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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 GPMI Company,

10 Plaintiff,

11 v.

12 Michelin Lifestyle Limited, et al.,

13 Defendants.
14

No. CV-21-00299-PHX-GMS

ORDER

15
16 Pending before this Court is Michelin North America, Inc.’s (“Defendant” or
17 “MNA”) Motion to Dismiss Amended Complaint Pursuant to Rule 12(b)(6) for Lack of
18 Personal Jurisdiction (Doc. 45). For the following reasons, Defendant’s motion is denied.

19 **BACKGROUND**

20 This is the second Motion to Dismiss in this matter, this Court having first granted
21 dismissal March 3, 2022, with leave to amend. (Doc. 35). GPMI (“Plaintiff”) is a
22 corporation registered in, and with its principal place of business in, Arizona. (Doc. 42
23 at 2). GPMI partners with corporate brands to develop products that GPMI “produces,
24 distributes, and sells pursuant to a licensing agreement.” (Doc. 42 at 3). MNA is a
25 corporation registered in New York with its principal place of business in South Carolina.
26 (Doc. 42 at 2). Michelin Lifestyle Ltd. (“MLL”) is incorporated in the United Kingdom
27 and was originally a named defendant in this matter before being terminated pursuant to a
28 Motion to Dismiss granted by this Court. (Doc. 42 at 2; Doc. 35).

1 In 2017, Plaintiff and MLL entered into a licensing agreement allowing Plaintiff to
2 manufacture and distribute a Michelin-branded automotive product in the United States.
3 (Doc. 42 at 4). By 2019, the parties had settled on a Tire Sealant Product to be sold with
4 the Michelin brand name and designed, manufactured, and distributed from Arizona.
5 (Doc. 42 at 4–5). MLL gave final written approval for the product in February 2019.
6 (Doc. 42 at 5–6). During the product’s development, GPMI had successfully negotiated
7 with Walmart to carry and sell the product nation-wide, including in Arizona. (Doc. 42
8 at 6).

9 Soon after receiving final approval, MLL revoked its approval of the Tire Sealant
10 Product. (Doc. 42 at 7). Plaintiff alleges that MNA induced MLL to revoke its approval
11 because MNA was “concerned that a Michelin-branded Tire Sealant Product might
12 negatively affect MNA’s tire sales . . . by creating the impression that Michelin tires were
13 defective.” (Doc. 42 at 7). Plaintiff further alleges that MLL’s revocation and subsequent
14 logistical demands were tactics to force GPMI into a new contract more financially
15 advantageous for MLL. (Doc. 42 at 11). Plaintiff also claims that because of the revoked
16 deal GPMI lost “supplier of choice” status with Walmart, costing GPMI millions of dollars.
17 (Doc. 42 at 13).

18 Plaintiff alleges that MNA knew of GPMI’s relationship with Walmart and was
19 aware that its actions had the potential to cause significant damages to GPMI. (Doc. 42 at
20 13–14). Further, Plaintiff alleges that MNA directed its interference at GPMI, which it
21 knew to be an Arizona corporation. (Doc. 42 at 14). Finally, Plaintiff alleges MNA knew
22 the effects of its interference would be felt in Arizona. (Doc. 42 at 14)

23 Plaintiff filed its original complaint against MLL and MNA in February 2021.
24 (Doc. 1). On March 3, 2022, this Court granted Defendants’ Motion to Dismiss. (Doc. 35).
25 Pursuant to this Court’s order, MLL was terminated as a defendant pursuant to a valid-
26 forum selection clause. (Doc. 35 at 16). Defendant MNA’s Motion to Dismiss for Lack
27 of Personal Jurisdiction was also granted with leave to amend. (Doc. 35 at 16) On August
28 4, 2022, Plaintiff filed its Amended Complaint against Defendant MNA with two counts:

1 Aiding and Abetting Breach of Implied Covenant of Good Faith and Fair Dealing (Count
2 III), Tortious Interference with Contractual Relations (Count IV), and Tortious Interference
3 with a Business Expectancy (Count V).¹ (Doc. 42 at 16–20).

4 DISCUSSION

5 I. Legal Standard

6 The plaintiff “bears the burden of demonstrating that jurisdiction is appropriate” in
7 a motion to dismiss. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th
8 Cir. 2004) (citing *Sher v. Johnson*, 911 F. 2d 1357, 1361 (9th Cir. 2001). “Where, as here,
9 the motion is based on written materials rather than an evidentiary hearing, ‘the plaintiff
10 need only make a prima facie showing of jurisdictional facts.’” *Id.* (quoting *Sher*, 911 F.2d
11 at 1361). While the plaintiff “cannot ‘simply rest on the bare allegations of its complaint,’”
12 *id.* (quoting *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)),
13 the Court must “take as true all uncontroverted allegations in the complaint.” *Glob.*
14 *Commodities Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1106
15 (9th Cir. 2020). Allegations that are contradicted by affidavit are not assumed as true, but
16 factual disputes between affidavits are resolved in the plaintiff’s favor. *CollegeSource,*
17 *Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011).

18 This Court applies Arizona law in determining whether it possesses personal
19 jurisdiction over a defendant. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). “The
20 Arizona long-arm statute provides for personal jurisdiction co-extensive with the limits of
21 federal due process.” *Doe v. Am. Nat. Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997);
22 Ariz. R. Civ. P. 4.2(a). For the exercise of personal jurisdiction to adhere to the
23 requirements of due process, a defendant must have “minimum contacts” with the forum
24 state and exercise of jurisdiction “does not offend traditional notions of fair play and
25 substantial justice.” *Schwarzenegger*, 374 F.3d at 801 (quoting *Int’l Shoe Co. v.*
26 *Washington*, 326 U.S. 310, 316 (1945)).

27
28 ¹ Plaintiff also included Counts I and II against terminated defendant MLL. (Doc. 42 at 14–
16). This Court already terminated this matter as against MLL and did not grant leave to
amend. (Doc. 35). These Counts are improper and thus disregarded.

1 There is both general and specific personal jurisdiction. *Ford Motor Co. v. Mont.*
2 *Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). General jurisdiction applies to
3 defendants who are “essentially at home in the forum state” and means that the defendant
4 is open to all claims brought in that state’s courts, regardless of where the claims or conduct
5 originated. *Id.* Specific jurisdiction—by contrast—exists only if the suit arises out of or
6 relates to the defendant’s specific contacts with the forum. *Bristol-Myers Squibb Co. v.*
7 *Superior Ct. of Cal.*, 582 U.S. 255, 262 (2017). When specific jurisdiction is the sole basis
8 for haling an out-of-state defendant into the forum, it must “exist for each claim asserted,”
9 *Action Embroidery Corp. v. Atl. Embroidery, Inc.*, 368 F.3d 1174, 1180 (9th Cir. 2004),
10 and each defendant. *Sher*, 911 F.2d at 1365.

11 **II. Analysis**

12 Plaintiff concedes that MNA is not a citizen of Arizona and does not otherwise
13 allege or argue that MNA is subject to Arizona’s general jurisdiction. (Doc. 42 ¶ 6;
14 Doc. 49). As such, this Court must either have specific jurisdiction or none at all.

15 A non-resident is subject a court’s specific jurisdiction when (1) the defendant
16 purposefully avails itself—or directs its activities towards—the forum state, (2) the claim
17 arises out of those forum-related activities, and (3) the exercise of that jurisdiction is
18 reasonable. *Glob. Commodities*, 972 F.3d at 1107 (quoting *Schwarzenegger*, 374 F.3d at
19 802). While there is no rigid distinction between purposeful availment and purposeful
20 direction, “purposeful direction is often the better approach for analyzing claims in tort”
21 and purposeful availment better for claims in contract. *Id.* at 1107. Since Plaintiff is
22 alleging tortious conduct, purposeful direction is the apt test.

23 **a. Purposeful Direction**

24 Under purposeful direction, “a defendant purposefully directed his activities at the
25 forum state if he: (1) committed an intentional act, (2) expressly aimed at the forum state,
26 (3) causing harm that the defendant knows is likely to be suffered in the forum state.” *Picot*,
27 780 F.3d at 1213–14 (citations omitted). But “[t]he proper question is not where the
28 plaintiff experienced a particular injury or effect but whether the defendant’s conduct

1 connects him to the forum in a meaningful way.” *Walden v. Fiore*, 571 U.S. 277, 290
2 (2014). Additionally, a defendant minimum contacts must be “with the forum State itself”
3 and not merely with its residents. *Id.* at 285. Thus, specific jurisdiction cannot be
4 established solely by allegations that “a defendant ‘engaged in wrongful conduct targeted
5 at a plaintiff whom the defendant knows to be a resident of the forum state.’” *Axiom Foods,*
6 *Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017) (quoting *Wash. Shoe Co.*
7 *v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir. 2012), abrogated by *Walden*, 571
8 U.S. at 290). A greater connection to the forum state is required. *See CE Distrib., LLC v.*
9 *New Sensor Corp.*, 380 F. 3d 1107, 1111–12 (9th Cir. 2004) (holding plaintiff showed
10 sufficient facts for personal jurisdiction based on the defendant’s intention to undermine
11 plaintiff’s business ventures in the forum state); *Brayton v. Purcell LLP v. Recordon &*
12 *Recordon*, 606 F.3d 1124, 1129 (9th Cir. 2015) (holding defendant’s copied use of
13 plaintiff’s website material put it in direct competition with plaintiff, creating sufficient ties
14 for specific jurisdiction); *see also Tresona Multimedia LLC v. Legg*, No. CV-14-02141-
15 PHX-DGC, 2015 WL 470228, at *4 (D. Ariz. Feb. 4, 2015).

16 Plaintiff’s Amended Complaint sufficiently alleges connections to Arizona beyond
17 those in *Walden*. Plaintiff pleads sufficient facts indicating that Defendant inserted itself
18 into Plaintiff’s contract with MLL because “it was concerned that a Michelin-branded Tire
19 Sealant Product might negatively affect MNA’s tire sales.” (Doc. 42 at 7). MNA’s business
20 is substantially based on tire sales, including sales within Arizona. (Doc. 49 at 1–2).
21 According to Plaintiff’s Amended Complaint, Defendant’s actions were not merely made
22 with the knowledge of Plaintiff’s citizenship; they were purposefully directed toward
23 shutting down an Arizona-based product that would negatively affect Michelin’s national
24 tire sales including such sales in Arizona. This is enough for Plaintiff to satisfy purposeful
25 direction.

26 **b. Forum-Related Activities**

27 After showing purposeful direction, a plaintiff must show the claim arises out of the
28 defendant’s forum-related activities. *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007).

1 “In determining whether [Plaintiff’s] claims arise out of [Defendant’s] forum-related
2 conduct, ‘the Ninth Circuit follows the ‘but for’ test.’” *Id.* (citing *Myers v. Bennett Law*
3 *Offices*, 238 F.3d 1068, 1075 (9th Cir. 2001)).

4 Plaintiff’s Amended Complaint shows a “but for” relationship between Defendant’s
5 actions and its forum-related activities. As discussed above, Plaintiff’s complaint
6 sufficiently alleges that Defendant took intentional action directed toward Arizona out of
7 concern of the effects that Plaintiff’s Arizona-based product would have on Michelin’s
8 national tire sales including such sales in Arizona. (Doc. 42 at 7). Defendant’s actions
9 prevented Plaintiff from producing or selling its tire sealant, meaning it could no longer
10 profit from its contract with MLL or perform on its contract with Walmart. (Doc. 42 at
11 7-13). This caused Plaintiff injury. (Doc. 42 at 13–14). This causal link is sufficient to
12 satisfy the “but for” test, meaning Plaintiff’s complaint sufficiently alleges its suit arises
13 out of Defendant’s forum related activities.

14 **c. Reasonableness**

15 Finally, it must be reasonable for this Court to exercise personal jurisdiction over
16 Defendant. Reasonableness is a balancing test based on seven reasonableness factors:

17 (1) the extent of the defendant's purposeful interjection into the forum state's
18 affairs; (2) the burden on the defendant of defending in the forum; (3) the
19 extent of conflict with the sovereignty of the defendants' state; (4) the forum
20 state's interest in adjudicating the dispute; (5) the most efficient judicial
21 resolution of the controversy; (6) the importance of the forum to the
22 plaintiff's interest in convenient and effective relief; and (7) the existence of
23 an alternative forum.

24 *CE Distrib. LLC*, 380 F.3d at 1112 (citations omitted).

25 The factors in this indicate that it would be reasonable for this Court to exercise
26 jurisdiction over Defendant. As shown above, Plaintiff sufficiently alleges that Defendant
27 purposefully interjected itself into not one, but two contracts performed in Arizona—the
28 contracts with MLL and with Walmart. (Doc. 42 at 1–2, 7–13). Furthermore, Defendant
has already defended other cases in Arizona, indicating that Defendant’s burden by

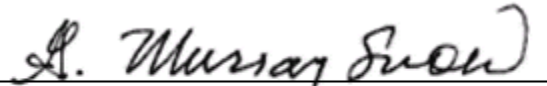
1 defending another case in Arizona is not substantial enough to challenge specific
2 jurisdiction. (Doc. 42 at 3). As it stands, there is no indication that Defendant's forum
3 state has indicated an interest in this dispute, while Arizona does possess such an interest
4 as both Plaintiff and Defendant regularly conduct business within Arizona. (Doc. 42 at 2-
5 3). Next, considering that the contracts were performed in Arizona, Arizona is the most
6 convenient and efficient forum for this case. (Doc. 42 at 1-2, 7-13) Finally, while
7 Defendant's home-states of New York and South Carolina are potential alternative forums,
8 the weight of this single factor in favor of Defendant is not enough to counter the
9 cumulative weight of the remaining factors. (Doc. 42 at 2). In sum, it is reasonable for
10 this Court to exercise specific jurisdiction over Defendant.

11 **CONCLUSION**

12 Accordingly,

13 **IT IS THEREFORE ORDERED** that Defendant's Motion to Dismiss Pursuant to
14 Rule 12(b)(2) for Lack of Personal Jurisdiction (Doc. 45) is **DENIED**.

15 Dated this 29th day of September, 2023.

16 

17 G. Murray Snow
18 Chief United States District Judge