IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

ROMAN ZRAZHEVSKIY and TATIANA MIRONOVA,	)
Plaintiffs,	) Case No. 5:26-cv-05135-TLB
v.	)
WHITE RIVER ENERGY CORP, a Nevada corporation, JAY PUCHIR, an individual, and E3 TAX, LLC d/b/a E3 FAMILY OFFICE,	)
Defendants.	)

e3 TAX LLC's Brief in Support of Motion to Dismiss Plaintiffs' First Amended Complaint

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Defendant e3 Tax, LLC d/b/a E3 Family Office ("e3") files this brief in support of its motion to dismiss the First Amended Complaint ("Amended Complaint") for lack of personal jurisdiction, or in the alternative for failure to state a claim upon which relief can be granted.

Introduction and Summary of Argument

This is a fraud and breach of contract directed at White River Energy Corp ("White River") and its principal—Jay Puchir—involving the sale and purchase of Sovereign Tribal Tax Federal Credits (the "Credits"). Plaintiffs—both residents of Texas—claim they were deceived into purchasing the Credits (which they claim are worthless) and that White River breached its obligations under the purchase agreement for the Credits. Plaintiffs have also sued Defendant and movant e3 under a combination of theories related primarily to the advice and recommendation to acquire the Credits. All parties have also been sued for conspiracy.

e3 is a Missouri based tax and family office firm with no office, employees, or members, in the state of Arkansas. All services and advice it rendered to Plaintiffs was transmitted into Texas from Missouri. Despite this, Plaintiffs claim that Arkansas can exercise specific jurisdiction over e3 based upon certain dealings and contracts between e3 and co-defendant White River.

These are the same jurisdictional arguments Plaintiffs previously made in their initial Complaint, only repackaged. Consequently, e3's response remains the same: Personal jurisdiction turns on a defendant's own direct suit related connections to a forum, as opposed to its dealing with a resident third-party or a plaintiff's connection to a forum. And, as this brief will show, there are no suit related connections between e3 and the State of Arkansas sufficient to confer jurisdiction.

Nor do Plaintiffs' allegations concerning forum-selection provisions cure this defect. e3 was not a signatory to these agreements *between Plaintiffs and White River*. As a result, Plaintiffs

cannot establish personal jurisdiction simply by attempting to bind e3 to contractual forum-selections provisions to which it never agreed. e3 did not consent to jurisdiction in Arkansas or co-defendants' choice of law. As a result, e3 should be dismissed from this action under Rule 12(b)(2). Separately, and on the merits, all but one of Plaintiffs' causes of action are defectively pleaded and must be dismissed under Rule 12(b)(6).

Factual Background and Jurisdictional Allegations

A. The Parties.

Plaintiffs Roman Zrazhevskiy and Tatiana Mironova are individuals residing in Jonestown, Texas, and are citizens of Texas. (Am. Compl., ¶¶ 6, 20–21). Co-Defendant White River is a Nevada corporation with its principal place of business in Fayetteville, Arkansas. (Am. Compl., ¶ 6). Co-Defendant Jay Puchir, White River's Chief Financial Officer, is alleged to be a citizen of Colorado. (Am. Compl., ¶¶ 6, 24). Movant e3 is a Missouri limited liability company with its principal place of business in Missouri. (Am. Compl., ¶ 27).

B. The e3 Engagement and Its Relationship with Plaintiffs.

Plaintiffs were existing clients of e3 at the time they purchased the Credits from White River. (Am. Compl., ¶ 53). The work performed for Plaintiffs included tax preparation, bookkeeping, and other related services. (Ex. 1, Decl. John Moriarty ¶ 13, Ex. A).[1] Plaintiffs executed several engagement letters with e3 detailing the nature of the professional services e3 would render. (Ex. 1, Decl. John Moriarty ¶ 13, Ex. A.). The engagement letters prominently feature e3's Missouri address. (*Id.*). The only other address listed is Plaintiffs' Texas residence.

Plaintiffs allege that in December of 2023, they were contacted by e3 employees Jessica Aubuchon and Mark C. Schreiber via email regarding the Credits and an opportunity to purchase

[1] This Declaration is provided only for the 12(b)(2) portion of this memorandum. It should be ignored for purposes of the 12(b)(6) arguments should the Court conclude there is jurisdiction.

them. (Am. Compl., ¶¶ 54–55). Plaintiffs allege that e3 principal John Moriarty "transmitted misrepresentations" to Plaintiff Zrazhevskiy by text message in January of 2024 regarding the Credits and the efficacy of the same. (Am. Compl., ¶ 57). These communications originated outside Arkansas and were transmitted to Plaintiffs. (Ex. 1, Decl. John Moritarty, ¶¶ 13–14).

C. e3's Relationship with White River.

Plaintiffs' jurisdictional hook centers on e3 relationship with White River. Through their Amended Complaint, Plaintiffs substantially expanded their allegations concerning that relationship, asserting that e3 served as White River's "distribution partner," participated in a marketing and distribution arrangement relating to the Credits, transmitted transaction documents to purchasers, coordinated transaction closings with White River personnel, and received commissions or other compensation associated with Credit sales. (Am. Compl., ¶¶ 11–15, 52). Plaintiffs further contend that these activities constitute conduct purposefully directed toward Arkansas sufficient to support specific personal jurisdiction. (Am. Compl., ¶ 8).

In support of these claims, Plaintiffs principally rely upon two agreements. First, Plaintiffs reference a purported "written marketing and distribution agreement with White River . . . under which e3 undertook to 'establish a distribution network' for the Credits." (Am. Compl., ¶ 8(a) and (2) a non-disclosure agreement. (Am. Compl., ¶ 8(b)). The first Agreement is an Advisory/Consulting Agreement between e3 and White River Private Capital Management LLC ("WRPCM) dated February 1, 2024. (Ex. 1, Decl. John Moriarty, ¶ 18–19, Ex. C). However, WRPCM is a Texas limited liability company, not an Arkansas entity. And the contract provides that it is to be construed according to Texas law. (Ex. 1, Decl. John Moriarty, ¶ 18–19, Ex. C). Furthermore, this contract expressly indicates that e3 has no power to bind WRPCM. (Ex. 1, Decl.

John Moriarty, ¶ 18–19, Ex. C). This agreement does not demonstrate that e3 purposefully availed itself of Arkansas.

The second referenced contract is a Nondisclosure Agreement between White River and e3 dated December 15, 2023. The Amended Complaint now alleges that this agreement independently subjects e3 to jurisdiction in Arkansas because the Tax Credit Purchase Agreement attached to Plaintiffs' pleadings contains a form Mutual Non-Disclosure Agreement providing that parties to that agreement consent to jurisdiction in Washington County, Arkansas. (Am. Compl., ¶ 9). However, as the Amended Complaint shows, that Mutual Non-Disclosure Agreement is between "the Seller and the Buyer" of the Credits, of which e3 was neither. (Am. Compl. ¶ 9).

The actual NDA executed by e3 and White River contains its own specific forum selection and venue clause, providing otherwise:

> This Agreement shall be governed by and construed under the laws of Nevada without regard to the conflict of law rules. . . . Both parties agree to submit to the jurisdiction of the applicable court in Nevada, in the event of any dispute under his Agreement, and waive any defense of forum non conveniens or similar defense to this selection of jurisdiction and venue.

(Ex. 1, Decl. John Moriarty, ¶ 16–17, Ex. B). Accordingly, the NDA upon which Plaintiffs rely does not establish consent by e3 to suit in Arkansas. To the contrary, the actual agreement designates Nevada as the agreed forum for disputes arising under that contract.

The remaining allegations fail to establish suit-related contacts with Arkansas. Plaintiffs allege that e3 accessed White River's data room, communicated with White River personnel, transmitted transaction documents that originated from White River, received compensation from White River, and participated in a DocuSign workflow in which transaction documents were copied to White River personnel located in Arkansas. (Am. Compl. ¶¶ 8, 10–15, 52–53). Yet each of these allegations concern e3's dealings with White River, not with Arkansas.

Plaintiffs also allege that e3 "coordinated" with co-defendant and White River principal Jay Puchir regarding the Credits and worked with White River personnel in connection with due diligence, investor communications, and transaction administration. (Am. Compl., ¶¶ 8(f), 13–15). These activities focus on e3's connections to third-parties—such as White River and (Colorado citizen) Mr. Puchir—not with Arkansas.[2]

D. The Purchase Agreement between White River and Plaintiffs.

On March 28, 2024, Plaintiffs allege they entered into a contract with White River to purchase the Credits (the "Agreement"). (Am. Compl., ¶ 33). The Agreement consisted of three separate documents: (1) the Tax Credit Purchase Agreement between Mr. Zrazhevskiy and White River, including Banking Instructions; (2) an Addendum; and (3) a Mutual Non-Disclosure Agreement. (Am. Compl., ¶¶ 33–41; Am. Compl., Ex. A–C). Plaintiffs claim they paid $600,000 for the Credits by wire transfer to a White River account "administered" by White River from Arkansas. (Am. Compl., ¶¶ 8(d), 40, 76). However, the wire instructions identify a beneficiary address in Colorado. (Am. Compl., Ex. A, Ex. A, Banking Instructions).

The Agreement is only between Roman Zrazhevskiy (as buyer) and White River (as seller). The agreement contains a merger clause. It also contains a forum selection clause providing that: "Each Party consents to the exclusive jurisdiction of any federal or state court located in Washington County, Arkansas." Relying heavily on this forum selection clause, Plaintiffs argue that e3 is bound by this provision because it was "closely related to the contractual relationship" or because the allegations concerning e3's role as a "distribution partner." (Am. Compl., ¶¶ 9, 16, 41). Again, however, e3 is not a signatory party, or third-party beneficiary of the Agreement (Am. Compl., Ex. A).

[2] Through their answer to the Amended Complaint, White River and Mr. Puchir have denied that e3 was White River's agent. (D.E. 35, ¶¶ 53, 84). They did so as well in their motion to dismiss. (D.E. 34, p. 15).

The Addendum does not support personal jurisdiction over e3. Per the Addendum, e3 was to be paid for its services from the "current price offering," not directly by Plaintiffs—contrary to Plaintiffs allegations over payment of a due diligence fee. (Am. Compl., ¶¶ 40, 76; Am. Compl., Ex. C). The Addendum also contains a limitation of liability provision for any claims arising from the execution of the Agreement. (Am. Compl., Ex. C). Accordingly, the Agreement and its component parts establishes at most that e3 assisted in facilitating a transaction between Texas purchasers and White River. It does not establish that e3 purposefully availed itself of the privilege of conducting activities in Arkansas or that e3 agreed to litigate disputes in Arkansas.

E. The Dispute.

Plaintiffs claimed the Credits on their tax return, which the IRS rejected. (Am. Compl., ¶¶ 3, 42). Plaintiffs contested the rejection but were advised by their attorneys to "pay the outstanding tax and withdraw any pending IRS process." (Am. Compl., ¶ 47). On April 16, 2026, Plaintiffs demanded White River rescind the contract, and White River rejected that request. (Am. Compl., ¶¶ 3, 46, 48). According to the complaint, e3 was paying the Plaintiffs' various tax counsel (first at Evershed then at Akerman) while they were working with the IRS. (Am. Compl., ¶¶ 17). This lawsuit followed.

Legal Argument

I. There is No Personal Specific Jurisdiction over e3.

A. Legal Standard for Evaluating Personal Jurisdiction Over a Non-resident Defendant.

To survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must plead "sufficient facts to support a reasonable inference that the defendant[ ] can be subjected to jurisdiction within the state." *Creative Calling Sols., Inc. v. LF Beauty Ltd.,* 799 F.3d 975, 979 (8th Cir. 2015). Plaintiffs bear the burden making a prima facie showing of jurisdiction. *See Whaley v.*

Esebag, 946 F.3d 447, 451 (8th Cir. 2020). Federal courts apply the long-arm statute of the forum state to determine the existence of personal jurisdiction over the parties and "Arkansas's long-arm statute permits personal jurisdiction to the maximum extent provided by the Due Process Clause." *Id.* (citing Ark. Code Ann. § 16-4-101). Thus, a plaintiff must show sufficient "minimum contacts' exist so that 'traditional notions of fair play and substantial justice' are not offended." *Whaley v. Esebag*, 946 F.3d 447, 451 (8th Cir. 2020) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

Plaintiffs do not allege that e3 is subject to the general jurisdiction of this Court—only that it has specific or "case-linked" jurisdiction. (Am. Compl., ¶¶ 8–17). *See generally Goodyear Dunlop Tires Operations, S.A. v. Brown,* 564 U.S. 915, 919 (2011). Regardless, the Amended Complaint contains no allegations supporting general jurisdiction and as demonstrated in the attached declaration of John Moriarty, factually it does not exist either. e3 is not at home in Arkansas. Its principal place of business is Missouri. It is an LLC organized under Missouri law. Less than 1% of its clients are based out of Arkansas, and none involving Credits. And e3 has no members who are citizens outside Missouri. Thus, its contacts with Arkansas are not sufficient to confer general jurisdiction. *See Henry Law Firm v. Cuker Interactive, LLC,* No. 5:18-CV-5066, 2018 WL 3025959, at *3 (W.D. Ark. June 18, 2018)*; Doshier v. Twitter, Inc.,* 417 F. Supp. 3d 1171, 1176 (E.D. Ark. 2019).

Turning to specific jurisdiction: "The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 571 U.S. 277, 283–84 (2014) (cleaned up). Thus, a defendant's suit-related conduct must create a "substantial connection with the forum state" to confer jurisdiction. *Id.* at 284. This inquiry turns on two aspects: "First, the relationship must arise

out of contacts that the defendant himself creates with the forum State." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (cleaned up). Second, a court must look "to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there," be they plaintiffs or co-defendants to the litigation. *Id*. Because of the rigorous application of this rule in this circuit, a plaintiffs', or co-defendants' presence and contact with the forum cannot substitute for the defendant's own purposeful availment of the forum. *See, e.g.*, *Brown v. Kerkhoff*, 504 F. Supp. 2d 464, 518 (S.D. Iowa 2007); *see also Walden v. Fiore*, 571 U.S. at 277 (explaining that the proper focus is on the defendant's relationship with the forum itself, not the defendant's relationship with persons who reside there).

In analyzing a defendant's connection *with the forum state*, courts in the 8th Circuit employ a five-factor test to evaluate minimum contacts, with the first three being the most important: "(1) the nature and quality of contacts with the forum state; (2) the quantity of such contacts; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) convenience of the parties." *Whaley v. Esebag*, 946 F.3d 447, 452 (8th Cir. 2020).

Further, because Plaintiffs claim e3 committed intentional torts, the Court can also consider the *Calder* effects test. *Garritty v. Blaze Media, LLC*, No. 5:23-CV-5225, 2024 WL 4340038, at *3 (W.D. Ark. Sept. 27, 2024) (discussing *Calder v. Jones,* 465 U.S. 783, 787–89 (1984)). Under this analysis personal jurisdiction exist if "the plaintiff makes a prima facie showing that the defendant's acts (1) were intentional, (2) were uniquely or expressly aimed at the forum state, and (3) caused harm, the brunt of which was suffered—and which the defendant knew was likely to be suffered—in the forum state." *Garritty v. Blaze Media, LLC*, No. 5:23-CV-5225, 2024 WL

4340038, at *3 (W.D. Ark. Sept. 27, 2024) (*citing Brothers & Sisters in Christ, LLC v. Zazzle, Inc.,* 42 F.4th 948, 954 (8th Cir. 2022) (cleaned up).

Finally, to the extent that Plaintiffs advance a consent-to-jurisdiction theory by way of the Arkansas forum-selection clause contained in the Tax Credit Purchase Agreement under the closely related parties doctrine, the threshold inquiry is whether e3 is sufficiently "closely related to the dispute such that it becomes foreseeable that it will be bound." *PNC Bank, Nat'l Ass'n v. MAC Meetings & Events, LLC Cisco Sys., Inc.*, No. 4:18-CV-1967-SPM, 2020 WL 3578574, at *7 (E.D. Mo. July 1, 2020) (quoting *Marano Enters. of Kan. v. Z–Teca Rests., L.P.*, 254 F.3d 753, 757 (8th Cir. 2001)). "To determine whether a party is closely related to the dispute, courts have looked to its common interests with the contracting party in the litigation," or whether "the non-contracting party voluntarily associated itself with the contracting party in some type of legal process." *Id.* (quoting *Medtronic, Inc. v. Ernst*, 182 F. Supp. 3d 925, 932 (D. Minn. 2016).

B. e3's Suit-Related Contacts Do Not Relate to Arkansas.

Plaintiffs allege e3 has minimum contacts with the State of Arkansas by virtue of its interactions with co-Defendant White River or their own dealings with White River. (Am. Compl., ¶¶ 8–15).. Their failure to allege a direct link between e3 and the state of Arkansas itself is fatal to its efforts to bring e3 into this Court. Even the allegations rooted in a theory that e3 served as "White River's distribution partner, [and] made purchaser facing representations" and transmissions do not implicate Arkansas, but illustrate a connection between e3 in Missouri and Plaintiffs in Texas. (Am. Compl., ¶¶ 8–15).

In amending the earlier iteration of the complaint, Plaintiffs have now attached copies of the Tax Credit Purchase Agreement and the Mutual Non-Disclosure Agreement between Mr. Zrazhevskiy and White River, as well as the Addendum he executed with e3. (Am. Compl., Ex.

A–C). As a result, those documents may be considered under Rule 10(c) for purposes of this analysis. Fed. R. Civ. P. 10(c) ("A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes."); *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012) ("Though matters outside the pleading may not be considered in deciding a Rule 12 motion to dismiss, documents necessarily embraced by the complaint are not matters outside the pleading."); *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017) ("In a case involving a contract, the court may examine the contract documents in deciding a motion to dismiss." (quoting *Stahl v. U.S. Dep't of Agric.*, 327 F.3d 697, 700 (8th Cir. 2003)). And if a conflict exists between the complaint and an attached exhibit, the exhibit controls. *See Zean*, 858 F.3d at 528.

Plaintiffs' exhibits undermine their jurisdictional allegations. While Plaintiffs repeatedly characterize e3 as White River's "distribution partner" and suggest that e3 became bound to Arkansas through those documents, the exhibits do not support either conclusion. The Tax Credit Purchase Agreement identifies only Roman Zrazhevskiy as the Buyer and White River as the Seller. (Am. Compl., Ex. A). e3 is not identified as a party, signatory, purchaser, seller, third-party beneficiary, guarantor, or obligor under that agreement. Likewise, the Mutual Non-Disclosure Agreement states on its face that it is between the "Seller" and the "Buyer," not e3. (Am. Compl., Ex. C). The Addendum similarly reflects only that compensation payable to e3 would come from the transaction itself, not from Plaintiffs, and does not make e3 a party to the purchase agreement or otherwise subject e3 to its forum-selection clause. (Am. Compl., Ex. B). Thus, these documents refute, rather than support, Plaintiffs' contention that e3 purposefully availed itself of Arkansas.

The Supreme Court has "consistently rejected attempts to satisfy the defendant-focused minimum contacts inquiry by demonstrating contacts between the plaintiff . . . and the forum

state." *Walden v. Fiore*, 571 U.S. 277, 284 (2014) (cleaned up). Indeed "the plaintiff cannot be the only link between the defendant and the forum." *Id.* at 285. Along the same lines, "Courts widely reject 'jurisdiction by association,' so the mere fact that Defendant A had some relationship with Defendant B does not impute Defendant B's contacts with the forum to Defendant A." *Garritty v. Blaze Media, LLC*, No. 5:23-CV-5225, 2024 WL 4340038, at *3 (W.D. Ark. Sept. 27, 2024).

Against this backdrop, specific jurisdiction is non-existent. Per the complaint: (1) e3 (a citizen and resident of Missouri) interacted with White River (a citizen and resident of Arkansas); (2) "coordinated" with a citizen of Colorado (Jay Puchir); (3) e3 transmitted documents from Missouri to Texas; (4) which caused Plaintiffs to wire money pursuant to a contract between co-defendant White River and Plaintiffs. "Merely entering into a contract with a forum resident does not provide the requisite contacts between a defendant and the forum state." *See Iowa Elec. Light & Power Co. v. Atlas Corp*., 603 F.2d 1301, 1303 (8th Cir. 1979). "The minimum contacts relied upon must be between the defendant and the forum state, not simply between the defendant and a resident of the forum state." *Iowa Elec. Light & Power Co. v. Atlas Corp.*, 603 F.2d 1301, 1304 n.3 (8th Cir. 1979). Thus, e3's contacts with White River cannot supply the jurisdictional link for this case.

Removing e3's contacts with White River from the jurisdictional analysis leaves little else. e3's communications with Plaintiffs were directed from Missouri into Texas (Am. Compl., ¶¶ 6, 52–58). Plaintiffs own act of entering into a contract with White River and wiring funds to White River are *its own* interactions with White River; the activity of Plaintiffs or a third-party are insufficient to confer jurisdiction over a non-resident defendant. *See Walden v. Fiore*, 571 U.S. 277, 286 (2014).

Furthermore, the actual contracts involving e3 referenced in the Amended Complaint are creatures of states *other* than Arkansas. The NDA Plaintiffs reference in their complaint is specifically grounded in Nevada law with a Nevada venue clause as discussed previously. And the consulting agreement with White River Private Capital Management extensively referenced in the Amended Complaint is not even with the co-defendant but, rather, a Texas LLC with a Texas choice of law provision (Ex. 1, Decl. John Moriarty, ¶ 18–19, Ex. C).

The Arkansas case of *Goodwin v. Magness Oil Co.*, 552 S.W.3d 26 (Ark. Ct. App. 2018) is instructive. There, an Arkansas company, Magness, sued a Virginia attorney, Goodwin, related to the loss of escrow funds. *Id.* at 28. Magness and Georgia-based Piedmont executed a letter of intent related to Piedmont's intended acquisition of Magness. *Id.* Piedmont then entered into a separate contract with an entity represented by Goodwin called USAG, whereby USAG would use $500,000 provided by Piedmont to generate funds to make a $45 million loan to Piedmont for it to acquire Magness. *Id.* Goodwin instructed Piedmont to wire the funds to his trust account in Virgina which were then transmitted to USAG. *Id.*

Magness and Piedmont then entered into a formal agreement with Arkansas choice of law and venue provisions where USAG was to hold the $500,000 in escrow to be paid to Magness should the transaction fail. *Id.* at 28–29. Neither Goodwin nor USAG were parties to this agreement. *Id.* When the transaction failed, Piedmont and Magness demanded the escrow funds but were rebuffed, resulting in litigation. Although a judgment was secured against Goodwin, it was reversed on appeal for lack of personal jurisdiction. *Id.* at 28. The appellate court observed that the only direct connection between Goodwin and Magness were emails Goodwin sent to Magness. *Id.* at 30–31. But, "the use of arteries of interstate mail and banking facilities, standing

alone, is insufficient to satisfy due process in asserting long-arm jurisdiction over a nonresident." *Id.* at 31.

The court also noted that Piedmont had wired the fund at Goodwin's direction pursuant to a contract between Piedmont and USAG, which contained a Nevada choice of law provision and that Magness was not a party to that contract. *Id.* Likewise, Goodwin was not a party to the underlying documents between Magness and Piedmont—documents providing that the escrow funds were to be sent to Magness. *Id.* Although Goodwin's client USAG had contacts with Arkansas, the court rejected the attempt to tie Goodwin to USAG, noting that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *Id.* (quoting *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cnty.,* 582 U.S. 255, 264 (2017)). The court also noted that Goodwin was sued for torts occurring either in Nevada or Virgina—not in Arkansas. *Id.*

The Arkansas appellate case *Stampley v. LG Chem America, Inc.*, is likewise instructive. *See* 713 S.W.3d 26, 33 (2025). In that matter, the plaintiff, a Tennessee resident, purchased an LG 18650 lithium-ion battery in West Memphis, Arkansas, but was later injured in Tennessee when the battery exploded in his pocket. *Id.* at 29. He sued LG Chem, the South Korean manufacturer of the battery, alleging that it placed the battery into the stream of commerce "purposefully causing its products, including the LG 18650 battery, to be marketed, distributed, sold and used in Arkansas," and "derived significant revenue from its activities and the sale/use of its products in Arkansas." *Id.* at 30 (cleaned up).

LG Chem moved to dismiss the complaint for lack of personal jurisdiction. *Id.* The record showed LG Chem had no offices, licensed dealers, retailers, repair facilities, or direct sales activities in Arkansas, did not market the batteries for the consumer use at issue, and that the

battery reached Arkansas only through a chain of independent third-party wholesalers. *Id.* As a result, the Arkansas Court of Appeals determined that LG Chem had not purposefully availed itself of the privilege of conducting business in Arkansas as it "did not extensively promote, sell, or service its batteries in Arkansas," and the battery's presence in the state was the result of the "[u]nilateral activity" of third-party, which "cannot satisfy the requirement of contact with the forum state." *Id.* 33 (emphasis added). In doing so, the *Stampley* court confirmed the U.S. Supreme Court's earlier holding in *Ford Motor Co. v. Montana Eighth Judicial District* Court, 592 U.S. 351 (2021), as to the importance of where the injury was felt for purposes of establishing appropriate jurisdiction over the defendants. *Id.*

The situations addressed in *Goodwin* and *Stampley* are no different than Plaintiffs' attempt to use e3's alleged relationship with White River—including its communications with White River and its personnel, its transmission of transaction documents, and Plaintiffs' subsequent wire transfers to White River—to submit e3 to the jurisdiction of this Court. Those allegations describe e3's dealings with third parties, not e3's own suit-related contacts with Arkansas. Similarly, the core theories against e3—professional negligence and misrepresentation—occurred in Missouri and were transmitted in Texas. As a result, those the jurisdictions—not Arkansas—are most closely affiliated with Plaintiffs' claims against e3.

Thus, Plaintiffs cannot satisfy the five-factor test for specific jurisdiction. *See Whaley v. Esebag,* 946 F.3d 447, 452 (8th Cir. 2020). e3's connections to the state relate solely to its commercial dealings with a forum resident. The causes of action against e3 involve alleged injuries in Missouri and Texas flowing from a relationship that predated the tax credit claims. Although Arkansas would have an interest in overseeing this type of claim, Plaintiffs are not Arkansas residents, and their interests in the state derive from a forum selection clause and contract that e3

is not a party to. And Arkansas is a mutually inconvenient forum for e3 and Plaintiffs. Finally, under the *Calder* effects test, the place where the injury was felt was not Arkansas, but Texas or Missouri. As a result, this Court should dismiss e3 from this action for lack of personal jurisdiction.

C. e3 is Not Bound by the Forum Selection Clause in the Purchase Agreement.

Plaintiffs also allege that e3 is bound by the forum selection clause in the Agreement as a "non-signatory whose conduct is 'closely related to the contractual relationship.'" (Am. Compl., ¶ 16) (citing *Marano*, 254 F.3d at 757–58). Plaintiffs further allege that e3 is bound by being a "distribution partner," being compensated from the purchase, and having transmitted the Agreement. (Am. Compl., ¶ 16). However—and as addressed above—the exhibits Plaintiffs have now attached to the pending complaint defeat this argument, confirming that e3 occupied a distinct role outside of the contractual relationship between Plaintiffs and White River subject to the Arkansas forum selection provision. As a result, Plaintiffs cannot rely upon contradictory allegations characterizing e3 as bound by Plaintiffs' agreement with White River where the very documents attached to the First Amended Complaint establish otherwise. *See, e.g, Zean v. Fairview Health Servs.*, 858 F.3d 520, 528 (8th Cir. 2017).

Although courts and states within the 8th Circuit allow a forum selection clause to reach non-parties, the circumstances by which that is accomplished are narrow and require a very close alignment between the party and non-party such as: whether the contract was signed by an owner, officer, or some other authorized representative of the non-signatory business organization; whether the contract conferred rights, benefits, or obligations on the non-party; and whether the non-party was involved in the suit-provoking conduct or induced the contract's breach. *See, e.g.*, *Pitman Farms v. Kuehl Poultry LLC*, 676 F. Supp. 3d 741, 750–51 (D. Minn. 2023). None of those factors are present here.

For example, in *Marano,* the closely related party was a "shareholder, officer, and director of the signatory" and, therefore, was closely related to the disputes triggering the application of the forum selection clause. *See Marano*, 254 F.3d at 757. Thus, it was foreseeable that they would be bound. *Id.* (citing *Hugel v. Corp. of Lloyd's,* 999 F.2d 206, 209 (7th Cir.1993)); *see also Pet Quarters, Inc. v. Badian,* No. 4:04-CV-697 (RSW), 2006 WL 8445029, at *4 (E.D. Ark. May 25, 2006) ("an officer or director of a corporation . . . that is a party to an arbitration agreement is 'closely related' to the disputes arising out of the agreement and may enforce any arbitration clause.").

In contrast, e3 is a non-party to the Agreement and is not alleged to be a shareholder, officer, director, employee, or member of White River. Although Plaintiff Roman Zrazhevskiy executed an "Addendum," the only thing that document provided was that Plaintiffs would hold e3 harmless for any damages flowing from the purchase of the Credits. Per the integration and merger clauses to the Agreement itself, the Addendum cannot modify any terms to the Agreement or otherwise turn e3 into a party. As a result, Plaintiffs cannot show that e3 is a closely related party subject to the forum selection clause in the Agreement.

D. Plaintiffs' Concert of Activity Allegations and Conspiracy Count Do Not Support Specific Jurisdiction.

Plaintiffs allege that e3 "acted in concert" with White River and that White River has reserved "contribution and indemnity claims" against e3 based on certain acts undertaken by e3. (Am. Compl., ¶ 8(g)(h)). This appears to be an attempt by Plaintiffs to allege a conspiracy-based theory of jurisdiction, which ties to Count XIII of the Amended Complaint. The Supreme Court of Arkansas has previously stated that the conspiracy theory of personal jurisdiction does not violate Arkansas' long arm statute. However, the foundational authority for this decision—*Gibbs v. PrimeLending*, 2011 Ark. 255, 4, 381 S.W.3d 829, 832 (2011)—pre-dates the Supreme Court's

decision in *Walden v. Fiore,* 571 U.S. 277 (2014)—and the 8th Circuit does not appear to have conclusively ruled on whether conspiracy-based jurisdiction comports with due process.[3] As the *Gibbs* court observed, under the Arkansas long arm statute the "the exercise of personal jurisdiction is limited only by federal constitutional law . . . [the] court looks only to Fourteenth Amendment due process jurisprudence when deciding an issue of jurisdiction." *Id.* at 833. In this respect, the Arkansas Supreme Court did not have the benefit of *Walden* when it decided *Gibbs.*

A jurisdictional theory that depends on a concert of activity is inconsistent with *Walden* as only a defendant's conduct within a forum that establishes jurisdiction, not their dealings with third-parties in a particular forum. Thus, this Court should reject any attempt by Plaintiffs to impute jurisdiction to e3 purely through the co-defendants. Plaintiffs must still prove a direct connection between e3 and Arkansas sufficient to show that jurisdiction is appropriate here and the expanded allegations contained within the Amended Complaint still fail to do so.

Even assuming the viability of a conspiracy-based jurisdiction, the complaint would still be subject to dismissal. *Gibbs* relied upon the test articulated by *Cawley v. Bloch*, 544 F. Supp. 133 (D. Md. 1982), in evaluating whether jurisdiction for a conspiracy comports with due process. That test has four parts: (1) two or more individuals conspire to do something; (2) they could reasonably expect to lead to consequences in a particular forum: if (3) one co-conspirator commits overt acts in furtherance of the conspiracy; and (4) those acts are of a type which, if committed by a non-resident, would subject the non-resident to personal jurisdiction under the long-arm statute of the forum state.

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[3] *See GP3 II, LLC v. BANK OF THE WEST*, No. 20-00424-CV-W-BP, 2023 WL 11950604, at *5 (W.D. Mo. July 18, 2023) ("[T]he 8th Circuit Court of Appeals . . . ha[s] not yet ruled on whether conspiracy-based jurisdiction is grounds for jurisdiction in Missouri, . . . thus it is unclear whether conspiracy jurisdiction is a viable concept.").

None of the above are present. First, there is no actionable conspiracy claim pleaded in the complaint that would satisfy the combined requirements of Rule 9 and Rule 12(b)(6) as Count XIII is unsound. Instead of alleging that Defendants conspired to commit a particular or specific tort, Plaintiffs shotgun a combination of negligence and intentional tort allegations and describes them as a stand-alone conspiracy without breaking them into their constituent elements. Specifically, Plaintiffs allege that e3 and the co-defendants engaged in a conspiracy to commit fraud, negligent misrepresentation, and breach of fiduciary duty all in one count. (Am. Compl. ¶ 153).

Conspiracy requires an intent to act. For example, under Nevada law, conspiracy can only be stablished by showing "some concerted action, intend[ed] to accomplish an unlawful objective for the purpose of harming another." *Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc*., 114 Nev. 1304, 1311 (1998); *see also Firestone Steel Products Co. v. Barajas,* 927 S.W.2d 608, 614 (Tex. 1996) ("Civil conspiracy requires specific intent. . . . [T]he parties must be aware of the harm or the wrongful conduct at the beginning of the combination or agreement."); *Faulkner v. Arkansas Children's Hosp*., 347 Ark. 941, 961 (2002) ("A civil conspiracy is an intentional tort which requires a specific intent to accomplish the contemplated wrong."). Thus, there can be no conspiracy to commit a negligent act.

Conspiracy claims require showing a meeting of the minds to commit the specific underlying tort and mere cooperation among entities is not sufficient. *See Wolk v. City of Brooklyn Ctr.*, 107 F.4th 854, 860 (8th Cir. 2024); *Park Ridge Associates v. U.M.B. Bank*, 613 S.W.3d 456, 463 (Mo. Ct. App. 2020); *Agar Corp., Inc. v. Electro Circuits Int'l, LLC*, 580 S.W.3d 136, 141 (Tex. 2019); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). Plaintiffs have merely described commercial activity between e3 and White River. There are no plausible allegations showing, establishing, or inferring that e3 and White River conspired to

commit an underlying fraudulent act that would satisfy Rule 9(b) and certainly nothing as to e3 beyond Plaintiffs' repeated intonation that e3 "should have known" (or that it did know, but "upon information and belief"). And the allegations of negligence and breach of fiduciary certainly cannot satisfy this requirement.

Where jurisdiction has been challenged, it falls to the plaintiff to provide proof showing that jurisdiction is appropriate. Otherwise, plaintiffs could haul out-of-state defendants into foreign courts on threadbare conspiracy theories premised upon their dealing with forum residents, as opposed to the forum itself. *See Cockrum v. Donald J. Trump for President, Inc.,* 319 F. Supp. 3d 158, 186 (D.D.C. 2018) (requiring exacting particularity and specificity to sustain conspiratorial jurisdiction). Plaintiffs' allegations show that the jurisdictional predicate is not present in this complaint. The claims against e3 must be dismissed for lack of personal jurisdiction.

II. In the Alternative, the Complaint Fails to State a Claim under Rule 12(b)(6) and Must Be Dismissed.

A. Choice of Law.

Plaintiffs allege that this action is governed by Nevada law based upon the choice of law provisions contained within the Agreement. (Am. Compl., ¶ 4). However, that Agreement does not bind e3. As a result, the Court must apply choice of law principles in evaluating which law applies to this diversity action. In Arkansas:

> [t]he state supreme court considers first which State has the most significant relationship to the action and the parties, and then analyzes the Leflar factors: (1) predictability of results, (2) maintenance of interstate and international order, (3) simplification of the judicial task, (4) advancement of the forum's governmental interests, and (5) application of the better rule of law.

Shelby Cnty. Health Care Corp. v. S. Farm Bureau Cas. Ins. Co., 855 F.3d 836, 842 (8th Cir. 2017). Applying the above factors shows that Missouri and Texas have a far greater connection to this action than Nevada or even Arkansas as it pertains to e3. *See Nursing Home Consultants, Inc.*

v. Quantum Health Services, Inc., 926 F. Supp. 835, 847 (E.D. Ark. 1996), *aff'd,* 112 F.3d 513 (8th Cir. 1997).

Predictability of results is primarily directed at forum shopping, which is not a concern here. Next, Maintenance of interstate and international order seeks to minimize the friction between states that could lead to retaliatory behaviors. *Bourgeois v. Vanderbilt*, 639 F. Supp. 2d 958, 963 (W.D. Ark. 2009). In this respect, Missouri has a greater interest in the negligence-based causes of action against e3 in regulating the affairs of accounting firms within its own borders. Texas would also have an interest in addressing alleged misrepresentations made to its citizens. *Bourgeois v. Vanderbilt*, 639 F. Supp. 2d 958, 963 (W.D. Ark. 2009), *aff'd*, 417 Fed. Appx. 605 (8th Cir. 2011).

Advancement of the forum's governmental interests is evaluated by examining a forum's connections to a case. *See Shelby Cnty. Health Care Corp. v. S. Farm Bureau Cas. Ins. Co.,* 855 F.3d 836, 843 (8th Cir. 2017). As to e3 and Plaintiffs, Texas arguably has the strongest interest due to Plaintiffs' citizenship, while Missouri would be secondary. Arkansas appears to have limited interest in an inherently an out-of-state dispute between an accounting firm and its clients.

While Factors 3 and 5—simplification of the judicial task and application of the better rule of law—are neutral, the application of Texas' would significantly simplify the claims against e3 by eliminating several redundant causes of action subsumed by the professional malpractice claim. However, Missouri and Texas both reject aiding and abetting and breach of fiduciary duty as viable causes of action in this case. On balance, the call is close, but the favors the application of Texas law to the claims against e3. For ease of analysis, e3 addresses the law of all potential jurisdictions where appropriate.

B. Count IX — Fraud / Fraudulent Misrepresentation.

A typical fraud claim generally must include: "(1) A false representation made by the defendant; (2) defendant's knowledge or belief that its representation was false or that defendant has an insufficient basis of information for making the representation; (3) defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; and (4) damage to the plaintiff as a result of relying on the misrepresentation." *See Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998); *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009); *Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003, 1010 (8th Cir. 2015). It must also satisfy the strictures of Federal Rule of Civil Procedure 9.

Here, Plaintiffs claim that e3 made representations that the Credits had been "in the tax code . . . since the early 2000's," that e3 was "near 100% certain" that the IRS would accept the Credits, and that the "balance sheet" of White River was "backing the tax credits." (Am. Compl., ¶ 134). However, as to intent, Plaintiffs allege that e3 "knew, or with the exercise of reasonable diligence . . . would have known" that the statements were false. (Am. Compl., ¶ 135).

This is insufficient. All Plaintiffs are alleging that upon information and belief e3 *should* have known the representations it made were false—which is negligence. There are no allegations establishing or creating the inference that e3 itself had knowledge that the representations were false when they were made. Furthermore, promises of future performance do not constitute actionable fraud. *See S. Cnty., Inc. v. First W. Loan Co.,* 315 Ark. 722*, 727,* 871 S.W.2d 325, 327 (1994). All Plaintiffs have done is recast their negligence claim with fraud-based trappings. Indeed, the Amended Complaint shows that the statements made by the IRS, Cherokee Nation, and others occurred well after the Plaintiffs acquired the tax credits. (Am. Compl., ¶¶ 65-80). This is insufficient to sustain a fraud claim, does not satisfy Rule 9, and warrants dismissal. *See e.g., Drobnak v. Andersen Corp.,* 561 F.3d 778, 783 (8th Cir. 2009).

C. Count X — Negligent Misrepresentation.

Plaintiffs allege a negligent misrepresentation claim against e3. This claims is defective in every potential choice of law. In Texas, this claim is a vehicle used to establish liability by someone not in a direct professional relationship with the alleged tortfeasor, for example, an intended third-party user of an audit. *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 792–94 (Tex. 1999). Thus, the claim is redundant of the professional malpractice claim already pleaded in the complaint—alleging direct privity of contract—and subject to dismissal with prejudice. *See Haase v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, LLP,* 404 S.W.3d 75, 82 (Tex. App. 2013) (concluding that a negligent misrepresentation claim violated Texas' anti-fracturing rules and was subject to dismissal).

Dismissal is warranted under Missouri law as well. Plaintiffs plead that e3 misrepresentation supplied "false information to Plaintiffs" and "failed to exercise reasonable care." (Am. Compl., ¶ 140). This count cross references the earlier alleged misrepresentations in Count IX, but strips them of their scienter component. The anchor point for the claim is a statement that e3 was "near 100% certain on the tax credits acceptance by the IRS." (Am. Compl., ¶ 134). Ultimately, the IRS rejected the application of the credits sometime later.

Thus, the specific allegations—tied to the *potential* acceptance of the tax credits—is non-actionable. A negligent misrepresentation claim turns on false statement "of existing fact." *BCY Water Supply Corp. v. Residential Inv., Inc*., 170 S.W.3d 596, 603 (Tex. App. 2005). A negligent misrepresentation claim cannot be premised "upon the promise that a third party will perform an act." *Ryann Spencer Group, Inc. v. Assurance Co. of Am.*, 275 S.W.3d 284, 291 (Mo. Ct. App. 2008) (cleaned up); *Comp & Soft, Inc. v. AT & T Corp*., 252 S.W.3d 189, 197 (Mo. Ct. App. 2008).

Finally, while e3 does not believe Arkansas law governs the claims against it, Arkansas does not recognize a cause of action for negligent misrepresentation. *See Receivables Purchasing Co., Inc. v. Eng'g & Prof'l Services, Inc.*, 510 F.3d 840, 843 (8th Cir. 2008); *Robertson v. White,* 633 F. Supp. 954, 971 (W.D. Ark. 1986). So, Count X should be dismissed regardless of what jurisdiction's law controls.

D. Count XII — Breach of Fiduciary Duty and Constructive Fraud.

Plaintiffs allege that e3 owed a fiduciary duty based upon its status as Plaintiffs' "family office" and tax advisor. (Am. Compl., ¶ 147). However, tax and accounting engagements are generally not fiduciary in nature. *See Pitts v. Rivas,* 709 S.W.3d 517, 528 (Tex. 2025) ("Unlike the attorney–client relationship, Texas courts have not held that an accountant–client relationship automatically gives rise to fiduciary duties under Texas law."); § 15:110. Specific applications, 4A American Law of Torts § 15:110 n.3 ("As a general rule, accountants are not fiduciaries as to their clients except when the accountants are directly involved in managing the client's investments"); *Iacurci v. Sax*, 57 A.3d 736, 750 (Conn. App. Ct. 2012), *aff'd,* 313 Conn. 786, 99 A.3d 1145 (2014) (collecting cases on breach of fiduciary duty and accounting relationship, noting that "generally, an accountant-client relationship is not fiduciary in nature."); *see also F.D.I.C. v. Deloitte & Touche*, 834 F. Supp. 1129, 1154 (E.D. Ark. 1992) (declining to answer whether an auditor owes a fiduciary duty to an engagement client under Arkansas law).

In the absence of a legally recognized fiduciary duty, Plaintiffs must plead special circumstances of superiority, influence, and reliance to create a fiduciary duty. Under Missouri Law—where the professional relationship flowed from—a "[f]iduciary duty is not created by a unilateral decision to repose trust and confidence; it derives from the conduct or undertaking of the purported fiduciary which is recognized by the law as justifying such reliance." *Pool v. Farm*

Bureau Town & Country Ins. Co. of Missouri, 311 S.W.3d 895, 907 (Mo. Ct. App. 2010). Here, the boilerplate generic allegations that Plaintiffs reposed trust and confidence in e3 regarding certain tax strategies does not rise to this level. There are no allegations of superiority and influence—only conclusory statements. And the tax planning engagement sitting at the heart of this dispute is not by its nature fiduciary.

At best, this is merely a repacked claim for professional malpractice, which is subject to dismissal. *See, e.g.*, *Rosemann v. Sigillito*, 785 F.3d 1175, 1181 (8th Cir. 2015) ("a party may not clothe an attorney-malpractice claim as a claim of breach of contract or breach of a fiduciary duty."). Distilled to its most basic form, Plaintiffs allege that e3 gave negligent advice regarding the Credits. Count XII should be dismissed with prejudice.

E. Count XIII — Civil Conspiracy.

Count XIII purports to hold e3 liable for conspiracy alongside the other Defendants. However, as noted in the relevant 12(b)(2) portion of this motion, the conspiracy claim is defective in any of the possible choices of law and subject to dismissal. e3 reincorporates its prior arguments from pages 15 and 18 here.

In addition, an actionable conspiracy claim requires the presence of an underlying tort and co-conspirators. Should this Court dismiss the underlying fraud and misrepresentation-based claims against e3, Count XIII would necessarily fail as well. *See Agar Corp., Inc. v. Electro Circuits Int'l, LLC,* 580 S.W.3d 136, 142 (Tex. 2019) (noting that conspiracy is not an independent tort but, rather, turns on actionable underlying wrong); *Park Ridge Assocs. v. U.M.B. Bank*, 613 S.W.3d 456, 464 (Mo. Ct. App. 2020) (noting that is underlying tort claim fails, the conspiracy claim fails as well); *Faulkner v. Arkansas Children's Hosp.*, 347 Ark. 941, 961, 69 S.W.3d 393, 406 (2002) ("A civil conspiracy is not actionable in and of itself. . . .").

Finally, should the other Defendants secure dismissal of the underlying claims, including the conspiracy count, the conspiracy claim would fail as a conspiracy claim requires two or more persons to act for unlawful purposes. *See, e.g.*, *Park Ridge*, 613 S.W.3d at 463.

F. Count XIV — Aiding and Abetting Fraud.

Plaintiffs allege that e3 aided and abetted the alleged fraud of both co-defendants. While aiding and abetting is a recognized theory under Nevada law, *see, e.g.*, *Dow Chem. Co. v. Mahlum,* 114 Nev. 1468, 1490, 970 P.2d 98, 112 (1998), *abrogated by GES, Inc. v. Corbitt*, 117 Nev. 265, 271, 21 P.3d 11, 15 (2001), neither Texas nor Missouri recognize the tort, and it is unclear whether an aiding and abetting claim even exists under Arkansas law. *See Hampton v. Equity Tr. Co.,* 607 S.W.3d 1, 5 (Tex. App. 2020); *Rack v. Schwartz*, No. 4:20-CV-00135-BRW, 2020 WL 9813515, at *2 (E.D. Ark. Apr. 24, 2020); *Bradley v. Ray*, 904 S.W.2d 302, 315 (Mo. Ct. App. 1995); *Jo Ann Howard & Associates, P.C. v. Cassity*, 868 F.3d 637, 651 (8th Cir. 2017). Under the laws of these states, Count XIV must be dismissed with prejudice.

Even if Nevada law applies to this dispute, Plaintiffs are required to plead that e3 "knowingly and substantially assisted" the primary tortfeasor in committing the fraud. *See CMB Infrastructure Grp. IX, LP v. Cobra Energy Inv. Fin., Inc.*, 572 F. Supp. 3d 950, 967 (D. Nev. 2021). Much like the stand-alone fraud claim directed at e3, this cause of action fails, as Plaintiffs allege nothing establishing how e3 knew that White River was perpetrating a fraud—outside pure conclusory boilerplate. Thus, even under the jurisdiction Plaintiffs advocate for the claim would fail.

G. Counts IV and XV — Unjust Enrichment / Restitution.

Plaintiffs have pleaded two counts of unjust enrichment against e3. Through Count IV, Plaintiffs allege a single claim against all Defendants. However, this count should be dismissed as to e3 as there are no allegations that the $600,000 in question was paid to e3.

Similarly, through Count XV, Plaintiffs do not allege they transmitted funds to e3. Rather, they claim that e3 was paid from funds "Plaintiffs wired to White River." (Am. Compl., ¶ 158). Based on these allegations, Missouri is the place where the alleged enrichment occurred and where the professional relationship flowed, but Texas is where Plaintiffs conferred the benefit, relied upon e3, and felt the injury. As a result, this count is likely governed by either Texas or Missouri law.

Under Texas law, this claim would be untimely as there is a two-year statute of limitations. *See Clark v. Dillard's, Inc.,* 460 S.W.3d 714, 719 (Tex. App. 2015). Texas' express contract also bar prohibits an unjust enrichment claim premised upon a contract. *Protocol Techs., Inc. v. J.B. Grand Canyon Dairy, L.P.*, 406 S.W.3d 609, 614 (Tex. App. 2013). Although the only express contract here is between White River and Plaintiffs, this doctrine extends to "a third party foreign to the original contract but who is alleged to have benefited from its performance." *Id.* Here, Plaintiffs have sued White River for recovery of the $600,000 from which e3 was allegedly paid commissions and a due diligence fee—which would eliminate this claim. The express contract bar would also dispose of this claim under Arkansas law for these same reasons. *See Servewell Plumbing, LLC v. Summit Contractors, Inc.,* 362 Ark. 598, 612, 210 S.W.3d 101, 112 (2005) (discussing *U.S. East Telecommunications, Inc. v. U.S. West Communications Services, Inc*., 38 F.3d 1289, 1296 (2d Cir. 1994)).

Under either Missouri or Nevada law, the claim would fail as well. Unjust enrichment requires establishing that a plaintiff conferred "a benefit on the defendant, the defendant

appreciates such benefit, and there is acceptance and retention by the defendant of such benefit under such circumstances that it would be inequitable for him to retain the benefit without payment of the value thereof." *Nautilus Ins. Co. v. Access Med., LLC*, 137 Nev. 96, 101, 482 P.3d 683, 688 (2021); *see also Childress Painting & Associates, Inc. v. John Q. Hammons Hotels Two, L.P.,* 106 S.W.3d 558, 562 (Mo. Ct. App. 2003). Here, no direct benefit is alleged to have been conferred. Rather, based upon the allegations in the complaint and the exhibits, e3 appears to have been paid by White River and would not constitute a direct benefit conferred by Plaintiffs to e3. This is also the same outcome under Arkansas law as well. The allegations in paragraph 158 show that e3 did not receive the alleged "due diligence fee" from Plaintiffs. Rather it is pleaded upon *information and belief* that funds were received "directly or indirectly" from White River—which would be unnecessary if the funds were actually paid by Plaintiffs, rendering Count XV subject to dismissal. And the same is true for Count IV as well for these same reasons.

H. Count XI — Professional Malpractice.

As pleaded and accepting the allegations as true under Rule 12(b)(6), Count XI likely states a claim upon which relief can be granted in any applicable jurisdiction. But because a motion to dismiss is directed at the balance of the complaint including personal jurisdiction, the deadline to respond to Count XI is tolled pending disposition of this motion. *See Ideal Instruments, Inc. v. Rivard Instruments, Inc.*, 434 F. Supp. 2d 598, 640 (N.D. Iowa 2006), *on reconsideration,* 434 F. Supp. 2d 640 (N.D. Iowa 2006).

Conclusion

For the foregoing reasons, Defendant e3 Tax, LLC requests this Court dismiss Plaintiffs' First Amended Complaint for lack of personal jurisdiction under Rule 12(b)(2). In the alternative, e3 requests this Court dismiss that pleading for failure to state a claim upon which relief can be granted.

Dated: September 17, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Richard M. Jones, certify that on September 17, 2026. I electronically filed the foregoing through the Court's CM/ECF System, which will provide notice of such filing to all counsel of record.

By: */s/ Richard M. Jones.*