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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ocean Garden Products Incorporated,
10 Plaintiff,
11 v.
12 Blessings Incorporated, et al.,
13 Defendants.

No. CV-18-00322-TUC-RM
Consolidated with:
No. CV-19-00284-TUC-RM

ORDER

14
15 Pending before the Court is Pacific Ocean Harvest, S. De R.L. De C.V.'s ("Pacific
16 Ocean") Motion to Dismiss Plaintiff's Second Amended Complaint. (Doc. 299.)
17 Plaintiff Ocean Garden Products, Inc. ("OG") filed a Response on January 23, 2020
18 (Doc. 319), and Pacific Ocean filed a Reply on February 3, 2020 (Doc. 323). For the
19 following reasons, the Motion to Dismiss will be denied.¹

20 **I. Background**

21 This litigation began in July 2018, when OG initiated a lawsuit against Blessings,
22 Inc. ("Blessings") and David Mayorquin ("David") in case number CV-18-322. (Doc. 1.)
23 OG later initiated a separate lawsuit alleging claims under Arizona's Uniform Fraudulent
24 Trade Act ("UFTA") against numerous defendants, including Pacific Ocean and
25 Abraham Mayorquin ("Abraham"), in case number CV-19-284. (Doc. 1 in CV-19-284)
26 (the "UFTA Action"). After case numbers CV-18-322 and CV-19-284 were
27 consolidated, OG filed a First Amended Complaint in the UFTA Action ("UFTA FAC").

28 ¹ The Court finds that the Motion is suitable for resolution without oral argument. Accordingly, Plaintiff's request for oral argument (see Doc. 319 at 1) is denied.

1 (Doc. 154.) Pacific Ocean moved to dismiss for lack of jurisdiction the claims asserted
2 against it in the UFTA FAC. (Doc. 157.) In an Order filed on October 25, 2019, this
3 Court granted Pacific Ocean’s Motion to Dismiss but gave OG leave to file a Second
4 Amended UFTA Complaint (“UFTA SAC”). (Doc. 239.) OG filed its UFTA SAC on
5 November 25, 2019. (Doc. 260.)

6 **II. Allegations of UFTA SAC**

7 OG’s UFTA SAC makes the following allegations with respect to Pacific Ocean:

8 In 2014, brothers David and Abraham conducted a shrimp business predominantly
9 through Blessings, purchasing shrimp from vendors (primarily OG), processing the
10 shrimp at Blessings’ Tucson facility, and reselling the processed shrimp to Blessings’
11 customers. (Doc. 260 at ¶¶ 2, 70.) While concealing the existence of a criminal
12 investigation that posed an existential threat to Blessings’ business, the brothers
13 “embarked on a campaign to get as much cash and shrimp as possible for Blessings from
14 OG, while systematically transferring Blessings’ assets” to a Mexican entity named
15 ADAB Ocean Harvest, S. De R.L. De C.V. (“ADAB Mexico”), thereby isolating the
16 debts of their shrimp business in Blessings and their assets in ADAB Mexico. (Id. at ¶¶
17 2-5, 18.) Beginning in or around September 2015, the brothers transferred Blessings’
18 shrimp processing business to ADAB Mexico and terminated Blessings’ shrimp
19 processing operations in Tucson. (Id. at ¶¶ 86-89.)

20 After the criminal investigation became public in 2017, David and Abraham set up
21 Pacific Ocean—a Mexican entity with premises in Nogales, Sonora—to take over the
22 shrimp processing business of ADAB Mexico, and they set up ADAB Ocean Harvest
23 LLC (“ADAB Tucson”) to take over the shrimp sales business of Blessings. (Id. at ¶¶ 6-
24 8, 19, 127-128.) Pacific Ocean processes shrimp from the same building occupied by
25 ADAB Mexico in Nogales, Sonora, and purchases shrimp from Blessings’ former
26 suppliers. (Id. at ¶¶ 128-129.) Although Abraham is nominally the 99% owner of Pacific
27 Ocean—thus creating an “illusion that David and Blessings have been separated from the
28 business”—David is still an equitable owner of the company, attending a meeting for

1 Pacific Ocean in October 2019 and directing the preparation of deal terms on Pacific
2 Ocean letterhead using Abraham’s signature. (Id. at ¶¶ 130-131, 140-144.) As a result of
3 “the brothers’ cross-border corporate shell game, Blessings is insolvent and judgment-
4 proof,” while ADAB Mexico and Pacific Ocean “are operational and apparently
5 profitable” primarily thanks to cash, equipment, and intangible assets fraudulently
6 transferred from Blessings. (Id. at ¶¶ 9-10.)

7 OG asserts that jurisdiction over Pacific Ocean is proper because the entity “is
8 owned by Abraham and is not a good faith transferee of assets David and Abraham
9 fraudulently transferred to it from Blessings (both directly and through ADAB Mexico).”
10 (Id. at ¶ 25.) Sometime after January 2018, Blessings transferred possession of IMMEX
11 equipment to Pacific Ocean, which has been using the equipment to process shrimp since
12 at least March 2018 and has not paid Blessings anything for its possession or use of the
13 equipment. (Id. at ¶¶ 137-139.) Pacific Ocean also leases equipment from ADAB
14 Mexico under an insider lease. (Id. at ¶ 153.) In addition to equipment transfers, David
15 and Abraham transferred Blessings’ supplier relationships to Pacific Ocean, without any
16 contracts being signed concerning the transfer and without Blessings receiving any value
17 from Pacific Ocean in exchange for the transfer. (Id. at ¶¶ 145, 149-150.) Finally, David
18 and Abraham transferred Blessings’ shrimp-processing techniques, which Defendants
19 have claimed are trade secrets, directly to Pacific Ocean in exchange for no
20 consideration. (Id. at ¶¶ 151-152.) Blessings made the transfers of IMMEX equipment,
21 supplier relationships, and shrimp-processing trade secrets to Pacific Ocean “with the
22 actual intent to hinder, delay or defraud Blessings’ creditors, including OG,” and Pacific
23 Ocean did not receive the transfers in good faith. (Id. at ¶¶ 177-180, 189.) At the time of
24 the transfers, OG had a claim against Blessings; Blessings was insolvent or became
25 insolvent as a result of the transfers; and Blessings “did not receive reasonably equivalent
26 value in exchange” for the transfers. (Id. at ¶¶ 177, 187-188.) David, Abraham, ADAB
27 Mexico, Pacific Ocean, and ADAB Tucson conspired to orchestrate the transfers in
28 violation of the UFTA. (Id. at ¶ 196.)

1 **III. Legal Standard**

2 “Federal courts apply state law to determine the bounds of their jurisdiction over a
3 party.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017). Arizona’s
4 long-arm statute permits the exercise of jurisdiction to the full extent permissible under
5 the United States Constitution. *Ariz. R. Civ. P. 4.2(a)*; *Davis v. Metro Prods., Inc.*, 885
6 F.2d 515, 520 (9th Cir. 1989). In order for the exercise of personal jurisdiction over an
7 out-of-state defendant to comport with the requirements of due process under the United
8 States Constitution, the defendant must “have certain minimum contacts” with the forum
9 state “such that the maintenance of the suit does not offend traditional notions of fair play
10 and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal
11 quotation omitted).

12 The plaintiff bears the burden of establishing that the exercise of personal
13 jurisdiction is proper. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). This is
14 true even though the defendant is the moving party on a Rule 12(b)(2) motion to dismiss.
15 *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). But in the
16 absence of an evidentiary hearing, the plaintiff need only make “a prima facie showing of
17 personal jurisdiction.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800
18 (9th Cir. 2004) (internal quotation omitted).²

19 Personal jurisdiction can be general or specific. General personal jurisdiction
20 exists when the defendant’s affiliations with the forum state are so “continuous and
21 systematic” that the defendant can properly be said to be “at home” in that state.
22 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (internal
23 quotation omitted). A corporate defendant is typically “at home” only in its state of
24 incorporation and the state in which it has its principal place of business. See *id.* at 924.
25 Specific personal jurisdiction exists when “the defendant’s suit-related conduct . . .
26 create[s] a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277,

27 _____
28 ² The plaintiff must later establish the jurisdictional facts by a preponderance of the
evidence at a preliminary hearing or at trial. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*,
557 F.2d 1280, 1285 (9th Cir. 1977).

1 284 (2014). Three requirements must be satisfied for a court to exercise specific personal
2 jurisdiction over a non-resident defendant: (1) the defendant must have “purposefully
3 direct[ed] his activities or consummate[d] some transaction with the forum or resident
4 thereof” or “purposefully avail[ed itself] of the privileges of conducting activities in the
5 forum, thereby invoking the benefits and protections of its laws”; (2) the claim must have
6 arisen out of or relate to the defendant’s forum-related activities; and (3) “the exercise of
7 jurisdiction must comport with fair play and substantial justice, i.e. it must be
8 reasonable.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). If the
9 plaintiff meets its burden of showing sufficient minimum contacts to satisfy the first two
10 requirements for exercising specific personal jurisdiction, the burden then shifts to the
11 defendant to “present a compelling case that the exercise of jurisdiction would not be
12 reasonable.” *Schwarzenegger*, 374 F.3d at 802 (internal quotation omitted).

13 In evaluating a motion to dismiss for lack of personal jurisdiction under Rule
14 12(b)(2), the Court is not restricted to the four corners of the Complaint and may consider
15 extrinsic evidence, including affidavits and discovery materials. *Doe v. Unocal Corp.*,
16 248 F.3d 915, 922 (9th Cir. 2001) (per curiam), abrogated on other grounds by *Daimler*
17 *AG v. Bauman*, 571 U.S. 117 (2014). Uncontroverted allegations of a complaint must be
18 taken as true. *Ranza*, 793 F.3d at 1068. Factual disputes are resolved in the plaintiff’s
19 favor. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).

20 **IV. Discussion**

21 Pacific Ocean asks the Court to dismiss the claims asserted against it in the UFTA
22 SAC for lack of personal jurisdiction, without further leave to amend. (Doc. 299 at 12-
23 13.) Pacific Ocean argues that jurisdiction is lacking because “any and all actions or
24 supposed transfers took place solely in Mexico, where it is undisputed that Pacific Ocean
25 solely operates.” (Doc. 323 at 3-7, 12.) Pacific Ocean also argues that it pays fair market
26 value to lease equipment from ADAB Mexico, and that neither supplier relationships nor
27 Abraham’s knowledge of shrimp-processing techniques are assets that can be transferred
28 in violation of the UFTA. (Doc. 299 at 3-11.)

1 Pacific Ocean is not incorporated in Arizona, does not have its principal place of
2 business in this state, and does not have affiliations with Arizona that are so continuous
3 and systematic as to establish general personal jurisdiction. See *Goodyear Dunlop Tires*
4 *Operations*, 564 U.S. at 919. Accordingly, the Court turns to the question of specific
5 personal jurisdiction.

6 In resolving Pacific Ocean’s prior Motion to Dismiss OG’s UFTA FAC, the Court
7 analyzed whether Pacific Ocean is subject to specific personal jurisdiction under the
8 “effects” test of *Calder v. Jones*, 465 U.S. 783 (1984). (Doc. 239 at 6-7.) Under that test,
9 a defendant purposefully directs conduct at a forum state by (1) committing an intentional
10 act, (2) “expressly aimed at the forum state,” (3) that causes “harm that the defendant
11 knows is likely to be suffered in the forum state.” *Schwarzenegger*, 374 F.3d at 803
12 (quoting *Dole Food*, 303 F.3d at 1111). “Harm sufficient to establish personal
13 jurisdiction may be felt in multiple forums,” and harm from a plaintiff’s inability to
14 collect on a judgment is felt in the location of the action as well as the residence of the
15 plaintiff. *Best Western Int’l, Inc. v. I-70 Hotel Corp.*, No. CV11-1281-PHX-FJM, 2012
16 WL 2952363, at *4 (D. Ariz. July 19, 2012). Accordingly, as this Court has previously
17 found, interfering with a creditor’s ability to obtain a collectable judgment against
18 Blessings in a court in Arizona constitutes harm felt in Arizona. (See Doc. 217 at 10.)

19 OG’s UFTA SAC alleges the direct transfer from Blessings to Pacific Ocean of
20 IMMEX equipment, supplier relationships, and shrimp-processing trade secrets.
21 However, the UFTA SAC also alleges that Blessings transferred its shrimp-processing
22 business to ADAB Mexico beginning in 2015, and that the shrimp-processing business
23 was subsequently transferred to Pacific Ocean. (See Doc. 260 at ¶¶ 6-8, 86-89, 127-128.)
24 Furthermore, the IMMEX equipment documents attached to the UFTA FAC and to OG’s
25 Response to Pacific Ocean’s Motion to Dismiss appear to indicate that the equipment at
26 issue was imported by ADAB Mexico, primarily in the 2012-2014 time-frame, prior to
27 the existence of Pacific Ocean.³ (See Doc. 260-4; Doc. 319-8; see also Doc. 319-3

28 ³ Some equipment appears to have been imported by ADAB Mexico in 2018. (See
Doc. 260-4 at 28-32; Doc. 319-8 at 29-33.)

1 (incorporation documents indicating Pacific Ocean was incorporated in 2018.)⁴ Based on
2 the IMMEX equipment documents, other evidence in the record, and the allegations of
3 the UFTA FAC itself, it appears that equipment, supplier relationships, and shrimp-
4 processing techniques were transferred from Blessings to ADAB Mexico, and then
5 subsequently transferred from ADAB Mexico to Pacific Ocean.

6 OG argues that whether assets were transferred directly from Blessings to Pacific
7 Ocean or through an intermediary such as ADAB Mexico is irrelevant to whether Pacific
8 Ocean, as a subsequent transferee under A.R.S. § 44-1008(B)(2), is subject to
9 jurisdiction. (Doc. 319 at 9.) Under Arizona’s UFTA, “to the extent a transfer is
10 voidable in an action by a creditor” the creditor may obtain a judgment against either
11 “[t]he first transferee of the asset or the person for whose benefit the transfer was made,”
12 or “[a]ny subsequent transferee other than a good faith transferee who took for value.”
13 A.R.S. § 44-1008(B)(1)-(2). And as this Court has previously found, under the Calder
14 effects test, intentionally accepting fraudulently transferred assets for purposes of
15 interfering with a creditor’s ability to obtain a collectable judgment in a court in Arizona
16 constitutes conduct purposefully directed at Arizona for purposes of specific personal
17 jurisdiction. See *Schwarzenegger*, 374 F.3d at 803; *Best Western Int’l*, 2012 WL
18 2952363, at *4. Accordingly, even if Pacific Ocean is merely a subsequent transferee of
19 assets that were originally transferred from Blessings to ADAB Mexico, and even if the
20 transfer of those assets from ADAB Mexico to Pacific Ocean occurred only in Mexico,
21 specific personal jurisdiction may exist over Pacific Ocean.

22 In granting Pacific Ocean’s prior Motion to Dismiss OG’s UFTA FAC, the Court
23 noted that the evidence in the record at that time indicated, at most, that Blessings
24 directed the transfer of assets to ADAB Mexico and that Pacific Ocean later leased from
25 ADAB Mexico equipment that had been transferred to ADAB Mexico from Blessings.
26 (Doc. 239 at 6.) The Court found that, even if it were to assume that Pacific Ocean did

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28 ⁴ The IMMEX equipment documents and the Pacific Ocean incorporation documents are written in Spanish, and neither party has provided the Court with a translation of the documents.

1 not pay fair market value for its use of equipment leased from ADAB Mexico, the
2 circumstances were “too tenuous to support a finding that Pacific Ocean knew that its
3 mere use of the equipment would likely cause harm to creditors seeking to collect from
4 Blessings in Arizona.” (Id. at 7.) The new allegations of the UFTA SAC strengthen
5 OG’s position that specific jurisdiction exists over Pacific Ocean under the Calder effects
6 test. OG now alleges that critical aspects of Blessings’ shrimp-processing business—
7 including equipment, supplier relationships, and shrimp-processing trade secrets—were
8 transferred from Blessings to Pacific Ocean (either directly or through ADAB Mexico as
9 an intermediary), without Pacific Ocean providing Blessings with reasonably equivalent
10 value for the transfers.

11 Pacific Ocean argues that it pays value to lease shrimp-processing equipment from
12 ADAB Mexico, relying on an affidavit filed in support of its prior dismissal motion.
13 (Doc. 299 at 3, 5, 7-8.) In that affidavit, Abraham asserted that Pacific Ocean “pays fair
14 market value to ADAB Mexico” for its use of certain equipment. (See Doc. 24-1 at 5 in
15 CV 19-284.) However, the affidavit does not provide any specific facts to support the
16 conclusory assertion that Pacific Ocean pays fair market value to lease the equipment,
17 and Defendants have not identified any evidence showing the amount paid by Pacific
18 Ocean. See *Activator Methods Int’l, Ltd. v. Future Health, Inc.*, No. CV-11-1379-PHX-
19 GMS, 2012 WL 715629, at *4-5 (D. Ariz. Mar. 6, 2012) (finding self-serving conclusory
20 assertion in affidavit insufficient to contradict factual assertions of complaint).
21 Furthermore, the UFTA SAC alleges that the IMMEX equipment is separate and distinct
22 from the equipment leased by Pacific Ocean from ADAB Mexico (Doc. 260 at ¶ 153),
23 and Pacific Ocean has presented no evidence to contradict that allegation.
24 Uncontroverted allegations in the UFTA SAC “must be taken as true” for purposes of a
25 dismissal motion resolved without an evidentiary hearing. *Dole*, 303 F.3d at 1108.

26 Pacific Ocean further argues that Abraham’s knowledge of shrimp-processing
27 techniques is not an asset that can be transferred in violation of the UFTA. (Doc. 299 at
28 4-5, 10-11.) However, this argument is inconsistent with Defendants’ position—taken in

1 other contexts in this litigation—that Blessings’ shrimp-processing techniques are trade
2 secrets. (See, e.g., Doc. 251 at 5.) Intangible property rights and interests, such as trade
3 secrets, can be fraudulently transferred in violation of the UFTA. See *Arizona ex rel.*
4 *Indus. Comm’n of Ariz. v. Wright*, 43 P.3d 203, 206 (Ariz. App. 2002).

5 The parties also dispute whether supplier relationships are assets that can be
6 transferred in violation of the UFTA. (See Doc. 299 at 4-5, 8-10; Doc. 319 at 13-15;
7 Doc. 323 at 8-12.) In arguing that such relationships are assets for purposes of the
8 UFTA, OG relies upon *Powertech Tech., Inc. v. Tessera, Inc.*, No. C 11-6121 CW, 2014
9 WL 171830 (N.D. Cal. Jan. 15, 2014) and *Odyssey Reinsurance Co. v. Nagby*, No. 16-cv-
10 03038-BTM-WVG, 2019 WL 2868928 (S.D. Cal. July 2, 2019). (Doc. 319 at 14-15.) In
11 *Powertech*, there was evidence that the UFTA defendant transferred a customer
12 relationship that “represented a large percentage” of its business. 2014 WL 171830, at
13 *11. In *Odyssey*, the UFTA defendant transferred “at least 75% of its most valuable
14 resource,” which was its business relationships with insurance brokerage firms. 2019
15 WL 2868928, at *4-7, 9-10. It is not clear that the allegedly transferred supplier
16 relationships at issue here had value equivalent to the value of the customer and broker
17 relationships at issue in *Powertech* and *Odyssey*. Nevertheless, the Court finds that OG’s
18 allegation that Pacific Ocean is not a good-faith transferee of Blessings’ supplier
19 relationships, when considered in conjunction with OG’s allegations that Pacific Ocean
20 received shrimp-processing trade secrets and possession of shrimp-processing equipment
21 without giving reasonably equivalent value in exchange, are sufficient to establish a
22 prima facie case of specific personal jurisdiction.


23 By allegedly transferring tangible and intangible shrimp-processing assets from
24 Blessings to Pacific Ocean (either directly or through ADAB Mexico), Defendants were
25 able to continue to profit from their shrimp-processing business operations while leaving
26 Blessings insolvent and judgment-proof, thus frustrating the ability of creditors such as
27 OG from collecting on Blessings’ debts in courts in Arizona. Given Defendants’
28 overlapping ownership, OG has sufficiently shown—for purposes of a jurisdictional

1 dismissal motion resolved without an evidentiary hearing—that Pacific Ocean knew that
2 its receipt of tangible and intangible shrimp-processing assets would interfere with
3 creditors’ ability to collect from Blessings in Arizona, thus satisfying the purposeful
4 direction requirement of specific personal jurisdiction pursuant to the Calder effects test.
5 OG’s claims against Pacific Ocean arise out of that purposeful direction, and Pacific
6 Ocean has not presented “a compelling case that the exercise of jurisdiction would” be
7 unreasonable. Schwarzenegger, 374 F.3d at 802 (internal quotation omitted); see also
8 Dole Food, 303 F.3d at 1111. Accordingly, OG has established a prima facie case of
9 specific personal jurisdiction over Pacific Ocean.⁵

10 **IT IS ORDERED** that Pacific Ocean’s Motion to Dismiss the UFTA SAC (Doc.
11 299) is **denied**.

12 Dated this 18th day of February, 2020.

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Honorable Rosemary Márquez
United States District Judge

⁵ OG will later be required to establish the facts supporting personal jurisdiction by a preponderance of the evidence at a preliminary hearing or at trial. Data Disc, 557 F.2d at 1285.