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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Blake Haines,  
10 Plaintiff,  
11 v.  
12 Get Air Tucson Incorporated, et al.,  
13 Defendants.  
14

No. CV-15-00002-TUC-RM (EJM)

**ORDER**

15 On February 13, 2017, Magistrate Judge Eric J. Markovich issued a Report and  
16 Recommendation (Doc. 158) recommending that this Court deny Defendant Get Air,  
17 LLC's second Motion to Dismiss (Doc. 97). Defendant Get Air, LLC objected to the  
18 Report and Recommendation (Doc. 164), and Plaintiff responded in opposition (Doc.  
19 170) to Defendant's Objections.

20 **I. Background**

21 Plaintiff Blake Haines alleges that he suffered catastrophic injuries when he  
22 performed a multiple-flip maneuver from a trampoline platform into a foam pit at the Get  
23 Air Tucson indoor trampoline park. (Doc. 84 at 10, ¶ 69.) He alleges that Get Air, LLC  
24 created deficient and defective safety rules applicable to trampoline park customers and  
25 supplied those safety rules to Get Air Tucson for use in the Tucson trampoline park. (*Id.*  
26 at 6, ¶¶ 37-38.)

27 Defendant Get Air, LLC filed its first Motion to Dismiss for lack of personal  
28 jurisdiction on July 30, 2015. (Doc. 43.) This Court denied that motion as moot after

1 granting Plaintiff leave to amend his complaint. (Doc. 83.) Plaintiff filed his Third  
 2 Amended Complaint (Doc. 84) on February 8, 2016.

3 On March 1, 2016, Get Air, LLC filed the currently pending Motion to Dismiss  
 4 for lack of personal jurisdiction. (Doc. 97.) After allowing the parties time to conduct  
 5 limited jurisdictional discovery (*see* Doc. 117), Judge Markovich found that Plaintiff had  
 6 met his burden of establishing a *prima facie* showing of specific personal jurisdiction, and  
 7 accordingly recommended that Get Air, LLC's Motion to Dismiss be denied. (Doc. 158.)

8 **II. Standard of Review**

9 A district judge must "make a *de novo* determination of those portions" of a  
 10 magistrate judge's "report or specified proposed findings or recommendations to which  
 11 objection is made." 28 U.S.C. § 636(b)(1). "If no objection or only partial objection is  
 12 made, the district court judge reviews those unobjected portions for clear error." *Johnson*  
 13 *v. Zema Sys. Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Prior v. Ryan*, CV 10-  
 14 225-TUC-RCC, 2012 WL 1344286, at \*1 (D. Ariz. Apr. 18, 2012) (reviewing for clear  
 15 error unobjected-to portions of Report and Recommendation); Fed. R. Civ. P. 72(b)  
 16 advisory committee's note to 1983 addition ("[w]hen no timely objection is filed, the  
 17 court need only satisfy itself that there is no clear error on the face of the record in order  
 18 to accept the recommendation" of a magistrate judge).

19 **III. Discussion**

20 Plaintiff alleges that this Court has specific (as opposed to general) personal  
 21 jurisdiction over Get Air, LLC. (*See* Doc. 102 at 3.) Judge Markovich accordingly  
 22 applied the three-prong test for specific personal jurisdiction:

23 (1) The non-resident defendant must purposefully direct [its] activities or  
 24 consummate some transaction with the forum or resident thereof; or  
 25 perform some act by which [it] purposefully avails [itself] of the privilege  
 26 of conducting activities in the forum, thereby invoking the benefits and  
 27 protections of its laws; (2) the claim must be one which arises out of or  
 28 relates to the defendant's forum related activities; and (3) the exercise of  
 jurisdiction must comport with fair play and substantial justice, i.e. it must  
 be reasonable.

(Doc. 158 at 5-6 (citing *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802

1 (9th Cir. 2004)).)<sup>1</sup> Get Air, LLC objects only to the factual findings that Judge  
 2 Markovich made in applying the test.

3 Judge Markovich held that Plaintiff had identified evidence sufficient to support a  
 4 finding that Get Air, LLC purposefully directed its activities at Arizona by creating a  
 5 generic employee handbook with the specific intent that it be used at all then-existing and  
 6 future Get Air trampoline parks, including Get Air Tucson; that Plaintiff's claims arose  
 7 out of and relate to Get Air, LLC's contacts with Arizona because they are based on the  
 8 allegedly defective safety rules contained in the employee handbook; and that this  
 9 Court's exercise of personal jurisdiction over Get Air, LLC would be reasonable. In its  
 10 Objections, Get Air, LLC argues that the Magistrate Judge's Report and  
 11 Recommendation erroneously describes the deposition testimony of Amy Iverson, Jacob  
 12 Goodell, Val Iverson, and Jessica Bybee<sup>2</sup> and draws unsupported inferences. According  
 13 to Get Air, LLC, Amy Iverson drafted a generic employee handbook to be used at other  
 14 Get Air trampoline parks, but she drafted it for *Trampoline Parks, LLC* rather than *Get*  
 15 *Air, LLC*.

16 The evidence indicates that Get Air, LLC operated a trampoline park in Roy, Utah  
 17 but that the Get Air Roy park is now closed, and Get Air, LLC is currently a holding  
 18 company. (V. Iverson Dep. at 7:10-19, 19:4-15, 23:14-24:8; J. Goodell Dep. at 15:5-15.)  
 19 Trampoline Parks, LLC is a company that designs and constructs trampoline parks  
 20 nationwide and internationally. (V. Iverson Dep. at 7:21-25, 18:7-19:3; J. Goodell Dep.  
 21 at 45:22-24.) Both companies were originally founded by Val Iverson. (V. Iverson Dep.  
 22 at 7:10-15, 21-25.) In approximately 2013, a company called Get Air Management, LLC

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23       <sup>1</sup> As Judge Markovich noted, the due process analysis under Arizona state  
 24 and federal law is the same, because Arizona's long-arm jurisdictional statute allows this  
 25 Court to exercise personal jurisdiction to the maximum extent permitted by the United  
 26 States Constitution. (See Doc. 158 (citing Ariz. R. Civ. P. 4.2(a); *Scott v. Breeland*, 792  
 27 F.2d 925, 927 (9th Cir. 1986)).)

28       <sup>2</sup> The deposition testimony of Amy Iverson appears in the record at Doc. 154-1, Doc. 155-2, and Doc. 164-1. The deposition testimony of Jacob Goodell appears at Doc. 154-5, Doc. 155-3, and Doc. 164-2. The deposition testimony of Val Iverson appears at Doc. 154-2, Doc. 155-4, and Doc. 164-4. The deposition testimony of Jessica Bybee appears at Doc. 154-4, Doc. 155-1, and Doc. 164-3.

1 was formed in order to manage various Get Air trampoline parks, including Get Air  
 2 Tucson. (V. Iverson Dep. at 9:4-12; J. Goodell Dep. at 67:10-68:3.) However, Val  
 3 Iverson and his family began expanding the Get Air business by opening and supporting  
 4 parks in new locations prior to the creation of Get Air Management, LLC. The  
 5 deposition testimony of Amy Iverson and Jacob Goodell shows significant confusion  
 6 regarding whether support for new Get Air trampoline parks was performed on behalf of  
 7 Get Air, LLC or Trampoline Parks, LLC prior to the formation of Get Air Management,  
 8 LLC. For example, Amy Iverson testified: “I guess the confusion lies in that, in my  
 9 mind, it was all the same thing. I worked for my father-in-law [Val Iverson], and he gave  
 10 me some assignments and I did them.” (A. Iverson Dep. at 85:21-24; *see also id.* at 90:2-  
 11 12.)

12 Jacob Goodell—the son-in-law of Val Iverson—founded Get Air Tucson and took  
 13 the employee handbook in use at Get Air Roy to the Tucson facility to supply to Get Air  
 14 Tucson employees as part of their training. (J. Goodell Dep. at 15:18-19, 16:19-23,  
 15 25:19-21, 27:11-28:8, 34:6-35:6, 54:23-55:9.) The employee handbook was originally  
 16 created for the Get Air Roy trampoline park, at the direction of Val Iverson, by an  
 17 employee named Jessica Bybee. (J. Bybee Dep. at 14:12-14, 15:21-18:2.)<sup>3</sup> Amy Iverson  
 18 later took over work on the handbook and revised it so that it could function as a generic  
 19 employee handbook to be used in other then-existing and future Get Air trampoline  
 20 parks. (A. Iverson Dep. at 22:19-24:6, 30:7-31:9, 55:11-56:14, 68:21-23; J. Goodell Dep.  
 21 at 87:13-17; J. Bybee Dep. at 16:22-17:9, 21:17-20, 25:2-7, 30:12-17.) She did so at a  
 22 time when she was working as an independent contractor for Trampoline Parks, LLC.  
 23 (A. Iverson Dep. at 20:24-21:8, 22:19-24:6, 27:10-16.) Although she had no contract  
 24 with Get Air, LLC and was paid by Trampoline Parks, LLC, she provided assistance as  
 25 needed to Get Air, LLC on request from Val and Joan Iverson—the two owners of Get  
 26 Air, LLC. (*Id.* at 22:6-23:12, 27:10-25, 39:1-23, 89:22-90:1.) Amy signed an affidavit

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 28 <sup>3</sup> The evidence indicates that Jessica Bybee drafted the portion of the  
 handbook containing safety rules. (J. Bybee Dep. at 15:21-18:2.)

1 stating that she prepared the employee handbook as part of her work for Trampoline  
 2 Parks, LLC (Doc. 97-1), but she testified at her deposition that she prepared the  
 3 handbook for Get Air, LLC on request from Val and Joan Iverson. (A. Iverson Dep. at  
 4 22:19-24:6, 27:21-28:3, 28:8-11.) Specifically, she testified that Val and Joan Iverson  
 5 asked her to revise the handbook so that it could be used in a larger capacity as the Get  
 6 Air business expanded. (*Id.* at 22:19-24:6.)

7 Jacob Goodell testified that an employee handbook created for Trampoline Parks,  
 8 LLC would be very different than the handbook that he took to Get Air Tucson, because  
 9 Trampoline Park, LLC was in the business of constructing—rather than operating—  
 10 trampoline parks, and its employees were construction workers. (J. Goodell Dep. at  
 11 28:13-29:19.) Amy Iverson testified similarly that there was a separate employee  
 12 handbook for Trampoline Parks, LLC, and that Trampoline Parks, LLC was in the  
 13 business of building parks rather than running them. (A. Iverson Dep. at 28:8-22, 59:13-  
 14 16, 78:19-79:3; *see also* V. Iverson Dep. at 18:16-19:3 (testifying that Trampoline Parks,  
 15 LLC designs and builds trampoline parks but does not operate them.)

16 Other evidence corroborates Amy's testimony that she revised the employee  
 17 handbook on behalf of Get Air, LLC for use in other Get Air trampoline parks. The  
 18 handbook itself is titled "Get Air, LLC Employee Handbook,"<sup>4</sup> and although Amy  
 19 Iverson testified that the name was a mistake and should have said "Get Air" instead of  
 20 "Get Air, LLC" (A. Iverson Dep. 59:25-60:22), the name "Get Air, LLC Employee  
 21 Handbook"—as well as language used in business plans and other documents created  
 22 during the time period—supports a finding that the Iverson family used Get Air, LLC to  
 23 support the expansion of the Get Air business prior to the creation of Get Air  
 24 Management, LLC.

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26       <sup>4</sup> Jessica Bybee put the title "Get Air, LLC Employee Handbook" on the  
 27 original draft of the handbook, and no one discussed the accuracy of the title with her  
 28 because she "made [the handbook] for the Roy park." (J. Bybee Dep. at 24:19-25.) Amy  
 Iverson testified that the handbook was not titled "Trampoline Parks, LLC" "[b]ecause  
 Trampoline Parks is a different entity" that builds parks, whereas "Get Air ran the parks."  
 (A. Iverson Dep. at 59:13-16.)

1        In short, there is a factual dispute regarding whether Amy Iverson prepared a  
2 generic employee handbook on behalf of Get Air, LLC or Trampoline Parks, LLC.  
3 While there is evidence indicating she created the handbook while working as an  
4 independent contractor for Trampoline Parks, LLC, there is also significant evidence  
5 supporting a finding that she created it on behalf of Get Air, LLC at the request of the  
6 owners of Get Air, LLC. Judge Markovich appropriately resolved the factual dispute in  
7 Plaintiff's favor. *See Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th  
8 Cir. 2011).<sup>5</sup>

9        **IT IS ORDERED** that Get Air, LLC's Objection (Doc. 164) is **overruled**, and  
10 Judge Markovich's Report and Recommendation (Doc. 158) is **accepted and adopted in  
11 full**.

12        **IT IS FURTHER ORDERED** that Get Air, LLC's Motion to Dismiss (Doc. 97)  
13 is **denied**.

14        Dated this 31st day of March, 2017.



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17        Honorable Rosemary Márquez  
18        United States District Judge

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24        <sup>5</sup> Plaintiff's Opposition to Defendant Get Air, LLC's Objections includes a  
25 request for an award of attorneys' fees and costs incurred in responding to Get Air,  
26 LLC's Motion to Dismiss and Objections. (See Doc. 170 at 9.) Plaintiff cites no  
27 authority in support of the request. A motion for sanctions under Rule 11 of the Federal  
28 Rules of Civil Procedure "must be made separately from any other motion and must  
describe the specific conduct that allegedly violates Rule 11(b)." Fed. R. Civ. P.  
11(c)(2). A court may impose attorneys' fees as a sanction under its inherent powers  
only where a litigant has acted in bad faith or willful disobedience of court orders. *See Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648-49 (9th Cir. 1997). Plaintiff  
has not shown that Defendants' conduct rises to this level. Plaintiff's request for an  
award of attorneys' fees and costs is denied.