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United States District Court  
Central District of California

LEGENDZ ENTERTAINMENT, LLC et  
al.,

Plaintiffs,

v.

CAM SPECIALTY LENDING 1, LTD et  
al.,

Defendants.

Case № 2:23-cv-03097-ODW (MARx)

**ORDER GRANTING MOTION TO  
DISMISS [35]**

**I. INTRODUCTION**

Plaintiffs Legendz Entertainment LLC and Cinematic LLC (collectively, “Legendz”) bring this breach of contract and tort action against Defendants Crescendo Asset Management LLC (“CAM”), CAM Specialty Lending 1, Ltd. (“CSL”), Crescendo Capital S.A., and Brian Weiner. (Second Am. Compl. (“SAC”), ECF No. 14.) Crescendo Capital now moves to dismiss the Second Amended Complaint as against it pursuant to Federal Rules of Civil Procedure (“Rule”) 12(b)(2).<sup>1</sup> (Mot. Dismiss (“Mot.” or “Motion”), ECF No. 35.) For the reasons below, the Court **GRANTS** the Motion.<sup>2</sup>

<sup>1</sup> Crescendo Capital nominally states it is also moving pursuant to Rule 12(b)(6); however, its analysis in the Motion focuses entirely on Rule 12(b)(2). Therefore, the Court does the same.

<sup>2</sup> Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

## II. BACKGROUND<sup>3</sup>

1  
2 In August 2022, Legendz committed to promote a World Boxing Council  
3 pay-per-view fight between two professional boxers on November 26, 2022. (SAC  
4 ¶¶ 12, 20.) Legendz’s “main job” pursuant to this agreement was to “source the  
5 marketing and operating capital required to promote the title fight” and “generate  
6 sufficient revenue to cover the purses paid to the boxers plus all the other expenses  
7 incurred in organizing and staging the event.” (*Id.* ¶¶ 14, 16.)

8 In October 2022, Legendz came to an oral understanding with “Defendants”  
9 regarding the event’s financing. (*See id.* ¶ 20.) Legendz requested and received  
10 funding assurances letters from CAM and Crescendo Capital. (Opp’n Mot. Dismiss  
11 (“Opp’n”) 14, ECF No. 41.) On November 21, 2022, Legendz entered into a written  
12 contract with CSL, a client of CAM (“Contract”). (*See* SAC ¶¶ 23, 29<sup>4</sup>; Decl. Dylan  
13 Marer ISO Opp’n (“Marer Decl.”) Ex. A, ECF No. 41-2 (Letter of Direction,  
14 indicating that Legendz entered into an asset purchase agreement with CSL  
15 concerning the event); Decl. Douglas Kalen ISO Mot. (“Kalen Decl.”) ¶ 7, ECF  
16 No. 37.) The Contract obligated CSL to provide full funding on the day of the  
17 Contract’s execution—November 21, 2022. (SAC ¶ 23.) CSL failed to provide full  
18 payment at that time, and instead made late installment payments on November 25,  
19 November 30, December 1, and December 2. (*Id.* ¶ 27.)

20 Brian Weiner, CAM’s Executive Director and Portfolio Manager, executed the  
21 Contract on behalf of CAM and CAM’s client, CSL. (Decl. Brian Weiner ISO Reply  
22 (“Weiner Decl.”) ¶ 2, ECF No. 43-1.) Crescendo Capital was not a party to the  
23 Contract. (*Id.*) However, Legendz contends that Weiner’s communications  
24 concerning the Contract led Legendz to believe that Crescendo Capital was involved

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25 <sup>3</sup> The background facts derive from Legendz’s well-pleaded allegations. *See Ashcroft v. Iqbal*,  
26 556 U.S. 662, 678 (2009); *Lee v. City of Los Angeles*, 250 F.3d 668, 679 (9th Cir. 2001).

27 <sup>4</sup> Legendz purports to attach the Contract between Legendz and Defendants to the Second Amended  
28 Complaint as Exhibit A. However, Exhibit A does not identify any Defendant and is not executed  
by any Defendant. (*See* SAC Ex. A, ECF No. 14-1.) As such, it does not establish a written  
agreement between Legendz and any Defendant.

1 in funding the event. (*See* SAC ¶ 24; Opp’n 11–20; Marer Decl. Exs. B–D, F, ECF  
2 No. 41-2.) Specifically, Legendz contends that emails and text messages Weiner sent  
3 to Legendz’s CEO, Dylan Marer, and a funding assurances letter from Crescendo  
4 Capital led Legendz to believe that Weiner “acted as an agent, servant, employee,  
5 co-conspirator, alter-ego and/or joint venturer” for not only CAM and CSL, but also  
6 Crescendo Capital and the broader “Crescendo Group.” (SAC ¶ 24; Opp’n 7–8, 12.)

7 Legendz relied on the promised funding, and as a result of the lack of timely  
8 funding, the boxing event suffered from “diminished marketing, loss of  
9 viewership . . . , loss of revenue, [and] delayed payment of the boxers’ purses.” (SAC  
10 ¶ 28.) Legendz claims that CAM, CSL, and Crescendo Capital knew or should have  
11 known that (1) they would not be able to pay on time, (2) it was fraudulent and/or  
12 negligent to continue representing that they would pay on time, and (3) a breach of the  
13 Contract would damage Legendz’s “reputation in the event and boxing industries, the  
14 ability to hire and pay celebrity talent, performers and produce high budget, broadcast  
15 corporate events and concerts.” (*Id.*)

16 Based on the above allegations, Legendz brings this action asserting six causes  
17 of action against CAM, CSL, Weiner, and Crescendo Capital: (1) breach of written  
18 contract, (2) promissory estoppel, (3) fraudulent inducement, (4) negligent  
19 inducement, (5) negligence, and (6) declaratory relief. (*Id.* ¶¶ 29–63.) Before  
20 Crescendo Capital appeared in the case, Legendz, CSL, CAM, and Weiner stipulated  
21 to submit their dispute to voluntary binding arbitration. (Order re: Stip. Arb., ECF  
22 No. 24.) The Court approved the stipulation and stayed the case as to Legendz’s  
23 claims against CSL, CAM, and Weiner. (*Id.*)

24 Crescendo Capital has since appeared and moves to dismiss Legendz’s claims  
25 against it pursuant to Rule 12(b)(2), for lack of personal jurisdiction. The Motion is  
26 fully briefed. (*See* Opp’n; Reply ISO Mot. (“Reply”), ECF No. 43.)

### III. LEGAL STANDARD

Federal courts have the power to exercise personal jurisdiction to the extent permitted by the laws of the states in which they sit. Fed. R. Civ. P. 4(k)(1)(A). “California’s long-arm jurisdictional statute is coextensive with federal due-process requirements . . . .” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th Cir. 2004); *see* Cal. Civ. Proc. Code § 410.10. When this is the case, the court inquires whether the defendant “ha[s] certain minimum contacts with [the forum state] such that the maintenance of the suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).

When a defendant seeks dismissal under Rule 12(b)(2), the plaintiff bears the burden of demonstrating that personal jurisdiction is proper. *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007). When, as here, a motion to dismiss for lack of personal jurisdiction is based on written materials rather than an evidentiary hearing, “the plaintiff need only make a prima facie showing of jurisdictional facts.” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). However, the plaintiff cannot “simply rest on the bare allegations of its complaint.” *Schwarzenegger*, 374 F.3d at 800. The court “may not assume the truth of allegations in a pleading which are contradicted by affidavit, but factual conflicts between dueling affidavits must be resolved in the plaintiff’s favor.” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021) (internal quotation marks and citations omitted). “[B]are bones assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff’s pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (internal quotation marks omitted). Nor will “random,” “fortuitous,” or “attenuated” contacts establish specific personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

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#### IV. DISCUSSION

Crescendo Capital moves to dismiss this action as against it for lack of personal jurisdiction. (*See generally* Mot.) Courts may exercise general or specific personal jurisdiction over nonresident defendants. *Fed. Deposit Ins. Corp. v. British-Am. Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987). Legendz concedes that Crescendo Capital is not subject to general jurisdiction and opposes dismissal only as to specific personal jurisdiction. (Opp’n 15.)

In light of this concession, the question narrows to whether Crescendo Capital’s contacts with California are sufficient to render the exercise of specific personal jurisdiction reasonable. *See Schwarzenegger*, 374 F.3d at 802. To answer this question, the Ninth Circuit applies a three-prong test: (1) the nonresident defendant “purposefully direct[s] his activities or consummate[s] some transaction with the forum,” or performs “some act by which he personally avails himself of the privilege of conducting activities in the forum”; (2) the claim “arises out of or relates to the defendant’s forum-related activities”; and (3) the exercise of jurisdiction “comport[s] with fair play and substantial justice,” i.e., it is reasonable. *Id.* If the plaintiff successfully satisfies the first two prongs, the burden shifts to the defendant to “present a compelling case” that the third prong—reasonableness—has not been satisfied. *Id.* (quoting *Burger King*, 471 U.S. at 476–78).

As the party asserting jurisdiction, Legendz bears the burden of satisfying the first two prongs of this test. *Id.* The showing necessary to satisfy the first prong varies slightly depending on whether the case sounds in contract or in tort. *Id.* Legendz brings both contract and tort-based causes of action. Therefore, with respect to contract claims, Legendz must establish that Crescendo Capital “purposefully availed itself of the privilege of conducting activities in California.” *Id.* Regarding tort claims, Legendz must establish that Crescendo Capital “purposefully directed its activities toward California.” *Id.*

1 **A. Purposeful Availment**

2 A showing of purposeful availment “typically consists of evidence of the  
3 defendant’s actions *in the forum*, such as executing or performing a contract there.”  
4 *Id.* (emphasis added).

5 Crescendo Capital asserts, and Legendz does not dispute, that Crescendo  
6 Capital was not a signatory to the Contract. (Kalen Decl. ¶ 7; Opp’n 16.)  
7 Nevertheless, Legendz argues that Crescendo Capital engaged in actions in California  
8 through Weiner, who acted as an “agent, servant, employee, co-conspirator, alter-ego  
9 and/or joint venturer” for Crescendo Capital and its owner, the umbrella company  
10 Crescendo Group. (Opp’n 7, 14–15.) Legendz contends that Weiner’s intentional  
11 acts in the forum may therefore be properly ascribed to Crescendo Capital under a  
12 principal-agent relationship. (Opp’n 11–15.) However, Legendz supports its belief  
13 about Weiner’s agent-connection to Crescendo Capital with only Marer’s unfounded  
14 interpretations of Weiner’s communications: (1) Marer “understood” Weiner’s  
15 references to “Geneva” (*e.g.*, Geneva, Switzerland) and “CEO” in text messages to  
16 mean Crescendo Capital, and (2) Marer understood that Crescendo Capital’s funding  
17 assurances letter, stating that “Crescendo Capital S.A. (and/or other of its suitable  
18 affiliates) *has the capacity* to allocate” funds, to mean that Crescendo Capital funded  
19 the event. (Marer Decl. ¶¶ 2–7, 11–12; *id.* Ex. C (emphasis added); Opp’n 11–15.)

20 In contrast to Legendz’s speculative affidavit, Crescendo Capital submits  
21 declaration testimony from its own CEO and from Weiner, both expressly and directly  
22 refuting that Weiner had any connection with Crescendo Capital. (*See* Kalen Decl.  
23 ¶ 8 (“Weiner does not work for and is not affiliated with Cresendo Capital . . . . At all  
24 times relevant hereto Mr. Weiner was working solely for [CAM] and on behalf of its  
25 client, [CSL].”); Weiner Decl. ¶¶ 2–3 (“At no time have I ever worked for or been an  
26 agent of Crescendo Capital.”).) Weiner further attests that when he used the terms  
27 “Geneva” and “CEO” in text messages with Marer, he “was not referring to  
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1 Crescendo Capital,” but instead to CAM’s client CSL, located in Geneva, and CAM’s  
2 CEO. (Weiner Decl. ¶¶ 2–4.2.<sup>5</sup>)

3 Legendz does not object to or adequately refute Crescendo Capital’s explicit  
4 affidavit denials. (*See generally* Opp’n.) Nor does Legendz respond or request the  
5 opportunity to respond with additional support for its agency contentions in the face of  
6 those direct denials. Thus, Legendz fails to overcome Crescendo Capital’s evidentiary  
7 showing and the Court accepts as true Crescendo Capital’s factual assertions that  
8 Weiner’s actions were not taken on Crescendo Capital’s behalf. Accordingly, the  
9 Court concludes that Crescendo Capital has not conducted any in-forum activities that  
10 warrant a purposeful availment analysis.

### 11 **B. Purposeful Direction**

12 The Court next examines whether Crescendo Capital purposefully directed its  
13 conduct toward California. *Schwarzenegger*, 374 F.3d at 802. A showing of  
14 purposeful direction “usually consists of evidence of the defendant’s actions outside  
15 the forum state that are directed at the forum.” *Id.* at 803.

16 Purposeful direction is evaluated under a three-part “effects” test. *Dole Food*  
17 *Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002) (citing *Calder v. Jones*,  
18 465 U.S. 783 (1984)). The defendant allegedly must have “(1) committed an  
19 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the  
20 defendant knows is likely to be suffered in the forum state.” *Id.* However, “a foreign  
21 act with foreseeable effects in the forum state” does not “always give[] rise to specific  
22 [personal] jurisdiction.” *Schwarzenegger*, 374 F.3d at 804 (second alteration in  
23 original). “The proper question is not where the plaintiff experienced a particular  
24 injury or effect but whether the defendant’s conduct connects him to the forum in a  
25 meaningful way.” *Walden v. Fiore*, 571 U.S. 277, 290 (2014). Here, after excluding  
26 all alleged conduct by Weiner for the reasons explained above, the evidence of

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28 <sup>5</sup> Weiner identifies two paragraphs in his Declaration with the numeral “4.” The Court cites the first  
as “4.1” and the second as “4.2.”

1 Crescendo Capital’s potential purposeful direction is limited to the act of mailing a  
2 funding assurance letter at Legendz’s request. (See Mot. 1; Kalen Decl. ¶ 7; Opp’n 5.)  
3 Thus, the Court considers whether this letter satisfies purposeful direction.

4 The first requirement is an intentional act, i.e. a real-world manifestation of the  
5 actor’s will. *Schwarzenegger*, 374 F.3d at 806. At Legendz’s request, Crescendo  
6 Capital prepared a funding assurance letter for Legendz. (Kalen Decl. ¶ 7, Ex. 1.)  
7 Preparing a letter constitutes an intentional act. *See Bancroft & Masters Inc. v.*  
8 *Augusta Nat’l, Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000) (concluding that defendant  
9 “acted intentionally when it sent its letter to [plaintiff]”), *overruled in part on other*  
10 *grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d  
11 1199, 1207 (9th Cir. 2006) (en banc). Therefore, the first requirement is met.

12 The second requirement is that Crescendo Capital “expressly aimed” its  
13 intentional act at the forum. *Schwarzenegger*, 374 F.3d at 806. In general, a  
14 defendant expressly aims its act at the forum when it intentionally directs its actions at  
15 a forum resident. *Id.* However, “the plaintiff cannot be the only link between the  
16 defendant and the forum.” *Walden*, 571 U.S. at 285. Rather, the court must evaluate  
17 the defendant’s “minimum contacts” with the forum, including “the relationship  
18 among the defendant, the forum, and the litigation.” *Id.* at 284 (quoting *Keeton v.*  
19 *Hustler Mag., Inc.*, 465 U.S. 770, 775 (1984)); *see also Schwarzenegger*, 374 F.3d  
20 at 807 (finding that the possibility the foreign defendant’s act may have “eventually  
21 caused harm” to the plaintiff in California, or that the defendant “may have known”  
22 the plaintiff was in California did “not confer [personal] jurisdiction” in California  
23 over the defendant).

24 Here, Crescendo Capital’s only contact with California was preparing the  
25 funding assurances letter for Legendz (a California resident), at Legendz’s request.  
26 (Mot. 1; Opp’n 5.) Legendz argues that this letter relates to the Contract because it  
27 concerns funding for the California-based boxing event. (Opp’n 5.) However,  
28 Legendz mischaracterizes the letter, as “inform[ing] Plaintiffs that Crescendo Capital



1 will be funding and financially supporting the boxing fight that is the subject of this  
2 matter.” (*Id.*) Legendz argues on this basis that Crescendo Capital “intentionally put  
3 money into a California operation with the intention of obtaining a return on the  
4 investment.” (*Id.* at 5–6.) Yet, Crescendo Capital was never a party to the Contract,  
5 did not fund the boxing event or otherwise “put money into a California operation,”  
6 and has no other contacts with the state of California. (Mot. 0, 3; Kalen Decl. ¶ 7.)  
7 The funding assurance letter on which Legendz so heavily depends states only that  
8 “Crescendo Capital (and/or one of its suitable affiliates) *has the capacity to allocate*”  
9 funds, not that it or its affiliates were committing to do so. (Kalen Decl. ¶ 7, Ex. 1  
10 (emphasis added).) On its own, such a one-time interaction with a forum-state  
11 resident is usually not enough to establish the minimum contacts necessary for  
12 specific personal jurisdiction. *See, e.g., Burger King*, 471 U.S. at 478 (“[Even] [a]n  
13 individual’s contract with an out-of-state party *alone* [cannot] automatically establish  
14 sufficient minimum contacts in the other party’s home forum.”).

15 Moreover, the Ninth Circuit has expressed reluctance to find purposeful  
16 direction’s express aiming when the one-time action is mailing a neutral letter, such as  
17 the one at issue here stating that funds could be available. *See Yahoo!*, 433 F.3d  
18 at 1208 (“[A] cease and desist letter is not in and of itself sufficient to establish  
19 personal jurisdiction over the sender.”); *cf. Bancroft*, 223 F.3d at 1087–88 (holding  
20 that sending a letter intended to trigger dispute resolution procedures or interfere  
21 wrongfully with a plaintiff’s rights is sufficient to establish personal jurisdiction). The  
22 aversion to premising purposeful availment on a single letter is even stronger where a  
23 defendant engages in no other acts in California. *See Kransco Mfg., Inc. v. Markwitz*,  
24 656 F.2d 1376, 1379–80 (9th Cir. 1981) (discussing *Chem Lab Prods, Inc. v. Stepanek*,  
25 554 F.2d 371, 372 (9th Cir. 1977) (“[D]irecting that the letter be mailed to California  
26 could not support personal jurisdiction over defendant because he did not commit any  
27 personal acts with consequences in California.” (internal quotation marks omitted))).  
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1 Here, the tie between Crescendo Capital and California is particularly weak.  
2 This is in part because Legendz requested the letter—Crescendo Capital did not  
3 independently “reach out beyond” Switzerland to create a relationship with a  
4 California resident. *Burger King*, 471 U.S. at 473. Rather, Crescendo Capital  
5 responded to contact that Legendz initiated. And this single letter is the extent of  
6 Crescendo Capital’s connection to California in this case. The single funding  
7 assurances letter here, standing alone, is not a contact that justifies the exercise of  
8 personal jurisdiction. *See Yahoo!*, 433 F.3d at 1209 (concluding a “normal” cease and  
9 desist letter, that was not “abusive, tortious or otherwise wrongful,” did not justify the  
10 exercise of personal jurisdiction when considered alone).

11 As the sole act of mailing a neutral letter upon request does not establish that  
12 Crescendo Capital expressly aimed tortious conduct at California, Legendz fails to  
13 show purposeful direction.

14 Legendz has not met its burden to show that Crescendo Capital purposefully  
15 availed itself of California or otherwise purposefully directed its activities at the state.  
16 Therefore, the Court declines to reach the questions of whether Legendz’s claims arise  
17 from Crescendo Capital’s forum-related activities or whether Crescendo Capital  
18 demonstrates the exercise of personal jurisdiction would be unreasonable.  
19 *Schwarzenegger*, 374 F.3d at 802.

## 20 V. JURISDICTIONAL DISCOVERY

21 Legendz requests the Court grant jurisdictional discovery on the issue of  
22 Crescendo Capital’s relationship to the other Defendants and its contacts with  
23 California. (Opp’n 21–22.<sup>6</sup>)

24 Whether to grant jurisdictional discovery is subject to the Court’s discretion.  
25 *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir.  
26 1977) (“[R]efusal [to grant discovery] is not an abuse of discretion when it is clear

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27 <sup>6</sup> The Court declines to consider Legendz’s late-filed supplemental brief. (Suppl., ECF No. 42);  
28 C.D. Cal. L.R. 7-12. Even if the Court did consider it, the proffered case opinion is unpersuasive  
and inapposite.

1 that further discovery would not demonstrate facts sufficient to constitute a basis for  
2 jurisdiction.”). “Where a plaintiff’s claim of personal jurisdiction appears to be both  
3 attenuated and based on bare allegations in the face of specific denials made by  
4 defendants, the Court need not permit even limited discovery.” *Terracom v. Valley*  
5 *Nat’l Bank*, 49 F.3d 555, 562 (9th Cir. 1995) (alterations omitted).

6 Here, Crescendo Capital successfully rebuts Legendz’s good-faith but  
7 speculative allegations, and Legendz fails to demonstrate that any amount of  
8 jurisdictional discovery would produce facts sufficient to constitute a basis for  
9 personal jurisdiction. Accordingly, the Court denies Legendz’s request for  
10 jurisdictional discovery.

11 **VI. LEAVE TO AMEND**

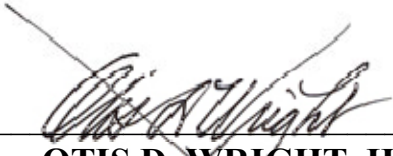
12 Where a district court grants a motion to dismiss, it should generally provide  
13 leave to amend unless it is clear the complaint could not be saved by any amendment.  
14 *See* Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins.*, 519 F.3d 1025,  
15 1031 (9th Cir. 2008). Here, it is clear that Legendz can allege no additional “facts  
16 consistent with the [record and] challenged pleading [that] could . . . possibly cure the  
17 deficiency.” *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401  
18 (9th Cir. 1986). In light of the present record, the Court finds amendment “would be  
19 futile.” *Carrico v. City & County of San Francisco*, 656 F.3d 1002, 1008 (9th Cir.  
20 2011).

21 **VII. CONCLUSION**

22 For the reasons discussed above, the Court **GRANTS** Crescendo Capital’s  
23 Motion. (ECF No. 35.) The action is dismissed as against Crescendo Capital, without  
24 leave to amend.

25 **IT IS SO ORDERED.**

26 June 5, 2024

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**OTIS D. WRIGHT, II**  
**UNITED STATES DISTRICT JUDGE**