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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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MJG Enterprises, Inc.,

) No. CV-10-0086-PHX-MHM

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Plaintiff,

) **ORDER**

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vs.

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GLEN CLOYD, an individual; NATE M. DEN BLEYKER, an individual; GIBRALTAR FINANCIAL GROUP, INC., a Colorado corporation; JOHN P. JOHNSON, an individual; J. JOHNSON CONSULTING, LLC, a Colorado limited liability company; KIM ELAINE McCREIGHT and JOHN DOE McCREIGHT, wife and husband; CALCOUNTIES TITLE NATION COMPANY, a California corporation f/d/b/a CALIFORNIA COUNTIES TITLE COMPANY; THOMAS MATTHEW NANTAIS and JANE DOE NANTAIS, husband and wife; GAYLORD & NANTAIS, a California entity; PETER JACK RIMEL and JANE DOE RIMEL, husband and wife; RIMEL & NICHOLS, LLP, a California limited liability partnership; ANTHONY TODD WHITEHEAD, an individual; DOES 1-10; ABC BUSINESS ENTITIES 1-10,

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Defendants.

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Currently before the Court are three Motions to Dismiss MJG Enterprises, Inc.’s

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Amended Complaint for lack of personal jurisdiction pursuant to Rule 12(b)(2) of the Federal

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Rules of Civil Procedure filed on behalf of (1) Peter J. Rimel, Kimberly A. Rimel, and Rimel

1 & Nichols, LLP (Doc. 20); (2) Nate M. Den Bleyker, Gibraltar Financial Group, Inc., John  
2 P. Johnson, and J. Johnson Consulting, LLC (Doc. 22); and (3) Glen Cloyd (Doc. 27). Also  
3 before the Court is Plaintiff's Motion to Strike Parts of Defendants Nate M. Den Bleyker,  
4 Gibraltar Financial Group, Inc., John P. Johnson, and J. Johnson Consulting, LLC's Reply  
5 in Support of Motion to Dismiss. (Doc. 38). Having determined that oral argument is  
6 unnecessary, the Court issues the following order.

7 **I. BACKGROUND**

8 **A. Procedural History**

9 In December 2009, Plaintiff filed its First Amended Complaint ("FAC") against  
10 Defendants Glen Cloyd, Nate M. Den Bleyker, Gibraltar Financial Group, Inc., John P.  
11 Johnson, J. Johnson Consulting, LLC, Kim Elaine McCreight and Joe Doe McCreight,  
12 CalCounties Title Nation Company, Thomas Matthew Nantais and Jane Doe Nantais,  
13 Gaylord & Nantais, Peter Jack Rimel and Jane Doe Rimel, Rimel & Nichols, LLP, Anthony  
14 Todd Whitehead, Does 1-10, and ABC Business Entities 1-10 in the Maricopa County  
15 Superior Court in the State of Arizona. (Doc. 5). In the FAC, Plaintiffs bring twenty-four  
16 counts against Defendants, either individually or collectively, including: Sale of Unregistered  
17 Securities; Transactions by Unregistered Dealers or Salesmen; Securities Fraud; Investment  
18 Advisory Services Fraud; Common Law Fraud/Constructive Fraud; Fraud in the Inducement;  
19 Fraudulent Concealment; Consumer Fraud; Civil Conspiracy; Fraudulent Transfer and  
20 Conveyance; Conversion; Negligent Misrepresentation; Negligence; Pattern of Unlawful  
21 Activity; Breach of Contract; Breach of Implied Covenant of Good Faith and Fair Dealing;  
22 Breach of Fiduciary Duty; and Aiding and Abetting Breach of Fiduciary Duty; among  
23 others. (Doc. 5). In January 2010, Defendants removed this case from Maricopa County  
24 Superior Court. (Doc. 1).

25 On January 26, 2010, Defendants Peter Rimel, Kimberly Rimel and Rimel & Nichols,  
26 LLP, filed the instant Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 20). Plaintiff  
27 responded on March 1, 2010, (Doc. 31), and this motion became fully briefed on March 10,  
28 2010. (Doc. 35). On January 26, 2010, Defendants Nate N. Den Bleyker, Gibraltar

1 Financial Group, Inc., John P. Johnson, and J. Johnson Consulting LLC filed the instant  
2 Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 22). Plaintiff responded on March 1,  
3 2010, (Doc. 32), and the motion became fully briefed on March 19, 2010. (Doc. 36).  
4 Finally, on February 5, 2010, Defendant Glen Cloyd, appearing pro se, filed the instant  
5 Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 30). Plaintiff responded on March 8,  
6 2010, (Doc. 34), and the motion became fully briefed on March 8, 2010. (Doc. 34).

7 **B. Factual Background**

8 Plaintiffs' allegations of material fact are assumed to be true and are construed in the  
9 light most favorable to them. See Cousins v. Lockyer, 568 F.3d 1063, 1067 (9th Cir. 2009).

10 MJG Enterprises, Inc. (“Plaintiff”/“MJG”) is an Arizona corporation with its principal  
11 place of business in Phoenix, Arizona. (Doc. 5). Marguerite Gerhart is President of MJG’s  
12 President, but her husband, Anthony Mark Boscarino, manages MJG’s day-to-day activities.  
13 (Id.). At all relevant times, Boscarino and Gerhart resided in, and managed MJG from,  
14 Arizona. Generally speaking, Plaintiff alleges that the Defendants participated in a scheme  
15 meant to elicit Plaintiff’s participation in a collateralized mortgage obligation (“CMO”)  
16 investment. (Doc. 5). CMOs are a type of mortgage-backed security, and are bonds that  
17 represent claims to specific cash flows from large pools of home mortgages.” U.S. Sec. &  
18 Exch. Comm’n, Collateralized Mortgage Obligations, <http://www.sec.gov/answers/tcmos.htm>  
19 (last updated June 25, 2007).

20 Specifically, Plaintiff alleges that in early November 2008, Boscarino was  
21 approached about the possibility of investing in CMOs by Defendant Anthony Todd  
22 Whitehead. Subsequently, Whitehead flew to Arizona and met with Boscarino to discuss the  
23 CMO investment opportunity. (Id. at 6, ¶20). During these discussions, Whitehead  
24 introduced Boscarino to Defendant Thomas Matthew Nantais, a California licensed attorney,  
25 who assured Boscarino that CBOs were a worthwhile investment. (Id. ¶21). Some time  
26 later, Nantais formed, or was supposed to form, ATM Enterprises, LLC (“ATM”) to govern  
27 compensation for the CMO investment between Whitehead, Nantais, and Boscarino. (Id.  
28 ¶22). Nantais also acted as legal counsel for ATM. (Id. ¶23).

1 Defendant Den Bleyker, on behalf of himself and Defendant Gibraltar Financial  
2 Group, Inc., and Defendant John P. Johnson, on behalf of himself and Defendant J. Johnson  
3 Consulting, LLC, brokered the CMO investment deal under the Gibraltar Financial Group,  
4 Inc. name. As the brokers, Den Bleyker and Johnson put together the buyers and sellers of  
5 the CMO. (Id. ¶24). Defendant Peter Rimel, on behalf of himself and Rimel & Nicholas,  
6 LLP, was the trade desk associate or trader liaison for the CMO investment, and in this  
7 capacity acted as an intermediary between Cloyd and Den Bleyker, Nantais, Whitehead, and  
8 Boscarino. (Id. ¶25). Rimel and Cloyd were introduced to Boscarino as partners. (Id.  
9 ¶26). Rimel and Cloyd selected Defendant CalCounties Title Nation Company to act as the  
10 escrow company for the CMO investment, as they had allegedly used the company on a  
11 regular basis in the past. (Id. ¶28). Defendant Kim Elaine McCreight was an escrow officer  
12 at CalCounties Title Nation Company. (Id. ¶29).

13 At some point in time, Johnson drafted a Master Fee Agreement (“MFA”) between  
14 ATM and Gibraltar Financial group, Inc., and Michael Beans (a consultant). The MFA set  
15 forth the manner in which proceeds from the sale of the CMO would be divided amongst the  
16 Parties, with “Gibraltar Financial Group, INC; Peter Rimel, Esquire; and Michael Beans agree  
17 to a 60%;25%;10%;5% split on a first in first out basis, meaning ATM will receive the first  
18 return of \$1,000,000.00 USD (One Million United states Dollars) before any commission  
19 split with all other Parties and/or assignees. After ATM receives the initial first One Million  
20 United States Dollars, the Parties agree to split the remaining balance on a 60%; 25%; 10%;  
21 5% basis into their separate accounts as described below.” (Id. ¶34). Plaintiff also alleges  
22 that Johnson drafted the “Gibraltar-Escrow Depository” document, which set forth rules to  
23 govern the escrow account. (Id. ¶35).

24 On February 17, 2009, Den Bleyker sent an email to McCreight advising her that  
25 Boscarino, on behalf of Plaintiff, wished to open an escrow for one million dollars, and asked  
26 McCreight to provide Boscarino and Nantais with instructions on how to wire the money to  
27 the escrow account. (Id. ¶36). Shortly thereafter, McCreight replied to Den Bleyker’s email,  
28 sending the requested wire instructions. On February 18, Plaintiff wired one million dollars

1 from its Desert School Bank Account, in Arizona, to Bank of America in Costa Mesa. (Id.  
2 ¶38). Soon thereafter, Boscarino became concerned about the CMO investment and retracted  
3 the wire transfer, causing one million dollars to be returned to MJG Enterprises. According  
4 to Plaintiffs, however, Defendants talked Boscarino back into investing, advising him that  
5 that it was not possible for Plaintiff to lose its investment funds. On February 23, 2009,  
6 Rimel sent Boscarino an email, copied to Nantais, Den Bleyker, Whitehead, and Cloyd,  
7 describing how the CMO investment works and stating that the CMO investment “should  
8 generate 2,000,000.00 to 2,500,000 a week profit for 40 weeks some weeks might be larger  
9 but they guarantee this amount.” (Id. ¶41). In two other emails sent that same day, Rimel  
10 made further guarantees about the profitability of the CMO investment, including that  
11 “nobody will take one dime of profit until you receive your initial \$1,000,000,” and “WE  
12 WILL NOT PURCHASE A BOND THAT WILL SUFFER A LOSS.” (Id. ¶43–44). Rimel  
13 went onto assure Boscarino that “your money is safe and secure with Cal Counties Escrow,”  
14 and explained that the bonds Rimel wanted to purchase were “very secure.” (Id. ¶45).

15 On February 24, 2009, Rimel advised Boscarino of a potential deal to purchase a bond  
16 for \$1 million dollars, then sell it immediately for \$1.8 million. Rimel once again provided  
17 Boscarino with escrow instructions via an emails copied to Nantais, Den Bleyker,  
18 Whitehead, and Cloyd. In that email, Rimel asked Boscarino to wire \$1.3 million to  
19 purchase a CMO bond, advising that “unlike the other escrow, this will go into a  
20 transactional escrow that we will pull the trigger on when we have an acceptable bond. Then  
21 its game on!!!”, and once again explaining how the CMO investment was likely to generate  
22 funds for the investors and was a low risk deal. (Id. ¶51–52). On March 11, 2009, in  
23 anticipation of the CMO investment, ATM and Gibraltar Financial Group entered into a Joint  
24 Venture Agreement, which set forth the various obligations of the parties with respect to the  
25 CMO purchase, including the distribution of the profits. (Id. ¶55–59). Also on March 11,  
26 2009, Rimel sent another email further explaining the CMO purchase and its likelihood of  
27 generating profits. (Id. ¶60–64).

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1           On March 11, Boscarino also received Holding Escrow Instructions, which provided  
2 that: “California Counties title Company agrees to act as Escrow and Holding Agent for this  
3 Transaction, where the responsibility of escrow shall be to hold funds for MJG Enterprises,  
4 Inc., and Arizona Corporation (“Holding Party”).” (Id. ¶66). That same day, MJG wired  
5 \$1.3 million dollars from its Desert Schools bank account to the Bank of America account  
6 in Costa Mesa, California for Escrow KS -117. (Id. ¶67). Once again, Boscarino became  
7 concerned about the CMO investment and tried to retract the second wire, but was convinced  
8 not do so by McCreight, who personally vouched for Cloyd’s business acumen and ethics.  
9 (Id. ¶68–69). This reassurance caused Boscarino to cancel his request for return of the wired  
10 funds, which he did in conjunction with Gerhart, and on behalf of MJG. (Id. ¶70). This  
11 decision was memorialized in “Amendment to Escrow Instructions,” which contained a  
12 section entitled “Authorization to Wire,” and provided that the \$1.3 million would be utilized  
13 to purchase a CMO bond from JPMorgan Chase, but that the funds “would not be released  
14 for the purchase of the CMO under any circumstances without holding party’s explicit  
15 written and executed instructions. (Id. ¶72-75).

16           Plaintiff, upon information and belief, alleges that someone executed another  
17 Amendment to Escrow Instructions, which was dated March 13, 2009 and signed with Ms.  
18 Marguerite Gerhart's forged signature, and caused the \$1.3 million to be distributed to Fifth  
19 Third Bank in the amount of \$1,175,000, Noah Management Company in the amount of  
20 \$99,980, and Cadence Hill, Inc. in the amount of \$25,000; not to JP Morgan Chase in the full  
21 amount of \$1,300,000 as provided in the March 11, 2009 Amendment to Escrow Instructions.  
22 (Id. ¶76-77). On March 19, 2009, Rimel sent Boscarino an email with an update on the  
23 CMO investment, informing Boscarino that Cloyd “[was] negotiating the price of a top notch  
24 commercial AAA bond with no back end default ratio" that pays out at a confirmed "2% of  
25 face per week," and that four parties were interested in purchasing the bond.” (Id. ¶82).  
26 The next day, Cloyd sent Rimel a screen shot of a JP Morgan Chase Bond, which Rimel  
27 forwarded to Boscarino, Nantais, Whitehead, and Den Bleyker. (Id. ¶83). On March 23,  
28 2009, Rimel informed Boscarino, along with Defendants Nantais, Whitehead, and Den

1 Bleyker, that they “were outbid on the bid I screened to you Friday,” but advised the group  
2 not to worry because Cloyd “found a better one, a JP Morgan commercial AAA bond.” (Id.  
3 ¶84–85).

4 Eventually, on March 24, 2009, Rimel sent an email to Boscarino that a CMO had  
5 been purchased with a face value of approximately \$1.1 million, and that a buyer may have  
6 been located who was willing to purchase the CMO for \$2.75 million. (Id. ¶90). Over the  
7 course of the next week, Rimel sent emails to Boscarino, Whitehead, Nantais, Johnson, and  
8 Den Bleyker informing them about progress being made towards selling the CMO. (Id. ¶90-  
9 97). On March 31, in an email to Boscarino, copied to Whitehead, Nantais, Johnson, and  
10 Den Bleyker, Rimel informed Boscarino that within a couple of days MJG would receive  
11 \$2.3 million, less escrow fees, into its escrow account at CalCounties. (Id. ¶103). The email  
12 attached a “trade ticket” for the purchased CMO bond, which appeared to show that the  
13 CMO was actually not purchased or held in Plaintiffs name, but was purchased by a Thomas  
14 C. Cooper of San Diego, California and was being held in an Oppenheimer brokerage  
15 account for a trust known as the Norema CG Trust. At this point, Whitehead expressed  
16 concern about who actually owned the bond, but was assured by Rimel that the investment  
17 group had control over the bond. (Id. at ¶106). On April 1, 2009, Rimel advised Boscarino,  
18 along with Whitehead, Nantais, Den Bleyker, Rimel, and Cloyd, that the \$2.3 million  
19 expected to be in escrow that day had not been put in escrow “because the brokers on [the  
20 buyer’s] side wanted a whole bunch of agreements prepared and signed. This had held the  
21 matter up all day, I am told. Certainly, neither Glen nor I are signing any agreements with  
22 these folks.” (Id. ¶108). They are still in the hunt, but we are seeking other potential  
23 parties.” That same day, Rimel propositioned Boscarino concerning another CMO-bond  
24 investment opportunity. (Id. ¶109). On April 3, Rimel informed Boscarino via email that  
25 contracts with a buyer had been signed and money would soon be placed in an escrow  
26 account. (Id. at ¶113). On April 8, 2009, MJG and Johnson Consulting, LLC entered into  
27 a Joint Venture Agreement, “for the purpose of establishing an Asset Management  
28 Agreement with a responsible and licensed Security Trader capable of evaluating and placing

1 value on the financial instruments presented to Trader as well as cash. In addition, the Parties  
2 agree to investigate and share in other opportunities and/or programs that are the result of the  
3 direct and indirect introduction by the Second Party [J. Johnson Consulting, LLC].” (Id. at  
4 ¶114).

5 To date, MJG alleges that it has never received an accounting or return of its  
6 investment funds. (Id. at ¶117). And, upon information and belief, MJG alleges that the  
7 purchased CMO bond was purchased by and is currently being held in the name of Thomas  
8 Charles Cooper, as Trustee of the Norema CO Trust, in Oppenheimer Account No.  
9 2996-3667.

## 10 **II. STANDARD OF REVIEW**

11 To establish personal jurisdiction, the plaintiff must show that: (1) the forum state’s  
12 long arm statute confers jurisdiction over the non-resident defendant and (2) the exercise of  
13 jurisdiction comports with the principles of due process. Omeluk v. Langsten Slip &  
14 Batbyggeri A/S, 52 F.3d 267, 269 (9th Cir. 1995). Arizona’s long arm statute confers  
15 jurisdiction to the maximum extent allowed by the Due Process Clause of the United States  
16 Constitution. ARIZ. R. CIV. P. 4.2(A); Doe v. Am. Nat’l Red Cross, 112 F.3d 1048, 1050  
17 (9th Cir. 1997). Therefore, the issue before the Court is whether the exercise of jurisdiction  
18 over Defendants accords with due process. See Omeluk, 52 F.3d at 269.

19 The Due Process Clause requires that a nonresident defendant have “certain  
20 minimum contacts with [the forum] such that the maintenance of the suit does not offend  
21 ‘traditional notions of fair play and substantial justice.’” Int’l Shoe Co. v. Washington, 326  
22 U.S. 310, 316 (1945) (internal citation omitted). There are two types of personal jurisdiction:  
23 general and specific. Perkins v. Benquet Consol. Mining, Co., 342 U.S. 437, 445 (1952).  
24 General jurisdiction exists where a non-resident defendant engages in substantial, continuous  
25 or systematic activities within the forum. Id. When a court has general jurisdiction over a  
26 defendant, the defendant may be hailed into that court for any claim, even one that does not  
27 arise from the defendant’s contacts with that jurisdiction. See Helicopteros Nacionales de  
28 Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984). However, when a defendant’s contact



1 with the forum does not rise to the level required for general jurisdiction, a court may have  
2 specific jurisdiction over a claim when the claim arises from the defendant's activities within  
3 that forum. Shute v. Carnival Cruise Lines, 897 F.2d 377, 381 (9th Cir. 1990), *rev'd on other*  
4 *grounds*, 499 U.S. 585, 111 S. Ct. 1522 (1991).

5 Where an evidentiary hearing is not held, dismissal for lack of personal jurisdiction  
6 is appropriate only if the plaintiff has not made a *prima facie* showing of personal  
7 jurisdiction. Fields v. Sedgwick Associated Risks, Ltd., 796 F.2d 299, 300 (9th Cir. 1986).  
8 "Uncontroverted allegations in [the plaintiff's] complaint must be taken as true, and conflicts  
9 between the facts contained in the parties' affidavits must be resolved in [the plaintiff's]  
10 favor for purposes of deciding whether a *prima facie* case for personal jurisdiction exists."  
11 Am. Telephone & Telegraph Co. v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th  
12 Cir. 1996) (citing WNS, Inc. v. Farrow, 884 F.2d 200, 203 (5th Cir. 1989)). However, a  
13 court may not assume the truth of allegations in a pleading that are contradicted by affidavit.  
14 Data Disc., Inc. v. Systems Tech. Assoc., 557 F.2d 1280, 1284 (9th Cir. 1977). If the  
15 plaintiff is able to meet its *prima facie* burden, the movant can nevertheless continue to  
16 challenge personal jurisdiction either at a pretrial evidentiary hearing or at trial itself.  
17 Metropolitan Life Ins. Co. v. Neaves, 912 F.2d 1062, 1064, n.1 (9th Cir. 1990).

### 18 **III. THE PARTIES' MOTIONS TO DISMISS:**

19 The arguments presented in the three motions to dismiss that have been filed in this  
20 case are similar, based on the same set of operative facts, and subject to the same legal  
21 standard. Accordingly, to the greatest extent possible, the Court will consider them  
22 simultaneously, instead of conducting three individual evaluations. However, where  
23 individualized analysis is required, it will of course be provided.

24 In response to all three motions to dismiss, Plaintiff concedes that this Court does not  
25 have general jurisdiction over the Defendants. Instead, Plaintiff argues that this Court has  
26 specific jurisdiction. Specific jurisdiction exists where the cause of action arises out of the  
27 defendant's activities in the forum state. Shute, 897 F.2d at 381. The Ninth Circuit utilizes  
28 a three-prong test to evaluate the nature and quality of defendant's contacts for purposes of

1 specific jurisdiction; the test provides: (1) the non-resident defendant must do some act or  
2 consummate some transaction with the forum or perform some act by which he purposefully  
3 avails himself of the privilege of conducting activities in the form, thereby invoking the  
4 benefits and protections; (2) the claim must be one which arises out of or results from the  
5 defendant's forum related activities; and (3) exercise of the jurisdiction must be reasonable.

6 EDIAS Software Intern., LLC v. BASIS Intern. Ltd., 947 F. Supp. 413, 417 (D. Ariz. 1996).

7 All three factors must exist for personal jurisdiction to apply. Omeluk v. Langsten Slip &  
8 Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir. 1995).

9 **A. Purposeful Availment**

10 The Ninth Circuit has typically treated purposeful availment somewhat differently in  
11 intentional tort cases. Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433  
12 F.3d 1199, 1206 (9th Cir. 2006). In intentional tort cases, courts inquire whether a defendant  
13 purposefully directs his activities at the forum state, applying an "effects test", which focuses  
14 on the forum in which the defendant's actions were felt, whether or not the actions  
15 themselves occurred within the forum. Id. (quotations added); Holland America Line Inc.  
16 v. Wartsila North America, Inc., 485 F.3d 450, 460 (9th Cir. 2007) ("It is well established  
17 that the [effects] test applies only to intentional torts, not to . . . breach of contract and  
18 negligence claims."). By contrast, with all other types of claims (or at least those that do  
19 not involve wrongful targeting), the Ninth Circuit typically inquires whether a defendant  
20 "purposefully avails itself of the privilege of conducting activities" or "consummate[s] [a]  
21 transaction" in the forum, focusing on activities such as delivering goods or executing a  
22 contract." See Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir. 2004).  
23 For its *prima facie* showing of personal jurisdiction Plaintiff relies on the allegations set forth  
24 in its FAC, its responses to Defendants' various Motions to Dismiss, as well as supporting  
25 exhibits and affidavits. (Docs. 5 & 34). As Plaintiff asserts intentional torts claims and other  
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27  
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1 types of claims against each of these Defendants, the Court will analyze personal jurisdiction  
2 under both the purposeful-direction and purposeful-avilment standards.<sup>1</sup>

3 **1. Purposeful Direction (the effects test)**

4 When confronted with a claim in tort the court must “inquire whether a defendant  
5 ‘purposefully directed his activities’ at the forum state, applying an effects test that focuses  
6 on the forum in which the defendants’ actions were felt.” Id. To satisfy the effects test, a  
7 defendant must have: “(1) committed an intentional act, (2) expressly aimed at the forum  
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9  
10 <sup>1</sup> Before addressing the purposeful avilment test, the Court must address Plaintiff’s  
11 Motion to Strike Parts of Defendants Den Bleyker and Johnson’s Reply in Support of their  
12 Motion to Dismiss pursuant to Local Rule 7.2(m)(1). LRCiv 7.2(m)(1). (Doc. 38). Plaintiff  
13 moves the Court to strike Defendants’ citations to Holland v. Hurley, 221 Ariz. 552 (Ct. App.  
14 2009) as the case was de-published three months prior to Defendants filing their Reply in  
15 support of their Motion to Dismiss. (Doc. 36). As a de-published opinion has no  
16 precedential effect and cannot be cited as authority in any court, FDIC v. Adams, 187 Ariz.  
17 585, 593 (Ct. App. 1996), the Court grants Plaintiffs Motion to Strike Defendants’ citations  
18 to Holland from their Reply.

19 Next, Plaintiff seeks to strike new arguments raised by Defendants in their Reply in  
20 Support to their Motion to Dismiss which Plaintiff asserts were not previously raised. (Doc.  
21 38). Specifically, Plaintiff alleges that Defendants argued for the first time in their Reply that  
22 the Court does not have jurisdiction over Defendants because the Joint Venture Agreement  
23 dated March 11, 2009 had a forum selection clause that required the parties to arbitrate any  
24 claims or disputes arising from the JVA in California. (Doc. 38). Plaintiff also asserts that  
25 Defendant argued for the first time in their Reply that Plaintiff lacks standing to assert claims  
26 against Defendants. (Id.). Finally, Plaintiff claims that Defendants referenced and attached  
27 to their Reply new evidence: an email from Plaintiff’s representative, Boscarino to  
28 Defendant John Johnson. (Id.).

29 The Ninth Circuit has consistently held that where new arguments and new evidence  
30 is submitted for the first time in a reply brief, the arguments and evidence may be stricken.  
31 See Cedano-Viera v. Ashcroft, 324 F.3d 1062, 1066 n.5 (9th Cir. 2003) (declining to  
32 consider new issues raised for the first time in a reply brief) (citing Thompson v.  
33 Commissioner, 631 F.2d 642, 649 (9th Cir. 1980)); United States v. Wright, 215 F.3d 1020,  
34 1030 n.3 (9th Cir. 2000) (declining to consider an argument raised for the first time in reply  
35 brief); Provenz v. Miller, 102 F.3d 1478, 1483 (9th Cir. 1996) (finding that a court may  
36 refuse to consider new evidence submitted with a reply brief). As Defendants arguments  
37 and evidence were raised for the first time in Defendant’s reply brief and Plaintiff did not  
38 have the opportunity to respond to them, the Court will strike these parts of Defendants’  
Reply.

1 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”  
2 Id. Under this test, a defendant need not have had physical contact with the forum state for  
3 a court to exercise its jurisdiction. Brainerd v. Governors of the University of Alberta, 873  
4 F.2d 1257, 1260 (9th Cir. 1989).

5 The first prong of the test requires the Court to find that Defendant committed an  
6 intentional act. “‘Intent’ in the context of the ‘intentional act’ test refer[s] to an intent to  
7 perform an actual physical act in the real world, rather than an intent to accomplish a result  
8 or consequence of that act.” Schwarzenegger, 374 F.3d at 806. An “‘act’ refers to an  
9 external manifestation of the actor’s will.” Id. (quoting The Restatement (Second) of Torts  
10 § 2 (1964)). Plaintiff has alleged that all Defendants participated in and played a role in a  
11 scheme meant to defraud it of its investment funds. In its Complaint, Plaintiff has set forth  
12 facts which demonstrate that each Defendant has completed an intentional act in service of  
13 that scheme. Rimel sent numerous emails to Boscarino that contained allegedly fraudulent  
14 promises of financial success with respect to the proposed CMO investment and that detailed  
15 Cloyd’s attempts to purchase the CMO and, after it had been bought, to sell it. Such emails  
16 are sufficient to satisfy the intentional acts prong of the effects test. Schwarzenegger, 374  
17 F.3d at 806 (holding that placing an add in a local newspaper constituted an intentional act);  
18 Bancroft & Masters, Inc. v. Augusta Nat’l, Inc., 223 F.3d 1082, 1088 (9th Cir.2000) (finding  
19 that the sending of a demand letter constituted an intentional act). Cloyd, for his part,  
20 committed intentional acts by negotiating and facilitating the purchase of the JP Morgan  
21 Bond, and by providing Rimel with the information about his actions (information that was  
22 conveyed in Rimel’s emails). See Calder v. Jones, 465 U.S. 783, 789 (1984) (finding the  
23 researching, writing, editing, and publishing of an allegedly libelous article is an intentional  
24 act). Finally, the Court finds that Defendants Den Bleyker and Johnson (collectively the  
25 “Colorado Defendants”) also committed intentional acts. It is alleged that Defendant  
26 Johnson drafted the MFA that governed distribution of proceeds from the sale of the CMO.  
27 Additionally, it is alleged that Den Bleyker asked McCreight to provide Boscarino and  
28

1 Nantais with instructions on how to wire the money to the escrow account. Finally, it is  
2 alleged that Gibraltar Capital, on behalf of the Colorado Defendants, entered into the MFA.

3 Having found that each Defendant satisfied the first prong of the purposeful direction  
4 test, the Court turns to the second: whether Defendants actions were expressly aimed at the  
5 forum state. The “express aiming” requirement is met when “the defendant is alleged to have  
6 engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a  
7 resident of the forum state.” Bancroft & Masters, 223 F.3d at 1087. Acts that have merely  
8 foreseeable effects in the forum state are insufficient. Id. All of the Defendants allege either  
9 or both that they were unaware that Boscarino was from Arizona and that he represented  
10 MJG, an Arizona corporation. Any such argument is completely unpersuasive with respect  
11 to Rimel and Cloyd. First, Plaintiff has alleged that Rimel and Cloyd were both aware that  
12 Boscarino was working on behalf of Plaintiff, an Arizona corporation. Neither Rimel or  
13 Cloyd have produced evidence demonstrating they did not possess this knowledge. And, to  
14 the contrary, circumstantial evidence in the record suggests that they did. The “Holding  
15 Escrow Instructions” provided to Boscarino on March 11, 2009, specifically stated that  
16 California Counties title Company was to “hold funds for MJG Enterprises, Inc., An Arizona  
17 Corporation (“Holding Party”) and release or disburse said funds upon receipt of written and  
18 executed instructions from said Holding Party.” The fact that Plaintiff was specifically  
19 named belies any claims that either Rimel or Cloyd, both of whom appear to have been  
20 directly involved with using the funds provided by ATM to purchase the CMO, were  
21 unaware that Boscarino represented MJG and that MJG, not Boscarino, was ATM’s primary  
22 financial backer. Additionally, the Court strongly doubts that the March 11 escrow  
23 instructions were the first time Cloyd or Rimel would have been aware of that fact.  
24 Accordingly, the Court finds that the alleged misrepresentations and steps taken in service  
25 of those misrepresentations by Cloyd and Rimel satisfy the express aiming requirement.

26 Likewise, the Court is also dubious of the Colorado Defendants assertion that they  
27 were not aware that Boscarino was both an Arizona resident and a representative of an  
28 Arizona Company. The Colorado Defendants argue that Boscarino’s affidavit statement that

1 he was not “secretive” about his representation of MJG falls short of demonstrating their  
2 actual knowledge of that fact. This Court disagrees. The clear implication of Boscarino’s  
3 statement is that Den Bleyker and Johnson were aware of his connection to MJG. And  
4 notably, the Colorado Defendants do not make an outright denial with respect to their actual  
5 knowledge. Other facts also lead this Court to conclude, at least at this juncture, that the  
6 Colorado Defendants were aware that Boscarino represented an MJG. First, they admit  
7 learning of Boscarino’s existence, that he was a party to the joint venture, and the primary  
8 financial backer for ATM by February 17, 2009, well before the CMO was purchased. (Doc.  
9 22, p. 2). Given Boscarino’s affidavit and the fact that MJG’s name was used with respect  
10 to the wire transfers, the Court finds it unlikely that the Colorado Defendants did not also  
11 discover that Boscarino represented MJG. Indeed, with respect to Johnson and Johnson  
12 Consulting LLC, they entered into a separate JVA agreement with MJG on April 8, 2009,  
13 which strongly suggests they were aware of MJG’s involvement prior to that date. Thus,  
14 although it is plausible that the Colorado Defendants only learned of MJG’s involvement and  
15 were not therefore specifically targeting Arizona when they entered into the MFA and First  
16 Joint Venture Agreement, their continued participation in the alleged scam satisfies the  
17 express aiming requirement. See, e.g., Dole Food Co., Inc. v. Watts, 303 F.3d 1104, 1112  
18 (9th Cir. 2002) (“Because Watts and Boenneken knew that Dole’s principal place of business  
19 was in California, knew that the decisionmakers for Dole were located in California, and  
20 communicated directly with those California decisionmakers, we conclude that their actions  
21 were “expressly aimed” at the forum state.”).

22 Finally, the Court turns to the third prong of the effects test, which asks if a defendant’s  
23 intentional action aimed at the forum state caused harm that the defendant knew was likely  
24 to be suffered in the forum. “[W]hen a forum in which a plaintiff corporation has its  
25 principal place of business is in the same forum toward which defendants expressly aim their  
26 acts, the “effects” test permits that forum to exercise personal jurisdiction”. Dole, 303 F.3d  
27 at 1114. In other words, when the Plaintiff’s principal place of business is located in the  
28 same forum at which the defendant aimed his intentional acts, the Court may find that a

1 defendant knew harm was likely to be suffered in the forum state. See Id. The Court has  
2 already found that all of the Defendants aimed their conduct at Arizona, which is the  
3 principal place of business of Plaintiff MJG. Accordingly, the effects test is satisfied if  
4 Plaintiffs have alleged harm, which they have; the loss of their investment funds.

5 Consequently, the Court finds that all of the Defendants purposefully directed their  
6 alleged fraudulent conduct at Arizona, satisfying the first prong of the minimum-contacts  
7 test.

## 8 **2. Purposeful Availment**

9 The Court turns next to the more traditional of the minimum contacts test: purposeful  
10 availment. The purposeful availment standard is meant to determine whether “the  
11 defendant’s conduct and connection with the forum State are such that he should reasonably  
12 anticipate being haled into court there.” World-Wide Volkswagen v. Woodson, 444 U.S.  
13 286, 297, 100 S. Ct. 559 (1980). And, it “is based on the presumption that it is reasonable  
14 to require a defendant who conducts business and benefits from his activities in a state to be  
15 subject to the burden of litigating in that state as well.” Brainerd v. Governors of the  
16 University of Alberta, 873 F.2d 1257, 1259 (9th Cir. 1989). Even if a defendant has not  
17 maintained a physical presence in a forum state, that state may still exercise specific  
18 jurisdiction over him. Id. Instead, the test focuses more on the actions of the defendants:

19 [W]here the defendant ‘deliberately’ has engaged in significant activities  
20 within a State, or has created ‘continuing obligations’ between himself and  
21 residents of the forum, he manifestly has availed himself of the privilege of  
22 conducting business there, and because his activities are shielded by ‘the  
benefits and protections’ of the forum’s laws it is presumptively not  
unreasonable to require him to submit to the burdens of litigation in that  
forum as well.

23 Burger King Corp. v. Rudzewicz, 471 U.S. 462, 475-476 (1985) (internal citations omitted).

24 “Nevertheless, a defendant may not be haled into a jurisdiction as the result of random,  
25 fortuitous or attenuated contacts or based upon the unilateral acts of third parties.” Keeton  
26 v. Hustler Magazine, Inc., 465 U.S. at 774.

27 None of the Defendants whose motions the Court now considers are residents of  
28 Arizona, none are alleged to have visited Arizona. All business, including the execution of

1 the various agreements by these Defendants, appears to have been conducted in Colorado and  
2 California, and Defendants have not delivered any goods to Arizona. In short, none of these  
3 Defendants can be said to have engaged in significant activities within the state of Arizona.  
4 Instead, the question this Court must consider is whether Defendants' actions created a  
5 continuing obligation between themselves and MJG, such that they can be said to have  
6 availed themselves of conducting business in Arizona.

7         Answering this inquiry in the affirmative is problematic, as neither MJG nor its  
8 representative, Boscarino, were Parties to the MFA. Instead, ATM was a party to both  
9 agreements. Therefore, any continuing obligations stemming from the MFA were, by the  
10 MFA's own terms, between ATM, Gibraltar Financial Group, and Peter Rimel. Likewise,  
11 neither MJG nor Boscarino were Parties to the March 11 JVA, which set forth the various  
12 obligations of the Parties in the CMO purchasing plan. The "Parties" to that agreement were  
13 ATM and Gibraltar, and, therefore, any continuing obligations stemming from the JVA did  
14 not specifically involve MJG. In sum, it appears that to the extent Defendants had continuing  
15 obligations, they were to ATM, corporate entity of unknown origins that is not a Plaintiff in  
16 this case.

17         Because under the JVA and MFA Defendants did not have any continuing obligations  
18 to Plaintiff, the Court cannot conclude that they should reasonably have anticipated being  
19 hauled into Court in the forum where Plaintiff is incorporated. Given this fact, the Court is  
20 also unwilling to find that the email and communications by Defendants to Boscarino, a  
21 member of ATM and Arizona resident, are sufficient to establish purposeful availment absent  
22 such a continuing obligation See e.g. Brainerd, 873 F.2d at 729 (declining to find purposeful  
23 availment test met where alleged contacts consisted of communications between individuals  
24 at two universities, and the defendant did not otherwise conduct business in the proposed  
25 forum state); see also Scullin Steel Co. v. National Ry. Utilization Corp., 676 F.2d 309, 314  
26 (8th Cir. 1982) ("The use of interstate facilities (telephone, the mail) . . . are secondary or  
27 ancillary factors and cannot alone provide the "minimum contacts" required by due  
28 process.").



1 Unlike the other Defendants, however, Defendants Johnson and Johnson Consulting  
2 LLC (“Johnson Defendants”) did enter into a contract with MJG (as opposed to ATM); the  
3 April 8 JVA. The Johnson Defendants argue that this contract is not sufficient to  
4 demonstrate purposeful availment because: (1) no business was ever conducted under the  
5 April 8 JVA; and (2) the Parties entered into the April 8 JVA after the money provided by  
6 MJG had already been used to purchase the CMO bond pursuant to the March 13, 2009  
7 Amendment to Escrow Instructions. In support of the latter position, the Johnson Defendants  
8 cite Williams v. Lakeview Co., for the proposition that “a nexus [must] exist between  
9 a defendant's activities in the forum state and a plaintiff's cause of action.” 199 Ariz. 1,3,  
10 13 P.3d 280,282 (2000) Defendants argue that no such nexus exists because the actions  
11 from which the claims arose had already occurred when Plaintiff and the Johnson Defendants  
12 entered into the April 8 JVA.

13 Plaintiff counters that Johnson (1) attempted to fulfill his obligations under the April  
14 8 JVA; and (2) that Plaintiff's claims arise from the fraudulent investment scheme as a whole,  
15 including Defendants’ failure to purchase a CMO bond and sell it pursuant to the various  
16 JVAs, including the April 8 JVA. Based on Plaintiff’s own facts, its first assertion appears  
17 to be incorrect. Plaintiff states Johnson attempted to perform under the April 8 JVA by  
18 “finding at least one other security trader (Mr. Lambert) and having MJG contract with Mr.  
19 Lambert's company SCM.” (Doc. 32, p.10). The Standard Asset Management Agreement  
20 entered into between MJG and SCM, however, was signed on April 2, 2009, six days before  
21 Plaintiff and the Johnson Defendants signed the April 8 JVA. (Id., Exh. 3). As for  
22 Plaintiff’s second argument, the Court agrees with Defendants that Plaintiff has not  
23 sufficiently demonstrated how its non-intentional torts claims arise out of the April 8 2009  
24 JVA. Plaintiff only characterizes the JVA as part of the Defendants’ fraudulent scheme,  
25 which was considered as part of the Court’s purposeful direction analysis. It has not  
26 explained which of its claims cites an injury resulting purely from the April 8 JVA, which  
27 is the only agreement that directly involves Plaintiff and is the Johnson Defendants’ only  
28 Arizona-based activity. See Williams, 13 P.3d at 282 (“A plaintiff's claim must result

1 from "alleged injuries that 'arise out of or relate to' [the defendant's] . . . activities" in the  
2 forum state. (quoting *Burger King*, 471 U.S. at 472)). The Court finds, therefore, that the  
3 April 8 JVA is insufficient for this Court to find that the Johnson Defendants purposefully  
4 availed themselves of this forum for the purpose of the non-intentional torts in this lawsuit.  
5 Williams, 13 P.3d at 282.

6 **B. Arising Out of the Forum Related Activities**

7 Having determined that Plaintiff's intentional-tort claims satisfy the first prong of  
8 the minimum contacts test, the Court must now determine whether Plaintiff's claims arise  
9 out of Defendants' forum-related activities, thereby satisfying the second requirement of  
10 the specific jurisdiction test. A claim arises out of a defendant's contacts with the forum  
11 when the claim would not have arisen "but for" the defendant's actions in the forum.  
12 Panavision Int'l v. Toeppen, 141 F.3d 1316, 1322 (9th Cir. 1998). The question  
13 therefore is: but for the Defendants' contacts with the Plaintiff, would the Plaintiff's  
14 claims have arisen. Plaintiff alleges that each of these Defendants played a crucial role  
15 in perpetrating the alleged fraud that caused it to lose its CMO investment, without any of  
16 whom it would not have become entangled in the alleged scheme. With respect to the  
17 Colorado Defendants, Plaintiff argues that but for the their introduction of the buyers and  
18 sellers, solicitation of and participation in a joint venture with ATM, and drafting of the  
19 controlling documents and contracts, the CMO investment would not have gone forward.  
20 Likewise, it argues that but for Cloyd's participation in and facilitation of the CMO  
21 investment as the allegedly knowledgeable and experienced securities trader, and Cloyd's  
22 fraudulent representations to Boscarino in Arizona regarding the safety and profitability  
23 of the CMO investment, no investment would have occurred. Finally, Plaintiff argues  
24 that but for Defendant Rimel's communications soliciting, encouraging, and ultimately  
25 inducing them, they would not have invested in the CMO. In light of Plaintiff's  
26 allegations that each of these Defendants played a role in part of a larger fraud, the Court  
27 is willing to accept that each may have played a but for role in the perpetration of that  
28

1 fraud. Accordingly, the Court finds that Plaintiff’s claims arise out of Defendants’  
2 forum-related activities

### 3 **C. Reasonableness**

4 Finally, the Court needs to determine if exercising personal jurisdiction over the  
5 Defendants is reasonable. The Court must “presume that an otherwise valid exercise of  
6 specific jurisdiction is reasonable.” Ballard, 65 F.3d at 1500. To avoid jurisdiction,  
7 Defendants “must present a compelling case that the presence of some other  
8 considerations would render jurisdiction unreasonable.” Id. (quoting Burger King Corp.  
9 v. Rudzewicz, 471 U.S. 462, 477 (1985)). In determining reasonableness, the Court must  
10 consider:

11 (1) the extent of the defendants' purposeful injection into the forum state's  
12 affairs; (2) the burden on the defendant of defending in the forum; (3) the  
13 extent of conflict with the sovereignty of the defendant's state; (4) the forum  
14 state's interest in adjudicating the dispute; (5) the most efficient judicial  
resolution of the controversy; (6) the importance of the forum to the  
plaintiff's interest in convenient and effective relief; and (7) the existence of  
an alternative forum

15 Dole, 303 F.3d at 1114. Finally, the court must balance and weigh all seven factors; none  
16 is dispositive. Ziegler v. Indian River County, 64 F.3d 470, 475 (9th Cir 1995).

#### 17 **1. Purposeful Injection**

18 The first factor the Court must consider is purposeful injection. The Court has  
19 already concluded that Defendants purposefully directed their actions at Arizona. This is  
20 sufficient to meet the purposeful injection standard. Sinatra v. National Enquirer, Inc.,  
21 854 F.2d 1191, 1199 (9th Cir. 1988) (“The factor of purposeful interjection is analogous  
22 to the purposeful direction analysis discussed above.”).

#### 23 **2. The Burden of Defending in the Forum**

24 “[U]nless the inconvenience [to the defendants of litigating in the forum state] is  
25 so great as to constitute a deprivation of due process, it will not overcome clear  
26 justifications for the exercise of jurisdiction.” Panavision Intern., L.P. v. Toepfen, 141  
27 F.3d 1316, 1323 (9th Cir. 1998) (internal quotation omitted). Defendants in this case  
28 appear to be residents of Colorado and California, which are states in close proximity to

1 Arizona. In addition, the Court notes that “modern advances in comminations and  
2 transportation have significantly reduced the burden of litigating” in another forum.  
3 Sinatra v. Nat'l Enquirer, Inc., 854 F.2d 1191, 1199 (9th Cir.1988). This factor weighs in  
4 favor of the reasonableness of personal jurisdiction.

### 5 **3. Conflict with the Sovereignty of Colorado and California**

6 Third, the Court finds that its exercise of jurisdiction in Arizona creates no  
7 conflict of sovereignty with Defendant’s home state of California. The conflict between  
8 the laws of a defendant’s home state and the proposed forum is not a very significant  
9 factor in cases involving only United States citizens since conflicting policies between  
10 states are settled through choice of law analysis, not through loss of jurisdiction. Brand v.  
11 Menlove Dodge, 796 F.2d 1070, 1076 n.5. (9th Cir. 1985). Here, Defendants are citizens  
12 of California and Colorado, while Plaintiff is an Arizona corporation. Therefore, in  
13 determining whether it is reasonable to exercise jurisdiction, this factor weighs in favor of  
14 reasonableness.

### 15 **4. Forum State’s Interest**

16 Fourth, the State of Arizona’s interest in adjudicating the dispute weighs in favor  
17 of finding jurisdiction reasonable. A state is deemed to have a strong interest in  
18 protecting its citizens against the tortious acts of others. Cabbage v. Merchant, 744 F.2d  
19 665, 671 (9th Cir. 1984). In the instant action, Plaintiff, an Arizona corporation, alleges  
20 that Defendants individual and collectively, along with other defendants in the instant  
21 action, actively solicited and/or facilitated, aided, and abetted in the solicitation of  
22 Plaintiff in an allegedly fraudulent CMO investment scheme which resulted in economic  
23 injury to Plaintiff. Arizona has a strong interest in providing Plaintiff, an Arizona  
24 corporation, with an effective means of redress for the alleged tortious conduct of  
25 Defendants. Accordingly, this factor weighs in favor of a finding of reasonableness.

### 26 **5. Efficiency of Adjudication**

27 “The site where the events in question took place or where most of the evidence is  
28 located usually will be the most efficient forum.” Brand, 796 F.2d at 1070. However,

1 this factor is no longer weighed heavily given the modern advances in transportation and  
2 communication. Caruth v. Int'l Psychoanalytical Ass'n, 59 F.3d 126, 129 (9th Cir. 1995).  
3 The Court notes that Plaintiff's principal place of business is in Arizona and Plaintiff's  
4 representatives are Arizona residents. In addition, MJG's investment funds came from its  
5 bank in Arizona and evidence and witnesses can be found in Arizona. On the other hand,  
6 that Defendants are California and Colorado residents. The Court further notes that the  
7 transactions and events surrounding the actions that pertain to Defendants were largely  
8 conducted via email and telephone, thus much of the evidence surrounding the case  
9 would be available in both California, Colorado, and Arizona. Finally, the Court notes  
10 that this Court is already familiar with the claims, facts, and parties involved. On  
11 balance, the Court finds that efficiency of adjudication can most readily be achieved by  
12 leaving the case where it is; in Arizona.

#### 13 **6. Convenience and Effectiveness of Relief for Plaintiff**

14 Sixth, the Court is required to look at the convenience and effectiveness of relief of  
15 having trial in Plaintiff's desired forum. Plaintiff is an Arizona corporation. The  
16 maintenance of a suit outside of Arizona would clearly be less convenient for Plaintiff.  
17 Defendants have not shown that Plaintiff's claim can be more effectively remedied  
18 elsewhere. Consequently, the Court finds that this factor weighs in favor of the Plaintiff;  
19 Arizona is the most convenient and effective forum of relief.

#### 20 **7. Existence of an Alternative Forum**

21 Finally, the Court considers whether an alternative forum exists. This element  
22 only comes into play, however, "when the forum state is shown to be unreasonable."  
23 Corporate Investment Business Brokers v. Melcher, 824 F.2d 786, 791 (9th Cir. 1987).  
24 The Court finds that such a showing has not been made. In balancing the factors above,  
25 the Court finds that its exercise of jurisdiction over Defendants is both reasonable and  
26 proper. Therefore, the Court finds that Plaintiff has made the necessary *prima facie*  
27 showing of jurisdictional fact with respect to its claims over Defendant.

#### 28 **D. Conclusion**

1           After balancing each and every one of the reasonableness test factors, this Court  
2 concludes that its exercise of jurisdiction over the Defendants is both reasonable and  
3 proper. The burden of rebutting the presumption of reasonableness lay with the  
4 Defendants; it was not met. Id. Therefore, this Court finds that Plaintiff has made the  
5 necessary *prima facie* showing of jurisdictional fact with respect to its intentional tort  
6 claim. The Court cannot exercise jurisdiction over Plaintiff’s other claims, as the facts  
7 plead do not permit a finding that the first element of the minimum contacts  
8 test—purposeful availment—has been satisfied.

9           However, “[w]hen a defendant must appear in a forum to defend against one claim,  
10 it is often reasonable to compel that defendant to answer other claims in the same suit  
11 arising out of a common nucleus of operative facts.” Action Embroidery Corp. v.  
12 Atlantic Embroidery, Inc., 368 F.3d 1174, 1181 (9th Cir. 2004). Under the doctrine of  
13 pendent personal jurisdiction the court may exercise its jurisdiction “over a defendant  
14 with respect to a claim for which there is no independent basis of personal jurisdiction so  
15 long as it arises out of a common nucleus of operative facts with a claim in the same suit  
16 over which the court does have personal jurisdiction.” Id. at 1180. Such a decision is  
17 completely within the Court’s discretion and should be made to promote “judicial  
18 economy, avoidance of piecemeal litigation, and overall convenience.” Id. at 1181.  
19 Plaintiff’s non-intentional tort claims against Defendants, over which this Court does not  
20 have jurisdiction, clearly arise from the same set of operative facts. Consequently, the  
21 Court finds that exercising its jurisdiction over all of Plaintiff’s claims will promote the  
22 interests of justice and the efficient use of the parties’ and the Court’s resources.

23           **Accordingly,**

24           **IT IS HEREBY ORDERED** denying Defendants Nate N. Den Bleyker,  
25 Gibraltar Financial Group, Inc., John P. Johnson, and J. Johnson Consulting LLC’s  
26 Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 22).

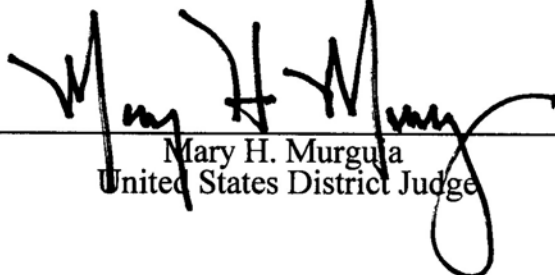
27           **IT IS FURTHER ORDERED** denying Defendants Peter Rimel, Kimberly Rimel  
28 and Rimel & Nichols, LLP’s Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 20).

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**IT IS FURTHER ORDERED** denying Defendant Glen Cloyd's Motion to Dismiss Pursuant to Rule 12(b)(2). (Doc. 30).

**IT IS FURTHER ORDERED** granting Plaintiff MJG's Motion to Strike. (Doc. 38).

DATED this 23rd day of September, 2010.



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Mary H. Murgula  
United States District Judge