



1 **I. BACKGROUND**

2 Plaintiff is a Nevada Limited Liability Company. Its principal place of business  
3 is in Henderson, Nevada. (Doc. No. 1 ¶ 3.) Defendant is a an Iowa corporation. Its  
4 principal place of business is in Muscatine, Iowa. (*Id.* at ¶ 4.)

5 On October 17, 2006, Plaintiff and Defendant entered into a written contract at  
6 Defendant’s office in Kingsman, Arizona. (*Id.* at ¶ 6.) Defendant contracted to provide  
7 civil engineering consulting services related to Plaintiff’s property in Mohave County,  
8 Arizona (“the Property”). (*Id.* at ¶ 6.)

9 On January 4, 2007, Plaintiff and Defendant entered into a second contract under  
10 which Defendant was to perform additional civil engineering services related to the  
11 Property. (*Id.* at ¶ 7.)

12 On May 18, 2010, Plaintiff filed this lawsuit in the Southern District of  
13 California alleging the following: (1) Breach of Contract; (2) Fraud; (3) Unjust  
14 Enrichment; (4) Negligence; and (5) Negligent Misrepresentation. (*Id.*) On June 17,  
15 2010, Defendant moved to dismiss Plaintiff’s claims for lack of personal jurisdiction,  
16 improper venue, and failure to state a claim.

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18 **II. LEGAL STANDARD**

19 **A. Lack of Personal Jurisdiction - Rule 12(b)(2)**

20 Rule 12(b)(2) provides that a court may dismiss a claim for “lack of jurisdiction  
21 over the person.” Fed. R. Civ. P. 12(b)(2). Although the defendant is the moving party  
22 in a motion to dismiss, the plaintiff is the party that invoked the court’s jurisdiction.  
23 Therefore, the plaintiff bears the burden of proof on the necessary jurisdictional facts.  
24 Spacey v. Burgar, 207 F.Supp.2d 1037, 1042 (C.D. Cal. 2001); Ballard v Savage, 65  
25 F.3d 1495, 1497 (9th Cir. 1995); Fields v. Sedgwick Associated Risks, Ltd., 796 F.2d  
26 299, 301 (9th Cir. 1986); Flynth Distrib. Co., Inc. v. Harvey, 734 F.2d 1389, 1392 (9th  
27 Cir. 1984).

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1           When a defendant's motion to dismiss is made as its initial response to a  
2 complaint, the plaintiff need only make a prima facie showing that personal jurisdiction  
3 exists. Motion, Inc. v. Environmental Tectonics Corporation, 196 F.Supp.2d 1051,  
4 1055 (D. Or. 2001); Myers v. Bennett Law Offices, 238 F.3d 1068, 1071 (9th Cir.  
5 2001); Data Disc., Inc. v. Sys. Technology Assoc., Inc., 557 F.2d 1280, 1285 (9th Cir.  
6 1977). In this context, a "prima facie" showing means that plaintiff has produced  
7 admissible evidence which, if believed, would be sufficient to establish the existence of  
8 personal jurisdiction. See American Tel. & Tel. Co. v. Compagnie Bruxelles Lambert,  
9 94 F.3d 586, 588 (9th Cir. 1996) (citing WNS, Inc. v. Farrow, 884 F.2d 200, 203-04  
10 (5th Cir. 1989)). The allegations contained in the affidavits and pleadings may not be  
11 merely conclusory, but rather, must assert particular facts which establish the necessary  
12 ties between the defendant and the forum state. H.M. Greenspun v. Del E. Webb  
13 Corp., 634 F.2d 1204, 1208 n.5 (9th Cir. 1980); Jazini v. Nissan Motor Co., Ltd., 148  
14 F.3d 181, 185 (2d Cir. 1998).

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16           **B. Improper Venue - Rule 12(b)(3)**

17           Rule 12(b)(3) provides that a court may dismiss a claim for improper venue. See  
18 FED. R. CIV. P. 12(b)(3). Once venue is challenged, the burden is on the plaintiff to  
19 show that venue is properly laid. Piedmont Label Co. v. Sun Garden Packing Co., 598  
20 F.2d 491, 496 (9th Cir. 1979); Bohara v. Backus Hosp. Medical Benefit Plan, 390 F.  
21 Supp. 2d 957, 960 (C.D. Cal. 2005); King v. Vesco, 342 F. Supp. 120, 125 (N.D. Cal.  
22 1972). Facts supporting venue may be established through evidence outside of the  
23 pleadings, such as affidavits or declarations. Argueta v. Banco Mexicano, S.A., 87 F.3d  
24 320, 324 (9th Cir. 1996).

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1 **III. DISCUSSION**

2 Defendant has moved to dismiss Plaintiff's complaint on three grounds: (1) lack  
3 of personal jurisdiction; (2) improper venue; and (3) failure to state a claim. The Court  
4 will only address the arguments it deemed relevant to the issuance of a disposition.

5  
6 **A. Plaintiff Has Not Made a Prima Facie Case That Personal Jurisdiction**  
7 **Exists Over Defendant**

8 As a reminder, the parties are from Nevada and Iowa. The present controversy  
9 involves a contract signed in Arizona, relating to services that would be provided in  
10 Arizona. The parties also contractually agreed that Nevada law would control this  
11 dispute. (Doc. No. 5 at Exh. A, pg. 8.) Despite these allegations, Plaintiff asserts that  
12 this Court has jurisdiction over this action by virtue of diversity of citizenship and  
13 because the amount in controversy exceeds \$75,000. (Doc. No. 1, ¶ 1.) No other  
14 mention of jurisdiction is made in the Complaint.

15 In opposition to the present motion, Plaintiff agrees that Defendant is not subject  
16 to specific personal jurisdiction in California. Instead, Plaintiff argues that Defendant  
17 is subject to general personal jurisdiction in California. The Court disagrees.

18 For this Court to impose general personal jurisdiction on a defendant, the  
19 defendant must have minimum contacts in California "such that the maintenance of the  
20 suit does not offend traditional notions of fair play and substantial justice." Int'l Shoe  
21 Co. v. Washington, 326 U.S. 310, 316 (1945). The minimum contacts requirement  
22 serves to protect defendants against the burden of having to litigate in a distant or  
23 inconvenient forum. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 291  
24 (1980). The Ninth Circuit has determined this to be an "exacting standard" because  
25 a finding of general personal jurisdiction permits a defendant to be "haled into court in  
26 the forum state to answer for any of its activities anywhere in the world."  
27 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800-801 (9th Cir. 2004).

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1 In an attempt to make its prima facie showing, Plaintiff has provided language  
2 from what is alleged to be Defendant’s website. (Doc. No. 8 at 2–3.) The website says  
3 that Defendant has completed “engagements in all 50 states.” (*Id.*) The website also  
4 appears to contain information about services Defendant has provided to California  
5 companies. (*Id.*) The excerpts from the website do not, however, indicate that  
6 Defendant had “substantial” or “continuous and systematic activities” within California.  
7 For example, the Court is unable to determine *when* Defendant performed work in  
8 California or if Defendant’s services were actually rendered *in* the state of California.

9 The Court’s inability to verify this information is especially damaging in light of  
10 the sworn declaration of Defendant’s Chief Legal Officer. He states that “Stanley does  
11 not own any facilities, have any employees... maintain any bank accounts, books, or  
12 records in California...” (*Marquard Decl.* ¶¶ 6–9.) Nor does Defendant “perform  
13 professional services that require working in the State of California.” (*Id.*)

14 In sum, the Court finds that Plaintiff has not met its burden to provide admissible  
15 evidence that is sufficient to establish the existence of personal jurisdiction. American  
16 Tel., 94 F.3d at 588. As such, the Court believes that the maintenance of this suit  
17 would “offend traditional notions of fair play and substantial justice.” Int’l Shoe Co., 326  
18 U.S. at 316.

19 Accordingly, the Court **GRANTS** Defendants’ motion to dismiss for lack of  
20 personal jurisdiction, with leave to amend.

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22 **B. The Court Doubts Plaintiff’s Choice of Venue**

23 Alternatively, even if the Court attempted to exercise personal jurisdiction over  
24 the Defendant, the Court questions whether Plaintiff’s choice of venue is proper.

25 Plaintiff specifically alleged that venue was appropriate under 28 U.S.C. §  
26 1391(a)(2) because “a substantial part of the events or omissions giving rise to the claim  
27 occurred in this judicial district.” (Doc. No. 1 ¶ 2.) Having thoroughly reviewed the  
28 Complaint, the Court is at a loss. Again, the parties contracted in Arizona, utilizing

1 Nevada law, regarding a project in Arizona. *None* of the events alleged in this lawsuit  
2 took place in the Southern District of California, let alone a ‘substantial’ portion.

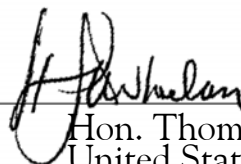
3 In opposition, Plaintiff ignores the blatant deficiencies of its own pleadings.  
4 Instead, Plaintiff cites a previously unmentioned portion of the venue statute and  
5 attempts to argue that venue is proper because there is jurisdiction over Defendant.  
6 (Doc. No. 8 at 4; citing 28 U.S.C. § 1391(c).) The Court is unimpressed. More  
7 importantly, because this Court has already determined that it does not have personal  
8 jurisdiction over the Defendant, Section 1391(c) is not applicable.

9  
10 Because the Court lacks personal jurisdiction over the Defendant, and doubts  
11 that the venue is proper, it is not necessary for the Court to address the sufficiency of  
12 the claims pled. It is also unnecessary to discuss transferring this case to either Nevada  
13 or Arizona, which the parties have discussed. (compare Doc. No. 5 at 19 with Doc. No.  
14 8 at 6.)

15  
16 **IV. CONCLUSION AND ORDER**

17 In light of the foregoing, the Court **GRANTS** Defendant’s motion to dismiss  
18 **WITH LEAVE TO AMEND**. Should the Plaintiff choose to file a First Amended  
19 Complaint in this district, as opposed to another district with fewer jurisdiction and  
20 venue problems, it must be filed **on or before August 23, 2010.**

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22  
23 DATED: August 3, 2010

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26 Hon. Thomas J. Whelan  
27 United States District Judge  
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