2022 WL 1407963
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United States District Court, C.D. California.

SUNFLORA, INC., Plaintiff,

v.

The NATURAL SOLUTIONS, LLC, Michelle Pina, Steven Pina a.k.a. Steven Edward, Fadi Saab, and Injoi Inc., Defendants.

The Natural Solutions, LLC, and Michelle Pina, Counterclaimants,

v.

SunFlora, Inc., Marcus Quinn, and Phillip Anthony a/k/a "Tony" Bryan, Counter-Defendants.

Case No.: CV 20-01141-CJC(MRWx)
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Signed 01/21/2022

Attorneys and Law Firms

Adam R. Fox, Hannah Justine Makinde, Marisol C. Mork, Squire Patton Boggs US LLP, Los Angeles, CA, Eleanor M. Hagan, Squire Patton Boggs US LLP, Cleveland, OH, Joseph Patrick Grasser, Squire Patton Boggs US LLP, San Francisco, CA, for Plaintiff.

Brice E. Bryan, Christopher J. Brantingham, Jeffrey Thomas Gillingham, Brice E. Bryan and Associates, Thousand Oaks, CA, for Defendants.

Brice E. Bryan, Christopher J. Brantingham, Jeffrey Thomas Gillingham, Brice E. Bryan and Associates, Thousand Oaks, CA, for Counterclaimants.

Adam R. Fox, Hannah Justine Makinde, Marisol C. Mork, Squire Patton Boggs US LLP, Los Angeles, CA, for Counter-Defendants Marcus Quinn, Phillip Anthony Bryan.

Adam R. Fox, Squire Patton Boggs US LLP, Los Angeles, CA, Eleanor M. Hagan, Squire Patton Boggs US LLP, Cleveland, OH, for Counter-Defendants SunFlora, Inc.

ORDER GRANTING COUNTER-DEFENDANTS MARCUS QUINN'S AND PHILLIP ANTHONY BRYAN'S MOTION TO DISMISS WITH LEAVE TO AMEND [Dkt. 89]

CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

***1** On February 4, 2020, Plaintiff SunFlora, Inc. ("SunFlora") filed this action alleging that Defendants The Natural Solutions and Michelle Pina failed to fulfill the terms of an Exclusive Territory Agreement ("ETA") and Affiliate Agreement to open stores that sold Cannabidiol products. (Dkt. 1 [Complaint].) On May 5, 2020, Defendants (hereinafter "Counterclaimants") counterclaimed, alleging several contract-related claims against SunFlora. (Dkt. 25 [Counterclaim].) After amending their Counterclaim twice, Counterclaimants filed their Third Amended Counterclaim ("TACC") on November 5, 2021, with the Court's leave, alleging that SunFlora also violated California franchise laws and California's Business and Professions Code § 17200. (Dkt. 73 [Court's Order Granting Leave to File TACC]; Dkt. 74 [TACC].) The TACC also added two new Counter-Defendants, Marcus Quinn ("Quinn") and Philip Anthony "Tony" Bryan ("Bryan"). Quinn is Chief Executive Officer of

SunFlora, Inc. and Bryan is SunFlora's Chief Marketing Officer. (TACC ¶ 77.) The TACC alleges only one claim against Quinn and Bryan under California's Franchise Investment Law ("CFIL"), Cal. Corp. Code § 31000 *et seq.* (*Id.* ¶¶ 92–105.)

On December 16, 2021, this Court denied SunFlora's motion to dismiss Counterclaimants' claims in the TACC to the extent that they were predicated upon the existence of a franchise agreement between Counterclaimants and SunFlora. (Dkt. 90 [Court's Order Denying Counter-Defendant SunFlora, Inc's Motion to Dismiss].) The Court explained, at length, that Counterclaimants had sufficiently plead the existence of a franchise agreement. (*Id.* at 6–13.) Now before the Court is Quinn's and Bryan's joint motion to dismiss themselves from the action for lack of personal jurisdiction and for failure to state a claim against them under CFIL. For the following reasons, Quinn's and Bryan's motion to dismiss is **GRANTED WITH LEAVE TO AMEND**. [1]

II. BACKGROUND

On January 4, 2019, Counterclaimants and SunFlora entered into an Exclusive Territory Agreement ("ETA"), which granted Counterclaimants the exclusive right to open stores affiliated with SunFlora ("Affiliate Stores") within six counties in Southern California. (TACC ¶ 2.) Affiliate Stores, also known as "Your CBD" stores, were to market and sell SunFlora's CBD products. If Counterclaimants were able to open twelve Affiliate Stores within Southern California by December 31, 2019, then the ETA would be renewed for an additional 36 months. (*Id.*) The ETA defines an Affiliate Store as "a business owned by an individual or entity that has signed an Affiliate Letter of Agreement from SunFlora in order to market the Sunmend product line, SunFlora, Inc. products, and the Your CBD Store brand." [2] (*Id.* ¶¶ 2, 35, Ex. A [ETA and Affiliate Agreement] at 8.)

***2** According to the TACC, "[t]he Affiliate Agreement, both independently and together with the ETA, constitutes a franchise agreement as defined under California's Business and Professions Code § 2001 and Corporations Code § 31005." (*Id.* ¶ 3.) The TACC alleges that Quinn and Bryan acted as "an officer, director, manager or principal owner of" SunFlora and that "[a]t all times material to this complaint ... [they] formulated, directed, controlled or participated in the acts or practice of" SunFlora. (*Id.* ¶¶ 10, 11.) The TACC also identifies Quinn and Bryan as "agents" of SunFlora, whom "solicited Counterclaimants to open Your CBD Stores in the state of California" as well as "ratified" conduct by other SunFlora employees that determined that Counterclaimant's Fontana, California store was not legitimate. (*Id.* ¶¶ 33, 77, 84.) Counterclaimants also allege that Quinn and Bryan "materially aided and exercised control over SunFlora in the offer and sale of the franchise in violation of Corporations Code § 31110 and had knowledge of the facts by reason of which the liability is alleged to exist." (*Id.* ¶¶ 102, 103.)

III. LEGAL STANDARD

A party may move to dismiss an action for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2). In determining the bounds of their personal jurisdiction, "[f]ederal courts ordinarily follow state law." *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014). Because California's long-arm statute "allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution," the Court need only analyze whether personal jurisdiction over Defendants comports with constitutional due process. *Id.*

Constitutional due process concerns are satisfied when a nonresident defendant has "certain minimum contacts" with the forum state "such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001) (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945)). Under the minimum contacts analysis, personal jurisdiction may be either general or specific. *Id.*

General jurisdiction "permits a court to hear 'any and all claims' against a defendant, whether or not the conduct at issue has any connection to the forum [state]." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). A court may exercise general jurisdiction over an out-of-state defendant when that defendant's "affiliations with the State are so 'continuous and systematic' as to render [the defendant] essentially at home [there]." *Id.* at 125. In contrast, specific jurisdiction arises when a defendant's contacts with the forum state give rise to the claim in question. *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S.

408, 414–16 (1984). Because there does not seem to be a dispute regarding general jurisdiction over Quinn and Bryan, the Court will address only specific jurisdiction.

The Ninth Circuit employs a three-part test for assessing whether a defendant has sufficient contacts with the forum state to be subject to specific personal jurisdiction: (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; (2) the claim must be one which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). The plaintiff has the burden of proving the first two prongs. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011). If a plaintiff can successfully do so, "the burden shifts to the defendant to set forth a compelling case that the exercise of jurisdiction would not be reasonable." *Picot*, 780 F.3d at 1212.

The first prong "appl[ies] a 'purposeful direction' test and look[s] to evidence that the defendant has directed his actions at the forum state, even if those actions took place elsewhere." *Id.* To show that the defendant purposefully directed his activities to the forum state, "the defendant allegedly must have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)).

***3** The plaintiff's burden "varies according to the nature of the pre-trial proceedings in which the jurisdictional question is decided." *Forsythe v. Overmyer*, 576 F.2d 779, 781 (9th Cir. 1978). "Where, as here, a motion to dismiss is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts." *Love v. Associated Newspapers, Ltd.*, 611 F.3d 601, 608–09 (9th Cir. 2010). "Uncontroverted allegations in the complaint must be taken as true, and conflicts over statements contained in affidavits must be resolved in [the plaintiff's] favor." *Id.*; *see also Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). However, "mere 'bare bones' assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual allegations will not satisfy a plaintiff's pleading burden." *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (per curiam).

IV. DISCUSSION

Quinn and Bryan make two primary arguments that this Court lacks personal jurisdiction over them. The first is the TACC fails to allege sufficient facts to support a finding of "specific jurisdiction." (Mot. at 5.) The second is since the TACC characterizes Quinn and Philip as "agents" of SunFlora and only describes them as acting in their capacity as "management and executives of SunFlora," they are shielded by the "fiduciary shield doctrine." (*Id.*) Counterclaimants respond that section 31302 of the California Corporations Code specifically allows that Quinn and Bryan be held individually liable for violations of CFIL § 31000 *et seq.* and Quinn and Bryan acted as the "guiding light" behind SunFlora's wrongful conduct, such that the fiduciary shield doctrine is inapplicable. At this point, the Court finds that Counterclaimants have failed to establish personal jurisdiction over Quinn and Bryan.

A. Specific Jurisdiction

The TACC does not contain enough facts to establish specific jurisdiction over Quinn and Bryan. To establish jurisdiction, Counterclaimants point out at the ETA and Affiliate Agreement are expressly directed at California because they were designed to govern the expansion of SunFlora's Your CBD Stores in six territories of Southern California: Los Angeles, Ventura, Orange, San Diego, Santa Barbara, and San Bernardino. (ETA and Affiliate Agreement at 9; Dkt. 92 [Opposition to Quinn's and Bryan's Motion to Dismiss, hereinafter "Opp."] at 9.) Counterclaimants also allege that Bryan and Quinn directed SunFlora to enter into these contracts. (TAC ¶¶ 102, 103.) And point out that it is their signatures and initials that executed these contracts on behalf of SunFlora. (Opp. at 9; ETA and Affiliate Agreement at 4–15.)

While the Court agrees that a contract aimed at establishing stores in California is conduct directed at the state, " 'a contract alone does not automatically establish minimum contacts in the plaintiff's home forum.' " *Picot v. Weston*, 780 F.3d 1205, 1212 (9th Cir. 2015) (quoting *Boschetto v. Hansing*, 539 F.3d 1011, 1017 (9th Cir. 2008)). "Rather, there must be 'actions by the defendant *himself* that create a substantial connection' with the forum State." *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)) (emphasis in original) (internal quotations omitted). That is, "[a] defendant must have 'performed some type of affirmative conduct which allows or promotes the transaction of business within the forum state.' " *Id.* (quoting *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990)). This involves considering "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing." *Burger King*, 471 U.S. at 479. The TACC's allegations mostly concern Sunflora's conduct aimed at the state, rather than Quinn's and Bryan's specific conduct aimed at California.

***4** Steven Pina ("Pina"), husband to Counterclaimant Michelle Pina and Defendant in this action, asserts that Bryan's and Quinn's contacts with California go beyond the execution of the ETA and Affiliate Agreement. In a declaration, Pina states that Bryan solicited him and his wife to expand SunFlora's network of stores in Southern California, and that both Quinn and Bryan expressed that they wanted to "solicit individuals like" Pina and his wife "into becoming an 'affiliate' of SunFlora." (Dkt. 92-1 [Declaration of Steven Pina In Support of Counterclaimants' Opposition to Quinn's and Bryan's Motion to Dismiss] ¶¶ 2–4.) Pina also declares that he had a prior business relationship with Quinn and Bryan and "they used that pre-existing relationship to reach out and solicit us to become SunFlora affiliates." (*Id.* ¶ 6.) Pina's declaration, however, does not explain where or how Quinn and Bryan solicited him or his wife, where the negotiations over the ETA and Affiliate Agreement took place, where the agreements were formed, nor any material details about the parties' course of dealing that would establish Quinn's and Bryan's purposeful activity in California. *See Picot*, 780 F.3d at 1212–13. Pina's declaration simply falls short of establishing that Quinn's and Bryan's contacts with the state, as individuals, were so substantial as to establish specific jurisdiction. *See id.* at 1212 (contacts in the forum sufficient to establish jurisdiction must not be " 'random, fortuitous, or attenuated' ") (quoting *Burger King*, 471 U.S. at 475).

B. Fiduciary Shield Doctrine

Currently, the TACC's allegations also fail short of avoiding the fiduciary shield doctrine. In general, the fiduciary shield doctrine prevents a corporation's minimum contacts with a forum from being imputed to its officers and employees in their individual capacities. The doctrine arises from the premise that "a person's mere association with a corporation that causes injury in the forum state is not sufficient in itself to permit that forum to assert jurisdiction over the person." *Davis v. Metro Prods. Inc.*, 885 F.2d 515, 520 (9th Cir. 1989). The fiduciary shield doctrine does not provide individuals with absolute protection, however, and does not apply when there is "a reason for the court to disregard the corporate form." *Id.* Courts disregard the corporate form in "instances where the [individual] defendant was the 'guiding spirit' behind the wrongful conduct ... or the 'central figure' in the challenged corporate activity." *Id.* at 524 (9th Cir. 1989) (quoting *Escude Cruz v. Ortho Pharm. Corp.*, 619 F.2d 902, 907 (1st Cir. 1980)). "Courts have thus found a corporate officer's contacts on behalf of a corporation sufficient to subject the officer to personal jurisdiction where the officer is a primary participant in the alleged wrongdoing." *Allstar Mktg. Grp., LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1120 (C.D. Cal. 2009) (internal citations omitted). It is the Counterclaimants' burden to show "that the individual defendant personally directed the activities toward the forum state giving rise to the complaint." *Ind. Plumbing Supply, Inc. v. Standard of Lynn, Inc.*, 880 F. Supp. 743, 750 (C.D. Cal. 1995).

The TACC's allegations as to the roles Quinn and Bryan played in SunFlora's alleged infringement of CFIL are currently too broad and vague to sustain a finding of personal jurisdiction. Counterclaimants allege that SunFlora violated CFIL when it offered or sold a franchise in California but failed to register that franchise with the State of California. (*Id.* ¶¶ 93, 94). Counterclaimants also allege that they were proximately harmed by this failure because they were unaware of their rights as franchisees. (*Id.* ¶¶ 95–99). With respect to Quinn and Bryan specifically, the TACC states nothing more than as "principal executive officer[s], [they] materially aided and exercised control over SunFlora in the offer and sale of the franchise in violation of Corporations Code § 31110 and had knowledge of the fact by reason of which the liability is alleged to exist." (*Id.* ¶¶ 102,

103.) Without more, the Court is unable to determine whether Quinn or Bryan were "guiding lights" behind SunFlora's alleged violations of the Franchise Investment Law. *See Davis*, 885 F.2d at 524. Indeed, Bryan submits in a declaration that he is unable to make a decision on SunFlora's behalf without the consent of the entire management team, which includes eight individuals of which he is only one. (Dkt. 89-2 [Declaration of Phillip A. Bryan in Support of Quinn's and Phillip's Motion to Dismiss] ¶ 3.) Quinn also declares that though he is CEO of SunFlora, he does "not make major decisions on SunFlora's behalf without the endorsement and recommendation of the broader management team." (Dkt. 89-1 [Declaration of Marcus Quinn in Support of Quinn's and Phillip's Motion to Dismiss] ¶ 3.)

C. California's Franchise Investment Law § 31302

***5** Counterclaimants' argument that CFIL provides an independent basis for personal jurisdiction over Quinn and Bryan is not persuasive. California courts have routinely rejected the idea that California Corporations Code section 31302 allows California to exercise personal jurisdiction over a nonresident executive or other employee of the franchisor. *See, e.g., Thomson v. Anderson*, 113 Cal. App. 4th 258, 267–70 (2003). Indeed, courts have emphasized that "Section 31302 extends liability to nonresidents controlling persons," but only so long as those persons are "subject to personal jurisdiction in California." *Id.* at 269–70. That is, CFIL does not "create[ ] an independent basis for personal jurisdiction[.]" *Burgo v. Lady of Am. Franchise Corp.*, 2006 WL 6642172, at *6 (C.D. Cal. May 4, 2006). As explained above, Counterclaimants have, at this stage, failed to establish specific jurisdiction over Quinn and Bryan.

D. Leave to Amend

Leave to amend must be freely granted, Fed. R. Civ. P. 15(a), and the Rule is "to be applied with extreme liberality," *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003). While the TACC lacks sufficient allegations to establish personal jurisdiction over Quinn and Bryan, there is nothing to suggest that amendment would be futile, unduly prejudicial, delayed, or in bad faith. *See Foman v. Davis*, 371 U.S. 178, 182 (1962); *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 871 (9th Cir. 2016) ("Dismissal of a complaint without leave to amend is only proper when, upon de novo review, it is clear that the complaint could not be saved by any amendment."). Counterclaimants, if they wish to do so, may amend their TACC to add more specific details concerning Quinn's and Bryan's contact with California as well as their roles in Sunflora's alleged infringement of CFIL. Such allegations must plausibly allege that Quinn and Bryan were the "guiding light" behind Sunflora's alleged infringement of CFIL to avoid the fiduciary shield doctrine, establishing personal jurisdiction.

V. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED WITH LEAVE TO AMEND**.

All Citations

Not Reported in Fed. Supp., 2022 WL 1407963

Footnotes

1 Having read and considered the papers presented by the parties, the Court finds this matter appropriate for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set for January 24, 2022, at 1:30 p.m. is hereby vacated and off calendar.

2 Both the ETA and Affiliate Agreement are attached to the TACC as Exhibit A and are central to the allegations raised. Thus, they are incorporated by reference. *See Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010).

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