

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO: 21-cv-81890-MIDDLEBROOKS

ROBERT GUARINI,

Plaintiff,

v.

JOHN DOE and  
BINANCE, a Foreign Company,

Defendants.

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**ORDER GRANTING MOTION TO DISMISS**

THIS CAUSE comes before the Court upon Defendant Binance’s Motion to Dismiss the Amended Complaint for Lack of Personal Jurisdiction and Failure to State a Claim, filed on January 4, 2022. (DE 16). The Motion is fully briefed. (DE 20; DE 21). For the reasons set forth below, Defendant’s Motion is granted.

**I. BACKGROUND**

Plaintiff Robert Guarini, a Florida resident, initiated this lawsuit on October 8, 2021, alleging that a John Doe Defendant stole \$680,000 in cryptocurrency from his Gemini account by pretending to be a representative of Gemini’s Customer Support team. (DE 5 at ¶ 15). According to Plaintiff, the John Doe Defendant then transferred the money to a Binance account. (DE 5 at ¶ 18). Count I of Plaintiff’s Complaint presents a claim for conversion against the John Doe Defendant and Count II presents a claim for the imposition of a constructive trust and disgorgement of funds against Defendant Binance. (*Id.* at ¶¶ 25–36). Defendant Binance is a foreign company registered and headquartered in the Cayman Islands. (*Id.* at ¶ 6). As to Defendant Binance’s ties to this forum, Plaintiff’s Amended Complaint asserts that Defendant Binance “serves customers in

the United States—including in this jurisdiction—through its United States-based affiliate Binance.US and serves customers abroad.” (*Id.* at ¶ 7). The Amended Complaint contains no other allegations linking Binance to the Southern District of Florida.

Defendant Binance now moves to dismiss Plaintiff’s Amended Complaint. (DE 16). It asserts that this Court does not have personal jurisdiction over it, and, even if it did, that Count II of Plaintiff’s Amended Complaint fails to state a claim. Because I conclude that Defendant does not have the requisite contacts with Florida for this Court to exercise personal jurisdiction over it, Defendant’s Motion is granted. Further, because I find that this Court does not have personal jurisdiction over Defendant, I do not reach Defendant’s argument that Plaintiff has failed to state a claim.

## **II. LEGAL STANDARD**

Federal Rule of Civil Procedure 12(b)(2) allows for dismissal of a claim when the court lacks personal jurisdiction over a defendant. *See* Fed. R. Civ. P. 12(b)(2). “A plaintiff seeking to establish personal jurisdiction over a nonresident defendant ‘bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction.’” *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). The Eleventh Circuit has described the standard for satisfying the prima facie case as the presentation of “enough evidence to withstand a motion for directed verdict.” *E.g., Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990).

“When a defendant challenges personal jurisdiction ‘by submitting affidavit evidence in support of its position, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction.’” *Mosseri*, 736 F.3d at 1350 (quoting *Madara*, 916 F.3d at 1514). At that stage, “the plaintiff is required to substantiate the jurisdictional allegations in the complaint by

affidavits or other competent proof, and not merely reiterate the factual allegations in the complaint.” *Polski Linie Oceaniczne v. Seasafe Transp. A/S*, 795 F.2d 968, 972 (11th Cir. 1986) (internal citation omitted). I must “accept[] as true all unchallenged facts in the plaintiff’s complaint.” *AcryliCon USA, LLC v. Silikal GmbH*, 985 F.3d 1350, 1364 (11th Cir. 2021). “To the extent that ‘the plaintiff’s complaint and supporting evidence conflict with the defendant’s affidavits, [I] must construe all reasonable inferences in favor of the plaintiff.’” *Id.* at 1364 (quoting *Diamond Crystal Brands, Inc. v. Food Movers Int’l, Inc.*, 593 F.3d 1249 (11th Cir. 2010)). However, I need only consider “specific factual declarations within the affiant’s personal knowledge,” and not “statements . . . [which] are in substance legal conclusions.” *Posner v. Essex Ins. Co. Ltd.*, 178 F.3d 1209, 1215 (11th Cir. 1999) (per curiam).

“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.” *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203 (11th Cir. 2015). “Only if both prongs of the analysis are satisfied may a federal or state court exercise personal jurisdiction over a nonresident defendant.” *Madara*, 916 F.2d at 1514 (citations omitted).

Florida’s long-arm statute provides two ways in which a defendant can be subject to personal jurisdiction. *Carmouche*, 789 F.3d at 1203–04. “[F]irst, section 48.193(1)(a) lists acts that subject a defendant to specific personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant’s contacts with Florida.” *Id.* at 1204 (citing Fla. Stat. § 48.193(1)(a)). “[S]econd, section 48.193(2) provides that Florida courts may exercise general personal jurisdiction—that is, jurisdiction over any claims against a defendant, whether or not they involve

the defendant's activities in Florida—if the defendant engages in ‘substantial and not isolated activity’ in Florida.” *Id.* (quoting § 48.193(2)).

“If there is a basis for the assertion of personal jurisdiction under the state statute, [I] next determine whether sufficient minimum contacts exist to satisfy the Due Process Clause of the Fourteenth Amendment so that ‘maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Madara*, 916 F.2d at 1514 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (additional citations omitted)). The minimum contacts sufficient to comport with Due Process differ when assessing the exercise of “general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction.” *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). The general jurisdiction provision of Florida’s long-arm statute “extends to the limits on personal jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment.” *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010). Therefore, when assessing this Court’s exercise of general jurisdiction, “[I] need only determine whether the . . . exercise of jurisdiction . . . would exceed constitutional bounds.” *Id.*

### III. DISCUSSION

Defendant now moves to dismiss, arguing that this Court lacks both specific personal jurisdiction and general personal jurisdiction over it in this cause of action. Before proceeding to a discussion of general and specific jurisdiction, I first address Plaintiff’s misconception about the burden of proof on a motion to dismiss for lack of personal jurisdiction. Plaintiff appears to believe that because Defendant has not filed any affidavits, testimony, or documents in support of its Motion to Dismiss that Defendant cannot prevail. (DE 20 at 4). Not so. “It is by now almost axiomatic that a plaintiff bears the burden of establishing a prima facie case of personal jurisdiction, meaning it must present enough evidence to withstand a motion for a directed

verdict.” *Don’t Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1292 (11th Cir. 2021). If Plaintiff satisfies this burden, then the burden shifts to the defendant to submit non-conclusory affidavits to controvert the allegations in the complaint. *Id.* Here, Defendant argues that Plaintiff has not met that initial burden. Thus, because Defendant is attacking Plaintiff’s prima facie case, no affidavits are necessary.

### **A. General Jurisdiction**

The sole allegation concerning Defendant’s ties to this jurisdiction in Plaintiff’s Amended Complaint is that Binance “serves customers in the United States—including in this jurisdiction—through its United States-based affiliate Binance.US and serves customers abroad.” (DE 5 at ¶ 7). Plaintiff appears to believe that this is sufficient to confer general jurisdiction over Defendant on federal courts in Florida—and, by the logic in Plaintiff’s Response, apparently on federal courts in all other states in the United States. (DE 20 at 7). To reiterate the standard here, Florida law effectively merges the analysis on general jurisdiction with overarching Due Process principles, therefore I need only determine whether exercising general jurisdiction over Defendant would violate Due Process. *See Fraser*, 594 F.3d at 846.

The Supreme Court has held that to exercise general personal jurisdiction over a foreign corporation consistent with Due Process, the corporation’s “affiliations with the State [must be] so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Carmouche*, 789 F.3d at 1204 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). “[O]nly a limited set of affiliations with a forum render a defendant amenable to all-purpose jurisdiction there.” *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). The “paradigm all-purpose forums” where a corporate defendant is essentially at home are its place of incorporation and its principal place of business. *Id.* Only in the “exceptional case” will a corporation’s activities

in a forum other than its place of incorporation or principal place of business be “so substantial and of such a nature as to render the corporation at home in that state.” *Id.* at 139 n. 19. Establishing the exceptional case is a “heavy burden.” *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1317 (11th Cir. 2018).

Plaintiff’s single factual allegation about customers’ use of Defendant’s services in the United States is woefully inadequate to support the exercise of general jurisdiction over Defendant. Under no interpretation of these facts can Florida be considered a “paradigm all-purpose forum” for Defendant. *See id.* at 137. It is uncontested that Defendant is a foreign company registered and headquartered in the Cayman Islands. (DE 5 at ¶ 6). Moreover, the public records<sup>1</sup> cited by Defendant establish that Binance is not a cryptocurrency exchange for United States users and that Binance.US is a subsidiary of BAM Trading Services, not the Binance that has been named as a Defendant in this action. This case does not present sufficiently “exceptional” circumstances such that Defendant’s contacts with Florida “render [it] at home in” Florida. *See Daimler*, 571 U.S. at 139 n. 19. Therefore, I find that this Court cannot exercise general jurisdiction over Defendant consistent with the Due Process Clause.

## **B. Specific Jurisdiction**

Nor is Defendant subject to specific personal jurisdiction. In making this determination, I must first consider whether Florida’s long-arm statute provides for specific jurisdiction. Under Florida’s long-arm statute, specific jurisdiction can only be exercised over a defendant in causes

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<sup>1</sup> A district court may take judicial notice of matters of public record on a motion to dismiss. *See Watson v. Bally Mfg. Corp.*, 844 F. Supp. 1533, 1535 n.1, *aff’d* 84 F.3d 438 (11th Cir. 1996) (quoting 5A Charles A. Wright and Arthur R. Miller, *Federal Practice and Procedure* § 1357 (1990)) (“In determining whether to grant a Rule 12(b)(6) motion, the court primarily considers the allegations in the complaint, although matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint, also may be taken into account.”).

of action that “aris[e] from” a list of enumerated acts. § 48.193(1)(a). And Florida’s long-arm statute is strictly construed. *Sculptchair, Inc., v. Century Arts, Ltd.*, 94 F.3d 623, 627 (11th Cir. 1996) (applying Florida law). If the long-arm statute applies, I must then consider whether the exercise of specific jurisdiction over Defendant would comport with Due Process (as this constitutional standard is analyzed within the context of a specific jurisdiction analysis). *Carmouche*, 789 F.3d at 1203.

Plaintiff appears to be invoking this Court’s exercise of personal jurisdiction over Defendant under §§ 49.193(1)(a)(1). Section 49.193(1)(a)(1) provides that a person is subject to jurisdiction in Florida for any causes of action arising from “[o]perating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state.” § 49.193(1)(a)(1). In support of the exercise of specific personal jurisdiction over Defendant, Plaintiff argues that “Plaintiff in the instant matter is a Florida resident who was victimized by a crime in Florida . . . through the transfer of stolen funds Plaintiff had been holding in Florida” and that “the ‘business activity’ that draws [Defendant] into this lawsuit is precisely and inextricably entwined with the harm that has been inflicted upon Plaintiff.” (DE 20 at 8). But the fact that Plaintiff was the victim of a crime in Florida committed by an unknown John Doe Defendant does not bear on Defendant Binance’s contacts with the forum state. “In order to establish that a defendant is ‘carrying on business’ for the purposes of the long-arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the state for pecuniary benefit.” *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000). Factors relevant to this inquiry include: (1) “the presence and operation of an office in Florida”; (2) “the possession and maintenance of a license to do business in Florida”; (3) “the number of Florida clients served”; and (4) “the percentage of overall revenue

gleaned from Florida clients.” *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1167 (11th Cir. 2005). Plaintiff’s Amended Complaint contains no allegations that Defendant Binance satisfies any of these factors. Moreover, because the public records cited by Defendant establish that Binance restricts United States users from accessing its platforms and that Binance.US is not affiliated with the Binance that has been sued in this action, amendment would not cure the jurisdictional defects in Plaintiff’s Amended Complaint.

Because I determined that no basis exists to assert specific jurisdiction over Defendant under Florida’s long-arm statute, I need not consider whether the exercise of specific jurisdiction would satisfy the Due Process Clause. *See Melgarejo v. Pycsa Panama, S.A.*, 537 Fed. Appx. 852, 862, (11th Cir. 2013) (“Because the district court properly concluded there is no [statutory] basis for specific jurisdiction . . . we do not reach the second question of the personal jurisdiction analysis—whether such an exercise of personal jurisdiction would be constitutional.”); *see also Madara*, 916 F.2d at 1514 (“Only if both prongs of the analysis are satisfied may a federal . . . court exercise personal jurisdiction over a nonresident defendant.”). Additionally, because I have concluded that this Court lacks personal jurisdiction over Defendant, I need not reach Defendant’s argument that Plaintiffs have failed to state a claim upon which relief may be granted.

With the claims against Defendant Binance due to be dismissed, the only Defendant remaining in this action is a “John Doe” who remains unnamed and who has still not been served. Thus, there remains no viable Defendant in this action. *See Richardson v. Johnson*, 598 F.3d 734, 738 (upholding a district court’s dismissal of an unnamed John Doe defendant because “[a]s a general matter, fictitious-party pleading is not permitted in federal court.”).

#### IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** that:

- (1) Defendant's Motion to Dismiss (DE 16) is **GRANTED**.
- (2) Plaintiff's Amended Complaint (DE 5) is **DISMISSED WITHOUT PREJUDICE**.
- (3) The Clerk of Court shall **CLOSE THIS CASE**.
- (4) All pending motions shall be **DENIED AS MOOT**.

**SIGNED** in Chambers at West Palm Beach, Florida, this 4th day of April, 2022.



Donald M. Middlebrooks  
United States District Judge

Copies to: Counsel of Record