

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CESAR Y. CATIBAYAN, a U.S. citizen,

No. 3:13-cv-00273-HU

Plaintiff,

FINDINGS AND RECOMMENDATION

V.

16 SYCIP GORRES VELAYO & CO. (SGV),
a.k.a. SGV/ERNST & YOUNG (SGV/EY),
a Philippine Accounting firm,

Defendant.

19 Cesar Y. Catibayan
c/o Kimberly Kern
20 10026 Pacita Del Timbre
Tuscon, AZ 85747

Pro Se Plaintiff

22 Douglas E. Goe
23 ORRICK, HERRINGTON & SUTCLIFFE LLP
1120 N.W. Couch Street, Suite 200
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Attorneys for Defendant

1 HUBEL, Magistrate Judge:

2 Defendant SyCip Gorres Velayo & Co. ("Defendant") moves to
3 dismiss this action on the grounds that: (1) this Court lacks
4 personal jurisdiction over Defendant; (2) the doctrine of *forum non
conveniens* precludes going forward in the District of Oregon; and
5 (3) Plaintiff Cesar Catibayan's ("Plaintiff") complaint fails to
6 state a claim upon which relief can be granted. For the reasons
7 that follow, Defendant's motion (Docket No. 11) to dismiss should
8 be granted on the grounds that Plaintiff has established neither
9 general, nor specific jurisdiction over Defendant in Oregon.
10

I. FACTS AND PROCEDURAL HISTORY

12 Plaintiff is a former resident of Oregon who currently resides
13 in Vancouver, Washington. Defendant "is a professional accounting
14 firm organized and existing under the laws of the Philippines as a
15 general professional partnership, with its principal office located
16 [in] . . . Makati City, Philippines." (Alcantara Decl. ¶ 3.)
17 Defendant "provides accounting and auditing services to clients
18 throughout the Philippines." (Alcantara Decl. ¶ 3.) Defendant "is
19 not licensed to perform professional services in Oregon or in any
20 other state in the United States, nor does it perform professional
21 services in the United States." (Alcantara Decl. ¶ 4.) Defendant
22 "has no employees or offices located within the United States."
23 (Alcantara Decl. ¶ 4.)

24 Both parties agree that this action concerns an audit report
25 Defendant issued in January 1997 in connection with a business
26 dispute that had been commenced in a Philippines-based court
27 (hereinafter the "Regional Trial Court or "RTC") in May 1995. That
28 proceeding was initiated by Fischer Engineering and Maintenance

1 Company ("FEMCO"), a Delaware corporation co-owned by Plaintiff and
 2 Donald Fischer ("Fischer"). FEMCO had a license to perform
 3 construction work in the Philippines and, up until May 1995, FEMCO
 4 maintained its principal place of business in Portland, Oregon.¹

5 FEMCO sued its "Filipino General Manager and Chief Operating
 6 Officer," Isaias Bongar ("Bongar"), who is a citizen of the
 7 Philippines, in the RTC for breach of contract. (Alcantara Decl.
 8 Ex. C at 4, 9; Pl.'s P. & A. [Docket 32-2] at 1.) About two years
 9 earlier, in October 1993, FEMCO hired Bongar to oversee its
 10 operations in the Philippines, despite that the fact that Bongar
 11 had previously allegedly breached two agreements to purchase the
 12 company. (Alcantara Decl. Ex. C at 8-9.) In late February 1994,
 13 Bongar apparently got his hands on "pre-endorsed blank" FEMCO stock
 14 certificates and proceeded to "illegally t[ake] over . . . the
 15 entire FEMCO organization in the Philippines and claimed the
 16 American company as his own to the exclusion of the two American
 17 owners Fis[c]her and [Plaintiff]." (Alcantara Decl. Ex. C at 9;
 18 Pl.'s P. & A. [Docket 32-1] at 2.) As Plaintiff explains, "Bongar
 19 got hold of the stock certificates in February 1994, . . . shut
 20 down the FEMCO office in Manila City and moved everything i.e.,
 21 office furniture, equipment, etc., including all the personnel to
 22 his compound in Las Pinas, Rizal, Metro Manila." (Pl.'s P. & A.
 23 [Docket 32-1] at 2.)

24 By way of an engagement letter dated February 12, 1996, the
 25 RTC, with the approval of FEMCO and Bongar,

27 ¹ FEMCO's "registration in the [state of] Oregon . . . has
 28 been under inactive status" since March 1991. (Fischer Aff. ¶ 3;
 Phillips Supp. Decl. Ex. A at 2.)

hired [Defendant] as an independent auditor who pursuant to the directive of the RTC . . . were tasked to inspect the books and records of . . . FEMCO; verify the payments of Bongar for his purchase of 100 common shares of stock belonging to FEMCO's shareholders; and ascertain the sources of the funds used by Bongar in claiming his alleged payments to FEMCO for said purchase.

5 (Alcantara Decl. Ex. C [Docket No. 14-1] at 10; Pl.'s P. & A.
6 [Docket No. 32-4] at 1.) Defendant submitted its audit report on
7 January 22, 1997, and was paid a fee in the amount of
8 \$10,000—"which was equally shared between FEMCO and Bongar (with
9 the stipulation that the losing party [would] reimburse the winning
10 party for its share of the audit fee)." (Alcantara Decl. Ex. C at
11 10.) Ultimately, FEMCO was the losing party in the RTC.

12 Not satisfied with Defendant's audit report and the RTC's
13 rulings (which Plaintiff has appealed successfully in the ongoing
14 case in the Philippines against Bongar), Plaintiff mounted attacks
15 against Defendant in various administrative and judicial fora
16 around the world. Plaintiff filed his complaint in the present
17 action on February 15, 2013, alleging, inter alia, causes of action
18 for negligence, breach of fiduciary duty, and fraud. It is
19 Plaintiff's belief that Defendant submitted "a highly erroneous and
20 fraudulent audit report," despite its "knowledge and possession of
21 documentary evidence[] that materially affected and contradicted
22 [its] audit findings." (Compl. at 1.) Plaintiff's complaint was
23 served on Defendant in Makati City, Philippines, on February 26,
24 2013. (Proof Serv. [Docket No. 5] at 1-3.) Defendant's motion
25 followed on March 19, 2013.

II. LEGAL STANDARD

27 Where, as here, "the existence of personal jurisdiction is
28 challenged and the defendant appears specially to contest its

1 presence in the jurisdiction, the plaintiff has the burden to come
 2 forward with some evidence to establish jurisdiction." *DRW-LLC v.*
 3 *Golden Harvest Holdings, Inc.*, No. 3:12-CV-01009-BR, 2013 WL
 4 1296075, at *2 (D. Or. Mar. 28, 2013) (citation omitted). "The
 5 court may consider evidence presented in affidavits to assist it in
 6 its determination and may order discovery on the jurisdictional
 7 issues." *Id.*

8 When the "court rule[s] on the issue relying only on
 9 affidavits [and/or] discovery materials without holding an
 10 evidentiary hearing," which is the case here, "dismissal is
 11 appropriate only if the plaintiff has not made a *prima facie*
 12 showing of personal jurisdiction." *Dist. Council No. 16 of Int'l*
 13 *Union of Painters & Allied Trades, Glaziers, Architectural Metal &*
 14 *Glass Workers, Local 1621 v. B & B Glass, Inc.*, 510 F.3d 851, 855
 15 (9th Cir. 2007) (citation omitted). Indeed, as the Ninth Circuit
 16 more recently explained:

17 Absent an evidentiary hearing this court only inquires
 18 into whether the plaintiff's pleadings and affidavits
 19 make a *prima facie* showing of personal jurisdiction.
 20 Uncontroverted allegations in the plaintiff's complaint
 must be taken as true. Conflicts between the parties
 over statements contained in affidavits must be resolved
 in the plaintiff's favor.

21 *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008) (citation
 22 and internal quotation marks omitted; brackets deleted).

23 "To determine whether there is personal jurisdiction over a
 24 non-resident defendant in a diversity case, a federal court must
 25 look to the law of the forum state." *W. Helicopters, Inc. v.*
 26 *Rogerson Aircraft Corp.*, 715 F. Supp. 1486, 1489 (D. Or. 1989)
 27 (citing *Hunt v. Erie Ins. Group*, 728 F.2d 1244, 1246 (9th Cir.
 28 1984)). Oregon's long-arm statute is co-extensive with federal

1 standards, so this court may exercise personal jurisdiction if
2 doing so comports with federal constitutional due process. *Gray &*
3 *Co. v. Firstenberg Mach. Co.*, 913 F.2d 758, 760 (9th Cir. 1990).
4 Due process requires that a defendant have certain minimum contacts
5 with the forum state such that the maintenance of the suit does not
6 offend "traditional notions of fair play and substantial justice."
7 *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945). The
8 pertinent determination for the court is whether the "defendant's
9 conduct and connection with the forum [s]tate are such that he
10 should reasonably anticipate being haled into court there." *World-*
11 *Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

12 **III. DISCUSSION**

13 There are two types of personal jurisdiction: general and
14 specific. If general jurisdiction is inapplicable, the court must
15 then determine whether specific jurisdiction exists. *In re Tuli*,
16 172 F.3d 707, 713 n.5 (9th Cir 1999). The Court will proceed first
17 to the general jurisdiction analysis.

18 **A. General Jurisdiction**

19 For general jurisdiction to exist, "the defendant must engage
20 in continuous and systematic general business contacts . . . that
21 approximate physical presence in the forum state." *Schwarzenegger*
22 *v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004)
23 (internal quotation marks and citations omitted). The Ninth
24 Circuit has set a high standard for general jurisdiction, *Tuazon v.*
25 *R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1169 (9th Cir. 2006),
26 because such a finding "permits a defendant to be haled into court
27 in the forum state to answer for any of its activities anywhere in
28 the world." *Schwarzenegger*, 374 F.3d at 801. Factors to be taken

1 into consideration include whether the non-resident defendant
2 "makes sales, solicits or engages in business in the state, serves
3 the state's markets, designates an agent for service of process,
4 holds a license, or is incorporated there." *Bancroft & Masters,*
5 *Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000),
6 overruled on other grounds by *Yahoo! Inc. v. La Ligue Contre Le*
7 *Racisme Et L'Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006) (en
8 banc).

9 In this case, it is abundantly clear that Defendant's
10 affiliations with Oregon are not "so 'continuous and systematic' as
11 to render them essentially at home in th[is] . . . [s]tate."
12 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846,
13 2851 (2011). Many examples can be given, but one suffices to
14 illustrate this point. In *Mavrix Photo, Inc. v. Brand*
15 *Technologies, Inc.*, 647 F.3d 1218 (9th Cir. 2011), it was argued
16 that Brand, an Ohio corporation that operated an interactive
17 website called celebrity-gossip.net, was subject to general
18 jurisdiction in California. *Id.* at 1222. Brand and its website
19 had several specific ties to California, including (1) Brand made
20 money from third-party advertisements for jobs, hotels, and
21 vacations in California; (2) the website featured a "Ticket
22 Center," which enabled third-party vendors to sell tickets to
23 events in California; (3) Brand had several agreements with
24 California businesses; (4) a California Internet advertising agency
25 solicited buyers and placed advertisements on the website; (5) a
26 California wireless phone service provider designed and hosted on
27 its servers a version of the website that was accessible to cell
28 phone users; (6) a California firm designed the website and

1 performed site maintenance; and (7) Brand entered a "link-sharing"
2 agreement with a California-based national new site, according to
3 which each site agreed to promote the other's top stories. *Id.* The
4 Ninth Circuit held that Brand's contacts fell "well short of the
5 requisite showing for general jurisdiction" and "reiterate[d] that
6 Brand ha[d] no offices or staff in California, [was] not registered
7 to do business in the state, ha[d] no registered agent for service
8 of process, and pa[id] no state taxes." *Id.* at 1225.

9 The level of activity rejected in *Mavrix* as insufficient to
10 make out a case for general jurisdiction is greater than that which
11 exists on the record before this Court. As in *Mavrix*, the Court
12 emphasizes that Defendant "is not licensed to perform professional
13 services in Oregon or in any other state in the United States,"
14 (Alcantara Decl. ¶ 4), and it "has no employees or offices located
15 within the United States." (Alcantara Decl. ¶ 4.) Plaintiff does
16 not dispute these facts, nor does he allege that Defendant has a
17 registered agent for service of process in Oregon or pays state
18 taxes. See *Levine v. Entrust Group, Inc.*, No. C 12-03959 WHA, 2013
19 WL 1320498, at *2 (N.D. Cal. Apr. 1, 2013) (making similar
20 observations in concluding that a defendant was not subject to
21 general jurisdiction in California). Indeed, the only apparent
22 contact with Oregon is the fortuitous hiring of Defendant by the
23 RTC in the Philippines in conjunction with litigation in that court
24 where one of the parties to the litigation at that time had an
25 Oregon office. Accordingly, Defendant's contacts with Oregon do
26 not justify the exercise of general jurisdiction.

27 ///

28 ///

1 **B. Specific Jurisdiction**

2 The Ninth Circuit applies a tripartite analysis to determine
 3 whether the exercise of specific jurisdiction over a non-resident
 4 is appropriate:

5 (1) [t]he non-resident defendant must purposefully direct
 6 his activities or consummate some transaction with the
 7 forum [state] or resident thereof; or perform some act by
 8 which he purposefully avails himself of the privilege of
 9 conducting activities in the forum [state], thereby
 10 invoking the benefits and protections of its laws;

11 (2) the claim must be one which arises out of or relates
 12 to the [non-resident] defendant's forum-related
 13 activities; and

14 (3) the exercise of jurisdiction must comport with fair
 15 play and substantial justice, i.e. it must be reasonable.

16 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d
 17 1416, 1421 (9th Cir. 1987)). "The plaintiff bears the burden of
 18 satisfying the first two prongs of the test. If the plaintiff
 19 fails to satisfy either of these prongs, personal jurisdiction is
 20 not established in the forum state." *Schwarzenegger*, 374 F.3d at
 21 802 (emphasis added).

22 The first prong of the specific jurisdiction test refers to
 23 both purposeful direction and purposeful availment. A purposeful
 24 availment analysis is most often used in suits sounding in
 25 contract, while a purposeful direction analysis is used in suits
 26 sounding in tort. *Schwarzenegger*, 374 F.3d at 802. In this case,
 27 the Court concludes that the purposeful direction analysis should
 28 be applied because the present suit sounds in tort. (Compl. at 1)
 (alleging claims for breach of fiduciary duty, negligence and
 fraud); *Ufrvaktsina v. Olden Group, LLC*, No. 10-6297-AA, 2011 WL
 5244697, at *7 (D. Or. Oct. 30, 2011) (fraud is a tort claim);
Regatta Bay Ltd. v. United States, 506 F. App'x 617, 618 (9th Cir.

1 2013) (breach of fiduciary duty is a tort claim); *Skanning v.*
2 *Sorensen*, No. 09-00364, 2009 WL 5449149, at *5 (D. Haw. Dec. 10,
3 2009) (negligence is a tort claim).

4 The three-part *Calder* effects test, taken from the Supreme
5 Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984), is used
6 by the Ninth Circuit to evaluate purposeful direction.
7 *Schwarzenegger*, 374 F.3d at 803. Under this test, "the defendant
8 allegedly must have (1) committed an intentional act, (2) expressly
9 aimed at the forum state, (3) causing harm that the defendant knows
10 is likely to be suffered in the forum state." *Yahoo! Inc.*, 433
11 F.3d at 1206 (internal quotation marks omitted).

12 **1. Intentional Act**

13 The Ninth Circuit "construe[s] 'intent' in the context of the
14 'intentional act' test as referring to an intent to perform an
15 actual, physical act in the real world, rather than an intent to
16 accomplish a result or consequence of that act." *Schwarzenegger*,
17 374 F.3d at 806. The "intentional act" element is easily satisfied
18 here. Defendant committed an intentional act when it produced the
19 audit report. *Cf. Bancroft*, 223 F.3d at 1088 (sending a letter was
20 an intentional act).

21 **2. Express Aiming**

22 The Ninth Circuit has held that *Calder* does not stand for the
23 "broad proposition" that "a foreign act with foreseeable effects in
24 the forum state always gives rise to specific jurisdiction,"
25 *Bancroft*, 223 F.3d at 1087; there must be "something more." *Id.*
26 That "something more" is "express aiming" at the forum state, which
27 "encompasses wrongful conduct individually targeting a known forum
28 resident." *Washington Shoe Co. v. A-Z Sporting Goods, Inc.*, 704

1 F.3d 668, 675 (9th Cir. 2012) (quoting *Bancroft*, 223 F.3d at
 2 1087)).

3 The dispute underlying this litigation commenced when FEMCO (a
 4 Delaware corporation licensed to perform work in the Philippines)
 5 brought an action for breach of contract against Bongar (a citizen
 6 of the Philippines that worked as a manager for FEMCO) in a
 7 Philippines-based court (the RTC) on May 17, 1995. (Pl.'s P. & A.
 8 [Docket 32-2] at 1.) Also in May 1995, while Plaintiff was
 9 residing in Maryland, it was decided that FEMCO would no longer
 10 maintain its principal place of business in Portland, Oregon.
 11 (Fischer Aff. [Docket No. 30-3] ¶¶ 3, 33, 37.) Sometime shortly
 12 thereafter, FEMCO's co-owners, Plaintiff and Fischer, mutually
 13 decided that Plaintiff and his family should move back to Portland,
 14 Oregon, where it would be easier for Plaintiff "to travel to and
 15 from Manila at any time while the court hearings [before the RTC]
 16 were scheduled almost on a month basis [beginning in] August 1995."
 17 (Fischer Aff. ¶ 34; Alcantara Decl. Ex. C at 9.)²

18 Several months later, by way of an engagement letter dated
 19 February 12, 1996, the RTC, with the approval of FEMCO and Bongar,
 20 hired [Defendant] as an independent auditor who pursuant
 21 to the directive of the RTC . . . were tasked to inspect
 22 the books and records of . . . FEMCO; verify the payments
 23 of Bongar for his purchase of 100 common shares of stock
 belonging to FEMCO's shareholders; and ascertain the
 sources of the funds used by Bongar in claiming his
 alleged payments to FEMCO for said purchase.

24 (Alcantara Decl. Ex. C [Docket No. 14-1] at 10; Pl.'s P. & A.
 25 [Docket No. 32-4] at 1.) Defendant submitted its audit report on
 26 January 22, 1997, and was paid a fee in the amount of

27
 28 ² Plaintiff moved from Oregon to Laurel, Maryland in 1988.
 (Pl.'s P. & A. [Docket 30-3] at 9.)

1 \$10,000—"which was equally shared between FEMCO and Bongar (with
 2 the stipulation that the losing party [would] reimburse the winning
 3 party for its share of the audit fee)." (Alcantara Decl. Ex. C at
 4 10.)

5 With this background in mind, the Court turns to Plaintiff's
 6 voluminous opposition papers. Taken together, Plaintiff has filed
 7 over 400 pages worth of single-spaced briefing, affidavits,
 8 exhibits and annexes in response to Defendant's motion to dismiss.³
 9 Plaintiff addresses the *Calder* effects test at page 9 of his sixth
 10 opposition to Defendant's motion to dismiss, where he argues that
 11 Defendant "engaged in a course of conduct that was designed to harm
 12 American investors . . . and to cause in the forum, USA." (Pl.'s
 13 P. & A. [Docket No. 29-1] at 9; Compl. at 15.) Plaintiff also
 14 claims that Bongar's conduct, which was "abetted and supported by
 15 [Defendant]'s false audit report," caused FEMCO to close "its
 16 operations in Portland, Oregon." (Pl.'s P. & A. at 10.)

17 All of this may be true, but there is no record evidence to
 18 support the conclusion that Defendant was individually targeting a
 19 known Oregon resident, as opposed to a resident of the United
 20 States. Indeed, Defendant was hired by the RTC in February 1996,
 21 several months after FEMCO decided to no longer maintain its
 22 principal place of business in Oregon. And Plaintiff does not
 23

24 ³ The Court acknowledges that, "[w]ithout prior Court
 25 approval, memoranda . . . may not exceed 11,000 words, or in the
 26 alternative, 35 pages." LR 7-2(b)(1). Nevertheless, the Court
 27 declines Defendant's request to "disregard the portion of the
 28 briefing that exceeds the permissible limits," (Def.'s Reply at 1),
 because (1) some of the additional material was helpful, (2)
 Plaintiff is appearing pro se, and (3) the Court believes
 Plaintiff's lack of compliance was a good-faith mistake.

1 allege that Defendant knew he had moved from Maryland to Oregon
2 during the time period of February 1996 (when Defendant was hired
3 by the RTC) through January 1997 (when Defendant issued its audit
4 report). This would seem to negate any possibility that
5 Defendant's "conduct and connection with the forum [s]tate are such
6 that [it] should [have] reasonably anticipate[d] being haled into
7 court []here." *World-Wide Volkswagen*, 444 U.S. at 297.

8 Plaintiff seeks to convince this Court otherwise by pointing
9 out that (1) from 1985 to early 2002, Defendant was a member firm
10 of Andersen Worldwide Societe Cooperative, which was also known as
11 Arthur Andersen Worldwide Organization ("AAW"); (2) Defendant is a
12 member of Ernst & Young Global ("EYG"); and (3) Plaintiff received
13 emails from Defendant in March and April 2000 in response to his
14 inquiries regarding proceedings in the RTC. This is of little
15 import because (1) Plaintiff was living in Vancouver, Washington at
16 the time the emails were received, (Fischer Aff. ¶ 36), (2)
17 Defendant remained a separate and autonomous legal entity during
18 its time as a member firm of AAW and EYG, (Alcantara Supp. Decl. ¶¶
19 5-6; Phillips Decl. Ex. A at 3), and (3) AAW and EYG are
20 coordinating bodies that do not manage, control or govern the
21 conduct or affairs of any of their member firms, (Alcantara Supp.
22 Decl. ¶¶ 5-6; Phillips Decl. Ex. A at 3). See *Goh v. Baldor Elec.*
23 Co., No. 3:98-MC-064-T, 1999 WL 20943, at *3 (N.D. Tex. Jan. 13,
24 1999) ("Other than shared membership in the common association of
25 Ernst & Young International, Ernst & Young LLP, Ernst & Young
26 Singapore, and Ernst & Young Thailand are separate entities."); see
27 also *Nasser v. Andersen Worldwide Societe Co-op.*, 2003 WL 22179008,
28 at *1 n.1 (S.D.N.Y. Sept. 23, 2003) (explaining that AAW "was

1 created to coordinate the professional practices of the separate
 2 national practice entities that were affiliates of Arthur Andersen
 3 & Co. Each national practice was to be kept separate, autonomous,
 4 and [AAW] did not earn net income, nor did it engage in
 5 professional practice.")

6 In summary, the Court concludes that Defendant's conduct was
 7 not expressly aimed at a known Oregon resident. See
 8 *Schwarzenegger*, 374 F.3d at 805 (explaining that even "[t]he mere
 9 fact that [the defendant] can 'foresee' that the [challenged
 10 conduct] will . . . have an effect in [the forum state] is not
 11 sufficient for an assertion of [specific] jurisdiction." (quoting
 12 *Calder*, 365 U.S. at 789)). Because Plaintiff failed to sustain his
 13 burden with respect to the second part of the *Calder* effects test,
 14 the Court need not reach the third part of the test.
 15 *Schwarzenegger*, 374 F.3d at 807 n.1. Nor does it need to address
 16 the remaining two prongs of the three-part specific jurisdiction
 17 analysis. See *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th
 18 Cir. 2006) ("[Plaintiff's] arguments fail under the first prong.
 19 Accordingly, we need not address [the remaining two prongs].")

20 **IV. CONCLUSION**

21 For the reasons stated, Defendant's motion (Docket No. 11) to
 22 dismiss should be granted on the grounds that Plaintiff has
 23 established neither general, nor specific jurisdiction over
 24 Defendant in Oregon.⁴

25
 26 ⁴ While this decision was pending, Plaintiff inquired about
 27 submitting documents indicating the results from an appeal in the
 28 Philippine court system that he alleges has been successful.
 Having already filed several responses to Defendant's motion to
 dismiss, and there being no likelihood an appeal of the action in

V. SCHEDULING ORDER

2 The Findings and Recommendation will be referred to a district
3 judge. Objections, if any, are due **September 3, 2013**. If no
4 objections are filed, then the Findings and Recommendation will go
5 under advisement on that date. If objections are filed, then a
6 response is due **September 20, 2013**. When the response is due or
7 filed, whichever date is earlier, the Findings and Recommendation
8 will go under advisement.

Dated this 14th day of August, 2013.

/s/ Dennis J. Hubel

DENNIS J. HUBEL
United States Magistrate Judge

the Philippines will change any of the facts for jurisdictional purposes, no further documents may be filed on this issue.