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7 THE BEAR STEARNS COMPANIES,  
INC. and JAMES CAYNE  
8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION  
11

12 MICHAEL BLOMQUIST &  
MICHAEL SCOTT PROPERTIES, INC.,

13 Plaintiffs,

14 vs.

15 WASHINGTON MUTUAL, a Washington  
16 corporation; KERRY K. KILLINGER;  
JOSEPH W. SAUNDERS; COUNTRYWIDE  
17 HOME LOANS, INC., a Delaware  
corporation; ANGELO MOZILLO;  
18 WACHOVIA CORPORATION, a North  
Carolina corporation; KEN THOMPSON  
19 CITIGROUP, a Delaware corporation;  
SANFORD WEILL; CHARLES PRINCE;  
20 GOLDMAN SACHS GROUP, INC., a  
Delaware corporation; HENRY PAULSON;  
21 BEAR STERNS COMPANIES, INC., a  
Delaware corporation; JAMES CAYNE; THE  
22 MCGRAW HILL COMPANY, INC., a  
Delaware corporation; HAROLD MCGRAW  
23 III; WELLS FARGO & COMPANY, a  
Delaware corporation; PATRICIA R.  
24 CALLAHAN; HERBERT M. SANDLER;  
ROCK HOLDINGS, INC., a Delaware  
25 corporation; EXPERIAN CORPORATION, a  
Delaware corporation; JAMES E. GILLERAN;  
26 JOHN M. REICH; JOHN D. HAWKE JR.;  
JOHN C. DUGAN; SUSAN SCHMIDT BIES;  
27 DONALD E. POWELL; SHEILA C. BAIR,

28 Defendants.

Case No.: C07-04108-JF

**DEFENDANT JAMES CAYNE’S  
NOTICE OF MOTION AND MOTION  
TO DISMISS FOR LACK  
OF PERSONAL JURISDICTION;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF  
[Fed R. Civ. P., Rule 12(b)(2)]**

Hearing Date: July 11, 2008  
Time: 9:00 a.m.  
Dept.: Courtroom 3  
Judge: Hon. Jeremy Fogel  
Complaint Date: September 10, 2007  
Trial Date: Not Set

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**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on July 11, 2008, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 3 of the above-entitled Court, located at 280 South First Street, San Jose, CA 95113, the Honorable Jeremy Fogel presiding, defendant James Cayne will and hereby does move for an order dismissing plaintiff Michael Blomquist's first amended complaint with prejudice as to Cayne pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure for lack of personal jurisdiction.

This motion is made pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure and is based on the following grounds: (1) Cayne is not subject to general jurisdiction in California; (2) Cayne is not subject to specific jurisdiction in California; and (3) even in Cayne were subject to specific jurisdiction in California, exercise of jurisdiction over Cayne in this matter would be constitutionally unreasonable.

This motion is based on this notice of motion and motion, the memorandum of points and authorities that follows, the Declaration of James Cayne, the pleadings and records on file in this action, and upon such other oral and documentary evidence that may be presented at the hearing on this motion.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Blomquist holds a grudge against the entire mortgage lending industry.  
4 A former mortgage broker, he claims to have foreseen the recent economic downturn years ago,  
5 and also purports to hold the solution. Through this lawsuit, he attempts to drag several major  
6 financial institutions and their executives into this Court.

7 The Due Process Clause of the Constitution limits plaintiff's attempt to turn this Court  
8 into a forum for his crusade. James Cayne, one of the many persons forced to defend this suit, is  
9 a New York resident and Chairman of the Board of Directors of The Bear Stearns Companies,  
10 Inc. (incorrectly sued herein as "Bear Sterns Companies, Inc."), a Delaware corporation  
11 headquartered in New York. Plaintiff's polemic against the mortgage lending industry hardly  
12 mentions Cayne, but names him, individually, as a defendant. Plaintiff cannot hale Cayne into a  
13 California court for no apparent reason. He must explain what Cayne has done—as an  
14 individual—that would subject him to jurisdiction in this state.

15 Plaintiff cannot carry this burden. Cayne has had no contact with California, let alone  
16 with plaintiff, that would subject him to the Court's jurisdiction here. Accordingly, Cayne hereby  
17 moves to dismiss under Rule 12(b)(2) of the Federal Rules of Civil Procedure.<sup>1</sup>

18 First, plaintiff cannot satisfy the substantial burden of proving Cayne is subject to general  
19 jurisdiction in California. General jurisdiction is established only when a defendant's contact  
20 with the forum state is so "systematic and continuous" that it "approximate[s] physical presence."  
21 *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1168 (9th Cir. 2006).

22 In fact, Cayne has no presence in California at all. He is not a resident of California, nor  
23 does he maintain an office here. Further, he owns no real property in California, and has no  
24 significant business connection with the state. Cayne lives and works in New York. He votes  
25 and pays his taxes there. In short, Cayne is present in New York, not California—and he is not  
26 subject to general jurisdiction in California courts.

27 \_\_\_\_\_  
28 <sup>1</sup>This motion to dismiss for lack of personal jurisdiction is made in the alternative to a  
motion to dismiss for failure to state a claim under Rule 12(b)(6).

1 Second, plaintiff also cannot establish that Cayne is subject to specific jurisdiction in  
2 California. A court may exercise specific jurisdiction over a nonresident defendant only when the  
3 suit “arises out of” the defendant’s contacts with the forum, and the defendant “purposefully  
4 avails itself of the privilege of conducting activities in the forum” or “purposely directs” its  
5 conduct toward the forum. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th  
6 Cir. 797, 801-02.)

7 Cayne did not purposely avail himself of the privilege of conducting business in  
8 California, nor did he direct any conduct toward California from afar. In fact, plaintiff fails to  
9 even allege that Cayne did anything individually wrong, much less that he committed any wrongs  
10 in California or directed toward California. Although Cayne has been to California, these  
11 occasional trips have nothing to with plaintiff or his suit. Because plaintiff’s suit does not “arise  
12 out of” Cayne’s *de minimis* contacts with California, specific jurisdiction is likewise lacking.

13 Finally, even if the Court were to somehow find that this suit arises out of Cayne’s  
14 negligible contacts with California, exercise of jurisdiction over Cayne would be constitutionally  
15 unreasonable. Because plaintiff does not allege Cayne ever set foot in California, all the evidence  
16 of Cayne’s purported wrongs must be in New York, where he lives and works. Obviously, New  
17 York has a strong interest in exercising jurisdiction over allegedly wrongful acts committed  
18 entirely within its borders. The Due Process Clause forbids plaintiff from haling Cayne into a  
19 California court to defend a suit that has no apparent connection with California.

20 For all these reasons, the Court should grant this motion and dismiss plaintiff’s complaint  
21 as to Cayne for lack of personal jurisdiction.

## 22 II. STATEMENT OF FACTS

### 23 A. The Complaint’s Allegations.

24 On a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of  
25 establishing that jurisdiction exists and is appropriate. *Tuazon*, 433 F.3d 1163, 1168 (9th Cir.  
26 2006). Plaintiff’s complaint does nothing to help him meet this burden. The few references  
27 that are made to Cayne, or to one of the larger groups to which he allegedly belongs, in no way  
28 even suggest that a California court would have personal jurisdiction over Cayne.

1 The complaint’s focus rests not on Cayne, or on the other defendants, but instead on  
 2 plaintiff—a mortgage broker and the sole owner of Michael Scott Properties, Inc.—and his many  
 3 theories on mortgage lending. Compl., ¶ 2. Plaintiff claims he has been individually restrained  
 4 from his work “because of legal, fiduciary, ethical, and moral conflicts.” *Id.* at ¶ 4. Although not  
 5 entirely clear, the thrust of this theory is apparently that the defendants have collectively engaged  
 6 in various illegal or otherwise wrongful acts that have, for some reason, restrained plaintiff from  
 7 acting as a mortgage broker.<sup>2</sup> See *id.* at ¶¶ 3-5, 47, 52, 56, 60, 63.

8 The complaint identifies numerous defendants, including Cayne, who was the CEO and is  
 9 Chairman of the Board of Directors of Bear Stearns. Compl., ¶ 19a. Plaintiff does not allege  
 10 Cayne committed any acts in California, or directed any conduct toward California. In fact, apart  
 11 from identifying Cayne, the complaint never mentions him again individually.

12 Instead, the complaint lumps Cayne together with several executives of other financial  
 13 institution defendants, collectively referring to them as “Executives.”<sup>3</sup> Compl., ¶ 33. But the  
 14 complaint pays scant attention to the “Executives” as a discrete group either. Nowhere does  
 15 plaintiff allege that any of the executives committed any acts within California, directed any  
 16 conduct toward California, or entered into any contracts with California residents. See Compl.

17 In fact, not until the prayer for relief—some 23 pages after the group is defined—is the  
 18 group specifically mentioned again. Compl., Prayer, ¶¶ 3, 7. When they are mentioned, it is only  
 19 in plaintiff’s request that they “be disgorged by [sic] all unlawful profits,” and that they be  
 20 “immediately demote[d] or remove[d]” from their current positions. *Id.*

21 Similarly, the complaint hardly mentions Bear Stearns. Bear Stearns is an investment  
 22 bank. Compl., at ¶ 19. After being identified as such, Bear Stearns—like Cayne as an  
 23  
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25 <sup>2</sup>Additionally, plaintiff purchased securities that declined in value. Compl., at ¶¶ 6, 69.  
 26 Although he “realizes that he was not forced to buy the securities,” he nonetheless blames the  
 defendants for his losses. *Id.*

27 <sup>3</sup>Along with Cayne, the other persons in the “Executives” category are co-defendants  
 28 Kerry K. Killinger, Joseph W. Saunders, Angelo Mozillo, Ken Thompson, Sanford Weill, Charles  
 Prince, Henry Paulson, Patricia R. Callahan, and Herbert M. Sandler.” Compl., ¶ 33.

1 individual—is never referred to by name again. Rather, Bear Stearns is also treated as a member  
2 of a group, one of the so-called “Banker” defendants.<sup>4</sup> *Id.* at ¶ 33.

3 And the “Bankers” are also seldom mentioned. Plaintiff only alleges that the Bankers  
4 “ratified” or “endorsed or permitted” the wrongful conduct of others, not that they directly  
5 engaged in any wrongful conduct themselves. Compl., ¶¶ 47(A), 47(F), 47(G). Again, plaintiff  
6 does not allege that the “Bankers” purported ratifying, endorsing, and permitting occurred in  
7 California, or that it was directed toward California. See Compl. Further, plaintiff does not  
8 allege that the “Bankers” entered into any contracts with California residents. In fact, the only  
9 contracts mentioned in the complaint are the real-estate secured loans between the so-called  
10 “Lenders” and California residents. *Id.* at ¶ 48. Neither the Bankers nor the Executives are  
11 parties to these contracts.

12 **B. Facts Regarding Cayne’s Contacts with California.**

13 Obviously, plaintiff has not alleged any facts that would support personal jurisdiction of  
14 a California court over Cayne. Although plaintiff has not and cannot meet his burden, Cayne  
15 submits the following relevant facts that unequivocally demonstrate jurisdiction is lacking.

16 Cayne is domiciled in New York, New York. Declaration of James Cayne (“Cayne  
17 Decl.”), ¶ 4. He has lived in New York for more than forty years, and intends to stay there  
18 indefinitely. *Id.* Cayne files income taxes as a New York resident, and is registered to vote in  
19 New York. *Id.* at ¶ 5. Cayne is the Chairman of the Board of Directors of Bear Stearns, an  
20 investment bank incorporated under the laws of Delaware with its principal place of business in  
21 New York. Complaint at ¶ 19; Cayne Decl., ¶¶ 2-4. Cayne works primarily from his office at  
22 Bear Stearns headquarters in New York. *Id.* at ¶ 3.

23 Cayne owns no real property in California. Cayne Decl., ¶ 4. He does not maintain an  
24 office in California, and does not regularly conduct business here. *Id.* at ¶ 7. He rarely visits  
25 California. *Id.* He has never had any contact or communication with plaintiff or Michael Scott  
26 Properties, Inc., in California or elsewhere. *Id.* at ¶ 8.

27 \_\_\_\_\_  
28 <sup>4</sup>The other “Bankers” are co-defendants Citigroup and Goldman Sachs Group, Inc.,  
Compl., ¶ 33.

### III. LEGAL ARGUMENT

#### A. Standard of Review and Burden of Proof.

Plaintiff bears the burden of establishing that jurisdiction exists and is appropriate. *Tuazon*, 433 F.3d at 1168; *Data Disc, Inc. v. Sys. Tech. Assoc., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Plaintiff must make a prima facie showing of facts that would support jurisdiction. *Tuazon*, 433 F.3d at 1168; *Data Disc, Inc.*, 557 F.2d at 1285. If the written submissions raise issues of credibility or disputed questions of fact, this Court has the discretion to hold an evidentiary hearing to resolve those contested issues. *Data Disc, Inc.*, 557 F.2d at 1285. If it does so, plaintiff will be put to his full proof and must establish the jurisdictional facts by a preponderance of the evidence. *Id.*

In a federal question case, a court may exercise jurisdiction over a defendant “if a rule or statute authorizes it to do so and the exercise of jurisdiction comports with the constitutional requirement of due process.” *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1072 (9th Cir. 2001). Rule 4(k)(1)(A) of the Federal Rules of Civil Procedure provides that service of a summons establishes personal jurisdiction over a defendant “who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P., Rule 4(k)(1)(A). Because California’s long-arm jurisdictional statute is coextensive with federal due process requirements, the two standards coalesce. *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 590 (9th Cir. 1996); Cal. Code Civ. Proc., § 410.10.

#### B. Due Process Requires that Plaintiff Prove Cayne Has Sufficient Minimum Contacts With California, Not That Bear Stearns or Any Other Defendant Does.

The Due Process Clause limits a court’s exercise of jurisdiction over an out-of-state defendant. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 413-14 (1984). Absent one of the traditional bases for jurisdiction,<sup>5</sup> a defendant must be shown to have “certain minimum contacts with [the forum] such that the maintenance of the suit does not offend

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<sup>5</sup>The three traditional bases for personal jurisdiction are service within the forum state, domicile within the forum state, and consent. *Pennoyer v. Neff*, 95 U.S. 714, 722 (1877). None of traditional bases are present here—as the purported service of Cayne occurred in New York, Cayne is domiciled in New York, and Cayne does not consent to jurisdiction in this action.

1 ‘traditional notions of fair play and substantial justice.’” *International Shoe Co. v. Washington*,  
 2 326 U.S. 310, 316 (1945).

3 Due Process requires that “[e]ach defendant’s contacts with the forum state must be  
 4 assessed individually.” *Calder v. Jones*, 465 U.S. 783, 790 (1984); see also *Burger King Corp. v.*  
 5 *Rudzewicz*, 471 U.S. 462, 475 (1985). Thus, plaintiff cannot rely on the Court’s jurisdiction over  
 6 Bear Stearns or any other defendant to establish jurisdiction over Cayne. “[J]urisdiction over an  
 7 employee does automatically follow from jurisdiction over the corporation which employs  
 8 him...” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781, n. 13 (1984). That is, a “person’s  
 9 mere association with a corporation that causes injury in the forum state is not sufficient in itself  
 10 to permit that forum to assert jurisdiction over that person.” *Davis v. Metro Productions, Inc.* 885  
 11 F.2d 515, 520 (9th Cir. 1989); see also *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990)  
 12 (California court’s jurisdiction over Florida law partnership not sufficient to confer jurisdiction  
 13 over individual partners).<sup>6</sup>

14 Thus, though the Court may have jurisdiction over Bear Stearns because of its business  
 15 operations within the state, this has no effect on whether the Court has jurisdiction over Cayne,  
 16 Bear Stearns’ former CEO and current Chairman of the Board of Directors. To subject Cayne to  
 17 personal jurisdiction in California, due process requires that plaintiff establish that Cayne, as an  
 18 individual, had sufficient minimum contacts with the state.

19 “There are two types of personal jurisdiction: general and specific.” *Ziegler v. Indian*  
 20 *River County*, 64 F.3d 470, 473 (9th Cir. 1995). As explained below, Cayne is subject to neither.

21 **C. Cayne is Not Subject to General Jurisdiction in California.**

22 General jurisdiction is established only if a nonresident defendant’s contacts in the forum  
 23 state are so “substantial” or “continuous and systematic” that jurisdiction exists even when the  
 24 claim is unrelated to those contacts. *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 445-446

25  
 26 <sup>6</sup> See also *Weller v. Cromwell Oil Company*, 504 F.2d 927, 929 (6th Cir. 1974) (“It is  
 27 settled that jurisdiction over the individual officers of a corporation cannot be predicated merely  
 28 upon jurisdiction over the corporation.”); *Club Car, Inc. v. Club Car (Quebec) Import, Inc.*, 362  
 F.3d 775, 784 (11th Cir. 2004) (“A nonresident individual cannot be subject to personal  
 jurisdiction based solely upon acts in Georgia taken in his or her corporate capacity.”).

1 (1952); *Tuazon* 433 F.3d at 1171. “The standard for general jurisdiction is high; contacts with a  
2 state must ‘approximate physical presence.’” *Tuazon*, 433 F.3d at 1168, quoting *Bancroft &*  
3 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). “Put another way, a  
4 defendant must not only step through the door, it must also ‘[sit] down and [make] itself at  
5 home.’” *Tuazon*, 433 F.3d at 1168; [internal citations omitted].

6 Thus, even occasional business trips to the forum state, solicitation of business within the  
7 state, and regular telephone communication with the state, are all insufficient to establish general  
8 jurisdiction. *Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1331 (9th Cir. 1984). Such contacts  
9 “constitute doing business with California, but do not constitute doing business in California.”  
10 *Bancroft & Masters, Inc. v. Augusta National, Inc.*, 223 F.3d 1082, 1086; citing *Helicopteros*,  
11 466 U.S. at 418.

12 Here, Cayne’s contacts with California, to the extent there are any, are plainly not  
13 “continuous and systematic.” Cayne is not present in California. He is present in New York,  
14 where he is domiciled and employed. Cayne Decl., ¶ 4. Cayne does not maintain an office in  
15 California, nor does he own any real property here. Nor does he have any other significant  
16 business contacts or personal connection to California. *Id.* at ¶¶ 3-8. Again, the few passing  
17 references to Cayne in plaintiff’s complaint offer nothing to the contrary. For all these reasons,  
18 Cayne’s contacts with California are clearly insufficient to establish general jurisdiction.

19 **D. Cayne is Not Subject to Specific Jurisdiction in California.**

20 Cayne also is not subject to specific jurisdiction in California. A “court may exercise  
21 specific jurisdiction [over a nonresident defendant] where the suit ‘arises out of’ or is related to  
22 the defendant’s contacts with the forum and the defendant ‘purposefully avails itself of the  
23 privilege of conducting activities within the forum State, thus invoking the benefits and  
24 protections of its laws.’ ” *Tuazon*, 433 F.3d at 1168, quoting *Burger King Corp. v. Rudzewicz*,  
25 471 U.S. 462, 475 (1985).

26 The Ninth Circuit’s test for determining whether a nonresident defendant is subject to  
27 specific jurisdiction employs the following three prongs:  
28

- 1 (1) the non-resident defendant must purposefully direct his  
 2 activities or consummate some transaction with the forum or  
 3 resident thereof; or perform some act by which he  
 4 purposefully avails himself of the privilege of conducting  
 5 activities in the forum, thereby invoking the benefits and  
 6 protections of its laws;
- 7 (2) the claim must be one which arises out of or relates to the  
 8 defendant's forum-related activities; and
- 9 (3) the exercise of jurisdiction must comport with fair play and  
 10 substantial justice, i.e. it must be reasonable.

11 *Schwarzenegger*, 374 F.3d at 802; accord *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987).

12 Plaintiff bears the burden of establishing both of the first two prongs. *Sher v. Johnson*,  
 13 911 F.2d 1357, 1361 (9th Cir. 1990). "If the plaintiff succeeds in satisfying both of the first two  
 14 prongs, the burden then shifts to the defendant to 'present a compelling case' that the exercise of  
 15 jurisdiction would not be reasonable." *Schwarzenegger*, 374 F.3d at 802.

16 **1. There Is No Purposeful Availment or Direction Here.**

17 As the Ninth Circuit explained in *Schwarzenegger*, 374 F.3d at 802-03, the first prong of  
 18 the specific jurisdiction test itself requires dual analysis. If the plaintiff's claims sound in  
 19 contract, the test is "purposeful availment." *Id.* If, however, the plaintiff's claims sound in tort,  
 20 then the test is "purposeful direction." *Id.*

21 Here, it is unclear whether plaintiff's purported causes of action—which incorporate  
 22 numerous statutes, regulations, and supposed agreements—are meant to sound in tort or contract.  
 23 But whatever plaintiff's intent, he has not and cannot establish purposeful availment or  
 24 purposeful direction.

25 **a. No Purposeful Availment**

26 Under the Ninth Circuit's test, purposeful availment occurs when the defendant has  
 27 "performed some type of affirmative conduct which allows or promotes the transaction of  
 28 business in the forum state." *Sinatra v. National Inquirer, Inc.* 854 F.2d 1191, 1195 (9th Cir.  
 1988). "A showing that a defendant purposefully availed himself of the privilege of doing  
 business in a forum state typically consists of evidence of the defendant's actions in the forum,  
 such as executing or performing a contract there." *Schwarzenegger*, 374 F.3d at 802.

1 But the “existence of a contract with a resident of the forum state is insufficient by itself to  
2 create personal jurisdiction over the nonresident.” *Roth v. Garcia Marquez*, 942 F.2d 617, 621  
3 (9th Cir. 1991); *emphasis in original*; internal citations omitted. Rather, it is factors beyond the  
4 contract itself, such as “prior negotiations and contemplated future consequences, along with the  
5 terms of the contract and the parties’ actual course of dealing—that must be evaluated in  
6 determining whether the defendant purposefully established minimum contacts within the forum.”  
7 *Burger King Corp.*, 471 U.S. at 478 (citation omitted). In the Ninth Circuit, this “analysis turns  
8 upon whether the defendant’s contacts are attributable to ‘actions by the defendant *himself*,’ or  
9 conversely to the unilateral activity of another party.” *Roth*, 942 F.2d at 621.

10 Here, Cayne has done nothing to purposefully avail himself of the benefits of California  
11 law. Plaintiff does not even allege that Cayne (or any of the other “executives”) entered into any  
12 contracts with any California residents, let alone that Cayne negotiated such contracts in  
13 California or performed them here. Rather, plaintiff only alleges that the “Lenders” entered into  
14 various contracts with California borrowers. Compl., ¶ 48. Of course, Cayne, as a non-party to  
15 these contracts, has not availed himself of any privilege by some remote association with the  
16 “Lenders.” Cayne has no connection with California as an individual, and does not conduct  
17 business here as an individual. Cayne Decl., ¶¶ 7, 8. Therefore, he is not subject to suit here.

18 **b. No Purposeful Direction**

19 Nor has Cayne purposefully directed his conduct at California from afar. Purposeful  
20 direction is evaluated under a three-part “effects” test that originated in *Calder v. Jones*, 465 U.S.  
21 783 (1984). *Schwarzenegger*, 374 F.3d at 803. Under the *Calder* test, a defendant “whose only  
22 ‘contact’ with the forum state is the ‘purposeful direction’ of a foreign act having effect in the  
23 forum state” may be subject to the forum state’s specific personal jurisdiction if the defendant  
24 allegedly “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing  
25 harm that the defendant knows is likely to be suffered in the forum state.” *Dole Food Co., Inc. v.*  
26 *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

27 Purposeful direction does not occur merely because the defendant can foresee that harm  
28 from its activities may be suffered in the forum state. *Schwarzenegger*, 374 F.3d at 805. Rather,

1 the defendant must “expressly aim” its conduct at the forum state. *Bancroft & Masters*, 223 F.3d  
2 at 1087. This requirement is satisfied when the defendant has “engaged in wrongful conduct  
3 targeted at a plaintiff whom the defendant knows to be a resident of a forum state.” *Myers*, 238  
4 F.3d at 1072.

5 Again, plaintiff does not allege Cayne committed any act within California, so presumably  
6 he seeks to invoke jurisdiction over Cayne under the *Calder* “effects” test. But plaintiff has  
7 identified no intentional acts of Cayne at all, much less any expressly aimed at plaintiff or any  
8 other California resident. It cannot just be presumed that Cayne, a New York resident who has  
9 only been to California on a few occasions, expressly aimed some unidentified conduct toward  
10 California, thereby subjecting him to suit in a California court. Obviously, plaintiff has come  
11 nowhere close to meeting his burden, and Cayne has not purposefully directed himself toward  
12 California.

13 **2. Plaintiff’s Claim Does Not Arise From Cayne’s Forum-Related**  
14 **Activities.**

15 “The second requirement for specific jurisdiction is that the contacts constituting  
16 purposeful availment must be the ones that give rise to the current suit.” *Bancroft & Masters*,  
17 *Inc.*, 223 F.3d at 1088. The plaintiff must establish that “but for” the defendant’s contacts with  
18 California, the claim would not have arisen. *Ziegler*, 64 F.3d at 474.

19 Here, plaintiff cannot meet even this liberal standard. Again, plaintiff has not identified  
20 any acts of Cayne as an individual, so the Court need not undertake any cause-and-effect analysis.  
21 And the only contacts Cayne did have with California—those identified in the Cayne  
22 Declaration—have nothing to do with plaintiff’s claims. Cayne has never met plaintiff, is not a  
23 party to any contract with him, has never conducted business with him, and has never directed  
24 any conduct toward him. Hence, whatever negligible contacts Cayne might have with California,  
25 this suit does not “arise out of” those contacts, and jurisdiction is therefore lacking.

26 Accordingly, plaintiff cannot satisfy either of the specific jurisdiction test’s first two  
27 prongs, and the court should dismiss this action against Cayne.

28

1                   **3. Exercise Of Jurisdiction Would Not Be Reasonable.**

2           Even of plaintiff could satisfy the specific jurisdiction test’s first two prongs, which he  
3 cannot, the Court should still dismiss the action against Cayne as an unreasonable exercise of  
4 jurisdiction under that test’s third prong. Under Ninth Circuit law, a district court should balance  
5 the following seven factors in deciding whether exercise of personal jurisdiction is reasonable:

6                   (1) the extent of the defendants’ purposeful interjection into the  
7 forum state’s affairs; (2) the burden on the defendant of defending  
8 in the forum; (3) the extent of conflict with the sovereignty of the  
9 defendants’ state; (4) the forum state’s interest in adjudicating the  
10 dispute; (5) the most efficient judicial resolution of the controversy;  
11 (6) the importance of the forum to the plaintiff’s interest in  
12 convenient and effective relief; and (7) the existence of an  
13 alternative forum.

14 *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857, 866-67 (9th Cir. 2003).

15           As shown above, Cayne’s contacts with California were and are minimal, so the first of  
16 these seven factors weighs against exercise of jurisdiction here. *Insurance Company of North  
17 America v. Marina Salina Cruz*, 649 F.2d 1266, 1271 (9th Cir.1981) (“[t]he smaller the element  
18 of purposeful interjection, the less is jurisdiction to be anticipated and the less reasonable is its  
19 exercise.”)

20           Defending this action in California would significantly burden Cayne. Cayne lives and  
21 works in New York, where he spends substantial amounts of time attending to his duties as  
22 Chairman of the Board of Directors of Bear Stearns. Assuming that plaintiff would have similar  
23 difficulty traveling to New York to prosecute his case there, this factor still weighs in Cayne’s  
24 favor: “where burdens are equal, this factor tips in favor of the defendants because the law of  
25 personal jurisdiction is ‘primarily concerned with the defendant’s burden.’” *Ziegler*, 64 F.3d 470,  
26 citing *Terracom v. Valley National Bank*, 49 F.3d 555, 561 (9th Cir. 1995).

27           The third and fourth factors cancel each other out. Although California may have an  
28 interest in providing a forum for plaintiff’s so-called claims, all of Cayne’s alleged wrongful  
acts—whatever they might be—must have been committed in New York. And New York has a  
“special interest in exercising jurisdiction over those who have committed tortious acts within the  
state.” *Data Disc, Inc.*, 557 F.2d at 1288.

