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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NATIONWIDE AGRIBUSINESS  
INSURANCE COMPANY; and  
D'ARRIGO BROS. CO. OF  
CALIFORNIA,  
  
Plaintiffs,  
  
v.  
  
YUMA COUNTY WATER USERS  
ASSOCIATION; and DOES 1 through 10,  
Inclusive,  
  
Defendants.

Case No.: 21-CV-78 JLS (AGS)  
  
**ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS  
PLAINTIFFS' FIRST AMENDED  
COMPLAINT FOR LACK OF  
PERSONAL JURISDICTION**  
  
(ECF No. 8)

Presently before the Court is Defendant Yuma County Water Users Association's ("Defendant") Motion to Dismiss Plaintiffs' First Amended Complaint ("Mot.," ECF No. 8), as well as Plaintiffs Nationwide Agribusiness Insurance Company ("Nationwide") and D'Arrigo Bros. Co. of California's ("D'Arrigo Bros.") (collectively, "Plaintiffs") Opposition thereto ("Opp'n," ECF No. 12) and Defendant's Reply in support thereof ("Reply," ECF No. 13). The Court took the matter under submission without oral argument pursuant to Civil Local Rule 7.1(d)(1). See ECF No. 14. Having carefully reviewed Plaintiffs' First Amended Complaint ("FAC," ECF No. 6), the Parties' arguments, and the law, the Court **GRANTS** the Motion.

## BACKGROUND

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2 D'Arrigo Bros. is a grower and packer of vegetables, incorporated and with its  
3 principal place of business in California. FAC ¶ 3; ECF No. 1 ("Removal"). Nationwide,  
4 incorporated and with its principal place of business in Iowa, issued an insurance policy to  
5 D'Arrigo Bros. FAC ¶ 2; Removal ¶ 6. Defendant is an Arizona corporation with its  
6 principal place of business in Arizona. Removal ¶ 8. However, Defendant gets its water  
7 from California and owns and operates physical assets within the state. FAC ¶ 6.  
8 Defendant's canal system provides irrigation to agricultural users in Yuma County,  
9 Arizona. *See* Mot at 1; ECF No. 7 ("Davis Decl.").

10 On or about September 24, 2017, Defendant allegedly sprayed herbicide in its  
11 irrigation canal near D'Arrigo Bros.' property in Yuma County, Arizona. *See* ECF No. 7  
12 ("Request for Judicial Notice").<sup>1</sup> The herbicide allegedly stunted D'Arrigo Bros.'  
13 cauliflower, causing the crop to not grow properly. FAC ¶ 12. Specifically, according to  
14 Plaintiffs, the contamination from the herbicide killed 36.7 acres of cauliflower on  
15 D'Arrigo Bros' property. *Id.* ¶ 17. This allegedly drove D'Arrigo Bros. to purchase  
16 replacement cauliflower to deliver to its customers in order to meet its contractual  
17 obligations. *Id.* ¶ 18.

18 As a result of the damage to the cauliflower, Nationwide paid D'Arrigo Bros. for the  
19 damage it sustained. *Id.* ¶ 20. D'Arrigo Bros. thereafter subrogated to Nationwide all  
20 rights, claims, and interests it may have against the party responsible for causing the  
21 reimbursed damages resulting from the death of the cauliflower. *Id.* ¶ 21. All told,  
22 Plaintiffs allege damages of at least \$573,000. *Id.* ¶ 22.

23 Plaintiffs initially filed an action in Yuma County, Arizona, based on the same  
24 allegations in the complaint. *See* Request for Judicial Notice Ex. D, ECF No. 7-1. After  
25 Plaintiffs voluntarily dismissed that action, *see* Opp'n at 15, they filed the present action  
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27 <sup>1</sup> In their Complaint, Plaintiffs do not state where D'Arrigo Bros.' property is located. *See generally* FAC.  
28 The Court takes judicial notice that the property at issue is located in Arizona. *See* Request for Judicial  
Notice Ex. A ¶ 12, ECF No. 7-1.

1 in the Superior Court of California for the County of Imperial on December 14, 2020.  
2 Removal ¶ 1. On January 13, 2021, Defendant removed the present action to this Court on  
3 the basis of diversity of citizenship. *See generally id.* Plaintiffs assert four causes of action  
4 against Defendant: (1) negligence; (2) negligence per se; (3) strict liability for ultra-  
5 hazardous activity; and (4) takings. *See generally* FAC. On February 10, 2021, Defendant  
6 filed the instant Motion. *See* Mot.

### 7 LEGAL STANDARD

8 Federal Rule of Civil Procedure 12(b)(2) allows a district court to dismiss an action  
9 for lack of personal jurisdiction. “Where defendants move to dismiss a complaint for lack  
10 of personal jurisdiction, plaintiffs bear the burden of demonstrating that jurisdiction is  
11 appropriate.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). “The court  
12 may consider evidence presented in affidavits to assist in its determination and may order  
13 discovery on the jurisdictional issues.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir.  
14 2001) (citing *Data Disc. Inc. v. Sys. Tech. Ass’n, Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977)).  
15 “When a district court acts on the defendant’s motion to dismiss without holding an  
16 evidentiary hearing, the plaintiff need make only a prima facie showing of jurisdictional  
17 facts to withstand” the motion. *Id.* (citing *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir.  
18 1995)); *see also Data Disc*, 557 F.2d at 1285 (“[I]t is necessary only for [the plaintiff] to  
19 demonstrate facts which support a finding of jurisdiction in order to avoid a motion to  
20 dismiss.”).

21 “Unless directly contravened, [the plaintiff’s] version of the facts is taken as true,  
22 and ‘conflicts between the facts contained in the parties’ affidavits must be resolved in [the  
23 plaintiff’s] favor for purposes of deciding whether a prima facie case for personal  
24 jurisdiction exists.” *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328  
25 F.3d 1122, 1129 (9th Cir. 2003) (citing *Doe*, 248 F.3d at 922); *see also Bancroft & Masters,*  
26 *Inc. v. Augusta Nat’l, Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000). However, a court “may  
27 not assume the truth of allegations in a pleading which are contradicted by affidavit.”

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1 *Alexander v. Circus Enters., Inc.*, 972 F.2d 261, 262 (9th Cir. 1992) (citations and internal  
2 quotation marks omitted).

3 California’s long-arm jurisdictional statute permits the exercise of personal  
4 jurisdiction so long as it comports with federal due process. *See* Cal. Civ. Proc. Code  
5 § 410.10; *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01 (9th Cir.  
6 2004). “For a court to exercise personal jurisdiction over a nonresident defendant, that  
7 defendant must have at least ‘minimum contacts’ with the relevant forum such that the  
8 exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial  
9 justice.’” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v. Washington*, 326  
10 U.S. 310, 316 (1945) (internal quotation marks omitted)). Under the minimum contacts  
11 test, jurisdiction can be either “general” or “specific.” *Doe*, 248 F.3d at 923. If a defendant  
12 has sufficient minimum contacts for the court to exercise personal jurisdiction over him,  
13 the exercise of such jurisdiction must also be reasonable. *Asahi Metal Indus. Co. v. Super.*  
14 *Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 113 (1987).

## 15 ANALYSIS

16 Defendant argues that the Court cannot exercise specific or general jurisdiction over  
17 it. Mot. at 3–7. Because personal jurisdiction is dispositive here, the Court only addresses  
18 this specific issue.<sup>2</sup>

### 19 I. Specific Jurisdiction

20 “Because California’s long-arm statute is coextensive with federal due process  
21 requirements, the jurisdictional analyses under state law and federal due process are the  
22 same.” *Schwarzenegger*, 374 F.3d at 800–01 (citing *Panavision Int’l, L.P. v. Toeppen*, 141

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27 <sup>2</sup> Alternatively, Defendant contends that Plaintiffs’ First Amended Complaint should be dismissed (1)  
28 because it is time-barred by A.R.S. § 12-524(3); (2) under the doctrine of *forum non conveniens*; (3) under  
the doctrine of judicial estoppel; or (4) regarding Plaintiffs’ fourth cause of action, because Defendant is  
not a governmental entity. Mot. at 10, 14, 16.

1 F.3d 1316, 1320 (9th Cir. 1998)). To determine whether specific jurisdiction exists, the  
2 Ninth Circuit has developed a three-prong test:

3 (1) The non-resident defendant must purposefully direct his  
4 activities or consummate some transaction with the forum or  
5 resident thereof; or perform some act by which he purposefully  
6 avails himself to the privilege of conducting activities in the  
7 forum, thereby invoking the benefits and protections of its laws;

8 (2) the claim must be one which arises out of or relates to the  
9 defendant's forum-related activities; and

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

12 *Id.* at 802 (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987)). Plaintiffs bear the  
13 burden of satisfying the first two prongs of the test. *Id.* (citing *Sher v. Johnson*, 911 F.2d  
14 1357, 1361 (9th Cir. 1990)).

15 Defendant seemingly does not dispute it has purposefully directed its activities  
16 towards California. *See* Mot. at 3–4.<sup>3</sup> As Plaintiffs point out, “[Defendant] owns and  
17 operates physical assets and power plants in California,” and uses this infrastructure to  
18 promote its business activities in Arizona. Opp’n at 7. Given that Defendant does not  
19 contend otherwise, the Court finds the first prong of the test satisfied. *See Schwarzenegger*,  
20 373 F.3d at 803 (“A showing that a defendant purposefully directed his conduct towards a  
21 forum state . . . usually consists of evidence of the defendant’s actions outside the forum  
22 state that are directed at the forum.” (citing *Keaton v. Hustler Magazine, Inc.*, 465 U.S.  
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24 <sup>3</sup> As the Ninth Circuit has made clear, purposeful availment and purposeful direction represent “two  
25 distinct concepts.” *Schwarzenegger*, 373 F.3d at 802. A purposeful availment analysis is used for suits  
26 sounding in contract, while a purposeful direction analysis is used for suits sounding in tort. *Id.* (citations  
27 omitted). “At bottom, [however,] both purposeful availment and purposeful direction ask whether  
28 defendants have voluntarily received some benefit from their interstate activities such that they ‘will not  
be haled into a jurisdiction solely as a result of “random,” “fortuitous,” or “attenuated” contacts.’” *Global  
Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020)  
(quoting *Burger King Corp v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)).

1 770, 774–75 (1984))). Likewise, Defendant does not appear to argue it would be  
2 unreasonable to subject it to jurisdiction in California. *See* Mot. at 3–4.<sup>4</sup>

3 Rather, the Parties’ main point of contention focuses on whether Plaintiffs’ claims  
4 arise out of or relate to Defendant’s California-related conduct. Defendant argues that the  
5 events giving rise to this dispute occurred entirely within Arizona, so specific jurisdiction  
6 cannot exist. Mot. at 4. Plaintiffs, on the other hand, contend that although Defendant  
7 sprayed the herbicide in Arizona, the chemicals later contaminated water from California  
8 that D’Arrigo Bros. uses for irrigating crops. Opp’n at 7. Plaintiffs further argue that  
9 “[Defendant] provides California water to agricultural industries . . . , and [Defendant]  
10 could not do so but for its taking of California water.” *Id.* (citations omitted). Thus,  
11 according to Plaintiffs, Defendant’s conduct in California is “inexorably link[ed]” to the  
12 injury Plaintiffs suffered. *Id.*

13 The question, then, is whether Plaintiffs’ claims “arise out of or relate to  
14 [Defendant’s] contacts with the forum.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*,  
15 141 S. Ct. 1017, 1026 (2021) (emphasis removed) (quoting *Bristol-Myers Squibb Co. v.*  
16 *Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1780 (2017)).<sup>5</sup> “The first half of the standard  
17 asks about causation, but the back half, after the ‘or,’ contemplates that some relationships  
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19 <sup>4</sup> Once a plaintiff satisfies the first two prongs of this test, the burden shifts to the defendant to demonstrate  
20 that exercising specific jurisdiction over it would be unreasonable. *See Schwarzenegger*, 373 F.3d at 802.  
21 To do so, the defendant must “present a compelling case.” *Id.* (citing *Burger King*, 471 U.S. at 476–78).  
However, for the reasons provided *infra*, Plaintiffs cannot satisfy the second prong of this test.

22 <sup>5</sup> Courts within the Ninth Circuit have traditionally applied a “but for” test to determine whether a claim  
23 “arises out of or relates to” a defendant’s contacts with a forum. *See, e.g., Henderson v. United Student*  
24 *Aid Funds, Inc.*, No. 13-CV-1845 JLS (BLM), 2015 WL 12658485, at \*4 (S.D. Cal. Apr. 8, 2015);  
25 *Notorious B.I.G. LLC v. Hutson*, No. 14-02415 SJO (JCx), 2014 WL 12589626, at \*4 (C.D. Cal. July 3,  
26 2014). However, the Supreme Court in *Ford* held that proof of causation is not required to determine  
27 whether specific jurisdiction exists. 141 S. Ct. at 1026. Some courts within the Ninth Circuit have  
28 interpreted this to mean that the traditional “but for” test is too narrow. *See James Lee Constr., Inc. v.*  
*Gov’t Emps. Ins. Co.*, No CV 20-68-M-DWM, 2021 WL 1139876, at \*2 (D. Mont. Mar. 25, 2021) (“[A]s  
the Supreme Court just made clear, such a ‘causation-only approach’ improperly narrows the inquiry.”);  
*Clarke v. Dutton Harris & Co., PLLC*, No. 2:20-cv-00160-JAD-BNW, 2021 WL 1225881, at \*4 (D. Nev.  
Mar. 31, 2021) (“[T]he Supreme Court appears to have recently done away with [the ‘but for’]  
approach.”).

1 will support jurisdiction without a causal showing.” *Id.* Nevertheless, “the phrase ‘relate  
2 to’ incorporates real limits, as it must adequately protect defendants foreign to a forum.”  
3 *Id.*

4 The Court finds that Plaintiffs’ claims do not “arise out of” Defendant’s contacts  
5 with California. Rather, they all arise out of one discrete event in Arizona—Defendant  
6 allegedly spraying herbicide in a ditch near Garvin Ranch, Arizona. *See generally* FAC.  
7 Additionally, as Defendant points out, Plaintiffs do not allege that Defendant’s “California-  
8 based infrastructure played any role in this incident.” Reply at 4.<sup>6</sup> These facts do not  
9 support personal jurisdiction. *See In re W. States Wholesale Natural Gas Antitrust Litig.*,  
10 715 F.3d 716, 742 (9th Cir. 2013) (“[A] lawsuit arises out of a defendant’s contacts with  
11 the forum state if a *direct nexus* exists between those contacts and the cause of action.”  
12 (emphasis added) (citations omitted)). Nor can it be said that Plaintiffs’ claims “relate to”  
13 Defendant’s contacts within California. Instead, all of Plaintiffs’ claims relate to  
14 Defendant’s activity in Arizona. *See generally* FAC. Again, specific jurisdiction cannot  
15 exist on this basis. *See Williams v. Praetorian Ins. Co.*, No. 3:20-cv-04766-WHO, 2021  
16 WL 2383329, at \*3 (N.D. Cal. June 10, 2021) (“The second prong . . . require[s] ‘an  
17 affiliation between the forum and the underlying controversy, principally, an activity or an  
18 occurrence that takes place in the forum State and is therefore subject to the State’s  
19 regulations.’” (quoting *Ford*, 141 S. Ct. at 1025–26)).

20 In sum, the Court cannot exercise specific jurisdiction over Defendant because  
21 Plaintiffs’ claims do not “arise out of or relate to” Defendant’s California contacts. The  
22 Court therefore turns to analyze whether it can exercise general jurisdiction over  
23 Defendant.

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26 <sup>6</sup> Defendant also contends that Plaintiffs’ claims do not arise out of or relate to its California contacts  
27 because “[t]he Colorado River is not California water,” but rather “a natural resource, controlled by the  
28 United States.” Reply at 7 (emphasis omitted) (citing *Arizona v. California*, 547 U.S. 150, 153 (2006)).  
Because the Court finds Plaintiffs’ specific jurisdiction arguments unpersuasive for other reasons, it  
declines to reach this argument.

## 1 II. General Jurisdiction

2 “With respect to a corporation, the place of incorporation and principal place of  
3 business are paradigm[m] . . . bases for general jurisdiction.” *Daimler AG v. Bauman*, 571  
4 U.S. 117, 137 (2014) (citations omitted) (internal quotation marks omitted). A corporation  
5 being “engage[d] in a substantial, continuous, and systematic course of business” in a state  
6 does not necessarily subject it to general jurisdiction. *Id.* Rather, the question is whether  
7 a “corporation’s affiliations with the State are so continuous and systematic as to render  
8 [it] essentially at home in the forum State.” *Id.* at 138–39 (quoting *Goodyear Dunlop Tires*  
9 *Operations v. Brown*, 564 U.S. 915, 919 (2011)). However, “in an exceptional case, . . . a  
10 corporation’s operations in a forum other than its formal place of incorporation or principal  
11 place of business may be so substantial and of such a nature as to render the corporation at  
12 home in that State.” *Id.* at 139 n.19.

13 Defendant points out that it is not incorporated in California, and that all its executive  
14 officers “who direct, control, and coordinate [its] activities are . . . located in Arizona.”  
15 Mot. at 6.<sup>7</sup> Defendant further argues that its contacts with California are not so “substantial  
16 or unique” so as to subject it to general jurisdiction. Mot. at 7. Plaintiffs, meanwhile,  
17 contend that Defendant has “significant operations” in California, and that *Daimler AG* is  
18 distinguishable. Opp’n at 8–9. Plaintiffs further argue that subjecting Defendant to general  
19 jurisdiction in California “would not upset jurisprudence or open the floodgates of  
20 litigation.” *Id.* at 9.

21 Plaintiffs’ argument seems to conflate specific jurisdiction and general jurisdiction.  
22 For the general jurisdiction analysis, a corporation’s “substantial, continuous, and  
23 systematic” presence in a forum does not necessarily subject it to general jurisdiction.  
24 *Daimler AG*, 571 U.S. at 138. The question is rather whether the corporation can be said  
25 to be “at home” in the forum. *See id.* at 137. Nevertheless, Plaintiffs appear to contend  
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28 <sup>7</sup> A corporation’s principal place of business is the “place where [its] officers direct, control, and  
coordinate the corporation’s activities.” *Hertz Corp v. Friend*, 559 U.S. 77, 92–93 (2010).



1 that exceptional circumstances exist because Defendant “operate[s] significant physical  
2 assets” in California. Opp’n at 8. But the Supreme Court in *BNSF Ry. Co. v. Tyrell*, 137  
3 S. Ct. 1549 (2017), rejected a similar argument, noting that although the defendant had  
4 “over 2,000 miles of railroad track and more than 2,000 employees” in the forum state, this  
5 did not suffice to subject it to general jurisdiction. *Id.* at 1559. In reaching this conclusion,  
6 the Supreme Court recognized that the general jurisdiction analysis “calls for an appraisal  
7 of a corporation’s activities in their entirety.” *Id.* (quoting *Daimler AG*, 571 U.S. at 139  
8 n.20). Engaging in such an appraisal, the Supreme Court found the defendant was not “so  
9 heavily engaged in activity in [the forum state] ‘as to render [it] essentially at home’ in that  
10 State.” *Id.* (quoting *Daimler AG*, 571 U.S. at 139). Here, Defendant points out that the  
11 “vast majority” of its operations occur in Arizona and all its customers are located in  
12 Arizona. Reply at 10. Additionally, Defendant does not regularly conduct any type of  
13 business in California. *See* Davis Decl. ¶ 4. Thus, like *Tyrell*, Defendant’s operations in  
14 California cannot be said to “render [it] essentially at home in [California].” *Daimler AG*,  
15 571 U.S. at 139 (quoting *Goodyear*, 564 U.S. at 919).

16 The Court also disagrees with Plaintiffs’ contention that subjecting Defendant to  
17 general jurisdiction based on its contacts with California “would not upset jurisprudence  
18 or open the floodgates of litigation.” Opp’n at 9. First, the Supreme Court has expressly  
19 held that continuous and systematic contacts with a forum do not alone subject a  
20 corporation to general jurisdiction. *See Daimler AG*, 571 U.S. at 138. To hold otherwise  
21 would fly in the face of Supreme Court precedent. Moreover, to hold that a corporation’s  
22 operations within a forum automatically subject it to general jurisdiction would effectively  
23 eliminate the specific jurisdiction requirement that claims “arise out of or relate to” a  
24 corporation’s contacts with a forum. *See Bristol-Myers Squibb*, 137 S. Ct. at 1781. Rather,  
25 a corporation would be subject to personal jurisdiction wherever it conducted business—  
26 regardless of whether the claims arose out of its contacts. *See generally Daimler AG*, 571  
27 U.S. at 139 n.20 (“A corporation that operates in many places can scarcely be deemed at  
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1 home in all of them. Otherwise, ‘at home’ would be synonymous with ‘doing business’  
2 tests framed before specific jurisdiction evolved in the United States.”).

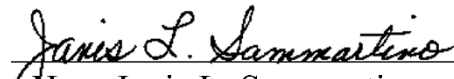
3 In sum, the Court finds that Defendant is not “at home” in California. Nor is this an  
4 “exceptional case.” Defendant is thus not subject to general jurisdiction in California.

5 **CONCLUSION**

6 In light of the foregoing, the Court **GRANTS** Defendant’s Motion to Dismiss  
7 Plaintiffs’ First Amended Complaint (ECF No. 8) and **DISMISSES WITHOUT**  
8 **PREJUDICE** Plaintiffs’ First Amended Complaint. Plaintiffs may file an amended  
9 complaint within thirty (30) days of the date on which this Order is electronically docketed.

10 **IT IS SO ORDERED.**

11 Dated: August 16, 2021

  
12 Hon. Janis L. Sammartino  
13 United States District Judge  
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