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2 UNITED STATES DISTRICT COURT  
3 WESTERN DISTRICT OF WASHINGTON  
4 AT TACOMA

5 THOMAS MATISON and KAREN  
6 MATISON,

7 Plaintiffs,

8 v.

9 JOEL PEARCE, et al.,

10 Defendants.

CASE NO. C16-5431 BHS

ORDER DENYING  
DEFENDANT'S MOTION TO  
DISMISS PURSUANT TO FED. R.  
CIV. P. 12(b)(2)

11 This matter comes before the Court on Defendant Joel Pearce's ("Pearce") motion  
12 to dismiss for lack of personal jurisdiction. Dkt. 13. The Court has considered the  
13 pleadings filed in support of and in opposition to the motion and the remainder of the file  
14 and denies the motion because (1) Pearce's status as a corporate officer does not  
15 somehow insulate him from personal jurisdiction arising from his alleged tortious actions  
16 aimed at Washington State residents; and (2) Plaintiffs Thomas and Karen Matison have  
17 alleged actions by Pearce that sufficiently demonstrate the Court's personal jurisdiction  
18 over him.

19 **I. PROCEDURAL AND FACTUAL BACKGROUND**

20 On May 11, 2016, Plaintiffs filed a complaint in Pierce County Superior Court  
21 against Defendants Rockwest, Inc. ("Rockwest"), Pearce, and Turnbull and Born,  
22 P.L.L.C., seeking to quiet title, obtain declaratory relief that collection on a promissory



1 Amendment, which requires that out-of-state defendants have sufficient “minimum  
2 contacts” with the forum state such that requiring the defendant to litigate in that forum  
3 would comport with “traditional notions of fair play and substantial justice.” *Int’l Shoe*  
4 *Co. v. Washington*, 326 U.S. 310, 316 (1945).

5 “Where a defendant moves to dismiss a complaint for lack of personal jurisdiction,  
6 the plaintiff bears the burden of demonstrating that jurisdiction is appropriate.”  
7 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). When a  
8 court rules on the motion based on affidavits and discovery materials rather than an  
9 evidentiary hearing, the plaintiff need only make a *prima facie* showing of personal  
10 jurisdiction. *See Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir.  
11 2002). “Although the plaintiff cannot simply rest on the bare allegations of its complaint,  
12 uncontroverted allegations in the complaint must be taken as true.” *Schwarzenegger*, 374  
13 F.3d at 800 (internal quotation marks and citations omitted). “Additionally, any  
14 evidentiary materials submitted on the motion are construed in the light most favorable to  
15 the plaintiffs and all doubts are resolved in their favor.” *Ochoa*, 287 F.3d at 1187  
16 (internal quotation marks omitted).

17 Pearce’s motion to dismiss is premised on the argument that his corporate role  
18 immunizes him from personal jurisdiction for the actions he takes on behalf of his  
19 corporation. The Court rejects this argument because (A) Pearce’s corporate role does  
20 not shorten the reach of Washington’s long-arm statute and (B) Plaintiffs have alleged  
21 actions by Pearce sufficient to establish the necessary “minimum contacts” with  
22 Washington State.

1 **A. Fiduciary Shield Doctrine**

2 Pearce’s argument implicates the “fiduciary shield doctrine.” Although he does  
3 not expressly reference this doctrine in his briefing, it is the sum of his jurisdictional  
4 argument: particularly, that personal jurisdiction is deficient because “Plaintiff’s  
5 allegations against Pearce are premised exclusively on his role as a corporate officer of  
6 Rockwest.” Dkt. 13 at 4.

7 “Under the fiduciary shield doctrine, a person’s mere association with a  
8 corporation that causes injury in the forum state is not sufficient in itself to permit that  
9 forum to assert jurisdiction over the person.” *Davis v. Metro Prods., Inc.*, 885 F.2d 515,  
10 520 (9th Cir. 1989). However, in applying the Supreme Court’s precedent from *Calder v.*  
11 *Jones*, 465 U.S. 783 (1984), and *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984),  
12 the Ninth Circuit in *Davis* recognized that the Supreme Court “did not consider the  
13 existence of a state-created corporate form to create a due process limit on jurisdiction.”  
14 *Davis*, 885 F.2d at 521. Under this guiding principle, the Ninth Circuit largely  
15 abandoned the fiduciary shield doctrine, determining that a forum’s “long-arm statute  
16 may, consistent with constitutional due process, allow assertion of personal jurisdiction  
17 over officers of a corporation as long as the court finds those officers to have sufficient  
18 minimum contacts with [the forum].” *Davis*, 885 F.2d at 522.

1 Although various courts approach the fiduciary shield doctrine inconsistently,<sup>2</sup> this  
2 Court is bound by the decision of the Ninth Circuit in *Davis*. Accordingly, the fiduciary  
3 shield doctrine is of no consequence where the applicable long-arm statute extends to the  
4 full extent authorized by the Due Process Clause. *Davis*, 885 F.2d at 522 (construing  
5 Arizona long-arm statute coextensive with due process requirements to establish personal  
6 jurisdiction despite defendant’s assertion of fiduciary protections). *See also Brink v. First*  
7 *Credit Res.*, 57 F. Supp. 2d 848, 859 (D. Ariz. 1999) (“If the state’s long-arm statute  
8 allows jurisdiction to the extent allowed by the Constitution, then employing the  
9 fiduciary shield to insulate employees is inconsistent with the wide reach of the statute.”);  
10 *Kukui Gardens Corp. v. Holco Capital Grp., Inc.*, 664 F. Supp. 2d 1103, 1110 (D. Haw.  
11 2008) (“[I]t is unclear whether the doctrine continues to be a viable defense to personal  
12 jurisdiction. Instead, the proper inquiry is to look specifically at the minimum contacts of  
13 the individual regardless of whether that individual was acting within his or her official  
14 capacity.”); 3A William Fletcher, *Fletcher Cyclopedia of the Law of Private*  
15 *Corporations* § 1296.20 (2015) (“The fiduciary shield doctrine is not available where the  
16 forum state’s long-arm statute is coextensive with the full reach of due process.”).

17 Because Washington’s long-arm statute is coextensive with due process  
18 requirements, *Shute v. Carnival Cruise Lines*, 113 Wn. 2d 763, 766–67 (1989), Pearce’s

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20 <sup>2</sup> *See, e.g., Giusto v. Ashland Chemical Co.*, 994 F. Supp. 587 (E.D. Pa. 1998); *TriStrata*  
21 *Technology, Inc. v. Neoteric Cosmetics, Inc.*, 961 F. Supp. 686 (D. Del. 1997); *Glass v. Kemper*  
22 *Corp.*, 930 F. Supp. 332 (N.D. Ill. 1996). *But see Kukui Gardens Corp. v. Holco Capital Grp.,*  
*Inc.*, 664 F. Supp. 2d 1103 (D. Haw. 2008); *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 859  
(D. Ariz. 1999); *Nassar v. Florida Fleet Sales Inc.*, 69 F. Supp. 2d 443 (S.D.N.Y. 1999); *Davis*,  
885 F.2d 515.

1 role as a corporate officer does not prevent the Court from exercising personal  
2 jurisdiction over him.

3 **B. “Minimum Contacts” Analysis**

4 Instead of examining Pearce’s corporate role in determining whether personal  
5 jurisdiction exists, the proper inquiry before the Court is whether Pearce’s alleged actions  
6 satisfy a “typical minimum contacts analysis.” *Kukui Gardens*, 664 F. Supp. 2d at 1111.

7 The Ninth Circuit applies a three-part test to determine whether due process is satisfied  
8 by exercising personal jurisdiction over an out-of-state defendant based on his contacts  
9 with the forum:

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

15 (2) the claim must be one which arises out of or relates to the  
16 defendant's forum-related activities; and

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

19 *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433 F.3d 1199, 1205–06  
20 (9th Cir. 2006). Under this minimum contacts analysis, the plaintiff bears the burden of  
21 establishing the first two prongs. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d  
22 1066, 1076 (9th Cir. 2011). The burden then shifts to the defendant “to set forth a  
‘compelling case’ that the exercise of jurisdiction would not be reasonable.” *Id.*

1           **1. Purposeful direction**

2           When determining whether a defendant has purposefully directed activities toward  
3 a forum state, the Ninth Circuit employs the “*Calder-effects test*.”<sup>3</sup> *Mavrix Photo, Inc. v.*  
4 *Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011). This test “requires that ‘the  
5 defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at  
6 the forum state, (3) causing harm that the defendant knows is likely to be suffered in the  
7 forum state.’” *Id.* at 1228 (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606  
8 F.3d 1124, 1128 (9th Cir. 2010)).

9           Plaintiffs’ factual allegations satisfy this test. They allege that Pearce contacted  
10 them at their Washington home in December 2005 and began collecting payments on an  
11 allegedly fraudulent promissory note. Dkt. 1-1 at 5–6. They further allege Pearce,  
12 without a required license, telephoned in May 2014 and left a message, seeking to collect  
13 on the loan and threatening foreclosure absent payment. Dkt. 1-1 at 7, 12. The *Calder-*  
14 *effects test* is satisfied by such alleged wrongful attempts at debt collection. *See, e.g.*,  
15 *Weakley v. Redline Recovery Servs., LLC*, 723 F. Supp. 2d 1341, 1344 (S.D. Cal. 2010),

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17           <sup>3</sup> Citing *Hollande Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir.  
18 2007), Pearce argues that the *Calder-effects test* applies only to “intentional torts,” not actions  
19 brought pursuant to a statute. Dkt. 20 at 2. This misapplies the Ninth Circuit’s analysis in  
20 *Hollande*. Referring to the *Calder* decision, the Ninth Circuit in *Hollande* used the term  
21 “intentional tort” to describe any tortious actions intentionally targeting a forum. 485 F.3d at  
22 460. It contrasted such “intentional torts” with tortious acts which do not involve the active and  
intentional targeting of a forum state, such as negligently placing a faulty product into the stream  
of commerce. *Id.* Such an analysis does not limit the *Calder-effects test* to wrongful acts like  
assault, battery, conversion, etc., defined in law school textbooks as “intentional torts.” As set  
forth in the *Calder* decision, the Court’s analysis therein applies wherever a defendant engages in  
“intentional, and allegedly tortious, actions . . . expressly aimed at [the forum],” as opposed to  
“mere untargeted negligence.” *Calder*, 465 U.S. at 789.

1 clarified on denial of reconsideration, No. 09-CV-1423 BEN, 2010 WL 3033801 (S.D.  
2 Cal. Aug. 2, 2010) (“Because individual Defendants . . . contacted Plaintiff . . . in  
3 California, by telephone to collect Plaintiff’s alleged debt, Defendants have performed  
4 acts or transactions within the forum.”). Such alleged actions are clearly both intentional  
5 and aimed at Washington residents. Additionally, Plaintiffs claim to have suffered  
6 resulting harm occurring within the forum state. Dkt. 1-1 at 6–8, 13.

7         The facts outlined in the complaint adequately allege that Pearce, while acting on  
8 behalf of Rockwest, was instrumental in establishing, directing, and/or ratifying these  
9 debt collection practices. Pearce’s repeated assertions that he “is merely the sole  
10 shareholder and president of Rockwest,” is of no consequence in the face of such  
11 allegations. Dkt. 13 at 2. *See State v. Ralph Williams’ N. W. Chrysler Plymouth, Inc.*, 87  
12 Wn.2d 298, 322 (1976) (Under the CPA, “[i]f a corporate officer participates in the  
13 wrongful conduct, or with knowledge approves of the conduct, then the officer, as well as  
14 the corporation, is liable for the penalties. Corporate officers cannot use the corporate  
15 form to shield themselves from individual liability.”).

## 16         **2. Claims arising from Pearce’s forum related activities**

17         The second prong of the minimum contacts analysis demands that “the claim must  
18 be one which arises out of or relates to the defendant’s forum-related activities.” *Yahoo!*,  
19 433 F.3d at 1206. As stated above, Plaintiffs’ claim against Pearce arises from their  
20 allegations that Pearce engaged in unlawful debt collection practices aimed at  
21 Washington State. Specifically, Plaintiffs bring a claim under the CPA for alleged  
22 violations of the WCAA. Dkt. 1-1 at 10–13. Because Plaintiffs’ claim against Pearce is



1 | premised on Pearce’s debt collection activities aimed at Washington State, it properly  
2 | arises from his forum related activities.

3 | **3. Reasonableness**

4 | After a plaintiff satisfies the first two prongs of the minimum contacts analysis, the  
5 | burden falls upon the defendant “to set forth a ‘compelling case’ that the exercise of  
6 | jurisdiction would not be reasonable.” *CollegeSource*, 653 F.3d at 1076. Pearce once  
7 | again relies on his corporate position, arguing that the Court’s exercise of personal  
8 | jurisdiction would be unreasonable because his contacts with the forum were based on his  
9 | role as Rockwest’s officer and agent. Dkt. 20 at 5–6. For the reasons expressed above,  
10 | the Court rejects this argument.

11 | Pearce also contends that subjecting him to litigation in Washington is  
12 | unreasonable where his corporation, Rockwest, is vicariously liable for his actions. Dkt.  
13 | 20 at 5–6. Although Pearce contends that this means Plaintiffs will receive “no marginal  
14 | substantive benefit” from his inclusion, Dkt. 20 at 6, the Court finds otherwise. Plaintiffs  
15 | cannot recover from Pearce on a judgment solely against Rockwest. If Rockwest lacks  
16 | assets to compensate Plaintiffs for any damages sustained by Pearce’s and Rockwest’s  
17 | alleged violation of the CPA, a dismissal would effectively allow Pearce to shield himself  
18 | from personal liability for his tortious conduct. *See Ralph Williams*, 87 Wn.2d at 322  
19 | (“Corporate officers cannot use the corporate form to shield themselves from individual  
20 | liability.”). The purpose of vicarious liability is to protect the injured by imputing tort  
21 | liability to the principal of the agent, not to allow an agent to escape responsibility for his  
22 | own tortious acts. *Johnson v. Harrigan-Peach Land Dev. Co.*, 79 Wn.2d 745, 753 (1971)

1 (“An officer of a corporation, consequently, is liable for a tort committed in the course  
2 and within the scope of his official duties to the corporation the same as any other agent  
3 or servant is liable for his torts, for an agent is not exonerated from the consequences of  
4 his torts by the facts that, in committing them, he acted for his principal.”).

5 Most importantly, Pearce has failed to address any of the seven reasonableness  
6 factors set forth in *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1021 (9th  
7 Cir. 2002). Lacking any other argument,<sup>4</sup> Pearce has failed to articulate a basis whereby  
8 the Court might consider the exercise of personal jurisdiction to be unreasonable.  
9 Therefore, the Court finds that the third prong of the minimum contacts analysis has been  
10 satisfied. While Plaintiffs’ allegations that Pearce is liable for violating the CPA remain  
11 unproven, they are more than adequate to establish a *prima facie* showing of personal  
12 jurisdiction.

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20 <sup>4</sup> In his reply, Pearce does allude to the definition of “collection agency” under RCW  
21 19.16.100(5)(6) of the WCAA, suggesting that his role as an agent might preclude *personal*  
22 *liability* for Plaintiffs’ CPA claim. Dkt. 20 at 5. Such an argument is relevant to a motion to  
dismiss pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a claim. The Court will not  
consider it in assessing *personal jurisdiction* on a Fed. R. Civ. P. 12(b)(2) motion, particularly  
when raised only in passing by the moving party’s reply.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Pearce's motion to dismiss (Dkt. 13) is  
3 **DENIED.**

4 Dated this 23rd day of August, 2016.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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