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

ROMAN ZRAZHEVSKIY and
TATIANA MIRONOVA,

Plaintiffs,

v.

WHITE RIVER ENERGY CORP., a Nevada corporation, JAY PUCHIR, an individual, and E3 TAX, LLC d/b/a E3 FAMILY OFFICE, a Missouri limited liability company,

Defendants.

Case No. 5:26-cv-05135-TLB

Chief Judge Timothy L. Brooks

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT E3 TAX, LLC'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT (DKT. 37), OR IN THE ALTERNATIVE, FOR JURISDICTIONAL DISCOVERY

Introduction

This is a $600,000 tax-credit scam. Plaintiffs Roman Zrazhevskiy and Tatiana Mironova paid Defendant White River Energy Corp. ("White River"), an Arkansas-headquartered issuer, $600,000 for what the First Amended Complaint (Dkt. 27, the "FAC") alleges were fictitious "Native American Tribe Trust Fund Federal Income Tax Credits." The IRS has confirmed in writing that "these tax credits do not exist," FAC ¶ 2, and the U.S. Department of the Treasury has publicly stated that "no such credits exist," FAC ¶ 43. Defendant e3 Tax, LLC d/b/a e3 Family Office ("e3") sold that fictitious product to Plaintiffs as White River's approved "distribution partner" and collected between $5,000,000 and $10,000,000 in commissions and fees out of Arkansas-received purchaser proceeds. FAC ¶¶ 8, 12, 14, 84. e3 now argues that this Court cannot even hear the case against it.

The argument fails at every step. e3 purposefully directed the very conduct at issue toward Arkansas. It executed a written Non-Disclosure Agreement with Arkansas-based White River on December 15, 2023, as a precondition to accessing White River's confidential data room in Fayetteville, Arkansas. FAC ¶¶ 9, 25, 59. Its "NATC Operations Team" originated the DocuSign envelope containing White River's Tax Credit Purchase Agreement ("TCPA"), transmitted that envelope to Plaintiffs for execution, and routed the completed envelope back to White River personnel using White River's Arkansas-based corporate email domain. FAC ¶ 13. It communicated to Plaintiffs the wire instructions directing $600,000 into White River's Bank of America account, an account controlled and administered from White River's Fayetteville, Arkansas office. FAC ¶¶ 8(d), 13. It coordinated directly with Defendant Jay Puchir, White River's Fayetteville-based CFO, on due diligence, IRS-filing instructions, audit support, and post-sale investor communications, including the December 19, 2024 investor call Puchir hosted on White River's behalf from Arkansas. FAC ¶ 8(f). White River Private Capital Management, LLC formally approved it as a "distribution partner" for the Credits on January 26, 2024. FAC ¶¶ 12, 14.

e3's motion asks the Court to ignore that record and to accept a version of the facts drawn from a self-serving declaration by e3's own founder. It cannot succeed. On a Rule 12(b)(2) motion, the Court views the record in the light most favorable to Plaintiffs and requires only a prima facie showing of jurisdiction. *See Whaley v. Esebag*, 946 F.3d 447, 451 (8th Cir. 2020); *Creative Calling Sols., Inc. v. LF Beauty Ltd.*, 799 F.3d 975, 979 (8th Cir. 2015). The FAC and its exhibits make that showing many times over. e3 is separately bound by the Arkansas exclusive-forum clauses in the TCPA and the Mutual Non-Disclosure Agreement executed simultaneously with the TCPA under the Eighth Circuit's "closely related" doctrine of *Marano Enters. of Kan. v. Z-Teca Rests.,*

L.P., 254 F.3d 753, 757–58 (8th Cir. 2001). And if the Court has any doubt, Plaintiffs are entitled to jurisdictional discovery under *Steinbuch v. Cutler*, 518 F.3d 580, 589 (8th Cir. 2008), because Plaintiffs have submitted documentary evidence, not speculation, concerning e3's Arkansas-directed conduct.

e3's Rule 12(b)(6) arguments fare no better. e3 begins with a choice-of-law argument to displace Nevada law (the substantive law the parties' TCPA selects and Plaintiffs plead), then applies each state's law selectively to argue that no substantive count survives. But e3 is bound by the TCPA's Section 9 Nevada choice-of-law provision as a non-signatory closely related to the dispute, and even under Texas or Missouri law each challenged count states a claim: fraud is pleaded with Rule 9(b) particularity; negligent misrepresentation lies against a professional under Restatement (Second) of Torts § 552 in every relevant jurisdiction; the fiduciary-duty count is grounded in e3's holding itself out as Plaintiffs' "family office" and tax adviser and charging Plaintiffs a $10,000 "due-diligence fee"; the conspiracy count identifies the underlying intentional torts and the concerted action; the aiding-and-abetting count is squarely recognized under Nevada law; and the unjust-enrichment counts allege that e3 was paid millions of dollars out of purchaser funds that flowed through Arkansas.

The Motion should be denied in full. In the alternative, if the Court is inclined to find any factual gap in the jurisdictional record, Plaintiffs respectfully request leave to take limited jurisdictional discovery.

Legal Standard

Rule 12(b)(2) tests personal jurisdiction. "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*, 799 F.3d at

979 (alteration in original) (*quoting K-V Pharm. Co. v. J. Uriach & CIA, S.A.*, 648 F.3d 588, 591–92 (8th Cir. 2011)). Where, as here, the parties submit affidavits and other extra-pleading materials, "the action should not be dismissed for lack of jurisdiction if the evidence, viewed in the light most favorable to [the plaintiff], is sufficient to support a conclusion that the exercise of personal jurisdiction over [the defendant] is proper." *Id*. Plaintiffs need only make a prima facie showing; "[t]he plaintiffs bear the burden of establishing a prima facie showing of jurisdiction, and we view the evidence in the light most favorable to the plaintiffs." *Whaley*, 946 F.3d at 451. Arkansas' long-arm statute "permits personal jurisdiction to the maximum extent provided by the Due Process Clause," so the inquiry collapses into a constitutional one. *Id*. (citing Ark. Code Ann. § 16-4-101).

Rule 12(b)(6) requires that the FAC's well-pleaded factual allegations, taken as true and viewed in Plaintiffs' favor, state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Documents attached to or embraced by the FAC are considered on a Rule 12(b)(6) motion. *Ashanti v. City of Golden Valley*, 666 F.3d 1148, 1151 (8th Cir. 2012); *Zean v. Fairview Health Servs.*, 858 F.3d 520, 526 (8th Cir. 2017).

Statement of Facts

A. e3's Arkansas-Directed Sales Conduct in the Transaction at Issue.

On March 28, 2024, Plaintiffs executed a Tax Credit Purchase Agreement with Arkansas-headquartered White River. FAC ¶¶ 6, 33–34. The TCPA, the Addendum executed simultaneously, and the Mutual Non-Disclosure Agreement ("MNDA") attached to the TCPA as Exhibit B were all transmitted through a single DocuSign envelope that e3's own "NATC Operations Team" originated and sent to Plaintiffs for execution. FAC ¶¶ 13, 34, 41. Section 9 of

the TCPA selects Nevada substantive law and mandates exclusive jurisdiction and venue in "the state or federal courts located in Washington County, Arkansas." FAC ¶ 39. Section 10 of the MNDA contains a stand-alone Arkansas consent-to-jurisdiction clause: "Each Party consents to the exclusive jurisdiction of any federal or state court located in Washington County, Arkansas . . . ." FAC ¶ 9.

On January 26, 2024, White River Private Capital Management, LLC ("WRPCM"), a White River affiliate operating from White River's Fayetteville, Arkansas office, formally approved e3 as a "distribution partner" for the Credits. FAC ¶¶ 11–12, 14. The Addendum attached to Plaintiffs' TCPA expressly recites that the Credits "are offered to you per the NDA and marketing agreement that e3 Tax, LLC (dba e3 Family Office) has obtained from White River Energy Corporation to establish a distribution network." FAC ¶ 12. e3 was White River's "Sales Network Partner" and, in that capacity, transmitted purchaser-facing materials, transaction documents, and wire instructions on behalf of White River. FAC ¶¶ 13, 52.

On December 15, 2023, more than three months before Plaintiffs' purchase, Puchir signed on White River's behalf a Non-Disclosure Agreement with e3 as a precondition to e3's access to White River's confidential Credits materials and its role as White River's marketing and distribution partner. FAC ¶¶ 25, 59. Following that NDA, e3 accessed White River's Fayetteville, Arkansas data room, which contained the form TCPA and wire instructions. FAC ¶ 59.

e3's "NATC Operations Team" (natcteam@e3familyoffice.com), operating from a Kirkwood, Missouri IP address, originated the DocuSign envelope containing the White-River-issued TCPA. FAC¶ 13. Upon Plaintiffs' countersignature, DocuSign delivered "COPIED" carbon-copy service on March 28, 2024, at 2:36:05 p.m. Central Time to Suzanne Bond at sbond@white-river.com, a White River employee using White River's Arkansas-based corporate

email domain, and, immediately thereafter, to Jessica Aubuchon of e3. FAC ¶ 13(b). DocuSign transmittal messages from e3's "NATC Operations Team" to purchasers, including Plaintiffs, expressly stated that "the tax credit purchase order is not considered final until the wired funds have been received and confirmed by both e3 family OFFICE and White River Energy Corp." FAC ¶ 13(c). That was a joint transaction-closing sign-off by e3 and Arkansas-headquartered White River.

e3 transmitted to Plaintiffs the wire instructions directing the $600,000 purchase price into "White River's Bank of America account, an account controlled and administered from White River's Fayetteville, Arkansas office." FAC ¶ 8(d). Plaintiffs wired those funds into Arkansas in reliance on e3's directions. *Id*. e3 signed its purchaser-facing wire-instruction messages, including the April 5, 2024 message to Plaintiff Zrazhevskiy, "Your Sales Network Partner: Jessica Aubuchon." FAC ¶ 13(d).

e3, through Moriarty and Schreiber, "coordinated directly with Defendant Puchir in Fayetteville, Arkansas regarding due diligence on the Credits, IRS-filing instructions, audit support, and post-sale investor communications, including the December 19, 2024 investor call Puchir hosted on White River's behalf from Arkansas." FAC ¶ 8(f).

On May 15, 2026, White River's own outside general counsel, Brian S. Ettinger, admitted in writing that "e3 Family collected commissions and a tax planning fee from your clients as well as other third parties totaling between $5,000,000 and $10,000,000." FAC ¶¶ 8(e), 48, 84. Those commissions and fees came out of the Credit-sale proceeds White River received in its Arkansas-administered bank account. FAC ¶¶ 8(e), 10, 14.

B. e3's Role as Plaintiffs' Tax Adviser and "Family Office."

Independently, e3 served as Plaintiffs' tax adviser, family office, and accountant. Plaintiffs engaged Mark C. Schreiber, CPA, identified in the Addendum as e3's "Senior Partner & Registered Representative", as their CPA, and engaged e3 as their "family office" for tax-strategy advice. FAC ¶¶ 27, 53, 58, 143, 147. e3 held itself out as having the "expertise," the "due diligence," and the "contacts" necessary to evaluate the Credits, and Plaintiffs reposed trust and confidence in e3 on that basis. FAC ¶ 58. Plaintiffs paid e3 a $10,000 "due diligence fee" tied specifically to the recommendation to purchase the Credits. FAC ¶¶ 55, 70(g), 138.

C. The Specific Pre-Sale Representations from e3.

The FAC identifies specific pre-sale representations by e3 personnel, transmitted to Plaintiffs, on identified dates. FAC ¶¶ 54–57. Among them: on December 19, 2023, Jessica Aubuchon (acting on behalf of e3) sent Plaintiffs an email representing that authority for the Credits could be found "in the Internal Revenue Code under: Title 25, Chapter 4, Subchapter 3, Section 161A" and that the Credits provided "a 2 to 1 tax benefit or 2X multiple on your money." FAC ¶ 54. Title 25 of the U.S. Code is the Indian Affairs title, not the Internal Revenue Code, and no "Section 161A" of Title 25 authorizes any such credit. FAC ¶ 54. On December 26, 2023, Mark Schreiber, CPA, sent Plaintiffs an email titled "Final Tax Strategy for 2023" stating that "[w]e have completed our due diligence and are ready to move forward" and that e3 was "charging a due diligence fee of $10,000." FAC ¶ 55. On January 8, 2024, Schreiber assured Plaintiffs that he was "very comfortable with White River based on our due diligence and near 100% certain on the tax credit acceptance by the IRS." FAC ¶ 56. From early January 2024 through the closing, John Moriarty transmitted text messages to Plaintiff Zrazhevskiy stating, among other things, that

"[t]hese credits are already in the tax code . . . since the early 2000's" and that "[t]he balance sheet of White [River] is backing the tax credits." FAC ¶ 57.

D. e3's Concealment of Internal Knowledge of the Credits' Failure.

By November 20, 2024, e3 personnel had internally identified material problems with the Credits. FAC ¶¶ 66–69. Nine days before that internal recognition, the IRS had issued Plaintiffs Notice CP23 disallowing the $1,000,000 in Credits. FAC ¶ 67. e3 received or otherwise learned of Notice CP23 before November 20, 2024, and had a formal IRS disallowance in hand. FAC ¶ 67. Yet neither Bridgeman nor Schreiber disclosed Notice CP23 or its consequences to Plaintiffs and Plaintiffs did not learn of the disallowance until Hale Sheppard of Eversheds Sutherland disclosed it more than five months later, on April 18, 2025. FAC ¶¶ 67–69, 71.

Argument

I. This Court Has Specific Personal Jurisdiction Over e3.

The Eighth Circuit assesses minimum contacts under a familiar five-factor test: "(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," with "the first three factors being of 'primary importance.'" *Whaley*, 946 F.3d at 452 (*quoting Burlington Indus., Inc. v. Maples Indus., Inc.*, 97 F.3d 1100, 1102 (8th Cir. 1996)). Specific jurisdiction turns on whether "the defendant has 'purposely directed [its] activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.'" *Id.* (*quoting Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The relevant contacts are e3's own; "the plaintiff cannot be the only link between the defendant and the forum." *Walden v. Fiore*, 571 U.S. 277, 285 (2014). But nothing in *Walden* or the Eighth Circuit's post-*Walden* cases requires the plaintiff to reside in the

forum. Where an out-of-state defendant purposefully directs suit-related conduct at an Arkansas resident, at an Arkansas transaction, and at Arkansas-based bank and record-keeping systems, specific jurisdiction lies.

A. Company e3's Own Suit-Related Conduct in and Directed at Arkansas Satisfies Minimum Contacts.

The FAC pleads seven categories of e3 conduct that were directed at Arkansas or occurred in Arkansas, each on the very Transaction Plaintiffs are suing over. Any one would satisfy the "purposefully directed" test. Together they compel the exercise of jurisdiction.

First, e3 executed a written Non-Disclosure Agreement with Arkansas-headquartered White River as a precondition to accessing White River's Fayetteville, Arkansas confidential data room containing the Credits materials. FAC ¶¶ 9, 25, 59. Physical or virtual entry into the forum (including via "an agent, goods, mail, or some other means") is a relevant jurisdictional contact. *Whaley*, 946 F.3d at 452 (*quoting Walden*, 571 U.S. at 285). Accessing Arkansas-based confidential business records under a bilateral NDA with an Arkansas counterparty is, by definition, an Arkansas contact.

Second, e3 entered into a written marketing and distribution agreement with White River under which e3 was tasked with "establish[ing] a distribution network" for the Credits. FAC ¶¶ 10, 12, 14. That relationship was formally memorialized: on January 26, 2024, WRPCM (a White River affiliate operating from White River's Fayetteville, Arkansas office) approved e3 as a "distribution partner" for the Credits. FAC ¶¶ 11–12, 14. "A defendant's solicitation of a business relationship with a company incorporated in the forum State that takes place within that State is a relevant contact in determining whether its courts may exercise personal jurisdiction." *Creative Calling*, 799 F.3d at 981 (*citing Fastpath, Inc. v. Arbela Techs. Corp.*, 760 F.3d 816, 822–24 (8th Cir. 2014)). e3 solicited, entered, and profited from an Arkansas-anchored business relationship.

Third, e3's own "NATC Operations Team" originated the DocuSign envelope containing the White-River-issued TCPA, transmitted that envelope to Plaintiffs for execution, and routed the completed envelope back to White River personnel using White River's Arkansas-based corporate email domain. FAC ¶ 13. e3 also transmitted messages requiring joint transaction-closing sign-off by e3 and Arkansas-headquartered White River. FAC ¶ 13(c). That is direct participation in an Arkansas-terminating transactional workflow.

Fourth, e3 transmitted to Plaintiffs the wire instructions directing $600,000 into White River's Bank of America account "controlled and administered from White River's Fayetteville, Arkansas office." FAC ¶ 8(d). A "contractual provision requiring a defendant to remit payment to a company located in the forum State, and the defendant's performance of that term, is a purposeful contact with the forum." *Creative Calling*, 799 F.3d at 981 (*citing K-V Pharm.*, 648 F.3d at 593–94). e3 did more: it directed the wire itself, on White River's behalf, into Arkansas, and signed the wire-instruction message "Your Sales Network Partner: Jessica Aubuchon." FAC ¶ 13(d). e3 does not dispute in its motion that it transmitted the wire instructions. The wire e3 directed was received in Arkansas. That contact is direct.

Fifth, e3, through Moriarty and Schreiber, "coordinated directly with Defendant Puchir in Fayetteville, Arkansas regarding due diligence on the Credits, IRS-filing instructions, audit support, and post-sale investor communications, including the December 19, 2024 investor call Puchir hosted on White River's behalf from Arkansas." FAC ¶ 8(f). e3's motion attempts to reframe this as "dealings with third parties." Dkt. 38 at 14. But Puchir is White River's Fayetteville-based CFO acting for the Arkansas Defendant, and every one of those coordination points involved the direct or indirect exchange of communications and business documents into Arkansas.

Sixth, e3 collected between $5 million and $10 million in commissions, distribution fees, and tax-planning fees, all measured as a percentage of gross Credit-sale proceeds received by White River in its Arkansas-administered account. FAC ¶¶ 8(e), 10, 14, 84. White River's own outside general counsel confirmed that fee stream in writing on May 15, 2026. FAC ¶ 48. e3 was, in economic terms, paid out of Arkansas. *Whaley*'s third factor, "the relation of the cause of action to the contacts," is squarely met: the Credit-sale proceeds e3 received are the same proceeds Plaintiffs seek to recover.

Seventh, the Addendum attached to Plaintiffs' TCPA recites that e3's fees are paid "from the transaction itself." Dkt. 38 at 10 (e3's own characterization of the Addendum). That is a direct written contractual link between e3 and the Arkansas-terminating Transaction e3 arranged. e3's own reading of the Addendum places its economic gain inside the Transaction; it cannot simultaneously insist that its economic gain is a mere "third-party" matter for jurisdictional purposes.

Taken together, these contacts satisfy every prong of the Eighth Circuit's five-factor test. They are direct, purposeful, and voluminous. They are the very contacts out of which this litigation arises: Plaintiffs' fraud, negligent-misrepresentation, and unjust-enrichment claims against e3 arise from the e3 conduct that induced the Arkansas-terminating Transaction; the aiding-and-abetting and conspiracy claims arise from e3's coordination with Arkansas-based Puchir; and the professional-malpractice and fiduciary-duty claims arise from e3's Arkansas-anchored role as "distribution partner" and "family office" tax adviser in respect of an Arkansas-headquartered issuer's product. *See Whaley*, 946 F.3d at 452 (third factor "speaks to the particular question of specific jurisdiction"). Arkansas has a significant interest in adjudicating a scheme built around

and funded through an Arkansas-headquartered issuer. And e3, having chosen to build its business around White River's Arkansas-headquartered operations, cannot credibly claim inconvenience.

e3's contrary argument depends almost entirely on *Walden*. But *Walden* held that Nevada could not exercise jurisdiction over a Georgia police officer whose only connection to Nevada was that his out-of-state conduct affected Nevada plaintiffs. 571 U.S. at 285. Nothing in *Walden* displaces the settled rule that a defendant's purposeful conduct directed at the forum (executing NDAs with forum residents, accessing forum-based data rooms, receiving payment out of a forum-based account, and coordinating with forum-based principals) supports specific jurisdiction. e3's own conduct here does not consist of "random, fortuitous, or attenuated contacts." *Walden*, 571 U.S. at 286. It consists of a two-year business partnership with an Arkansas issuer that terminated in Arkansas bank accounts.

B. e3 is Bound by the Arkansas Exclusive-Forum Clauses in the TCPA and MNDA Under Marano's "Closely Related" Doctrine.

Independently, e3 is bound by the Arkansas exclusive-forum clauses in the TCPA and in the Mutual Non-Disclosure Agreement executed simultaneously with the TCPA. The Eighth Circuit has adopted the Seventh Circuit's rule: "In order to bind a non-party to a forum selection clause, the party must be 'closely related' to the dispute such that it becomes 'foreseeable' that it will be bound." *Marano Enters. of Kan. v. Z-Teca Rests., L.P.*, 254 F.3d 753, 757 (8th Cir. 2001) (*quoting Hugel v. Corp. of Lloyd's*, 999 F.2d 206, 209 (7th Cir. 1993)).

e3 satisfies the *Marano* test many times over. First, e3 was the operational nerve center of the Transaction: its "NATC Operations Team" originated the DocuSign envelope containing the TCPA, transmitted the TCPA and Addendum to Plaintiffs for execution, transmitted the wire instructions directing funds into White River's Arkansas account, and confirmed "COPIED" service back to White River personnel using White River's Arkansas-based corporate email

domain. FAC ¶ 13. Second, e3 was the direct economic beneficiary of every closing: it collected commissions and distribution and tax-planning fees measured as a percentage of the Credit-sale proceeds White River received, aggregating between $5 million and $10 million. FAC ¶¶ 8(e), 10, 14, 84. Third, e3 was named on the face of the Addendum executed simultaneously with the TCPA as the holder of the "NDA and marketing agreement . . . to establish a distribution network" for the Credits. FAC ¶ 12. Fourth, e3's alleged misconduct, the pre-sale representations that induced the Transaction, and the concealment of Notice CP23 that prolonged Plaintiffs' inability to recover, go to the very heart of the Transaction the TCPA governs. It was manifestly "foreseeable" to e3, as it originated and routed the TCPA into execution, that it would be bound by the TCPA's forum-selection clause.

The Mutual Non-Disclosure Agreement ("MNDA") is a separate and independent basis. The FAC alleges that "e3 executed a Mutual Non-Disclosure Agreement with White River as part of the very 'NDA and marketing agreement' arrangement the Addendum to Plaintiffs' Tax Credit Purchase Agreement expressly recites," and that the MNDA's Section 10 contains a stand-alone Arkansas consent-to-jurisdiction clause: "Each Party consents to the exclusive jurisdiction of any federal or state court located in Washington County, Arkansas in any such civil action or legal proceeding in such Arkansas court." FAC ¶ 9. That is e3's own written consent to Arkansas jurisdiction. e3's suggestion that the operative NDA is a different document containing a Nevada clause misses the point twice over: (i) the MNDA attached to Plaintiffs' TCPA as Exhibit B, which is part of the pleading under Rule 10(c) and embraced by the FAC, contains the Arkansas clause; and (ii) even if there are two NDAs, the existence of one with a competing Nevada forum clause does not deprive Plaintiffs of the right to enforce the other, particularly where the Arkansas clause

was executed contemporaneously with, and as an operational part of, the TCPA the Plaintiffs actually signed.

e3's attempt to distinguish *Marano*, on the theory that the non-signatory there was a "shareholder, officer, and director" of the signatory, misreads the doctrine. *Marano*'s holding is not confined to corporate insiders; it applies wherever the non-signatory is "closely related" to the dispute such that it is "foreseeable" the non-signatory will be bound. 254 F.3d at 757. Sister circuits applying the same closely related standard have bound non-signatories whose participation in the underlying transaction makes it foreseeable that they would be subject to its forum-selection clause. *See Adams v. Raintree Vacation Exch., LLC*, 702 F.3d 436, 439–43 (7th Cir. 2012) (recognizing both "affiliation" and "mutuality" branches of the closely related doctrine and binding non-signatories, including alleged conspirators and "secret principals" of the signatory); *Frietsch v. Refco, Inc.*, 56 F.3d 825, 827–28 (7th Cir. 1995) (explaining that under the mutuality principle, because plaintiffs could invoke a forum-selection clause against a non-signatory alleged to be a secret principal of the signatory, the non-signatory may also invoke it, so the operational role of the non-signatory in the underlying transaction is what triggers the doctrine); *Manetti-Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 514 n.5 (9th Cir. 1988) ("a range of transaction participants, parties and non-parties, should benefit from and be subject to forum selection clauses" where their alleged conduct is "closely related to the contractual relationship").

Where a non-signatory (i) drafts or transmits the operative agreement, (ii) profits directly from every transaction the agreement governs, (iii) is named in a companion document to that agreement, and (iv) is the direct target of the very claims for which the agreement's forum was chosen: that non-signatory is at least as "closely related" as the *Marano* officer.

C. e3's Intentional-Tort Conduct Satisfies the Calder Effects Test.

Because Plaintiffs assert intentional tort claims against e3, the Court may also evaluate specific jurisdiction under the effects test articulated in *Calder v. Jones*, 465 U.S. 783 (1984). Under *Calder*, jurisdiction may exist where the defendant commits intentional conduct expressly aimed at the forum and knows that the resulting harm will be felt there. *Whaley v. Esebag*, 946 F.3d 447, 452 (8th Cir. 2020) (citing *Calder*, 465 U.S. at 787–89). *Walden v. Fiore* clarified that the defendant's own conduct must create the necessary connection with the forum; the plaintiff's relationship to the forum cannot supply that connection by itself. 571 U.S. 277, 284–86 (2014). *Walden*, however, did not displace *Calder* where the defendant's own intentional conduct is expressly aimed at the forum.

e3's alleged intentional torts were aimed at Arkansas. The scheme e3 helped promote was built around and funded through an Arkansas-headquartered issuer. e3 knew that Plaintiffs' $600,000 was being wired into Arkansas. FAC ¶¶ 8(d), 13. It knew that its own compensation was coming out of that Arkansas-received purchaser fund. FAC ¶¶ 8(e), 84. It coordinated with an Arkansas-based CFO in furtherance of the scheme. FAC ¶ 8(f). And it directly participated in constructing the DocuSign transaction workflow that terminated in Arkansas. FAC ¶ 13. Whatever the location of Plaintiffs' residence, the injury e3 knew its conduct would produce fell squarely on the Arkansas-based issuer's transaction: refund of the Arkansas-received purchase price, rescission of the Arkansas-terminating contract, and disgorgement of Arkansas-derived commissions. Together, those allegations satisfy the *Calder* effects test.

D. e3 Fails to Distinguish Arkansas Authority; Its Own Cited Cases Confirm Plaintiffs' Position.

e3 principally relies on two Arkansas cases: *Goodwin v. Magness Oil Co.*, 552 S.W.3d 26 (Ark. Ct. App. 2018), and *Stampley v. LG Chem America, Inc.*, 713 S.W.3d 26 (Ark. Ct. App.

2025). Neither helps e3. Goodwin dismissed a claim against a Virginia attorney whose only Arkansas contact was emails to an Arkansas company about escrow funds under a contract governed by Nevada law to which the attorney was a stranger. 552 S.W.3d at 30–31. Here, by contrast, e3 was not a stranger to Plaintiffs' Transaction. It originated its DocuSign envelope. It was named on the face of the Addendum. It received commissions and fees measured as a percentage of the Arkansas-received Credit-sale proceeds. It signed a Non-Disclosure Agreement with an Arkansas counterparty as a precondition to accessing an Arkansas data room. e3's role is not analogous to Goodwin's escrow attorney; it is the marketing and distribution nerve center of the Transaction.

Stampley dismissed a Tennessee plaintiff's suit against a South Korean battery manufacturer whose products reached Arkansas only through independent third-party wholesalers. 713 S.W.3d at 33. e3 is not a remote manufacturer whose product reached Arkansas through unrelated channels. e3 transmitted the operative Transaction documents to Plaintiffs and directed their $600,000 wire into an Arkansas bank account. *Stampley* is factually inapposite and legally irrelevant.

E. e3's Oher Arguments Fail.

e3 argues that Plaintiffs' "concert of activity" and civil-conspiracy allegations cannot support jurisdiction because the *Cawley v. Bloch* four-part test is not satisfied. Dkt. 38 at 16–19. Plaintiffs do not rely on conspiracy-based jurisdiction as the primary basis for jurisdiction over e3; specific jurisdiction is amply supported by e3's own conduct directed at Arkansas, as set out above. To the extent the Court reaches the point, however, e3's conduct meets *Cawley*: (i) e3 and White River agreed to and did pursue the objective of marketing, selling, and retaining proceeds from purported federal tax credits that did not legally exist, FAC ¶ 152; (ii) they reasonably expected

consequences in Arkansas (where the issuer was headquartered and the proceeds terminated); (iii) White River and Puchir committed overt acts in furtherance of the conspiracy in Arkansas; and (iv) those acts were of a type that would subject an Arkansas resident to Arkansas jurisdiction. That is enough.

e3's fallback that Plaintiffs' "pleaded conspiracy" fails under Rule 9 goes to Rule 12(b)(6), not Rule 12(b)(2). Plaintiffs address the sufficiency of Count XIII at Section III.E below.

II. In the Alternative, Plaintiffs Are Entitled to Jurisdictional Discovery.

If the Court concludes that the current record leaves any material factual question unresolved, Plaintiffs respectfully request the opportunity to take tailored jurisdictional discovery. Under Eighth Circuit law, when a plaintiff offers "documentary evidence, and not merely speculations or conclusory allegations," about a defendant's forum contacts, a district court should not dismiss the action for lack of personal jurisdiction without permitting the plaintiff to take jurisdictional discovery. *Steinbuch v. Cutler*, 518 F.3d 580, 589 (8th Cir. 2008).

Plaintiffs have offered far more than speculation. The FAC attaches the executed TCPA, Addendum, MNDA, and DocuSign envelope, and it pleads with specificity e3's Arkansas-directed conduct. e3, however, has submitted a self-serving declaration by its own founder that seeks to displace those documentary allegations with a series of contested assertions: that e3 has "no office, employees, or members in Arkansas" (Dkt. 38 at 1); that its Advisory/Consulting Agreement is with a "Texas LLC" rather than the Arkansas Defendant (Dkt. 38 at 12); that the NDA governing e3's relationship with White River contains only a Nevada forum-selection clause (Dkt. 38 at 4); and that its compensation flowed from something other than "the transaction" (Dkt. 38 at 10). The FAC's specific factual allegations and the attached documents contest those assertions.

If credited notwithstanding the documentary record, they would raise, at a minimum, the following jurisdictional questions warranting tailored discovery: (i) the actual pattern and volume of e3–White River communications directed into Arkansas from Missouri; (ii) whether WRPCM, the entity that approved e3 as a "distribution partner", operates from Arkansas and shares personnel or infrastructure with White River, notwithstanding e3's characterization of WRPCM as a Texas LLC; (iii) the complete text of the e3–WRPCM Advisory/Consulting Agreement and any related NDA or side letters, together with their execution history; (iv) the flow of Credit-sale proceeds from Plaintiffs' Arkansas-based wire through White River's account to e3, including the timing and mechanics of each payment; (v) the actual e3 personnel involved in coordinating with Puchir in Arkansas; and (vi) the internal e3 records of Plaintiffs' Transaction, including the DocuSign envelope logs, the "NATC Operations Team" workflow records, and the communications between the "NATC Operations Team" and White River personnel in Arkansas.

A limited period of jurisdictional discovery, 60 to 90 days for targeted document requests and one or two Rule 30(b)(6) depositions, would resolve the factual gaps that e3's declaration attempts to introduce. If, after such discovery, the record continues to support jurisdiction, this Court can decide the motion on a full record. If not, e3 will not have been prejudiced. What it cannot do is submit contested affidavits, dispute the FAC's documentary allegations, and then obtain dismissal without giving Plaintiffs any opportunity to test its assertions.

III. In the Alternative, the FAC States a Claim Under Rule 12(b)(6).

A. Nevada Substantive Law Governs Plaintiffs' Claims Against e3.

e3's Rule 12(b)(6) attack begins with a choice-of-law argument that seeks to displace Nevada law (which the parties chose in the TCPA and which the FAC pleads throughout) and to apply Texas or Missouri law selectively so as to defeat individual counts. That argument fails at

the threshold. First, the TCPA's Section 9 selects Nevada substantive law and applies to "any dispute, disagreement, or issue of construction or interpretation arising hereunder," including claims against e3 that are transaction-based and arise from the same operative facts as Plaintiffs' claims against White River. FAC ¶ 39. As discussed above, e3 is bound by the TCPA under the closely-related doctrine. Second, even under Arkansas' *Leflar* significant-relationship analysis, Nevada has the greatest interest: it is the state whose law the parties selected in the operative contract, and Plaintiffs' claims against e3 arise directly from the Nevada-governed Transaction. The Advisory/Consulting Agreement e3 relies on to argue for Texas or Missouri law is not the operative agreement here; it is a separate contract with a separate counterparty (WRPCM). It does not govern Plaintiffs' Transaction with White River, and it does not displace the choice of law the TCPA makes.

Even if the Court reaches the *Leflar* significant-relationship analysis, each of the five factors favors Nevada. *See Shelby Cnty. Health Care Corp. v. S. Farm Bureau Cas. Ins. Co.*, 855 F.3d 836, 842 (8th Cir. 2017) (Arkansas courts apply the five *Leflar* factors: predictability, maintenance of interstate order, simplification of the judicial task, advancement of the forum's governmental interests, and application of the better rule of law).

(1) Predictability of results.

The parties to the operative agreement predictably selected Nevada law, and e3, named on the face of the Addendum executed simultaneously with the TCPA, the direct economic beneficiary of every closing, and the operator of the DocuSign workflow through which the TCPA was executed, was on notice of that choice. Applying Nevada law protects the parties' settled expectations under the operative contract.

(2) Maintenance of interstate order.

Nevada, as the situs of the seller-corporation and the chosen substantive law of the operative contract, has at least as strong an interest in seeing its law applied to a dispute arising out of a Nevada-corporation's sale as Missouri or Texas has in regulating an ancillary distribution partner.

(3) Simplification of the judicial task.

Applying Nevada law to all three Defendants, the choice already made for the claims against White River and Puchir under TCPA § 9, simplifies the litigation by avoiding two or three parallel bodies of law being applied to the same operative facts. Applying Nevada law to e3 avoids the fragmented, count-by-count choice-of-law approach e3 proposes, which e3 itself concedes is required to reach the results it seeks.

(4) Advancement of the forum's governmental interests.

The forum here is Arkansas. Arkansas has no substantive-law interest that trumps Nevada's in a dispute over a Nevada corporation's Nevada-law-governed sale contract. e3's reliance on Texas and Missouri interest is misplaced: Plaintiffs' residence in Texas does not confer a Texas substantive-law interest that displaces the parties' own choice, and Missouri's interest in "regulating . . . accounting firms within its own borders" does not extend to an accounting firm that voluntarily entered into an Arkansas-anchored distribution partnership with a Nevada corporation.

(5) Application of the better rule of law.

Nevada's treatment of professional-services negligent misrepresentation (Restatement (Second) of Torts § 552), civil aiding-and-abetting (Restatement (Second) of Torts § 876(b)), civil conspiracy, and unjust enrichment squarely fits the facts alleged in the FAC: a coordinated sales-and-professional-services scheme in which e3 acted as both salesperson and tax adviser. e3's

selective invocation of Texas malpractice-fracturing doctrine and Missouri's narrower fiduciary-duty rules cherry-picks specific state-law limitations to defeat individual counts. That approach does not advance the "better rule of law"; it defeats coherent adjudication of a single course of alleged misconduct.

In any event, several of e3's challenges fail regardless of whether Nevada, Texas, or Missouri law applies. Plaintiffs' primary argument is that Nevada law governs; where the outcome does not turn on the choice of law, Plaintiffs address the alternative jurisdictions only briefly.

B. Count IX: Fraud/Fraudulent Misrepresentation.

Plaintiffs aver that Count IX states a claim. Under Nevada law, fraud requires: (1) a false representation of a material fact; (2) knowledge or belief the representation was false, or an insufficient basis for making the representation; (3) intent to induce reliance; (4) justifiable reliance; and (5) resulting damage. *Bulbman, Inc. v. Nevada Bell*, 108 Nev. 105, 111, 825 P.2d 588, 592 (1992). Rule 9(b) requires the who, what, when, where, and how; scienter "may be alleged generally." Fed. R. Civ. P. 9(b).

The FAC identifies specific representations by specific e3 personnel on specific dates. e3's registered agent, Jessica Aubuchon's December 19, 2023 email represented that authority for the Credits was found "in the Internal Revenue Code under: Title 25, Chapter 4, Subchapter 3, Section 161A." FAC ¶ 54. That representation was false when made: Title 25 of the U.S. Code is the Indian Affairs title, not the Internal Revenue Code, and no Section 161A of Title 25 authorizes any such credit. FAC ¶ 54. Mark Schreiber's December 26, 2023 "Final Tax Strategy" email represented that e3 had "completed our due diligence" and was charging Plaintiffs a $10,000 "due diligence fee." FAC ¶ 55. Schreiber's January 8, 2024 email represented that he was "near 100% certain on the tax credit acceptance by the IRS." FAC ¶ 56. Moriarty's January–March 2024 text messages

represented that "these credits are already in the tax code . . . since the early 2000's" and that "[t]he balance sheet of White [River] is backing the tax credits." FAC ¶ 57. Each representation identifies the speaker, date, medium, and content. That is the who, what, when, where, and how Rule 9(b) requires.

Scienter is pleaded at least generally under Rule 9(b), and in fact e3's own alleged conduct supplies stronger allegations of knowledge. The FAC alleges that e3 held itself out as having performed due diligence, expressly charged Plaintiffs $10,000 for that due diligence, and made specific representations about the statutory basis of the Credits that were false on their face. FAC ¶¶ 54–58, 118. It also alleges that by November 20, 2024, e3 personnel had actual internal knowledge that the Credits were failing. Bridgeman's internal note stated: "APPLIED REFUND FROM 23 is resulting from WR credit — which we know will be issue. DO we need to make estim to cover this?" FAC ¶ 66. e3 nevertheless concealed that knowledge and Notice CP23 from Plaintiffs for more than five months, continuing to solicit additional fee-generating tax strategies in the meantime. FAC ¶¶ 67–69. Those allegations plausibly establish that e3 acted with fraudulent intent, or at minimum without a sufficient basis for the representations it made.

e3's argument that Plaintiffs' fraud allegations amount to "negligence" because they use "should have known" language ignores the specific representations pleaded, ignores the $10,000 due-diligence-fee allegation, and ignores the November 2024 internal knowledge. *Ashcroft v. Iqbal*, 556 U.S. 662, 686 (2009), requires a plausible factual basis for scienter, not proof; the FAC supplies that basis. *Streambend Properties II, LLC v. Ivy Tower Minneapolis, LLC*, 781 F.3d 1003, 1013 (8th Cir. 2015) (Rule 9(b) requires "who, what, where, when, and how").

C. Count X: Negligent Misrepresentation.

Count X states a claim under any applicable law. Under Nevada law, negligent misrepresentation is a recognized tort adopted from Restatement (Second) of Torts § 552. *Bill Stremmel Motors, Inc. v. First Nat'l Bank of Nev.*, 94 Nev. 131, 575 P.2d 938 (1978). The elements are: (i) a representation made in the course of business or a transaction in which the defendant has a pecuniary interest; (ii) false information; (iii) failure to exercise reasonable care in obtaining or communicating the information; (iv) justifiable reliance; and (v) pecuniary loss. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 449, 956 P.2d 1382, 1387 (1998). The FAC pleads every element. e3 supplied false information to Plaintiffs in a transaction in which e3 had an obvious pecuniary interest (a $10,000 due-diligence fee and millions of dollars in commissions and distribution fees); it failed to exercise reasonable care; Plaintiffs justifiably relied; and Plaintiffs suffered pecuniary loss. FAC ¶¶ 140–141.

Under Texas law, negligent misrepresentation is likewise available against a professional who supplies false information for the guidance of another. *McCamish, Martin, Brown & Loeffler v. F.E. Appling Interests*, 991 S.W.2d 787, 792–94 (Tex. 1999). e3's argument that the negligent-misrepresentation claim is "redundant of the professional malpractice claim" is a merits and election-of-remedies argument, not a Rule 12 pleading defect. Rule 8(d)(2)–(3) permits alternative and inconsistent theories, and dismissal for redundancy at the pleading stage is generally inappropriate. *See Whitney v. Guys, Inc.*, 700 F.3d 1118, 1127 n.8 (8th Cir. 2012). Under Missouri law, negligent misrepresentation is also a recognized tort with elements substantially identical to § 552. *Ryann Spencer Grp., Inc. v. Assurance Co. of Am.*, 275 S.W.3d 284, 288 (Mo. Ct. App. 2008).

e3's suggestion that Arkansas does not recognize negligent misrepresentation is beside the point because e3's own choice-of-law analysis places this claim under Missouri or Texas law, both of which recognize it. Nothing in Arkansas law bars a federal court sitting in Arkansas from applying the substantive law of another forum. *See Shelby Cnty. Health Care Corp. v. S. Farm Bureau Cas. Ins. Co.*, 855 F.3d 836, 841–42 (8th Cir. 2017) (applying Arkansas choice-of-law rules to determine whether Arkansas or Tennessee substantive law governed).

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

Count XII also states a claim. The FAC pleads not just a generic accountant-client relationship, but a specific holding-out: e3 held itself out as Plaintiffs' "family office" and Schreiber held himself out as Plaintiffs' CPA; Plaintiffs reposed trust and confidence in e3 to act for Plaintiffs' benefit in evaluating, recommending, and structuring tax strategies; e3 accepted that trust and confidence and was paid for its services, including a specific $10,000 "due-diligence fee" tied to the recommendation to purchase the Credits. FAC ¶¶ 143, 147–148. Those allegations satisfy the "special circumstances of superiority, influence, and reliance" that create fiduciary duties under Missouri law and the analogous test under Texas law when an accountant is "directly involved in managing the client's investments." *Pitts v. Rivas*, 709 S.W.3d 517, 528 (Tex. 2025) (recognizing that Texas courts have not "held that an accountant–client relationship automatically gives rise to fiduciary duties" but leaving room for fiduciary duties in specific circumstances).

e3 further breached those duties by, among other things: (a) failing to disclose its financial interest in placing Plaintiffs in the Transaction, including commissions and fees e3 received from White River out of Plaintiffs' funds; (b) recommending a transaction that on adequate due diligence would have been known to be unlawful or would have exposed Plaintiffs to civil and criminal penalties; (c) misrepresenting the legal existence, validity, and source of the Credits; (d)

misrepresenting that e3 had performed adequate due diligence; (e) failing to disclose conflicts of interest; and (f) using high-pressure sales tactics. FAC ¶ 148. Whether e3's role sufficed to create a fiduciary duty is a factual question inappropriate for resolution at the pleading stage.

E. Count XIII: Civil Conspiracy.

Count XIII also states a claim. Nevada law defines civil conspiracy as "a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts." *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (*quoting Hilton Hotels v. Butch Lewis Prods.*, 109 Nev. 1043, 1048, 862 P.2d 1207, 1210 (1993)). The FAC pleads each element. It alleges that White River, Puchir, and e3 "are a combination of two or more persons . . . who, by concerted action, agreed to and did pursue the unlawful objective of marketing, selling, and retaining proceeds from the sale of purported federal income tax credits that did not legally exist, with the purpose of harming Plaintiffs." FAC ¶ 152. It identifies concrete evidence of the agreement: the express marketing and distribution arrangement between White River and e3 acknowledged in the Addendum; e3's receipt of compensation from the Transaction; coordinated promotional and contracting communications transmitted via the "NATC Operations Team" channel; and the joint efforts of Puchir and Moriarty to address and minimize purchaser concerns about IRS treatment. FAC ¶ 152.

The FAC also identifies actionable underlying torts: fraud, negligent misrepresentation, breach of fiduciary duty, and constructive fraud. FAC ¶ 153. e3's argument that Plaintiffs "cannot conspire to commit negligence" misses the mark: the FAC identifies multiple intentional torts, including fraud in the inducement (Count V), fraud/fraudulent misrepresentation against e3 (Count IX), and breach of fiduciary duty (Count XII), that supply the required intent. e3's further argument

that dismissal of the underlying torts would defeat the conspiracy claim is contingent on that dismissal, which, for the reasons set out in Sections III.B–III.D and III.F, the Court should decline to enter.

F. Count XIV: Aiding and Abetting Fraud.

Count XIV states a claim under Nevada law, which governs this dispute. Nevada recognizes civil aiding and abetting under Restatement (Second) of Torts § 876(b): "liability attaches for civil aiding and abetting if the defendant substantially assists or encourages another's conduct in breaching a duty to a third person." *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1489, 970 P.2d 98, 112 (1998), *abrogated on other grounds by GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11 (2001). The FAC pleads that e3 knew that White River and Puchir were perpetrating a fraud on purchasers, or was on notice of facts giving rise to such knowledge, and that e3 provided substantial assistance and encouragement to that fraud by: (a) acting as White River's distribution partner and contractually undertaking to "establish a distribution network"; (b) using its position as Plaintiffs' trusted family office and CPA to identify, recruit, and recommend Plaintiffs as purchasers; (c) drafting and transmitting offering and tax-strategy materials reaffirming White River's misrepresentations; (d) deflecting Plaintiffs' concerns about IRS acceptance, regulatory approval, and White River's solvency; and (e) collecting compensation paid out of Plaintiffs' funds. FAC ¶ 155. That is substantial assistance in fraudulent conduct, and it is precisely the kind of "direct communication, or conduct in close proximity, to the tortfeasor" that *Dow Chemical* requires. 114 Nev. at 1489, 970 P.2d at 112.

e3's argument that Missouri and Texas do not recognize aiding-and-abetting is beside the point because Nevada law governs Plaintiffs' claims against e3 for the reasons set out in Section III.A above.

G. Counts IV and XV: Unjust Enrichment.

Counts IV and XV state alternative unjust-enrichment claims. Nevada permits unjust enrichment where an express contract does not govern the same subject matter as between the plaintiff and the defendant. *LeasePartners Corp. v. Robert L. Brooks Trust*, 113 Nev. 747, 755, 942 P.2d 182, 187 (1997). Count IV is pleaded "solely in the alternative pursuant to Federal Rule of Civil Procedure 8(d)," and only if the Court determines that the TCPA is void, voidable, rescinded, unenforceable, or otherwise does not govern Plaintiffs' right to restitution. FAC ¶ 97. Count XV likewise seeks disgorgement from e3 of fees, commissions, or other consideration paid to e3 "directly or indirectly, out of the $600,000 Plaintiffs wired to White River," including the $10,000 "due-diligence fee." FAC ¶ 158.

e3's contention that no direct benefit flowed from Plaintiffs to e3 misreads both the FAC and the doctrine. First, Plaintiffs directly conferred a benefit on e3 in the form of a $10,000 "due-diligence fee" paid to e3 in connection with the recommendation to purchase the Credits. FAC ¶¶ 55, 70(g), 138. That direct payment satisfies the first element of unjust enrichment under any applicable law. *See Binkley v. Am. Equity Mortgage, Inc.*, 447 S.W.3d 194, 199 (Mo. 2014); *Childress Painting & Assocs., Inc. v. John Q. Hammons Hotels Two, L.P.*, 106 S.W.3d 558, 562 (Mo. Ct. App. 2003). Second, the FAC alleges that e3 collected commissions and fees measured as a percentage of Plaintiffs' Credit-sale proceeds. FAC ¶¶ 8(e), 10, 14, 84. Whether e3's additional commissions and fees derived from Credit-sale proceeds are recoverable in restitution presents a distinct tracing question that need not be resolved on a Rule 12(b)(6) motion.

H. Count XI: Professional Malpractice.

e3 concedes that "Count XI likely states a claim upon which relief can be granted in any applicable jurisdiction." Dkt. 38 at 27. e3 asks only that the deadline to respond to Count XI be

tolled pending disposition of the motion. Plaintiffs do not oppose that request as a procedural matter.

Conclusion

Plaintiffs respectfully request that the Court deny Defendant e3 Tax, LLC's Motion to Dismiss (Dkt. 37) in its entirety. In the alternative, if the Court concludes that any material factual question concerning e3's Arkansas-directed conduct remains unresolved, Plaintiffs respectfully request leave to take limited jurisdictional discovery under *Steinbuch v. Cutler*, 518 F.3d 580, 589 (8th Cir. 2008), for a period of 60–90 days directed at (i) the e3–White River sales agreement and related documents, (ii) the e3–WRPCM Advisory/Consulting Agreement and any related NDA or side letters, (iii) the flow of Credit-sale proceeds from Plaintiffs' Arkansas-received wire through White River's account to e3, and (iv) the pattern of e3–Puchir coordination directed into Arkansas. In the alternative, if the Court concludes that any count is deficient on any ground, Plaintiffs respectfully request leave to amend under Fed. R. Civ. P. 15(a)(2), which is to be freely given "when justice so requires."

Dated: September 28, 2026

Respectfully submitted,

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Certificate of Service

I hereby certify that on September 28, 2026, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ John Di Giacomo
John Di Giacomo