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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

MONIQUE HERNANDEZ, JOSEPH	)	Case No. EDCV 13-00967 DDP (DTBx)
HERNANDEZ, OLIVIA HERNANDEZ,	)	
GABRIELLE HERNANDEZ, JOANNA	)	<b>ORDER DENYING THIRD-PARTY</b>
HERNANDEZ, ALEXIS HERNANDEZ,	)	<b>DEFENDANT'S MOTION TO DISMISS FOR</b>
JOSEPH HERNANDEZ JR. AND	)	<b>LACK OF PERSONAL JURISDICTION</b>
O.G., a minor by and through	)	
her Guardian ad Litem OLIVIA	)	[Dkt. No. 84]
HERNANDEZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF BEAUMONT, OFFICER	)	
ENOCH CLARK, CORPORAL	)	
FRANCISCO VELASQUEZ, JR.,	)	
CHIEF FRANK COE,	)	
	)	
Defendants.	)	
_____	)	

Presently before the Court is Third-Party Defendant Piexon AG's motion to dismiss the third party complaint for lack of personal jurisdiction (the "Motion"). (Docket No. 84.) For the reasons stated in this Order, the Motion is DENIED.

**I. Background**

The underlying action is an excessive force case. Monique Hernandez ("Monique"), along with seven of her family members

1 (collectively, "Plaintiffs"), filed an action against the City of  
2 Beaumont ("City"), Officer Enoch Clark ("Clark"), Corporal  
3 Francisco Velasquez, Jr. ("Velasquez"), and Chief Frank Coe  
4 ("Coe"), alleging various civil rights violations. (Third Amended  
5 Complaint ("TAC"), Docket No. 51.) During the course of an arrest,  
6 Clark shot Monique with a JPX Jet Protector pepper spray gun  
7 ("JPX") at close range, causing severe eye injuries. (Id. ¶¶  
8 20-45.) Plaintiffs allege that "[t]he JPX gun shoots out spray  
9 liquid at 405 miles per hour. The muzzle velocities of JPX Jet  
10 Protector rounds provided to [the Beaumont Police Department] range  
11 from 550 feet per second to 1000 feet per second." (Id. ¶ 35.)  
12 Plaintiffs further allege that Clark and other Beaumont Police  
13 Department officers were not adequately trained on the use of the  
14 JPX. (Id. ¶ 36.)

15       The City filed a Third-Party Complaint ("TPC") against Third  
16 Party Defendants Piexon AG ("Piexon"), IBS Sigma Inc. ("IBS"), and  
17 Bart Bacolini ("Bacolini"). (Docket No. 46.) Piexon is a Swiss  
18 company that manufactures a line of personal defense products,  
19 including the JPX. (TPC ¶ 12; Fleishhauer Aff. ¶ 3.) IBS is a  
20 Canadian company that markets and distributes police and security  
21 products, including the JPX. (TPC ¶ 13.) Bacolini is a resident of  
22 California who received training from Piexon to prepare him to  
23 train law enforcement officers on the use of the JPX. (Fleischhauer  
24 Aff. ¶ 36; Decl. Gazzo ¶ 15.) Bacolini also owns and operates an  
25 affiliate business, Bacolini Enterprises, which distributes,  
26 markets, and conducts training for the JPX. (TPC ¶ 14.) In March  
27 2010, Piexon's Vice President of International Sales, Zac Almeis,  
28 attended the 2010 Trexpo West Police Expo in Long Beach,

1 California, where he trained Bacolini and provided him with  
2 Piexon's JPX training and user materials. (Gazzo Decl. ¶¶ 12-15;  
3 Fleischhauer Aff. ¶ 18.) On March 31, 2010, Bacolini received  
4 certification from the Piexon Training Academy indicating that he  
5 had completed the required training as well as passed the written  
6 and oral exams on the use and instruction of the JPX. (Fleischhauer  
7 Aff. ¶ 37.) This certification confirmed that Bacolini could  
8 certify others on the use of JPX. (Id. ¶ 38.)

9 In April 2010, City agreed to purchase the JPX from IBS. (TPC  
10 ¶ 31.) On May 20, 2010, Bacolini, as an authorized agent of IBS,  
11 hand delivered ten JPX devices to City's Police Department. (TPC ¶  
12 32.) On that same day, Bacolini trained City's police officers,  
13 exclusively relying on, referring to, and incorporating written  
14 training and user materials that Piexon provided. (TPC ¶ 33; Decl.  
15 Gazzo ¶ 16; Decl. Thuilliez ¶ 3, Exh. A.) Bacolini held two  
16 training sessions: one session to certify officers on the use of  
17 JPX and another to certify some officers so that they, in turn,  
18 could train others. (TPC ¶ 34.) The City alleges nine causes of  
19 action in the TPC: (1) Negligence; (2) Misrepresentation; (3)  
20 Strict Liability; (4) Failure to Warn; (5) Breach of Warranties;  
21 (6) Indemnification; (7) Contribution; (8) Apportionment; and (9)  
22 Declaratory Relief. City alleges that this Court has personal  
23 jurisdiction over Piexon because Piexon solicited and transacted  
24 business for the sale of the JPX in California and put products,  
25 including the JPX, into the stream of commerce, specifically  
26 targeting consumers in California and directly selling products to  
27 California law enforcement agencies. (TPC ¶¶ 3-4.)

28

1 Piexon now moves to dismiss the TPC for lack of personal  
2 jurisdiction pursuant to Fed. R. Civ. 12(b)(2). (Docket No. 84.)

### 3 **II. Legal Standard**

4 Federal Rule of Civil Procedure 12(b)(2) provides that a court  
5 may dismiss a suit for lack of personal jurisdiction. The plaintiff  
6 has the burden of establishing that jurisdiction exists. See Sher  
7 v. Johnson, 911 F.2d 1357, 1361 (9th Cir. 1990). Where, as here,  
8 the motion is based on written materials rather than an evidentiary  
9 hearing, "the plaintiff need only make a prima facie showing of  
10 jurisdictional facts." Caruth v. International Psychoanalytical  
11 Ass'n, 59 F.3d 126, 128 (9th Cir. 1977); Pebble Beach Co. v. Caddy,  
12 453 F.3d 1151, 1154 (9th Cir. 2006). "Although the plaintiff cannot  
13 simply rest on the bare allegations of its complaint,  
14 uncontroverted allegations in the complaint must be taken as true."  
15 Schwarzenegger v. Fred Martin Motor Co., 374 D.3d 797, 797 (9th  
16 Cir. 2004) (internal quotations and citation omitted). Conflicts  
17 between parties over statements contained in affidavits must be  
18 resolved in the plaintiff's favor. Id.

19 District courts have the power to exercise personal  
20 jurisdiction to the extent authorized by the law of the state in  
21 which they sit. Fed. R. Civ. P. 4(k)(1)(A); Panavision Int'l, L.P.  
22 v. Toebben, 141 F.3d 1316, 1320 (9th Cir. 1998). Because  
23 California's long-arm statute authorizes personal jurisdiction  
24 coextensive with the Due Process Clause of the United States  
25 Constitution, see Cal. Civ. Code § 410.10, this Court may exercise  
26 personal jurisdiction over a nonresident defendant when that  
27 defendant has "at least 'minimum contacts' with the relevant forum  
28 such that the exercise of jurisdiction 'does not offend traditional

1 notions of fair play and substantial justice.'" Schwarzenegger, 374  
2 F.3d 797, 800-01 (citing Int'l Shoe Co. v. Washington, 326 U.S.  
3 310, 316 (1945)). The contacts must be of such a quality and nature  
4 that the defendants could reasonably expect "being haled into court  
5 there." World-Wide Volkswagen v. Woodson, 444 U.S. 286, 297 (1980).

6 There are two types of personal jurisdiction: general and  
7 specific. Reebok Int'l Ltd. v. McLaughlin, 49 F.3d 1387, 1391 (9th  
8 1995). A court may exercise general personal jurisdiction over a  
9 defendant when the defendant's contacts are "so continuous and  
10 systematic as to render them essentially at home in the forum  
11 state." Goodyear Dunlop Tires Operations, S.A. v. Brown, 131 S.Ct.  
12 2846, 2851 (2011).

13 Specific personal jurisdiction may be found when the cause of  
14 action arises out of the defendant's contact or activities in the  
15 forum state. See Roth v. Garcia Marquez, 942 F.2d 617, 620 (9th  
16 Cir. 1991). The Ninth Circuit has set forth the following three-  
17 pronged test to determine whether specific personal jurisdiction  
18 exists: "(1) The non-resident defendant must purposefully direct  
19 his activities or consummate some transaction with the forum or  
20 resident thereof; or perform some act by which he purposefully  
21 avails himself of the privilege of conducting activities in the  
22 forum, thereby invoking the benefits and protections of its laws;  
23 (2) the claim must be one which arises out of or relates to the  
24 defendant's forum-related activities; and (3) the exercise of  
25 jurisdiction must comport with fair play and substantial justice,  
26 i.e. it must be reasonable." Lake v. Lake, 817 F.2d 1416, 1421 (9th  
27 Cir. 1986). If the plaintiff succeeds in establishing the first two  
28 prongs, the burden then shifts to the defendant to "present a

1 compelling case" that the court's assertion of jurisdiction would  
2 be unreasonable. Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-  
3 78 (1985).

### 4 **III. Discussion**

5 Piexon moves to dismiss City's claims for lack of general and  
6 specific jurisdiction. City, in its opposition, does not argue that  
7 the Court has general personal jurisdiction over Piexon. Therefore,  
8 the only issue for the Court to resolve is whether the Court has  
9 specific personal jurisdiction over Piexon.

#### 10 A. Agency

11 Plaintiff first argues that the usual personal jurisdiction  
12 analysis should be bypassed here because Bacolini acted as Piexon's  
13 agent. For purposes of personal jurisdiction, the actions of an  
14 agent are attributable to the principal. Sher, 911 F.2d at 1362.  
15 However, the Supreme Court held that the Ninth Circuit's  
16 formulation of the "agency" test did not satisfy the requirements  
17 of due process, finding an inquiry into the "importance" of a  
18 subsidiary is not a valid test, as it "will always yield a  
19 pro-jurisdiction answer." Daimler AG v. Bauman, 134 S.Ct. 746, 759  
20 (2014). The City argues Bacolini should be considered "sufficiently  
21 important" to Piexon's activities to be an agent of Piexon. The  
22 City points to a letter written by Piexon's executives where they  
23 refer to Bacolini as "our training instructor" to prove that  
24 Bacolini is an agent of Piexon. (Thuilliez Decl., Exh. B1.)  
25 However, Bacolini is not an employee of Piexon; had no contractual  
26 relationship with Piexon; and Piexon did not, and could not, direct  
27 or require Bacolini to instruct others in the use of the JPX.  
28 (Fleischhauer Aff. ¶¶ 39-41.) Moreover, the City, in its Motion for

1 determinating settlement to be in good faith, recognized Bacolini  
2 as the West Coast Sales Manager for IBS, not for Piexon. (Docket  
3 No. 88-1, p.4.) Based on these facts, the Court finds that Bacolini  
4 is not an agent of Piexon.

5 B. Specific Jurisdiction

6 1. *Purposeful Availment*

7 The first prong is satisfied by either purposeful availment or  
8 purposeful direction.<sup>1</sup> These are two distinct concepts: "A  
9 purposeful availment analysis is most often used in suits sounding  
10 in contract. A purposeful direction analysis, on the other hand, is  
11 most often used in suits sounding in tort." Schwarzenegger, 374  
12 F.3d at 802 (internal citations omitted). City seeks to employ the  
13 Ninth Circuit's three-part "Calder-effects" test, which applies to  
14 a purposeful direction analysis. Calder v. Jones, 465 U.S. 783  
15 (1984). However, the purposeful direction analysis applies only to  
16 intentional torts. See Holland Am. Line Inc. v. Wartsila N. Am.,  
17 Inc., 485 F.3d 450, 460 ("[I]t is well established that the Calder  
18 test applies only to intentional torts, not to the breach of  
19 contract and negligence claims); see also Bancroft & Masters, Inc.  
20 v. Augusta Nat'l Inc., 223 F.3d 1082, 1088 (9th Cir. 2000)  
21 (emphasizing that the Calder test requires the defendant to  
22 individually and wrongfully target the plaintiff). Here, the City's  
23 claims are based on negligence and products liability, not  
24 intentional torts. Thus, the Court will apply the more general  
25 purposeful availment analysis.

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27 <sup>1</sup>The parties dispute which test should apply. Piexon argues  
28 the Court should use a purposeful availment analysis. The City, on  
the other hand, argues for a purposeful direction analysis.

1 A defendant purposefully avails itself to a forum state when  
2 that defendant "perform[s] some type of affirmative conduct which  
3 allows or promotes the transaction of business within the forum  
4 state." Sinatra v. National Enquirer, Inc., 854 F.2d 1191, 1195  
5 (9th Cir. 1988). City argues that Piexon is subject to personal  
6 jurisdiction because it placed products, including the JPX, into  
7 the stream of commerce, and specifically targeted consumers in  
8 California. A foreign corporation's "placing good[s] into the  
9 stream of commerce 'with the expectation that they will be  
10 purchased by consumers within the forum State" may justify that  
11 state's exercise of specific jurisdiction over the corporation. J.  
12 McIntyre Mach., Ltd. v. Nicastro, 131 S.Ct. 2780, 2783 (2011)  
13 (quoting World-Wide Volkswagen Corp., 444 U.S. at 298). This  
14 "transmission of goods permits the exercise of jurisdiction only  
15 where the defendant can be said to have targeted the forum; as a  
16 general rule, it is not enough that the defendant might have  
17 predicted that its goods will reach the forum State." Id.

18 Piexon argues that it has not availed itself of the benefits  
19 and privileges of the forum state to warrant being subject to  
20 personal jurisdiction because it has no office, factory, employees,  
21 or presence in California at all. (Fleischhauer Aff. ¶¶ 5-9.) It  
22 did not directly market or sell any products to the City (IBS, the  
23 distributor, did), nor did it train the City's police officers.  
24 (Id. ¶¶ 22, 24-25.) Basically, Piexon argues it has had no contact  
25 with the forum state that would satisfy the purposeful availment  
26 prong.

27 The Court agrees with Piexon that several of the contacts that  
28 the City contends establish personal jurisdiction over Piexon are



1 insufficient to satisfy the "purposeful availment" test. First, the  
2 City claims that Piexon directly advertised to City's Police  
3 Department Chief Coe. According to Coe, he received a packet  
4 addressed to him containing advertisement cards from manufacturers  
5 and vendors participating in a local exposition, of which one card  
6 advertised Piexon's JPX. While this may be true, it does not  
7 support City's contention that Piexon intentionally advertised to  
8 City's Police Department and thus does not support finding personal  
9 jurisdiction. See Holland Am. Line Inc., 485 F.3d at 460 ("Nor do  
10 any print advertisements that incidentally may have made their way  
11 to [the forum state] support a finding of jurisdiction without more  
12 substantial evidence of contacts with the state.").

13       The City also argues that Piexon has specifically targeted the  
14 United States by operating a website; obtaining a U.S. Patent and  
15 registering a trademark; participating in the 2014 International  
16 Association of Chiefs of Police Conference in Orlando, Florida; and  
17 possibly retaining a U.S. insurance policy that "presumably covers  
18 Piexon's operations in the United States." Again, while this may  
19 all be true, specific jurisdiction requires that the non-resident  
20 defendant target the forum state and not the United States as a  
21 whole. Secondly, with regards to the website that the City alleges  
22 is in English and has links to articles on the use of its products  
23 in Texas, Louisiana, and Florida, the Ninth Circuit has held "mere  
24 web presence is insufficient to establish personal jurisdiction."  
25 Holland Am. Line Inc., 485 F.3d at 460 (finding a foreign  
26 manufacturer's passive website that simply provides information on  
27 its various products and redirects potential customers to the  
28 appropriate subsidiary was not enough for purposeful availment).

1           However, there is one contact between Piexon and the state of  
2 California that is central to the City's complaint. The City argues  
3 that Piexon made sufficient contact with the forum state when its  
4 Vice-President of International Sales, Zac Almeis, trained Bacolini  
5 at the 2010 Trexpo West Police Expo in Long Beach, California.  
6 While the Court agrees with Piexon that an executive's mere  
7 presence at a tradeshow is insufficient to establish jurisdiction  
8 in California, the executive's mere presence is not what is at  
9 issue in the present case. The executive took the affirmative step  
10 in training Bacolini, a California resident, on the use of the JPX  
11 for the purpose of preparing Bacolini to train others on use of the  
12 device.<sup>2</sup> Following this training, Bacolini received certification  
13 from the Piexon Training Academy indicating that he had completed  
14 the required training and could train others on the use of JPX  
15 pursuant to Piexon's training guidelines. (Fleischhauer Aff. ¶ 37-  
16 38.) Almeis provided Bacolini with Piexon's training materials on a  
17 thumb drive containing electronic copies of Piexon's JPX training  
18 and user materials. (Decl. Gazzo ¶¶ 12-15; Fleischhauer Aff. ¶ 18.)  
19 Bacolini, in turn, trained the City's officers. (TPC ¶ 33; Decl.  
20 Gazzo ¶ 16; Decl. Thuilliez ¶ 3, Exh. A.) Where the City's alleged  
21 negligence claim is based, at least in part, on "inadequate  
22 training, instruction, and warning of the inherently dangerous  
23 propensities of the JPX" (TPC ¶ 53), the issue of whether Piexon,  
24 through Almeis, provided inadequate training to Bacolini is

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26           <sup>2</sup>At the hearing on the Motion, the parties represented that  
27 the training lasted a day to a day and a half. This suggests that  
28 the training was intended to be comprehensive and further supports  
the strength of the connection between Piexon's forum-related  
activity and the alleged injuries in this action.

1 directly related to Piexon's contact with Bacolini, which occurred  
2 in California. Further, presumably Almeis, and therefore Piexon,  
3 was aware of the likelihood that Bacolini would use his training to  
4 train law enforcement officers on the proper use of the JPX;  
5 indeed, this was the entire purpose of Almeis training Bacolini.  
6 Where Piexon knew that officers in California would be trained on  
7 the use of a potentially dangerous pepper spray weapon, and that  
8 such training would be based on training and information provided  
9 by Piexon, Piexon should expect that any deficiencies in its  
10 training would subject it to suit in the very forum where that  
11 training took place.<sup>3</sup> Therefore, the Court finds that the sole  
12 contact of Piexon training Bacolini in California is sufficient to  
13 satisfy the purposeful availment requirement.

14           2. "But For" Causation

15           The second prong of the test requires that the asserted claim  
16 arises out of the defendant's contacts with the forum state.  
17 Panavision, 141 F.3d at 1322. This requirement is measured in terms

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19           <sup>3</sup>The conclusion is supported by Supreme Court dicta. In  
20 Helicopteros, the Supreme Court did not find a Colombian  
21 corporation's contacts with the state of Texas to be sufficient to  
22 satisfy purposeful availment in a wrongful death action arising  
23 from a helicopter crash. The court stated that the brief presence  
24 of the defendant's employees in Texas for the purpose of attending  
25 pilot training sessions did not enhance the nature of the  
26 defendant's contacts with Texas because the training was a part of  
27 the package of goods and services and since these purchases were  
28 not related to the cause of action, the court could not exercise  
general jurisdiction. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 418 (1984). "If, however, the applicable substantive law required that negligent training of the pilot was a necessary element of a cause of action for pilot error, or if the respondents had simply added an allegation of negligence in the training provided for the [ ] pilot, then presumably the Court would concede that the specific jurisdiction of the [forum state] was applicable." Id. at 427 (Brennan, J., dissenting). Here, the City has specifically alleged negligent training. This is precisely the situation Brennan discussed in his dissenting opinion.

1 of "but for" causation. Bancroft & Masters, 233 F.3d at 1088. A  
2 plaintiff must demonstrate that it would have no need for a  
3 judicial intervention but for the defendant's forum-related  
4 activities. See Yahoo! Inc. v. La Ligue Contre Le Racisme Et  
5 L'Antisemitisme, 145 F.Supp.2d 1168, 1176 (N.D. Cal. 2001).

6 Here, the City's negligence claims are partially based on  
7 Piexon's breach of duty to train, instruct, and warn Bacolini (and,  
8 by extension, the City) of the inherently dangerous propensities,  
9 including the specific risk of eye penetration injury from short  
10 range JPX deployment. (TPC ¶ 51.) Piexon argues that it did not  
11 sell the JPX directly to the City, nor did it specifically train  
12 Officers Clark or any other City officer on the use of the JPX.  
13 (Fleischhauer Aff. ¶¶ 22, 24-25.) However, Piexon's Vice President  
14 of International Sales, Zac Almeis, attended the 2010 Trexpo West  
15 Police Expo in Long Beach, California where he trained Bacolini and  
16 provided him with training materials. (Decl. Gazzo ¶¶ 12-14;  
17 Fleischhauer Aff. ¶ 18.) Bacolini, in turn, provided two live  
18 training sessions at the City's Police Department, exclusively  
19 relying on, referring to, and incorporating written training and  
20 user materials that Piexon provided. There is no indication that  
21 City officers were otherwise trained on the use of the JPX. Thus,  
22 the Court finds sufficient "but for" causation, as both the  
23 officers' training and the materials they received ultimately came  
24 from Piexon's contact with the forum state in training Bacolini.

### 25 3. Reasonableness

26 Because City has satisfied the first two prongs, the burden  
27 shifts to Piexon to rebut the presumption that jurisdiction is  
28 reasonable by presenting a compelling case that specific personal

1 jurisdiction would be unreasonable. Burger King, 471 U.S. at 477.  
2 To determine reasonableness, the Court considers: (1) the extent of  
3 purposeful interjection into the forum state; (2) the burden on the  
4 defendant; (3) the conflict with the sovereignty of the defendant's  
5 state; (4) the forum state's interest in the suit; (5) the most  
6 efficient judicial resolution of the dispute; (6) the convenience  
7 and effectiveness of relief for the plaintiff; and (7) the  
8 existence of an alternative forum. Id. at 475. All seven factors  
9 must be weighed and no single factor is dispositive. Ziegler v.  
10 Indian River Cnty., 64 F.3d 470, 475 (9th Cir. 1995).

11 The first factor is the extent of purposeful interjection into  
12 the forum state. "Even if there is sufficient 'interjection' into  
13 the state to satisfy the [purposeful availment prong], the degree  
14 of interjection is a factor to be weighed in assessing the overall  
15 reasonableness of jurisdiction under the [reasonableness prong]."  
16 Core-Vent Corp. v. Nobel Indus. AB, 11 F.3d 1482, 1488 (9th Cir.  
17 1993) (holding modified by Yahoo!, 433 F.3d 1199 (9th Cir. 2006))  
18 (brackets in original) (quoting Ins. Co. of N. Am. v. Marina Salina  
19 Cruz, 649 F.2d 1266, 1271 (9th Cir. 1981)). But see Roth, 942 F.2d  
20 at 623 (degree of interjection analysis and purposeful availment  
21 inquiry redundant). Here, again, Piexon's Vice President of  
22 International Sales's contacts are imputed to Piexon for purposes  
23 of determining jurisdiction. Sher, 911 F.2d 1357, 1362 (9th Cir.  
24 1990) ("For purposes of personal jurisdiction, the actions of an  
25 agent are attributable to the principal."). The extent of Piexon's  
26 interjection into California has not been great, however. This  
27 factor does not weigh strongly in either direction.

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1           The second factor is the burden on the defendant in defending  
2 in the forum state. Where "a defendant 'has done little to reach  
3 out to the forum state,' the burden of defending itself in a  
4 foreign forum militates against exercising jurisdiction." Fed.  
5 Deposit Ins. Corp. v. British-American Ins. Co., Ltd., 828 F.2d  
6 1439, 1444 (9th Cir. 1987) (quoting Ins. Co. of N. Am., 649 F.2d at  
7 1272.). The burden of a defendant is increased when it is ordered  
8 to defend itself in the foreign legal system of another country.  
9 Asahi Metal Indus. Co., Ltd. v. Superior Ct. of Cal. Solano Cnty.,  
10 480 U.S. 102, 114 (1987). The City argues that the burden on Piexon  
11 to litigate the suit in California is not heavy because "[i]n this  
12 era of fax machines and discount travel, requiring a [foreign]  
13 partnership to defend itself in California . . . would not be so  
14 unreasonable as to violate due process." Sher, 911 F.2d at 1365.  
15 The City contends that if an executive can fly to California to  
16 sell weapons and train individuals on their use, then it can  
17 require the same executive to fly to California for trial. Piexon  
18 counters that it is a resident and corporate citizen of Switzerland  
19 with few contacts in California and the fact that international  
20 flights exist should not be a consideration in weighing this  
21 defendant's burden. While the Court recognizes the burden of a  
22 Swiss company defending itself in the foreign courts of California,  
23 Piexon has not presented to the Court unique circumstances that  
24 would tip the scales more than any other foreign defendant.  
25 Nonetheless, the Court finds there is a burden on Piexon; thus,  
26 this factor weighs slightly against jurisdiction.

27           The third factor is the extent of conflict with the  
28 sovereignty of the defendant's state. As a principle matter, "a

1 foreign state presents a higher sovereignty barrier than another  
2 state within the United States." Fed. Deposit Uns. Corp., 828 F.2d  
3 at 1444. Thus, "great care and reserve should be exercised when  
4 extending our notions of personal jurisdiction into the  
5 international field." Asahi Metal Indus., 480 U.S. at 115. The City  
6 argues that Piexon should not be permitted to "hide behind Swiss  
7 borders" while deriving commercial benefits from having a  
8 registered patent and trademark. The Court cannot find support and  
9 the City has not provided case law to support the connection  
10 between having a registered patent or trademark and a potential  
11 conflict with the sovereignty of the defendant's state. Therefore,  
12 this factor weighs against jurisdiction.

13       The fourth factor is the forum state's interest in  
14 adjudicating the dispute. "California maintains a strong interest  
15 in providing an effective means of redress for its residents who  
16 are tortiously injured." Core-Vent, 11 F.3d at 1489 (internal  
17 quotation omitted). The City argues that California has a strong  
18 interest in ensuring the safety of its citizens, especially since  
19 Piexon's products, including the JPX, are ultimately sold to  
20 California law enforcement agencies. Further, the JPX is a  
21 potentially dangerous weapon; Piexon could reasonably have foreseen  
22 that its alleged failure to provide adequate training to Bacolini  
23 on proper use of the device might result in serious injury to  
24 California residents where an inadequately trained law enforcement  
25 officer deployed the weapon in a way that caused harm. This favor  
26 weighs in favor of jurisdiction.

27       The fifth consideration is the efficiency of the forum. "In  
28 evaluating this factor, we have looked primarily at where the

1 witnesses and the evidence are likely to be located." Core-Vent, 11  
2 F.3d at 1489. Piexon argues that efficient resolution of the  
3 product defect claim is not dependent on the adjudication of the  
4 underlying civil rights action. However, the alleged failure to  
5 warn of the dangerous propensities of the JPX claim will rely  
6 heavily on witnesses and evidence located in California,  
7 specifically forum-resident Bacolini and documents pertaining to  
8 the training received. Further, evidence as to the extent of damage  
9 caused by any product defect or inadequate training is located in  
10 California, where the underlying injury giving rise to this action  
11 occurred. Thus, this factor weighs in favor of jurisdiction.

12       The sixth factor is the plaintiff's interest in convenient and  
13 effective relief. Sinatra, 854 F.2d at 1200. "Neither the Supreme  
14 Court nor our court has given much weight to inconvenience to the  
15 plaintiff." Core-Vent, 11 F.3d at 1490. It will clearly be more  
16 convenient for the City to try the case here, but City has not  
17 demonstrated that effective relief would not be available  
18 elsewhere. The final factor is the availability of an alternate  
19 forum. The City effectively argues it is Piexon's burden to prove  
20 the unavailability of a viable alternative forum. The City is  
21 mistaken, as plaintiff bears the burden of proving the  
22 unavailability of an alternate forum. Fed. Deposit Ins. Corp., 828  
23 F.2d at 1445. Again, there is no proof of foreign law on whether a  
24 Switzerland forum is available. These last two factors, therefore,  
25 weight slightly against jurisdiction.

26       On balance, the Court finds that Piexon has not met its burden  
27 to show that it is unreasonable to require it to litigate this  
28 action in the forum state of California. Piexon purposefully



1 interjected itself into California by training a California  
2 resident on the use of the JPX, and the burden on Piexon in  
3 defending the case in California has not been shown to be unusually  
4 high as compared with other foreign defendants. Further,  
5 considerations of judicial efficiency, the interests of the forum  
6 state, and the City's interests weigh strongly in favor of having  
7 the case tried in a California court.

8 **IV. Conclusion**

9 For the foregoing reasons, the Motion is DENIED.

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IT IS SO ORDERED.

Dated: December 8, 2014

  
DEAN D. PREGERSON  
United States District Judge