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IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL A. TRICARICHI, Appellant, v. COOPERATIVE RABOBANK, U.A. UTRECHT-AMERICA FINANCE CO.; AND SEYFARTH SHAW LLP, Respondents.	Supreme Court No. 73175 District Case No. A735910 **DOCKETING STATEMENT CIVIL APPEALS**

GENERAL INFORMATION

All appellants not in proper person must complete the docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107, Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Judicial District Court, State of Nevada

Department: XV — County: Clark

Judge: Joe Hardy — District Ct. Docket No. A735910

2. **Attorney filing this docketing statement:**

Attorney:	Mark A. Hutchison Michael K. Wall Todd W. Prall	Telephone: (702) 385-2500 Fax: (702) 385-2086 Email: mhutchison@hutchlegal.com	
Firm:	Hutchison & Steffen, LLC	Email: mwall@hutchlegal.com	
Address:	10080 W. Alta Dr., Suite 200, Las Vegas, Nevada 89145	Email: tprall@hutchlegal.com	

AND

Attorney:	Scott F. Hessell (Pro Hac Vice) Thomas D. Brooks (Pro Hac Vice)	Telephone: (312) 641-3200 Fax: (312) 641-6492	
Firm:	Sperling & Slater, P.C.	Email: shessell@sperling-law.com	
Address:	55 West Monroe, Ste. 3200 Chicago, IL 60603	Email: tdbrooks@sperling-law.com	
Client(s):	Michael Tricarichi, Appellant		

If this is a joint statement by multiple applicants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement

3. **Attorney(s) representing respondent(s):**

Attorney:	Dan R. Waite	Telephone:	(702) 949-8200
Firm:	Lewis Roca Rothgerer Christie LLP	Fax:	(702) 949-9398
Address:	3993 Howard Hughes Pkwy., #600 Las Vegas, NV 89169	Email:	dwaite@LLRC.com

AND

Attorney:	Chris Paparella (Pro Hac Vice)	Telephone:	(212)837-6644
Firm:	Hughes Hubbard & Reed, LLP	Fax:	(212)299-6644
Address:	One Battery Park Plaza New York, NY 10004-1482	Email:	chris.paparella@hugheshubbard.com
Client(s)	Cooperatieve Rabobank, U.S. and Utrecht-America Finance Co.		

Attorney:	Steve Morris Ryan M. Lower Morris Law Group	Telephone: Fax: Email: sm@morrislawgroup.com	(702) 4749400 (702) 474-9422
Address:	300 S. Fourth Street, #900 Las Vegas, NV 89101	Email:	rml@morrislawgroup.com
Client(s):	Seyfarth Shaw LLP		

4. **Nature of disposition below (check all that apply):**

Judgment after bench trial	Grant/Denial of NRCP 60(b) relief
Judgment after jury verdict	Grant/Denial of Injunction
Summary Judgment	Grant/Denial of declaratory relief
Default Judgment	Review of agency determination

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Dismissal
XX Lack of Personal Jurisdiction
Failure to State a Claim
Failure to Prosecute
Other (specify):

Divorce Decree
Original Modification
Other disposition (specify):

5. **Does this appeal raise issues concerning any of the following:** NO

Child custody(visitation rights only)
Venue
Termination of parental rights

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. **Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiff/appellant Michael Tricarichi, a Nevada resident and sole shareholder of a cellular telephone business, sold all his shares in that company to a third party, Fortrend, which represented, among other things, that the transaction would have certain legitimate tax benefits. Unbeknownst to Mr. Tricarichi, those representations were false. Defendant/appellee Coöperatieve Rabobank U.A. ("Rabobank") and its affiliate, defendant/appellee Utrecht-America Finance Co. ("Utrecht"), participated in the transaction by loaning Fortrend the lion's share of the purchase price and by serving as the key conduit for the funds that changed hands at closing, in return for a substantial fee - all along knowing that the transaction was actually improper for tax purposes. Defendant/appellee Seyfarth Shaw LLP ("Seyfarth"), a law firm, participated in the transaction by providing Fortrend with a legal opinion blessing steps that Fortrend would take but that Seyfarth knew to be illegitimate for tax purposes - also in return for a substantial fee. As a result of defendants' actions, plaintiff was forced to defend himself before the IRS and in Tax Court, and found liable for millions of dollars in back taxes, penalties and interest. As alleged in plaintiff's complaint, these defendants' actions constitute aiding and abetting fraud, conspiracy and violations of Nevada's racketeering statute.

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Rabobank, Utrecht and Seyfarth all moved to dismiss for lack of personal jurisdiction. The district court granted those motions and certified the orders as final pursuant to NRCP 54(b).

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary:

1. Whether defendants who purposefully reached out to, interacted with and injured a Nevada resident in Nevada are subject to the specific personal jurisdiction of the Nevada courts in a case brought by the Nevada resident arising from those actions.

2. Whether defendants who participated in a civil conspiracy that targeted, defrauded and injured a Nevada resident are subject to the specific personal jurisdiction of the Nevada courts in a case brought by the Nevada resident arising from that conspiracy.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A **X** Yes No

If not, explain

12. **Other issues.** Does this appeal involve any of the following: No.

Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
An issue arising under the United States and/or Nevada Constitutions
A substantial issue of first-impression
An issue of public policy
An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
A ballot question
If so, explain

13. **Assignment to the Court of appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstances(s) that warrant retaining the case, and include an explanation of their importance or significance:

NRAP 17 does not address whether an order dismissing a claim on personal jurisdictional grounds should be addressed by the Supreme Court of the Court of

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Appeals. However, the amount in controversy and the unusual issues in this case suggest that this case should be retained by the Supreme Court.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

15. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice? No

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from:**

The orders appealed from were entered on February 8, 2017, and December 23, 2016.

On May 1, 2017, the district court entered an order certifying the above-orders as final pursuant to NRCP 54(b).

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. **Date written notice of entry of judgment or order served:** May 2, 2017

(a) Was service by delivery _____ or by mail/electronic/fax ____X____.

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52 (b), or 59,**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b) Date of filing_____
NRCP 52(b) Date of filing_____
NRCP 59 Date of filing

Note: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. ***See*** **AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion: _____

(c) Date of written notice of entry of order resolving motion served: _____

Was service by delivery _____ or by mail _____(specify).

19. **Date notice of appeal was filed:** May 25, 2017

If more than one party has appealed from the judgment or order, list date each notice of

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appeal was filed and identify by name the party filing the notice of appeal: N/A

20. **Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other:**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) **XX**	NRS 38.205
NRAP 3(A)(b)(2)	NRS 233B.150
NRAP 3A(b)(3)	NRS 703.376
XX Other (specify)	NRCP54(b)

Explain how each authority provides a basis for appeal from the judgment or order:

Orders certified as final are appealable under final judgment rule.

22. **List all parties involved in the action in the district court:**

(a) Parties:

Michael A. Tricarichi	Plaintiff
Pricewaterhouse Coopers, LLP, Cooperatieve Rabobank, U.A., Utrecht-America Finance Co., Seyfarth Shaw LLP and Graham R. Taylor	Defendants

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal *e.g.*, formally dismissed, not served, or other:

23. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

The underlying claims are for aiding and abetting fraud, conspiracy and violations of Nevada's racketeering statute. These claims have not yet been resolved on their merits. They have been dismissed as to defendants Rabobank, Utrecht and Seyfarth on February 8, 2017, and December 23, 2016, for lack of personal jurisdiction. This appeal concerns only personal jurisdiction issues.

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24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below:**

Yes _____ No ___X___

25. **If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

All claims remain against other defendants, but all claims against defendants Rabobank, Utrecht and Seyfarth have been dismissed for lack of personal jurisdiction.

(b) Specify the parties remaining below:

Appellants, Pricewaterhouse Coopers, LLP, and Graham R. Taylor

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

Yes __X____ No _____

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:

Yes __X___ No _____

26. **If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):**

27. **Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

///

///

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Name of Appellant: Michael Tricarichi

Name of counsel of record: Michael K. Wall

Date: June 23, 2017

Signature of counsel of record

Clark County, Nevada
State and county where signed

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC and that on this 23rd day of June, 2017, I caused the document entitled **DOCKETING STATEMENT** to be served on the following by Electronic Service to:

Dan Waite
Ryan Lower
Steve Morris

Service by regular U.S. Mail as follows:

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Attorneys for Respondents Cooperatieve Rabobank, U.S. and Utrecht-America Finance Co.

An employee of HUTCHISON & STEFFEN, LLC

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04/29/2016 02:24:00 PM

CLERK OF THE COURT

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

A-16-735910-B

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSECOOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW LLP and GRAHAM R. TAYLOR, Defendants.	CASE NO. DEPT NO. XV **COMPLAINT** BUSINESS COURT MATTER JURY TRIAL DEMANDED EXEMPT FROM ARBITRATION

NATURE OF THE CASE

1. Plaintiff, Michael Tricarichi, built a cellular telephone business from the ground up and preserved that business through years of litigation necessitated by the illegal trade practices of several larger, competing cellular providers. After those competitors were found liable for their anticompetitive actions, Mr. Tricarichi and his company, Westside Cellular, resolved the damages owed for those actions via a substantial settlement. As part of the settlement, Mr. Tricarichi's company exited the cellular phone business.

2. Faced with the question of what to do next, Mr. Tricarichi considered a number of options, including investing in other ventures via Westside, of which he was the sole shareholder. During this process, Mr. Tricarichi met with representatives of another company, Fortrend International, LLC ("Fortrend"), which offered to buy all his shares in Westside and employ Westside in Fortrend's debt-collection business. Fortrend represented, among other things, that Westside's remaining assets would facilitate this business, and that it would employ Westside's tax liabilities to legitimately offset tax deductions associated with the debt-collection business. As a result, Fortrend said, Mr. Tricarichi would realize a greater net return on his investment in Westside than would otherwise be the case if Westside were liquidated. Fortrend assured Mr. Tricarichi that the proposed transaction, including its tax aspect, was legitimate and in accordance with the tax laws. Unbeknownst to Plaintiff, Fortrend's representations and assurances were knowingly false.

3. Mr. Tricarichi retained a nationally recognized accounting firm with expertise in tax matters – Defendant PricewaterhouseCoopers LLP ("PwC") – to review the proposed transaction. PwC, via its senior partner Richard Stovsky and tax experts in its National Tax Office, did so, ultimately advising Mr. Tricarichi that the proposed transaction was legitimate for tax purposes, and that Mr. Tricarichi had no ongoing exposure related to Westside once the

transaction with Fortrend was completed. Unbeknownst to Mr. Tricarichi at the time, PwC's advice in this regard was, at minimum, grossly negligent.

4. Defendant Coöperatieve Rabobank U.A. ("Rabobank") and its affiliate Utrecht-America Finance Co. ("Utrecht") facilitated the transaction by loaning Fortrend the lion's share of the purchase price and by serving as the key conduit for the funds that changed hands at closing, in return for a substantial fee – all along knowing that the transaction was improper for tax purposes.

5. Defendants Seyfarth Shaw LLP ("Seyfarth") and Graham R. Taylor – a law firm and a now-disbarred lawyer who was a Seyfarth partner at the time – unbeknownst to Plaintiff until years later, further facilitated the transaction by providing Fortrend with a legal opinion blessing steps that Fortrend would take but that Seyfarth and Taylor actually knew to be illegitimate for tax purposes – also in return for a substantial fee.

6. Despite their representations and advice to the contrary to Mr. Tricarichi, Fortrend knew and PwC should have known that the Fortrend transaction was illegitimate for tax purposes, and would result in substantial tax and penalty exposure to Mr. Tricarichi personally. Defendants Rabobank, Utrecht, Seyfarth and Taylor knew the same thing, but they failed to disclose this material information to Mr. Tricarichi and otherwise facilitated the transaction that would result in harm to him.

7. As a result of Defendants' actions, Plaintiff was forced to defend himself before the IRS and in the U.S. Tax Court, and was found liable in October 2015 for millions of dollars in back taxes, penalties and interest, which Fortrend did not pay.

8. As further set forth below, Defendants' actions constitute gross negligence, the aiding and abetting of fraud, conspiracy and violations of the Nevada racketeering statute. Defendants should be held to account for these actions and for the tens of millions of dollars in damages that Mr. Tricarichi has suffered as a result.

PARTIES

9. Plaintiff, Michael A. Tricarichi, is an individual who has resided since May 2003 in the City of Las Vegas, Clark County, Nevada. Plaintiff was previously the president and sole shareholder of a company that provided telecommunications services. As a result of Defendants' improper actions in connection with the purchase of Plaintiff's shares in that company, Plaintiff has suffered millions of dollars in liabilities that he otherwise would not have faced.

10. Defendant PricewaterhouseCoopers LLP ("PwC") is a limited liability partnership organized and existing under the law of Delaware, and is registered with the Nevada Secretary of State to do business in the State of Nevada. PwC engages in the business of tax and business consulting and has maintained a Nevada CPA License (PART-0663) since at least 1990. PwC has offices and is doing business in the City of Las Vegas, Clark County, Nevada and PwC has partners who reside in the State of Nevada. At all times material to this Complaint, PwC held itself out to the public, including to the Plaintiff, as having specialized knowledge and skill possessed by a specialist in the field of income taxes, tax savings transactions, and business tax consulting.

11. Defendant Coöperatieve Rabobank U.A. ("Rabobank"), formerly known as Coöperatieve Centrale Raiffeisen-Boerenleenbank, B.A., is a bank with principal branches in New York, New York and Utrecht, Netherlands. Rabobank is organized as a Dutch cooperative and regulated in the U.S. by the Federal Reserve Bank of New York and other agencies. Rabobank did business with Plaintiff in Nevada via its New York branch. Rabobank also has other offices throughout the world and the United States and does business in the U.S. and, on information and belief, Nevada via a number of branches, divisions and affiliates, including Defendant Utrecht-America Finance Co. During the period relevant to this complaint, Rabobank's business included financing and facilitating, via such

units, certain tax savings transactions promoted by third parties including Fortrend International, LLC and Midcoast Credit Corp. Rabobank purposefully did business with Plaintiff in Las Vegas, Clark County, Nevada in connection with such a transaction, including entering a deposit account agreement with Plaintiff in Las Vegas.

12. Defendant Utrecht-America Finance Co. ("Utrecht"), a wholly-owned subsidiary of Rabobank, is a Delaware corporation with its principal place of business in New York. Utrecht was, on information and belief, a subsidiary via which Rabobank financed transactions promoted by Fortrend, Midcoast and related entities, and financed the transaction into which Plaintiff was drawn. Utrecht purposefully directed its activities complained of herein toward and established contacts with Las Vegas, Clark County, Nevada in participating in the transaction described below.

13. Defendant Seyfarth Shaw LLP ("Seyfarth") is a law firm with its principal office in Chicago, Illinois. Seyfarth has offices and is doing business in a number of different cities and states including San Francisco, California, and, on information and belief, Nevada. At least one Seyfarth attorney maintains a Nevada bar license and on information and belief Seyfarth partners reside and/or do business in Nevada. During the period relevant to this complaint, Seyfarth's business included providing opinion letters that facilitated certain tax savings transactions promoted by third parties including Fortrend International, LLC.

14. Defendant Graham R. Taylor ("Taylor") is a disbarred lawyer residing, on information and belief, in Tiburon, California. During the period relevant to this complaint, Taylor was a partner at and agent of Seyfarth whose business included providing opinion letters that facilitated certain tax savings transactions promoted by third parties such as Fortrend International, LLC, including a transaction promoted to Plaintiff. After his involvement in this transaction, Taylor pleaded guilty in Utah federal court to conspiring to commit tax fraud, and was subsequently disbarred.

THIRD PARTIES

15. Fortrend International, LLC ("Fortrend") is, on information and belief, a defunct Delaware limited liability company that had its principal place of business in San Francisco, California. During the period relevant to this complaint, Fortrend and its affiliates were engaged in the promotion of certain tax-shelter transactions, including the transaction promoted to Plaintiff.

16. Timothy H. Vu (f/k/a Timothy H. Conn, a/k/a Timothy Conn Vu) ("Conn Vu") is an individual residing in San Francisco, California, who has held himself out as a tax practitioner. In or about March 2003, Conn Vu began working with Fortrend as its agent to promote and facilitate certain tax-shelter transactions, including the transaction promoted to Plaintiff. On information and belief, Conn Vu managed various companies acquired by Fortrend, which he and other co-promoters used to facilitate tax-avoidance transactions. These companies included Westside Cellular. Conn Vu is currently the subject of a federal criminal investigation in New York with respect to such conduct, and it is anticipated that he will be indicted.

17. John P. McNabola ("McNabola") is, on information and belief, an accountant residing is Dublin, Ireland. The U.S. Department of Justice, based on its investigation, has named McNabola as a co-promoter, along with Conn Vu, Taylor and others, of certain unlawful Midco and "DAD" tax shelter transactions during the period 2003-2010. McNabola was an agent of Fortrend and the president of the Fortrend affiliates involved in defrauding Plaintiff.

18. Midcoast Credit Corp. ("Midcoast") is, on information and belief, a defunct Florida corporation that had its principal place of business in West Palm Beach, Florida. During the period relevant to this complaint, Midcoast and its affiliates were engaged in the promotion of certain tax-shelter transactions, including a transaction promoted to Plaintiff. In October 2013, the principals of Midcoast, along with other individuals, were indicted and charged with

criminal conspiracy to commit fraud and other offenses for allegedly designing and implementing fraudulent tax schemes.

19. John E. Rogers ("Rogers"), an attorney residing, on information and belief, in Kenilworth, Illinois, was a Seyfarth partner and agent from July 2003 until he was forced to resign in May 2008. In early 2003, shortly before he joined Seyfarth, Rogers conceived of and created an illegal tax shelter that was subsequently used to facilitate the Fortrend transaction with Plaintiff and, on information and belief, numerous other such transactions. In 2010, the U.S. Department of Justice sought to enjoin Rogers from engaging in such fraudulent conduct, with Rogers agreeing to a permanent injunction in September 2011.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over this matter pursuant to Art. 6, Sec. 6 of the Nevada Constitution.

21. This Court has personal jurisdiction over Defendants by virtue of their ongoing contacts with the state of Nevada, and/or because they purposefully availed themselves of, or directed their activities toward, the forum state of Nevada by participating in, substantially assisting and/or conspiring with Fortrend and other parties to advance the transaction that was promoted to and targeted Plaintiff, a Nevada resident, with Plaintiff's injuries arising in Nevada as a result, as set forth below.

22. Venue is proper before this Court because the Defendants, or one of them, reside in this District, and because the claims at issue arose in substantial part in this District.

23. This matter is properly brought as a business matter in business court pursuant to EDCR 1.61(a)(ii)-(iii).

FACTUAL BACKGROUND

Midco Transactions Generally

24. "Midco" transactions, a type of abusive tax shelter, were widely promoted during the late 1990s and early 2000s. The IRS has listed Midco transactions as "reportable transactions" for federal income tax purposes, meaning that the IRS considers them, and substantially similar transactions, to be improper tax-avoidance mechanisms. Fortrend and Midcoast were leading promoters of Midco-type transactions, with both companies being involved in numerous such transactions that were, years later, accordingly rejected by the tax courts.

25. Midco-type transactions were generally promoted to shareholders of closely held C corporations that had incurred large taxable gains. Promoters of Midco transactions targeted such shareholders and offered a purported solution to "double taxation," that is, the taxation of gains at both the corporate and individual shareholder levels. Generally speaking, Midco transactions proceeded as follows: First, an "intermediary company," or "midco," affiliated with the promoter – typically a shell company, often organized offshore – would purchase the shares of the target company, and thus its tax liability. After acquiring the shares and this tax liability, the intermediary company would engage in a second step that was supposed to offset the target's realized gains and eliminate the corporate-level tax. This second step, unbeknownst to the selling shareholder(s), would itself constitute an improper tax-avoidance maneuver, frequently a "distressed asset/debt," or "DAD," tax shelter (discussed in more detail below). The promoter received cash via the transaction, and represented to the target company's shareholders that they would legitimately net more for their shares than they otherwise would absent the intermediary transaction.

26. As was the case with Plaintiff's transaction, however, such representations often proved, years later, to be false. As set forth below, Plaintiff (and others like him)

subsequently found himself "holding the bag" after the transaction that was promoted to him by Fortrend and Midcoast; facilitated by Defendants Rabobank, Utrecht, Seyfarth and Taylor; and blessed by Defendant PwC, resulted in substantial tax liabilities and penalties for Plaintiff personally.

The Midco Transaction Into Which Plaintiff Was Drawn

27. Prior to 2003, Plaintiff was the president and sole shareholder of Westside Cellular, Inc. ("Westside"). From 1991 through 2003, Westside undertook various telecommunication activities in Ohio, including the resale of cellular phone service. In particular, beginning in 1991, Westside purchased network access from major cellular service providers in order to serve its customers. Plaintiff, as Westside's president, soon came to believe, however, that certain of these providers were discriminating against Westside. So, in 1993 he engaged the Cleveland law firm of Hahn Loeser & Parks, LLP ("Hahn Loeser"), to file a complaint with the Public Utilities Commission of Ohio ("PUCO") against certain of these providers, alleging anticompetitive trade practices. Westside's survival hung in the balance.

28. The PUCO ruled in Westside's favor on the liability issue, and the Ohio Supreme Court ultimately affirmed that decision. In early 2003 Westside returned to the lower court to commence the damages phase of the litigation. Not long thereafter a settlement was reached, pursuant to which Westside ultimately received, during April and May 2003, total settlement proceeds of $65,050,141. In exchange, Westside was required to terminate its business as a retail provider of cell phone service and to end all service to its customers in June 2003 – effectively relinquishing its assets in return for the settlement proceeds. From the approximately $65 million settlement, Westside would pay $25 million in legal fees and employee compensation and severance, leaving approximately $40 million in settlement proceeds.

29. Anticipating the settlement, Plaintiff asked Hahn Loeser to look into tax matters related to the anticipated settlement. Because Westside was a C Corporation, there was a concern that the settlement proceeds could be subject to double taxation. Hahn Loeser had prior experience with Midcoast and thought Midcoast might assist Plaintiff in this regard. So, a meeting between Plaintiff and Midcoast representatives was arranged for February 19, 2003.

30. At the February 19 meeting, Midcoast's representatives (including Donald Stevenson and Louis Bernstein) explained to Plaintiff that it was in the debt collection business and that, as part of its business model, it purchased companies in postures like Westside's.

31. Thereafter, Plaintiff was also introduced to Fortrend and received an informational letter from Fortrend's Steven Block. Plaintiff and his representatives subsequently had multiple calls and at least one face-to-face meeting with Fortrend representatives, including Block, in or about March/April 2003. Like Midcoast, Fortrend claimed that it was involved in the distressed debt receivables business and that it wanted to purchase Plaintiff's Westside stock as part of this business.

32. Midcoast and Fortrend each expressed interest in acquiring Plaintiff's Westside stock, and each made an offer proposing essentially the same transactional structure: An intermediary company would borrow money to purchase the stock. After the sale closed, the intermediary company would merge into Westside, and Fortrend / Midcoast would employ Westside in its distressed-debt collection business. The purchaser would fund its operations with Westside's remaining cash (Fortrend represented that financing for its distressed-debt recovery business was otherwise difficult to obtain), and employ Westside's tax liabilities to legitimately offset tax deductions associated with this business.

33. Fortrend and Midcoast represented to Plaintiff that the transactions they were each proposing would result in legitimate tax benefits and thus a greater net return to Plaintiff than he would otherwise realize. These representations included the assurance that the acquiring party had successfully undertaken numerous other transactions like the one being proposed to Plaintiff and that such transactions were proper under the tax laws. Neither party told Plaintiff that the IRS was scrutinizing and challenging similar transactions as improper tax shelters.

34. Absent Defendants' improper actions, Plaintiff would have left the settlement proceeds in Westside, paid the corporate-level tax and invested in other business ventures through Westside, thereby avoiding any shareholder-level tax on a distribution from Westside.

35. Because Plaintiff thought Midcoast and Fortrend were competitors, he began negotiating with both in the hope of stirring up a bidding war. Rather than continue to compete, though, Midcoast and Fortrend secretly agreed that Midcoast would step away from the transaction in exchange for a kickback of $1,180,000. As a result of this bid-rigging, Midcoast's final offer was intentionally unattractive, and Plaintiff chose to proceed with Fortrend.

36. Based on the representations made by Fortrend, Plaintiff was inclined to proceed with the Fortrend transaction. But, not wanting to run afoul of the tax laws, Plaintiff engaged a nationally regarded accounting firm, Defendant PwC, to independently evaluate the bids and proposed transactions for his Westside stock, verify that they and the purchasers were legitimate, and evaluate any potential tax issues.

37. On or about April 25, 2003, Plaintiff signed a letter agreement (the "PwC Engagement Letter") whereby PwC agreed to provide such tax research and evaluation services relating to the proposed sale of Westside's stock. The PwC Engagement Letter specifically noted that PwC had an obligation to determine whether Plaintiff would be

participating in a reportable transaction as defined by the IRS. The PwC Engagement Letter further noted that it would work with Plaintiff to avoid the imposition of any tax penalty. Plaintiff is unsophisticated in tax matters and was relying on PwC's expertise in deciding whether to proceed with the transaction.

38. Unbeknownst to Plaintiff, PwC had on at least one prior occasion brought Fortrend to the table to facilitate a Midco transaction that PwC itself had advocated. In particular, in late 1999, PwC advocated that a Midco transaction be used in the purchase of the Bishop Group Ltd. ("Bishop") by PwC's client Midcoast Energy Resources, Inc.; PwC approached Fortrend to serve as an intermediary; and a Fortrend affiliate in fact served as an intermediary, purchasing the Bishop stock in a Midco transaction that PwC helped negotiate. As it did in Mr. Tricarichi's case, Rabobank also facilitated the Bishop transaction by loaning Fortrend the purchase price and serving as the conduit through which funds changed hands at closing, all in return for a substantial fee. PwC disclosed none of this to Plaintiff. The Bishop Midco transaction was audited by the IRS starting in late 2003 (but before Plaintiff had reported the Westside stock sale on any tax returns), found deficient by the IRS in 2004, and confirmed by the courts in 2008 and 2009 to be an illegal tax shelter.

39. Consistent with the Engagement Letter, during the period April-August 2003, a team of PwC tax professionals, including Rich Stovsky, Timothy Lohnes and Don Rocen, set out to examine and advise Plaintiff regarding the transactions proposed by Fortrend and Midcoast. PwC personnel put between 150 and 200 hours into this effort, for which PwC charged approximately $48,000 in fees. PwC participated in various calls with the parties and/or their representatives, reviewed transaction documentation, and undertook research. PwC understood, among other things, that Fortrend would borrow a substantial sum from Rabobank in order to finance the transaction; that Fortrend intended to employ Westside's

tax liability to offset gains and deductions associated with high basis / low value assets; and that Plaintiff was relying on Fortrend to satisfy Westside's tax obligations.

40. PwC further understood but failed to properly advise Plaintiff that IRS Notice 2001-16, which had been issued in January 2001, applied to Midco transactions described therein and to "substantially similar" transactions; that the term "substantially similar" was broadly construed in this context; and that the proposed transaction and its tax implications posed risk for Plaintiff.

41. On or about July 22, 2003, Fortrend (via an affiliate) sent Plaintiff a letter of intent, signed by Conn Vu, regarding the proposed purchase of Plaintiff's Westside stock. The letter of intent proposed, among other things, that Fortrend would pay $34.9 million (later reduced slightly to $34.6 million) for the stock. The parties proceeded to discuss and negotiate a proposed stock purchase agreement, with PwC reviewing the terms thereof as part of its engagement.

42. Fortrend would use its affiliate Nob Hill, Inc. ("Nob Hill"), of which McNabola was the president, as the intermediary company to purchase the Westside stock. Nob Hill's sole shareholder was Millennium Recovery Fund, LLC, a Fortrend affiliate formed in the Cayman Islands. In the stock purchase agreement, which McNabola signed, Nob Hill represented that Westside would remain in existence for at least five years after the closing and "at all times be engaged in an active trade or business." Nob Hill also provided purported tax warranties. The agreement represented that Nob Hill would "cause ... [Westside] to satisfy fully all United States ... taxes, penalties and interest required to be paid by ... [Westside] attributable to income earned during the [2003] tax year." Nob Hill agreed to indemnify Plaintiff in the event of liability arising from breach of its representation to satisfy Westside's 2003 tax liability, and represented that it had sufficient assets to cover this indemnification obligation. Nob Hill

further warranted that it had no intention of causing Westside to engage in an IRS reportable transaction.

43. Plaintiff relied on these material representations and warranties, as well as PwC's evaluation and assessment of them, in deciding to proceed with the Fortrend transaction. Unbeknownst to Plaintiff, however, these representations and warranties were false when made; and they were not subsequently fulfilled, as PwC knew or should have known that they would not be. Although the stock purchase agreement contained covenants by the purchaser to pay Westside's taxes, and despite the fact that the agreement contained an indemnification provision in that regard, such provisions were without any value because, upon information and belief, the indemnitor/purchaser had insufficient assets with which to satisfy them when they were made and going forward, and simply intended to misappropriate Westside's funds, offset its tax liabilities with a bogus deduction via a reportable transaction, and conduct no business of substance.

44. Defendants Rabobank and Utrecht provided Fortrend financing for the vast majority of the purchase price, and Rabobank was the key conduit for the funds that changed hands in order to close the transaction. Without such participation and substantial assistance by Rabobank and Utrecht, Fortrend would not have been able to proceed with the transaction. Rabobank frequently partnered with Fortrend in executing Midco deals, and had done dozens of transactions with Fortrend prior to Plaintiff's transaction.

45. On information and belief, from 1996 to 2003, Fortrend promoted almost one hundred Midco transactions, and worked closely with Rabobank to obtain financing for many of those transactions. In Plaintiff's case, of the $34.6 million agreed purchase price for Westside's stock, $29.9 million would come from Rabobank, via Utrecht. (The remainder was loaned to Nob Hill by another Fortrend affiliate, Moffat.) The loan and the closing were

structured in such a way that Defendants Rabobank and Utrecht considered that they really bore no risk of non-payment.

46. On August 13, 2003, Fortrend asked Chris Kortlandt at Rabobank for a $29.9 million short-term loan, setting forth how those funds would remain in and be transferred through accounts at Rabobank that the parties would open, before being quickly repaid to the bank. Kortlandt at Rabobank subsequently requested and received internal approval of this loan, with Nob Hill as the nominal borrower. Rabobank understood that Westside would be required to have cash in excess of $29.9 million on deposit with Rabobank when the stock purchase closed. Rabobank therefore considered the risk of nonpayment of the loan to be essentially zero. The risk rating shown on Nob Hill's credit application was "N/A, or based on collateral: R-1 (cash)." Rabobank used the R-1 risk rating to denote a loan that is fully cash collateralized.

47. Among the financing documents subsequently executed by Nob Hill (the Fortrend affiliate) were a promissory note for $29.9 million, a security agreement, and a pledge agreement dated as of September 9, 2003. McNabola signed all these documents as Nob Hill's president. Pursuant to the security agreement, the Tax Court subsequently found, Nob Hill granted Rabobank a first priority security interest in a Rabobank account that Plaintiff would open for Westside in connection with the transaction, in order to secure Nob Hill's repayment obligation. Pursuant to the pledge agreement, the Tax Court also found, Nob Hill granted Rabobank a first-priority security interest in the Westside stock and the stock sale proceeds as collateral securing Nob Hill's repayment obligation. Among the financing documents to be executed by Westside were security and guaranty agreements in favor of Rabobank, and a control agreement. McNabola also signed these documents. Via the security and guaranty agreements, the Tax Court further found, Westside unconditionally guaranteed payment of Nob Hill's obligations to Rabobank, and granted Rabobank a first priority security interest in

Westside's Rabobank account. The control agreement further gave Rabobank control over Westside's account – including all cash, instruments, and other financial assets contained therein from time to time, and all security entitlements with respect thereto – in order to ensure that Westside did not default on its commitments, the Tax Court determined, further concluding that these agreements effectively gave Rabobank a "springing lien" on Westside's cash at the moment it funded the loan. For all practical purposes, therefore, the Tax Court found, the Rabobank loan was fully collateralized with the cash in Westside's Rabobank account, consistent with the R-1 risk rating that Rabobank assigned to that loan.

48. As noted above, in order to facilitate the transaction, Plaintiff and Westside were required to open accounts at Rabobank. The account opening documentation reflects Plaintiff's and Westside's residence in Las Vegas, Clark County, Nevada, where Rabobank and Utrecht thus knew Plaintiff resided, and where they proceeded to do business with, and direct their actions toward, Plaintiff and Westside. Plaintiff was relying on Rabobank, a large bank with a worldwide presence, to serve as an independent escrow agent and lender, rather than as a self-interested facilitator and co-conspirator of Fortrend's fraud – which, unbeknownst to Plaintiff, was Rabobank's actual role.

49. Rabobank and Utrecht proceeded with the transaction and the loan to Fortrend (Nob Hill) despite knowing that the Fortrend transaction in this case was a Midco deal that constituted a reportable transaction considered by the IRS to be an improper tax-avoidance mechanism. During the years 1998 – 2002, Rabobank (via, on information and belief, subsidiaries including Utrecht) had financed a total of 88 Midco transactions, at the pace of about 18 transactions per year. Rabobank earned considerable and attractive fees via the loans, which ranged in amount between $6 million and $260 million, and were mostly for terms of only one to three days. At the time, Rabobank was experiencing difficulty in other areas of its

business, and opportunistically looked at the Midco financing transactions as "easy money" – short term loans with high yield and no credit risk.

50. The Midco transactions that Rabobank / its affiliates participated in with Fortrend included the following, among others:

a. Bishop Group: In or about October 1999, Rabobank facilitated the purchase of Bishop stock by loaning another special-purpose Fortrend affiliate (K-Pipe Merger Corp.) approximately $200 million short-term for the purchase price, and by serving as the conduit through which funds changed hands at closing, in return for a substantial fee. Like Nob Hill in this case, K-Pipe was a shell company with no assets and conducted virtually no business after the purchase. A federal court in Texas subsequently found that the Bishop transaction was a sham and constituted an improper Midco tax shelter, and that determination was affirmed by the U.S. Court of Appeals for the Fifth Circuit.

b. Town Taxi and Checker Taxi: In or about October 2000, Rabobank loaned Three Wood LLC, a newly formed Fortrend special-purpose affiliate, $30 million short-term to purchase the stock of Town Taxi Inc. and Checker Taxi Inc. from the Frank Sawyer Trust after those companies had sold all their assets. Rabobank again served as the conduit through which funds changed hands at closing, on information and belief in return for a substantial fee. On information and belief, in order to induce the Trust into the transaction, Fortrend falsely represented to the Trust that Fortrend had a strategy to legitimately offset the taxes due as a result of the taxi companies' asset sales. Within about two months of the closing, Fortrend stripped Town Taxi and Checker Taxi of their remaining funds, totaling millions of dollars, moving that money to other Fortrend affiliates. Late in 2000, Fortrend contributed to Town Taxi and

Checker Taxi the stock of other companies that had ostensibly declined in value, subsequently claiming tax losses that offset nearly all the gains from the Town Taxi and Checker Taxi asset sales. After the IRS examined the transaction, the U.S. Tax Court found in 2014 that it constituted an improper Midco tax shelter.

c. St. Botolph Holding Co.: In or about February 2001, Rabobank loaned $19 million to Monte Mar, Inc., a special-purpose Fortrend affiliate, to purchase from the Frank Sawyer Trust the stock of St. Botolph, which was in the process of selling its assets. Rabobank again served as the conduit through which funds changed hands at closing, on information and belief in return for a substantial fee. On information and belief, in order to induce the Trust into the transaction, Fortrend falsely represented to the Trust that Fortrend had a strategy to legitimately offset the taxes due as a result of St. Botolph's asset sales. Over the next ten months, Fortrend stripped St. Botolph of its remaining cash. In 2001, Fortrend contributed to St. Botolph stock that had ostensibly declined in value, subsequently claiming tax losses that offset nearly all the gains from the St. Botolph asset sale. After the IRS examined the transaction, the U.S. Tax Court found in 2014 that it constituted an improper Midco tax shelter.

d. Slone Broadcasting: In December 2001, after the assets of Slone Broadcasting had been sold, Utrecht loaned another special-purpose Fortrend affiliate, Berlinetta, Inc., $30 million short-term to purchase the stock of Slone. Fortrend represented to the shareholders of Slone that it had a legitimate strategy to reduce the taxes due as a result of the asset sale. On information and belief, Rabobank served as the conduit through which funds changed hands at closing, in return for a substantial fee. Slone Broadcasting and Berlinetta merged, and the company's named was changed to Arizona Media, which then claimed an

inflated basis for certain Treasury bills contributed to the company by another Fortrend affiliate. Conn Vu was also Arizona Media's president, secretary and treasurer. The IRS maintains that the Slone-Fortrend transaction was an illegal Midco tax shelter, with the former Slone shareholders having transferee liability, and the matter is currently in litigation.

51. However, on information and belief, in or about October 2002 – that is, approximately ten months before it financed the transaction involving Plaintiff – Rabobank determined that many if not all of the Midco transactions it had previously financed were reportable transactions as defined by the IRS. As a result, the number of Midco transactions executed by Rabobank after October 2002 decreased significantly. Rabobank undertook only five Midco financing transactions in 2003, one of those being the financing in Plaintiff's case. In 2004, Rabobank undertook only one Midco financing transaction, its last. A Rabobank internal audit further found in 2005 that Rabobank's internal controls had been inadequate in numerous respects with respect to the Midco transactions in which it had participated. The audit found, among other things, that it was at least "questionable" whether Midco promoters like Fortrend could be described as "reputable" companies with which Rabobank should be doing business. Rabobank would have stopped financing Midco transactions entirely after October 2002 were it not for the fact that it did not want to harm its existing relationships with Midco promoters like Fortrend.

52. In addition to its own activities directed toward Plaintiff and the Nevada forum, Rabobank/Utrecht knew or should have known – via their participation in this and prior Fortrend transactions – that their co-conspirators Fortrend, McNabola and Conn Vu were directing and undertaking the acts alleged herein at Plaintiff and in the Nevada forum. Rabobank's / Utrecht's actions caused harm to Plaintiff in Nevada.

53. Notwithstanding the problematic nature of the transaction proposed by Fortrend, which should have been apparent to PwC given its expertise in tax matters, PwC, based on its examination and due diligence, came to the conclusion that the transaction did not fit the IRS definition of a Midco (or substantially similar) transaction and that it was not a reportable transaction as defined by the IRS. PwC also came to the conclusion that Plaintiff would not be subject to transferee liability for Westside's taxes as a result of the Fortrend transaction. PwC's examination of the proposed transaction concluded with a determination that there was no reason not to go forward with Fortrend's offer to purchase Plaintiff's Westside stock. PwC advised Plaintiff of its conclusions in or about August 2003. Relying upon PwC's advice, Plaintiff proceeded with the Fortrend transaction. Had PwC advised Plaintiff otherwise, Plaintiff would not have proceeded with the transaction.

54. The parties executed the stock purchase agreement, and the Fortrend transaction closed on September 9, 2003. As part of the closing, Nob Hill's Rabobank account was credited with the $29.9 million Rabobank loan proceeds; Nob Hill transferred the purchase price from its Rabobank account into the Rabobank account that Plaintiff had been required to open; Nob Hill acquired Plaintiff's Westside stock; Plaintiff's resignation as an officer and director of Westside became effective (with Plaintiff being replaced by Fortrend personnel); and Nob Hill paid Rabobank a $150,000 fee. After the Rabobank and Moffat loans were repaid the same day, however, Westside's remaining funds, rather than being used to facilitate Fortrend's debt-collection business as represented, were actually drained by Fortrend, as set forth below.

55. The day after the closing, Nob Hill merged into Westside with Westside being the surviving corporation. By that point, there was approximately $5.2 million left in Westside's bank account. Westside – now under Fortrend's control – proceeded over the next

seven months to transfer about $4.8 million of that amount to various Fortrend affiliates and co-promoters, including MidCoast, which in mid-September received its $1,180,000 payoff for stepping away from the transaction. After Conn Vu transferred the remaining funds to another bank in or about April 2004, Fortrend emptied the account and it was closed. Westside did not engage in the debt-collection business as Fortrend had represented to Plaintiff it would.

56. Notwithstanding the multiple representations of Fortrend and PwC to Plaintiff that the Fortrend transaction was proper under the tax laws, and the silence of Rabobank and Utrecht in this regard, Defendants and Fortrend knew that on January 18, 2001 the IRS had issued Notice 2001-16 ("the 2001 Tax Notice"). The 2001 Tax Notice describes transactions where a corporation disposes of substantially all of its assets and then the corporation's shareholders sell their stock to another party who seeks favorable tax treatment. The 2001 Tax Notice states that any transactions that are the same as, or substantially similar to, those described in the 2001 Tax Notice are "listed transactions." Listed transactions are deemed by the IRS to be abusive tax shelters. Persons failing to report these tax shelters may be subject to penalties. The IRS in the 2001 Tax Notice concluded that it "may challenge the purported tax results of these transactions on several grounds." It further warned that it "may impose penalties on participants in these transactions."

57. The publication of the 2001 Tax Notice put Defendants and Fortrend, who were experienced in tax matters, on notice that there was, at minimum, a significant likelihood that the IRS would consider the Fortrend transaction to be a listed transaction. In addition, as a result of the 2001 Tax Notice, Defendants and Fortrend, who were experienced in tax matters, knew or should have known that there was, at minimum, a significant likelihood that the IRS would hold Plaintiff liable as a transferee

for the unpaid taxes owed by Westside.

58. Defendants and Fortrend failed to properly advise Plaintiffs about the 2001 Tax Notice and its significance for the Fortrend transaction. To the contrary, PwC advised Plaintiff that the Fortrend transaction did not fall within, and was not substantially similar to the transaction listed in, the 2001 Tax Notice, and was not a listed transaction as defined by the IRS; PwC advised Plaintiff that he would not be exposed to transferee liability with respect to the Fortrend transaction; Fortrend also made such representations; and Rabobank and Utrecht remained silent, facilitating the transaction despite knowing that it was a listed transaction per the 2001 Tax Notice.

With Seyfarth and Taylor's Assistance,
Fortrend Closes the Loop on its Fraud Post-Closing

59. After the closing, Fortrend did not conduct business via Westside in the manner Fortrend had told Plaintiff it would. In fact, in order to draw Plaintiff into the Midco transaction, Fortrend had made various misrepresentations to Plaintiff when it described, represented and warranted how Westside's business would proceed after the stock sale. Contrary to what Fortrend represented, Fortrend's plan was never to operate Westside going forward as part of a legitimate debt-collection business, and its plan was never to "cause ... [Westside] to satisfy fully all United States ... taxes, penalties and interest required to be paid by ... [Westside] attributable to income earned during the [2003] tax year." Contrary to its representations via Nob Hill and otherwise, Fortrend always intended to engage in an IRS reportable transaction; avoid paying Westside's taxes; strip Westside of its assets; and leave Plaintiff "holding the bag" for transferee liability imposed by the IRS.

60. Unbeknownst to Plaintiff, Fortrend's efforts to set the stage in this regard dated back to at least 2001. As part of Fortrend's ongoing promotion of Midco transactions, in or about March 2001, Millennium (the Fortrend and Nob Hill affiliate) obtained a portfolio of

distressed Japanese debt then valued at $137,109 for a cost of $137,000. Although Millennium/Fortrend thus acquired the Japanese debt portfolio for only $137,000 in March 2001, it later claimed that its tax basis in that portfolio was actually more than $314 million.

61. As support for this claim, Fortrend looked to a canned opinion letter provided to McNabola at Millennium by Defendants Seyfarth and Taylor on or about August 21, 2003 (the "Seyfarth Opinion Letter"). Without a good-faith basis, the Seyfarth Opinion Letter stated, among other things, that it was appropriate for Millenium to claim more than $314 million in basis for the Japanese debt that it had acquired for a tiny fraction of that amount.

62. By obtaining and claiming an artificially high basis in the Japanese debt – and by "blessing" this maneuver – Fortrend, and Defendants Seyfarth and Taylor, facilitated the Midco transaction that defrauded Plaintiff by effectuating a maneuver that Fortrend, Seyfarth and Taylor all knew to be improper under the tax laws: a distressed asset/debt (or "DAD") scheme.

63. A DAD scheme uses purportedly high-basis, low-value distressed debt acquired from foreign entities that are not subject to United States taxation. The distressed debt is passed through one or more U.S. entities that fail to claim the proper basis for that debt. The U.S. taxpayer that finally ends up holding the debt – here, Westside under Fortrend's ownership – then claims the significant tax loss that has passed through in order to offset other U.S. income or gain. The effect is that the U.S. taxpayer (Westside under Fortrend's ownership) is seeking to benefit from the built-in economic losses in the foreign party's distressed asset when the U.S. taxpayer did not incur the economic costs of that asset.

64. As the Tax Court noted, Seyfarth "gained notoriety for issuing bogus tax-shelter opinions," and the opinion issued to Fortrend in Plaintiff's case "seems par for the course." Rogers conceived of and created a DAD shelter in early 2003, shortly before he became a

Seyfarth partner in July 2003, and Seyfarth, Rogers and Taylor subsequently promoted, facilitated and participated in numerous DAD and other illegal tax shelters thereafter with Fortrend and others. Upon information and belief, numerous clients of Seyfarth, Taylor and Rogers were – like Fortrend – themselves tax shelter promoters who used the purported losses from DAD and similar schemes as part of abusive Midco transactions.

65. Rogers and Taylor were both partners at the law firm Altheimer & Gray before joining Seyfarth, after Altheimer went bankrupt in 2003. Rogers and Taylor both left Seyfarth in 2008, Rogers after the firm – no longer comfortable with him promoting tax shelters – forced him to resign, and Taylor after he pleaded guilty in January of that year to conspiring to commit tax fraud.

66. In 2010, Taylor was disbarred, and the U.S. Department of Justice, based on a years-long investigation, filed a complaint in federal court in Illinois accusing Rogers of tax fraud and other offenses based on his creation and promotion of DAD shelters and similar tax schemes dating back to at least 2003. Rather than contest the complaint's allegations, Rogers agreed, in September 2011, to a permanent injunction against him directly or indirectly organizing, promoting, advising, implementing, carrying out, managing or selling DAD or similar transactions.

67. As was known at the time pertinent to this complaint by Fortrend, Seyfarth, Taylor and Rogers, who were sophisticated practitioners in the tax arena, a DAD shelter violates the legal doctrines of (1) economic substance; (2) substance over form; (3) step transaction; and (4) sham partnership. Even though they violated such doctrines from their inception, DAD shelters were widely promoted in the early 2000s by Fortrend, Seyfarth, Taylor, Rogers and others. As a result, Congress emphasized their illegality by outlawing all DAD schemes via the consideration and passage of the American Jobs Creation Act, with

which Fortrend, Seyfarth, Taylor and Rogers, as sophisticated tax practitioners, must have been familiar. *See* American Jobs Creation Act of 2004, P.L. 108-357 (amending, among other provisions, I.R.C. §§ 704(c), 734 and 743).

68. Fortrend, Seyfarth, Taylor and Rogers likewise knew, at the time pertinent to this complaint, that the DAD aspect of the transaction was a sham because Fortrend incurred no economic loss in connection with the deductions it was claiming.

69. In Plaintiff's case, and unbeknownst to Plaintiff, the second-stage DAD transaction continued (after the Westside stock sale) this way:

a. On November 6, 2003, Millennium contributed to Westside a subset of the Japanese debt portfolio, consisting of two defaulted loans (the "Aoyama Loans"). The Aoyama Loans had a purported tax basis of $43,323,069. Between November 6 and December 31, 2003, Westside wrote off the Aoyama Loans as worthless. On its Form 1120, U.S. Corporation Income Tax Return, for 2003, Westside claimed a bad debt deduction of $42,480,622 on account of that write-off.

b. As the Tax Court found, Westside conducted no meaningful business operations after September 10, 2003; it reported no gross receipts, income, or business expenses relating to its supposed "debt collection" business; and it undertook no efforts to collect the Aoyama Loans or contract with a third party to do so. During this period, Conn Vu served Fortrend as Westside's president, secretary and treasurer, signing Westside's tax returns and nominally presiding over the company's "business" until Fortrend drained it of its last assets.

c. On its tax return for 2003, Westside (under Fortrend's control) reported total income of $66,116,708 and total deductions of $67,840,521. The deductions

included purported bad debt losses of $42,480,622 based on the Aoyama Loans. Westside did not pay any amount of taxes.

70. By providing the purported justification for the $42,480,622 deduction claimed regarding the Aoyama Loans, Seyfarth and Taylor knowingly and substantially assisted the fraud that Fortrend perpetrated upon Plaintiff. On information and belief, Seyfarth and Taylor received a substantial fee in return for the Seyfarth Opinion Letter.

71. In addition to their own activities undertaken in or directed toward the Nevada forum, Seyfarth and Taylor, on information and belief, knew or should have known – via their participation in this transaction and otherwise – that their co-conspirators Fortrend, McNabola and Conn Vu were directing and undertaking the acts alleged herein at Plaintiff and in the Nevada forum. Seyfarth and Taylor's actions caused harm to Plaintiff in Nevada.

72. The Seyfarth Opinion Letter in this case was, on information and belief, not the only time that Seyfarth and Taylor were involved in similar transactions with McNabola, Conn Vu and Fortrend. The U.S. Department of Justice, based on its investigation, has stated that McNabola, with the assistance of Taylor, structured and/or assisted with setting up a DAD transaction by which First Active Capital Inc. ("First Active"), in or about August 2005, acquired distressed Chinese debt with a supposed basis of more than $57 million. First Active, which was incorporated in August 2005, and of which McNabola was the sole officer and director until 2006, then used this distressed debt to offset gains in connection with other transactions in which it participated in 2005, 2006, 2008, 2009 and 2010. In each of these transactions, the DoJ has stated, Conn Vu, who replaced McNabola as an officer and director of First Active, used the distressed debt that First Active had obtained to offset gains otherwise incurred. Per the DoJ, First Active had no legitimate business purpose and was used solely to facilitate illegal tax avoidance schemes. Moreover, while Taylor was indicted in November

2005 for tax fraud, and subsequently pleaded guilty to tax evasion, on information and belief, he continued to practice law and provide advice to McNabola through at least 2008.

Defendants and Their Co-Conspirators Fraudulently Concealed Their Acts

73. Defendants and their co-conspirators engaged in affirmative conduct designed to prevent Plaintiff's discovery of their wrongdoing. These acts prevented Plaintiff's discovery of the fraud and other misdeeds. PwC and its personnel were fiduciaries of Plaintiff, and the remaining Defendants and conspirators were in a position of superior knowledge and/or trust, and thus owed Plaintiff a duty to disclose the concealed facts, which they nonetheless concealed or suppressed. Had Plaintiff known these facts, which came to light as a result of the Tax Court trial or thereafter, he would have acted differently, but instead was damaged as a result of the concealment.

74. Defendants' acts of concealment and omission included those set forth above, and also continued after Plaintiff's agreement to and participation in the Fortrend transaction, including: (i) Defendants' concealment of the second-stage DAD transaction with respect to Westside; (ii) Defendants' concealment of their ongoing involvement in similar illegitimate Midco and DAD transactions; (iii) Defendants' concealment of their knowledge of the illegitimacy of these transactions and the transaction involving Plaintiff; (iv) Fortrend's concealment of its ongoing involvement with Midcoast; and (v) Fortrend and Conn Vu's concealment of their post-closing actions despite the fact that Plaintiff's representatives were in touch with them in 2006 and 2007 regarding the filing of a claim for the refund of excise taxes for Westside.

Plaintiff Is Left Holding the Bag as a Result of the Foregoing Events

75. As a result of the foregoing events, the IRS audited Westside's 2003 tax return. At the conclusion of the audit, the IRS disallowed the $42,480,622 bad-debt deduction, and

another $1,651,752 deduction claimed by Fortrend for legal and professional fees (on the ground that these fees were incurred in connection with a transaction entered into solely for tax avoidance). During the audit, the IRS was unable to find any assets or current sources of income for Westside. On February 25, 2009, the IRS mailed a notice of deficiency to Westside determining a deficiency of $15,186,570 and penalties totaling $6,012,777 under the tax code.

76. Westside – which had no assets or resources by this point as a result of Fortrend's actions – did not pay any of these amounts and did not petition the U.S Tax Court for relief. So, on July 20, 2009, the IRS assessed the tax and penalties set forth in the notice of deficiency, plus accrued interest.

77. The IRS also proceeded with a transferee liability examination concerning Westside's 2003 tax liabilities. Transferee liability is a method of imposing tax liability on a person (here, Plaintiff) other than the taxpayer who is directly liable for the tax. This method is used by the IRS when a person transfers property and tax related to that property subsequently goes unpaid. In that case, the IRS goes after the person who made the transfer to recover the taxes.

78. As a result of its examination, the IRS determined that Plaintiff had transferee liability for Westside's tax deficiency and penalties – a total of about $21.2 million. The IRS sent Plaintiff a notice of liability to that effect on June 25, 2012. (Years before, Plaintiff had timely paid the IRS more than $5 million in taxes relating to the long-term gain incurred in 2003 as a result of the sale of Plaintiff's Westside stock.)

79. Plaintiff petitioned the U.S. Tax Court in September 2012 for review of the IRS notice of liability. The matter was litigated during 2013 and 2014, proceeding to a four-day trial in June 2014. After trial, the Tax Court found in October 2015 that – contrary to what Defendants and Fortrend had led Plaintiff to believe – the Fortrend transaction into which Plaintiff had been drawn was an improper Midco transaction, and Plaintiff was liable under

transferee liability principles for Westside's tax deficiency and penalties totaling about $21.2 million, plus interest and interest penalties, which are estimated by Plaintiff to total approximately $17.8 million (and counting).

80. Moreover, as a further result of Defendants' actions, and in addition to such amounts, Plaintiff has been required to spend a considerable amount of money in fees and expenses in the IRS and Tax Court proceedings. To date these fees and expenses exceed about $5 million and continue to be incurred. Additionally, Plaintiff lost other sums in connection with the Fortrend transaction, including a $5.4 million Fortrend "premium" and $125,000 in professional fees paid upfront for review and advice regarding the transaction. All told, Plaintiff has suffered tens of millions of dollars in damages as a result of Defendants' actions.

COUNT I
GROSS NEGLIGENCE AS TO PwC

81. Plaintiff repeats and realleges paragraphs 1 through 80 above as though fully set forth herein.

82. In consulting with and otherwise representing Plaintiff with respect to the sale of Plaintiff's shares of stock in Westside and otherwise with respect to the transaction proposed by Fortrend, Defendant PwC owed a duty to Plaintiff to use such skill, prudence and diligence as commonly possessed and exercised by tax and business professionals in the fields of income taxes, tax savings transactions and business tax consulting.

83. wC breached that duty by committing, among others, one or more or a combination of all of the following acts or omissions:

a. Failing to advise Plaintiff of PwC's prior dealings with Fortrend and advocacy of a Midco transaction in the Bishop deal;

b. Advising Plaintiff that the transaction proposed by Fortrend was legal and proper and in compliance with the tax laws;

c. Failing to properly advise Plaintiff about the significance of the 2001 Tax Notice or, in the alternative, failing to be fully aware of the 2001 Tax Notice and/or its potential adverse consequences to Plaintiff as a result of the Fortrend transaction; and

d. Failing to advise Plaintiff that because of the 2001 Tax Notice, there was an increased likelihood that the transaction might result in an audit by the IRS and possible liability under a theory of transferee liability.

84. Acting in reliance on the advice and opinions given by PwC, Plaintiff proceeded with the Fortrend transaction.

85. As a direct and proximate result of the gross negligence of PwC, Plaintiff has incurred damages in excess of $10,000, including fees incurred to respond to and defend the examination by the IRS and to litigate the matter in Tax Court, the assessment of taxes, penalties and interest by the IRS in sums far greater than Plaintiff would otherwise have had to pay, and other losses.

86. PwC's actions compel Plaintiff to employ an attorney for redress, entitling Plaintiff to obtain attorneys' fees and costs for pursuing this action.

COUNT II
NEGLIGENT MISREPRESENTATION AS TO PwC

87. Plaintiff repeats and realleges paragraphs 1 through 86 above as though fully set forth herein.

88. In consulting and otherwise representing Plaintiff with respect to the sale of Plaintiff's shares of stock in Westside and otherwise with respect to the Fortrend transaction, Defendant PwC owed a duty to Plaintiff to communicate accurate information to Plaintiff.

89. The statements made by PwC to Plaintiff that the transaction proposed was proper and according to the tax laws were false statements of material fact and otherwise communications of inaccurate information to Plaintiff.

90. PwC was grossly negligent in failing to ascertain that these statements were, in fact, false and in otherwise conveying inaccurate information to Plaintiff.

91. PwC made the said false and otherwise inaccurate statements with reckless disregard for their truth.

92. Plaintiff had no knowledge of the falsity or otherwise of the inaccuracy of the said false statements made by PwC.

93. Plaintiff was thereby induced into going forward with and completing the Fortrend transaction.

94. Plaintiff reasonably, justifiably and actually relied upon the said false and otherwise inaccurate statements made by PwC and went forward with and completed the transaction.

95. The said false and otherwise inaccurate statements made by PwC caused Plaintiff to incur damages in excess of $10,000, including but not limited to Plaintiff's expenditure of a considerable amount of money in fees and expenses to respond to and defend the examination by the IRS and to litigate the matter in Tax Court, and the assessment of taxes, penalties and interest by the IRS in sums far greater than Plaintiff would otherwise have had to pay, and other losses.

96. PwC's actions compel Plaintiff to employ an attorney for redress, entitling Plaintiff to obtain attorneys' fees and costs for pursuing this action.

COUNT III
AIDING AND ABETTING FRAUD
AS TO RABOBANK, UTRECHT, SEYFARTH AND TAYLOR

97. Plaintiff repeats and realleges paragraphs 1 through 96 above as though fully set forth herein.

98. Fortrend made false representations to Plaintiff, knowing or believing that such representations were false or that there was insufficient basis to make such representations, intending to induce Plaintiff to act or to refrain from acting in reliance upon such representations. These false representations included the statements that Fortrend was really in the debt-collection business; that, after purchasing Westside's stock, Fortrend would employ Westside and its remaining assets in this debt-collection business; that Fortrend would employ Westside's tax liabilities to legitimately offset tax deductions associated with its debt-collection business; that the transaction it was proposing to Plaintiff would result in legitimate tax benefits and a greater net return to Plaintiff than he would otherwise realize; that Fortrend's affiliate Nob Hill would satisfy Westside's tax obligations for the year 2003; that Nob Hill would indemnify Plaintiff if it failed to satisfy these tax obligations; and that Fortrend / Nob Hill had no intention of causing Westside to engage in an IRS reportable transaction.

99. Plaintiff justifiably relied upon such representations in proceeding with the Fortrend transaction described above, and suffered tens of millions of dollars in damages as a result.

100. As reflected by the Rabobank audit and the steep drop-off in the number of Midco transactions it participated in, Rabobank / Utrecht knew that Fortrend was engaged in fraud, but nonetheless knowingly and substantially assisted Fortrend by loaning Fortrend the lion's share of the funds to purchase the Westside shares and by

serving as the conduit through which funds changed hands at closing, all in return for a substantial "fee." Plaintiff was damaged as a result.

101. Given their background and training as sophisticated practitioners in the tax arena, Seyfarth and Taylor also knew that Fortrend was engaged in fraud, but nonetheless knowingly and substantially assisted Fortrend by providing the Seyfarth Opinion Letter "blessing" the DAD scheme that Fortrend used in order to claim a large deduction supposedly offsetting the Westside tax liabilities it had purchased. Fortrend relied upon the Seyfarth Opinion Letter in effectuating this maneuver. Plaintiff incurred damages in excess of $10,000 as a result.

102. Such actions by Rabobank, Utrecht, Seyfarth and Taylor were oppressive, fraudulent and/or malicious; and/or part of a scheme to defraud Plaintiff entered into by such Defendants, entitling Plaintiff to punitive damages.

103. Such actions by Rabobank, Urecht, Seyfarth, and Taylor compel Plaintiff to employ an attorney for redress, entitling Plaintiff to obtain attorneys' fees and costs for pursuing this action.

COUNT IV
CIVIL CONSPIRACY
AS TO RABOBANK, UTRECHT, SEYFARTH AND TAYLOR

104. Plaintiff repeats and realleges paragraphs 1 through 103 set forth above as though fully set forth herein.

105. The forgoing acts and omissions of the Defendants Rabobank, Utrecht, Seyfarth and Taylor (collectively, the "Conspiring Defendants") constitute and were part of an ongoing scheme or artifice to defraud in which the said Conspiring Defendant(s) agreed and conspired with Fortrend to unlawfully defraud the Plaintiff and others by means of false or fraudulent pretenses, representations, omissions, concealments and suppression of facts.

106. The foregoing acts and omissions of the Conspiring Defendant(s) were done in furtherance of the common scheme, and in concert with Fortrend, Vu, McNabola, Midcoast, Rogers and/or the other Conspiring Defendant(s).

107. As a result of the common scheme, Plaintiff has suffered, and will continue to suffer damages in an amount in excess of $10,000, including but not limited to Plaintiff's expenditure of a considerable amount of money in fees and expenses to respond to and defend the examination by the IRS and to litigate the matter in Tax Court, the assessment of taxes, penalties and interest by the IRS in sums far greater than Plaintiff would otherwise have had to pay, and other losses.

108. Such actions by Rabobank, Utrecht, Seyfarth and Taylor were oppressive, fraudulent and/or malicious; and/or part of a scheme to defraud Plaintiff entered into by such Defendants, entitling Plaintiff to punitive damages.

109. Such actions by Rabobank, Urecht, Seyfarth, and Taylor compel Plaintiff to employ an attorney for redress, entitling Plaintiff to obtain attorneys' fees and costs for pursuing this action.

COUNT V
RACKETEERING – VIOLATION OF NRS 207.400(1)(c)
AS TO RABOBANK, UTRECHT, SEYFARTH AND TAYLOR

110. Plaintiff repeats and realleges paragraphs 1 through 109 set forth above as though fully set forth herein.

111. As reflected by the Bishop, Town Taxi, Checker Taxi, St. Botolph, Slone Broadcasting, Westside, First Active and other transactions described above, Rabobank, Utrecht, Seyfarth and Taylor were part of an enterprise pursuant to NRS 207.380; and participated in racketeering activity pursuant to NRS 207.390 by engaging in at least two crimes related to racketeering within five years that have the same or similar pattern,

intents, results, accomplices, victims or methods of commission, or are otherwise related by distinguishing characteristics and are not isolated incidents.

112. These crimes related to racketeering include obtaining possession of money or property valued at $650 or more, or obtaining signature by false pretenses (NRS 207.360(26)); fraud in connection with the offer, sale or purchase of a security (NRS 207.360(30) and NRS 90.570); and multiple transactions involving fraud or deceit in the course of an enterprise or occupation (NRS 207.360(33) and NRS 205.377).

113. Defendants' actions violate NRS 207.400(1)(c), in that they conducted or participated, directly or indirectly, in the affairs of the enterprise through racketeering activity, or racketeering activity through the affairs of the enterprise. Plaintiff was injured by reason of such violation(s) in an amount in excess of $10,000, and has a cause of action against these Defendants for three times the actual damage sustained, plus attorney's fees and costs of investigation and litigation reasonably incurred, and costs and expenses of the proceeding, pursuant to NRS 207.470 and NRS 207.480.

COUNT VI
RACKETEERING – VIOLATION OF NRS 207.400(1)(h)
AS TO RABOBANK, UTRECHT, SEYFARTH AND TAYLOR

114. Plaintiff repeats and realleges paragraphs 1 through 113 set forth above as though fully set forth herein.

115. As reflected by the Bishop, Town Taxi, Checker Taxi, St. Botolph, Slone Broadcasting, Westside, First Active and other transactions described above, Rabobank, Utrecht, Seyfarth and Taylor were part of an enterprise pursuant to NRS 207.380; and participated in racketeering activity pursuant to NRS 207.390 by engaging in at least two crimes related to racketeering within five years that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise related by distinguishing characteristics and are not isolated incidents.

116. These crimes related to racketeering include obtaining possession of money or property valued at $650 or more, or obtaining signature by false pretenses (NRS 207.360(26)); fraud in connection with the offer, sale or purchase of a security (NRS 207.360(30) and NRS 90.570); and multiple transactions involving fraud or deceit in the course of an enterprise or occupation (NRS 207.360(33) and NRS 205.377).

117. Defendants' actions violate NRS 207.400(1)(h), in that they provided property to another person knowing that the other person intends to use the property to further racketeering activity. Plaintiff was injured by reason of such violation(s) in an amount in excess of $10,000, and has a cause of action against these Defendants for three times the actual damage sustained, plus attorney's fees and costs of investigation and litigation reasonably incurred, and costs and expenses of the proceeding, pursuant to NRS 207.470 and NRS 207.480.

COUNT VII
RACKETEERING – VIOLATION OF NRS 207.400(1)(i)
AS TO RABOBANK, UTRECHT, SEYFARTH AND TAYLOR

118. Plaintiff repeats and realleges paragraphs 1 through 117 set forth above as though fully set forth herein.

119. As reflected by the Bishop, Town Taxi, Checker Taxi, St. Botolph, Slone Broadcasting, Westside, First Active and other transactions described above, Rabobank, Utrecht, Seyfarth and Taylor were part of an enterprise pursuant to NRS 207.380; and participated in racketeering activity pursuant to NRS 207.390 by engaging in at least two crimes related to racketeering within five years that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise related by distinguishing characteristics and are not isolated incidents.

120. These crimes related to racketeering include obtaining possession of money or property valued at $650 or more, or obtaining signature by false pretenses (NRS

207.360(26)); fraud in connection with the offer, sale or purchase of a security (NRS 207.360(30) and NRS 90.570); and multiple transactions involving fraud or deceit in the course of an enterprise or occupation (NRS 207.360(33) and NRS 205.377).

121. Defendants' actions violate NRS 207.400(1)(i), in that they conspired to violate one or more of the provisions of NRS 207.400. Plaintiff was injured in an amount in excess of $10,000 by reason of such violation(s) and has a cause of action against these Defendants for three times the actual damage sustained, plus attorney's fees and costs of investigation and litigation reasonably incurred, and costs and expenses of the proceeding, pursuant to NRS 207.470 and NRS 207.480.

COUNT VIII
UNJUST ENRICHMENT
AS TO RABOBANK AND UTRECHT

122. Plaintiff repeats and realleges paragraphs 1 through 121 set forth above as though fully set forth herein.

123. Approximately $29.9 million of the PUCO settlement proceeds in Westside's bank account were used by Nob Hill to repay the Rabobank / Utrecht loan to Nob Hill. By keeping these funds as part of the improper tax scheme described above, in which they participated, Rabobank and/or Utrecht had and retained a benefit which in equity and good conscience belongs to another, namely, Plaintiff, the sole shareholder of Westside, who was wrongfully drawn into Defendants' scheme, as set forth above.

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter the following relief in favor of the Plaintiff and against Defendant(s):

A. A judgment for compensatory damages in favor of Plaintiff and against Defendant(s), jointly and severally on all applicable claims in an amount in excess of $10,000 to be determined at trial.

B. A judgment for punitive damages in favor of Plaintiff and against Defendant(s), jointly and severally on all applicable claims in an amount in excess of $10,000 to be determined at trial.

C. A judgment for three times compensatory damages in favor of Plaintiff and against Defendant(s), jointly and severally on all applicable claims in an amount to be determined at trial.

D. Costs of investigation and litigation reasonably incurred;

E. A judgment in favor of the Plaintiff and against such Defendant(s), ordering Rabobank and/or Utrecht, as the case may be, to turn over in restitution the sums unjustly retained, including interest;

F. Attorney's fees and costs and expenses for filing and proceeding with this suit.

G. Any other good and proper relief as this Court deems appropriate.

JURY DEMAND

Plaintiff demands trial by jury on all claims so triable as of right.

DATED this 29th day of April, 2016.

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DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSECOOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW, LLP and GRAHAM R. TAYLOR, Defendants.	Case No. A-16-735910-B Dept.: XV **NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order Granting Motion to Dismiss the Complaint Against Seyfarth Shaw LLP for Lack of Jurisdiction was entered in this action on the 23rd day of December, 2016. A copy of the Order is attached hereto as Exhibit A.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS LAW GROUP, and that the following documents were served via electronic service: **NOTICE OF ENTRY OF ORDER**

TO:

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DATED this 28th day of December, 2016.

By: /s/ PATRICIA FERRUGIA

EXHIBIT A

EXHIBIT A

ORDG

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DISTRICT COURT
CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSECOOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW, LLP and GRAHAM R. TAYLOR, Defendants.	Case No. A-16-735910-B Dept.: XV **ORDER GRANTING MOTION TO DISMISS THE COMPLAINT AGAINST SEYFARTH SHAW LLP FOR LACK OF JURISDICTION**

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Defendant Seyfarth Shaw (Seyfarth) LLP's motion to dismiss for lack of personal jurisdiction came on for hearing on November 16, 2016. Steve Morris of Morris Law Group appeared and argued for Seyfarth; Mark A. Hutchison of Hutchison & Steffen, LLC, in association with Scott F. Hessell and Thomas D. Brooks of Sperling & Slater, P.C., appeared for Plaintiff, Michael A. Tricarichi, to oppose the motion. Mr. Hutchison argued for Mr. Tricarichi.

The Court, having read and considered the motion papers submitted by the parties and heard and considered the arguments of their counsel, and good cause appearing, grants Seyfarth's motion based on the following reasons and summary of the allegations in the complaint and in the uncontested information tendered by the parties to the Court in the exhibits and affidavits submitted in support of and in opposition to the motion.

Seyfarth is an international law firm headquartered in Chicago, Illinois. It is organized under Illinois law as a limited liability partnership. The firm has offices in 10 locations in the United States, none of which is in (or was in) Nevada. Seyfarth does not employ staff, attorneys, or agents who are domiciled in Nevada, nor does the firm own or hold security in real property in Nevada. It is not registered with Nevada's Secretary of State to do business in Nevada.

Although Seyfarth attorneys have from time to time appeared in Nevada federal district court on behalf of clients unrelated to this case, or have acted as counsel in transactions involving Nevada real property not related to this case, and one of Seyfarth's lawyers (since 2015) is a non-resident member of the Nevada Bar, none of Seyfarth's 850 attorneys has been in Nevada in connection with any matter involving Plaintiff Tricarichi, who has never been a client of Seyfarth.

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Against this background, Plaintiff contends that Seyfarth "facilitated" a transaction to minimize federal income taxes that had its origins in Ohio in 2003, when Plaintiff sold a cellular telephone business he operated in Ohio and moved to Nevada. Seyfarth played no part in the transaction by which Plaintiff's business, West Side Cellular, Inc. (West Side) was sold to another entity. The "transaction" and the steps which followed it were later found by the Internal Revenue Service to be a fraudulent tax avoidance scheme, of which the Tax Court held Plaintiff had constructive knowledge sufficient to impose liability on Plaintiff for the taxes owed by West Side. The transaction began in Ohio and Seyfarth is alleged to have "facilitated" the transaction by a former Seyfarth California partner, Graham Taylor, rendering an opinion in 2003 to Millennium Recovery Fund in Ireland, which involved a specific transaction which took place outside of Nevada in 2001 and was unrelated both to this case and to Plaintiff Tricarichi. Although the opinion expressly states it could only be relied on by Millennium, Plaintiff alleges the opinion somehow "facilitated" the transaction with him that the IRS later found was an abusive tax shelter. None of the transactional activity Plaintiff alleges to have injured him took place in Nevada or was directed to the state by Seyfarth.

The Court finds that the Plaintiff has not alleged facts that would establish personal jurisdiction over Seyfarth in Nevada. **First**, Seyfarth, an Illinois limited liability partnership with no offices in Nevada, is not subject to general jurisdiction in Nevada because it is not "at home" here. *Viega Gmbh. Eighth Jud. Dist. Ct.*, 328 P.3d 1152, 1158 (2014); *Daimler AG v. Bauman*, 134 S. Ct. 746, 751 (2014).

Second, Seyfarth is not subject to specific jurisdiction in Nevada. Plaintiff has not shown that Seyfarth purposefully established contacts with Nevada that resulted in injury to him, as *Walden v. Fiore*, 135 S. Ct. 1115,

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1121-23 (2014), requires. *Accord, Baker v. Eighth Jud. Dist. Ct.*, 116 Nev. 527, 533, 999 P.2d 1020, 1024 (2000) (same). The "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* at 1122 (citing *Int'l Shoe*, 326 U.S. 310, 319, 66 S. Ct. 154, 159-60 (1945).) Plaintiff cannot be the only link between Seyfarth and Nevada. *Id.* Rather, due process requires that jurisdiction must be founded on the defendant's contacts with Nevada, "not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Id.* citing *Burger King*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985). "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct. 571, 579 (1980)). In this case, Plaintiff has not shown any conduct by Seyfarth in Nevada, or directed by Seyfarth to Nevada, that injured him here.

Third, the same analysis applies to the intentional torts alleged against Seyfarth (conspiracy, racketeering). Jurisdiction over Seyfarth as an intentional tortfeasor must be based on intentional conduct that is alleged or has been shown to have been directed to Nevada. *Id.* at 1123 (holding that "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff" with respect to intentional tort claims). Plaintiff has not shown that Seyfarth "purposefully enter[ed] the forum's market or establish[ed] contacts in the forum and affirmatively direct[ed] conduct there, and [that his] claims arise from that purposeful contact or conduct," as *Viega* requires to support specific jurisdiction over an alleged tortfeasor. 328 P.3d at 1157. Plaintiff has not made a prima facie showing that the opinion delivered to

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Millennium in Ireland by defendant Graham Taylor was intended to have an effect in Nevada or that Plaintiff was aware of the opinion when he entered into the tax avoidance transaction with others in 2003 that the IRS later found was fraudulent. Seyfarth's out-of-state activity "did not create sufficient contacts with Nevada simply because [Seyfarth may have] directed [its] conduct at [Plaintiff] whom [Seyfarth allegedly] knew had Nevada connections." *Walden*, 134 S. Ct. at 1125. "Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis . . . [and] obscures the reality that none of [Seyfarth]'s conduct had anything to do with Nevada itself." *Id.* (internal citation omitted).

Absent alleging a prima facie case that Seyfarth is "at home" in Nevada or "affirmatively directed contact" with the state to deal with Plaintiff Tricarichi, such as he fails to do by his conspiracy and racketeering claims, he is not entitled to jurisdictional discovery before the Court rules on Seyfarth's motion to dismiss for lack of jurisdiction. *Viega*, 328 P.3d at 1157, 1160-61; *Daimler*, 134 S. Ct. at 751, 760 (insufficient facts alleged to support either general or specific jurisdiction; absent such facts, no basis to allow jurisdictional discovery); *see also, Western States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118, 1140 (D. Nev. 2009) and *Menalco, FZE v. Buchan*, 602 F. Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be based on the actions of co-conspirators).

In light of these recent cases from our Supreme Court, the U.S. Supreme Court, and the Nevada U.S. District Court, Plaintiff's reliance on *Davis v. Eighth Jud. Dist. Ct.*, 97 Nev. 332, 629 P.2d 1209 (1981) is misplaced, as *Walden* clearly confirms. *Davis* held that defendants who conspired out-of-state could be subject to jurisdiction for injuries alleged to have occurred in Nevada as a consequence of their acts elsewhere. *Walden*, however,

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appears to overrule *Davis* because, as the U.S. Supreme Court declared, "mere injury to a forum resident is not a sufficient connection to the forum. . . . The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." 134 S. Ct. at 1125. *See also id.* at 1122 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984) ("[The] unilateral activity of another party or a third party is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.")).

Thus, the opinion rendered by defendant Graham Taylor to Millennium in Ireland that allegedly "facilitated" a transaction between Plaintiff and others in an out-of-state conspiracy that Plaintiff says injured him in Nevada does not appear to be consistent with *Walden's* holding that "jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." 134 S. Ct. at 1125. Moreover, even if *Davis* has survived *Walden*, which is highly questionable to the Court, the circumstances alleged by Plaintiff are distinguishable from the limited facts recited in the Davis opinion, and still do not make out a prima facie case for jurisdiction under *Viega, Daimler,* or *Walden.* The facts of this case are also distinguishable from the post-*Walden* authority Plaintiff cites. *See Best Chairs Inc. v. Factory Direct Wholesale, LLC*, 121 F. Supp. 3d 828 (S.D. Inc. 2015); *First Cmty. Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.2d 369 (Tenn. 2015); *Khan v. Gramercy Advisors, LLC*, 2016 Ill. App. (4th) 150435, 2016 Ill. App. LEXIS 425 Ill. App. Ct. 2016).

Now, for the foregoing reasons, the Court grants Seyfarth's motion to dismiss and by this order dismisses the complaint against Seyfarth Shaw, LLP, for lack of personal jurisdiction.

IT IS SO ORDERED.

Dated: December 16, 2016

JOE HARDY, DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI,

Plaintiff,

vs.

PRICEWATERHOUSECOOPERS, LLP, COÖPERATIEVE RABOBANK, U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW LLP and GRAHAM R. TAYLOR,

Defendants.

Case No. A-16-735910-B

Dept. No. XV

NOTICE OF ENTRY OF ORDER GRANTING MOTION TO DISMISS THE COMPLAINT AGAINST COÖPERATIEVE RABOBANK U.A. AND UTRECHT-AMERICA FINANCE CO. FOR LACK OF PERSONAL JURISDICTION AND DENYING REMAINDER OF MOTION AS MOOT

NOTICE IS HEREBY GIVEN that an Order Granting Motion to Dismiss the Complaint Against Coöperatieve Rabobank U.A. and Utrecht-America Finance Company for Lack of Personal Jurisdiction and Denying Remainder of Motion as Moot, was entered on February 8, 2017.

////

A copy of the Order is attached hereto.

Dated this 9th day of February, 2017.

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CERTIFICATE OF SERVICE

Pursuant to Rule 5(b), I hereby certify that on this date, I electronically filed the foregoing document with the Clerk of the Court and caused a true and accurate copy of the same to be served *via* the Court's E-Filing System DAP/Wiznet, upon the following counsel of record. The date and time of the electronic service is in place of the date and place of deposit in the mail.

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Dated this 9th day of February, 2017.

/s/ Luz Horvath
An employee of Lewis Roca Rothgerber Christie LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSECOOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW, LLP and GRAHAM R. TAYLOR, Defendants.	) Case No. A-16-735910-B) Dept.: XV)) **ORDER GRANTING MOTION TO DISMISS THE COMPLAINT AGAINST COÖPERATIEVE RABOBANK U.A. AND UTRECHT-AMERICA FINANCE CO. FOR LACK OF PERSONAL JURISDICTION AND DENYING REMAINDER OF MOTION AS MOOT**)) **Date of Hearing: January 18, 2017**) **Time of Hearing: 9:00 a.m.**

Defendants Coöperatieve Rabobank U.A. ("Rabobank") and Utrecht-America Finance Company ("Utrecht")'s motion to dismiss for, among other things, lack of personal jurisdiction (the "Motion") came on for hearing on January 18, 2017. Chris Paparella of Hughes Hubbard & Reed LLP, in association with Dan Waite of Lewis Roca Rothgerber Christie LLP, appeared and

JAN 30 2017

argued in support of the Motion for Defendants Rabobank and Utrecht. Thomas D. Brooks of Sperling & Slater, P.C., in association with Todd Prall of Hutchison & Steffen, LLC, appeared and argued in opposition to the Motion for Plaintiff Michael A. Tricarichi.

The Court, having read and considered the Motion papers submitted by the parties and heard and considered the arguments of their counsel, and good cause appearing, grants the Motion for lack of personal jurisdiction based on the following reasons, summary of the allegations in the complaint, and information tendered by the parties to the Court in the exhibits and affidavits submitted in support of and in opposition to the Motion, and denies as moot and without prejudice the remainder of the arguments raised by the Motion.

BACKGROUND

The Tax Shelter

In Spring 2003, Mr. Tricarichi, who was then an Ohio resident, owned an Ohio corporation called West Side Cellular, Inc. ("West Side") that was about to receive a $65 million settlement payment from a lawsuit.[1] Mr. Tricarichi and Ohio lawyers at the Hahn Loeser firm began searching for ways to avoid paying all the tax due on the $65 million payment. Mr. Tricarichi decided to engage in a "midco" transaction with a San Francisco-based promoter called Fortrend. The transaction involved the sale by Mr. Tricarichi of West Side to an offshore Fortrend subsidiary called Nob Hill. Mr. Tricarichi would receive most of West Side's cash and Fortrend would receive a $5 million promotion fee. Nob Hill would offset West Side's tax liabilities with tax deductions from distressed debt. Mr. Tricarichi sold West Side to Nob Hill on September 9, 2003, and received $34.6 million in cash.

West Side failed to pay 2003 federal income taxes on the $65 million settlement payment. The IRS sought payment of those taxes, plus penalties and interest, from Mr. Tricarichi. Mr. Tricarichi commenced a proceeding in Tax Court to challenge the IRS's decision. The Tax Court upheld the IRS's determination that Mr. Tricarichi was liable for over $21 million in unpaid taxes, penalties, fees, and pre-judgment interest. In doing so, the Tax Court found after extensive

[1] Although the Tax Court found that Mr. Tricarichi did not move to Nevada until after his midco transaction was consummated, Mr. Tricarichi made a prima facie showing on this Motion that he relocated to Nevada before the transaction was consummated.

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discovery and a trial that Mr. Tricarichi had constructive knowledge that Fortrend intended to implement an illegitimate tax shelter.

Rabobank and Utrecht

Rabobank is a cooperative organized under Dutch law. Its principal place of business is in the Netherlands, and it has a branch in New York, New York. Utrecht is a subsidiary of Rabobank that is incorporated in Delaware and has its principal place of business in New York, New York. Rabobank and Utrecht (i) are not licensed to conduct business in Nevada, (ii) do not maintain any offices or branches in Nevada, (iii) do not have any employees in Nevada, (iv) are not required to and do not pay taxes in Nevada, and (v) do not have registered agents in Nevada. All of Rabobank and Utrecht's witnesses and documents relevant to this action are in New York.

Defendants Rabobank and Utrecht provided certain financial services in New York in connection with the subject transaction. Mr. Tricarichi, West Side and Nob Hill set up accounts at Rabobank's New York branch before the closing. Mr. Tricarichi signed a Non-Confidentiality Certificate in which he agreed Rabobank and Utrecht had not made any statement to Mr. Tricarichi about the potential tax consequences of the subject transaction. On September 9, 2003, Utrecht lent Nob Hill $29.9 million in New York, which Nob Hill transferred to Mr. Tricarichi's New York Rabobank escrow account, along with the balance of the $34.6 million purchase price. Mr. Tricarichi transferred the $34.6 million to another bank account he controlled in New York. That same day, Nob Hill repaid Utrecht the $29.9 million loan, along with a $150,000 transaction fee, in New York. Fortrend received $5 million of West Side's cash as a promotion fee.

Mr. Tricarichi and West Side's account agreements with Rabobank and Nob Hill's loan documents with Utrecht use Rabobank and Utrecht's New York addresses. The agreements and loan documents provide they are governed by New York law, and several of them provide for a New York forum for disputes (the others are silent on forum). None of the agreements and loan documents provide for Nevada law or a Nevada forum.

Mr. Tricarichi's Complaint asserts claims against Rabobank and Utrecht for aiding and abetting fraud, civil conspiracy, violations of Nevada Revised Statutes Section 207.400, and unjust enrichment. (Compl. Counts III-VIII.) All of Mr. Tricarichi's claims are based on his contention

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that Rabobank, Utrecht and the other defendants defrauded him into believing that the tax shelter was legitimate. Rabobank and Utrecht filed a motion to dismiss the claims against them based on the following grounds: lack of personal jurisdiction, *forum non conveniens*, statute of limitations, collateral estoppel and failure to state a claim.

THERE IS NO PERSONAL JURISDICTION OVER RABOBANK AND UTRECHT

Nevada's long-arm statute allows courts to exercise personal jurisdiction in civil matters "on any basis not inconsistent with the Constitution of [Nevada] or the Constitution of the United States." NEV. REV. STAT. § 14.065 (2015). "When a nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of showing that jurisdiction exists." *Fulbright & Jaworski v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 5, 7, 342 P.3d 997, 1001 (2015) (internal citation omitted). "In so doing, the plaintiff must satisfy the requirements of Nevada's long-arm statute and show that jurisdiction does not offend principles of due process." *Id.*; *see also Walden v. Fiore*, 134 S. Ct. 1115, 1121, 188 L. Ed. 2d 12, 19 (2014) ("[T]he Fourteenth Amendment "constrains a State's authority to bind a nonresident defendant to a judgment of its courts.") (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S. Ct. 559, 564 (1980)). To be subject to jurisdiction in a particular State, a nonresident defendant must have "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 342-43 (1940)). Mr. Tricarichi concedes that there is no general jurisdiction over Rabobank and Utrecht. Thus, the inquiry here is focused on whether the Court may exercise specific personal jurisdiction over Rabobank and Utrecht.

The exercise of "specific jurisdiction is proper only where the cause of action arises from the defendant's contacts with the forum." *Fulbright & Jaworski*, 131 Nev. Adv. Op. at 10, 342 P.3d at 1002 (internal citations omitted). In determining whether specific personal jurisdiction over a nonresident is proper, Nevada courts consider (1) whether the defendant purposefully availed itself of the privilege of acting in Nevada or causing important consequences in Nevada,

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(2) whether the cause of action arises out of the defendant's Nevada-related activities, and (3) whether the exercise of jurisdiction over the defendant is reasonable. *Id.*

This inquiry "focuses on the relationship among the defendant, the forum, and the litigation." *Walden v. Fiore*, 134 S. Ct. at 1121, 118 L. Ed. 2d at 19-20 (internal quotations omitted). For specific jurisdiction to comport with due process, "the defendant's suit-related conduct must create a substantial connection with the forum State." *Id.* Two aspects of this necessary relationship are relevant here.

"First, the relationship must arise out of contacts that the 'defendant *himself*' creates with the forum State." *Id.* at 1122, 118 L. Ed. 2d at 20 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2284 (1985)) (emphasis in original). "Due process limits on the State's adjudicative authority principally protect the liberty of the nonresident defendant—not the convenience of plaintiffs or third parties." *Id.* (citing *World-Wide Volkswagen Corp.*, 444 U.S. at 291-292, 100 S. Ct. at 564-65). "[C]ontacts between the plaintiff (or third parties) and the forum State" do not suffice. *Id.* (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417, 104 S. Ct. 1863, 1873 (1984)). "Put simply, however significant the plaintiff's contacts with the forum may be, those contacts cannot be 'decisive in determining whether the defendant's due process rights are violated.'" *Id.* (quoting *Rush v. Savchuk*, 444 U.S. 320, 332, 100 S. Ct. 571, 579 (1980)).

Second, the "'minimum contacts' analysis looks to the defendant's contacts with the forum State itself, not the defendant's contacts with persons who reside there." *Id.* (citing *Int'l Shoe*, 326 U.S. at 319, 66 S. Ct. at 159-60.) Thus, "the plaintiff cannot be the only link between the defendant and the forum." *Id.* at 1122, 188 L. Ed. 2d at 21. "Rather, it is the defendant's conduct that must form the necessary connection with the forum State that is the basis for its jurisdiction over him." *Id.* at 1122-23, 188 L. Ed. 2d at 21. (citing *Burger King*, 471 U.S. at 478, 105 S. Ct. at 2178). Instead, "[d]ue process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the 'random, fortuitous, or attenuated' contacts he makes by interacting with other persons affiliated with the State." *Id.* at 1123, 188 L. Ed. 2d at 21 (citing *Burger King*, 471 U.S. at 475, 105 S. Ct. at 2183).

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The same principles apply to intentional torts, as to which "it is likewise insufficient to rely on a defendant's 'random, fortuitous, or attenuated contacts' or on the 'unilateral activity' of a plaintiff." *Id.* at 1123, 188 L. Ed. 2d at 21 (internal citation omitted). Therefore, "[a] forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." *Id.*

These principles support dismissal here. First, Mr. Tricarichi has not identified any jurisdictionally significant contacts Rabobank or Utrecht directed at Nevada. Second, while Mr. Tricarichi alleges Rabobank and Utrecht had contact with him while knowing he was a Nevada resident at the time of the transaction, his claims do not arise out of those contacts. Third, the Court finds that it would not be reasonable to exercise personal jurisdiction over Rabobank and Utrecht for the reasons below.

Mr. Tricarichi does not identify a single Nevada activity by Rabobank or Utrecht in connection with the matters on which his claims are based. Mr. Tricarichi's transaction was consummated in New York, Ohio and California. Rabobank and Utrecht had no ongoing obligations or continuing contacts with Mr. Tricarichi in Nevada (or elsewhere). Rabobank and Utrecht's services occurred in New York, where they were located, and those services ended on September 9, 2003. While Mr. Tricarichi alleges that Nob Hill communicated with him while he was physically located in Nevada, he does not identify any communication made by Rabobank or Utrecht to him while he was physically located in Nevada. In fact, Mr. Tricarichi identifies only three direct communications with Rabobank or Utrecht, none of which came from Rabobank or Utrecht and none of which touched Nevada. The three communications Mr. Tricarichi identifies were faxes sent from San Francisco to Rabobank and Utrecht in New York. (*See* Exhibit M[2] (escrow account documents), Exhibit N (resignation document), and Exhibit O (wire transfer instructions).)[3]

[2] Exhibits refer to the Appendix of Exhibits in Support of Plaintiff's (1) Opposition to Defendants Rabobank and Utrecht's Motion to Dismiss, and (2) Counter-Motion for Leave to Take Jurisdictional Discovery, dated Dec. 7, 2016 ("Pl. App. Ex.").

[3] The fax headers on all three faxes show they were faxed from the 415 area code. And the escrow account documents in Exhibit M state Mr. Tricarichi signed them in San Francisco.

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Mr. Tricarichi's allegations that Rabobank and Utrecht knew he had a Nevada address are insufficient to obtain jurisdiction over Rabobank and Utrecht under *Walden*. It is not enough to allege that Rabobank and Utrecht dealt with someone they knew had a physical address in Nevada. The Court held in *Walden* that only the defendant's connections to the forum, not the plaintiff's, are relevant. *See* 134 S. Ct. at 1121-25, 118 L. Ed. at 19-24. The Court reversed a finding of specific personal jurisdiction because the court below, instead of evaluating the defendant's own contacts with Nevada, mistakenly premised jurisdiction on the defendant's knowledge that the plaintiffs had connections with the forum. 134 S. Ct. at 1124, 118 L. Ed. at 23. The Supreme Court held that the lower court had improperly "shift[ed] the analytical focus from [the defendant's] contacts with the forum to his contacts with [the plaintiffs]." *Id.* (internal citations omitted) (holding that "[s]uch reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis . . . [and] obscures the reality that none of petitioner's challenged conduct had anything to do with Nevada itself"). The Supreme Court found that the plaintiffs' reliance on *Calder v. Jones*, 465 U.S. 783, 104 S. Ct. 1482 (1984) — a decision on which Mr. Tricarichi also relies here — for the argument that "they suffered the 'injury' caused by petitioner's allegedly tortious conduct . . . while they were residing in the forum" was "misplaced" because "*Calder* made clear that mere injury to a forum resident is not a sufficient connection to the forum" and "[r]egardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State" through conduct that "connects him to the forum in a meaningful way." *Walden*, 134 S. Ct. at 1125, 118 L. Ed. at 23.

Here, Rabobank and Utrecht's New York activity "did not create sufficient contacts with Nevada simply because [they may have] directed [their] conduct at [Mr. Tricarichi] whom [they allegedly] knew had Nevada connections." *Walden*, 134 S. Ct. at 1125, 118 L. Ed. 2d at 23. "Such reasoning improperly attributes a plaintiff's forum connections to the defendant and makes those connections 'decisive' in the jurisdictional analysis . . . [and] obscures the reality that none of [Rabobank or Utrecht]'s conduct had anything to do with Nevada itself." *Id.* (internal citation

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omitted). Nevada jurisdiction over Rabobank and Utrecht must instead be based on acts by them that were purposefully directed at Nevada. No such acts are identified by Mr. Tricarichi.

Accordingly, Mr. Tricarichi's "claimed injury does not evince a connection between [him] and Nevada" because "it is not the sort of effect that is tethered to Nevada in any meaningful way." *Walden v. Fiore*, 134 S. Ct. at 1125, 118 L. Ed. 2d at 23. The fact that Mr. Tricarichi now has to repay the IRS from Nevada the amounts he wrongfully sought to evade paying is not due to anything that independently occurred in Nevada—in fact, as stated above, the Tax Court found that the relevant actions happened in Ohio—rather Mr. Tricarichi must pay the IRS from Nevada "because Nevada is where [he] chose to be at a time when [the IRS sought to recover the funds at issue]." *Id.* (noting that "Respondents would have experienced this same lack of access in California, Mississippi, or wherever else they might have traveled and found themselves wanting more money than they had."); *see also Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015); *Olivine Int'l Mktg. v. Texas Packaging Co.*, No. 2:09-CV-02118-KJD, 2010 WL 4024232, at *4 (D. Nev. Sept. 27, 2010). Mr. Tricarichi would be liable to the IRS for his tax obligations wherever he moved in the United States. The fact that he chose Nevada is, by itself, insufficient to establish specific jurisdiction. *Picot*, 780 F.3d at 1126.

Moreover, the few communications Mr. Tricarichi identifies between himself and Rabobank and Utrecht were ministerial in nature. These communications concerned the accounts Mr. Tricarichi opened for himself and West Side at Rabobank, his and his wife's resignations as officers of West Side, and the transfer of funds. Mr. Tricarichi's claims do not arise out of these communications.

In view of the foregoing facts, the Court also finds that it would not be reasonable to exercise personal jurisdiction over Rabobank or Utrecht.

Mr. Tricarichi Cannot Base Personal Jurisdiction on His Conspiracy Claims

In light of these recent cases from our Supreme Court, the U.S. Supreme Court, and the Nevada U.S. District Court, *Walden* confirms that Mr. Tricarichi misplaces his reliance on *Davis v. Eighth Jud. Dist. Ct.*, 97 Nev. 332, 629 P.2d 1209 (1981). *Davis* held that defendants who conspired out-of-state could be subject to jurisdiction for injuries alleged to have occurred in

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Nevada as a consequence of their acts elsewhere. *Walden,* however, appears to overrule *Davis* because, as the U.S. Supreme Court declared, "mere injury to a forum resident is not a sufficient connection to the forum. . . . The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." 134 S. Ct. at 1125. *See also id.* at 1122 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall,* 466 U.S. 408, 417 (1984) ("[The] unilateral activity of another party or a third party is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction.")).

Thus, Rabobank and Utrecht's alleged "facilitation" of a transaction between Mr. Tricarichi and others in an out-of-state conspiracy that Mr. Tricarichi says injured him in Nevada does not appear to be consistent with *Walden's* holding that "jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum." 134 S. Ct. at 1125. Moreover, even if *Davis* has survived *Walden*, which is highly questionable to the Court, the circumstances alleged by Mr. Tricarichi are distinguishable from the limited facts recited in the *Davis* opinion, which still do not make out a prima facie case for jurisdiction under *Viega Gmbh. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 16-18, 328 P.3d 1152, 1157, 1160-61 (2014), *Daimler AG v. Bauman*, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014), or *Walden.* The facts of this case are also distinguishable from the post-*Walden* authority Mr. Tricarichi cites. *See Best Chairs Inc. v. Factory Direct Wholesale, LLC*, 121 F. Supp. 3d 828 (S.D. Inc. 2015); *First Cmty. Bank, N.A. v. First Tennessee Bank, N.A.*, 489 S.W.2d 369 (Tenn. 2015); *Khan v. Gramercy Advisors, LLC*, 2016 Ill. App. (4th) 150435, 2016 Ill. App. LEXIS 425 Ill. App. Ct. 2016).

THERE IS NO BASIS FOR JURISDICTIONAL DISCOVERY

There is no basis for jurisdictional discovery here because Mr. Tricarichi has failed to establish a prima facie basis for specific personal jurisdiction. *See Viega Gmbh. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 40, 16-18, 328 P.3d 1152, 1157, 1160-61 (2014); *Daimler*, 134 S. Ct. at 751, 760 (insufficient facts alleged to support either general or specific jurisdiction; absent such facts, no basis to allow jurisdictional discovery); *see also Western States Wholesale Nat. Gas*

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Litig., 605 F. Supp. 2d 1118, 1140 (D. Nev. 2009) and *Menalco, FZE v. Buchan*, 602 F. Supp. 2d 1186, 1194 n. 1 (D. Nev. 2009) (personal jurisdiction cannot be based on the actions of co-conspirators). Moreover, the fact that Mr. Tricarichi has already had the benefit of extensive discovery from Rabobank and Utrecht in the Tax Court proceeding prior to filing his Complaint, as evidenced by his filing of numerous documents in this action produced by Rabobank in the Tax Court action, further supports denial of jurisdictional discovery here.

OTHER ARGUMENTS

Given the dismissal of all claims against Rabobank and Utrecht on personal jurisdiction grounds, the rest of the arguments raised by the Motion are denied, without prejudice, as moot.

CONCLUSION

Now, for the foregoing reasons, the Court grants the Motion and by this Order dismisses the Complaint against Rabobank and Utrecht for lack of personal jurisdiction, and denies the remainder of the arguments raised by the Motion, without prejudice, as moot.

IT IS SO ORDERED.

Dated: February 7, 2017

DISTRICT COURT JUDGE

Submitted by:

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSE COOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW LLP and GRAHAM R. TAYLOR, Defendants.	CASE NO. A-16-735910-B DEPT NO. XV **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(B) CERTIFICATION**

TO: ALL INTERESTED PARTIES

NOTICE IS HEREBY GIVEN that an Order Granting Plaintiff's Motion for Rule 54(B) Certification was entered in the above-entitled action on May 1, 2017, a copy of which is attached hereto.

DATED this 2nd day of May, 2017.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Hutchison & Steffen, LLC and that on this 2nd day of May, 2017, I caused the document entitled **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(B) CERTIFICATION** to be served on the following by Electronic Service to:

ALL PARTIES ON THE E-SERVICE LIST

/s/ Madelyn B. Carnate-Peralta
An employee of Hutchison & Steffen, LLC

CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

MICHAEL A. TRICARICHI, Plaintiff, v. PRICEWATERHOUSE COOPERS, LLP, COÖPERATIEVE RABOBANK U.A., UTRECHT-AMERICA FINANCE CO., SEYFARTH SHAW LLP and GRAHAM R. TAYLOR, Defendants.	CASE NO. A-16-735910-B DEPT NO. XV **ORDER GRANTING PLAINTIFF'S MOTION FOR RULE 54(B) CERTIFICATION**

APR 2 1 2017

Plaintiff Michael A. Tricarichi's Motion for Rule 54(b) Certification came on for hearing before this Court on April 18, 2017. Michael K. Wall appeared on behalf of Plaintiff Michael A. Tricarichi. J.P. Hendricks appeared on behalf of Defendant Seyfarth Shaw LLP. Dan R. Waite appeared on behalf of Defendants Cooperatieve Rabobank, U.A., and Utrecht-America Finance Co. Bradley Austin appeared on behalf of Defendant PricewaterhouseCoopers, LLP. The Court, having reviewed the Motion and Reply in support thereof, along with Seyfarth Shaw's Opposition, and having heard argument from counsel for Plaintiff and Defendant Seyfarth Shaw, and good cause appearing,

IT IS HEREBY ORDERED that Plaintiff Michael A. Tricarichi's Motion for Rule 54(b) Certification is GRANTED in its entirety for all of the reasons set forth in the Motion and Reply. The Court further finds that (1) Defendant Seyfarth Shaw has been dismissed and, upon the Court's inquiry, Seyfarth's Shaw's counsel stated that they wish for the dismissal to be final; (2) the only way to ensure final dismissal in this circumstance is through Rule 54(b) Certification; (3) the untimeliness issue raised by Seyfarth Shaw is not accurate under Nevada law; (4) alternatively, the instant Motion was timely given the circumstances.

The Court accordingly finds, pursuant to NRCP 54(b), that there is no just reason for delay of entry of final judgment as to Defendants Seyfarth Shaw LLP, Cooperatieve Rabobank, U.A., and Utrecht-America Finance Co. The Court finds that all claims for and against Defendants Seyfarth Shaw LLP, Cooperatieve Rabobank, U.A., and Utrecht-America Finance Co. have been resolved, and directs that final judgment be entered as to Defendants Seyfarth Shaw LLP, Cooperatieve Rabobank, U.A., and Utrecht-America Finance Co.

IT IS SO ORDERED.

DATED: April 28, 2017

Hon. Joe Hardy
DISTRICT COURT JUDGE

A735910

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