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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 M Firas Joudeh, et al.,
10 Plaintiffs,

11 v.

12 James F Beck, et al.,
13 Defendants.

No. CV-17-02744-PHX-DLR

ORDER

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16 Plaintiffs M. Firas Joudeh and Manal Alhakim accuse Defendants James Beck,
17 Ginger Beck, and LUX Home Investments LLC (“LUX”) of violating the federal
18 Racketeer Influenced and Corrupt Organizations (“RICO”) act through a scheme to
19 defraud Plaintiffs in their purchase of a new home. Plaintiffs also raise claims of
20 intentional infliction of emotional distress, unjust enrichment, conversion, and for a
21 declaratory judgment. Before the Court is Defendants’ motion to dismiss pursuant to
22 Federal Rule of Civil Procedure 12(b) for lack of personal jurisdiction and for failure to
23 state a claim for which relief can be granted. (Doc. 19.) The motion is fully briefed and
24 neither party requested oral argument. (Doc. 24.) For the following reasons, Defendants’
25 motion is granted in part and denied in part.

26 **I. Background**

27 In early 2017, Plaintiffs agreed to buy a home that was being developed, marketed,
28 and sold by CalAtlantic Homes. (Doc. 1 ¶¶ 14-15.) The closing date for the sale was set

1 for March 3, 2017, and Plaintiffs agreed to work with CalAtlantic Title, an affiliate of
2 CalAtlantic Homes. (¶ 15.)

3 On March 1, 2017, Plaintiffs received an email from CalAtlantic Title with an
4 attachment containing, among other things, wire instructions. (¶ 18.) The wire
5 instructions contained CalAtlantic Title's logo, address, and phone number. (¶ 27.) On
6 March 2, 2017, Plaintiffs went to CalAtlantic Title's office, signed the closing
7 documents, and confirmed that the wire instructions were correct. (¶ 21.) On March 3,
8 2017, Plaintiffs wired \$492,221.00 to purchase the home. (¶¶ 19, 22.) Later that same
9 day, Plaintiffs were notified by CalAtlantic Title that the wired funds had not been
10 received and that the closing date would be extended. (¶ 24.)

11 On March 7, 2017, Plaintiffs and CalAtlantic Title's escrow officer reviewed the
12 wire instructions Plaintiffs' had received and determined that the named recipient and
13 account holder was LUX, and that the ABA routing number and account number listed
14 were not those of CalAtlantic Title's bank. (¶ 26.) CalAtlantic Title's employees were
15 unable to explain why Plaintiffs received incorrect wire instructions. (¶ 28.) On March
16 8, 2017, CalAtlantic Homes cancelled the sales contract because Plaintiffs had
17 insufficient funds to complete the transaction. (¶¶ 29-30.)

18 In an attempt to recover the misplaced funds, Plaintiffs contacted Regions Bank in
19 Arkansas, the bank associated with the ABA routing number listed on the wire
20 instructions. Regions Bank confirmed that the funds were received and deposited into
21 LUX's account on March 3, 2017. (¶ 32.) After determining James Beck was the
22 managing member of LUX, Plaintiffs requested the return of their funds. (¶¶ 33, 35.)
23 During a telephone call on March 7, 2017, Beck informed Plaintiffs that he had received
24 the wired funds, but that he no longer was in possession of the money because on March
25 6, 2017, he wired the funds to other bank accounts he was unable to access. (¶ 36.)
26 Specifically, Beck had wired \$165,000.00 to a Bank of Little Rock account also held in
27 LUX's name, and \$325,000.00 to a JP Morgan Chase Bank account held in the name of
28 M&K Home Maintenance Services. (¶¶ 37-38). To date, Beck has refused to return the

1 funds and has offered a series of excuses, including that he himself was also defrauded as
2 part of these transactions. (¶¶ 46, 47.)

3 **II. Discussion**

4 **A. Personal Jurisdiction**

5 Where a defendant moves to dismiss a complaint for lack of personal jurisdiction,
6 the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Sher v.*
7 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Where, as here, the motion is based on
8 written materials rather than an evidentiary hearing, “the plaintiff need only make a prima
9 facie showing of jurisdictional facts.” *Id.* In such cases, the court inquires only “into
10 whether [the plaintiff’s] pleadings and affidavits make a prima facie showing of personal
11 jurisdiction.” *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 128 (9th Cir. 1995).
12 In determining whether the plaintiff has met this burden, uncontroverted allegations in
13 the plaintiff’s complaint must be taken as true, and “conflicts between the facts contained
14 in the parties’ affidavits must be resolved in [the plaintiff’s] favor for purposes of
15 deciding whether a prima facie case for personal jurisdiction exists.” *AT & T v.*
16 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

17 The exercise of jurisdiction over a non-resident defendant requires that the
18 defendant “have certain minimum contacts . . . such that the maintenance of the suit does
19 not offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. State*
20 *of Wash., Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316
21 (1945) (internal quotations and citation omitted). Personal jurisdiction may be general or
22 specific. A court may assert general jurisdiction over foreign defendants “to hear any and
23 all claims against them when their affiliations with the State are so ‘continuous and
24 systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop*
25 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing *Int’l Shoe Co.*, 326
26 U.S. at 317). “Specific jurisdiction, on the other hand, depends on an affiliation between
27 the forum and the underlying controversy, principally, activity or an occurrence that takes
28 place in the forum State and is therefore subject to the State’s regulation.” *Id.* (internal

1 quotation and citation omitted).

2 Here, neither party contends that the Court has general personal jurisdiction over
3 Defendants, and based on its independent review of the complaint and the parties'
4 competing sworn statements the Court agrees. This case, therefore, presents a question of
5 specific personal jurisdiction.

6 In specific jurisdiction cases, the relationship between the defendant and the forum
7 state “must arise out of contacts that the ‘defendant himself’ creates with the forum
8 State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (quoting *Burger King Corp. v.*
9 *Rudzewicz*, 471 U.S. 462, 475 (1985)). Additionally, the requisite “minimum contacts”
10 must be “with the forum State itself, not . . . with persons who reside there.” *Id.* A court
11 will exercise specific jurisdiction over a non-resident defendant only when three
12 requirements are satisfied: (1) the defendant either “purposefully directs” its activities or
13 “purposefully avails” itself of the benefits afforded by the forum’s laws; (2) the claim
14 “arises out of or relates to the defendant’s forum-related activities;” and (3) the exercise
15 of jurisdiction comports with fair play and substantial justice. *See Dole Food Co. v.*
16 *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

17 Defendants challenge only the first prong of this three-part test—whether
18 Defendants purposefully availed themselves of the privilege of conducting activities in or
19 purposefully directed their activities towards Arizona. (Doc. 19-2 at 3). Purposeful
20 direction exists where the defendant “(1) committed an intentional act, (2) expressly
21 aimed at the forum state, (3) causing harm that the defendant knows is likely to be
22 suffered in the forum state.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064,
23 1069 (9th Cir. 2017); *see Calder v. Jones*, 465 U.S. 783 (1984).

24 At the outset, the allegations in the complaint do not plausibly show any
25 purposeful direction of relevant activities by Defendants to Arizona. In an effort to make
26 a prima facie showing of personal jurisdiction, Plaintiffs cite several paragraphs from
27 their complaint alleging that James Beck moved Plaintiffs’ funds from the LUX account
28 and refused Plaintiffs’ requests to return the money. (Doc. 1 ¶¶ 41-47.) None of these

1 allegations, however, concern conduct aimed at the forum state. Instead, Plaintiffs cite to
2 actions taken by Defendants in Arkansas, such as moving money from the LUX account
3 to other non-Arizona bank accounts. (¶¶ 37-40.) These allegations are insufficient to
4 demonstrate a prima facie case for specific jurisdiction.

5 Plaintiffs also argue, based on the allegations in the complaint, that “[i]t is more
6 than reasonable to infer that Defendants involvement was required in order to have its
7 specific bank information on the fraudulent wire instruction.” (Doc. 24 at 9.) Plaintiffs
8 argue that this inference is further supported “by Defendants subsequent transfers out of
9 the account and cover up, including a death threat.” (*Id.*) The Court disagrees, however,
10 because the complaint’s other allegations undermine such an inference. For example,
11 Plaintiffs allege that they “received an email from CalAtlantic Title’s escrow officer with
12 an attachment containing all of the transaction closing documents required to be signed
13 by Plaintiffs.” (Doc. 1 ¶ 18.) Plaintiffs also allege that they “went to CalAtlantic Title’s
14 office . . . and confirmed that the wiring instructions which had been emailed to
15 [Plaintiffs] on March 1, 2017 were correct.” (¶ 21.) Absent from the complaint are
16 allegations that Defendants sent their account information to Plaintiffs or conspired with
17 CalAtlantic Title. (Doc. 1; Doc. 24 at 16-17.) To the contrary, Plaintiffs expressly
18 allege that CalAtlantic Title sent the wire instructions to Plaintiff and verified their
19 accuracy prior to the wire transfer.

20 Nor do the parties’ competing sworn statements support the exercise of specific
21 personal jurisdiction. In support of their motion to dismiss, Defendants submitted an
22 affidavit which states “Lux has no office in Arizona, no bank accounts or other records in
23 Arizona, nor is it authorized to do business in Arizona.” (Doc. 20-1 at 1.) The affidavit
24 also states that James Beck and Ginger Beck have not been to Arizona in decades and
25 have not directed any of their activities toward the residents of Arizona. (*Id.*) In
26 response, Plaintiffs offer Joudeh’s sworn declaration. (Doc. 24.) Joudeh’s declaration
27 merely restates the allegations contained within the complaint and fails to offer any
28 allegation that Defendants directed their conduct to the forum. (*Id.*) The Court therefore

1 grants Defendants' motion to dismiss for lack of personal jurisdiction.¹

2 **B. Leave to Amend**

3 In the final sentence of their opposition brief, Plaintiffs alternatively request leave
4 to amend should the Court conclude that Defendants' motion to dismiss is well taken.
5 (Doc. 24 at 13.) Federal Rule of Civil Procedure 15(a)(2) requires the Court to "freely
6 give leave when justice so requires." Leave need not be granted, however, "where the
7 amendment of the complaint would cause the opposing party undue prejudice, is sought
8 in bad faith, constitutes an exercise in futility, or creates undue delay." *Ascon Props.,*
9 *Inc. v. Mobil Oil Co.*, 866 F.2d 1149, 1160 (9th Cir. 1989).

10 Initially, the Court notes that Plaintiffs previously had an opportunity to amend the
11 complaint but chose not to do so. Specifically, the Court issued an order on August 15,
12 2017, stating, in relevant part:

13 1. Before the filing of any motion to dismiss under Rule
14 12(b)(6), the parties must confer in good faith to determine
15 whether the motion can be avoided. Defendant shall explain
16 to Plaintiff the reasons why Defendant believes the complaint
17 fails to state a claim for relief. The parties shall discuss
18 whether the deficiencies identified by Defendant can be cured
19 through an amended complaint. If the parties agree on this
20 point, Plaintiff shall file an appropriate amended complaint in
21 order to avoid the filing of an unnecessary motion to dismiss.

22 2. *Notwithstanding Plaintiff's belief that the complaint is*
23 *sufficient to state a claim for relief, or Defendant's belief that*
24 *the complaint is not curable, if Plaintiff believes that a*
25 *permissible amendment can cure some or all of the purported*
26 *deficiencies identified by Defendant, Plaintiff is encouraged*
27 *to file an amended complaint containing all further*
28 *allegations Plaintiff could make. This would avoid the need*
for Plaintiff to seek leave to amend should the Court
determine that the motion to dismiss is well taken.

23 (Doc. 8 (emphasis added).) Consistent with this order, before Defendants filed their
24 motion to dismiss the parties conferred about the issues Defendants intended to raise.

26 ¹ Because the Court concludes, based on the current pleadings, that it lacks
27 personal jurisdiction over Defendants, it will not pass judgment on the sufficiency of
28 Plaintiffs' factual allegations under Rule 12(b)(6). That portion of Defendants' motion to
dismiss will instead be denied as moot. In the event Plaintiffs amend their complaint to
adequately allege a basis for personal jurisdiction, nothing in this order precludes
Defendants from renewing their Rule 12(b)(6) motion if, after conferring with Plaintiffs,
they continue to believe such a motion is warranted.

1 (Doc. 19-1.) Rather than amend their complaint to address the perceived defects,
2 however, Plaintiffs chose to press their complaint and let the Court rule on the issues
3 raised by Defendants based on the current pleadings.

4 By requesting leave to amend now, Plaintiffs have not acted consistent with the
5 spirit or intent of the Court's prior order. If Plaintiffs can, in fact, allege additional facts
6 that they believe will cure some or all of the defects Defendants have identified, their
7 failure to do so after the parties met and conferred has needlessly delayed these
8 proceedings and resulted in the unnecessary expenditure of resources, both by the parties
9 and the Court. To be clear, the Court expects parties to take seriously their obligations to
10 meet and confer and to make every effort to ensure the just, speedy, and inexpensive
11 resolution of cases. The Court's August 15, 2017 order discouraging motions to dismiss
12 was intended to head off precisely this situation by strongly encouraging Plaintiffs to
13 make all further allegations they could make prior to Defendants moving to dismiss,
14 either to avoid an unnecessary motion to dismiss or to ensure that the parties brief—and
15 the Court rules—on only one such motion.

16 Plaintiffs' request for leave to amend also violates Local Rule 15.1, which requires
17 a party who moves for leave to amend to "attach a copy of the proposed amended
18 pleading as an exhibit to the motion, which must indicate in what respect it differs from
19 the pleading which it amends[.]" Plaintiffs did not attach a copy of the proposed
20 amended complaint to their response memorandum, nor have they otherwise explained in
21 their response brief what specific supporting allegations they would make to cure the
22 defects identified above. (Doc. 24 at 13.) For all these reasons, Plaintiffs' request for
23 leave to amend is denied without prejudice. Plaintiffs may, however, renew their request
24 for leave to amend if they believe they can allege facts curing the defects identified in this
25 order. If they choose to renew their request, they must do so in a manner that complies
26 Local Rule 15.1.

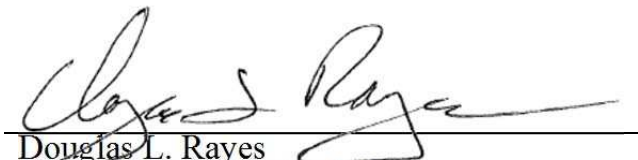
27 **IT IS ORDERED** that Defendants' motion to dismiss for lack of personal
28 jurisdiction (Doc. 19) is **GRANTED**. Defendants' motion to dismiss for failure to state a

1 claim is **DENIED** as moot.

2 **IT IS FURTHER ORDERED** that Plaintiffs may, if they choose, file a renewed
3 motion for leave to amend that complies with LRCiv 15.1 by no later than **July 23, 2018.**
4 The Clerk of the Court is directed to terminate this case without further order of the Court
5 on **July 24, 2018** if Plaintiffs do not file a renewed motion for leave to amend within the
6 timeframe specified herein.

7 Dated this 10th day of July, 2018.

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Douglas L. Rayes
United States District Judge