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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

INCENTIVE CAPITAL, LLC, a Utah Limited
 Liability Company,

Plaintiff,

vs.

CAMELOT ENTERTAINMENT GROUP,
 INC., a Delaware Corporation; CAMELOT
 FILM GROUP, INC., a Nevada Corporation;
 CAMELOT DISTRIBUTION GROUP, INC., a
 Nevada Corporation; ROBERT P. ATWELL, an
 individual; JAMIE R. THOMPSON, an
 individual; STEVEN ISTOCK, an individual;
 TED BAER, an individual; PETER JAROWEY,
 an individual,

Defendants.

:
 : **MEMORANDUM IN SUPPORT OF**
 : **DEFENDANT TED BAER'S**
 : **MOTION TO DISMISS**
 : **PLAINTIFF'S AMENDED**
 : **COMPLAINT FOR LACK OF**
 : **JURISDICTION**

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 : Civil No. 2:11-CV-00288

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 : Honorable Clark Waddoups
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Defendant Ted Baer appears specially, by and through his attorneys Dennis R. James,
 Morgan, Minnock, Rice & James, L.C., and submits this Memorandum in Support of Defendant
 Ted Baer's Motion to Dismiss Third-Party Complaint as follows:

STATEMENT OF FACTS

1. On April 14, 2011, Plaintiff Incentive Capital, LLC (“Plaintiff Incentive Capital”), a Utah limited liability company, filed its Amended Complaint naming Ted Baer, an individual, as a Defendant in the case. (See Amended Complaint, attached as Exhibit “A”).
2. Defendant Ted Baer’s legal name is Julius Arthur Baer III. His nickname, and the name he is most commonly known by, is Ted Baer. He is licensed to practice law in the State of California as J. A. Ted Baer. (Affidavit of Julius Arthur Ted Baer III at ¶1, attached as Exhibit “B”).
3. Plaintiff Incentive Capital also named Camelot Entertainment Group, Inc. (“CEG”), Camelot Film Group, Inc. (“CFG”), Camelot Distribution Group, Inc. (“CDG”), Robert P. Atwell, an individual, Jamie R. Thompson, an individual, Steven Istock, an individual, and Peter Jarowey, an individual, as Defendants in its Amended Complaint. (See Amended Complaint, Exhibit “A”).
4. Plaintiff Incentive Capital has alleged several causes of action against the Defendants and alleged that “[t]hese claims arise out of certain loans (collectively the “Loan”) that Camelot took from Incentive to finance the acquisition and distribution of a film and television library containing hundreds of media titles (‘Liberation Library’).” (Id. at ¶1, Exhibit “A”).
5. With regard to Defendant Ted Baer, Plaintiff Incentive Capital has only specifically alleged about him that: “Defendant Ted Baer has acted as the General Counsel for CEG, CFG, and CDG, and is a resident of the State of California.” (Id. at ¶13, Exhibit “A”).

6. Plaintiff Incentive Capital has also only alleged regarding Defendant Ted Baer that: “On April 1, 2010, Baer, acting as general counsel for CEG, CFG, and CDG during the negotiation of the loan agreements, misrepresented that CDG’s assets have a significantly higher value than the amount of the proposed loan and the interest thereon.” (Id. at ¶80, Exhibit “A”).
7. Otherwise, in the allegations of Plaintiff Incentive Capital’s Amended Complaint, Plaintiff Incentive Capital has merely lumped Defendant Ted Baer together with all of the other named Defendants and only generally alleged, without any more specifics about Defendant Ted Baer, that “Defendants have conducted business in the State of Utah relative to loans, security agreements, guarantees, and foreclosure sale of the Library and other related assets, and have participated in many business transactions in Utah relative to the dispute set forth [in the Amended Complaint].” (Id. at ¶14, Exhibit “A”).
8. Plaintiff Incentive Capital then simply alleges, without any more specifics about Defendant Ted Baer, that: “This Court has personal jurisdiction over Defendants based on Utah’s ‘long arm’ statute, Utah Code Ann. §78-3-205, inasmuch as Defendants have transacted business in the state of Utah and the claims asserted herein arise out of these transactions.” (Id. at ¶17, Exhibit “A”).
9. In its Amended Complaint, Plaintiff Incentive Capital has also lumped Defendant Ted Baer together with the other individuals who are named Defendants designating them collectively as the “Atwell Defendants” and also as the “Defendants” and has only generally claimed, without more specifics about Defendant Ted Baer, that the Atwell

Defendants “are each officers of Camelot,” and that they “are parties to the loans from Incentive.” (Id. at ¶¶2-3, Exhibit “A”).

10. Defendant Ted Baer is not, and has not ever been, an officer of Camelot Entertainment Group, Inc., or of any of the other companies identified in Plaintiff Incentive Capital’s Amended Complaint, including, Camelot Film Group, Inc., or Camelot Distribution Group, Inc. (Affidavit of Julius Arthur Ted Baer III at ¶15, attached as Exhibit “B”).
11. Plaintiff Incentive Capital’s Amended Complaint also contains a general allegation that when the alleged foreclosure sale was conducted, “legal counsel for the Defendants was present at the Foreclosure Sale” without specifically alleging that Defendant Ted Baer was the “legal counsel for the Defendants” who was present. (Amended Complaint at ¶65, Exhibit “A”).
12. Defendant Ted Baer terminated his representation of Camelot Entertainment Group in November 2010 and, therefore, was not present and did not participate in the February 21, 2011 Foreclosure Sale that allegedly took place in the State of Utah that is referenced in Plaintiff Incentive Capital’s Amended Complaint. (Affidavit of Julius Arthur Ted Baer III at ¶34, Exhibit “B”).
13. Plaintiff Incentive Capital has not included Defendant Ted Baer in its collective reference to CFG, CEG, CDG, and Atwell as the “Loan Parties” and thus Plaintiff Incentive Capital has not alleged several of its causes of action against Defendant Ted Baer. (Amended Complaint at Intro, Exhibit “A”).

14. Plaintiff Incentive Capital has only alleged the following causes of action against Defendant Ted Baer by including him in the designation of “All Defendants”: Fraud, Fraud in the Inducement, Alter Ego, Civil Conspiracy, Negligent Misrepresentation, Gross Negligence, Declaratory Relief, and Tortious Interference with Economic Relations.
15. Defendant Ted Baer is a resident of California and is an attorney who is admitted to the California State Bar. (Affidavit of Julius Arthur Ted Baer III at ¶¶3-4, Exhibit “B”).
16. Defendant Ted Baer maintains a private law practice at the Law Offices of J. A. Ted Baer, 21 E. Canon Perdido, Suite 223, Santa Barbara, CA 93101. (*Id.* at ¶5, Exhibit “B”).
17. In Defendant Ted Baer’s private law practice, Defendant Ted Baer represents many different clients located throughout the United States, but Defendant Ted Baer performs the majority of his legal work in the State of California. (*Id.* at ¶6, Exhibit “B”).
18. Defendant Ted Baer does not have any clients who are based in the State of Utah. (*Id.* at ¶7, Exhibit “B”).
19. Defendant Ted Baer has only had one client who actually lived in the State of Utah, but Defendant Ted Baer’s work for that client occurred more than ten years ago. (*Id.* at ¶8, Exhibit “B”).
20. Defendant Ted Baer has only traveled to Utah on infrequent occasions (less than one time a year on average) and then only to ski and/or to attend the Sundance Film Festival in Park City, Utah. (*Id.* at ¶9, Exhibit “B”).
21. In addition to representing many other clients, Defendant Ted Baer was retained by Camelot Entertainment Group Inc. (referred to by Plaintiffs as CEG in their Amended

Complaint, but referred to herein as “Camelot Entertainment Group”), on August 12, 2009, to perform outside legal work for Camelot Entertainment Group negotiating contracts involving film licensing, film distribution, and film library acquisition. (*Id.* at ¶10, Exhibit “B”).

22. Defendant Ted Baer performed work for Camelot Entertainment Group pursuant to a Representation Agreement that was later superseded by a Business and Legal Services Consultant Agreement. (*Id.* at ¶¶10-12, Exhibit “B”).
23. Defendant Ted Baer’s work for Camelot Entertainment Group ended in November 2010. (*Id.* at ¶13, Exhibit “B”).
24. During the time Defendant Ted Baer was retained by Camelot Entertainment Group, Camelot Entertainment Group maintained offices in Irvine, California and in Universal City/Burbank, California. (*Id.* at ¶14, Exhibit “B”).
25. Defendant Ted Baer has never been an officer or director of Camelot Entertainment Group or of any of the other companies identified in Plaintiff Incentive Capital’s Amended Complaint, including CEG (Camelot Film Group, Inc.), and CDG (Camelot Distribution Group, Inc.). (*Id.* at ¶15, Exhibit “B”).
26. Defendant Ted Baer has never been an employee of Camelot Entertainment Group or any of the other companies identified in Plaintiff Incentive Capital’s Amended Complaint. (*Id.* at ¶16, Exhibit “B”).
27. Under the Representation Agreement and the Business and Legal Services Consultant Agreement, Defendant Ted Baer received some shares of registered common stock in

partial payment for Defendant Ted Baer's legal services. These shares represented less than a 5% interest. Other than that, Defendant Ted Baer has never had any interest or ownership in Camelot Entertainment Group, or in any of the other companies named as defendants in Plaintiff Incentive Capital's Amended Complaint. (*Id.* at ¶17, Exhibit "B").

28. Defendant Ted Baer has never had any interest or ownership in the "Library" referenced in Plaintiff Incentive Capital's Amended Complaint or in any of Camelot Entertainment Group's other assets that are referenced in Plaintiff Incentive Capital's Amended Complaint. (*Id.* at ¶18, Exhibit "B").
29. All of the work Defendant Ted Baer did for Camelot Entertainment Group in connection with its dealings with Plaintiff Incentive Capital was performed in the State of California. (*Id.* at ¶19, Exhibit "B").
30. Defendant Ted Baer never conducted any business or participated in any business transactions in the State of Utah in connection with any of Defendant Ted Baer's work for Camelot Entertainment Group. (*Id.* at ¶20, Exhibit "B").
31. Defendant Ted Baer never conducted any business or participated in any business transactions or negotiations in the State of Utah in performing any work whatsoever connected with Camelot Entertainment Group's dealings with Plaintiff Incentive Capital. (*Id.* at ¶21, Exhibit "B").
32. Defendant Ted Baer never had any face-to-face dealings with representatives of Plaintiff Incentive Capital in connection with any work Defendant Ted Baer performed for Camelot

Entertainment Group during its dealings with Plaintiff Incentive Capital. (*Id.* at ¶22, Exhibit “B”).

33. Defendant Ted Baer’s only communications with representatives of Plaintiff Incentive Capital in connection with any work Defendant Ted Baer performed for Camelot Entertainment Group were limited to phone calls and email messages while Defendant Ted Baer was in the State of California. (*Id.* at ¶23, Exhibit “B”).
34. On April 1, 2010, Defendant Ted Baer sent an email with four attachments to Nathan Dorius, whom Defendant Ted Baer understood to be a lawyer representing Plaintiff Incentive Capital. (*Id.* at ¶24, Exhibit “B”).
35. The April 1, 2010 email and attached documents were sent at the request of Defendant Ted Baer’s client Camelot Entertainment Group. (*Id.* at ¶25, Exhibit “B”).
36. The April 1, 2010 email was in response to prior requests by representatives of Plaintiff Incentive Capital that Camelot Entertainment Group provide them documentation of Camelot Entertainment Group’s estimation of the value of the unencumbered assets of Camelot Entertainment Group’s subsidiaries and the value of the “Library” referenced in Plaintiff Incentive Capital’s Amended Complaint that Defendant Ted Baer’s client, Camelot Entertainment Group, was attempting to purchase with the loan it was seeking from Plaintiff Incentive Capital. (*Id.* at ¶26, Exhibit “B”).
37. Defendant Ted Baer did not prepare any of the four documents that were sent as attachments to Defendant Ted Baer’s April 1, 2010 email to Nathan Dorius. (*Id.* at ¶27, Exhibit “B”).

38. Defendant Ted Baer did not prepare or calculate any of the information or estimates contained in the four attached documents that were sent to Nathan Dorius with Defendant Ted Baer's April 1, 2010 email. (*Id.* at ¶28, Exhibit "B").
39. The information contained in the documents attached to Defendant Ted Baer's April 1, 2010 email to Nathan Dorius were prepared by someone other than Defendant Ted Baer and were provided to him by Defendant Ted Baer's client Camelot Entertainment Group to send to a representative of Plaintiff Incentive Capital. (*Id.* at ¶29, Exhibit "B").
40. In connection with Defendant Ted Baer's representation of Camelot Entertainment Group, Defendant Ted Baer participated in negotiations with legal counsel for Plaintiff Incentive Capital regarding the final language and execution of the loan agreements, security agreements, guaranty agreements, and escrow agreements identified in Plaintiff Incentive Capital's Amended Complaint. (*Id.* at ¶30, Exhibit "B").
41. Camelot Entertainment Group also retained and utilized the services of a Massachusetts lawyer, Philip S. Levoff ("Levoff"), to prepare the initial draft of an asset purchase agreement and to help negotiate and draft the terms of the loan agreements, security agreements, guaranty agreements, and escrow agreements. (*Id.* at ¶31, Exhibit "B").
42. Some of said agreements were initially drafted by representatives of Plaintiff Incentive Capital and some were initially drafted by Levoff. (*Id.* at ¶32, Exhibit "B").
43. Defendant Ted Baer was not involved in the negotiation of the Loan Modification Agreement referenced in Plaintiff Incentive Capital's Complaint. (*Id.* at ¶33, Exhibit "B").

44. Defendant Ted Baer terminated his representation of Camelot Entertainment Group in November 2010 and, therefore, was not present and did not participate in the February 21, 2011 Foreclosure Sale that allegedly took place in the State of Utah that is referenced in Plaintiff Incentive Capital's Amended Complaint. (*Id.* at ¶34, Exhibit "B").
45. Defendant Ted Baer did not sign, in any capacity, any loan documents, guarantees, security agreements or escrow agreements that Plaintiff Incentive Capital has identified in its Amended Complaint and has alleged were executed in connection with the loan from Plaintiff Incentive Capital. (*Id.* at ¶35, Exhibit "B").
46. Defendant Ted Baer has not personally guaranteed any of the loans Plaintiff Incentive Capital made to Camelot Entertainment Group or any of the other companies identified in Plaintiff Incentive Capital's Amended Complaint. (*Id.* at ¶36, Exhibit "B").
47. Defendant Ted Baer is not personally obligated under any of the Loan Documents referenced in Plaintiff Incentive Capital's Amended Complaint, including any obligation to repay any of the amounts due under said loans. (*Id.* at ¶37, Exhibit "B").
48. In at least the "April 27, 2010 Incentive loan agreement with CFG," (attached to Plaintiff Incentive Capital's Amended Complaint as Exhibit "A"); the "Security Agreement between Incentive and CDG" (attached to Plaintiff Incentive Capital's Amended Complaint as Exhibit "B"); and the "Security and Participation Agreement between Incentive and CFG" (attached to Plaintiff Incentive Capital's Amended Complaint as Exhibit "C") (collectively referred to by Plaintiff Incentive Capital as the "Loan Documents"), the Loan Documents integrated all prior negotiations, representations,

warranties, reports, certificates, financial statements, etc. made by the parties to the Loan Documents.

49. In at least the “April 27, 2010 Plaintiff Incentive loan agreement with CFG,” (attached to Plaintiff Incentive Capital’s Amended Complaint as Exhibit “A”); the “Security Agreement between Incentive and CDG” (attached to Plaintiff Incentive Capital’s Amended Complaint as Exhibit “B”); and the “Security and Participation Agreement between Incentive and CFG” (attached to Plaintiff Incentive Capital’s Amended Complaint as Exhibit “C”) (collectively referred to by Plaintiff Incentive Capital as the “Loan Documents”), the Loan Documents delineated that Plaintiff Incentive Capital’s remedy be in contract for any false or misleading representations, warranties, reports, certificates, financial statements, etc., furnished by or on behalf of Camelot Entertainment Group or any of the other companies identified in Plaintiff Incentive Capital’s Amended Complaint in securing the loans from Plaintiff Incentive Capital.
50. Defendant Ted Baer has not participated in, or taken, any action to deprive Plaintiff Incentive Capital of monies and other property by (i) making misrepresentations, (ii) failing to repay the amounts due under the Loan Documents referenced in Plaintiff Incentive Capital’s Amended Complaint, (iii) diverting and converting funds and property, (iv) falsifying information or documents that Plaintiff Incentive Capital may have relied on, or (v) doing any other thing whatsoever. (*Id.* at ¶38, Exhibit “B”).
51. Defendant Ted Baer has not participated in, or taken, any action to conspire to deprive Plaintiff Incentive Capital of monies and other property by (i) making misrepresentations, (ii) failing to repay the amounts due under the Loan Documents referenced in Plaintiff

Incentive Capital's Amended Complaint, (iii) diverting and converting funds and property, (iv) falsifying information or documents that Plaintiff Incentive Capital may have relied on, or (v) doing any other thing whatsoever. (*Id.* at ¶39, Exhibit "B").

ARGUMENT

THE COURT LACKS PERSONAL JURISDICTION OVER DEFENDANT TED BAER.

When the Court's jurisdiction over a defendant is contested, "Plaintiff bears the burden of establishing that personal jurisdiction in Utah over Defendant is proper." *Bathcrest, Inc. v. Safeway Safety Step, Inc.*, 417 F.Supp.2d 1236, 1239 (D. Utah 2006) (*citing Kuenzle v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 456 (10th Cir.1996)). "Jurisdiction of the district court over a nonresident defendant in a suit based on diversity is determined by the law of the forum state." *Id.* at 1506; *see also* Fed.R.Civ.P. 4(e). Accordingly, Plaintiff Incentive Capital "must show [(1)] that jurisdiction is legitimate under the laws of [Utah] and [(2)] that the exercise of jurisdiction does not offend the due process clause of the Fourteenth Amendment." *Bathcrest*, 417 F.Supp.2d at 1239 (*citing Soma Med. Int'l v. Standard Chartered Bank*, 196 F.3d 1292, 1295 (10th Cir.1999)) (other citations omitted).

Because Utah's long-arm statute intends "to assert jurisdiction over non-resident defendants to the fullest extent permitted by the due process clause of the Fourteenth Amendment," Utah courts "often assume the application of the statute and go straight to the due process issue." *Pohl Inc. of America v. Webelhuth*, 201 P.3d 944, 951 (Utah 2008); *see also Rusakiewicz v. Lowe*, 556 F.3d 1095, 1100 (10th Cir. 2009) ("As we have put it before, our jurisdictional inquiry in Utah diversity cases is reduced to a single question: did the defendants

have sufficient 'minimum contacts' with the state of Utah to establish personal jurisdiction over them?"). Consequently, Defendant's argument here focuses on the due process requirements that Plaintiff Incentive Capital has failed to establish in order to allow the Court to exercise personal jurisdiction over Defendant Ted Baer.

A. Plaintiff Incentive Capital's Amended Complaint Fails to Establish that Ted Baer has Sufficient Minimum Contacts with the State of Utah to Allow Personal Jurisdiction Over Him Under the Due Process Clause.

"The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' " *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471-72 (1985). Therefore, a "court may exercise personal jurisdiction over a nonresident defendant only so long as there exist 'minimum contacts' between the defendant and the forum state." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1979). Among other things, "[t]he requirement that "minimum contacts" be present protects a defendant, who has no meaningful contact with a state, from the burdens of defending a lawsuit far from home in a forum where the substantive and procedural laws may be quite different from those with which the litigant is familiar." *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1090 (10th Cir. 1998). To satisfy the due process protections, a court may only assert specific jurisdiction over a nonresident defendant "if the defendant has 'purposefully directed' his activities at residents of the forum, and the litigation results from alleged injuries that 'arise out of or relate to' those activities." *Id.* at 1090-91 (10th Cir. 1998) (*quoting Burger King*, 471 U.S. at 472, 105 S.Ct. 2174 (internal quotations omitted)).¹

¹ Plaintiff has not alleged any facts that would support finding that this Court has "general

Importantly, “[e]ach defendant’s contacts with the forum State must be assessed individually.” Calder v. Jones, 465 U.S. 783, 790 (1984). “In judging minimum contacts, a court properly focuses on ‘the relationship among the defendant, the forum, and the litigation.’” Calder, 465 U.S. at 788 (quoting Shaffer v. Heitner, 433 U.S. 186, 204 (1977)). In considering whether the Plaintiff Incentive Capital can shoulder its burden of showing jurisdiction, “[t]he allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant’s affidavits.” Wenz v. Memery Crystal, 55 F.3d 1503, 1505 (10th Cir. 1995) (quotations and citations omitted). However, “only the well pled facts of plaintiff’s complaint, as distinguished from mere conclusory allegations, must be accepted as true.” *Id.*² Plaintiff Incentive Capital’s Amended Complaint fails to establish that Defendant Ted Baer had sufficient minimum contacts with the State of Utah to allow the Court to exercise personal jurisdiction over him.

jurisdiction” over Defendant Ted Baer. “General jurisdiction lies when the defendant’s contacts with the forum state are so ‘continuous and systematic’ that the state may exercise personal jurisdiction over the defendant, even if the suit is unrelated to the defendant’s contacts with the state.” Trierweiler v. Croxton & Trench Holding Corp., 90 F.3d 1523, 1533 (10th Cir. 1996) (quoting Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 415-16 & n. 9 (1984)). The Affidavit of Julius Arthur Ted Baer III also makes it clear that he lacks the kind of contacts with Utah that would satisfy the more stringent contacts required for “general jurisdiction” to be exercised over him in Utah. “Because general jurisdiction is not related to the events giving rise to the suit, courts impose a more stringent minimum contacts test, requiring the plaintiff to demonstrate the defendant’s ‘continuous and systematic general business contacts.’ ” Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 567 (2d Cir. 1996) (quoting Helicopteros, 466 U.S. at 416).

² When assessing personal jurisdiction under Rule 12(b)(2), the Court may consider matters outside of the pleadings without converting the motion to dismiss to one for summary judgment. See Fed. R.Civ. P. 12(d) (providing only for treatment of motions under subsections (b)(6) and (c) as ones for summary judgment under Rule 56 when matters outside the pleadings are presented and considered by the court); see also 3Form, Inc. v. Sunset Plaza, LLC, 2:10-CV-856 TS, 2011 WL 761238 (D. Utah Feb. 24, 2011).

Plaintiff Incentive Capital's Amended Complaint only contains two general and conclusory jurisdictional allegations directed at all the named Defendants collectively, apparently meant to justify a personal jurisdiction claim over each individually named Defendant. Plaintiff Incentive Capital's Amended Complaint simply alleges: "Defendants have conducted business in the State of Utah relative to the loans, security agreements, guarantees, and foreclosure sale of the Library and other related assets, and have participated in many business transactions in Utah relative to the dispute set forth herein." (Amended Complaint at ¶15). Plaintiff Incentive Capital's Amended Complaint also alleges: "This Court has personal jurisdiction over Defendants based on Utah's "long arm" statute, Utah Code Ann. §78B-3-205, inasmuch as Defendants have transacted business in the state of Utah and the claims asserted herein arise out of these transactions." (*Id.* at §17). Nowhere in Plaintiff Incentive Capital's Amended Complaint, however, are there any more specific allegations regarding how Defendant Ted Baer personally and individually participated in "many business transactions in Utah" or "conducted business in the State of Utah" as alleged.

It is clear from the Affidavit of Julius Arthur Ted Baer III that Plaintiff Incentive Capital's conclusory allegations are not true—nor are they sufficient to establish personal jurisdiction—as to Defendant Ted Baer. Defendant Ted Baer was not general counsel for Camelot Entertainment Group and all of the specific work he performed for Camelot Entertainment Group pursuant to his Representation Agreement or Business Consultant Agreements was performed in California. Defendant Ted Baer did not himself participate in, transact, or conduct any business in the State of Utah. In fact, Defendant Ted Baer never conducted or participated in any face-to-face

negotiations or communications with any representative of Incentive Capital. His only interactions with representatives from Incentive Capital were through phone calls and email, and any such communications from him originated from California. As discussed below, such communications do not satisfy the minimum contacts requirement. Plaintiff Incentive Capital has otherwise failed to allege any other facts that show that Defendant Ted Baer individually had the kind of contacts that would satisfy the due process requirement.

B. Defendant Ted Baer's Phone and Email Communications do not Establish Minimum Contacts

Ted Baer's mere exchange of phone and email communications with representatives of Incentive Capital on behalf of his client Camelot Entertainment Group do not establish the type of significant minimum contacts to allow personal jurisdiction over him personally in Utah under the due process clause. Courts have clearly stated: "It is well-established that phone calls and letters are not necessarily sufficient in themselves to establish minimum contacts." *Far W. Capital, Inc. v. Towne*, 46 F.3d 1071, 1077 (10th Cir. 1995) (citing *Continental American Corp. v. Camera Controls Corp.*, 692 F.2d 1309, 1314 (10th Cir.1982); *Nicholas v. Buchanan*, 806 F.2d 305, 307-08 (1st Cir.1986) (per curiam) (collecting cases), *cert. denied*, 481 U.S. 1071, 107 S.Ct. 2466, 95 L.Ed.2d 875 (1987)). Such communications can only be relied on to establish personal jurisdiction if the specific quality—not the quantity—of the communication forms a "substantial connection with the forum." *Maverick Paper Co. v. Omaha Paper Co.*, 18 F.Supp.2d 1232, 1236-37 (D.Kan.1998); *see also Cont'l Am. Corp. v. Camera Controls Corp.*, 692 F.2d 1309, 1314 (10th Cir.1982).

Courts have been clear that where communications such as email or phone calls to the forum state are involved, “the exercise of jurisdiction depends on the *nature* of those contacts.” Rambo v. Am. S. Ins. Co., 839 F.2d 1415, 1418 (10th Cir. 1988) (emphasis in original). In addition, “[t]he proper focus for analyzing these contacts is whether they represent an effort by the defendant to “purposefully avail[] itself of the privilege of conducting activities within the forum State.” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). Purposeful availment can only be found where the contacts are such “that a potential defendant should ‘reasonably anticipate’ out-of-state litigation.” *Id.* (quoting *Burger King*, 471 U.S. at 474-75); see also *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1979) (stating that purposeful availment can only be found when a defendant “should reasonably anticipate being haled into court” in the forum). Finally, the court must decide whether the plaintiff’s claim “arises out of or results from ‘actions by the defendant *himself* that create a substantial connection with the forum state.’ “ *OMI*, 149 F.3d at 1091 (quoting *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 109 (1987))(emphasis added).

Plaintiff Incentive Capital’s only other specific reference to Defendant Ted Baer in the Amended Complaint is a conclusory allegation that: “On April 1, 2010, Baer, acting general counsel for Camelot during negotiation of the loan agreements, misrepresented that CDG’s assets have a significantly higher value than the amount of the proposed loan and the interest thereon.” (Amended Complaint ¶180). This allegation, as found in Plaintiff Incentive Capital’s Amended Complaint, fails on its own to specifically tie Defendant Ted Baer to the forum state or otherwise show that personal jurisdiction in Utah is appropriate. The Affidavit of Julius Arthur Ted Baer III

further clarifies that even if a specific email correspondence from him to Nathan Dorius in Utah is tied to the April 1, 2010 date it does not establish the required minimum contacts. The clear nature and quality of the April 1, 2010 communication—or any of Defendant Ted Baer's other communications with representatives of Incentive Capital, does not show that Defendant Ted Baer, as an individual, purposefully availed himself of the privilege of doing business in Utah or that he should have reasonably anticipated being haled into court on an individual basis.

The April 1, 2010 email that Defendant Ted Baer sent to Nathan Dorius with the attached documents were sent at the request of Defendant Ted Baer's client Camelot Entertainment Group. The documents that were attached to the April 1, 2010 email were sent in response to prior requests by representatives of Plaintiff Incentive Capital to Camelot Entertainment Group to provide documentation showing value. Defendant Ted Baer did not prepare any of the documents that were sent as attachments to the April 1, 2010 email. He did not prepare or calculate any of the information or estimates contained in the April 1, 2010 email or the attached documents. The information was provided to him by his client Camelot Entertainment Group and, in performing the outside legal work he was retained to do, he merely passed the information contained in the documents along to representatives of Plaintiff Incentive Capital.

Consequently, the email and the documents he sent—and all of his efforts in behalf of Camelot Entertainment Group—do not show a purposeful availment on his part individually to conduct activities within the State of Utah. They also do not create a substantial personal connection between Defendant Ted Baer and the State of Utah that would support concluding that he could reasonably anticipate that he would be haled into court in Utah on an individual and personal basis.

C. Plaintiff Incentive Capital's Conspiracy Allegations Fail to Specifically Establish any Grounds for Personal Jurisdiction over Defendant Ted Baer

While Plaintiff Incentive Capital has also apparently lumped Defendant Ted Baer into the Defendants against which it is alleging a cause of action for Civil Conspiracy, Plaintiff Incentive Capital's conspiracy allegations fail to establish that the court has personal jurisdiction over Defendant Ted Baer under this claim. While courts have recognized that “[t]he conspiracy theory of jurisdiction permits the assertion of jurisdiction over all co-conspirators, residents and non-residents, based upon their involvement in a conspiracy which occurred within the forum,” *Clark v. Tabin*, 400 F. Supp. 2d 1290, 1297 (N.D. Okla. 2005), Plaintiff Incentive Capital is still required to make more of a prima facie showing of a conspiracy involving Defendant Ted Baer than is contained in its Amended Complaint. *See id.*

In order to assert jurisdiction over a defendant under a conspiracy theory, the plaintiff must:

(1) make a prima facie factual showing of a conspiracy (*i.e.*, point to evidence showing the existence of the conspiracy and the defendant's knowing participation in that conspiracy); (2) allege specific facts warranting the inference that the defendant was a member of the conspiracy; and (3) show that the defendant's co-conspirator committed a tortious act pursuant to the conspiracy in the forum.

Id. (quoting *Kohler Co. v. Kohler International, Ltd.*, 196 F.Supp.2d 690 (N.D.III.2002)); *see also American Land Program, Inc. v. Bonaventura Uitgevers Maatschappij, N.V.*, 710 F.2d 1449 (10th Cir.1983) (recognizing requirement that defendant conspired to commit an overt act in state in furtherance of the conspiracy). In this case, however, Plaintiff Incentive Capital has only made general allegations, and none of the allegations include the commission of an overt act in Utah in furtherance of the conspiracy by any Defendant.

More importantly, there are no specific allegations in Plaintiff Incentive Capital's Amended Complaint regarding any actions or knowing participation by Defendant Ted Baer in furtherance of the alleged conspiracy. In fact, the Affidavit of Julius Arthur Ted Baer III is clear that he had no involvement in preparing any of the documents Plaintiff Incentive Capital is claiming contained misrepresentations or falsifications, he was not a party to said documents, he was not a signer of said documents, he was not obligated to repay any amounts due under the Loan Documents referenced in the Amended Complaint, and he is not involved as an owner, director, employee, or interested party in the handling of Camelot Entertainment Group's assets or funds. Moreover, he ceased performing work for Camelot Entertainment Group in November 2010 and has not had any further work with Camelot Entertainment Group since that date. He has never had, nor exercised, any control over the assets, Library, or other property that is referenced in Plaintiff Incentive Capital's Amended Complaint. Consequently, Plaintiff Incentive Capital's civil conspiracy claims are not a basis for asserting personal jurisdiction over Defendant Ted Baer.

D. Exercise of Personal Jurisdiction over Ted Baer in Utah Offends Traditional Notions of Fair Play and Substantial Justice

Even if sufficient minimum contacts between Defendant Ted Baer and the State of Utah could be found, the court must still consider whether “the exercise of personal jurisdiction over the defendant offends ‘traditional notions of fair play and substantial justice.’” *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091-92 (10th Cir. 1998) (quoting *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 109 (1987)). “This latter inquiry requires a determination of whether a district court's exercise of personal jurisdiction over a defendant with

minimum contacts is “reasonable” in light of the circumstances surrounding the case.” *Id.*

Courts have stated that:

In determining whether exercise of jurisdiction is so unreasonable as to violate “fair play and substantial justice,” we consider: (1) the burden on the defendant, (2) the forum state’s interest in resolving the dispute, (3) the plaintiff’s interest in receiving convenient and effective relief, (4) the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies. The strength of these factors sometimes serve to establish the reasonableness of jurisdiction upon a lesser showing of minimum contacts than would otherwise be required. Conversely, the factors may be so weak that even though minimum contacts are present, subjecting the defendant to jurisdiction in that forum would offend due process.

OMI Holdings, Inc., 149 F.3d at 1095-96 (internal citations omitted). Here, the concept of fair play and substantial justice defeats any argument that this Court has personal jurisdiction over Defendant Ted Baer, especially where Plaintiff Incentive Capital’s allegations fail to establish significant minimum contacts between him and the State of Utah.

It goes without saying that there will be a great personal and individual inconvenience and cost to Defendant Ted Baer if he is required to personally appear, as an individual, and defend against this litigation in Utah. As has been noted herein, Defendant Ted Baer is not, and has never been, an officer, director, or employee of Camelot Entertainment Group. He received and holds less than a 5% interest in Camelot Entertainment Group, said interest having been conveyed as partial payment of legal fees. Otherwise, Defendant Ted Baer has no personal interest in the Camelot Entertainment Group, or any of the other companies identified in Plaintiff Incentive Capital’s Amended Complaint, their assets, or any of the property that is allegedly at issue. He merely performed work for Camelot Entertainment Group, or any of the other companies

identified in Plaintiff Incentive Capital's Amended Complaint, in a limited role. In view of the lack of any specific allegations in Plaintiff Incentive Capital's Amended Complaint showing that Defendant Ted Baer has a personal connection to the State of Utah, it would impose an unfair and unreasonable burden on him to appear and defend against such general and conclusory allegations that do not specifically implicate him.

CONCLUSION

For the foregoing reasons, Defendant Ted Baer's Motion to Dismiss for Lack of Jurisdiction should be granted and Plaintiff Incentive Capital's Amended Complaint against him dismissed.

DATED this 16th day of May, 2011.

MORGAN, MINNOCK, RICE & JAMES, L.C.

/s/ Dennis R. James
Dennis R. James
Brian H. Hess
Counsel for Defendant Ted Baer

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of May, 2011, I electronically filed a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT TED BAER'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FOR LACK OF JURISDICTION** with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

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