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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBB EVANS OF ROBB EVANS &
ASSOCIATES,

Plaintiff,

v.

KERRY JOHNSON, et al.,

Defendants.

Case No. 2:12-cv-01053-MMD-VCF

ORDER
(Defendants' Motion to Dismiss – dkt. no. 12)

I. SUMMARY

Before the Court is Defendants' Motion to Dismiss. (Dkt. no. 12.) For the reasons discussed below, the Motion is denied.

II. BACKGROUND

Plaintiff Robb Evans of Robb Evans & Associates ("the Receiver") filed this suit on June 20, 2012, for alleged violations arising out of its role as a court-appointed receiver in *Federal Trade Commission v. Johnson*, No. 2:10-cv-2203-MMD-GWF (D. Nev. filed Dec. 20, 2010) ("the FTC Action"). After issuing a preliminary injunction, the Court ordered the Receiver to collect and preserve the assets ("the Receivership estate") that the FTC alleges was fraudulently gathered by the defendants in the FTC Action. Defendants Kerry and Barbara Johnson are the parents of Jeremy Johnson, the

1 principal defendant in the FTC Action. Defendant The KB Family Limited Partnership
2 (“KB”) is a limited partnership whose sole partners are the Johnsons.¹

3 The Receiver alleges that various defendants in the FTC Action, including Jeremy
4 Johnson, unlawfully transferred assets within the Receivership estate to the Johnsons in
5 the form of precious metals, stock, money, and other property. The Receiver alleges
6 that the Johnsons did not receive any of these transfers in good faith, and that these
7 transfers were not for reasonably equivalent value. The Receiver brings this suit alleging
8 that the Johnsons received these transfers with the intent to hinder existing and future
9 creditors of the Receivership estate. The Receiver alleges three violations of Utah’s
10 Uniform Fraudulent Transfer Act, unjust enrichment, and refusal to turnover receivership
11 property.

12 On July 16, 2012, the Johnsons filed this Motion seeking to dismiss the
13 Receiver’s Complaint for lack of personal jurisdiction. (Dkt. no. 12.)

14 **III. LEGAL STANDARD**

15 In opposing a defendant’s motion to dismiss for lack of personal jurisdiction, the
16 plaintiff bears the burden of establishing that jurisdiction is proper. *Boschetto v. Hansin*,
17 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, the defendant’s motion is based
18 on written materials rather than an evidentiary hearing, “the plaintiff need only make a
19 prima facie showing of jurisdictional facts to withstand the motion to dismiss.” *Brayton*
20 *Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010) (internal
21 quotation marks omitted). The plaintiff cannot “simply rest on the bare allegations of its
22 complaint,” but uncontroverted allegations in the complaint must be taken as true.
23 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting
24 *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). A court
25 “may not assume the truth of allegations in a pleading which are contradicted by
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27 ¹For convenience, the Court hereafter refers to all three Defendants as “the
28 Johnsons.”

1 affidavit,” *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir.
2 1977), but it may resolve factual disputes in the plaintiff’s favor, *Pebble Beach Co. v.*
3 *Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006).

4 **IV. DISCUSSION**

5 The Johnsons argue that, as citizens of Utah, this Court lacks personal jurisdiction
6 over them. They argue that the Receiver’s failure to allege that the Johnsons conducted
7 any business in Nevada, performed any act or consummated any transaction in Nevada,
8 or had any contacts with Nevada proves fatal to the Court’s assertion of jurisdiction over
9 them. The Receiver argues that 28 U.S.C. §§ 754 and 1692 authorize a receiver to file
10 complaints in other districts and allow those courts in which the receivership is pending
11 to assert personal jurisdiction over persons and assets in those districts. The Court
12 agrees with the Receiver.

13 The Court begins by noting that “the initial suit which results in the appointment of
14 the receiver is the primary action and that any suit which the receiver thereafter brings in
15 the appointment court in order to execute his duties is ancillary to the main suit.” *Haile v.*
16 *Henderson National Bank*, 657 F.2d 816, 822 (6th Cir. 1981). 28 U.S.C. § 754 provides
17 that a receiver appointed in any civil action is “vested with complete jurisdiction and
18 control of all such property with the right to take possession thereof” and has the
19 “capacity to sue in any district without ancillary appointment.” The companion statute, 28
20 U.S.C. § 1692, provides that “[i]n proceedings in a district court where a receiver is
21 appointed for property, real, personal, or mixed, situated in different districts, process
22 may issue and be executed in any such district as if the property lay wholly within one
23 district, but orders affecting the property shall be entered of record in each of such
24 districts.” As recognized by the First Circuit, “the purpose of the statute [§ 754] is to give
25 the appointing court jurisdiction over property in the actual or constructive possession
26 and control of the debtor, wherever such property may be located.” *Am. Freedom Train*
27 *Found. v. Spurney*, 747 F.2d 1069, 1073 (1st Cir. 1984).

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1 The question becomes whether these two statutes replace the minimum contacts
2 analysis developed in *International Shoe v. State of Washington*, 326 U.S. 310 (1945).
3 In *Haile*, the Sixth Circuit first confronted this issue, and held that an appointing court
4 need not follow *International Shoe* because the court is not attempting to extend its
5 jurisdiction beyond its territorial limitations. 657 F.2d at 823-24. Since § 1692 provides
6 for nationwide service, the *Haile* court reasoned, the strictures of minimum contacts did
7 not apply, and the appointing court can exercise personal jurisdiction over the ancillary
8 suit. *Id.* This holding was expressly adopted by the First and D.C. Circuits. *See S.E.C.*
9 *v. Bilzerian*, 378 F.3d 1100, 1103-06 (D.C. Cir. 2004) (declining to follow *Stenger v.*
10 *World Harvest Church, Inc.*, No. 02 C 8036, 2003 WL 22048047, at *2 (N.D. Ill. Aug. 29,
11 2003)); *Am. Freedom Train Found.*, 747 F.2d at 1073-74 (holding that §§ 754 and 1692
12 conferred non-exclusive personal jurisdiction over non-resident defendants).

13 Importantly, the Ninth Circuit affirmed this line of cases in interpreting §§ 754 and
14 1692, and expressly agreed with the D.C. and Sixth Circuits that “where a party has
15 been properly served by the Receiver, the Due Process Clause is satisfied because the
16 party has minimum contacts with the United States as a whole.” *S.E.C. v. Ross*, 504
17 F.3d 1130, 1146 (9th Cir. 2007). As support for this proposition, the *Ross* court quoted
18 language from *Haile* that determined inapplicable the strictures of *International Shoe*
19 where a federal statute authorizes nationwide service of process. Indeed, over 20 years
20 earlier, the Ninth Circuit appeared to adopt this rule, holding that a district court in the
21 District of Arizona could obtain in personam jurisdiction over a Texas citizen under the
22 receivership statutes. *See United States v. Ariz. Fuels Corps.*, 739 F.2d 455, 460 (9th
23 Cir. 1984) (citing *Haile*, 657 F.2d at 822). Contrary to the Johnsons’ wishes, this Court
24 cannot depart from such a clear enunciation of the law by its governing circuit.


25 The Johnsons also appear to challenge the underlying basis for the exercise of
26 personal jurisdiction, arguing that only when their property is adjudged to be conclusively
27 within the Receivership estate can this Court exercise jurisdiction over them. This
28 position also fails, for the simple reason that the Receiver’s factual assertions are to be

1 afforded weight at a Motion to Dismiss. Although “the question of jurisdiction and the
2 merits of the action are intertwined,” a court has jurisdiction over an action where a
3 dispute arises as to the proper exercise of that jurisdiction so long as the action’s claim
4 for jurisdiction is not frivolous or wholly insubstantial. *See Williston Basin Interstate*
5 *Pipeline Co. v. An Exclusive Gas Storage Leasehold*, 524 F.3d 1090, 1094 (9th Cir.
6 2008); *cf. Sarei v. Rio Tinto, PLC*, 487 F.3d 1193, 1200 (9th Cir. 2007) (“In order to
7 satisfy [itself] of jurisdiction, [the court] thus need[s] not engage in a full blown review of
8 plaintiffs’ claims on the merits but rather must determine only whether the claims do not
9 appear to be immaterial and made solely for the purpose of obtaining jurisdiction and are
10 not wholly insubstantial and frivolous.”). Accordingly, the plausibility of the Receiver’s
11 allegations suffices to afford this Court personal jurisdiction over the Johnsons in light of
12 the analysis *supra*.²

13 **V. CONCLUSION**

14 IT IS THEREFORE ORDERED that Defendants’ Motion to Dismiss (dkt. no. 12) is
15 DENIED.

16 DATED THIS 11th day of February 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

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28 ²The Johnsons do not argue that the Receiver failed to adhere to § 754’s filing
procedures. The Court declines to consider this issue.