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 10 CAPETANISSA MARITIME CORPORATION

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

13 PETER MOSES GUTIERREZ, Jr.;
 14 CHANDRALEKHA
 WICKRAMASEKARAN and
 15 RAJASEKARAN
 16 WICKRAMASEKARAN, as Trustees of
 THE WICKRAMASEKARAN FAMILY
 17 TRUST established March 12, 1993; et al.
 18 individually and on behalf of all others
 19 similarly situated,

20 Amplify,
 21 v.

22 AMPLIFY ENERGY CORP.; BETA
 OPERATING COMPANY, LLC; and
 23 SAN PEDRO BAY PIPELINE CO.,

24 Defendants/Third-Party
 25 Amplify,

26 v.
 27

Case No. 8:21-cv-01628-DOC-JDE
Judge David O. Carter
Magistrate Judge John D. Early

Action Filed: 10/04/2021

**SPECIALLY APPEARING
 DEFENDANT, CAPETANISSA
 MARITIME CORPORATION'S
 NOTICE OF MOTIONS AND
 MOTIONS TO QUASH IMPROPER
 SERVICE OF PROCESS AND TO
 DISMISS COMPLAINT FOR LACK
 OF PERSONAL JURISDICTION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES**

1 MEDITERRANEAN SHIPPING
2 COMPANY, S.A.; DORDELLAS
3 FINANCE CORPORATION; MSC
4 DANIT; ROES 1-100; COSTAMARE
5 SHIPPING CO., S.A.; CAPETANISSA
6 MARITIME CORPORATION;
7 V.SHIPS GREECE LTD.; COSCO
8 BEIJING; ROES 101-200; and
9 MARINE EXCHANGE OF LOS
ANGELES-LONG BEACH HARBOR
d/b/a MARINE EXCHANGE OF
SOUTHERN CALIFORNIA,

10 Defendants/Third-Party
11 Defendants.

12 **AND ALL RELATED ACTIONS**

13 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

14 **PLEASE TAKE NOTICE** that pursuant to Federal Rule of Civil Procedure
15 12(b)(5), Specially Appearing Defendant Capetanissa Maritime Corporation moves to
16 quash service of process purportedly made upon it by Defendants Amplify Energy
17 Corporation, Beta Operating Company, LLC, and San Pedro Bay Pipeline Company
18 (the “Amplify Defendants”) on March 17, 2022, in Dulles, Virginia.

19
20 **PLEASE TAKE FURTHER NOTICE** that pursuant to Fed. R. Civ. P.
21 12(b)(2), Specially Appearing Defendant Capetanissa Maritime Corporation also moves
22 for an order dismissing the Third-Party Complaint of the Amplify Defendants against it
23 for lack of personal jurisdiction.¹

24 ///

25 _____
26 ¹ If necessary, Defendant Capetanissa will also seek to dismiss the Class-Action
27 Complaint against it for lack of personal jurisdiction if that action is properly served.

1 The Motions are scheduled to be heard on Monday, May 23, 2022, at 8:30 a.m.
2 in the courtroom of the Honorable David O. Carter, in the United States District Court
3 for the Central District of California, Los Angeles, California.

4 The Motions are based on the pleadings, the attached Memorandum of Points and
5 Authorities, and Declarations of Albert E. Peacock III, Steven S. Snider and John Harry
6 Webster and other matters as may be presented in a reply memorandum and/or at the
7 hearing.

8 The Motions are made following the conference of counsel pursuant to Local
9 Rule 7-3 which took place on April 1, 2022.

10
11 DATED: April 7, 2022



12 ALBERT E. PEACOCK III
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14 DAVID A. TONG
15 **PEACOCK PIPER TONG + VOSS, LLP**
16 Attorneys for Specially Appearing Defendant,
17 CAPETANISSA MARITIME CORPORATION
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I. INTRODUCTION**

4 The Amplify Defendants filed a Proof of Service (“POS”) with the Court [Dkt.
5 No. 155] claiming that they personally served Capetanissa Maritime’s Chief Financial
6 Officer, Christine Dohoroty on March 17, 2022, at 9:43 a.m. at 22980 Indian Creek
7 Drive, Suite 200 in Dulles, Virginia. The Amplify Defendants’ POS is false and
8 misleading because:

9 1. Ms. Dohoroty’s real name is Christine Doherty;

10 2. Ms. Doherty is not the CFO of Capetanissa;

11 3. Ms. Doherty is not an officer, director, managing agent or even an
12 employee of Capetanissa;

13 4. Capetanissa does not have an office at that address, in Dulles, Virginia or
14 in the United States;

15 5. Ms. Doherty is the CFO for the Liberian International Ship and Corporate
16 Registry, LLC (“LISCR, LLC”);

17 6. LISCR, LLC is not an authorized or registered agent for service of process
18 for Capetanissa;

19 7. LISCR, LLC’s attorney, Steven Snider spoke with the Amplify
20 Defendants’ counsel and informed them by phone and in writing that LISCR, LLC was
21 not an authorized or registered agent for service of process on Capetanissa BEFORE
22 they filed their POS with the Court (*See* Declaration of Steven S. Snider (“Snider
23 Decl.”), attached);

24 8. LISCR, LLC’s attorney, Steven Snider told the Amplify Defendants’
25 counsel who the authorized agent for service of process was BEFORE they filed their
26 POS with the Court (Id.); and,

27 9. Capetanissa’s specially appearing counsel met and conferred with the
28 Amplify Defendants’ counsel prior to filing this motion, and they refused to withdraw

1 their POS (Declaration of Albert E. Peacock III (“Peacock Decl.”), attached).

2 The Amplify Defendants bear the burden of proving that service of process on
3 Capetanissa as described in their POS was proper. For each of the above reasons,
4 service was not proper or effective, and the Amplify Defendants’ purported service on
5 Capetanissa through LISCR, LLC should be quashed under FRCP 12(b)(5).

6 In addition, even if the Court were to find that service of process was proper, this
7 Court lacks both specific and general personal jurisdiction over Capetanissa.

8 1. Capetanissa is a Liberian company;

9 2. Capetanissa is not organized, incorporated or registered in California or
10 any other State in the United States;

11 3. Capetanissa has no headquarters or offices in California or any other State
12 in the United States;

13 4. Capetanissa has no officers, directors, managing agents or employees in
14 California or any other State in the United States;

15 5. Capetanissa did not and does not direct any activity toward California or
16 purposely avail itself of the benefits of California law;

17 6. Capetanissa did not order or direct its ship, the M/V BEIJING, to call in
18 California in January 2021. Instead, the ship’s time charterer determined the ship’s
19 itinerary and directed her to California in January 2021.

20 For these reasons, under applicable Federal law, this Court lacks personal
21 jurisdiction over Capetanissa, and Capetanissa should be dismissed from the Amplify
22 Defendants’ Third-Party Complaint with prejudice pursuant to FRCP 12(b)(2).

23
24 **II. SUMMARY OF RELEVANT FACTS**

25 **A. CAPETANISSA MARITIME CORPORATION.**

26 It their Third-Party Complaint, the Amplify Defendants allege that Capetanissa is
27 a Liberian corporation and the owner of the M/V BEIJING, both of which are true. [Dkt
28 No. 123, p. 7, ¶ 8]. To establish that the Court has personal jurisdiction over

1 Capetanissa, the Amplify Defendants allege that: 1. “Upon information and belief, the
2 [M/V] BEIJING regularly sails in and out of California’s ports...; and 2.
3 “Capetanissa...knew or should have known that the [M/V] BEIJING regularly entered
4 one or more ports within this district.” [Dkt No. 123, p. 10, ¶¶ 32 & 33]. Neither of
5 these allegations are true.

6 Capetanissa is a Liberian corporation whose principal office is in Liberia.
7 (Declaration of John Harry Webster (“Webster Decl.”) ¶7). As owner of the BEIJING,
8 Capetanissa’s role is to charter the ship to third-party entities known as “charterers”.
9 (Webster Decl., ¶¶15-16). Although Capetanissa is the owner of the BEIJING, it does
10 not book the cargo carried on the ship or negotiate freight, nor does it have any
11 authority to direct the BEIJING’s commercial schedule or its ports of call. (Webster
12 Decl., ¶¶9, 20-21, 25). The ship’s commercial schedule is directed solely by its
13 charterer, as dictated by the written and signed Charter Party agreement between
14 Capetanissa and the charterer. (Webster Decl., ¶¶9, 21, 25). The Charter Party permits
15 the charterers to engage the vessel in worldwide trade in all “safe ports and places.”
16 (Webster Decl., ¶¶22-23).

17 Capetanissa is not registered to do business in any U.S. State, including
18 California. (Webster Decl., ¶8). Capetanissa does not have an agent for service of
19 process in any U.S. State, including California. (Webster Decl., ¶13). The agent for
20 service of process is located in Liberia. (Webster Decl., ¶13; Snider Decl., ¶¶4,6,12).
21 Capetanissa does not maintain any office in California. (Webster Decl., ¶7). Its
22 principal place of business is in Liberia. (Webster Decl., ¶7). It does not own or
23 maintain any bank accounts in the United States. (Webster Decl., ¶12). Capetanissa
24 does not have any employees or agents in the United States. (Webster Decl., ¶11). It
25 does not otherwise advertise for business in the United States or conduct contract
26 negotiations here. (Webster Decl., ¶19).

27 The BEIJING did not and does not regularly call on California ports. Only
28 1.16% of the BEIJING’s lifetime port calls have been to the Ports of Los Angeles and

1 Long Beach. (Webster Decl., ¶26(a)).

2 **B. THE AMPLIFY DEFENDANTS’ SERVICE OF THE THIRD-**
3 **PARTY COMPLAINT ON LISCR LLC.**

4 On March 25, 2022, the Amplify Defendants purportedly filed their Proof of
5 Service (“POS”) on Capetanissa. [Dkt. No. 155]. The POS, signed under penalty of
6 perjury, claims that service was perfected on Capetanissa by personal service on
7 Christine Dohoroty, its Chief Financial Officer at 22980 Indian Creek Dr. Ste 200,
8 Dulles, VA 20166-6736. [Id.] The POS claims that service was perfected on March
9 17, 2022 at 9:43 a.m. [Id.]

10 Capetanissa does not have an office at the Dulles, Virginia address on the POS.
11 (Webster Decl., ¶7; Snider Decl., ¶13). Ms. Dohoroty (Doherty) is not the Chief
12 Financial Officer for Capetanissa. (Webster Decl., ¶14; Snider Decl., ¶13(b)). Ms.
13 Dohoroty is not an officer, director, managing agent or employee of Capetanissa.
14 (Webster Decl., ¶14; Snider Decl., ¶¶10, 13(b)). Ms. Dohoroty is not an authorized or
15 registered agent for service of process for Capetanissa. (Webster Decl., ¶13).

16 22980 Indian Creek Dr. Ste 200, Dulles, VA 20166-6736 is the address for the
17 Liberian International Ship and Corporate Register, LLC (“LISCR, LLC”). (Snider
18 Decl., ¶13(e)). There is no Christine Dohoroty at LISCR, LLC. However, there is a
19 Christine Doherty who is LISCR, LLC’s Chief Financial and Administrative Officer.
20 (Snider Decl., ¶¶10, 13(b)). LISCR, LLC is not an authorized or registered agent for
21 service of process on Capetanissa. (Snider Decl., ¶3; Webster Decl. ¶13).

22 On March 22, 2022, attorney Steven Snider representing LISCR, LLC spoke
23 with the Amplify Defendants’ counsel by phone after service of process was attempted
24 on Ms. Doherty. (Snider Decl., ¶11). Attorney Snider explained that service on
25 LISCR, LLC was not proper service on a Liberian non-resident corporation. (Snider
26 Decl., ¶11). On March 24, 2022, LISCR LLC’s counsel sent a follow-up email to
27 reiterate the information discussed in the March 22nd phone call. (Snider Decl., ¶12
28 and Exhibit “A” attached thereto). Specifically, under Liberian law, legal notices must

1 be served by an Officer of the Court in Liberia and received by the corporation's
2 Registered Agent, the LISCR Trust Company, at its address in Monrovia, Liberia.
3 (Snider Decl., ¶¶8, 11, 12 and Exhibit "A" attached thereto). That address is, the
4 LISCR Trust Company, 80 Broad Street, Monrovia, Liberia. (Snider Decl., ¶¶4, 11-
5 12). Despite the phone call and confirming e-mail from LISCR LLC's counsel, the
6 Amplify Defendants filed their erroneous POS on March 25, 2022. [DKT No. 155].

7 **C. THE PARTIES' MEET AND CONFER ATTEMPTS**

8 On April 1, 2022, specially appearing counsel for Capetanissa and counsel for
9 the Amplify Defendants met and conferred by conference call to discuss the POS,
10 Capetanissa's Motion to Quash and its Motion to Dismiss for lack of personal
11 jurisdiction. The Parties were not able to agree on either subject requiring these
12 motions. (Peacock Declaration).

13
14 **III. LEGAL ARGUMENT**

15 **A. THE SERVICE OF THE THIRD-PARTY COMPLAINT ON**
16 **CAPETANISSA THROUGH LISCR LLC WAS IMPROPER AND**
17 **SHOULD BE QUASHED (FRCP 12(B)(5)).**

18 Rule 12(b)(5) authorizes this Court to quash service of process if it is
19 insufficient. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350
20 (1999) ("In the absence of service of process ... a court ordinarily may not exercise
21 power over a party the complaint names as defendant"). "Before a ... court may
22 exercise personal jurisdiction over a defendant, the procedural requirement of service of
23 summons must be satisfied." *Strong v. Countrywide Home Loans, Inc.*, 700 Fed. App'x
24 664, 667 (9th Cir. 2017) (citing *Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co.*, 484 U.S.
25 97, 104 (1987)). That requirement has not been met here, and service should be
26 quashed.

27 On a Rule 12(b)(5) motion, the plaintiff bears the burden of establishing the
28 validity of service. *See Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004)

1 (reversing the district court's denial of motion to set aside judgment for
2 inadequate service of process). Although F. R. Civ. P. 4 “is a flexible rule that should
3 be liberally construed,” neither “actual notice [of an action] nor simply naming the
4 person in the caption of the complaint will subject defendants to personal jurisdiction if
5 service was not made in substantial compliance with F. R. Civ. P. 4.” *Crowley v.*
6 *Bannister*, 734 F.3d 967, 975 (9th Cir. 2013) (citing *Benny v. Pipes*, 799 F.2d 489, 492
7 (9th Cir. 1986)).

8 The Amplify Defendants’ Proof of Service includes several errors and
9 misrepresentations regarding who was served and in what capacity. For example, Ms.
10 Dohoroty is not Capetanissa’s Chief Financial Officer and is not employed by it. In
11 short, there was no substantial compliance with the Rule as noted above. (Webster
12 Decl., ¶14; Snider Decl., ¶13).

13 In addition, the Amplify Defendants were informed by LISCR, LLC’s counsel
14 how and to whom proper service should be made. To appropriately institute legal
15 proceedings against a Liberian corporation in accordance with the Liberia Code of
16 Laws Revised, Title 1, Civil Procedure Law, legal notices must be served using a
17 ministerial officer of the court in Liberia (and not simply couriered to the LISCR Trust
18 Company). The effective date of service is when the papers are correctly served by an
19 Officer of the Court in Liberia and received by the corporation’s exclusive Registered
20 Agent, the LISCR Trust Company in Monrovia, Liberia. The LISCR Trust Company
21 as the exclusive Registered Agent will then forward the papers to the non-resident
22 Liberian corporation at its Address of Record. (*See also*, Snider Decl., ¶¶3-4, 6-7, 11-
23 12 and Exhibit “A” attached thereto). The Amplify Defendants have not shown that
24 they have made any reasonable or good faith attempt at serving Capetanissa in this way.

25 For the foregoing reasons, the Amplify Defendants’ alleged service of process on
26 Capetanissa was improper and its Proof of Service should be quashed under FRCP Rule
27 12(b)(5).

1 **B. THE COURT LACKS PERSONAL JURISDICTION OVER**
2 **CAPETANISSA.**

3 The Amplify Defendants fail to make a *prima facie* showing of personal
4 jurisdiction over Capetanissa in their Complaint. *Caruth v. International*
5 *Psychoanalytical Ass'n*, 59 F.3d 126, 128 (9th Cir.1995). Personal jurisdiction over a
6 nonresident defendant attaches only when a defendant is amenable to service of process
7 under the forum state’s long-arm statute and the exercise of jurisdiction comports with
8 the due process clause of the Fourteenth Amendment. In the instant case, these two
9 inquiries merge into one because California’s long-arm statute permits service of
10 process coterminous with the scope of the due process clause. Cal. Civ. Proc. Code
11 Ann. § 410.10; *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014); *Panavision Int'l,*
12 *L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir.1998).

13 For personal jurisdiction to exist the nonresident defendant must have
14 purposefully established “minimum contacts” with the forum state such that it invoked
15 the benefits and protections of the forum’s laws and thus reasonably could anticipate
16 being haled into court there. In addition, circumstances must be such that the exercise
17 of personal jurisdiction does not offend “traditional notions of fair play and substantial
18 justice.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011)
19 (*quoting International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)); *see also,*
20 *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102 (1987); *Burger*
21 *King Corp. v. Rudzewicz*, 471 U.S. 462 (1985). “Minimum contacts” can arise in two
22 ways, which will be discussed below.

23 **1. This Court Lacks General Personal Jurisdiction Over**
24 **Capetanissa**

25 A court may assert general jurisdiction over foreign (sister-state or foreign-
26 country) corporations to hear any and all claims against them when their affiliations
27 with the State are so “continuous and systematic” as to render them essentially **at home**
28 in the forum State. *See International Shoe, supra*, 326 U.S., at 317; *Helicopteros*

1 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)(citing *Perkins v.*
2 *Benguet Consol. Mining Co.*, 342 U.S. 437 (1952)).

3 Here, the Court lacks general jurisdiction over Capetanissa because its contacts
4 were not continuous or systematic. In fact, Capetanissa has essentially no contacts with
5 the forum and therefore cannot be “at home” here.

6 The sole contacts cited by the Amplify Defendants in its Third-Party Complaint
7 were two calls to the Port of Los Angeles or the Port of Long Beach in 2021. The
8 Amplify Defendants allege that Capetanissa knew or should have known that the
9 BEIJING “regularly entered one or more ports within the district.” (Dkt. No. 123, p.
10 10). This is not enough to make Capetanissa “at home” in California. Capetanissa was
11 kept apprised of the BEIJING’s location as per the Charter Party agreement that was in
12 effect at the time of the Orange County oil spill. However, the requirements for
13 exercising general personal jurisdiction are stringent and typically hinge on the location
14 of defendant’s domicile. *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (“With
15 respect to a corporation, the place of incorporation and principal place of business are
16 paradigm bases for general jurisdiction ... Those affiliations have the virtue of being
17 unique—that is, each ordinarily indicates only one place—as well as easily
18 ascertainable.”) (internal quotations omitted).

19 Capetanissa is not incorporated in California, nor does it have its principal place
20 of business in California. (Webster Decl., ¶¶6-8). Capetanissa does not otherwise
21 conduct business in California or the United States. (Webster Decl., ¶¶10-13).

22 Additionally, Capetanissa has no control over the BEIJING’s ports of call, except
23 those regions specifically precluded by the Charter Party. (Webster Decl., ¶21). The
24 fact that the BEIJING’s charterers directed it to enter the forum is insufficient to cause
25 Capetanissa to reasonably anticipate the possibility of being haled into court in
26 California. Capetanissa cannot be held to have availed itself of the benefits and
27 protections of doing business in California by virtue of the fact third-party entities
28 decide to send its ship there.

1 The tenuous connection between the forum and Capetanissa alleged by the
2 Amplify Defendants in their Complaint is an inadequate basis for the exercise of
3 general jurisdiction. Such a connection does not establish the “continuous and
4 systematic” affiliation necessary to empower this Court to entertain claims unrelated to
5 Capetanissa’s contacts with California.

6 **2. This Court Lacks Specific Personal Jurisdiction Over**
7 **Capetanissa**

8 The Amplify Defendants have failed to allege that Capetanissa has sufficient
9 “minimum contacts” with California arising from, or related to, its operational
10 management of the BEIJING to maintain specific personal jurisdiction in the forum. In
11 contrast to general jurisdiction, specific jurisdiction is confined to adjudication of issues
12 deriving from, or connected with, the very controversy that establishes jurisdiction.
13 Specific personal jurisdiction “depends on an affiliation between the forum and the
14 underlying controversy, principally, activity or an occurrence that takes place in the
15 forum State and is therefore subject to the State’s regulation. *Goodyear Dunlop Tires*
16 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal quotations omitted).

17 Since *International Shoe*, the Supreme Court’s decisions have elaborated
18 primarily on circumstances that warrant the exercise of specific jurisdiction,
19 particularly in cases involving “single or occasional acts” occurring or having their
20 impact within the forum State. As a rule in these cases, the Supreme Court has inquired
21 whether there was “some act by which the defendant purposefully avail [ed] itself of the
22 privilege of conducting activities within the forum State, thus invoking the benefits and
23 protections of its laws.” *Goodyear*, 564 U.S. 915 at 924 (internal citations omitted).

24 For a court to have specific personal jurisdiction over a defendant, the
25 defendant’s suit-related conduct must create a substantial connection with the forum
26 state. *Williams*, 851 F.3d 1015, 1023 (9th 2017) (citing *International Shoe* and *Burger*
27 *King*); *see also Axiom Foods*, 874 F.3d 1064, 1068 (9th Cir. 2017) (internal citations
28 omitted). The relationship between the defendant and the forum state must arise out of

1 contacts that the **defendant itself** creates with the forum state. *Williams*, 851 F.3d
2 1015, 1023 (9th Cir. 2017).

3 The Ninth Circuit has established a three-prong test for analyzing a claim of
4 specific personal jurisdiction. The Amplify Defendants bears the burden of satisfying
5 the first two prongs of this test. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d
6 797, 802 (9th Cir. 2004). If the Amplify Defendants meet their burden of proof, then
7 the burden shifts to Defendant to establish that the third prong is not satisfied. *Id.*; see
8 also *Williams*, 851 F.3d 1015, 1023 (9th Cir. 2017) (citing *Dole Foods*); *Axiom Foods*,
9 874 F.3d 1064, 1068-1069 (9th Cir. 2017); *Picot v. Weston*, 780 F.3d 1206, 1212 (9th
10 Cir. 2015).

11 To satisfy the first prong of the test, the non-resident defendant must
12 purposefully direct its activities or consummate some transaction with the forum or
13 resident thereof; or perform some act by which it purposefully avails itself of the
14 privilege of conducting activities in the forum, thereby invoking the benefits and
15 protections of its laws. The Ninth Circuit employs the “purposeful direction test” to
16 analyze this prong. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th
17 Cir. 2017). To apply this test, courts look at the defendant’s contacts with the forum
18 State itself, not the defendant’s contacts with the persons who reside there. *Picot*, 780
19 F.3d at 1214. The defendant must have “(1) committed an intentional act, (2) expressly
20 aimed at the forum state, (3) causing harm that the defendant knows is likely to be
21 suffered in the forum state.” *Id.*

22 Here, the Amplify Defendants cannot show that Capetanissa committed an
23 intentional act because it did not direct the BEIJING to enter the forum. Capetanissa
24 could not have intended to do an “actual, physical act” in California because it did not
25 make the decision for its ship to be in the forum. (*See Webster Decl.*, ¶¶ 18-20, 22).

26 To satisfy the second prong of the Ninth Circuit’s test, the claim must be one
27 which arises out of or relates to the defendant’s forum-related activities. *Picot*, 780
28 F.3d at 1214. This prong cannot be satisfied with respect to Capetanissa because its

1 business activities are only tenuously related to the forum. Capetanissa does its
2 business outside of the United States and has no physical presence in this forum or in
3 any other forum of the United States. (*See passim* Webster Decl.).

4 Because the Amplify Defendants cannot satisfy the first two prongs of the Ninth
5 Circuit’s test for exercising specific personal jurisdiction, Defendant is not required to
6 analyze the third prong to show that the exercise of jurisdiction would not comport with
7 fair play and substantial justice. *Schwarzenegger*, 374 F.3d at 802. However, it is the
8 Defendant’s opinion that the exercise of personal jurisdiction in this circumstance
9 would not be reasonable or comport with fair play and substantial justice because
10 Capetanissa’s contact with this forum are solely the result of the BEIJING’s charterer,
11 not its own intentional acts.

12 Further, the Amplify Defendants have not and cannot allege that the actions of
13 Capetanissa’s charterer can create minimum contacts for it with this forum. As noted
14 above: “The relationship between the defendant and the forum state must arise out of
15 contacts that **the defendant itself** creates with the forum state.” *Williams v. Yamaha*
16 *Motor Co. Ltd.*, 851 F.3d 1015, 1023 (9th Cir. 2017) (internal quotations omitted)
17 (emphasis added).

18 Indeed, courts in the Ninth Circuit will not impute a parent company’s forum
19 contacts to its subsidiary, or vice-versa. “It is well established that, as a general rule,
20 where a parent and a subsidiary are separate and distinct corporate entities, the presence
21 of one ... in a forum state may not be attributed to the other[.]” *Axiom Foods, Inc. v.*
22 *Acerchem Int’l, Inc.*, 874 F.3d 1064, 1071 (9th Cir. 2017) (*quoting Holland Am. Line*
23 *Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007)) (internal quotations
24 omitted).

25 The case that this Court lacks specific personal jurisdiction is even stronger here.
26 Unlike *Williams*, the third-party here whom created the tenuous forum contact for
27 Capetanissa (i.e., the charterer of the BEIJING) is not a parent, affiliate, subsidiary, or
28 other related company to Capetanissa. (Webster Decl., ¶ 24). Neither have the Amplify

1 Defendants has made a *prima facie* case for an agency relationship between Capetanissa
2 and the charterers of the BEIJING. *See Williams*, 851 F.3d at 1024–25 (“[U]nder any
3 standard for finding an agency relationship, the parent company must have the right to
4 substantially control its subsidiary’s activities.”). In fact, Capetanissa did not have any
5 right to control the charterer’s activities. Nor have the Amplify Defendants spelled out
6 an alter ego theory of liability that would allow this Court to attribute the activities of
7 the parent entity to the subsidiary. *See id.* at 1021. “[A] plaintiff must make out a *prima*
8 *facie* case (1) that there is such unity of interest and ownership that the separate
9 personalities of the two entities no longer exist and (2) that failure to disregard their
10 separate identities would result in fraud or injustice.” *Id.* (citation omitted). Here, the
11 Amplify Defendants could not satisfy the requirements of this test because no such
12 relationship exists.

13 Capetanissa’s ownership of the BEIJING alone is not an action that could rise to
14 the level of purposeful availment of the privileges of doing business in this forum or the
15 protections of California’s laws.

16 Similar to the Ninth Circuit’s reluctance to impute a subsidiary’s contacts on the
17 parent (or vice versa), other Circuit Courts of Appeals have held that a ship charterer’s
18 forum contacts cannot be imputed to the ship owner. *See Asarco, Inc. v. Glenara, Ltd.*,
19 912 F.2d 784 (5th Cir. 1990) (holding that the court lacked specific personal jurisdiction
20 over the ship owner because it did not direct the ship to the forum, the ship’s time
21 charterer directed the ship); *Francosteel Corp., Unimetal-Normandy v. M/V Charm,*
22 *Tiki, Mortensen & Lange*, 19 F.3d 624 (11th Cir. 1994)(holding that the defendants’
23 agreement to deliver the cargo to the forum was an isolated and sporadic contact with
24 the forum, not part of a regular practice of delivering goods to it); *see also Porina v.*
25 *Marward Shipping Co.*, 521 F.3d 122 (2d Cir. 2008) (discussing general jurisdiction,
26 the Second Circuit held that the owner of a ship may not constitutionally be subjected to
27 personal jurisdiction with respect to an unrelated suit merely because, as the owner may
28 have expected, the ship has repeatedly visited the forum’s ports at the sole direction of

1 its charterers).

2 Capetanissa did not *itself* make any decision that brought the BEIJING to this
3 forum. Following *Williams* and the foregoing owner-charterer cases, the actions of the
4 charterer to send the BEIJING to Los Angeles – Long Beach cannot be imputed to
5 Capetanissa for the purposes of creating minimum contacts in a forum to allow this
6 Court to exercise specific personal jurisdiction over Capetanissa. Here, as in those
7 cases, the charterer alone controlled the ship’s movements and directed it to sail to the
8 forum.

9 In short, the Amplify Defendants do not establish that this Court can exercise
10 personal jurisdiction over Capetanissa. The few conclusory allegations about
11 Capetanissa fail to show that: (1) itself, as opposed to charterers, purposefully directed
12 the BEIJING to this forum; (2) the Amplify Defendants’ claims arise out of or relate to
13 any forum-related activities of Capetanissa; and (3) the exercise of jurisdiction over it
14 would “comport with fair play and substantial justice,” *i.e.*, would be reasonable. *Dole*
15 *Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

16 **3. Capetanissa’s Alleged Link to the Amplify Defendants is Not**
17 **Sufficient to Support Personal Jurisdiction**

18 The reason why courts look at contacts with the forum itself rather than
19 individual plaintiffs generally comes down to tradition. The Supreme Court in
20 *International Shoe* describes the historical ability of a court to exercise personal
21 jurisdiction: “Historically the jurisdiction of courts to render judgment *in personam* is
22 grounded on their de facto power over the defendant’s person. Hence his presence
23 within the territorial jurisdiction of court was prerequisite to its rendition of a judgment
24 personally binding him.” *Int’l Shoe Co. v. State of Wash., Off. of Unemployment Comp.*
25 *& Placement*, 326 U.S. 310, 316 (1945) (quoting *Pennoyer v. Neff*, 95 U.S. 714, 733,
26 (1877)). Now, “due process requires only that in order to subject a defendant to a
27 judgment *in personam*, if he be not present within the territory of the forum, he have
28 certain minimum contacts with it such that the maintenance of the suit does not offend

1 ‘traditional notions of fair play and substantial justice.’” *Id.* (emphasis added).

2 Following the historical/traditional idea of personal jurisdiction that required
3 physical presence in the forum, Courts continue to analyze the defendant’s contacts
4 with the forum State itself, not the defendant’s contacts with the persons who reside
5 there to determine the existence of specific personal jurisdiction. *Picot*, 780 F.3d at
6 1214 (quoting *Walden v. Fiore*, 571 U.S. 277, 285). The plaintiff cannot be the only
7 link between the defendant and the forum. *Walden v. Fiore*, 571 U.S. 277, 285; see also
8 *International Shoe, supra*, at 319 (Due process “does not contemplate that a state may
9 make binding a judgment *in personam* against an individual ... with which the state has
10 no contacts, ties, or relations”). Rather, it is the defendant’s conduct that must form the
11 necessary connection with the forum State that is the basis for its jurisdiction over him.
12 *Id.* at 285-286. See also *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985)
13 (“If the question is whether an individual’s contract with an out-of-state party alone can
14 automatically establish sufficient minimum contacts in the other party’s home forum,
15 we believe the answer clearly is that it cannot”); *Kulko v. Superior Court of Cal., City
16 and County of San Francisco*, 436 U.S. 84, 93 (1978) (declining to “find personal
17 jurisdiction in a State ... merely because [the plaintiff in a child support action] was
18 residing there”). The same principles apply to contract disputes and intentional torts.
19 *Walden v. Fiore*, 571 U.S. 277, 286. “To be sure, a defendant’s contacts with the forum
20 State may be intertwined with his transactions or interactions with the plaintiff or other
21 parties.” *Id.* But a defendant's relationship with a plaintiff or third party, standing
22 alone, is an insufficient basis for jurisdiction. *Id.*; See also, *Shaffer v. Heitner*, 433 U.S.
23 186 (1977); *Rush v. Savchuk*, 444 U.S. 320, 332 (1980) (“Naturally, the parties’
24 relationships with each other may be significant in evaluating their ties to the forum.
25 The requirements of *International Shoe*, however, must be met as to each defendant
26 over whom a state court exercises jurisdiction”).

27 Here, the Amplify Defendants have alleged that this Court has jurisdiction over
28 Capetanissa because its vessel, the BEIJING, struck Amplify’s pipeline off the coast of

1 Orange County. Based on *Walden* and its progeny in the Ninth Circuit, this link alone
2 between the Plaintiff and Defendant cannot serve as the “minimum contact” for the
3 exercise of personal jurisdiction in this forum. Although the alleged tort may connect
4 Capetanissa to the Amplify Defendants, the Amplify Defendants have failed to plead
5 sufficient facts to connect it with the forum at large and did not show that Capetanissa
6 knew or should have known it could be haled into court here. Amplify cannot rely on
7 Capetanissa’s “random, fortuitous, or attenuated contacts” and must instead show
8 intentional acts by Capetanissa in the forum. *Walden v. Fiore*, 571 U.S. 277, 286.
9 Amplify has therefore fallen short of the due process requirements of the Fourteenth
10 Amendment and the exercise of specific personal jurisdiction under these circumstances
11 would offend the traditional notions of fair play and substantial justice as outlined in
12 *International Shoe*.

13
14 **IV. CONCLUSION**

15 Based on the foregoing, Capetanissa requests that the Court grant its Motions to
16 quash service of process and dismiss for lack of personal jurisdiction under F. R. Civ.
17 P. 12(b)(5) and 12(b)(2), respectively.

18
19 DATED: April 7, 2022



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