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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 PRN Medical Services LLC,
10 Plaintiff,

11 v.

12 Michael Neilson, et al.,
13 Defendants.

No. CV-14-01047-PHX-GMS

ORDER

14 Pending before the Court is Defendant Wilmington Medical Supply, Inc.'s Motion
15 to Dismiss for Lack of Personal Jurisdiction. (Doc. 49.) For the following reasons, the
16 Motion is denied.

17 **BACKGROUND**

18 PRN Medical Services LLC ("PRN") brings suit against several of its former
19 employees alleging unfair competition. PRN also brings an unjust enrichment claim
20 against Defendant Wilmington Medical Supply, Inc. ("Wilmington"), the company for
21 whom these former employees currently work.

22 Specific to the current Motion, PRN alleges that Defendant John Pearce, while still
23 an employee of PRN, sent an email to a director at Wilmington containing personal
24 health information of PRN customers. This personal information originated from and is
25 archived at PRN's Phoenix headquarters. PRN also alleges that, immediately prior to
26 their departure to work for Wilmington three of its former employees illegally
27 downloaded confidential information of thousands of PRN's customers, including more
28 than 1,500 of PRN's Arizona customers, from PRN's Arizona computer servers.

1 Wilmington has a sales representative in Arizona, who began employment with
2 Wilmington on February 24, 2014, approximately the same time as the five defendants
3 left their PRN employ to work for Wilmington. Wilmington asserts that this Court has no
4 jurisdiction over PRN's claims against it.

5 DISCUSSION

6 I. Legal Standard

7 Because the Court is resolving this Motion without holding an evidentiary hearing,
8 PRN "need make only a prima facie showing of jurisdictional facts to withstand the
9 motion." *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995); see *Brainerd v.*
10 *Governors of the Univ. of Alberta*, 873 F.2d 1257, 1258 (9th Cir. 1989). The burden
11 under the prima facie case is minimal: plaintiffs "need only demonstrate facts that if true
12 would support jurisdiction over the defendant." *Ballard*, 65 F.3d at 1498. In addition,
13 "[c]onflicts between parties over statements contained in affidavits must be resolved in
14 the plaintiff's favor." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th
15 Cir. 2004) (citing *A T & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir.
16 1996)).

17 To establish the prima facie case for personal jurisdiction, the plaintiff has the
18 burden of showing that: (1) the forum state's long-arm statute confers jurisdiction over
19 the nonresident defendant; and (2) the exercise of jurisdiction comports with principles of
20 due process. *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir.
21 1995). Arizona's long-arm statute confers jurisdiction to the maximum extent allowed by
22 the Due Process Clause of the United States Constitution. Ariz. R. Civ. P. 4.2(a); *Doe v.*
23 *American Nat'l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997). Due process requires a
24 nonresident defendant to have "certain minimum contacts with [the forum] such that the
25 maintenance of the suit does not offend traditional notions of fair play and substantial
26 justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal citation
27 omitted). There are two types of personal jurisdiction, general and specific. *Burger King*
28 *Corp. v. Rudzewicz*, 471 U.S. 462, 473 n.5 (1985). PRN does not allege that the Court

1 possesses general personal jurisdiction over Wilmington; it claims only that specific
2 personal jurisdiction exists.

3 **A. Specific Personal Jurisdiction**

4 Specific jurisdiction exists if (1) the defendant purposefully directed tortious
5 activities at the forum or a resident thereof or performed some act by which he
6 purposefully availed himself of the privileges of conducting activities in the forum, (2)
7 the claims arise out of or result from the defendant’s forum-related activities, and (3) the
8 exercise of jurisdiction is reasonable. *See Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*,
9 223 F.3d 1082, 1086 (9th Cir. 2000); *Brainerd*, 873 F.2d at 1259.

10 **1. Purposeful Direction**

11 A court has specific jurisdiction over a defendant where the intended effects of the
12 defendant’s non-forum conduct were purposely directed at and caused harm in the forum
13 state. *Calder v. Jones*, 465 U.S. 783, 788–90 (1984); *see also Pebble Beach Co. v. Caddy*,
14 453 F.3d 1151, 1155–56 (9th Cir. 2006) (noting that purposeful direction analysis is
15 appropriate when “all of [the defendant’s] action identified by [the plaintiff] is action
16 taking place outside the forum”); *Sinatra v. Nat’l Enquirer, Inc.*, 854 F.2d 1191, 1195
17 (9th Cir. 1988) (“[T]he decisions of this court have interpreted the holdings of *Calder* and
18 *Burger King* as modifying the purposeful availment rubric to allow ‘the exercise of
19 jurisdiction over a defendant whose only “contact” with the forum is the “purposeful
20 direction” of a foreign act having effect in the forum state.’”) (quoting *Haisten v. Grass*
21 *Valley Med. Reimbursement Fund*, 784 F.2d 1392, 1397 (9th Cir. 1986)).

22 Courts evaluate purposeful direction using the *Calder* “effects test.” *See Brayton*
23 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010). Under the
24 “effects test,” the defendant must allegedly have: “(1) committed an intentional act, (2)
25 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to
26 be suffered in the forum state.” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th
27 Cir. 2002). All three elements of the test must be satisfied. *Schwarzenegger v. Fred*
28 *Martin Motor Co.*, 374 F.3d 797, 805 (9th Cir. 2004). “A finding of ‘express aiming’ . . .

1 does not mean ‘that a foreign act with foreseeable effects in the forum states always gives
2 rise to specific jurisdiction.’” *Dole*, 303 F.3d at 1112 (quoting *Bancroft*, 223 F.3d at
3 1087).

4 The “intentional” requirement is not a high bar, requiring only “an intent to
5 perform an actual, physical act in the real world.” *See Schwarzenegger*, 374 F.3d at 806.
6 The express aiming requirement is another way of saying that there must be “something
7 more” than the foreseeability of an effect in the forum state. *Brayton Purcell*, 606 F.3d at
8 1129. Under the causing harm requirement, the Ninth Circuit has made it clear that any
9 intentional conduct must be “targeted at a plaintiff whom the defendant knows to be a
10 resident of the forum state.” *Bancroft*, 223 F.3d at 1087.

11 Here, PRN demonstrates facts sufficient to show purposeful direction. PRN
12 alleges that Wilmington conspired with several of PRN’s former employees to
13 appropriate confidential information from PRN’s servers located in Arizona. Similarly,
14 PRN alleges that one of Wilmington’s directors accepted confidential information in an
15 email sent from one of PRN’s former employees, which originated, and is archived, in
16 Arizona. These were intentional actions, expressly aimed at information housed in
17 Arizona, and targeted at PRN, an Arizona corporation. In a similar case, *Aerotech*
18 *Holdings, Inc. v. Alliance Aerospace Eng’g, LLC*, a non-resident company was found to
19 have purposefully directed its activities at Texas, the forum state, by “using confidential
20 information that belong[ed] to a Texas company to target customers that are based in
21 Texas.” 650 F. Supp.2d 594, 600–01 (N.D. Tex. 2009). Just as in *Aerotech*, in the present
22 case PRN alleges that Wilmington used confidential information gathered by former
23 employees of PRN to target PRN’s customers’ confidential information. *See also*
24 *Panavision Int’l, L.P. v. Toebben*, 141 F.3d 1316, 1321 (9th Cir. 1998) (holding that acts
25 directed at limited partnership whose principal place of business in California constituted
26 purposeful direction at California). Because many of these customers were residents of
27 Arizona, and more importantly, because PRN alleges Wilmington knew its activities
28 would cause harm to PRN, an Arizona corporation, Wilmington purposefully directed its

1 activities at Arizona.

2 In sum, PRN sufficiently alleges Wilmington “(1) committed an intentional act,
3 (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is
4 likely to be suffered in the forum state.” *Dole*, 303 F.3d at 1111. Thus, Wilmington
5 purposely directed its actions at Arizona.

6 2. “Arising out of” Requirement

7 The Ninth Circuit has adopted a “but for” test for determining whether a plaintiff’s
8 cause of action arises out of a defendant’s forum-related activities. *See Omeluk*, 52 F.3d
9 at 271. The “arising out of” requirement is met if, but for the contacts between the
10 defendant and the forum state, the cause of action would not have arisen. *See Terracom v.*
11 *Valley Nat. Bank*, 49 F.3d 555, 561 (9th Cir. 1995).

12 As noted above, PRN has alleged that Wilmington acted in concert with several of
13 PRN’s former employees to access confidential information of PRN customers. Further,
14 PRN alleges that Wilmington was unjustly enriched because of the actions of PRN’s
15 former employees. The “arising out of” requirement is satisfied here because but for
16 Wilmington’s actions in concert with PRN’s former employees, it would not have been
17 unjustly enriched.

18 3. Reasonableness Requirement

19 An unreasonable exercise of jurisdiction violates the Due Process Clause even if
20 the “purposeful availment” and “arising out of” requirements of the specific jurisdiction
21 test are satisfied. *See Int’l Shoe Co. v. State of Wash., Office of Unemployment Comp. &*
22 *Placement*, 326 U.S. 310, 316 (1945); *Ziegler v. Indian River Cnty.*, 64 F.3d 470, 474–75
23 (9th Cir. 1995). A district court presumes, however, that its exercise of jurisdiction over
24 a defendant is reasonable if the first two requirements of the specific jurisdiction test are
25 met. *See Ballard*, 65 F.3d at 1500. If the first two requirements are satisfied, then the
26 burden of proof shifts and the defendant must ““present a compelling case that the
27 presence of some other considerations would render jurisdiction unreasonable.”” *Id.*
28 (quoting *Burger King*, 471 U.S. at 477).

1 **IT IS THEREFORE ORDERED** that Defendant Wilmington Medical Supply,
2 Inc.'s Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 49) is **DENIED**.

3 Dated this 15th day of December, 2014.

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7 G. Murray Snow
8 United States District Judge
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