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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

EDU-SCIENCE (USA), INC.,	
	Plaintiff,
v.	
INTUBRITE, LLC,	
	Defendant.
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INTUBRITE, LLC,	
	Counterclaimant,
v.	
EDU-SCIENCE (USA), INC.; and	
EDU-SCIENCE (HK) LTD.,	
	Counterdefendants.

Case No. 12cv01078 BTM (WMC)
**ORDER DENYING EDU-HK’S
MOTION TO DISMISS**

In its answer to the Complaint, Defendant IntuBrite, LLC (“IntuBrite”) brought counterclaims against Plaintiff Edu-Science (USA), Inc. (“EDU-USA”) and third party Edu-Science (HK) Ltd. (“EDU-HK”). On November 23, 2012, EDU-HK filed a motion to dismiss IntuBrite’s counterclaims against it on the grounds of lack of personal jurisdiction and forum non conveniens (ECF No. 34). For the reasons below, EDU-HK’s motion to dismiss is **DENIED**.

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1 **I. BACKGROUND**

2 On February 16, 2012, EDU-USA filed suit against IntuBrite for breach of
3 contract. In its answer, IntuBrite brought counterclaims against EDU-USA and
4 EDU-HK for: 1) breach of contract; 2) breach of the implied warranty of
5 merchantability; 3) negligence; 4) intentional interference with prospective advantage;
6 5) intentional misrepresentation of fact; and 6) negligent misrepresentation of fact.

7 This case arises out of a contract dispute for the supply of medical equipment,
8 specifically stylettes and laryngoscopes with pouches. Plaintiff EDU-USA claims that
9 IntuBrite breached its contracts by, *inter alia*, failing to pay for the goods it had
10 ordered. IntuBrite, in turn, claims that the goods were defective and/or otherwise failed
11 to conform to what had been ordered.

12 IntuBrite, a California limited liability company with its principal place of
13 business in California, brings its counterclaims both against the plaintiff, EDU-USA,
14 and a third party, EDU-HK. The reason for this appears to be that both price quotations
15 – the one for the stylettes and the one for the laryngoscopes with pouches – state
16 toward the bottom, “For and on behalf of Edu-Science (H.K.) Ltd.” See Compl., Ex.
17 A & D. IntuBrite has not otherwise made any allegations as to EDU-HK’s
18 involvement. According to EDU-USA, it is not affiliated with EDU-HK, but rather
19 “Edu-Science (HK) LTD. is simply a supplier to EDU-USA who is simply a
20 purchaser.” See EDU-USA Answer (ECF No. 21), ¶5. However, EDU-HK
21 acknowledges that Patrick Ng, with whom IntuBrite communicated regarding the
22 medical equipment, is vice president of both EDU-USA and EDU-HK. According to
23 Mr. Ng’s declaration, however, he is a vice president of EDU-HK “in name only.” See
24 EDU-HK’s Reply (ECF No. 37), Decl. of Patrick Ng ¶3. EDU-HK otherwise denies
25 any affiliation with EDU-USA.

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1 **II. DISCUSSION**

2 Counterdefendant EDU-HK moves to dismiss IntuBrite’s claims against it on the
3 grounds of lack of personal jurisdiction and forum non conveniens. Each will be
4 discussed in turn.

5
6 **A. Personal Jurisdiction**

7 First, EDU-HK argues that this court does not have personal jurisdiction over it.
8 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff
9 bears the burden of demonstrating that the court has jurisdiction.” In re W. States
10 Wholesale Natural Gas Antitrust Litig., 715 F.3d 716 (9th Cir. 2013) (citing Harris
11 Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1128-29 (9th
12 Cir. 2003)). However, the plaintiff need only make a prima facie showing of
13 jurisdiction, with all disputed facts resolved in favor of the plaintiff. Id.

14 In general, personal jurisdiction over a defendant is proper if permitted by the
15 state’s long-arm statute and if the exercise of that jurisdiction does not violate federal
16 due process. Data Disc, Inc. v. Sys. Tech. Associates, Inc., 557 F.2d 1280, 1286 (9th
17 Cir. 1977). California’s long-arm statute allows courts to exercise jurisdiction to the
18 full extent permitted under the Constitution. Id.

19 To exercise personal jurisdiction over a nonresident defendant consistent with
20 federal due process, “that defendant must have at least minimum contacts with the
21 relevant forum such that the exercise of jurisdiction does not offend traditional notions
22 of fair play and substantial justice.” Boschetto v. Hansing, 539 F.3d 1011, 1015-16
23 (9th Cir. 2008) (internal quotations omitted).

24 There are two kinds of personal jurisdiction, general and specific. The Court has
25 general jurisdiction over a nonresident defendant where the defendant has “substantial”
26 or “continuous and systematic” contacts with the state, such that it may be haled into
27 court in that state for any action without violating due process. However, “[t]he
28 standard for establishing general jurisdiction is ‘fairly high,’ and requires that the

1 defendant's contacts be of the sort that approximate physical presence." Bancroft &
2 Masters, Inc. v. Augusta Nat. Inc., 223 F.3d 1082, 1086 (9th Cir. 2000) (citation
3 omitted).

4 Alternatively, specific jurisdiction exists where: (1) the non-resident defendant
5 has performed some act or consummated some transaction within the forum or
6 otherwise purposefully availed himself of the privileges of conducting activities in the
7 forum, (2) the claim arises out of or results from the defendant's forum-related
8 activities, and (3) the exercise of jurisdiction is reasonable. Id. at 1086.

9 Neither party has alleged any facts supporting general jurisdiction. Therefore,
10 the question is whether the Court's exercise of jurisdiction over EDU-HK is reasonable
11 based on EDU-HK's contacts with this forum in connection with the contracts at issue.

12 EDU-HK relies heavily on Boschetto v. Hansing, 539 F.3d 1011 (9th Cir. 2008),
13 in which the Ninth Circuit held that "the lone transaction for the sale of one item," a
14 car, did not suffice to establish personal jurisdiction over the nonresident defendants.
15 However, the transaction at issue in Boschetto "did not create any ongoing obligations"
16 with the plaintiff in California, nor did the contract "require the Defendants to engage
17 in any substantial business in California." Id. at 1017. In contrast, EDU-HK had a
18 continuing obligation to ship the stylettes and laryngoscopes to IntuBrite in California
19 under the contracts. Moreover, EDU-HK invited the CEO of IntuBrite, via letters
20 mailed to an address in California, to visit its factory in Hong Kong on at least two
21 occasions to discuss EDU-HK's supply of the medical equipment to IntuBrite.
22 See IntuBrite's Opp. (ECF No. 36), Decl. of John R. Hicks ¶¶4 & 14; see also id., Ex.
23 2 & 15. It is well-established that "due process permits the exercise of personal
24 jurisdiction over a defendant who purposefully directs his activities at residents of a
25 forum, even in the absence of physical contacts with the forum." Schwarzenegger v.
26 Fred Martin Motor Co., 374 F.3d 797, 803 (9th Cir. 2004) (internal quotations and
27 alteration omitted). While the "degree of interjection" also plays a role in determining
28 the reasonableness of exercising jurisdiction, Harris Rutsky, 328 F.2d at 1132, EDU-

1 HK's contacts with California are sufficiently extensive so as to make reasonable the
2 exercise of jurisdiction. Compare id. at 1131-32 (exercise of personal jurisdiction was
3 reasonable where nonresident defendant purposefully sought out a business
4 relationship with a California corporation, had ongoing contacts with the state over a
5 five-year period, and drafted the agreement at issue). Therefore, the first two prongs
6 are met.

7 As to the final prong, whether the exercise of jurisdiction is reasonable depends
8 on whether it comports with "fair play and substantial justice." Bancroft, 223 F.3d at
9 1088 (citing Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476 (1985)). There are
10 seven factors to be considered: (1) the extent of the defendant's purposeful interjection
11 into the forum state, (2) the burden on the defendant in defending in the forum, (3) the
12 extent of the conflict with the sovereignty of the defendant's state, (4) the forum state's
13 interest in adjudicating the dispute, (5) the most efficient judicial resolution of the
14 controversy, (6) the importance of the forum to the plaintiff's interest in convenient and
15 effective relief, and (7) the existence of an alternative forum. Id.

16 Most of the factors clearly weigh in favor of exercising jurisdiction over EDU-
17 HK. EDU-HK has purposefully interjected itself into the forum state by shipping the
18 medical equipment to California and otherwise communicating with IntuBrite, a
19 company EDU-HK knew was located in California, regarding the goods. California
20 has a strong interest in adjudicating the dispute because IntuBrite alleges that the
21 medical equipment EDU-HK sent to IntuBrite in California contained defects,
22 including contamination and mislabeling. Moreover, it would be more efficient for
23 IntuBrite's counterclaims to be heard here, since they are closely related to the claims
24 in the main action brought by EDU-USA. Finally, because IntuBrite, its witnesses, and
25 the allegedly defective goods are located in California, having its claims heard here is
26 extremely significant to its interest in obtaining convenient and effective relief.

27 That said, the fact that EDU-HK is located in Hong Kong weighs against the
28 exercise of jurisdiction. See Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102,

1 114 (1987) (“The unique burdens placed upon one who must defend oneself in a
2 foreign legal system should have significant weight in assessing the reasonableness of
3 stretching the long arm of personal jurisdiction over national borders.”). However, this
4 factor is not dispositive, especially since modern technology has “significantly reduced
5 the burden of litigating in another country.” Dole Food Co., Inc. v. Watts, 303 F.3d
6 1104, 1115 (9th Cir. 2002) (internal quotations omitted).

7 The Court is mindful that, according to the declaration of Max Choi,
8 “[e]mployees who work in the People’s Republic of China are not permitted to travel
9 to the United States without the written permission of the government of the People’s
10 Republic of China, which would be difficult to obtain in a civil case in the United
11 States.” (ECF No. 39, ¶5.) Nonetheless, the Court must balance that against the
12 difficulty that IntuBrite would face it in obtaining relief for its claims were it forced to
13 bring suit in Hong Kong.

14 As to the remaining factor, conflict with the sovereignty of Hong Kong, this
15 factor “entails an examination of the competing sovereign interests in regulating [the
16 defendant’s] behavior.” Dole, 303 F.3d at 1115. California has a strong interest in
17 protecting its businesses, and certainly in protecting its citizens from faulty medical
18 equipment. Moreover, while Hong Kong may have an interest in regulating its
19 businesses, the goods in this case were intended solely for use in the United States.
20 Regardless of whether EDU-HK is affiliated with EDU-USA or not, EDU-HK appears
21 to do a significant amount of business with EDU-USA, which is an American company
22 supplying medical equipment to other American companies. Thus, this factor weighs
23 in favor of retaining jurisdiction.

24 In sum, while the Court appreciates that it may be difficult for EDU-HK to
25 litigate in this district, the factors overall favor IntuBrite. Therefore, the Court holds
26 that it has personal jurisdiction over EDU-HK.

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1 **B. Forum Non Conveniens**

2 EDU-HK’s second argument is that the claims against it should be dismissed on
3 the grounds of forum non conveniens. A district court may decline to exercise
4 jurisdiction where a foreign forum would be more convenient. Lueck v. Sundstrand
5 Corp., 236 F.3d 1137, 1142 (9th Cir. 2001). “In dismissing an action on forum non
6 conveniens grounds the court must examine: (1) whether an adequate alternative forum
7 exists, and (2) whether the balance of private and public interest factors favors
8 dismissal.” Id.

9
10 *1. Adequate Alternative Forum*

11 “The defendant bears the burden of proving the existence of an adequate
12 alternative forum.” Cheng v. Boeing Co., 708 F.2d 1406, 1411 (9th Cir.1983). An
13 alternative forum generally exists when “the defendant is amenable to service of
14 process in the foreign forum.” Lueck v. Sundstrand Corp., 236 F.3d 1137, 1143 (9th
15 Cir. 2001). Here, EDU-HK has indicated that it would be amenable to service of
16 process in Hong Kong, where it is located. Therefore, this prong is met.

17
18 *2. Private and Public Interest Factors*

19 The private interest factors to be considered are:

- 20 (1) the residence of the parties and the witnesses;
21 (2) the forum’s convenience to the litigants;
22 (3) access to physical evidence and other sources of proof;
23 (4) whether unwilling witnesses can be compelled to testify;
24 (5) the cost of bringing witnesses to trial;
25 (6) the enforceability of the judgment; and
26 (7) “all other practical problems that make trial of a case easy,
27 expeditious and inexpensive.”

28 Lueck, 236 F.3d at 1145. These factors cut both ways, for whatever would be easier

1 for EDU-HK would be harder for IntuBrite, and vice versa. For instance, IntuBrite is
2 likely to have witnesses and physical evidence in California, while EDU-HK is likely
3 to have witnesses and physical evidence in Hong Kong. But as IntuBrite points out,
4 “unless the balance is strongly in favor of the defendant, the plaintiff’s choice of forum
5 should rarely be disturbed.” Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508 (1947).

6 The public interest factors to be considered are:

- 7 (1) local interest of lawsuit;
- 8 (2) the court’s familiarity with governing law;
- 9 (3) burden on local courts and juries;
- 10 (4) congestion in the court; and
- 11 (5) the costs of resolving a dispute unrelated to this forum.

12 Lueck, 236 F.3d at 1147. As noted above, California has a strong interest in this case,
13 and the dispute is certainly not unrelated to this forum. Moreover, it is more
14 expeditious to hear IntuBrite’s claims here, since the related case brought by EDU-
15 USA will move forward in this district. Therefore, these factors weigh in favor of
16 keeping the case in this district.

17 Overall, the public and private interest factors weigh against dismissing the case
18 on forum non conveniens grounds, and the mere fact that an alternative forum exists
19 does not outweigh the presumption in favor of the plaintiff’s choice of forum. The
20 Court therefore **DENIES** EDU-HK’s motion to dismiss on forum non conveniens
21 grounds.

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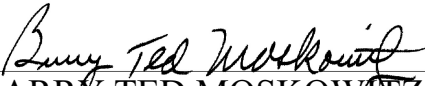
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III. CONCLUSION

For the reasons above, EDU-HK's motion to dismiss (ECF No. 34) is hereby **DENIED.**

IT IS SO ORDERED.

DATED: July 15, 2013


BARRY TED MOSKOWITZ, Chief Judge
United States District Court