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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Norman Stuckey,

10 Plaintiff,

11 v.

12 Jennifer Leath, Maryam Boroujerdi-Rad,
13 and Meadows & Fries LLP,

14 Defendants.

No. CV-18-03213-PHX-JAT

ORDER

15 Pending before the Court is Defendant Meadows & Fries, LLP's ("M&F") Motion
16 to Dismiss (Doc. 11) pursuant to Federal Rules of Civil Procedure ("Rules") 12(b)(2) and
17 12(b)(3). Also pending before the Court is Defendants Jennifer Leath and Maryam
18 Boroujerdi-Rad's (collectively, "Employees;" both M&F and Employees together,
19 "Defendants") Motion to Dismiss (Doc. 13) pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3),
20 and 12(b)(6). The Court now rules on the motions.

21 **I. BACKGROUND**

22 On November 19, 2018, M&F filed its Motion to Dismiss (Doc. 11). Plaintiff
23 Norman Stuckey ("Plaintiff") filed a Response (Doc. 15) on December 3, 2018, and M&F
24 filed a Reply (Doc 18) on December 17, 2018. On November 27, 2018, Employees likewise
25 filed their Motion to Dismiss (Doc. 13). Plaintiff filed a Response (Doc. 16) on December
26 11, 2018, and Employees filed a Reply (Doc. 17) on December 17, 2018.

27 **A. Complaint**

28 Plaintiff brings a direct action against Defendants for their respective actions as

1 employees of and a professional services firm retained by Stucky Psychological Services,
2 PC (“SPS”). (Doc. 10 (“Compl.”) ¶¶ 9–30). The eleven-count Complaint asserts the
3 following causes of action: (i) breach of contract; (ii) conversion; (iii) breach of fiduciary
4 duty; (iv) constructive fraud; (v) common law fraud; (vi) negligent misrepresentation; (vii)
5 tortious interference; (viii) financial elder abuse; (ix) fraudulent transfer; (x) unjust
6 enrichment; and (xi) complete accounting. (Id. ¶¶ 31–112). Plaintiff asserts all counts
7 against Employees, and also asserts counts (iii), (iv), (vi), and (xi) against M&F. (Id.).

8 **B. Facts**

9 The following facts are either undisputed or recounted in the light most favorable to
10 the non-moving party. *See Wyler Summit P’ship v. Turner Broad. Sys., Inc.*, 135 F.3d 658,
11 661 (9th Cir. 1998). Plaintiff, president and CEO of SPS, is a ten-year resident of Sun
12 Lakes, Arizona. (Compl. ¶ 9). Prior to his death, Plaintiff’s son, David Stuckey, was the
13 sole owner of SPS, a California corporation with its principal place of business in
14 California. (Id. ¶ 20; Doc. 15-1 at 13–16). At all relevant times, SPS employed Leath and
15 Boroujerdi-Rad, both citizens of Orange County, California. (Compl. ¶¶ 12–13). After
16 David Stuckey’s death in January 2014, Plaintiff entered into an oral contract with
17 Employees to provide operational loans to SPS. (Id. ¶ 22). In return for funding SPS,
18 Plaintiff was to become its owner, president, and CEO, and receive loan repayments and
19 profit disbursement. (Id.). Employees were to make periodic financial reports to Plaintiff
20 and “make a good faith offer to buy [SPS] within a reasonable time.” (Id.).

21 In early 2014, M&F telephoned Plaintiff in Arizona to offer tax services to SPS.
22 (Doc. 15 at 2). M&F is a limited liability partnership organized in California. (Compl. ¶
23 14). M&F’s principle place of business is in California, and both of its partners are
24 California citizens. (Id.). In October 2014, M&F mailed an engagement letter from
25 California to Plaintiff in Arizona, offering to prepare federal and California state income
26 tax returns for SPS. (Doc. 1-1 at 10–12). Plaintiff agreed to and signed the agreement “as
27 president of [SPS].” (Compl. ¶ 27 n.3).

28 Plaintiff alleges that Defendant committed the following unlawful acts during 2014–

1 2018. First, Employees took unauthorized salary advances and improperly booked loan
2 funding. (Id. ¶ 2). Second, M&F failed to detect or disclose these unauthorized advances
3 and improper bookings. (Id. ¶ 3). Third, M&F provided legal representation to Employees
4 without first obtaining Plaintiff’s informed consent. (Id. ¶ 8). Fourth, Employees made
5 “bad faith” offers to buy SPS from Plaintiff. (Id. ¶ 25). Finally, Employees and M&F failed
6 to report accurate financial information to Plaintiff during this period. (Id. ¶¶ 26–27). In
7 response, Plaintiff commenced this action.

8 **II. LEGAL STANDARD**

9 M&F filed a Motion to Dismiss pursuant to 12(b)(2) and 12(b)(3), and Employees
10 filed a Motion to Dismiss pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), and 12(b)(6). (See
11 Doc. 11; Doc. 13). While the Court observes that Defendants make arguments under the
12 banner of standing—which ordinarily presents a “threshold question of justiciability”—
13 those arguments may also be characterized as addressing a “real party in interest” issue.
14 See *In re Swintek*, 906 F.3d 1100, 1102 (9th Cir. 2018). Because the Court finds it
15 dispositive, the Court begins by addressing whether it has personal jurisdiction over
16 Defendants. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 578 (1999) (“[T]here is no
17 unyielding jurisdictional hierarchy. Customarily, a federal court first resolves doubts about
18 its jurisdiction over the subject matter, but there are circumstances in which a district court
19 appropriately accords priority to a personal jurisdiction inquiry.”).

20 **A. Personal Jurisdiction**

21 Defendants lack sufficient contacts with Arizona to justify the exercise of personal
22 jurisdiction over them. Generally, federal courts have personal jurisdiction over non-
23 resident defendants to the extent allowed by the state in which the courts sit. See Fed. R.
24 Civ. P. 4(e), (k); *Walden v. Fiore*, 571 U.S. 277, 283 (2014). Arizona law provides for
25 personal jurisdiction to the extent allowed by the United States Constitution. See Ariz. R.
26 Civ. P. 4.2. “The Due Process Clause of the Fourteenth Amendment sets the outer
27 boundaries of a [] tribunal’s authority to proceed against a defendant.” *Goodyear Dunlop*
28 *Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011) (citation omitted).

1 Due process requires that a defendant “have certain minimum contacts with [the
2 forum state] such that the maintenance of the suit does not offend traditional notions of fair
3 play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)
4 (internal quotation marks and citation omitted). This framework gives rise to two forms of
5 personal jurisdiction: “general” and “specific” jurisdiction. *Bristol-Myers Squibb Co. v.*
6 *Superior Ct. of Cal., S.F. Cty.*, 137 S. Ct. 1773, 1779–80 (2017). The burden of establishing
7 personal jurisdiction rests on the plaintiff, but if the motion attacking jurisdiction “is based
8 on written materials rather than an evidentiary hearing, the plaintiff need only make a prima
9 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Mavrix Photo,*
10 *Inc. v. Brand Techs, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). Courts must accept
11 uncontroverted statements in a complaint as true and resolve conflicts of facts contained in
12 affidavits in the plaintiff’s favor, but a “plaintiff cannot simply rest on the bare allegations
13 of its complaint.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.
14 2004) (internal quotation marks and citation omitted).

15 **1. General Jurisdiction**

16 Under general jurisdiction, a court can hear any claim against a defendant who can
17 be “fairly regarded as at home” in the state. *Goodyear*, 564 U.S. at 919. Generally, an
18 individual is at home where domiciled, and an unincorporated entity—including an LLP—
19 is a citizen of each state in which any member is a citizen. See *Daimler AG v. Bauman*, 571
20 U.S. 117, 137 (2014); see also *Americold Realty Tr. v. Conagra Foods, Inc.*, 136 S. Ct.
21 1012, 1013, (2016) (“For these unincorporated entities, we too have adhere[d] to our oft-
22 repeated rule that diversity jurisdiction in a suit by or against the entity depends on the
23 citizenship of all [its] members” (alterations in original; internal quotations marks and
24 citation omitted)). Both Employees and M&F, through its partners, are citizens of
25 California. (Compl. ¶¶ 12–14). Accordingly, the Court lacks general jurisdiction over
26 Defendants.

27 **2. Specific Jurisdiction**

28 When relying on specific jurisdiction, a plaintiff must establish that jurisdiction is

1 proper for each claim asserted against a defendant. See *Picot v. Weston*, 780 F.3d 1206,
2 1211 (9th Cir. 2015). If personal jurisdiction exists over one claim, the Court “may exercise
3 pendant jurisdiction over any remaining claims that arise out of the same common nucleus
4 of operative facts.” *Id.* (internal quotation marks and citation omitted). The specific
5 jurisdiction inquiry focuses on “the relationship among the defendant, the forum, and the
6 litigation.” *Walden*, 134 S. Ct. at 1121 (citation omitted). The Ninth Circuit applies a three-
7 part test to determine whether a defendant is subject to specific personal jurisdiction:

8 (1) The non-resident defendant must purposefully direct his
9 activities or consummate some transaction with the forum or
10 resident thereof; or perform some act by which he purposefully
11 avails himself of the privilege of conducting activities in the
12 forum, thereby invoking the benefits and protections of its
13 laws;

14 (2) the claim must be one which arises out of or relates to the
15 defendant’s forum-related activities; and

16 (3) the exercise of jurisdiction must comport with fair play and
17 substantial justice, i.e. it must be reasonable.

18 *Picot*, 780 F.3d at 1211 (citation omitted). The plaintiff must establish the first two factors.
19 See *Schwarzenegger*, 374 F.3d at 802. If the plaintiff does so, the burden then shifts to the
20 defendant to “present a compelling case” that the exercise of jurisdiction is not reasonable.
21 *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)).

22 **a. Purposeful Availment**

23 A court has specific jurisdiction over claims sounding in contract when a defendant
24 purposely availed himself of the privilege of conducting activities within the forum state,
25 thereby invoking the benefit and protection of its laws. See *Picot*, 780 F.3d at 1212.
26 Purposeful availment requires “affirmative conduct which allows or promotes the
27 transaction of business within the forum state.” *Id.* The formation of “a contract alone”
28 with an out-of-state party does not amount to purposeful availment. *Boschetto v. Hansing*,
539 F.3d 1011, 1017 (9th Cir. 2008).

b. Purposeful Direction

For claims sounding in tort, specific jurisdiction is proper when the defendant

1 purposely directed his actions at the forum state, regardless of where the actions took place.
2 See Picot, 780 F.3d at 1212. “Purposeful direction” is satisfied under the “effects” test
3 when the defendant: “(1) committed an intentional act, (2) expressly aimed at the forum
4 state, (3) causing harm that the defendant knows is likely to be suffered in the forum state.”
5 Id. at 1214 (citing *Calder v. Jones*, 465 U.S. 783, 788–89 (1984)). In applying this test,
6 courts must “look[] to the defendant’s contacts with the forum [s]tate itself, not the
7 defendant’s contacts with persons who reside there.” *Walden*, 571 U.S. at 285 (citing *Int’l*
8 *Shoe*, 326 U.S. at 319). “[A]n injury is jurisdictionally relevant only insofar as it shows
9 that the defendant has formed a contact with the forum [s]tate.” Id. at 290. “[M]ere injury
10 to a forum resident is not a sufficient connection to the forum.” Id. Rather, “an injury is
11 jurisdictionally relevant only insofar as it shows that the defendant has formed a contact
12 with the forum State.” Id. “The proper question is not where the plaintiff experienced a
13 particular injury or effect but whether the defendant’s conduct connects him to the forum
14 in a meaningful way.” Id.

15 **III. ANALYSIS**

16 Although Defendants are similarly-situated in some respects, the Court will address
17 whether it has personal jurisdiction over M&F and Employees separately.

18 **A. M&F**

19 Because Plaintiff’s claims against M&F depend on the existence of the October
20 2014 fee agreement, the purposeful avilment test applies for the first prong of the analysis.
21 See *Stanford Ranch, Inc. v. Md. Cas. Co.*, 89 F.3d 618, 625 (9th Cir. 1996) (noting that
22 claims “dependent upon the existence of an underlying contract” sound in contract). In
23 early 2014, M&F telephoned Plaintiff to offer tax services to SPS. (Doc. 15 at 4). On
24 October 2, 2014, M&F mailed an engagement letter from California to Plaintiff in Arizona.
25 (Doc. 15-1 at 21; see also Doc. 1-1 at 10–12). The letter provided that M&F would: (1)
26 prepare SPS’s 2014 federal and California income tax returns, (2) work with SPS’s
27 representatives in California, and (3) send draft and final versions of returns to Plaintiff, as
28 president of SPS, in Arizona. (Doc. 1-1 at 10–12). During 2015–2017, M&F “reviewed

1 and ratified mailings, tax returns, and loan repayments,” and “periodically reported [SPS]
2 activity to [Plaintiff] in Arizona.” (Doc. 15 at 3).

3 Courts recognize that a contract can serve as a jurisdictional hook when it involves
4 a forum selection clause or work for a client in the forum state. See *Burger King*, 471 U.S.
5 at 479–480 (finding that a Florida forum selection clause weighed in favor of finding that
6 a Michigan defendant purposefully availed himself of Florida’s laws); *T.M. Hylwa, M.D.,*
7 *Inc. v. Palka*, 823 F.2d 310, 314 (9th Cir. 1987) (reasoning that continuing to work for a
8 California client weighed in favor of finding that a Kansas defendant purposefully availed
9 himself of California law). Neither of these elements are present here. The engagement
10 letter does not mention—and neither does Plaintiff assert—a forum selection clause for
11 Arizona. (See generally Doc. 1-1 at 10–12). Neither does M&F perform work for an
12 Arizona client—SPS is incorporated and maintains its principal place of business in
13 California. To be sure, it is undisputed that M&F performed work solely in California. (See
14 Doc 15 at 1). Consequently, M&F’s initial contact with Plaintiff in Arizona alone is
15 insufficient to constitute purposeful availment, thus failing the first prong of the Ninth
16 Circuit test.

17 Under the second prong of the Ninth Circuit test, the claims must arise or result from
18 a defendant’s forum-related activities. See *Picot*, 780 F.3d at 1211. The Ninth Circuit
19 applies a “but for” test when examining this second prong. *Grey & Co. v. Firstenberg*
20 *Mach. Co.*, 913 F.2d 758, 761 (9th Cir. 1990). Plaintiff’s claims arise out of M&F’s tax
21 services in California, provided to a California entity, whose principal place of business is
22 in California. (See Doc. 15 at 2–5). M&F did not visit Arizona or provide accounting
23 services under Arizona tax law. (See generally *id.*). Because Plaintiff’s contract claims
24 arise out of M&F’s California-related activities, not Arizona-related activities, the claims
25 fail the second prong of the Ninth Circuit test. Accordingly, M&F lacks sufficient
26 minimum contacts with Arizona for this Court to exercise personal jurisdiction over it.¹

27
28 ¹ Because Plaintiff failed to establish the first two prongs of the Ninth Circuit test,
the Court need not address the third prong regarding whether the exercise of jurisdiction

1 **B. Employees**

2 Plaintiff brings claims against Employees that sound in tort and in contract;
3 therefore, both the purposeful availment and the purposeful direction tests apply. See Picot,
4 780 F.3d at 1212. Under either test, the exercise of personal jurisdiction is improper.

5 **1. Purposeful Availment**

6 Under the first prong of the Ninth Circuit test for claims sounding in contract,
7 Plaintiff must establish that the non-resident Employees purposefully availed themselves
8 of the privilege of conducting activities in Arizona. See Picot, 780 F.3d at 1212. Plaintiff
9 does not contest that Employees “haven’t physically been to Arizona,” but argues that
10 Employees established sufficient contacts with the forum through their dealings with
11 Plaintiff, a known Arizona resident. (Doc. 16 at 2–3). Specifically, Plaintiff asserts that
12 Employees acted in concert with M&F to solicit Plaintiff in Arizona and that Employees
13 entered into an oral contract with Plaintiff while Plaintiff was in Arizona. (See *id.*). As
14 reasoned above, M&F’s interactions with Plaintiff in Arizona are insufficient to
15 demonstrate purposeful availment because M&F sought only to perform accounting
16 services for a California entity in California. (See *supra* Part III(A)).

17 Likewise, the fact that Employees entered into an oral contract with Plaintiff while
18 Plaintiff resided in Arizona fails to demonstrate purposeful availment. See *Boschetto*, 539
19 F.3d at 1017 (formation of “a contract alone” with an out-of-state plaintiff does not amount
20 to purposeful availment of the plaintiff’s home forum). Assuming the truth of Plaintiff’s
21 allegations—at all relevant times during negotiation and non-performance of the
22 contract—Employees worked for SPS in California, mismanaged funds of the California
23 entity from revenue generated in California, made an unauthorized filing with the
24 California Secretary of State, and did so with the aid of SPS’s California-based accounting
25 firm. (See Compl. ¶¶ 22–23; see also Doc. 12 at 9). The fact that Plaintiff resided in Arizona
26 and received reports of Employees’ California-related activities in Arizona is merely
27 incidental to Employees’ alleged misconduct in California; thus, the Court finds that

28 _____ would be reasonable. See *Schwarzenegger*, 374 F.3d at 807 n.1.

1 Plaintiff cannot satisfy the first prong of the Ninth Circuit test with respect to Plaintiff's
2 claims sounding in contract under the purposeful availment test.

3 **2. Purposeful Direction**

4 Under the first prong of the Ninth Circuit test for claims sounding in tort, Plaintiff
5 must establish that the non-resident Employees purposely directed their actions at Arizona,
6 even if the actions took place elsewhere. See *Picot*, 780 F.3d at 1212. In this case, Plaintiff
7 clearly establishes a prima facie case that Employees “committed an intentional act”—or
8 several acts by way of their alleged mismanagement of SPS funds—causing harm that
9 Defendants “know is likely to be suffered in the forum state.” See *id.* at 1214. Accordingly,
10 the Court will focus its purposeful direction inquiry on whether Employees’ alleged acts
11 were “expressly aimed at the forum state.” See *id.*²

12 Based on the following, the Court finds that the case before it has much more in
13 common with *Walden* and *Morrill*—where courts found that there was no personal
14 jurisdiction over defendants—than *Calder*. See *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136,
15 1144–45 (9th Cir. 2017) (distinguishing *Calder* on the grounds that the connection with
16 the forum in *Calder* “was largely a function of the nature of the libel tort,” which was not
17 present there, nor here). Here, Plaintiff does not allege that Employees intentionally or
18 purposefully sought to conduct business in Arizona—as opposed to with Plaintiff
19 generally—in a meaningful way. (See generally *Compl.*); see also *Walden*, 571 U.S. at 290

20 ² At oral argument, Plaintiff argued for the first time that the *Calder* “effects” test
21 gives the Court personal jurisdiction over Employees. In rebuttal, Counsel for Employees
22 argued that Plaintiff did not raise that argument in his moving papers, and initially
23 requested supplemental briefing on the issue before noting that he did not believe
supplement briefing was necessary.

24 Although the Court observes that Plaintiff does not cite *Calder* or the “effects” test
25 in his responsive filing to either pending motion, the Court acknowledges that both parties
26 briefed the issue of personal jurisdiction extensively, so it will fully address Plaintiff’s
27 “effects” arguments herein. (See generally *Doc. 15*; *Doc. 16*); but see *United States v.*
28 *Halling*, 232 Fed. Appx. 692, 693 (9th Cir. 2007) (unpublished) (“We do not consider the
additional arguments raised for the first time at oral argument” (citing *Whittaker Corp. v.*
Execuair Corp., 953 F.2d 510, 515 (9th Cir. 1992)). Moreover, the Court agrees with
Counsel for Employees that supplemental briefing is not necessary to resolve this matter.

1 (finding that a defendant does not purposefully direct conduct at the forum state when the
2 plaintiff was “the only link between defendant and the forum”); Picot, 780 F3d at 1215
3 (finding that when a Plaintiff’s injury travels with him outside the forum state, the
4 defendant’s alleged action was not purposefully directed at the forum state). Rather, “[t]he
5 allegedly tortious conduct here involved very limited communications and proceedings in
6 Arizona, all of which arose out of and were component parts” of Employees’ allegedly
7 improper business activities and financial mismanagement in California. See Morrill, 873
8 F.3d at 1144–45 (reasoning that a defendant’s appearance in an Arizona court was “solely
9 a by-product of Plaintiffs’ residence;” accordingly, there was no personal jurisdiction over
10 defendants when an Arizona-based attorney brought tort claims in the District of Arizona
11 for abuse of process and wrongful institution of civil proceedings against out-of-state
12 defendants, even though the defendants travelled to and appeared in Arizona Superior
13 Court as part of the underlying action that gave rise to the dispute).

14 Specifically, Plaintiff argues that Employees purposefully directed their actions at
15 Arizona because: “(a) [Defendants] all knew they were dealing with an Arizona funder of
16 the business over an extended period; (b) they sent money to Arizona for years to repay
17 [Plaintiff’s] personal loans to [SPS]; and (c) [Employees] routinely reported the company’s
18 financial data to the Arizona citizen-owner[.]” (Doc. 16 at 3). Stated another way, Plaintiff
19 contends that “[b]ecause Defendants knew that Plaintiff[] [was] from Arizona, it was
20 foreseeable that some injury to [him] could have been experienced there based on the
21 actions taken by Defendants in connection with [SPS].” Morrill, 873 F.3d at 1144
22 (rejecting the argument as an insufficient basis to establish purposeful direction). Although
23 “[h]arm suffered in the forum state is a necessary element in establishing purposeful
24 direction,” it is not alone sufficient. *Id.*

25 Additionally, “the potential foreseeability of some incidental harm to Plaintiff[] in
26 Arizona,” due to substantial activities hindering the California entity owned by Plaintiff,
27 “without more, does not show that Defendants expressly targeted the forum state.” *Id.* at
28 1145. “Such reasoning improperly attributes a plaintiff’s forum connections to the

1 defendant and makes those connections decisive in the jurisdictional analysis.” Id. (internal
2 quotation marks and citation omitted). The fact that Defendants knew the owner and funder
3 of SPS was in Arizona, and sent money and information to Plaintiff in Arizona “obscures
4 the reality that none of [the] challenged conduct had anything to do with [the forum state]
5 itself.” Id. (quoting *Walden*, 571 U.S. at 289) (alterations in original). Rather, Employees’
6 relevant alleged actions—taking unauthorized salary advances, improperly booking loan
7 funding, making an unauthorized filing with the California Secretary of State, making bad
8 faith offers to buy SPS, and preparing inaccurate financial reports—all occurred in
9 California, and were related to Plaintiff’s involvement with a California entity. (See Compl.
10 ¶¶ 2, 3, 8, 23–27). “Therefore, as in *Walden*, the forum state was only implicated by the
11 happenstance of Plaintiff[‘s] residence.” *Morrill*, 873 F.3d at 1146. Even if Employees
12 deprived Plaintiff of funds historically sent to him in Arizona, Plaintiff “would have
13 experienced this same lack of access [to the allegedly mismanaged funds] in [Arizona],
14 Mississippi, or wherever else” he might have resided and “found [himself] wanting more
15 money than [he] had.” Id. at 1143–44 (citing *Walden*, 571 U.S. at 290).

16 Accordingly, the Court finds that Plaintiff fails to establish that Employees
17 committed any act “expressly aimed at the forum state.” See *Picot*, 780 F.3d at 1214; see
18 also *Morrill*, 873 F.3d at 1148–49 (“Plaintiff[] [is] required to make a prima facie showing
19 that [Employees’] alleged actions were directed at Arizona, not just at individuals who
20 resided there. . . . Plaintiff[] failed to do so.”). Plaintiff thus fails to establish purposeful
21 direction and likewise fails the first prong of the Ninth Circuit Test.

22 **3. Forum-Related Activities**

23 Addressing the second prong of the Ninth Circuit test, the Court finds that none of
24 Plaintiff’s claims arise out of or relate to Employees’ limited Arizona-related activities. See
25 *Picot*, 780 F.3d at 1211. Again, Plaintiff alleges that employees mishandled SPS funds in
26 California and interfered with a contract for work in California, causing injury to Plaintiff
27 through the economic losses of the California entity owned by Plaintiff. See *supra* Part
28 III(B)(1)–(2). All of these alleged activities underscore Employees’ connection to

1 California, without any activities connected to Arizona. (Id.). Consequently, Plaintiff fails
2 to establish the second prong of the Ninth Circuit test because Plaintiff’s claims do not
3 arise out of Employees’ Arizona-related activities.

4 Accordingly, Plaintiff fails to establish the first two prongs of the Ninth Circuit test
5 regarding his claims against Employees, regardless of whether the claims sound in tort or
6 contract. Thus, Employees lack sufficient minimum contacts with Arizona for this Court
7 to exercise personal jurisdiction over Employees.³

8 **IV. Miscellaneous Arguments**

9 Because the Court concludes that it lacks personal jurisdiction over Defendants, it
10 need not address Defendants’ other arguments.⁴

11 **A. Amendment**

12 Plaintiff requests leave to amend if the Court grants either of Defendants’ respective
13 motions to dismiss. (See Docs. 15 at 6; Doc. 16 at 8). A plaintiff may, under certain
14 circumstances, be entitled to leave to amend to attempt to cure defects in a complaint
15 through allegation of other facts if the complaint is dismissed under Rule 12(b)(6). See,
16 e.g., *Schreiber Distributing Co. v. ServWell Furniture Co., Inc.*, 806 F.2d 1393, 1401 (9th
17 Cir. 1986). However, lack of personal jurisdiction, pursuant to Rule 12(b)(2), “is not
18 curable by amendment.” *Wild W. Guns, LLC v. Superior Ammunition, Inc.*, No. 3:18-CV-
19 00043 JWS, 2019 WL 885915, at *1 (D. Alaska Feb. 23, 2019). Nonetheless, the Court

20
21 ³ Again, the Court need not address the third prong. See *supra* note 1.

22 ⁴ Defendants raised additional arguments regarding standing, statutes of limitation,
23 venue, and forum non conveniens. (See Doc. 11; Doc. 13). While Defendants could
24 potentially prevail on several grounds, the issue of personal jurisdiction is dispositive, so
the Court limits its analysis accordingly.

25 For instance, in addition to Plaintiff’s contract-related claims, Plaintiff alleges
26 financial elder abuse of a vulnerable adult (count viii) against Employees. (Compl. ¶¶ 76–
27 85). In Arizona, a “vulnerable adult” is “an individual who is eighteen years of age or older
28 and who is unable to protect himself from abuse, neglect or exploitation by others because
of a physical or mental impairment.” A.R.S. § 46-451 (emphasis added). Here, as an
alternative basis to dismiss the claim, Plaintiff does not plead any “physical or mental
impairment” that could qualify him as a vulnerable adult. (See Compl. ¶¶ 76–85).

1 dismisses the action without prejudice.

2 **V. CONCLUSION**

3 Based on the foregoing,

4 **IT IS ORDERED** that Defendant Meadow & Fries, LLP's Motion to Dismiss (Doc.
5 11) is **GRANTED** pursuant to Rule 12(b)(2).

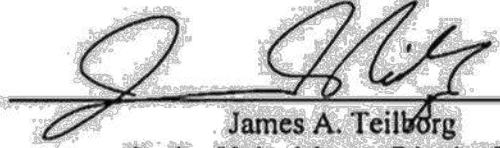
6 **IT IS FURTHER ORDERED** that Defendants Jennifer Leath and Maryam
7 Boroujerdi-Rad's Motion to Dismiss (Doc. 13) is **GRANTED** pursuant to Rule 12(b)(2).

8 **IT IS FURTHER ORDERED** that Plaintiff's claims against Defendants are
9 dismissed without prejudice (all other relief requested in the motions is denied as moot).

10 The Clerk of Court shall enter judgment accordingly and close this case.

11 Dated this 9th day of April, 2019.

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James A. Teilborg
Senior United States District Judge