

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

4 Smart Rain Systems, LLC,

5 Plaintiff

6 v.

7 Röhren –und Pumpenwerk Bauer Ges.m.b.H.,
8 et al.,

9 Defendants

Case No. 2:22-cv-00232-CDS-EJY

Order Granting Defendants'
Motions to Dismiss

[ECF Nos. 41, 42]

10 Plaintiff Smart Rain Systems, LLC brings this trademark infringement action, and related
11 claims for relief, against defendants Röhren –und Pumpenwerk Bauer Ges.m.b.H. (GmbH), an
12 Austrian LLC, and Bauer North America, Inc. (Bauer NA), an Indiana based corporation. Smart
13 Rain alleges that GmbH and Bauer NA unlawfully used Smart Rain's exclusively owned, federal
14 trademarks ("the trademarks") to advertise Bauer NA's competing products and services on
15 three separate occasions. *See generally* Complaint, ECF No. 1 at ¶¶ 24, 27–28. As relevant here, the
16 complaint alleges that one of those occasions was at an irrigation association convention in Las
17 Vegas, Nevada that occurred between December 2 and December 6, 2019. *Id.* ¶ 24. Both
18 defendants move to dismiss the complaint, arguing that they are improperly grouped together,
19 and that the complaint fails to allege personal jurisdiction or state a claim. *See generally* ECF Nos.
20 41, 42. Smart Rain opposes the motions, arguing that they should be denied because the court in
21 fact has personal jurisdiction over the parties, and further that Smart Rain has stated plausible
22 claims for Federal Trademark violations against each defendant. *See generally* ECF No. 50. The
23 motions are fully briefed. *See* ECF Nos. 50, 51, 52. For the reasons set forth herein, I grant both
24 motions and dismiss the complaint without prejudice and with leave to amend.

1 **I. Background**

2 As set forth in the complaint, Smart Rain is a Utah based company that “provides a wide
3 variety of innovative goods and services relating to agricultural irrigation systems, including but
4 not limited to, electrical controls for irrigation systems, advisory services pertaining to water
5 usage by commercial and residential irrigation systems, installation and maintenance services
6 for commercial and residential irrigation systems, and online and downloadable software for
7 controlling irrigation systems.” ECF No. 1 at ¶¶ 1, 13. Smart Rain alleges that over the past ten
8 years, it has been awarded several patents based on its innovations in the irrigation industry,
9 and that it is the exclusive owner of several federally registered trademarks.¹ *Id.* at ¶¶ 13–14.
10 Smart Rain further alleges that its innovation and significant investment in its company,
11 including the trademarks, has developed Smart Rain’s “substantial recognition and goodwill in
12 the United States” for goods and services it provides in connection with the trademarks. *Id.* at
13 15–16.

14 Smart Rain alleges that defendants are also in the business of providing goods and
15 services related to agricultural irrigation. *See generally id.* at ¶ 17. Smart Rain further alleges that in
16 April 2016, it was contacted by Bauer NA’s counsel, seeking Smart Rain’s consent to register
17 “SMARTRAIN” in connection with agricultural irrigation systems for Bauer NA.² *Id.* at ¶ 19.
18 Smart Rain advised that it opposed any such attempt, citing its rights under its U.S. trademarks.
19 *Id.* at ¶¶ 20–21. But Smart Rain did offer Bauer NA the opportunity to license its mark for a
20 yearly fee. *Id.* Bauer NA declined the licensing offer. *Id.* at ¶¶ 21, 23. Smart Rain further alleges
21 that after twice declining the licensing offer, Bauer NA used Smart Rain’s trademarks, including
22 the trademark associated with its logo, without Smart Rain’s consent in the United States at a
23 convention in Las Vegas, Nevada between December 2–9, 2019. *Id.* at ¶ 24; *see also* Ex. B, ECF No.
24 1-2 (pictures of alleged unauthorized use of Smart Rain’s trademarks).

25
26 ¹ The United States registered trademarks are identified as Nos. 4,422,647 and 6,268,132, and No.
5,288,810. ECF No. 1 at ¶ 14.

² It is unclear from the face of the complaint if Smart Rain is referring to Bauer NA or GmbH. *See id.*

1 Following the Las Vegas convention, Smart Rain sent GmbH's counsel a cease-and-
2 desist letter.³ *Id.* at ¶ 25; *see also* Ex. C, Letter, ECF No. 1-3. As alleged in the complaint, GmbH's
3 counsel responded by stating that Bauer NA "has no intentions to use the SMART RAIN mark
4 in the United States," that Bauer NA has "no intentions to infringe nor use the SMART RAIN
5 mark in the United States," and that Bauer NA's use of the Asserted Marks was "a mistake." *Id.* at
6 ¶ 26. Smart Rain contends that after receiving that communication, Bauer NA again used Smart
7 Rain's trademarks to advertise its competing products and services at an irrigation association
8 convention in San Diego, California on December 9, 2021. *Id.* at ¶ 27; *see also* Ex. D, ECF No. 1-4
9 (pictures of alleged unauthorized use of Smart Rain's trademarks).

10 The complaint also alleges that Bauer NA⁴ uses the Smart Rain "mark" on its website to
11 advertise its goods and services in the United States. *Id.* at ¶ 28; *see also* Ex. E, Website
12 screenshot, ECF No. 1-5. Smart Rain contends that defendants' use of the trademarks in
13 connection with marketing and advertising, and at conventions in the United States "creates
14 confusion" regarding the source of defendants' goods and services, misleads consumers to believe
15 that defendants' products are authorized by Smart Rain, and that defendants' actions have
16 caused injury to Smart Rain. *Id.* at ¶¶ 30, 32-33. As a result, Smart Rain brings this federal and
17 state law trademark action, seeking an order enjoining defendants from further trademark
18 infringement and damages. *See generally id.* at 9-10.

19 II. Discussion

20 As a court of limited jurisdiction, I must first resolve the issues of jurisdiction. Both
21 defendants contend that this court lacks general and specific jurisdiction over them. *See generally*
22 ECF Nos. 41, 42. Smart Rain avers that this court has both general and specific jurisdiction over
23

24 ³ The court assumes the letter was sent to GmbH's counsel as part of the address is redacted from the
25 letter attached to the complaint as an exhibit. *See* ECF No. 1-3 at 2. The first paragraph of the letter,
26 however, addresses a previous discussion with its client "Pumpenwerk Bauer Ges.m.b.H." *Id.*

⁴ Again, the complaint does not state which defendant utilized the trademark on the website referenced
in the complaint, and it is unclear from the screenshots included as exhibits to the complaint. *See* ECF
No. 1-5 (screenshots).

1 defendants, arguing that Bauer NA’s attendance and conduct at the Las Vegas trade show in
2 2019 subjects it to specific personal jurisdiction in Nevada, especially given defendants’
3 “conscious choice to attend the convention...in Las Vegas” and that Bauer NA intentionally used
4 Smart Rain’s mark at the Las Vegas convention “knowing it lacked permission to do so.” ECF
5 No. 50 at 7. Smart Rain further argues that GmbH is subject to specific personal jurisdiction in
6 this court because the actions of Bauer NA, its subsidiary, are attributable to it, and that Bauer
7 NA’s conduct at the Las Vegas convention is imputed to GmbH because: (1) Bauer NA is the
8 company’s U.S. agent, and (2) Bauer NA provides its products to customers in North America.
9 *Id.* at 9–10. Finally, Smart Rain argues that Bauer NA’s argument that its website is “passive”
10 fails, and that limited jurisdictional discovery is required to determine if the defendants
11 “delivered any products bearing [the trademarks] to Nevada.” *Id.* at 10–12.

12 “Personal jurisdiction must exist for each claim asserted against a defendant.” *Action*
13 *Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004) (citing *Data Disc., Inc. v.*
14 *Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1289 n.8 (9th Cir. 1977)). “When a defendant moves to
15 dismiss for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the
16 court has jurisdiction.” *Learjet, Inc. v. Oneok, Inc. (In re W. States Wholesale Natural Gas Antitrust Litig.)*,
17 715 F.3d 716, 741 (9th Cir. 2013) *aff’d sub nom. Oneok, Inc. v. Learjet, Inc.*, 575 U.S. 373 (2015). In cases
18 where the motion is based on written materials rather than an evidentiary hearing, the plaintiff
19 need only make “a prima facie showing of jurisdictional facts to withstand the motion to
20 dismiss.” *Bryton Purcell LLP v. Recordon & Recordon*, 575 F.3d 981, 985 (9th Cir. 2009). In such a
21 case, “we only inquire into whether [the plaintiff’s] pleadings and affidavits make a prima facie
22 showing of personal jurisdiction.” *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 128 (9th Cir.
23 1995). On a prima facie showing, the court resolves all contested facts in favor of the non-moving
24 party. *Oneok*, 715 F.3d at 741; *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
25 1996) (if conflicted facts are contained in the parties’ affidavits, the facts must be resolved in
26

1 favor of the plaintiff for purposes of determining whether a prima facie case of personal
2 jurisdiction has been established).

3 A plaintiff may not simply rest on the “bare allegations of [the] complaint.” *Schwarzenegger*
4 *v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting *Amba Mktg. Sys., Inc. v. Jobar Int’l,*
5 *Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). If the defendant presents evidence to contradict the
6 allegations in the complaint, the plaintiff must go beyond the pleadings and present affirmative
7 proof of personal jurisdiction through affidavits and/or declarations. *See AT & T Co.*, 94 F.3d at
8 588; *accord Caruth*, 59 F.3d at 127–28 (absent an evidentiary hearing, this court “only inquire[s]
9 into whether [the plaintiff’s] pleadings and affidavits make a prima facie showing of personal
10 jurisdiction.”).

11 Where, as in this case, “no federal statute authorizes personal jurisdiction, the district
12 court applies the law of the state in which the court sits.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
13 F.3d 1218, 1223 (9th Cir. 2011) (citations omitted). Nevada’s long-arm statute, set forth at Nev.
14 Rev. Stat. § 14.065, coincides with federal due process requirements. Those requirements
15 mandate that nonresident defendants have “minimum contacts” with Nevada “such that the
16 maintenance of the suit does not offend traditional notions of fair play and substantial
17 justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks and citation
18 omitted). Personal jurisdiction can be either “general” or “specific.” *See Helicopteros Nacionales de*
19 *Colombia v. Hall*, 466 U.S. 408, 415–16 (1984).

20 When, as is the case here, there are multiple defendants, “[t]he jurisdictional inquiry
21 must decouple defendants, considering whether each individual defendant has had sufficient
22 ‘minimum contacts’ with the forum state to justify an exercise of jurisdiction.” *Burri Law PA v.*
23 *Skurla*, 35 F.4th 1207, 1213 (9th Cir. 2022). And, like here, in cases involving related business
24 entities, “a parent-subsidiary relationship is insufficient, on its own, to justify imputing one
25 entity’s contacts with a forum state to another for the purpose of establishing personal
26 jurisdiction.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015). In fact, the Ninth Circuit

1 holds that “corporate separateness insulates a parent corporation from liability created by its
2 subsidiary.” *Id.*

3 Herein lies the first issue with this case. Smart Rain improperly groups both Bauer NA
4 and GmbH together in the complaint, making it difficult for this court to decipher which
5 allegations are directed at which defendant. This alone is grounds to grant defendants’ motions
6 to dismiss. But, as discussed further below, even if the court separates defendants and considers
7 the allegations as if alleged against both defendants, the allegations are insufficient to find either
8 general or specific personal jurisdiction over either.

9 **A. There are insufficient allegations to exercise general jurisdiction over**
10 **defendants.**

11 General personal jurisdiction is premised on a defendant’s relationship to the forum
12 state. *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1024 (2021) (citation
13 omitted). The defendant must engage in “continuous and systematic general business contacts,”
14 *Hall*, 466 U.S. at 416, that “approximate physical presence” in the forum state. *Bancroft & Masters,*
15 *Inc. v. Augusta Nat., Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). “The standard is met only by
16 ‘continuous corporate operations within a state [that are] thought so substantial and of such a
17 nature as to justify suit against [the defendant] on causes of action arising from dealings entirely
18 distinct from those activities.’” *King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 579 (9th Cir. 2011)
19 (quoting *Int’l Shoe*, 326 U.S. at 318). When determining if a nonresident defendant’s contacts are
20 sufficiently substantial, continuous, and systematic, courts evaluate several factors including
21 their “[l]ongevity, continuity, volume, economic impact, physical presence, and integration into
22 the state’s regulatory or economic markets.” *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1172
23 (9th Cir. 2006). The standard for general jurisdiction “is an *exacting* standard, as it should be,
24 because a finding of general jurisdiction permits a defendant to be hauled into court in the forum
25 state to answer for any of its activities anywhere in the world.” *Schwarzenegger*, 374 F.3d at 801
26 (emphasis added). “A court with general jurisdiction may hear *any* claim against that defendant,

1 even if all the incidents underlying the claim occurred in a different state.” *Bristol-Myers Squibb Co.*
2 *v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017) (citing *Goodyear Dunlop Tires Operations, S.A. v. Brown*,
3 564 U.S. 915, 918 (2011)).

4 Here, the only alleged contacts with Nevada are: (1) using the contested trademarks “in
5 commerce in the United States to advertise Defendants’ competing products and services at the
6 Irrigation Association convention in Las Vegas, Nevada on December 2–6, []2019” (ECF No. 1 at
7 ¶ 24), and (2) Bauer NA using the trademarks on its website to advertise its goods and services
8 in the United States (*id.* at ¶ 28). Based on the complaint, the first allegation is only directed at
9 Bauer NA. Its presence alone, at a single trade show open to the public, does not support
10 exercising general jurisdiction over it in this court. *See Kransco Manufacturing, Inc. v. Markwitz*, 656
11 F.2d 1376, 1377 (9th Cir. 1981) (no general jurisdiction where defendant attended trade show in
12 the forum and mailed several letters to forum alleging infringement). Further, the complaint
13 does not allege that Bauer NA sold any products at the show to Nevada residents or businesses,
14 or that Bauer NA otherwise engaged in any agreements, contracts, or negotiations with
15 any Nevada customers. Thus, the location of the trade show, over which presumably Bauer NA
16 had no control, is the only evidence of any contact with this forum. That is a far cry from the
17 “exacting” standard necessary to establish general jurisdiction over Bauer NA. The allegations
18 against GmbH fair no better: the complaint does not allege that it was even in Nevada—at any
19 time.

20 Nor is the website sufficient to establish general jurisdiction. Smart Rain fails to show
21 that access to or sales from GmbH’s website came from Nevada, that the website displayed
22 advertisements targeted to Nevada residents, or any other evidence that GmbH’s website was
23 designed or targeted for a Nevada user or purchaser base. As the Ninth Circuit held in
24 *CollegeSource, Inc. v. AcademyOne, Inc.*, “[i]f the maintenance of an interactive website were sufficient
25 to support general jurisdiction in every forum in which users interacted with the website, ‘the
26 eventual demise of all restrictions on the personal jurisdiction of state courts’ would be the

1 inevitable result.” 653 F.3d 1066, 1075–76 (9th Cir. 2011) (citing *World–Wide Volkswagen Corp. v.*
2 *Woodson*, 444 U.S. 286, 294 (1980) (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Stated
3 otherwise, there are no allegations that GmbH engaged in substantial, continuous, and
4 systematic contacts with Nevada. Accordingly, neither Bauer NA nor GmbH are subject to
5 general jurisdiction in Nevada.

6 **B. There are insufficient allegations to exercise specific personal jurisdiction over**
7 **defendants.**

8 The court also cannot find sufficient allegations in the complaint to establish specific
9 jurisdiction over either defendant. Specific jurisdiction “focuses on the relationship among the
10 defendant, the forum, and the litigation.” *Calder v. Jones*, 465 U.S. 783, 788 (1984) (internal
11 quotation marks and citation omitted). In the Ninth Circuit, a three-part test is applied to
12 determine whether the exercise of specific jurisdiction over a nonresident defendant is
13 appropriate. *Schwarzenegger*, 374 F.3d at 802 (citing *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir.
14 1987)). First, the nonresident defendant must purposefully direct his activities or consummate
15 some transaction with the forum or resident thereof; or perform some act by which he
16 purposefully avails himself of the privilege of conducting activities in the forum, thereby
17 invoking the benefits and protections of its laws. *Id.* Second, the claim must be one which arises
18 out of or relates to the defendant’s forum-related activities. *Id.* Finally, the exercise of jurisdiction
19 must comport with fair play and substantial justice, i.e., it must be reasonable. *Id.* The first prong
20 of the specific jurisdiction test refers to both purposeful availment and purposeful direction.
21 *CollegeSource, Inc.*, 653 F.3d at 1076.

22 Smart Rain has alleged tortious use of the trademarks, so the purposeful direction
23 analysis is appropriate. *Id.* (citing *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608–09 (9th Cir.
24 2010) (applying purposeful direction analysis in action involving claims for violation of right to
25 publicity based on misappropriation of plaintiff’s likeness)).

1 The first prong of *Calder* is satisfied for Bauer NA because it participated in a trade show
2 in Nevada. But Smart Rain fails to meet the second prong, which the Ninth Circuit refers to as
3 the “but for” test. *Oneok*, 715 F.3d at 742. The court is required to ask “but for Defendants’
4 contacts with [the forum state], would Plaintiff’s claims have arisen?” *CFAN. Cal., Inc. v. CRT*
5 *Partners LLP*, 378 F. Supp. 2d 1177, 1186 (N.D. Cal. 2005). Here, the claims would have arisen if
6 Bauer NA had used the logo in question whether it was at a trade show in Nevada, California, or
7 elsewhere. *See Chandler v. Roy*, 985 F. Supp. 1205, 1213 (D. Ariz. 1997) (finding the purposeful
8 availment requirement was not met where the defendant attended a two-day training seminar in
9 Arizona). Further, there are no allegations that Bauer NA continuously or deliberately exploited
10 the Nevada market. *Cf. Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984) (holding that an
11 out-of-state magazine was subject to personal jurisdiction because the magazine was “carrying
12 on a part of its general business in” the forum state, and “continuously and deliberately
13 exploited” the forum state’s market).

14 Smart Rain fails to meet any part of *Calder* test in its allegations against GmbH. It argues
15 that GmbH’s website advertises its goods and services in the United States, including Nevada,
16 therefore subjecting it to specific jurisdiction in this forum. ECF No. 50 at 10–11. To find that a
17 nonresident defendant expressly aimed its conduct at the forum, the Ninth Circuit requires
18 “something more” than “simply registering someone else’s trademark as a domain name and
19 posting a web site on the Internet.” *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir.
20 1998). The complaint lacks the “something more.” Specifically, it does not contain any evidence
21 that GmbH’s website was deliberately directed towards this forum.⁵ *Compare Electro Scan, Inc. v.*

22
23 ⁵ Smart Rain cites *Herbal Brands, Inc. v. Photoplaza, Inc.*, to argue that selling a product on an interactive
24 website and causing that product to be delivered to the forum, means the defendant “expressly aimed” its
25 conduct at the forum. ECF No. 50 at 10 (citing 72 F.4th 1085, 1092 (9th Cir. 2023), *cert. denied*, 144 S. Ct.
26 693 (2024)). But Smart Rain fails to address that *Herbal Brands* involved trademark and related claims
based on the defendants’ online sale of products that they shipped to consumers, including in the forum
state. The *Herbal Brands* court held that “if a defendant, in its regular course of business, sells a physical
product via an interactive website and causes that product to be delivered to the forum, the defendant
has purposefully directed its conduct at the forum such that the exercise of personal jurisdiction may be
appropriate.” *Id.* at 1088. This case, in contrast, does not involve alleged trademark infringement related to

1 *Henrich*, 2019 WL 1299010, at *5 (E.D. Cal. Mar. 21, 2019) (holding that a passive website, which
2 “lacks file exchange through [the] website or interactive features targeting” the forum state’s
3 customers or where the website owner “specifically targeted [the forum state]” were insufficient
4 to establish personal jurisdiction), with *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020
5 (9th Cir. 2002) (finding that when the nonresident defendant purposefully operated a website
6 whose content infringed the plaintiff’s trademarks, the “something more” requirement was met
7 because the defendant ran a for-profit marketing campaign **in the forum.**) (emphasis added).
8 While the website is certainly accessible from this forum, that is true of any forum available on
9 the internet, making GmbH’s mere ownership of a website that is accessible worldwide
10 insufficient to establish personal jurisdiction in Nevada. See *Matus v. Premium Nutraceuticals, LLC*,
11 715 F. App’x 662, 663 (9th Cir. 2018) (“If Premium can be haled into California merely on the
12 basis of its universally accessible website, then, under [plaintiff’s] proposed rule, it can be haled
13 into every state, and respectively, every online advertiser worldwide can be haled into
14 California.”); see also *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006) (the only acts
15 identified by plaintiff as being directed at the forum state were the website and the use of the
16 name “Pebble Beach” in the domain name, which were both insufficient to establish jurisdiction
17 because they were not aimed at the forum state); see also *Massie v. Gen. Motors Co.*, 2021 WL
18 2142728, at *6 (E.D. Cal. May 26, 2021) (holding that the defendant’s operation of broadly
19 accessible websites did not constitute the type of minimum contacts with the forum needed for
20 specific personal jurisdiction).

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22 _____
23 the website, but instead with a trade show. See *Golden Bull, LLC v. Elliott*, 2023 U.S. Dist. LEXIS 157831, at
24 *5–6 (C.D. Cal. Sept. 5, 2023) (distinguishing *Herbal Brands* because “even if Plaintiff could establish that
25 Defendants’ website was expressly aimed at California, it would not give rise to specific jurisdiction on
26 claims that are not related to [defendants’] website.”). While Smart Rain alleges that “Bauer additionally
uses the mark on its website to advertise its goods and services in the United States[,]” Smart Rain does
not provide any factual allegations demonstrating that anyone in Nevada purchased products or services
from the allegedly infringing website. See *NexLearn, LLC v. Allen Interactions, Inc.*, 859 F.3d 1371, 1379 (Fed.
Cir. 2017) (finding “no evidence that [defendant’s] website facilitated the making, using, offering, or
selling” of the infringing product in the forum state in order to connect the website with the patent
infringement claim).

1 Further, because Smart Rain has failed to meet the second and third *Calder* prongs as it
2 relates to Bauer NA, and all three of the prongs as it relates to GmbH, this court’s inquiry ends,
3 and this case must be dismissed for lack of personal jurisdiction. As a result, the court does not
4 address defendants’ arguments to dismiss the case pursuant to Federal Rule of Civil Procedure
5 12(b)(6).

6 **C. Smart Rain’s request to conduct jurisdictional discovery is denied.**

7 There are insufficient allegations before the court to grant Smart Rain’s request for
8 limited jurisdictional discovery. “[W]here a plaintiff’s claim of personal jurisdiction appears to
9 be both attenuated and based on bare allegations in the face of specific denials made by the
10 defendants, the Court need not permit even limited discovery....” *Terracom v. Valley Nat. Bank*, 49
11 F.3d 555, 562 (9th Cir. 1995) (citing *Rich v. KIS California, Inc.*, 121 F.R.D. 254, 259 (M.D.N.C.
12 1988)). Accordingly, Smart Rain’s request is denied.

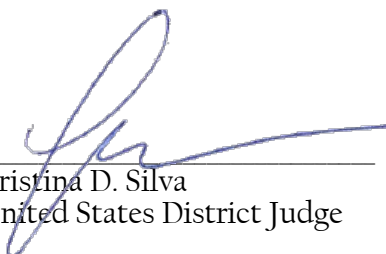
13 **D. Leave to amend is granted.**

14 Smart Rain does not move for leave to amend. However, Rule 15 calls for leave to amend
15 to be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Because there is a
16 possibility that Smart Rain could amend its complaint to add facts supporting personal
17 jurisdiction, Smart Rain is given leave to amend.

18 **III. Conclusion**

19 IT IS HEREBY ORDERED that defendants’ motions to dismiss [ECF No. 41, 42] are
20 GRANTED. The complaint is dismissed without prejudice and with leave to amend. Smart Rain
21 must amend its complaint, to allege specific facts that cure the deficiencies of its complaint, by
22 April 15, 2024. The amended complaint must be titled “First Amended Complaint.” Failure to
23 file an amended complaint by the deadline will result in the action being dismissed with
24 prejudice.

25 Dated: March 25, 2024

26 
Cristina D. Silva
United States District Judge