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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Hedges Industrial Enterprises, Inc.,
Plaintiff,
vs.
Rio Tinto PLC; Rio Tinto Limited; Rio
Tinto America Inc., and Kennecott Utah
Copper LLC,
Defendants.

No. CV-09-8113-PCT-GMS

ORDER

Kennecott Utah Copper LLC,
Counter-Plaintiff,
vs.
Hedges Industrial Enterprises, Inc.
Counter-Defendant,
and
Michael Hedges,
Third-Party Defendant.

Hedges Industrial Enterprises, Inc.,
Third-Party Plaintiff,
vs.
Motion Industries
Third-Party Defendant.

1 Pending before the Court are the Motion to Dismiss for Lack of Lack of Personal
2 Jurisdiction filed by Defendants Rio Tinto PLC and Rio Tinto America (Dkt. # 71) and the
3 Motion to Dismiss filed by Defendant Kennecott Utah Copper LLC (“Kennecott”) (Dkt. #
4 73). For the reasons set forth below, the Court grants both Motions with leave to amend.¹

5 BACKGROUND

6 In 2002, Hedges Industrial Enterprises, Inc. (“Hedges”) and Defendants entered into
7 an contract pursuant to which Hedges agreed to perform maintenance on Kennecott’s
8 hydraulic jacks and to provide Kennecott with a safety inspection program at the Bingham
9 Canyon mine in Utah. (Dkt. # 72 Ex. 2 at ¶ 2, # 55 at ¶ 6.) According to Hedges, Defendants
10 allegedly breached that agreement, made defaming statements regarding Hedges’s
11 performance of the contract, and then misappropriated certain of Hedges’s trade secrets.
12 (Dkt. # 55.)

13 Rio Tinto PLC and Rio Tinto America now move to dismiss the claims against them
14 for lack of personal jurisdiction. Kennecott moves to dismiss the defamation claim pursuant
15 to Federal Rule of Civil Procedure 12(b)(6).

16 DISCUSSION

17 I. Rio Tinto’s Motion to Dismiss for Lack of Personal Jurisdiction

18 A. Legal Standard—Rule 12(b)(2)

19 When the parties dispute whether personal jurisdiction over an out-of-state defendant
20 is proper, “the plaintiff bears the burden of establishing that jurisdiction exists.” *Rio Props.,*
21 *Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). This is so, even though the
22 defendant is the moving party on a 12(b)(2) motion. *Id.* In the absence of an evidentiary
23 hearing, however, the plaintiff need only make “a prima facie showing of jurisdictional facts
24 to withstand the motion to dismiss.” *Brayton Purcell LLP v. Recordon & Recordon*, ___ F.3d
25 ___, 2010 WL 2135302, at *2 (9th Cir. 2009) (*citing Pebble Beach Co. v. Caddy*, 453 F.3d

26
27 ¹The parties’ requests for oral argument are denied because oral argument will not aid
28 the Court’s decision. *See Lake at Las Vegas Investors Group, Inc. v. Pac. Malibu Dev.*, 933
F.2d 724, 729 (9th Cir. 1991).

1 1151 (9th Cir. 2002)). In considering the motion, a court may “assume the truth of allegations
2 in a pleading” to the extent that such allegations are not “contradicted by affidavit.” *See Data*
3 *Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1284 (9th Cir. 1977) (citing *Taylor v. Portland*
4 *Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967)); *see also Rio Props.*, 284 F.3d at 1019
5 (observing that only “uncontroverted allegations in [the] complaint must be taken as true”).
6 Where there are “conflicts between the facts contained in the parties’ affidavits,” depositions,
7 and other filings, those conflicts “must be resolved in [the plaintiff’s] favor.” *Am. Tel. & Tel.*,
8 *Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996) (internal quotations
9 omitted). In cases where a plaintiff survives the motion to dismiss under a prima facie burden
10 of proof, the plaintiff still must prove the jurisdictional facts by a preponderance of the
11 evidence at a preliminary hearing or at trial. *Data Disc*, 557 F.2d at 1285 n. 2.

12 To establish that personal jurisdiction over a defendant is proper, the plaintiff must
13 demonstrate that (1) the state’s long arm statute confers jurisdiction over that defendant; and
14 (2) that “the exercise of jurisdiction comports with the constitutional principles of Due
15 Process.” *See Rio Props.*, 284 F.3d at 1019 (citation omitted). Because Arizona’s long-arm
16 statute extends jurisdiction “to the maximum extent permitted by the . . . Constitution of the
17 United States,” the Court’s personal jurisdiction inquiry largely collapses into an analysis of
18 Due Process. *See Ariz. R. Civ. P. 4.2(a)*; *Davis v. Metro Prods., Inc.*, 885 F.2d 515, 520 (9th
19 Cir. 1989); *Williams v. Lakeview Co.*, 199 Ariz. 1, 5, 13 P.3d 280, 282 (2000).

20 **B. The Court Lacks Jurisdiction over Defendants Rio Tinto PLC and Rio**
21 **Tinto America.**

22 Based on the current record, the exercise of jurisdiction over either Rio Tinto PLC or
23 Rio Tinto America does not comport with principles of Due Process. Under the Due Process
24 Clause, a defendant must have sufficient “minimum contacts” with the forum state so that
25 subjecting the defendant to its jurisdiction will not “offend traditional notions of fair play and
26 substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal
27 quotation marks omitted). Under this standard, “the defendant’s conduct and connection with
28 the forum State [must be] such that he [or she] should reasonably anticipate being haled into

1 court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). In
2 accord with the Due Process Clause, the “minimum contacts” standard may be satisfied in
3 two ways. First, a court may exercise general jurisdiction when the defendant’s contacts with
4 the forum state are “continuous and systematic.” *Helicopteros Nacionales de Colombia, S.A.*
5 *v. Hall*, 466 U.S. 408, 415 (1984). Second, a court may exercise specific jurisdiction if a
6 defendant “has purposefully directed his activities at residents of the forum . . . and the
7 litigation results from alleged injuries that arise out of or relate to those activities.” *Burger*
8 *King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation omitted). “In addition
9 to establishing the requisite contacts, the assertion of jurisdiction must be found reasonable.”
10 *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 344 F. Supp.2d 686, 690 (W.D. Wash.
11 2003) (citation omitted).

12 In cases where a defendant has a wholly-owned subsidiary that possesses minimum
13 contacts, the subsidiary’s contacts may be imputed to the defendant if the plaintiff
14 demonstrates that the subsidiary acted as an alter-ego or general agent of the defendant. *See*
15 *Davis*, 885 F.2d at 520. The subsidiary’s contacts can also be imputed when the parties
16 engage in a joint venture in the relevant forum. *Bensmiller v. E.I. Dupont De Nemours & Co.*,
17 47 F.3d 79, 84 (2nd Cir. 1995).

18 **(1) Rio Tinto Is Not Subject to General Jurisdiction in Arizona.**

19 First, a court may assert general jurisdiction over a defendant if the defendant’s
20 activities in the state are substantial or continuous and systematic, even if the cause of action
21 is unrelated to those activities. *Helicopteros*, 466 U.S. at 415; *Haisten v. Grass Valley Med.*
22 *Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986); *Data Disc*, 557 F.2d at
23 1287 (citing *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 446–47 (1952)).

24 Hedges fails to provide an adequate legal basis for the exercise of general jurisdiction
25 over either Rio Tinto PLC or Rio Tinto America. According to uncontroverted affidavit
26 evidence, Rio Tinto PLC is a parent holding company incorporated in England with its
27 principal place of business in London, England (*see* Dkt. # 72, Ex. 1 at ¶ 4), and Defendant
28 Rio Tinto America is a Delaware corporation that owns and manages a number of different

1 companies in various industries (*id.* at ¶ 13). Additionally, neither Rio Tinto PLC nor Rio
2 Tinto America is licensed to do business in Arizona, has any employees in Arizona, owns
3 any real or tangible property in Arizona, sells goods or services in Arizona, or has ever paid
4 income or property tax in Arizona. (Dkt. # 72 Ex. 1 at ¶ 5–9.) The uncontroverted affidavit
5 evidence further provides that neither company engages or operates mining or processing
6 facilities within Arizona. (*Id.* at ¶ 10.)

7 The Court rejects Hedges argument that the Rio Tinto entities are subject to general
8 jurisdiction based on their fifty-five percent ownership stake in Resolution Copper. While
9 it appears that Resolution Copper is an Arizona company, Resolution Copper is not a
10 defendant, and insofar as this Court can surmise from Hedges’s Amended Complaint,
11 Resolution Copper has nothing to do with the wrongdoings alleged in this case. To the extent
12 that Resolution Copper’s contacts might be a basis for general jurisdiction under the alter-
13 ego, agency, or joint venture theories, Hedges has not set forth any facts or allegations in its
14 Amended Complaint, or elsewhere, that justify imputing Resolution Copper’s contacts to Rio
15 Tinto PLC or Rio Tinto America. *See Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001)
16 (setting forth the parameters for imputing a subsidiary’s contacts to its parent); *Patterson v.*
17 *Home Depot, USA, Inc.*, 684 F. Supp.2d 1170 (D. Ariz. 2010) (same). Instead, the Rio Tinto
18 entities’ uncontroverted affidavit precludes the application of the alter-ego, agency, and joint
19 venture theories to the facts of this case. For example, the affidavit indicates that Resolution
20 and the Rio Tinto entities do not share the unity of control that is required to find jurisdiction
21 under the alter-ego or joint-venture theories. *See Gatecliff v. Great Republic Life Ins. Co.*,
22 170 Ariz. 34,37, 821 P.2d 725, 728 (outlining the factors in establishing a “unity of control”
23 under an alter-ego theory); *Tanner Cos. v. Superior Court*, 144 Ariz. 141, 143, 696 P.2d 693,
24 695 (1985) (setting forth the requirements, including “an equal right to control,” for finding
25 jurisdiction under a joint-venture theory). Additionally, the affidavit asserts that Rio Tinto
26 America’s interest in Resolution is limited to that of a holding company. *See Doe*, 248 F.3d
27 at 929 (holding that the agency theory does not apply where a parent holding company takes
28 actions that are merely consistent with the parent’s status as an investor).

1 **(2) Rio Tinto Is Not Subject to Specific Jurisdiction in Arizona.**

2 A court may exercise specific jurisdiction over a defendant when the cause of action
3 arises directly from the defendant’s contacts with the forum state. *See Sher v. Johnson*, 911
4 F.2d 1357, 1361 (9th Cir. 1990). The Ninth Circuit employs a three-part test to determine
5 whether the defendant’s contacts with the forum state are sufficient to subject it to specific
6 jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Under this three-part
7 inquiry, specific jurisdiction exists only if: (1) the defendant *purposefully availed* itself of the
8 privileges of conducting activities in the forum, thereby invoking the benefits and protections
9 of its laws, or *purposely directs* conduct at the forum that has effects in the forum; (2) the
10 claim *arises out* of the defendant’s forum-related activities; and (3) the exercise of
11 jurisdiction comports with fair play and substantial justice, *i.e.*, it is *reasonable*. *Id.*; *see*
12 *Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (citing
13 *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 417 (9th Cir. 1997)). Under this three-step
14 analysis, the Court finds that neither Rio Tinto PLC nor Rio Tinto America is subject to
15 specific jurisdiction in Arizona.

16 **(a)(i) Purposeful Availment**

17 The Ninth Circuit has held that “[a] purposeful availment analysis is most often used
18 in suits sounding in contract.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802
19 (9th Cir. 2002). A defendant has purposefully availed itself of a forum when it “has taken
20 deliberate action within the forum state or . . . has created continuing obligations to forum
21 residents.” *Ballard*, 65 F.3d at 1498. Although contacts must be more than random,
22 fortuitous, or attenuated, contacts that are “isolated” or “sporadic” may support specific
23 jurisdiction if they create a “substantial connection” with the forum. *Burger King*, 471 U.S.
24 at 472–73, 75. This is so, even if a defendant has no physical presence within the forum. *Id.*

25 Hedges has failed to set forth facts indicating that either Rio Tinto PLC or Rio Tinto
26 America purposefully availed itself of an Arizona forum. According to Hedges, the Rio Tinto
27 entities subjected themselves to jurisdiction in Arizona by “specifically contract[ing] with
28 Hedges.” (Dkt. # 76.) Nevertheless, while it appears that Hedges contracted with *Kennecott*

1 to perform jack maintenance services for Kennecott’s Utah operation, the fact that Hedges
2 may have removed some of the jacks and performed some of that maintenance in Arizona
3 does not suggest that either Rio Tinto America or Rio Tinto PLC purposely availed
4 themselves of the privileges of conducting business in *Arizona*. Even assuming that one or
5 both of the Rio Tinto entities are parties to this agreement, the mere presence of a contract
6 with an out-of-state party is insufficient to establish minimum contacts for personal
7 jurisdiction. *See Doe*, 248 F.3d at 924 (*citing McGlinchy v. Shell Chemical Co.*, 845 F.2d
8 802, 816 n.9 (9th Cir. 1988)). Instead, the “prior negotiations and contemplated future
9 consequences, along with the terms of the contract and the parties’ actual course of dealing,”
10 are the proper factors to be considered in evaluating whether a contract establishes sufficient
11 minimum contacts. *Burger King*, 471 U.S. at 478–79. Hedges’s complaint pleads no facts
12 pertaining to the test set out in *Burger King*. The Court, therefore, rejects Hedges’s argument
13 that its contract with the Defendants provides a basis for specific jurisdiction.

14 Hedges’s reliance on *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328
15 F.3d 1122, 1130 (9th Cir. 2003), to the contrary, is misplaced. In *Harris Rutsky*, the Ninth
16 Circuit held that purposeful availment existed because the defendants had *intentionally*
17 *directed action towards residents of California* by actively seeking contracts with residents
18 of that state. *Id.* Hedges’s allegations demonstrate no such affirmative conduct on the part
19 of Rio Tinto America or Rio Tinto PLC.

20 The Court also rejects Hedges’s argument that the purposeful availment test is
21 satisfied by Resolution Copper’s contacts with Arizona. Again, Resolution Copper is not a
22 defendant in this action and there is no allegation that Resolution Copper had anything to do
23 with the wrongdoings alleged in this case. Similarly, while the Rio Tinto entities allegedly
24 made periodic business trips to Arizona, there is no allegation that the misconduct at issue
25 has anything to do with those contacts. *See Ballard*, 65 F.3d at 1498 (noting that purposeful
26 availment requires that the claim be related to the contacts at issue).

1 **(a)(ii) Purposeful Direction**

2 In cases sounding in tort, the Ninth Circuit employs a purposeful direction analysis.
3 *Schwarzenegger*, 374 F.3d at 802. This three part test for purposeful direction provides:

4 *Calder* stands for the proposition that purposeful availment is satisfied even
5 by a defendant “whose only ‘contact’ with the forum state is the ‘purposeful
6 direction’ of a foreign act having effect in the forum state.” . . . [Under]
7 *Calder*, the “effects” test requires that the defendant allegedly have (1)
8 committed an intentional act, (2) expressly aimed at the forum state, (3)
9 causing harm that the defendant knows is likely to be suffered in the forum
10 state.

11 *Id.* at 803 (citing *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). Applying
12 this test to Hedges’s tort claims, Rio Tinto PLC and Rio Tinto America are not subject to
13 personal jurisdiction on the facts alleged.

14 There are simply no allegations that Rio Tinto PLC or Rio Tinto America intentionally
15 directed tortious conduct at Arizona. In its Amended Complaint, Hedges refers specifically
16 to the five individuals who were involved with the alleged tortious conduct: (1) Green, (2)
17 Lund, (3) Withers, (4) White, and (5) Ridge. (Dkt. # 55.) The Amended Complaint indicates
18 that all of these individuals, with the exception of Withers, are employed by Kennecott,
19 rather than any Rio Tinto entity. (*Id.* at ¶ 10–15.) And while Hedges alleges that Withers is
20 an employee of an undisclosed Rio Tinto entity, (*see id.* at ¶ 13), the Amended Complaint
21 does not plead any facts suggesting that Withers was employed in Arizona or that he
22 purposefully directed tortious conduct at Arizona. The only misconduct asserted against
23 Withers is his allegedly defamatory email. There is no allegation, however, that the email
24 was circulated in Arizona—a prerequisite for jurisdiction based on a claim of defamation.
25 *See Casualty Assur. Risk Ins. Brokerage Co. v. Dillon*, 976 F.2d 596, 600 (9th Cir. 1992)
26 (holding that “circulation of the libel in the forum jurisdiction is a key factor in determining
27 whether a nonresident defendant has sufficient contacts with the forum”). Accordingly,
28 Hedges has failed to plead sufficient facts that either Rio Tinto PLC or Rio Tinto America
purposefully directed any tortious conduct at Arizona.

1 to provide a basis for exercising specific jurisdiction over Rio Tinto PLC or Rio Tinto
2 America in Arizona.²

3 **II. Kennecott’s Motion to Dismiss Pursuant to Rule 12(b)(6).**

4 **A. Legal Standard: Motion to Dismiss for Failure to State a Claim**

5
6 To survive a dismissal for failure to state a claim under to Rule 12(b)(6), a complaint
7 must contain more than a “formulaic recitation of the elements of a cause of action[;]” it must
8 contain factual allegations sufficient to “raise a right to relief above the speculative level.”
9 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). And while “[a]ll allegations of
10 material fact are taken as true and construed in the light most favorable” to the non-moving
11 party, *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996), “conclusory allegations of law
12 and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state
13 a claim.” *In re Stac Elecs. Sec. Litig.*, 89 F.3d 1399, 1403 (9th Cir. 1996) (internal quotations
14 marks omitted). “[O]nly a complaint that states a plausible claim for relief survives a motion
15 to dismiss.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009).

16 **B. Hedges Has Failed to State a Claim for Defamation Under Rule 12(b)(6).**

17 Hedges has not plead sufficient facts to state a claim for either defamation or
18 defamation *per se*.³ Under Arizona law governing simple defamation, “one who publishes
19

20 ²According to the Ninth Circuit, jurisdictional discovery should “ordinarily be granted
21 where pertinent facts bearing on the question of jurisdiction are controverted or where a more
22 satisfactory showing of the facts is necessary.” *Butcher’s Union Local No. 498 v. SDC*
23 *Invest., Inc.*, 788 F.2d 535, 540 (9th Cir. 1986) (quotation omitted). Because Hedges has not
24 made a substantial showing that any of the pertinent facts are controverted as to Rio Tinto
25 PLC or Rio Tinto America, jurisdictional discovery is not appropriate at this time. *See*
26 *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008) (holding that a request
27 jurisdictional discovery should be denied where the request is premised merely on a hunch
28 or a belief that such discovery will result in relevant evidence). Prior to receiving
jurisdictional discovery against either of these Defendants, Hedges would have to establish
a more specific basis on which to believe there may be jurisdiction as to either.

³This Court need not address at this time whether Arizona or Utah law applies to the
defamation claim because Hedges fails to plead adequate facts for the purposes of either law.

1 a false and defamatory communication concerning a private person . . . is subject to liability,
2 if, but only if, he (a) knows that the statement is false and it defames the other, (b) acts in
3 reckless disregard for these matters, or (c) acts negligently in failing to ascertain them.” *Dube*
4 *v. Likins*, 216 Ariz. 406, 417, 167 P.3d 93, 104 (Ct. App. 2007). Publication as it pertains to
5 defamation is communication of defamatory statements to a third party. *Id.* Similarly under
6 Utah law, a claimant must show that “defendants published the statements concerning him,
7 that the statements were false, defamatory, and not subject to any privilege, that the
8 statements were published with the requisite degree of fault, and that their publication
9 resulted in damage.” *West v. Thomson Newspapers*, 872 P.2d 999, 1007–08 (Utah 1994). To
10 state a claim for defamation *per se*, the statements must “on their face falsely tend to impeach
11 one’s honesty, integrity or reputation.” *Boswell v. Phoenix Newspapers*, 152 Ariz. 1, 6, 730
12 P.2d 178, 183 n.4 (Ct. App. 1985) (citation omitted); *see also Larson v. SYSCO Corp.*, 767
13 P.2d 557, 560 (Utah 1989) (holding that under Utah law, statements are defamatory *per se*
14 when they are “false and allege criminal conduct on the part of the plaintiff or impute the
15 contracting of some loathsome disease, unchaste behavior (on the part of a woman) or
16 conduct which is incongruous with the exercise of a lawful business, trade, profession or
17 office.”).

18 With respect to his defamation claim, Hedges has done nothing more than plead
19 conclusory allegations of law that are insufficient to raise a right to relief above the
20 speculative level. *See Iqbal*, 129 S. Ct. at 1950; *Twombly*, 550 U.S. at 555. Hedges alleges
21 four defamatory statements in his complaint; however, each of these statements fails to meet
22 the pleading requirements set forth in *Twombly* and *Iqbal*.

23 First, Hedges alleges that Kennecott made defamatory statements when an employee
24 sent emails indicating that Hedges would have to go on welfare soon. (Dkt. # 55 at ¶ 10.) It
25 is unclear, however, whether these emails were published to some third party. From the face
26 of the Amended Complaint, it appears that the allegedly harassing emails were merely
27 “responses” to Hedges’s requests for payment from Kennecott.
28

1 Hedges next points to statements from Kennecott personnel implying that he was
2 responsible for too many jacks needing repair. (Dkt. # 77.) According to the Amended
3 Complaint, Hedges was once asked “why so many jacks were going out for repair?” On
4 another occasion two Kennecott employees voiced displeasure about the number of jacks
5 going out. (Dkt. # 55 at ¶ 12.) These facts alone, however, are insufficient to state a claim for
6 defamation. These statements appear to be little more than an opinion, for which a claim for
7 defamation does not lie. *See Burns v. Davis*, 196 Ariz. 155, 165, 993 P.2d 1119, 1130 (Ct.
8 App. 1999) (“We reiterate that mere opinion, hyperbole, and political invective are protected
9 speech and as such do not constitute defamation.”); *West*, 872 P.2d at 1015 (“Because
10 expressions of pure opinion . . . are incapable of being verified, they cannot serve as the basis
11 for defamation liability.”).

12 Third, Hedges asserts that he received a defamatory email from Withers reprimanding
13 him for removing Kennecott property without permission. Again, Hedges fails to plead any
14 facts suggesting that the email was ever published. To the contrary, the Amended Complaint
15 implies that the email exchange occurred solely between Hedges and Withers.

16 Finally, Hedges points to the “Jack # 4 Report” and alleges that it contained
17 “numerous defamatory statements.” (Dkt. # 77.) Hedges’s Amended Complaint, however,
18 fails to set forth facts suggesting that any information published in the “Jack # 4 Report” was
19 defamatory in nature. Without any additional facts pertaining to the contents of “Jack # 4
20 Report,” this Court cannot assess whether the statements therein are defamatory or
21 defamatory *per se*.

22 CONCLUSION

23
24 For the foregoing reasons, the Court finds that Hedges has failed to assert a prima
25 facie case for exercising personal jurisdiction over Rio Tinto PLC or Rio Tinto America in
26 Arizona. The Court also finds that Hedges has failed to state a claim for defamation against
27 Kennecott.

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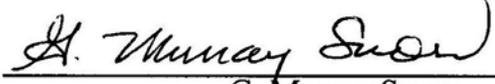
IT IS THEREFORE ORDERED:

(1) The Rio Tinto entities' Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. # 71) and Kennecott's Motion to Dismiss Hedges's defamation claim (Dkt. # 73) are **GRANTED WITH LEAVE TO AMEND.**

(2) Hedges shall have **thirty days (30) or until July 29, 2010** to file its Second Amended Complaint. Hedges shall also file with the Court and all Defendants a redline version indicating all changes from the Amended Complaint and the Second Amended Complaint.

(3) Should Hedges fail to file its Second Amended Complaint in the requisite time frame, the Clerk of the Court is directed to **TERMINATE** Rio Tinto PLC and Rio Tinto America from this action.

DATED this 30th day of June, 2010.



G. Murray Snow
United States District Judge