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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GLOBAL COMMODITIES TRADING  
GROUP, INC., and INSURANCE  
COMPANY OF THE STATE OF  
PENNSYLVANIA, PHILADELPHIA,

Plaintiffs,

v.

BENEFICIO DE ARROZ CHOLOMA,  
S.A, a Honduran Company, SANDY  
FARID ANDONIE REYES, an individual,  
and JOYCE MARY JARUFE DOX, aka  
JOYCE JARUFE DE ANDONIE, an  
Individual,

Defendants.

No. 2:16-cv-01045-TLN-CKD

**ORDER**

This matter is before the Court on six separate motions. Defendants Beneficio De Arroz Choloma, S.A. (“Bachosa”), Sandy Farid Andonie Reyes (“Andonie”), and Joyce Mary Jarufe Dox’s (collectively “Defendants”) filed a Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 11), a Motion to Dismiss for Failure to State a Claim (ECF No. 12), and two motions to strike (ECF Nos. 54 & 70). Plaintiff Global Commodities Trading Group, Inc. (“Plaintiff”) filed a Motion for Preliminary Injunction (ECF No. 14) and a Motion to File a First Amended Complaint (ECF No. 35). Oppositions and replies were filed as to all motions. Having considered the arguments raised by the parties and for the reasons set forth below, the Court

1 hereby GRANTS Defendants' Motion to Dismiss for Lack of Personal Jurisdiction.<sup>1</sup> (ECF No.  
2 11.) The remaining motions are hereby DENIED as moot.

3 **I. FACTUAL AND PROCEDURAL BACKGROUND**

4 This lawsuit involves an alleged breach of contract arising out of shipping contracts for  
5 rice and corn from the United States to Honduras. Plaintiff alleges Bachosa reached out to it in  
6 the end of 2011 to purchase "14,500 (+/-) metric tons of U.S. No. 2 or better long grain rough rice  
7 and approximately 5,000 (+/-10%) metric tons of U.S. No. 2 or better white corn." (Velasquez  
8 Decl., ECF No. 16 ¶ 9.) The Rice and Corn were originally scheduled for shipment in late  
9 December 2011. (Compl., ECF No. 1-2 ¶ 12.) Plaintiff alleges the shipment was delayed and  
10 upon arrival in Honduras the officials delayed unloading the cargo because Barchosa's  
11 importation permits were not valid. (ECF No. 1-2 ¶ 12.) The cargo was not unloaded until  
12 March 3, 2012. (ECF No. 1-2 ¶ 12.) Plaintiff alleges Bachosa's failure to have valid permits  
13 incurred demurrages of \$644,000 for Plaintiff. (ECF No. 1-2 ¶ 12.)

14 Plaintiff alleges Bachosa failed to pay for the corn and rice by the contract date of August  
15 30, 2012. (ECF No. 1-2 ¶ 13.) As a result of the breach, Plaintiff and Bachosa agreed to  
16 additional terms for payment of the contracts and signed an Act of Understanding (the "Act") in  
17 October of 2012. (ECF No. 1-2 ¶ 14.) Under the Act, the parties agreed to an additional 180  
18 days for Bachosa to pay the amounts owed under the rice and corn contracts. (ECF No. 1-2 ¶ 14.)  
19 The Act acknowledges that Bachosa owes \$7,073,648 on the original contracts and \$644,897.92  
20 for demurrage charges. (ECF No. 1-2 ¶ 14; ECF No. 66-4 at 3.)

21 Plaintiff alleges Bachosa and Defendant Andonie executed a promissory note in favor of  
22 Plaintiff for an amount up to \$11,000,000 (the "Note"). Obligations under the Note were due  
23 April 6, 2013. Interest accrued and continues to accrue at 8.5% per annum. (See ECF No. 1-2 ¶  
24 15; ECF No. 66-5 at 3.)

25 Plaintiff alleges Defendant Adonie and Defendant Dox each also signed a personal

26  
27 <sup>1</sup> Plaintiff requested jurisdictional discovery in its opposition to Defendants' motion to dismiss for lack of  
28 personal jurisdiction. The magistrate judge already permitted jurisdictional discovery which this Court upheld in its  
order denying Defendants' motion for reconsideration (ECF No. 99). Accordingly, the request for jurisdictional  
discovery is DENIED as moot.

1 guaranty of debt (the “Guaranty”). (ECF No. 66-5 at 3.) The Guaranty became due upon  
2 immediate failure to pay the Note. (ECF No. 1-2 ¶ 16.) Plaintiff alleges Defendants have failed  
3 to pay the amount owed under the Act, the Note, or the Guaranty. (ECF No. 1-2 ¶¶ 14–16.)  
4 Plaintiff alleges Bachosa has made various payments to Plaintiff, the last being made in August  
5 2014. Plaintiff alleges an outstanding balance of \$9,015,676, calculated through June 30, 2014.  
6 (ECF No. 1-2 ¶ 18.)

7 Plaintiff filed suit in Superior Court of the State of California, County of Placer on  
8 September 25, 2014. (ECF No. 1-2.) Plaintiff alleged five causes of action: (1) Breach of  
9 Contract — the Act; (2) Breach of Contract — the Note; Breach of Contract – the Guaranty; (4)  
10 Goods and Services Rendered; and (5) Open Book Account. (ECF No. 1-2.) Defendants  
11 removed the action to this Court on May 17, 2016. (ECF No. 1.) Defendants filed their motion to  
12 dismiss for lack of personal jurisdiction on July 1, 2016. (ECF No. 11.) Plaintiff filed a motion  
13 to amend on September 6, 2016. (ECF No. 35.)

## 14 II. STANDARD OF LAW

### 15 A. Motion to Dismiss for Lack of Personal Jurisdiction

16 Federal Rule of Civil Procedure 12(b)(2) allows a party to file a motion to dismiss for lack  
17 of personal jurisdiction. When there is no federal statute authorizing personal jurisdiction, the  
18 district court applies the law of the state in which the district court sits. *Mavrix Photo, Inc. v.*  
19 *Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). California’s long-arm statute is  
20 coextensive with federal due process requirements. Cal. Civ. Proc. Code § 410.10. Accordingly,  
21 the “jurisdictional analyses under state law and federal due process are the same.” *Mavrix Photo,*  
22 *647 F.3d at 1223 (citing Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800–01*  
23 *(2004)).*

24 There are two types of personal jurisdiction: general and specific. General jurisdiction  
25 exists when a defendant’s “continuous corporate operations within a state [are] so substantial and  
26 of such a nature as to justify suit against it on causes of action arising from dealings entirely  
27 distinct from those activities.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). Specific  
28 personal jurisdiction, on the other hand, exists when the suit arises out of or relates to the

1 defendant's contacts with a forum. *Helicopteros Nacionales de Colombia, S.A.*, 466 U.S. 408,  
2 414 n.8 (1984); *Int'l Shoe*, 326 U.S. at 316 ("due process requires only that in order to subject a  
3 defendant to a judgment in personam, if he be not present within the territory of the forum, he  
4 have certain minimum contacts with it such that the maintenance of the suit does not offend  
5 'traditional notions of fair play and substantial justice' ") (quoting *Milliken v. Meyer*, 311 U.S.  
6 457, 463 (1940)).

7 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, the plaintiff  
8 bears the burden of establishing the court's jurisdiction over the defendant. *Wash. Shoe Co. v. A-*  
9 *Z Sporting Goods Inc.*, 704 F.3d 668, 671–72 (9th Cir. 2012). However, when the defendant's  
10 motion is based on written materials rather than an evidentiary hearing, the plaintiff need only  
11 make a "prima facie showing of jurisdictional facts to withstand the motion to dismiss." *Id.*  
12 (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.2006)) (internal quotation  
13 marks omitted). The court resolves all disputed facts in favor of the plaintiff. *Id.* at 672.

#### 14 B. Motion to Amend

15 Granting or denying leave to amend a complaint rests in the sound discretion of the trial  
16 court. *Swanson v. United States Forest Serv.*, 87 F.3d 339, 343 (9th Cir. 1996). When the Court  
17 issues a pretrial scheduling order that establishes a timetable to amend the complaint, Federal  
18 Rule of Civil Procedure ("FRCP") 16 governs any amendments to the complaint. *Coleman v.*  
19 *Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). To allow for amendment under FRCP 16,  
20 a plaintiff must show good cause for not having amended the complaint before the time specified  
21 in the pretrial scheduling order. *Id.* The good cause standard primarily considers the diligence of  
22 the party seeking the amendment. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th  
23 Cir. 1992). "Moreover, carelessness is not compatible with a finding of diligence and offers no  
24 reason for a grant of relief." *Id.* The focus of the inquiry is on the reasons why the moving party  
25 seeks to modify the complaint. *Id.* If the moving party was not diligent then good cause cannot  
26 be shown and the inquiry should end. *Id.*

27 Even if the good cause standard is met under FRCP 16(b), the Court has the discretion to  
28 refuse the amendment if it finds reasons to deny leave to amend under FRCP 15(a). *Johnson*, 975

1 F.2d at 610. Under Rule 15(a)(2), “a party may amend its pleading only with the opposing  
2 party’s written consent or the court’s leave,” and the “court should freely give leave when justice  
3 so requires.” The Ninth Circuit has considered five factors in determining whether leave to  
4 amend should be given: “(1) bad faith, (2) undue delay, (3) prejudice to the opposing party, (4)  
5 futility of amendment; and (5) whether plaintiff has previously amended his complaint.” *In re*  
6 *Western States Wholesale Natural Gas Antitrust Litigation*, 715 F.3d 716, 738 (9th Cir. 2013)  
7 (citing *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)). “[T]he consideration of  
8 prejudice to the opposing party carries the greatest weight.” *Eminence Capital, LLC v. Aspeon,*  
9 *Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

### 10 III. ANALYSIS

#### 11 A. Personal Jurisdiction

12 As an initial matter, Plaintiff seeks leave to file a First Amended Complaint which it avers  
13 demonstrates jurisdiction over Defendants. (ECF No. 72 at 8.) Plaintiff contends the Court must  
14 allow Plaintiff to file their amended complaint and deny Defendants motion as moot. (ECF No.  
15 72 at 8.) Plaintiff cites no case law, and the Court can find none, that requires a court to grant a  
16 motion to amend when personal jurisdiction is in question. The cases Plaintiff cite deal with  
17 personal jurisdiction after a motion to amend has been granted and hold that jurisdictional  
18 motions must be made on the operative complaint. (ECF No. 72 at 8.) At this time, Plaintiff’s  
19 motion to amend is pending and the operative complaint remains the complaint originally filed in  
20 this action. Accordingly, the Court will first determine if personal jurisdiction exists on the face  
21 of the original complaint and then determine if the proposed amended complaint cures any  
22 jurisdictional deficiencies.

23 The parties do not question that general jurisdiction is inapplicable in this case.  
24 Therefore, the Court turns solely to the question of specific jurisdiction. The Ninth Circuit  
25 applies a three-part test to determine if the exercise of specific jurisdiction over a nonresident  
26 defendant is appropriate:

- 27 (1) The non-resident defendant must purposefully direct his  
28 activities or consummate some transaction with the forum or  
resident thereof; or perform some act by which he purposefully

1 avails himself of the privilege of conducting activities in the forum,  
2 thereby invoking the benefits and protections of its laws; (2) the  
3 claim must be one which arises out of or relates to the defendant's  
4 forum-related activities; and (3) the exercise of jurisdiction must  
5 comport with fair play and substantial justice, *i.e.* it must be  
6 reasonable.

7 *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010). The  
8 plaintiff bears the burden of proving the first two prongs of the test. *Boschetto v. Hansing*, 539  
9 F.3d 1011, 1016 (9th Cir. 2008). If the first two prongs are met, then “the defendant must come  
10 forward with a ‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.*  
11 (quoting *Schwarzenegger*, 374 F.3d at 802).

12 Under the first prong of the *Brayton* test, Plaintiff bears the burden of establishing that  
13 Defendant “has performed some act or consummated some transaction within the forum or  
14 otherwise purposefully availed itself of the privileges of conducting activities in the forum.”  
15 *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). The Ninth  
16 Circuit has refined this test to mean Defendant has either: (1) purposefully availed itself of the  
17 privilege of conducting activities in the forum; or (2) purposefully directed his activities toward  
18 the forum. *Schwarzenegger*, 374 F.3d at 802. A purposeful availment analysis is most often used  
19 in suits sounding in contract. *See, e.g., Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001).  
20 A purposeful direction test is generally reserved for cases sounding in tort. *See Dole Food, Inc. v.*  
21 *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

22 Plaintiff applies the *Calder* effects test to demonstrate purposeful availment. (ECF No. 72  
23 at 15–17 (citing *Calder v. Jones*, 465 U.S. 783, 789–90 (1984).) However, Ninth Circuit  
24 precedent applies the *Calder* effects test only in intentional tort cases under the purposeful  
25 direction analysis. *See Dole Food*, 303 F.3d at 1111. Furthermore, Plaintiff analyzes the test  
26 against the three new tort causes of action asserted in its proposed first amended complaint. As  
27 the Court has explained, the operative complaint remains the originally filed complaint until the  
28 Court rules on Plaintiff’s motion to amend. The action as alleged in the original complaint  
sounds in contract and does not assert any causes of action based in tort. Therefore, the *Calder*  
effects test is inapplicable as to the original complaint and the purposeful availment standard shall

1 be applied.

2 Plaintiff makes no other arguments regarding purposeful availment. Accordingly,  
3 Plaintiff fails to meet its burden of establishing the first prong of the *Brayton* test. *Brayton*, 606  
4 F.3d at 1128. Out of an abundance of caution the Court reviews the facts under the purposeful  
5 availment prong. Plaintiff alleges the current action arises out of a contract initiated by Bachosa.  
6 (Velasquez Decl., ECF No. 16 ¶ 9.) Bachosa contacted Defendant to form a contract involving  
7 the sale and shipment of rice and grain. All discussion involving the contract took place over  
8 emails or telephone calls, except one visit by Defendants to Plaintiff's facility in Roseville,  
9 California. Defendants argue the visit to the Roseville facility was for non-business purposes.  
10 The Act, Note, and Guaranty were all made payable to Plaintiff in Roseville, California, but  
11 executed outside of the state.

12 The Ninth Circuit and California courts have repeatedly held negotiations completed  
13 solely through emails, telephones, and other international communications are insufficient to  
14 demonstrate purposeful activity. See *Penny Newman Grain Co. v. Midwest Paint Services, Inc.*,  
15 No. CV-F-06-1020 OWW/DLB, 2007 WL 4531700, at \*3 (E.D. Cal. Dec. 18, 2007) (collecting  
16 cases). Additionally, the "act of making notes executed elsewhere by a nonresidential defendant  
17 payable to a California resident in California" is insufficient to invoke the laws and benefits of the  
18 state. *Floyd J. Harness Co. v. Amezcua*, 60 Cal. App. 3d 687, 692 (Fifth District, 1976).  
19 Accordingly, jurisdiction turns on Defendant Andonie's single visit to California.

20 The parties dispute the characteristics of Defendant Andonie's visit. Defendants assert the  
21 visit was of a leisurely nature and the contracts were not discussed. (ECF No. 11-1 at 7.)  
22 Plaintiff argues the "key communication" ordering Plaintiff to ship the products took place during  
23 that visit. (ECF No. 72 at 20.) The Court must resolve all disputed facts in favor of Plaintiff.  
24 *Wash. Shoe Co.*, 704 F.3d at 672. However, Plaintiff overstates the significance of the alleged  
25 visit because the visit dealt with the original contract and performance under that contract — not  
26 the Act, Note, and Guaranty upon which Plaintiff brought suit. However, even if the visit is  
27 related to the contracts at issue, a single trip to California is inadequate for a finding of purposeful  
28 availment. *Info Span, Inc. v. Emirates NBD Bank PJSC*, No. SACV 11-1062 JVS (ANx), 2012

1 WL 12953464, at \* 8 (C.D. Cal. July 27, 2012) (citing *HK China Group, Inc. v. Beijing United*  
2 *Auto & Motorcycle Mfg. Corp.*, 417 Fed. Appx. 664, 666 (9th Cir. 2011)); *see also Smartshop*  
3 *Self Storage Operating Partnership L.P. v. Can-Dev, ULC*, No. SACV 15-01415-CJC(DFMx),  
4 2015 WL 13322430, at \*4 (S.D. Cal. Oct. 26, 2015) (finding a short two day trip to discuss the  
5 development plan that concerned the contract at issue in the complaint insufficient to create  
6 personal jurisdiction).

7 On the facts and evidence presented by Plaintiff, the Court cannot find Defendants  
8 purposefully availed themselves of the laws of the forum state. Plaintiff fails to meet its burden  
9 to establish the first prong. Accordingly, the original complaint does not convey the Court with  
10 personal jurisdiction over Defendants.

11 B. Futility of Amendment

12 Through its motion to amend, Plaintiff seeks to add two tort claims for intentional  
13 misrepresentation and false promises apparently in an effort to strengthen its personal jurisdiction  
14 claim. Plaintiff attempts to apply the *Calder* effects test to the proposed claims sounding in tort  
15 in order to establish purposeful direction under the first prong of the *Brayton* analysis. However,  
16 Plaintiff's addition of tort claims does not transform this contract action into an action in tort.  
17 The main premise of the lawsuit is the alleged breach of contract of the Act, Note, and Guaranty.  
18 The proposed new claims relate directly to those contracts as they allege that the Guaranty was  
19 forged. Additionally, Plaintiff continues to seek damages as a result of the alleged breach of  
20 contracts. Accordingly, the action remains a contract action at its core and a purposeful availment  
21 standard applies. *See Boschetto v. Hansing*, 539 F.3d 1011, 1015–1016 (9th Cir. 2008) (applying  
22 the purposeful availment action to a complaint alleging claims for breach of contract and  
23 misrepresentation because the action sounds in contract).

24 Plaintiff's complaint fails to present new facts which would allow the Court to find  
25 Defendants purposefully availed themselves of the laws of the state of California. Therefore,  
26 amendment would be futile.

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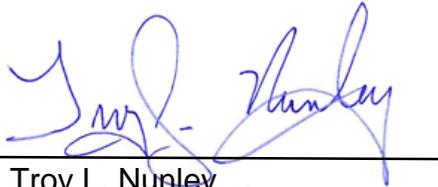
**IV. CONCLUSION**

For the reasons set forth above, the Court finds Plaintiff’s complaint fails to convey personal jurisdiction over Defendants. Accordingly, the Court orders as follows.

1. Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 11) is hereby GRANTED.
2. Plaintiff’s Motion to Amend (ECF No. 36) is hereby DENIED.
3. The remaining four motions (ECF Nos. 12, 14, 54, & 70) are hereby DENIED as moot.
4. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

Dated: August 17, 2017



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Troy L. Nunley  
United States District Judge