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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 ENS Labs Ltd., *et al.*,
10 Plaintiffs,

11 v.

12 GoDaddy Incorporated, *et al.*,
13 Defendants.
14

No. CV-22-01494-PHX-JJT

ORDER

15 At issue are three fully briefed Motions. First, Defendant Manifold Finance, Inc.
16 filed a Motion to Dismiss First Amended Complaint and to Vacate Preliminary Injunction
17 for Lack of Personal Jurisdiction (Doc. 37), to which Plaintiffs ENS Labs, Ltd., f/k/a True
18 Names, Ltd., and Virgil Griffith filed a Response (Doc. 44), and Manifold filed a Reply
19 (Doc. 46). Second, Defendants GoDaddy Inc. and GoDaddy.com, LLC filed a Motion to
20 Dismiss (Doc. 49) and Supplement (Doc. 70), to which Plaintiffs filed a Response
21 (Doc. 58) and the GoDaddy entities filed a Reply (Doc. 62). Third, Plaintiffs filed a Motion
22 to Enforce Preliminary Injunction (Doc. 65), to which Defendant Dynadot, LLC filed a
23 Response (Doc. 73) joined by Manifold (Doc. 74), and Plaintiffs filed a Reply (Doc. 75).
24 The Court resolves these Motions without oral argument. LRCiv 7.2(f).

25 **I. BACKGROUND**

26 In the Amended Complaint (Doc. 24, Am. Compl.), the operative pleading,
27 Plaintiffs allege Griffith, for and on behalf of True Names, entered into a 2018 Domain
28 Name Registration Agreement with Uniregistry, now owned by GoDaddy, Inc., for the

1 domain name eth.link (the “Domain”), and Plaintiffs have owned the Domain since then.
2 The Domain provides access to the Ethereum Name Service (ENS), which—similar to the
3 domain name system itself—allows a cryptocurrency holder to give a name to a
4 cryptocurrency address, facilitating the trade and exchange of cryptocurrency.

5 In August and September 2022, the GoDaddy entities allegedly declined to renew
6 Plaintiffs’ registration in the Domain, as the Agreement requires, and refused to assist
7 Plaintiffs in renewing the Domain or by clarifying the Domain’s renewal status. Instead,
8 Plaintiffs allege that on September 3, 2022, the GoDaddy entities sold the Domain to
9 Dynadot, another registrar that holds online auctions, which in turn sold the Domain to
10 Manifold. As a result, Plaintiffs raise claims of breach of contract and breach of the
11 covenant of good faith and fair dealing against the GoDaddy entities as well as claims of
12 intentional interference with prospective economic advantage, unfair competition, and
13 conversion against all Defendants.

14 On September 5, 2022, Plaintiffs sought a Temporary Restraining Order (TRO)
15 without notice (Doc. 2), but the Court ordered Plaintiffs to serve the Complaint, Summons,
16 and motion for injunctive relief on Defendants (Doc. 11). The Court held a hearing on the
17 motion on September 9, 2022 (Doc. 18), and no Defendant appeared at the hearing even
18 after having received notice and the warning that if they failed to file a response to
19 Plaintiffs’ motion or failed to appear at the hearing, the Court “will deem either failure to
20 be Defendants’ consent to the Motion being granted.” (Doc. 11 at 3.) The Court construed
21 Plaintiffs’ motion as one for a preliminary injunction and granted Plaintiffs the relief they
22 sought in the motion, including requiring Defendants to transfer ownership of the Domain
23 back to Plaintiffs and enjoining Defendants from causing the Domain to expire, allowing
24 the Domain to revert to the registry to be generally available for purchase by third parties,
25 preventing or frustrating Plaintiffs’ right to renew the Domain registration, and selling or
26 transferring ownership interest in the Domain. (Doc. 19.)

27 In the Amended Complaint, Plaintiffs state actual transfer of ownership of the
28 Domain to a third party was not completed, although the Domain is now under the registrar

1 services of Dynadot. Plaintiffs allege Defendants engaged in the alleged conduct knowing
2 “that Plaintiffs were entitled to control [the Domain]” (Am. Compl. ¶¶ 75–77) and with
3 “an intent to injure Plaintiffs and improve their own economic opportunities” (Am. Compl.
4 ¶¶ 56, 58).

5 **II. Manifold’s Motion to Dismiss for Lack of Personal Jurisdiction**

6 In its Motion (Doc. 37), Manifold asks the Court to dismiss Plaintiffs’ claims against
7 it and to vacate the Preliminary Injunction as it pertains to Manifold because the Court
8 lacks personal jurisdiction over Manifold.

9 **A. Legal Standard**

10 For a federal court to adjudicate a matter, it must have jurisdiction over the parties.
11 *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). The party
12 bringing the action has the burden of establishing that personal jurisdiction exists.
13 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citing *McNutt v.*
14 *Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936)); *Data Disc, Inc. v. Sys. Tech.*
15 *Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). When a defendant moves, prior to trial,
16 to dismiss a complaint for lack of personal jurisdiction by challenging the plaintiff’s
17 allegations, the plaintiff must “come forward with facts, by affidavit or otherwise,
18 supporting personal jurisdiction.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986)
19 (quoting *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)).

20 Because there is no statutory method for resolving the question of personal
21 jurisdiction, “the mode of determination is left to the trial court.” *Data Disc*, 557 F.2d at
22 1285 (citing *Gibbs v. Buck*, 307 U.S. 66, 71–72 (1939)). Where, as here, a court resolves
23 the question of personal jurisdiction upon motions and supporting documents, the plaintiff
24 “must make only a *prima facie* showing of jurisdictional facts through the submitted
25 materials in order to avoid a defendant’s motion to dismiss.” *Id.* In determining whether
26 the plaintiff has met that burden, the “uncontroverted allegations in [the plaintiff’s]
27 complaint must be taken as true, and conflicts between the facts contained in the parties’
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1 affidavits must be resolved in [the plaintiff's] favor.” *Rio Props., Inc. v. Rio Int’l Interlink*,
2 284 F.3d 1007, 1019 (9th Cir. 2002) (citation omitted).

3 To establish personal jurisdiction over a nonresident defendant, a plaintiff must
4 show that the forum state’s long-arm statute confers jurisdiction over the defendant and
5 that the exercise of jurisdiction comports with constitutional principles of due process. *Id.*;
6 *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995). Arizona’s
7 long-arm statute allows the exercise of personal jurisdiction to the same extent as the
8 United States Constitution. *See* Ariz. R. Civ. P. 4.2(a); *Cybersell v. Cybersell*, 130 F.3d
9 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354, 1358 (Ariz. 1995)
10 (stating that under Rule 4.2(a), “Arizona will exert personal jurisdiction over a nonresident
11 litigant to the maximum extent allowed by the federal constitution”). Thus, a court in
12 Arizona may exercise personal jurisdiction over a nonresident defendant so long as doing
13 so accords with constitutional principles of due process. *Cybersell*, 130 F.3d at 416.

14 Due process requires that a nonresident defendant have sufficient minimum contacts
15 with the forum state so that “maintenance of the suit does not offend ‘traditional notions of
16 fair play and substantial justice.’” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)
17 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see also Data Disc*, 557 F.2d at
18 1287. Courts recognize two bases for personal jurisdiction within the confines of due
19 process: “(1) ‘general jurisdiction’ which arises when a defendant’s contacts with the
20 forum state are so pervasive as to justify the exercise of jurisdiction over the defendant in
21 all matters; and (2) ‘specific jurisdiction’ which arises out of the defendant’s contacts with
22 the forum state giving rise to the subject litigation.” *Birder v. Jockey’s Guild, Inc.*, 444 F.
23 Supp. 2d 1005, 1008 (C.D. Cal. 2006).

24 **B. General Jurisdiction**

25 The “paradigm forum” for the exercise of general jurisdiction over a corporate
26 defendant “is one in which the corporation is fairly regarded as at home.” *Bristol-Myers*
27 *Squibb Co. v. Sup. Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (internal
28 citations omitted). And a corporation is fairly regarded as at home in “its place of

1 incorporation and principal place of business.” *Ford Motor Co. v. Mont. Eighth Judicial*
2 *Dist. Ct.*, 592 U.S. ___, 141 S. Ct. 1017, 1024 (2021).¹

3 Plaintiffs allege Manifold is “a Delaware company residing in Delaware.”² (Am.
4 Compl. ¶ 15.) Because Plaintiffs have not shown that Arizona is Manifold’s place of
5 incorporation or principal place of business or that this is an exceptional case, general
6 jurisdiction over Manifold does not lie in this District.

7 C. Specific Jurisdiction

8 Whether a court may exercise specific jurisdiction in a given case turns on the extent
9 of the defendant’s contact with the forum and the degree to which the plaintiff’s suit is
10 related to the defendant’s contacts. *Yahoo! Inc. v. La Ligue Contre Le Racisme et*
11 *L’Antisemitisme*, 433 F.3d 1199, 1210 (9th Cir. 2006). The Ninth Circuit uses the following
12 approach to determine whether a court may exercise specific jurisdiction over a nonresident
13 defendant: (1) the nonresident defendant must do some act in or consummate some
14 transaction with the forum, or perform some act by which it purposefully avails itself of
15 the privilege of conducting activities in the forum, thereby invoking the benefits and
16 protections of its laws; (2) the claim must be one which arises out of or results from the
17 defendant’s forum-related activities; and (3) the exercise of jurisdiction must be
18 reasonable. *Data Disc*, 557 F.2d at 1287.

19 The plaintiff bears the burden of establishing the first two requirements of the test.
20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the
21 plaintiff does so, the burden shifts to the defendant to establish that the third requirement
22 is not met. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011)
23 (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)). All three
24 requirements must be met for the exercise of jurisdiction to comport with constitutional
25 principles of due process. *Omeluk*, 52 F.3d at 270.

26 ¹ The Supreme Court in *Daimler AG v. Bauman*, 571 U.S. 117, 139 n.19 (2014), left open
27 “the possibility that in an exceptional case” a corporation might be “at home” elsewhere.

28 ² In its Motion, Manifold contends its principal place of business is in California (Doc. 37
at 1), but a contention in a brief is neither an allegation nor evidence, so the Court must
disregard it in this context. In any event, neither Delaware nor California is Arizona.

1 To meet the first element, the plaintiff must show the defendant “either (1)
2 ‘purposefully availed’ himself of the privilege of conducting activities in the forum, or (2)
3 ‘purposefully directed’ his activities towards the forum.” *Pebble Beach Co. v. Caddy*, 453
4 F.3d 1151, 1155 (9th Cir. 2006) (quoting *Schwarzenegger*, 374 F.3d at 802). The
5 purposeful direction analysis is most commonly applied in cases alleging tortious conduct,
6 as in this case. *Mavrix Photo, Inc.*, 647 F.3d at 1228.

7 Beginning with the first element, to determine whether a defendant’s actions
8 constitute purposeful direction, courts apply the “effects” test developed in *Calder v. Jones*,
9 465 U.S. 783, 789–90 (1984). The effects test requires that “the defendant allegedly must
10 have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing
11 harm that the defendant knows is likely to be suffered in the forum state.” *Yahoo!*, 433 F.3d
12 at 1206. “The proper question is not where the plaintiff experienced a particular injury or
13 effect but whether the defendant’s conduct connects [it] to the forum in a meaningful way.”
14 *Walden v. Fiore*, 571 U.S. 277, 290 (2014). In other words, the relationship between the
15 defendant, the forum state, and the litigation “must arise out of contacts that the defendant
16 *himself* creates with the forum State” and not just “the defendant’s contacts with persons
17 who reside there.” *Id.* at 284.

18 According to Plaintiffs’ allegations, the GoDaddy entities—Arizona residents—
19 breached a contract with Plaintiffs—Singapore and Pennsylvania residents—and
20 conducted a sale of the Domain on September 3, 2022. (Am. Compl. ¶¶ 10–13, 33, 42.)
21 Dynadot—a California resident—purchased the Domain and sold it to Manifold—a
22 Delaware resident. (Am. Compl. ¶¶ 14–15, 33–34.) Plaintiffs state that Dynadot and
23 Manifold knew that Plaintiffs were entitled to control the Domain and intended to injure
24 Plaintiffs. (Am. Compl. ¶¶ 56, 58, 75–77.)

25 This sequence of events does not lead to the conclusion that, by purchasing the
26 Domain from Dynadot, a California domain registrar, Manifold aimed its conduct at
27 Arizona and caused harm it knew would likely be suffered in Arizona. The principal
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1 alleged harm was suffered by Plaintiffs' business, and they themselves allege they are
2 Singapore and Pennsylvania residents.

3 In their Response (Doc. 44), Plaintiffs posit that because the GoDaddy entities, the
4 Domain's prior registrar(s), are located in Arizona, Manifold's purchase of the Domain
5 was aimed at and caused harm in Arizona. It is unclear how. Plaintiffs do not allege the
6 GoDaddy entities' business was harmed, other than perhaps by litigation Plaintiffs
7 themselves initiated against the GoDaddy entities based on their alleged conduct. But no
8 allegations or evidence point to conduct by Manifold aimed at Arizona, such that Manifold
9 would reasonably expect to be haled into court in Arizona, and Plaintiffs thus fail to satisfy
10 the *Calder* effects test.³

11 Plaintiffs also argue that because ENS has users of the Domain in Arizona, harm
12 was suffered in and by Arizona. Although the Amended Complaint includes only a general
13 allegation that "[o]ver 2 million ENS names have been registered worldwide," (Am.
14 Compl. ¶ 6), Plaintiffs provide a Declaration in which Kori Whitaker, Executive Director
15 of True Names, avers without further evidentiary support that ENS "has registrants who
16 live in Arizona and conduct business and other transactions in Arizona in reliance on the
17 [Domain]" (Doc. 45 ¶ 6). Even if the Court accepts this as sufficient evidence showing a
18 connection between Plaintiffs and Arizona, "[t]he inquiry whether a forum State may assert
19 specific jurisdiction over a nonresident defendant focuses on the relationship among the
20 *defendant*, the forum, and the litigation." *Walden*, 571 U.S. at 283 (emphasis added)
21 (internal quotations omitted). That Plaintiffs allege Manifold knew Plaintiffs had users

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23 ³ The Court agrees with Manifold (Doc. 46 at 2-7) that the cases cited by Plaintiffs in this
24 respect are inapposite. In *Office Depot, Inc. v. Zuccarini*, 621 F. Supp. 2d 773, 778 (N.D.
25 Cal. 2007), the court set forth how to determine in which California county a domain name
26 was located for the purpose of applying a California writ-of-execution statute; the case had
27 nothing to do with personal jurisdiction and its associated inquiries. In *Jenkins v. Pooke*,
28 2009 WL 10692010, at *4-6 (N.D. Cal. July 13, 2009), also cited by Plaintiffs, the court
determined a defendant's tortious conduct was aimed at California because the defendant
had unlawfully accessed an e-mail account maintained by a California registry. Here,
Manifold allegedly purchased the Domain from a California registrar that Manifold shows
is maintained by a registry in Malta, not Arizona. Manifold also correctly points out
Plaintiffs' conflation in the briefing of "registrar" and "registry"; according to the
allegations, the GoDaddy entities were not registries of the Domain, but rather acted as the
registrar. (Doc. 46 at 4-5.)

1 worldwide is too attenuated to show Manifold aimed its conduct at Arizona users, much
2 less Arizona. Indeed, Plaintiffs have pointed to no allegations or evidence showing that
3 Manifold aimed its conduct at Arizona.

4 Likewise, by alleging Manifold purchased the Domain from a California registrar
5 with the intent to injure an individual in Pennsylvania and an entity in Singapore, Plaintiffs
6 have not demonstrated the second requirement of specific jurisdiction. Plaintiffs' claims
7 do not arise from Manifold's Arizona-related activities because those activities are non-
8 existent.

9 In sum, Plaintiffs fail to meet their burden to show the Court has specific personal
10 jurisdiction over Manifold. Plaintiffs ask to be able to conduct jurisdictional discovery
11 (Doc. 44 at 11), but the Court agrees with Manifold (Doc. 46 at 8–9) that Plaintiffs do not
12 adequately demonstrate what they anticipate such discovery will reveal, that is, what
13 conduct Manifold may have aimed at Arizona and causing harm in Arizona. Plaintiffs thus
14 fail to substantiate their request for jurisdictional discovery.

15 Of course, because the Court lacks personal jurisdiction over Manifold, the Court
16 must vacate the Preliminary Injunction (Doc. 19) as it pertains to Manifold only. While
17 Manifold did not appear on short notice to contest the entry of the Preliminary Injunction,
18 Manifold contested the Court's personal jurisdiction over it in its first appearance in this
19 case.

20 **III. GoDaddy Inc. and GoDaddy.com, LLC's Motion to Dismiss**

21 The GoDaddy entities move to dismiss Plaintiffs' claims against them for failure to
22 state a claim under Federal Rule of Civil Procedure 12(b)(6).

23 **A. Legal Standard**

24 Rule 12(b)(6) is designed to “test[] the legal sufficiency of a claim.” *Navarro v.*
25 *Block*, 250 F.3d 729, 732 (9th Cir. 2001). A dismissal under Rule 12(b)(6) for failure to
26 state a claim can be based on either: (1) the lack of a cognizable legal theory; or (2) the
27 absence of sufficient factual allegations to support a cognizable legal theory. *Balistreri v.*
28 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). When analyzing a complaint for

1 failure to state a claim, the well-pled factual allegations are taken as true and construed in
2 the light most favorable to the nonmoving party. *Cousins v. Lockyer*, 568 F.3d 1063, 1067
3 (9th Cir. 2009). A plaintiff must allege “enough facts to state a claim to relief that is
4 plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has
5 facial plausibility when the plaintiff pleads factual content that allows the court to draw the
6 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
7 *Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). “The plausibility
8 standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer
9 possibility that a defendant has acted unlawfully.” *Id.*

10 “While a complaint attacked by a Rule 12(b)(6) motion does not need detailed
11 factual allegations, a plaintiff’s obligation to provide the grounds of his entitlement to relief
12 requires more than labels and conclusions, and a formulaic recitation of the elements of a
13 cause of action will not do.” *Twombly*, 550 U.S. at 555 (cleaned up and citations omitted).
14 Legal conclusions couched as factual allegations are not entitled to the assumption of truth
15 and therefore are insufficient to defeat a motion to dismiss for failure to state a claim. *Iqbal*,
16 556 U.S. at 679–80. However, “a well-pleaded complaint may proceed even if it strikes a
17 savvy judge that actual proof of those facts is improbable, and that ‘recovery is very remote
18 and unlikely.’” *Twombly*, 550 U.S. at 556 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236
19 (1974)).

20 **B. Counts 1 and 2: Breach of Contract and the Covenant of Good Faith and**
21 **Fair Dealing**

22 The GoDaddy entities first argue that Plaintiffs’ breach of contract claim fails
23 because Plaintiffs entered into a contract with Uniregistry, not the GoDaddy entities.
24 (Doc. 50 at 7.) But Plaintiffs also allege that the GoDaddy entities acquired Uniregistry in
25 2020 (Am. Compl. ¶ 22), from which the Court can plausibly infer that the GoDaddy
26 entities stepped into the shoes of Uniregistry for the purpose of its contractual and other
27 obligations. Indeed, in their Motion, the GoDaddy entities assert that Uniregistry is a d/b/a
28 of GoDaddy Online Services Cayman Islands. (Doc. 50 at 3.) The Amended Complaint

1 also includes allegations that GoDaddy, not Uniregistry, released a statement on August 25,
2 2022, that the Domain had expired and would be returned to the registry on September 5,
3 2022 “absent a renewal by the current registrant.” (Am. Compl. ¶ 28 & Ex. E.)⁴

4 At this stage of the litigation, the Court accepts as true Plaintiffs’ allegations; any
5 argument regarding whether the evidence will support the allegations—such as evidence
6 going to the scope of the GoDaddy entities’ acquisition of Uniregistry or GoDaddy’s
7 conduct in acting on behalf of Uniregistry—is premature. Moreover, as Plaintiffs point out
8 in their Response, if they named the wrong GoDaddy entity as Defendant, the proper course
9 would generally not be a dismissal with prejudice of Plaintiffs’ claims, as the GoDaddy
10 entities request, but rather resolution of a motion to amend the complaint.⁵ *See, e.g.,*
11 *Bengiveno v. Pulte Home Corp.*, No. CV-07-01117-PHX-FJM, 2007 WL 3145100, at *2
12 (D. Ariz. Oct. 25, 2007).

13 The GoDaddy entities next contend the breach of contract claim fails because it is
14 premised on Plaintiffs’ renewal of the Domain registration, which the GoDaddy entities
15 argue Plaintiffs did not consummate with Uniregistry. The GoDaddy entities’ argument
16 that Plaintiffs improperly contacted GoDaddy instead of Uniregistry for the renewal is not
17 a basis to dismiss the Amended Complaint for the same reasons as the Court discussed
18 above.

19 Plaintiffs’ Domain registration was set to expire on July 26, 2022. As for what
20 Plaintiffs knew about the Domain renewal in 2022, Uniregistry’s Registration and Service
21 Agreement provides that automatic renewal of a domain is the default setting provided as a
22 courtesy to customers. (Am. Compl. ¶ 21 & Ex. A.)⁶ Plaintiffs allege they received a notice

23 ⁴ Rule 10(c) provides that “a written instrument that is an exhibit to a pleading is a part of
24 the pleading for all purposes.”

25 ⁵ After arguing they are the wrong parties, the majority of the GoDaddy entities’ brief
26 consists of substantive challenges to Plaintiffs’ claims, again as if the GoDaddy entities are
27 proper Defendants. *See Chrome Hearts, LLC v. Alma Shop*, 2009 WL 10680869, at *6 (D.
28 Guam Aug. 13, 2009).

⁶ The GoDaddy entities request that the Court take judicial notice of Uniregistry’s “current
version” of its Registration and Service Agreement, available on Uniregistry’s website
(Doc. 52), which Plaintiffs do not oppose. Because Plaintiffs allege breach of the
Agreement and it is thus central to the Amended Complaint, the Court will take judicial

1 on July 31, 2022, that the registration had expired but that it was “not too late” to renew the
2 Domain. (Am. Compl. ¶ 25 & Ex. G.) The Amended Complaint also includes allegations
3 that the WhoIs domain registration information Plaintiffs pulled after July 31, 2022, showed
4 that the Domain was renewed through July 26, 2023 with GoDaddy Online Services Ltd. as
5 the Registrar. (Am. Compl. ¶ 26 & Ex. C.) Plaintiffs contacted the GoDaddy entities on
6 several occasions in August and September 2022 to clarify the Domain’s registration status
7 but received no response. (Am. Compl. ¶¶ 27, 30 & Exs. D, F.)

8 Plaintiffs’ theory of breach of contract is that the current Agreement provides for a
9 30 day grace period in which to renew a domain, so the notice Plaintiffs received on
10 July 31, 2022 that it was “not too late” to renew, and Plaintiffs’ alleged renewal on or
11 around August 3, 2022—as reflected by the WhoIs information—were consistent with the
12 terms of the Agreement. (Doc. 58 at 7–8.) The GoDaddy entities breached the Agreement
13 by offering the Domain for auction after Plaintiffs had allegedly renewed within the grace
14 period. Likewise, Plaintiffs contend the GoDaddy entities breached the provisions of the
15 Agreement that they will only “cancel, suspend, transfer or modify” a domain registration
16 with a justification—which they did not have—and a third party may only purchase a
17 domain at auction if the domain has not been renewed—which it allegedly had been.
18 (Doc. 54-1 at 5; Doc. 58 at 8.) The Court agrees with the GoDaddy entities that no
19 allegation in the Amended Complaint explicitly states that Plaintiffs renewed the Domain
20 registration on or around August 3, 2022, but the Court can infer that from the WhoIs
21 information, which is sufficient at this stage of the litigation. As a result, the Court must
22 deny the GoDaddy entities’ request to dismiss Count 1.

23 For similar reasons, the Court declines to dismiss Count 2 for breach of the covenant
24 of good faith and fair dealing. Under Arizona law,⁷ the covenant of good faith and fair
25 dealing is implied in every contract. *Wells Fargo Bank v. Ariz. Laborers, Teamsters &*
26 *notice of what the parties do not dispute is the current version of the Agreement. See Lee*
27 *v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Snyder v. HSBC Bank, USA,*
N.A., 913 F. Supp. 2d 755, 768 (D. Ariz. 2012).

28 ⁷ The parties both apply Arizona law to Plaintiffs’ claims, which the Court accepts for the
purpose of resolving the Motion to Dismiss.

1 *Cement Masons Local No. 395 Pension Trust Fund*, 38 P.3d 12, 28 (Ariz. 2002), *as corrected*
2 (Apr. 9, 2002). This implied covenant “prohibits a party from doing anything to prevent other
3 parties to the contract from receiving the benefits and entitlements of the agreement.” *Id.* A
4 party may “breach its duty of good faith without actually breaching an express covenant
5 in the contract.” *Id.* at 29.

6 Plaintiffs allege facts showing that the GoDaddy entities refused to renew the
7 Domain registration for Plaintiffs and disregarded Plaintiffs’ requests for clarification of
8 the Domain’s registration status and to renew the Domain as necessary. These allegations
9 are sufficient to plausibly show the GoDaddy entities engaged in conduct preventing
10 Plaintiffs from receiving the benefits and entitlements of the Domain’s registration
11 agreement.

12 **C. Count 3: Intentional Interference with Prospective Economic**
13 **Advantage**

14 The GoDaddy entities also seek dismissal of Plaintiffs’ claim of intentional
15 interference with prospective economic advantage. Arizona courts refer to this tort as
16 intentional interference with business relationships, and its elements are as follows:

- 17 (1) The existence of valid contractual relationship or business expectancy;
18 (2) knowledge of the relationship or expectancy on the part of the
19 interferer;
20 (3) intentional interference inducing or causing a breach or termination of
21 the relationship or expectancy; and
22 (4) resultant damage to the party whose relationship or expectancy has
been disrupted.

23 *Antwerp Diamond Exch. of Am., Inc. v. Better Bus. Bureau of Maricopa Cnty., Inc.*, 637 P.2d
24 733, 739–40 (Ariz. 1985) (internal quotations and citations omitted); *see also Wagenseller*
25 *v. Scottsdale Mem’l Hosp.*, 710 P.2d 1025, 1041 (Ariz. 1985) (superseded by statute in other
26 respects). The alleged interference must have been both intentional and improper.
27 *Wagenseller*, 710 P.2d at 1041. The Arizona Supreme Court looks to the Restatement of
28 Torts and has cited with approval section 766 of the Restatement (First) of Torts (1939),

1 which defines the tort as “one who, without privilege to do so, induces or otherwise purposely
2 causes a third person not to . . . enter into or continue a business relation with another is liable
3 to the other for the harm caused thereby.” *Antwerp Diamond Exch.*, 637 P.2d at 740 (quoting
4 *Edwards v. Anaconda Co.*, 565 P.2d 190, 192 (Ariz. Ct. Ap. 1977)).

5 The GoDaddy entities argue Plaintiffs fail to allege sufficient facts regarding actions
6 by the GoDaddy entities constituting intentional interference with Plaintiffs’ business
7 relationships, and specifically, that the GoDaddy entities prevented Plaintiffs from
8 renewing the Domain registration. But as stated above, Plaintiffs adequately allege that the
9 GoDaddy entities refused to renew the Domain registration and disregarded Plaintiffs’
10 requests for help. It is just as plausible as not that these alleged acts, if true, were
11 intentional.

12 The GoDaddy entities also argue that Plaintiffs do not adequately allege facts
13 showing the GoDaddy entities had the requisite knowledge of Plaintiffs’ business
14 expectancy. In response, Plaintiffs point to allegations that they sent a letter to GoDaddy
15 on September 1, 2022—before GoDaddy offered the Domain for auction—that the Domain
16 “is critical to ENS, and over 2 million ENS addresses rely on [the Domain] for operation
17 and routing.” (Am. Compl. ¶ 31 & Ex. F.) As a result, “GoDaddy’s decision to renege on
18 its renewal of [the Domain] will result in disruption, fraud, and irreparable harm to the
19 operations of ENS, and the many hundreds of thousands of wallets, websites, and
20 applications that are currently relying on ENS.” (Am. Compl. ¶ 31 & Ex. F.) Plaintiffs thus
21 adequately allege that the GoDaddy entities had the requisite knowledge at least as of
22 September 1, 2022, before they auctioned the Domain. For these reasons, the Court will
23 deny the GoDaddy entities’ request to dismiss Count 3.⁸

24 **D. Count 4: Unfair Competition**

25 The GoDaddy entities next challenge Plaintiffs’ common law claim of unfair
26 competition. The Court agrees with the GoDaddy entities that Arizona courts have only

27 _____
28 ⁸ The Court finds no merit to the GoDaddy entities’ argument (Doc. 50 at 16-17) that the
Court should order a more definite statement of the Amended Complaint under Rule 12(e)
because Plaintiffs’ allegations against them are not sufficiently specific.

1 recognized such a tort in limited circumstances, including in conjunction with “trademark
2 infringement, false advertising, ‘palming off’, and misappropriation.” *Joshua David
3 Mellberg LLC v. Will*, 96 F. Supp. 3d 953, 963 (D. Ariz. 2015) (quoting *Fairway
4 Constructors, Inc. v. Ahern*, 970 P.2d 954, 956 (Ariz. Ct. App. 1998)). The parties do not
5 cite any legal authority that would convince the Court to extend the tort to circumstances
6 such as those alleged by Plaintiffs here. Accordingly, the Court will dismiss Count 4 with
7 prejudice. Moreover, the Court will dismiss Count 4 against the remaining non-moving
8 party—Dynadot LLC—for the same reason. *See Silverton v. Dep’t of Treasury of U.S.A.*,
9 644 F.2d 1341, 1345 (9th Cir. 1981).

10 **E. Count 5: Conversion**

11 Likewise, the Court agrees with the GoDaddy entities that Arizona courts have not
12 recognized the tort of conversion in circumstances such as those pled by Plaintiffs. In
13 Arizona, “conversion is an intentional exercise of dominion or control over a chattel which
14 so seriously interferes with the right of another to control it that the actor may justly be
15 required to pay the other the full value of the chattel.” *Miller v. Hehlen*, 104 P.3d 193, 203
16 (Ariz. Ct. App. 2005) (citing Restatement (Second) of Torts § 222A(1) (1965)). But “[a]n
17 action for conversion ordinarily lies only for personal property that is tangible, or to
18 intangible property that is merged in, or identified with, some document.” *Id.* (citing
19 18 Am. Jur. 2d, Conversion § 7 (2004); Restatement (Second) of Torts § 242 cmt.a); *see*
20 *also* Restatement (Second) of Torts § 242 cmt.e (stating that some courts have recognized
21 there may be an action for conversion of an intangible right, but “[t]his does not accord
22 very well with the traditional common law limitations of conversion,” and courts “may
23 prefer to regard the liability as one for an intentional interference with the right, which is
24 not identical with conversion, but is similar to it in its nature and legal consequences”).

25 Plaintiffs argue that none of these sources state whether website domains can be
26 subject to conversion claims (Doc. 58 at 15), but Plaintiffs have alleged neither that the
27 Domain was tangible nor that, as intangible property, it was merged in a document.
28 Plaintiffs also ask the Court to look to states other than Arizona that have recognized a

1 common law action for conversion of a domain name, but the Court is applying Arizona
2 law in this instance. Because Arizona has not recognized a common law action for
3 conversion in these circumstances, the Court will dismiss Count 5 with prejudice against
4 the GoDaddy entities as well as non-moving party Dynadot LLC. *See Silverton*, 644 F.2d
5 at 1345.

6 **IV. Plaintiffs’ Motion to Enforce Preliminary Injunction**

7 Plaintiffs seek to transfer the Domain from Dynadot to a registrar of Plaintiffs’
8 choice but report that Dynadot as registrar has locked the Domain, preventing Plaintiffs
9 from transferring it. (Doc. 65 at 4.) The Court looks to the language of the Preliminary
10 Injunction, which states, “Defendants shall immediately transfer ownership in the Domain
11 back to Plaintiffs.” (Doc. 19 at 4.) Plaintiffs point out, and Dynadot does not dispute, that
12 within the bundle of rights included in ownership of a domain name is the right to transfer
13 domain name registration between registrars. (Doc. 75 at 1–2.) As Plaintiffs also point out,
14 although the rules of the Internet Corporation for Assigned Names and Numbers (ICANN)
15 provide that a registrar can place a lock on a domain name when a proceeding under the
16 Uniform Domain-Name Dispute Resolution Policy (UDRP) is taking place, no such
17 proceeding is underway here.

18 Dynadot argues the lock “is necessary to preserve the status quo” (Doc. 73 at 10),
19 but it neither substantiates that claim nor points to language in the Preliminary Injunction
20 directing it to lock the Domain. Dynadot’s main concern with Plaintiffs’ transfer of the
21 Domain to another registrar appears to be that “Plaintiffs can transfer the Domain outside
22 this Court’s jurisdiction, rendering the litigation moot.” (Doc. 73 at 9.) But Plaintiffs—
23 current owners of the Domain—will remain in the jurisdiction of the Court. Moreover, in
24 their Reply, Plaintiffs agree not to move the Domain out of the United States or contest the
25 Court’s jurisdiction in entering an Order regarding the disposition of the Domain. (Doc. 75
26 at 4.)

27 For these reasons, the Court will grant Plaintiffs’ request to enforce the Preliminary
28 Injunction (Doc. 65) by ordering Dynadot to unlock the Domain so that Plaintiffs may

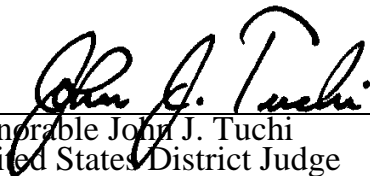
1 transfer it to another registrar. However, the Court in its discretion declines to award
2 sanctions to Plaintiffs and against Dynadot on this issue.

3 **IT IS THEREFORE ORDERED** granting Defendant Manifold Finance, Inc.’s
4 Motion to Dismiss First Amended Complaint and to Vacate Preliminary Injunction for
5 Lack of Personal Jurisdiction (Doc. 37). Plaintiffs’ claims against Manifold Finance, Inc.
6 are dismissed for lack of personal jurisdiction, and the Preliminary Injunction (Doc. 19) is
7 vacated as it pertains to Manifold Finance, Inc. only.

8 **IT IS FURTHER ORDERED** granting in part and denying in part Defendants
9 GoDaddy Inc. and GoDaddy.com, LLC’s Motion to Dismiss (Doc. 49). Counts 4 and 5
10 against all remaining parties are dismissed with prejudice, but the Motion to Dismiss is
11 denied as to Counts 1, 2, and 3.

12 **IT IS FURTHER ORDERED** granting in part and denying in part Plaintiffs’
13 Motion to Enforce Preliminary Injunction (Doc. 65). Defendant Dynadot, LLC shall
14 immediately unlock the Domain, eth.link, so that Plaintiffs may transfer it to another
15 registrar. Plaintiffs may not transfer the Domain to a registrar outside the United States and
16 agree not to contest the Court’s jurisdiction in entering an Order regarding the disposition
17 of the Domain. The Court declines to enter sanctions on this issue.

18 Dated this 24th day of July, 2023.

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21 _____
22 Honorable John J. Tuchi
23 United States District Judge
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