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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**CYA OIL & GAS INVESTMENTS,  
LLC,**

**Plaintiff,**

**vs.**

**ISIS, LLC OF OKLAHOMA, et al.,**

**Defendants.**

**2:12-cv-00212 JWS**

**ORDER AND OPINION**

**[Re: Motion at Docket 8]**

**I. MOTION PRESENTED**

At docket 8, defendants ISIS, LLC of Oklahoma (“ISIS”), Freeman Properties, LLC, C.R. “Bobby” Freeman (“Freeman”), and Tammy Freeman (collectively “defendants”) move pursuant to Federal Rule of Civil Procedure 12(b)(1) to dismiss some of plaintiff’s state law claims for lack of subject matter jurisdiction.<sup>1</sup> Plaintiff CYA Oil & Gas Investments, LLC (“CYA” or “plaintiff”) opposes the motion at docket 14.

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<sup>1</sup>The motion states that defendants are moving pursuant to Rule 12(b)(6), but it is clear that defendants are asking the court to decline to exercise supplemental jurisdiction over plaintiff’s state law claims.

1 Defendant's reply is at docket 17. Oral argument was requested but would not assist  
2 the court.

### 3 **II. BACKGROUND**<sup>2</sup>

4 This lawsuit arises out of a failed oil and gas project in Oklahoma. CYA is a  
5 Texas limited liability company. Hung Simon Vo ("Simon Vo") was the representative of  
6 CYA. Based on discussions between Freeman, who represented to have purchased  
7 ISIS, and Steve Hutchinson ("Hutchinson"), an officer of ISIS—and Simon Vo, CYA  
8 invested at least \$655,000 in ISIS and later, Black Gold, LLC ("Black Gold"), during  
9 2008 and 2009.<sup>3</sup> Black Gold was created by Freeman in 2009 to insulate investors in  
10 ISIS from counterclaims against Freeman in a lawsuit against the original owners of  
11 ISIS. Freeman was the managing member of Black Gold.

12 Among the representations made to Simon Vo were that Freeman, through his  
13 ownership of ISIS, had production rights at three wells—the HFA #1, Adkins, and Yvonne  
14 wells—and that early investors could get a return of 25 times their investment. CYA  
15 maintains that Freeman represented to Simon Vo that combined expected revenue from  
16 all three wells would exceed \$45 million in the first year of production. CYA claims that  
17 Freeman actually did not have production rights at any of the three wells. CYA also  
18 maintains that Freeman used investors' funds to make the down payment in the stock  
19 purchase agreement by which Freeman was to purchase ISIS and did not disclose that  
20 to investors.

21 Freeman replaced the independent operators of all three wells with his own  
22 company, Last Run, LLC ("Last Run"). Last Run shut down the Yvonne well  
23 approximately one month after operations began. CYA claims that the failure of the  
24 Yvonne well was not disclosed to CYA and that Last Run billed Black Gold

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26 <sup>2</sup>This background is taken from the complaint at docket 1.

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28 <sup>3</sup>It is not clear from the complaint whether CYA invested \$655,000 in ISIS and another  
\$655,000 in Black Gold or whether \$655,000 was CYA's total investment.

1 approximately \$1.4 million during the Yvonne well's month of operation. Last Run also  
2 had difficulties drilling at the other wells and production was dismal.

3 Black Gold considered a cash call from investors after funds dried up. In  
4 response, Black Gold's board requested an accounting. CYA states that Freeman  
5 could not provide a coherent accounting. CYA maintains that in December 2010  
6 Freeman hired an accounting firm to perform a preliminary review of Black Gold's  
7 accounting. The firm concluded that Black Gold paid approximately \$1.9 million directly  
8 to Freeman without invoices, that numerous expenses could not be tied to well-related  
9 work and that over 50% of all expenses were not invoiced. The preliminary review also  
10 concluded that Black Gold was approximately \$900,000 in debt but only received total  
11 revenues from all wells of \$416,528.

12 CYA filed suit in federal court in January 2012. CYA has asserted claims for  
13 breach of contract, breach of fiduciary duty, misrepresentation, securities fraud under  
14 Arizona law, federal securities fraud, rescission, and accounting. The court has original  
15 jurisdiction over CYA's three federal securities fraud claims pursuant to 28 U.S.C.  
16 § 1331. Defendants argue that several of CYA's state law claims should be dismissed.

### 17 **III. STANDARD OF REVIEW**

18 Under Federal Rule of Civil Procedure 12(b)(1), a party may seek dismissal of an  
19 action for lack of subject matter jurisdiction. In order to survive a defendant's motion to  
20 dismiss, the plaintiff has the burden of proving jurisdiction.<sup>4</sup> Where the defendant brings  
21 a facial attack on the subject matter of the district court, the court assumes the factual  
22 allegations in the plaintiff's complaint are true and draws all reasonable inferences in the  
23 plaintiff's favor.<sup>5</sup> The court does not, however, accept the truth of legal conclusions cast  
24 in the form of factual allegations.<sup>6</sup>

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26 <sup>4</sup>*Tosco v. Cmtys. for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2000).

27 <sup>5</sup>*Doe v. Holy See*, 557 F.3d 1066, 1073 (9th Cir. 2009).

28 <sup>6</sup>*Id.*

1 **IV. DISCUSSION**

2 Pursuant to 28 U.S.C. § 1367(a), “in any civil action of which district courts have  
3 original jurisdiction, the district courts . . . have supplemental jurisdiction over all other  
4 claims . . . that . . . form part of the same case or controversy under Article III.”<sup>7</sup> “A state  
5 law claim is part of the same case or controversy when it shares a common nucleus of  
6 operative fact with the federal claims and the state and federal claims would ordinarily  
7 be tried together.”<sup>8</sup> A district court may nonetheless decline to exercise supplemental  
8 jurisdiction over state claims if the state claims “substantially predominate” over the  
9 federal claims.<sup>9</sup>

10 Defendant makes two arguments. First, defendant argues that plaintiff’s state  
11 claims are unrelated to plaintiff’s federal claims and, therefore, the court is without  
12 supplemental jurisdiction. Second, defendant argues that even if the court has  
13 supplemental jurisdiction, plaintiff’s state claims substantially predominate the federal  
14 claims and the court should decline to exercise jurisdiction.

15 Defendant’s first argument confuses “derive from” with “arises out of.” Even  
16 though the facts that would support plaintiff’s federal claims differ from those that would  
17 support plaintiff’s state claims, that does not mean that they do not *derive from* the  
18 same nucleus of operative fact. Plaintiff’s state claims for breach of contract based on  
19 CYA’s investment in Black Gold and ISIS, and breach of fiduciary duty against Freeman  
20 can be traced to the alleged securities fraud that forms the basis of plaintiff’s federal  
21 claims. Moreover, state claims for breach of a limited liability company membership  
22 contract and breach of fiduciary duty related to management of the company would  
23 ordinarily be tried with federal claims for securities fraud when the securities fraud  
24 allegedly induced the contractual relationship. Plaintiff’s state and federal claims

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26 <sup>7</sup>28 U.S.C. § 1367(a).

27 <sup>8</sup>*Bahrapour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004).

28 <sup>9</sup>28 U.S.C. § 1367(c)(2).

1 therefore derive from a common nucleus of operative fact, and the court has  
2 supplemental jurisdiction over plaintiff's state claims.

3 Defendants argue that the state claims predominate plaintiff's federal claims and  
4 therefore the court should decline to exercise supplemental jurisdiction. Defendants'  
5 argument is conclusory—they do not articulate which claim predominates or how. The  
6 primary case cited by defendants as support for their position, *Stevedoring Svcs. of Am.*  
7 *v. Eggert*,<sup>10</sup> involved original federal jurisdiction over an administrative order requiring  
8 payment of \$60 in attorney's fees and the erroneous exercise of supplemental  
9 jurisdiction over state claims to recover \$96, 551.55 in alleged overcompensation.<sup>11</sup> It is  
10 not clear that plaintiff's state claims in this case, even if considered in the aggregate,  
11 would substantially predominate over plaintiff's federal securities fraud claims.  
12 Certainly, it is not such a clear cut situation that the exercise of supplemental jurisdiction  
13 would be inappropriate.

14 **V. CONCLUSION**

15 For the reasons above, defendants' motion at docket 8 to dismiss plaintiff's state  
16 law claims for breach of contract, breach of fiduciary duty, and accounting for lack of  
17 subject matter jurisdiction pursuant to Rule 12(b)(1) is **DENIED**.

18 DATED this 4th day of June 2012.

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20 \_\_\_\_\_/s/  
21 JOHN W. SEDWICK  
22 UNITED STATES DISTRICT JUDGE  
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<sup>10</sup>953 F.2d 552 (9th Cir. 1992).

28 <sup>11</sup>*Id.* at 554, 558.