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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ideasolv LLC,

10 Plaintiff,

11 v.

12 Geante Rouge SARL, et al.,

13 Defendants.
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No. CV-21-01905-PHX-MTL

ORDER

15 Before the Court is Geante Rouge, SARL’s (“Geante”) and Youssef Aarab’s
16 (“Aarab”) Motion to Dismiss. (Doc. 13.) Geante and Aarab argue that they are not subject
17 to personal jurisdiction in Arizona. (*Id.* at 3–9.) In the alternative, they argue for dismissal
18 of two of Plaintiff IdeaSolv, LLC’s three claims pursuant to Federal Rule of Civil
19 Procedure 9(b) and 12(b)(6). (*Id.* at 9–13, Doc. 17 at 2.) For the reasons stated below, the
20 Motion is granted in part and denied in part.¹

21 **I. BACKGROUND**

22 Plaintiff asserts that Aarab, as a member and manager of Geante, was hired to
23 promote the music career of Gandhi Bilel Djuna (“Djuna”). (Doc. 1-3 ¶¶ 4–7.) Aarab and
24 Djuna both reside in Morocco, and Geante’s principal place of business is in Morocco. (*Id.*
25 ¶¶ 2–5.) Plaintiff’s principal place of business in Arizona. (*Id.* ¶ 1.) As a member of Geante,
26 Aarab allegedly agreed to pay Plaintiff \$1,200,000 to create a website and a mobile app to
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28 ¹ Both parties have fully briefed the issues and oral argument would not have aided the Court’s decisional process. *See Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998); *see also* LRCiv 7.2(f); Fed. R. Civ. P. 78(b).

1 promote Djuna’s U.S. concert tour. (*Id.* ¶¶ 12–19.) Djuna toured in numerous U.S. cities,
2 but Geante and Aarab never set foot in Arizona. (*Id.* ¶ 29; Doc. 13 at 4–5.) Plaintiff alleges
3 that even though it fulfilled all of its contractual obligations, Geante only paid \$872,049.00
4 for the work done. (Doc. 1-3 ¶¶ 17, 27.) Including late fees and interest, Plaintiff asserts
5 that Geante still owes \$360,746.10. (*Id.* ¶ 28.) Plaintiff attempted numerous times to
6 collect, but Geante and Aarab never responded to the requests. (*Id.* ¶¶ 32–33.)

7 In August 2020, Plaintiff filed a complaint in Maricopa County Superior Court for
8 (1) breach of contract against Geante; (2) unjust enrichment against Geante, Aarab, and
9 Djuna; and (3) common law fraud against Aarab and Djuna. (*Id.* ¶¶ 34–58.) Defendants
10 timely removed the action to this Court pursuant to 28 U.S.C. § 1441(b) by invoking
11 diversity of citizenship and alleging an amount in controversy higher than \$75,000. (Doc.
12 1 at 4–5.) Djuna is not a party to this motion. (Doc. 13.)

13 **II. LEGAL STANDARD**

14 **A. Rule 12(b)(2)**

15 Under Fed. R. Civ. P. 12(b)(2), a defendant may move, “prior to trial, to dismiss the
16 complaint for lack of personal jurisdiction.” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557
17 F.2d 1280, 1285 (9th Cir. 1977). The plaintiff bears the burden to show that an exercise of
18 jurisdiction is proper. *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 473 (9th Cir. 1995). Here,
19 the plaintiff “need only make a prima facie showing of jurisdictional facts.” *Sher v.*
20 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990) (internal citation omitted). When examining
21 whether a prima facie showing of jurisdictional facts exists, any “uncontroverted
22 allegations in [the complaint] must be taken as true, and conflicts between the facts
23 contained in the parties’ affidavits must be resolved in [plaintiff’s] favor.” *AT&T Co. v.*
24 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (internal quotation marks
25 and citations omitted).

26 **B. Rule 12(b)(6)**

27 To survive a motion to dismiss for failure to state a claim, a complaint must contain
28 “a short and plain statement of the claim showing that the pleader is entitled to relief” such

1 that the defendant is given “fair notice of what the . . . claim is and the grounds upon which
2 it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P.
3 8(a)(2)); *Conley v. Gibson*, 355 U.S. 41, 47 (1957). Dismissal under Rule 12(b)(6) “can be
4 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
5 under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699
6 (9th Cir. 1988). A complaint should not be dismissed unless the plaintiff fails “to raise a
7 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555.

8 The Court must accept material allegations in the complaint as true and construe
9 them in the light most favorable to the plaintiff. *North Star Int’l v. Ariz. Corp. Comm’n*,
10 720 F.2d 578, 580 (9th Cir. 1983). “Indeed, factual challenges to a plaintiff’s complaint
11 have no bearing on the legal sufficiency of the allegations under Rule 12(b)(6).” *Lee v. City*
12 *of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). Review of a Rule 12(b)(6) motion is “limited to
13 the content of the complaint.” *North Star Int’l*, 720 F.2d at 581.

14 **III. DISCUSSION**

15 **A. Rule 12(b)(2)**

16 The parties agree that general jurisdiction over Geante and Aarab does not exist in
17 Arizona. (Doc. 13 at 4–5, Doc. 16 at 1.) Next, Geante and Aarab argue that Arizona does
18 not have specific jurisdiction over them. (Doc. 13 at 5–9.)

19 Arizona’s long-arm statute allows courts to exercise personal jurisdiction to the
20 maximum extent permitted by the U.S. Constitution. Ariz. R. Civ. P. 4.2(a). Courts in the
21 Ninth Circuit

22 apply a three-part test to determine whether the exercise of
23 specific jurisdiction over a nonresident defendant is
24 appropriate: (1) The non-resident defendant must purposefully
25 direct his activities or consummate some transaction with the
26 forum or resident thereof; or perform some act by which he
27 purposefully avails himself of the privilege of conducting
activities in the forum, thereby invoking the benefits and
protections of its laws; (2) the claim must be one which arises
out of or relates to the defendant’s forum-related activities; and
(3) the exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

28 *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008); *see also Burri L. PA v. Skurla*,

1 35 F.4th 1207, 1212 (9th Cir. 2022). “If the plaintiff succeeds in satisfying both of the first
2 two prongs, the burden then shifts to the defendant to ‘present a compelling case’ that the
3 exercise of jurisdiction would not be reasonable.” *Glob. Commodities Trading Grp., Inc.*
4 *v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020) (quoting *Burger*
5 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)). At this stage, the Court is
6 permitted to consider affidavits from both parties. *See, e.g., Data Disc*, 557 F.2d at 1285
7 (“If the court determines that it will receive only affidavits . . . these very limitations dictate
8 that a plaintiff must make only a prima facie showing of jurisdictional facts through the
9 submitted materials in order to avoid a defendant’s motion to dismiss.”). Here, Plaintiff
10 satisfies the first two prongs of the three-prong test.

11 **i. Purposeful Availment**

12 For contract disputes, the mere existence of a contract is not sufficient to subject the
13 out-of-state party to the personal jurisdiction of the plaintiff’s state. *Burger King*, 471 U.S.
14 at 468. Rather, courts “must evaluate the parties’ entire course of dealing, not solely the
15 particular contract or tortious conduct giving rise to the claim, when assessing whether a
16 defendant has minimum contacts with a forum.” *Glob. Commodities*, 972 F.3d at 1108. As
17 long as the contract is evidence of a negotiation process, not merely a “fleeting” business
18 relationship with a “center of gravity lay[ing] elsewhere,” the relationship will be sufficient
19 to confer specific personal jurisdiction. *Id.* (finding sufficient contacts existed to exercise
20 personal jurisdiction where the defendant had ongoing payment obligations in California,
21 denoting a “sustained [] relationship”); *but see Thomas P. Gonzalez Corp. v. Consejo*
22 *Nacional De Produccion De Costa Rica*, 614 F.2d 1247 (9th Cir. 1980) (finding that a
23 contract formed after a California plaintiff traveled to a foreign country to bid did not give
24 rise to personal jurisdiction in California); *Boschetto*, 539 F.3d 1011 (holding that a single
25 eBay sale to a California resident did not give rise to personal jurisdiction there in the
26 absence of continuing obligations). Purposeful availment is found if “business activities
27 reach out beyond one state and create continuing relationships and obligations.” *Id.* at 1017
28 (quoting *Travelers Health Ass’n v. Commonwealth of Va.*, 339 U.S. 643, 647 (1950)).

1 Contrary to the “fleeting” business relationships which this Circuit has held to be
2 insufficient to confer personal jurisdiction, the “center of gravity” of this agreement was in
3 Arizona. Geante, through its agent Aarab, entered a \$1,200,000 contract with an Arizona
4 plaintiff (Doc. 1-3 ¶¶ 12–13), and made six payments, totaling \$872,049, to Plaintiff’s
5 Arizona bank. (*Id.* ¶¶ 20–27; Doc. 16-1 ¶ 12.) Plaintiff performed all the work required by
6 the contract in Arizona. (Doc. 16-1 ¶ 13.) Geante and Aarab “retained the right to evaluate,
7 improve and modify the tasks to be performed under the [contract],” which is indicative of
8 a sustained relationship. (*Id.* ¶ 14.) This case is distinguishable from *Boschetto*. 539 F.3d
9 1011. As opposed to an anonymous online purchase of a product, Aarab here specifically
10 negotiated, via “dozens of emails,” a contract with Plaintiff, which he knew was domiciled
11 in Arizona, and agreed to resolve disputes according to Arizona law. (*Id.* ¶¶ 8, 4, 11.) In
12 sum, Geante and Aarab “reach[ed] out beyond” [Morocco] and “create[d] continuing
13 relationships and obligations with citizens of another state,” so they are subject to
14 “sanctions in the other [s]tate for the consequences of their activities.” *Burger King*, 471
15 U.S. at 473.

16 **ii. Arising Out of Or Relates to Defendant’s Forum Contacts**

17 Although Geante and Aarab argue that since they have no contacts with Arizona,
18 Plaintiff’s claims cannot arise out of their contacts (Doc. 13 at 8), that circular logic is
19 unpersuasive. Given that the above analysis establishes that Geante and Aarab had the
20 requisite minimum contacts with Arizona via the contract with Plaintiff, failure to pay the
21 remaining balance of that contract “arises out of or relates to the defendant’s forum-related
22 activities.” *See Glob. Commodities*, 972 F.3d 1101 (holding that a foreign entity entering a
23 contract with continuing obligations is sufficient, without physical presence, to subject it
24 to a state’s personal jurisdiction). Geante’s and Aarab’s only Arizona contacts were their
25 business dealings with Plaintiff, and all counts in the complaint are directly related to those
26 transactions. (Doc. 1-3 ¶¶ 34–58, Doc. 13 at 5.) Thus, this prong is satisfied.

27 **iii. Reasonableness of Exercising Jurisdiction**

28 Since Plaintiff satisfies the first two prongs, Geante and Aarab must “present a

1 compelling case” to show that the exercise of jurisdiction would be unreasonable. *Burger*
2 *King*, 471 U.S. at 477. In determining the reasonableness of exercising jurisdiction, the
3 Court balances seven factors:

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

12 *See CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1079 (9th Cir. 2011). No one
13 factor, even the burden on the defendant of defending in the forum, is dispositive. *Core-*
14 *Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1488–89 (9th Cir. 1993); *see also Dole Food*
15 *Co. v. Watts*, 303 F.3d 1104, 1117 (9th Cir. 2002) (“[T]wo of the seven factors—burden
16 on defendants and sovereignty conflicts— . . . are likely to favor foreign defendants every
17 time personal jurisdiction in the United States is considered.” But those two, in isolation,
18 are not enough to overcome the “strong presumption of reasonableness of the assertion of
19 personal jurisdiction.”).

20 Geante and Aarab, however, only raise the second factor in their motion: the burden
21 on the defendant. (Doc. 13 at 8–9.) No one factor by itself is sufficient to meet the movant’s
22 high burden and render the exercise of personal jurisdiction unreasonable. Additionally,
23 the Court is not required to analyze factors beyond those which the parties raised. *See*
24 *CollegeSource*, 653 F.3d at 1079–80 (noting that, since the defendant only raised three of
25 the possible seven factors, the court did not analyze the remaining four and held that the
26 defendant did not present a compelling case to avoid the exercise of personal jurisdiction).
27 Thus, Geante and Aarab failed to present a persuasive case to avoid the strong presumption
28 of reasonableness, and are subject to personal jurisdiction in Arizona.

B. Rule 12(b)(6)

The parties stipulate that Plaintiff’s fraud claim should be dismissed for failure to

1 state a claim under the economic loss doctrine.² (Doc. 13 at 9–11, Doc. 16 at 1.)

2 As to Count II, Aarab argues that Plaintiff’s unjust enrichment claim against him
3 should be dismissed for failure to state a claim. (Doc. 13 at 13.) Specifically, Aarab argues
4 that it is “conclusory” to state that he, as an employee of Geante, benefitted financially
5 from the promotion of Djuna’s concert tour. *Id.*

6 To prevail on an unjust enrichment claim under Arizona law, a plaintiff must prove
7 five elements: “(1) an enrichment, (2) an impoverishment, (3) a connection between the
8 enrichment and impoverishment, (4) the absence of justification for the enrichment and
9 impoverishment, and (5) the absence of a remedy provided by law.” *Wang Elec., Inc. v.*
10 *Smoke Tree Resort, LLC*, 230 Ariz. 314, 318 (Ariz. Ct. App. 2012). In short, it “provides a
11 remedy when a party has received a benefit at another’s expense and, in good conscience,
12 the benefitted party should compensate the other.” *Id.* Although a plaintiff is permitted to
13 “state as many separate claims or defenses as it has, regardless of consistency,” “where
14 there is a specific contract which governs the relationship of the parties, the doctrine of
15 unjust enrichment has no application.” Fed. R. Civ. P. 8(d)(3); *Brooks v. Valley Nat’l Bank*,
16 113 Ariz. 169, 174 (Ariz. 1976).

17 Here, the unjust enrichment claim against Aarab meets the five requirements under
18 Arizona law, thus making the prima facie showing that is necessary at this stage. The
19 complaint alleges that (1) Aarab is the member and manager of Geante, the manager of
20 Djuna’s music career, and benefits financially and professionally from Djuna’s success
21 (Doc. 1-3 ¶¶ 4, 6, 7); (2) despite Plaintiff meeting all obligations in the contract, Geante
22 failed to pay and now owes Plaintiff \$360,746.10 (*id.* ¶¶ 17–19, 28); (3) Geante entered a
23 contract with Plaintiff to create an application that would promote Djuna’s U.S. concert
24 tour, so the enrichment and impoverishment are “directly and causally related” (*id.*
25 ¶¶ 7, 12, 46); (4) there is no “legal justification for the enrichment of Aarab . . . at
26 [Plaintiff]’s expense.” (*id.* ¶ 48.) From these purported facts, Aarab’s unjust enrichment,

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28 ² Aarab also argues that Plaintiff’s fraud claim should be dismissed since it is not “pleaded
with the particularity required by Fed. R. Civ. P. 9(b).” (Doc. 13 at 11.) Since Plaintiff
stipulated to dismiss the fraud claim, the Court will not analyze that issue separately.

1 given his managerial role in Geante, is alleged “above a speculative level.” *Twombly*, 550
2 U.S. at 555. Aarab cites no relevant case law to the contrary.

3 Additionally, although there is a governing contract, that contract is between
4 Plaintiff and Geante, rather than between Plaintiff and Aarab. (*Id.* ¶ 12.) Thus, the fifth
5 element, “absence of remedy provided by law,” is also met, since Plaintiff cannot pursue a
6 breach of contract claim against Aarab directly. *Smoke Tree*, 230 Ariz. at 318.

7 **IV. CONCLUSION**

8 Accordingly,


9 **IT IS ORDERED** denying Defendants Geante Rouge, SARL’s and Youssef
10 Aarab’s Motion to Dismiss Plaintiff Ideasolv’s complaint for lack of personal jurisdiction.
11 (Doc. 13.)

12 **IT IS FURTHER ORDERED** granting Defendants Geante Rouge, SARL’s and
13 Youssef Aarab’s Motion to Dismiss Count Three (Common Law Fraud) claim, per the
14 parties’ stipulation. (Doc. 13; Doc. 16.)

15 **IT IS FURTHER ORDERED** denying Defendant Youssef Aarab’s Motion to
16 Dismiss Count Two (Unjust Enrichment) for failure to state a claim. (Doc. 13.)

17 **IT IS FINALLY ORDERED** that the remaining claims are (1) breach of contract
18 against Geante; (2) unjust enrichment against Geante, Aarab, and Djuna; and (3) common
19 law fraud against Djuna. (Doc. 1-3.)

20 Dated this 1st day of August, 2022.

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24 Michael T. Liburdi
25 United States District Judge
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