

1 THE HONORABLE JOHN C. COUGHENOUR

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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 VYACHESLAV MELNICHUK,

CASE NO. C18-1830-JCC

10 Plaintiff,

ORDER

11 v.

12 FINE HAU INDUSTRY CO., LTD *et al.*,

13 Defendants.

14
15 This matter comes before the Court on Defendant Fine Hau's motion to dismiss for lack
16 of personal jurisdiction (Dkt. No. 35). Having thoroughly considered the parties' briefing and the
17 relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion and
18 GRANTS Plaintiff's request for jurisdictional discovery for the reasons explained herein.

19 **I. BACKGROUND**

20 This lawsuit arises out of an eye injury Plaintiff allegedly sustained while using an HDX
21 Extra Strong Bungee Cord manufactured by Fine Hau. (*See* Dkt. No. 1-1 at 2.) Plaintiff alleges
22 that in designing, manufacturing, and testing the bungee cord, Fine Hau acted negligently and
23 breached express and implied warranties of fitness and merchantability. (*Id.* at 4–8.)

24 Fine Hau is a Chinese company that is incorporated in China. (*See* Dkt. No. 35 at 13.)
25 Fine Hau maintains its principal place of business in China. (*Id.*) Fine Hau manufactures bungee
26 cords, including the one that allegedly injured Plaintiff. (*Id.* at 14; Dkt. No. 1-1 at 2.) Fine Hau

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1 does not lease or own any real property in Washington; own any personal property located in
2 Washington; employ anyone in Washington; advertise its products in Washington; have a license
3 to conduct any business in Washington; pay taxes in Washington; or retain any bank accounts in
4 Washington. (Dkt No. 35 at 14.) Fine Hau did purchase liability insurance covering accidents
5 involving its products.¹ (*See* Dkt. No. 40 at 8.)

6 Fine Hau manufactures its products at a facility in Guangdong, China, and then ships the
7 products to a facility in Shenzhen, China, after which Home Depot takes possession and title of
8 the products. (Dkt. No. 35 at 14.) Fine Hau has no control over Home Depot’s shipping,
9 marketing, or selling of Fine Hau’s products. (*Id.*) Nor does Fine Hau independently ship its
10 products to the United States. (*Id.*) Fine Hau does not advertise or market its products in
11 Washington or the United States. (*Id.*)

12 In 2018, Plaintiff filed a complaint against Fine Hau in Snohomish County Superior
13 Court. (*See* Dkt. No. 1-1 at 2.) Plaintiff brings claims against Fine Hau for negligence; violation
14 of Wash. Rev. Code § 7.72.030; breach of an express warranty; breach of the implied warranty
15 of merchantability; and breach of the implied warranty of fitness. (*Id.* at 4–8.) In his complaint,
16 Plaintiff alleges that the Court has personal jurisdiction over Fine Hau because Fine Hau
17 “engaged in continuous and systematic business” with Washington, including that it “engaged in
18 the design, manufacture, assembly, marketing, advertising, drafting of product literature and
19 labeling and/or distribution and sale of its bungee cord.” (*Id.* at 2.)

20 On December 18, 2018, Home Depot removed the case. (*Id.* at 1.) Fine Hau now moves
21 to dismiss Plaintiff’s claims against it for lack of personal jurisdiction. (Dkt. No 35.)

22 **II. DISCUSSION**

23 **A. Legal Standard**

24 Claims against a defendant must be dismissed when a court lacks personal jurisdiction.

25 _____
26 ¹ Defendant Home Depot also purchased a liability insurance policy from the same insurer. (*See*
Dkt. No. 40 at 8.)

1 Fed. R. Civ. P. 12(b)(2). When a defendant seeks dismissal on this ground, the plaintiff must
2 show that the exercise of jurisdiction is appropriate. *Picot v. Weston*, 780 F.3d 1206, 1211 (9th
3 Cir. 2015). “[I]n the absence of an evidentiary hearing, the plaintiff must make a prima facie
4 showing of jurisdictional facts.” *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). In
5 assessing this showing, the court must take any uncontroverted allegations in the plaintiff’s
6 complaint as true and resolve any conflicts between the facts in the documentary evidence in the
7 plaintiff’s favor. *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).
8 However, the plaintiff “[can]not simply rest on the bare allegations of [their] complaint, but
9 rather [is] obligated to come forward with facts, by affidavit or otherwise, supporting personal
10 jurisdiction.” *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787–88 (9th Cir. 1977).
11 Courts may not assume the truth of allegations in a pleading that are contradicted by affidavit.
12 *Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639 (9th Cir. 1967).

13 **B. Personal Jurisdiction**

14 A federal district court may exercise personal jurisdiction over a non-resident defendant
15 only if doing so comports with the long-arm statute of the state in which the district court sits.
16 See Fed. R. Civ. P. 4(k)(1)(A); *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir.
17 1994). Washington’s long-arm statute imposes no greater limits on a court’s personal jurisdiction
18 than those imposed by the Due Process Clause. *SeaHAVN, Ltd. v. Glitnir Bank*, 226 P.3d 141,
19 149 (Wash. Ct. App. 2010). Thus, the only question for the Court is whether the exercise of
20 jurisdiction over Fine Hau comports with due process. See *Helicopteros Nacionales de*
21 *Colombia, S.A. v. Hall*, 466 U.S. 408, 413 (1984).

22 Due process permits a court to “subject a defendant to judgment only when the defendant
23 has sufficient contacts with the sovereign ‘such that the maintenance of the suit does not offend
24 traditional notions of fair play and substantial justice.’” *J. McIntyre Mach., Ltd. v. Nicastro*, 564
25 U.S. 873, 880 (2011) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). The
26 extent and nature of the contacts a defendant must have depends on which of the two categories

1 of personal jurisdiction a litigant invokes: general or specific. *Goodyear Dunlop Tires*
2 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Here, Plaintiff argues that the Court has
3 both general jurisdiction and specific jurisdiction over Fine Hau. (*See* Dkt. No. 40 at 6.) The
4 Court addresses each jurisdictional ground in turn.

5 1. General Jurisdiction

6 General jurisdiction is properly exercised when a defendant corporation has maintained
7 contacts with the forum state that are “so continuous and systematic as to render the foreign
8 corporation essentially at home in the forum State.” *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1069
9 (9th Cir. 2015) (quoting *Daimler AG v. Bauman*, 134 S. Ct. 746, 758 n.11 (2014)). A corporation
10 is considered to be ‘at home’ in a forum state in three circumstances: (1) if it is incorporated in
11 the forum; (2) if it has its principal place of business in the forum; or (3) if in “exceptional
12 circumstances,” it is “essentially at home” in the forum even though it is not incorporated there
13 and does not have its principal place of business there. *Id.* at 1069–70. Here, Fine Hau is not
14 incorporated in Washington and does not have its principal place of business there. (*See* Dkt. No.
15 35 at 13–14.) Fine Hau’s contacts are also insufficient to constitute “exceptional circumstances”:
16 it has no business offices or exclusive agents in Washington, it pays no taxes in Washington, and
17 it is not registered to do business here. *See Ranza*, 793 F.3d at 1069; (Dkt. No. 35 at 2). Plaintiff
18 alleges no facts to the contrary. (*See* Dkt. No. 40 at 6–8.) For these reasons, the Court FINDS
19 that it does not have general jurisdiction over Fine Hau.

20 2. Specific Jurisdiction

21 Specific jurisdiction is properly exercised when a defendant has “purposefully [availed]
22 itself of the privilege of conducting activities within the forum State, thus invoking the benefits
23 and protections of its laws.” *J. McIntyre Mach.*, 564 U.S. at 877 (citing *Hanson v. Denckla*, 357
24 U.S. 235, 253 (1958)). This requirement ensures that a defendant will not be “haled into a
25 jurisdiction through random, fortuitous, or attenuated contacts.” *Zeigler v. Indian River City*, 64
26 F.3d 470, 473 (9th Cir. 1995). The Ninth Circuit uses a three-prong test to determine whether the

1 exercise of specific jurisdiction is appropriate:

- 2 1. The non-resident defendant must purposefully direct his activities or
3 consummate some transaction with the forum or resident thereof; or perform
4 some act by which he purposefully avails himself of the privilege of conducting
5 activities in the forum, thereby invoking the benefits and protections of its laws;
- 6 2. the claim must be one which arises out of or relates to the defendant's forum-
7 related activities; and
- 8 3. the exercise of jurisdiction must comport with fair play and substantial justice,
9 i.e. it must be reasonable.

10 *Schwarzenegger*, 374 F.3d at 802.

11 The first prong of the test for specific jurisdiction includes two distinct analyses:
12 “purposeful direction” and “purposeful availment.” *Ziegler*, 64 F.3d at 473. The purposeful
13 direction analysis applies to claims alleging intentional torts, while the purposeful availment
14 analysis applies to claims sounding in contract. *Schwarzenegger*, 374 F.3d at 802. Courts in the
15 Ninth Circuit have applied the purposeful availment analysis to product liability claims. *See*
16 *Marvix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1228 (9th Cir. 2011) (discussing
17 Supreme Court’s application of purposeful availment analysis in product liability case in
18 plurality opinion); *Hernandez v. City of Beaumont*, 2014 WL 6943881, slip op. at 3 (C.D. Cal.
19 2014). Because Plaintiff alleges that Fine Hau was negligent, violated Wash. Rev. Code
20 § 7.72.030, and breached express and implied warranties, (*see* Dkt. No. 1-1 at 4–8), the Court
21 considers Fine Hau’s contacts with Washington using the purposeful availment analysis.

22 A brief review of the law is warranted. “It is essential in each case that there be some act
23 by which the defendant purposefully avails . . . [itself] of the privilege of conducting activities
24 within the forum state.” *Hanson*, 357 U.S. at 253 (1958). But “the unilateral activity of those
25 who claim some relationship with a nonresident defendant cannot satisfy the requirement of
26 contact with the forum state.” *Id.* Nor has “foreseeability alone” that a product might enter the
forum state ever “been a sufficient benchmark for personal jurisdiction under the Due Process
Clause.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 298 (1980). In *World-Wide*

1 *Volkswagen*, 444 U.S. 286 (1980), however, the Supreme Court noted in *dictum* that personal
2 jurisdiction may be satisfied over a nonresident defendant “that delivers its products into the
3 stream of commerce with the *expectation* that they will be purchased by consumers in the forum
4 state.” *Id.* at 297 (emphasis added). Several theories expanding on that *dictum* have since
5 emerged from the Supreme Court. In *Asahi Metal Indus. Co. v. Super. Ct.*, 480 U.S. 102, 112
6 (1987), Justice O’Connor stated in a plurality opinion that “[t]he placement of a product into the
7 stream of commerce, without more,” was insufficient for an exercise of personal jurisdiction. *Id.*
8 Justice Brennan disagreed, stating in a concurrence that as long as a nonresident defendant is
9 aware their product is being sold in a forum and is benefitting economically from those sales, an
10 exercise of jurisdiction is proper. *Id.* at 117, 1036–37 (Brennan, J., concurring). Most recently, in
11 *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011), Justice Kennedy stated in a
12 plurality opinion that it is insufficient that a nonresident defendant might have predicted their
13 goods would reach the forum; instead, the nonresident defendant must have targeted the forum.
14 *Id.* Thus, the Supreme Court has not yet defined the outer limits of the stream of commerce
15 theory. But the Supreme Court has held that neither unilateral activity nor foreseeability alone
16 are sufficient to establish specific personal jurisdiction. *See World-Wide Volkswagen*, 444 U.S. at
17 298; *Hanson*, 357 U.S. at 253.

18 It appears as though the Ninth Circuit has aligned itself with Justice O’Connor’s and
19 Justice Kennedy’s “targeting” approach. In *Holland America Line Inc. v. Wartsila North*
20 *America, Inc.*, 485 F.3d 450 (9th Cir. 2007), the Ninth Circuit cited Justice O’Connor’s plurality
21 opinion in *Asahi* for the proposition that “the placement of a product into the stream of
22 commerce, without more, is not an act purposefully directed toward a forum state.” *Id.* at 459.
23 And the Ninth Circuit stated that a nonresident defendant’s awareness that its product could be
24 swept into the forum is insufficient to confer jurisdiction. *Id.* But the Ninth Circuit has yet to
25 issue another opinion discussing the competing approaches in *Asahi*. Further, the Ninth Circuit
26 affirmed a district court’s application of Justice Kennedy’s rule in *J. McIntyre*. *See Anhing Corp.*

1 v. *Viet Phu, Inc.*, 671 F. App'x. 956, 959 (9th Cir. 2016) (discussing but not expressly adopting
2 that approach). As such, *Holland* sets forth the applicable rule to the instant case.

3 Several examples help clarify this rule. Courts have found the purposeful availment
4 requirement satisfied where a defendant designed a product specifically for a market in the forum
5 state, see *Tobin v. Astra Pharm. Prods., Inc.*, 993 F.2d 528, 544 (6th Cir. 1993), and where a
6 defendant enlisted a distributor in the forum state and marketed its product through the
7 distributor, see *Bou-Matic, L.L.C. v. Ollimac Dairy, Inc.*, 2006 WL 658602, slip op. at 4 (E.D.
8 Cal. 2006). But courts have found no purposeful availment where a foreign defendant sold a
9 defective saw to a United States distributor but had no further influence in marketing or selling
10 the saw, see *Bonner v. Rexon Indus. Corp.*, 2020 WL 954978, slip op. at 2 (E.D. Wash. 2020),
11 and where a defendant sold a defective ham that was used in a sandwich in the forum state but
12 did not design the product for the forum state's residents or market the product in the forum
13 state, see *Starbucks Corp. v. Wellshire Farms, Inc.*, C13-1170-MJP, Dkt. No. 43 at 5 (W.D.
14 Wash. 2013).

15 Here, Plaintiff maintains that Fine Hau manufactured the bungee cord at issue; that Fine
16 Hau contracted with Home Depot to sell the bungee cord in Washington; and that Fine Hau knew
17 that Home Depot was selling Fine Hau's products to Washington citizens. (See Dkt. No. 40 at 8.)
18 In his complaint, Plaintiff also alleges that Fine Hau "engaged in the design . . . marketing,
19 advertising . . . and/or distribution and sale" of the bungee cord in Washington. (See Dkt. No. 1-1
20 at 1.) But Fine Hau's affidavit establishes that Fine Hau did not conduct any marketing in
21 Washington; retain any control over its products after it sold them to Home Depot in China; or
22 ship or market any of its products directly in Washington. (See Dkt. No. 35 at 14-15.)

23 While Plaintiff's and Fine Hau's allegations regarding Fine Hau's marketing and
24 distribution activities conflict, because Plaintiff has not "come forward with facts, by affidavit or
25 otherwise, supporting personal jurisdiction," the Court declines to resolve those inferences in
26 Plaintiff's favor. See *Amba Mktg. Sys.*, 551 F.2d at 787-88; *Taylor*, 383 F.2d at 639. Therefore,

1 based on the facts in Fine Hau’s affidavit, (*see* Dkt. No. 35 at 14–15), Fine Hau did not ship,
2 market, or directly sell its products in Washington.

3 As such, Plaintiff has not established that Fine Hau engaged in the ‘additional conduct’
4 that is needed for the Court to exercise personal jurisdiction. *See Holland*, 485 F.3d 459. For
5 example, Plaintiff has not introduced evidence that Fine Hau knew the product was reaching
6 Washington; that Fine Hau was intending its product to reach Washington; any details regarding
7 the volume of Fine Hau’s products sold in Washington; whether Fine Hau’s products were
8 designed for Washington; whether Fine Hau maintained customer service channels in
9 Washington; or other details regarding Fine Hau and Home Depot’s business history and
10 relationship. Plaintiff does argue that because Fine Hau purchased liability insurance that
11 covered its products sold in the United States, Fine Hau was anticipating that its products would
12 be sold in the forum state. (*See* Dkt. No. 40 at 8.) But “‘foreseeability’ alone has never been a
13 sufficient benchmark for personal jurisdiction under the Due Process Clause.” *World-Wide*
14 *Volkswagen*, 444 U.S. at 295. Thus, Fine Hau’s anticipation that its product might be sold in the
15 forum state is insufficient to confer jurisdiction. Accordingly, the Court FINDS that Plaintiffs
16 thus far failed to demonstrate personal jurisdiction over Defendants. Nonetheless, the Court
17 DENIES Defendants’ motion without prejudice to refile following jurisdictional discovery for
18 the reasons stated below.

19 C. Jurisdictional Discovery

20 A district court has broad discretion to permit or deny discovery to determine whether it
21 has personal jurisdiction. *See Laub v. U.S. Dep’t of the Interior*, 342 F.3d 1080, 1093 (9th Cir.
22 2003); *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir. 1977).
23 A party’s request to conduct jurisdictional discovery should be granted “where pertinent facts
24 bearing on the question of jurisdiction are controverted or where a more satisfactory showing of
25 the facts is necessary.” *Laub*, 342 F.3d at 1093. “It is well established that ‘[t]he burden is on the
26 party seeking to conduct additional discovery to put forth sufficient facts to show that the

1 evidence sought exists.” *Gager v. United States*, 149 F.3d 918, 922 (9th Cir. 1998) (quoting
2 *Conkle v. Jeong*, 73 F.3d 909, 914 (9th Cir. 1995)). But a plaintiff seeking jurisdictional
3 discovery need not first establish a “prima facie showing that jurisdiction actually exists.” *Hall v.*
4 *United States*, 2017 WL 3252240, slip op. at 4 (S.D. Cal. 2017).

5 For example, in *Orchid Biosciences v. St. Louis University*, 198 F.R.D. 670 (S.D. Cal.
6 2001), the district court ordered jurisdictional discovery on a motion to dismiss after finding the
7 defendant’s affidavits may not have stated the full extent of its contacts with the forum state. *Id.*
8 at 673. The court explained that because the defendant had some contacts with the forum—
9 though those contacts were insufficient for personal jurisdiction as pleaded—discovery might
10 reveal additional relevant information. *Id.* at 674. Similarly, in *Boddy v. Pourciau*, C18-1046-
11 JLR, Dkt. No. 19 (W.D. Wash. 2018), the district court found that the defendants had staffed
12 employees in the forum state; maintained an affiliate relationship in the forum state; travelled to
13 the forum state for training; and conducted business in competition with the plaintiffs in the
14 forum state. *Id.* at 19–20. Thus, the court ordered jurisdictional discovery, noting that it might
15 uncover the “necessary facts [for the court] to determine whether it [had] personal jurisdiction
16 over [the] defendants.” *Id.* at 19.

17 Here, Plaintiff asks the Court for the opportunity to conduct jurisdictional discovery
18 regarding Fine Hau’s contacts with Washington. (Dkt. No. 40 at 4.) Plaintiff maintains that Fine
19 Hau manufactured a product; entered into a relationship with a distributor who sold the product
20 in the United States; and purchased a liability insurance policy for that product. (*Id.* at 8–9.) Fine
21 Hau’s affidavit clarifies several relevant facts, such as that Fine Hau does not market its products
22 in Washington or sell them directly in Washington. (*See* Dkt. No. 35 at 13–15.) But with regard
23 to other possibly relevant evidence about Fine Hau’s contacts with Washington, as discussed
24 above, *see supra* Section II.B.2, Fine Hau’s affidavit broadly states that Fine Hau does not
25 “target or focus its business on entities located in Washington.” (*See id.* at 15.) Thus, because “a
26 more satisfactory showing of the facts is necessary” for the Court to make an informed decision

1 regarding whether it may properly exercise specific personal jurisdiction over Fine Hau,
2 jurisdictional discovery is proper. *Laub*, 342 F.3d at 1093. Therefore, Plaintiff’s request to
3 conduct jurisdictional discovery is GRANTED.

4 The Court has broad discretion to limit discovery otherwise permissible under the Federal
5 Rules of Civil Procedure. On motion or on its own, the Court must limit the frequency or extent
6 of discovery after considering a number of factors, including “the importance of discovery in
7 resolving the issues, and whether the burden or expense of the proposed discovery outweighs its
8 likely benefit.” Fed. R. Civ. P. 26(b)(1)-(2). Accordingly, the Court DENIES without prejudice
9 Fine Hau’s motion to dismiss and GRANTS Plaintiff’s request to conduct jurisdictional
10 discovery on the issue of specific personal jurisdiction.

11 Plaintiff shall have 120 days in which to conduct jurisdictional discovery. The Court
12 specifically limits Plaintiff to requesting documents that relate to personal jurisdiction, as
13 allowing discovery beyond jurisdictional issues at this juncture would place a burden on Fine
14 Hau that far exceeds any benefit Plaintiff would derive. The parties must file any related
15 discovery motions within 60 days of the filing date of this order—60 days prior to the
16 jurisdictional discovery cutoff. The Court encourages the parties to work cooperatively to
17 implement this order and to expeditiously complete the discovery authorized herein. If, however,
18 discovery disputes arise that require court intervention, the parties must use the procedures set
19 forth in Western District of Washington Local Civil Rule 7(i) before resorting to formal motions
20 practice. After Plaintiff has conducted jurisdictional discovery limited to the issue of personal
21 jurisdiction, Fine Hau may renew its motion to dismiss if appropriate.

22 **III. CONCLUSION**

23 For the foregoing reasons, Fine Hau’s motion to dismiss Plaintiff’s claims against it for
24 lack of personal jurisdiction (Dkt. No. 35) is DENIED without prejudice to refile. Plaintiff’s
25 request to conduct jurisdictional discovery is GRANTED.

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1 DATED this 12th day of May 2020.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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