

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MILLENIUM DRILLING CO., INC.,
Pla
v.
BEVERLY HOUSE-MEYERS
RECOVABLE TRUST, et al.,
Defend

Case No. 2:12-cv-00462-MMD-CWH

ORDER

(Third-Party Def.'s Motion to Dismiss – dkt. no. 202)

I. SUMMARY

Before the Court is Third-Party Defendant Carter Henson Jr.’s Motion to Dismiss (“Motion”). (Dkt. no. 202). The Court has also reviewed a response filed by Third-Party Plaintiffs Molly Hamrick, Beverly House-Meyers, and R & M Hamrick Family Trust (dkt. no. 215), and Henson’s reply (dkt. no. 222). For the reasons discussed below, the Motion is granted.

II. BACKGROUND

A. Facts

Plaintiff Millennium Drilling Co., Inc. (“Millennium”) alleges that Defendants Beverly House-Meyers Revocable Trust; Grace Mae Properties, LLC; R & M Hamrick Family Trust; Robert H. Hamrick; Molly Hamrick; and Beverly House-Meyers acquired interests in several partnerships — Falcon Drilling Partners (“Falcon”), Colt Drilling Partners (“Colt”), and Lion Drilling Partners (“Lion”) — engaged in oil and gas exploration. (See dkt. no. 30 at 2-15.) Millennium, in turn, entered into agreements with those partnerships to provide exploratory drilling and related services on certain sites, some of which were acquired through an agreement with Third-Party Defendant Patriot

1 Exploration Company, LLC (“Patriot”). (*Id.* ¶¶ 12, 31, 89, 128.) Alleging that Falcon, Colt,
2 and Lion defaulted on their obligations under those agreements, Millennium now seeks
3 compensation from Defendants for the work Millennium claims to have performed
4 pursuant to the agreements. (*See id.* at 5-6, 9-10, 13, 15.)

5 Third-Party Plaintiffs separately allege that they were fraudulently induced into
6 purchasing oil and gas investments by Third-Party Defendants Patriot, Henson, and
7 Jonathan Feldman, among others. (*See* Notice of Removal, Exh. 1, *Hamrick v. Feldman*,
8 No. 2:13-cv-0078-MMD-CWH (D. Nev. July 16, 2012) [hereinafter Dkt. no. 1-1, 2:13-cv-
9 78].)¹ Third-Party Plaintiffs contend that Feldman and Henson created partnerships for
10 oil and gas exploration (including Falcon, Colt, and Lion), which they fraudulently
11 convinced investors to fund by misrepresenting expected returns and tax benefits. (*See*
12 *id.* ¶¶ 4.01–4.18.)

13 Feldman, according to Third-Party Plaintiffs, is the President of Patriot and
14 Millennium, and Henson was Patriot’s Managing Director. (*Id.* ¶ 4.01.) Patriot is an
15 Alaska corporation with an office in Houston, Texas. (*Id.* ¶ 2.07.) Henson also resides in
16 Texas. (*Id.* ¶ 2.08.)

17 **B. Procedural History**

18 On March 19, 2012, Millennium filed this lawsuit in the District of Nevada. (Dkt.
19 no. 1.) Three months later, on June 6, 2012, Third-Party Plaintiffs filed a complaint
20 against Third-Party Defendants — but not against Millennium — in Texas state court
21 based on the same transactions giving rise to Millennium’s lawsuit. (Dkt. no. 1-1, 2:13-
22 cv-78.) Patriot removed the case to the Southern District of Texas. (Notice of Removal,
23 2:13-cv-78.) Third-Party Plaintiffs allege breach of fiduciary duty, fraud/fraud in the
24 inducement, fraudulent nondisclosure, negligent misrepresentation, breach of contract,
25 imposition of constructive trust, and conspiracy. (Dkt. no. 1-1, 2:13-cv-78.)

26
27 ¹The Court consolidated Third-Party Plaintiffs’ separate lawsuit with case number
28 2:12-cv-00462-MMD-CWH (“2:12-cv-462”). After consolidation, the Court directed the
parties to file all documents in case number 2:12-cv-462. In citing to any documents filed
in Third-Party Plaintiffs’ separate lawsuit, the Court will refer to “2:13-cv-78.”

1 In January 2013, Hon. Melinda Harmon, United States District Judge for the
2 Southern District of Texas, granted Patriot's Motion to Transfer Venue, determining that
3 the Nevada and Texas actions involved substantially similar issues. (Transfer Order,
4 2:13-cv-78 (Jan. 15, 2013).) The transferred case was assigned case number 2:13-cv-
5 00078-MMD-CWH ("2:13-cv-78"). This Court consolidated the two related cases into the
6 first-filed Nevada action. (Dkt. no. 79). The plaintiffs and defendants in 2:13-cv-78 were
7 designated as Third-Party Plaintiffs and Third-Party Defendants, respectively, in the
8 instant case. (*Id.*)

9 On February 25, 2014, the Court granted a motion to dismiss filed by Third-Party
10 Defendants Matthew Barnes; Montcalm Co., LLC; and Schain, Leifer, Guralnick
11 ("SLG").² (Dkt. no. 172.) The Court found that it lacked personal jurisdiction over those
12 parties. (*Id.*; see dkt. no. 168.) The day before oral argument on the motion, Third-Party
13 Plaintiffs filed an amended complaint without requesting leave from the Court or
14 obtaining the opposing parties' consent. (See dkt. no. 166.) The Court clarified in the
15 dismissal order that the amended complaint was not properly before the Court, and that
16 it failed to cure the jurisdictional problems with regard to Barnes, Montcalm, and SLG.
17 (See dkt. no. 172 at 4.) Shortly after oral argument, Third-Party Plaintiffs sought leave to
18 file a second amended complaint, which the Court denied in light of the late stage of the
19 proceedings. (Dkt. nos. 171, 179.)

20 The Court now addresses Third-Party Defendant Henson's Motion to Dismiss for
21 Lack of Personal Jurisdiction, filed February 5, 2015. (Dkt. no. 202.)

22 **III. LEGAL STANDARD**

23 In opposing a defendant's motion to dismiss for lack of personal jurisdiction, a
24 plaintiff bears the burden of establishing that jurisdiction is proper. *Boschetto v. Hansing*,
25 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, the defendant's motions are based
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27 ²The parties had previously stipulated to dismiss Third-Party Defendants Robert
28 Holt and Elizabeth Holt from the lawsuit. (Dkt. nos. 169, 170.)

1 on written materials rather than an evidentiary hearing, “the plaintiff need only make a
2 ‘prima facie showing of jurisdictional facts to withstand the motion to dismiss.’” *Brayton*
3 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (quoting
4 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006)). The plaintiff cannot
5 “simply rest on the bare allegations of its complaint,” but uncontested allegations in
6 the complaint must be taken as true. *Schwarzenegger v. Fred Martin Motor Co.*, 374
7 F.3d 797, 800 (9th Cir. 2004) (quoting *Ambar Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d
8 784, 787 (9th Cir. 1977)). The court “may not assume the truth of allegations in a
9 pleading which are contradicted by affidavit,” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*,
10 557 F.2d 1280, 1284 (9th Cir. 1977), but it may resolve factual disputes in the plaintiff’s
11 favor. *Pebble Beach Co.*, 453 F.3d at 1154.

12 **IV. DISCUSSION**

13 A two-part analysis governs whether a court retains personal jurisdiction over a
14 nonresident defendant. “First, the exercise of jurisdiction must satisfy the requirements of
15 the applicable state long-arm statute.” *Chan v. Soc’y Expeditions, Inc.*, 39 F.3d 1398,
16 1404 (9th Cir. 1994). Since “Nevada’s long-arm statute, NRS § 14.065, reaches the
17 limits of due process set by the United States Constitution,” the Court moves on to the
18 second part of the analysis. *Baker v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 999
19 P.2d 1020, 1023 (Nev. 2000). “Second, the exercise of jurisdiction must comport with
20 federal due process.” *Chan*, 39 F.3d at 1404-05. “Due process requires that nonresident
21 defendants have certain minimum contacts with the forum state so that the exercise of
22 jurisdiction does not offend traditional notions of fair play and substantial justice.” *Id.*
23 (citing *International Shoe v. Washington*, 326 U.S. 310 (1945)). Courts analyze this
24 constitutional question with reference to two forms of jurisdiction: general and specific
25 jurisdiction. Here, Third-Party Plaintiffs assert only specific jurisdiction with regard to
26 Henson. (See dkt. no. 215 at 5-6.)

27 Specific jurisdiction exists where “[a] nonresident defendant’s discrete, isolated
28 contacts with the forum support jurisdiction on a cause of action arising directly out of its

1 forum contacts.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1075 (9th
2 Cir. 2011). Courts use a three-prong test to determine whether specific jurisdiction exists
3 over a particular cause of action:

4 (1) The non-resident defendant must purposefully direct his activities or
5 consummate some transaction with the forum or resident thereof; or
6 perform some act by which he purposefully avails himself of the privilege of
7 conducting activities in the forum, thereby invoking the benefits and
8 protections of its laws; (2) the claim must be one which arises out of or
9 relates to the defendant’s forum-related activities; and (3) the exercise of
10 jurisdiction must comport with fair play and substantial justice, i.e., it must
11 be reasonable.

12 *Id.* at 1076 (quoting *Schwarzenegger*, 374 F.3d at 802). The party asserting jurisdiction
13 bears the burden of satisfying the first two prongs. *Id.* (citing *Sher v. Johnson*, 911 F.2d
14 1357, 1361 (9th Cir. 1990)). If it does so, the burden shifts to the party challenging
15 jurisdiction “to set forth a ‘compelling case’ that the exercise of jurisdiction would not be
16 reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78
17 (1985)).

18 Third-Party Plaintiffs seek to invoke this Court’s jurisdiction over Henson based on
19 actions he allegedly carried out while serving as the Managing Director of Patriot
20 between 2005 and 2007.³ (See dkt. no. 215 at 3-5.) In that role, Henson was responsible
21 for “evaluating and providing technical advice on all aspects of the Company’s
22 investments and activities.” (Dkt. no. 215-3 at 1.) Third-Party Plaintiffs claim that Henson
23 and Feldman⁴ created entities — including Falcon, Colt, Lion, Millennium, and Patriot —
24 through which they defrauded Third-Party Plaintiffs. (Dkt. no. 1-1, 2:13-cv-78, at 9.) They
25 further allege that Henson and Feldman conspired in, aided, and abetted each other’s

26 ³Henson claims that he was merely an employee of Patriot. Third-Party Plaintiffs,
27 however, attached to their response a letter offering Henson the position of “Managing
28 Director” of Patriot. (See dkt. no. 215-3 at 1.) During his deposition, moreover, Henson
acknowledged that “Managing Director” was his only title while he worked for Patriot.
(Dkt. no. 215-1 at 13.)

4Initially, Third-Party Plaintiffs claimed that Barnes was similarly involved in
creating these entities and in using them to engage in fraud. (See dkt. no. 1-1, 2:13-cv-
78.) The Court, however, dismissed Barnes from this lawsuit for lack of personal
jurisdiction. (Dkt. no. 172.)

1 fraudulent conduct, both individually and as agents of Patriot and Millennium. (See *id.* ¶¶
2 4.11-4.18.) Henson, for example, provided information about Patriot's drilling operations
3 to Feldman, who relayed that information to outside investors — including Third-Party
4 Plaintiffs — through quarterly reports. (Dkt. no. 215 at 3-5.) Taken together, Third-Party
5 Plaintiffs argue, these actions constitute knowing and intentional tortious behaviors
6 directed toward Nevada, which are sufficient to establish specific jurisdiction over
7 Henson. The Court disagrees.

8 **A. Purposeful Availment and Purposeful Direction**

9 "The first prong of the specific jurisdiction test refers to both purposeful availment
10 and purposeful direction." *CollegeSource, Inc.*, 653 F.3d at 1076. Cases involving
11 tortious conduct are analyzed under the rubric of purposeful direction. *Id.* (citing
12 *Schwarzenegger*, 374 F.3d at 802). Courts ask "whether a defendant 'purposefully
13 directs his activities' at the forum state," and applies an "effects" test that looks to where
14 the defendant's actions were felt, rather than where they occurred. *Yahoo! Inc. v. La*
15 *Ligue Contre Le Racism Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en
16 banc) (quoting *Schwarzenegger*, 374 F.3d at 803). In contract cases, a court examines
17 "whether the defendant 'purposefully avails itself of the privilege of conducting activities'
18 or 'consummates a transaction' in the forum, focusing on activities such as delivering
19 goods or executing a contract." *Id.* (quoting *Shwarzenegger*, 374 F.3d at 802).

20 Here, because Third-Party Plaintiffs' claims sound in contract and tort, the Court
21 will address both approaches to this prong of the specific jurisdiction analysis. See
22 *Yahoo! Inc.*, 433 F.3d at 1206 (noting that the first prong "may be satisfied . . . by some
23 combination" of purposeful availment and purposeful direction).

24 **1. Purposeful Availment**

25 Purposeful availment occurs when a defendant "'deliberately' has engaged in
26 significant activities within a state, or has created 'continuing obligations' between
27 himself and residents of the forum." *Burger King Corp.*, 471 U.S. at 475-76 (citations
28 omitted). A single act associated with a forum state may be sufficient, "[s]o long as it

1 creates a ‘substantial connection’ with the forum.” *Id.* at 475 n.18 (quoting *McGee v.*
2 *International Life Ins. Co.*, 355 U.S. 220, 223 (1957)). Activities constituting purposeful
3 availment may include “executing or performing a contract” in a forum state,
4 *Schwarzenegger*, 374 F.3d at 802, or delivering “products into the stream of commerce
5 with the expectation that they will be purchased by consumers in the forum State’ and
6 [where] those products subsequently injure forum consumers.” *Burger King Corp.*, 471
7 U.S. at 473 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98
8 (1980)). In assessing purposeful availment, courts have examined parties’ “prior
9 negotiations and contemplated future consequences, along with the terms of the
10 contract and the parties’ actual course of dealing.” *Id.* at 479.

11 Third-Party Plaintiffs argue that Henson “purposefully avail[ed] [him]self of the
12 privilege of conducting activities within” Nevada by conspiring to induce state residents
13 to invest in oil and gas prospects. *Id.* at 475 (quoting *Hanson v. Denckla*, 357 U.S. 235,
14 253 (1958)); (see dkt. no. 215 at 6-7). They assert that Henson provided information
15 about oil and gas prospects to Feldman, who, in turn, passed along the information to
16 Nevada-based investors. (See dkt. no. 215 at 3-5, 7.) Henson, according to Third-Party
17 Plaintiffs, knew both that investors would rely on the information he provided, and that
18 certain investors were Nevada residents. (*Id.* at 7.) Third-Party Plaintiffs, however, have
19 not made a *prima facie* showing that Henson knew or expected that Nevada-based
20 investors would rely on this information.

21 In his deposition, Henson conceded that he provided periodic written updates on
22 oil and gas prospects to Feldman, who was based in either New York or Connecticut.
23 (See dkt. no. 215 at 4; dkt. no. 215-1 at 4-5, 7.) Upon reviewing certain reports Feldman
24 had sent to outside investors, Henson acknowledged that Feldman’s reports appeared to
25 include language from Henson’s updates. (See dkt. no. 215 at 4; dkt. no. 215-1 at 9-10;
26 dkt. no. 215-2.) But Henson testified that he did not know whether Feldman had shared
27 his updates with investors, or that any of those investors were located in Nevada. (Dkt.
28 no. 215-1 at 7, 9-10, 30.) Nor did Henson communicate with outside investors. (*Id.* at

1 13.) Rather, according to Henson’s testimony, Feldman controlled communications with
2 investors, while Henson researched and assessed oil and gas prospects from his office
3 in Houston. (*See id.* at 7-8, 11-14.)

4 Despite Third-Party Plaintiffs’ assertions that Henson knew or should have known
5 that he helped dupe Nevada residents into faulty investments, they have not offered
6 evidence to dispute Henson’s deposition testimony. (*See* dkt. no. 215 at 7.) Instead,
7 Third-Party Plaintiffs concede that communications containing Henson’s research “were
8 presumably prepared by Feldman in New York.” (*Id.* at 4.) Moreover, even assuming that
9 Henson introduced information on oil and gas prospects into the stream of commerce by
10 relaying his updates to Feldman, Third-Party Plaintiffs have not shown that Henson had
11 any expectation that this information would be consumed by investors in Nevada. *See*
12 *Burger King Corp.*, 471 U.S. at 473. Thus, to the extent Henson had any connection with
13 Nevada-based investors, that contact is too attenuated to show purposeful availment.
14 The Court accordingly finds that Third-Party Plaintiffs have not met their burden of
15 showing that Henson purposefully availed himself of Nevada’s laws and protections.

16 **2. Purposeful Direction**

17 Third-Party Plaintiffs’ arguments are similarly deficient under the purposeful
18 direction framework that applies to their tort-based claims. To assess purposeful
19 direction, courts employ an “effects” test, which requires that “the defendant allegedly
20 must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3)
21 causing harm that the defendant knows is likely to be suffered in the forum state.”
22 *Yahoo! Inc.*, 433 F.3d at 1206 (quoting *Schwarzenegger*, 374 F.3d at 803). As the Ninth
23 Circuit has made clear in applying the effects test, an act with foreseeable effects in the
24 forum is not sufficient; there must be “something more” — namely, “express aiming” at
25 the forum state. *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1087 (9th
26 Cir. 2000), *abrogated on other grounds by* *Yahoo! Inc.*, 433 F.3d at 1206-08; *see also*
27 *Liberty Media Holdings, LLC v. Letyagin*, 925 F. Supp. 2d 1114, 1118 (D. Nev. 2013).

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1 Third-Party Plaintiffs cannot make a *prima facie* showing of purposeful direction
2 because they have not demonstrated that Henson expressly aimed any activity at
3 Nevada. They claim that Henson “knowingly directed” intentional torts to Nevada by
4 conspiring with Feldman to induce investments in oil and gas prospects. (Dkt. no. 215 at
5 9; see dkt. no. 1-1, 2:13-cv-78, ¶¶ 4.01, 4.05, 4.11.) They further allege that Henson
6 “reached out to harm Third-Party Plaintiffs Hamrick and House-Myers” (dkt. no. 215 at
7 9), but offer no evidence to dispute Henson’s testimony that he never communicated
8 with outside investors. (See dkt. no. 215-1 at 7-10, 13.) Third-Party Plaintiffs also point
9 out that Henson was involved in contracts, invoices, and email communications for
10 acquiring interests in and assessing oil and gas prospects. (Dkt. no. 215-3.) Those
11 documents, however, do not suggest that Henson directed tortious activity toward
12 Nevada; rather, they indicate his involvement in Patriot’s work of analyzing and securing
13 oil and gas prospects. (See *id.*)

14 Even after resolving all factual disputes in Third-Party Plaintiffs’ favor, the Court
15 finds that Third-Party Plaintiffs have failed to make a *prima facie* showing of purposeful
16 direction. See *Pebble Beach Co.*, 453 F.3d at 1154. Because Third-Party Plaintiffs
17 cannot satisfy the first prong of the personal jurisdiction analysis, the Court will grant
18 Henson’s Motion.

19 **B. Relatedness and Fairness**

20 The Court finds that Third-Party Plaintiffs have failed to demonstrate an element
21 that is necessary to establish specific jurisdiction over Henson. Accordingly, the Court
22 will not reach the remaining two prongs of the specific jurisdiction analysis — whether
23 Third-Party Plaintiffs’ action arises out of Henson’s forum-related activities, and whether
24 asserting personal jurisdiction over Henson is reasonable. See *CollegeSource, Inc.*, 653
25 F.3d at 1075.

26 **V. CONCLUSION**

27 The Court notes that the parties made several arguments and cited to several
28 cases not discussed above. The Court has reviewed these arguments and cases and

1 determines that they do not warrant discussion as they do not affect the outcome of the
2 Motion.

3 It is therefore ordered that Third-Party Defendant Carter Henson, Jr.'s Motion to
4 Dismiss for Lack of Personal Jurisdiction (dkt. no. 202) is granted.

5 All of Third-Party Plaintiffs' claims against Henson are therefore dismissed.

6 DATED THIS 17th day of September 2015.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE