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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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PHILIP WINGEN, et al.,  <div style="text-align: right;">Plaintiff(s),</div> <div style="text-align: center;">v.</div> VENTRUM ENERGY CORP., et al.,  <div style="text-align: right;">Defendant(s).</div>	Case No. 2:15-cv-02043-JCM-VCF	ORDER
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Presently before the court is defendants CGrowth Capital, Inc. (“CGrowth”), Keystone Financial Management, Inc. (“Keystone”), and William Wright’s (collectively, the “CGrowth defendants”) motion for judgment on the pleadings (ECF No. 136), to which defendants Fossil Energy, Inc (“Fossil”), Montgomery George, Paul Grady, William Sturdevant, and Tari Vickery (collectively, the “Fossil defendants”) joined, (ECF No. 137). Plaintiffs Karen and Phillip Wingen filed a response. (ECF No. 140). The CGrowth defendants and the Fossil defendants filed separate replies. (ECF Nos. 141, 142).

**I. Facts**

Plaintiffs are a married couple residing in Minnesota. (ECF No. 1). Plaintiffs brought this lawsuit in their individual capacities as investors in securities issued in 2012 by Salt Creek West Drilling Fund, LLP (“Salt Creek West”) and Ventrum Louisiana, LLP (“Ventrum LA”). Id.

1 Defendant Ventrum Energy (“VE”) was a Nevada corporation with its principal place of  
2 business in Nevada. VE was the managing partner of Salt Creek West<sup>1</sup> and Ventrum LA.<sup>2</sup> On  
3 December 15, 2014, VE’s corporate charter was dissolved in the state of Nevada.

4 Defendant Andrew Van Slee was, at all relevant times, a Nevada resident. Id. “Van Slee  
5 directly or indirectly controlled [VE], Salt Creek West, [and] Ventrum LA.” Id.

6 Plaintiffs invested in both Salt Creek West and Ventrum LA between February and July of  
7 2012. Id. During that time period, plaintiffs purchased 2.5 partnership units in Salt Creek West  
8 for \$500,000. Id. On April 15, 2012, plaintiffs purchased one partnership unit of Ventrum LA for  
9 \$100,000. Id. Plaintiffs allege that Van Slee and his related entities made false or misleading  
10 statements to induce plaintiffs to invest in Salt Creek West and Ventrum LA.<sup>3</sup> Id.

11 CGrowth is a Delaware corporation with its principal place of business in Washington. Id.  
12 Keystone is a Washington corporation with its principal place of business in Washington. Id.  
13 Keystone holds 33.5% of CGrowth’s common stock and all of CGrowth’s Series B preferred stock.  
14 Id. Wright is a Washington resident who maintains a controlling stake in CGrowth and Keystone  
15 as a shareholder, sole director, and CEO. Id.

16 In late 2013 and early 2014, CGrowth entered into two purchase and sale agreements for  
17 oil leases and wells under development by Salt Creek West and Ventrum LA. Id.; (ECF Nos. 54-  
18 1, 54-2). As consideration, CGrowth issued shares of CGrowth stock to VE and Ventrum LA.  
19 (ECF No. 1).

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22 <sup>1</sup> Defendant Salt Creek West was a Nevada LLP with its principal place of business in  
23 Nevada. Id. On March 31, Salt Creek West’s charter was withdrawn. Defendant Fossil (a  
24 Delaware corporation) held a 25% before-payout interest and a 40% after-payout interest in Salt  
25 Creek West. Id. Defendant West Salt Creek, Inc. was a Wyoming corporation formed on July 29,  
2013, by Fossil “for the [alleged] purpose of transferring assets, including the [Salt Creek West]  
assets it held, to CGrowth” after the state of Wyoming administratively dissolved Fossil as a  
Wyoming corporation. Id.

26 <sup>2</sup> Ventrum LA was a Nevada LLP with its principal place of business in Nevada. Id. On  
27 August 7, 2014, Ventrum LA’s charter was withdrawn in the state of Nevada. Id.

28 <sup>3</sup> The CGrowth defendants note that plaintiffs do not allege any communication between  
plaintiffs and the CGrowth defendants during the first 18 months of plaintiffs’ investment in Salt  
Creek West and Ventrum LA. (ECF No. 136).

1 Plaintiffs allege that as a result of the purchase and sale agreements the CGrowth shares  
2 were distributed to plaintiffs and the other limited partners of Salt Creek West and Ventrum LA.  
3 Id. Plaintiffs allege that the sale of these partnership assets to CGrowth was done without the  
4 consent or involvement of plaintiffs or the other limited partners. Id.

5 On October 22, 2015, plaintiffs filed their complaint in this court, asserting causes of action  
6 for alleged violations of state and federal securities laws, fraudulent or intentional  
7 misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty,  
8 racketeering, deceptive trade practices, civil conspiracy, partnership-by-estoppel, and aiding and  
9 abetting. (ECF No. 1).

## 10 **II. Legal Standard**

11 Motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)  
12 are “functionally identical” to motions to dismiss for failure to state a claim under Federal Rule of  
13 Civil Procedure 12(b)(6). *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989).

14 In reviewing a motion for judgment on the pleadings pursuant to Rule 12(c), the court  
15 “must accept all factual allegations in the complaint as true and construe them in the light most  
16 favorable to the non-moving party.” *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

17 “[J]udgment on the pleadings is proper ‘when, taking all the allegations in the non-moving party’s  
18 pleadings as true, the moving party is entitled to judgment as a matter of law.’” *Ventress v. Japan  
19 Airlines*, 486 F.3d 1111, 1114 (9th Cir. 2007) (citation omitted). The allegations of the nonmoving  
20 party must be accepted as true while any allegations made by the moving party that have been  
21 denied or contradicted are assumed to be false. *MacDonald v. Grace Church Seattle*, 457 F.3d  
22 1079, 1081 (9th Cir. 2006).

## 23 **III. Discussion**

24 The CGrowth defendants move for judgment on the pleadings on three grounds: (1) this  
25 court lacks personal jurisdiction over the CGrowth defendants; (2) plaintiffs fail to allege reliance  
26 on any representations made by CGrowth or damages resulting from the CGrowth transaction; and  
27 (3) all claims stated against CGrowth belong to the limited liability partnerships, and not to  
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1 plaintiffs as individuals. (ECF No. 136). The court will first address the CGrowth defendants’  
2 argument regarding personal jurisdiction.

3 To avoid dismissal for lack of personal jurisdiction, a plaintiff bears the burden of  
4 demonstrating that its allegations establish a prima facie case for personal jurisdiction. See  
5 *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Allegations in the complaint must be  
6 taken as true and factual disputes should be construed in the plaintiff’s favor. *Rio Props., Inc. v.*  
7 *Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).

8 “When no federal statute governs personal jurisdiction, the district court applies the law of  
9 the forum state.” *Boschetto*, 539 F.3d at 1015; *see also Panavision Int’l L.P. v. Toebben*, 141 F.3d  
10 1316, 1320 (9th Cir. 1998). Where a state has a “long-arm” statute providing its courts jurisdiction  
11 to the fullest extent permitted by the due process clause, as Nevada does, a court need only address  
12 federal due process standards. See *Arbella Mut. Ins. Co. v. Eighth Judicial Dist. Court*, 134 P.3d  
13 710, 712 (Nev. 2006) (citing Nev. Rev. Stat. § 14.065); *see also Boschetto*, 539 F.3d at 1015.

14 An assertion of personal jurisdiction must comport with due process. See *Wash. Shoe Co.*  
15 *v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th Cir. 2012). Two categories of personal  
16 jurisdiction exist: (1) general jurisdiction; and (2) specific jurisdiction. See *Helicopteros*  
17 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413–15 (1984); *see also LSI Indus., Inc. v.*  
18 *Hubbell Lighting, Inc.*, 232 F.3d 1369, 1375 (Fed. Cir. 2000).

19 General jurisdiction arises where a defendant has continuous and systematic ties with the  
20 forum, even if those ties are unrelated to the litigation. See *Tuazon v. R.J. Reynolds Tobacco Co.*,  
21 433 F.3d 1163, 1171 (9th Cir. 2006) (citing *Helicopteros Nacionales de Columbia, S.A.*, 466 U.S.  
22 at 414–16). “[T]he plaintiff must demonstrate the defendant has sufficient contacts to constitute  
23 the kind of continuous and systematic general business contacts that approximate physical  
24 presence.” *In re W. States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1131 (D. Nev. 2009)  
25 (internal quotation marks and citations omitted). In other words, defendant’s affiliations with the  
26 forum state must be so “continuous and systematic” as to render it essentially “at home” in that  
27 forum. See *Daimler AG v. Bauman*, 134 S. Ct. 746, 760–61 (2014).

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1 Specific jurisdiction arises where sufficient contacts with the forum state exist such that  
2 the assertion of personal jurisdiction “does not offend ‘traditional notions of fair play and  
3 substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v.*  
4 *Meyer*, 311 U.S. 457, 463 (1940)). The Ninth Circuit has established a three-prong test for  
5 analyzing an assertion of specific personal jurisdiction:

6 (1) The non-resident defendant must purposefully direct his activities or  
7 consummate some transaction with the forum or resident thereof; or perform some  
8 act by which he purposefully avails himself of the privilege of conducting activities  
9 in the forum, thereby invoking the benefits and protections of its laws;

10 (2) the claim must be one which arises out of or relates to the defendant’s forum-  
11 related activities; and

12 (3) the exercise of jurisdiction must comport with fair play and substantial justice,  
13 i.e., it must be reasonable.

14 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). “The plaintiff bears  
15 the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of  
16 these prongs, personal jurisdiction is not established in the forum state.” *Id.* (citations omitted).

17 Here, plaintiffs fail to demonstrate a prima facie case of personal jurisdiction over  
18 defendants. Plaintiffs devote much of their argument to assertions regarding general jurisdiction.  
19 See (ECF No. 140) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416  
20 (1984)). Plaintiffs arguments overlook more recent Supreme Court precedent that requires a  
21 defendant to be “essentially at home” in the forum state for general jurisdiction to exist. See, e.g.  
22 *Daimler*, 134 S.Ct. at 760–61. The court holds that general jurisdiction does not exist on these  
23 facts, as the CGrowth defendants are citizens of Washington and Delaware.

24 Further, plaintiffs have not demonstrated that specific jurisdiction exists here. Plaintiffs  
25 assert that defendant Wright (who plaintiffs argue is the alter ego of defendants CGrowth and  
26 KFM) “continues to systematically conduct business in Nevada, purposefully availing himself of  
27 the forum.” (ECF No. 140). However, plaintiffs’ argument here focuses primarily on conduct not  
28 related to this litigation. See *id.* (discussing Wright’s relationships with Nevada companies that  
are not related to the instant litigation).

Plaintiffs’ response does cite one alleged connection between the CGrowth defendants and  
Nevada that relates to this litigation. Plaintiffs assert that their complaint alleges that CGrowth

1 stock certificates were sent to plaintiffs from Nevada. “By extension, [the stock certificates] had  
2 to have been sent from Wright or CGrowth to Nevada.” (ECF No. 140). However, this attenuated  
3 connection to Nevada does not demonstrate systematic or continuous contact with the forum that  
4 gives rise to the causes of action in plaintiffs’ complaint. See *Int’l Shoe Co.*, 326 U.S. at 316.

5 Plaintiffs’ response requests jurisdictional discovery regarding the CGrowth defendants’  
6 forum-related contacts. (ECF No. 140). As plaintiffs have not filed the appropriate motion, the  
7 court will not consider plaintiffs’ arguments regarding jurisdictional discovery.

8 In light of the foregoing, the court will not consider defendants’ alternative arguments for  
9 judgment on the pleadings.


10 **IV. Conclusion**

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendants’ motion for  
13 judgment on the pleadings (ECF No. 136) be, and the same hereby is, GRANTED in part and  
14 DENIED in part, consistent with the foregoing.

15 IT IS FURTHER ORDERED that plaintiffs’ claims against the CGrowth defendants be,  
16 and the same hereby are, DISMISSED without prejudice.

17 DATED March 30, 2018.

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20 UNITED STATES DISTRICT JUDGE