UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-22471-DPG

NORTH AMERICAN SUGAR INDUSTRIES, INC.,

Plaintiff,

v.

XINJIANG GOLDWIND SCIENCE & TECHNOLOGY CO., LTD., GOLDWIND INTERNATIONAL HOLDINGS (HK) LTD., DSV AIR & SEA INC., BBC CHARTERING USA, LLC, and BBC CHARTERING SINGAPORE PTE LTD.,

Defendants.

DEFENDANT DSV AIR & SEA, INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION AND MEMORANDUM OF LAW

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I. INTRODUCTION

Plaintiff North American Sugar Industries Inc. ("Plaintiff") alleged in its initial Complaint that DSV Air & Sea Inc. ("DSV US"), a Delaware Corporation, was the carrier for a shipment of wind farm equipment from China to Cuba. Plaintiff claimed that as an alleged carrier, DSV US was liable for trafficking in the port of discharge in Cuba under Title III of the Cuban Liberty and Democratic Solidarity Act (LIBERTAD) Act. *See* 22 U.S.C. § 6021, *et seq.* ("Title III," or "Helms-Burton"). But after seven months of jurisdictional discovery, Plaintiff now knows that DSV US was not a carrier for or a party to either of the two shipments at issue. Moreover, DSV US did not take any actions in Florida or direct any activity at Florida that was related in any way to Plaintiff's claims.

The only allegation in the Amended Complaint of Florida activity by DSV US relating to the shipments is that a DSV US employee in Miami "discussed and corresponded regarding the Miami stop" (Am. Compl. ¶ 66, ECF No. 189), which both falls well short of establishing personal jurisdiction in Florida and is false. *See* Declaration of Ken Witkowski, at ¶¶ 20, 24-25 ("Wit. Decl.", attached as Exhibit A). Nevertheless, Plaintiff' again alleges specific jurisdiction over DSV US under Florida's long-arm statute, claiming the Title III cause of action for trafficking in Puerto Carupano in Cuba arose from or is connected to DSV US's (1) business activity in Florida or (2) commission of a tortious act in Florida.

Title III creates a statutory cause of action against entities who "'traffic[]' . . . knowingly and intentionally" in property confiscated by the Cuban Government. 22 U.S.C. §§ 6023(13), 6082(a). Plaintiff's subsidiary allegedly owned a port in Cuba—Puerto Carupano—that was confiscated by the Cuban Government in 1960 along with dozens of other assets belonging to Plaintiff. Plaintiff's suit stems from the alleged "trafficking" at Puerto Carupano when wind farm

equipment aboard the Jade and Moonstone arrived from China by sea (the "Shipments"). Plaintiff's new theory in light of discovering that DSV US was not a carrier for the Shipments, is that DSV US trafficked in Puerto Carupano *located in Cuba* by allegedly supporting non-party DSV Ocean Transport A/S, a Danish corporation ("DSV Denmark"), a carrier for the Shipments. (Am. Compl. ¶¶ 162-64.) DSV US, however, was not party to *any agreement* to ship wind farm equipment from China to Cuba. (Wit. Decl. ¶¶ 10, 12, 26.) More significantly, DSV US did not engage in *any activity in Florida* related to either Shipment. (*Id.* ¶ 24.) And no DSV US employee working at an office located in Florida took any action related to the Shipments. (*Id.* ¶ 20.)

Florida's long-arm statute does not confer personal jurisdiction over DSV US, which is headquartered in Iselin, New Jersey. First, Plaintiff's Title III claim does not *arise from* any business activity by DSV US in Florida. DSV US has two offices in Florida, but neither office or any person residing in a Florida office was involved in the Shipments in any way. Second, the Title III claim does not *arise from* DSV US committing a substantial aspect of a tort in Florida. DSV US did not take any action in Florida related to the Shipments, much less engage in any tortious activity in Florida. For these reasons, personal jurisdiction is not established under Florida's long arm-statute.

Even if the Florida long-arm statute provided a basis for personal jurisdiction over DSV US, exercising jurisdiction over DSV US would be contrary to constitutional due process. Plaintiff has failed to demonstrate that its Title III claim arises out of or relates to DSV US's contacts with the forum and that DSV US purposefully availed itself of the privilege of conducting activities within Florida. The relatedness requirement fails because DSV US's contacts with Florida have no connection to Plaintiff's Title III claim. As to the "purposeful availment" requirement, Plaintiff cannot satisfy the *Calder* "effects test" for intentionally torts because DSV US did not engage in

intentional conduct aimed at Florida that caused harm in Florida. In fact, DSV US could not have harmed Plaintiff in Florida because Plaintiff is a non-resident and does not allege to have any connection to Florida.

Plaintiff cannot establish personal jurisdiction by asserting a civil conspiracy claim. Plaintiff alleges that Defendants engaged in a scheme by which the BBC Jade vessel (the "Jade") and the BBC Moonstone vessel (the "Moonstone") stopped in Miami, Florida *to comply with an export license* for the Shipments. The conspiracy claim, however, does not establish personal jurisdiction because DSV US was not part of any agreement to ship wind farm equipment from China to Cuba. In fact, DSV US did not have *any communications* with any alleged co-conspirator. (Wit. Decl. ¶ 11.) As such, there is no personal jurisdiction over DSV US based on the alleged civil conspiracy claim.

The Amended Complaint must be dismissed because Plaintiff's claims do not arise from any DSV US activity in Florida related to Plaintiff's claims.

II. BACKGROUND

A. Procedural History

Plaintiff filed this action on July 10, 2020. (ECF No. 1.) On October 31, 2020, each Defendant filed a motion to dismiss for lack of personal jurisdiction (ECF Nos. 48, 52, 53) and Defendants filed a joint motion to dismiss for failure to state a claim (ECF No. 54).[1] On February 25, 2021, this Court permitted the parties to engage in jurisdictional discovery for four months until June 25, 2021. (ECF No. 80.) At Plaintiff's request, jurisdictional discovery was extended by another three months, until September 27, 2021 as to DSV US (ECF No. 144).

[1] On June 4, 2021, Defendant Goldwind Science filed a motion to dismiss for lack of personal jurisdiction (ECF No. 107) and filed a notice of joinder in Defendants' joint Rule 12(b)(6) motion to dismiss (ECF No. 108).

The Court dismissed the initial Complaint because it was an improper shotgun pleading that did not identify facts supporting each claim against each Defendant. (ECF No. 145, at 11-12.) Because there was "no longer an operative complaint[,]" the Court denied as moot Defendants' respective motions to dismiss for lack of personal jurisdiction (*Id.* at 12.) Plaintiff filed the Amended Complaint on November 1, 2021 (ECF No. 189), and DSV US again moves to dismiss for lack of personal jurisdiction.[2]

B. <u>The Parties</u>

Plaintiff is a New Jersey corporation that, prior to 1960, owned several Cuban subsidiaries in the sugar production industry. (Am. Compl. ¶¶ 17, 23-27.) Plaintiff alleges that in 1960 the Cuban Government confiscated these various companies and their properties and assets located across Cuba, including Puerto Carupano. (*Id.* ¶¶ 28-29.) Plaintiff does not allege that it has conducted business in Florida, or that it has any connection to the State of Florida.

DSV US is a Delaware corporation with its principal place of business in Iselin, New Jersey. (*Id.* ¶ 20; Wit. Decl. ¶ 2.) DSV US provides freight forwarding services, both by air and sea, for international shipments. (Wit. Decl. ¶ 3.) DSV US is an affiliate of non-party DSV

[2] Defendants will file on December 15, 2021 a Joint Motion to Dismiss Plaintiff's claims and DSV US will file a supplemental motion to dismiss for failure to state a claim. (ECF No. 192.) Because the Amended Complaint fails to state a claim for relief, there is no basis to assert personal jurisdiction over DSV US. *FR Tax Grp., LLC v. Kassover*, No. 17-cv-80386, 2017 WL 6346051, at *4 (S.D. Fla. Aug. 2, 2017), *aff'd*, 723 F. App'x 977 (11th Cir. 2018); *see also Taylor v. Moskow*, 717 F. App'x 836, 839–40 (11th Cir. 2017) ("In Florida, before a court addresses the question of whether specific jurisdiction exists under the long-arm statute, the court must determine whether the allegations of the complaint state a cause of action.") (citation omitted).

Denmark.[3] (*Id.* ¶ 5.) In December 2018, DSV US had 35 offices in the United States, including a Miami and Orlando office. (*Id.* ¶ 6.)[4]

C. **The Shipments Of Wind Farm Equipment**

According to the Amended Complaint, Goldwind International entered into an agreement with third parties to supply wind turbines for a wind farm project in Cuba. (Am. Compl. ¶¶ 41–45.) Goldwind Science contracted with a non-party to purchase and deliver wind turbine blades to Cuba. (*Id.* ¶ 50.) DSV Denmark (*not* DSV US) was the carrier that did not operate the vessel (*i.e.*, the NVOCC) for the shipments of the wind farm equipment to Cuba. (*Id.* ¶ 56.) DSV Denmark hired BBC Singapore to carry out the two shipments. (*Id.* ¶ 76.) The wind farm equipment was shipped in two voyages: the Jade Shipment and the Moonstone Shipment. (*Id.* ¶¶ 79–122.)

The Jade and Moonstone delivered wind farm equipment from China to Puerto Carupano, Cuba in January and February 2019. (*Id.* ¶¶ 93, 115.) Both shipments stopped at the Miami Seaport *to comply with an export license issued by the U.S. Government* and to refuel and resupply before arriving in Cuba. (*Id.* ¶¶ 90, 109.)

In the initial Complaint, Plaintiff (incorrectly) alleged DSV US was involved in the Shipments by:

- Goldwind Science hiring and paying DSV US to deliver the wind farm equipment to Puerto Carupano (Compl. ¶ 109);

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[3] The Amended Complaint makes allegations about DSV Denmark, but it was not named as a Defendant. (*See, e.g.*, Am. Compl. ¶¶ 20, 56, 57.)

[4] Each codefendant is a foreign corporation. (Am. Compl. ¶ 18 (Goldwind Science is a Chinese Corporation), ¶ 19 (Goldwind International—is a Hong Kong corporation), ¶ 21 (BBC Chartering USA, LLC is a Texas corporation), ¶ 22 (Defendant BBC Singapore PTE Ltd. is a Singapore corporation).)

- DSV US then hiring and paying BBC Carriers to carry out the delivery (*id.* ¶ 110); and
- DSV US acting as the carrier that did not operate the vessel for the Moonstone Shipment (*id.* ¶¶ 95, 108, 117–118).

After seven months of jurisdictional discovery, Plaintiff has withdrawn those allegations in its amended pleading because discovery has shown them to be false. In the Amended Complaint, Plaintiff attempts to save its claims against DSV US by alleging instead that DSV US "*supported* DSV Denmark's business relationship with Goldwind Science and Goldwind International [and the BBC Carriers] to facilitate the shipment of the wind farm equipment . . . ." (Am. Compl. ¶ 163 (emphasis added).) Plaintiff alleges that DSV US participated in determining how to route the vessels to comply with U.S. law and in executing U.S. customs filings to comply with a U.S. Department of Commerce license. (*Id.* ¶ 162.)[5]

D. DSV US Did Not Engage In Any Activity In Florida Relating To The Shipments

Despite alleging in the initial Complaint, that "DSV [US]'s Miami office was involved . . . in providing" various logistical services related to the Moonstone Shipment, the only allegation in the Amended Complaint concerning DSV US activity in Florida purportedly related to the Shipments is that "DSV and DSV Denmark discussed and corresponded regarding the Miami stop with Carol Scheid, DSV[US]'s Miami, Florida-based customs broker." (Compl. ¶ 113; Am.

[5] As established by the Witkowski Declaration, DSV US engaged in only limited activities relating to the Shipments, outside Florida: DSV US conferred, outside of Florida, about a compliance issue, DSV US made a call from outside of Florida to the U.S. Department of Commerce (also located outside of Florida) to discuss the export license authorizing the Shipments, and DSV US transmitted forms for DSV Denmark pertaining to the Shipments from outside of Florida to United States Customs and Border Protection ("CBP"). (Wit. Decl. ¶¶ 13, 16.)

Compl. ¶ 66.) In fact, Carol Scheid did not communicate regarding the Shipments or the Miami stops—she did not have any involvement in the Shipments. (Wit. Decl. ¶ 25.)[6] No DSV US employee, agent, or representative took any action in Florida related to the Shipments. (*Id.* at ¶¶ 20, 24)

III. ARGUMENT

A. Legal Standard For Dismissal Under Rule 12(b)(2)

"A court must dismiss an action against a defendant over which it has no personal jurisdiction." *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1286 (S.D. Fla. 2014) (citation omitted). A plaintiff first must plead sufficient facts to establish a prima facie case for the exercise of specific personal jurisdiction over a foreign defendant. *Aronson v. Celebrity Cruises, Inc.*, 30 F. Supp. 3d 1379, 1385-86 (S.D. Fla. 2014); *see also DeRossett v. Se. Toyota Distribs., Inc.*, No. 17-CV-60415, 2017 WL 7344406, at *2 (S.D. Fla. Aug. 18, 2017). Even if a plaintiff meets its initial burden, if the defendant submits an affidavit challenging jurisdiction, the burden shifts back to the plaintiff "to produce evidence supporting jurisdiction." *Aronson*, 30 F. Supp. 3d at 1385.

To meet its burden, the complaint must plead sufficient facts that establish both that the defendant is subject to the forum state's long-arm statute, Fla. Stat. § 48.193, and that "the exercise of jurisdiction comports with the Due Process Clause of the Fourteenth Amendment to the United States Constitution." *Hinkle v. Cont'l Motors, Inc.*, 268 F. Supp. 3d 1312, 1319 (M.D. Fla. 2017), *aff'd sub nom. Hinkle v. Cirrus Design Corp.*, 775 F. App'x 545 (11th Cir. 2019). The "Due Process" question is a separate inquiry that "imposes a more restrictive requirement" than Florida's

[6] Carol Scheid was one of several DSV US employees who were recipients of emails in an email chain initiated by DSV Denmark concerning a compliance question pertaining to the Shipments. Ms. Scheid merely received the emails, as she did not send any emails or communications related to the Shipments or take any other action related to the Shipments. (Wit. Decl. ¶ 25.)

Long-Arm Statute. *Melgarejo v. Pycsa Panama, S.A.*, 537 F. App'x 852, 859-60 (11th Cir. 2013) (quoting *Internet Sos. Corp. v. Marshall*, 39 So. 3d 1201, 1207 (Fla. 2010)).

Here, the Court lacks personal jurisdiction over DSV US because Fla. Stat. § 48.193(1)(a) is not satisfied, and, even if it were, asserting jurisdiction over DSV US would violate due process principles.[7]

B. This Court Lacks Specific Jurisdiction Over DSV US Under Florida Statute § 48.193(1)(a)

Plaintiff relies on the provisions in Florida's long-arm statute that provide for personal jurisdiction over a nonresident corporation "for any cause of action *arising from*" (1) "[o]perating, conducting, engaging in, or carrying on a business or business venture in [Florida] or having an office or agency in [Florida]," and (2) "[c]ommitting a tortious act within this state." Fla. Stat. §§ 48.193(1)(a)(1) and (a)(2) (emphasis added). Neither provision subjects DSV US to this Court's jurisdiction because Plaintiff's claims do not arise from DSV US's business activity or "tortious" actions in Florida.

1. Plaintiff's Claims Do Not Arise From Any Business Activity By DSV US In Florida

To establish specific jurisdiction based on allegations of business activity in Florida, "[t]he business activity must demonstrate a general course of business for pecuniary benefit *connected with* the alleged tort." *Neelu Aviation, LLC v. Boca Aircraft Maint., LLC*, No. 18-CV-81445, 2019 WL 3532024, at *12 (S.D. Fla. Aug. 2, 2019) (emphasis added). "For this provision to apply, there must be a direct affiliation, nexus, or substantial connection between the basis for the cause of action and the business activity." *Borchers v. Amazon.com, Inc.*, No. 18-CV-61537, 2019 WL

[7] Plaintiff did *not* allege general jurisdiction under Florida's long-arm statute over DSV US, nor did it allege personal jurisdiction over DSV US under Federal Rule of Civil Procedure 4(k)(2). (Am. Compl. ¶ 13.)

5196117, at *3 (S.D. Fla. Jan. 30, 2019) (citing *Citicorp Ins. Brokers (Marine), Ltd. v. Charman*, 635 So. 2d 79, 82 (Fla. 1st DCA 1994)).

DSV US's business activity in Florida had *no connection* to the Shipments. (Wit. Decl. ¶¶ 20, 24.) The two DSV US offices located in Florida and DSV US's employees in Florida played no part in any activity that was in any way related to the Shipments. (*Id.*) Because there is no "nexus or connection between the business carried on" by DSV US in Florida and Plaintiff's alleged claims the Court cannot exercise specific jurisdiction. *Tancogne v. Aquimpex, S.p.A.*, No. 07-22553-CIV, 2009 WL 10667749, at *4 (S.D. Fla. Mar. 6, 2009); *see Herederos de Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, No. 20-21630-CIV, 2021 WL 1648222, at *3 (S.D. Fla. Apr. 27, 2021) (dismissing Helms-Burton claims for lack of personal jurisdiction because "Plaintiff fails to explain how its claim for unlawful trafficking in Cuba is related to [defendant]'s activities in Florida"), *reconsideration denied*, No. 20-21630-CIV, 2021 WL 3054908 (S.D. Fla. July 20, 2021).

The only activity by DSV US even tangentially related to the Shipments occurred *entirely outside of Florida* and did not involve DSV US's Florida offices or employees. (Wit. Decl. ¶¶ 17-19 (DSV US's compliance personnel had discussions outside of Florida concerning the Shipments, DSV US had one phone conversation with the U.S. Department of Commerce to discuss the export license for the Shipments where the participants on the call were outside of Florida, and DSV US electronically transmitted forms from outside of Florida to CBP).) Even if the electronic transmissions or communications had been directed at Florida (and they were not), they would not rise to the level of "doing business" in Florida. *See Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1167 (11th Cir. 2005) ("While [defendant] made telephonic and electronic communications from its California offices into Florida, these communications cannot

constitute 'conducting business' in Florida."). DSV US has established that it did not engage in any business activity in Florida connected to Plaintiff's claims.

2. <u>DSV US Did Not Engage In Tortious Activity In Florida</u>

For personal jurisdiction to attach under the tortious activity provision of the Florida long-arm statute Plaintiff must demonstrate that DSV US "committed a substantial aspect of the alleged tort *in Florida* by establishing that the activities in Florida were essential to the success of the tort." *DeZinno v. McClain Printing Co.*, No. 06-22974-CIV, 2007 WL 9709709, at *8 (S.D. Fla. Apr. 19, 2007) (internal quotations omitted; emphasis added). In addition, out-of-state conduct that causes injury *within Florida* can serve as a basis for jurisdiction under § 48.193(1)(a)(2). *See Est. of Scutieri v. Chambers*, 386 F. App'x 951, 956 (11th Cir. 2010). Here, DSV US did not commit any aspect of the alleged trafficking in Florida or cause any injury in Florida.

a. DSV US Did Not Engage In Tortious Activity In Florida <u>Related To Plaintiff's Title III Claim</u>

DSV US did not engage in any activity in Florida related to the Shipments, much less commit a substantial aspect of the alleged trafficking activity in Florida. Tracking the language of 22 U.S.C. § 6023(13), the Amended Complaint alleges in conclusory fashion that DSV US knowingly and intentionally (1) used the Confiscated Property; (2) engaged in commercial activity using or otherwise benefiting from the Confiscated Property; and/or (3) caused, directed, participated, or profited from the trafficking by another person. (Am. Compl. ¶¶ 162–64.) But DSV US did not engage in any such activity, and certainly did not do so in Florida. (*See* Wit. Decl. ¶¶ 20 24.)

Puerto Carupano is located in Cuba, not Florida. As such, DSV US did not "use" Puerto Carupano in Florida (nor could any other defendant have done so). In fact, DSV US did not "use" or benefit from Puerto Carupano in any way. (*See* Wit. Decl. ¶¶ 9-16.) Likewise, DSV US did

not engage in any commercial activity using or benefitting from Puerto Carupano, and certainly did not do so in Florida. (*Id.* ¶¶ 20, 24.) DSV US did not benefit from Puerto Carupano because it was not a carrier for Shipments or a party to the Shipments. (*Id.* ¶¶ 9, 10, 12, 26.) And DSV US certainly did not benefit from Puerto Carupano *in Florida*. (*Id.* ¶¶ 20, 24.) While a DSV US employee in Miami received emails about a compliance issue involving the Shipments, she did not send any emails or take any actions in response to the emails—indeed, no DSV US employee in Florida took any action related to the Shipments. (*Id.* ¶ 20, 24, 25.) Receiving an email is not tortious activity. Simply put, DSV US did not engage in any activity related to the Shipments in Florida so it necessarily did not engage in any activity in Florida that was essential to the alleged trafficking in Cuba.

b. Plaintiff's Conspiracy Claim Adds Nothing To The <u>Jurisdictional Analysis</u>

Lacking any facts that DSV US engaged in any activity in Florida related to the Title III claim, Plaintiff attempts to impute acts of the alleged co-conspirators to DSV US. Plaintiff alleges that each of the Defendants agreed "to help transport wind farm equipment from China to . . . Cuba via [Puerto Carupano]." (Am. Compl. ¶ 189.) In furtherance of the supposed conspiracy, Defendants allegedly "took overt actions to facilitate the Moonstone's and Jade's stops in Miami, Florida in an effort to comply with the requirements of U.S. trade laws before proceeding to" Cuba. (*Id.* ¶ 241.)[8]

Acts of alleged co-conspirators may be imputed to a defendant to establish personal jurisdiction only where it "was part of a conspiracy either engineered in Florida or pursuant to

[8] For the reasons stated in Defendants' forthcoming Rule 12(b)(6) motion, Plaintiff fails to state a claim for civil conspiracy, including that there are no allegations of an unlawful purpose. To the contrary, the purpose of the alleged conspiracy was to comply with U.S. trade laws. The conspiracy claim, therefore, does not provide a basis to establish personal jurisdiction over DSV US. *FR Tax Grp., LLC*, 2017 WL 6346051, at *4; *Taylor*, 717 F. App'x at 839–40.

which a tortious act in furtherance was committed in Florida." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1283 (11th Cir. 2009). As such, the conspiracy allegations cannot support personal jurisdiction over DSV US unless it "was involved in a Florida-based agreement to [traffic in Puerto Carupano]—i.e., involved in a meeting of the minds with at least one other [alleged] co-conspirator—*before* the time of the [alleged trafficking]." *Id.* at 1282 (emphasis in original). DSV US, however, was not a party to *any agreement* with an alleged co-conspirator related to the Shipments. (Wit. Decl. ¶¶ 10, 12.); *see Mazer*, 556 F.3d at 1277 (finding factual denials of jurisdictional allegations sufficient to shift burden to plaintiff); *Advantus, Corp. v. Sandpiper of California, Inc.*, No. 3:18-CV-1368-J-34JRK, 2019 WL 4751725, at *28 (M.D. Fla. Sept. 30, 2019) (holding plaintiff "failed to carry its burden of establishing . . . personal jurisdiction over [defendant] as to the alleged conspiracy claim" where defendant "has come forward with evidence rebutting" allegations of conspiracy"). Indeed, DSV US did not communicate with any alleged co-conspirator related to the Shipments. (Wit. Decl. ¶ 11.) Because DSV US was not part of an agreement to engage in the alleged trafficking activity, Plaintiff's conspiracy claim cannot serve as a basis for asserting personal jurisdiction over DSV US. *See Platypus Wear, Inc. v. Clarke Modet & Co.*, 515 F. Supp. 2d 1288, 1296 (S.D. Fla. 2007) (finding evidence of defendant's involvement in conspiracy insufficient to establish personal jurisdiction under § 48.193(1)(b)); *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1318 (11th Cir. 2006) (same).[9]

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[9] Even if DSV US had been party to an agreement to ship wind farm equipment from China to Cuba (and it was not), the conspiracy claim still would not provide a basis for exercising personal jurisdiction over DSV US. Because "Florida courts do not recognize civil conspiracy as an independent tort," the court must determine whether the alleged underlying tort "arises from" acts in Florida. *Estate of Scutieri*, 386 F. App'x at 954. Plaintiff alleges in conclusory fashion that "[t]he stopovers of the BBC Moonstone and BBC Jade in Miami comprised an essential aspect of Defendants' use of [Puerto Carupano]." (Am. Compl. ¶ 191.) In fact, the equipment could have been delivered to Cuba without a stopover in Miami. (Wit. Decl. ¶ 27; Ex. B, Dep. of K. Witkowski at 155:12-158:1.)

c. **Plaintiff Did Not Suffer Any Injury In Florida**

While out-of-state conduct can satisfy § 48.193(1)(a)(2), Plaintiff "must still plead facts demonstrating a cognizable injury in Florida." *Estate of Scutieri*, 386 F. App'x at 956. Plaintiff is a New Jersey corporation with its principal place of business in New York and does not allege that it has any connection to Florida. (Am. Compl. ¶ 17.) While DSV US disputes that Plaintiff has alleged *any injury* caused by any DSV US activity, Plaintiff certainly does not allege that it suffered any injury *in Florida*. *See Estate of Scutieri*, 386 F. App'x. at 956 (holding that long-arm statute was not satisfied where plaintiff did not suffer injury in Florida); *Posner v. Essex Ins. Co.*, 178 F.3d 1209, 1220 (11th Cir. 1999) (the statute does not provide jurisdiction over claims arising from "an allegation of injury to the business interest of [even] a Florida plaintiff where that interest is located entirely outside of Florida."). DSV US's out-of-state conduct does not provide a basis for jurisdiction under Florida's long-arm statute.

C. **Asserting Jurisdiction Over DSV US Would Not Comport With Due Process**

Even if Plaintiff had satisfied the Florida long-arm statue, it fails the second step of the jurisdictional analysis—determining whether the exercise of specific jurisdiction comports with the due process requirements of the Fourteenth Amendment to the Unites States Constitution. Due process requires courts to consider, first, "whether the plaintiffs have established that their claims arise out of or relate to at least one of the defendant's contacts with the forum" and second, "whether the plaintiffs have demonstrated that the defendant purposefully availed itself of the privilege of conducting activities within the forum state." *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1313 (11th Cir. 2018) (internal quotation marks omitted), *cert. denied sub nom. Waite v. Union Carbide Corp.*, 139 S. Ct. 1384 (2019). Plaintiff cannot meet its burden to establish either prong. *See Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1355 (11th Cir. 2013) ("The plaintiff bears the burden of establishing the first two prongs . . . .")

1. Plaintiff's Claims Do Not Arise Out Of Or Relate To DSV US's Contacts With Florida

Plaintiff must establish that its "claims [are] sufficiently related to [DSV US]'s contacts with Florida." *Israel v. Alfa Laval, Inc.*, No. 8:20-CV-2133-WFJ-AAS, 2021 WL 1662770, at *5 (M.D. Fla. Apr. 28, 2021). The Supreme Court in *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021) rejected a "but-for" causation requirement between a defendant's contacts with the forum and plaintiff's injury, but made clear that "the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." *In re: Zantac (Ranitidine) Prod. Liab. Litig.*, No. 20-MD-2924, 2021 WL 2682602, at *14 (S.D. Fla. June 30, 2021) (quoting *Ford Motor Co.*, at 1026). Since *Ford Motor Co.*, courts continue to dismiss for lack of personal jurisdiction claims that do not arise out of or relate to defendants' alleged activities within the forum state. *See, e.g.*, *id.* at *6, *14 (applying rule where defendants sold pharmaceuticals, but not the specific product at issue, in the forum states); *Israel*, at *5 (applying rule because plaintiff "has not established any connection between his claims and the companies' business within the state"); *Johnson v. UBS AG*, 860 F. App'x 531, 533 (9th Cir. 2021) (affirming dismissal and holding "there must be a connection between the forum and the underlying controversy"); *Alexander v. Anheuser-Busch, L.L.C.*, No. 19-30993, 2021 WL 3439131, at *3 (5th Cir. Aug. 5, 2021) (affirming dismissal because "the nexus between [selling beer in Louisiana and allegedly conspiring to poison beer is] much too attenuated"); *Hepp v. Facebook*, 14 F.4th 204, 208 (3d Cir. 2021) (affirming dismissal because plaintiff "failed to establish the strong connection [between the claims and the forum state] present in *Ford Motor*").

Here, the activity by DSV US in Florida does not relate to Plaintiff's claims. DSV US has branch offices in Miami and Orlando and it is the shipper for unrelated shipments each year that are unloaded at Florida ports. (Am. Compl. ¶ 20.) Those contacts with Florida have nothing to

do with the Shipments. (Wit. Decl. ¶ 20, 24.) Therefore, Plaintiff's claims do not arise out of or relate to DSV US's contacts with Florida. *See In re: Zantac (Ranitidine) Prod. Liab. Litig.*, at *14 ("if the Court were to . . . find specific personal jurisdiction because of Defendants' . . . conduct that the Court has concluded is not 'jurisdictionally relevant' to the claim, the phrase 'relate to' would have no 'real limits.'").

2. DSV US Did Not Purposefully Avail Itself Of The Privilege Of Conducting Business In Florida

As for the second prong of the due process inquiry—*i.e.*, purposeful availment—in cases involving intentional torts courts apply the *Calder* "effects test," which requires that a defendant has (1) committed an intentional act, (2) aimed at the forum state, (3) causing harm that the defendant should have anticipated would be suffered in the forum state. *Licciardello v. Lovelady*, 544 F.3d 1280, 1286 (11th Cir. 2008). DSV US is alleged to have committed an intentional act of "trafficking" in Puerto Carupano, but Plaintiff cannot satisfy the second and third prongs of the effects test.

To satisfy the second prong, a defendant must have intentionally and purposefully directed "tortious conduct" at a resident of the forum. *Buzz Pop Cocktails Corp. v. Booze Pops, LLC*, No. 8:19-CV-1840-MSS-TGW, 2020 WL 2838825, at *7 (M.D. Fla. Apr. 22, 2020). DSV US did not engage in any conduct relating to the Shipments that was *aimed at* Florida, whether intentional or otherwise. The only conduct by DSV US related in any way to the Shipments occurred outside of Florida and was not directed at Florida. (Wit. Decl. ¶ 17-19.) This is not sufficient. *See Navitar, Inc. v. eScholar, LLC*, No. 11-CV-20266-PAS, 2011 WL 13223668, at *3 (S.D. Fla. July 7, 2011) (holding defendant's contact with Florida were not sufficient to satisfy due process where provided "[a]ffidavit makes it clear that Defendant's business activities relating to [plaintiff's claim] are not directed at Florida."); *see also CJS Sols. Grp., LLC v. Tokarz*, No. 3:20-CV-65-MMH-JRK, 2021

WL 848159, at *11 (M.D. Fla. Mar. 5, 2021) ("alleged tortious interference with . . . business relationship . . . was [not] in any way 'directed at' or 'expressly aimed' at Florida, as necessary to satisfy the second prong of the *Calder* effects test."); *Sovereign Offshore Servs., LLC v. Shames*, No. 17-CV-80172, 2017 WL 7798664, at *4 (S.D. Fla. Aug. 3, 2017) (holding that even "Defendant's awareness that his blog posts would be accessible in Florida, by virtue of the nature of the world-wide web, and [plaintiff's] physical location in Florida are insufficient to establish that Defendant has minimum contacts with Florida.")

Moreover, DSV US's limited acts related to the Shipments were not tortious, and certainly DSV US did not engage in any tortious activity directed at Florida. By Plaintiff's allegations, DSV US was involved in "U.S. trade law compliance analyses" regarding the Shipments and took actions to "attempt to comply with a U.S. Department of Commerce license." (Am. Compl. ¶ 162; *see also id.* at ¶ 6(iii) ("DSV [US] was a key participant in analyzing regulatory requirements imposed by certain U.S. trade laws in connection with the delivery of the equipment from China to Cuba, and in leading efforts to attempt to satisfy those requirements.") There is no wrongful or tortious conduct in conferring on a compliance issue relating to the Shipments or discussing with the U.S. Department of Commerce the license it issued for the Shipments, as alleged. Nor is it wrongful or tortious for DSV US to transmit forms to CBP relating to the Shipments. Absent any tortious conduct directed at Florida, DSV US did not purposefully avail itself of the privilege of conducting business in Florida. *See Don King Prods., Inc. v. Mosley*, No. 15-61717-CV, 2016 WL 3950930, at *5 (S.D. Fla. Jan. 27, 2016) (holding plaintiff failed to satisfy "effects test" defendant's national advertising campaign was "not inherently tortious . . . and there is no evidence that the promotional materials were purposefully directed at Florida or its citizens.")

Plaintiff also cannot satisfy the third prong of the effects test—that DSV US should have anticipated that it would cause harm to Plaintiff in Florida. To satisfy this requirement the defendant must have known "that it was likely committing [a tort] specifically against the plaintiff in the forum state and continued to do so anyway." *CCTV Outlet, Corp. v. Desert Sec. Sys. L.L.C.*, No. 17-60928-CIV, 2017 WL 5640717, at *3 (S.D. Fla. Aug. 7, 2017). As discussed in Section III.B.2.c above, if Plaintiff was harmed it did not occur in Florida. And the Amended Complaint does not allege that DSV US was aware of the existence of American Sugar, much less that DSV US took any action that it should have known would harm American Sugar in Florida.[10]

Plaintiff's conspiracy allegations do not change the analysis. Minimum contacts can be based on a coconspirator's presence in Florida "only if the conspiracy is directed towards the forum, or substantial steps in furtherance of the conspiracy are taken in the forum" and there is evidence "of injury related to the conspiracy that occurred in the State of Florida." *Blueskygreenland Envtl. Sols., LLC v. 21st Century Planet Fund, LLC*, No. 12-81234-CIV, 2014 WL 1341277, at *6 (S.D. Fla. Apr. 4, 2014) (finding elements lacking because, *inter alia*, plaintiff "is a Texas corporation complaining of lost revenues from sales in the territory of India"). As discussed in Section III.B.2.b above, DSV US was not party to "a 'meeting of the minds' between the [alleged] co-conspirators." *Id.*

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[10] Plaintiff also could not satisfy the traditional minimum contacts test for purposeful availment. Under the traditional purposeful availment analysis, the court assesses the nonresident's contacts with the forum state and asks whether those contacts "(1) are related to the plaintiff's cause of action; (2) involve some act by which the defendant purposefully availed himself of the privileges of doing business within the forum; and (3) are such that the defendant should reasonably anticipate being haled into court in the forum." *Louis Vuitton*, 736 F.3d at 1357 (citing *U.S. S.E.C. v. Carrillo*, 115 F.3d 1540, 1542 (11th Cir. 1997)). Plaintiff cannot satisfy the first prong because DSV US's contacts with Florida are not related to the alleged trafficking activity. (Wit. Decl. ¶ 20, 24.)

Even if DSV US had been involved in an agreement to have the Jade and Moonstone stop in Miami, Plaintiff has failed to allege that the supposed conspiracy was directed at Florida or substantial steps in furtherance of the conspiracy were taken in Florida. Plaintiff's conclusory allegation that "[t]he stopovers of the BBC Moonstone and BBC Jade in Miami comprised an essential aspect of Defendants' use of [Puerto Carupano]." (Am. Compl. ¶191), is "not entitled to [an] assumption[] of truth[]." *PG Creative Inc. v. Affirm Agency, LLC*, No. 18-CV-242, 2019 WL 5684219, at *6 (S.D. Fla. Oct. 31, 2019) (Gayles, J.) (rejecting conclusory allegations in applying the effects test). Rather, the stops in Miami were not "essential" because the Jade and the Moonstone need not have stopped in Miami (or Florida) in order to comply with the export license, and because the Shipments could have been made directly from China to Cuba pursuant to an OFAC license. (Wit. Decl. ¶ 27; Ex. B, Wit. Dep. at 155:12-158:1.) As such, the stop in Miami was nothing more than a "'fortuitous[] or attenuated contact[],' which cannot support specific jurisdiction." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (quoting *Walden v. Fiore*, 571 U.S 277, 286 (2014); *see also Robey v. JPMorgan Chase Bank, N.A.*, 343 F. Supp. 3d 1304, 1319 (S.D. Fla. 2018) (applying rule).[11]

IV. CONCLUSION

For all the reasons state above, Plaintiff's Amended Complaint should be dismissed for lack of personal jurisdiction as to DSV US.

[11] Because Plaintiff cannot meet its burden to satisfy either the relatedness or purposeful availment prongs of the due process analysis, "it would offend traditional notions of fair play and substantial justice to subject [DSV US] to personal jurisdiction in Florida." *PG Creative Inc.*, 2019 WL 5684219, at *7 (Gayles, J.).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021, I electronically filed the foregoing with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to counsel for all parties of record.

/s/Robert M. Brochin
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