

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JHSHYR YIH,  
Plaintiff,  
  
v.  
  
TAIWAN SEMICONDUCTOR  
MANUFACTURING COMPANY, LTD,  
Defendant.

Case No. 5:20-cv-04184-EJD

**ORDER GRANTING MOTION TO  
DISMISS FOR LACK OF PERSONAL  
JURISDICTION**

Re: Dkt. No. 16

Presently before the Court is Defendant Taiwan Semiconductor Manufacturing Company, Ltd.’s (“TSMC”) motion to dismiss pro se Plaintiff JihShyr Yih’s complaint pursuant to Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction and 12(b)(6) for failure to state a claim. Dkt. No. 16. The Court took this motion under submission without oral argument pursuant to Civil Local Rule 7-1(b). For the reasons stated below, the Court **GRANTS** TSMC’s motion to dismiss for lack of personal jurisdiction.

**I. BACKGROUND**

**A. Factual History**

This action involves allegations of hiring discrimination committed by TSMC against Plaintiff. Plaintiff is a United States citizen who has lived in the United States for the past thirty-seven years, and currently resides in New York with his family. Complaint (Compl.), Dkt. No. 1 ¶¶ 1, 59. Plaintiff is an engineer, who holds a PhD from the University of Michigan – Ann Arbor in Computer Science and Engineering, and who previously worked for International Business Machines (“IBM”) for over twenty years where he earned many outstanding accomplishment awards. Id. ¶¶ 53-54. TSMC is a Taiwanese corporation whose sole business is manufacturing

1 semi-conductor devices for use in various electronic products, such as phones and computers. See  
2 Declaration of Hen-Yih (“Terrance”) Chao (“Chao Decl.”), Dkt. No. 16-1 ¶ 4. TSMC is  
3 headquartered and has its principal place of business in Hsinchu, Taiwan. Id. The company  
4 employs approximately 43,000 individuals mainly at its offices and factories in Taiwan, but the  
5 company has approximately 15 employees working in the United States on limited-term overseas  
6 assignments. Id. ¶ 7. None of these 15 employees work in California, nor does TSMC have an  
7 office or designated agent for service of process in the state. Id. 6-7.<sup>1</sup> However, TSMC does have  
8 a subsidiary, TSMC North America (“TSMC NA”), which is incorporated in California and has its  
9 principal place of business in San Jose, California. Id. ¶ 9.

10 In April 2017, TSMC tasked Lighthouse Global Resources (“LGR”), a Singapore-based  
11 recruiting firm, to fill a “Senior Business Intelligence Analyst” position in the “Business  
12 Operations Division under TSMC’s Corporate Planning Organization.” See Declaration of  
13 Wenwei Chang (“Chang Decl.”), Dkt. No. 16-2 ¶ 3, Exh. A. The position description in TSMC’s  
14 request to LGR specified that the job was located in Hsinchu, Taiwan. Id.; Exh. A at 2. After  
15 contacting Plaintiff by e-mail about the job opportunity with TSMC, LGR recommended Plaintiff  
16 to TSMC as a potential candidate for the Senior Business Intelligence Analyst position. Id. 5,  
17 Exh. B at 1. Thereafter, on August 3, 2017, Plaintiff participated in a preliminary screening  
18 interview from his home in New York via skype with Wenwei Chang and Claire Yin, two  
19 recruiting managers from TSMC’s recruiting department who reside in Taiwan. Id. ¶ 6. During  
20 the interview, Mr. Chang asked Plaintiff questions about his family including: “‘How many  
21 children do you have’ and ‘Does your wife work?’” Compl. ¶ 18.

22 Following the preliminary screening interview, the recruiting department forwarded  
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24 <sup>1</sup> As part of Plaintiff’s declaration in support of his opposition to the motion to dismiss, Plaintiff  
25 includes an exhibit which lists fourteen individuals purportedly employed by TSMC who self-  
26 identified their locations in California on their LinkedIn social media profile as evidence that  
27 TSMC has employees working in California. See Declaration of JihShyr Yih in support of  
28 Opposition to Defendant’s Motion to Dismiss the Complaint (“Yih Decl.”), Dkt. No. 19-1 ¶ 7,  
Exh. D. Plaintiff has submitted no evidence to authenticate this exhibit, and it is therefore  
inadmissible under Federal Rule of Evidence 901 for lack of authentication.

1 Plaintiff's profile to the hiring manager. Chang Decl. ¶ 8. TSMC determined that Plaintiff did not  
2 have the appropriate background or qualifications for the position, but decided to consider him for  
3 a role in the company's Information Technology ("IT") function. Id. ¶¶ 8-9. Plaintiff claims that  
4 on September 25, 2017, he participated in another skype interview, this time with TSMC IT  
5 managers. Compl. ¶ 26. During this interview, he was again asked questions about his family  
6 including: "How many children do you have?"; "How old are your children?"; "What are your  
7 children doing now?"; "What future schools are your children going to attend?"; "Are you  
8 married?"; and "Does your wife work?" Id. ¶¶ 26, 31.

9 After the interview, LGR informed Plaintiff that TSMC had declined to offer him a job.  
10 Id. ¶ 39. Plaintiff alleges he was told that "he was too senior to fit in" at TSMC. Id. Then, on or  
11 about October 5, 2017, Plaintiff spoke on the phone with Hen-Yih Chao, TSMC's HR Director.  
12 Plaintiff expressed to Mr. Chao the concerns he had about the family related questions asked  
13 during the interviews and that he felt he was discriminated against by TSMC. Id. ¶ 40. On  
14 October 13, 2017, Plaintiff received an email from TSMC's attorney, explaining that the "reason  
15 [TSMC] asked questions regarding [Plaintiff] and [Plaintiff's] family members [was] to learn  
16 about that, should [Plaintiff] determine to work in Taiwan" so that TSMC "could assist [Plaintiff]  
17 and [his] family on possible issues that might arise from [their] relocation to Taiwan . . .  
18 considering [Plaintiff] and [his] famil[y] have stayed in the U.S. for many years." Chang Decl.  
19 Exh. C at 2-3. The email also stated that Plaintiff was not chosen for the position because of his  
20 vague, unspecific answers to questions about his experience and his failure to provide references,  
21 id. at 2, even though Plaintiff alleges he emailed TSMC officials a list of references three days  
22 after the interview. Compl. ¶¶ 38. According to Plaintiff, TSMC's counsel also warned him that  
23 TSMC would sue "should [Plaintiff] disclose to the media, the public and any other third parties  
24 [anything] related to the interview without TSMC's prior approval." Compl. ¶ 45.

25 Plaintiff filed a charge of discrimination against TSMC with the Equal Employment  
26 Opportunity Commission ("EEOC") on October 30, 2017. See Compl. ¶ 8. He received a Notice  
27 of Right to Sue from the EEOC on February 5, 2018. Id.

**B. Procedural History**

1 Plaintiff first filed a pro se complaint against TSMC in the Southern District of New York.  
2 See *JihShyr Yih v. Taiwan Semiconductor Manufacturing Company*, No. 18-CV-3844 (CS) 2019  
3 WL 2578306 (S.D.N.Y. June 24, 2019). The Southern District of New York granted TSMC’s  
4 motion to dismiss for lack of personal jurisdiction. The district court’s judgment was affirmed by  
5 the Second Circuit Court of Appeals following an appeal by Plaintiff. See *Yih v. Taiwan*  
6 *Semiconductor Manufacturing Company*, 815 Fed. App’x. 571 (2d Cir. 2020).

7 Then, on June 25, 2020, Plaintiff filed a pro se complaint in this Court. See Dkt. No. 1.  
8 TSMC moved to dismiss the complaint thereafter on August 11, 2020. See Defendant’s Notice of  
9 Motion and Motion to Dismiss the Complaint (“Mot.”), Dkt. No. 16. Plaintiff has filed an  
10 opposition (“Opp.”), Dkt. No. 19, to which TSMC has replied (“Reply”), Dkt. No. 20.

**II. LEGAL STANDARD**

11  
12 Federal Rule of Civil Procedure 12(b)(2) allows a party to file a motion to dismiss when  
13 there is a lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). While the plaintiff bears the  
14 burden of showing that the Court has personal jurisdiction over the defendant, the court “resolves  
15 all disputed facts in favor of the plaintiff.” See *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154  
16 (9th Cir. 2006) (quotation marks and citation omitted). The Court may consider evidence  
17 presented in affidavits and declarations in determining personal jurisdiction. *Data Disc, Inc. v.*  
18 *Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977); but see *Ballard v. Savage*, 65 F.3d  
19 1495, 1498 (9th Cir. 1995) (“When a district court acts on a defendant’s motion to dismiss under  
20 Rule 12(b)(2) without holding an evidentiary hearing, the plaintiff need make only a prima facie  
21 showing of jurisdictional facts to withstand the motion to dismiss. That is, the plaintiff need only  
22 demonstrate facts that if true would support jurisdiction over the defendant.” (citations omitted)).  
23 “The plaintiff cannot simply rest on the bare allegations of its complaint, but uncontroverted  
24 allegations in the complaint must be taken as true.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647  
25 F.3d 1218, 1223 (9th Cir. 2011) (quotation marks and citation omitted). “The Court may not  
26 assume the truth of allegations that are contradicted by affidavit.” *In re Cathode Ray Tube (CRT)*  
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1 Antitrust Litig., 27 F. Supp. 3d 1002, 1008 (N.D. Cal. 2014) (citing Data Disc, Inc., 557 F.2d at  
2 1284).

3 There are two limitations that restrict a court’s power to exercise personal jurisdiction over  
4 a nonresident defendant: the constitutional principles of due process and the applicable state  
5 personal jurisdiction rule. *Sher v. Johnson*, 911 F.2d 1357, 1360 (9th Cir. 1990). The Ninth  
6 Circuit has held that because California’s personal jurisdictional rule is “coextensive with the  
7 outer limits of due process,” personal jurisdictional inquiries under California law are constrained  
8 solely by constitutional principles. *Id.* at 1361; Cal. Civ. Proc. Code § 410.10.

9 The Supreme Court has held that constitutional due process requires that a nonresident  
10 defendant have sufficient “minimum contacts” with the forum state “such that maintenance of the  
11 suit does not offend ‘traditional notions of fair play and substantial justice.’” *Int’l Shoe Co. v.*  
12 *Washington*, 326 U.S. 310, 316 (1945). In applying the minimum contacts analysis, a court may  
13 exercise either general or specific jurisdiction over a nonresident defendant. *Doe v. Unocal Corp.*,  
14 248 F.3d 915, 923 (9th Cir. 2001) (per curiam), abrogated on other grounds by *Daimler AG v.*  
15 *Bauman*, 571 U.S. 117 (2014). When the defendant’s activities in the forum state are substantial,  
16 continuous and systematic, a court may exercise general jurisdiction over the defendant, even if  
17 the cause of action is unrelated to defendant’s contacts with the forum. *Id.* at 923. A defendant  
18 may also be subject to specific jurisdiction if the defendant “has sufficient contacts with the forum  
19 state in relation to the cause of action.” *Sher*, 911 F.2d at 1361 (citations omitted).

20 **III. JUDICIAL NOTICE**

21 TSMC requests for the Court to take judicial notice of exhibits. See Request for Judicial  
22 Notice in Support of Defendant’s Motion to Dismiss (“RJN”), Dkt. No. 17. Federal Rule of  
23 Evidence 201(b) permits a court to take judicial notice of an adjudicative fact “not subject to  
24 reasonable dispute,” that is “generally known” or “can be accurately and readily determined from  
25 sources whose accuracy cannot reasonably be questioned.” Specifically, a court may take judicial  
26 notice of matters of public record. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th  
27 Cir. 2018).

1 TSMC requests for the Court to take judicial notice of Exhibits A-D. See RJN at 2-3.  
2 Exhibit A is Plaintiff's EEOC Charge No. 520-2018-00491, JihShyr Yih v. Taiwan Semiconductor  
3 Manufacturing Company. A court may take judicial notice of charges filed with administrative  
4 bodies, including the EEOC. See *Interstate Nat. Gas Co. v. S. California Gas Co.*, 209 F.2d 380,  
5 385 (9th Cir. 1953) ("We may take judicial notice of records and reports of administrative  
6 bodies."); *Ferguson v. Walmart*, No. CV 12-04434 RSWL EX, 2014 WL 24139, at \*4 (C.D. Cal.  
7 Jan. 2, 2014) (taking judicial notice of EEOC complaints and right-to-sue letters). However, a  
8 court "cannot take judicial notice of disputed facts contained in such public records." *Baird v.*  
9 *BlackRock Institutional Tr. Co., N.A.*, 403 F. Supp. 3d 765, 774 (N.D. Cal. 2019) (quoting *Khoja*,  
10 899 F.3d at 999). As such, the Court takes notice of Exhibit A but does not take judicial notice of  
11 any disputed facts therein.

12 Next, TSMC requests for the Court to take judicial notice of Exhibits B-D, which are  
13 documents that were filed in Plaintiff's Southern District of New York case. See *JihShyr Yih v.*  
14 *Taiwan Semiconductor Manufacturing Company, Ltd.*, No. 18-CV-3844 (CS) 2019 WL 2578306  
15 (S.D.N.Y. June 24, 2019). These documents include: Plaintiff's First Amended Complaint filed on  
16 August 1, 2018; the Memorandum of Law in Opposition to Defendant's Motion to Dismiss the  
17 Amended Complaint filed on October 10, 2018; and the Declaration of JihShyr Yih in Opposition  
18 to Defendant's Motion to Dismiss the Amended Complaint filed on October 10, 2018. Under  
19 Ninth Circuit law, courts may properly take notice of court orders and other matters of public  
20 record. See *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (noting that a court "may  
21 take notice of proceedings in other courts, both within and without the federal judicial system, if  
22 those proceedings have a direct relation to matters at issue") (internal quotation marks and  
23 citations omitted). Accordingly, the Court takes notice of Exhibits B-D but does not take notice of  
24 any disputed facts. See *Baird*, 403 F. Supp. 3d at 774.

25 **IV. DISCUSSION**

26 TSMC moves for dismissal on the basis that personal jurisdiction is improper in California  
27 because Plaintiff cannot establish either general or specific jurisdiction over TSMC. Mot. 14-20.

1 In response, Plaintiff puts forth three arguments in his opposition, including that (1) TSMC’s  
2 revenue from the company’s sales demonstrates its continuous and systematic contacts so as to  
3 render TSMC “at home” in California, which would justify an assertion of general jurisdiction;  
4 alternatively, (2) that TSMC and its California subsidiary TSMC NA are alter egos, thereby  
5 permitting the Court to impute TSMC NA’s contacts to TSMC and confer general jurisdiction  
6 over TSMC; and (3) that TSMC has purposefully availed itself of the privilege of conducting  
7 activities in California, and thus the Court has specific jurisdiction over TSMC. See Opp. 3-8.  
8 The Court addresses each argument in turn.

9 **A. Whether TSMC is “At Home” in California**

10 Plaintiff first asserts that “TSMC has **substantial, continuous, and systematic** contacts  
11 with California because about 67% of its annual revenue [in 2017] is attributed to its general  
12 manager TSMC NA within California.” Opp. at 4; Compl. ¶10 (emphasis in original). In turn,  
13 TSMC argues that this Court lacks general personal jurisdiction over it because its limited contacts  
14 with the state, through its subsidiary TSMC NA, hardly render it at home in California. Mot. at  
15 16.

16 “A court may assert general jurisdiction over foreign (sister-state or foreign-country)  
17 corporations to hear any and all claims against them when their affiliations with the State are so  
18 ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear*  
19 *Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing *Int’l Shoe Co.*, 326  
20 U.S. at 317). As to corporations, “the place of incorporation and principal place of business are  
21 ‘paradig[m]’ . . . bases for general jurisdiction.” *Daimler AG*, 571 U.S. at 137. “A corporation  
22 that operates in many places can scarcely be deemed at home in all of them, [o]therwise, ‘at home’  
23 would be synonymous with ‘doing business.’” *Id.* at 139 n.20. Outside of these paradigm bases,  
24 only “in an exceptional case” should a court find a corporation’s operations in the forum to be “so  
25 substantial and of such a nature as to render the corporation at home in that State.” *Id.* at 139 n.19.  
26 Exceptional circumstances, as noted in *Daimler*, do not exist merely whenever “a foreign  
27 corporation’s in-forum contacts can be said to be in some sense ‘continuous and systematic,’ it is

1 only whether that corporation’s ‘affiliations with the State are so ‘continuous and systematic’ as to  
2 render [it] essentially at home in the forum State.’” Id. (quoting *Goodyear*, 564 U.S. at 919). The  
3 Supreme Court in *Daimler AG* cited to its decision in *Perkins v. Benguet Consol. Min. Co.*, 342  
4 U.S. 437 (1952) to exemplify what constitutes “exceptional circumstances.” Id. at 129-30. There,  
5 the Court held that an Ohio court could exert general jurisdiction over an out-of-state corporation  
6 located in the Philippines, because Ohio was the corporation’s principal, albeit temporary, place of  
7 business during the war when the Japanese occupied the Philippines. *Perkins*, 342 U.S. at 447-48.

8 Here, TSMC is a Taiwanese corporation with its primary place of business in Hsinchu,  
9 Taiwan. Chao ¶ 4. TSMC does not maintain an office in California and does not conduct any  
10 business in the state. Id. ¶¶ 5-6. Furthermore, the revenue of its subsidiary, TSMC NA, is derived  
11 from shipments overseas. Id. ¶ 10. Indeed, only 2.4% of TSMC NA’s revenue from 2015-2019  
12 was derived from sales within the state of California. Id.

13 Plaintiff argues, however, that neither TSMC NA’s revenue nor sales performance can be  
14 discounted when analyzing TSMC’s affiliations with California because TSMC still includes  
15 TSMC NA’s sales performance in its yearly financial reports. Opp. 4. Nonetheless, the fact that a  
16 portion of TSMC’s revenue is derived from its subsidiary is not an exceptional circumstance.  
17 “[I]n any parent-subsidiary relationship, at least some revenues will presumably make their way  
18 back to the parent. Allowing attribution on this circumstance alone would run counter to the  
19 baseline principle that a parent-subsidiary relationship in itself is not enough to hold a parent  
20 responsible for its subsidiary’s contacts with the distant forum.” *Focht v. Sol Melia S.A.*, No. C-  
21 10-1096 EMC, 2012 WL 162564, at \*7 (N.D. Cal. Jan 19, 2012).

22 Plaintiff’s focus on TSMC NA’s revenue is also unavailing because of the paltry total  
23 revenue that was actually generated from intrastate California sales. In *Daimler*, the U.S. Supreme  
24 Court held that *Daimler AG*, the German manufacturer of Mercedes–Benz automobiles, was not  
25 subject to general jurisdiction in California even if its California subsidiary’s contacts were  
26 attributed to it. *Daimler AG*, 571 U.S. at 136. The *Daimler* subsidiary’s California sales, which  
27 accounted for 10% of *Daimler*’s revenue and 2.4% of its worldwide sales, constituted “slim



1 contacts with the state” and “hardly render[ed] it at home.” *Id.* It would follow then that  
2 California certainly lacks general jurisdiction over TSMC, which has far more modest ties to  
3 California than one of the largest importers of luxury vehicles to this state. Thus, the Court  
4 determines that this is not an “exceptional case” in which TSMC’s business contacts with  
5 California are “so substantial” as to “essentially render it at home” in California. *Id.* at 139 n.19.

6 **B. Alter Ego**

7 Next, Plaintiff alleges that TSMC cannot escape personal jurisdiction because it is the alter  
8 ego of TSMC NA. *Opp.* at 3-4; *Compl.* ¶ 3. However, a parent-subsidary relationship does not  
9 on its own establish two entities as alter egos — “general jurisdiction over one does not give rise  
10 to general jurisdiction over the other.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021 (9th  
11 Cir. 2017) (internal quotations and citations omitted). To survive a motion to dismiss, a plaintiff  
12 asserting application of the alter ego doctrine to extend personal jurisdiction to a foreign parent or  
13 subsidiary must “allege specifically both the elements of alter ego liability, as well as facts  
14 supporting each.” *MH Pillars Ltd. v. Realini*, No. 15-CV-1383-PJH, 2017 WL 916414, at \*12  
15 (N.D. Cal. Mar. 8, 2017) (citation omitted). The plaintiff must show that “(1) there is such unity  
16 of interest and ownership that the separate personalities of the two entities no longer exists, and  
17 [that] (2) failure to disregard their separate identities would result in fraud or injustice.” *Williams*,  
18 851 F.3d at 1021 (citing *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1073 (9th Cir. 2015)). Here, Plaintiff  
19 fails to plausibly allege both elements of alter ego liability.

20 **i. Unity of Interest**

21 The “unity of interest” prong requires “a showing that the parent controls the subsidiary to  
22 such a degree as to render the latter the mere instrumentality of the former.” *Ranza*, 793 F.3d at  
23 1073. (internal quotation marks and citations omitted). Courts generally consider nine factors in  
24 assessing whether the unity of interest prong of an alter ego relationship is satisfied:

- 25 (1) the commingling of funds and other assets of the entities, (2) the  
26 holding out by one entity that it is liable for the debts of the other, (3)  
27 identical equitable ownership of the entities, (4) use of the same  
28 offices and employees, (5) use of one as a mere shell or conduit for  
the affairs of the other, (6) inadequate capitalization, (7) disregard of

1 corporate formalities, (8) lack of segregation of corporate records, and  
2 (9) identical directors and officers.

3 Sandoval v. Ali, 34 F. Supp. 3d 1031, 1040 (N.D. Cal. 2014) (citation omitted).

4 While a court need not find that every factor is present, *Updateme Inc. v. Axel Springer SE*,  
5 No. 17-CV-05054-SI, 2018 WL 1184797, at \*10 (N.D. Cal. Mar. 7, 2018), the Ninth Circuit has  
6 specifically found that “[t]otal ownership and shared management personnel are alone insufficient  
7 to establish the requisite level of control.” *Ranza*, 793 F.3d at 1073. A parent’s involvement in  
8 “macro-management issues” do not satisfy this element, such as reviewing and approving major  
9 decisions, placing several of its directors on the subsidiary’s board, and involving itself in the  
10 subsidiary’s pricing decisions. *Id.* at 1074–75. Instead, the plaintiff must show that the parent  
11 directs the subsidiary’s “day-to-day operations” and that the “entities failed to observe their  
12 separate corporate formalities.” *Id.* at 1075.

13 Plaintiff claims that this Court’s previous holding in *Ziptronix, Inc. v. Omnivision Techs,*  
14 *Inc.*, 71 F. Supp. 3d 1090 (N.D. Cal. 2014), combined with new evidence presented in his  
15 opposition establishes a unity of interest between TSMC and TSMC NA. *Opp.* at 3. Specifically,  
16 Plaintiff alleges that TSMC may be found to be an alter ego of TSMC NA because: “TSMC NA  
17 facilitates sales of [TSMC]’s wafers between [TSMC] and its customers in the United States”;  
18 “TSMC NA is only allowed to issue price quotations that comply with [TSMC]’s pricing  
19 guidelines”; “[TSMC] must approve any deviations from its pricing guidelines”; and “[TSMC]  
20 supplies TSMC NA with price quotations that are forwarded by TSMC NA to [TSMC]’s  
21 customers.” *Opp.* at 3-4 (citing *Ziptronix*, 71 F. Supp. 3d at 1095).

22 While these allegations establish TSMC’s involvement in TSMC NA’s operations, they are  
23 insufficient to establish alter ego liability.<sup>2</sup> A “plaintiff does not meet the unity of interest and  
24 ownership prong when the evidence shows only an active parent corporation involved directly in

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25 <sup>2</sup> Contrary to Plaintiff’s assertion, the court in *Ziptronix* did not hold that TSMC NA is a general  
26 manager of TSMC. The court instead noted in *Ziptronix* that “*Ziptronix* does not treat TSMC Ltd.  
27 and TSMC NA as separate legal entities. *Ziptronix* presents no authority or legal analysis  
28 establishing a basis for ignoring the corporate form. *Ziptronix* has not shown that it is appropriate  
to pierce the corporate veil or to treat the TSMC entities as alter egos.” *Ziptronix*, 71 F. Supp. 3d  
at 1096.

1 decision-making about its subsidiaries’ holdings, but each entity observes all of the corporate  
2 formalities necessary to maintain corporate separateness.” Ranza, 793 F.3d at 1073. Here,  
3 Plaintiff does not address whether the entities commingled funds, whether there was inadequate  
4 capitalization, or whether the entities disregarded corporate formalities. TSMC in contrast, asserts  
5 that TSMC and TSMC NA maintain separate accounting records and books, maintain separate  
6 bank accounts having never commingled assets or funds, and have always operated in separate  
7 corporate facilities in different countries. See Chao Decl. ¶¶ 11-15. These statements serve as  
8 further evidence that TSMC and TSMC NA are not alter egos, and foundationally, that Plaintiff  
9 has not met his burden in showing that TSMC and TSMC NA hold a unity of interest. See Apple  
10 Inc. v. Allan & Assocs. Ltd., 445 F. Supp. 3d 42, 53 (N.D. Cal. 2020).

11 Plaintiff instead relies on allegations that an alter ego relationship is further evidenced by  
12 TSMC and TSMC NA sharing a common employee who served as TSMC NA’s CEO in 2017 and  
13 whose compensation for that year was determined by TSMC. Opp. at 4 (citing Yih Decl.). He  
14 further contends that TSMC operates for itself and TSMC NA, a common corporate website, a  
15 common email address domain, and a common interactive system for on-line information and  
16 transactions. Id.

17 In response to Plaintiff’s allegations about the shared employee’s roles in both TSMC and  
18 TSMC NA, TSMC asserts that the employee was periodically granted titles associated with TSMC  
19 as an advisor, at the discretion of TSMC’s Board of Directors. Chao Decl. ¶ 7. However, TSMC  
20 claims that the shared employee was never considered an employee of TSMC and received no  
21 compensation from TSMC. Id. Even if the Court were to find this factor in establishing unity of  
22 interest, the Ninth Circuit has made clear that “[t]otal ownership and shared management  
23 personnel are alone insufficient to establish the requisite level of control.” Ranza, 793 F.3d at  
24 1073 (internal citation omitted); see also, e.g., Stewart v. Screen Gems-EMI Music, Inc., 81 F.  
25 Supp. 3d 938, 956 (N.D. Cal. 2015) (finding three factors—equitable ownership, use of same  
26 offices and identical officers and directors—weighed in favor of finding unity of interest but  
27 concluding these factors “even when considered together, are not sufficient to support a finding of

1 unity of interest”).

2 Turning to Plaintiff’s claims that TSMC and TSMC NA operate on the same corporate  
3 website, share the same email address domain, and also have a common interactive online system  
4 for information and transactions, courts have held that these facts do not reflect an “abuse of the  
5 corporate form and existence of an alter ego relationship.” *Gerritsen v. Warner Bros. Entm’t Inc.*,  
6 116 F. Supp. 3d 1104, 1139 (C.D. Cal. 2015); see also *NetApp, Inc. v. Nimble Storage, Inc.*, No.  
7 5:13-CV-05058-LHKHRL, 2015 WL 400251, at \*7 (N.D. Cal. Jan. 29, 2015) (“In addition, the  
8 allegation that [entities] share a website and email is an administrative . . . function. Shared  
9 administrative functions are not necessarily indicative of an alter ego relationship.”) (citation  
10 omitted). Moreover, separate corporate entities presenting themselves “as one online does not rise  
11 to the level of unity of interest required to show companies are alter egos.” *Corcoran v. CVS*  
12 *Health Corporation*, 169 F. Supp. 3d 970, 984 (N.D. Cal. 2016); see also *Moody v. Charming*  
13 *Shoppes of Delaware, Inc.*, No. C 07-06073 MHP, 2008 WL 2128955, at \*3 (N.D. Cal. May 20,  
14 2008) (“[g]eneric language on [company’s] website . . . simply do[es] not rise to the day-to-day  
15 control required to impute the subsidiary’s contacts to the parent”). Thus, given the administrative  
16 nature of the entities’ website and online system, the Court finds that the facts do not weigh in  
17 favor of finding alter-ego liability.

18 Plaintiff has failed to meet the prima facie burden regarding any unity of interest between  
19 TSMC and TSMC NA. See *Williams*, 851 F.3d at 1021. Therefore, because both prongs of the  
20 alter ego test must be satisfied, TSMC is not subject to personal jurisdiction as TSMC’s alter ego.

21 **ii. Fraud or Injustice**

22 Where a plaintiff fails to satisfy the “unity of interest” prong, a court need not analyze the  
23 “fraud or injustice prong.” *Ranza*, 793 F.3d at 1075 n.9 (citation omitted). However, even if the  
24 Court analyzed this prong, Plaintiff has not established that an inequitable result would follow  
25 from a failure to disregard the separate identities between TSMC and TSMC NA. See *Ranza*, 793  
26 F.3d at 1073. The alter ego liability test’s second prong requires that a plaintiff “plead facts  
27 sufficient to demonstrate that conduct amounting to bad faith makes it inequitable for the

1 corporate owner to hide behind the corporate form.” Successor Agency to Former Emeryville  
2 Redevelopment Agency v. Swagelok Co., 364 F. Supp. 3d 1061, 1082 (N.D. Cal. 2019) (citing  
3 Prod. & Ventures Int’l v. Axus Stationary (Shanghai) Ltd., No. 16-CV-00669-YGR, 2017 WL  
4 201703, at \*8 (N.D. Cal. Jan. 18, 2017)). Plaintiff has not done so.

5 Plaintiff simply mentions in his opposition that treating TSMC as an entity distinct from  
6 TSMC NA when the two jointly work on sales in “such tightly coupled ways like a single  
7 enterprise,” would be unjust. Opp. at 4. Merely alleging that Plaintiff will suffer an inequitable  
8 result if TSMC is not a defendant is not sufficient. Neilson v. Union Bank of California, N.A., 290  
9 F. Supp. 2d 1101, 1117 (C.D. Cal. 2003) (pleading failed to allege injustice prong of alter ego  
10 theory where it stated that it would suffer an inequitable result but “fail[ed] to allege facts  
11 supporting this statement”); Hibbs–Rines v. Seagate Tech., LLC, No. C 08–05430 SI, 2009 WL  
12 513496, at \*5 (N.D. Cal. 2009) (“[A] court is not bound to accept as true a legal conclusion  
13 couched as a factual allegation.”) (quotation omitted). Accordingly, Plaintiff has failed to meet his  
14 burden in showing any conduct that would make it inequitable for this Court to observe the  
15 corporate distinction between TSMC and TSMC NA.

16 For the forgoing reasons, this Court lacks general jurisdiction over TSMC.

17 **C. Specific Jurisdiction**

18 Finally, Plaintiff attempts to establish personal jurisdiction over TSMC by arguing that  
19 TSMC purposefully availed itself to the forum by doing “e-business” in California. Opp. at 5.  
20 The Ninth Circuit has set forth a three-prong test to determine whether a defendant has the  
21 “minimum contacts” necessary for specific jurisdiction: (1) the defendant must either  
22 “purposefully direct his activities” toward the forum or “purposefully avail himself of the  
23 privileges of conducting activities in the forum”; (2) “the claim must be one which arises out of or  
24 relates to the defendant’s forum-related activities”; and (3) “the exercise of jurisdiction must  
25 comport with fair play and substantial justice, i.e. it must be reasonable.” Axiom Foods, Inc. v.  
26 Acerchem Int’l, Inc., 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting Dole Food Co., Inc. v. Watts,  
27 303 F.3d 1104, 1111 (9th Cir. 2002)). “The plaintiff bears the burden of satisfying the first two

1 prongs of the test.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).  
2 If the plaintiff makes a prima facie showing as to those first two prongs, “the burden then shifts to  
3 the defendant to ‘present a compelling case’ that the exercise of jurisdiction would not be  
4 reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

5 TSMC argues that Plaintiff has not satisfied his burden of establishing the first and second  
6 prongs; the Court agrees. The first prong of the specific jurisdiction test is met if the defendant  
7 “purposefully directed” his activities toward the forum or “purposefully availed” himself of “the  
8 privileges of conducting activities in the forum.” The Ninth Circuit has said that “purposeful  
9 availment” and “purposeful direction” are “two distinct concepts.” *Schwarzenegger*, 374 F.3d at  
10 802. The former applies to claims sounding in contract whereas the latter applies to claims  
11 sounding in tort. *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015). Because Plaintiff’s claims  
12 of discrimination are “more akin to tort claims,” the Court employs the purposeful direction  
13 framework. See e.g., *Bradley v. T-Mobile US, Inc.*, No. 17-cv-07232-BLF, 2020 WL 1233924, at  
14 \*13 (N.D. Cal. Mar. 13, 2020); *Ziegler v. Indian River Cty.*, 64 F.3d 470, 474 (9th Cir. 1995)  
15 (citing with approval an ADEA case in which the district court applied the tort-case standard)).

16 Purposeful direction, in turn, can be shown in two ways. First, the Ninth Circuit has said  
17 that “the commission of an intentional tort in a state is a purposeful act that will satisfy” the  
18 purposeful direction test. *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d 597,  
19 603 (9th Cir. 2018). In other words, if the “allegedly intentional tortious conduct” occurred in the  
20 forum state, that conduct has plainly been purposefully directed at the forum state. *Id.*  
21 Alternatively, if the defendant’s conduct “takes place outside the forum,” there may still be  
22 purposeful direction if that conduct has “effects inside the forum state.” *Id.* at 604. This second  
23 method is known as the “effects” test from *Calder v. Jones*, 465 U.S. 783 (1984). The *Calder*  
24 “effects” test requires that the defendant have “(1) committed an intentional act, (2) expressly  
25 aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the  
26 forum state.” *Axiom Foods*, 874 F.3d at 1069 (internal quotation marks and citation omitted).

27 Plaintiff’s sole theory why TSMC is subject to specific jurisdiction in California has to do

1 with TSMC allegedly conducting “e-business” in the state. Opp. at 5. According to Plaintiff,  
2 TSMC operates its corporate website, “which specifically solicits customers in ‘Silicon Valley’  
3 and ‘Southern California’ to ‘start a foundry relationship,’ using dedicated TSMC email  
4 addresses.” Opp. at 5; Yih Decl. ¶ 8. Plaintiff argues that TSMC’s website allegedly provides  
5 customers with access to an interactive information and transaction system and that because his  
6 position with TSMC would involve him working on the website, this establishes specific  
7 jurisdiction over TSMC. Id.

8           However, Plaintiff has not put forth allegations suggesting that any of TSMC’s “allegedly  
9 intentional tortious conduct” occurred in California. At all times, Plaintiff communicated with  
10 TSMC officials based in Taiwan and only through skype interviews and email exchanges from his  
11 home in New York. See Compl. ¶ 16, 26. The Court is mindful of the U.S. Supreme Court’s  
12 recent admonition that the minimum contacts analysis focuses upon “contacts that the defendant  
13 himself creates with the forum State,” and that “an injury is jurisdictionally relevant only insofar  
14 as it shows that the defendant has formed a contact with the forum State.” *Walden v. Fiore*, 571  
15 U.S. 277, 284 (2014) (emphasis in original). As such, the Court is skeptical that, based on  
16 Plaintiff’s lack of allegations, it can fairly be said that TSMC’s allegedly tortious conduct is  
17 connected to California to satisfy the purposeful direction prong. See *Picot*, 780 F.3d at 1214–15  
18 (9th Cir. 2015) (holding California could not exercise specific jurisdiction over defendant whose  
19 tortious conduct consisted of making statements to an Ohio resident that caused a Delaware  
20 corporation to cease making payments into two trusts in Wyoming and Australia all without  
21 entering California, contacting any person in California, or otherwise reaching out to California  
22 despite plaintiff being a resident of California and defendant having twice traveled to California in  
23 connection with the parties’ business relationship).

24           Moreover, TSMC’s alleged contacts with California through its e-business and website do  
25 not warrant exercising personal jurisdiction over TSMC. By simply putting forth the argument  
26 that TSMC availed itself of the benefits of this forum by conducting e-business through its  
27 accessible website, Plaintiff has failed to connect that business to any discriminatory harm alleged

1 in this case. Plaintiff’s claims arising out of TSMC’s alleged discriminatory conduct during the  
2 hiring process would have arisen regardless of whether his anticipated role in the company would  
3 impact the fact that individuals and businesses in California can access TSMC’s website. It  
4 follows that these contacts fall short of satisfying the second prong of the specific jurisdiction  
5 analysis. See *W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 742 (9th Cir. 2013)  
6 (“This court has referred to the second prong of the specific jurisdiction test as a ‘but for’ test.”).

7 Since the Court has determined that Plaintiff has not satisfied the first and second  
8 requirements of the minimum contacts test, the Northern District of California does not have  
9 personal jurisdiction of TSMC. See *Pebble Beach*, 453 F.3d at 1155. Accordingly, the Court need  
10 not address the remaining prong. Moreover, as personal jurisdiction over TSMC does not exist,  
11 this Court need not consider whether Plaintiff fails to state a claim upon which relief can be  
12 granted under Federal Rule of Civil Procedure 12(b)(6).

13 **V. CONCLUSION**

14 In light of the foregoing, the Court **GRANTS** TSMC’s motion to dismiss for lack of  
15 personal jurisdiction and **DISMISSES** Plaintiff’s action against TSMC. As such, the Court  
16 **DENIES** as moot, without prejudice, the remaining grounds for dismissal.

17 **IT IS SO ORDERED.**

18 Dated: October 27, 2020

19  
20 

21 EDWARD J. DAVILA  
22 United States District Judge