APPENDIX TABLE OF CONTENTS

RHODE ISLAND OPINIONS AND ORDERS

UTAH OPINIONS AND ORDERS

APPENDIX TABLE OF CONTENTS (cont.)

OPINION OF THE SUPREME COURT OF RHODE ISLAND (MAY 24, 2018)

SUPREME COURT OF RHODE ISLAND

GEORGE T. HAWES,

v.

DANIEL P. REILLY,

No. 2015-250

Appeal. (NC 14-148)

Before: SUTTELL, C.J., GOLDBERG, FLAHERTY, ROBINSON, and INDEGLIA, JJ.

Justice Robinson, for the Court.

The plaintiff, George T. Hawes, appeals from a May 4, 2015 final judgment entered in the Newport County Superior Court. That judgment was entered to reflect an April 27, 2015 written decision in which the hearing justice quashed an execution previously issued by the Rhode Island Superior Court on a State of Utah District Court judgment and dismissed the plaintiff's petition to enforce the Utah judgment, on the grounds that Utah did not have personal jurisdiction over the defendant, Daniel P. Reilly.[1] On appeal,

[1] Due to the fact that Daniel P. Reilly, his sister Shannon Reilly, and their father William Reilly, are all involved in this case in varying ways, we refer to them by their first names for clarity. In so doing, we intend no disrespect.

the plaintiff contends that the hearing justice erred in refusing to grant full faith and credit to the order of the Utah District Court with respect to personal jurisdiction. He further avers that the hearing justice erred in determining that Utah did not have personal jurisdiction over Daniel. Lastly, he posits that Daniel "forfeited the defense of lack of personal jurisdiction."

For the reasons set forth in this opinion, we affirm the judgment of the Superior Court.

I. Facts and Travel

The facts of the case before this Court are somewhat complicated but are not materially in dispute. In relating those facts in this opinion, we rely primarily on the March 16, 2010 complaint filed in state court in Utah, the April 27, 2015 decision of the Rhode Island Superior Court in the instant case, and other documents in the record.

A company named InnerLight Holdings, Inc. (InnerLight), with its principal place of business in Utah, hired William Reilly (Daniel's father) to act as their corporate counsel for the purpose of obtaining authorization from the United States Securities and Exchange Commission (SEC) to publicly trade InnerLight stock. Ultimately, however, InnerLight did not receive final authorization from the SEC to trade its shares publicly.

In its March 16, 2010 First Amended Complaint filed in the State of Utah District Court, InnerLight represented that it had agreed to pay William with 650,000 shares of InnerLight stock and had agreed to let him hold an additional 600,000 shares, to be transferred after InnerLight became a public com-

pany. InnerLight further alleged that William, in the process of acting as InnerLight's corporate counsel, transferred 700,000 shares without permission through several corporate entities—Ashworth Development, LLC (Ashworth); Doylestown Partners, Inc. (Doylestown); Shamrock Equities, Inc. (Shamrock); and Beachview Associates, Inc. (Beachview) (collectively, the corporate entities). Of significance is the fact that, according to his affidavit filed in Rhode Island Superior Court, Daniel was a minority shareholder in Doylestown, Shamrock, and Beachview, as well as being the secretary of Doylestown and Beachview and the Vice President of Shamrock.[2] Mr. Hawes ultimately purchased shares of InnerLight stock that had purportedly been transferred by William to the corporate entities. Mr. Hawes also purchased warrants.[3] InnerLight then rescinded the stock offerings, but Mr. Hawes did not receive a refund for the shares he had purchased.

On March 16, 2010, InnerLight filed its previously mentioned First Amended Complaint in state court in Utah against William, Daniel, Shannon, the corporate entities, Mr. Hawes, and other investors who had purchased shares of InnerLight stock.[4] Thereafter,

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[2] Daniel's sister, Shannon Reilly, was also involved in the corporate entities, but her relation to those entities is not relevant to the case before this Court.

[3] A warrant in this context is defined as "[a]n option to buy stock at a specified price from an issuing company." The American Heritage Dictionary of the English Language 1953 (5th ed. 2011).

[4] For the purposes of this case, we are focused on the events which unfolded in state court in Utah as they pertain to Daniel and Mr. Hawes.

Mr. Hawes answered the complaint. Included in his answer was a cross-claim against William, Daniel, Shannon, and the corporate entities, as well as other parties.[5] On June 29, 2010, Daniel, Shannon, and the corporate entities filed a motion to dismiss InnerLight's First Amended Complaint in state court in Utah on the ground that Utah did not have personal jurisdiction over them;[6] in addition, both sides filed memoranda of law with respect to that motion. Daniel's Utah counsel subsequently withdrew, and neither Daniel nor counsel representing him were present at the hearing on the motion to dismiss. The Utah District Court then denied the motion to dismiss in a brief order which stated that "Innerlight made a prima facie showing by pleading sufficient facts to establish that this Court may exercise personal jurisdiction over each of the non-resident Defendants." They then continued not to appear in the state court, and they did not engage new counsel. Accordingly, on May 11, 2012, an amended default judgment on Mr. Hawes's cross-claim was entered against Daniel, William, Shannon, and the corporate entities in the amount of $775,000, plus "reasonable expenses, including attorney's fees * * *."

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[5] The cross-claim contained multiple counts.

[6] A notice of removal to federal District Court had been filed in the United States District Court for the District of Utah, Central Division, by William, Daniel, Shannon, and the corporate entities on April 19, 2010. The case was ultimately remanded to the state court in which the complaint had originally been filed—the Utah District Court. Daniel filed his motion to dismiss in federal court initially and then in state court on June 29, 2010, after the case was remanded to state court. In the end, only the Utah state court ruled on the motion to dismiss.

On April 21, 2014, Mr. Hawes filed a "Petition to Enforce a Foreign Judgment" in the Rhode Island Superior Court, seeking enforcement in this jurisdiction of the default judgment from Utah against Daniel. On June 20, 2014, an execution was issued in the amount of $971,351.78. On October 30, 2014, Daniel filed a motion to quash the execution and dismiss the petition for lack of personal jurisdiction in the foreign action.

The hearing justice, after considering the briefings of the parties and after hearing argument, issued a written decision on April 27, 2015. In his written decision, the hearing justice first addressed whether or not he needed to give full faith and credit to the order of the state court in Utah that denied Daniel's motion to dismiss. After a thorough and commendable discussion of the facts and applicable precedent, the hearing justice determined that he would not be obligated to give full faith and credit to the denial of the motion to dismiss because that order was "vague" and did not include any "underlying reasoning." He added that "[i]n this case, it does not seem that a final determination of personal jurisdiction had [been] reached;" and he expressly noted that "[t]he order only states a *prima facie* showing of personal jurisdiction ha[d] been made." The hearing justice then reviewed Daniel's contacts with Utah and the applicable Utah law and came to the conclusion that Utah did not have personal jurisdiction over Daniel. For that reason, he quashed the execution and dismissed Mr. Hawes's petition. Final judgment subsequently entered on May 4, 2015. Mr. Hawes filed a timely appeal.

II. Standard of Review

In a case which similarly involved the doctrine of full faith and credit, we stated, with respect to the standard of review to be applied, that "this Court will apply a *de novo* standard of review to questions of law that may implicate a constitutional right." *Goetz v. LUVRAJ, LLC*, 986 A.2d 1012, 1016 (R.I. 2010).[7]

With respect to issues of personal jurisdiction, we have explained that usually "mixed questions of law and fact, as well as inferences and conclusions drawn from the testimony and evidence presented at trial, are entitled to the same deference as the trial justice's findings of fact, that is, they will not be disturbed on appeal unless it is clearly wrong or otherwise incorrect as a matter of law." *Cassidy v. Lonquist Management Co., LLC*, 920 A.2d 228, 232 (R.I. 2007) (internal quotation marks omitted). However, we went on in *Cassidy* to clarify that "when deciding mixed questions of law and fact that involve constitutional issues, our review is *de novo*." *Id.* Therefore, we concluded that "[o]ur review of a challenge to *in personam* jurisdiction is *de novo*." *Id.*; *see also Cerberus Partners, L.P. v. Gadsby & Hannah, LLP*, 836 A.2d 1113, 1117 (R.I. 2003) (stating that "[o]ur review [of the dismissal of a case for failure to make a *prima facie* showing of personal jurisdiction] is *de novo*").

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[7] We note as well that we apply a *de novo* standard of review to determine the applicability (*vel non*) of the doctrine of *res judicata*. *Town of Warren v. Bristol Warren Regional School District*, 159 A.3d 1029, 1035 (R.I. 2017).

III. Analysis

A. Full Faith and Credit

Mr. Hawes contends on appeal that the hearing justice erred in granting the motion to quash the execution and dismiss the petition because he did not grant full faith and credit to the order of the Utah District Court denying Daniel's motion to dismiss.

It is clear from our law that, "[i]f a defendant fails to appear after having been served with a complaint filed against him in another state and a default judgment is entered, he may defeat subsequent enforcement in another forum by showing that the judgment was issued from a court lacking personal jurisdiction." *Goetz*, 986 A.2d at 1016 (internal quotation marks omitted); *see also Video Products Distributors, Inc. v. Kilsey*, 682 A.2d 1381, 1382 (R.I. 1996).[8] It is equally

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[8] We note that, in *Goetz v. LUVRAJ, LLC*, 986 A.2d 1012, 1016 (R.I. 2010) and *Video Products Distributors, Inc. v. Kilsey*, 682 A.2d 1381, 1382 (R.I. 1996), we were presented with simpler procedural scenarios than we are confronted with in the instant case; in those cases, personal jurisdiction had not been challenged in the foreign jurisdiction. We were, therefore, able to simply apply the following principle and determine whether or not the foreign jurisdiction had personal jurisdiction: "[u]nder the full faith and credit clause [of the United States Constitution], a state court must enforce and give effect to a judgment of a court of a sister state, provided, upon inquiry, the court is satisfied that its sister court properly exercised * * * *in personam* jurisdiction." *Goetz*, 986 A.2d at 1016 (quoting *Maryland Central Collection Unit v. Board of Regents for Education of the University of Rhode Island*, 529 A.2d 144, 152–53 (R.I. 1987)). However, we are unable to apply that principle in a blunt and un-nuanced manner in this case because we have to contend with the fact that Daniel did file a motion to dismiss in Utah contesting personal jurisdiction and then failed to appear for a hearing on that motion, resulting in the issuance of an order denying his

clear that, in some situations, "[b]y submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, the defendant agrees to abide by that court's determination on the issue of jurisdiction: That decision will be res judicata on that issue in any further proceedings." *Insurance Corporation of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706, 102 S.Ct. 2099, 72 L.Ed. 2d 492 (1982); *see also Durfee v. Duke*, 375 U.S. 106, 109, 84 S.Ct. 242, 11 L.Ed.2d 186 (1963) ("Full faith and credit thus generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.").

In the instant case, we are not presented with the first just-mentioned scenario, but we are potentially presented with the second scenario. In this case, Daniel did not simply fail to appear in Utah with a default judgment subsequently being entered against him in that state. Rather, he initially elected to submit to the limited jurisdiction of Utah for the sole purpose of determining personal jurisdiction by filing the motion to dismiss for lack of personal jurisdiction. However, and importantly, his motion to dismiss was denied in a rather brief order issued after he did not appear at the hearing on the motion. He later had a default judgment entered against him on the cross-claim. We are left, therefore, to answer the question of whether, under controlling precedent, the Utah order denying Daniel's motion to dismiss on the ground that a *prima facie* showing of sufficient facts

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motion to dismiss. As such, it is our first responsibility to determine whether that order is entitled to full faith and credit and *res judicata* effect.

to establish the Utah court's personal jurisdiction over Daniel had been met should be accorded full faith and credit and, accordingly, *res judicata* effect.

The Full Faith and Credit Clause set forth in Article IV, Section 1 of the United States Constitution reads as follows:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

In accordance with the Full Faith and Credit Clause, G.L. 1956 § 9-32-2 provides as follows:

> "A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of the appropriate superior or district court. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior or district court. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the court and may be enforced or satisfied in like manner to any Rhode Island state court judgment."

Section 9-32-1 defines a foreign judgment as "any judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit in this state."

The United States Supreme Court in *Baldwin v. Iowa State Traveling Men's Association*, 283 U.S. 522, 525-26 (1931), articulated the following rather instructive general principle:

> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause." (Emphasis added.)

In express accordance with that principle, the Supreme Court went on to state, in a later case, "the general rule that a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Durfee*, 375 U.S. at 111 (emphasis added); *see Data Management Systems, Inc. v. EDP Corp.*, 709 P.2d 377, 379 (Utah 1985) (stating that, "although our Court may inquire into the jurisdictional basis of a foreign judgment, a determination by the rendering state on the issue of jurisdiction is *res judicata* when that issue is fully and fairly litigated there") (citing *Durfee*, 375 U.S. at 111-13); *see also Marshall v. Marshall*, 547 U.S. 293, 297 (2006); *Walzer v. Walzer*, 376 A.2d 414, 419 (1977); *Undrey Engine & Pump Co. v. Eufaula Enterprises, Inc.*, 597 P.2d 246, 249 (Kan. 1979); *Bassett*

v. Blanchard, 546 N.E.2d 155, 157 (Mass. 1989); *O'Malley v. O'Malley*, 338 A.2d 149, 154 (Me. 1975); *In re Smith*, 925 P.2d 169, 172 (Utah 1996); *Bloodworth v. Ellis*, 267 S.E.2d 96, 98 (Va. 1980); *OCS/Glenn Pappas v. O'Brien*, 67 A.3d 916, 926-27 (Vt. 2013).

In view of the above-referenced principles and authorities, it is now our responsibility to ask ourselves: has the issue of personal jurisdiction been fully and fairly litigated and then finally decided in Utah? After a thorough review of this case, it is simply impossible for us to answer that question in the affirmative.

Neither Daniel nor counsel for Daniel appeared at the hearing on the motion to dismiss in Utah. The order which issued after that hearing consists of a total of seven sentences. The following is that order in its entirety (omitting only the names of InnerLight's counsel):

> "This matter came before the Court on January 21, 2011, for oral argument on the Motion to Dismiss for Lack of Personal Jurisdiction ('Motion to Dismiss') filed by Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview Associates, Inc., and Shamrock Equities, Inc. ('Defendants').
>
> "At the hearing on January 21, 2011, Plaintiff Innerlight Holdings, Inc., ('Innerlight') was represented * * *. Defendants failed to appear personally or by counsel. Based upon consideration of the case file, and the memoranda submitted by the parties, and good

> cause appearing therefor, IT IS HEREBY ORDERED as follows:
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> "That Defendants' Motion to Dismiss be DENIED. Innerlight made a prima facie showing by pleading sufficient facts to establish that this Court may exercise personal jurisdiction over each of the non-resident Defendants. As a result, this Court possesses personal jurisdiction over Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview Associates, Inc., and Shamrock Equities, Inc." (Emphasis added.)

A review of that order makes it clear that the legal conclusion spans a mere two sentences; the Utah court did not include any insight into the arguments of the parties or, more importantly, the court's reasoning.[9] In the Utah order at issue in the instant case, there are certainly no reasons announced on

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[9] The importance of the explication of judicial reasoning is well-explained in the following passage from a law review article:

> "When reasons are announced and can be weighed, the public can have assurance that the correcting process is working. * * * In a busy court, the reasons are an essential demonstration that the court did in fact fix its mind on the case at hand. * * * Moreover, the necessity of stating reasons not infrequently changes the results by forcing judges to come to grips with nettlesome facts or issues which their normal instincts would otherwise cause them to avoid." Dale D. Goble, *Of Defamation and Decisionmaking: Wiemer v. Rankin and the Abdication of Appellate Responsibility*, 28 Idaho L. Rev. 1, 7 n.22 (1991-92) (emphasis in original) (quoting *Paul D. Carrington et al.*, Justice on Appeal 10 (1976)).

the basis of which one could review any analysis on the issue of personal jurisdiction that the Utah court may have engaged in. The order contains no discussion, analysis, or legal reasoning. Consequently, it is obvious to us from the dearth of reasoning in the Utah court's order and from the fact that neither Daniel, nor counsel for Daniel, appeared at the hearing on the motion to dismiss that the issue of personal jurisdiction was not fully and fairly litigated in Utah. *See Durfee*, 375 U.S. at 111, 84 S.Ct. 242; *see, e.g.*, *Bloodworth*, 267 S.E.2d at 98-99 (holding that the issue of jurisdiction was not fully and fairly litigated when the court's "recitation of jurisdiction rested upon a stipulation of the parties, rather than a litigation of the jurisdictional issues").

We note additionally that the Utah order denying the motion to dismiss merely referenced the fact that Mr. Hawes had made a *prima facie* showing of sufficient facts to establish the Utah court's personal jurisdiction over Daniel. It is absolutely clear to this Court that a *prima facie* showing is not a final decision on the issue of personal jurisdiction. The United States Court of Appeals for the Tenth Circuit has stated that "[w]hatever degree of proof is required initially, a plaintiff must have proved by the end of trial the jurisdictional facts by a preponderance of the evidence."[10] *Federal Deposit Insurance Corp. v. Oaklawn*

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[10] In many areas of the law, a "*prima facie*" showing is understood to be just the first element of proof that must be established in the decisional process. It is often a necessary prerequisite to the decisional process going forward; but it represents just the first step in that process and not its end point. *See, e.g.*, *Azar v. Town of Lincoln*, 173 A.3d 862, 867 (R.I. 2017) (describing how a party establishes "a *prima facie* case" in the context of the paradigm set forth by the United States Supreme Court in *Mc-*

Apartments, 959 F.2d 170, 174 (10th Cir. 1992) (internal quotation marks omitted); *see Anderson v. American Society of Plastic and Reconstructive Surgeons*, 807 P.2d 825, 827 (Utah 1990) (stating that, in situations where an evidentiary hearing is not held, "the plaintiff must prove jurisdiction at trial by a preponderance of the evidence after making a prima facie showing before trial"); *see also Neways, Inc. v. McCausland*, 950 P.2d 420, 422 (Utah 1997). No final determination of personal jurisdiction was reached prior to the entry of default judgment in the instant case. Accordingly, in addition to not being fully and fairly litigated in Utah, we are of the opinion that the issue of personal jurisdiction was also not finally decided in Utah. *See Durfee*, 375 U.S. at 111, 84 S.Ct. 242.

In our judgment, for the above-stated reasons, the Utah order denying the motion to dismiss for lack of personal jurisdiction was not entitled to full faith and credit in Rhode Island. As such, the hearing justice in the Superior Court did not err in determining that he was not precluded from making his own determination as to whether or not Utah had personal jurisdiction over Daniel.

B. Personal Jurisdiction

Mr. Hawes contends on appeal that, even if we were to hold that the hearing justice in Rhode Island

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Donnell Douglas Corp. v. Green, 411 U.S. 792 (1973), with respect to employment discrimination cases); *Wray v. Green*, 126 A.3d 476, 480 (R.I. 2015) ("Although evidence of a rear-end collision is *prima facie* evidence of negligence, [it] does not conclusively determine the issue of liability.") (internal quotation marks omitted).

was not required to give the Utah order denying the motion to dismiss full faith and credit, he nevertheless erred in determining that Utah did not have personal jurisdiction over Daniel. Mr. Hawes contends that Daniel had the requisite minimum contacts with Utah to satisfy personal jurisdiction. Moreover, he posits that William was acting as Daniel's agent in Utah. He further avers that Daniel had constructive notice of the happenings which form the factual background of this case and that he had purportedly ratified those actions.

In addressing whether or not Utah had personal jurisdiction over Daniel, we look to Utah law. *See Goetz*, 986 A.2d at 1017; *Video Products Distributors, Inc.*, 682 A.2d at 1383. Under Utah law, the inquiry into personal jurisdiction is two-pronged: the requirements of Utah's long-arm statute must be satisfied before the Utah court would have jurisdiction, and Utah's assertion of jurisdiction must not violate the Due Process Clause of the Fourteenth Amendment. *See Pohl, Inc. of America v. Webelhuth*, 201 P.3d 944, 950 (Utah 2008).[11] We will begin our analysis by addressing whether or not Utah's exercise of personal jurisdiction over Daniel offends due process.

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[11] The Utah Supreme Court's holding in *Pohl, Inc. of America v. Webelhuth*, 201 P.3d 944, 950 (Utah 2008), was limited by that court's later decision in *ClearOne, Inc. v. Revolabs, Inc.*, 369 P.3d 1269, 1277-78 (Utah 2016). We cite *Pohl, Inc. of America* only for its articulation of more general principles with respect to personal jurisdiction and not for the "effects test" which was limited by the Utah Supreme Court in *ClearOne, Inc.*, in accordance with the United States Supreme Court opinion in *Walden v. Fiore*, 571 U.S. 277, 134 S.Ct. 1115 (2014).

It has long been held that "due process requires only that in order to subject a defendant to a judgment *in personam*, if he be not present within the territory of the forum, he have certain minimum contacts with it such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *International Shoe Co. v. State of Washington, Office of Unemployment Compensation and Placement*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted); *see also Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984). When "judging minimum contacts, a court properly focuses on the relationship among the defendant, the forum, and the litigation." *Pohl, Inc. of America*, 201 P.3d at 953 (internal quotation marks omitted). "The essential question is whether the defendant purposefully and voluntarily direct[ed] his activities toward the forum so that he should expect . . . to be subject to the court's jurisdiction based on his contacts with the forum;" in other words, would the defendant "reasonably anticipate being haled into court there." *Id.* at 953-54 (internal quotation marks omitted); *see SII Mega-Diamond, Inc. v. American Superabrasives Corp.*, 969 P.2d 430, 435 (Utah 1998); *see also Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). The United States Supreme Court has also stated that "it is essential in each case that there be some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *see also MFS Series Trust III (on behalf of MFS Municipal High Income Fund) v. Grainger*, 96 P.3d 927, 931 (Utah 2004). A defendant "purposefully avails itself of the benefits of conducting business in a state by deliber-

ately engaging in significant activities within the state or by creating continuing obligations between himself and residents of the forum." *Fenn v. Mleads Enterprises, Inc.*, 137 P.3d 706, 712 (Utah 2006) (internal quotation marks omitted). "[E]ach defendant's contacts with the forum State must be assessed individually."[12] *MFS Series Trust III*, 96 P.3d at 931.

There are two categories of personal jurisdiction: specific and general. *Pohl, Inc. of America*, 201 P.3d at 949. General personal jurisdiction "permits a court to exercise power over a defendant without regard to the subject of the claim asserted and is dependent on a showing that the defendant conducted substantial and continuous local activity in the forum state." *Id.* (internal quotation marks omitted); *see also ClearOne, Inc. v. Revolabs, Inc.*, 369 P.3d 1269, 1281 (Utah 2016) (stating that general jurisdiction is "also known as all-purpose personal jurisdiction") (internal quotation marks omitted). Given that the factual basis for personal jurisdiction in the instant case is based upon only Daniel's alleged involvement, as a minority shareholder and as an officer in three of the corporate entities, with the sale of InnerLight stock to Mr. Hawes, we certainly perceive no basis for a determination that Daniel, or the corporate entities, conducted substantial and continuous activity in Utah.

We turn then to specific personal jurisdiction, which "gives a court power over a defendant only with respect to claims arising out of the particular activities of the defendant in the forum state * * *." *Pohl, Inc.*

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[12] In accordance with the principle quoted in the text, we are concerned in the instant case only with Daniel's contacts with Utah.

of America, 201 P.3d at 949 (internal quotation marks omitted); *see also Arguello v. Industrial Woodworking Machine Co.*, 838 P.2d 1120, 1122 (Utah 1992). The defendant's relationship with the forum must "arise out of contacts that the defendant himself creates with the forum [s]tate." *Walden v. Fiore*, 571 U.S. 277, ___, 134 S.Ct. 1115, 1122 (2014) (emphasis in original) (internal quotation marks omitted). Indeed, the "plaintiff cannot be the only link between the defendant and the forum." *ClearOne, Inc.*, 369 P.3d at 1276 (internal quotation marks omitted). We look then to Daniel's contacts with Utah and whether the claims against him arose out of the particular activities of Daniel in Utah.

The claims against Daniel that are set forth in InnerLight's First Amended Complaint and in Mr. Hawes's cross-claim arise out of the same set of operative facts. William was hired by InnerLight, in Utah, as corporate counsel. InnerLight contended that, thereafter, William "and his Children" transferred shares of InnerLight without permission through the corporate entities. The allegations in Mr. Hawes's cross-claim with respect to Daniel are limited to his role in the corporate entities and an allegation that William was acting as Daniel's agent. As such, a review of InnerLight's First Amended Complaint and Mr. Hawes's cross-claim clearly reveals that the only, very limited, role Daniel played (even accepting as true the allegations which lie at the heart of this case) was as a shareholder and officer of three of the corporate entities and as the son of William Reilly. It is clear from the record that Daniel himself had no relevant contact with Utah. Additionally, Daniel submitted an affidavit to the Rhode Island Superior

Court[13] stating that Doylestown, Shamrock, and Beachview are all Florida corporations with their principal places of business in Rhode Island and Florida. Thus, the corporate entities did not operate in Utah and had no connection with Utah beyond their purportedly having been used to convey InnerLight stock. While it is true that InnerLight's principal place of business is in Utah, minimum contacts cannot be based solely on the fact that the plaintiff is located in the forum. *See Walden*, 571 U.S. at ___, 134 S.Ct. at 1122; *ClearOne, Inc.*, 369 P.3d at 1276.

Moreover, Daniel's affidavit stated that he is a resident of Rhode Island and that he had been to Utah only "once"—"on a ski trip in approximately 2007." He went on to state that he had never "conducted business" in Utah or "authorized any agent to act on [his] behalf in the state of Utah." Daniel also stated that he did not participate in his father's work for InnerLight, was never aware of any deposit of stock or options in any of the accounts owned by Doylestown, Shamrock, and Beachview, and did not know about or participate in the transfer of shares of InnerLight stock from the corporate entities to Mr. Hawes. Lastly, he stated that he never "sold or authorized anyone to sell on [his] behalf or on behalf of Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc. any share of InnerLight or any warrant or option related to InnerLight shares."

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[13] In his appeal to this Court, Mr. Hawes characterizes Daniel's affidavit submitted to the Rhode Island Superior Court as "conclusory" and "self-serving." However, he does not point to any specific inaccuracies nor does he point to any admissible evidence to refute what Daniel has averred in his affidavit.

Thus, we are left with the ineluctable conclusion that Daniel's contacts with Utah in the instant case are certainly not the minimum contacts envisioned by the Supreme Court in *International Shoe Co.*, 326 U.S. at 316, 66 S.Ct. 154. *See Cerberus Partners, L.P.*, 836 A.2d at 1117. Daniel had no personal contact with Utah apart from a ski trip a number of years ago. There is absolutely no evidence that he was in any way involved in the dealings between InnerLight, William, Mr. Hawes, and the corporate entities. As such, Daniel had absolutely no reason to anticipate being haled into court in Utah in connection with the sale of InnerLight stock to Mr. Hawes through the corporate entities because he had clearly not purposefully availed himself of the privileges of conducting business in Utah. *See Hanson*, 357 U.S. at 253, 78 S.Ct. 1228; *Pohl, Inc. of America*, 201 P.3d at 953-54. Daniel is not alleged to have engaged in what we would characterize as significant activities in Utah, nor has he "creat[ed] continuing obligations" to InnerLight in Utah. *Fenn*, 137 P.3d at 712 (internal quotation marks omitted). Consequently, in our judgment, Utah did not have specific personal jurisdiction over Daniel.

Furthermore, we are not swayed by Mr. Hawes's argument that William acted as Daniel's agent in Utah or by his argument that Daniel had constructive notice of the transfers involved in this case. There is no evidence beyond a familial relationship upon which one could reasonably base such a conclusion; and Mr. Hawes's allegation of such, under the facts in the instant case, does not alter our analysis and conclusion with respect to Daniel's minimum contacts with Utah.

Accordingly, we conclude that the hearing justice did not err in finding that Utah lacked personal jurisdiction over Daniel.[14]

C. Forfeiture

Mr. Hawes makes a final argument to the effect that Daniel "forfeited the defense of lack of personal jurisdiction * * * ." In support of his argument, he cites to this Court's decision in *Pullar v. Cappelli*, 148 A.3d 551 (R.I. 2016).

In *Pullar*, 148 A.3d at 553, the defendant filed an answer in which he asserted lack of personal jurisdiction; but the case then wended its way in litigation for more than three years. The parties engaged in court-annexed arbitration as well as discovery, including the propounding of interrogatories and the taking of depositions. *Id.* The defendant rejected (as was his right) the eventual arbitration award in favor of the plaintiff, and the case was set down for trial. *Id.* The defendant then filed a motion for summary judgment asserting that Rhode Island did not have personal jurisdiction over him. *Id.* at 554. We stated that a "defendant, confronted with an impending trial, cannot * * * pull [personal jurisdiction] out of the hat like a rabbit in the face of an inhospitable sea." *Id.* at 558 (internal quotation marks omitted). For that reason, we articulated a rule to the effect

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[14] Since we are of the decided opinion that Utah's exercise of jurisdiction over Daniel would violate due process, we need not address whether or not jurisdiction over Daniel would be authorized by Utah's long-arm statute. *Cf. Pohl, Inc. of America*, 201 P.3d at 951 ("[W]e have stated in the past that any set of circumstances that satisfies due process will also satisfy the long-arm statute.") (internal quotation marks omitted).

that a defense of lack of personal jurisdiction could be forfeited "when the defendant, through delay or conduct, give[s] a plaintiff a reasonable expectation that it will defend the suit on the merits or * * * cause[s] the court to go to some effort that would be wasted if personal jurisdiction is later found lacking." *Id.* (internal quotation marks omitted). We then held that, in that case, the defendant had forfeited his defense of lack of personal jurisdiction due to the delay of over three years in moving for summary judgment and the fact that the defendant had engaged in discovery and arbitration. *Id.* at 557-58.

Mr. Hawes presents us with the following reasons for his belief that Daniel forfeited his defense of lack of personal jurisdiction in the instant case: (1) he submitted a motion to dismiss in Utah; (2) he attempted to remove the Utah case to federal court; (3) he did not appeal the denial of his motion to dismiss in the Utah state court; (4) he did not seek a stay in Utah; and (5) he delayed attacking the validity of the Utah judgment until a petition was filed against him in Rhode Island. In our opinion, those reasons are not sufficient to establish a forfeiture of Daniel's right to contest personal jurisdiction. Filing a motion to dismiss on the grounds of lack of personal jurisdiction certainly does not give the plaintiff a reasonable expectation that the suit will be defended on the merits—nor does an attempt to remove the case to federal court. The instant case involves a radically different factual scenario from that which was present in *Pullar*. Here, we do not have any facts which are even remotely similar to a party's waiting three years to actively contest personal jurisdiction while voluntarily engaging in the state's discovery and arbitration

processes. As such, Mr. Hawes's attempt to equate this case with *Pullar* is unavailing.

In conclusion, it is our judgment that: (1) the Utah order denying the motion to dismiss was not entitled to full faith and credit; (2) Utah did not have personal jurisdiction over Daniel; and (3) Daniel did not forfeit his defense of lack of personal jurisdiction in this case.

IV. Conclusion

For the reasons stated herein, we affirm the judgment of the Superior Court. We remand the record to that tribunal.

DECISION OF THE SUPERIOR COURT (APRIL 27, 2015)

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, NEWPORT, SC SUPERIOR COURT

GEORGE T. HAWES,

Petitioner,

v.

DANIEL P. REILLY, Alias,

Respondent.

C.A. No. NC-2014-0148

Before: STERN, J.

STERN, J.

Before this Court for decision is the Respondent's, Daniel P. Reilly, (Respondent or Reilly) Motion to Quash and to Dismiss the Execution a Foreign Judgment entered against him by the Petitioner, George T. Hawes (Petitioner or Hawes). The basis for the Respondent's Motion is that the Utah court did not have personal jurisdiction over him prior to the default judgment being entered. The Petitioner, has filed an objection to the current Motion. Jurisdiction is pursuant to G.L. 1956 § 9-32-1, *et. seq.*

I. Facts and Travel

The current action stems from a foreign action filed in the state court of Utah by InnerLight Holdings Inc. (InnerLight), a Delaware corporation with its principal place of business in Utah. InnerLight marketed nutritional and healthcare products. In anticipation of going public, InnerLight hired the Respondent's father, William Reilly (William), to act as its corporate counsel in order to obtain authorization from the Securities and Exchange Commission (SEC) to publically [sic] trade shares of its stock. William drafted the SEC required registration statement, subscription agreements, prospectus, and other required documents. However, InnerLight failed to receive from the SEC final authorization to publically [sic] sell its shares. In its complaint, InnerLight alleged William, without permission, transferred unauthorized shares of its stock through the use of several of his own corporate Entities.[1] The Petitioner was one of the unfortunate purchasers of InnerLight's unauthorized stock and warrants. After discovering the transactions executed by William, InnerLight rescinded the stock offerings. Although the Respondent had already paid for the InnerLight shares and warrants, he did not receive a refund from either InnerLight or William. In 2010, InnerLight filed suit against William, the Respondent, the Entities, the Petitioner, and other investors who had purchased shares of InnerLight stock.[2]

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[1] The Entities referred to in the complaint are, Ashworth Development, LLC (Ashworth); Doylestown Partners, Inc. (Doylestown); Shamrock Equities, Inc. (Shamrock); Beachview Associates, Inc. (Beachview) (collectively the Entities).

[2] Respondent's sister, Shannon Reilly, was also a named defendant.

On June 30, 2010, the Petitioner answered InnerLight's complaint and filed a cross-claim against the other "InnerLight Defendants."[3] The cross-claim asserted that the Respondent, while acting in the scope of his authority, sold and transferred shares and warrants of InnerLight stock to the Petitioner through the Entities.[4] The Respondent did not answer InnerLight's complaint, but rather, appeared only to file a motion to dismiss InnerLight's complaint on the basis that Utah did not have personal jurisdiction over him.[5] The court in Utah denied the Respondent's motion, stating InnerLight had demonstrated a *prima facie* case that the court had personal jurisdiction over the Respondent.

After failing to appear and appoint new counsel, the Utah court stated that if Respondent failed to appear at the next scheduled pre-trial conference, a default judgment on Petitioner's cross-claim would enter against him. On February 16, 2011, after failing to appear, a default judgment of $750,000 was entered against the Respondent, as well as the other named defendants, in the Petitioner's cross-claim. In an attempt to execute the default judgment, Petitioner filed a complaint in the Rhode Island Superior Court.

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[3] The InnerLight Defendants are essentially the members of the Reilly family and Entities.

[4] The record indicates that Respondent is a shareholder of Doylestown, Beachview, and Shamrock.

[5] The motion to dismiss was submitted by counsel retained in Utah by the Respondent. However, Respondent's counsel withdrew before the motion was ruled on. By filing this motion to dismiss, the Respondent was not consenting to or waiving the issue of personal jurisdiction.

Respondent, in his Motion to Quash the execution of the default judgment, argues that the default judgment is unenforceable since the court in Utah, failed to properly find that it, in fact, had personal jurisdiction over him at the time the default judgment was entered. [6]

II. Standard of Review

A foreign judgment consists of any "judgment, decree, or order of a court of the United States or of any other court which is entitled to full faith and credit . . . ." G.L. 1956 § 9-32-1. Rhode Island courts shall treat foreign judgments in a like manner as judgment entered by the superior or district court of this state. Sec. 9-32-2. A foreign judgment is subject to the "procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of the court." *Id.*

III. Analysis

The Respondent argues that the Utah courts did not have personal jurisdiction over him at the time the default judgment was entered, resulting in a void judgment. The Respondent contends that the Utah courts did not definitively rule on the personal jurisdiction issue raised by the Respondent, and therefore, the personal jurisdiction issue should be reviewed by this Court.

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[6] The Respondent also makes reference to the fact that Respondent, in his motion to stay, raised the argument that Hawes failed to properly serve his cross-claim on the Defendant. However, this Court determined that such an issue should be left to the courts of Utah to determine.

"If a defendant fails to appear after having been served with a complaint filed against him to another state and a default judgment is entered, he may defeat subsequent enforcement in another forum by showing that the judgment was issued from a court lacking personal jurisdiction." *Goetz v. LUVRAJ, LLC*, 986 A.2d 1012, 1016 (R.I. 2010) (quoting *C & J Leasing Corp. v. Paolino*, 721 A.2d 839, M1 (R.I. 1998)) (internal quotations omitted); *see also Video products Dist., Inc. v. Kilsey*, 682 A.2d 1381, 1382 (R.I. 1996). However, this process of overturning a default judgment carries with it a heavy burden." *Id.* "Under the full faith and credit clause, a state court must enforce and give effect to a judgment of a court of a sister state, provided, upon inquiry, the court is satisfied that its sister court properly exercised subject-matter and in personam jurisdiction." *State of Md. Cent., Collection Unit v. Bd., of Regents for Educ. of University of Rhode Island*, 529 A.2d 144, 152-53 (R.I. 1987) (citing *Underwriters Nat'l Assurance Co. v. North Carolina Life and Accident and Health Insurance Guaranty Association*, 455 U.S. 691, 704-05 (1982)). If successful, Rhode Island courts "will not recognize foreign judgments if they are invalid or subject to collateral attack where rendered," *Israel v. National Bd. of Young Men's Christian Ass'n.*, 117 R.I. 614, 620, 369, A.2d 646, 650 (1977),(citing *Nevin v. Nevin*, 88 R.I. 426, 149 A.2d 722 (1959)).

A. Respondent's Challenge of Personal Jurisdiction

The Petitioner argues that this Court should not inquire into whether Utah properly exercised personal jurisdiction Over the Respondent because the issue has already been decided. Therefore, the Petitioner

contends the Respondent is precluded from re-litigating the issue.

"[J]udicial proceedings . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken." *Durfee v. Duke*, 375 U.S. 106, 109 (1963); *see Baldwin v. Iowa State Traveling Men's Ass'n.*, 283 U.S. 522, 525-26 (1931) ("matters once tried shall be considered forever settled as between the parties."); *see also Emig v. Massau*, 746 N.E. 2d 707, 711 (Ohio App. 2000) (stating that after fully and actually litigating a Motion contesting personal jurisdiction, a foreign court's finding that personal jurisdiction exists is not subject to collateral attack, especially if the party contesting has not appealed the foreign court's judgment). "By submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, the defendant agrees to abide by that court's determination on the issue of jurisdiction; [t]hat decision will be *res judicata* on that issue in any further proceedings. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 706 (1982) (citing *Baldwin*, 283 U.S. at 525). Therefore, a party who has had a full and fair opportunity to contest and litigate the issue of personal jurisdiction, and a final determination was made on the issue, is prevented from receiving "a 'second opportunity' to litigate jurisdictional facts." *Emig*, 746 N.E. 2d at 711 (citing *Sherrer v. Sherrer*, 334 U.S. 343 (1948)).

It is beyond dispute that the Respondent in this case filed a motion to dismiss InnerLight's complaint arguing no personal jurisdiction in Utah. However, Respondent's counsel withdrew before the Utah court

ruled on the submitted motion and the Respondent was not present for oral argument. As a result, the Utah court issued a brief order stating that InnerLight had made a *prima facie* showing that Utah had personal jurisdiction over the Respondent. *See* Pet.'s Ex. 11. The Utah order did not include the court's underlying reasoning for finding the existence of personal jurisdiction over the Respondent, but rather, relied upon the case file and InnerLight's memorandum objecting to the motion to dismiss.

In light of vague order, this Court that requested the Petitioner supplement the filings in order for this Court to properly determine whether the jurisdictional issue had been previously and fully decided.[7] This Court finds troubling the fact that the Utah order fails to disclose the court's reasoning behind finding a *prima facie* showing that personal jurisdiction exists over the Respondent. Courts must give preclusive effects to rendered decisions of a different court; however, this Court also "has an interest in protecting the rights of its residents" who deal with out-of-state parties. *Rose v. Firstar Bank*, 819 A.2d 1247, 1253 (R.I. 2003). In this case, the record does not include a copy of the InnerLight's memorandum heavily relied on by the Utah court. Without such document Utah's basis for its ruling cannot be justified by this Court. The order only states a *prima facie* showing of personal jurisdiction has been made, but this Court cannot determine if this constitutes a proper and

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[7] This Court requested such submission be filed within a certain period of time. The Petitioner failed to meet the deadline set by this Court. However, after reviewing the additional submissions by the Petitioner, it appears that the additional filings did not include any new documents from those previously filed.

complete review of the jurisdictional issue. *See Baldwin*, 283 U.S. at 525 (stating a party should be bound by the result of a contested issue only after being afforded an opportunity to be fully heard). In this case, it does not seem that a final determination of personal jurisdiction had reached. *See* 30 Am. Jur. 2d Executions, Etc. § 746 (stating the forum state can make a determination regarding jurisdiction, especially when the issue itself has not been "fully and fairly litigated and finally determined" in the sister state). For these reasons, this Court does not believe the Utah court order should be given preclusive effect and should not prevent the Respondent from now challenging the jurisdictional issue.

Similarly, the default judgment did not resolve or finally determine the issue of personal jurisdiction. *See* Pet.'s Ex. 7. In Utah, to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff only has to make a prima facie showing to establish personal jurisdiction. *Federal Deposit Ins. Corp. v. Oaklawn Apartments*, 959 F.2d 170 174 (10th Cir. 1992). A ruling on a motion to dismiss does not constitute a final judgment. *See Little v. Mitchell*, 604 P.2d 918, 919 (Utah 1979). However, by the end of trial, or before entry of default judgment, "a plaintiff must have proved . . . the jurisdictional facts by a preponderance of the evidence," *Id.*; *see Dennis Garberg & Associates, Inc. v. Pack Tech Intern. Corp.*, 115 F.3d 767, 773 (10th Cir. 1997).

In this case, only a *prima facie* showing of personal jurisdiction was made. However, before the entry of default judgment, the court did not expreslly [sic] find by a preponderance of the evidence signified that Utah had personal jurisdiction over the Respondent;

See Garberg, 115 F.3d at 771 (stating a court's decision to enter a default judgment "should not be entered without a determination that the court has jurisdiction over the defendant"); *Williams v. Life Savings and Loan*, 802 F.2d 1200, 1203 (10th Cir., 1986). Therefore, with only an order stating a *prima facie* showing was made allowing Utah to invoke personal jurisdiction over the Respondent—without providing the basis for reaching this determination that can be reviewed by this Court—coupled with the fact that a final determination of personal jurisdiction was not reached prior to entry of the default judgment, this prior order does not preclude this Court from reviewing Utah's jurisdiction over the Respondent.[8] *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001)) (stating issue preclusion bars litigation of issues of law that had been actually litigated and resolved "in a valid court determinations"'). Accordingly, this Court will review Respondent's argument that execution or the judgment should be quashed since the judgment was entered by a court which did not possess jurisdiction over him.

B. Personal Jurisdiction

The foreign judgment in this case will only be enforced if, upon inquiry, this Court is satisfied Utah had jurisdiction over the Respondent. *See Trustees of Shepperd and Enoch Pratt Hospital v. Smith*, 114 R.I. 181, 330 A.2d 804, 805 (1975). In determining whether

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[8] It is of note that the order issued by the Utah state court did not deem this a final judgment. Instead, it states that Inner-Light met its low burden to survive a motion to dismiss. To state again, the default judgment did not address the personal jurisdiction issue.

Utah had personal jurisdiction, over the Respondent, this Court must look to Utah law. Analysis personal jurisdiction is two pronged. First, Utah's long-arm statute must confer jurisdiction over the nonresident. *See* Utah Code Ann. § 78B-3-205. Second, the exercise of jurisdiction over the nonresident must conform with the due process clause of the Fourteenth Amendment. *See Pohl, Inc. of America v. Webelhuth*, 201 P.3d 944, 950 (Utah 2008). "[D]ue process requires only that in order to subject a defendant to a judgment in personam, . . ., he have certain minimum contacts with it such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *State of Md. Cent. Collection Unit*, 529 A.2d at 151 (quoting *International Shoe v. Washington*, 326 U.S. 310 (1945)) (internal quotations omitted).

There are two categories of personal jurisdiction that allows a state to hale into court a nonresident: general and specific jurisdiction. The exercise of general personal jurisdiction "is dependent on a showing that the defendant conducted "substantial and continuous local activity in the forum state." *Pohl*, 201 P.3d at 950 (quoting *Arguello v. Indus. Woodworking Mach. Co.*, 838 P.2d 1120, 1122 (Utah 1992). Further, a court may exercise specific personal jurisdiction over a nonresident if the cause of action arises from the defendant's contact with the forum state. *Id.* In order to find specific personal jurisdiction, "the defendant must have purposely avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws." *SII Megadiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 435 (Utah 1998) (quoting *Mallory Eng'g. Inc. v. Ted R. Brown & Assocs.*, 618 P.2d 1004, 1008 (Utah

1980) (internal quotations omitted), "The nature of the act and the magnitude of its connection with the forum state must be such that the defendant should reasonably anticipate being haled into court in that state." *State of Md. Cent. Collection Unit*, 529 A.2d at 151 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Last, "'the determination of whether Utah can justify asserting jurisdiction over defendants hinges on the balancing of the fairness to the parties and the interests of the State in assuming jurisdiction.'" *SII Megadiamond*, 969 P.2d at 435 (quoting *Synergetics v. Marathon Ranching Co.*, 701 P.2d 1106, 1110-11 (Utah 1985)).

In this case, this Court must determine whether the Respondent had certain minimum contacts with the forum to allow Utah to invoke specific personal jurisdiction over him.[9] When reviewing the filings in this matter, this Court is not persuaded that those minimum contacts exist. After reviewing InnerLight's complaint and the cross-claim filed by Petitioner, this Court does not find that the Respondent purposefully availed himself to the benefits of conducting business in Utah. *See Hanson v. Denckia*, 357 U.S. 235, 251 (1958). InnerLight's amended complaint describes the Respondent as a shareholder of several of the Entities used to transfer the unauthorized shares of InnerLight stock. However, the complaint alleges it was the Respondent's father who caused the unauthorized shares to be transferred to the Entities, and eventually being sold to the Petitioner. The Petitioner does not allege that the Respondent is in possession of

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[9] It is clear to this Court that there is no suggestion that Respondent has conducted continuous substantial activity in Utah allowing Utah to invoke general personal jurisdiction over him.

his money or that he caused his loss. The only allegation in the Petitioner's cross-claim is that the Entities were used as a conduit to transfer the shares and warrants to him.

The Respondent submitted a sworn declaration in Utah and in this Court stating the only time he entered Utah was for a family ski trip, which is unrelated to the current controversy. Based on the submissions by the parties, it has not been demonstrated that the Respondent has any contacts or conducts any business in Utah that would make it reasonably foreseeable that he would be haled into a Utah court. *See Bendick v. Picillo*, 525 A.2d 1310, 1312 (R.I. 1937) (quoting *Violet v. Picillo*, 613 F.Supp. 1563, 1574 (D.R.L 1985)). The injury allegedly sustained by Petitioner did not occur in Utah, but rather, only originated there. Further, it is possible that William's act of transferring the InnerLight stock out of state could have allegedly resulted in an injury being sustained in Utah, but InnerLight's complaint fails to divulge the Entities' or the Respondent's contact with Utah. *See Hydroswift Corp. v. Louie's Boats & Motors, Inc.*, 494 P.2d 532, 533 (Utah 1972); *see also Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (stating "[t]he requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdiction.").

The underlying facts of this case points to a scenario where the Respondent's father allegedly has caused InnerLight's shares to be traded without authorization. The Petitioner, is resident of New York, purchased and received these shares from one or several of the Entities, and sustained damages upon InnerLight's rescission of its stock. There is no evidence suggesting that the Respondent specifically

contacted Utah in association with the unauthorized transfer of InnerLight's stock.[10] Although the Respondent's father may have the purposeful contacts with Utah and used the Entities to allegedly transfer unauthorized shares, these is no suggestion that the Respondent knew of the actions the Entities were involved with or that he himself had purposeful contacts with Utah. *See Calder*, 465 U.S. at 790. Therefore, this Court finds that it has not been demonstrated that the Respondent had purposefully availed itself to Utah's jurisdiction. Further, the Respondent has met its burden that it did not have certain minimum contacts with Utah to allow Utah to invoke specific personal jurisdiction over him.

IV. Conclusion

Therefore, the Respondent's Motion to Quash the execution issued by the Clerk of Newport County is granted and the petition filed by the Petitioner is hereby dismissed. The Respondent shall prepare the appropriate judgment for entry.

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[10] The Entities are not organized pursuant to Utah law, maintain no offices in Utah, do not solicit business there, and have no clients from Utah or are in communication with anyone from Utah.

AMENDED DEFAULT JUDGMENT IN FAVOUR OF GEORGE T. HAWES AGAINST WILLIAM J. REILLY, SHANNON P. REILLY, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., AND SHAMROCK EQUITIES, INC. (MAY 11, 2012)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, FOR THE STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

GEORGE T. HAWES,

Counterclaim and Third Party Plaintiff,

v.

INNERLIGHT HOLDINGS, INC; WILLIAM J. REILLY; DANIEL P. REILLY, SHANNON P. REILLY; BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC; and KEVIN BROGAN,

Counterclaim and Third Party Defendants.

Case No. 100400890

Before: The Hon. David MORTENSEN,
Fourth Judicial District Court Judge.

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1. This matter came before the Court on March 21, 2011, for a Pretrial Conference ordered by the Court. The Court mailed Notice of the Pretrial Conference to the parties. Attorney Richard L. Petersen appeared for Plaintiff InnerLight Holdings, Inc. Attorney Bryan S. Johansen appeared for Defendant and Cross-Claimant George T. Hawes ("Hawes"). Defendants William J. Reilly, Daniel P. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doylestown Partners, Inc., and Shamrock Equities, Inc. (collectively "Defendants") failed to appear at the Pretrial Conference.

2. The Court found that Defendants failed to appear, answer, plead, or otherwise defend in this action, and their motion to dismiss has been previously denied.

3. The Court found that Hawes' Cross-Claim is well-pled and that each of the allegations state a valid claim for relief against Defendants.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment by default is hereby entered in favor of George T. Hawes against Defendants William J. Reilly, Daniel P. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doylestown Partner, Inc., and Shamrock Equities, Inc., as follows:

1. Hawes is awarded a default judgment in the principal amount of $775,000.00, which is a

sum certain pled in Hawes' Cross Claim against Defendants.

2. Defendant William J. Reilly's Answer is stricken.

3. Pursuant to Rule 37(b)(2)(D) of the Utah Rules of Civil Procedure, Defendants are ordered to pay Hawes' reasonable expenses, including attorney fees, caused by the failure of Defendants to appear or otherwise defend in this action.

4. Finding no just reason for delay, the court hereby enters this Judgment as a final judgment for purpose of Rule 54(b) of the Utah Rules of Civil Procedure.

DATED THIS 11 day of May 2012.

BY THE COURT:

/s/ David Mortensen
Fourth Judicial District Court Judge

NOTICE OF ENTRY OF JUDGMENT (MAY 9, 2011)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, FOR THE STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

GEORGE T. HAWES,

Counterclaim and Third Party Plaintiff,

v.

INNERLIGHT HOLDINGS, INC; WILLIAM J. REILLY; DANIEL P. REILLY, SHANNON P. REILLY; BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC.,

Counterclaim and Third Party Defendants.

Case No. 100400890

Before: The Hon. David MORTENSEN,
Fourth Judicial District Court Judge.

Pursuant to Rule 58A(d) of the Utah Rules of Civil Procedure, Plaintiff Counterclaimant and Cross claimant George T. Hawes ("Hawes"), through its undersigned counsel, hereby provides notice that judgment was entered in the above-captioned matter against Defendants William J. Reilly, Daniel P. Reilly, Shanllon P. Reilly, Beachview Associates, Inc., Doylestown Partners, Inc., and Shamrock Equities, Inc. The Judgment in Favor of Hawes (the "Judgment") was entered on April, 20 2011. A copy of the Judgment is attached hereto as Exhibit A.

Dated this 9th day of May, 2011.

Parr Brown Gee & Loveless

/s/ Bryan S. Johansen
Attorney for George T. Hawes

DEFAULT JUDGMENT IN FAVOR OF GEORGE T. HAWES AGAINST WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., AND SHAMROCK EQUITIES, INC. (APRIL 28, 2011)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, FOR THE STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

GEORGE T. HAWES,

Counterclaim and Third Party Plaintiff,

v.

INNERLIGHT HOLDINGS, INC; WILLIAM J. REILLY; DANIEL P. REILLY, SHANNON P. REILLY; BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC; and KEVIN BROGAN,

Counterclaim and Third Party Defendants.

Case No. 100400890

Before: The Hon. David MORTENSEN,
Fourth Judicial District Court Judge.

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1. This matter came before the Court on March 21, 2011, for a Pretrial Conference ordered by the Court. The Court mailed Notice of the Pretrial Conference to the parties. Attorney Richard L. Petersen appeared for Plaintiff InnerLight Holdings, Inc. Attorney Bryan S. Johansen appeared for Defendant and Cross-Claimant George T. Hawes ("Hawes"). Defendants William J. Reilly, Daniel P. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doylestown Partners, Inc., and Shamrock Equities, Inc. (collectively "Defendants") failed to appear at the Pretrial Conference.

2. The Court found that Defendants failed to appear, answer, plead, or otherwise defend in this action, and their motion to dismiss has been previously denied.

3. The Court found that Hawes' Cross-Claim is well-pled and that each of the allegations state a valid claim for relief against Defendants.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment by default is hereby entered in favor of George T. Hawes against Defendants William J. Reilly, Daniel P. Reilly, Shannon P. Reilly, Beachview Associates, Inc., Doylestown Partner, Inc., and Shamrock Equities, Inc., as follows:

1. Hawes is awarded a default judgment in the principal amount of $775,000.00, which is a

sum certain pled in Hawes' Cross Claim against Defendants.

2. Defendant William J. Reilly's Answer is stricken.

3. Pursuant to Rule 37(b)(2)(D) of the Utah Rules of Civil Procedure, Defendants are ordered to pay Hawes' reasonable expenses, including attorney fees, caused by the failure of Defendants to appear or otherwise defend in this action.

4. Finding no just reason for delay, the court hereby enters this Judgment as a final judgment for purpose of Rule 54(b) of the Utah Rules of Civil Procedure.

DATED THIS 28 day of April, 2011.

BY THE COURT:

/s/ David Mortensen
Fourth Judicial District Court Judge

NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (FEBRUARY 17, 2011)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890

Before: David N. MORTENSEN,
Fourth Judicial District Court Judge.

TO PARTIES AND COUNSEL:

You are hereby given notice that an Order Denying Defendants' Motion to Dismiss for Lack of Personal Jurisdiction was entered in this action on the 16th day of February 2011. A copy of the Order is attached.

Dated this 17th day of February, 2011.

/s/ Richard L. Petersen
Howard, Lewis & Petersen, P.C.
Attorneys for InnerLight Holdings, Inc.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (FEBRUARY 16, 2011)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, PROVO DEPARTMENT,
STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890

Before: David MORTENSEN,
Fourth Judicial District Court Judge.

This matter came before the Court on January 21, 2011, for oral argument on the Motion to Dismiss for Lack of Personal Jurisdiction ("Motion to Dismiss") filed by Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview Associates, Inc., and Shamrock Equities, Inc. ("Defendants").

At the hearing on January 21, 2011, Plaintiff Innerlight Holdings, Inc., ("Innerlight") was represented by Richard L. Petersen and Richard A. Roberts.

Defendants failed to appear personally or by counsel. Based upon consideration of the case file, and the memoranda submitted by the parties, and good cause appearing therefor, IT IS HEREBY ORDERED as follows:

That Defendants' Motion to Dismiss be DENIED. Innerlight made a prima facie showing by pleading sufficient facts to establish that this Court may exercise personal jurisdiction over each of the non-resident Defendants. As a result, this Court possesses personal jurisdiction over Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beach-view Associates, Inc., and Shamrock Equities, Inc.

SO ORDERED this 16 day of February, 2011.

BY THE COURT:

/s/ David Mortensen
Judge, Fourth Judicial District

Prepared by:

/s/ Richard A. Roberts
Richard L. Petersen
Richard A. Roberts, for:
Howard, Lewis & Petersen, P.C.
Attorneys for Plaintiff

NOTICE OF PRETRIAL CONFERENCE (JANUARY 25, 2011)

FOURTH DISTRICT COURT PROVO
UTAH COUNTY, STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890

Before: David MORTENSEN,
Fourth Judicial District Court Judge.

Notice is given of pretrial conference set at a time of oral arguments on 1/21/11.

/s/
District Court Deputy Clerk

Date: 1-25-11

The court provides interpreters for criminal, protective order, and stalking injunction cases. If you

need an interpreter, please notify the court at (801) 429-1005 five days before the hearing.

Individuals needing special accommodations (including auxiliary communicative aids and services) should call KRISTEN at (801) 429-1005 three days prior to the hearing. For TTY service call Utah Relay at (800) 346-4128.

NOTICE OF ORAL ARGUMENT (NOVEMBER 5, 2010)

FOURTH DISTRICT COURT PROVO
UTAH COUNTY, STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890 CN

Before: David MORTENSEN,
Fourth Judicial District Court Judge.

This matter set for hearing at Plaintiff's request for argument on the Motion to Dismiss for Lack of Personal Jurisdiction. Counsel are asked to submit courtesy copies 10 days Prior to the Hearing.

/s/
District Court Deputy Clerk

Date: 11-5-10

The court provides interpreters for criminal, protective order, and stalking injunction cases. If you need an interpreter, please notify the court at (801) 429-1005 five days before the hearing.

Individuals needing special accommodations (including auxiliary communicative aids and services) should call KRISTEN at (801) 429-1005 three days prior to the hearing. For TTY service call Utah Relay at (800) 346-4128.

TRANSCRIPT OF PROCEEDINGS
(JANUARY 11, 2011)

IN THE FOURTH DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY,

Defendant.

Case No. 100400890

Before: The Hon. David MORTENSEN,
Fourth Judicial District Court Judge.

[January 11, 2011 Transcript, p.1]

THE COURT: Please be seated. Call the matter of Innerlight Holdings, Inc. vs. William Reilly and others. It's case No. 100400890. Counsel will state their appearances, please.

MR. PETERSEN: Your Honor, Richard Petersen and Rich Roberts for Innerlight Holdings. We're here with Heber Maughan who is the CFO of Innerlight.

THE COURT: All right.

MR. JOHANSEN: Bryan Johansen on behalf of George Hawes, your Honor.

THE COURT: We're here for the purpose of a default hearing on damages, correct?

MR. PETERSEN: That is.

THE COURT: As far as Mr. Hawes is concerned, the default is not as to him, is that correct? Or is it?

MR. JOHANSEN: Mr. Hawes (inaudible) letter to you last week, your Honor. The default was against Reilly and the Reilly entities, not against Innerlight. Innerlight is now asserting a default against Hawes.

THE COURT: That's what I'm saying.

MR. JOHANSEN: Yes.

THE COURT: Okay. Now what is this about a letter?

MR. JOHANSEN: Your Honor, I submitted a letter to you last Thursday with the default judgment. Hopefully it got to you.

THE COURT: No. Last Thursday? Which would have been what date?

MR. JOHANSEN: That was last Wednesday, I believe, your Honor. Oh, I'm sorry, the 13th. I'm sorry, it was last Wednesday the 13th.

THE COURT: The 13th, okay. I don't have any pleadings subsequent to April 6th in my—oh, wait a minute. Yeah, anything subsequent to April 6th.

MR. JOHANSEN: What I have, your Honor—

THE COURT: But that doesn't mean it's not in the building. You may approach if you have a copy of it.

COURT CLERK: There's nothing entered.

THE COURT: We don't show anything entered, so—

MR. JOHANSEN: I apologize, your Honor.

THE COURT: It's all right. No problem.

MR. JOHANSEN: What I had done was I had sent a cover letter with a default—proposed default judgment attached. The default is a request for some (inaudible) of $775,000 as pled in the counterclaim, cross claimant.

THE COURT: Oh, this is you against—

MR. JOHANSEN: That's correct, your Honor.

THE COURT:—the Reillys?

MR. JOHANSEN: Yes.

THE COURT: But not as against MLA?

MR. JOHANSEN: That's correct.

THE COURT: All right.

MR. JOHANSEN: I can have an original sent back to you for signature if it's acceptable.

THE COURT: Well, do you think it's already been filed, you said?

MR. JOHANSEN: I believe so, your Honor.

THE COURT: Did you e-file it?

MR. JOHANSEN: No, your Honor.

THE COURT: Okay.

MR. JOHANSEN: No, I did not file it. I just sent it by way of cover letter.

THE COURT: Oh, I see. Okay.

MR. JOHANSEN: And for—if it was acceptable to you to sign and enter it.

THE. COURT: All right. Do you have any objection to this?

MR. PETERSEN: We don't.

THE COURT: Have you seen it?

MR. PETERSEN: Yes, we have.

THE COURT: All right. I'm just going to enter your copy today.

MR. JOHANSEN: Thank you, your Honor.

THE COURT: All right. I'll direct my clerk to enter this. This is based upon my ruling at the last hearing?

MR. JOHANSEN: That's correct.

THE COURT: All right. Great. Then are you going to have any other input today on Mr. Petersen's—

MR. JOHANSEN: I don't believe so, your Honor.

THE COURT: All right. Do you have anything else you want from me today?

MR. JOHANSEN: Not at this point. Thank you.

THE COURT: All right. Mr. Petersen, you may proceed.

MR. PETERSEN: Thank you, your Honor. That comment about e-filing, I hope it's not—we've just signed up, so hopefully it's not bad.

THE COURT: I believe in the promise of Utopia and that some day it will arrive and computers will make our lives easier, but currently in this district we're doing it halfway, which means we're doing

both the physical file and the electronic file, and as has been my experience in any aspect of my life, when you divide responsibility in order to create efficiency, you never achieve your goal because there's no stewardship or place where it's supposed—you know, you take two people and say we'll have you share this assignment, then all you get is, "well, I thought he did it." So it turns out with these files that—

MR. PETERSEN: Well, the salesman that sold me the e-filing package did a pretty good job, then, I guess, but—

THE COURT: Well, I'll tell you this, on debt collections, on simple uncontested matters it works great. I just go on the computer, I approve it. When you have files not—you know, this is getting there, but when you have like this and it's multi-party litigation and then we get this, you know, where did the paper go and it's in the ephemeral space then it's not as neat.

It's been working pretty good at the federal courts. I think the reason is is [sic] they said we're doing this a year from now. You all have a year to get trained, mark, get set, go, here's a deadline. We're trying to ease into this, and I think our approach is a bad one, but I'm not in charge, so there you go. I don't want to disparage it. I believe somewhere out there in the future it's going to be great.

MR. PETERSEN: Well, I don't want to be the test case. I don't want to be the guinea pig on that. But your Honor, the—

THE COURT: So you should take—even though it wasn't e-filing, you should take Mr. Johansen's example and always bring an extra copy of whatever you think is important to court. All right.

MR. PETERSEN: So your Honor, you set this for a hearing on damages at our last hearing.

THE COURT: Correct.

MR. PETERSEN: If it's proper, if you would like, I'm happy to proffer the evidence. I—

THE COURT: Well, I wanted to put something on the record since we've had a previous proceeding and I asked you do something, which you did, and I just wanted to put it on the record.

Back in March the Reilly's did not appear. It was determined that notice was mailed. You requested permission to enter the default, which I granted. Pleadings were stricken and default was entered. The matter was set for a hearing today.

The default documents were to be prepared, and I also asked you to send a copy of the notice of default to the parties concerned. That's what I wanted to put on the record is that you did that. It appears that the mailing certificate from your office indicates that on April 6th of this year you sent a copy of the default judgment to those parties, and that judgment, which bears my signature from April 4th, also indicated that we would have a hearing today to assess the damages. So I Just wanted to put on the record that procedurally we were in the right place.

MR. PETERSEN: Would your Honor like me to proffer the evidence as to the amount of damages?

THE COURT: Absolutely.

MR. PETERSEN: Okay. If your Honor has any questions, this was the purpose for bringing Mr. Maughan was clarifying anything.

THE COURT: What I would like you to do is state your proffer on the record, and then when you're finished you tell me that you are done. I'm going to have your CFO stand, raise his right hand, be sworn and verify that he would testify consistent with your proffer.

MR. PETERSEN: So the damage component consists of three components as pled in our amended complaint, first a general damages component and an attorney's fee component, and also a punitive damages component, and I'll hit each one of those real briefly.

THE COURT: Okay.

MR. PETERSEN: The first one is the general damages, and I'll just run through the amounts for those damages.

THIS COURT: Well, if you wouldn't mind, where were the three again?

MR. PETERSEN: The three are just the general damages, attorney fees and the punitive damages.

THE COURT: All right.

MR. PETERSEN: Under the general category there are five or six different subcategories. The first though is escrow payments. What happened was is Mr. Reilly and his entities—an escrow account was set up pursuant to the SEC instructions for a public offering.

THE COURT: This is soundly remarkably like a special damage.

MR. PETERSEN: Excuse me. Yes. Did I say—

THE COURT: You said general. That's why I stopped you the first time.

MR. PETERSEN: I apologize.

THE COURT: All right.

MR. PETERSEN: The—

THE COURT: So just—do you have tort claims?

MR. PETERSEN: No.

THE COURT: Okay. So we're going to do special damages, attorney's fees.

MR. PETERSEN: And punitive damages.

THE COURT: Okay.

MR. PETERSEN: And we do have actually—I take that back. We do have one tort claim which was intentional interference or economic relations.

THE COURT: I'm so glad to hear that because that's going to help on your punitive claim. All right.

MR. PETERSEN: Okay. Sorry. Thank you for—

THE COURT: So special damages first.

MR. PETERSEN: These escrow payments, we have an amount of $271,670 stemming from the shortfall which existed between subscription agreements that were signed by potential investors as well as the dollars held in the escrow account at the end of the day. So there was a certain amount that was in the escrow account. That amount actually came back to Innerlight Holdings.

The difference, though, between the amount of what the investors subscribed as to—in comparison to that amount that was in the escrow account is $271,000. The amount of subscription—the amount of the subscription agreements and the amount in the escrow account should have balanced. They did not balance, hence the shortfall on the escrow payments.

THE COURT: Who was to put the money in the escrow?

MR. PETERSEN: Mr. Reilly.

THE COURT: Okay. That's the point, right?

MR. PETERSEN: That's the point.

THE COURT: Okay.

MR. PETERSEN: The second point is the legal fees that were paid to Mr. Reilly in the amount of $69,500. Innerlight Holdings paid $69,500 to Mr. Reilly to complete the public offering process with the SEC. As alleged in the complaint, the offering was never complete, and in fact it is alleged in the amended complaint that Mr. Reilly absconded and took those monies, and hence Innerlight is seeking a refund of the attorney's fees that were paid to him for work that was never completed.

THE COURT: Okay.

MR. PETERSEN: There was a cost of the public offering or just out of pocket costs of $70,088.55. How that is broken down, the SEC requires an audit to be completed on Innerlight Holdings in order to proceed with the public offering. The

amount of the audit was $62,210. There was a filing fee paid directly to the SEC of $300. There was a fee of $7,518.55 paid directly to a group by the name of Southridge for the purpose of edgarizing the filing with the SEC.

THE COURT: Okay.

MR. PETERSEN: That amount totals to $70,088.55. The other big one here is there was stock that was sold to third parties to which the money was never remitted to Innerlight Holdings or to the escrow account.

THE COURT: Mr. Reilly sold stock in the company and—purportedly on behalf of the company and—

MR. PETERSEN: Correct.

THE COURT:—pocketed the money?

MR. PETERSEN: Correct. There was $900,000 of stock that was sold to Mr. Hawes to which Innerlight has never seen the money on that. There was also $325,000 sold to a group by the name of Pop Holdings. There was no subscription agreements signed by either Mr. Hawes or Pop Holdings, and Innerlight is seeking damages in the amount of one million—excuse me. I gave you the wrong figures. I want to back up. Mr. Hawes is $775,000, and that is consistent with the filings of Mr. Hawes, and the 325 is consistent with Pop Holdings. That total is $1,100,000.

THE COURT: Okay.

MR. PETERSEN: Also alleged in the complaint there is an allegation of restitution as well as indem-

nification as well as a request to be repaid the money that it lost, and this is partially under the tort claim. There is a loss of gross sales which stem from the conduct of Mr. Reilly.

In November of 2009 it was reported to the distributors of Innerlight Holdings that a problem existed with Mr. Reilly, and that the public offering was likely not to go through. From November of 2009 to the present date the gross sales of Innerlight Holdings, have decreased substantially, primarily based on these representations—or primarily based on the conduct of Mr. Reilly and the inability of Mr. Reilly to move the public offering forward.

What happens is is [sic] that there's distributors that exist around the world, and primarily the main distributors are in Europe. These distributors are distributors that have been in the MLM business for years and years and years, and these distributors oftentimes jump ship from one distributor—from one company to another company, depending upon the infrastructure of the underlying company.

When this blow to the infrastructure came that the public offering was never going to be made, the infrastructure of Innerlight Holdings started to tailor a little bit; thereby distributors started to jump ship. That has continued since November of 2009.

We have taken a benchmark starting in January of 2010, but we looked at the benchmark of 2009 altogether. They had gross sales of $11,051,831. Since that time there has been a sharp decline,

specifically in 2010 the sales were decreased or there has been a loss in gross sales of $2,482,397. In the first quarter of 2011 there has been a gross sales loss of $1,170,397 between 2010 and the first quarter of 2011.

Looking forward in the future, there is a projected loss for 2011 of $4,681,500—excuse me, I'm getting these numbers off, I apologize. It's $4,681,590.80 for 2011. Those are the primary damages that were—

THE COURT: Well, I have a question on the—so what's the total number of gross sales diminution you're asking for?

MR. PETERSEN: It's $4,681,590.80.

THE COURT: And that's following from intentional interference with Economic—

MR. PETERSEN: Relations.

THE COURT:—Relations.

MR. PETERSEN: Correct.

THE COURT: The basis of that is fraud and conversion as to the wrong—underlying wrong act.

MR. PETERSEN: And unlawful activities all—yeah.

THE COURT: All right. Explain to me how you're entitled to gross sales versus net as an item of damage.

MR. PETERSEN: The fact that the—you know, we discussed this yesterday, but there's an issue as to the gross sales run the company versus the actual net profits, which exist, and we—or the net—

THE COURT: Yeah, but thereto—you still have a product, right?

MR. PETERSEN: Still have a product. We do still have a product.

THE COURT: So there would be costs of goods sold at a minimum?

MR. PETERSEN: Yes, your Honor, that is correct. The actual—and if you look at it from a net figure or an average figure, Innerlight does about 10 percent profit of that. We would be fine to take the 10 percent—

THE COURT: Okay.

MR. PETERSEN:—of that figure.

THE COURT: That's what I'll award. I'm not willing to just go with gross receipts.

MR. PETERSEN: Ten percent of that figure?

THE COURT: Ten percent of that figure.

MR. PETERSEN: Okay. Then—

THE COURT: Because the tort claim is actual damage. right?

MR. PETERSEN: That is correct. That's correct.

THE COURT: All right. We do hove attorney's fees in addition to this. Before I get to the attorney's fees actually, let me go back to the unlawful activities. In the statute—and we've alleged unlawful activities and we've also alleged—we've requested double damages as allowed for in the statute for unlawful activities, specifically 76-10-1605 subparagraph (1) allows for double damages of damages that are awarded for unlawful activi-

ties, and we've got nearly 100 paragraphs of allegations of unlawful activities actually exist, and so we'd request the double damages in regards to those amounts that we just discussed.

THE COURT: So if we go with the 10 percent that would be $468,159, right?

MR. PETERSEN: That's correct.

THE COURT: So that would be your principal amount, and then you want that doubled?

MR. PETERSEN: Well, in addition to the total of the—

THE COURT: Right.

MR. PETERSEN:—rest of the—

THE COURT: And then punitives?

MR. PETERSEN: Yeah.

THE COURT: All right.

MR. PETERSEN: I can—we can—I can give you that figure in about two minutes. The attorney's fees and the punitive, the attorney's fees—

THE COURT: Tell me the statutory or common law basis for your attorney's.

MR. PETERSEN: So there's a statutory basis also in the same statute for the pattern of unlawful activities which we've alleged in the complaint, specifically 76-10 1605 subparagraph (2) which says the prevailing plaintiff recovers the costs of the suit, including reasonable attorney's fees.

THE COURT: Okay.

MR. PETERSEN: Then the common law basis—

THE COURT: Did you have a retainer with Mr. Reilly?

MR. PETERSEN: I'm sorry?

THE COURT: Retainer agreement.

MR. PETERSEN: I don't think we have. I don't—

THE COURT: Okay.

MR. PETERSEN: Well, I don't know.

THE COURT: All right.

MR. PETERSEN: I don't know the answer to that question. The common law basis as well is found in the case of—I apologize for my pronunciation—Kaealamakia vs. Kaealamakia. The cite is 213 P.3d 13, or it states, "Plaintiff was entitled to an award of reasonable attorney's fees against the defendant due to their breaches of fiduciary duty," and we've alleged a breach of fiduciary duty on—in Count XIII, specifically paragraph 136 of the complaint.

We've prepared an affidavit of attorney's fees, but we did not include the attorney's fees that existed for the other law firms that are involved in this matter. There's a law firm that's involved in this matter out of the State of Pennsylvania, and two from the State of Florida that have been heavily involved in this matter, and we have not prepared an affidavit for them, but we have prepared an affidavit for—

THE COURT: Do you want to supplement?

MR. PETERSEN: If that would be all right.

THE COURT: I will allow that under Rule 73. Within 10 days of today's date, the affidavit.

MR. PETERSEN: The total amount of legal fees is $133,994.50.

THE COURT: Okay.

MR. PETERSEN: Then the final piece is the punitive damage piece.

THE COURT: Before you got to that, are you waiving generals on your breach of fiduciary duty?

MR. PETERSEN: Can I have a moment?

THE COURT: Sure.

MR. PETERSEN: Your Honor, I think the only thing that we could show with the generals on that would be the same principles which follow the loss of gross sales, or loss of net sales I guess is what you want to put in there, so we would be willing to waive those based on that.

THE COURT: You understand those aren't the same damages right?

MR. PETERSEN: Yeah. Yeah. What I'm saying is what —I guess we can argue if it would be appropriate in the alternative, I mean if your Honor feels so inclined to award the—

THE COURT: Well, you just told me, and I've read your complaint, and by default the default judgment has already been entered. You have established a breach of fiduciary duty and 100 paragraphs of wrongful acts. You told me that it's materially affected the profitability and the ongoing ability of the company to function, and you certainly have an officer here who can tell

me how much it affected the company, and I'd be happy to put a number on that if you want me to. On the other hand, it you want to waive it, these other damages are good, that's fine with me.

MR. PETERSEN: It's going to be the same number as the previous number for loss of profits.

THE COURT: No, that's a special damage. I'm talking about a general damage.

MR. PETERSEN: Well, let's—but we don't have a precise number for that (inaudible).

THE COURT: Of course you don't. That's what general damages are all about. I'm not trying to force you to—

MR. PETERSEN: No, I understand.

THE COURT: If you don't want to add the general damages, that's fine.

MR. PETERSEN: What I'm telling—what I'm saying is that it's not—it's an issue with general damages, but it's an issue that we're willing to waive.

THE COURT: That's fine.

MR. PETERSEN: Based on the punitive damage (inaudible).

THE COURT: All right.

MR. PETERSEN: The basis—and I'll get into the punitive damages, but the basis for the punitive damages here is found in a couple of different areas, specifically in the breach of fiduciary duty allegations in the amended complaint and res-

ponding to Campbell vs. State Farm Mutual Auto Insurance Company.

THE COURT: Your basis is both that it was—it was reckless and not appreciating the effect it would have on the company, but is was also in this case specifically malicious, correct?

MR. PETERSEN: Yeah, and that's what was alleged in the complaint. We state specifically that the acts of omission of the defendants are the result of willful and malicious and intentional fraudulent conduct, or conduct that manifests knowing or reckless indifference toward, and a disregard of, the rights of others.

THE COURT: Pursuant to the default judgment that's now a finding of the court.

MR. PETERSEN: So we would ask your Honor for 2.5 million punitive damages.

THE COURT: Okay.

MR. PETERSEN: That is all I have.

THE COURT: That's well within the ration allowed by Campbell, so I'll be happy to do that. Do you a judgment that bears those numbers?

MR. PETERSEN: I do not. I—

THE COURT: That's okay, because you're going to supplement the attorney's fees anyway, right?

MR. PETERSEN: Yes.

THE COURT: All right.

MR. PETERSEN: I can get a final judgment here.

THE COURT: If you'd have your client verify that on the record, please. If you'd stand up, sir, raise your right hand right where you are.

COURT CLERK: You solemnly swear that the testimony you are about to give in the case now pending before the Court will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes.

THE COURT: Go ahead.

MR. PETERSEN: Mr. Maughan, you've heard the proffer that's been given here today. Is the proffer that was given accurate and acceptable as well as the numbers, do they line up in regards to what your belief is?

MR. MAUGHAN: Yes.

THE COURT: Sir, you name for the record is?

MR. MAUGHAN: Heber Maughan.

THE COURT: Your position with Innerlight Holdings?

MR. MAUGHAN: I am the chief financial officer of Innerlight Holdings, Inc.

THE COURT: Is your understanding of these figures based on your personal knowledge and familiarity with the financial records of the company?

MR. MAUGHAN: Yes, sir.

THE COURT: All right. That's (inaudible). Thank you.

MR. MAUGHAN: Thanks.

THE COURT: So you'll submit that to the court with the affidavits?

MR. PETERSEN: Yes, your Honor. If there is a problem with getting those affidavits, and after discussing it with the client—

THE COURT: You may waive that if you want.

MR. PETERSEN: Okay.

THE COURT: Just send the pleading in indicating that and your cover letter that that's been waived and submit your judgment and it will be fine.

MR. PETERSEN: Okay.

THE COURT: Now still, I understand under the rules there's a reading of the rules that you do not need to send a copy of the proposed judgment to the other side, but I want you to do that anyway. It makes it nice and clean if someone claims lack of notice later.

MR. PETERSEN: Thank you, your Honor.

(Hearing Concluded)

MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (AUGUST 18, 2010)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, PROVO DEPARTMENT,
STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890
(Oral Arguments Requested)

Before: David MORTENSEN,
Fourth Judicial District Court Judge.

InnerLight Holdings, Inc. ("InnerLight"), submits this memorandum in opposition to the Motion to Dismiss for Lack of Personal Jurisdiction ("Motion to Dismiss") that was filed by defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview Associates, Inc., and Shamrock Equities, Inc. (collectively "the Defendants").

INTRODUCTION

The Reilly family—including William, Shannon, and Daniel Reilly—has numerous business entities. Most, if not all, of these entities lack a legitimate business purpose. Instead, they are mere shells that the Reilly family uses to scam others. This lawsuit arises out of one such scam that members of the Reilly family and several of their controlled entities recently conspired to bring about in Utah with respect to property in Utah belonging to InnerLight, a Utah-based company.

In an effort to further the common purposes of their unlawful enterprise, members of the Reilly family and their nominees contacted InnerLight in Utah, solicited its business in Utah, and then quietly pillaged its Utah property before subsequently pawning it off to others for a profit. In doing so, the Reilly family and their controlled entities knowingly caused InnerLight to suffer substantial damages in Utah. As a result, InnerLight brought this lawsuit against them in Utah.

In addition to the Defendants' direct contacts with Utah, several other grounds for exercising jurisdiction over them exist. This Court may, for example, exercise jurisdiction over the Defendants because they conspired to cause a tortious injury in Utah. It may also exercise jurisdiction over them because the effects of their tortious conduct were purposefully directed at Utah. The direct contacts of their agents with Utah is yet another basis for exercising jurisdiction over them, as is also the fact that the Reilly family and their controlled entities are alter egos of each other. As is explained in greater detail below, any

one of these reasons is alone sufficient to justify exercising jurisdiction over the Defendants. Consequently, the Defendants' Motion to Dismiss should be denied.

RESPONSE TO STATEMENT OF FACTS

1. Innerlight is a corporation organized under the laws of the State of Delaware and maintains its principal place of business in Utah County, Utah. *See* Compl. at ¶ 1.

RESPONSE: Not disputed for purposes of the motion at issue only.

2. Daniel Reilly is an individual who resides in Portsmouth, Rhode Island, *See* Declaration of Daniel Reilly at ¶ 3, attached hereto as Exhibit A.

RESPONSE: Not disputed for purposes of the motion at issue only.

3. Shannon Reilly is an individual who resides in Loxahatchee, Florida. *See* Declaration of Shannon Reilly at ¶ 3, attached hereto as Exhibit B.

RESPONSE: Not disputed for purposes of the motion at issue only.

4 Ashworth Development LLC is a corporation organized under the laws of the State of Florida and maintains its principal place of business in Port Charlotte, Florida. *See* Declaration of William Reilly at ¶ 4, attached hereto as Exhibit C.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 61-63.)

5. Beachview Associates is a corporation organized under the laws of the State of Florida and maintains

its principal place of business in Loxahatchee, Florida. *See* Declaration of Shannon Reilly at ¶ 5.

RESPONSE: Not disputed for purposes of the motion at issue only.

6. Shamrock Equities, Inc. is a corporation organized under the laws of the State of Florida and maintains its principal place of business in Loxahatchee, Florida. *See* Declaration of Daniel Reilly at ¶ 5.

RESPONSE: It is not disputed for purposes of the motion at issue only that Shamrock Equities, Inc., is a corporation organized under the laws of Florida. All other allegations are disputed. (*See* Additional Facts, *infra*, ¶¶ 31, 34.)

7. Defendant Daniel Reilly has never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah. In fact, the only time he has visited the State of Utah was for a skiing vacation, unrelated to any business purpose. *See* Declaration of Daniel Reilly at ¶ 4.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 14, 31, 33, 35-36, 52-53.)

8. Likewise, Defendant Shannon Reilly has never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah. The only time she has visited the State of Utah was for a skiing vacation, unrelated to any business purpose. *See* Declaration of Shannon Reilly at ¶ 4.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 15, 35-36, 52-53.)

9. Defendant Ashworth is engaged in the real estate business solely in Florida. *See* Declaration of William J. Reilly at ¶ 5.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 61, 65.)

10. Defendants Shamrock and Beachview are investment companies solely operating in the State of Florida. *See* Declaration of Shannon Reilly at ¶ 6; Declaration of Daniel Reilly at ¶ 6.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 31, 37, 73.)

11. Defendants Ashworth, Beachview and Shamrock are not registered or qualified to do business in the State of Utah and do not conduct business in the State of Utah. *See* Declaration of Shannon Reilly at ¶ 7; Declaration of Daniel Reilly at ¶ 7; Declaration of William Reilly at ¶ 6.

RESPONSE: It is not disputed for purposes of the motion at issue only that Ashworth Development LLC, Beachview Associates, Inc., and Shamrock Equities, Inc., are not registered to do business in Utah. All other allegations are disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 14-15, 30-33, 37, 73.)

12. Defendants Ashworth, Beachview and Shamrock do not supply services or goods in the State of Utah. *See* Declaration of Shannon Reilly at ¶ 8; Declaration of Daniel Reilly at ¶ 8; Declaration of William Reilly at ¶ 7.

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 14-15, 30-33, 37, 73)

13. Defendants Ashworth, Beachview and Shamrock do not lease or own any real estate in Utah. *Id.*

RESPONSE: InnerLight is unable to respond due to insufficient knowledge or information.

14. Defendants Ashworth, Beachview and Shamrock do not engage in any local advertising or solicit business in Utah. *Id.*

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 14-15, 30-33, 37, 62, 73.)

15. Defendants Ashworth, Beachview and Shamrock do not have any offices, agents or employees in Utah. *Id.*

RESPONSE: Disputed. (*See* Additional Facts, *infra*, ¶¶ 7, 14-15, 30, 32-33, 60, 62, 64, 73.)

16. Defendants Ashworth, Beachview and Shamrock do not pay taxes in Utah. *Id.*

RESPONSE: InnerLight is unable to respond due to insufficient knowledge or information.

STATEMENT OF ADDITIONAL FACTS

A. InnerLight and the Reilly Family

1. InnerLight Holdings, Inc. ("InnerLight"), is a Utah-based corporation with its headquarters and principal place of business and operation being in Utah. (Brogan Decl., ¶ 1 ("Ex. 1").)

2. InnerLight's principal assets, properties, and accounts are in Utah. (Brogan Decl., Ex. 1, ¶ 3)

3. InnerLight's directors and officers are all Utah residents. (Brogan Decl., Ex. 1, ¶ 4.)

4. Most of InnerLight's shareholders are Utah residents. (Brogan Decl., Ex. 1, ¶ 5.)

5. In 2008, InnerLight retained New York attorney William Reilly as its SEC counsel to, among other things, successfully complete a public offering of InnerLight's stock and make InnerLight a publicly-traded company. (Pl.'s Am. Compl., ¶ 27, at p. 4 (Mar. 16, 2010) (on file with Court); Brogan Decl., Ex. 1, ¶ 6.)

6. It is undisputed that this Court has personal jurisdiction over William Reilly. (Mem. in Supp. of Mot. to Dismiss (June 29, 2010), at p. 2 n.2 ("Defendant William J. Reilly does not contest personal jurisdiction as an individual.") (on file with Court); *see generally* W. Reilly Answer (June 29, 2010) (not contesting jurisdiction) (on file with Court).)

7. Several of William Reilly's family members work both with and for him, including two of his adult children, Shannon Reilly and Daniel Reilly. (N.Y. Voluntary Pet., at p. 31 ("Ex. 2"); Fla. Voluntary Pet., at pp. 4, 12-14 ("Ex. 3"); Ownership Statement, at p. 1 ("Ex. 4").)

8. William Reilly is both an attorney-in-fact and-at-law for Shannon Reilly. (Note to Yellow Funding, at p. 4 ("Ex. 5"); N.Y. Voluntary Pet., Ex. 2, at pp. 38, 40.)

9. William Reilly contacted InnerLight at its headquarters in Utah to negotiate the terms and nature of their business relationship. (Pl.'s Am. Compl, ¶ 28, at p. 4; Brogan Decl., Ex. 1, ¶ 7.)

10. As-a result of such negotiations, InnerLight agreed to pay William Reilly with 650,000 shares of InnerLight stock upon the successful completion of

the public offering (including funding per the terms of the prospectus) and making InnerLight a publicly-traded company. (Pl.'s Am. Compl., ¶ 29, at p. 4; Brogan Decl., Ex. 1, ¶ 8.)

11. In order to successfully complete the public offering and make InnerLight a publicly-traded company, William Reilly agreed to properly prepare and file with the SEC a public registration statement and prospectus and then to properly complete the public offering in accordance with the prospectus. (Pl's Am. Compl., ¶¶ 30-35, at pp. 4-5; Brogan Decl., Ex. 1, ¶ 9.)

12. InnerLight agreed to allow William Reilly to hold and/or distribute 600,000 shares of its stock to be transferred to market makers for stock promotion and other services after becoming an effective publicly-traded company, completing all of the funding necessary to trade publicly, and obtaining authorization from the SEC to trade publicly. (Pl.'s Am. Compl., ¶ 36, at p. 5; Brogan Decl., Ex. 1, ¶ 10.) Thereafter, William Reilly and the Defendants surreptitiously converted these 600,000 shares of InnerLight's stock for their own purposes without notice to or permission from InnerLight. (Brogan Decl., Ex. 1, ¶ 10.)

13. After having established a business relationship with InnerLight, William Reilly contacted InnerLight at its headquarters in Utah, both in person and via other means of direct communication (including telephone, facsimile, mail, and email), at different times for business purposes, (Pl.'s Am. Compl., ¶ 37, at p. 5; Marriott Emails ("Ex. 6"); W. Reilly Emails ("Ex. 7"); FedEx Retrieval Copies ("Ex. 8"); Brogan Decl., Ex. 1, ¶ 11.)

14. Daniel Reilly also contacted InnerLight in person at its headquarters in Utah for business purposes. (Brogan Decl., Ex. 1, ¶ 12.)

15. Shannon Reilly also directly contacted InnerLight at its headquarters in Utah for business purposes. (S. Reilly Invoice & Emails ("Ex. 9"); Brogan Decl., Ex. 1, ¶ 13.)

16. William Reilly drafted a public registration statement and prospectus for InnerLight. (Pl.'s Am. Compl., ¶¶ 38-39, at p. 5 (*see also* Exhibit A attached thereto); Brogan Decl., Ex. 1, ¶ 14.)

17. William Reilly also drafted subscription agreements for InnerLight. (Pl.'s Am. Compl., ¶ 40, at p. 5 (*see also* Exhibit B attached thereto); Brogan Decl., Ex. 1, ¶ 15.)

18. The subscription agreements clearly identify InnerLight's headquarters and principal place of business as being in Utah. (Pl.'s Am. Compl., ¶¶ 41-42, at p. 5 (*see also* Exhibit B attached thereto); Brogan Decl., Ex. 1, ¶ 16.)

19. William Reilly named himself as escrow agent in the public registration statement, prospectus, and subscription agreements. (Pl.'s Am. Compl., ¶ 43, at p. 6 (*see also* Exhibits A and B attached thereto); Brogan Decl., Ex. 1, ¶ 17.)

20. On or about July 21, 2008, William Reilly caused the public registration statement and prospectus to be filed with the SEC. (Pl.'s Am. Compl., ¶ 44, at p. 6; Brogan Decl., Ex. 1, ¶ 18.)

21. The public registration statement and prospectus were not fully subscribed as per their terms

and SEC requirements. (Pl.'s Am. Compl., ¶ 45, at p. 6; Brogan Decl., Ex. I, ¶ 19.)

22. InnerLight has never obtained authorization to trade its stock publicly. (Pl.'s Am. Compl., ¶ 46, at p. 6; Brogan Decl., Ex. 1, ¶ 20.)

23. Unbeknownst to InnerLight, William Reilly caused the Rule 144 legend to be removed from all of InnerLight's shares of stock without authorization, permission, or notice to InnerLight. (Pl.'s Am. Compl., ¶ 47, at p. 6; Brogan Decl., Ex. 1, ¶ 22.)

24. After the Rule 144 legend was removed from InnerLight's stock without InnerLight's knowledge or consent, William Reilly, Shannon Reilly, and Daniel Reilly combined together to cause approximately 10% of InnerLight's total stock (1,250,000 shares) to be issued to and received by various entities which they control; they did this without authorization from the SEC, without InnerLight's knowledge or permission, and without having earned any of these shares of stock. (Pl.'s Am. Compl., ¶ 48, at p. 6; Brogan Decl., Ex. 1, ¶ 23.) InnerLight has never authorized William Reilly to issue any of its stock to or from himself, the Defendants, or anyone else. (Brogan Decl., Ex. 1, ¶ 23.)

25. Shannon Reilly and Daniel Reilly knew, or reasonably should have known, that they were trading InnerLight's stock without authorization from the SEC and without InnerLight's knowledge or permission. They also clearly knew that they were dealing with a Utah-based corporation and its Utah property. (Brogan Decl., Ex. 1, ¶ 25.)

B. Shamrock Equities, Inc

26. After William Reilly had the Rule 144 legend removed from InnerLight's stock without InnerLight's knowledge or consent, William Reilly, Shannon Reilly, and Daniel Reilly combined together to cause a substantial portion of InnerLight's stock to be transferred to and received by Shamrock Equities, Inc. ("Shamrock"), (Pl.'s Am. Compl., ¶ 50, at p. 6; Brogan Decl., Ex. 1, at ¶ 26.)

27. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Shamrock without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Pl.'s Am. Compl., ¶ 51, at p. 6; Brogan Decl., Ex. 1, at ¶ 27.)

28. InnerLight received no consideration for the stock which William Reilly, Shannon Reilly, and Daniel Reilly illegally caused to be transferred to and received by Shamrock. (Pl.'s Am. Compl., ¶ 52, at p. 7; Brogan Decl., Ex. 1, at ¶ 28.)

29. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Shamrock for the purpose of, among other things, converting InnerLight's property, interfering with InnerLight's economic relations, and unlawfully causing other tortious injuries to InnerLight in Utah. (Brogan Decl., Ex. 1, ¶ 29.)

30. Daniel Reilly has testified in this case that he is "the owner of Shamrock Equities." (D. Reilly Decl., ¶ 5, at p. 2 (attached as Exhibit A to Mem. in Supp. of Mot. to Dismiss).) William Reilly has testified elsewhere, however, that Shamrock is a "family-

owned business[]." (W. Reilly Dep. II, at pp. 56:13, 60:2-8 (Aug. 4, 2009) ("Ex, 10").) In an effort to protect his family from liability, William Reilly has also stipulated elsewhere as follows:

> 4. Shamrock Equities, Inc., Shamrock Holdings, LLC, and/or Shamrock Funding, Inc. ("Shamrock") is and/or are an entity or entities legally or equitably owned by [William] Reilly and over which [William] Reilly exercised dominion and control at all times . . . ,including, but not limited to, the period from January 1, 2003 through [at least July 2009], notwithstanding the nominal titles held therein by family members, including but not limited to Christopher Reilly and/or Shannon Reilly.
>
> [. . .]
>
> 6. All any [sic] actions taken by or on behalf of Shamrock, any financial transactions, including, but not limited to, deposits and withdrawals of funds from accounts at financial institutions, and the execution of any transfers or transactions in securities, and/or the execution of any documents on its behalf, were taken at [William] Reilly's decision, direction and control.

(Stipulations of Fact, ¶¶ 4, 6, at p. 2 ("Ex. 11").)

31. Daniel Reilly has testified in this case that "Shamrock [Equities] is an investment company solely operating in the State of Florida." (D. Reilly Decl., ¶ 6, at p. 2 (attached as Exhibit A to Mem. in Supp. of Mot. to Dismiss).) Notwithstanding this testimony, it is clear that Shamrock also operates in New York;

has agents in New York and Rhode Island; has bank and securities accounts in Massachusetts, New York, and Rhode Island; and maintains its books and records in New York. (Stipulations of Fact, Ex. 11, ¶ 5, at p. 2 ("At all relevant times, including but not limited to, January 1, 2003 through and including [at least July 2009], [William] Reilly possessed, maintained and controlled all of Shamrock's books and records, at [his office in] New York, New York or elsewhere."); Shamrock N.Y. Info. ("Ex. 12"); Shamrock Account Application ("Ex. 13"); Shamrock Letters ("Ex. 14"); Check & Materials ("Ex. 15") (Sovereign Bank, of Mass. and R.I.).) Shamrock has also done business directly with InnerLight in Utah. (Check & Materials, Ex. 15.)

32. William Reilly incorporated Shamrock, is one of its directors and officers, and has control over its bank account. (Shamrock Articles, at p. 2 (Sept. 2, 2001) ("Ex. 16"); Shamrock Detail, Ex. 17, at pp. 1-2; Check & Materials, Ex. 15.) He is also its attorney, registered agent, and general agent. (W. Reilly Dep. II, Ex. 10, at p. 56:2-3; Shamrock Detail, Ex. 17, at p. 1; Shamrock N.Y. Info., Ex. 12, at p. 1; Check & Materials, Ex. 15.)

33. Shannon Reilly and Daniel Reilly are also officers and directors of Shamrock. (Shamrock Detail, Ex. 17, at pp. 1-2.)

34. Shamrock's principal place of business was at William Reilly's address in Boca Raton, Florida, but is now at Shannon Reilly's address in Loxahatchee, Florida. (*Compare* 2005 Report ("Ex. 18"), *with* 2007 Report ("Ex. 19").)

35. Another defendant in this case, George Hawes, has confirmed that William Reilly, Shannon Reilly, and Daniel Reilly "own and/or control Shamrock Equities"; that Shannon Reilly and Daniel Reilly act on William Reilly's behalf, under his direction, and as his agents in operating and participating in the affairs of Shamrock; and that Shamrock acts on William Reilly's behalf, under his direction, and as his agent (Hawes Answer, ¶¶ 24-26, at p. 4 (on file with Court).)

36. George Hawes has also confirmed that William Reilly, Shannon Reilly, and Daniel Reilly controlled and used Shamrock to fraudulently and unlawfully transfer InnerLight stock to others; and that William Reilly, Shannon Reilly, Daniel Reilly, and Shamrock combined, conspired, and acted in concert with one another to fraudulently and unlawfully transfer InnerLight stock to others. (Hawes Answer, ¶ 189, at p. 21; Hawes Countercl., ¶¶ 38-39, 48, 79, 127, at pp. 38-40, 44, 50 (on file with Court).)

37. On or about October 1, 2009, William Reilly signed a check on behalf of Shamrock for $60,000.00 and sent it to InnerLight for public subscriptions which William Reilly collected from third-parties to be deposited in InnerLight's escrow account. When InnerLight attempted to deposit this check, the check bounced. (Check & Materials, Ex. 15; Brogan Decl., Ex. 1, ¶ 30.) *See* Utah Code Ann. § 7-15-1 (re dishonored instruments).

38. William Reilly has admittedly transferred thousands of dollars worth of funds and securities through Shamrock's accounts illegally. (Graubard Decl., ¶¶ 12-13, at pp. 5-6 ("Ex. 20"); Graubard Calculations ("Ex. 21").)

C. Doylestown Partners, Inc.

39. After William Reilly had the Rule 144 legend removed from InnerLight's stock without InnerLight's knowledge or consent, William Reilly, Shannon Reilly, and Daniel Reilly combined together to cause a substantial portion of InnerLight's stock to be transferred to and received by Doylestown Partners, Inc. ("Doylestown"). (Pl.'s Am. Compl., ¶ 50, at p. 6; Brogan Decl., Ex. 1, ¶ 26.)[1]

40. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Doylestown without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Pl.'s Am. Compl., ¶ 51, at p. 6; Brogan Decl., Ex. 1, ¶ 27.)

41. InnerLight received no consideration for the stock which William Reilly, Shannon Reilly, and Daniel Reilly illegally caused to be transferred to and received by Doylestown. (Pl.'s Am. Compl., ¶ 52, at p. 7; Brogan Decl., Ex. 1, ¶ 28.)

42. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Doylestown for the purpose of,

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[1] Doylestown has not joined in the Defendants' Motion to Dismiss. In addition, it is InnerLight's understanding that Doylestown is currently involved with bankruptcy proceedings. As a result, nothing set forth herein regarding Doylestown should be construed or interpreted in any way as an attempt by InnerLight to proceed at this time against Doylestown in this or in any other matter. Rather, all references to Doylestown herein are included for the sole purpose of setting forth facts sufficient to establish jurisdiction over the Defendants in opposition to their Motion to Dismiss.

among other things, converting InnerLight's property, interfering with InnerLight's economic relations, and unlawfully causing other tortious injuries to InnerLight in Utah. (Brogan Decl., Ex. 1, ¶ 29.)

43. William Reilly and Shannon Reilly have stated that Doylestown is a "Single Asset Real Estate" business. (Fla. Voluntary Pet., Ex. 3, at p. 4.) William Reilly has testified elsewhere, however, that Doylestown is a "family-owned business[]," and that he is not listed as having an ownership interest in it simply "[b]ecause I was setting [Doylestown] up as a family investment vehicle." (W. Reilly Dep. II, Ex. 10, at pp. 22:11-14, 56:13, 60:2-8; Graubard Decl., Ex. 20, ¶ 15, at pp. 6-7.) In an effort to protect his family, William Reilly has also stipulated elsewhere as follows:

1. [Doylestown] is an entity legally or equitably owned by [William] Reilly and over which [William] Reilly exercised dominion and control at all times . . . , including from 2003 through the present, notwithstanding the nominal titles held in Doylestown by family members, including but not limited to Christopher Reilly and/or Shannon Reilly.

2. At all relevant times, including, but not limited to, January 1, 2003 through and including [at least July 2009], [William] Reilly possessed, maintained and controlled all of Doylestown's books and records, at [his office in] New York, New York or elsewhere.

3. All actions taken by or on behalf of Doylestown, including the execution of any transfers or transactions in securities, any financial transactions, including, but not limited to,

> deposits and withdrawals of finds from accounts at financial institutions, and/or the execution of any documents on its behalf, were taken at [William] Reilly's decision, direction and control.

(Stipulations of Fact, Ex. 11, ¶¶ 1-3, at pp. 1-2; *see* Graubard Decl., Ex. 20, ¶ 15, at pp. 6-7.)

44. William Reilly is one of the directors and officers of Doylestown. He is also its attorney and general agent. (N.Y. Voluntary Pet., Ex. 2, at p. 2; Fla. Voluntary Pet., Ex. 3, at pp. 3-5, 10-14; Note to Yellow Funding, Ex. 5, at pp. 4-5; Doylestown Articles, at p. 1 ("Ex. 22"); Doylestown N.Y. Info., at p. 1. ("Ex. 23").)

45. Shannon Reilly is the registered agent for Doylestown. (Doylestown Articles, Ex. 22, at p. 1.) She and Daniel Reilly are also officers and directors of Doylestown. (Doylestown Articles, Ex. 22, at p. 1; Doylestown N.Y. Info., Ex. 23, at p. 1; Fla. Voluntary Pet., Ex. 3, at pp. 3-5, 10-14.)

46. Doylestown has no employees and pays no wages or salaries. (Chap. 11 Case Mgmt. Summ., ¶¶ 11-12, at p. 3 ("Ex. 24").)

47. Doylestown's principal executive office was at Daniel Reilly's address in Portsmouth, Rhode Island. (Doylestown N.Y. Info., Ex. 23, at p. 1.) Its principal place of business now, however, is at Shannon Reilly's address in Loxahatchee, Florida. (Doylestown Articles, Ex. 22, at p. 1.)

48. Doylestown's sole assets are the house and furnishings located at Daniel Reilly's address in Portsmouth, Rhode Island. (Fla. Voluntary Pet., Ex. 3, at

p. 4; Debtor Application, ¶¶ 2-3, at 1 ("Ex. 25"); Mem. in Supp. of Mot. for Relief, ¶ 2, at p. 1 ("Ex. 26"); Graubard Decl., Ex. 20, ¶ 15, at pp. 6-7.) William Reilly and his family, however, are the true owners of this house and its furnishings. (Fla. Voluntary Pet., Ex. 3, at p. 4; Ownership Statement, Ex. 4, at p.1; Mot. to Dismiss for Bad Faith, ¶ 11, at. p. 5 ("Ex. 27")); Notice of Filing, at p. 102 ("Ex. 28"); Evid. of Ins. ("Ex. 29"); Appraisal, at pp. 130, 149 ("Ex. 30"); Graubard Decl., Ex. 20, ¶ 15, at pp. 6-7.)

49. William Reilly has testified that the house in Portsmouth, Rhode Island; is a summer home for him and his family; that he personally probably paid at least two-thirds of the house's full purchase price in Doylestown's name; that his children did not contribute anything towards the purchase of the house; that he "paid Doylestown mortgages directly out of [his] own [bank] account"; and that he "transfer[red] money up from Doylestown to [his] account to use for [his] own personal expenses." (W. Reilly Dep. II, Ex. 10, at pp. 17:15-17, 21:9-19, 22:6-7, 37:25 to 38:3, 39:6-11; *see* Graubard Decl., Ex. 20, ¶¶ l5-16, at pp. 6-7.)

50. According to filings in bankruptcy court, Doylestown owes an unsecured $100,000.00 debt to William Reilly and an unsecured $25,000.00 debt to Shamrock, another Reilly-family controlled entity. (Fla. Voluntary Pet., Ex. 3, at p. 5; N.Y. Voluntary Pet., Ex. 2, at p. 16.) Notwithstanding this, William Reilly admits to personally paying and guarantying Doylestown's costs and expenses. (Notice of Filing, Ex. 28, at p. 100; Aff. of Att'y, ¶ 3(b), at p.62 ("Ex. 31").)

51. Daniel Reilly allegedly began leasing the house in Portsmouth, Rhode Island, from Doylestown

on or about January 1, 2010. (Notice of Filing, Ex. 28, at p, 94.)

52. George Hawes has confirmed that William Reilly, Shannon Reilly, and Daniel Reilly "own and/or control Doylestown"; that Shannon Reilly and Daniel Reilly act on William Reilly's behalf, under his direction, and as his agents in operating and participating in the affairs of Doylestown; and that Doylestown acts on William Reilly's behalf under his direction, and as his agent. (Hawes Answer, ¶¶ 23-26, at p. 4; *see* Fla. Voluntary Pet., Ex. 3, at pp. 3-5, 10-14.)

53. George Hawes has also confirmed that William Reilly, Shannon Reilly, and Daniel Reilly controlled and used Doylestown to fraudulently and unlawfully transfer InnerLight stock to others; and that William Reilly, Shannon Reilly, Daniel Reilly, and Doylestown combined, conspired, and acted in concert with one another to fraudulently and unlawfully transfer InnerLight stock to others. (Hawes Answer, ¶ 189, at p. 21; Hawes Countercl., ¶¶ 38-39, 48, 79, 127, at pp. 38-40, 44, 50.)

54. William Reilly and Shannon Reilly have admittedly transferred thousands of dollars worth of funds and securities through Doylestown's accounts illegally. (Graubard Decl., Ex. 20, ¶¶ 12-13, at pp. 5-6; Graubard Calculations, Ex. 21.)

55. Although William Reilly denies causing any of InnerLight's stock to be transferred to or received by Doylestown, he has asserted that Doylestown is "an indispensable party to several claims [InnerLight] has made" in this case. (W. Reilly Answer, ¶¶ 50, 53, 63, at pp. 5-6, 24.)

D. Ashworth Development LLC

56. After William Reilly had the Rule 144 legend removed from InnerLight's stock without InnerLight's knowledge or consent, William Reilly, Shannon Reilly, and Daniel Reilly combined together to cause a substantial portion of InnerLight's stock to be transferred to and received by Ashworth Development LLC ("Ashworth"). (Pl.'s Am. Compl., ¶ 50, at p. 6; Brogan Decl., Ex. 1, ¶ 26.)

57. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Ashworth without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Pl.'s Am. Compl., ¶¶ 51, at p. 6; Brogan Decl., Ex. 1, ¶ 27.)

58. InnerLight received no consideration for the stock which William Reilly, Shannon Reilly, and Daniel Reilly illegally caused to be transferred to and received by Ashworth. (Pl.'s Am. Compl., ¶ 52, at p. 7; Brogan Decl., Ex. 1, ¶ 28.)

59. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Ashworth for the purpose of, among other things, converting InnerLight's property, interfering with InnerLight's economic relations, and unlawfully causing other tortious injuries to InnerLight in Utah. (Brogan Decl., Ex. 1, ¶ 29.)

60. It is undisputed that William Reilly owns and/or controls Ashworth. (W. Reilly Answer, ¶ 21, at p. 3.)

61. William Reilly has testified in this case that, "[a]t all times, Ashworth was engaged in the real estate business solely in Florida." (W. Reilly Decl., ¶ 5, at 2 (attached as Exhibit C to Mem. in Supp. of Mat. to Dismiss).) Notwithstanding this testimony, it is clear that Ashworth also operates in New York; has agents in New York; and has securities accounts in New York. (Ashworth Account Application ("Ex. 32"); Ashworth Letters ("Ex. 33").)

62. William Reilly is a director and officer of Ashworth, as well as its attorney, registered agent, and general agent; he also controls its bank and investment accounts. (Ashworth Articles, at p. 1 ("Ex. 34"); W. Reilly Dep. I, at pp. 61-64 (Mar. 1, 2007) ("Ex. 35"); Ashworth Account Application, Ex. 32; Ashworth Letters, Ex. 33; Fla. Compl., ¶ 14, at p. 3 ("Ex. 36").)

63. Ashworth's principal place of business is at William Reilly's address in Boca Raton, Florida. (2009 Report ("Ex. 37").)

64. George Hawes has confirmed that Shannon Reilly and Daniel Reilly act on William Reilly's behalf, under his direction, and as his agents in operating and participating in the affairs of Ashworth; that Ashworth acts on William Reilly's behalf, under his direction, and as his agent; and that William Reilly, Shannon Reilly, Daniel Reilly, and Ashworth "established a combination between themselves of two or more persons." (Hawes Answer, ¶¶ 25-26, 189, at pp. 4, 21.)

65. William Reilly has admittedly transferred thousands of dollars worth of funds and securities through Ashworth's accounts illegally. (Graubard Decl.,

Ex. 20, ¶¶ 12-13, at pp. 5-6; Graubard Calculations, Ex. 21.)

E. Beachview Associates, Inc.

66. After William Reilly had the Rule 144 legend removed from InnerLight's stock without InnerLight's knowledge or consent, William Reilly, Shannon Reilly, and Daniel Reilly combined together to cause a substantial portion of InnerLight's stock to be transferred to and received by Beachview Associates, Inc. ("Beachview"). (Pl.'s Am. Compl., ¶ 50, at p. 6; Brogan Decl., Ex. 1, ¶ 26.)

67. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Beachview without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Pl.'s Am. Compl., ¶ 51, at p. 6; Brogan Decl., Ex. 1, ¶ 27.)

68. InnerLight received no consideration for the stock which William Reilly, Shannon Reilly, and Daniel Reilly illegally caused to be transferred to and received by Beachview. (Pl.'s Am. Compl., ¶ 52, at p. 7; Brogan Decl., Ex. 1, ¶ 28.)

69. William Reilly, Shannon Reilly, and Daniel Reilly caused these shares of stock to be transferred to and received by Beachview for the purpose of among other things, converting InnerLight's property, interfering with InnerLight's economic relations, and unlawfully causing other tortious injuries to InnerLight in Utah. (Brogan Decl., Ex. 1, ¶ 29.)

70. Shannon Reilly has testified in this case that she is "the owner of Beachview." (S. Reilly Decl.,

¶ 5, at. p. 2 (attached as Exhibit B to Mem. in Supp. of Mot. to Dismiss).) She has also testified that "Beachview is an investment company solely operating in the State of Florida." (S. Reilly Decl., ¶ 6, at p. 2 (attached as Exhibit B to Mem. in Supp. of Mot. to Dismiss).)

71. Shannon Reilly is the registered agent for Beachview and one of its officers and directors. (Beachview Articles ("Ex. 38").) Daniel Reilly is also an officer and director of Beachview. (Beachview Articles, Ex. 38.)

72. Beachview's principal place of business is at Shannon Reilly's address in Loxahatchee, Florida. (Beachview Articles, Ex. 38, at p. 1)

73. George Hawes has confirmed that Shannon Reilly and Daniel Reilly "own and/or control Beachview"; that Shannon Reilly and Daniel Reilly act on William Reilly's behalf, under his direction, and as his agents in operating and participating in the affairs of Beachview; and that Beachview acts on William Reilly's behalf, under his direction, and as his agent. (Hawes Answer, ¶¶ 22, 25-26, at p. 4.)

74. George Hawes also confirmed that William Reilly, Shannon Reilly, and Daniel Reilly controlled and used Beachview to fraudulently and unlawfully transfer InnerLight stock to others; and that William Reilly, Shannon Reilly, Daniel Reilly, and Beachview combined, conspired, and acted in concert with one another to fraudulently and unlawfully transfer InnerLight stock to others. (Hawes Answer, ¶ 189, at p. 21; Hawes Countercl., ¶¶ 38-39, 48, 79, 127, at pp. 38-40, 44, 50.)

F. POP Holdings, Ltd.

75. After the Rule 144 legend was removed without InnerLight's knowledge or consent, William Reilly and the Defendants combined together to cause a substantial portion of InnerLight's stock to he pledged as collateral for a loan from POP Holdings, Ltd. ("POP Holdings"), an offshore entity and another defendant in this case. (Pl.'s Am. Compl., ¶ 49, at p. 6; Brogan Decl., Ex. 1, ¶ 32; *see generally* Fla. Compl., Ex. 36.)

76. William Reilly and the Defendants caused these shares of stock to be pledged as collateral without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Brogan Decl., Ex. 1, ¶ 33.)

77. InnerLight received no consideration for the stock which William Reilly and the Defendants illegally caused to be pledged as collateral. (Brogan Decl., Ex. 1, ¶ 34.)

78. William Reilly and the Defendants caused these shares of stock to be pledged as collateral for the purpose of, among other things, converting InnerLight's property, interfering with InnerLight's economic relations, and unlawfully causing other tortious injuries to InnerLight in Utah. (Brogan Decl., Ex. 1, ¶ 35.)

79. William Reilly and the Defendants caused InnerLight's stock to be pledged as collateral by and through another family-controlled entity, Shamrock Funding, Inc. ("Shamrock Funding"). (Fla. Compl., Ex. 36, ¶¶ 15-27, at pp. 3-5; Note to POP Holdings ("Ex. 39"); Sec. Agreement ("Ex. 40"); Pledge Agreement ("Ex. 41"); Guaranty Agreement ("Ex. 42"); Escrow

Agreement ("Ex. 43"); Stock Purchase Agreement ("Ex. 44").)

80. On or about October 10 or 12, 2009, Shamrock Funding, acting through Shannon Reilly, executed a Secured Promissory Note ("the Note") payable to POP Holdings for $325,000.00 plus interest. (Note to POP Holdings, Ex. 39, at pp. 1, 6.)

81. The purpose of the Note was to provide security for the loan from POP Holdings. (Sec. Agreement, Ex, 40, ¶ 1, at 1.)

82. The Note was subject to the terms and provisions of a Loan and Security Agreement ("the Security Agreement") that was entered into by POP Holdings, Shamrock, Shamrock Funding, Doylestown, and Ashworth. (Nate to POP Holdings, Ex. 39, at p. 1; Sec. Agreement, Ex. 40, at p. 1.)

83. Shannon Reilly executed the Security Agreement on behalf of Shamrock and Shamrock Funding. She also executed the Borrowing and Pledgor Certificates accompanying the Security Agreement on behalf of these entities. (Sec. Agreement, Ex. 40, at pp. 7-11.)

84. Daniel Reilly executed the Security Agreement on behalf of Doylestown. He also executed the Borrowing and Pledgor Certificates accompanying the Security Agreement on behalf of Shamrock and Shamrock Funding. (Sec. Agreement, Ex. 40, at pp. 7-11.)

85. William Reilly executed the Security Agreement on behalf of Ashworth. He also appears to have been the one who wrote in by hand the various names and titles of the signors of the Security Agreement and the documents which accompany it. (Sec. Agreement, Ex. 40, at pp. 7-11.)

86. Shamrock, Shamrock Funding, Doylestown, and Ashworth represented and warranted to POP Holdings in the Security Agreement that they had

> full power and authority to execute and deliver this Agreement, the Note, the Guaranty, the Pledge & Security Agreement, the Escrow Agreement . . . , and all other documents, instruments, guarantees, certificates and agreements executed and/or delivered by the Borrower Parties in connection with the Loan. . . , and to incur and perform the obligations provided for therein, all of which have been duly authorized by all proper and necessary action of the appropriate governing body of the Borrower Parties. No consent or approval of any public authority or other third party is required as a condition to the validity of any Loan Document, and each Borrower Party is in material compliance with all laws and regulatory requirements to which it is subject.

(Sec. Agreement, Ex. 40, ¶ 4(b), at p. 2.)

87. Shamrock, Shamrock Funding, Doylestown, and Ashworth represented and warranted to POP Holdings in the Security Agreement that they "have good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien . . . hereunder, free and clear of any and all Liens." (Sec. Agreement, Ex. 40, ¶ 4(e), at pp. 2-3.)

88. As specified in the accompanying Pledge & Security Agreement ("the Pledge Agreement"), the Security Agreement purports to give POP Holdings a

security interest in the following InnerLight stock as collateral:

(a) The "Pledged Securities" defined as:

i. 150,000 shares of Common Stock of InnerLight Holdings, Inc., a Delaware corporation . . . , held in the name of [Shamrock] Equities and evidenced by Certificates #121, #122, and #123. . . ;

ii. 50,000 shares of Common Stock of InnerLight held in the name of Ashworth and evidenced by Certificate #127 . . . ;

. . . and

iv. a Class "A" Stock Purchase Warrant for the purchase of up to 236,000 shares of Common Stock of InnerLight held in the name of [Shamrock] Equities pursuant to a warrant power . . . .

(b) all dividends, distributions and sums distributable or payable from, upon or in respect of the Pledged Securities, (c) all other rights and privileges incident to the Pledged Securities, and (d) all proceeds and products of the foregoing.

(Pledge Agreement, Ex. 41, ¶ 2, at pp. 1-2.)

89. The Pledge Agreement was entered into by and between POP Holdings, Shamrock, Shamrock Funding, and Ashworth. (Pledge Agreement, Ex. 41, at p. 1.)

90. Shannon Reilly executed the Pledge Agreement on behalf of Shamrock and Shamrock Funding. (Pledge Agreement, Ex. 41, at pp. 9-10.)

91. William Reilly appears to have been the one who wrote in by hand the names and titles of the signors of the Pledge Agreement and the documents which accompany it. (Pledge Agreement, Ex. 41, at pp.9-10.)

92. Among other things, Shamrock, Shamrock Funding, and Ashworth represented and warranted the following to POP Holdings in the Pledge Agreement:

(a) Pledgor has full power and authority to enter into this Agreement;

(b) any consent or approval which is required as a condition to the validity of this Agreement has been obtained;

(c) this Agreement constitutes the valid and legally binding agreement of Pledgor in accordance with its terms and does not constitute a prohibited transfer under any law, statute, regulation or ordinance, including the Securities Act of 1933, as amended;

(d) there is no provision of any existing mortgage, indenture, contract, subscription agreement, shareholders' agreement, operating agreement or other agreement binding on Pledgor or affecting its property which would conflict with or in any way prevent the execution, delivery or carrying out the terms of this Agreement;

(e) Pledgor has good title to the Collateral and the Collateral is owned free and clear of all security interests, liens (including, without limitation, mechanics', laborers' and statutory liens), attachments, levies and encum-

brances of every kind, nature and description and whether voluntary or involuntary, except for the security interest of the Secured Party therein. The Pledgor shall warrant and defend the Collateral against any claims and demands of all persons or entities at any time claiming the same or any interest in the Collateral adverse to the Secured Party;

(f) there are no proceedings pending or, so far as Pledgor knows, threatened before any court or administrative agency which, in the opinion of Pledgor, will adversely affect the authority of Pledgor to enter into, or the validity or enforceability of, this Agreement or any of the Loan Documents;

[. . .]

(i) Pledgor has delivered, or simultaneous with the execution of this Agreement will deliver, to the Escrow Agent any and all Pledged Certificates evidencing the Collateral, together with

i. duly executed irrevocable stock powers . . . in substantially the form attached hereto . . . , in accordance with the terms of the Escrow Agreement;

ii. the Warrant Power in substantially the form attached hereto . . . ;

iii. the written consent of InnerLight authorizing the Warrant Power.

(Pledge Agreement, Ex. 41, ¶ 4, at pp. 2-3.)

93. The stock powers accompanying the Pledge Agreement were executed by Shamrock, Shamrock

Funding, and Ashworth. (Pledge Agreement, Ex. 41, at pp. 10-12.)

94. The stock power Shamrock executed states:

> FOR VALUE RECEIVED, Shamrock Equities, Inc., . . . hereby assigns and transfers unto POP Holdings, Ltd. One Hundred Fifty Thousand (150,000) shares of the Common Stock of InnerLight Holdings, Inc., . . . standing in [Shamrock's] name, represented by Certificates Nos. 121, 122, and 123 herewith, and does hereby irrevocably constitute and appoint [POP Holdings' attorneys], as transfer agent, to transfer the said stock on the books of InnerLight with full power of substitution in the premises.

(Pledge Agreement, Ex. 41, at p. 10.)

95. The stock power Ashworth executed states:

> FOR VALUE RECEIVED, Ashworth Development LLC . . . hereby assigns and transfers unto POP Holdings, Ltd. One Hundred Thousand (100,000) shares of the Common Stock of InnerLight Holdings, Inc., . . . standing in [Ashworth's] name, represented by Certificate No. 127 herewith, and does hereby irrevocably constitute and appoint [POP Holdings' attorneys], as transfer agent, to transfer the said stock on the books of InnerLight with full power of substitution in the premises.

(Pledge Agreement, Ex. 41, at p. 12.)

96. The warrant power accompanying the Pledge Agreement was executed by Shannon Reilly for Shamrock, and it states:

> FOR VALUE RECEIVED, Shamrock Equities, Inc., . . . hereby assigns and transfers unto POP Holdings, Ltd. the Class "A" Common Stock Purchase Warrant . . . to purchase up to Two Hundred Thirty Six Thousand (236,000) shares of the Common Stock of InnerLight Holdings, Inc., . . . at a purchase price of $0.25 per share, standing in [Shamrock's] name, represented by the Warrant attached hereto, and does hereby irrevocably constitute and appoint [POP Holdings' attorneys], as transfer agent, to transfer the said Warrant on the books of InnerLight with full power of substitution in the premises.

(Pledge Agreement, Ex. 41, at p. 13.) Notwithstanding these and similar representations, InnerLight has never issued any warrants to anyone because its public offering was never successfully completed. (Brogan Decl., Ex. 1, ¶ 21.)

97. In addition to the Pledge Agreement, the Security Agreement was also accompanied by a Guaranty Agreement, Escrow Agreement, and Stock Purchase Agreement. (Guaranty Agreement, Ex. 42; Escrow Agreement, Ex. 43; Stock Purchase Agreement, Ex, 44.)

98. The Guaranty Agreement was executed on October 10 or 12, 2009, by Shannon Reilly for Doylestown, pursuant to which Doylestown guarantied full and complete performance under the Security

Agreement and its accompanying documents. (Guaranty Agreement, Ex. 42.)

99. The Escrow Agreement was entered into between POP Holdings, POP Holdings' attorneys, Shamrock, Shamrock Funding, and Ashworth. Pursuant to the Escrow Agreement, POP Holdings' attorneys were appointed to serve as the escrow and transfer agents in connection with the InnerLight stock which was to be pledged as collateral. (Escrow Agreement, Ex. 43.)

100. The Stock Purchase Agreement was entered into on October 10 or 12, 2009, by and between POP Holdings, Beachview, and Shannon Reilly. (Stock Purchase Agreement, Ex. 44.)

101. Daniel Reilly executed the Stock Purchase Agreement on behalf of Beachview. (Stock Purchase Agreement, Ex. 44, at p. 8.)

102. In the Stock Purchase Agreement, Beachview claims to be "the owner of Fifty Thousand (50,000) shares . . . of the Common Stock of InnerLight Holdings, Inc., . . . $0.001 par value per share," and agrees to "sell, assign, convey, transfer and deliver the Shares to [POP Holdings], free and clear of all liens, encumbrances, security agreements, equities, options, claims, charges and restrictions." (Stock Purchase Agreement, Ex. 44, at p. 1.)

103. Beachview also agreed in the Stock Purchase Agreement to

> deliver to [POP Holdings] the following: (1) Certificate No. 125 representing the Shares, properly endorsed by the Seller, accompanied by a stock power representing the transfer

> to the Buyer substantially in the form attached hereto . . . ; (2) a joint board of director and shareholder resolution approving and ratifying the sale of the Shares, this Agreement, and any other agreements, instruments and documents contemplated by this Agreement substantially in the form attached hereto . . . ; and (3) such other documents, instruments or certificates as shall be reasonably requested by the Buyer or its counsel.

(Stock Purchase Agreement, Ex. 44, ¶ 1.5, at pp. 1-2.)

104. As an inducement to POP Holdings, Beachview and Shannon Reilly, "jointly and severally, represent[ed], covenant[ed] and warrant[ed] to [POP Holdings] the following:"

> 2.1 Power and Authority. [Beachview] and [Shannon] Reilly each have the legal power, legal right and authority to enter into, execute and deliver this Agreement and any other agreements, instruments and documents contemplated by this Agreement, and to carry out their obligations under this Agreement. No other acts or proceedings on the part of [Beachview] and/or [Shannon] Reilly will be necessary to authorize this Agreement (or any agreements, instruments and documents contemplated by this Agreement) or the transactions contemplated by this Agreement. . . .
>
> 2.2. No Liens or Encumbrances. [Beachview] owns the Shares, beneficially and of record, and, upon transfer of the Shares to [POP

> Holdings], the Shares shall be free and clear of all liens, encumbrances, security agreements, equities, options, claims, charges and restrictions. . . .
>
> 2.3 Freely Assignable. [Beachview] represents and warrants that the Shares are freely assignable and tradable. The sale of the Shares is (a) exempt from the registration requirements of the Securities Act of 1933, as amended and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws within the required statutory periods; and (b) will not be in violation of any federal or state securities laws.

(Stock Purchase Agreement, Ex. 44, p. 2.)

105. As an inducement to POP Holdings, Beachview and Shannon Reilly agreed that they, "jointly and severally, shall indemnify, defend and hold harmless [POP Holdings] . . . against and in respect of any and all direct or indirect damages, claims, losses, liabilities and reasonable expenses . . . suffered by [POP Holdings] . . . , which may arise out of, relate to or be in respect of any of the following:"

> (i) any breach or violation of this Agreement by [Beachview] and/or [Shannon] Reilly; (ii) any material falsity, inaccuracy or misrepresentation in or breach of any of the representations, warranties or covenants made in this Agreement by [Beachview] and/or [Shannon] Reilly; and (iii) any inaccuracy or mis-

> representation in any certificate, documents or instrument delivered at or prior to the Closing by or on behalf of [Beachview] and/or [Shannon] Reilly in accordance with the provisions of this Agreement.

(Stock Purchase Agreement, Ex. 44, ¶¶ 1.4, 3.1, at pp. 1-3.)

106. William Reilly acted as an agent and attorney for Shannon Reilly, Shamrock, Shamrock Funding, Doylestown, and Ashworth in all negotiations and transactions with POP Holdings regarding InnerLight's stock. As such, William Reilly faxed most, if not all, of the agreements entered into by them with POP Holdings to and from his Rhode Island residence, (Fla. Compl., Ex. 36, ¶ 14, at p. 3; Sec. Agreement, Ex. 40, at pp. 7-11; Pledge Agreement, Ex. 41, at pp. 1-10; Stock Purchase Agreement, Ex. 44, at pp. 1-8; Stipulations of Fact, Ex. 11, ¶¶ 1-6, at pp. 1-2.)

107. By executing the various loan documents and subsequently defaulting upon their obligations therein, William Reilly and the Defendants caused the InnerLight stock which they had pledged as collateral for the loan to be transferred to POP Holdings without authorization from InnerLight, without InnerLight's knowledge or permission, and without a valid subscription agreement. (Fla. Compl., Ex. 36, ¶ 27, at p. 5; Brogan Decl., Ex. 1, ¶ 37.)

108. William Reilly and the Defendants caused these shares of stock to be transferred to POP Holdings without authorization from InnerLight, without InnerLight's knowledge or permission, and without a

valid subscription agreement. (Brogan Decl., Ex. 1, ¶ 38.)

109. InnerLight received no consideration for the stock, which William Reilly and the Defendants illegally caused to be transferred to POP Holdings. (Brogan Decl., Ex. 1, ¶ 39.)

110. POP Holdings recently filed a lawsuit in Broward County, Florida, wherein it has confirmed that William Reilly, Shannon Reilly, Shamrock, Shamrock Funding, Doylestown, Ashworth, and Beachview acted in concert with one another in purporting to transfer InnerLight's stock to others. (Fla. Compl., Ex. 36, ¶¶ 20, 28-30, 53-56, 58-61, at pp. 4-6, 9-11.)

111. POP Holdings has also confirmed that InnerLight's stock was purportedly sold to others by and through William Reilly, Shannon Reilly, Shamrock, Shamrock Funding, Doylestown, Ashworth, and Beachview. (Fla. Compl., Ex. 36, ¶¶ 14-27, at pp. 3-5.)

112. POP Holdings has also confirmed that InnerLight's stock was purportedly transferred by and/or from William Reilly, Shannon Reilly, Shamrock, Shamrock Funding, Doylestown, Ashworth, and Beachview. (Fla. Compl., Ex. 36, ¶¶ 14-27, at pp. 3-5.)

113. POP Holdings has also confirmed that William Reilly, Shannon Reilly, Shamrock, Shamrock Funding, Doylestown, Ashworth, and Beachview conspired with one another to commit fraud and other unlawful actions in connection with InnerLight's stock. (Fla. Compl., Ex. 36, ¶¶ 20, 28-30, 53-56, 58-61, at pp. 4-6, 9-11.)

G. SEC v. William Reilly

114. Due to numerous violations of federal securities laws, the SEC brought suit against William Reilly in the U.S. District Court for the Southern District of New York. (SEC Release No. 20878 ("Ex. 45").)

115. On October 8, 2009, William Reilly signed a consent agreement, pursuant to which he agreed that a judgment could be entered against him by the court in the SEC case. (Judgment & Consent, at pp. 6-11 ("Ex. 46").)

116. As a result, on October 15, 2009, the court in that case entered a judgment against William Reilly, wherein, among other things, the court ordered, adjudged, and decreed:

> that [William Reilly] and [his] agents, servants, employees, attorneys, and all persons in active concert or participation with them . . . are permanently restrained and enjoined from violating, directly or indirectly, [federal securities laws], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security. . . .

(Judgment & Consent, Ex. 46, at p. 1.)

117. The court also ordered, adjudged, and decreed:

> that [William Reilly] is permanently barred from participating in an offering of penny stock, including engaging in activities with

> a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars. . . .

(Judgment & Consent, Ex. 46, at p. 3.)

118. Only 2 to 4 days after William Reilly signed the consent agreement in the SEC case, and 3 to 5 days before the court entered its judgment thereon, William Reilly and the Defendants executed the various loan documents with POP Holdings, pursuant to which they purportedly gave InnerLight's stock to POP Holdings' attorneys as collateral. (Judgment & Consent, Ex. 46; Sec. Agreement, Ex. 40; Pledge Agreement, Ex. 41; Guaranty Agreement, Ex. 42; Escrow Agreement, Ex. 43; Stock Purchase Agreement, Ex. 44.)

119. InnerLight has suffered a substantial amount of damages as a result of the Defendants' tortious conduct. The majority, if not all, of these damages have been suffered in Utah. William Reilly and the Defendants knew that this would likely be the case. (Brogan Decl., Ex. 1, ¶ 41.)

ARGUMENT

InnerLight has satisfied its burden of making a prima facie showing that jurisdiction exists. As a result, the Defendants' Motion to Dismiss should be denied.

The Defendants' Motion to Dismiss Should Be Denied Because Innerlight Has Satisfied Its Burden of Making a Prima Facie Showing That the Defendants Have Minimum Contacts with Utah and the Exercise of Jurisdiction Over the Defendants Is Reasonable

Although a plaintiff bears the burden of establishing personal jurisdiction over a defendant, *see Fenn v. Mleads Enters., Inc.*, 2006 UT 8, ¶ 8, 137 P.3d 706, in the preliminary stages of litigation this burden is "light." *Intercon, Inc. v. Bell Atl. Internet Solutions, Inc.*, 205 F.3d 1244, 1247 (10th Cir. 2000). Contrary to the Defendants' representations (*see* Mem. in Supp. of Mot. to Dismiss, at 5 (claiming the standard to be "a preponderance of the evidence")), where there has been no evidentiary hearing and the motion to dismiss for lack of personal jurisdiction "is decided on the basis of affidavits and other written material, the plaintiff need only make a prima facie showing that jurisdiction exists." *See Intercon*, 205 F.3d at 1247; *accord Pohl, Inc. v. Webelhuth*, 2008 UT 89, ¶ 30, 201 P.3d 944; *Frank's Garage & Used Cars, Inc.*, 2004 UT App. 260, ¶ 2 n.1, 97 P.3d 717. The allegations in the complaint must be taken as true to the extent they are uncontroverted by the defendant's affidavits. *Intercon*, 205 F.3d at 1247; *Pohl*, 2008 UT 89, ¶ 30; *Frank's Garage*, 2004 UT App. 260, ¶ 2 n.1. Moreover, if the parties present conflicting affidavits, "all factual disputes must be resolved in the plaintiff's favor, and the plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party." *Intercon*, 205 F.3d at 1247; *accord Pohl*, 2008 UT 89, ¶ 30; *Frank's Garage*, 2004 UT App. 260, ¶ 2 n.1. Only the well pled facts of plaintiff's complaint, however, as distinguished from mere conclusory

allegations, must be accepted as true, *Intercon*, 205 F.3d at 1247; *accord Pohl*, 2008 UT 89, ¶ 30.

To obtain personal jurisdiction over a nonresident defendant, "a plaintiff must show both that jurisdiction is proper under the laws of the forum state and that the exercise of jurisdiction would not offend due process." *Intercon*, 205 F.3d at 1247; *accord Pohl*, 2008 UT 89, ¶ 10. Because Utah's long-arm statute permits the exercise of any jurisdiction that is consistent with the United States Constitution, the personal jurisdiction inquiry under Utah law collapses into the single due process inquiry. *Pohl*, 2008 UT 89, ¶¶ 15, 19; *see* Utah Code Ann. § 78B-3-205. As explained below, the exercise of jurisdiction over the Defendants here is consistent with due process because they have sufficient "minimum contacts" with Utah and the exercise of jurisdiction over them is reasonable.

I. The Defendants Have Sufficient "Minimum Contacts" with Utah

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution permits the exercise of personal jurisdiction over a nonresident defendant so long as she purposefully established "minimum contacts" with the forum state. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). "[U]nder a minimum contacts analysis . . . , [p]roper inquiry must not focus on the mere quantity of contacts, but rather upon the quality and nature of those contacts as they relate to the claims asserted." *Fenn v. MLeads Enters., Inc.*, 2006 UT 8, ¶ 19, 137 P.3d 706 (internal quotation marks omitted). The minimum-contacts standard may be met in two ways. First, a court may exercise general jurisdiction if the defendant's contacts

with the forum state, while unrelated to the alleged activities upon which the claims are based, are nonetheless "continuous and systematic." *Intercon, Inc. v. Bell Atl. Internet Solutions, Inc.*, 205 F.3d 1244, 1247 (10th Cir. 2000) ("When a plaintiff's cause of action does not arise directly from a defendant's forum-related activities, the court may nonetheless maintain general personal jurisdiction over the defendant based on the defendant's business contacts with the forum state."); *accord Pohl, Inc. v. Webelhuth*, 2008 UT 89, ¶ 9, 201 P.3d 944. Second, a court may exercise specific jurisdiction if a defendant has "purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities." *Intercon*, 205 F.3d at 1247 (quoting *Burger King Corp.*, 471 U.S. at 472); *accord Pohl*, 2008 UT 89, ¶¶ 10, 20, 24. It is not, however, necessary that a nonresident be physically present in Utah to transact business or provide services. So long as her "efforts are purposefully directed toward residents of [Utah], [courts] have consistently rejected the notion that an absence of physical contacts can defeat personal jurisdiction [here]." *SII Megadiamond, Inc. v. Am. Superabrasives Corp.*, 969 P.2d 430, 435 (Utah 1998) (internal quotation marks omitted).

As explained below, this Court may exercise jurisdiction over the Defendants because they conspired to cause a tortious injury in Utah, the effects of their tortious conduct were purposefully directed at Utah, their agents had direct contacts with InnerLight in Utah, and they cannot hide behind the so-called "corporate shield." Any one of these reasons is alone sufficient for jurisdiction.

A. The Defendants' Conspired to Cause a Tortious Injury in Utah

Among other things, "Utah's long-arm statute provides for jurisdiction over individuals who never physically entered. Utah but who conspired to cause tortious injury in Utah, and directed their actions toward Utah knowing that they would cause tortious injury there." *Pohl*, 2008 UT 89, ¶ 1. The existence of a conspiracy and acts of a co-conspirator within a forum may subject another co-conspirator to the forum's jurisdiction. *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1069 (10th Cir. 2007). "'The conspiracy theory of personal jurisdiction is based on the time honored notion that the acts of [a] conspirator in furtherance of a conspiracy may be attributed to the other members of the conspiracy.'" *Pohl*, 2008 UT 89, ¶ 28 (Voting *Textor v. Bd. of Regents*, 711 F.2d 1387, 1392 (7th Cir. 1983)). "Under this theory, personal jurisdiction over a nonresident conspirator is sufficient to establish personal jurisdiction over a nonresident coconspirator." *Am. Land Program, Inc. v. Bonaventura Uitgevers Maatsehappij, N.V.*, 710 F.2d 1449, 1454 (10th Cir. 1983). "In order for personal jurisdiction based on a conspiracy theory to exist, the plaintiff must offer more than 'bare allegations' that a conspiracy existed, and must allege-facts that would support a prima facie showing of a conspiracy." *Melea*, 511 F.3d at 1069 (citation omitted); *accord Pohl*, 2008 UT 89, ¶ 30. "[I]t is not," however, "necessary in a civil conspiracy action to prove that the parties actually came together and entered into a formal agreement to do the acts complained of by direct evidence." *Pagan Estate v. Cannon*, 746 P.2d 785, 791 (Utah Ct. App. 1987). Rather, a "conspiracy may be inferred from circum-

stantial evidence, including the nature of the act done, the relations of the parties, and the interests of the alleged conspirators." *Id.* Courts must determine whether "the totality of the allegations give rise to a plausible inference that a conspiracy existed." *Near v. Crivello,* 673 F. Supp. 2d 1265, 1275 (D. Kan. 2009); *accord State v. Erwin*, 120 P.2d 285, 306 (Utah 1941).

Under the conspiracy theory of jurisdiction, the plaintiff must:

> (1) make a prima facie factual showing of a conspiracy (*i.e.*, point to evidence showing the existence of the conspiracy and the defendant's knowing participation in that conspiracy); (2) allege specific facts warranting the inference that the defendant was a member of the conspiracy; and (3) show that the defendant's co-conspirator committed a tortious act pursuant to the conspiracy in the forum.

Clark v. Tabin, 400 F. Supp. 2d 1290, 1297 (N.D. Okla. 2005) (quoting *Kohler Co. v. Kohler Intl, Ltd.*, 196 F. Supp. 2d 690, 697 (N.D. III. 2002). In Utah, civil conspiracy requires proof of the following five elements: "(1) a combination of two or more persons; (2) an object to be accomplished, (3) a meeting of the minds on the object or course of action, (4) one or more unlawful, overt acts, and (5) damages as a proximate result thereof." *Pagan*, 746 P.2d at 790. "In a conspiracy that results in tort liability, the cause of action for which the co-conspirators are ultimately held liable is not the tort resulting in the harm, but for the conspiracy that led to the harm. These are separate and distinct causes of action." *Jedrziewski v. Smith*, 2005 UT 85, ¶ 10, 128 P.3d 1146.

InnerLight has alleged sufficient facts to support a prima facie showing that William Reilly and the Defendants knowingly conspired with one another for the purpose of causing InnerLight to suffer a tortious injury in Utah. In particular, InnerLight has alleged sufficient facts to show that William Reilly and the Defendants knowingly formed a combination, of which they were all members, for the purpose of causing InnerLight's stock to be unlawfully transferred to and received by Shamrock, Doylestown, Ashworth, and Beachview without proper authorization. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 7, 24-36, 39-42, 44-45, 50-53, 55-57, 59-60, 66-67, 69, 73-76, 78-79, 82-93, 95-96, 98-100, 102, 104-108, 113, 118-119; *see also* Pl.'s Am. Compl., ¶¶ 19-26, 45-99, 140-297, 300-304, at pp. 3-4, 6-11, 17-37.) InnerLight has also alleged sufficient facts to show that William Reilly and the Defendants knowingly formed a combination, of which they were all members, for the purpose of causing InnerLight's stock to be unlawfully pledged as collateral to POP Holdings without proper authorization. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 7, 24-25, 29-36, 39-42, 52-53, 55-56, 59-60, 66-67, 69, 73-76, 78-93, 95-108, 110-113, 118-119; *see also* Pl.'s Am. Compl., 19-26, 45-99, 140-297, 300-304, at pp. 3-4, 6-11, 17-37.) These allegations and the materials offered in support of them are sufficient to establish that William Reilly and the Defendants had a "meeting of the minds" on their object or course of action regarding InnerLight's stock. Furthermore, the fact that William Reilly and the Defendants actually caused InnerLight's stock to be transferred and pledged as collateral to third-parties without proper authorization constitutes an unlawful overt act in furtherance of their combination. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 23-36, 39-42,

50-53, 55-57, 59-60, 66-67, 69, 73-76, 78-93, 95-108, 110-113, 118-119; *see also* Pl.'s Am. Compl., ¶¶48-91, 139-168, 192, at pp. 6-10, 17-20, 23) And the fact that William Reilly and Shamrock, two of the Defendants' co-conspirators, committed a tortious act in Utah which caused InnerLight to suffer damages has never been, and indeed cannot now be, controverted by the Defendants. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 24-29, 31, 36-37, 39-42, 53, 56-59, 66-69, 75-76, 78, 82; *see also* Pl.'s Am. Compl., ¶¶ 19-26, 45-99, 140-297, 300-304, at pp. 3-4, 6-11, 17-37.) As a result, this Court may properly exercise jurisdiction over the Defendants in this matter.

B. The Effects of the Defendants' Tortious Conduct Were Directed at Utah

The exercise of jurisdiction over the Defendants in Utah is also proper under the "effects test" which the United States Supreme Court enunciated in *Calder v. Jones*, 465 U.S. 783 (1984). The "effects test" provides that the exercise of personal jurisdiction over a nonresident defendant does not violate due process when (1) a defendant commits an intentional tort, (2) the resulting harm is expressly aimed at the forum, and (3) the defendant knows or should know that the brunt of the harm will be felt in the forum. *Calder*, 465 U.S. at 788-90. Although the actions of the defendants in *Calder* were performed in Florida, they resulted in an allegedly libelous article, "drawn from California sources," concerning "the California activities of a California resident," whose "career was centered in California." *Id.* at 788. "[T]he brunt of the harm . . . was suffered in California." *Id.* at 789. California was, in sum, "the focal point both of the story and of the harm suffered." *Id.* As a result, the Court held

that jurisdiction over the Florida defendants was "proper in California based on the 'effects' of their Florida conduct in California." *Id.* (citations omitted). "[A]n individual injured in California," the Court concluded, "need not go to Florida to seek redress from persons who, though remaining in Florida, knowingly cause the injury in California," *Id.* at 790.

As an alternative to the conspiracy theory of jurisdiction (which was addressed in the previous section above), the Utah Supreme Court has held that *Calder*'s "effects test" may also be used to establish jurisdiction over the members of a conspiracy by alleging "(1) that the defendants were engaged in a conspiracy, which is an intentional tort, (2) that the conspiracy was expressly aimed at the forum state, and (3) that the conspiracy caused harm, the brunt of which was suffered, and the defendants knew was likely to be suffered, in the forum state." *Pohl*, 2008 UT 89, ¶¶ 29.

The Utah Supreme Court has also considered *Calder*'s "effects test" with respect to so-called purely financial injuries and concluded that "a plaintiff cannot claim that a tortious injury has been 'caused' in Utah by showing a diminished bank account in Utah when the tortious activity was not directed toward Utah." *Id.* ¶ 18 (emphasis added). Notwithstanding this, the Defendants claim "that allowing jurisdiction based on out of state conduct that caused injury to a Utah business has been flatly rejected by Utah courts and would violate federal due process." (Mem. in Supp. of Mot to Dismiss, p. 9.) The Defendants' cite to and rely upon out-of-date, bad law. The Utah Supreme Court has held that such an "interpretation of the injury requirement is erroneous because it unnaturally

constricts the plain language of the long-arm statute and does not comport with legislative intent." *Id.* ¶ 14. According to *Pohl*, "[n]othing in the plain language of the statute distinguishes between financial injuries and other injuries." *Id.* ¶ 15. Thus, "the suggestion that financial injuries cannot provide the basis for jurisdiction at all is an oversimplification of the law." *Id.* ¶ 16. To hold otherwise would "ignore[] the fact that a tort is incomplete without an injury, and . . . the place of injury is an important component of the minimum contacts analysis." *Id.* ¶ 25 (citation omitted).

InnerLight has alleged that the Defendants committed the following intentional torts: (1) intentional interference with economic relations, (2) conversion, (3) racketeering, (4) aiding and abetting fraud, and (5) civil conspiracy to commit fraud. (*See* Pl.'s Am, Compl., ¶¶ 188-204, 259-297, at pp. 22-24, 31-36.) The Defendants have not controverted these allegations. Such must, therefore, be taken as true. In any event, the allegations and materials contained herein provide added support for the fact that the Defendants intentionally interfered with InnerLight's economic relations, converted its property, conspired to defraud it, and intentionally engaged in other wrongful conduct harmful to it. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 23-31, 36, 39-43, 53, 56-59, 66-69, 74-80, 82-93, 95-96, 98-113, 118-119; Argument, *supra*, at pp. 3-6; *see also* Pl.'s Am. Compl., ¶¶ 19-26, 45-99, 140-297, 300-304, at pp. 3-4, 6-11, 17-37.) Given that the Defendants' actions were expressly aimed at the Utah operations, Utah assets and properties, Utah accounts, Utah directors and officers, and Utah shareholders and owners of a Utah-based business, the Defendants knew or should have known that the brunt of the harm

resulting from their actions would be suffered in Utah. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 1-4, 13-15, 18, 22-29, 36-37, 39, 42, 53, 56-59, 66-69, 74-80, 82-93, 95-96, 98-113, 118-119; *see also* Pl.'s Am. Compl., ¶¶ 1 9-26, 45-99, 140-297, 300-304, at pp. 3-4, 6-11, 17-37.) As a result, it makes no difference whether InnerLight's damages are construed as "financial" or otherwise; under any scenario, jurisdiction over the Defendants "is proper in [Utah] based on the 'effects' of their . . . conduct in [Utah]" because "an individual injured in [Utah] need not go [elsewhere] to seek redress from persons who, though remaining in [another state], knowingly cause the injury in [Utah]." *Calder*, 465 U.S. at 788, 790.

C. The Defendants' Agents Had Fired Contacts with InnerLight in Utah

Jurisdiction over the Defendants is also proper under the agency theory of jurisdiction because their agents had direct contacts with InnerLight in Utah. "It is fundamental that where one authorizes another to act for him and for his intended benefit that, insofar as the latter is doing acts within the scope of the authority given, or acts reasonably calculated to further that purpose, the principal so authorizing is deemed to be performing those acts himself" *Producers' Livestock Loan Co. v. Miller*, 580 P.2d 603, 605-06 (Utah 1978). The agency theory of jurisdiction is rooted in this concept. Under this theory, an agent's actions within a forum may subject his principal to the jurisdiction of that forum. *See Kuenzel v. HTM Sport-Und Freizeitgerate AG*, 102 F.3d 453, 458 (10th Cir. 1996). Indeed, the method by which a nonresident corporate entity creates contacts for purposes of jurisdiction is through its authorized representatives,

i.e., its employees, directors, officers, and agents. *Id.* "Generally, the issue of whether an individual is an agent is a question of fact." *Calhoun v. State Farm Mut. Auto. Ins. Co.*, 2004 UT 56,¶ 34, 96 P.3d 916 (citation omitted); *see Goddard v. Lexington Motor Co.*, 223 P. 340, 342 (Utah 1924) ("When any evidence is adduced tending to prove the existence of a disputed agency, its existence or nonexistence is as a general rule a question of fact . . . even though the evidence is not full and satisfactory . . . . ").

InnerLight has alleged sufficient facts to support a prima facie showing that the Defendants' agents had direct contacts with InnerLight in Utah. In particular, InnerLight has alleged and provided evidence that William Reilly is an agent for the Defendants. (*See, e.g.*, Additional. Facts, *supra*, ¶¶ 8, 13-15, 30-32, 34-40, 43-45, 47, 49-50, 52-54, 59-66, 70-73, 78, 82-88, 91, 96, 99-102, 104-107, 110-112, 118; *see also* Pl.'s Am. Compl., ¶¶ 21-24, 48-99, at pp. 3-4, 6-11.) InnerLight has alleged and provided evidence that Shannon Reilly and Daniel Reilly are agents for the Defendants. (*See. e.g.*, Additional Facts, *supra*, ¶¶ 14-15, 29-31, 33-35, 39-40, 43, 47, 51-54, 57, 59, 64, 66, 70-73, 78, 82-84, 86-88, 90, 96, 98, 100-102, 104-105, 110-112, 118; *see also* Pl.'s Am. Compl., ¶¶ 21-24, 48-99, 188-204, 259-304, at pp. 3-4, 6-11, 22-24, 31-37.) And InnerLight has alleged and provided evidence that Shamrock is an agent for the Defendants. (*See, e.g.,* Additional Facts, *supra*, ¶¶ 29-31, 35-37, 50, 80, 83-84, 86-90, 92-93, 96, 99, 110-112, 118; *see also* Pl.'s Am. Compl., ¶¶ 21-24, 48-99, at pp. 3-4, 6-11.) That William Reilly has directly contacted InnerLight at its Utah headquarters by various means for business purposes is uncontroverted. (*See, e.g.*,

Additional Facts, *supra*, ¶¶ 9, 13, 37; *see also* Pl.'s Am. Compl., ¶¶ 28-29, 37, 166, at pp: 4-5, 20.) In addition, InnerLight has alleged and provided evidence that Shannon Reilly, Daniel Reilly, and Shamrock contacted InnerLight at its Utah headquarters by various means for business purposes. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 14-15, 31, 37; *see also* Pl.'s Am. Compl., ¶¶ 20-26, 28-29, 37, 166, at pp. 3-5, 20.) William Reilly's contacts with InnerLight in Utah should be imputed to the Defendants for whom he was acting as an agent. The contacts of Daniel Reilly and Shamrock with InnerLight in Utah should also be imputed to the Defendants for whom they were acting as agents. The imputation of all such contacts to the Defendants establishes jurisdiction over them in Utah.

D. The Defendants Cannot Hide Behind the Corporate Shield

1. The Defendants' Tortious Conduct Exposes Them Each to Jurisdiction

As principals, agents, and alter egos of and for each other, the Defendants cannot escape liability by hiding behind any entity's so-called corporate shield. A defendant does "not exculpate himself by proving that he was acting as agent of a corporation." *Mecham v. Benson*, 590 P.2d 304, 308 (Utah 1979). Instead, he "only additionally inculpate[s] his corporate principal." *Id.* In any event, it is well established that "a corporate officer or director can incur personal liability for his own acts even though the action is done in furtherance of the corporate business." *Bennett v. Huish*, 2007 UT App. 19, ¶ 48, 155 P.3d 917 (citing *Armed Forces Ins. Exch. v. Harrison*, 2003 UT 14, ¶ 19, 170

P.3d 35). With that said, [a]n officer or director of a corporation is not personally liable for torts of the corporation or of its other officers and agents merely by virtue of holding corporate office, but can only incur personal liability by participating in the wrongful activity." *Armed Forces Ins. Exch*, 2003 UT 14, ¶ 19 (citation and internal quotation marks omitted); *see D'Elia v. Rice Dev., Inc.*, 2006 UT App. 416, ¶ 43, 147 P.3d 515 (extending liability under *Armed Forces Ins. Exch.* to members of limited liability companies). Thus, "[w]hen fraud is alleged, a director or officer of a corporation is individually liable for fraudulent acts or false representations of his own or in which he participates, even though his action in such respect may be in furtherance of the corporate business." *Armed Forces Ins. Exch.*, 2003 UT 14, ¶ 19 (citation and internal quotation marks omitted).

Given the numerous examples set forth above and below of each of the Defendants' tortious conduct and participation in one another's wrongdoings with William Reilly, all of which targeted InnerLight in Utah, each of the Defendants may be sued in their individual capacities in Utah.

2. As Alter Egos of One Another, Jurisdiction Exists Over Each Defendant

Jurisdiction over the Defendants is also proper based upon the alter ego doctrine. The alter ego doctrine justifies a corporate entity to be disregarded where its identity "has not been maintained and injustice would occur to third parties if the separate entity were recognized." *Quarles v. Fuqua Indus., Inc.*, 504 F.2d 1358, 1362 (10th Cir. 1974) (citation omitted); *accord Norman v. Murray First Thrift & Loan Co.*, 596

P.2d 1028, 1030 (Utah 1979). Based upon this doctrine, one who owns or controls an entity may be subjected to personal jurisdiction even if she has no contact with the forum state. In determining whether to disregard the corporate entity for jurisdictional purposes,

> it is sufficient to inquire whether the corporation is a real or shell entity. If the corporation is merely a shell, it is equitable, even if the shell may not have been used to perpetrate a fraud, to subject its owner personally to the court's jurisdiction to defend the acts he has done on behalf of his shell.

Marine Midland Bank, N.A. v. Miller, 664 F.2d 899, 903 (2d Cir. 1981); *accord Colman v. Colman*, 743 P.2d 782, 786 (Utah Ct. App. 1987) ("It is not necessary that the plaintiff prove actual fraud, but must only show that failure to pierce the corporate veil would result in an injustice."); *see also Home-Stake Prod. Co. v. Talon Petroleum, C.A.*, 907 F.2d 1012, 1018 (10th Cir. 1990) ("To determine whether [a person's] contacts with the forum may be attributed to him personally, . . . the [plaintiff] need only demonstrate that the corporations on whose behalf [the person] was allegedly acting were . . . mere instrumentalities."). Significant factors for determining this include:

> (1) undercapitalization of a one-man corporation; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds by the dominant stockholder; (5) nonfunctioning of other officers or directors; (6) absence of corporate records; (7) the use of the corporation as a facade for operations of the dominant stockholder or

> stockholders; and (8) the use of the corporate entity in promoting injustice or fraud.

Colman, 743 P.2d at 786 (citations omitted). "Failure to distinguish between corporate and personal property, the use of corporate funds to pay personal expenses without proper accounting, and failure to maintain complete corporate and financial records are looked upon with extreme disfavor." *Id.* at 786 n.3 (citation omitted).

InnerLight has stated sufficient facts to make a prima facie showing that Shamrock, Doylestown, Ashworth, and Beachview are alter egos for William Reilly, Shannon Reilly, and Daniel Reilly. (*See, e.g.*, Additional Facts, *supra*, ¶¶ 30-31, 35-40, 43-47, 49-54, 60-65, 70-74, 79-80, 82-87, 90-91, 96, 98, 100-102, 104-107, 110-113, 118; *see also* Pl.'s Am. Compl., ¶¶ 20-26, 166, 259-289, 298-304, at pp. 3-4, 20, 31-37.) Indeed, William Reilly admits as much. (Additional Facts, *supra*, ¶¶ 30-31, 43.) As a result, the Defendants cannot hide behind the corporate shield.

II The Court's Exercise of Jurisdiction Is Reasonable

Even if a defendant has sufficient contacts, a court must still decide whether the exercise of jurisdiction "would offend traditional notions of 'fair play and substantial justice.'" *Intercon, Inc. v. Bell Atl. Internet Solutions, Inc.*, 205 F.3d 1244, 1247 (10th Cir. 2000) (quoting *Burger King Corp, v. Rudzewicz*, 471 U.S. 462, 476 (1985)); *accord Pohl, Inc. v. Webelhuth*, 2008 UT 89, ¶ 23, 201 P.3d 944. This inquiry requires a determination of whether the "exercise of personal jurisdiction over [the] defendant is reasonable in light of the circumstances surrounding the case." *Intercon*, 205 F.3d at 1247 (citing *Burger King*

Corp., 471 U.S. at 477-78). To defeat the plaintiff's prima facie showing of jurisdiction, a defendant must "present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Burger King Corp.*, 471 U.S. at 477. In determining the reasonableness of an exercise of jurisdiction, courts consider the following factors:

> (1) the burden on the defendant, (2) the forum state's interest in resolving the dispute, (3) the plaintiff's interest in receiving convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies.

Intercon, 205 F.3d at 1249 (citation omitted).

Consideration of these factors weighs towards exercising jurisdiction over the Defendants. First, the burden on the Defendants from defending themselves in Utah is not unduly onerous: (a) a representative of the Defendants, William Reilly, is one of the primary actors in this case and he will already be traveling to Utah for purposes of this litigation because jurisdiction over him has been conclusively established; (b) until recently, all of the Defendants and William Reilly were represented by common counsel in this case; (c) communications and travel between Florida and Utah is not difficult; (d) the need for travel is greatly reduced by the availability of electronic filing and telephone conferences; and (e) the Defendants engaged in activities with respect to the allegations in the Complaint that spanned much of the country, including off-shore nations, which suggests that traveling to

Utah should not cause them any real hardship. *See Uniscope, Inc. v. Tembec BTLSR, Inc.*, 2008 WL 4830909, *5 (D. Colo. 2008) (upholding jurisdiction under nearly identical facts); *Time Critical Solutions, LLC v. AComm, Inc.*, 2008 WL 2909329, *4 (D. Utah 2008) (same). Second, Utah has a manifest interest in providing a forum in which its residents can seek redress for intentional injuries caused by out-of-state actors, especially where such injuries were aimed at the Utah operations, assets, properties, accounts, directors, officers, and shareholders of a Utah-based business. *See Burger King*, 471 U.S. at 473. Third, it is undisputed that the primary defendant, William Reilly, is properly within this Court's jurisdiction, as is InnerLight, and InnerLight has a strong interest in resolving issues concerning William Reilly and all of the Defendants in one proceeding rather than in multiple proceedings in different states and countries. Fourth, Utah seems to be the most efficient place to litigate this dispute, as the wrong underlying this suit was suffered in Utah and many of the key witnesses are in Utah. The fifth factor does not appear to apply in this case, as there is no evidence that the exercise of jurisdiction over the Defendants in Utah will interfere with important interests of any other state, particularly since the injuries are centered in Utah. *See Intercon*, 205 F.3d at 1249. Upon balancing these factors, it should be concluded that the exercise of personal jurisdiction over the Defendants is reasonable. *See id.*

CONCLUSION

InnerLight has satisfied its burden of making a prima facie showing of grounds for exercising juris-

diction over the Defendants in Utah. As a result, the Motion to Dismiss should be denied.

REQUEST FOR ORAL ARGUMENTS

InnerLight requests that oral arguments be had on this motion. *See* Utah R. Civ. P. 7(e).

Dated this 18 day of August, 2010.

/s/ Richard A. Roberts
Richard L. Petersen, and
Richard A. Roberts, for:
Howard, Lewis & Petersen, P.C.
Attorneys for InnerLight Holdings, Inc.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION (JUNE 29, 2010)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiffs,

v.

WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, ASHWORTH DEVELOPMENT LLC, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC., LOUIS GLECKEL, SHERYL WULKAN (a.k.a. SHERYL GLECKEL), JAREB GLECKEL, EMMA GLECKEL, GEORGE T. HAWES, ROBERT MIRABITO, and POP HOLDINGS, LTD. (a.k.a. POP HOLDINGS, LLC),

Defendants.

Case No. 100400890

Before: Fred D. HOWARD, Judge.

Pursuant to Rule 12(b)(2) of the Utah Rule of Civil Procedure, Defendants Daniel P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview

Associates, Inc., and Shamrock Equities, Inc. ("Defendants"), through counsel, appear specially and respectfully submit the following memorandum in support of their motion to dismiss for lack of personal jurisdiction.[1]

SUMMARY

Plaintiff Innerlight Holdings, Inc. ("Innerlight"), a Utah corporation with its place of business in Utah County, has sued these Defendants, among others, each of whom has no connection with the State of Utah. The one and only reason for filing this lawsuit in Utah is that Innerlight happens to be a Utah company. Any connection between Innerlight, these particular Defendants and the State of Utah ends there.[2] Defendants do not transact any business within the State of Utah. Defendants have not contracted to supply services or goods in the State of Utah. Defendants have never solicited Innerlight's business in the State of Utah.

Under these circumstances, Innerlight cannot meet its burden to affirmatively demonstrate personal

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[1] After this case was removed to federal district court, Defendant filed a Motion to Dismiss for Lack of Personal Jurisdiction and an accompanying memorandum on April 30, 2010. This case was remanded to state court on June 21, 2010. Pursuant to *Tracy Loan & Trust Co. v. Mutual Life Ins. Co. of New York*, 7 P.2d 279 (Utah 1932), Defendants file this Motion to Dismiss for Lack of Personal Jurisdiction and this accompanying memorandum in state court. The premise of the Motion to Dismiss filed in federal court is the same as the Motion to Dismiss filed here, but the present filing has been updated to cite Utah law.

[2] Defendant William J. Reilly does not contest personal jurisdiction as an individual.

jurisdiction over Defendants. Innerlight cannot show that the Defendants had any systematic and continuous contacts with the State of Utah for purposes of establishing general jurisdiction. Similarly, Innerlight cannot show that Defendants purposely availed themselves of the benefits and protections of Utah's laws for purposes of establishing specific jurisdiction. As a matter of law, there are no contacts between Defendants and the State of Utah to establish personal jurisdiction.

JURISDICTIONAL FACTS

A. Background

1. Innerlight is a corporation organized under the laws of the State of Delaware and maintains its principal place of business in Utah County, Utah. *See* Compl. at ¶ 1.

2. Daniel Reilly is an individual who resides in Portsmouth, Rhode Island. *See* Declaration of Daniel Reilly at ¶ 3, attached hereto as Exhibit A.

3. Shannon Reilly is an individual who resides in Loxahatchee, Florida. *See* Declaration of Shannon Reilly at ¶ 3, attached hereto as Exhibit B.

4. Ashworth Development LLC is a corporation organized under the laws of the State of Florida and maintains its principal place of business in Port Charlotte, Florida. *See* Declaration of William Reilly at ¶ 4, attached hereto as Exhibit C.

5. Beachview Associates is a corporation organized under the laws of the State of Florida and maintains its principal place of business in Loxahatchee, Florida. *See* Declaration of Shannon Reilly at ¶ 5.

6. Shamrock Equities, Inc. is a corporation organized under the laws of the State of Florida and maintains its principal place of business in Loxahatchee, Florida. *See* Declaration of Daniel Reilly at ¶ 5.

B. Defendants' Lack of Contact with the State of Utah

7. Defendant Daniel Reilly has never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah. In fact, the only time he has visited the State of Utah was for a skiing vacation, unrelated to any business purpose. *See* Declaration of Daniel Reilly at ¶ 4.

8. Likewise, Defendant Shannon Reilly has never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah. The only time she has visited the State of Utah was for a skiing vacation, unrelated to any business purpose. *See* Declaration of Shannon Reilly at ¶ 4.

9. Defendant Ashworth is engaged in the real estate business solely in Florida. *See* Declaration of William J. Reilly at ¶ 5.

10. Defendants Shamrock and Beachview are investment companies solely operating in the State of Florida. *See* Declaration of Shannon Reilly at ¶ 6; Declaration of Daniel Reilly at ¶ 6.

11. Defendants Ashworth, Beachview and Shamrock are not registered or qualified to do business in the State of Utah and do not conduct business in

the State of Utah. *See* Declaration of Shannon Reilly at ¶ 7; Declaration of Daniel Reilly at ¶ 7; Declaration of William Reilly at ¶ 6.

12. Defendants Ashworth, Beachview and Shamrock do not supply services or goods in the State of Utah. *See* Declaration of Shannon Reilly at ¶ 8; Declaration of Daniel Reilly at ¶ 8; Declaration of William Reilly at ¶ 7.

13. Defendants Ashworth, Beachview and Shamrock do not lease or own any real estate in Utah. *Id.*

14. Defendants Ashworth, Beachview and Shamrock do not engage in any local advertising or solicit business in Utah. *Id.*

15. Defendants Ashworth, Beachview and Shamrock do not have any offices, agents or employees in Utah. *Id.*

16. Defendants Ashworth, Beachview and Shamrock do not pay taxes in Utah. *Id.*

ARGUMENT

I. Innerlight Bears the Burden of Establishing Jurisdiction Over Defendants

Innerlight "must establish personal jurisdiction with adequate evidence." "[Once] a defendant raises lack of personal jurisdiction as a defense." *Fenn v. Mleads Enterprises. Inc*, 2006 UT 8, ¶ 8, 137 P.3d 706; *Anderson v. Am Soc'y of Plastic and Reconstructive Surgeons*, 807 P.2d 825, 827 (Utah 1990) ("The Plaintiff's Factual Allegations are accepted as true unless specifically controverted by the defendant affidavits or by deposition . . . "). Because Defendants have supported their motion to dismiss with declarations of

Williams Reilly, Shannon Reilly and Daniel Reilly, Innerlight is required to make a prima facie evidentiary showing of proper jurisdiction in response. *Id.* To make this required showing, Innerlight must prove the necessary jurisdiction facts by a preponderance of the evidence. *See, e.g.*, *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936) ("the Court may demand that the party alleging jurisdiction justify his allegations by preponderance of Evidence").

Utah law recognizes two types of personal jurisdiction—specific and general. *Fenn*, 2006 UT 8, ¶ 8. To Meets its burden of proof for specific jurisdiction, Innerlight must demonstrate that "(1) the Utah long-arm statute extends to defendant's acts or contacts, (2) Plaintiff's claim arises out of those acts or contacts, and (3) the exercise of jurisdiction satisfies the defendant's rights to due process under the United States Constitution." *Id.* A Court may exercise specific jurisdiction over a defendant "only with respects to claims arising out of particular activities of the defendant in the forum state. For such jurisdiction to exist, the defendant must have certain minimum local contacts." *Phone Directories Co., Inc. v. Henderson*, 200 UT 64 ¶ 11, 8 P.3d 256; *Burger king Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). A court has general jurisdiction where the defendant "conducts substantial and continuous local activity in the forum state." *Fenn*, 2006 UT 8, ¶ 8, n.8 (internal citations omitted). Innerlight cannot establish a prima facie showing of general or specific jurisdiction over defendant's, as demonstrated in the following two sections.

II. Innerlight Cannot Establish General Jurisdiction Over Defendants

"General personal jurisdiction permits a court to exercise power over a defendant without regard to the subject of the claim asserted and is dependent on a showing that the defendant conducted 'substantial and continuous local activity in the forum state.'" *Pohl, Inc. of America v. Webelhuth*, 2008 UT 89, ¶ 9, 201 P.3d 944 (quoting *Arguello v. Woodworking Mach Co.*, 838 P.2d 1120, 1122 (Utah 1992)). Courts require a showing of such substantial and continuous contacts with the forum such that the defendant "should reasonably anticipate being haled into court there." *Arguello*, 838 P.2d at 1124 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). Defendants have not engaged in the "substantial and continuous local activity" necessary to establish general jurisdiction.

Utah courts have recognized several factors as relevant to the issue of whether general jurisdiction exists. *See Buddensick v. Stateline Hotel, Inc.*, 972 P.2d 928, 930-31 (Ut. Ct. App. 1998). In the case, Innerlight has not alleged that these factors are present. In fact, Defendants do not:

1. reside in the state;
2. have any licenses to do business in this state;
3. conduct business in this state;
4. supply goods or services in this state;
5. own or lease property in this state;
6. maintain employees, officers, or agents, in this state

7. advertise or solicit business in this: or

8. pay taxes in this state

See Declaration of Shannon Reilly at ¶¶ 7-8; Declaration of Daniel Reilly at ¶¶ 7-8; Declaration of William Reilly at ¶¶ 6-7; *Buddensick*, 972 P.2d at 930-31.

Under these standards, Defendants do not have continuous and systematic contacts with the State of Utah that could bring them within this Court's personal jurisdiction. Because Defendants are not engaged in "substantial and continuous local activity" in Utah, this Court should conclude that Defendants are not subject to general jurisdiction in this Court.

III. Innerlight Cannot Establish Specific Jurisdiction Over Defendants

Just as Innerlight cannot establish general jurisdiction over Defendants, neither can it establish specific jurisdiction. In determining specific jurisdiction, Utah courts generally look first to whether jurisdiction satisfies federal due process. *SII Megadiamond, Inc. v. Am,. Superbrasives Corp.*, 969 P.2d 430, 433 (Utah 1998). This Court may exercise specific jurisdiction over a defendant only if the defendants' "minimum contacts with the forum state are such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice" *Id.* (internal citations omitted). Furthermore, jurisdiction is only appropriate if the defendants have "purposefully availed (themselves) of the privilege of conduction activities within the forum state." *Parry v. Ernst Home Center Corp.*, 779 P.2d 659, 667 (Utah 1989) (internal quotation omitted). Defendants do not have "minimum contacts" with Utah and have not

"purposefully availed" themselves of the benefits of conduction business in Utah. Thus, lacking personal jurisdiction over Defendants, this Court should dismiss Innerlight's complaint.

A. Defendants Do Not Have Minimum Contacts with the State Utah

The touchstone for specific jurisdiction analysis is the concept of "minimum contacts." *See e.g.*, *World-Wide Volkswagen*, 444 U.S. at 291; *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Defendants have minimum contacts with the State of Utah only if they have "purposefully directed" their activities at residents of the state and the litigation results from alleged injuries that arise out of those activities. *See Pohl*, 2008 UT 89, ¶ 25. In determining minimum contacts, this Court is to "examine the quantity and quality of [Defendant's] contacts with Utah, including 'prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing'" to find out whether the exercise of personal jurisdiction comports with due process. *Soma Medical Intern. v. Standard Chartered Bank*, 196 F.3d 1292, 1298 (10th Cir 1999) (quoting *Burger King*, 471 U.S. at 479).

Here, Defendants do not have the necessary minimum contacts with Utah sufficient to satisfy due process. Defendants have no contacts with the State of Utah. The only connection between Defendants and Innerlight is the Innerlight happens to be a Utah corporation. This, however, is not enough to assert personal jurisdiction. Innerlight's only possible claim to jurisdiction against Defendants is the fact it is a Utah corporation and it was allegedly injured by

Defendants. In Utah, however, jurisdiction may not be predicated solely upon financial injury accruing to a Utah resident. *See Brown v. United States*, 1993 U.S. Dist. LEXIS 17565 (D. Utah 1993) (granting motion to dismiss for lack of personal jurisdiction because jurisdiction could not be predicated solely upon financial injury accruing to a Utah resident by virtue of an alleged out of state conversion); *Burt Drilling, Inc. v. Portadrill*, 608 P.2d 244, 250 (Utah 1980) (allowing jurisdiction to be predicated solely upon financial injury to a Utah plaintiff "would lead to the unacceptable proposition that jurisdiction could be established anywhere a plaintiff might locate"); *Patriot Systems, Inc. v. C-Cubed Corp.*, 21 F supp. 2d 1318, 1321 (D. Utah 1998) (finding the allowing jurisdiction based on out of state conduct that caused injury to a Utah business has been flatly rejected by Utah courts and would violate federal due process). Thus, even if Innerlight's allegations were true, personal jurisdiction cannot exist here.

Defendants did not "purposefully direct" their activities at the residents of Utah. Innerlight's claimed injuries "arise out of or relate to" activities that allegedly occurred outside of Utah. *See Burger King*, 471 U.S. at 472. Because Defendants lack minimum contacts with the State of Utah, exercising jurisdiction over them would "'offend traditional notions of fair play and substantial justice'" *Pohl*, 2008 UT 89, ¶ 23 (quoting *Int'l Shoe*, 326 U.S. at 316). Thus, this Court should dismiss Innerlight's claims against Defendants for lack of personal jurisdiction.

B. Defendants Did Not Purposely Avail Themselves of the Benefit of Conducting Business in Utah

A party purposefully avails itself of the benefits of conducting business in a state by deliberately engaging in significant activities within a state. *See Burger King*, 471 U.S. at 475-76. The Supreme Court has noted that the "purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person. Jurisdiction is proper, however, where the contacts proximately result from actions by the defendant himself that create a substantial connection with the forum State" *Id.* at 474-75 (internal quotations and citations omitted). Defendant's actions do not create a "substantial connection" to Utah. Because Defendants did not engage in significant activities in Utah or have substantial connections in Utah, this Court can find that Defendants did not purposefully avail themselves of the benefits of conducting business in Utah and should thus dismiss Innerlight's complaint against Defendants for lack of personal jurisdiction.

CONCLUSION

Because Defendants have no systematic, continuous or even minimum contacts with the State of Utah, and because they have not purposefully availed themselves of the protection of Utah's laws, this should be dismissed for lack of personal jurisdiction.

DATED this 29th day of June, 2010

Snell & Wilmer L.L.P.

/s/ Alan L. Sullivan
Alan L. Sullivan
J. Elizabeth Haws
Attorneys for Defendants

AFFIDAVIT OF DANIEL P. REILLY (OCTOBER 29, 2014)

SUPERIOR COURT
STATE OF RHODE ISLAND, NEWPORT, SC.,
OUT COUNTY BUSINESS CALENDAR

GEORGE HAWES,

Petitioner,

v.

DANIEL P. REILLY, Alias

Respondent.

C.A. No. NC-2014-0148

I, Daniel P. Reilly, make affidavit and state as follows:

1. I am over the age of 18 and have personal knowledge of the facts set forth within this Affidavit. If called and sworn as a witness, I could and test testify as set forth herein.

2. I am a resident of the State of Rhode Island.

3. I have never been a resident of the State of Utah.

4. I have only been to Utah once on a ski trip in approximately 2007. The ski trip was not related to any business purpose.

5. I have never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertise or solicited business in Utah, paid income taxes to the state of Utah or authorized any agent to act on my behalf in the state of Utah.

6. I never had any communication or done business with a company known as InnerLight Holdings, LLC.

7. I have never had any communication or done business with the Petitioner George Hawes.

8. I have never had any communication or done any business with Louis Gleckel, Sheryl Wulkan (a.k.a. Sheryl Gleckel), Jareb Gleckel, Emma Gleckel, Robert Mirabito or company known as POP Holdings, Ltd. (a.k.a. POP Holdings, LLC).

9. I am not and have never been an officer or shareholder of Ashworth Development, LLC.

10. I was a minority shareholder of Doylestown Partners, Inc. for a short period of its existence before its dissolution from approximately 2007-2011.

11. I was the agent for service of process for Doylestown Partners, Inc. for suits instituted in New York under a foreign corporation registration in the state of New York during the at least part of the time I owned shares.

12. I was secretary of Doylestown Partners, Inc. for during at least part of the time I owned shares in the corporation.

13. Under a Rhode Island foreign corporation registration annual report filing, I served as Secretary for Doylestown from 2007-2009, but not 2009-2010.

14. Doylestown Partners, Inc. was a Florida Corporation with a principal places of business in Rhode Island and then Florida.

15. To my knowledge, Doylestown Partners, Inc. never solicited or did business in Utah and was never registered to do business in Utah.

16. I was a minority shareholder of Shamrock Equities, Inc. for a short period of its existence before its dissolution from approximately 2007-2010.

17. I was vice president of Shamrock Equities, Inc. during at least part of the time I owned shares.

18. Shamrock Equities, Inc. was a Florida Corporation with a principal place of business in Florida.

19. To my knowledge, Shamrock Equities, Inc. never solicited or did business in Utah and was never registered lo do business in Utah.

20. I was a minority shareholder of Beachview Associates, Inc. for a short period of its existence before its dissolution from approximately 2007-2011.

21. I was secretary of Beachview Associates, Inc. during at least part of the time I owned shares.

22. Beachview Associates, Inc. was a Florida Corporation with a principal place of business in Florida.

23. To my knowledge, Beachview Associates, Inc. never solicited or did business in Utah and was never registered to do business in Utah.

24. To my knowledge, Beachview Associates, Inc., Shamrock Equities, Inc. and Doylestown Partners, Inc. have never had any clients in Utah, employees in Utah, real property in Utah, or offices in Utah.

25. To my knowledge, Beachview Associates, Inc., Shamrock Equities, Inc. and Doylestown Partners, Inc. have never advertised, solicited, paid taxes or did business in Utah.

26. To my knowledge, Beachview Associates, Inc., Shamrock Equities, Inc. and Doylestown Partners, Inc. have never been registered to do business in Utah.

27. I never formed any agreement with either my father or sister related to InnerLight stock, warrants or options as I was unaware of the transfer of any stock, warrants or options prior to institution of the Utah suit.

28. Prior to the filing of the Utah lawsuit my knowledge of InnerLight was limited to my father mentioning at one point that he was doing some work for a company known as InnerLight.

29. I was unaware that InnerLight was making an initial public offering prior to filing of the Utah suit and I did not participate in my father's work for InnerLight.

30. I was never aware of the deposit of InnerLight stock or options into any of the accounts owned by Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc.

31. I never knew about, participated in, otherwise "caused 700,000 of InnerLight's shares to be transferred" to either Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc. or from

any of these entities to George Hawes or any of the other defendants in the Utah lawsuit.

32. I have never sold or authorized anyone to sell on my behalf or on behalf of Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc. any share of InnerLight or any warrant or option related to InnerLight shares.

33. I do not believe I have received any benefit from InnerLight or George Hawes.

34. I believe that I have been named in the Utah action for an ulterior and wrongful purpose not to make a legitimate claim against me, but instead to put pressure on my father who is a codefendant in the litigation.

35. I am not, and to my knowledge I do not believe I have ever been, in possession, care, custody or control of any InnerLight stock, warrants or options.

36. I never knew, prior to institution of the Utah lawsuit, that InnerLight expected compensation from me or Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc.

37. My current understanding, as confirmed by InnerLight's amended complaint, is that my father served as corporate counsel and the stock that was provided to him was payment for services rendered by him, or was provided in furtherance of his role working for InnerLight.

38. Prior to the filing of the Utah suit, I was not aware, and after a reasonable inquiry cannot confirm or deny now, that my father intended to or actually transferred any Innerlight stock, warrant or option

to Beachview Associates, Inc., Shamrock Equities, Inc. or Doylestown Partners, Inc.

39. I do not believe I was ever personally served a copy of George Hawes's answer, counter claim and cross claim in the Utah lawsuit.

/s/ Daniel P. Reilly

Subscribed and sworn to before me this 29th day of October, 2014.

/s/
Notary Public
My Commission Expires 1/15/2017

DECLARATION OF DANIEL P. REILLY (APRIL 29, 2010)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INNERLIGHT HOLDINGS, INC.,

Plaintiffs,

v.

WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, ASHWORTH DEVELOPMENT LLC, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC., LOUIS GLECKEL, SHERYL WULKAN (a.k.a. SHERYL GLECKEL), JAREB GLECKEL, EMMA GLECKEL, GEORGE T. HAWES, ROBERT MIRABITO, and POP HOLDINGS, LTD. (a.k.a. POP HOLDINGS, LLC),

Defendants.

Civil No. 2:10-CV-345

Before: Ted STEWART, District Judge.

I, Daniel P. Reilly, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746:

1. I am over the age of 18 and have personal knowledge of the facts set forth herein. If called and sworn as a witness, I could and would testify as set forth in this Declaration.

2. I submit this Declaration in support of the Motion to Dismiss filed in the matter of *Innerlight Holdings, Inc. v. Williams J. Reilly, et al.*, pending in the United States District Court for the District of Utah, Case No. 2:10-CV-345.

3. I am a resident of Rhode Island. My address is 105 Heidi Drive, Portsmouth, Rhode Island.

4. The only time I have visited the State of Utah was for a skiing vacation, unrelated to any business purpose. I have never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah.

5. I am the owner of Shamrock Equities, Inc., ("Shamrock"), a company incorporated under the laws of Florida with its principal place of business at 14404 North Road Loxahatchee, Florida 33470.

6. Shamrock is an investment company solely operating in the State of Florida.

7. Shamrock is not registered or qualified to do business in the State of Utah and does not conduct business in Utah.

8. Shamrock does not supply services or goods in Utah. Shamrock does not lease or own any real estate in Utah and does not engage in any local advertising or solicit business in Utah. Shamrock does not have any offices, agents or employees in Utah. Shamrock does not pay taxes in Utah.

9. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Executed this 29th day of April in Portsmouth, Rhode Island.

/s/ Daniel P. Reilly
Declarant

DECLARATION OF SHANNON P. REILLY (APRIL 30, 2010)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INNERLIGHT HOLDINGS, INC.,

Plaintiffs,

v.

WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, ASHWORTH DEVELOPMENT LLC, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC., LOUIS GLECKEL, SHERYL WULKAN (a.k.a. SHERYL GLECKEL), JAREB GLECKEL, EMMA GLECKEL, GEORGE T. HAWES, ROBERT MIRABITO, and POP HOLDINGS, LTD. (a.k.a. POP HOLDINGS, LLC),

Defendants.

Civil No. 2:10-CV-345

Before: Ted STEWART, District Judge.

I, Shannon P. Reilly, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746:

1. I am over the age of 18 and have personal knowledge of the facts set forth herein. If called and sworn as a witness, I could and would testify as set forth in this Declaration.

2. I submit this Declaration in support of the Motion to Dismiss filed in the matter of *Innerlight Holdings, Inc. v. Williams J. Reilly, et al.*, pending in the United States District Court for the District of Utah, Case No. 2:10-CV-345.

3. I am a resident of Florida. My address is 114404 North Road, Loxahatchee, Florida 33470.

4. The only time I have visited the State of Utah was for a skiing vacation, unrelated to any business purpose. I have never conducted business in Utah, supplied goods or services in Utah, leased or owned any real estate in Utah, advertised or solicited business in Utah, or paid taxes in Utah.

5. I am the owner of Beachview Associates, Inc., ("Beachview"), a company incorporated under the laws of Florida with its principal place of business at 14404 North Road Loxahatchee, Florida 33470.

6. Beachview is an investment company solely operating in the State of Florida.

7. Beachview is not registered or qualified to do business in the State of Utah and does not conduct business in the State of Utah.

8. Beachview does not supply services or goods in the State of Utah. Beachview does not lease or own any real estate in Utah. Beachview does not engage in any local advertising or solicit business in Utah. Beachview does not have any offices, agents or employees in Utah. Beachview does not pay taxes in Utah.

9. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

EXECUTED this 30 day of April, in 2010 in Boca Raton, Florida.

/s/ Shannon P. Reilly
Declarant

DECLARATION OF WILLIAM J. REILLY (APRIL 30, 2010)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

INNERLIGHT HOLDINGS, INC.,

Plaintiffs,

v.

WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, ASHWORTH DEVELOPMENT LLC, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC., LOUIS GLECKEL, SHERYL WULKAN (a.k.a. SHERYL GLECKEL), JAREB GLECKEL, EMMA GLECKEL, GEORGE T. HAWES, ROBERT MIRABITO, and POP HOLDINGS, LTD. (a.k.a. POP HOLDINGS, LLC),

Defendants.

Civil No. 2:10-CV-345

Before: Ted STEWART, District Judge.

I, William J. Reilly, declare under penalty of perjury pursuant to 28 U.S.C. Section 1746:

1. I am over the age of 18 and have personal knowledge of the facts set forth herein. If called and sworn as a witness, I could and would testify as set forth in this Declaration.

2. I submit this Declaration in support of the Motion to Dismiss filed in the matter of *Innerlight Holdings, Inc. v. Williams J. Reilly, et al.*, pending in the United States District Court for the District of Utah, Case No. 2:10-CV-345.

3. I am a resident of Florida. My address is 5447 Northwest 42nd Ave, Boca Raton, Florida 33496.

4. I am a member of Ashworth Development LLC ("Ashworth"), a company incorporated under the laws of Florida with its principal place of business at 1619 Sharpe Street, Port Charlotte, Florida 33952.

5. At all times, Ashworth was engaged in the real estate business solely in Florida.

6. Ashworth is not registered or qualified to do business in the State of Utah and does not conduct business in the State of Utah.

7. Ashworth does not supply services or goods in the State of Utah. Ashworth does not lease or own any real estate in Utah and does not engage in any local advertising or solicit business in Utah. Ashworth does not have any offices, agents or employees in Utah. Ashworth does not pay taxes in Utah.

8. I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

EXECUTED this 30 day of April, 2010 on Boca Raton, Florida.

/s/ William J. Reilly
Declarant

AMENDED NOTICE OF WITHDRAWAL AS COUNSEL (JULY 30, 2010)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiffs,

v.

WILLIAM J. REILLY, DANIEL P. REILLY, SHANNON P. REILLY, ASHWORTH DEVELOPMENT LLC, BEACHVIEW ASSOCIATES, INC., DOYLESTOWN PARTNERS, INC., SHAMROCK EQUITIES, INC., LOUIS GLECKEL, SHERYL WULKAN (a.k.a. SHERYL GLECKEL), JAREB GLECKEL, EMMA GLECKEL, GEORGE T. HAWES, ROBERT MIRABITO, and POP HOLDINGS, LTD. (a.k.a. POP HOLDINGS, LLC),

Defendants.

Case No. 100400890

Before: David MORTENSEN, Judge.

Based upon the Court's Order Granting Motion for Leave to Withdraw as Counsel (July 27, 2010), Alan L. Sullivan, Kamie F. Brown and J. Elizabeth Haws of Snell & Wilmer, L.L.P. hereby give notice of

their withdrawal as counsel for the following defendants:

Ashworth Development LLC
5447 Northwest 42nd Avenue
Boca Raton, Florida 33496

Beachview Associates, Inc.
5447 Northwest 42nd Avenue
Boca Raton, Florida 33496

Doylestown Partners, Inc.
5447 Northwest 42nd Avenue
Boca Raton, Florida 33496

Shamrock Equities, Inc.
14404 North Road
Loxahatchee, FL 33470

William J. Reilly
5447 Northwest 42nd Avenue
Boca Raton, Florida 33496

Shannon P. Reilly
5447 Northwest 42nd Avenue
Boca Raton, Florida 33496

Daniel P. Reilly
105 Heidi Drive
Portsmouth, Rhode Island 02871-3509

DATED this 30th day of July, 2010

Snell & Wilmer L.L.P.

/s/ Alan L. Sullivan
Alan L. Sullivan
Kamie F. Brown
J. Elizabeth Haws
Attorneys for Defendant William J. Reilly P. Reilly, Shannon P. Reilly, Ashworth Development LLC, Beachview Associates, Inc. Doylestown Partners, Inc., and Shamrock Equities, Inc.

NOTICE TO APPEAR OR APPOINT COUNSEL (JULY 30, 2010)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY, PROVO DEPARTMENT,
STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

WILLIAM J. REILLY, ET AL.,

Defendants.

Case No. 100400890

Before: David MORTENSEN,
Fourth Judicial District Court Judge

TO EACH OF THE FOLLOWING NAMED DEFENDANTS:

WILLIAM J. REILLY; SHANNON P. REILLY; DANIEL P. REILLY; SHAMROCK EQUITIES, INC.; ASHWORTH DEVELOPMENT LLC; and BEACH-VIEW ASSOCIATES, INC.

In accordance with rule 74(c) of the Utah Rules of Civil Procedure, you are each hereby given notice and informed that you must either appoint another attorney to represent you in this case or else appear in person to represent yourself. If you fail to do so

within 20 days from the date that this Notice is filed with the Court, then the plaintiff may take such further action as may be appropriate.

DATED this 30 day of July, 2010.

/s/ Elijah L. Milne
Richard L. Petersen, and
Richard A. Roberts, for:
Howard, Lewis & Petersen, P.C.
Attorneys for Plaintiff

AFFIDAVIT OF SERVICE OF COMPLAINT ON DANIEL REILLY (MARCH 22, 2010)

IN THE FOURTH JUDICIAL DISTRICT COURT
OF UTAH COUNTY STATE OF UTAH

INNERLIGHT HOLDINGS, INC.,

Plaintiff,

v.

DANIEL P. REILLY, BEACHVIEW ASSOCIATES, DOYLESTOWN PARTNERS, SHAMROCK EQUITIES, INC.,

Defendant.

File No: 30-227-1

Case No: 100400890

Document Type: Summons and Complaint

I, Hymle Beaufort, state that I am a resident of the State of Rhode Island, over 18 years of age and not a party to the above action; and that on Monday the 22nd day of March, 2010 at 11:05 am, I served the above documents on Daniel P. Reilly. Service was made in the Following Manner.

I Served: Daniel P. Reilly probably in hand at 105 Heidi Drive Portsmouth, RI

/s/ Hymle Beaufort
Rhode Island State Constable
PO Box 4546
Middletown, RI 02842