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

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9 Allstate Life Insurance Company;  
10 Plaintiff,  
11 vs.  
12 Robert W. Baird & Co., Inc., *et al.*,  
13 Defendants.

) Lead Case No. CV-09-8162-PCT-GMS  
)  
) Consolidated with:  
) Case No. CV-09-8174-PCT-GMS

**ORDER**

14 \_\_\_\_\_  
15 Ronald Covin, *et al.*,  
16 Plaintiffs,  
17 vs.  
18 Robert W. Baird & Co., Inc., *et al.*,  
19 Defendants.

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21 Pending before the Court is Allstate Life Insurance Company's Motion to Dismiss the  
22 Town of Prescott Valley's Counterclaims. (Doc. 262). As set forth below, Allstate's Motion  
23 to Dismiss is granted in part and denied in part.<sup>1</sup>

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27 <sup>1</sup>The Town's request for oral argument is denied as the Court has determined that oral  
28 argument will not aid in its decision. *See Lake at Las Vegas Investors Group v. Pac. Malibu Dev.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 **BACKGROUND**

2 This action arises from the offering and sale of \$35 million in revenue bonds (the  
3 “Bonds”) used to finance the construction of a 5,000 seat event center in the Town of  
4 Prescott Valley, Arizona. In 2005, Plaintiff Allstate Life Insurance Company invested \$26.4  
5 million in the Bonds and is the majority Bondholder. The Covin Plaintiffs, which consist of  
6 Bondholders other than Allstate, invested an additional \$9 million in the Bonds. Wells Fargo  
7 Bank, N.A. (“Trustee”) was appointed as the Bonds’ Indenture Trustee and gained certain  
8 rights and responsibilities in relation to the Bonds pursuant to the Indenture of Trust  
9 (“Indenture”).

10 In 2009 Allstate commenced this action. Allstate alleges that in the offering  
11 documents for the Bonds, various Defendants, including the Town of Prescott Valley  
12 (“Town”), failed to disclose material information to purchasers of the Bonds, resulting in  
13 financial loss to the Bondholders. Allstate has therefore filed federal securities fraud claims  
14 against the Town, along with state-law claims for securities fraud, common-law fraud, aiding  
15 and abetting fraud, and negligent misrepresentation. The Covin Plaintiffs likewise assert  
16 fraud claims against the Town.

17 The Town, meanwhile, has counterclaimed, contending that Allstate is at least  
18 partially responsible for the Bondholders’ financial loss. A 2005 development agreement  
19 (“Development Agreement”) between the Town and the Trustee requires that the Town make  
20 periodic payments to the Trustee of transaction privilege tax revenues (“TPT revenues”). The  
21 Development Agreement further requires that these TPT revenues be used to service the  
22 Bonds. (Dev. Agmt. § 4.3.7.4). The Town alleges, however, that Allstate improperly induced  
23 the Trustee to use the TPT revenues to pursue litigation against the Town instead of to  
24 service the Bonds. In particular, the Town alleges that “Allstate induced the Trustee to divert  
25 the Town’s October 2009, April 2010, and October 2010 debt service payments to the  
26 payment of legal fees.” (Doc. 238, ¶ 6). According to the Town, the Trustee acknowledged  
27 Allstate’s actions in a notice on its website, which informed the Bondholders that Allstate  
28 had “directed the Trustee in writing to forbear . . . from applying funds in the trust account

1 to principal and interest on the Bonds.” (Doc. 238, ¶ 18). The Town contends that, as a result  
2 of Allstate’s actions, Fitch Ratings “withdrew its rating on the Bonds, causing [the] harm to  
3 the Bondholders for which they seek recovery from the Town.” (Doc. 238, ¶ 6).

4 At issue in the instant motion are the Town’s two counterclaims. (Doc. 238). First, the  
5 Town claims that Allstate intentionally interfered with both the Indenture and the  
6 Development Agreement. Second, the Town alleges that to the extent it is liable for harm  
7 suffered by the Bondholders, it is entitled to contribution from Allstate. Allstate moves to  
8 dismiss both counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure  
9 to state a claim. (Doc. 262).

## 10 DISCUSSION

### 11 I. Legal Standard

12 To survive dismissal, a claim must contain more than “labels and conclusions” or a  
13 “formulaic recitation of the elements of a cause of action”; it must contain factual allegations  
14 sufficient to “raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*,  
15 550 U.S. 544, 555 (2007). When analyzing a counterclaim for failure to state a claim under  
16 Rule 12(b)(6), “[a]ll allegations of material fact are taken as true and construed in the light  
17 most favorable to the non-moving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir.  
18 1996). In addition, the Court must assume that all general allegations “embrace whatever  
19 specific facts might be necessary to support them.” *Pelosa v. Capistrano Unified Sch. Dist.*,  
20 37 F.3d 517, 521 (9th Cir. 1994). Although a claim “need not contain detailed factual  
21 allegations,” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008), the  
22 Court will not assume that the plaintiff can prove facts different from those alleged. *See*  
23 *Associated Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526  
24 (1983); *Jack Russell Terrier Network of N. Cal. v. Am. Kennel Club, Inc.*, 407 F.3d 1027,  
25 1035 (9th Cir. 2005). Similarly, legal conclusions couched as factual allegations are not  
26 given a presumption of truthfulness, and “conclusory allegations of law and unwarranted  
27 inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696,  
28 699 (9th Cir. 1998).

1 **II. Legal Analysis**

2 **A. Intentional Interference with Contract**

3 The Town claims that Allstate intentionally interfered with contractual relations  
4 between the Town and the Trustee. (Doc. 238 at 35). To successfully state a claim for  
5 intentional interference with contractual relations, the Town must plead:

6 (1) the existence of a valid contractual relationship; (2)  
7 knowledge of the relationship on the part of [Allstate]; (3)  
8 intentional interference inducing or causing a breach; (4)  
9 resultant damage to [the Town]; and (5) that [Allstate] acted  
improperly. *Snow v. Western Sav. & Loan Ass'n*, 152 Ariz. 27,  
33, 730 P.2d 204, 211 (1986).

10 The Town has adequately plead elements (2), (3), and (5). Allstate contends, however, that  
11 the Town has failed to allege (1) a valid contractual relationship or (4) damage to the party  
12 whose relationship has been disrupted. (Doc. 262 at 4–5).

13 A contract is not valid for purposes of tortious interference unless the plaintiff is a  
14 party to the contract. *Am. Family Mut. Ins. Co. v. Zavala*, 302 F. Supp. 2d 1108, 1118 (D.  
15 Ariz. 2003) (citing *Bowdoin v. Oriel*, No. 98–5539, 2000 WL 134800, at \*4 (E.D. Pa. Jan.  
16 28, 2000)). Allstate alleges that the Town is not a party to the Indenture Agreement, and that  
17 therefore the Town has failed to plead the existence of a valid contract. The Town, however,  
18 has pled that Allstate tortiously interfered with both the Indenture *and* the Development  
19 Agreement. Allstate acknowledges that the Town is a party to the Development Agreement.  
20 (Doc. 294 at 2–3). Therefore, the Town has adequately pled a valid contractual relationship  
21 with respect to the Development Agreement.<sup>2</sup>

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23 <sup>2</sup>Allstate argues that it cannot be held liable for tortious interference with the  
24 Development Agreement since it is not a “stranger” to this contract. (Doc. 262 at 4). To  
25 support this argument, Allstate cites *Southern Union Co. v. Southwest Gas Corp.*, a 2001 case  
26 in which the U.S. District of Arizona determined, citing Georgia state law, that “[t]he  
27 intended third-party beneficiary of a contract . . . cannot be held liable for tortious  
28 interference since he is not a stranger to the contract.” 165 F. Supp. 2d 1010, 1037 (D. Ariz.  
2001) (citing *Atlanta Market Ctr. Mgmt. Co. v. McLane*, 269 Ga. 604, 609 (1998)). In 2002,  
however, the Arizona Supreme Court allowed a tortious interference claim to proceed even  
though the defendant was one of the contract’s beneficiaries. *Wells Fargo Bank v. Arizona*

1           The Town must also plead that Allstate’s actions resulted in damages to the Town.  
2 *Snow*, 152 Ariz. at 33. The Town alleges that as a result of Allstate’s actions, “the  
3 Bondholders have been harmed by the loss of debt service payments and devaluation of the  
4 Bonds, and the Bondholders seek recovery of such losses from the Town.” (Doc. 238, ¶ 40).  
5 Although the Town’s allegations emphasize *Bondholder* losses, the Town makes clear that  
6 it faces personal liability for these Bondholder losses and therefore has also been harmed by  
7 Allstate’s actions. (*Id.*). For instance, the Town contends that, as a result of Allstate’s actions,  
8 Fitch Ratings “withdrew its rating on the Bonds, causing [the] harm to the Bondholders for  
9 which they seek recovery from the Town.” (*Id.* at ¶ 6). In short, the Town has adequately  
10 pled that Allstate interfered with the contractual relations between the Town and the Trustee,  
11 and that the Town was harmed as a result.

12           **B.     Contribution**

13           The Town also claims that it “is entitled to contribution from Allstate due to the  
14 actions of Allstate causing losses to Bondholders.” (Doc. 238, ¶ 49). Under Arizona law there  
15 can be a “right of contribution [between parties] even though judgment has not been  
16 recovered against all or any of them.” A.R.S. § 12-2501(A) (2011). Such a right of  
17 contribution only exists, however, where the parties are jointly and severally liable. *Id.* And  
18 the State of Arizona has largely abolished joint and several liability. A.R.S. § 12-2506  
19 (2011). *See also PAM Transport v. Freightliner Corp.*, 182 Ariz. 132, 133 (1995).

20           The Town nevertheless contends that it and Allstate are jointly and severally liable  
21 under the joint and several liability provisions of the PSLRA and Arizona Securities Act. *See*  
22 15 U.S.C. § 78u-4(f)(2)(A) (2011); A.R.S. § 44-2003 (2011). In other words, the Town  
23 claims that Allstate is jointly liable with the Town for securities fraud. (Doc. 282 at 5–7). But  
24 the Town has not asserted counterclaims against Trustee for violating the PSLRA or the  
25 Arizona Securities Act. Therefore the joint and several liability provisions of those acts are

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27 *Laborers*, 201 Ariz. 474, 493 n.19, 494, 38 P.3d 12, 31 n.19, 32 (2002) (holding that the  
28 plaintiff had pled the existence of a valid contract even though it was a “beneficiary of the  
[contract’s] proceeds”). Arizona does not, therefore, adhere to the “stranger” requirement.

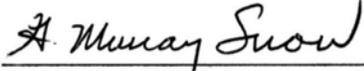
1 not applicable.

2 **CONCLUSION**

3 For the above reasons, the Town has adequately stated a claim against Allstate for  
4 intentional interference with contractual relations. The Town has failed, however, to  
5 adequately plead joint and several liability between Allstate and the Town. Therefore the  
6 Town's contribution claim must be dismissed.

7 **IT IS THEREFORE ORDERED** that Allstate Life Insurance Company's Motion  
8 to Dismiss the Town of Prescott Valley's Counterclaims (Doc. 262) is **GRANTED in part**  
9 **and DENIED in part.**

10 DATED this 1st day of November, 2011.

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13 G. Murray Snow  
14 United States District Judge

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