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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ENCOMPASS HOLDINGS, INC.,	)	
	)	
Plaintiff(s),	)	No. C09-1816 BZ
	)	
v.	)	
	)	<b>ORDER GRANTING LASKOWSKI'S</b>
CAREY F. DALY II, et al.,	)	<b>MOTION TO DISMISS</b>
	)	
Defendant(s).	)	
	)	
_____	)	

Plaintiff Encompass Holdings, a Nevada corporation, filed a lawsuit against California residents Carey F. Daly and Randall J. Lanham (collectively "Daly") stemming from a failed business agreement.<sup>1</sup> Daly responded by filing a counterclaim against Encompass and multiple other defendants, including Encompass's attorney, Robert Laskowski.<sup>2</sup> Daly alleges Laskowski's conduct while representing Encompass makes him liable for fraud and for conspiracy under the RICO Act.

<sup>1</sup> All parties have consented to my jurisdiction for all proceedings including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

<sup>2</sup> Although Laskowski and others are added as third-party defendants, Daly titled this pleading a counterclaim.

1 Laskowski, an Oregon resident, now moves to dismiss the case  
2 against him for lack of personal jurisdiction. For the  
3 reasons explained below, I **GRANT** Laskowski's motion to  
4 dismiss.

5 As the party invoking the Court's jurisdiction, Daly  
6 bears the burden of establishing personal jurisdiction over  
7 Laskowski. Rio Properties, Inc. v. Rio Int'l Interlink, 284  
8 F.3d 1007, 1019 (9th Cir. 2002).<sup>3</sup> A forum state may exercise  
9 personal jurisdiction over a nonresident defendant only if the  
10 defendant has certain "minimum contacts" with the forum "such  
11 that maintenance of the suit does not offend traditional  
12 notions of fair play and substantial justice." Int'l Shoe Co.  
13 v. Washington, 326 U.S. 310, 316 (1945) (internal quotations  
14 omitted). Traditionally, courts exercise either general or  
15 specific jurisdiction. Helicopteros Nacionales de Columbia  
16 S.S. v. Hall, 466 U.S. 408, 414 (1984). General jurisdiction  
17 exists where a defendant's activities in the state are  
18 "substantial" or "continuous and systematic," even if the  
19 cause of action is unrelated to those activities. Data Disc,  
20 Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280 (9th Cir.  
21 1977). Where general jurisdiction is inappropriate, a court  
22 may still exercise specific jurisdiction if the defendant has  
23 sufficient minimum contacts with the forum state in relation  
24 to the plaintiff's cause of action. Id.

25 Daly begins his opposition by correctly noting that the  
26 Court need not consider long-arm jurisdiction if he can

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27  
28 <sup>3</sup> Daly's burden only requires him to make a prima facie  
showing that personal jurisdiction exists. Ballard v. Savage,  
65 F.3d 1495, 1498 (9th Cir. 1995).

1 establish personal jurisdiction under 18 U.S.C. § 1965(b).  
2 This statute allows district courts to exercise jurisdiction  
3 over non-resident defendants accused of RICO violations. In  
4 the Ninth Circuit, three threshold requirements must be met to  
5 establish personal jurisdiction under RICO: (1) plaintiffs  
6 must have "sufficiently alleged a multidistrict conspiracy  
7 that encompasses the defendants"; (2) the district court must  
8 have personal jurisdiction, under the traditional due process  
9 analysis, over at least one participant in the alleged  
10 conspiracy; and (3) plaintiffs must show that "there is no  
11 other district in which a court will have personal  
12 jurisdiction over all of the alleged co-conspirators."

13 Rocawear Licensing LLC, v. Pacesetter Apparel Group, 2007 WL  
14 5289737 at \*5 (C.D. Cal. 2007) (citing Butchers Union Local  
15 No. 498 v. SDC Investment, Inc., 788 F.2d 535, 539 (9th Cir.  
16 1986)). Simply naming individuals in a RICO complaint does  
17 not, in itself, make them subject to nationwide jurisdiction.  
18 Butchers Union Local No. 498, 788 F.2d at 539.

19 Daly does not meet his burden to establish personal  
20 jurisdiction under the RICO Act because he fails to satisfy  
21 two of the above threshold requirements.<sup>4</sup> First, Daly does  
22 not sufficiently allege that Laskowski was part of a multi-  
23 district conspiracy with the co-conspirators. The relevant  
24 pleading requirements are summarized in Rocawear:

25 In order to plead the existence of a nationwide  
26 conspiracy among Defendants, both the Ninth Circuit  
and the Supreme Court have required that a plaintiff

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27 <sup>4</sup> The second threshold requirement is not in dispute  
28 because several of the alleged co-conspirators are California  
residents.

1 make a showing that the defendant intended to enter  
2 into an agreement or that the defendant had  
3 knowledge of the essential nature of the conspiracy.  
4 A plaintiff must allege facts showing that the  
5 "conspirator[s] ... intend[ed] to further an  
6 endeavor which, if completed, would satisfy all of  
7 the elements of a substantive criminal offense, but  
8 it suffices that [the conspirators] adopt[ed] the  
9 goal of furthering or facilitating the criminal  
10 endeavor." Additionally, the Ninth Circuit has  
11 required that a defendant must also have been "aware  
12 of the essential nature and scope of the enterprise  
13 and intended to participate in it." While it is not  
14 necessary that each conspirator know all of the  
15 details of the conspiracy, the evidence must show  
16 that the defendant "knowingly agree[d] to facilitate  
17 a scheme which includes the operation or management  
18 of a RICO enterprise."

11 Rocawear, 2007 WL 5289737 at \*5 (internal citations and  
12 quotations omitted).

13 Daly's only factual allegations against Laskowski assert  
14 that Laskowski and others concealed material information about  
15 certain security interests in Daly's former company and  
16 delivered a defective stock certificate. Daly then pleads, by  
17 recitation, the elements of the RICO statutes against  
18 Laskowski and others. This type of conclusory pleading is  
19 improper. Daly must do more than plead a "formulaic  
20 recitation of the elements of a cause of action" and must  
21 instead plead "factual content that allows the court to draw a  
22 reasonable inference that the defendant is liable for the  
23 misconduct alleged." Bell Atlantic Corp. v. Twombly, 550 U.S.  
24 544, 555 (2007); Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949  
25 (2009). Here, Daly does not allege that Laskowski intended to  
26 and entered into an agreement with the other co-conspirators  
27 to commit a criminal offense and engaged in a conspiracy.  
28 Daly does not specify what criminal statutes he believes

1 Laskowski violated, what pattern of racketeering activity  
2 Laskowski engaged in or otherwise allege facts that would  
3 support the other pleading requirements summarized in  
4 Rocawear. Absent such factual allegations, Daly has not  
5 sufficiently pled his RICO claims.<sup>5</sup>

6 Second, Daly does not establish that there is no other  
7 district court that would have personal jurisdiction over  
8 every co-conspirator. Daly argues that because some co-  
9 conspirators are from diverse jurisdictions like Nevada, New  
10 York, and Florida, personal jurisdiction in another district  
11 would not be possible.<sup>6</sup> This conclusory assertion is  
12 improper. In Brown v. General Steel Domestic Sales, LLC, the  
13 plaintiff also concluded, without any evidence or support,  
14 that no other district court in the country could exercise  
15 personal jurisdiction over all the co-conspirators. 2008 WL  
16 2128057 at \*12 n. 53 (C.D. Cal. 2008). Brown held that the  
17 third threshold requirement was not established due to this  
18 lack of support. I agree and find that Daly fails to  
19 establish personal jurisdiction under RICO. Id.<sup>7</sup>

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21 <sup>5</sup> Daly's Amended Counterclaims, filed in part in  
22 response to a similar challenge by other third party  
defendants, do not dictate a different result as to Lakowski.

23 <sup>6</sup> I am not certain Daly's unsupported conclusion is  
24 correct. Most of Daly's allegations are based on conduct that  
25 is related to Nevada, including Laskowski's, raising the  
possibility that a district court in Nevada could exercise  
personal jurisdiction over all the co-conspirators.

26 <sup>7</sup> Daly's reliance on Cory v. Aztec Steel Bldg., Inc.,  
27 468 F.3d 1226 (10th Cir. 2006), is misplaced. While it is true  
28 that a number of Circuits, including the Tenth, have taken a  
more expansive view of RICO jurisdiction than has the Ninth and  
other Circuits, I am bound by Ninth Circuit authority. See In  
re Conseco Ins. Co. Annuity Marketing & Sales Practices Litig.,

1           Daly also does not meet his burden for establishing that  
2 this Court has general or specific jurisdiction over  
3 Laskowski. In his declaration, Laskowski states he is a  
4 resident of Oregon, has practiced law there since 1971, and  
5 has no meaningful contacts with California. Declaration of  
6 Laskowski ¶¶ 3, 4. Although Laskowski has had some incidental  
7 contact with California,<sup>8</sup> he has never conducted or solicited  
8 business in the state. Declaration of Laskowski ¶¶ 7, 8.  
9 With respect to the agreement at issue in this case, Laskowski  
10 represented Encompass — a non-California entity — but he did  
11 not represent any California companies or residents, and he  
12 did not travel to California. Declaration of Laskowski ¶ 15.

13           In his opposition, Daly makes only two short arguments in  
14 favor of finding general and specific jurisdiction. He first  
15 contends that Laskowski acted “on a regular basis, as counsel  
16 for Nacio Corporation, which did business solely in  
17 California.” Opposition at 5. But Daly does not submit any  
18 evidence to support this allegation, as required by Local Rule  
19 7-5. Moreover, this is contradicted by Laskowski’s  
20 declaration that he only worked for Encompass and did not  
21 represent Nacio Systems, a California corporation.  
22 Declaration of Laskowski ¶ 15. See Data Disc, Inc. v. Sys.

23 \_\_\_\_\_  
24 2008 WL 4544441 at \*3-4 (N.D. Cal. 2008).

25           <sup>8</sup> Laskowski admits to some fleeting contacts in  
26 California. These include conducting a few meetings and  
27 corresponding with California individuals and companies while  
28 representing non-California clients. Declaration of Laskowski  
¶ 17. They also include providing expert testimony in  
California on two occasions about non-California law.  
Declaration of Laskowski ¶ 10. None of these contacts are  
related to the claims alleged by Daly in this action.

1 Tech. Assocs., Inc., 557 F.2d 1280, 1284 (9th Cir. 1977); Chem  
2 Lab Products, Inc. v. Stepanek, 554 F.2d 371 (9th Cir. 1977)  
3 ("the mere allegations of the complaint, when contradicted by  
4 affidavits, are not enough to confer personal jurisdiction  
5 over a nonresident defendant").

6 Daly's other argument, consisting of two sentences,  
7 contends specific jurisdiction exists because:

8 The allegations of the Amended Cross-Complaint  
9 establish, prima facie, sufficient basis for  
10 jurisdiction under these tests. Laskowski's  
11 issuance of the defective stock certificate and  
12 failure to disclose the NIR relationship and  
13 security interest in the assets of Nacio was a key,  
14 if not the key, component of the circumstances  
15 giving rise to this action.

16 Opposition at 6.

17 This alleged conduct by Laskowski does not result in this  
18 Court having specific jurisdiction over him. For there to be  
19 specific jurisdiction, a nonresident defendant must have  
20 purposefully availed himself of a forum state's jurisdiction.  
21 One way of doing this is by 1) committing an intentional act,  
22 2) expressly aimed at the forum state, which 3) causes harm  
23 that the defendant knew was likely to be suffered in the forum  
24 state. Schwarzenegger v. Ford Martin Motor Co., 374 F.3d 797,  
25 800 (9th Cir. 2004) (citing Calder v. Jones, 465 U.S. 783  
26 (1984)). Here, Daly's amended counterclaim does not allege  
27 that Laskowski committed any acts expressly aimed at  
28 California. Nor did Daly provide any evidence to fill this  
gap. For example, there is no showing that Laskowski did  
anything in California, or that Daly was in California when he  
was dealing with Laskowski. Without such specific allegations  
or proof, I cannot assume that Laskowski was purposefully

1 directing his activities towards California and knew that harm  
2 would be suffered there.

3         Daly also impermissibly attempts to include arguments in  
4 favor of specific jurisdiction in his surreply. I only  
5 allowed Daly to file a surreply to respond to arguments raised  
6 by Laskowski's reply that there was no personal jurisdiction  
7 under the RICO Act. Rather than do this, Daly used the  
8 surreply as an opportunity to challenge a case cited by  
9 Laskowski in his motion to dismiss. Although Laskowski may  
10 have misstated the holding of Sher v. Johnson, 911 F.2d 1357  
11 (9th Cir. 1990), Daly should have made this argument in his  
12 opposition and gives no explanation for his failure to so.

13         Regardless, the Sher decision does not help Daly. In  
14 Sher, the Ninth Circuit held that Florida attorneys  
15 purposefully availed themselves of California's jurisdiction  
16 when, among other dealings, they required their California  
17 clients to execute a deed of trust in the attorneys' favor to  
18 secure their fees. 911 F.2d at 1363-64. A deed of trust,  
19 which "contemplated significant future consequences" in  
20 California in the event the attorneys had to enforce it, is  
21 not the same as Laskowski issuing an allegedly defective stock  
22 certificate and failing to disclose financial information to  
23 California residents who were not his clients. Id.  
24 Laskowski's contacts with California are more analogous to  
25 contacts the Sher Court determined did not result in specific  
26 jurisdiction. Id. at 1363 (finding that specific jurisdiction  
27 did not exist when Florida attorneys represented California  
28 clients in a Florida action, accepted payments from California

1 banks, made phone calls and sent letters to California, but  
2 did not conduct or solicit business in California).

3 For the foregoing reasons, Daly has not satisfied his  
4 burden of showing that this Court may exercise personal  
5 jurisdiction over Laskowski. He has failed to establish the  
6 threshold requirements demanded by the Ninth Circuit to attain  
7 nationwide personal jurisdiction under the RICO Act. He has  
8 also not carried his burden to establish either general or  
9 specific jurisdiction.

10 Accordingly, **IT IS ORDERED** that Laskowski's motion to  
11 dismiss for lack of personal jurisdiction is **GRANTED**.

12 Dated: November 2, 2010

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14 Bernard Zimmerman  
15 United States Magistrate Judge

16 G:\BZALL\BZCASES\ENCOMPASS V. DALY\ORDER GRANTING LASKOWSKI'S MOTION TO DISMISS bz Final.wpd

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