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United States District Court,
D. Wyoming.

GAS SENSING TECHNOLOGY CORP., and Blue Sky Group, Inc., Plaintiffs,
v.
Simon ASHTON, et al., Defendants.

Case No: 16-CV-272-F
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Signed 06/12/2017

Attorneys and Law Firms

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ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

NANCY D. FREUDENTHAL, CHIEF UNITED STATES DISTRICT JUDGE

***1** This matter is before the Court on several motions to dismiss made by Defendants. The Court has considered the evidence, motions, responses, and replies, and is fully informed in the premises. For the following reasons, the Court finds and Orders Defendant ProX's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 54) is GRANTED; Defendants Quentin Morgan and Ewan Meldrum's Motion to Dismiss (Doc. 57) is GRANTED as to Defendant Meldrum; John Dugald Mactaggart's Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction (Doc. 60) is GRANTED; Moving Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim (Doc. 62) is GRANTED; Motion to Dismiss Defendant Production Solutions-Australia Pty. Ltd. (Doc. 64) is GRANTED as it relates to Defendant Kinabalu; Motion to Dismiss Claims Against Defendants Linklater Family Property Trust and Graeme Michael Linklater (Doc. 67) is GRANTED; and Defendants Simon Ashton, Kinabalu Australia Pty. Ltd., Kinabalu Australia Trust, and ProX Pty. Ltd.'s Motion to Dismiss (Doc. 70) is GRANTED.

BACKGROUND

Plaintiffs brought this action against Defendants for engaging in activities to improperly take over ownership and control of Plaintiff Gas Sensing Technology Corp.'s ("Gas Sensing") subsidiary WellDog Pty. Ltd. ("WellDog") and misappropriating Gas Sensing's intellectual property and trade secrets. (Doc. 35 [Am. Compl.] at 2). The takeover is referred to as the "Take Over Action" and those engaged in the Take Over Action are referred to as the "Take Over Group." (*Id.*).

Gas Sensing "is an energy-focused technical services company that has developed its own patented reservoir Raman chemical sensing systems to provide commercial reservoir analysis services for coal, gas, [and] alternative and conventional resources...." (*Id.* at 12, ¶ 81). On December 3, 2010, Gas Sensing formed WellDog in Australia as its wholly owned subsidiary with the intent to expand its energy services throughout Australia. (*Id.* ¶ 84). Gas Sensing then sought private venture equity and debt from experts in the energy industry. (*Id.* at 13, ¶ 89). To expand WellDog in Australia, Gas Sensing "offered private venture equity and debt from Ashton Controlled Defendants, Linklater Controlled Defendants, Mactaggart Controlled Defendants and Brisbane Angels...."[1] (*Id.* ¶ 90). On June 1, 2011, the Ashton Controlled Defendants invested private venture equity in Gas Sensing by purchasing shares of stock. (*Id.* at 14, ¶ 95). Between 2011 and 2014, the Ashton Controlled Defendants provided approximately $4,000,000.00 in total venture debt. (*Id.* at 15, ¶ 103). In addition, the Linklater Controlled Defendants and Brisbane Angels Group Ltd. ("Brisbane Angels") also provided private venture equity and debt to Gas Sensing. (*Id.* ¶ 110).

***2** The same year the Ashton Controlled Defendants invested private venture equity in Gas Sensing, Defendant Quentin Morgan ("Morgan") was hired as Gas Sensing's Chief Technology Officer. (*Id.* at 16, ¶ 116). Plaintiffs

allege "[t]he Take Over Group solicited Defendant Morgan's assistance and aide while he was an employee and officer of GSTC, causing Defendant Morgan to violate his duty of loyalty to GSTC." (*Id.* ¶ 121). Additionally, Plaintiffs claim Defendant Graeme Michael Linklater ("Linklater"), while acting as Gas Sensing's Chief Financial Officer, "used confidential information acquired while employed by WellDog and an officer of GSTC to direct and assist the Take Over Group in its Take Over Activities." (*Id.* at 17, ¶ 127). As such, Plaintiffs assert Linklater violated his duty of loyalty to Gas Sensing. (*Id.* ¶ 129).

In December of 2012, Gas Sensing was approached about developing a new technology for shale gas exploration of an international oil and gas exploration and production company. (*Id.* at 18, ¶ 132). To help finance the research and development, "the international exploration and production company's technology venture capital subsidiary ("INVESTOR") invested capital in GSTC in exchange for private venture equity with the expectation for further investment upon a successful beta trial of the technology." (*Id.* ¶ 133). In May of 2015, a successful beta trial was completed. (*Id.* ¶ 134). According to Plaintiffs, "[t]he capital expected to be raised by the second round of INVESTOR equity investment in GSTC would have paid all maturing venture debt owed to Ashton Controlled Entities, Mactaggart Controlled Entities, Brisbane Angels and Linklater Controlled Entities." (*Id.* ¶ 137). Plaintiffs also claim that "[u]pon receipt of the INVESTOR's equity investment, GSTC would have been able to secure additional private equity and debt investment sufficient to pay in full the private venture debt provided by Ashton Controlled Entities, Mactaggart Controlled Entities, Brisbane Angels and Linklater Controlled Entities." (*Id.* at 18–19, ¶ 138).

Thereafter, on November 19, 2014, Defendant Simon Ashton ("Ashton") signed the Director Agreement for Gas Sensing which explained his duties as the Director. (*Id.* at 19, ¶¶ 139–40). Since its adoption on August 5, 2015, Plaintiffs claim Ashton has repeatedly violated the Code of Conduct to benefit the Ashton Controlled Defendants to the detriment of Gas Sensing. (*Id.* at 20, ¶¶ 147–48). Also in August of 2015, Plaintiffs claim Ashton began "attempting to sell Ashton Controlled Entity Kinabalu's shares of GSTC to INVESTOR in competition with GSTC's efforts to secure additional private venture equity investments from INVESTOR." (*Id.* at 20–21, ¶ 150). On August 14, 2015, Chairman of the Board of Directors for Gas Sensing Dr. John Michael Pope sent an email to Ashton warning Ashton that if he continued to pursue a transaction with INVESTOR, it would be considered a violation of the Director Agreement and Code of Conduct. (*Id.* at 21, ¶ 151). Despite Dr. Pope's email, Ashton

> offered to sell and sold to INVESTOR below market value non-statutory shares acquired by his Ashton Controlled Entity through options on warrants ... for a price far in excess of the purchase price of the shares, but at [a] price well below the market price that INVESTOR would have paid GSTC for additional shares.

(*Id.* at 22, ¶ 153). Ashton notified Gas Sensing's Board of Directors of his sale on November 13, 2015. (*Id.* ¶ 155). Plaintiffs allege Ashton "wrongfully converted for Ashton Controlled Entities' sole benefit GSTC's business opportunities and deprived GSTC of the business opportunities to sell its shares that would have benefited all shareholders pro rata." (*Id.* ¶ 157). Because Ashton converted the INVESTOR capital to his own use and thereby denied Gas Sensing access to the capital, "Ashton prevented GSTC from having a means to extinguish the Ashton Controlled Entity ProX debt." (*Id.* at 23, ¶ 166).

***3** Also while Ashton served as the Wyoming Director for Gas Sensing, he devised "a plan with others to unlawfully divest GSTC of its subsidiary WellDog Pty." (*Id.* at 25, ¶ 175). This was the plan for the Take Over Action. The Mactaggart Controlled Defendants, Brisbane Angels, and the Linklater Controlled Defendants joined Ashton and the Ashton Controlled Defendants in the plan, creating the Take Over Group. (*Id.* ¶ 176). Plaintiffs assert the plan was for Ashton to control WellDog and Defendant John Dugald Mactaggart ("Mactaggart") to control Gas Sensing. (*Id.* ¶ 179). As a means of achieving this goal, on August 17, 2015, the Mactaggart Controlled Entities and Brisbane Angels requested Gas Sensing and WellDog to allow them to move their venture capital debt from an obligation to Welldog to Gas Sensing. (*Id.* ¶ 177). This reorganization of capital "left ProX as the sole entity providing WellDog venture capital debt." (*Id.* ¶ 178). As the plan for the Take Over Action unfolded, Plaintiffs claim Ashton described "to an employee and manager of GSTC his desire to take over WellDog Pty. and merge it into his Ashton Controlled Entities." (*Id.* at 26, ¶ 180). During this time, Ashton also recruited Morgan to help implement the Take Over Action. (*Id.* ¶ 182).

Plaintiffs allege that part of the Take Over Action was to simultaneously foreclose on the Take Over Group's venture debt. (*See id.* at 27, ¶ 191). Thus, on September 1, 2016, Defendant ProX Pty. Ltd. ("ProX") issued WellDog

an initial notice of default.[2] (*Id.* ¶ 192). Plaintiffs claim they cured the alleged default on September 9, 2016. (*Id.* at 27, ¶ 194). Similarly, the Mactaggart Controlled Defendants also issued a notice of default to Gas Sensing.[3] (*Id.* at 30, ¶ 204). In response, Plaintiffs state the Mactaggart Controlled Defendants "are estopped by their own conduct to assert that there was a requirement for GSTC to pay additional payments of principal." (*Id.* at 33, ¶ 228). Plaintiffs allege "Defendants together with John Does 1-20 continue conspiring to erode the value of WellDog Pty. in order to force a transfer of the business to themselves, giving them a preference over all other shareholders." (*Id.* at 33–34, ¶ 234).

In the summer of 2016, the Take Over Group began exposing the Take Over Action. (*Id.* at 34, ¶ 241).

> The plan for Ashton Controlled Entities to take over WellDog Pty. Ltd. and Mactaggart Controlled Entities to take over GSTC was formally articulated in an email from Defendant Ashton, dated September 21, 2016, to Defendant Meldrum, Defendant Morgan, and Defendant Linklater, with a fictitious proposed press release to be issued on October 1, 2016.

(*Id.* at 35–36, ¶ 246). As a result of the Take Over Group's conduct, Plaintiffs claim damages, including the inability to pay out certain debts owed by WellDog and Gas Sensing, operational constraints due to undercapitalization, the inability to raise additional capital, the inability to realize certain commercial and market opportunities, significantly weakening Gas Sensing's and WellDog's financial condition, and causing Gas Sensing and WellDog to be at risk of Defendants taking over. (*Id.* at 39–40, ¶ 261). As such, Plaintiffs brought this action on November 2, 2016, and amended their complaint on January 20, 2017. (*See* Doc. 1 [Compl.]; Doc. 35 [Am. Compl.]).

LEGAL STANDARD

It is well-settled that "a judge ruling on a defendant's motion to dismiss a complaint, 'must accept as true all factual allegations contained in the complaint.' " *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 572 (2007) (citations omitted). The Court must also view the allegations in the light most favorable to the nonmoving party. *See Sutton v. Utah State Sch. for Deaf & Blind*, 173 F.3d 1226, 1236 (10th Cir. 1999).

Motion to Dismiss for Lack of Personal Jurisdiction

In a motion to dismiss for lack of personal jurisdiction, the "[p]laintiff bears the burden of establishing personal jurisdiction over the defendant." *OMI Holdings, Inc. v. Royal Ins. Co. of Canada*, 149 F.3d 1086, 1091 (10th Cir. 1998) (citation omitted). For the plaintiff to defeat a Rule 12(b)(2) motion to dismiss, the plaintiff need only make a "prima facie showing by demonstrating, via affidavit or other written materials, facts that if true would support jurisdiction over the defendant." *Id.*

***4** In Wyoming, courts "are authorized by statute to exercise personal jurisdiction over defendants on any basis which is not inconsistent with the Wyoming or United States constitutions." *Black Diamond Energy Partners 2001-A Ltd. v. S & T Bank*, 278 P.3d 738, 742–43 (Wyo. 2012). Therefore, the exercise of jurisdiction is permitted so long as it "does not offend the Due Process Clause of the Fourteenth Amendment to the United States Constitution...." *Id.* at 743. "The Due Process Clause protects an individual's liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful 'contacts, ties, or relations.' " *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985) (citation omitted). Thus, for a court to have personal jurisdiction over a nonresident defendant, there must exist " 'minimum contacts' between the defendant and the forum state." *OMI Holdings*, 149 F.3d at 1090 (citations omitted). To satisfy the minimum contacts standard, a court may assert either specific or general jurisdiction over the defendant. *See id.* at 1091. However, if there is no specific or general jurisdiction, personal jurisdiction will nevertheless exist if the defendant consents to jurisdiction.

Specific jurisdiction "depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (alteration in original). When a court has specific jurisdiction, it is "confined to adjudication of 'issues deriving from, or connected with, the very controversy that establishes jurisdiction.' " *Id.* To establish specific jurisdiction, the defendant must have minimum contacts with the forum state. Minimum contacts "encompasses two distinct requirements: 'first, that the out-of-state defendant must have 'purposefully directed' its activities at residents of the forum state, and second, that the plaintiff's injuries must 'arise out of' defendant's forum-related activities." *Shrader v.*

Biddinger, 633 F.3d 1235, 1239 (10th Cir. 2011). Once the "purposefully directed" and "arising out of" requirements are met, the court must then "inquire whether the exercise of personal jurisdiction would offend traditional notions of fair play and substantial justice." *Id.* at 1240 (citation omitted).

In contrast, general jurisdiction is all inclusive and does not depend on a specific issue in dispute. Rather, a court may exercise "general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014) (citations omitted).

Motion to Dismiss for Failure to State a Claim

When ruling on a motion to dismiss for failure to state a claim, it is not the Court's function "to weigh [the] potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Miller v. Glanz*, 948 F.2d 1562, 1565 (10th Cir. 1991). To survive a motion to dismiss, the plaintiff's "complaint must contain sufficient factual matter ... to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). Plausibility requires the plaintiff to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. This standard "is not akin to a 'probability requirement,' but asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citation omitted). Thus, although the plaintiff does not need to provide detailed factual allegations, the complaint must contain more than mere "labels," "conclusions," and "formulaic recitations of the elements of a cause of action." *Twombly*, 550 U.S. at 555.

DISCUSSION

***5** Plaintiffs filed their Amended Complaint on January 20, 2017 against Defendants. (Doc. 35 [Am. Compl.]). Consistent with the scheduling order entered on February 1, 2017, Defendants filed numerous motions to dismiss in response to Plaintiffs' Amended Complaint. (*See* Doc. 41 [Order]; *see also* Docs. 54, 57, 60, 62, 64, 67, 70). For clarity purposes, each motion is addressed separately below.

A. Defendant ProX's Motion to Dismiss for Lack of Personal Jurisdiction

On March 10, 2017, ProX filed its motion to dismiss for lack of personal jurisdiction against Plaintiffs. (Doc. 54). Also on March 10, 2017 Mactaggart, Brisbane Angels, Jontra, and Associated Construction Equipment Pty. Ltd. ("ACE") filed a Notice of Joinder in ProX's motion. (*See* Doc. 69). In its motion, ProX argues dismissal is appropriate because ProX did not consent to Wyoming jurisdiction and the Court lacks either general or specific jurisdiction. (*See* Doc. 55 [ProX's Br. in Supp. Mot. to Dismiss] at 6–7). Although all three forms of establishing personal jurisdiction were asserted, ProX's arguments focused on lack of consent and lack of specific jurisdiction. (*See id.*).

One avenue for this Court to exercise personal jurisdiction over ProX is if the parties consent to jurisdiction. *See Rudzewicz*, 471 U.S. at 472 n.14 (citing *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982)). Consent is a viable avenue for finding jurisdiction because personal jurisdiction represents a waivable individual right. *See Ins. Corp. of Ireland*, 456 U.S. at 703. For example, a forum selection clause is one way parties may consent to jurisdiction. *See id.* ("A variety of legal arrangements have been taken to represent express or implied consent to the personal jurisdiction of the court."). Here, however, there is no dispute that ProX's involvement in this case is through certain financial notes between ProX and WellDog, the Australian subsidiary of Gas Sensing. (*See* Doc. 35 [Am. Compl.] at 15, ¶ 103). In addition, according to the Affidavit of Ashton, the notes contained a forum selection clause directing the notes to "be governed by, and construed and enforced in accordance with, the laws of the State of Queensland, Australia...." (Doc. 54-1 [Ashton Affidavit] at 3, ¶ 7; *see also* Docs. 59-1, 59-2, 59-3). Based on the facts alleged, the Court finds there is no evidence to suggest the parties consented to personal jurisdiction in Wyoming. Therefore, for ProX to prevail in this motion, the Court must lack both general and specific jurisdiction.

As previously stated, general jurisdiction is available when the defendant's contacts with the forum state are continuous and systematic. *See Bauman*, 134 S. Ct. at 754. In this case, there are no allegations that ProX had continuous and systematic contacts with Wyoming. Rather, the allegations in the motion to dismiss and Plaintiffs' response focus on whether this Court has specific jurisdiction. As a result, the Court finds general jurisdiction does not exist.

To establish specific jurisdiction, ProX must have minimum contacts with Wyoming. The minimum contacts standard typically requires courts to determine: "(1) whether the defendant purposefully directed its activities at residents of the forum state; (2) whether the plaintiff's injury arose from those purposefully directed activities; and (3) whether exercising jurisdiction would offend traditional notions of fair play and substantial justice." *Newsome v. Gallacher*, 722 F.3d 1257, 1264 (10th Cir. 2013) (citation omitted). Regarding the first requirement—purposefully directed activities—in tort-based lawsuits, there must be an intentional act that was expressly directed at the forum state with knowledge that the brunt of the injury would be felt in the forum state. *Id.* at 1264–65.

***6** However, when the plaintiff alleges a conspiracy, the purposeful direction inquiry differs from the traditional analysis. *See id.* at 1265. In some circumstances "[t]he existence of a conspiracy and acts of a co-conspirator within the forum may ... subject another co-conspirator to the forum's jurisdiction." *Melea, Ltd. v. Jawer SA*, 511 F.3d 1060, 1069 (10th Cir. 2007). "In order for personal jurisdiction based on a conspiracy theory to exist, the plaintiff must offer more than 'bare allegations' that a conspiracy existed, and must allege facts that would support a prima facie showing of a conspiracy." *Id.* Thus, if a conspiracy is alleged, the defendant may have the minimum contacts for personal jurisdiction if the co-conspirator's presence within the forum reasonably creates the minimum contacts necessary, the conspiracy is directed toward the forum, or substantial steps were taken in the forum to further the conspiracy. *See id.* at 1070.

Here, Plaintiffs allege Ashton, as Director and sole shareholder of ProX conspired to takeover WellDog and used ProX as his alter ego. By virtue of the conspiracy and being the alter ego, Plaintiffs claim ProX purposefully availed itself of the Wyoming courts. However, even if ProX is the alter ego of Ashton, Ashton's activities in Wyoming must nevertheless further the conspiracy on ProX's behalf to support personal jurisdiction premised on a conspiracy theory. Therefore, the first inquiry is whether personal jurisdiction will attach to ProX because ProX is the alter ego of Ashton.

According to the United States Court of Appeals for the Tenth Circuit, "[j]urisdiction over any entity, if it exists, must arise out of the entity's contacts with the forum. When one defendant completely controls another, the latter's contacts with the forum may fairly be imputed or attributed to the former." *Home-Stake Prod. Co. v. Talon Petroleum, C.A.*, 907 F.2d 1012, 1020 (10th Cir. 1990). This scenario is "one in which the individual alleged to dominate the corporation has no contacts with the forum, but the alter ego corporation has sufficient contacts." *Id.* at 1021; *see also PanAmerican Mineral Serv., Inc. v. KLS Enviro Res., Inc.*, 916 P.2d 986, 986 (finding "a Wyoming court can exercise personal jurisdiction over a parent corporation ... and its sister corporation, ... neither of which has the requisite minimum contacts with Wyoming, if a subsidiary corporation ... which has the requisite minimum contacts, is an alter ego of the parent or the sister."). The opposite is alleged in this case. Specifically, that Ashton (the dominating defendant) had contacts with Wyoming, whereas ProX (the dominated defendant) lacked such contacts. When looking at this situation, the Tenth Circuit rejected the proposition that "because the court has jurisdiction over a parent corporation or dominating individual, without more, it has jurisdiction over the alter ego corporation." *Talon Petroleum*, 907 F.2d at 1021. The rationale is that "[t]he dominated corporation does not direct and control its dominating corporate or individual alter ego." *Id.* As such, the Tenth Circuit concluded, "the corporate defendants are entitled to defend their status as real legal entities, separate from [the dominating individual], in a forum with which they themselves have sufficient contacts to subject them to service of process." *Id.* Because Ashton is alleged to be the dominating individual over ProX, the Court finds specific jurisdiction over ProX does not exist. The evidence demonstrates that ProX is an Australian entity, which entered into financial notes with the Australian company WellDog, and all relevant transactions between ProX and WellDog occurred in Australia. Additionally, because Ashton cannot provide the minimum contacts necessary for the Court to have jurisdiction over ProX, Plaintiffs' conspiracy theory in support of personal jurisdiction must also fail. For these reasons, ProX's motion to dismiss (Doc. 54) is GRANTED and ProX is DISMISSED WITHOUT PREJUDICE from this case.

B. Defendants Quentin Morgan and Ewan Meldrum's Motion to Dismiss

***7** On March 10, 2017, Defendants Morgan and Ewan Meldrum ("Meldrum") filed their motion to dismiss for lack of personal jurisdiction and failure to state a claim upon which relief may be granted. (Doc. 57). Also on March 10, 2017 Mactaggart, Brisbane Angels, Jontra, and ACE filed a Notice of Joinder in Morgan and Meldrum's motion. (*See* Doc. 69). In their motion to dismiss, Morgan and Meldrum argue dismissal is appropriate because the Court lacks both general and specific jurisdiction. (*See* Doc. 58 [Morgan and Meldrum's Br. in Supp. Mot. to Dismiss]). Within their motion, Morgan and Meldrum also joined in several other arguments based on forum non conveniens, international abstention, and because

Plaintiff Blue Sky Group, Inc. ("BSG") claims no harm to itself.[4] (*Id.* at 5). Because Morgan and Meldrum joined in other motions to dismiss, the only issue the Court will address within this motion is whether the Court lacks personal jurisdiction over Morgan and Meldrum. Furthermore, because neither consent nor general jurisdiction was argued in the motion, the only form of personal jurisdiction this Court will discuss is specific jurisdiction.

Defendant Quentin Morgan

As stated earlier, for the Court to have specific jurisdiction over Morgan, Morgan must have minimum contacts with Wyoming that relate to the issues presented in this case. This standard requires courts to determine: "(1) whether the defendant purposefully directed its activities at residents of the forum state; (2) whether the plaintiff's injury arose from those purposefully directed activities; and (3) whether exercising jurisdiction would offend traditional notions of fair play and substantial justice." *Newsome*, 722 F.3d at 1264 (citation omitted).

For the Court to find Morgan purposefully directed his activities at Wyoming residents, there must be an intentional action expressly aimed at the forum state, with knowledge that the brunt of the injury would be felt in the forum state. *Id.* at 1264–65. Here, Plaintiffs allege Morgan "was first employed by [WellDog] as its Technology Manager beginning in July of 2011, and shortly thereafter was promoted to Chief Technology Officer of GSTC." (Doc. 35 [Am. Compl.] at 6, ¶ 28; *see also* Doc. 92 [Pope Aff.] at 8, ¶ 61). The relevant Offer of Employment letter states: "We refer to our recent discussions regarding the possibility of you joining the team at WellDog Pty. Ltd. and its affiliates including Gas Sensing Technology Corp., collectively known as the Company." (Doc. 58-3 [Morgan Aff.] at 5). Plaintiffs also allege that as an officer of Gas Sensing, Morgan "spent much of his time in Wyoming performing his duties for GSTC." (Doc. 92 [Pope Aff.] at 8, ¶ 62). Thus, there seems to be no dispute that Morgan intentionally visited Wyoming and conducted business in Wyoming. (*See* Doc. 58-3 [Morgan Aff.] at 2, ¶ 8 (stating "[o]n occasion, I traveled to Wyoming as part of my job.")). Therefore, the next inquiry is whether Morgan expressly aimed his actions at the forum state. The expressly aiming element requires Wyoming to have been the focal point of Morgan's actions. *See Newsome*, 722 F.3d at 1268. Although disputed, Plaintiffs have provided facts alleging Morgan, in his capacity as an officer of Gas Sensing, conducted business in Wyoming. Specifically, according to Trenton Thornock's Affidavit, "[w]hile in Wyoming, Mr. Morgan managed GSTC['s] engineering group and technology portfolio. As such, Mr. Morgan would have access to and actually used certain information to assist himself and the other defendants in trying to divest GSTC of its wholly-owned subsidiary WellDog Pty. Ltd." (Doc. 96-1 [Thornock Aff.] at 2, ¶ 9). Finally, the last sub-element for the Court to find Morgan purposefully directed his activities at the forum state is whether Morgan had knowledge that the brunt of the injury would be felt in Wyoming. Because it is undisputed that Gas Sensing's principal place of business and corporate offices are located in Wyoming, at the pleading stage, the Court finds it is fair to infer Morgan knew that the brunt of the injury to Gas Sensing would occur in Wyoming. *See Newsome*, 722 F.3d at 1269 (stating "Newsome established that the individual defendants knew Mahalo USA's business operated in Oklahoma. At the pleading phase, then, it is a fair inference that the individual defendants knew that the brunt of any injury to Mahalo USA would be felt in Oklahoma."). For these reasons, the Court concludes the first element of specific jurisdiction is satisfied.

***8** Next, the Court must find Plaintiffs' injuries were the product of Morgan's forum-related activities. This requirement is referred to as the "arising out of" element. According to the Tenth Circuit, "[t]he import of the 'arising out of' analysis is whether the plaintiff can establish that the claimed injury resulted from the defendant's forum-related activities." *Id.* at 1271. There are two potential tests used to determine the arising out of element, the but-for test and the proximate cause test. *See id.* at 1269.

> Under the [but-for] approach, any event in the casual chain leading to the plaintiff's injury is sufficiently related to the claim to support the exercise of specific jurisdiction. The [proximate cause] approach, by contrast, is considerably more restrictive and calls for courts to examine whether any of the defendant's contacts with the forum are relevant to the merits of the plaintiff's claim.

Id. at 1269–70 (citation omitted). As this Court previously recognized, the Tenth Circuit has not chosen one test over the other. *See Schmitz v. Xiqing Diao*, No. 11-CV-157-S, 2013 WL 5965882, at *11 (D. Wyo. Nov. 7, 2013). However, because the Court finds Plaintiffs satisfy the more restrictive proximate cause test, the Court does not need to pick between the two tests.

Based on Plaintiffs' complaint and Thornock's Affidavit, the Court finds Plaintiffs have sufficiently pleaded Morgan's forum-related activities contributed to Plaintiffs' injury. (*See* Doc. 96-1 [Thornock Aff.] at 2, ¶ 9 (stating, "Mr. Morgan would have access to and actually used certain information to assist himself and the other defendants in trying to divest GSTC of its wholly-owned subsidiary WellDog Pty. Ltd.")). Specifically, because Morgan traveled to Wyoming while employed by Gas Sensing and WellDog, Morgan's contacts with Wyoming are relevant to the merits of Plaintiffs' hostile takeover allegations. As such, the Court finds Plaintiffs have satisfied the minimum contacts burden for the Court to exercise specific jurisdiction over Morgan. Accordingly, the final inquiry is whether exercising personal jurisdiction over Morgan would offend traditional notions of fair play and substantial justice.

The Tenth Circuit has said, "[w]hen a plaintiff satisfies its minimum contacts burden, the burden shifts to the defendant to demonstrate that exercising personal jurisdiction would nonetheless 'offend traditional notions of fair play and substantial justice.' " *Newsome*, 722 F.3d at 1271 (citations omitted). Although such cases are rare, for Morgan to prevail, he "must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable." *Id.* (citation omitted). In doing so, courts look to the following five considerations:

> (1) the burden on the defendant, (2) the forum state's interest in resolving the dispute, (3) the plaintiff's interest in receiving convenient and effective relief, (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and (5) the shared interest of the several states in furthering fundamental substantive social policies.

Id. (citing *OMI Holdings*, 149 F.3d at 1095).

The Tenth Circuit explains, that "[w]hile not dispositive, the burden on the defendant of litigating the case in a foreign forum is of primary concern in determining the reasonableness of personal jurisdiction." *Newsome*, 722 F.3d at 1273. Here, Morgan seems to focus on the mere expense of traveling from Australia to Wyoming. The Court finds mere financial expense is insufficient to demonstrate a burden on the defendant. *See id.* (finding no particular burden simply in traveling from Alberta to Oklahoma). Therefore, the Court finds the first factor weighs in favor of Plaintiffs. Regarding the second factor, Morgan argues the center of gravity for this case is in Australia and, as such, Wyoming's interest in resolving the dispute is limited. (Doc. 58 [Morgan and Meldrum's Br. in Supp. Mot. to Dismiss] at 13). The Court is not persuaded by Morgan's argument because Gas Sensing is domiciled in Wyoming and all offices for Gas Sensing are located in Wyoming. Thus, the Court finds the forum state's interest in resolving this dispute against Morgan weighs in Plaintiffs' favor. Additionally, the Court finds Plaintiffs' interest in receiving convenient and effective relief also weighs in Plaintiffs' favor. Plaintiffs are domiciled in Wyoming, operate in Wyoming, and seek relief in their home state. However, the Court finds the fourth factor—the interstate judicial system's interest in obtaining the most efficient resolution of controversies—is neutral in this case. The "[k]ey to this inquiry are the location of witnesses, where the wrong underlying the lawsuit occurred, what forum's substantive law governs the case, and whether jurisdiction is necessary to prevent piecemeal litigation." *Newsome*, 722 F.3d at 1274 (citation omitted). The Court finds this factor is neutral because there are witnesses located in both Wyoming and Australia and Plaintiffs allege the wrong underlying the lawsuit occurred in Wyoming. Finally, the last factor relies on "the extent to which jurisdiction in the forum state interferes with the foreign nation's sovereignty." *Id.* (citation omitted). Although some considerations favor Morgan, the Court finds he has not carried his overall burden of convincing the Court that Wyoming jurisdiction would offend fair play and substantial justice. Consequently, the Court finds Morgan is subject to the Court's personal jurisdiction.

Defendant Ewan Meldrum

***9** Similar to Morgan, the only applicable form of establishing personal jurisdiction over Meldrum is through specific jurisdiction. Thus, Meldrum must have minimum contacts with Wyoming that relate to the issues presented in this case. Specifically, the Court must determine "(1) whether the defendant purposefully directed its activities at residents of the forum state; (2) whether the plaintiff's injury arose from those purposefully directed activities; and (3) whether exercising jurisdiction would offend traditional notions of fair play and substantial justice." *Id.* at 1264 (citation omitted). For the Court to find Meldrum purposefully directed his activities at Wyoming residents, there must be an intentional action expressly aimed at the forum state, with knowledge that the brunt of the injury would be felt in the forum state. *Id.* at 1264–65.

In this case, there are no facts that suggest Meldrum ever set foot in Wyoming or was otherwise directly affiliated with Gas Sensing. In the Amended Complaint, Plaintiffs allege Meldrum is an Australian resident, employed by Gas Sensing's Australian subsidiary WellDog. (Doc. 35 [Am. Compl.] at 9–10, ¶¶ 59–64). In addition, in his Affidavit, Meldrum explained that he was "formerly employed by an Australian company, WellDog Pty. Ltd.," and his "primary duties for WellDog Pty. Ltd. were managing the Asian Pacific region." (Doc. 58-2 [Meldrum Aff.] at 2, ¶¶ 3, 5). Moreover, unlike Morgan, the Offer of Employment letter stated: "We refer to our recent discussions regarding the possibility of you joining the team at WellDog Pty. Ltd. (the Company)." (*Id.* at 5). Based on these facts, the Court finds personal jurisdiction over Meldrum does not exist because there is no showing that Meldrum purposefully directed his activities at Wyoming residents.

Despite the Court lacking personal jurisdiction over Meldrum, Plaintiffs allege the Court may nevertheless exercise jurisdiction through the doctrine of surrogacy and civil conspiracy. (Doc. 96 [Resp.] at 17). In support of their argument, Plaintiffs claim that because Meldrum received the "secret September 21, 2016 email and fictitious press release which is an admission of the defendants' unlawful scheme to harm GSTC," Plaintiffs have direct evidence of Meldrum's involvement in the conspiracy. (*Id.* at 18).

As explained earlier, in some circumstances "[t]he existence of a conspiracy and acts of a co-conspirator within the forum may ... subject another co-conspirator to the forum's jurisdiction." *Melea*, 511 F.3d at 1069. "In order for personal jurisdiction based on a conspiracy theory to exist, the plaintiff must offer more than 'bare allegations' that a conspiracy existed, and must allege facts that would support a prima facie showing of a conspiracy." *Id.* Here, the only allegation that might support a conspiracy is Plaintiffs' claim that Meldrum received the secret September 21, 2016 email. (*See* Doc. 96 [Resp.] at 17). Plaintiffs claim the email and fictitious press release provide "direct evidence of Mr. Meldrum's involvement in the conspiracy to do harm to GSTC, but as of yet do not know details as they relate to him." (*Id.* at 18). The Court finds this sole allegation does not support a prima facie showing that a conspiracy, involving Meldrum, existed. As such, the Court finds Meldrum is not subject to the Court's jurisdiction and is DISMISSED WITHOUT PREJUDICE from this case.

Finally, Plaintiffs ask the Court for discovery as to Meldrum to further explore his activities. (*Id.*). According to the Tenth Circuit, "a refusal to grant discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant." *Grynberg v. Ivanhoe Energy, Inc.*, 490 Fed.Appx. 86, 103 (10th Cir. 2012). "The district court does not abuse its discretion by denying jurisdictional discovery where there is a 'very low probability that the lack of discovery affected the outcome of this case.' " *Id.* (citation omitted). Because Plaintiffs request jurisdictional discovery, they have the burden of demonstrating legal entitlement to it and the related prejudice. *See id.* In Plaintiffs' response, they fail to explain why jurisdictional discovery is necessary other than by making vast assertions that it will help them understand Meldrum's involvement in the alleged conspiracy. (Doc. 96 [Resp.] at 18). Plaintiffs also fail to state how a denial of jurisdictional discovery as to Meldrum would be prejudicial. (*Id.*). As such, the Court finds Plaintiffs failed to carry their burden and, therefore, their jurisdictional discovery request is denied.

C. John Dugald Mactaggart's Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction

***10** On March 10, 2017, Defendant Mactaggart filed this motion to dismiss for lack of personal jurisdiction. (Doc. 60). In his motion, Mactaggart argues dismissal is warranted because the Court lacks both general and specific jurisdiction. (Doc. 61 [Mactaggart's Br. in Supp. Mot. to Dismiss] at 3, 5). In response, Plaintiffs argue Mactaggart consented to Wyoming jurisdiction or in the alternative is subject to the Court's jurisdiction through specific jurisdiction. (*See* Doc. 89 [Resp.] at 1–2). Because general jurisdiction is not contested, the Court will only discuss whether Mactaggart consented to jurisdiction or is subject to specific jurisdiction by the Court.

A defendant may consent to personal jurisdiction in several ways, including through contract, appearance, or stipulation. *See Ins. Corp. of Ireland*, 456 U.S. at 703. Here, Plaintiffs argue that because Jontra, ACE, and Brisbane Angels consented to Wyoming's jurisdiction, Mactaggart also consented to Wyoming's jurisdiction.[5] Although it is undisputed that Jontra, ACE, and Brisbane Angels agreed to Wyoming's jurisdiction through several financial notes, the Court finds Plaintiffs fail to show how Mactaggart, individually, has consented to Wyoming jurisdiction. Therefore, for personal jurisdiction to exist, the Court must have specific jurisdiction over Mactaggart.

For the Court to have specific jurisdiction over Mactaggart, Mactaggart must have purposefully directed his activities at residents of Wyoming, Plaintiffs' injuries must have arose from those purposefully directed

activities, and exercising jurisdiction must not offend traditional notions of fair play and substantial justice. *Newsome*, 722 F.3d at 1264. In their response, Plaintiffs allege Mactaggart "solely owns and operates entities Jontra, ACE [,] and Brisbane Angels...." (Doc. 89 [Resp.] at 18). As such, Plaintiffs ask the Court to treat Jontra, ACE, and Brisbane Angels as Mactaggart's alter egos and find personal jurisdiction over Mactaggart. (*Id.* at 18–19).

According to the Tenth Circuit, "[t]he Wyoming Supreme Court has set forth certain guidelines for determining when the acts of the corporation may be attributed to the individuals comprising that corporation." *Ten Mile Indus. Park v. W. Plains Serv. Corp.*, 810 F.2d 1518, 1526 (10th Cir. 1987). Specifically, "[f]or a corporation to be accorded treatment as a separate entity, it must exist and function as such and not be the alter ego of the person owning and controlling it and cannot be used or ignored just to fit the convenience of the individual." *Id.* Thus,

> [b]efore a corporation's acts and obligations can be legally recognized as those of a particular person, and vice versa, it must be made to appear that the corporation is not only influenced and governed by that person, but that there is such a *unity of interest and ownership* that the individuality, or separateness, of such person and corporation has ceased, and that the facts are such that an adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice.

Id. at 1526–27 (emphasis added) (citations omitted).

Similarly, "[w]here the acts of individual principals of a corporation in the jurisdiction were carried out solely in the individuals' corporate or representative capacity, the corporate structure will ordinarily insulate the individuals from the court's jurisdiction." *Id.* at 1527. Therefore, "[j]urisdiction over the representatives of a corporation may not be predicated on jurisdiction over the corporation itself, and jurisdiction over the individual officers and directors must be based on their individual contacts with the forum state." *Id.* (citation omitted). "However, if the corporation is not a viable one and the individuals are in fact conducting personal activities and using the corporate form as a shield, a court may feel compelled to pierce the corporate veil and permit assertion of personal jurisdiction over the individuals." *Id.* (citation omitted).

***11** In this case, Plaintiffs allege Jontra, ACE, and Brisbane Angels "are the alter egos of Mr. Mactaggart which have conspired with other defendants to illegally take-over GSTC and its solely owned subsidiary Welldog Pty. Ltd." (Doc. 89 [Resp.] at 12). Because Plaintiffs argue Jontra, ACE, and Brisbane Angels are the alter egos of Mactaggart, Plaintiffs claim this Court has personal jurisdiction over Mactaggart. (*Id.* at 18). However, the Court finds Plaintiffs fail to show sufficient evidence tending to demonstrate that Jontra, ACE, and Brisbane Angels are the alter egos of Mactaggart.[6] Rather, the Court finds Plaintiffs have only offered conclusory allegations, unsupported by evidence. (*See* Doc. 35 [Am. Compl.] at 6–9, ¶¶ 33–58). In furtherance of their claims against Mactaggart, Plaintiffs offer the Affidavit of Dr. Pope. (Doc. 92 [Pope Aff.]). In his Affidavit, Dr. Pope states the following facts:

- "Defendant Brisbane Angels and Mr. Mactaggart shared the same residential address of 30 Beeston Street, Newstead, QLD, AU 4006." (*Id.* at 5, ¶ 37).

- "Mr. Mactaggart told me that he was interested in investing private venture debt and capital using his personal funds that he was going to funnel through contributions made by him in companies he controlled." (*Id.* ¶ 38).

- "Mr. Mactaggart later identified those companies as the Brisbane Angels Group Ltd. ('Brisbane Angels'), Jontra Holdings Pty. Ltd. ('Jontra'), and Associated Construction Equipment Pty. Ltd. ('ACE')." (*Id.* ¶ 39).

- "Mr. Mactaggart represented to me that he had sole authority to approve the debt instruments by Defendant ACE, Jontra and Brisbane Angels." (*Id.* ¶ 40).

Despite Plaintiffs' attempt to show alter ego status, the Court finds Plaintiffs fail to show "that there is such a *unity of interest and ownership* that the individuality, or separateness, of" Mactaggart and Jontra, ACE, and Brisbane Angels has ceased. *Ten Mile Indus. Park*, 810 F.2d at 1526–27 (emphasis added) (citations omitted). As such, the Court finds Mactaggart is not subject to this Court's jurisdiction. Therefore, Mactaggart's motion to dismiss is GRANTED and Mactaggart is DISMISSED WITHOUT PREJUDICE from this case.

In addition, the Court finds jurisdictional discovery is not appropriate. In their response, Plaintiffs ask the Court to grant jurisdictional discovery if the Court finds in favor of Mactaggart. (Doc. 89 [Resp.] at 20). Because Plaintiffs

request jurisdictional discovery, they have the burden of demonstrating legal entitlement to it and the related prejudice. *See Grynberg*, 490 Fed.Appx. at 103. As previously stated, "a refusal to grant discovery constitutes an abuse of discretion if the denial results in prejudice to a litigant." *Id.* Prejudice does not result in cases "where there is a 'very low probability that the lack of discovery affected the outcome of this case.' " *Id.* (citation omitted). Here, Plaintiffs fail to explain why jurisdictional discovery is necessary, if they are legally entitled to discovery, and how prejudice would result if their request is denied. For these reasons, Plaintiffs' jurisdictional discovery request is denied.

D. Moving Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim

On March 10, 2017, Defendants Mactaggart, Brisbane Angels, Jontra, and ACE filed this motion to dismiss for failure to state a claim upon which relief may be granted. (Doc. 62). Also, on March 10, 2017, Defendants Ashton, Kinabalu Australia Pty. Ltd. ("Kinabalu"), and ProX filed a Notice of Joinder in Defendants' motion to dismiss. (Doc. 72). Because the Court dismissed Mactaggart from this case for lack of personal jurisdiction, the Court will only address this motion as applied to Brisbane Angels, Jontra, and ACE.

***12** As previously discussed, it is undisputed that Jontra, Brisbane Angels, and ACE are subject to this Court's jurisdiction. Therefore, the issue is whether Plaintiffs have plausibly stated a claim as to Jontra, Brisbane Angels, and ACE. In Plaintiffs' response, they concede that this Court should dismiss their tortious interference with contract expectancy claim, unjust enrichment claim, and misappropriation of trade secrets and resulting unfair business practices and unfair competition claims against Jontra, ACE, and Brisbane Angels. (*See* Doc. 93 [Resp.] at 12, 15, 20). As such, the remaining claims are breach of fiduciary duty, insider transaction and conversion of corporate opportunity, tortious interference with contract, self-dealing, civil conspiracy, lender liability and breach of good faith and fair dealing, and declaratory relief. (*See id*. at 4, 9, 12, 15, 18, 20). Regarding the remaining claims, however, the Court finds Plaintiffs fail to plead sufficient facts to state a claim upon which relief may be granted because Plaintiffs do not specifically allege any facts against Jontra, Brisbane Angels, or ACE individually that would support a finding in Plaintiffs' favor. Instead, Plaintiffs rely on grouping all or most of the defendants together for the causes of actions asserted.

When reviewing a motion to dismiss for failure to state a claim, the Court looks to the facts alleged in the plaintiff's complaint and views those facts in the light most favorable to the plaintiff. *See Sutton*, 173 F.3d at 1236. To survive a motion to dismiss, the plaintiff's "complaint must contain sufficient factual matter ... to 'state a claim to relief that is plausible on its face.' " *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). Plausibility requires the plaintiff to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. This standard "is not akin to a 'probability requirement,' but asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citation omitted). Thus, "[t]he complaint must offer sufficient factual allegations 'to raise a right to relief above the speculative level.' " *Burnett v. Mortg. Elec. Registration Sys., Inc.*, 706 F.3d 1231, 1235 (10th Cir. 2013) (citation omitted). Additionally, "[a]lthough '[s]pecific facts are not necessary' to comply with Rule 8(a)(2), the complaint must 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " *Id.* (second and third alteration in original) (citations omitted). In other words, this standard requires Plaintiffs to specifically plead facts which allows Defendants to understand the allegations against them.

Here, Plaintiffs' Amended Complaint is directed at a variety of defendants—including Jontra, ACE, and Brisbane Angels—all grouped together in various other groups. This form of group pleading fails to provide sufficient notice to Brisbane Angels, ACE, and Jontra of the allegations against them. *See id.* at 1240 (finding the plaintiff's group pleadings to be "too conclusory, vague and confusing to give each 'defendant fair notice of what the ... claim is and the grounds upon which it rests.' " (alteration in original)). Rather, Plaintiffs' Amended Complaint leaves Defendants to speculate what claims Plaintiffs are alleging against them. Because the Court finds Plaintiffs' Amended Complaint is deficient, Defendants' motion to dismiss is GRANTED and Defendants Jontra, ACE, and Brisbane Angels are DISMISSED WITHOUT PREJUDICE from this case.

E. Motion to Dismiss Defendant Production Solutions-Australia Pty. Ltd.

On March 10, 2017, Production Solutions-Australia Pty. Ltd. ("PSA") filed this motion to dismiss for failure to state a claim and lack of personal jurisdiction against Plaintiffs. (Doc. 64). Since filing the motion, PSA was dismissed as a party to this litigation on April 11, 2017. (Doc. 94 [Order]). However, this motion was not terminated because Kinabalu joined in PSA's motion on March 10, 2017. (*See* Doc. 66). As a result, the Court

must decide this motion as it relates to Kinabalu. Because neither a response nor a reply was timely filed, this matter is ready for disposition.

In Kinabalu's Notice of Joinder, it joins in PSA's motion for failing to state a claim upon which relief may be granted. (*Id.* at 2). Relevant to the Court's inquiry is PSA's argument that Plaintiffs fail to state a claim because Plaintiffs grouped several Defendants together, thereby, making it "impossible for PSA to isolate, and refute, the improper conduct it allegedly committed." (Doc. 65 [PSA's Br. in Supp. Mot. to Dismiss] at 9).

***13** In Plaintiffs' Amended Complaint, they allege eleven different causes of action against Defendants. (Doc. 35 [Am. Compl.] at 40–52). Throughout Plaintiffs' complaint, Plaintiffs refer to the various Defendants in specific small groups. For example, Plaintiffs refer to Kinabalu as an entity within the Ashton Controlled Defendants. (*Id.* at 4, ¶ 15). As this Court has already stated, such group pleading is insufficient to state a claim upon which relief may be granted because it fails to provide the specificity required by Rules 12 and 8 of the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 12, 8. Therefore, the Court finds the allegations against Kinabalu in relation to the Ashton Controlled Defendants are insufficient to state a plausible claim to relief. The Court also finds the allegations specifically directed at Kinabalu do not provide any support that Kinabalu is liable for the misconduct alleged. Plaintiffs claim Kinabalu is an Australian entity, holding approximately 20% of GSTC's shares, is the alter ego of Ashton, on June 1, 2011, had the right to designate a director on GSTC's Board of Directors, and that Ashton sold Kinabalu's shares of GSTC to INVESTOR in August of 2015. (Doc. 35 [Am. Compl.] at 3–4, 14, 20, ¶¶ 10–11, 15, 96, 150). The Court finds Plaintiffs' allegations are conclusory and that Plaintiffs failed to support their allegations with sufficient evidence. *See Burnett*, 706 F.3d at 1235 (stating "the tenant that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." (citation omitted)). As such, the Court finds Plaintiffs fail to state a claim upon which relief may be granted as to Kinabalu. Therefore, PSA's motion to dismiss is GRANTED as it relates to Kinabalu and Kinabalu is DISMISSED WITHOUT PREJUDICE from this case.

F. Motion to Dismiss Claims Against Defendants Linklater Family Property Trust and Graeme Michael Linklater

On March 10, 2017, Defendants Linklater Family Trust and Graeme Michael Linklater filed this motion to dismiss for failure to state a claim upon which relief may be granted. (Doc. 67). Defendants argue dismissal is appropriate because BSG cannot assert claims for purported harms to Gas Sensing, Gas Sensing may not assert claims for purported harms to WellDog, the claims against Linklater Family Trust ("Linklater Trust") are wholly unsupported, and the claims against Linklater fail to state a claim upon which relief may be granted. (Doc. 68 [Linklater Trust and Linklater's Br. in Supp. Mot. to Dismiss] at 4–6, 9–13). Within Defendants' motion, they joined in Defendants Ashton, Kinabalu, and ProX's motion to dismiss premised on forum non conveniens, or in the alternative, international abstention. (*Id.* at 3). Also on March 10, 2017, Defendants Ashton, Kinabalu, ProX, Mactaggart, Jontra, ACE, and Brisbane Angels filed a Notice of Joinder in this motion to dismiss. (Docs. 69, 72).

Defendant Linklater Family Trust

Defendants ask this Court to dismiss Plaintiffs' complaint as it pertains to Linklater Trust because Plaintiffs' claims are unsupported by allegations specific to Linklater Trust. (Doc. 68 [Linklater Trust and Linklater's Br. in Supp. Mot. to Dismiss] at 6). Specifically, Defendants argue Plaintiffs' allegations are conclusory, without factual support, and improperly group Defendants together. (*Id.* at 7). As the Court previously explained, Plaintiffs' "complaint must offer sufficient factual allegations 'to raise a right to relief above the speculative level.' " *Burnett*, 706 F.3d at 1235 (citation omitted). Additionally, "[a]lthough '[s]pecific facts are not necessary' to comply with Rule 8(a)(2), the complaint must 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.' " *Id.* (second and third alteration in original) (citations omitted).

Here, Plaintiffs incorporate Linklater Trust into this case by grouping it with the other Defendants. (*See* Doc. 35 [Am. Compl.] at 5–6, ¶¶ 23–26). Plaintiffs also refer to the Linklater Trust within the "Linklater Controlled Entities." (*Id.* at 5–6, ¶ 25). However, Plaintiffs fail to specifically allege what conduct Linklater Trust is responsible for and how that conduct has harmed Plaintiffs. The only statement Plaintiffs make regarding Linklater Trust's connection with this case is that it is the alter ego of Linklater. (*See id.* at 5, ¶ 25; *see also* Doc. 99 [Resp.] at 2). Because Plaintiffs improperly group Linklater Trust with the other Defendants and fail to provide factual support that demonstrates Linklater Trust is the alter ego of Linklater, the Court finds Plaintiffs have failed to state a claim upon which relief may be granted as to Linklater Trust. As such, Linklater Trust is DISMISSED WITHOUT PREJUDICE from this case.

Defendant Graeme Michael Linklater

***14** Similar to Linklater Trust, Defendants argue dismissal as to Linklater is appropriate because Plaintiffs fail to state a claim upon which relief may be granted. In their motion, Defendants ask this Court to limit Plaintiffs' claims against Linklater to the periods during which Linklater owed Gas Sensing a fiduciary duty. (Doc. 68 [Linklater Trust and Linklater's Br. in Supp. Mot. to Dismiss] at 9). Linklater also discusses how Plaintiffs' claims do not pertain to him based on the required elements of each claim. (*Id.* at 9–13). Before the Court dives into a discussion of each claim asserted against Linklater, the Court will look to the sufficiency of Plaintiffs' complaint as applied to Linklater.

As Plaintiffs have done with most of the defendants, Plaintiffs group Linklater into a generic group, comprised of all Defendants and the Take Over Group. The Court has explained that such generic group pleading is insufficient to state a claim upon which relief may be granted. Because Plaintiffs do not clearly articulate which Defendants committed what acts, Plaintiffs' claims against Linklater must be dismissed. For these reasons, Defendants' motion to dismiss is GRANTED and Linklater is DISMISSED WITHOUT PREJDUDICE from this case.

G. Defendants Simon Ashton, Kinabalu Australia Pty. Ltd., Kinabalu Australia Trust, and ProX Pty. Ltd.'s Motion to Dismiss

On March 10, 2017, Defendants Ashton, Kinabalu, and ProX filed this motion to dismiss on forum non conveniens grounds, or alternatively ask the Court to dismiss or stay this action under the doctrine of international abstention. (Doc. 71 [Ashton, Kinabalu, and ProX's Br. in Supp. Mot. to Dismiss] at 2). Joining in this motion are Defendants Morgan, Meldrum, Linklater Trust, Linklater, Mactaggart, Jontra, ACE, Brisbane Angels, and PSA. (*See* Docs. 58, 68, 74, 73). Relevant to this motion, PSA was dismissed as a defendant from this case on April 11, 2017, and this Court has already dismissed Defendants ProX, Meldrum, and Mactaggart for lack of personal jurisdiction, and Defendants Kinabalu, Linklater Trust, Linklater, Jontra, ACE, and Brisbane Angels for failure to state a claim upon which relief may be granted. Thus, the only remaining Defendants related to this motion to dismiss are Ashton and Morgan.

Forum Non Conveniens

The first argument presented by Defendants is that this case should be dismissed on forum non conveniens grounds. (Doc. 71 [Ashton, Kinabalu, and ProX's Br. in Supp. Mot. to Dismiss] at 7). The purpose of forum non conveniens "is to ensure that the trial is convenient." *Yavuz v. 61 MM, Ltd.*, 576 F.3d 1166, 1172 (10th Cir. 2009) (citation omitted). Under this doctrine,

> when an alternative forum has jurisdiction to hear a case, and when trial in the chosen forum would establish oppressiveness and vexation to a defendant out of all proportion to the plaintiff's convenience, or when the chosen forum is inappropriate because of considerations affecting the court's own administrative and legal problems, the court may, in the exercise of its sound discretion, dismiss the case, even if jurisdiction and proper venue are established.

Id. (citation omitted). Additionally, "[a]lthough there is ordinarily a 'strong presumption in favor of hearing the case in the plaintiff's chosen forum,' a foreign plaintiff's choice of forum 'warrants less deference.' " *Id.* However, before this Court dismisses a case on forum non conveniens grounds, two threshold requirements must be satisfied. "First, there must be an 'adequate alternative forum where the defendant is amenable to process.' " *Archangel Diamond Corp. Liquidating Trust v. Lukoil*, 812 F.3d 799, 804 (10th Cir. 2016) (citation omitted). "Second, 'the court must confirm that foreign law is applicable,' ... because forum non conveniens is improper if foreign law is not applicable and domestic law controls." *Id.* (citation omitted). If both threshold inquiries are met, then the Court must weigh the private and public interests to determine if dismissal is warranted. *See id.*

***15** With regard to the first threshold inquiry—adequate alternative forum—the parties do not dispute that Australia would serve as an adequate alternative forum for this case. (*See* Doc. 91 [Resp.] at 4). As such, the Court finds the first requirement of forum non conveniens is satisfied. Therefore, the next inquiry is whether foreign law is applicable to this case.

To determine if the second inquiry is satisfied, the Court must decide if Australia or American law controls this case. The Tenth Circuit has stated that if the issues are controlled by American law, then the doctrine of forum

non conveniens is inapplicable. *See Lukoil*, 812 F.3d at 804. However, as the Tenth Circuit clarified, if a claim involves domestic law, it is not automatically deprived of forum non conveniens. *See id.* at 805. The Tenth Circuit explained that "[t]o do otherwise would allow a party to avoid a forum non conveniens dismissal simply by including a claim based upon a domestic statute." *Id.* at 806. Instead, it appears that the crux of the second inquiry is whether the vast majority of the underlying dispute is subject to foreign or domestic law. *See id.* (stating, "the vast majority of the underlying dispute is subject to Russian law, and forum non conveniens applies.").

Here, the parties strongly disagree as to whether American or Australian law controls this case. (*Compare* Doc. 71 at 9–10, *with* Doc. 91 at 4–8). Defendants seem to concede that both American and Australian law applies, whereas Plaintiffs argue all of their claims are governed strictly by American law. (*See* Doc. 71 [Ashton, Kinabalu, and ProX's Br. in Supp. Mot. to Dismiss] at 10 ("Here, where at least some of Plaintiffs' claims relate to contracts that specify that Australian law applies, the second threshold determination is met."); *see also* Doc. 91 [Resp.] at 5 ("All eleven claims for relief are governed by American law, specifically Wyoming law.")). Although the parties disagree about whether American law or Australian law applies, one issue that is not disputed is that the financial notes between ProX and WellDog, which are central to Plaintiffs' conspiracy hostile takeover action, contain Australian choice-of-law provisions. (*See* Doc. 70-13 at 13, 34, 55, ¶ 14). Plaintiffs' conspiracy theory rests on the idea that Ashton planned to take control of WellDog and Mactaggart planned to take control of Gas Sensing. (Doc. 35 [Am. Compl.] at 25, ¶ 179). In order to achieve the conspiracy, Plaintiffs allege Defendants, including ProX, planned to foreclose on their venture debt to attain control of WellDog. (*Id.* at 27, ¶¶ 191–92). Thus, the Court finds Plaintiffs' statement that "[n]one of the causes of action, or the allegations underlying them, requires the Court to interpret or apply Australian law" is false. (Doc. 91 [Resp.] at 5). The Court finds that although this case requires both Australian and American law to be interpreted, the majority of this case is subject to Australian law. Therefore, the Court finds the second threshold inquiry satisfied. Because both threshold requirements are met, before dismissing a case on forum non conveniens grounds, the Court must weigh the private and public interests.

The private interest factors the Court must consider are:

> (1) the relative ease of access to sources of proof; (2) the availability of compulsory process for compelling attendance of witnesses; (3) cost of obtaining attendance of willing non-party witnesses; (4) possibility of a view of the premises, if appropriate; and (5) all other practical problems that make trial of the case easy, expeditious, and inexpensive.

***16** *Lukoil*, 812 F.3d at 806. Typically, when the plaintiff is domestic and selects its domestic forum, there is a strong presumption in favor of hearing the case in the plaintiff's chosen forum. *See Yavuz*, 576 F.3d at 1172. However, in this case, before filing a complaint with the Court, Plaintiffs filed a writ of summons on the issues presented in this action in the Supreme Court of Western Australia. (*See* Doc. 71 [Ashton, Kinabalu, and ProX's Br. in Supp. Mot. to Dismiss] at 5). Because Plaintiffs initially chose to pursue claims in Australia rather than in America, the presumption in favor of Plaintiffs' domestic forum lessens.

Looking to the factors under the private interest inquiry, Plaintiffs admit that "a trip to Australia may be necessary for the taking of depositions." (Doc. 91 [Resp.] at 8). Plaintiffs preface their concession by stating "there are an equal number of Australian witnesses" as American witnesses. (*Id.*). The Court agrees that if this case remains in America, trips to Australia will be necessary, however, the Court disagrees with Plaintiffs' characterization that there are equal Australian and American witnesses. Other than Plaintiffs, themselves, Plaintiffs have not provided information on who will be required to travel abroad except for Defendants. On the other hand, the second factor—the availability of a compulsory process—seems to remain neutral because neither Plaintiffs nor Defendants provide facts or arguments to suggest this factor weighs in their favor. Regarding the other factors, Plaintiffs formed WellDog in Australia and came into contact with all Defendants—in some capacity—for the benefit of WellDog, and thereby Gas Sensing. Moreover, the cost of obtaining witnesses appears to weigh in Defendants' favor because there are more Defendants than Plaintiffs, and the majority of events occurred in Australia. Furthermore, Plaintiffs have already availed themselves to Australia's courts, rendering any argument that Australia is an inconvenient forum unpersuasive. Based on these factors and the circumstances surrounding this case, the Court finds the private interests weigh in Defendants' favor.

In contrast, the public interest factors the Court must consider are:

> (1) administrative difficulties of the courts with congested dockets which can be caused by cases not being filed at their place of origin; (2) the burden of jury duty on members of a community with no connection to the litigation; (3) the local interest in having localized controversies decided at home; and (4) the appropriateness of having diversity cases tried in a forum that is familiar with the governing law.

Lukoil, 812 F.3d at 808. The primary inquiry for determining whether the public interests favor Plaintiffs or Defendants is to decide which forum has a stronger interest in deciding this case. In response to Defendants' motion, Plaintiffs fail to cite to any legal authority or otherwise mention any of the factors listed above. (Doc. 91 [Resp.] at 11). Instead, Plaintiffs plainly state:

> GSTC is head-quartered in Laramie, Wyoming and historically [employs] approximately 30 employees. All GSTC employees work in either Texas, Colorado or Wyoming. As to Wyoming citizens, GSTC has employed 21, 18 and 15 persons respectively over the past three years. These are all well-paying professional and technical jobs.
>
> In our small Wyoming towns these are significant numbers. In short, the State of Wyoming and a Wyoming jury have a strong interest and connection to helping resolve this matter. The public interest mitigates heavily in favor of litigating this case in Wyoming.

***17** (*Id.*). The Court finds Plaintiffs' argument to be wholly unsupported and unpersuasive. It is undisputed that this case is based on a hostile takeover action of WellDog, Gas Sensing's Australian subsidiary. It is also undisputed that all Defendants reside in Australia and, therefore, a majority of the evidence for Plaintiffs' claims is located in Australia as well. Thus, the administrative difficulties favor Defendants because Plaintiffs not only filed this action, but also actions in Australia alleging similar claims against Defendants. In addition, this Court previously found it lacks personal jurisdiction over several key Defendants, including ProX, Meldrum, and Mactaggart. Moreover, the members of the Wyoming community have very little connection to this case because all claims revolve around the hostile takeover of WellDog, including Plaintiffs' claims that Defendants misappropriated Gas Sensing's intellectual property and trade secrets in furtherance of their conspiracy takeover theory. (*See* Doc. 35 [Am. Compl.] at 2). Rather, Australia and its citizens have a strong interest in resolving this dispute because all Defendants reside in Australia, the majority of the actions at issue took place in Australia, WellDog is the Australian subsidiary of Gas Sensing, and Plaintiffs have already availed themselves to Australia's jurisdiction. Finally, as the Court previously explained, although this case involves both American and Australian law, the majority of the issues are properly under Australia's authority. For all of these reasons, the Court finds the private and public interests weigh in Defendants' favor and, therefore, Defendants' motion to dismiss premised on forum non conveniens is GRANTED. Plaintiffs are not provided an opportunity to file a Second Amended Complaint because the Court is dismissing this case on forum non conveniens.

CONCLUSION

For the reasons stated above, the Court finds and Orders as follows:

IT IS ORDERED Defendant ProX's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 54) is GRANTED. Defendant ProX is DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED Defendants Quentin Morgan and Ewan Meldrum's Motion to Dismiss (Doc. 57) is GRANTED as to Defendant Meldrum. Defendant Meldrum is DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED John Dugald Mactaggart's Motion to Dismiss First Amended Complaint for Lack of Personal Jurisdiction (Doc. 60) is GRANTED. Defendant Mactaggart is DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED Moving Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim (Doc. 62) is GRANTED. Defendants Jontra, ACE, and Brisbane Angels are DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED Motion to Dismiss Defendant Production Solutions-Australia Pty. Ltd. (Doc. 64) is GRANTED as it relates to Defendant Kinabalu. Defendant Kinabalu is DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED Motion to Dismiss Claims Against Defendants Linklater Family Property Trust and

Graeme Michael Linklater (Doc. 67) is GRANTED. Defendants Linklater Trust and Linklater are DISMISSED WITHOUT PREJUDICE from this case.

IT IS FURTHER ORDERED Defendants Simon Ashton, Kinabalu Australia Pty. Ltd., Kinabalu Australia Trust, and ProX Pty. Ltd.'s Motion to Dismiss (Doc. 70) is GRANTED based on forum non conveniens.

IT IS FINALLY ORDERED that this case is DISMISSED WITHOUT PREJUDICE.

All Citations

Slip Copy, 2017 WL 2955353

Footnotes

1 The Ashton Controlled Defendants include Defendants Simon Ashton, Kinabalu Australia Pty. Ltd., ProX Pty. Ltd., and Production Solutions-Australia Pty. Ltd. (Doc. 35 [Am. Compl.] at 4, ¶ 15). Defendant Production Solutions-Australia Pty. Ltd. was terminated as a party in this case on April 11, 2017. (*See* Doc. 94). The Linklater Controlled Defendants include Defendants Graeme Michael Linklater and Linklater Property Family Trust. (Doc. 35 [Am. Compl.] at 5–6, ¶ 25). The Mactaggart Controlled Defendants include Defendants John Dugald Mactaggart, Jontra Holdings Pty. Ltd., and Associated Construction Equipment Pty. Ltd. (*Id.* at 7, ¶ 40).

2 A second notice of default was issued on October 6, 2016, a third notice was issued on October 21, 2016, and a fourth notice was issued on October 26, 2016. (*Id.* at 28–29, ¶ 196).

3 The notice of default issued by the Mactaggart Controlled Defendants was on behalf of Mactaggart, Jontra, and Associated Construction Equipment Pty. Ltd. ("ACE"). (*Id.* at 30, ¶ 204).

4 In the motion to dismiss, Defendants Morgan and Meldrum join in the motion to dismiss filed by Defendants Simon Ashton, Kinabalu Australian Pty. Ltd., Kinabalu Australian Trust, and ProX Pty. Ltd. (Doc. 70), and the motion to dismiss filed by Defendants Linklater Family Property Trust and Graeme Michael Linklater (Doc. 67). (*See* Doc. 58 [Morgan and Meldrum's Br. in Supp. Mot. to Dismiss] at 5). Morgan's and Meldrum's joinder in these motions will be addressed below within the corresponding motions to dismiss.

5 Plaintiffs allege Mactaggart owns and operates Jontra, ACE, and Brisbane Angels. (*See* Doc. 89 [Resp.] at 18).

6 In addition, Mactaggart's Affidavit provides that he is a director of Brisbane Angels, Jontra, and ACE, and a shareholder of Jontra. (Doc. 61-1 [Mactaggart Aff.] at 3, ¶ 6). However, he states, "Brisbane, Jontra, and ACE are sufficiently capitalized, maintain their corporate forms, and do not commingle funds with me." (*Id.*).