

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

FIRST-CITIZENS BANK AND TRUST
COMPANY,

Plaintiff,

v.

HSBC HOLDINGS PLC, et al.,

Defendants.

Case No. 3:23-cv-02483-LB

**ORDER DISMISSING CLAIMS TWO
THROUGH SEVEN AND TEN (BUT
NOT CLAIM ONE)**

Re: ECF No. 81

INTRODUCTION AND STATEMENT

Silicon Valley Bank (SVB) collapsed on March 10, 2023, following a run on its deposits by its customers. The FDIC assumed control of the bank and on March 27 sold SVB assets to First Citizens. SVB UK collapsed too: the Bank of England seized its assets and on March 13 sold SVB UK to HSBC UK Bank plc (HBUK).¹

On April 9 (Easter Sunday), starting at 9 p.m., more than forty former SVB employees submitted their resignations by email to First Citizens and began work at HSBC Bank USA, N.A. (HBUS). First Citizens sued six former SVB employees (Sunita Patel, Melissa Stepanis, Peter Kidder, Kevin Longo,

¹ First Am. Compl. (FAC) – ECF No. 76 at 4, 5 (¶¶ 1–2), 26 (¶¶ 99–101), 41 (¶ 184). Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 Rebekah Hanlon, and Katherine Andersen), a former SVB senior executive named David Sabow
 2 (who became an SVB UK employee before First Citizens acquired SVB and then an HBUK
 3 employee after HBUK acquired SVB UK on March 13), SVB UK, HBUS, and other HSBC entities.
 4 The gist of the complaint is that Mr. Sabow organized a scheme (called Project Colony) to poach
 5 former SVB employees, thereby obtain SVB's confidential, proprietary, and trade-secret information,
 6 and (essentially) steal the SVB business model, to First Citizens' financial detriment.²

7 All claims are grounded in this alleged scheme. The employees breached their employment
 8 agreements with SVB (claim one against Sabow, Patel, Stepanis, Longo, and Hanlon) and First
 9 Citizens (claim two against Patel, Stepanis, Longo, Hanlon, and Andersen) and their duty of loyalty
 10 to First Citizens (claim three against Patel, Stepanis, Longo, Hanlon, and Andersen). The HSBC
 11 entities and Sabow aided and abetted the breach of the duty of loyalty (claim four) and tortiously
 12 interfered with First Citizens' contracts by inducing the mass resignations and causing the breaches
 13 of the employment agreements (claim five). All defendants tortiously interfered with First Citizens'
 14 prospective economic advantage by inducing the mass resignations and breaches of the duty of
 15 loyalty (claim six) and engaged in unfair and deceptive trade practices by executing the mass
 16 departure of former SVB employees, in violation of N.C. Gen. Stat. § 75-1.1 (claim seven). All
 17 defendants violated the federal Defend Trade Secrets Act (claim eight) and either the California
 18 Uniform Trade Secrets Act (CUTSA) or the North Carolina Trade Secrets Protection Act (claim
 19 nine). And all defendants conspired to injure First Citizens by these unlawful acts (claim ten).³

20 The defendants move to dismiss the claims on the following grounds.

21 First, they contend that there is no personal jurisdiction over entity defendants HBUK, HSBC
 22 Holdings, and HS Bank USA Inc. (HUSI). Similarly, there is no personal jurisdiction against the out-
 23 of-state defendants Stepanis, Longo, and Andersen because the only acts alleged occurred outside of
 24 California or via Zoom calls to recruit them to work for HBUS.⁴

26 ² *Id.* at 5–9 (¶¶ 3–18).

27 ³ *Id.* at 59–92 (¶¶ 261–406).

28 ⁴ Mot. – ECF No. 81 at 11.

1 Second, they move to dismiss all claims against certain defendants (the defendants in the last
2 paragraph plus three in-state defendants, Patel, Kidder, and Hanlon) because the allegations against
3 them based on their conduct after March 27 do not plausibly plead claims (except for trade-secret
4 claims against Hanlon).⁵ (The asset-purchase agreement with the FDIC precludes First Citizens
5 from asserting claims arising from conduct that predates March 27.⁶)

6 Third, they contend that CUTSA preempts the common-law tort claims (claims three through
7 six and ten).⁷

8 Fourth, they contend that common-law tort and contract claims are not pleaded plausibly because
9 (a) there are no allegations that the individual defendants owed First Citizens a duty of loyalty
10 (claims three and four) or interfered with contracts or prospective economic advantage (claims five
11 and six), (b) conspiracy (claim ten) is not a standalone tort, (c) there is no plausible claim for breach
12 of the SVB employment agreements (claim one) because First Citizens did not allege that it acquired
13 the contracts with its purchase of assets (SVB Financial Group had the contracts, never transferred
14 assets, and is in bankruptcy proceedings), and (d) there is no plausible claim for breach of the First
15 Citizens agreements (claim two) because First Citizens did not allege that the individual defendants
16 breached the agreement's terms after they signed the agreement's acknowledgment form.⁸

17 Fifth, they contend that claim seven — implicating North Carolina's Unfair and Deceptive
18 Practices Act — must be dismissed because no deceptive conduct occurred in North Carolina or had
19 the requisite substantial effect on commerce there.⁹

20 Given the defendants' declarations with jurisdictional facts, there is no personal jurisdiction
21 over HSBC Holdings, HUSI, and HBUK. The allegations against HSBC Holdings and HUSI are
22 grounded in a misunderstanding about the corporate structure. The jurisdictional case against
23

24 ⁵ *Id.*

25 ⁶ Order – ECF No. 71 at 11 (the parties agree on this point). This order incorporates the earlier order's
analysis by this reference.

26 ⁷ Mot. – ECF No. 81 at 11.

27 ⁸ *Id.* at 12.

28 ⁹ *Id.* The court held a hearing on May 30, 2024. The parties consented to magistrate-judge jurisdiction
under 28 U.S.C. § 636(c). Consents – ECF Nos. 23, 33.

1 HBUK is closer given its acquisition of SVB UK on March 13, 2023, but the declaration defeats
 2 the jurisdictional allegations (given that the relevant executives were at HBUS). The court allows
 3 the jurisdictional discovery discussed below. The allegations against the out-of-state defendants
 4 Stepanis, Longo, and Andersen do not establish personal jurisdiction. The court denies the motion
 5 to dismiss the breach-of-contract claim predicated on the SVB agreement (claim one): the earlier
 6 order held that First Citizens acquired the right to enforce the agreements, and the counterparty
 7 includes SVB Financial’s affiliates. The court otherwise grants the Rule 12(b)(6) motion to
 8 dismiss for the reasons advanced by the defendants. The effect of this ruling is that claim one (for
 9 breach of the SVB contract) survives against Sabow and claims eight and nine (for theft of trade
 10 secrets) are live against HBUS, SVB UK, Sabow, and Hanlon.

12 STANDARD OF REVIEW

13 1. Personal Jurisdiction — Rule 12(b)(2)

14 “In opposing a defendant’s motion to dismiss for lack of personal jurisdiction, the plaintiff
 15 bears the burden of establishing that jurisdiction is proper.” *Ranza v. Nike, Inc.*, 793 F.3d 1059,
 16 1068 (9th Cir. 2015) (cleaned up). The parties may submit, and the court may consider,
 17 declarations and other evidence outside the pleadings in determining whether it has personal
 18 jurisdiction. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). “Where, as here, the
 19 defendant’s motion is based on written materials rather than an evidentiary hearing, the plaintiff
 20 need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”
 21 *Ranza*, 793 F.3d at 1068 (cleaned up). “Uncontroverted allegations must be taken as true, and
 22 conflicts between parties over statements contained in affidavits must be resolved in the plaintiff’s
 23 favor.” *Id.* (cleaned up). But courts “may not assume the truth of allegations in a pleading which
 24 are contradicted by affidavit.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th
 25 Cir. 2011) (cleaned up); *accord Ranza*, 793 F.3d at 1068 (“A plaintiff may not simply rest on the
 26 bare allegations of the complaint.”) (cleaned up).

1 **2. Motion to Dismiss — Rule 12(b)(6)**

2 A complaint must contain a “short and plain statement of the claim showing that the pleader is
3 entitled to relief” to give the defendant “fair notice” of (1) what the claims are and (2) the grounds
4 upon which they rest. Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
5 (2007). Thus, “[a] complaint may fail to show a right to relief either by lacking a cognizable legal
6 theory or by lacking sufficient facts alleged under a cognizable legal theory.” *Woods v. U.S. Bank*
7 *N.A.*, 831 F.3d 1159, 1162 (9th Cir. 2016).

8 A complaint does not need detailed factual allegations, but “a plaintiff’s obligation to provide
9 the ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a
10 formulaic recitation of the elements of a cause of action will not do. Factual allegations must be
11 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (cleaned
12 up). A complaint must contain factual allegations that, when accepted as true, are sufficient to “state
13 a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *NorthBay*
14 *Healthcare Grp., Inc. v. Kaiser Found. Health Plan, Inc.*, 838 F. App’x 231, 234 (9th Cir. 2020).
15 “[O]nly the claim needs to be plausible, and not the facts themselves. . . .” *NorthBay Healthcare*
16 *Group, Inc.*, 838 F. App’x at 234 (citing *Iqbal*, 556 U.S. at 696); see *Interpipe Contracting, Inc. v.*
17 *Becerra*, 898 F.3d 879, 886–87 (9th Cir. 2018) (the court must accept the factual allegations in the
18 complaint “as true and construe them in the light most favorable to the plaintiff”) (cleaned up).

19 Put another way, “[a] claim has facial plausibility when the plaintiff pleads factual content that
20 allows the court to draw the reasonable inference that the defendant is liable for the misconduct
21 alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability
22 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.”
23 *Id.* “Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops
24 short of the line between possibility and plausibility of ‘entitlement to relief.’” *Id.* (cleaned up).

25 If a court dismisses a complaint because of insufficient factual allegations, it should give leave
26 to amend unless “the pleading could not possibly be cured by the allegation of other facts.” *Cook,*
27 *Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). If a court
28 dismisses a complaint because its legal theory is not cognizable, the court should not give leave to

1 amend. *United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016); see
 2 *Steele-Klein v. Int'l Bhd. of Teamsters, Loc. 117*, 696 F. App'x 200, 202 (9th Cir. 2017) (leave to
 3 amend may be appropriate if the plaintiff “identifie[s] how she would articulate a cognizable legal
 4 theory if given the opportunity”).

5 ANALYSIS

6 The issues are (1) whether there is personal jurisdiction over the HSBC entities and individual
 7 defendants and (2) whether First Citizens plausibly pleaded claims.

9 1. Personal Jurisdiction

10 “Where, as here, there is no applicable federal statute governing personal jurisdiction, the
 11 district court applies the law of the state in which the district court sits.” *Herbal Brands, Inc. v.*
 12 *Photoplaza, Inc.*, 72 F.4th 1085, 1089 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 693 (2024).

13 California’s long-arm statute provides for personal jurisdiction co-extensive with the limits of
 14 federal due process. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015). The court’s “inquiry
 15 centers on whether exercising jurisdiction comports with due process,” which requires that
 16 defendants have “certain minimum contacts with the State such that the maintenance of the suit
 17 does not offend traditional notions of fair play and substantial justice.” *Id.*; *Daimler AG v.*
 18 *Bauman*, 571 U.S. 117, 125–26 (2014) (cleaned up).

19 Personal jurisdiction is general or specific. *Bristol-Myers Squibb Co. v. Super. Ct.*, 137 S. Ct.
 20 1773, 1779–80 (2017). First Citizens asserts only specific jurisdiction. Specific jurisdiction exists
 21 when the suit arises out of or relates to the defendant’s contacts with the forum. *Walden v. Fiore*,
 22 571 U.S. 277, 284 (2014); *Bristol-Myers Squibb*, 137 S. Ct. at 1779–80. “In other words, there
 23 must be an affiliation between the forum and the underlying controversy, principally, an activity or
 24 occurrence that takes place in the forum State and thus is subject to the State’s regulation.” *Bristol-*
 25 *Myers Squibb*, 137 S. Ct. at 1780 (cleaned up). “For this reason, specific jurisdiction is confined to
 26 adjudication of issues deriving from, or connected with, the very controversy that establishes
 27 jurisdiction.” *Id.* Specific jurisdiction “covers defendants less intimately connected with a State,
 28 but only as to a narrower class of claims.” *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S.

1 Ct. 1017, 1024 (2021). The Ninth Circuit analyzes specific jurisdiction under a three-prong test:

2 (1) The non-resident defendant must purposefully direct his activities or consummate
3 some transaction with the forum or resident thereof; or perform some act by which
4 he purposefully avails himself of the privilege of conducting activities in the forum,
thereby invoking the benefits and protections of its laws;

5 (2) the claim must be one which arises out of or relates to the defendant’s forum-
related activities; and

6 (3) the exercise of jurisdiction must comport with fair play and substantial justice,
7 i.e. it must be reasonable.

8 *Picot*, 780 F.3d at 1211; *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir.
9 2017). “The plaintiff has the burden of proving the first two prongs.” *Picot*, 780 F.3d at 1211–12.
10 “If he does so, the burden shifts to the defendant to set forth a compelling case that the exercise of
11 jurisdiction would not be reasonable.” *Id.* at 1212 (cleaned up).

12 A plaintiff satisfies the first prong by “demonstrating that the defendant either purposefully
13 availed itself of the privilege of conducting activities in the forum or purposefully directed its
14 activities at the forum,” *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 672 (9th
15 Cir. 2012), *abrogated on other grounds by Axiom Foods*, 874 F.3d 1064, or engaged in “some
16 combination thereof,” *Yahoo! Inc. v. La Ligue Contre Le Racisme et L’Antisemitisme*, 433 F.3d 1199,
17 1206 (9th Cir. 2006) (en banc) (per curiam) ; *accord Impossible Foods Inc. v. Impossible X LLC*, 80
18 F.4th 1079, 1088 (9th Cir. 2023), *cert. denied*, No. 23-874, 2024 WL 2262336 (May 20, 2024).

19 The court’s application of the purposeful-direction or purposeful-avilment test “turns on the
20 nature of the underlying claims.” *Ayla, LLC v. Alya Skin Pty. Ltd.*, 11 F.4th 972, 979 (9th Cir.
21 2021). When a defendant’s conduct takes place primarily outside the forum state, the Ninth Circuit
22 generally applies the purposeful-direction “effects” test and “look[s] to whether the defendant
23 expressly aimed acts at the forum state knowing that they would harm the plaintiff there.”
24 *Impossible Foods*, 80 F.4th at 1088; *Washington Shoe*, 704 F.3d at 672–73 (the “effects” test
25 “focuses on the forum in which the defendant’s actions were felt, whether or not the actions
26 themselves occurred within the forum”) (cleaned up). It applies a purposeful-avilment analysis
27 when “the defendant has taken deliberate action within the forum state or has created continuing
28 obligations to forum residents.” *Impossible Foods*, 80 F.4th at 1088. “Thus, purposeful avilment

1 generally provides a more useful frame of analysis for claims sounding in contract, while purposeful
2 direction is often the better approach for analyzing claims in tort.” *Id.* (cleaned up); *see*
3 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004); *Glob. Commodities*
4 *Trading Grp., Inc. v. Beneficio de Arroz Choloma, S.A.*, 972 F.3d 1101, 1107 (9th Cir. 2020).

5 First Citizens argues only purposeful direction.¹⁰

6 Purposeful direction exists if the defendant (1) commits an intentional act (2) expressly aimed
7 at the forum (3) that causes harm that the defendant knows is likely to be suffered in the forum.
8 *Washington Shoe*, 704 F.3d at 673; *Calder v. Jones*, 465 U.S. 783, 788–90 (1984) (articulating this
9 “effects” test). “However, referring to the *Calder* test as an effects test can be misleading. For this
10 reason, we have warned courts not to focus too narrowly on the test’s third prong — the effects
11 prong — holding that something more is needed in addition to a mere foreseeable effect.” *Pebble*
12 *Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006) (cleaned up).

13 Then, as to prong two of the specific-jurisdiction test, the issue is whether the plaintiff’s claims
14 arise out of or are related to the defendants’ contacts with the forum. *Ford Motor Co.*, 141 S. Ct. at
15 1026; *Ayla*, 11 F.4th at 983. “In other words, there must be an affiliation between the forum and the
16 underlying controversy, principally, an activity or an occurrence that takes place in the forum State
17 and is therefore subject to the State’s regulation.” *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (cleaned
18 up). Ninth Circuit precedent before *Ford* required a showing of but-for causation for prong two.
19 *Ayla*, 11 F.4th at 983 n.5 (collecting cases). But “[t]he Supreme Court announced in *Ford* that ‘arise
20 out of’ and ‘relate to’ are alternatives: for a claim to arise out of a defendant’s forum contacts
21 requires causation, while a claim can relate to those contacts[] even absent causation.” *Yamashita v.*
22 *LG Chem, Ltd.*, 62 F.4th 496, 504–05 (9th Cir. 2023). Thus, a showing of but-for causation is
23 permitted, but not required, to satisfy prong two. *Ayla*, 11 F.4th at 983 n.5 (collecting cases).

24 The defendants conceded^c that there is personal jurisdiction over HBUS, SVB UK, Sabow, Patel,
25 Kidder, and Hanlon but contend that there is no personal jurisdiction over HBUK, HSBC Holdings,
26

27 ¹⁰ Opp’n – ECF No. 84 at 12–19. For the individual defendants, the section title has the words
28 “purposefully directed,” but the text has “purposefully availed.” *Id.* at 16:19, 16:25. The analysis in the
briefs and at oral argument addresses purposeful direction. *E.g.*, Tr. – ECF No. 96 at 16:16–19.

1 and HUSI or Stepanis, Longo, and Andersen.¹¹ In the next sections, the court summarizes the
2 jurisdictional facts for the entities and the individual defendants and concludes that there is no
3 personal jurisdiction (but allows jurisdictional discovery).

4 **1.1 Jurisdictional Facts: HSBC Entities**

5 First Citizens contends that the defendants' California-focused conspiracy — to poach former
6 SVB employees to work for HBUS — establishes personal jurisdiction over them.¹² The next
7 paragraphs summarize first the overall allegations that First Citizen identifies and then its
8 identification of allegations by HSBC entity.¹³

9 On March 17, 2023, Sabow sent a copy of Project Colony to Greg Guyett, HSBC Holdings'
10 CEO, calling it an opportunity for U.S. venture banking and saying it might make sense to meet
11 with Michael Roberts (identified as HBSC Holdings' Group Managing Director and an ex-
12 committee member, HUSI's chairman, president, and CEO, and HSUS's chairman).¹⁴ Sabow sent
13 it on March 18 to Ian Stuart, HBUK's CEO, who responded in part that "HSBC see[s] this as a
14 key market," said they'd have to move fast, and suggested a meeting with Guyett and Roberts.¹⁵
15 On March 21, Sabow had a phone call with Guyett and Will McClean (HBUK's Group Head of
16 Strategy) about Project Colony.¹⁶ Parts of the document were redacted, showing that it contained
17 SVB's confidential and proprietary information.¹⁷

18 By March 27, Sabow continued to refine his plan, spending many hours on a document with a
19 five-year plan he titled "HSBC Future State Document 3-27-23."¹⁸ In it he wrote, "HSBC

20 _____
21 ¹¹ Mot. – ECF No. 81 at 14–22.

22 ¹² Opp'n – ECF No. 84 at 13–14 (citing FAC – ECF No. 76 at 33 (¶ 131), 34–35 (¶¶ 140–41), 36 (¶
23 153), 41–42 (¶¶ 187–88), 42–43 (¶¶ 191–92), 48–49 (¶¶ 213–15) and then citing *id.* at 5–7 (¶¶ 1–18)
and 29–57 (¶¶ 111–248), which is a string cite to all the fact allegations in the complaint about the
wholesale lifting of former SVB employees after First Citizens acquired SVB).

24 ¹³ This approach is a little repetitive, but it captures First Citizens' summary more efficiently.

25 ¹⁴ FAC – ECF No. 76 at 33 (¶ 131).

26 ¹⁵ *Id.* at 34–35 (¶¶ 140–41).

27 ¹⁶ *Id.* at 36 (¶ 153); *see id.* (¶ 150) (Ian Stuart, HBUK's CEO, introduced McLane as "our Group Head
of strategy").

28 ¹⁷ *Id.* at 34 (¶ 139), 40 (¶ 141).

¹⁸ *Id.* at 42–43 (¶¶ 188–85).

1 assembled a team of 40 people hand-picked based on their relationships, reputations, and functional
2 expertise across the innovation ecosystem.”¹⁹ He sent it that day to Sungmahn Seo, managing
3 director of HSBC Holdings, and spoke to him about it on Zoom.²⁰ On March 29, HBUS sent Sabow
4 documents about the benefits it offers U.S.-based employees.²¹ That day, Sabow introduced Hanlon
5 to Seo and Jennifer Capasso, HUSI’s and HBUS’s head of Embedded Banking & Platforms, so that
6 Hanlon could be included in a discussion about the “US onboarding journey.”²²

7 On April 3, 2023, Sabow flew from San Francisco to New York to meet the next day with
8 executives from HUSI and HBUS.²³ On April 4, he told Erin Platts, SVB UK’s CEO, that he was
9 expecting to discuss that day the specifics of HSBC’s investment in Project Colony.²⁴ Also on April
10 4, Sabow met with Roberts, Mabel Rius (head of HR for HUSI), Wyatt Crowell (HSUS’s head of
11 commercial banking), and Mauricio Rose (HSUS’s head of Performance & Rewards USA and
12 Americas) in person. First Citizens believes that the conversation included how to execute Project
13 Colony, which was predicated on confidential information.²⁵

14 All the HSBC entities allegedly were involved in this California-focused conspiracy.²⁶ HBUS
15 celebrated the hiring in a press release that quoted Roberts (HBSC Holdings, HUSI, and HBUS):
16 “As we look to grow our business, this offering allows us to connect the innovation ecosystem with
17 the size, strength, and international network of HSBC.”²⁷

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19 ¹⁹ *Id.* at 41–42 (¶ 187).

20 ²⁰ *Id.* (¶¶ 187–88).

21 ²¹ *Id.* at 42 (¶ 191).

22 ²² *Id.* at 42–43 (¶¶ 191–92).

23 ²³ *Id.* at 48 (¶ 213).

24 ²⁴ *Id.* at 49 (¶ 214).

25 ²⁵ *Id.* at 48–49 (¶¶ 213–15).

26 ²⁶ *Opp’n* – ECF No. 84 at 14 (citing FAC – ECF No. 76 at 7 (¶¶ 9–10) (alleging concerted activity by
27 the HSBC entities to hire six core leaders in the U.S., meaning, the individual defendants other than
28 Sabow), 77 (¶ 323) (alleging concerted activity by the HSBC entities and Sabow, Roberts, and Ruis to
recruit and onboard the former SVB/then First Citizens employees and encourage them to breach their
duty of loyalty), 82 (¶ 343) (the individual defendants breached their duty of loyalty)).

²⁷ Press Release, Ex. 1 to Hemann Decl. – ECF No. 84-2 at 3); *see also* Press Release, Ex. 3 to *id.* –
ECF No. 84-4 at 2–4 (HSBC touting its plan to recruit fifty bankers in its U.S. bank to lend to startups,
discussing the hire of the forty SVB employees, and quoting Crowell). First Citizens’ request for

1 After this identification of the collective allegations of the involvement in the scheme by HSBC
2 Holdings, HBUK, and HUSI, First Citizens then identifies the allegations by entity.²⁸ The next
3 paragraphs synopsise the allegations.

4 HSBC Holdings was involved because numerous high-level executives approved Project
5 Colony.²⁹ On March 15, 2023, Sabow met in London with three HSBC Holdings executives —
6 CEO Noel Quinn, Chief Legal Officer Bob Hoyte and Greg Guyett — about Project Colony.³⁰ He
7 then made plans to fly to San Francisco to execute the plan.³¹ Before he left, Sabow gave Guyett a
8 copy of the plan, and they discussed it.³² On March 18, 2023, the day that Sabow flew from London
9 to San Francisco, Roberts contacted Sabow and asked to discuss the plan.³³ From March 18 through
10 April 9, the date of the mass resignations, Sabow refined the plan by speaking to those at HSBC
11 Holdings: Guyett, Will McLane (Head of Strategy), Seo, and Barry O’Byrne (Chief Executive of
12 Global Commercial Banking).³⁴

13
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15 _____
16 judicial notice at ECF No. 85 is unopposed. Reply – ECF No. 88 at 10 (addressing press releases).The
17 court judicially notices the documents in First Citizens’ request.

18 ²⁸ Opp’n – ECF No. 84 at 14–16.

19 ²⁹ *Id.*

20 ³⁰ FAC – ECF No. 76 at 30 (¶ 116).

21 ³¹ *Id.* at 30 (¶ 116), 31 (¶ 123), 34 (¶ 136).

22 ³² *Id.* at 33 (¶ 131), 34–35 (¶ 140).

23 ³³ *Id.* at 34 (¶ 136), 35 (¶ 142).

24 ³⁴ *Id.* at 36 (¶ 149) (on March 21, Guyett contacted Sabow, suggested that they speak, and introduced
25 Sabow to O’Byrne so that the two could speak, which they did that day), 36 (¶ 153) (on March 21,
26 Sabow spoke with Guyett and McLane by phone about Project Colony), 38–39 (¶¶ 161–63) (on March
27 22, McLane told Seo and Mary MacLeod to speak with Sabow about rolling out the future venture-debt
28 business, Sabow told O’Byrne that McLane was connecting him to O’Byrne’s strategy team to build out
the model, and Sabow told McLane, Seo, and MacLeod that people he had targeted had resigned from
the Bridge Bank [where the FDIC transferred assets to protect SVB’s investors, *see* Order – ECF No. 71
at 4–5] and that they needed to move faster “to make this happen”), 39 (¶ 165) March 23 call between
Sabow and O’Byrne about more material departures at SVB and the need to move faster), 40 (¶ 170)
(Roberts contacted Sabow and asked to chat at 10 a.m.), 42 (¶ 188) (on March 27, Sabow sent the Future
State document to Seo), 42–43 (¶¶ 192) (on March 29, Sabow introduces Hanlon to Seo and Capasso to
discuss onboarding), 44 (¶ 200) (on March 31, Roberts asks Sabow for a call and, First Citizens
believes, spoke later that day), 52 (¶ 226) (on April 7, Sabow updates Roberts and Crowell that he, Ruis,
and Ruis’s team were “hitting the phones hard” to call the targeted employees regarding proposed
compensation packages), 53 (¶ 230) (Sabow celebrated the success of the employee calls by thanking
Roberts and Crowell for their call, apparently with the new employees).

1 HBUK was involved because its executives were involved in Project Colony.³⁵ On March 15,
2 2023, Sabow pitched the plan to Noel Quinn (CEO of HSBC Holdings) and Ian Stuart (CEO of
3 HBUK) and discussed it with HBUK’s Head of Commercial Banking, Stuart Tait.³⁶ After Sabow
4 sent a copy of the plan to Tait on March 18, touting it as a “once in a generation opportunity,” Tait
5 responded that the proposal sounded exciting and that they “need[ed] to maximise all the
6 opportunities created by coming together.”³⁷ On March 19, the day after Sabow flew back to San
7 Francisco, Tait asked for an update about whether the plan had been shared with Quinn and
8 others.³⁸ On March 21, Sabow gave a copy of the plan to McLane, and they spoke about it.³⁹
9 During this time, the HBUK executives knew that Sabow was in California, meeting with the
10 California-based Bridge Bank employees to poach them, acquire their confidential information,
11 and acquire the former SVB “profitability engine.”⁴⁰

12 HUSI was involved because it operates with HBUS, on paper and in practice.⁴¹ It shares its
13 office location with HBUS, “its principal U.S. banking subsidiary,” and together they offer a “wide
14 range of commercial and consumer banking products and related financial services” to
15 approximately 423,000 customers (thirty-eight percent are in California).⁴² On March 23, 2023,
16 Rius (the head of HR) reached out to Sabow to set up a meeting (after she obtained his contact
17 information from Roberts) and then met with him on March 24 on Zoom to discuss Project
18 Colony.⁴³ On March 29, HBUS sent Sabow documents explaining its employee benefits, and
19

20 ³⁵ Opp’n – ECF No. 84 at 15.

21 ³⁶ FAC – ECF No. 76 at 30 (¶¶ 116–17).

22 ³⁷ *Id.* at 34 (¶ 138).

23 ³⁸ *Id.* at 35–36 (¶ 144) (Sabow responded that it had been shared with Roberts, Guyett, and Stewart,
24 and the team was discussing it with Quinn, which means that at this point, Project Colony was
“disclosed to, and was under consideration by[,] executives of HSBC Holdings, HSBC UK [referred to
herein as HBUK], SVB UK, and HSBC Bank USA [herein, HSUS]”).

25 ³⁹ *Id.* at 36 (¶¶ 150, 153).

26 ⁴⁰ *Id.* at 36 (¶¶ 150–51), 38 (¶ 160), 39 (¶ 167).

27 ⁴¹ Opp’n – ECF No. 84 at 15–16.

28 ⁴² FAC – ECF No. 76 at 9–10 (¶¶ 21–22); HUSI Annual Report (Form 10-K) (Feb. 21, 2024), Ex. 4 to
Hemann Decl. – ECF No. 84-5 at 3 (p. 4), 4 (p. 7) (HUSI had 2,040 employees in 2023).

⁴³ FAC – ECF No. 76 at 40 (¶ 171), 41 (¶ 179).

1 Sabow forwarded them to the six individual defendants.⁴⁴ That day, Sabow spoke with Jennifer
2 Capasso (the head of Embedded Banking & Platforms at HUSI and HBUS) about including Hanlon
3 (a California-based employee and defendant) in the onboarding discussion.⁴⁵ While he was in
4 California, Sabow arranged to meet with HUSI and HBUS executives in New York, flying there on
5 April 3 and meeting with them on April 4.⁴⁶ The day of the meeting, Sabow created spreadsheets to
6 illustrate his staffing model for Project Colony, including targeting California employees.⁴⁷ On
7 April 6, 2023, Sabow wrote to Rius and two other HBUS executives (Dianna Hollin, the head of
8 executive recruitment, and Rose) asking about the progress of the recruitment process for the six
9 individual defendants (referred to as the pillars). Rius responded, “[g]etting the engine ready,” and
10 Sabow replied, “Whoo hoo!” First Citizens surmises that this is when the individual defendants
11 received their officers of employment.⁴⁸

12 The defendants submitted declarations with jurisdictional facts for each entity.

13 HSBC Holdings, HBUK, and HUSI have no offices or employees in California and did not
14 recruit, offer employment to, or employ any of the former SVB employees who were poached.⁴⁹

15 HSBC Holdings does not employ Roberts, O’Byrne, Crowell, Guyett, MacLeod, McClane, or
16 Seo.⁵⁰ Noel Quinn is “not employed by HSBC Holdings;” he is its CEO and a director. It would
17 not be “within the ordinary scope of [his] duties as a director or officer of HSBS Holdings, which
18 is a bank holding company, to engage in such recruitment activity. Accordingly, to the extent [that
19 the FAC] alleges Mr. Quinn engaged in any specific conduct related to the hiring of the Former
20
21

22 ⁴⁴ *Id.* at 42 (¶ 191).

23 ⁴⁵ *Id.* at 42–43 (¶ 192).

24 ⁴⁶ *Id.* at 48–49 (¶¶ 213–15).

25 ⁴⁷ *Id.* at 49 (¶ 216).

26 ⁴⁸ *Id.* at 51–52 (¶ 223).

27 ⁴⁹ Strybel Decl. – ECF No. 81-1 at 2 (¶¶ 2–8) (HBUK’s COO); Alioto Decl. – ECF No. 81-2 at 2–3 (¶¶
2–3, 6–11) (HSBS Holdings’ Deputy Group Chief Officer); Privitera Decl. – ECF No. 81-3 at 2–6 (¶¶
2–3, 8–20) (HUSI’s COO).

28 ⁵⁰ Alioto Decl. – ECF No. 81-2 at 3 (¶ 10).

1 SVB Employees by HBUS, those allegations do not refer to conduct that was undertaken on
2 HSBC Holdings' behalf.”⁵¹

3 HUSI has corporate officers but no employees.⁵² Michael Roberts is HUSI's Chairman of the
4 Board and HBUS's Chairman of the Board, President, and CEO. The allegations in the complaint
5 do not concern his conduct as HUSI's Chairman or otherwise on HUSI's behalf because HUSI
6 never recruited, offered employment to, or employed any former SVB employees.⁵³ For the same
7 reason, the allegations about other HUSI officers (Ruis, Crowell, and Capasso) are not conduct on
8 HUSI's behalf.⁵⁴ (The point here is that only HBUS hired the former SVB employees, and HBUS
9 does not challenge jurisdiction).⁵⁵

10 **1.2 Jurisdictional Facts: Individual Defendants**

11 First Citizens contends that personal jurisdiction exists over Stepanis, Longo, and Andersen
12 because they were SVB and Bridge Bank employees, reported to a California-based employer, led
13 teams with California-based employees, and convinced their California reports to resign en masse to
14 join HBUS.⁵⁶ First Citizens then summarizes the allegations by individual.⁵⁷ The next paragraphs
15 synopsise the allegations.

16 Stepanis knew about Project Colony by at least March 21, 2023: that is the date that Sabow met
17 with her and other defendants (Patel, Longo, Hanlon, and Andersen) to solicit them to leave
18

19 ⁵¹ *Id.* (¶ 11).

20 ⁵² Privitera Decl. – ECF No. 81-3 at 2 (¶ 6).

21 ⁵³ *Id.* at 3 (¶ 9).

22 ⁵⁴ *Id.* at 3–5 (¶¶ 10 (Ruis), 12 (Capasso), and 14 (Crowell)); *see also id.* at 3–4 (¶ 11) (Catherine
23 Twarorwski has an HR role at HBUS and has no corporate role or title at HUSI), 5 (¶ 15) (Sabow,
24 Patel, Kidder, and Hanlon have never worked for HUSI), 5 (¶ 16) (HUSI never offered or intended to
25 offer compensation to Sabow, Andersen, Kidder, Patel, Stepanis, Hanlon, Longo, or other former SVB
26 employees), 5–6 (¶¶ 17–20) (HUSI never offered or intended to offer Andersen any “financial terms”
27 or employment; HUSI does not employ (or provide any corporate role to) Hanlon or any of her reports;
28 HUSI does not regularly conduct business in California “in concert with” HBUK or SVB UK, as the
FAC alleges; HUSI did not direct the former SVB employees to resign or provide them email
templates because it never hired or intended to hire any of the former SVB employees).

⁵⁵ Mot. – ECF No. 81 at 18 (making this point).

⁵⁶ Opp'n – ECF No. 84 at 16–17 (citing FAC – ECF No. 76 at 12–15 (¶¶ 35 (Stepanis), 37 (Longo), 39
(Andersen), 21 (¶ 71) (SVB was a California state-chartered bank)).

⁵⁷ *Id.*

1 SVB/the Bridge Bank.⁵⁸ Sabow, Hanlon, and Patel participated in person in California, and the
 2 others participated via Zoom.⁵⁹ Sabow asked for their help to recruit “30, 40, 50 people out of the
 3 gate.”⁶⁰ Over the next days, Sabow met with members of Stepanis’s team in California.⁶¹ On March
 4 23, Stepanis printed a confidential SVP report (named the “9-Block Report”), which listed 830
 5 employees and evaluated their work performance and potential, ranking them on a scale of 1 to 9.⁶²
 6 On March 26, Sabow sent her a calendar invite titled “Follow-up Colony Discussion.”⁶³ By March
 7 31, Stepanis was googling “negotiating salary job offer” and “hsbc glass door.”⁶⁴ On March 31,
 8 while Longo was on the phone with Roberts, Stepanis told Longo to ask Roberts for one hundred
 9 offer letters and revised salaries to present to First Citizens employees.⁶⁵ On April 6, Stepanis called
 10 a member of her team; First Citizens believes it was to recruit her because the employee resigned
 11 with the other employees to join HSUS.⁶⁶ On April 8, Stepanis participated in an executive-
 12 recruitment Zoom with other members of her team and Michael Roberts.⁶⁷

13 Longo knew about Project Colony by March 21: he participated in the same conversation
 14 synopsis in the previous paragraph.⁶⁸ On March 26, he received the same calendar invite titled
 15 “Follow-up Colony Discussion.”⁶⁹ By March 27, he had already told Sabow that he was “in” and had
 16

17 ⁵⁸ FAC – ECF No. 76 at 37 (¶ 154).

18 ⁵⁹ *Id.*

19 ⁶⁰ *Id.* (¶¶ 154–55).

20 ⁶¹ *Id.* at 38 (¶ 160), 39 (¶ 168).

21 ⁶² *Id.* at 40 (¶¶ 173–74) (describing the report as a talent-management tool that allows HR and
 22 managers identify leaders and prepare employees for future roles).

23 ⁶³ *Id.* at 41 (¶ 183) (invite sent to Stepanis, Longo, Andersen, Patel, and Hanlon).

24 ⁶⁴ *Id.* at 44 (¶ 201). Glassdoor is a website where current and former employees anonymously review
 25 companies. *Id.* at 41 (¶ 186).

26 ⁶⁵ *Id.* at 45 (¶ 203).

27 ⁶⁶ *Id.* at 41 (¶ 222), 75 (¶ 310); *see id.* at 74 (¶¶ 307–08 (Sabow recruited Stepanis and Andersen to
 28 recruit other employees; Stepanis was “in on the plot” by March 23, and Andersen was thereafter
 (sometime after March 23 and before April 8); Jensen Decl. – ECF No. 84-9 at 2 (¶ 3) (one California-
 based employee on Stepanis’s team resigned on April 9, 2023)).

⁶⁷ *Id.* at 53 (¶ 228), 74 (¶ 307), 75 (¶¶ 311–12).

⁶⁸ *Id.* at 37 (¶¶ 154–55).

⁶⁹ *Id.* at 51 (¶ 183) (invite sent to Stepanis, Longo, Andersen, Patel, and Hanlon).

1 googled “hsbc glassdoor.”⁷⁰ After March 27, he “accessed and modified (fifteen times) a spreadsheet
2 containing confidential information” that “aligns with information used to develop and execute
3 Project Colony.” For the members on his team, the spreadsheet has hire dates, positions, salaries,
4 bonuses, data underlying the bonuses, and aggregate statistics about loan performance (broken down
5 by loan type, region, and loan-growth numbers).⁷¹ On March 31, he participated in the “100 offer
6 letters” call with Roberts and Stepanis, synopsised in the previous paragraph.⁷² Also on March 31, a
7 California-based employee asked him, “can we get Sabow back,” and Longo responded, “I keep
8 texting him to please come back,” thereby misleading the employee to keep the upcoming mass
9 departure a secret and putting his own interests above First Citizens’ interests.⁷³ On April 4, a First
10 Citizens employee asked Longo whether Sabow was going to HSBC; Longo responded that he had
11 “no clue.” By this time, Longo had agreed to help Sabow recruit employees.⁷⁴ First Citizens believes
12 that Longo recruited California-based employees to participate in the April 8 call with Roberts to
13 discuss Project Colony. Ultimately, eight California-based First Citizens employees joined the April
14 8 call with Roberts and resigned with the other thirteen California-based employees on April 9.⁷⁵

15 Andersen knew about Project Colony by March 20, when she spoke with Hanlon by phone for
16 twenty-one minutes, presumably about Project Colony.⁷⁶ On March 21, she participated in the same
17 conversation synopsised above in the Stepanis section.⁷⁷ On March 26, she received the same
18 calendar invite titled “Follow-up Colony Discussion.”⁷⁸ “After March 27, 2023, in the days leading
19 up to her departure, [she] repeatedly accessed, modified, or downloaded (dozens of times)
20 spreadsheets and other documents containing confidential information” that “aligns with
21

22 ⁷⁰ *Id.* at 41 (¶ 186).

23 ⁷¹ *Id.* at 47 (¶ 208).

24 ⁷² *Id.* at 45 (¶ 203).

25 ⁷³ *Id.* (¶ 204); Brown Decl. – ECF No. 84-10 at 2 (¶ 3).

26 ⁷⁴ FAC – ECF No. 76 at 49–50 (¶ 217), 76 (¶ 315).

27 ⁷⁵ *Id.* at 76 (¶ 316); Jensen Decl. – ECF No. 84-9 at 2 (¶ 2).

28 ⁷⁶ FAC – ECF No. 76 at 36 (¶ 146).

⁷⁷ *Id.* at 37 (¶¶ 154–55).

⁷⁸ *Id.* at 41 (¶ 183) (invite sent to Stepanis, Longo, Andersen, Patel, and Hanlon).

1 information used to develop and execute Project Colony.”⁷⁹ On April 2, 2023, she “promise[d]
2 followership” to Roberts, meaning, she could recruit others.⁸⁰ On April 8, she participated in the
3 executive-recruitment Zoom with other members of her team and Michael Roberts (synopsized in
4 the Stepanis summary).⁸¹

5 The defendants submitted declarations with jurisdictional facts for the three individuals.
6 Stepanis has resided in Connecticut at all times since March 10, 2023, to the present. She did not
7 travel to California between March 10, 2023, and April 10, 2023.⁸² Any Google searches were
8 done in Connecticut.⁸³ The March 31 call was with Longo (who resides in Massachusetts). The
9 April 8 call was with Roberts (based in New York).⁸⁴ She was not active on the call. Andersen is
10 based in Massachusetts.⁸⁵ Longo similarly declares that he was in Massachusetts during the
11 relevant times.⁸⁶ Andersen too was in Massachusetts during the relevant times.⁸⁷ SVB’s servers
12 were located in Arizona or Texas.⁸⁸

13 **1.3 Application of Legal Standard to Jurisdictional Facts**

14 There is no personal jurisdiction over HBUK, HSBC Holdings, and HUSI or Stepanis, Longo,
15 and Andersen.

16 First, as to the entity defendants, as the declarations establish, the executives that First Citizens
17 named did not work for (or, in the cases of officers of HSBC Holdings, act for) HBUK, HSBC
18

19
20 _____
21 ⁷⁹ *Id.* at 46–47 (¶ 207) (documents include a spreadsheet with employee information (names, titles,
22 tenures, managers, compensation, and other data), client information, and overviews and analyses).

23 ⁸⁰ *Id.* at 48 (¶ 211).

24 ⁸¹ *Id.* at 53 (¶ 228), 74 (¶ 307), 75 (¶¶ 311–12).

25 ⁸² Stepanis Decl. – ECF No. 81-4 at 2 (¶¶ 3–4).

26 ⁸³ *Id.* (¶ 6).

27 ⁸⁴ *Id.* (¶¶ 7–8).

28 ⁸⁵ *Id.* at 3 (¶ 10).

⁸⁶ Longo Decl. – ECF No. 81-5 at 2–4 (¶¶ 3–13).

⁸⁷ Andersen Decl. – ECF No. 81-6 at 2–3 (¶¶ 3–12).

⁸⁸ Sefton Decl. – ECF No. 81-7 at 2 (¶¶ 3–4, 7) (former head of information technology at SVB UK and current head of information technology at HSBC Innovation Banking).

1 Holdings, or HUSI.⁸⁹ Wearing their HBUS hats, the executives' actions are directed at the
2 California forum, but not otherwise. First Citizens nonetheless contends that the declarants lack
3 personal knowledge, other evidence contradicts the declarations, and the conduct of the executives
4 can be attributed to the entities.⁹⁰ These arguments do not change the conclusion that there is no
5 personal jurisdiction over the entities.

6 The declarants all have roles that establish their personal knowledge of the jurisdictional facts.⁹¹
7 The other evidence is three HSBC webpages and a *Reuters* article that purportedly make the
8 executives part of HSBC Holdings.⁹² Three exhibits do not identify the executives as employees,
9 officers, or directors of HSBC Holdings.⁹³ The fourth identifies Roberts as “Chief Executive
10 Officer, HSBC USA and Americas,” which is not a position at HSBC Holdings either. The exhibit
11 lists Guyett, Hoyte, and O’Byrne as, respectively, CEO of Global Banking & Markets, Group Chief
12 Legal (the HSBC enterprise as a whole), not at HSBC Holdings.⁹⁴ HUSI does not have employees
13 and thus any actions taken by the executives could not have been on behalf of HUSI.⁹⁵

14 A closer issue is HBUK. HBUK’s declarant (its COO) does not address her personal knowledge
15 of the roles played by HBUK CEO Ian Stuart and Head of Commercial Banking Stuart Tait, who —
16 on dates starting on March 15 and continuing to March 21 — received copies of Project Colony and
17 discussed it with Sabow as an “exciting opportunity.”⁹⁶ HBUK responds that Sabow sent them the
18
19
20

21 ⁸⁹ This order does not rely on facts in the declarations that are not relevant to the jurisdictional analysis.

22 ⁹⁰ Opp’n – ECF No. 84 at 22–25.

23 ⁹¹ See supra n.43 (Strybel is HBUK’s COO, Alioto is HSBS Holdings’ Deputy Group Chief Officer,
24 and Privitera is HUSI’s COO).

25 ⁹² Exs. 1–3 & 5 to Hemann Decl. – ECF Nos. 84-2–82-4, 82-6.

26 ⁹³ Exs. 1–3 to Hemann Decl. – ECF Nos. 84-2–82-4.

27 ⁹⁴ Alioto Supp. Decl. – ECF No. 89-1 at 2 (¶¶ 6–8) (discussing Ex. 5 to Hemann Decl. – ECF No. 84-6).

28 ⁹⁵ Privitera Supp. Decl. – ECF No. 88-2 at 2 (¶ 6) (verifying earlier declaration, see supra, and noting
that the Form 10-K defines HUSI as “HSBC USA” and states that “[i]n this Form 10-K, HSBC USA
and its subsidiaries are referred to as ‘HUSI,’ ‘we,’ ‘us,’ and ‘our.’”) (cleaned up and emphasis omitted).

⁹⁶ Opp’n – ECF No. 84 at 24; see supra text accompanying nn.29–31 (discussing Sabow’s pitch to
HBUK and the resulting interest by HBUK’s executives).

1 pitch, and they discussed it over Zoom, which is not enough.⁹⁷ But at this point, Sabow (a former
2 SVB senior executive who became an SVB UK employee and, after HBUK acquired SVB UK on
3 March 13, an HBUK employee) is pitching to his new bosses. That said, given the declaration, First
4 Citizens has not met its burden.

5 It seems unlikely that a jurisdictional case can be made against HSBC Holdings or HUSI, but
6 possibly it can against HBUK. The court allows the limited jurisdictional discovery described below.

7 While a district court is vested with broad discretion to permit or deny jurisdictional discovery,
8 courts generally require a plaintiff to make out a “colorable basis” for jurisdiction to warrant
9 discovery. *See, e.g., Teras Cargo Transp. (Am.), LLC v. Cal Dive Int’l (Austl.) Pty Ltd.*, No. 15-
10 cv-03566-JSC, 2015 WL 6089276, at *8 (N.D. Cal. Oct. 16, 2015) (citing cases). Courts may
11 properly deny jurisdictional discovery where “there is insufficient evidence to give rise to more
12 than a ‘hunch’” that discovery will make out a case for exercising personal jurisdiction over a
13 defendant. *See id.* (denying jurisdictional discovery where “there is insufficient evidence to give
14 rise to more than a ‘hunch’ that jurisdictional discovery might assist [plaintiff] in making out a
15 case for personal jurisdiction over [defendant]” and observing that “speculation cannot rise above
16 the ‘mere hunch’ bar that the Ninth Circuit requires cleared to obtain jurisdictional discovery”).

17 The alter-ego and agency theories that First Citizens advances for HSBC Holdings and HUSI
18 seem slight on this record and founded in a misunderstanding of the corporate structure. Corporate
19 structures exist for a reason. That said, the issue here involves more than a hunch, and it’s
20 answerable through a better understanding of the corporate structure and who works where.
21 Perhaps the equivalent of a Rule 30(b)(6) deposition would be the right start. For HBUK, given its
22 acquisition of SVB UK on March 13, the time period is relatively short (through the mass
23 departures on April 9), and jurisdictional discovery should not be onerous. The relevant
24 jurisdictional discovery also overlaps with merits discovery and can be staged at the same time.

25 In sum, the court dismisses the three entity defendants without prejudice and allows discovery.
26

27 _____
28 ⁹⁷ Reply – ECF No. 88 at 10 (referencing its argument about how Zoom contacts were not enough for
personal jurisdiction over the individual defendants) (discussed below).

1 Second, as to the individual defendants Stepanis, Longo, and Andersen, the jurisdictional
2 allegations against them are slight: they looked online for information about HSBC salaries (from
3 Connecticut and Massachusetts, where they lived), they had recruitment meetings with HBUS (with
4 someone based in New York), they downloaded confidential information from servers outside of
5 California, and possibly helped to recruit other SVB employees, and Longo allegedly downplayed
6 what was going on with the planned mass exit, thus putting his interests above First Citizens. It
7 might be, as First Citizens contends, that an orchestrated scheme directed at a California employer
8 to poach its employees, steal confidential information, and appropriate its business would establish
9 specific jurisdiction against an out-of-state aggressor.⁹⁸ *Weisel Partners LLC v. BNP Paribas*, No. C
10 07–6198 MHP, 2008 WL 3977887, at *6 (N.D. Cal. Aug. 26, 2008). But the allegations here do not
11 rise to that level. The court dismisses the three defendants for lack of personal jurisdiction.
12

13 **2. Failure to State a Claim**

14 The defendants move to dismiss on the following grounds: (1) the allegations against certain
15 defendants for conduct after March 27 do not plausibly plead claims, (2) CUTSA preempts the tort
16 claims, and (3) First Citizens does not otherwise plausibly plead the common-law tort or contract
17 claims. The court grants the motion on all grounds (except under (3), the court denies the motion to
18 dismiss the contract claim against Sabow based on the SVB agreement (claim one)).

19 **2.1 Claims Based on Conduct After March 27**

20 The defendants at issue are HBUK, HSBC Holdings, HUSI, three out-of-state defendants
21 (Stepanis, Longo, and Andersen) and three California-based defendants (Patel, Kidder, and Hanlon).⁹⁹

22 First, for the entity and out-of-state defendants, the defendants contend only that “the specific
23 allegations of post-March 27 activity attributable to these Defendants are either conclusory or
24 amount to efforts by *other* individuals (*e.g.*, Sabow and Roberts) to purportedly recruit them. These
25 Defendants thus should be dismissed not only for lack of personal jurisdiction but also for failure to
26

27 ⁹⁸ Opp’n – ECF No. 84 at 19 (citing *Weisel Partners LLC v. BNP Paribas*, No. C 07–6198 MHP, 2008
WL 3977887, at *6 (N.D. Cal. Aug. 26, 2008)).

28 ⁹⁹ Mot. – ECF No. 81 at 22; Reply – ECF No. 88 at 18.

1 state a claim.”¹⁰⁰ Given this argument, the dismissal for these defendants is for lack of personal
2 jurisdiction only.

3 Second, for the claims against the California-based defendants, the relevant claims are claims
4 one through three and six through ten (for Patel and Kidder) and three, six, seven, and ten (for
5 Hanlon). Claims one and two are for breach of the employment agreements with SVB and First
6 Citizens, claim three is for breach of the duty of loyalty to First Citizens, claim six is for tortious
7 interference with First Citizens’ prospective economic advantage by inducing the mass resignations
8 and breaches of the duty of loyalty, claim seven is engaging in unfair and deceptive trade practices
9 by executing the mass departures of former SVB employees, in violation of N.C. Gen. Stat. § 75-
10 1.1, claims eight and nine are the trade-secrets claims, and claim ten is civil conspiracy.¹⁰¹

11 For Patel, First Citizens identifies the following relevant allegations. On March 16, 2024, Sabow
12 told a Bridge Bank employee to send information to Patel about gross profits, allegedly so that
13 Sabow could incorporate the information into Project Colony.¹⁰² On March 17, 2024, Sabow sent
14 Patel (in California) a copy of Project Colony and asked for her thoughts.¹⁰³ On March 21, she
15 participated in the same conversation synopsised above in the Stepanis section.¹⁰⁴ By March 23,
16 Sabow listed her as “in” on his tracking spreadsheet.¹⁰⁵ That day, Sabow sent her an email with his
17 “initial idea” for staffing in the San Francisco, New York, and Boston areas.¹⁰⁶ First Citizens
18 characterizes this as context for what happened after March 27.¹⁰⁷ On April 5, she spoke with
19 Sabow by Zoom, Sabow accessed his spreadsheet with his staffing model, and presumably they
20
21

22 ¹⁰⁰ Mot. – ECF No. 81 at 22–24 (analyzing only the California-based defendants); Reply – ECF No. 88
23 at 18–19 (same).

24 ¹⁰¹ See Introduction and Statement, *supra*.

25 ¹⁰² FAC – ECF No. 76 at 30–31 (¶¶ 119–22).

26 ¹⁰³ *Id.* at 33 (¶ 133).

27 ¹⁰⁴ *Id.* at 37 (¶¶ 154–55).

28 ¹⁰⁵ *Id.* at 39 (¶ 166).

¹⁰⁶ *Id.* at 40 (¶ 172).

¹⁰⁷ Opp’n – ECF No. 84 at 27.

1 discussed Project Colony and an employment offer.¹⁰⁸ On April 8, she participated in the executive-
2 recruitment Zoom with other members of her team and Michael Roberts (synopsized in the Stepanis
3 summary).¹⁰⁹ The allegations establish only that Sabow offered Patel a job and she attended a
4 recruitment call. The claims against her are dismissed.

5 For Kidder, by March 14, 2024, Sabow identified him (like the other individual defendants) as a
6 core leader to execute Project Colony.¹¹⁰ On April 6, Kidder received an email from a direct report
7 alerting him to competitive threats that could result in “a run on the bank’s talent.” He did not
8 respond or alert anyone, thereby putting his interests above First Citizens’ interest¹¹¹ At best, the
9 allegations show that he was recruited. The claims against him are dismissed.

10 For Hanlon, she discussed Project Colony with Andersen on March 20, 2023, and she met with
11 Sabow in California on March 21 to discuss the plan.¹¹² On March 21, she googled “michael roberts
12 hsbc.”¹¹³ On March 31, she accessed the 9-Block Report and other confidential information and
13 continued to access, modify, and download other confidential information that “align[s] with the
14 information used to develop and execute Project Colony.”¹¹⁴ The allegations support the theft of
15 trade-secret claims. There are no allegations, if true, that plausibly plead breach of contract. The tort
16 claims are otherwise preempted by CUTSA, as discussed below.

17 2.2 CUTSA

18 The defendants contend that CUTSA preempts the tort claims: claims three through six and
19 ten.¹¹⁵ The claims (again) are breach of the duty of loyalty to First Citizens (claim three against
20 Patel, Stepanis, Longo, Hanlon, and Andersen), aiding and abetting that breach (claim four against
21 the HSBC entities and Sabow), tortious interference with First Citizens’ contracts by inducing the

22 _____
23 ¹⁰⁸ FAC – ECF No. 76 at 50 (¶ 220).

24 ¹⁰⁹ *Id.* at 53 (¶ 228), 74 (¶ 307), 75 (¶¶ 311–12).

25 ¹¹⁰ FAC – ECF No. 76 at 27 (¶ 105).

26 ¹¹¹ *Id.* at 52 (¶ 224).

27 ¹¹² *Id.* at 36 (¶ 146), 37 (¶¶ 154–55).

28 ¹¹³ *Id.* at 36 (¶ 148).

¹¹⁴ *Id.* at 45–46 (¶¶ 205–06).

¹¹⁵ Mot. – ECF No. 81 at 24–27.

1 mass resignations and causing the breaches of the employment agreements (claim five against the
2 HSBC entities and Sabow), tortious interference with First Citizens’ prospective economic
3 advantage by inducing the mass resignations and breaches of the duty of loyalty (claim six against
4 all defendants), and civil conspiracy (claim ten against all defendants).¹¹⁶ The analysis turns on
5 whether First Citizens plausibly pleads claims that are independent of the trade-secrets claims.

6 “CUTSA provides the exclusive legal remedy for conduct falling within its terms and
7 supersedes other civil remedies based on misappropriation of a trade secret.” *Waymo, LLC v. Uber*
8 *Techs., Inc.*, 256 F. Supp. 3d 1059, 1062 (N.D. Cal. 2017) (citing Cal. Civ. Code § 3426.7 and
9 *Silvaco Data Sys. v. Intel Corp.*, 184 Cal. App. 4th 210, 236 (2010), *as modified on denial of reh'g*
10 (May 27, 2010), and *disapproved of by Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310 (2011), and
11 *disapproved of by Swarmify, Inc. v. Cloudflare, Inc.*, No. C 17-06957 WHA, 2018 WL 1609379
12 (N.D. Cal. Apr. 3, 2018). “It therefore supersedes claims . . . based on the same nucleus of facts as
13 trade secret misappropriation.” *Id.* (cleaned up) (citing *Silvaco*, 184 Cal. App. 4th at 232). “At the
14 pleadings stage, the supersession analysis asks whether, stripped of facts supporting trade secret
15 misappropriation, the remaining factual allegations can be reassembled to independently support
16 other causes of action.” *Id.*

17 To the extent that the allegations are based on appropriation of trade secrets to solicit
18 customers and employees, the claims are preempted. But if they are grounded on other conduct
19 that does not implicate trade secrets (such as competing while still employed, which is a breach of
20 fiduciary duty regardless of whether the defendants used trade secrets to do so), then the claims
21 are not preempted. *Arthur G. Gallagher & Co. v. Tarantino*, No. 20-cv-05505-EMC, 2022 WL
22 4092673, at *9–10 (N.D. Cal. July 27, 2022).

23 For the three entity defendants and the six individual defendants addressed so far in this order,
24 no claims survive (except for the trade-secrets claim against Hanlon). For the remaining entity and
25 individual defendants, First Citizens’ theory of the case is at least in part that there was a
26 wholesale steal of the business model, in violation of some defendants’ duty of loyalty and a
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28 ¹¹⁶ See Introduction and Statement, *supra*.

1 resulting tortious interference with contract and interference with business advantage by all
2 defendants. That theory — if supported by fact allegations — could result in claims that survive
3 CUTSA preemption, at least at the pleadings stage. (Such claims might be better addressed at
4 summary judgment.) The problem — discussed above for the three California-based defendants
5 and in the next section — is that allegations do not support non-trade-secret claims. That means
6 that CUTSA preempts the tort claims.

7 **2.3 Common-Law Tort and Contract Claims**

8 The tort claims at issue are (1) breach of the duty of loyalty (claim three against Patel, Stepanis,
9 Longo, Hanlon, and Andersen), (2) aiding and abetting that breach and tortious interference with
10 contract (claims four and five against the HSBC entities and Sabow), (3) tortious interference with
11 prospective economic advantage (claim six against all defendants), and (4) conspiracy (count ten).
12 The contract claims are breach of employment agreements with SVB (claim one) and First Citizens
13 (claim two). The court denies the motion to dismiss claim one but otherwise grants the motion.

14 For the breach-of-the-duty-of-loyalty claims (claims three and four), First Citizens is a North
15 Carolina corporation with its principal place of business there.¹¹⁷ North Carolina does not allow
16 employers to sue for a breach of the duty of loyalty; California does.¹¹⁸ The briefing is slight on the
17 choice-of-law issue (given page limits and the overarching jurisdictional issues). But assuming
18 California law applies,¹¹⁹ the fact allegations do not support a claim for breach of the duty of loyalty.
19 There was a thirteen-day period between First Citizens' acquisition of SVB assets and the employees'
20 departure. The new-hire acknowledgment form required them to comply with First Citizens' code of
21 ethics, compliance policy, information-security standards, and other like policies.¹²⁰ The forms do not
22 identify any job functions or responsibilities. *Ledesma v. CSX Intermodal Terminals, Inc.*, No. 16-cv-
23 05237-EDL, 2017 WL 2617938, at *3 (N.D. Cal. June 16, 2017) (must allege facts illustrating the

24 _____
25 ¹¹⁷ FAC – ECF No. 76 at 9 (¶ 19).

26 ¹¹⁸ Mot. – ECF No. 81 at 27 (collecting cases); Opp'n – ECF No. 84 at 31 (California law trumps
27 North Carolina law because California has a legitimate interest in enforcing its law here).

28 ¹¹⁹ The parties more or less do this. Mot. – ECF No. 81 at 27–28 (assuming California law applies
without conceding the issue). Given the slight briefing, the order takes that approach here.

¹²⁰ Order – ECF No. 71 at 9; New Hire Acknowledgments, Exs. P–U to Compl. – ECF Nos. 1-16–1-21.

1 employment relationship). There are no allegations about what the duty of loyalty was or what the
2 employees did to breach it (except take a new job). There is no plausible claim. That in turn means
3 that there is no predicate for the aiding-and-abetting claim (claim four). Also, there are no allegations
4 that the defendants knew about the alleged duty of loyalty.

5 The next claim is tortious interference with contract (claim five against Sabow and the HSBC
6 entities). The elements of a claim for tortious interference with contract are as follows: “(1) the
7 existence of a valid contract between the plaintiff and a third party; (2) the defendant’s knowledge
8 of that contract; (3) the defendant’s intentional acts designed to induce a breach or disruption of the
9 contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5)
10 resulting damage.” *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1141 (2020). As with the
11 aiding-and-abetting claim (claim four), there are no allegations that Sabow or the HSBC entities
12 knew about the individual defendants’ loyalty duties or contractual obligations, and thus there is no
13 plausible claim. *Parallel Synthesis Techs. Inc. v. DeRisi*, 5:13-cv-05968-PSG, 2014 WL 4748611,
14 at *5 (N.D. Cal. Sept. 23, 2014); *Nexsales Corp. v. Salebuild, Inc.*, No. C-11-3915 EMC, 2012 WL
15 216260, at *4 (N.D. Cal. Jan. 24, 2012).

16 The next claim is tortious inference with prospective economic advantage (claim six against all
17 defendants). The elements of the claim generally are the factors for tortious interference with
18 contract: (1) the existence of an economic relationship between the plaintiff and a third party; (2)
19 the defendant’s knowledge of the relationship; (3) the defendant’s intentional acts to disrupt the
20 relationship; (4) actual disruption; and (5) economic harm proximately caused by the disruption.
21 *O’Connor v. Uber Techs., Inc.*, 58 F. Supp. 3d 989, 996 (N.D. Cal. 2014). Also, a plaintiff must
22 plead the commission of an independently wrongful act, meaning that the defendants’ conduct was
23 “wrongful by some measure other than the fact of interference itself.” *Ixchel Pharma, LLC*, 9 Cal.
24 5th at 1142. “An act is independently wrongful if it is unlawful, that is if it is proscribed by some
25 constitutional, statutory, regulatory, common law, or other determinable legal standard.” *Id.*;
26 *accord Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1159 (2003). The allegedly
27
28

1 unlawful act is inducing employees to leave en masse.¹²¹ But First Citizens does not allege
 2 independently wrongful conduct proscribed by a determinable legal standard (beyond the
 3 interference itself). *Martin P. v. Premera Blue Cross*, No. 18-cv-00934-RS, 2018 WL 10579525,
 4 at *4–5 (N.D. Cal. Sept. 19, 2015). Also, First Citizens does not explain how relationships were
 5 jeopardized (such as customer relationships). *AlterG v. Boost Treadmill LLC*, 388 F. Supp. 3d
 6 1133, 1151–52 (N.D. Cal. 2019) (dismissing interference claim because the plaintiff did not
 7 “identify” the “vendors, suppliers, and prospective or current customers” or allege “facts to
 8 explain their economic relationship”).

9 The conspiracy claim (claim ten) depends on the underlying claims, and to the extent that those
 10 fail, claim ten fails too.

11 For the breach-of-contract claim based on the SVB agreement (claim one against Sabow,
 12 Patel, Stepanis, Longo, and Hanlon), the court previously held that First Citizens acquired the
 13 rights to bring contract claims under the contracts.¹²² The defendants now contend that the
 14 counterparty on the contracts was SVB Financial Group, not SVB, and Bridge Bank never
 15 acquired the contracts because SVB never had them.¹²³ But as First Citizens counters, the
 16 contracts, which cover “New and Current SVB Employees,” lists the counterparty as “SVB
 17 Financial Group, a Delaware corporation, or any of its current or future subsidiaries, affiliates,
 18 successors or assigns (collectively, the “Company”)”¹²⁴ The earlier analysis controls, at least at the
 19 pleadings stage: First Citizens acquired the contracts. There is an issue as about Sabow: First
 20 Citizens contends that, even though his employment relationship with SVB ended in January
 21 2023, when he began work for SVB UK, he had a six-month non-solicitation covenant.¹²⁵ The
 22 defendants respond that his obligations were owed to SVB UK, purchased by HBUK.¹²⁶ That is
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24 ¹²¹ Opp’n – ECF No. 84 at 35.

25 ¹²² Order – ECF No. 71 at 12–14 (analyzing the transfer and purchase agreements).

26 ¹²³ Mot. – ECF No. 81 at 30 (citing Agreements, Exs. I–L to Compl. – ECF Nos. 1-9–1-12).

27 ¹²⁴ Opp’n – ECF No. 84 at 36; *see, e.g.*, Agreement, Ex. I to Compl. – ECF No. 1-9 at 2.

28 ¹²⁵ Opp’n – ECF No. 84 at 36 (citing FAC – ECF No. 76 at 63 (¶ 277)).

¹²⁶ Reply – ECF No. 88 at 24.

1 not enough of an argument for the court to dismiss the claim.

2 For the breach-of-contract claim based on the First Citizens agreement (claim two against Patel,
3 Stepanis, Longo, Hanlon, and Andersen), the defendants contend that First Citizens does not allege
4 any actionable conduct during the brief thirteen-day window between signing and departure.¹²⁷ As
5 discussed above, the individual defendants generally attended meetings (recruitment meetings with
6 Roberts, for example) and resigned.¹²⁸ The allegations do not plausibly plead breach. First Citizen
7 counters that the former SVB employees promised to comply with company policies, including the
8 ethics policy, which requires them to (1) “promptly report any act or omission you know or suspect to
9 be illegal, dishonest, fraudulent or unethical that may affect or involve First Citizens,” (2) “safeguard
10 and protect non-public information . . . even after you are no longer employed by First Citizens,” (3)
11 “avoid any activity or situation that involves, or appears to involve, a conflict of interest, and (4)
12 “avoid engaging in activities that place you in competition with” First Citizens.¹²⁹ The gist of First
13 Citizens’ argument is that the former SVB employees knew that they were going to decamp, knew
14 Sabow had trade-secret information, didn’t report it, and unfairly competed.¹³⁰ But alleging
15 knowledge of trade secrets and a subsequent resignation does not plead a breach of contract. *M/A-*
16 *COM Tech. Solutions, Inc. v. Litrinium, Inc.*, No. SACV 19-220 JVS (JDEx), 2019 WL 6655274, at
17 *9 (C.D. Cal. Sept. 23, 2019) (“The allegation that Garez had knowledge of trade secret information
18 and was then recruited to Litrinium describes a change in employment, but not wrongful conduct.”)

19 The final claim is claim seven against all defendants for a violation of North Carolina’s Unfair
20 and Deceptive Practices Act. It makes unlawful “unfair methods of competition in or affecting
21 commerce, and unfair or deceptive acts or practices in or affecting commerce.” N.C. Gen. Stat. §
22 75-1.1. The elements of the claim are (1) the defendant committed an unfair or deceptive act or
23 practice; (2) the act in question was in or affecting commerce, and (3) the act proximately caused
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25 ¹²⁷ Mot. – ECF No. 81 at 31–32.

26 ¹²⁸ *Id.* (chart summarizing allegations); *see* summaries of allegations by defendant, *supra*.

27 ¹²⁹ Opp’n – ECF No. 84 at 36–37 (quoting Code of Ethics, excerpted in the FAC – ECF No. 76 at 66–
68 (¶ 288) (cleaned up).

28 ¹³⁰ *Id.*

1 injury to the plaintiff. *Dalton v. Camp*, 353 N.C. 647, 656 (2001).

2 First Citizens does not allege an “in-state, injurious effect on his business operations in North
3 Carolina.” *The In Porters, S.A. v. Hanes Printables*, 663 F. Supp. 494, 501–02 (M.D.N.C. 1987). It
4 did not allege “deceptive conduct emanating from North Carolina or having a substantial effect on
5 commerce within North Carolina.” *Negrel v. Drive N Style Franchisor SPV LLC*, No. SACV 18-
6 00583 JVS(KESx), 2018 WL 6136151, at *5 (C.D. Cal. Aug. 27, 2018) (citing minority view in
7 North Carolina). It did not allege “unfair acts” that occurred in North Carolina. *In re Genetically*
8 *Modified Rice Litig.*, 666 F. Supp. 2d 1004, 1017 (E.D. Mo. 2009).

9 10 CONCLUSION

11 The court dismisses the claims against HSBC Holdings, HUSI, HBUK, Stepanis, Longo, and
12 Andersen for lack of personal jurisdiction (and allows jurisdictional discovery about the entity
13 defendants), grants the motion to dismiss claims one through three and six through ten (for Patel and
14 Kidder) and three, six, seven, and ten (for Hanlon), dismisses claims three through six as preempted
15 by CUTSA, and (under a Rule 12(b)(6) analysis) dismisses claim two (against Patel, Stepanis, Longo,
16 Hanlon, and Andersen), claim three (against Patel, Stepanis, Longo, Hanlon, and Andersen), claims
17 four and five against the HSBC entities and Sabow), claim six (against all defendants), claim seven
18 (against all defendants), and claim ten (against all defendants). The court denies the motion to dismiss
19 claim one under Rule 12(b)(6), which means that the claim survives only against Sabow. Claims
20 eight and nine (for theft of trade secrets) are live against HBUS, SVB UK, Sabow, and Hanlon.

21 The jurisdictional allegations might be able to be firmed up against HBUK (but probably not
22 against HSBC Holdings and HUSI). Maybe discovery will support claims for a nefarious scheme
23 to poach trade secrets and steal a business model, but right now, the allegations against most
24 defendants show only a failed bank and employees decamping to a better business opportunity.

25 Given the need for jurisdictional discovery, the court defers setting a deadline for amendment
26 and will address the issue at the case-management conference set for August 22, 2024, at 11 a.m.
27 In their joint case-management statement, the parties can propose a discovery plan and a date for
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1 amendment of the pleadings. Any amended complaint must include as an attachment a blackline
2 compare of the amended complaint against the current complaint.

3 This disposes of ECF No. 81.

4 **IT IS SO ORDERED.**

5 Dated: July 9, 2024



LAUREL BEELER
United States Magistrate Judge

United States District Court
Northern District of California

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