

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 09-CV-00309 MSK-KMT

SUZANNE SHELL  
Plaintiff

v.

AMERICAN FAMILY RIGHTS ASSOCIATION, et. al.

Defendants

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**MEMORANDUM OF LAW PERTAINING TO PERSONAL JURISDICTION**

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Personal jurisdiction over the defendant(s) is based on the following theories, Specific Jurisdiction, General Jurisdiction, Agency theory of personal jurisdiction and Personal Jurisdiction Based on a Conspiracy.

**Business**

1. The defendants have insisted they are not engaged in “business” by playing on words<sup>1</sup>. They assert they are not making a profit, but they are also obviously not engaged in a hobby, nor recreation, nor relaxation.
2. The term “business” as used in the Federal Rules of Evidence 803(6) includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.
3. The defendants have as their purpose the promotion, advancement and achievement of a specific mission, this mission is relating to child welfare reform and protecting the rights of parents, children and families.

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<sup>1</sup> [Wikipedia defines business](#) as “*A business (also called a firm or an enterprise) is a legally recognized organization designed to provide goods and/or services to consumers.*” Sullivan, Arthur; Steven M. Sheffrin (2003). Economics: Principles in action. Upper Saddle River, New Jersey 07458: Pearson Prentice Hall. pp. 29. ISBN 0-13-063085-3.

4. They have formed organizations, associations and nonprofit corporations for the purposes of performing that specific mission.
5. They have ascribed distinct names to those organizations and created logos, inscriptions, signs, tags or labels which indicate ownership, control or origin.
6. AFRA has permitted members to represent AFRA and use their logos, inscriptions, signs, tags or label in their occupations associated with their respective purposes
7. AFRA members are authorized to speak for AFRA.
8. The defendant organizations operate under a hierarchal structure, under which the defendant members must abide.
9. Defendant members of defendant organizations are subject to expulsion pursuant to the discretion of the defendant organization.
10. The defendants have voluntarily joined as members of the defendant organizations, including but not limited to American Family Rights Association (AFRA), and/or accepted membership from individuals and organizations nationwide to participate in the achievement of their respective missions and/or the joint mission.
11. The defendants have introduced products into the stream of commerce expecting they will be used in Colorado.
12. Defendant AFRA has defaulted.
13. Having defaulted, AFRA necessarily has made judicial admissions to truth of the averments of facts pled in the complaint. See FED.R.CIV.P. 8(d); see also *Burlington Northern Railroad Co. v. Huddleston*, 94 F.3d 1413, 1415 (10th Cir. 1996); 10A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2688 at 58-59 (3rd ed. 1998).
14. On the subject of jurisdiction and the status of its members, AFRA has made judicial admissions to the following relevant facts averred in my complaint:
  - a. AFRA has general membership in the 50 states, including a significant number of

members who reside in Colorado. ¶ 2 [1] This establishes AFRA has a presence in Colorado.

- b. AFRA sponsors and owns a web site and a number of online groups to offer and deliver support services and information services and various products to the public, and for soliciting membership into AFRA and to advertise AFRA's business activities and to conduct AFRA business. ¶ 2 [1] This established AFRA conducts business in Colorado.
- c. Each of the defendants is an agent of AFRA. ¶¶ 8-24 [1]. This establishes that the defendants conduct business in Colorado.
- d. AFRA has maintained systematic and general business contacts with Colorado and a continuous presence in Colorado. ¶ 38 [1]
- e. AFRA has pursued business relationships and other activities with Colorado ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298 [1].
- f. AFRA has reached out beyond its home state and created continuing relationships and obligations with citizens of Colorado and is subject to regulation and sanctions in Colorado for the consequences of its activities ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298 [1].
- g. The injuries claimed arise out of or relate AFRA's activities. AFRA's conduct and connection with Colorado are such that it should reasonably anticipate being haled into court here ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298 [1].
- h. Pursuant to Colorado Revised Statutes § 13-1-124, AFRA purposely availed itself of the privilege of acting in Colorado or of causing important consequences here; the cause of action arises from the consequences to me in Colorado of AFRA's activities; the activities of AFRA or the consequences of those activities have a substantial enough connection with Colorado to make the exercise of Colorado's jurisdiction over AFRA reasonable. AFRA transacts business in Colorado and/or

has representatives and agents situated in Colorado and/or committed tortious acts in Colorado, therefore, jurisdiction and venue is proper in Colorado ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298.[1].

- i. AFRA also admits that claims also arise out of a contractual forum selection clause wherein Colorado is the agreed upon jurisdiction and venue for disputes arising out of breach of an express nondisclosure agreement by one or more of the defendants, and other torts and damages that arise out of that breach and which also arise out of the tortious interference causing that breach. Claims also arise out of a contractual forum selection clause wherein Colorado is the agreed upon jurisdiction and venue for disputes arising out of breach of an express nondisclosure agreement by one or more of the defendants, and other torts and damages that arise out of that breach and which also arise out of the tortious interference causing that breach ¶40 [1].
- j. AFRA advertises and provide goods and/or services, to the public and to consumers and/or professionals involved with Child Protective Services investigations and court cases nationwide ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298 [1].
- k. These goods and services are offered by AFRA are in competition with, and are also offered as supplemental goods and services to the products offered and provided by state child protective services (CPS) agencies, CPS agency contractors and alternative and independent providers of goods and services to consumers of child welfare agencies and professionals who administer child welfare cases administratively or in the courts across the nation ¶43 [1].
- l. AFRA's advertising is done by and through web sites, and through ownership of and participation with and input to various online groups and forums dedicated to this issue, and on other public forums available to the general public nationwide

¶46 [1].

- m. Any online group with “AFRA” in its name speaks for AFRA and is subject to AFRA oversight and control.
15. AFRA is the sole party with the authority to establish and profess the undisputable status of its members. AFRA has admitted its members speak for AFRA, represent AFRA and have the right to use AFRA logos and name in their occupations, subject to suspension of those privileges by the AFRA Board of Directors for failure to comply with AFRA’s guidelines, and that the defendants were agents of AFRA ¶2 [1].
  16. None of the defendants have exercised any authority they had in their respective organizations to prohibit or prevent any individual or organization that resides in Colorado from joining as a member of their respective organizations. This establishes they maintain a presence in Colorado.
  17. The defendants and the organizations they are members of have introduced their own products, goods and services to the market consisting of consumers of child welfare agency investigations, interventions, court cases and court ordered services and to the general public. This establishes they conduct business.
  18. Not one of the defendants have exercised any authority they had in their respective organizations to prohibit or prevent the dissemination of their respective products to the relevant market or the general public in Colorado. This establishes they intended to establish a presence or maintain continuing contacts with Colorado.
  19. Each of the defendants has affirmatively offered and provided their products to the relevant market and the general public in Colorado. This establishes they conduct business in Colorado.
  20. These products include but are not limited to products offered as support services, advocacy services, information goods and services, advice, paralegal services, referral services, literature, lobbying services, and any other goods and services which help

promote their expertise, qualifications and competence in the relevant markets or which promote child welfare reform or which assist families involved with child welfare agencies and the courts.<sup>2</sup>

21. The defendants have sponsored and/or promoted and/or participated in public demonstrations, events, hearings and rallies in Colorado, in their own capacities and in their capacities as members of American Family Rights Association (AFRA).
22. They solicit and accept donations from the market they serve and from the general public in order to accomplish their mission.
23. Some of them sell or have sold products, including apparel with their organization's logo or the logo of associate organizations.
24. Some of them sell or have sold memberships to their organizations. This membership was solicited from, offered to and accepted from persons who live in Colorado.
25. They are presumably liable for income taxes on the income they generate through their respective donations and sales.
26. Each of the defendants has conducted business with persons in Colorado.
27. It is undisputed that I am engaged in business in interstate commerce.
28. I introduce products, goods and services into the same markets as the defendants do.
29. The defendants's conduct has adversely affected my business.
30. The defendants's occupations and business operations affect interstate commerce.

#### **Personal Jurisdiction**

31. This court must accept "the well-pleaded allegations of the complaint as true and construe them in the light most favorable to the plaintiff." *Ramirez v. Dep't of Corr.*, 222 F.3d 1238, 1240-41 (10th Cir. 2000). We also "'look for plausibility in th[e] complaint.'" *Alvarado v. KOB-TV. L.L.C.*, 493 F.3d 1210 (10th Cir. 2007 (quoting the standard for

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<sup>2</sup> Complaint [1] ¶42

Rule 12(b)(6) dismissals in *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1970 (2007)).

32. At this stage of the proceeding, I only need to make a prima facie showing of personal jurisdiction in order to defeat defendant's motion to dismiss. *Benton v. Cameco Corp.*, 375 F.3d 1070, 1074 (10th Cir. 2004).
33. "[F]actual disputes at this initial stage must be resolved in the plaintiff's favor when the parties present conflicting affidavits." *FDIC v. Oaklawn Apartments*, 959 F.2d 170, 174 (10th Cir. 1992). Further, "a district court relying on documentary evidence in its consideration of a motion to dismiss may not weigh the factual evidence." *Ten Mile Indus. Park v. W. Plains Serv. Corp.*, 810 F.2d 1518, 1524 (10th Cir. 1987); see also *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1417 (10th Cir. 1988) ("If the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party.")
34. The district court may not decide material issues of jurisdictional fact against a plaintiff without an evidentiary hearing. *Archangel Diamond Corp. v. Lukoil*, 123 P.3d 1187, 1190 (Colo. 2005).
35. Colorado's Long Arm Statute states, in pertinent part: "Engaging in any act enumerated in this section by any person, whether or not a resident of the state of Colorado, either in person or by an agent, submits such person . . . to the jurisdiction of the courts of this state concerning any cause of action arising from: (a) The transaction of any business within this state; (b) The commission of a tortious act within this state . . ." § 13-1-124(1)(a)-(b), C.R.S. (2005).
36. Because the Colorado long-arm statute extends personal jurisdiction within the state as far as the federal constitutional requirements of due process permit, *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1270 (Colo. 2002), the analysis

- collapses into a single inquiry as to whether the requirements of due process are satisfied.
37. Due process for jurisdictional purposes consists of two elements. First, the defendant must have sufficient “minimum contacts” with the forum state. *International Shoe Co. v. State of Washington, Office of Unemployment Compensation & Placement*, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95 (1945); *Kuenzle v. HTM Sport-Und Freizeitgeräte AG*, 102 F.3d 453, 455 (10th Cir. 1996), and whether the assertion of jurisdiction under the circumstances is reasonable and fair. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985); *Teierweiler v. Croxton and Trench Holding Co.*, 90 F.3d 1523, 1532-33 (10th Cir. 1996).
38. “Minimum contacts” may be analyzed in terms of specific jurisdiction or general jurisdiction. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, 104 S.Ct. 1868, 1872, 80 L.Ed.2d 404 (1984); *Trierweiler v. Croxton & Trench Holding Corp.*, 90 F.3d 1523, 1532 (10th Cir. 1996).
39. I have alleged both specific and general jurisdiction [1] ¶¶ 38-39.

### **Specific Jurisdiction**

40. “Specific jurisdiction is properly exercised where the injuries triggering litigation arise out of and are related to ‘activities that are significant and purposefully directed by the defendant at residents of the forum.’” *Archangel Diamond Corp. v. Lukoil*, supra, 123 P.3d at 1194 (quoting *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, supra, 40 P.3d at 1271); see also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472, 105 S.Ct. 2174, 2182, 85 L.Ed.2d 528 (1985).
41. Even a single act can sometimes support specific jurisdiction. *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1271 (Colo. 2002); *In re Parental Responsibilities of H.Z.G.*, 77 P.3d 848, 852 (Colo. App. 2003).
42. The Due Process Clause “gives a degree of predictability to the legal system that allows

potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit,” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

43. “Frequently, the commission of a tort, in itself, creates a sufficient nexus between the defendant and the state so as to satisfy the due process inquiry.” *Classic Auto Sales, Inc. v. Schocket*, 832 P.2d 233, 237 (Colo. 1992). In such cases, there is no need to engage further in a minimum contacts analysis, because the defendant is so connected with the forum state that traditional notions of fair play and substantial justice are not offended by the state’s exercise of jurisdiction. *Classic Auto Sales, Inc. v. Schocket*, *supra*, 832 P.2d at 237.
44. In *Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984), the United States Supreme Court “approved an ‘effects’ test and held that where a defendant’s intentional, and allegedly tortious, actions, taken outside the forum, are expressly directed at causing a harmful effect within the forum state, a sufficient nexus exists between the defendant and the state so as to satisfy due process.” *Classic Auto Sales, Inc., supra*.
45. In the context of intentional torts, this test has been alternatively stated as whether the defendant’s actions “‘were expressly aimed at’ the forum jurisdiction and [whether] the forum jurisdiction was ‘the focal point’ of the tort and its harm.” *Far West Capital, Inc. v. Towne*, 46 F.3d 1071, 1080 (10th Cir. 1995) (quoting *Calder v. Jones*, 465 U.S. 783, 789, 104 S.Ct., 1482, 1486-87, 79 L.Ed.2d 804 (1983)). The purposeful availment/express aiming requirement “ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person.” *Benally v. Amon Carter Museum of Western Art*, 858 F.2d 618, 625 (10th Cir. 1988) (quoting *Burger King Corp.*, 105 S.Ct. at 2183 (internal citations and quotation marks omitted)). The contacts with the forum state must be such that “it is foreseeable that the defendant should reasonably anticipate being haled into

court there.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980).

46. It is undisputed that a claim for copyright infringement sounds in tort, and therefore a purposeful direction analysis is appropriate. See, e.g., *IO Group, Inc. v. Pivotal, Inc.*, No. C 03-5286 MHP, 2004 U.S. Dist. LEXIS 6673, at \*17 (N.D. Cal. Apr. 19, 2004) (“Copyright infringement may be characterized as an intentional tort.”).
47. A federal court may assume specific jurisdiction over a non-resident defendant who “purposefully avails himself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Benally v. Amon Carter Museum of Western Art*, 858 F.2d 618, 625 (10th Cir. 1988) (quoting *Hanson*, 78 S.Ct. at 1239-40).
48. Yet even if the injury properly were construed to have occurred in Colorado, this fact in itself would be insufficient to support personal jurisdiction over defendants in this forum. See *Regional Airline Management Systems, Inc. v. Airports USA, Inc.*, 2007 WL 1059012 at \*5 (D. Colo. Apr. 4, 2007) (slip op.). Plaintiff “must present ‘something more’ than the injuries [he] allegedly suffered as a result of the out-of-forum [copyright] infringement.” *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 804 (9th Cir. 2004)).
49. That “something more” is the requirement that the defendant have “expressly aimed” his activities at the forum state such that the forum is the “focal point” of the tort and the injury. When a defendant intentionally takes some action with the knowledge that the result will be harm to a specific victim in another state, the picture involves more than mere foreseeability or the likelihood that fortuitous and undirected conduct will have an effect in the state.
50. The courts have noted several reasons why a forum legitimately may exercise personal jurisdiction over a nonresident who “purposefully directs” his activities toward forum residents. A State generally has a “manifest interest” in providing its residents with a

convenient forum for redressing injuries inflicted by out-of-state actors. *McGee v. International Life Insurance Co.*, 355 U.S. 220, 223 (1957); see also *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 776 (1984). Moreover, where individuals “purposefully derive benefit” from their interstate activities, *Kulko v. California Superior Court*, 436 U.S. 84, 96 (1978).

51. I have alleged intentional acts by the defendants specifically aimed at me in Colorado, and conspiracy to commit same, acts intended to cause harm to me and my business, in my Complaint [1] at ¶¶ 70-89<sup>3</sup>, 95-114<sup>4</sup>, 118-122<sup>5</sup>, 126-128<sup>6</sup>, 132-150<sup>7</sup>, 177-214<sup>8</sup>, 218-289<sup>9</sup>, 293-326<sup>10</sup>, 329-338<sup>11</sup>, 341-349<sup>12</sup>

#### **General Jurisdiction**

52. General jurisdiction is based on the defendant’s presence or accumulated contacts with the forum. *Rambo v. Am. S. Ins. Co.*, 839 F.2d 1415, 1418 (10th Cir. 1988).
53. General jurisdiction is proper when the defendant has other “continuous and systematic” contacts with the forum, even if those contacts are unrelated to the pending litigation. *Helicopteros Nacionales de Columbia*, 104 S.Ct. at 1872; *Daniel J. Trierweiler, v.*

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<sup>3</sup> Theft or Misappropriation of Trade Secrets

<sup>4</sup> Copyright Infringement

<sup>5</sup> Contributory Copyright Infringement

<sup>6</sup> Vicarious Copyright Infringement

<sup>7</sup> Breach of Contract with forum selection clause [#1 ¶40]

<sup>8</sup> RICO

<sup>9</sup> False and Misleading Advertising

<sup>10</sup> Unfair or Deceptive Trade Practices and Unfair Methods of Competition

<sup>11</sup> Conspiracy

<sup>12</sup> Antitrust / Sherman Act

*Croxton and Trench Holdi*, 90 F.3D 1523, 1533 (10th Cir. 07/29/1996)

54. General jurisdiction exists when the activities of a nonresident defendant in the forum state are “continuous and systematic, of a general business nature.” *Keefe v.*

*Kirschenbaum & Kirschenbaum*, P.C., 40 P.3d 1267, 1271 (Colo. 2002).

55. The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a person that delivers his products into the stream of commerce with the expectation that they will be used by consumers in the forum State and those products subsequently cause injury. *World-Wide Volkswagen Corp. v. Woodson*, supra, at 297-298.

56. The Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because “modern transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,” it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity. *McGee v. International Life Insurance Co.*, supra, at 223.

57. Jurisdiction may not be avoided merely because the defendant did not physically enter the forum State. It is an inescapable fact of modern commercial life that a substantial amount of business is transacted solely by mail and wire communications across state lines, thus obviating the need for physical presence within a State in which business is conducted. So long as an actor’s efforts are “purposefully directed” toward residents of another State, courts have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction there. *Keeton v. Hustler Magazine, Inc.*, supra, at 774-775; see also *Calder v. Jones*, 465 U.S., at 788-790; *McGee v. International Life Insurance Co.*, 355 U.S., at 222-223. Cf. *Hoopston Canning Co. v. Cullen*, 318 U.S. 313, 317 (1943).

58. AFRA has made the judicial admission that it has continuous and systematic contacts

with Colorado that are of a business nature.

59. Defendants have introduced products into the stream of commerce with the expectation that they will be used by consumers in the forum State.
60. Defendants have chosen to be members of and/or hold positions of authority in AFRA.
61. I alleged facts supporting general jurisdiction in my complaint [#1, ¶¶ 2-25, 38, 42, 44-46, 64-67, 219-233, 296-298.

### **Agency or Alter-ego Theory of Personal Jurisdiction**

62. Under Colorado's long-arm statute, a nonresident defendant may be subject to personal jurisdiction in Colorado based on the imputed contacts of the defendant's agent.
63. The agency theory of personal jurisdiction is based on the concept that the principal is responsible for the actions of an agent. "An agent can make his principal responsible for his actions if he is acting pursuant to either actual or apparent authority." *Willey v. Mayer*, 876 P.2d 1260, 1264 (Colo. 1994).
64. An agent may be a corporation as well as an individual. "[A]s all corporations must necessarily act through agents, a wholly owned subsidiary may be an agent and when its activities as an agent are of such a character as to amount to doing business of the parent, the parent is subjected to the in personam jurisdiction of the state." *SGI Air Holdings II LLC v. Novartis Int'l AG*, 239 F. Supp. 2d 1161, 1166 (D. Colo. 2003)(quoting *Curtis Publ'g Co. v. Cassel*, 302 F.2d 132, 137 (10th Cir. 1962)).
65. If a subsidiary is merely an alter ego of the principal, the corporate veil may be pierced, "if not doing so would defeat public convenience, justify wrong, or protect fraud." *Great Neck Plaza, L.P. v. Le Peep Rests., LLC*, 37 P.3d 485, 490 (Colo. App. 2001).
66. Facts concerning the amount of control exercised by the corporate parent over its subsidiary are relevant for both theories. "Such control could be evidence that the subsidiary is the parent's alter ego because the subsidiary has no real separate corporate existence." *SGI Air Holdings II LLC v. Novartis Int'l AG*, supra, 239 F. Supp. 2d at 1166.

Similarly, such control could be evidence that the subsidiary is the parent's agent because the subsidiary is conducting the "real" business of the parent. The objective of either theory is to establish that the parent company has the minimum contacts with the forum necessary to support a finding of jurisdiction. *SGI Air Holdings II LLC v. Novartis Int'l AG*, supra, 239 F. Supp. 2d at 1166.

67. To exercise personal jurisdiction on a theory of either agency or alter ego, the plaintiff bears the burden of demonstrating a prima facie case. *Berry v. Lee*, 428 F. Supp. 2d 546, 556 (N.D. Texas 2006); *Williams v. Firstplus Home Loan Owner Trust 1998-4*, 310 F. Supp. 2d 981, 994 (W.D. Tenn. 2004)(plaintiff must allege facts that show agency relationship such that personal jurisdiction may be maintained); *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 878 A.2d 567, 574 (Md. 2005).
68. To establish this agency theory of personal jurisdiction under Colorado's long-arm statute, the jurisdictional facts must connect the actions of the agent to the principal by either "the transaction of any business" or "the commission of a tortious act" within the state. *Shepherd v. U.S. Olympic Comm.*, 94 F. Supp. 2d 1136, 1142 (D. Colo. 2000)
69. When a defendant objects to both jurisdiction and liability on the basis that there is no agency relationship, the question of personal jurisdiction appears circular: personal jurisdiction cannot be exercised without determining the question of agency, but the question of agency cannot be determined without exercising personal jurisdiction. See *id.* For this reason, a court's determination of agency for the purpose of personal jurisdiction is a separate determination from, and is not dispositive of, the substantive issue of the defendant's liability for the actions of the agent. As such, a plaintiff need only make a prima facie showing of the connection between the actions of the agent and the principal to defeat a motion to dismiss for lack of personal jurisdiction. *First Horizon Merch. Servs., Inc. v. Wellspring Capital Mgmt., LLC*, 166 P.3d 166, 178 (Colo. App. 2007).
70. This connection has been shown by the judicial admissions of AFRA who has confirmed

that AFRA's members are its agents.

71. The connected has been averred in my complaint [#1] ¶¶ 2-24

**Personal Jurisdiction Based on a Conspiracy**

72. The Colorado General Assembly reintroduced joint liability in 1987 when it amended the statute to include subsection (4), which provides that “[j]oint liability shall be imposed on two or more persons who consciously conspire and deliberately pursue a common plan or design to commit a tortious act.” Section 13-21-111.5(4). The subsection further provides that any person held jointly liable shall have a right to contribution from co-defendants acting in concert.
73. A “tortious act” under the statute includes any conduct other than a breach of contract that constitutes a civil wrong and causes injury or damages. A “tortious act” may include negligence. *Resolution Trust Corp. v. Heiserman*, 898 P.2d 1049 (Colo. 1995).
74. “The existence of a conspiracy and acts of a co-conspirator within the forum may, in some cases, subject another co-conspirator to the forum’s jurisdiction “ *Melea, Limited v. Jawer SA*, 511 F.3d 1060 (10th Cir. 12/26/2007) (quoting *Lolavar v. de Santibanes* 430 F.3d 221, 229 (4th Cir. 2005)).
75. “[This] theory applies when two or more persons conspire to do something that they could reasonably expect to lead to consequences in the forum state and one of the co-conspirators commits overt acts in furtherance of the conspiracy of a type that would submit a nonresident to personal jurisdiction under the long-arm statute of the forum state. Then those overt acts are attributable to the other co-conspirators, who become subject to personal jurisdiction in the forum state, even without direct contacts with the forum. See *Mfrs. Consolidation Serv., Inc. v. Rodell*, 42 S.W.3d 846, 857 (Tenn. Ct. App. 2000).” Discussed in *First Horizon Merchant Services, Inc. v. Wellspring Capital Management, LLC*, No. 05CA2370 (Colo.App. 04/19/2007)

76. Six defendants<sup>13</sup> have necessarily made judicial admissions as to the existence of a conspiracy to commit the torts against me as averred in my complaint by virtue of their defaults.
77. “In order for personal jurisdiction based on a conspiracy theory to exist, the plaintiff must offer more than ‘bare allegations’ that a conspiracy existed, and must allege facts that would support a prima facie showing of a conspiracy.” *Melea, Limited v. Jawer SA*, 511 F.3d 1060 (10th Cir. 12/26/2007) at 1069 (quoting *Lolavar v. de Santibanes* 430 F.3d 221, 229 (4th Cir. 2005)).
78. I alleged facts support a prima facie showing of a conspiracy in my complaint [#1] ¶¶ 328-339, and cited overt acts tending to prove the existence of a conspiracy [#1] ¶¶ 95-110, 341-347.
79. I assert that a co-conspirator’s judicial admissions as to the existence of the conspiracy with the other defendants to commit multiple wrongful acts directed toward this forum, and the co-conspirator’s judicial admissions that substantial steps in furtherance of the conspiracy were taken in this forum, and that the judicial admissions that the co-conspirators took those substantial steps, and the co-conspirators’ judicial admissions as to the exact wrongful acts committed in the furtherance of that conspiracy is sufficient to create the minimum contacts with this forum necessary to exercise jurisdiction over the remaining co-conspirators.

Respectfully submitted May 10, 2009

/s/ Suzanne Shell

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<sup>13</sup> AFRA [#71], William Tower, Ann Tower, Francine Renee Cygan, Mark Cygan [#90], Sarah Thompson [#107].