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7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 STEVEN ("LASER") HAAS,

12 Plaintiff,

13 v.

14 WILLARD MITT ROMNEY, PAUL
TRAUB, BAIN CAPITAL, JOHN &
15 JANE "DOES" 1 THROUGH 10,
MORRIS, NICHOLS, ARSHT &
16 TUNNELL, GREG WERKHEISER,
BARRY GOLD, MICHAEL GLAZER,
17 COLM F. CONNOLLY, GOLDMAN
SACHS, JOHANN HAMERSKI,

18 Defendants.
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Case No. CV 13-07738 SVW (AGR)

**NOTICE OF MOTION AND
MOTION TO DISMISS FIRST
AMENDED COMPLAINT**

Assigned To: Hon. Stephen V. Wilson

Date: April 14, 2014

Time: 1:30 p.m.

Crtn: 6

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2
3 PLEASE TAKE NOTICE THAT on April 14, 2014 at 1:30 p.m. or as soon
4 thereafter as counsel may be heard in Courtroom 6 of the above-entitled Court,
5 located at the United States Courthouse, 312 North Spring Street, Los Angeles, CA
6 90012, defendant Barry Gold ("Mr. Gold") will, and hereby does, move (the
7 "Motion") the Court to dismiss the First Amended Complaint [D.I. 6] (the
8 "Complaint") of Steven ("Laser") Haas ("Plaintiff"), with prejudice, pursuant to
9 Rules 8 and 12(b)(1), (2), (3), (4), (5) and (6) of the Federal Rules of Civil
10 Procedure. This Motion joins in part the motion (the "MNAT Motion") filed by
11 Defendants Morris, Nichols, Arsht & Tunnel LLP and Gregory W. Werkheiser.

12 The Motion is made on the grounds that:

13 (1) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
14 Civ. P. 12(b)(1) because this Court lacks subject matter jurisdiction over the claims
15 asserted against Mr. Gold.

16 (2) The Complaint should be dismissed as to Mr. Gold under Fed. R. Civ. P.
17 12(b)(2) for lack of personal jurisdiction over Mr. Gold.

18 (3) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
19 Civ. P. 8 because it fails to provide a short and plain statement of the claim showing
20 that the pleader is entitled to relief.

21 (4) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
22 Civ. P. 12(b) because it fails to state a claim upon which relief can be granted in
23 that:

- 24 (a) the Complaint is barred by the doctrine of *res judicata*;
- 25 (b) the Complaint is barred by the statute of limitations governing
26 civil claims under the Racketeer Influenced and Corrupt Organizations Act
27 ("RICO"), codified as Title IX of the Organized Crime Control Act of 1970, 18
28 U.S.C. §§ 1961-68 claims;

1 (c) the Complaint fails to allege facts sufficient to support a claim
2 under the RICO statute; and

3 (d) to the extent that Haas's civil RICO claim is based on alleged
4 predicate acts involving fraud, Haas has failed to plead fraud with particularity as
5 required by Fed. R. Civ. P. 9(b).

6 (5) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3)
7 because venue of this action in this District is improper.

8 (6) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
9 Civ. P. 12(b)(4) for insufficiency of process.

10 (7) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
11 Civ. P. 12(b)(5) for insufficient service of process.

12 The Motion is based on this Notice of Motion, the attached Memorandum of
13 Points and Authorities, the records, pleadings and papers on file in this action, any
14 reply papers that may be filed in connection herewith, the declaration of Barry Gold
15 dated March 5, 2014 submitted herewith, the declaration of Fredrick B. Rosner,
16 dated March 5, 2014 submitted herewith, the MNAT Motion and the memorandum
17 of points and authorities and declaration and request for judicial notice filed in
18 support of that Motion, and on such other evidence and argument as may be
19 presented to the Court at or before the hearing on this matter.

20 This Motion is made following an e-mail conference pursuant to Local Rule
21 7-3 between Plaintiff and counsel for Mr. Gold, which took place on February 27
22 and 28, 2014.

23 DATED: March 5, 2014

GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

24
25
26 By: */s/ Matthew N. Falley*

MATTHEW N. FALLEY

Attorneys for Defendant BARRY GOLD

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 Section I of the MNAT Motion is an accurate summary of the various
5 litigations brought by Plaintiff and the various prior proceedings in other courts that
6 may be relevant to this Motion. Accordingly, Mr. Gold adopts and incorporates
7 Section I of the MNAT Motion as though fully set forth herein.

8 The grounds for this Motion include the following:

9 (1) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
10 Civ. P. 12(b)(1) for the reasons stated and the authorities cited in the MNAT
11 Motion.

12 (2) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
13 Civ. P. 12(b)(2) for the reasons set forth in this Motion.

14 (3) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
15 Civ. P. 8 for the reasons stated and the authorities cited in the MNAT Motion.

16 (4) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6)
17 for the reasons stated and the authorities cited in the MNAT Motion.

18 (5) The Complaint should be dismissed pursuant to Fed. R. Civ. P. 12(b)(3)
19 for the reasons stated and the authorities cited in the MNAT Motion.

20 (6) The Complaint should be dismissed as to Mr. Gold pursuant to Fed. R.
21 Civ. P. 12(b)(5) for insufficiency of process for the reasons set forth in this Motion.

22 For the reasons stated and the authorities cited in the MNAT Motion, the
23 dismissal of the Complaint should be with prejudice.

24
25 **II. STATEMENT OF RELEVANT FACTS**

26 A. Incorporation of the MNAT Motion's Summary of the Bankruptcy
27 Case

28 Section II of the MNAT Motion is an accurate summary of the relevant

1 proceedings in the eToys, Inc., n/k/a EBC I, Inc., bankruptcy case (the “Bankruptcy
2 Case”), and Plaintiff’s case before this Court. Accordingly, Mr. Gold adopts and
3 incorporates Section II of the MNAT Motion as though fully set forth herein.

4 B. Relevant Allegations in the Complaint Relating to Mr. Gold

5 The Complaint alleges that Mr. Gold “utilize[s] offices in California. See
6 Compl. ¶ 1 (“Defendant Barry Gold, Goldman Sachs and Bain Capital utilize
7 offices in California.”). The Complaint makes several statements that may arguably
8 reference California and Mr. Gold. See Compl. ¶ 287 (“Then, perhaps this court
9 can find a way to order Barry Gold out and claimant back where litigant belongs
10 (*being that Barry Gold is illegally sitting in plaintiff’s seat right here in Irvine,*
11 *California.*)” (emphasis in original)); Compl. ¶ 350 (alleging that all “Defendants
12 have engaged in immoral, unethical and illegal conduct in the states of DE, New
13 York, Pennsylvania, Texas and California”); Compl. ¶ 622 (“This court can throw
14 out . . . Barry Gold who sits in eToys chair – in the SoCal district.”). Other than the
15 foregoing, the Complaint makes no other allegations relating to Mr. Gold’s
16 supposed relationship with California. See Compl. In particular, the Complaint
17 does not identify any act Mr. Gold allegedly perpetrated in California or an act Mr.
18 Gold directed toward California. See Compl.

19 In the caption of the Complaint, Plaintiff provides an address for Mr. Gold:
20 “Barry Gold C/O Frederick Rosner, 824 Market St., Suite 810, Wilmington, DE
21 19801.” See Complaint. Nowhere does the Complaint allege any relationship
22 between Mr. Gold and Mr. Rosner.

23 C. Other Facts Relevant to This Motion

24 Mr. Gold submits two declarations in support of this Motion: that of himself,
25 dated March 5, 2014 (the “Gold Declaration”) and that of Fredrick B. Rosner, dated
26 March 5, 2014 (the “Rosner Declaration”).

27 For over two decades, Mr. Gold has been a resident of Pennsylvania. Gold
28 Decl. ¶ 5. He has never resided in California, has not travelled to California in the

1 past four years other than to change airplanes, has never maintained an office in
2 California, has never owned real property in California, has never had a bank
3 account in California, has never maintained a phone number or fax number in
4 California, has never entered into any material contracts with a California person or
5 entity, and does not otherwise direct his activities toward California. See Gold
6 Decl. ¶¶ 6–13.

7 Fredrick Rosner is an attorney in Wilmington, Delaware. Rosner Decl. ¶ 3.
8 Neither Mr. Rosner or anyone from Mr. Rosner’s firm has ever represented Mr.
9 Gold. See Rosner Decl. ¶ 5; Gold Decl. ¶ 3. Neither Mr. Rosner nor anyone from
10 Mr. Rosner’s firm has ever been authorized to accept service on Mr. Gold’s behalf.
11 See Rosner Decl. ¶ 6; Gold Decl. ¶ 4.

12
13 **III. ARGUMENT**

14 A. This Action Should Be Dismissed For Lack Of Subject Matter
15 Jurisdiction

16 For the reasons stated in Section III.A of the MNAT Motion, Mr. Gold
17 respectfully submits that this Court is without subject matter jurisdiction over
18 Plaintiff’s allegations against Mr. Gold. Accordingly, Mr. Gold hereby moves the
19 Court to dismiss the Complaint under Fed. R. Civ. P 12(b)(1).

20 B. This Action Against Mr. Gold Should Be Dismissed For Lack Of
21 Personal Jurisdiction

22 Under the due process clause of the Constitution, courts may exercise general
23 or specific jurisdiction. See generally, e.g., Helicopteros Nacionales de Columbia,
24 S.A. v. Hall, 466 U.S. 408, 414–18 (1984). General personal jurisdiction is
25 established where a defendant’s activities in the forum state are “continuous and
26 systematic.” Int’l Shoe Co. v. Wash., 326 U.S. 310, 317 (1945). If general
27 jurisdiction is established, a court may exercise jurisdiction over the nonresident
28 even if the cause of action is unrelated to the nonresident’s activities in the forum.

1 Data Disc, Inc. v. Systems Tech. Assocs., Inc., 557 F.2d 1280, 1287 (9th Cir.
2 1977). If the nonresident’s activities in the forum are not so pervasive as to subject
3 him to general jurisdiction, jurisdiction will turn “on an evaluation of the nature and
4 quality of the defendant’s contacts in relation to the cause of action.” Id.

5 Specific personal jurisdiction is established if the plaintiff can meet three
6 requirements. First, the “nonresident defendant must do some act or consummate
7 some transaction within the forum.” Taylor v. Portland Paramount Corp., 383 F.2d
8 634, 641 (9th Cir. 1967). Second, the plaintiff’s claim must arise out of or result
9 from the defendant’s alleged act in the forum. Id. If the first two requirements are
10 met, then the Court is to turn to the final inquiry: whether the assumption of
11 jurisdiction over the nonresident defendant would be “consonant with the due
12 process tenets of fair play and substantial justice.” Id.

13 Plaintiff, as the person seeking to invoke the jurisdiction of this court, has the
14 burden of establishing that jurisdiction exists. Data Disc, Inc. v. Systems Tech.
15 Assocs., Inc., 557 F.2d at 1290. Plaintiff concludes that Mr. Gold has an office in
16 California and obliquely suggests that Plaintiff’s injury may have occurred in
17 California. However, even assuming that Plaintiff’s vague, general assertions can
18 be interpreted as asserting facts relating to Plaintiff’s contacts with California, this
19 Court is not bound by the Complaint in determining Mr. Gold’s contacts. See, e.g.,
20 Taylor v. Portland Paramount Corp., 383 F.2d at 639 (holding that a “trial court is
21 not bound by the pleadings and . . .the party asserting jurisdiction has the burden of
22 establishing it if his allegations are challenged in any appropriate manner” (citing
23 McNutt v. Gen. Motors Acceptance Corp., 298 U.S. 178 (1936))). Because
24 Plaintiff’s vague allegations in the Complaint regarding jurisdiction are
25 contradicted by the Gold Declaration, this Court should find that the Gold
26 Declaration trumps the Complaint. The Taylor opinion is directly on point: “We do
27 not think that the mere allegations of the complaint, when contradicted by
28 affidavits, are enough to confer personal jurisdiction of a nonresident defendant. In

1 such a case, facts, not mere allegations, must be the touchstone.” Id.; see also, e.g.,
2 Data Disc, Inc. v. Systems Tech. Assocs., Inc., 557 F.2d at 1284 (“If only one side
3 of the conflict was supported by affidavit, our task would be relatively easy, for we
4 may not assume the truth of allegations in a pleading which are contradicted by
5 affidavit.”).

6 Here, Plaintiff does not meet his burden to show general jurisdiction over Mr.
7 Gold. Mr. Gold does not have “continuous and systematic” contacts with California
8 to invoke general jurisdiction. See Gold Decl. ¶¶ 5-13; see, e.g., Int’l Shoe Co. v.
9 Wash., 326 U.S. at 317. As to specific jurisdiction, Plaintiff does not make it past
10 the first or second requirement. There is no allegation—even in the most generous
11 reading of the Complaint—that Mr. Gold committed any act in California. See,
12 e.g., Taylor v. Portland Paramount Corp., 383 F.2d at 642 (reversing trial court’s
13 exercise of jurisdiction over a nonresident where no act was committed in forum,
14 alleged misconduct did not occur in forum, no contract had been made in forum,
15 and nonresident had never been to forum). Because the first two requirements for
16 specific jurisdiction are not met, the Court need to turn to the third requirement.
17 See, e.g., id. at 641 (9th Cir. 1967) (holding that a court need only analyze the third
18 element of “fair play and substantial justice” if the first two elements for specific
19 jurisdiction are met). However, even if the Court concludes that the Complaint
20 alleges an act by Mr. Gold within California (the first requirement for specific
21 jurisdiction), and that the act within California created Plaintiff’s claim (the second
22 requirement for specific jurisdiction), or the Court is otherwise inclined to examine
23 the third requirement, Mr. Gold should be protected against the burdens of litigating
24 in this distant and inconvenient forum. The Court’s exercise of jurisdiction over
25 Mr. Gold, a long time Pennsylvania resident with no real connection to California,
26 would not be consistent with “fair play” and “substantial justice” (the third
27 requirement for specific jurisdiction).

1 Accordingly, the Court should dismiss the Complaint under Fed. R. Civ. P.
2 12(b)(1).

3 C. The Complaint Should Be Dismissed Under Fed. R. Civ. P. 8(a).

4 For the reasons stated in Section III.B of the MNAT Motion, Mr. Gold
5 hereby moves the Court to dismiss the Complaint under Fed. R. Civ. P. 8(a).

6 D. The Complaint Should Be Dismissed For Failure To State A Claim
7 Upon Which Relief Can Be Granted.

8 It is difficult to glean from the 690-paragraph Complaint exactly what
9 Plaintiff asserts against Mr. Gold. However, Plaintiff's allegations against Mr. Gold
10 appear to fall into two general categories: first, Mr. Gold's alleged conduct in the
11 Bankruptcy Case, see, e.g., Compl., ¶¶ 205, 216, 219, 222, 225, 240, 263, 269, 273,
12 274-78, 292, 294, 368, 370, 373, 376, 386, 670, 674, and second, Mr. Gold's
13 alleged usurpation of some "seat" or business related to the Bankruptcy Case
14 allegedly belonging to Plaintiff, see, e.g., Compl. ¶¶ 297, 365, 617, 622. It appears
15 that Plaintiff's claims against Mr. Gold in the Complaint are essentially a
16 repackaging of claims that have been determined by the United States Bankruptcy
17 Court for the District of Delaware (the "Bankruptcy Court").

18 The facts, circumstances, and details of the Bankruptcy Court's October 4,
19 2005 decision (published as In re eToys, Inc., 331 B.R. 176 (Bankr. D. Del. 2005))
20 (the "October 4, 2005 Decision") are described more fully in Section II.E of the
21 MNAT Motion, which Mr. Gold hereby incorporates as through fully set forth
22 herein. In that decision the Bankruptcy Court determined (1) Mr. Gold did not
23 breach a duty of loyalty as alleged, see In re eToys, Inc., 331 B.R. at 200 ("[T]he
24 Court concludes that no beach has been established."), (2) that there was no basis to
25 reduce Mr. Gold's compensation or otherwise sanction him, see id. ("[T]he Court
26 concludes that there is no basis to reduce Gold's compensation or otherwise
27 sanction him under the general equitable concepts of the Bankruptcy Code."), (3)
28 that there was no bankruptcy crime, see id. (holding that Mr. Gold's conduct

1 “cannot be considered perjury or any other bankruptcy crime”); and (4) that Mr.
2 Gold’s conduct was not a waste of estate assets, see id. 203 (“The Court further
3 does not find that Gold committed any bankruptcy crime or wasted assets of the
4 estate.”). As described more fully in Section II.E of the MNAT Motion, the
5 October 4, 2005 Decision was adjudicated to a final appeal. Accordingly,
6 Plaintiff’s claims against Mr. Gold in this action are barred by the doctrine of *res*
7 *judicata*.

8 For these reasons, and the reasons and authorities stated in Section III.C of
9 the MNAT Motion, the Complaint should be dismissed under Fed. R. Civ. P
10 12(b)(6) because, as to Mr. Gold, the Complaint is barred by the doctrine of *res*
11 *judicata*, any RICO claim is brought beyond the statute of limitations, Plaintiff
12 cannot establish standing under the RICO suit, and Plaintiff has failed to plead
13 fraud against Mr. Gold with the requisite particularity.

14 E. Venue Is Improper in this District.

15 Mr. Gold is not a resident of California. See Gold Decl. ¶¶ 5-6. For the
16 reasons stated in Section III.D of the MNAT Motion, venue is not proper in this
17 District.

18 F. The Complaint Should Be Dismissed for Insufficient Process.

19 For the reasons stated in Section III.E of the MNAT Motion, the summons
20 associated with the Complaint was defective. Accordingly, the Complaint should
21 be dismissed as to Mr. Gold pursuant to Fed. R. Civ. P. 12(b)(4) and/or Fed. R. Civ.
22 P. 4(m).

23 G. The Complaint Should Be Dismissed for Insufficient Service of
24 Process on Mr. Gold.

25 The procedural requirement of service of summons must be satisfied before a
26 federal court can exercise personal jurisdiction over a defendant. Under Fed. R.
27 Civ. P. 12(b)(5), a defendant may seek to dismiss the complaint on the basis of
28 improper service of process. See J2 Global, Inc. v. FAX87.COM, No. CV 13-

1 05353, 2014 WL 462832, at *2 (C.D. Cal. February 5, 2014) (the failure to properly
2 serve a defendant provides a basis for dismissal of the complaint); see also Omni
3 Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 104, 108 S.Ct. 404, 98
4 L.Ed.2d 415 (1987). “Before a federal court may exercise personal jurisdiction
5 over a defendant, the procedural requirement of service of summons must be
6 satisfied.” “Once service is challenged, plaintiffs bear the burden of establishing
7 that service was valid under Rule 4.” Brockmeyer v. May, 383 F.3d 798, 801 (9th
8 Cir. 2004) (citations and internal quotation marks omitted).

9 Fed. R. Civ. P. 4(e) states that personal service upon an individual within the
10 United States shall be accomplished by (1) delivering a copy of the summons and
11 complaint to the individual personally; (2) leaving a copy of the summons and
12 complaint at the individual’s dwelling or usual place of abode with someone of
13 suitable age and discretion who also resides there; (3) delivering a copy of the
14 summons and complaint to an agent authorized to receive service of process; or (4)
15 following the law of the state of service with respect to serving a summons. Fed. R.
16 Civ. P. 4(e)(1)-(2). The California Code of Civil Procedure, in turn, provides that
17 service on a natural person shall be accomplished by (1) personal delivery of the
18 summons; (2) delivering the summons and complaint to the person’s dwelling
19 house, usual place of abode, usual place of business, or usual mailing address, in
20 the presence of a competent member of the household or a person apparently in
21 charge of the business, and by mailing a copy of the summons and complaint to the
22 person to be served at the place where a copy of the summons and complaint were
23 left; (3) in the case of an out of state person, by sending a copy of the summons and
24 complaint by first class mail, postage prepaid to the person to be served with a
25 return receipt; or (4) by delivering a copy of the summons and the complaint to a
26 person authorized to receive service of process. Cal.Civ.Proc.Code. § 415.10-40,
27 416.90.
28

1 Service through an agent requires that the purported agent have actual
2 authority for service to be adequate. See Fed.R.Civ .P 4(e)(2)(C) (allowing for
3 service on an agent who is “authorized by appointment or by law to receive service
4 of process”); Pochiro v. Prudential Ins. Co. of Am., 827 F.2d 1246, 1248–49 (9th
5 Cir.1987) (service on attorney is insufficient unless attorney had actual authority
6 from client to accept service on client's behalf). The requirement of actual authority
7 is strictly enforced. Even in the situation where the person says that he is
8 authorized to accept service, it is not sufficient proof that the person indeed has
9 actual authority. U.S. Commodity Futures Trading Comm’n v. Paron Capital
10 Mgmt, LLC, No. C 11-4577 CW, 2012 WL 1156396, at *2 (N.D. Cal. April 6,
11 2012) (“[E]ven if a person states that he or she is authorized to accept service, that
12 is not proof that the person actually has authority to do so.”).

13 Mr. Gold anticipates that Plaintiff will argue that he effected service on Mr.
14 Gold through Mr. Rosner. However, as shown in the Gold Declaration and the
15 Rosner Declaration, Mr. Rosner did not have authority to accept service on behalf
16 of Mr. Gold. See Gold Decl. ¶¶ 3, 4; Rosner Decl. ¶¶ 5, 6. Therefore, any
17 purported service of Mr. Gold through Mr. Rosner is ineffective. See, e.g., Pochiro
18 v. Prudential Ins. Co. of Am., 827 F.2d at 1248-49 (service on attorney is
19 insufficient unless attorney has actual authority from client to accept service on
20 client’s behalf). Therefore, since Plaintiff cannot contradict this fact, the Court
21 should rule in Mr. Gold’s favor. U.S. Commodity Futures Trading Comm’n v.
22 Paron Capital Mgmt, LLC, 2012 WL 1156396, at *2 (finding for defendant where
23 plaintiff did not contradict evidence that office manager had actual authority to
24 accept service of process).

25 Plaintiff may argue that Mr. Gold’s actual knowledge of this matter
26 constitutes service. However, the law is unambiguous: Actual notice of a
27 proceeding does not cure defective service of process. See, e.g., United States v.
28 Ligas, 549 F.3d 497, 500 (7th Cir. 2008) (finding that district court could not

1 exercise personal jurisdiction over defendant without proper service of process, and
2 that service requirement is not satisfied merely because a defendant is aware that he
3 has been named in lawsuit or has received copy of summons and complaint); LSJ
4 Inv. Co., Inc. v. O.L.D., Inc., 167 F.3d 320, 322 (6th Cir. 1999) (holding that actual
5 knowledge of lawsuit does not substitute for proper service under Federal Rule 4);
6 McGuire v. Sigma Coatings, Inc., 48 F.3d 902, 907 (5th Cir. 1995) (finding actual
7 notice of action obtained by in-house counsel for defendant corporation insufficient
8 to confer jurisdiction without proper service of summons); Mid-Continent Wood
9 Products, Inc. v. Harris, 936 F.2d 297, 301 (7th Cir. 1991) (explaining that actual
10 knowledge of lawsuit acquired during negotiations with opposing party was
11 insufficient to confer jurisdiction); Direct Mail Specialists, Inc. v. Eclat
12 Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988) (stating that party's
13 actual notice of action will not provide jurisdiction without service of process under
14 Federal Rule 4).

15 Thus, the Court should dismiss the Complaint under Fed. R. Civ. P. 12(b)(5)
16 because Plaintiff has failed to satisfy his burden to establish proper service of
17 process on Mr. Gold.

18 H. Dismissal of the Complaint Should Be with Prejudice.

19 For the reasons stated in Section III.F of the MNAT Motion, the Complaint
20 against Mr. Gold should be dismissed with prejudice.

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IV. CONCLUSION

For the foregoing reasons, Mr. Gold respectfully requests that the Court dismiss of the Complaint with prejudice and grant Mr. Gold such other and further relief as is just and proper.

DATED: March 5, 2014

GREENBERG GLUSKER FIELDS
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By: /s/ Matthew N. Falley
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