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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GLOBAL ACQUISITIONS NETWORK,)
a Wyoming corporaiton; SHAWN)
CORNEILLE, an individual,)

Plaintiff,)

v.)

BANK OF AMERICA CORPORATION,)
a Delaware corporation;)
ORIANA CAPITAL PARTNERS, LLC,)
a Connecticut limited)
liability company; ZANCO, a)
company of unknown business)
form, HLB FINANCIAL, LLC, a)
company of unknown form; W/C)
INVESTMETN HOLDINGS INC., a)
Florida corporatin; DEXTER)
CHAPPELL, an individual;)
VALERIE CHAPPELL, an)
individual; JON LEARY, an)
individual; GLEN McINERNEY)
also known as LARRY BENNETT,)
an individual; CHRISTOPHER)
RAY ZANCO, an individual;)
BERNARD WOODSON, an)
individual,)

Defendants.)

Case No. CV 12-08758 DDP (CWx)

**ORDER DENYING DEFENDANT'S MOTION
TO DISMISS PURSUANT TO FED. R.
CIV. P. 12(B)(2)**

[Dkt. No. 65]

Presently before the Court is Defendant's Motion to Dismiss
Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(2)

1 ("Motion"). Having considered the parties' submissions, the Court
2 denies the Motion and adopts the following Order.

3 **I. BACKGROUND**

4 Plaintiffs are Global Acquisitions Network ("GAN") and Shawn
5 Corneille. (First Amended Complaint ("FAC") ¶¶ 2-3.) Defendants
6 are Oriana Capital Partners ("Oriana"), Dexter Chappell, and Jon
7 Leary (sometimes referred to herein as the "Oriana Defendants")¹.
8 (Id. at ¶¶ 4-7.) Relevant to this motion, Defendant Jon Leary
9 resides in the State of Connecticut and is licensed to practice
10 law there. Mr. Leary acted as legal counsel for Oriana and Dexter
11 Chappell, and engaged in business in the State of California. (Id.
12 at ¶ 7.)

13 Plaintiffs allege the following facts. Plaintiffs are the
14 owners of two collateralized mortgage obligations ("CMOs") that
15 have a combined face value of approximately \$2.5 billion. (Id. at
16 ¶ 10.) Plaintiffs sought opportunities where the CMOs could
17 generate financial returns by using them as collateral on a loan.
18 (Id. at ¶ 12.) Having no experience in that particular field, the
19 Plaintiffs sought help and were introduced to Defendants Leary and
20 Chappell. (Id. at ¶ 13.) Defendants Chappell and Leary approached
21 Oriana Capital Partners ("Oriana") who agreed to use the CMOs as
22 collateral for an approximately \$18 million non-recourse loan
23 ("NRL") to Plaintiffs. (Id. at ¶ 15.) Before consummating the
24 agreement, the Plaintiffs requested assurances from the Oriana
25 Defendants that Oriana had the ability to fund the NRL. (Id. at ¶
26 21.) To address Plaintiffs' concerns, a conference call was

27
28 ¹Bank of America was originally a defendant, but was dismissed
on February 19, 2013. (Dkt. No. 38.)

1 allegedly held on February 9, 2012, at approximately 7:56 a.m.,
2 between Plaintiffs, the Oriana Defendants, and a Bank of America
3 Bank Officer whose name Plaintiffs believe was Tom Hazlet or
4 Hazlit. (Id. at ¶ 25.) The call was identified as originating
5 from the number 800-432-1000, which Plaintiffs allege is a Bank of
6 America phone number. (Id. at ¶ 24.) During this call, both the
7 Oriana Defendants and the Bank Officer, Hazlet or Hazlit, told
8 Plaintiffs that Bank of America was the primary financial
9 institution with which Oriana did business and that it would be the
10 institution funding the credit line for Plaintiffs' non-recourse
11 loan. (Id. at ¶ 28.) Additionally, the Bank Officer stated that
12 Oriana had access to a credit line and had the financial resources
13 to fund the loan. (Id.)

14 Based on these assurances from the Oriana Defendants and the
15 Bank of America Bank Officer, Plaintiffs decided to transfer the
16 CMOs to Oriana. The CMOs were delivered to the Fidelity account
17 designated by Oriana between February 27 and 29, 2012, and they
18 confirmed receipt of the CMOs. (Id. at ¶¶ 33-35; Exh. 2.) On March
19 12, 2012, Oriana Defendants told Plaintiffs that they would be
20 unable to fund the loan within the contractually required time
21 period, so the parties agreed to extend the payout deadline to
22 April 18. (Id. at ¶ 41.)

23 By June 2, Oriana still had not made the loan to Plaintiffs.
24 (Id. at ¶¶ 47-48.) Over the next couple of months, the parties
25 communicated, primarily through counsel, by phone and email about
26 the status of the loan and the CMOs. (Id. at ¶¶ 47-55.) Mr.
27 Chappell and Mr. Leary would provide different reasons for the
28 delay in payment. (Id.; Exh. 5.) Over the course of this

1 communication, Plaintiffs learned that the Fidelity account to
2 which they had transferred the CMOs was actually owned by a third
3 party. (Id. at ¶¶ 63-65.) Oriana's name had been added to the
4 account, but the Oriana Defendants informed Plaintiffs that, as of
5 July 7, 2012, the account had been closed and Oriana was unable to
6 obtain any details about the closure because Defendant Chappell was
7 not listed as an account holder. (Id. at ¶ 68.) At that time, the
8 Oriana Defendants stated that they did not know what had happened
9 to the CMOs or where they were located. (Id. at ¶ 86.)

10 Eventually, in an August 6, 2012, email,² counsel for the
11 Oriana Defendants admitted that they misrepresented their ability
12 to fund the loan through a Bank of America credit line or with
13 their own funds, but contended that the CMOs were never received in
14 the Fidelity account. (Id. at ¶ 82.) As of the time of the filing
15 of Plaintiff's original complaint in October 2012, the Oriana
16 Defendants still had not paid the loan or returned the CMOs, and
17 Plaintiffs did not know where the CMOs were located. (Id. at ¶
18 86.)

19 On February 9, 2013, Defendant Bank of America filed a motion
20 to dismiss which the Court granted with leave to amend the
21 complaint. (Dkt. No. 38.) After the FAC was filed, Bank of
22 America filed a second motion to dismiss. (Dkt. No. 50.) Its
23 motion was granted on June 7, 2013. (Dkt. No. 60.)

24 Defendant Jon Leary now moves to dismiss pursuant to Fed. R.
25 Civ. P. 12(b)(2) for lack of personal jurisdiction.

26
27 ² This August 6, 2012 email is not included with the other
28 email correspondence attached as the fifth exhibit to Plaintiffs'
complaint.

1 **II. LEGAL STANDARD**

2 When a defendant moves to dismiss for lack of personal
3 jurisdiction, the plaintiff bears the burden of demonstrating that
4 the court has jurisdiction over the defendant. Pebble Beach Co. v.
5 Caddy, F.3d 1151, 1154 (9th Cir. 2006). To demonstrate a court's
6 jurisdiction over a defendant, a plaintiff must show that personal
7 jurisdiction is (1) permitted under the applicable state's long-arm
8 statute and that (2) the exercise of jurisdiction does not violate
9 federal due process. Id. California's long-arm statute, Cal.
10 Code. Civ. Pro. § 410.10, allows personal jurisdiction on any basis
11 not inconsistent with the Constitution. Cal. Code. Civ. Pro. §
12 410.10.

13 A federal district court may exercise either general or
14 specific jurisdiction over a non-forum defendant. See Helicopteros
15 Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 (1984).
16 Demonstrations of general or specific jurisdiction require that the
17 plaintiff make a prima facie showing of jurisdictional facts, facts
18 that if taken as true would support jurisdiction and withstand the
19 motion to dismiss. Id.

20 Any disputed facts for the purposes of the motion to dismiss
21 are construed in favor of the plaintiff. Id. However, a court may
22 permit discovery to help determine whether it has personal
23 jurisdiction, especially in circumstances where pertinent facts are
24 controverted. Data Disc, Inc., v. Systems Tech. Assoc. Inc., 557
25 F.2d 1280, 1285 n.1 (9th Cir. 1977).

26 **III. DISCUSSION**

27 Mr. Leary moves to dismiss the complaint against him for lack
28 of personal jurisdiction. He argues that he maintains no contacts

1 with California. Mr. Leary claims to be a lifelong resident of the
2 State of Connecticut, who has never solicited or conducted business
3 outside of Massachusetts and Connecticut. (Motion to Dismiss at
4 4.) Moreover he contends that he has only visited California once,
5 in 1991, as a tourist and that his only contact with the Plaintiffs
6 was through email and one phone call. (Mot. to Dismiss at 4.)

7 The Plaintiffs appear to concede that the Court lacks general
8 jurisdiction; instead, the Plaintiffs argue that the FAC has
9 sufficiently alleged that this Court can exercise specific
10 jurisdiction over Mr. Leary.

11 **A. Specific Jurisdiction**

12 Under Ninth Circuit law, a court may exercise specific
13 jurisdiction over a nonresident defendant when (1) a defendant
14 purposefully directs her activities or consummates some transaction
15 with the forum or resident thereof, or performs some act by which
16 she purposefully avails herself of the privilege of conducting
17 activities in the forum, thereby invoking the benefits and
18 protections of its laws, (2) the plaintiff's claim arises out of or
19 relates to the defendant's forum related activities, and (3) the
20 exercise of jurisdiction comports with fair play and substantive
21 justice, i.e. it must be reasonable. Schwarzenegger v. Fred Martin
22 Motor Co., 374 F.3d 797, 801-02 (9th Cir. 2004).

23 Depending on the type of claim made by a plaintiff, purposeful
24 direction takes on different meanings. Compare Dole Foods Co.,
25 Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002) (explaining how
26 personal jurisdiction in intentional tort cases is a question of
27 purposeful direction which is evaluated under the "effects test"
28 (quoting Calder v. Jones, 465 U.S. 783 (1984))), with

1 Schwarzenegger, 374 F.3d at 803 (explaining that personal
2 jurisdiction in contracts cases is a question of purposeful
3 availment to the privileges of doing business in the forum state).

4 If a plaintiff can establish the first two prongs, then the
5 defendant must come forward with a "compelling case" that the
6 exercise of jurisdiction would be unreasonable. Burger King Corp.
7 v. Rudzewicz, 471 U.S. 462, 477 (1985).

8 **i. Purposeful Direction**

9 Here, the Plaintiffs argue that Mr. Leary purposefully
10 directed his activities toward residents of California. (See Mot.
11 to Dismiss at 9.) A purposeful direction analysis is relevant for
12 tort claims. Schwarzenegger, 374 F.3d at 803. To demonstrate
13 purposeful direction, the first prong of the test determining
14 whether a court may exercise specific jurisdiction over a
15 defendant, a plaintiff must show that the defendant (1) committed
16 an intentional act, (2) expressly aimed at the forum state, (3)
17 which caused harm that the defendant knows is likely to be suffered
18 in the forum state. Id.(citing Calder v. Jones, 465 U.S. 783
19 (1984)).

20 The FAC alleges that Mr. Leary made representations to the
21 Plaintiffs that the Oriana Defendants would be able to fund the
22 CMOs; however, Mr. Leary knew that the Oriana Defendants' ability
23 to pay was contingent on a third party. (FAC at ¶¶ 22-26, 49-50.)
24 Moreover, the FAC alleges that the Plaintiffs suffered monetary
25 losses due to Mr. Leary's representations. (Id. at ¶ 90.) These
26 facts establish that Mr. Leary's actions meet the first and third
27 prongs of "purposeful direction": that he acted intentionally and
28 that his actions caused harm to the Plaintiffs in the forum state.

1 The issue is whether Mr. Leary's actions were "expressly aimed" at
2 the forum state.

3 "Expressly aimed" requires "more" than mere foreseeability;
4 "expressly aimed" requires that the relevant action in the forum
5 state be individually targeted to a forum resident, so that the
6 defendant can reasonably anticipate being hauled into court in the
7 forum state. Bancroft & Masters, Inc. v. Augusta National Inc.,
8 223 F.3d 1082, 1088 (9th Cir. 2000); Calder v. Jones, 465 U.S. 783,
9 790 (1984). For example, in Dole, the defendants were found to
10 have expressly aimed their actions at California, the forum state,
11 because they knew the decision makers they were communicating with
12 were located in California. 303 F.3d at 1111; see also Data Disc,
13 Inc, 557 F.2d at 1288 ("The inducement of reliance in California is
14 a sufficient act within California to satisfy the requirement of
15 minimum contacts where the cause of action arises out of that
16 inducement.").

17 Here, while Mr. Leary did not actively solicit business in
18 California, his actions were still expressly aimed at the forum
19 state. Like the defendants in Dole, Mr. Leary knew the Plaintiffs
20 had California contacts because every email sent to Mr. Leary
21 contained a signature block with a California address. (FAC, Exh.
22 5.) These indicia of the Plaintiffs' California contacts created a
23 reasonable expectation that Mr. Leary could be hauled into court in
24 California. Mr. Leary is correct that his status as a Connecticut
25 resident does not allow this Court to exercise general jurisdiction
26 over him; however, Mr. Leary's communications targeted California
27 residents and are the basis of the present cause of action, thereby
28 providing a basis for this Court to exercise specific jurisdiction.

1 Mr. Leary contends that any communication with the Plaintiffs
2 in California occurred through email and telephone and is therefore
3 insufficient to establish personal jurisdiction. However, courts
4 have held that limited personal jurisdiction may be based on email
5 contacts that are intentionally directed to residents of the forum
6 state and then cause harm in the forum state. See Felland v.
7 Clifton, 682 F.3d 665, 674-76 (7th Cir. 2012) (fraudulent
8 misrepresentations sent by email, regular mail, and telephone can
9 be the basis for specific jurisdiction). Here, the Plaintiffs have
10 attached multiple email exchanges between themselves and Mr. Leary;
11 these exchanges not only support the negligence and fraud-based
12 claims against Mr. Leary, but also establish sufficient contacts to
13 allow this Court to exercise specific jurisdiction.

14 **ii. Arising From**

15 Under the second prong of the specific jurisdiction test,
16 whether the defendant's actions give rise to the current action is
17 measured in terms of "but for" causation. Bancroft, 223 F.3d at
18 1088. Here, the Plaintiffs allege in the FAC that Mr. Leary's
19 representation about the Oriana Defendants' ability to pay was
20 essential to the Plaintiffs in deciding whether to transfer the
21 CMOs. (FAC at ¶ 30.) Mr. Leary does not contend that his
22 communications with Plaintiffs caused the alleged harm; Mr. Leary
23 only argues that his California contacts are insufficient to grant
24 this Court jurisdiction.

25 **iii. Reasonableness**

26 If both of these prongs are met, the burden falls on the
27 defendant to show that the exercise of jurisdiction would be
28 unreasonable. Felland, 682 F.3d at 674-76. In his Motion to

1 Dismiss, Mr. Leary alleges that his status as a Connecticut
2 domiciliary means this Court cannot exercise personal jurisdiction
3 over him; however, Mr. Leary does argue why exercising personal
4 jurisdiction over a Connecticut domiciliary would be unreasonable.
5 The Court declines to speculate a reason why exercising personal
6 jurisdiction would be unreasonable, but notes that nothing in Mr.
7 Leary's papers or in the FAC suggests that it would not be
8 reasonable.

9 **IV. CONCLUSION**

10 For the above reasons, Leary's motion to dismiss for lack of
11 personal jurisdiction is DENIED. The Plaintiffs have alleged facts
12 sufficient to demonstrate that Mr. Leary possessed the necessary
13 minimum contacts with California for this Court to exercise
14 personal jurisdiction over him.

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17 IT IS SO ORDERED.

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19 Dated: July 9, 2013

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DEAN D. PREGERSON
United States District Judge