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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Community Dental Services of Arizona,
LLC

No. CV 12-01039-PHX-JAT

10 Plaintiff,

ORDER

11 v.

12 American Dental Industries, Inc., an
13 Oregon corporation; and Advanced
Dynamo Industries, an Oregon corporation

14 Defendants.
15

16 Pending before the Court is Defendants' Motion to Dismiss (Doc. 7). The Court
17 now rules on the Motion.

18 **I. BACKGROUND**

19 **A. The Complaint**

20 On December 30, 2011, Plaintiff filed a Complaint in Maricopa County Superior
21 Court against Defendants. Thereafter, Defendants removed the action to this Court. In
22 its Complaint, Plaintiff alleges that it is an Arizona corporation,¹ which operates mobile
23 dental clinics. (Doc. 1-1 at ¶ 1). Plaintiff further alleges that Defendants American
24 Dental Industries, Inc. ("ADI"), an Oregon corporation and Advanced Dynamo
25 Industries, Inc., an Oregon corporation (collectively, the "ADI Defendants") are engaged

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27 ¹ The Court notes that Plaintiff alleged in its Complaint that it is an Arizona
28 corporation. However, Mr. Carsten Loelke, Plaintiff's chief executive officer, avers in
his declaration that Plaintiff is a limited liability company. (*See* Doc. 8-1).

1 in the business of designing and manufacturing specialty mobile health and dental clinics
2 on motorcoach chassis. (*Id.* at ¶ 2).

3 Plaintiff alleges that, on or about August 30, 2012, Plaintiff entered into a contract
4 with Defendants for the purchase of a mobile dental clinic (“mobile clinic 1”), based
5 upon a Winnebago commercial chassis and designed in accordance with certain
6 specifications, for the purchase price of \$327,947. (*Id.* at ¶ 4). Plaintiff alleges that the
7 Parties agreed that the work would be completed by December 31, 2010. (*Id.* at ¶ 5).
8 Plaintiff alleges that, on August 31, 2010, it made a payment to Defendants in the amount
9 of \$125,359. (*Id.* at ¶ 6). Plaintiff alleges that, on November 8, 2010, it made a second
10 payment in the amount of \$101,889.50 to Defendants. (*Id.*). Plaintiff alleges that, at the
11 end of December 2010, it made a third payment of \$68,363.50 to Defendants. (*Id.* at ¶ 8).

12 Plaintiff alleges that, notwithstanding its repeated inquiries to Defendants, the
13 work was not completed until July 15, 2011. (*Id.* at 9). Plaintiff alleges that, due to this
14 six month delay in the promised completion of the chassis, Plaintiff sustained substantial
15 losses. (*Id.*). Plaintiff alleges that, when it was informed the work on the mobile dental
16 clinic was completed in July 2011, it sent representatives to pick up the mobile dental
17 clinic and drive it back to Arizona. (*Id.* at ¶ 10). Plaintiff alleges that, within a week of
18 its arrival in Arizona, it became apparent that the mobile dental clinic was defective. (*Id.*
19 at ¶ 11).

20 Plaintiff alleges that it informed Defendants of the problem and they arranged for
21 repairs to be made by Arizona companies with experience with such malfunctions using
22 parts shipped by Defendants and instructions provided by Defendants’ engineers. (*Id.* at
23 ¶13). Plaintiff alleges that, after some work was completed, it was determined that the
24 unit would need to be repaired at Defendants’ facilities in Oregon. (*Id.* at ¶ 14). Plaintiff
25 alleges that Defendants’ agent flew to Arizona to pick up the mobile clinic and drove it
26 back to Oregon. (*Id.* at ¶ 15).

27 Plaintiff alleges that, thereafter, another of Plaintiff’s mobile dental clinics
28 (“mobile clinic 2”) became inoperative due to a defective generator supplied by

1 Defendant ADI claims that the Oregon lawsuit is ongoing.³

2 **D. The Motion to Dismiss**

3 Defendants now seek to dismiss Plaintiff's Complaint in this case pursuant to
4 Federal Rules of Civil Procedure 12(b)(2),(3) and (6). (Doc. 7). Defendants argue that
5 this case should be dismissed because (1) Plaintiff lacks standing to sue under the
6 Contract, (2) venue is not proper, (3), the Court lacks personal jurisdiction over
7 Defendants, and (4) the Complaint fails to state a claim upon which relief can be granted.

8 The Court will first address whether it can exercise personal jurisdiction over
9 Defendants.⁴

10 **II. LEGAL STANDARD & ANALYSIS**

11 Plaintiff bears the burden of establishing personal jurisdiction. *See*
12 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing
13 *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). "When a defendant moves to
14 dismiss for lack of personal jurisdiction, the plaintiff is obligated to come forward with
15 facts, by affidavit or otherwise, supporting personal jurisdiction." *Cummings v. W. Trial*
16 *Lawyers Assoc.*, 133 F.Supp.2d 1144, 1151 (D. Ariz. 2001) (internal quotations and
17 citations omitted). Conflicts over statements contained in Plaintiff's and Defendant's
18 affidavits "must be resolved in the plaintiff's favor." *Schwarzenegger*, 374 F.3d at 800
19 (internal citations omitted). In the absence of an evidentiary hearing on the issue of
20 personal jurisdiction, Plaintiff must make "a prima facie showing of jurisdictional facts
21 through the submitted materials" in order to avoid dismissal for lack of personal

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23 ³ During oral argument, the Parties represented that the Oregon state court has set
24 a trial date in that action and that there is currently a Motion to Dismiss pending in that
25 case.

26 ⁴ "As a general rule, when the court is confronted by a motion raising a
27 combination of Rule 12(b) defenses, it will pass on the jurisdictional issues before
28 considering whether a claim was stated by the complaint." 5B Charles Alan Wright,
Arthur R. Miller, Mary Kay Kane & Richard L. Marcus, *Federal Practice and Procedure*
§ 1351 (3d ed. 2004) (internal citation omitted).

1 jurisdiction. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.
2 1977).

3 Further, because no applicable federal statute governing personal jurisdiction
4 exists, Arizona's long-arm statute applies to this case. *See Terracom v. Valley Nat'l*
5 *Bank*, 49 F.3d 555, 559 (9th Cir. 1995) (internal citations omitted). Arizona's long-arm
6 statute provides for personal jurisdiction to the extent permitted by the Due Process
7 Clause of the United States Constitution. Ariz. R. Civ. P. 4.2(a);⁵ *see also A. Uberti and*
8 *C. v. Leonardo*, 892 P.2d 1354, 1358 (Ariz. 1995), *cert. denied*, 516 U.S. 906 (1995)
9 (stating that under Rule 4.2(a), "Arizona will exert personal jurisdiction over a
10 nonresident litigant to the maximum extent allowed by the federal constitution") (internal
11 citations omitted).

12 The Due Process Clause requires that a nonresident defendant have certain
13 minimum contacts with the forum state such that the "exercise of personal jurisdiction
14 does not offend traditional notions of fair play and substantial justice." *Doe v. Am. Nat'l*
15 *Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997) (internal citation omitted). "The Due
16 Process Clause protects a defendant's liberty interest in not being subject to the binding
17 judgments of a forum with which he has established no meaningful contacts, ties or
18 relations." *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269-70 (9th Cir.
19 1995) (internal quotations and citations omitted).

20 If a court determines that a defendant's contacts with the forum state are sufficient
21 to satisfy the Due Process Clause, then the court must exercise either "general" or
22 "specific" jurisdiction over the defendant. *See Helicopteros Nacionales de Colombia v.*
23 *Hall*, 466 U.S. 408, 414-15 nn. 8-9 (1984) (internal citations omitted). The nature of the
24 defendant's contacts with the forum state will determine whether the court exercises

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26 ⁵ Arizona Rule of Civil Procedure. 4.2(a) provides, in pertinent part, "A court of
27 this state may exercise personal jurisdiction over parties, whether found within or outside
28 the state, to the maximum extent permitted by the Constitution of this state and the
Constitution of the United States." Ariz. R. Civ. P. 4.2(a).

1 general or specific jurisdiction over the defendant. *Helicopteros*, 466 U.S. at 415–16.

2 In this case, Plaintiff makes no argument that the Court can exercise general
3 personal jurisdiction over Defendants. Accordingly, the Court will solely analyze
4 whether Plaintiff has made a prima facie showing that the Court has specific personal
5 jurisdiction over Defendants.

6 **A. Specific Jurisdiction**

7 If a defendant does not have substantial or continuous and systematic contacts
8 with the forum state, then the court must determine whether the defendant has had
9 sufficient contacts with the forum state such that the exercise of specific jurisdiction over
10 the defendant would not offend the Due Process Clause. *See Core–Vent Corp. v. Nobel*
11 *Indus. AB*, 11 F.3d 1482, 1485 (9th Cir. 1993). The Ninth Circuit applies a three-prong
12 test to determine whether the defendant’s contacts with the forum state are sufficient to
13 subject him to the state’s specific jurisdiction. *Id.* Under this three-prong test, specific
14 jurisdiction exists only if: (a) the nonresident defendant purposefully directs activities or
15 consummates some transaction with the forum of the plaintiff, or performs some act by
16 which he personally avails himself of the privilege of conducting activities in that forum;
17 (b) the claim arises out of or relates to the defendant’s forum-related activities; and (c)
18 the exercise of jurisdiction comports with fair play and substantial justice, i.e., it is
19 reasonable. *Id.*

20 In this case, Plaintiff has presented some evidence that Defendant American
21 Dental Industries, Inc. conducted forum-related activities. However, Plaintiff has not
22 carried its burden of demonstrating that Plaintiff’s claims against Defendants arise out of
23 or relate to Defendants’ forum-related activities. Plaintiff cannot satisfy this burden
24 because Plaintiff has failed to state a claim upon which relief can be granted in its
25 Complaint. In its Complaint, Plaintiff alleges that it entered into a contract with
26 Defendants and that Defendants breached that contract. Plaintiff does not identify the
27 contract or any specific provisions of the contract that were breached by Defendants.

28 In his Response to Defendants’ Motion to Dismiss, Plaintiff claims that “there was

1 no comprehensive signed contract between the parties.” (Doc. 8 at 10). Plaintiff then
2 states that “[o]ne document was signed, but it was clear on its face that some matter
3 remained to be decided The rest is a mass of detail which must be straightened out.”
4 (Doc. 8 at 10). Plaintiff then appears to assert that it is solely asserting an “equitable
5 claim” for an accounting.⁶ Plaintiff then states that “[t]he court may find that there are
6 other matters where a contract theory can be applied.” (Doc. 8 at 10). Plaintiff then
7 appears to argue that there may have been an oral contract between the Parties. (*Id.*).
8 Thereafter, Plaintiff appears to assert that a document entitled “Quotation Summary”
9 constituted a contract between the Parties. (Doc. 8 at 11). Apparently, Plaintiff believes
10 that, at this stage of the proceedings, it need only assert various facts and leave it to the
11 Court to decide Plaintiff’s legal theories. This type of pleading does not meet Rule 8’s
12 pleading standard.

13 “Dismissal can be based on the lack of a cognizable legal theory or the absence of
14 sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police*
15 *Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (citing *Robertson v. Dean Witter Reynolds, Inc.*,
16 749 F.2d 530, 533–34 (9th Cir. 1984)). In this case, Plaintiff has failed to articulate any
17 legal theory. In this situation, it is impossible for the Court to determine whether
18 Plaintiff’s claims arise out of or relate to Defendants’ forum-related activities.
19 Accordingly, Plaintiff has failed to meet its burden in establishing that this Court has

21 ⁶ It is not clear what Plaintiff’s theory is as to why it is entitled to assert an
22 “equitable claim for accounting.” Rather, in this case, it appears that Plaintiff seeks
23 accounting as a remedy for some wrong performed by Defendants, but has failed to state
24 a legal theory under which it is entitled to such a remedy. Even if Plaintiff could state a
25 claim for an accounting as a separate cause of action, rather than a remedy, Plaintiff’s
26 theory as to its right to an accounting is not clear from the allegations in the Complaint.
27 As such, Plaintiff has not successfully asserted a separate claim for “an accounting” upon
28 which relief can be granted. See *Mezey v. Fioramonti*, 65 P.3d 980, 984 (Ariz. Ct. App.
2003 (“an accounting is ordinarily performed in two stages: in the first, the court
determines liability (the right to the accounting); in the second, the actual accounting is
conducted.”) (citing 1 Am.Jur.2d *Accounts and Accounting* § 66, at 624), *overruled on*
other grounds by Bilke v. State, 80 P.3d 269 (Ariz. 2003).

1 personal jurisdiction over Defendants.

2 This Court would normally allow Plaintiff leave to amend because it appears that
3 it may be able to state a claim upon which relief can be granted in an amended complaint.
4 However, in conducting the personal jurisdiction analysis, the Court finds that, even if
5 Defendants had purposefully availed themselves of the Arizona forum, the fairness of the
6 personal jurisdiction analysis weighs in favor of requiring Plaintiff to litigate claims
7 related to the Oregon state court action in that court. This is because pending litigation in
8 another forum weighs against the reasonableness of the Court's exercise of personal
9 jurisdiction over a Defendant. *See Ziegler v. Indian River County*, 64 F.3d 470, 474-75
10 (9th Cir. 1995) (explaining that, in deciding whether the exercise of specific jurisdiction
11 over a defendant is reasonable, the Court must consider certain factors, including the
12 most efficient judicial resolution of the dispute and the existence of an alternative forum.)
13 (internal citation omitted). During oral argument, Plaintiff represented that its claims
14 could be asserted as counterclaims in the pending action in Oregon state court.
15 Accordingly, if Plaintiff can state a claim upon which relief can be granted, it would
16 serve purposes of judicial efficiency and fairness for Plaintiff to file its claims as
17 counterclaims in the Oregon state court action and Plaintiff should file any such claims in
18 that pending action.

19 The Court notes that Defendants also moved to dismiss Plaintiff's Complaint for
20 lack of standing. However, because the Court has found that Plaintiff has failed to state a
21 claim upon which relief can be granted, the Court cannot conduct any meaningful
22 analysis of Plaintiff's standing.

23 III. CONCLUSION

24 Based on the foregoing,

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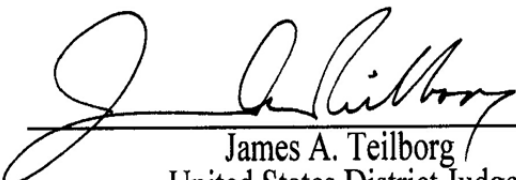
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IT IS ORDERED that Defendants' Motion to Dismiss (Doc. 7) is granted in part and denied in part as set forth herein. Plaintiff's complaint is dismissed without prejudice. The Clerk of the Court shall close this case and enter judgment accordingly.

Dated this 12th day of October, 2012.



James A. Teilborg
United States District Judge