or not holding the nonresident defendant amenable to personal jurisdiction in Texas would be consistent with the principles which are inherent in the concepts of fair play and substantial justice *See International Shoe Co. v. Washington*, 326 U.S. 310,316 (1945); *Guardian Royal*, 815 S.W.2d at 231. Several factors are relevant to determining whether or not the exercise of jurisdiction runs afoul of fair play and substantial justice: (1) the burden on the nonresident 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 judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the shared interests of the several states in furthering fundamental social policies. *Guardian Royal*, 815 S.W.2d at 231.

2. In addition to the fact that Plaintiff has not established minimum contacts with the State of Texas, asserting personal jurisdiction over Defendants would offend traditional notions of fair play and substantial justice. The numerous and multiple

Defendants (over 75 of them) named by Plaintiff are residents of Utah as admitted by Plaintiff, would be severely burdened if required to appear and travel to Texas to defend against Plaintiff's claims in Collin County, Texas. The amount each individual Defendant paid for the season and uniforms is minor compared to the cost to travel and hiring defense in Texas. Further mitigating against the appropriateness of jurisdiction is the fact that Plaintiff could obtain adequate relief in the Utah court system where Plaintiff solicited Sky View. Subjecting the Defendant to suit in Texas would violate the traditional notions of fair play and substantial justice which are inherent in the Due Process Clause of the Fourteenth Amendment. The only acts in Texas, if any, was performed by Plaintiff, and in fact, the only act of Plaintiff was to receive payments and forward them to Defendant Sky View in Utah. Plaintiff failed in this sole obligation to transfer the money it received thereby breaching the Agreement. When Defendant Sky View was left without its funds, the league and players in Utah were left to seek the donations to purchase uniforms. Clearly, Utah has a greater interest in making sure its citizens (all 75) are protected. Further, the witnesses are in Utah other than Plaintiff and Plaintiff's choice of where to conduct its services is not required in Texas and Plaintiff cannot create jurisdiction over Defendants by Plaintiff's voluntary acts.

III. DEFENDANTS' ORIGINAL ANSWER SUBJECT TO SPECIAL APPEARANCE

A. General Denial

1. Subject to and without waiver of the above and foregoing Special Appearance, Defendants deny each and every allegation of Plaintiff's Amended Petition, and demand strict proof thereof as required by the Texas Rules of Civil Procedure.

B. Affirmative Defenses

1. The contract upon which Plaintiff basis its claims is vague and ambiguous.
2. Plaintiff's claims are barred by accord and satisfaction.
3. To the extent Plaintiff is alleging an open account, Plaintiff has not provided all lawful offsets and credits.
4. Plaintiff's claims are barred by Plaintiff's prior breach of the contract and fraud.

IV. PRAYER

WHEREFORE, the Defendants request that the Court grant their Special Appearance, and that the Court issue judgment of the Court that Plaintiff recovers nothing from the Defendants, and that the Defendants go hence with their costs without delay, and for such other and further relief at law or in equity to which they may show themselves justly entitled.

Respectfully submitted,

ALBIN ROACH, PLLC

By: /s/ John J. Mongogna

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Fax: (214) 423-5111

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that on April 3rd, 2017, the foregoing document was served on all parties pursuant to Rules 21 and/or 21a of the Texas Rules of Civil Procedure.

/s/ John J. Mongogna

John J. Mongogna

a resident of the State of Texas. When I learned the parents fees like mine had not been forwarded to Sky View and the League could not provide uniforms and pay to run the league and I, sitting in Utah, charged back or stopped my payment.

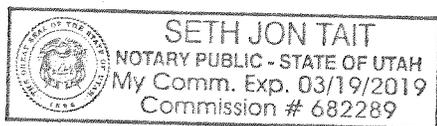
4. I never did anything in Texas nor contracted with any resident of Texas related to this football transaction. Plaintiff's claims against me in this lawsuit do not arise from and are not related to any activity that I conducted in Texas. Instead, the alleged claims arise from the stop payment in Utah by me. I have never had any substantial connection with Texas arising from any action or conduct purposefully directed toward Texas. I have never maintained a place of business or residency in Texas. I have never had employees, servants, or agents in Texas. I have not committed a tort in Texas. I have not transacted business in Texas. I have never owed any real estate or other property located in Texas.

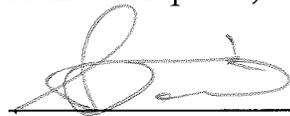
FURTHER, AFFIANT SAYETH NOT.

(name) 

STATE OF UTAH §
 §
COUNTY OF CACHE §

SWORN TO and SUBSCRIBED before me on April 1, 2017.



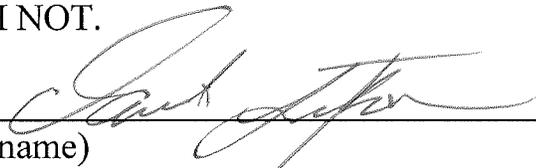

Notary Public in and for the
State of Utah

AFFIDAVIT OF Jared Ferguson

a resident of the State of Texas. When I learned the parents fees like mine had not been forwarded to Sky View and the League could not provide uniforms and pay to run the league and I, sitting in Utah, charged back or stopped my payment.

4. I never did anything in Texas nor contracted with any resident of Texas related to this football transaction. Plaintiff's claims against me in this lawsuit do not arise from and are not related to any activity that I conducted in Texas. Instead, the alleged claims arise from the stop payment in Utah by me. I have never had any substantial connection with Texas arising from any action or conduct purposefully directed toward Texas. I have never maintained a place of business or residency in Texas. I have never had employees, servants, or agents in Texas. I have not committed a tort in Texas. I have not transacted business in Texas. I have never owed any real estate or other property located in Texas.

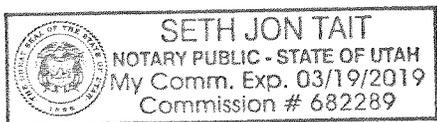
FURTHER, AFFIANT SAYETH NOT.

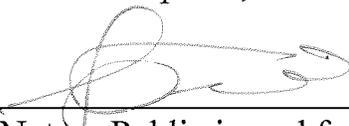


(name)

STATE OF UTAH §
 §
COUNTY OF CACHE §

SWORN TO and SUBSCRIBED before me on April 1, 2017.





Notary Public in and for the
State of Utah

AFFIDAVIT OF DAVE Sactor

3. Sky View and WFFL are businesses located only in Utah. I executed an Agreement with Plaintiff to use its software to accept payments from parents for registration fees and uniforms, while physically in Utah. The Agreement was then sent to Plaintiff.

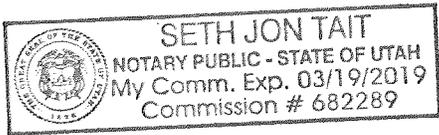
4. Plaintiff's claims in this lawsuit do not arise from and are not related to any activity that Sky View, WFFL, or the individual Defendants conducted in Texas. Instead, the alleged claims arise from chargebacks by Utah residents in Utah, the parents, when Plaintiff failed to provide the funds to Sky View. Sky View is a football league in Utah and has never had any substantial connection with Texas arising from any actions or conduct purposefully directed toward Texas. Defendants Sky View and WFFL have never maintained a place of business or residency in Texas, and has never had employees, servants, or agents in Texas. Sky View and WFFL have not committed a tort in Texas, have not transacted business in Texas, and have never owned any real estate or other property located in Texas.

FURTHER, AFFIANT SAYETH NOT.

Suanne J Young
(name)

STATE OF UTAH §
 §
COUNTY OF CACHE §

SWORN TO and SUBSCRIBED before me on April 1, 2017.



[Signature]
Notary Public in and for the
State of Utah

CAUSE NO. 199-00984-2017

JEVIN, INC., a Texas Corporation;	§	IN THE DISTRICT COURT
and DANIEL E. PTAK, an	§	
individual;	§	
 	§	
<i>Plaintiffs,</i>	§	
 	§	
v.	§	199th JUDICIAL DISTRICT
 	§	
SKY VIEW YOUTH FOOTBALL,	§	
a Utah organization;	§	
WASATCH FRONT FOOTBALL	§	
LEAGUE, INC., a Utah	§	
corporation; and JARED	§	
FURGESON, et al.; and	§	
HEATHER DOBROTT, an	§	
individual;	§	
 	§	
<i>Defendants.</i>	§	COLLIN COUNTY, TEXAS

DECLARATION OF MATTHEW BLAKE

My name is Matthew Blake, my address is 572 E. 2625 N., North Logan, Utah 84341, and I declare under penalty of perjury the following is true and correct:

1. My wife Mindy and I are Defendants in the above-referenced lawsuit. I am competent to make this declaration. The statements made herein are based upon my personal knowledge and are true and correct.

2. My wife and I registered our child to play football in Utah from my computer in Utah and paid the fees for registration and uniform fee from Utah. We live in Utah. We have never lived in or been residents of the State of Texas. When we learned the parents fees like mine had not been forwarded to Sky View and the

League could not provide uniforms and pay to run the league, my wife and I, sitting in Utah, charged back or stopped our payment.

3. We never did anything in Texas nor contracted with any resident of Texas related to this football transaction. Plaintiff's claims against us in this lawsuit do not arise from and are not related to any activity that we conducted in Texas. Instead, the alleged claims arise from the stop payment in Utah by us. We have never had any substantial connection with Texas arising from any action or conduct purposefully directed toward Texas. We have never maintained a place of business or residency in Texas. We have never had employees, servants, or agents in Texas. We have not committed a tort in Texas. We have not transacted business in Texas. We have never owed any real estate or other property located in Texas.

/s/ Matthew Blake

Matthew Blake

fees like mine had not been forwarded to Sky View and the League could not provide uniforms and pay to run the league, I, sitting in Utah, charged back or stopped my payment.

3. I never did anything in Texas nor contracted with any resident of Texas related to this football transaction. Plaintiff's claims against me in this lawsuit do not arise from and are not related to any activity that I conducted in Texas. Instead, the alleged claims arise from the stop payment in Utah by me. I have never had any substantial connection with Texas arising from any action or conduct purposefully directed toward Texas. I have never maintained a place of business or residency in Texas. I have never had employees, servants, or agents in Texas. I have not committed a tort in Texas. I have not transacted business in Texas. I have never owed any real estate or other property located in Texas.

/s/ Brandt Hellstern

Brandt Hellstern

CAUSE NO. 199-00984-2017

JEVIN, INC., a Texas Corporation;	§	IN THE DISTRICT COURT
and DANIEL E. PTAK, an	§	
individual;	§	
 	§	
<i>Plaintiffs,</i>	§	
 	§	
v.	§	199th JUDICIAL DISTRICT
 	§	
SKY VIEW YOUTH FOOTBALL,	§	
a Utah organization;	§	
WASATCH FRONT FOOTBALL	§	
LEAGUE, INC., a Utah	§	
corporation; and JARED	§	
FURGESON, et al.; and	§	
HEATHER DOBROTT, an	§	
individual;	§	
 	§	
<i>Defendants.</i>	§	COLLIN COUNTY, TEXAS

DECLARATION OF JENNI RADFORD

My name is Jenni Radford, my address is 607 E. 460 S., Smithfield, Utah 84335, and I declare under penalty of perjury the following is true and correct:

1. I am a Defendant in the above-referenced lawsuit. I am competent to make this declaration. The statements made herein are based upon my personal knowledge and are true and correct.

2. I registered my child to play football in Utah from my computer in Utah and paid the fees for registration and uniform fee from Utah. I live in Utah. I have never lived in or been a resident of the State of Texas. When I learned the parents fees like mine had not been forwarded to Sky View and the League could not

provide uniforms and pay to run the league, I, sitting in Utah, charged back or stopped my payment.

3. I never did anything in Texas nor contracted with any resident of Texas related to this football transaction. Plaintiff's claims against me in this lawsuit do not arise from and are not related to any activity that I conducted in Texas. Instead, the alleged claims arise from the stop payment in Utah by me. I have never had any substantial connection with Texas arising from any action or conduct purposefully directed toward Texas. I have never maintained a place of business or residency in Texas. I have never had employees, servants, or agents in Texas. I have not committed a tort in Texas. I have not transacted business in Texas. I have never owed any real estate or other property located in Texas.

/s/ Jenni Radford

Jenni Radford