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**United States District Court
Central District of California**

ARYOUT MICHAEL THOMAS
BHOTIWIHOK et al.,

Plaintiffs,

v.

FAIRLIFE, LLC et al.,

Defendants.

Case No 2:25-cv-01650-ODW (AGRx)

**ORDER GRANTING DEFENDANTS
MIKE AND SUE MCCLOSKEY’S
MOTION TO DISMISS [70]**

I. INTRODUCTION

Three representative Plaintiffs bring claims against Defendants Fairlife, Inc.; The Coca-Cola Company; Select Milk Producers, Inc.; Mike McCloskey; and Sue McCloskey. (First Am. Compl. (“FAC”), Dkt. No. 45.) Mike and Sue McCloskey (the “McCloskeys”) now move to dismiss pursuant to Federal Rule of Civil Procedure (“Rule” or “Rules”) 12(b)(2) and 12(b)(6). (Mot. Dismiss (“Motion” or “Mot.”), Dkt. No. 70.) For the following reasons, the Court finds that it lacks personal jurisdiction over the McCloskeys and **GRANTS** the Motion.¹

¹ Having carefully considered the papers filed in connection with the Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND**

2 The McCloskeys are a married couple and co-founders of Select Milk
3 Producers, two dairy farms, and several other corporate entities and brands. (FAC
4 ¶¶ 19–20.) The McCloskeys are also employed by the Farmers Assuring Responsible
5 Management program (“FARM”), which sets industry animal-care standards and
6 performs animal welfare audits. (*Id.* ¶¶ 45–47.) The McCloskeys are not California
7 citizens. (*See id.* ¶¶ 12–14, 24.)

8 Around 2014, the McCloskeys co-founded the Fairlife brand with Select Milk
9 Producers and Coca-Cola. (*Id.* ¶¶ 26–27.) Fairlife is a premium dairy company that
10 charges higher prices than traditional milk and milk products but touts higher levels of
11 animal care. (*Id.* ¶ 17.) For example, Fairlife states that it complies with “industry
12 leading standards” regarding animal welfare, set by organizations such as FARM. (*Id.*
13 ¶ 44.) However, according to Plaintiffs, the dairy farms that supply Fairlife engage in
14 rampant animal abuse and neglect that violates FARM standards. (*See, e.g., id.* ¶¶ 61–
15 65.)

16 Fairlife also touts its sustainability practices. (*Id.* ¶ 17.) For example, Fairlife
17 advertises that it utilizes “sustainable farming efforts” and that its bottles are
18 recyclable. (*Id.* ¶¶ 88, 96–97.) However, according to Plaintiffs, these claims are also
19 false or misleading because the bottles contain materials that render them
20 non-recyclable. (*Id.* ¶¶ 89, 102.)

21 Plaintiffs purchased Fairlife products in California, allegedly relying on
22 Fairlife’s animal care and sustainability representations. (*Id.* ¶¶ 12–14.) After
23 learning of the falsity of these representations, Plaintiffs filed this class action against
24 Coca-Cola and Fairlife for, among other things, false advertising, unfair competition,
25 and violations of California’s Consumers Legal Remedies Act (“CLRA”). (*Id.*
26 ¶¶ 228–81.) Plaintiffs also named Select Milk Producers and the McCloskeys,
27 charging them with aiding-and-abetting Coca-Cola and Fairlife’s false advertising,
28 unfair competition, and CLRA violations. (*Id.* ¶¶ 290–95.) The McCloskeys now

1 move to dismiss, arguing that the Court does not have personal jurisdiction over them.
2 (Mot. 8–16.)

3 III. LEGAL STANDARDS

4 Federal courts have the power to exercise personal jurisdiction to the extent
5 permitted by the laws of the states in which they sit. Fed. R. Civ. P. 4(k)(1)(A).
6 “California’s long-arm jurisdictional statute is coextensive with federal due process
7 requirements.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800–01
8 (9th Cir. 2004); *see* Cal. Civ. Proc. Code § 410.10. When this is the case, the court
9 inquires whether the defendant “ha[s] certain minimum contacts with [the forum state]
10 such that the maintenance of the suit does not offend ‘traditional notions of fair play
11 and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)
12 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *Glencore Grain Rotterdam*
13 *B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002).

14 When a defendant seeks dismissal under Rule 12(b)(2), the plaintiff bears the
15 burden of demonstrating that personal jurisdiction is proper. *Menken v. Emm*,
16 503 F.3d 1050, 1056 (9th Cir. 2007). Where, as here, a motion to dismiss for lack of
17 personal jurisdiction is based on written materials rather than an evidentiary hearing,
18 “the plaintiff need only make a prima facie showing of jurisdictional facts.” *Sher v.*
19 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). However, the plaintiff cannot “simply
20 rest on the bare allegations of its complaint.” *Schwarzenegger*, 374 F.3d at 800. The
21 court “may not assume the truth of allegations in a pleading which are contradicted by
22 affidavit, but factual conflicts between dueling affidavits must be resolved in the
23 plaintiff’s favor.” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 978 (9th Cir. 2021)
24 (citation modified). “Mere ‘bare bones’ assertions of minimum contacts with the
25 forum or legal conclusions unsupported by specific factual allegations will not satisfy
26 a plaintiff’s pleading burden.” *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir.
27 2007). Nor will “random,” “fortuitous,” or “attenuated” contacts establish specific
28 personal jurisdiction. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985).

1 IV. DISCUSSION

2 A non-resident defendant may be subject to either general or specific personal
3 jurisdiction. *FDIC v. British-Am. Ins. Co.*, 828 F.2d 1439, 1442 (9th Cir. 1987).
4 Plaintiffs do not dispute that the Court lacks general personal jurisdiction over the
5 McCloskeys. (*See* Opp’n 6–12, Dkt. No. 78 (discussing only specific jurisdiction).)
6 Indeed, general personal jurisdiction would be improper as the McCloskeys are not
7 California citizens. *See Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S.
8 915, 924 (2011) (“For an individual, the paradigm forum for the exercise of general
9 jurisdiction is the individual’s domicile.”). Thus, the Court focuses only on whether it
10 may exercise specific personal jurisdiction over the McCloskeys.

11 To determine whether a defendant’s contacts with the forum state are sufficient
12 to render the exercise of specific jurisdiction reasonable, the Ninth Circuit applies a
13 three-prong test: (a) the nonresident defendant purposefully directs activities or
14 consummates some transaction with the forum-state, or performs some act by which
15 he personally avails himself of the privilege of conducting activities in that forum;
16 (b) the claim arises out of or relates to the defendant’s forum-related activities; and
17 (c) the exercise of jurisdiction comports with fair play and substantial justice, *i.e.*, it is
18 reasonable. *Schwarzenegger*, 374 F.3d at 802. The party asserting jurisdiction,
19 Plaintiffs here, bears the burden of satisfying the first two prongs of this test. *Id.*
20 Once they have done so, the burden shifts to the party contesting jurisdiction, the
21 McCloskeys here, to establish that the third prong—reasonableness—has not been
22 satisfied. *Id.*

23 In assessing the first prong of the specific jurisdiction test, courts distinguish
24 between contract and tort cases. *See Roth v. Garcia Marquez*, 942 F.2d 617, 621
25 (9th Cir. 1991). Here, Plaintiffs bring claims against the McCloskeys sounding in tort,
26 specifically, aiding-and-abetting. *See Gerald v. Ross*, 204 Cal. App. 3d 968, 983
27 (1988) (“In the civil arena, an aider and abettor is called a cotortfeasor.”). For claims
28 sounding in tort, courts apply a “purposeful direction” test and look to “evidence that

1 the defendant has directed his actions at the forum state, even if those actions took
2 place elsewhere.” *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015) (quoting
3 *Schwarzenegger*, 374 F.3d at 802–03). Thus, the first prong of specific personal
4 jurisdiction, purposeful direction, is satisfied when the plaintiff demonstrates the
5 defendant “(1) committed an intentional act, (2) expressly aimed at the forum state,
6 (3) causing harm that the defendant knows is likely to be suffered in the forum state.”
7 *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002).

8 Here, Plaintiffs fail to establish purposeful direction because they fail to allege
9 that the McCloskeys “committed an intentional act.” *Id.* Plaintiffs’ theory of
10 purposeful direction relies heavily on the McCloskeys’ association with Fairlife and
11 FARM. According to Plaintiffs, by virtue of only the McCloskeys’ roles as
12 co-founders (and in Mike McCloskey’s case, “manager”) of Fairlife, the McCloskeys
13 must have known that California consumers would suffer from Fairlife’s
14 misrepresentations and omissions. (Opp’n 6.) This theory fails at the outset because
15 mere association does not suffice as an intentional act that could support a finding of
16 purposeful direction. Moreover, courts routinely reject conclusory attempts to impute
17 a corporation’s actions on its employees or agents. *See, e.g., Glob. Commodities*
18 *Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1109 (9th Cir.
19 2020) (“Personal jurisdiction over an individual who acts as an agent of a third party
20 must be assessed on the individual’s actions alone.”). Thus, without any allegation
21 that the McCloskeys committed any intentional acts directed at California while
22 working at Fairlife, the Court cannot find purposeful direction here. *See Keeton v.*
23 *Hustler Magazine, Inc.*, 465 U.S. 770, 781 (1984) (“[J]urisdiction over an employee
24 does not automatically follow from jurisdiction over the corporation which employs
25 him.”).

26 Plaintiffs also argue that the McCloskeys must have “engaged in conduct in
27 California” given that their FARM auditing work “doubtless took place in California.”
28 (Opp’n 6–7.) This argument fails for at least three reasons. First, the allegation that

1 the McCloskeys “engaged in conduct in California” is barebones and conclusory and
2 cannot support Plaintiffs’ plea for the exercise of personal jurisdiction. *See Swartz,*
3 476 F.3d at 766. Second, Plaintiffs do not allege that FARM conducted any auditing
4 work at any dairy farm connected to Fairlife. (*See generally* FAC.) Finally, even if
5 FARM did conduct auditing work related to Fairlife, Plaintiffs do not allege that the
6 McCloskeys actually performed any of those audits. (*See generally id.*) Thus,
7 Plaintiffs’ assertion, that the McCloskeys must have directed their conduct toward
8 California because of the auditing work, is insufficient to establish purposeful
9 direction.

10 Accordingly, Plaintiffs fail to establish that the McCloskeys purposefully
11 directed any activity at California. As Plaintiffs fail to establish this first prong of the
12 personal jurisdiction analysis, the Court need not inquire further. *See Boschetto v.*
13 *Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (“[I]f the plaintiff fails at the first step,
14 the jurisdictional inquiry ends and the case must be dismissed.”).

15 Finally, Plaintiffs seek leave for jurisdictional discovery. (Opp’n 12.) “[T]o
16 obtain discovery on jurisdictional facts, the plaintiff must at least make a ‘colorable’
17 showing that the Court can exercise personal jurisdiction over the defendant.” *Mitan*
18 *v. Feeney*, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007). “This ‘colorable’ showing
19 should be understood as something less than a prima facie showing, and could be
20 equated as requiring the plaintiff to come forward with ‘some evidence’ tending to
21 establish personal jurisdiction.” *Id.*

22 Here, Plaintiffs fail to allege a single intentional act by the McCloskeys, let
23 alone one expressly aimed at California. (*See generally* FAC.) Thus, the Court
24 declines to grant jurisdictional discovery and dismisses the case without leave to
25 amend. *See Yeager v. Airbus Grp. SE*, No. 8:19-cv-01793-JLS (ADSx), 2020 WL
26 3841049, at *7 (C.D. Cal. Mar. 19, 2020) (denying leave to amend where plaintiffs
27 failed to establish entitlement to jurisdictional discovery), *aff’d*, No. 21-55162,
28 2022 WL 1175236 (9th Cir. Apr. 20, 2022).

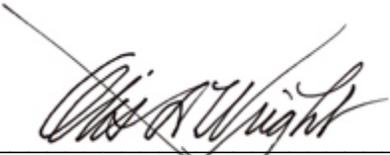
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V. CONCLUSION

For the reasons discussed above, the Court **GRANTS** the McCloskeys' Motion to Dismiss **WITHOUT LEAVE TO AMEND**. (Dkt. No. 70.) The Court **DISMISSES** Mike and Sue McCloskey **WITHOUT PREJUDICE**.

IT IS SO ORDERED.

January 26, 2026



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE