

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WHITE WAVE INTERNATIONAL LABS,
INC., a Florida corporation

Case No. 8:09-cv-01260-VMC-TGW

Plaintiff,

DISPOSITIVE MOTION

vs.

LINDSAY LOHAN, *et al.*

Defendants.

**DEFENDANT LINDSAY LOHAN'S MOTION TO DISMISS
FOR LACK OF PERSONAL JURISDICTION, FED. R. CIV. P. 12(b)(2), AND
FOR FAILURE TO STATE A CLAIM, FED. R. CIV. P. 12(b)(6)**

COMES NOW, specially appearing defendant LINDSAY LOHAN, and files this, her Motion to Dismiss for Lack of Personal Jurisdiction, Fed. R. Civ. P. 12(b)(2), and for Failure to State a Claim, Fed. R. Civ. P. 12(b)(6):

1. Pursuant to Local Rule 3.01(g), undersigned counsel certifies that counsel for Defendants, Jonathan Steinsapir, conferred with counsel for Plaintiff, Craig Berman and Marcia Cohen, in a good faith effort to resolve this motion. Plaintiff opposes the relief sought by this motion.

2. As more fully explained in the attached memorandum of law and supporting declaration, defendant Lindsay Lohan does not have sufficient contacts with the State of Florida to justify a Florida court's exercise of jurisdiction over her pursuant to either the Florida long-arm statute, Fla. Stat. § 48.193 or the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. Also, as more fully explained in the attached memorandum of law, Plaintiff's Complaint against Lohan fails to state a claim upon which relief may be granted. The Complaint should therefore be dismissed against her on this additional basis as well.

WHEREFORE, defendant LINDSAY LOHAN, respectfully requests that this Honorable Court dismiss the Complaint against her without leave to amend.

MEMORANDUM OF LAW

I. INTRODUCTION

Plaintiff White Wave International Labs, Inc. ("White Wave") alleges that it is the inventor of a "secret formula" for a sunless tanning spray, that it disclosed this formula under a non-disclosure agreement to Defendant Lorit, LLC ("Lorit" or "the LLC"), and that Lorit has misappropriated this secret formula in a product called "Sevin Nyne." The Complaint asserts claims for breach of contract, misappropriation of trade secrets, conspiracy, intentional interference with contract, and unfair trade practices. Along with the LLC, the Complaint names additional defendants, including Lindsay Lohan ("Lohan"), a spokesperson for Sevin Nyne.

By this motion, Lohan moves to dismiss for lack of personal jurisdiction and failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(2) and 12(b)(6). The Complaint fails to allege any facts supporting this Court's exercise of personal jurisdiction over Lohan, and this defect cannot be cured. It is undisputed that Lohan had no contacts at all with Florida relating to these claims, let alone the "minimum contacts" required to satisfy due process. There are no allegations that Lohan had anything to do with the alleged misappropriation of trade secrets, let alone allegations that her involvement with Sevin Nyne is connected to this State in any way whatsoever.

The exercise of jurisdiction over Lohan is further improper under Florida's long-arm statute. White Wave will presumably argue that Lohan is subject to jurisdiction under the statute for having "[c]ommitt[ed] a tortious act within this state." Fla. Stat. § 48.193(1)(b). But in trade secrets cases such as this one, Florida courts construe this provision of the long-arm statute to require that the *misappropriation occur within Florida*. Any misappropriation in this case—and there was none—occurred in Las Vegas, where the LLC is based, or in Texas, where

the spray is manufactured. And perhaps most importantly, Lohan had *nothing* to do with the alleged misappropriation. She knew nothing of the interactions between the LLC and Plaintiff.

Lohan additionally moves to dismiss the Complaint for failure to state a claim. There are no factual allegations supporting an allegation that Lohan committed any acts in support of the alleged misappropriation and other claims. The Complaint falls well short of the pleading standard prescribed by Fed. R. Civ. P. 8(a), as recently construed by the Supreme Court in *Bell Atlantic v. Twombly*, 550 U.S. 544 (2007), and as clarified by the Eleventh Circuit in *Watts v. Florida Intern. University*, 495 F.3d 1289, 1295-96 (11th Cir. 2007).

For all these reasons, and as set forth in more detail below, Lohan respectfully requests that the Court dismiss the Complaint against her without leave to amend.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Corporate Structure Of Defendant Lorit, LLC

Defendant Lorit is a limited liability company organized under the laws of Nevada, with its principal place of business in Las Vegas. Complaint (Doc. No. 1) (“Compl.”) at ¶ 5. The members of Lorit include Defendants Simon, Lampman, and Crossheart. Compl. at ¶ 21. Simon and Lampman are Nevada residents. Compl. at ¶¶ 6, 10. Crossheart is a California corporation with its principal place of business in Beverly Hills. Compl. at ¶ 8. Crossheart is owned by Defendant Lindsay Lohan, a California resident. Compl. at ¶¶ 7, 21.

Lohan is *not* a member of Lorit, and holds no equity interest in Lorit. Declaration of Lindsay Lohan (“Lohan Decl.”) (attached hereto as “Exhibit A”) at ¶ 5; Compl. at ¶ 21.

B. The Allegations Of The Complaint

The Complaint alleges that White Wave and the LLC entered into a “Confidentiality Agreement Between Firms” (the “CABF”) under which White Wave permitted the LLC to examine samples of a sunless tanning spray product. Compl. at ¶¶ 10-13. That agreement provided for the LLC to submit to the jurisdiction of Florida courts in the event of a dispute. Compl. at ¶ 12.

Lohan is *not* party or signatory to the CABF and thus has not consented to the Court's jurisdiction. *See* Compl. at Ex. A.

Lorit subsequently launched a tanning spray called Sevin Nyne, which is sold online at Sephora.com, with Lohan as a spokesperson for the product. Compl. at ¶ 18. The Complaint alleges that Sevin Nyne "contains exactly the same or nearly identical ingredients which Plaintiff made known . . . under the strict terms of the CABF." *Id.* The Complaint asserts that the LLC has breached the CABF by using White Wave's supposed secret formula without permission. The Complaint further asserts claims against all of the defendants for misappropriation of trade secrets, conspiracy to misappropriate trade secrets, intentional interference with contract, and unfair trade practices.

C. The Complaint Contains No Allegations Regarding Jurisdiction Or Liability Against Lohan

The bare-bones Complaint filed by White Wave is completely devoid of jurisdictional allegations upon which this Court could exercise jurisdiction over Lohan.

This deficiency is, without question, incurable. Lohan is a spokesperson for the LLC, and nothing more. She had no interactions whatsoever with White Wave, or with any of its agents. At the time of the alleged interactions between the LLC and White Wave in early 2009, Lohan had no knowledge of, or involvement in, those interactions. She only became aware of White Wave as a result of this lawsuit. Lohan has had no interactions with anyone in Florida regarding the LLC or its business.. Lohan Decl. at ¶ 3.

Although Lohan occasionally visits Florida for pleasure, she has never worked, or been employed in any capacity, in Florida. She has no agent for service of process in Florida and employs no one in Florida. Lohan Decl. at ¶ 2.

III. THE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER LOHAN

A. Courts Engage In A Two-Step Inquiry In Assessing Personal Jurisdiction

"A federal court sitting in diversity undertakes a two-step inquiry in determining whether personal jurisdiction exists: the exercise of jurisdiction must (1) be appropriate under the state

long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.” *United Technologies Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009).

Florida’s long-arm statute is set forth at Fla. Stat. § 48.193. To satisfy that statute, the plaintiff must demonstrate that the nonresident defendant has committed acts falling within one of subparagraphs (1)(a) through (h). The Eleventh Circuit has recognized that the analysis under Florida’s long-arm statute is more rigorous than the minimum contacts analysis under the Due Process Clause because the long-arm provision “requires more activities or contacts to confer personal jurisdiction than those demanded by the Constitution.” *Williams Elec. Co. v. Honeywell, Inc.*, 854 F.2d 389, 394 (11th Cir. 1988).

The exercise of personal jurisdiction over a nonresident defendant satisfies due process when “(1) the nonresident defendant has purposefully established minimum contacts with the forum state, and (2) the exercise of jurisdiction will not offend traditional notions of fair play and substantial justice.” *Francosteel Corp. v. M/V Charm*, 19 F.3d 624, 627 (11th Cir. 1994). Federal courts distinguish between two types of personal jurisdiction that depend upon the degree of the defendant’s contacts with the state—“general jurisdiction” and “specific jurisdiction.” *Madara v. Hall*, 916 F.2d 1510, 1516 n.7 (11th Cir. 1990) General jurisdiction lies where a defendant has “continuous and systematic” contacts with a state. *See United Technol.*, 556 F.3d at 1275 n.16, citing *Helicopteros Nacionales de Colombia S.A. v. Hall*, 466 U.S. 408 (1984). In such case, jurisdiction exists regardless of whether the continuous and systematic contacts relate to the claims at issue. *Madara*, 916 F.2d at 1516 n.7.

Conversely, “[t]o constitute minimum contacts for purposes of specific jurisdiction . . . the defendant’s contacts with the applicable forum must satisfy three criteria”:

First, the contacts must be related to the plaintiff’s cause of action or have given rise to it. Second, the contacts must involve “some act by which the defendant purposefully avails itself of the privilege of conduction activities within the forum . . . , thus invoking the benefits and protections of its laws.” Third, the

defendant's contacts with the forum must be "such that [the defendant] should reasonably anticipate being haled into court there.

Francosteel, 19 F.3d at 627; *see also Vermeulen v. Renault U.S.A., Inc.*, 985 F.2d 1534, 1546 (11th Cir. 1993).

B. No Facts Can Be Alleged To Support Jurisdiction Over Defendant Lohan

"The plaintiff is required to plead sufficient material facts to form a basis for *in personam* jurisdiction. Once the plaintiff meets this burden, the burden shifts to the defendant to challenge the plaintiff's complaint by affidavits or other pleading." *Wallack v. Worldwide Machinery Sales, Inc.*, 278 F. Supp. 2d 1358, 1364 (M.D. Fla. 2003).

The Complaint here plainly fails to make out a *prima facie* case of jurisdiction over Lohan. *Not a single fact* is alleged to support that Lohan had *any* contacts with Florida relating to this case. This Court cannot exercise jurisdiction over Lohan simply because a corporation in which she is the principal shareholder is a member of the LLC—particularly in light of the fact that there is no allegation (or evidence) that the member corporation had *any* involvement in the alleged interactions between the LLC and Plaintiff. Nor can the Court exercise personal jurisdiction over Lohan simply because she is a spokesperson for the product at issue. *Williams Elec.*, 854 F.2d at 391-392 ("[A] court cannot exercise personal jurisdiction over a defendant solely on the basis of his employer's contacts with the forum state.").

White Wave must specifically allege *facts* supporting that *Lohan herself* reached out to Florida such that she could foresee being haled into a Florida court. White Wave has failed to do so, and the Complaint must therefore be dismissed. The Eleventh Circuit has repeatedly held that "the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Madara*, 916 F.2d at 1516. Rather, "[j]urisdiction is proper where the defendant's contacts with the forum proximately result from actions by the defendant *h[er]self* that create a 'substantial connection' with the forum state." *Id.* (emphasis in original). The fact that Lohan has an indirect ownership interest in the alleged tortfeasor (the LLC) and that she has acted as a spokesperson for the alleged tortfeasor

does not meet this standard, particularly when the evidence is undisputed that Lohan had nothing to do with the allegedly tortious activity (the alleged misappropriation of trade secrets, etc.) and knew nothing about it, or Plaintiff, until the case was filed. Lohan Decl. at ¶ 3.

Likewise, Plaintiff's attempt to argue that because Plaintiff has allegedly been injured in Florida, Lohan should be subject to jurisdiction here is also without merit. "[T]he kind of foreseeability critical to the proper exercise of personal jurisdiction is *not* the ability to see that the acts of third persons may affect the forum, but rather that the defendant's own purposeful acts will have some effect in the forum." *Madara*, 916 F.2d at 1516-1517 (emphasis in original). There are no allegations, or evidence, that Lohan knew or should have known that her acts would have an effect on Plaintiff in Florida. She never heard of Plaintiff until this action was filed. Lohan Decl. at ¶ 3.

Finally, Plaintiff's attempt to justify personal jurisdiction with rote allegations of "conspiracy" fail. The Eleventh Circuit has held that, under Florida law, in order for an alleged conspiracy to support personal jurisdiction, there must be *specific evidence* that the alleged conspirator was "clearly connected . . . to a conspiracy made or carried out in Florida." *United Technologies Corp. v. Mazer*, 556 F.3d 1260, 1282 (11th Cir. 2009). There is *no* evidence that Lohan was "clearly connected" to any conspiracy at all. Nor is there evidence of *any* conspiracy "made or carried out in Florida." Indeed, the evidence is uncontroverted that Lohan knew nothing about the alleged trade secrets or about White Wave until this case was filed. Lohan Decl. at ¶ 3. In light of the fact that Lohan knew nothing of the alleged trade secrets or their location in Florida, she could not have conspired to steal them in Florida. *See also United Technologies*, 556 F.3d at 1283 ("[T]he complaint's allegations are simply too ambiguous to connect Loetschert and APM to the formation of the conspiracy to steal the Pratt blueprints.").

Leave to amend should not be permitted because the deficiencies in White Wave's Complaint cannot be cured. It cannot be disputed that Lohan is a California citizen and that she has never worked in Florida, employs no one in the State, and does not regularly conduct business here. Lohan Decl. at ¶ 2. Moreover, as White Wave knows full well—evidenced by

the absence of allegations against Lohan—Lohan had no involvement in the discussions with White Wave and she did not even know about them until this case was filed. Lohan Decl. at ¶ 3.

Where, as here, the defendant has produced evidence in the form of declarations rebutting the assertion of personal jurisdiction, White Wave cannot rely upon unsupported allegations in a complaint. “If the defendant sufficiently challenges the plaintiff’s jurisdictional allegations,” such as through declarations, “the plaintiff must affirmatively support his jurisdictional allegations set forth in the complaint.” *Wallack*, 278 F. Supp. 2d at 1364. Thus, were the Court to permit an opportunity to amend, White Wave would be required to confront defendants’ declarations with *evidence* supporting jurisdiction. White Wave cannot do so. It would be futile to grant leave to amend. The claims against Lohan should therefore be dismissed.

IV. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST LOHAN AND SHOULD BE DISMISSED

The Complaint should further be dismissed as to Lohan on the basis that it fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

Recent Supreme Court authority, including *Bell Atlantic Corporation v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009), have clarified that the pleading standard under Fed. R. Civ. P. 8(a) requires more than a rote statement of the elements of a cause of action. *See Ashcroft*, 129 S. Ct. at 1949 (Rule 8(a) “demands more than unadorned, the defendant-unlawfully-harmed-me accusation”). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’” *Id.*, quoting *Twombly*, 550 U.S. at 555. “Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.*, quoting *Twombly*, 550 U.S. at 557.

“To survive a motion to dismiss, a complaint must contain sufficient *factual matter*, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (emphasis added), quoting *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads *factual content* that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged.” *Id.* “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

Because Rule 8(a) requires the pleading of *facts*, and not just conclusory statements of the elements of a claim, “a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* at 1950 (emphasis added). “While legal conclusions can provide the framework of a complaint, *they must be supported by factual allegations.*” *Id.*

As this Court will see in reviewing White Wave’s Complaint, there are virtually no allegations in the pleading *against Lohan*, let alone the *factual* allegations required by Rule 8(a) and *Ashcroft*. This Complaint epitomizes the conclusory, mechanical style of pleading that the Supreme Court rejected in *Twombly* and *Ashcroft*. It is nothing more than “a formulaic recitation of the elements” of the asserted claims. *Ashcroft*, 129 S. Ct at 1949.

White Wave’s second cause of action for misappropriation of trade secrets against Lohan contain nothing more than a formulaic list of the elements (if that)¹. There are no *factual allegations* supporting, for example, that Lohan was aware of White Wave’s alleged trade secrets, or that she disclosed these supposed secrets to anyone. Because misappropriation of trade secrets is an intentional tort, one cannot “accidentally” misappropriate a trade secret. *Vance v. Tire Engineering and Distribution, LLC*, 32 So.3d 774, 776 (Fla. 2d DCA 2010) (misappropriation of trade secrets is an intentional tort). Thus, without *knowledge* of the alleged trade secrets, a person cannot *intentionally* misappropriate those secrets. Without specific allegations that Lohan knew about the trade secrets—allegations that *cannot* be made consistently with Rule 11—these “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

White Wave asserts a third cause of action for conspiracy to misappropriate its trade secrets. Again, there is not a single factual allegation supporting that Lohan conspired with the other defendants to misappropriate White Wave’s allegedly secret formula. It stands to reason

¹ White Wave’s first cause of action is stated only against the LLC.

that Lohan would have to *know* about the alleged trade secrets to enter into a conspiracy to misappropriate them. But there is *no* allegation that Lohan was aware of the alleged trade secrets—nor could Plaintiff possibly make such an allegation consistent with Rule 11.

Furthermore, the conspiracy allegations in the Complaint are fatally defective as to Lohan (and *all* Defendants) because they attempt to allege a conspiracy between the LLC and its agents and employees, *without* further alleging that the agents and employees had a personal stake separate and distinct from that of the LLC. *See Lipsig v. Ramlawi*, 760 So.2d 170, 180-81 (Fla. 3d DCA 2000) (finding that “neither an agent nor an employee can conspire with his or her corporate principal or employer” unless they have “a personal stake in the activities that are separate and distinct from the corporations' interest”), *quoting Cedar Hills Properties Corp. v. Eastern Fed. Corp.*, 575 So.2d 673, 676 (Fla. 1st DCA 1991).

The fourth cause of action alleges that Lohan intentionally interfered with the CABF. Again, there are no factual allegations whatsoever supporting this claim. The Complaint does not allege how Lohan interfered with the CABF. In fact, White Wave does not even allege facts supporting that Lohan even *knew* of the CABF (which she did not)—an essential element of the claim. *Fernandez v. Haber & Ganguzza, LLP*, 30 So.3d 644, 646 (Fla. 3d DCA 2010) (knowledge of contract is essential element of interference claim).

The fifth and final cause of action is for deceptive and unfair trade practices based upon the alleged misappropriation of White Wave's trade secrets. That claim similarly lacks any factual allegations against Lohan upon which liability could be based.

White Wave's rote pleading of the elements of its causes of action is not sufficient under Rule 8(a) as construed by the Supreme Court. Not only must White Wave's assertions against Lohan be “supported by factual allegations,” *Ashcroft*, 129 S. Ct. at 1950, but those allegations must “nudge” its claims “across the line from conceivable to plausible.” *Id.* “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Id.*

For the reasons stated above, the claims against Lohan should be additionally dismissed on the basis that they fail to state a claim upon which relief may be granted.

V. CONCLUSION

For the foregoing reasons, Defendant Lindsay Lohan respectfully requests that the Court grant this Motion and dismiss without leave to amend the Complaint against her.

RESPECTFULLY SUBMITTED this 27th day of September 2010.

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the foregoing via the CM/ECF system.

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EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WHITE WAVE INTERNATIONAL, INC.,
INC., et al., on motion

Case No. 8:09-cv-01260-VMC-TGW

Plaintiff,

vs.

LINDSAY LOHAN, et al.

Defendants.

DECLARATION OF LINDSAY LOHAN

I, Lindsay Lohan, declare as follows:

1. I am over the age of 18 and I am of sound mind.
2. I reside in California and work as an actor. Although I occasionally visit

Florida for pleasure, I have never had any acting jobs in Florida and I have never worked, or been employed in any capacity, in Florida. I have no agent or service of process in Florida. I employ no one in Florida.

3. I had no interactions whatsoever with either White Wave International Labs, Inc. ("White Wave"), or with any of its agents, including Jennifer Sunday. At the time of the alleged interactions between Loris, LLC and White Wave in early 2009, I had no knowledge of, or involvement in, those interactions. I only became aware of White

Wave as a result of this lawsuit. I have had no interactions with anyone in Florida regarding Lorit, LLC or its business.

4. Although I have been a spokesperson for Lorit, LLC and its Seven Nymc product, I had no involvement in the creation of the formula for the Seven Nymc product. I also have no involvement in where and how the Seven Nymc product is marketed and sold or in the marketing strategy for the product.

5. Although Crossheart Productions, Inc.—a corporation of which I am the principal shareholder—does have an equity interest in Lorit, LLC, I personally have no ownership interest in Lorit, LLC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 3, 2010, in Los Angeles, California.

Linda P. Taylor