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# Article

## LEVELING THE PLAYING FIELD—U.S. COURT JURISDICTION OVER DISPUTES BETWEEN AMERICAN PROFESSIONAL ATHLETES AND FOREIGN SPORTS TEAMS

KENNETH A. JACOBSEN\*, NOAH J. GOODMAN\*\*, AND  
TRAVIS W. WATSON\*\*\*

### I. INTRODUCTION

In a decision that could have far-reaching consequences for American professional athletes playing abroad and the foreign teams that employ them, a federal judge in Philadelphia has ruled that courts in Pennsylvania had personal jurisdiction over a professional baseball team from Japan in a contract dispute with a former player from Pennsylvania.<sup>1</sup> While the court's decision in *Lutz v. Rakuten, Inc.*<sup>2</sup> was driven by the extensive contacts and communications between the parties, many of which took place while the player was in the United States, the decision should serve as a warning to foreign sports teams that recruit and employ American athletes. *Lutz* provides hope for those athletes that their grievances against their former employers might find a welcoming venue in the United States (U.S.) courts.<sup>3</sup> Undoubtedly, the *Lutz* decision will likely have significant practical implications given the increasing number of American athletes who play professional sports abroad.<sup>4</sup>

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\*\*\* Mr. Watson is a J.D. Candidate, Temple University Beasley School of Law, 2021. He would like to thank Professor Jacobsen and Mr. Goodman for their guidance, encouragement, and allowing his contribution to this Article.

1. See generally *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 465 (E.D. Pa. 2019) (summarizing court decision and noting potential ramifications).

2. 376 F. Supp. 3d 455 (E.D. Pa. 2019).

3. See *id.*

4. See Mark Bode, *Game On: America's Sports Leagues in Emerging Markets*, HARVARD POLITICS (Sept. 17, 2014), <http://harvardpolitics.com/unity-states/game-americas-sports-leagues-emerging-markets/> [https://perma.cc/CY72-DKX9]

## II. U.S. PROFESSIONAL ATHLETES PLAYING ABROAD

The steady growth in the number of American athletes playing for foreign professional sports teams is most apparent in the sports of basketball and baseball.<sup>5</sup> This increase is no doubt driven by a number of factors: there are a greater number of professional opportunities abroad than in domestic leagues in the U.S.;<sup>6</sup> there are restrictive U.S. draft and free agency rules<sup>7</sup> that result in potentially larger salaries abroad;<sup>8</sup> and there are more developmental opportunities abroad for top tier prospects than they have at home.<sup>9</sup>

## A. Professional Basketball Abroad

For many U.S. Division I college basketball players, the prospect of playing professional basketball at the highest domestic level, such as the National Basketball Association (NBA) or Women's National Basketball Association (WNBA), is remote.<sup>10</sup> The National Collegiate Athletic Association (NCAA) "estimate[s] that 4.2% of draft-eligible Division I players were chosen in the 2018 NBA draft."<sup>11</sup> Therefore, of the 1,230 eligible players, only fifty-two were drafted into the NBA.<sup>12</sup> However, approximately 839 went on to

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(discussing increase in American athletes who have had success in professional sports leagues overseas).

5. See Kyle Schnitzer, *High School Athletes are Taking Professional Routes Abroad to Get Paid Now*, LADDERS (May 29, 2019), <https://www.theladders.com/career-advice/high-school-athletes-are-taking-professional-routes-abroad-to-get-paid-now> [<https://perma.cc/E4FN-NKBW>] (discussing recent decisions by two prominent amateur prospects to forego college or professional drafts to play abroad).

6. See Elia Powers, *When the Madness Ends: How College Hoopsters Navigate European Options*, THEPOSTGAME (Apr. 4, 2017), <http://www.thepostgame.com/college-basketball-players-march-madness-europe-pro> [<https://perma.cc/Y3C9-SLML>] (discussing how undrafted college basketball players often go on to have successful professional international careers).

7. See Des Bieler, *LaMelo Ball, 17, Opts for Australian League Ahead of 2020 NBA Draft*, WASH. POST (June 18, 2019), [https://www.washingtonpost.com/sports/2019/06/18/lamelo-ball-age-opts-australian-league-ahead-nba-draft/?utm\\_term=.38299cfdd7dd](https://www.washingtonpost.com/sports/2019/06/18/lamelo-ball-age-opts-australian-league-ahead-nba-draft/?utm_term=.38299cfdd7dd) [<https://perma.cc/5JCR-3X4F>] (highlighting NBA athletes forego draft decision to go abroad); see also Tyler Kepner, *Carter Stewart, 19, Chooses Japan Over the M.L.B. Draft*, N.Y. TIMES (May 22, 2019), <https://www.nytimes.com/2019/05/22/sports/carter-stewart-japan.html> [<https://perma.cc/6EV7-VVYJ>] (illustrating MLB like NBA athletes forego draft decision to go abroad).

8. See Schnitzer, *supra* note 5 (noting foreign contracts for high school prospects exceed offers from U.S. developmental leagues such as NBA's G-League).

9. See Bieler, *supra* note 7.

10. See *Estimated Probability of Competing in Professional Athletics*, NCAA, <http://www.ncaa.org/about/resources/research/estimated-probability-competing-professional-athletics> [<https://perma.cc/48W5-JVW4>] (last updated Apr. 3, 2019) (demonstrating statistical probabilities).

11. *Id.*

12. See *id.*

play professional basketball internationally or in the NBA's developmental G-League.<sup>13</sup> The 2018 cohort numbers are similar for women's basketball, with only thirty-two players being drafted into the WNBA, while 223 went on to play professional basketball internationally.<sup>14</sup> As of June 2019, a total of 638 men and women played professional basketball at the highest level in the U.S.—494 in the NBA and 144 in the WNBA—while 3,014 played professionally overseas—2,560 men and 454 women.<sup>15</sup>

There are two general categories of U.S.-based basketball players who play professionally overseas: (1) U.S. collegiate basketball players who go undrafted,<sup>16</sup> and (2) players whose diminishing domestic career prospects have landed them on foreign teams.<sup>17</sup> There is also a potential third category emerging: high school-aged basketball players opting to play overseas rather than play U.S. collegiate basketball—the traditional path for many highly rated American prospects.<sup>18</sup>

Teenage players choosing to play professional basketball overseas after graduation from high school is a recent phenomenon.<sup>19</sup> In 2019, LaMelo Ball and RJ Hampton, two highly rated prospects, chose to play professional basketball in Australia rather than on an

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13. *See id.* (identifying number of 2018 draft-eligible men's collegiate basketball players who played internationally, in G-League, or in NBA as undrafted players).

14. *See id.*

15. *See Americans Overseas*, USBASKET, <https://www.usbasket.com/Americans-Overseas.asp> [<https://perma.cc/PJ9L-8P6U>] (last visited June 6, 2019) (listing athletes playing in foreign countries).

16. *See generally* TJ Mathewson, *How Basketball Players Go Pro in Different Countries*, GLOBAL SPORT MATTERS (Dec. 13, 2018), <https://globalsportmatters.com/business/2018/12/13/how-do-basketball-players-go-pro-in-different-countries/> [<https://perma.cc/5TSM-BGUA>] (comparing NBA G-League with playing professional basketball overseas); *cf.* Don Markus, *Seeking Lane into NBA, Undrafted Players Turn to Development and Overseas Leagues*, BALTIMORE SUN (Jun. 20, 2017), <https://www.baltimoresun.com/sports/terps/bs-sp-nba-draft-avenues-0621-20170620-story.html> [<https://perma.cc/DR6E-TBE8>] (noting NBA G-League may be better path to NBA than playing overseas).

17. *See* Luke Adams, *NBA Players Who Are Headed Overseas For 2018/19*, HOOPS RUMOR (Aug. 8, 2018) <https://www.hoopsrumors.com/2018/08/nba-players-who-are-headed-overseas-for-201819.html> [<https://perma.cc/465R-YLRC>] (“[T]here simply aren't enough roster spots around the league to accommodate all the players who spent time with NBA clubs last season.”).

18. *See* Howard L. Nixon, *Sport in a Changing World*, PARADIGM PUBLISHERS (Feb. 2018) at 319–320 (discussing alternative path to professional sports).

19. *See* Michael Creepy, *The Perks of Playing Basketball Overseas*, THE UNDEFEATED (June 21, 2018), <https://theundefeated.com/features/the-perks-of-playing-basketball-overseas/> [<https://perma.cc/27VP-C5T7>] (explaining that teenage basketball players have recently elected to sign professional contracts in foreign countries because it is financially lucrative and provides unique cultural experiences).

NCAA Division I team, garnering much attention.<sup>20</sup> While both Hampton and Ball pointed to the similarity in style between Australian and American basketball, many commentators were quick to attribute their choices to the NBA's "one-and-done" rule.<sup>21</sup>

Current NBA rules require that to be eligible for the draft; (1) the player must be over the age of nineteen, and (2) a minimum of one NBA season has elapsed since the player's high school graduation.<sup>22</sup> Article X of the NBA Collective Bargaining Agreement is referred to as the "one-and-done" rule and was instituted in 2006 with the consent of both team ownership and the players association—the union which represents the NBA players.<sup>23</sup> While only a handful of graduating high school players have opted to play professionally overseas, increasing salary potential in leagues like Australia may be changing that calculus.<sup>24</sup> The NBA's recent announcement that it is in the process of reconsidering the "one-and-done" rule may be further evidence of the threat of foreign-based teams recruiting highly touted U.S. high school prospects.<sup>25</sup>

By far, basketball accounts for the most significant portion of U.S.-based professional athletes on foreign teams; this is the result of the potential for larger foreign contracts and the competitiveness of NBA play. Given the worldwide popularity of basketball, it is anticipated that, despite any reconsideration of the "one-and-done" rule, the number of U.S.-based basketball players playing abroad professionally will continue to increase, and for greater amounts of money.

## B. Professional Baseball Overseas

The number of U.S.-based baseball players playing overseas professionally is dramatically smaller than in basketball, but remains significant in Japan and South Korea, where baseball is a

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20. *See id.*

21. *See id.*

22. *See* 2017 NBA-NBPA COLLECTIVE BARGAINING AGREEMENT, art. X, § 1, available at <https://cosmic-s3.imgix.net/3c7a0a50-8e11-11e9-875d-3d44e94ae33f-2017-NBA-NBPA-Collective-Bargaining-Agreement.pdf> [<https://perma.cc/8SB7-ATNF>] (last visited Apr. 15, 2020) (providing collective agreement).

23. *See* Michael McCann, *Examining What a Change to the NBA's One-and-Done Rule Could Mean for All Involved*, SPORTS ILLUSTRATED (Mar. 3, 2019), <https://www.si.com/nba/2019/03/03/legal-analysis-change-age-eligibility-rule-one-and-done> [<https://perma.cc/LMV7-GL4X>] (noting high school athletes are absent from negotiations despite impact on lives and careers).

24. *See* Bieler, *supra* note 7.

25. *See id.* ("By 2022 the league will likely rid of its rule mandating draft-eligible players spend at least one year out [of] high school.")

popular sport.<sup>26</sup> One source estimates “as many as 100 ex-major or minor leaguers played in either [Japan’s Nippon Professional Baseball League] or [the Korea Baseball Organization] last year.”<sup>27</sup> A review of last year’s rosters of each major league’s players shows that for 2019, twenty-eight U.S.-based players were active in the Nippon Professional Baseball League (NPB) and twenty-four U.S.-based players were active in the Korea Baseball Organization (KBO).<sup>28</sup>

Although highly rated prospects from high school and college fare only slightly better in ascending to U.S. professional baseball than in the NBA—0.5% from high school and 9.8% from college—their presence in Asia is unlikely to increase despite the overwhelming odds against them in the U.S.<sup>29</sup> Since the NPB limits the total number of foreign players on each team to four and the KBO to three, the number of U.S.-based baseball players in Asia is capped and unlikely to increase significantly in the near or long term.<sup>30</sup>

There are, however, unique monetary incentives for young baseball players to participate in the NPB over the MLB draft. Rather than spending years working their way under contract through the U.S. minor-league system, top college-age prospects can have greater immediate earning potential in the NPB, and enter MLB free agency sooner.<sup>31</sup> For example, instead of entering the MLB draft, nineteen year old Carter Stewart, a pitcher for Eastern Florida State College, signed a six-year, seven million dollar

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26. See Christine Bagarino, *How Did Baseball Become So Popular in Japan?*, CULTURE TRIP (June 28, 2017), <https://theculturetrip.com/asia/japan/articles/how-did-baseball-become-so-popular-in-japan/> [<https://perma.cc/6UPP-9S5Z>] (“[I]n Japan the game has reached such heights of popularity that some Japanese people fail to realize that the sport is not native to the country.”); see also *Top 10 Most Popular Sports in South Korea as of May 2017*, STATISTA, <https://www.statista.com/statistics/829536/south-korea-most-popular-sports/> [<https://perma.cc/F6QY-RFM9>] (last visited Sept. 4, 2019) (noting 62% percent of South Korean’s population stated it was their favorite sport).

27. Kyle Glaser, *Players Seek Riches, Opportunity in Japan and Korea*, BASEBALL AMERICA (Jan. 26, 2018), <https://www.baseballamerica.com/stories/players-seek-riches-opportunity-in-japan-and-korea/> [<https://perma.cc/Z7KM-JWWM>] (highlighting financial opportunities for athletes in Asia).

28. See generally *Professional Baseball History*, SPORTS REFERENCE, <https://www.baseball-reference.com/register> [<https://perma.cc/7LHZ-3PY5>]; see also *KBO Foreign Players*, MYKBO STATS, <https://mykbostats.com/players/foreign> [<https://perma.cc/Z3FD-YRSN>].

29. See *Probability of Playing College and Professional Baseball*, HS BASEBALL WEB, <http://www.hsbaseballweb.com/probability.htm> [<https://perma.cc/228P-HNV4>] (last visited Sept. 4, 2019); see *supra* notes 6–9 and accompanying text.

30. See Glaser, *supra* note 27.

31. See Kepner, *supra* note 7.

contract with incentives to play for the NPA's Fukuoka SoftBank Hawks.<sup>32</sup>

The U.S. export of professional baseball players appears generally limited to Japan and Korea. This number appears unlikely to increase absent significant structural changes to their leagues' rules. Although the aggregate number of U.S. players may remain low, there exists the potential for increased incentives for both younger and experienced players who elect to start—or end—their professional baseball careers in those countries.

### III. THE RAKUTEN LITIGATION

#### A. Overview

On August 30, 2017, Zach Lutz, a former MLB player for the New York Mets, filed suit in the Eastern District of Pennsylvania against Rakuten Baseball, Inc., a Japanese baseball company that owns and operates the Tohoku Rakuten Golden Eagles (the “Golden Eagles”), and Rakuten Inc. (“Rakuten”), a Japanese e-commerce company and the corporate parent of the Golden Eagles, for failing to renew Lutz's contract to play for the Golden Eagles for the 2015 season.<sup>33</sup>

Lutz alleged that senior management of the Golden Eagles broke promises and made false statements to him in Pennsylvania, and to his agents in California, that the team would enter into a new contract with him at specified terms including a guaranteed base salary of \$700,000 plus incentive bonuses and expense reimbursements.<sup>34</sup> These terms were embodied in a written contract drafted by the Golden Eagles and its lawyers and signed by Lutz the day after he received it at his home in Pennsylvania.<sup>35</sup> Nonetheless, the Golden Eagles, despite months of negotiations and assurances to Lutz that he would play “an important role” during the 2015 season, refused to countersign the contract, insisting during the litigation that negotiations had been ongoing and were incomplete.<sup>36</sup>

During their negotiations, the Golden Eagles kept Lutz on its “Reserve List,” preventing Lutz and his agents from even contact-

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32. *See id.*

33. *See generally* Compl. at ¶ 1, Lutz v. Rakuten, Inc., No. 5:17-cv-03895-CFK (E.D. Pa. Aug. 30, 2017), ECF No. 1 (indicating Mr. Jacobsen was counsel for Lutz during litigation and noting Lutz played for Golden Eagles during 2014 season before injuring his thumb during a game which required him to return to United States for surgery as well as physical therapy).

34. *See id.* at ¶ 49.

35. *See id.* at ¶¶ 49–52.

36. *See id.* at ¶¶ 40, 53.

ing, let alone negotiating with, any other professional baseball team in the world, likewise preventing those teams from contacting him about playing for their team.<sup>37</sup> When the Golden Eagles informed Lutz that they would not sign the contract, were ceasing any further negotiations, and removing Lutz from its “Reserve List,” it was too late for Lutz to find another team to play for in Japan.<sup>38</sup> Instead, Lutz signed a contract to play for a professional baseball team in Korea at substantially less compensation and with far fewer incentives than those in the final agreement tendered to him by the Golden Eagles and signed by Lutz the day he received it.<sup>39</sup>

Rakuten and the Golden Eagles moved to dismiss Lutz’s Complaint under Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction.<sup>40</sup> They contended it violated constitutional principles of due process to litigate Lutz’s claims for fraud, negligent misrepresentation, and promissory estoppel in Pennsylvania.<sup>41</sup>

On April 22, 2019, the court issued its decision in *Lutz v. Rakuten, Inc.*,<sup>42</sup> and held in a groundbreaking opinion that the Golden Eagles were subject to personal jurisdiction in Pennsylvania due to its extensive and protracted contacts and communications with Lutz over their four month period of contract negotiations.<sup>43</sup> Although the court dismissed Lutz’s claims against Rakuten for lack of personal jurisdiction, it endorsed the notion that an international conglomerate such as Rakuten *could* be subject to personal jurisdiction in a United States court if its marketing strategy targets citizens of a particular state that was central to its business.<sup>44</sup>

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37. *See id.* at ¶¶ 53, 55.

38. *See id.* at ¶¶ 57–59.

39. *See id.* at ¶ 59.

40. *See generally* Memorandum in Support of Defendants Rakuten Baseball, Inc.’s, Rakuten, Inc.’s, and Hiroshi Mikitani’s Motions to: (1) Dismiss for Lack of Personal Jurisdiction Under Rule 12(b)(2); (2) Dismiss or Stay Pending Resolution of a Parallel Proceeding in Japan and on Grounds of Forum Non Conveniens; and (3) Dismiss for Failure to State a Claim Under Rule 12(b)(6), *Lutz v. Rakuten, Inc.*, No. 5:17-cv-03895-CFK, 2017 WL 11516381 (E.D. Pa. Nov. 30, 2017), ECF No. 11; Memorandum in Support of Defendants Rakuten, Inc.’s and Rakuten Baseball, Inc.’s Renewed Motions to Dismiss: (1) for Lack of Personal Jurisdiction Under Rule 12(b)(2); and (2) for Failure to State a Claim Under Rule 12(b)(6), *Lutz*, 2019 WL 8370826, ECF No. 42.

41. *See generally Lutz*, 2017 WL 11516381, ECF No. 11; *Lutz*, 2019 WL 8370826, ECF No. 42.

42. 376 F. Supp. 455 (E.D. Pa. 2019).

43. *See generally id.* at 476 (explaining personal jurisdiction ramifications on future athletic contracts).

44. *See id.* at 465–66.

The *Lutz* decision opens the door for professional athletes to file lawsuits in the United States against foreign entities that employ them. It also provides a roadmap for lawyers to creatively plead claims against foreign professional sports teams—and potentially the international conglomerates that own them—to resolve employment disputes. By recruiting and employing athletes while those athletes reside in the United States, foreign professional sports teams run the risk of subjecting themselves to U.S. federal and state laws—a key development for the rights of U.S.-based professional athletes.

## B. The Parties

### 1. Plaintiff Zach Lutz

Zach Lutz grew up in Berks County, Pennsylvania.<sup>45</sup> After graduating from his local high school, Lutz attended Alvernia College in Pennsylvania from 2005–2007, where he starred as a baseball player.<sup>46</sup> Lutz earned first team All American each of his three years at Alvernia and won the Division III National Player of the Year in 2007.<sup>47</sup>

Lutz became a sought after professional baseball player because of his illustrious collegiate career.<sup>48</sup> In 2007, the New York Mets drafted him in the fifth round of the MLB draft.<sup>49</sup> Lutz went on to play for the Mets organization for the next six years, ultimately making his MLB debut for the club in 2012.<sup>50</sup> After spending portions of the 2012 and 2013 seasons with the Mets, Lutz—like many other U.S.-based professional baseball players—pursued an opportunity to continue his career in Japan, signing a lucrative contract with the Golden Eagles for the 2014 season.<sup>51</sup>

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45. See Compl. at ¶ 3, *supra* note 33.

46. See *id.*

47. See *id.*

48. See *id.* at ¶ 4.

49. See *id.*

50. See *id.*

51. See *id.* ¶¶ 24, 50; see also Danny Abriano, *Zach Lutz Heading to Japan to Play for Rakuten*, RISING APPLE (June 11, 2014), <https://risingapple.com/2014/06/11/zach-lutz-heading-japan-play-rakuten/> [https://perma.cc/N9TJ-DQWE] (describing personal opportunity for Lutz to leave U.S. for Japan).

## 2. *Defendant Rakuten*

Rakuten is one of the largest international e-commerce and internet services companies in the world.<sup>52</sup> While Rakuten is incorporated and headquartered in Japan, it is a global conglomerate with offices throughout the world, including a number in the United States.<sup>53</sup> Through its extensive divisions and consolidated subsidiaries based in thirty countries, Rakuten provides online retail services, sports and entertainment events and partnerships, and other services and products globally to billions of customers.<sup>54</sup>

In order to service its vast business operations, Rakuten has established technology centers and institutes in several cities in the United States.<sup>55</sup> These entities focus on research and development in advanced internet technologies to further Rakuten's diverse business activities.<sup>56</sup> Rakuten's website boasts of its extensive global business holdings under the broad name "Rakuten Group," describing the integration of its various businesses into a single integrated enterprise which it labels the Rakuten "ecosystem":

We have since grown to offer services across finance, sports and entertainment and more. We've partnered with businesses around the world that share the same values as us. Now, we're bringing these diverse elements together in one ecosystem, united under the Rakuten umbrella.<sup>57</sup>

On its website, Rakuten also emphasizes that its "ecosystem" is an integrated one that cuts across all its business entities:

At the same time, development and design of common group platform functions such as Rakuten IDs, points, and checkout payment will continue to be managed by a group-wide team, in order to further enrich the customer benefits offered by the Rakuten Ecosystem.<sup>58</sup>

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52. *See generally About Us*, RAKUTEN, <https://global.rakuten.com/corp/about/> [<https://perma.cc/2X6W-VZVW>] (last visited Jan. 27, 2020) ("Rakuten Group as 70+ businesses and almost 1.3 billion members across the world.").

53. *See id.*

54. *See id.*

55. *See About*, RAKUTEN INST. TECH., <https://rit.rakuten.co.jp/about/> [<https://perma.cc/YT85-KATZ>] (last visited Jan. 27, 2020) (illustrating map of cities).

56. *See id.*

57. Compl. at ¶ 9, *supra* note 33.

58. *Rakuten Introduces Company System to Enhance Customer-Centricity*, RAKUTEN (Apr. 1, 2016), [https://global.rakuten.com/corp/news/press/2016/0401\\_01.html](https://global.rakuten.com/corp/news/press/2016/0401_01.html) [<https://perma.cc/7GYB-LZA6>] (emphasizing integration).

To this same point, further unifying its various businesses in its integrated “ecosystem” under the Rakuten umbrella, the company changed its global logo, which appears on its website.<sup>59</sup> Consistent with the integrated nature of its multiple businesses in the United States and abroad, Rakuten employees all have a common e-mail address, “@mail.rakuten.com”, including individuals who work for the Golden Eagles.<sup>60</sup>

Rakuten calls its global subsidiaries—including those in the United States—“services” provided by Rakuten to its global members, not independent, stand-alone corporate entities.<sup>61</sup> Rakuten has 120 million members in the United States—more than the 90 million in its home country of Japan.<sup>62</sup> As Rakuten states in its annual reports, its members “access a variety of services” through its affiliates using the same member identification number, creating what Rakuten calls a unified, integrated “Ecosystem.”<sup>63</sup> This “one-stop access” and “organic linkage” of all of Rakuten’s businesses (*i.e.*, “services”) creates a unified, integrated enterprise with Rakuten at its core.

Rakuten collects customer data—including demographics, search and browsing history, purchase history, and other “Big Data”—from all of these transactions, runs it through the “Rakuten Analytics Tracker” and its member “Behavior log,” and uses this data to forecast demand for its “services,” to optimize inventory and pricing, and to target its members for discounts and coupons.<sup>64</sup> None of this is done by Rakuten’s U.S. affiliates; all is done by Rakuten itself. Indeed, Rakuten operates two “Rakuten Institutes of Technology” in the United States—one in New York and one in Boston—staffed by engineers and researchers to provide technical support and development for its “services” here.<sup>65</sup>

Rakuten’s primary subsidiary in the United States, Rakuten USA, Inc., operates an e-commerce website which sells products on-

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59. See *Rakuten Introduces New Brand Symbol*, RAKUTEN (Sept. 8, 2018), [https://global.rakuten.com/corp/news/press/2018/0908\\_01.html](https://global.rakuten.com/corp/news/press/2018/0908_01.html) [<https://perma.cc/64TB-9JNG>] (illustrating new logo).

60. See Compl. at ¶ 16, *supra* note 33.

61. See *id.* at ¶¶ 5–20; see also *About Us*, RAKUTEN, *supra* note 52.

62. See *Empowerment Through Innovations Corporate Report 2017*, RAKUTEN, <https://global.rakuten.com/corp/investors/documents/annual.html> [<https://perma.cc/2ZFG-5H7W>].

63. See *id.*

64. See Compl. at ¶ 13, *supra* note 33.

65. See *About*, RAKUTEN INST. TECH., *supra* note 55. Rakuten has similar Institutes in Japan, Europe and elsewhere. See *id.*

line throughout the United States.<sup>66</sup> Rakuten subsidiary Ebates solicits customers throughout the country to purchase products through its e-commerce platform, allowing those customers to pay for their purchases through their computers and phones located in the United States.<sup>67</sup> Prominently displayed and promoted throughout its targeted television and other advertisements is that Ebates is “A Rakuten Company,” manifesting Rakuten’s clear intent to solicit and profit from its business activities in the United States.<sup>68</sup> Rakuten Kobo sells e-books online directly to purchasers in the United States as well as through Walmart’s website and “brick and mortar” stores in this country under a partnership announced in 2018.<sup>69</sup>

Rakuten Card USA, is registered as a foreign corporation in Pennsylvania, thereby consenting to general jurisdiction in Pennsylvania and generating substantial revenue and data that directly benefits Rakuten from its activities here.<sup>70</sup> Rakuten “service” company Rakuten Commerce, LLC operates a fully interactive website in Pennsylvania which allows customers to purchase goods from their residences in Pennsylvania and ship those goods to their residences without ever leaving this Commonwealth.<sup>71</sup> Rakuten Marketing prominently promotes its inextricable intertwinement with Rakuten on its website:

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66. See *Ebates: We’re Now Rakuten*, RAKUTEN, <https://www.rakuten.com> [<https://perma.cc/3XVK-7HXF>] (last visited Jan. 27, 2020) (describing change in company name).

67. See *id.*

68. See <https://www.rakuten.com/?ebdirect=true&httpredirect=true> [<https://perma.cc/3X6K-N4B7>] (last visited Jan. 27, 2020) (redirecting Ebates website to Rakuten website and noting “A Rakuten Company” appears).

69. See *Walmart and Rakuten Announce New Strategic Alliance*, WALMART (Jan. 25, 2018), <https://corporate.walmart.com/newsroom/2018/01/25/walmart-and-rakuten-announce-new-strategic-alliance> [<https://perma.cc/7A7V-SQZ3>] (describing new partnership designed for future market success).

70. See *Announcement for Resolution to Establish a Company for Banking Operations in the United States*, RAKUTEN (July 26, 2019), [https://global.rakuten.com/corp/news/press/2019/0726\\_06.html?year=2019&month=7&category=corp%20ir%20fintech](https://global.rakuten.com/corp/news/press/2019/0726_06.html?year=2019&month=7&category=corp%20ir%20fintech) [<https://perma.cc/9VQZ-RD2R>] (describing process of jurisdiction in United States).

71. See *id.*

**The Rakuten Ecosystem**

Rakuten, Inc.	Global Company	Membership Worldwide	Members In
6th Largest Internet Service Provider	10,000 + Employees	1.1 billion Consumers	230+ Countries

**Rakuten Marketing is built on a legacy of empowerment through its relationship with Rakuten, Inc.**

We leverage the power of Rakuten ecosystem data to identify audiences, optimize media buying, personalize ad experiences and maximize incremental revenue for our clients. Our global presence allows us to engage and influence consumers worldwide.<sup>72</sup>

Rakuten itself has deeply intertwined itself with the NBA to leverage the goodwill generated by its association with that organization and its member teams. Toward that same end, Rakuten also has formed separate partnerships with the Golden State Warriors and its superstar player, Steph Curry, who regularly plays in Pennsylvania, prominently displaying Rakuten's logo on their jerseys in direct promotion to fans in Philadelphia.<sup>73</sup> Rakuten negotiated a separate partnership arrangement directly with the NBA to sell merchandise of NBA teams, including the Philadelphia 76ers, on a global level through its e-commerce platform.<sup>74</sup>

In an effort to expand its global brand into the sports and entertainment industries, Rakuten has signed recent partnership agreements with some of the world's best-known professional teams. For example, in July 2017, Rakuten signed an endorsement deal with FC Barcelona, agreeing to pay the club sixty million dollars annually for four years to display the Rakuten name and logo on team jerseys.<sup>75</sup> Likewise, in September 2017, Rakuten signed a

72. *Rakuten Marketing*, RAKUTEN, <https://rakutenmarketing.com> [<https://perma.cc/4AHG-GSF4?type=image>] (updated Oct. 24, 2018) (illustrating marketing ecosystem).

73. See Steven Impey, *NBA Star Stephen Curry Becomes Rakuten's US Ambassador*, SPORTS PRO MEDIA (Jan. 10, 2019), <https://www.sportspromedia.com/news/nba-stephen-curry-rakuten-underrated-ambassador> [<https://perma.cc/P6WG-2QDN>].

74. See Sam Amick, *NBA Expands Global Reach with Massive Deal with Rakuten*, USA TODAY (Oct. 9, 2017, 10:17 PM), <https://www.usatoday.com/story/sports/nba/2017/10/09/nba-expands-global-reach-massive-deal-rakuten/748631001/> [<https://perma.cc/3UU4-JRKH>] ("We want to be a household name like Google and Facebook . . ."); see also *Warriors Ink Lucrative Jersey Deal With Rakuten*, YAHOO! SPORTS (Sept. 12, 2017), <https://sports.yahoo.com/warriors-ink-lucrative-jersey-deal-rakuten-231124242-nba.html> [<https://perma.cc/5B5C-N9Z4>] (quoting Rakuten CEO Hiroshi Mikitani).

75. See *Rakuten Sponsorship Deal with FC Barcelona Begins*, FC BARCELONA, (July 1, 2017, 6:45 AM), <https://www.fcbarcelona.com/en/news/752333/rakuten-sponsorship-deal-with-fc-barcelona-begins> [<https://perma.cc/V58V-ZR3D>] (noting endorsement deals).

sponsorship deal also worth sixty million dollars with the Golden State Warriors to promote its global “ecosystem” by displaying its logo on a patch on the team’s jerseys—effectively targeting consumers in each of the twenty seven United States cities where the Warriors play and in millions of households worldwide through television and other media.<sup>76</sup> Rakuten’s “partnerships” with these “internationally beloved” teams is prominently displayed on its website, highlighting the company philosophy that sports have the ability to “unite the world.”<sup>77</sup>

Rakuten’s founder and Chairman Hiroshi Mikitani personally appeared in San Francisco to announce the Rakuten-Warriors partnership, posing for newspaper and television cameras with Warriors’ executives and star players Draymond Green and Andre Iguodala.<sup>78</sup> The Warriors’ practice facility was renamed the “Rakuten Performance Center.”<sup>79</sup> Under the deal, Rakuten also became the official e-commerce, video-on-demand and affiliate marketing partner of the Warriors. Ebates became the Warriors’ official shopping rewards partner. The global messaging service Viber became the Warriors official instant messaging and calling app partner. Another affiliate, Rakuten Kobo, which has its own partnership arrangement with Wal-Mart, became the Warriors’ official e-book partner.<sup>80</sup>

Rakuten reports all its financial data and financial performance on a consolidated basis for all of its businesses throughout the world, including its American subsidiaries.<sup>81</sup> In 2018, Rakuten re-

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76. See Maury Brown, *Inside The Golden State Warriors’ \$60 Million Jersey Patch Deal With Rakuten*, FORBES, (Nov. 27, 2017, 8:00 AM), <https://www.forbes.com/sites/maurybrown/2017/11/27/inside-the-golden-state-warriors-record-60-million-jersey-patch-deal-with-rakuten/#49bd08437b59> [<https://perma.cc/5CLM-C9KE>] (noting details of endorsement); see also, Jeremy Woo, *What is Rakuten? A Brief Explanation of the Warriors, Barcelona Jersey Sponsor*, SPORTS ILLUSTRATED, (Oct. 17, 2017), <https://www.si.com/extra-mustard/2017/rakuten-warriors-barcelona-jersey-sponsor-uniform-patch> [<https://perma.cc/Z79D-VT53>] (explaining sponsor).

77. See generally *Sports & Entertainment*, RAKUTEN, [https://global.rakuten.com/corp/about/sports\\_entertainment/](https://global.rakuten.com/corp/about/sports_entertainment/) [<https://perma.cc/76MQ-UZ6J>] (last visited Jan. 27, 2020).

78. See Ed Odeven, *Warriors an Inspiration to Rakuten CEO Hiroshi Mikitani*, THE JAPAN TIMES (June 30, 2018) <https://www.japantimes.co.jp/sports/2018/06/30/basketball/warriors-inspiration-rakuten-ceo-hiroshi-mikitani/#.XoDOP24pDBI> [<https://perma.cc/28UE-REC9>].

79. See Angel Au-Yeung, *Japanese Firm Rakuten Signs Sponsorship Deal with NBA’s Golden State Warriors*, FORBES, <https://www.forbes.com/sites/angelaueung/2017/09/13/japanese-firm-rakuten-signs-sponsorship-deal-with-nbas-golden-state-warriors/#5afb754864e7> [<https://perma.cc/JDX6-Y58Y>].

80. See Brown, *supra* note 76.

81. See Compl. at ¶ 18, *supra* note 33.

ported that its consolidated businesses had earned revenues of nearly ten billion dollars.<sup>82</sup>

### 3. *The Golden Eagles*

The Golden Eagles are a Japanese professional baseball team that is a wholly-owned subsidiary of Rakuten.<sup>83</sup> The Golden Eagles play in NPB's Pacific League, one of two Japanese professional baseball leagues.<sup>84</sup> Mr. Mikitani—a self-professed fan of professional baseball—was personally involved in the establishment of the Golden Eagles in 2005 as an expansion team in the Pacific League.<sup>85</sup> Like FC Barcelona and the Golden State Warriors, the Golden Eagles prominently display the Rakuten logo on their jerseys.<sup>86</sup>

In contrast to their United States counterparts, professional baseball teams in Asia are typically owned and operated by large, diversified corporate enterprises like Rakuten.<sup>87</sup> Many professional baseball teams in Asia, including the Golden Eagles, bear the name of their corporate owners and serve as marketing, promotion and advertising vehicles for the corporate enterprise both domestically and internationally.<sup>88</sup>

As is common with professional baseball teams in Asia, the Golden Eagles have negotiated contracts with several prominent former United States professional baseball players to play for the team.<sup>89</sup> These players include: Andrew Jones, Gaby Sanchez, Jonny Gomes, Kevin Youkilis, Luis Lopez, Gary Rath, Eric Valent, Andy Tracy, and others.<sup>90</sup> Due to the globalization of the labor market in professional baseball, representatives from the Golden Eagles travel to the United States to scout players, attend meetings, and corre-

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82. See Julia Engelman, *Annual Net Revenue of the Rakuten Group From Fiscal Year 2011 to 2018*, STATISTICA, (Feb. 22, 2019), <https://www.statista.com/statistics/223327/consolidated-sales-of-the-rakuten-group-since-2007/> [<https://perma.cc/873Y-P6EL>] (illustrating revenue in consolidated table).

83. See generally *Sports & Entertainment*, RAKUTEN *supra* note 77.

84. See *id.*

85. See generally *Welcome to the Home of Tohoku Rakuten Eagles*, RAKUTEN EAGLES, <https://www.rakuteneagles.jp/global/english/> [<https://perma.cc/4VD3-W22F>] (last visited Jan. 27, 2020).

86. See *id.*

87. See Compl. at ¶ 23, *supra* note 33.

88. See *id.*

89. See Keiji Kawai & Matt Nichol, *International Sports Law Perspective Labor in Nippon Professional Baseball and the Future of Player Transfers to Major League Baseball*, 25 MARQ. SPORTS L. REV. 491, 524 (2015) (detailing the recruitment activities of international professional teams as part of baseball's "global labor market").

90. See Compl. at ¶ 24–25, *supra* note 33.

spond with baseball players in the United States to negotiate over the terms and conditions of their employment.<sup>91</sup>

### C. Factual Allegations

#### 1. *The Underlying Dispute Between Lutz and the Japanese Entities*

Following his career with the New York Mets, Lutz signed a lucrative contract with the Golden Eagles to play in the Nippon League for the 2014 season.<sup>92</sup> Lutz's season with the Golden Eagles, however, was cut short when he was hit by a pitch during a game in July 2014 and fractured his thumb.<sup>93</sup> After a period of unsuccessful treatment in Japan, Lutz returned to his home in Pennsylvania in September 2014 for surgery and rehabilitation.<sup>94</sup>

Following Lutz's return to his home state,<sup>95</sup> Akihoto Sasaki ("Sasaki"), Special Assistant to the Rakuten Golden Eagles General Manager, began a series of e-mail and telephone communications directly with Lutz and his agents, MVP Sports Group in Los Angeles, over the terms of a new contract for the 2015 season.<sup>96</sup> While negotiations continued during the fall of 2014 and with proposals and terms being discussed for the 2015 season and beyond, the Golden Eagles closely monitored Lutz's injury and rehabilitation.<sup>97</sup> This communications included documents from Lutz's doctors detailing the procedure that Lutz underwent to repair his fractured thumb, and reports from Lutz's physical therapist about his rehabilitation and fitness to return to the team for the 2015 season.<sup>98</sup> One example of the dozens of communications during this period is an email on October 13, 2014; Lutz sent an e-mail from his home in Pennsylvania to Sasaki, informing him that: "[E]verything is going

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91. See *id.* at ¶ 26; see also Noah J. Goodman, *The Evolution and Decline of Free Agency in Major League Baseball: How the 2012–2016 Collective Bargaining Agreement Is Restraining Trade*, 23 *SPORTS L.J.* 19, 55 (2016) (highlighting globalization of labor market in professional baseball); Kawai & Nichol, *supra* note 89, at 523 (detailing professional baseball's global labor market).

92. See Compl. at ¶ 33, *supra* note 33; see also Abriano, *supra* note 51.

93. See Compl. at ¶¶ 33–36, *supra* note 33; see also Bartt Davis, *Lutz Happy to be Back in the States*, *LAS VEGAS REVIEW-JOURNAL*, (July 20, 2015, 4:59 PM), <https://www.reviewjournal.com/sports/lutz-happy-to-be-back-in-states/> [<https://perma.cc/M6RV-Y3VC>] (summarizing interview).

94. See Compl. at ¶¶ 36–37, *supra* note 33.

95. See *id.* ¶¶ 34–37 (noting Lutz never changed his state or country of domicile and continued to maintain his primary residence, bank accounts, income taxes on Golden Eagles earnings in Pennsylvania, thus he called Pennsylvania his home in other respects).

96. See *id.* at ¶ 34.

97. See *id.* at ¶¶ 34, 36–41.

98. See *id.* at ¶ 37.

great with my thumb.”<sup>99</sup> In response, Sasaki wrote to Lutz in Pennsylvania stating that he was pleased “everything is going good with [Lutz’s] thumb” and the Golden Eagles were reviewing Lutz’s X-rays “with our doctor.”<sup>100</sup> Just a few days later, Sasaki wrote to Lutz, while Lutz was in Pennsylvania, stating the Golden Eagles were confident that he would play “an important role” for the team during the 2015 season.<sup>101</sup>

In addition to requesting medical records from his doctors in the United States and communicating with him repeatedly concerning the new contract, the Golden Eagles also wired his 2014 salary and a buyout of his contract at the end of 2014 directly into Lutz’s Pennsylvania bank account.<sup>102</sup>

On November 27, 2014, following months of communication and negotiation, Lutz and the Golden Eagles agreed to a one-year contract for the 2015 season.<sup>103</sup> The contract guaranteed Lutz \$700,000 in base salary plus lucrative incentive bonuses and expenses.<sup>104</sup> After agreeing to those terms, representatives from the Golden Eagles called Lutz at his home in Pennsylvania on Thanksgiving Day to welcome him back to the team.<sup>105</sup>

Over the next week, representatives from the Golden Eagles, including Sasaki, communicated repeatedly with Lutz in Pennsylvania and his agents in Los Angeles via telephone and e-mail to finalize the contract for the 2015 season, ultimately e-mailing the “final agreement” to Lutz at his Pennsylvania home on December 5, 2014.<sup>106</sup> The next day, on December 6, 2014, Lutz signed and returned the contract to the Golden Eagles.<sup>107</sup> Based on that contract and the security it provided, Lutz and his wife purchased a new home in Pennsylvania and used his guaranteed salary as proof of income to obtain a mortgage.<sup>108</sup>

The Golden Eagles, however, never countersigned the contract, instead insisting that Lutz provide more medical information

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99. *Id.* at ¶ 38.

100. *Id.* at ¶ 39.

101. *See id.*

102. *See generally* Lutz v. Rakuten, Inc., 376 F. Supp. 3d 455, 465 (E.D. Pa. 2019) (explaining Lutz’s medical and financial dealings in Pennsylvania, among other things).

103. *See* Compl. at ¶ 44, *supra* note 33.

104. *See id.*

105. *See id.* at ¶ 45.

106. *See id.* at ¶¶ 46–49.

107. *See id.* at ¶ 50.

108. *See id.* at ¶ 52.

on the status of his thumb.<sup>109</sup> During this entire period, Lutz remained on the Golden Eagles' "Reserve List," which under NPB's rules barred Lutz from even communicating with, let alone negotiating, a new contract with any other team in the world.<sup>110</sup> Lutz remained on the "Reserve List" for several crucial weeks before finally being released from the Reserve Clause by Rakuten in late December 2014.<sup>111</sup> The rosters of other NPB teams were already filled for the 2015 season at that point, accordingly Lutz signed a contract in January 2015 with the Doosan Bears of the KBO for \$550,000—\$150,000 less than his Golden Eagles contract, with no incentive bonuses or paid expenses—a far less attractive package than the one than he had accepted from the Golden Eagles a month earlier.<sup>112</sup>

## 2. *The Procedural History of the Lutz Decision*

Lutz filed suit in the United States District Court for the Eastern District of Pennsylvania on August 30, 2017 against Rakuten and the Golden Eagles alleging: (1) fraud; (2) negligent misrepresentation; and (3) promissory estoppel.<sup>113</sup> On November 30, 2017, Rakuten and the Golden Eagles responded by filing a Motion to Dismiss Lutz's Complaint under Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction and under Rule 12(b)(6) for failure to state a claim for relief.<sup>114</sup>

On September 11, 2018, the court denied Rakuten and the Golden Eagles Motion to Dismiss without prejudice and allowed the parties to conduct jurisdictional discovery for a period of 60 days.<sup>115</sup> After completing jurisdictional discovery, Rakuten and the Golden Eagles were permitted to renew their Motion to Dismiss to determine whether the underlying merits of the case could be litigated jurisdictionally in Pennsylvania.<sup>116</sup>

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109. *See id.* at ¶ 53.

110. *See id.* at ¶ 55.

111. *See id.*

112. *See id.* at ¶¶ 58–59.

113. *See generally* Compl., *supra* note 33.

114. *See generally* Defendants Rakuten Baseball, Inc.'s, Rakuten, Inc.'s, and Hiroshi Mikitani's Motion to Dismiss for Lack of Personal Jurisdiction Under 12(b)(2); Dismiss or Stay Pending Resolution of a Parallel Proceeding in Japan and on Grounds of *Forum Non Conveniens*; and Dismiss for Failure to State a Claim Under Rule 12(b)(6), *Lutz v. Rakuten, Inc.*, No. 5:17-cv-03895-CFK, 2017 WL 11516381 (E.D. Pa. Nov. 30, 2017), ECF No. 11.

115. *See generally* Order that Defendants' Motion to Dismiss is Denied Without Prejudice, *Lutz*, No. 5:17-cv-03895-CFK (E.D. Pa. Sept. 11, 2018), ECF No. 23.

116. *See id.*

The deadline for jurisdiction discovery was briefly extended while the parties exchanged additional documents.<sup>117</sup> On January 25, 2019 Rakuten and the Golden Eagles filed their renewed Motion to Dismiss under Federal Rules of Civil Procedure 12(b)(2) and (6).<sup>118</sup> Lutz filed his response on February 11, 2019.<sup>119</sup> Rakuten and the Golden Eagles filed a Reply on February 15, 2019, and Lutz filed a Sur-Reply on February 17, 2019.<sup>120</sup>

a. Defendants' Motions to Dismiss Under Rule 12(b)(2)

The crux of Rakuten's and the Golden Eagles' argument was that the federal court lacked both specific personal and general jurisdiction under Federal Rule 12(b)(2) over both Japanese entities such that litigation in a Pennsylvania court would violate constitutional principles of due process.<sup>121</sup> Specific personal jurisdiction requires a defendant to have sufficient "minimum contacts" with a state and that the claims arise out of those contacts.<sup>122</sup> General jurisdiction subjects a defendant to jurisdiction if its non-claim-related contacts with a state are so continuous and systematic that the defendant is considered to be "at home" there.<sup>123</sup>

Rakuten and the Golden Eagles contended that the federal court lacked specific personal jurisdiction over them because neither entity conducts business or has a physical location in Penn-

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117. *See generally* Order That Plaintiff's Motion for Extension of Discovery Deadline on Jurisdictional Issues is Granted, *Lutz*, No. 5:17-cv-03895-CFK (E.D. Pa. Nov. 29, 2018), ECF No. 35.

118. *See generally* Defendants Rakuten, Inc. and Rakuten Baseball, Inc.'s Renewed Motion to Dismiss: (1) For Lack of Personal Jurisdiction Under Rule 12(b)(2) and (2) For Failure to State a Claim Under Rule 12(b)(6), *Lutz*, 2019 WL 8370826, ECF No. 42.

119. *See generally* Plaintiff's Memorandum of Law in Opposition to Defendants' Renewed Motion to Dismiss, *Lutz*, 2019 WL 8370825, ECF No. 44.

120. *See generally* Reply Memorandum in Support of Defendants Rakuten, Inc.'s and Rakuten Baseball, Inc.'s Renewed Motion to Dismiss, *Lutz*, 2019 WL 2549538, ECF No. 45; Plaintiff's Sur-Reply Brief in Opposition to Defendants' Renewed Motions to Dismiss Plaintiff's Complaint, *Lutz*, 2019 WL 8370831, ECF No. 48.

121. *See generally* Memorandum in Support of Defendants Rakuten, Inc.'s and Rakuten Baseball's Inc.'s Renewed Motion to Dismiss: (1) For Lack of Personal Jurisdiction Under Rule 12(b)(2) and (2) For Failure to State a Claim Under Rule 12(b)(6), *Lutz*, 2019 WL 8370826, ECF No. 42.

122. *See generally* Daimler AG v. Bauman, 571 U.S. 117, 126–27 (2014); *see also* O'Connor v. Sandy Lane Hotel Co., Ltd., 496 F.3d 312, 316–17 (3d Cir. 2007) (explaining that specific personal jurisdiction requires defendant to have purposefully directed its activities to, arise out of one of those activities directed to, and is fair and reasonable to haul defendant into forum state).

123. *See Damler*, 571 U.S. at 128 (citing Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919 (2011) and Metcalfe v. Renaissance Marine, Inc., 566 F.3d 324, 334 (3d Cir. 2009)).

sylvania, and because the Golden Eagles representatives did not set foot in Pennsylvania to negotiate with Lutz over the terms of a contract for the 2015 season.<sup>124</sup> The Golden Eagles further contended that their contacts with Lutz were location-agnostic; they communicated with Lutz without direct knowledge of where Lutz was physically located at the time.<sup>125</sup> As it relates to Rakuten, the corporate parent also argued that its representatives were not involved in the contract negotiations with Lutz at all and therefore had no “contacts” with Pennsylvania.<sup>126</sup>

Both Rakuten and the Golden Eagles asserted general personal jurisdiction over them was improper because they do not engage in business that directly targets or solicits Pennsylvania residents.<sup>127</sup>

b. Lutz’s Response to Defendants’ Motions to Dismiss

In opposition, Lutz argued specific personal jurisdiction was proper because representatives from the Golden Eagles communicated “directly and frequently” with him concerning his injury and a new contract for the 2015 season while he was in Pennsylvania, citing dozens of e-mail, text message, and telephone exchanges throughout the fall of 2014.<sup>128</sup>

Lutz also argued general personal jurisdiction over Rakuten was appropriate because Rakuten overtly promotes on its website all of its business endeavors—the integrated nature of the multitude of “services” provided by its affiliates in the United States—are part of its global “ecosystem” that markets the Rakuten brand internationally, including in Pennsylvania.<sup>129</sup>

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124. See Memorandum in Support of Defendants Rakuten, Inc.’s and Rakuten Baseball’s Inc.’s Renewed Motion to Dismiss: (1) For Lack of Personal Jurisdiction Under Rule 12(b)(2) and (2) For Failure to State a Claim Under Rule 12(b)(6), *Lutz*, 2019 WL 8370826, at \*1–2, ECF No. 42 (contending that Rakuten was not involved with Lutz’s negotiations and Golden Eagles did not travel to Pennsylvania to negotiate terms of contract for 2015 season).

125. See *id.* at \*13–14 (arguing that Golden Eagles did not know “if Lutz was in Pennsylvania, or elsewhere” while negotiating his contract for 2015 season).

126. See *id.* at \*16 (“There is no evidence that Rakuten, Inc. was involved in negotiations with Lutz, much less in Pennsylvania.”).

127. See *id.* at \*9 (arguing that Rakuten and its subsidiaries do not “conduct business, file tax returns or administrative reports, regularly purchase products or supplies, own land, advertise, or maintain an agent in Pennsylvania”).

128. See Plaintiff’s Memorandum of Law in Opposition to Defendants’ Renewed Motion to Dismiss, *Lutz*, 2019 WL 8370825, at \*1–4, ECF No. 44 (detailing extensive negotiations that Golden Eagles senior management had with Lutz between September 2014 and January 2015 while he was rehabilitating from his injury in Pennsylvania).

129. See *id.* at \*17–21.

3. *The Lutz Decision*

On April 22, 2019, the court issued a detailed opinion holding the federal court had specific personal jurisdiction over the Golden Eagles but lacked either specific or general personal jurisdiction over Rakuten.<sup>130</sup> The court found the Golden Eagles “knowingly reached into Pennsylvania to recruit and employ [Lutz] to play baseball for the Golden Eagles.”<sup>131</sup> The court found it had specific personal jurisdiction over the Golden Eagles because it “purposefully directed its activities at Pennsylvania” by: (1) knowing Lutz was a Pennsylvania resident, evidenced by the fact they wired money to his Pennsylvania bank account for his 2014 salary; and (2) communicating via e-mail, text message, and telephone with him while he was in Pennsylvania related to his recovery from surgery and negotiations over the 2015 contract.<sup>132</sup>

The court, however, determined that it lacked personal jurisdiction over Rakuten.<sup>133</sup> There was no specific personal jurisdiction because Lutz’s allegations implicated only the negotiations with the Golden Eagles, not Rakuten.<sup>134</sup> The court also lacked general personal jurisdiction over Rakuten because the parent company does not directly, at the parent level, sell any goods or services in Pennsylvania, have any offices in Pennsylvania, or directly target or solicit Pennsylvania consumers.<sup>135</sup>

The court also applied the test set forth in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*,<sup>136</sup> because of Rakuten’s extensive divisions and consolidated subsidiaries across the globe, to consider whether Rakuten’s website subjected it to personal jurisdiction.<sup>137</sup> While recognizing that Rakuten overtly promotes its integrated global “ecosystem” on its website, the court determined that this was a passive form of marketing that was “more akin to an advertisement of

130. See generally *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455 (E.D. Pa. 2019).

131. *Id.* at 465.

132. See *id.*

133. See *id.* at 465–66.

134. See *id.* at 466 (determining that court lacked specific personal jurisdiction over Rakuten because “there are no allegations that Rakuten’s contacts with Pennsylvania in any way affected the negotiations between Plaintiff and Rakuten Baseball”).

135. See *id.* at 467 (explaining that Rakuten does not have “continuous and systemic affiliations with Pennsylvania that would essentially render it at home in Pennsylvania”).

136. 952 F. Supp. 1119 (W.D. Pa. 1997).

137. See *id.* at 468 (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)).

the overall Rakuten brand.”<sup>138</sup> The court refused to attribute to Rakuten the activities of websites operated by its wholly-owned and indirect subsidiaries even though those websites bear the Rakuten name and logo and promote the overarching Rakuten brand.<sup>139</sup> In so doing, the court endorsed the notion that an international conglomerate *could* be subject to personal jurisdiction if its marketing strategy targets citizens of a particular state and is central to its business.<sup>140</sup>

Although the court dismissed Rakuten on jurisdictional grounds, the court denied the Golden Eagles’ Rule 12(b)(6) motion, allowing Lutz’s claims for fraud, negligent misrepresentation, and promissory estoppel against the Golden Eagles to proceed.<sup>141</sup> Less than three months after the *Lutz* decision, the parties resolved their dispute.<sup>142</sup>

The *Lutz* decision—while persuasive authority—is not binding on other courts. There are strategic reasons why both sides would want to avoid any appellate review of the District Court’s decision. Any appeal by the Golden Eagles would have created the risk that the Court of Appeals for the Third Circuit would have affirmed the District Court’s opinion, thereby setting a precedent for all federal courts in Pennsylvania, New Jersey, Delaware, and the U.S. Virgin Islands, in addition to creating a highly influential decision for all other federal courts. In any such appeal, Lutz unquestionably would have filed a cross-appeal asking the Third Circuit to determine the propriety of the dismissal of Rakuten—a request that would have allowed the appellate court to take a closer look at the record evidence of Rakuten’s deep business entwinement with its subsidiaries in the United States.

#### IV. THE SIGNIFICANCE OF THE *LUTZ* DECISION GOING FORWARD

The *Lutz* decision opens the door for U.S.-based professional athletes to litigate employment disputes against foreign professional teams, and potentially the international conglomerates that

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138. *See id.* at 469–70.

139. *See id.* at 470.

140. *See id.* at 469 (identifying that Rakuten could be subject to personal jurisdiction if its website and marketing strategy specifically targeted Pennsylvania and its website and marketing were central to its business in Pennsylvania).

141. *See id.* at 476 (holding that Lutz’s “claims have been sufficiently pled, allowing his causes of action to proceed to discovery”).

142. *See generally* Settlement Conference and Order Dismissing Action with Prejudice Pursuant to Local Rule 41.1(b), *Lutz v. Rakuten, Inc.*, No. 5:17-cv-03895-CFK (E.D. Pa. July 17, 2019), ECF Nos. 65–66.

own them, in American courts. By actively reaching into a state to recruit and employ an athlete, such actions may be considered to be “purposefully directed” at the state and may subject the foreign teams to jurisdiction there. This is a crucial development for the legal rights of U.S.-based professional athletes and it should present substantial concern for foreign professional sports teams.

#### A. Expanding Players’ Legal Rights

The *Lutz* decision expands the legal rights of professional athletes because litigating in foreign jurisdictions to resolve employment disputes is cost prohibitive and logistically challenging.<sup>143</sup> These challenges include an unfamiliar legal system, reduced access to legal representation, the need for a language interpreter, travel expenses, and uncertainty about litigation outcomes.<sup>144</sup> The court explicitly acknowledged the financial and procedural barriers for athletes to litigate in foreign jurisdictions in the *Lutz* decision, specifically stating it would pose a significant burden on Lutz to bring his claims in Japan, while the Golden Eagles would face a “substantially smaller burden” to defend themselves in Pennsylvania.<sup>145</sup>

Another potentially insurmountable challenge for professional athletes litigating employment disputes abroad is the foreign team’s political influence, which often results in the player having no legal redress.<sup>146</sup> By way of example, Dan Grunfield, a United States basketball player who played professionally in Europe, described this overwhelming challenge as follows: “The owner of the team had a

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143. See Roger M. Michalski, *Rights Come with Responsibilities: Personal Jurisdiction in the Age of Corporate Personhood*, 50 SAN DIEGO L. REV. 125, 161 (2013) (detailing importance of plaintiff’s litigation in American courts against foreign corporations).

144. See *id.*

145. See *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 465, 476 (E.D. Pa. 2019) (“Rakuten Baseball is a sophisticated corporation that has the resources to defend this matter in Pennsylvania. The relative finances of Rakuten Baseball compared to Plaintiff’s finances is an overwhelming factor that supports the Court’s exercise of personal jurisdiction over Rakuten Baseball.”).

146. See Matthew J. Mitten & Hayden Opie, “*Sports Law*”: *Implications for the Development of International, Comparative, and National Law and Global Dispute Resolution*, 85 TUL. L. REV. 269, 311 (2010) (explaining alternative dispute resolution); see also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980) (explaining that “the plaintiff’s interest in obtaining convenient and effect relief” is important consideration for courts to evaluate when determining whether to exercise personal jurisdiction); *McGee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957) (concluding that considerations of justice requires plaintiffs to litigate in the United States because “individual claimants frequently could not afford the cost of bringing an action in a foreign forum – thus in effect making the company judgment proof”).

lot of political influence in the region, and not surprisingly, the courts ruled in favor of the team.”<sup>147</sup>

Litigating abroad also creates legal challenges for professional athletes as there is a lack of international uniformity regarding contract law.<sup>148</sup> Professional teams abroad—in contrast to the United States—often deprive players of guaranteed contractual payments.<sup>149</sup> Thus, foreign professional teams commonly release players based on their subjective perception that the player is not meeting expectations or the determination that the team is not profiting from the player’s services.<sup>150</sup> While several foreign sports leagues have governing bodies that arbitrate contractual disputes, teams are still not deterred from failing to pay players because of the lack of uniformity in international contract law and the logistical challenges U.S. athletes face.<sup>151</sup>

The issue of failing to pay professional athletes abroad was highlighted in a 2012 study conducted by FIFPro—the international football players’ union—which determined more than forty-one percent of Eastern European soccer teams did not pay their players on time, and more than fifty percent of the players did not receive their bonuses on time.<sup>152</sup> Even worse, an astounding ninety-four percent of players in Montenegro did not get their salaries on time, and over sixty-six percent of the players in Greece reported the same.<sup>153</sup> Nor are U.S.-based athletes immune. Brandon Jennings, a former NBA player, signed a \$1.2 million contract with a top professional team in Italy in 2008 and only got paid “on time

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147. Dan Grunfeld, *Payment Uncertainty Looms Large When You’re Ballin’ Overseas*, SB NATION (Sept. 20, 2011), <https://www.sbnation.com/nba/2011/9/20/2436043/nba-overseas-payment-dan-grunfeld> [<https://perma.cc/U4ZF-CKJV>] (highlighting risks of player overseas compared to at home).

148. See Mitten & Opie, *supra* note 146, at 270.

149. See Creepy, *supra* note 19 (identifying that professional teams abroad “routinely breach contracts”).

150. See *id.* (explaining that “teams routinely will cut a player, or withhold his salary, if they perceive he is not playing at the level they think he should be . . . the team has full discretion”).

151. See Zach Schreiber, *The Right to Play: How Sports Leagues Worldwide Interfere with the Fundamental Right to Work*, 25 SPORTS LAW. J. 19, 40–41 (2018) (explaining “a wide variety” of legal concerns and “an uphill battle against legal challenges in a court of law”).

152. See FIFPRO, FIFPRO BLACK BOOK: EASTERN EUROPE, at 10. (2012), available at <http://www.lefigaro.fr/assets/pdf/fifpro.pdf> [<https://perma.cc/JD5E-XUEW>] (detailing the frequency that professional teams abroad circumvent from their legal obligations to compensate athletes).

153. See *id.*

once.”<sup>154</sup> ESPN also detailed the challenges of U.S.-based basketball players pursuing their careers abroad, identifying that most players “have at least one story about not getting paid.”<sup>155</sup>

Since foreign professional teams do not make timely or justly contractual payments to players, the *Lutz* decision can expand the rights for U.S.-based professional athletes by enabling them to litigate in American courts. The increased popularity of professional athletes on social media platforms and the globalization of the labor markets in professional sports will make the recruitment of U.S.-based athletes by foreign teams more common.<sup>156</sup> When foreign professional teams knowingly communicate with a U.S.-based athlete for the purposes of recruitment and employment, creative pleading can expand legal rights by enabling a putative plaintiff to circumvent potential contract law issues (e.g., mandatory arbitration in a foreign jurisdiction) by asserting claims—as *Lutz* did—for fraud, negligent misrepresentation, and promissory estoppel.

#### B. Potential Liability for International Conglomerates

Foreign professional sports teams, especially those in Asia, are frequently owned by international conglomerates that use the team to promote their overall brand through the team’s exposure to consumers. To the extent that these foreign entities target American consumers through their global branding strategies, they may be subject to personal jurisdiction in American courts, especially if there is fact driven evidence of their deep involvement and entwinement with the operational and business activities of their affiliates that operate here.

The court in *Lutz* did not give adequate consideration to Rakuten’s collection and processing of customer data, including demographics, search and browsing history and purchase history, from its 120 million members in the United States. As noted, Rakuten runs this “Big Data” through its “Rakuten Analytics Tracker” and its member “Behavior Log,” and uses the results to forecast demand for the goods and services offered by its U.S affili-

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154. See Ray Glier, *Brandon Jennings Sends Home a Warning from Europe*, N.Y. TIMES (Jan. 23, 2009), <https://www.nytimes.com/2009/01/24/sports/basketball/24recruit.html> [<https://perma.cc/2XMK-KLR5>] (noting concerns).

155. Thomas Neumann, *Oh, The Places They Went – Strange Tales From Americans Playing Pro Basketball’s Underbelly*, ESPN (Jan. 25, 2017), [https://www.espn.com/nba/story/\\_/id/18497433/oh-places-went-strange-tales-americans-playing-pro-basketball-globe](https://www.espn.com/nba/story/_/id/18497433/oh-places-went-strange-tales-americans-playing-pro-basketball-globe) [<https://perma.cc/XWR9-G44Y>] (elaborating concerns in particular with payment for athletes).

156. See Mitten & Opie, *supra* note 146, at 310.

ates to optimize inventory and pricing, and to target its members for discounts and coupons. Certainly, many of those 120 million members reside in Pennsylvania and are directly impacted by this collection and processing of their data by Rakuten.

Nor did the court address the possible implications of the Supreme Court's decision in *South Dakota v. Wayfair, Inc.*<sup>157</sup> in its analysis of personal jurisdiction under the twenty-three year old *Zippo* test.<sup>158</sup> In *Wayfair*, the Supreme Court upheld the power of states to impose and collect sales tax on out-of-state sellers with no physical presence in the state who ship goods into the state.<sup>159</sup> The holding in *Wayfair* is narrowly focused, rooted in the policy interests of the state's ability to collect much needed tax revenue and the inequity of any "physical presence rule," which would give out-of-state businesses a competitive advantage over their in-state counterparts.<sup>160</sup> However, there are relevant points of discussion in *Wayfair* that might question the continued relevance of the *Zippo* analysis.<sup>161</sup> In applying the *Zippo* test to determine personal jurisdiction based on website activity, the court in *Lutz* applied a "sliding scale" analysis, looking at whether the websites specifically targeted Pennsylvania residents and whether those activities were central to the Rakuten's business in the Commonwealth.<sup>162</sup> The court opined that by itself, the establishment of a website where Pennsylvania residents could purchase goods was insufficient to establish general jurisdiction.<sup>163</sup>

*Wayfair* seems to take an alternate view of the significance of "presence" as it relates to interactivity through the internet.<sup>164</sup> The Supreme Court stated that such a nexus is established when a business avails itself of the substantial privilege of carrying on business in that jurisdiction: "[T]he nexus is clearly sufficient based on both the economic and virtual contacts [the businesses] have with the State," particularly in this era of an "increasingly interconnected economy."<sup>165</sup>

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157. 138 S. Ct. 2080 (2018).

158. *See id.* (analyzing Commerce Clause implications); *Lutz v. Rakuten, Inc.*, 376 F. Supp. 3d 455, 468 (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)).

159. *See generally Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

160. *See id.*

161. *See, e.g., Lutz*, 376 F. Supp. 3d at 468 (citing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)).

162. *See id.*

163. *See id.*

164. *See generally Wayfair, Inc.*, 138 S. Ct. 2080 (2018) (defining presence).

165. *Id.* at 2099 (noting although Supreme Court's review of state taxing authority in *Wayfair* was conducted under Commerce Clause, Supreme Court hinted that its analysis might have more broad applicability under Due Process Clause on

*Wayfair* also recognizes the impact of technological changes on prior doctrine. In contrast to the *Lutz* court's "passive-interactive-active" analysis under *Zippo*, the Supreme Court in *Wayfair* emphasized the "far-reaching systemic and structural changes in the economy and many other societal dimensions caused by the Cyber Age."<sup>166</sup> This observation may suggest a shift in the role of websites in the personal jurisdiction analysis and, in particular, the continued viability of the "targeting state residents" and "central to the business" requirements for personal jurisdiction relied on by the court in *Lutz*.<sup>167</sup>

## V. CONCLUSION

Reaching into a state through e-mail, text message, and telephone communications with a professional athlete based in the United States can give rise to personal jurisdiction over foreign professional sports teams that participate in those communications. Jurisdiction over their corporate owners is less clear. As a matter of simple common sense, should an international conglomerate—one who compares itself to Google and Facebook and who saturates the United States with television commercials and signs high profile sponsorship and endorsement deals with equally high profile professional athletes and sports teams here—escape jurisdiction because it does not specifically target Pennsylvania residents for the menu of "services" offered by its affiliates in its integrated global "ecosystem?" Under the court's decision in *Lutz*, by aggressively promoting its brand, logo and businesses throughout the *entire* United States, Rakuten has essentially immunized its conduct from scrutiny by *any* court here.

The court in *Lutz* held that the exercise of such jurisdiction was inappropriate unless the company specifically targets residents of Pennsylvania and its marketing strategy is central to its business. While the court, without much discussion of the actual evidence produced by *Lutz*, found these jurisdictional requirements deficient, it is questionable whether this is the proper analysis at all.

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which, as in *Lutz*); *see also id.* at 2093 (challenging personal jurisdiction grounded: "Due Process and Commerce Clause standards may not be identical or coterminous, but there are significant parallels.").

166. *Id.* at 2097.

167. *See Lutz*, 376 F. Supp. at 468 (discussing *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997)).