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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Lavinia Aircraft Leasing, LLC; Thomas
10 McDermott,

11 Plaintiffs,

12 v.

13 Piper Aircraft Inc. et al.,

14 Defendants.

No. CV-16-02849-PHX-DGC

ORDER

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16 Plaintiffs Lavinia Aircraft Leasing, LLC (“Lavinia”) and Thomas McDermott
17 (“McDermott”) have sued Defendant Piper Aircraft Inc. (“Piper”) and others for the
18 failure of an engine in a Piper aircraft. Piper has moved to dismiss Plaintiffs’ claims
19 against it for lack of personal jurisdiction. Doc. 4. The issues are fully briefed, and the
20 Court determines that oral argument will not aid its decision. *See* Fed. R. Civ. P. 78(b);
21 *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998). For the following reasons, the
22 Court will deny the motion.

23 **I. Background.**

24 Plaintiff Thomas McDermott is an Arizona resident and the sole member of
25 Lavinia. He and Lavinia own a 2001 Piper Meridian aircraft and allege that the aircraft’s
26 engine exploded on July 7, 2014. Defendant Piper is a Delaware corporation with its
27 principal place of business in Florida. Doc. 1-1, ¶ 3. Plaintiffs bring product liability
28 claims arising out of the engine failure.

1 McDermott has filed a declaration stating that he first learned about the Piper
2 Meridian model aircraft from Piper’s website. Doc. 20-1, ¶ 4. McDermott became
3 interested in purchasing such an aircraft, but wanted to make the purchase from an
4 authorized Piper dealer in case the aircraft developed problems. *Id.*, ¶ 5. McDermott
5 learned from Piper’s website that Keystone Aviation, located in Utah, was an authorized
6 Piper dealer. *Id.*, ¶¶ 6-7. McDermott arranged to test fly a Keystone Piper Meridian in
7 Arizona, but, to avoid expenses and logistical issues associated with purchasing an
8 aircraft out-of-state, he decided to locate an authorized Piper dealer in Arizona. *Id.*, ¶ 10.

9 McDermott located Cutter Southwest Aviation Aircraft Sales, LLC (“Cutter”)
10 using the Piper webpage. *Id.*, ¶ 11. McDermott contacted Cutter and learned that it sells
11 new and used Piper aircraft to Arizona residents. *Id.*, ¶ 12. McDermott also knew there
12 were two authorized Piper service centers in Arizona, and that Piper sells aircraft parts in
13 Arizona through a nationwide distribution network. *Id.*, ¶¶ 16-17.

14 On November 7, 2013, McDermott purchased a 2001 Piper Meridian from Cutter.
15 *Id.*, ¶ 15. On July 7, 2014, McDermott was preparing to take off from a Colorado airport
16 when the engine exploded. Doc. 20-1, ¶¶ 18, 21. On July 6, 2016, Plaintiffs filed suit
17 against Defendants under theories of strict product liability, negligence, and breach of
18 warranties. Doc. 1-1. On August 25, 2016, the action was removed to this Court based
19 on diversity of citizenship. Doc. 1.

20 **II. Legal Standard.**

21 “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff
22 bears the burden of demonstrating that the court has jurisdiction over the defendant.”
23 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). “Where, as here, the
24 defendant’s motion is based on written materials rather than an evidentiary hearing, the
25 plaintiff need only make a prima facie showing of jurisdictional facts to withstand the
26 motion to dismiss.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th
27 Cir. 2011) (citing *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127
28 (9th Cir. 2010)). “The plaintiff cannot ‘simply rest on the bare allegations of its

1 complaint,’ but uncontroverted allegations in the complaint must be taken as
2 true.” *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th
3 Cir. 2004)). The Court may not assume the truth of allegations that are contradicted by
4 an affidavit, but factual disputes are resolved in Plaintiff’s favor. *Id.*

5 **III. Analysis.**

6 Arizona’s long-arm statute, Ariz. R. Civ. P. 4.2(a), applies to this diversity
7 action. *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 559 (9th Cir. 1995). Rule 4.2(a)
8 “provides for personal jurisdiction co-extensive with the limits of federal due
9 process.” *Doe v. Am. Nat’l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997) (citation
10 omitted).

11 A corporation “may be subject to personal jurisdiction only when its contacts with
12 the forum state support either specific or general jurisdiction.” *Martinez v. Aero*
13 *Caribbean*, 764 F.3d 1062, 1068 (9th Cir. 2014) (citing *Int’l Shoe Co. v. Washington*, 326
14 U.S. 310, 310 (1945)). General jurisdiction enables a court to entertain any claim against
15 a defendant over which it has subject matter jurisdiction, even claims arising from the
16 defendant’s actions in other states. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).
17 General jurisdiction exists if the defendant’s activities in the state are “so continuous and
18 systematic as to render [it] essentially at home in the forum State.” *Id.* Plaintiffs do not
19 argue that Piper has such contacts with Arizona.

20 Rather, Plaintiffs allege that Piper is subject to specific personal jurisdiction.
21 Doc. 20. A court may exercise specific jurisdiction over a foreign defendant if his or her
22 contacts with the forum give rise to the cause of action before the court. *Doe v. Unocal*
23 *Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). The Ninth Circuit employs a three-prong test
24 to determine whether a party has sufficient minimum contacts for specific jurisdiction:

- 25 (1) The non-resident defendant must purposefully direct his activities or
26 consummate some transaction with the forum or resident thereof; or
27 perform some act by which he purposefully avails himself of the privilege
28 of conducting activities in the forum, thereby invoking the benefits and
protections of its laws; (2) the claim must be one which arises out of or
relates to the defendant’s forum-related activities; and (3) the exercise of

1 jurisdiction must comport with fair play and substantial justice, i.e. it must
2 be reasonable.

3 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). Plaintiffs
4 have the burden of satisfying the first two elements. If they do, the burden shifts to
5 Defendants to show that jurisdiction would be unreasonable. *CollegeSource, Inc. v.*
6 *AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (citations omitted).

7 **A. Purposeful Availment.**

8 To have purposefully availed itself of the privilege of doing business in the forum,
9 a defendant must have engaged in some type of affirmative conduct that allows or
10 promotes the transaction of business within the forum state. *Boschetto v. Hansing*, 539
11 F.3d 1011, 1016 (9th Cir. 2008). The defendant's conduct, not the plaintiff's, must create
12 a substantial connection with the forum state. *Walden v. Fiore*, 134 S. Ct. 1115, 1121
13 (2014). The goal of focusing on a defendant's conduct is to prevent defendants from
14 being "haled into court as the result of random, fortuitous, or attenuated contacts." *Gray*
15 *& Co.*, 913 F.2d at 760 (citation omitted).

16 Piper argues that Plaintiffs' allegations support only a stream-of-commerce
17 argument, insufficient for establishing personal jurisdiction. Doc. 4 at 6-7. The Court
18 agrees that a stream-of-commerce theory would be insufficient. The Supreme Court has
19 held that a "defendant's transmission of goods permits the exercise of jurisdiction only
20 where the defendant can be said to have targeted the forum; as a general rule, it is not
21 enough that the defendant might have predicted that its goods will reach the forum State."
22 *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882-83 (2011).

23 The Court concludes, however, that Piper has initiated sufficient contacts with
24 Arizona to satisfy the purposeful availment test. Piper has authorized Keystone and
25 Cutter to act as authorized Piper dealers, and identifies them as authorized dealers on its
26 website. Doc. 20-1 at 38-44. Piper has designated Keystone as an authorized dealer for
27 Arizona. *Id.* at 42. Piper's website lists two "Authorized Piper Service Center[s]" in
28 Arizona, Landmark Aviation in Scottsdale and Ratliff Aviation in Tucson. *Id.* at 43.

1 Piper’s website enables viewers to insert their zip code and obtain the identities of dealers
2 and service centers in their area, including in Arizona. *Id.* at 42-43. By all of these
3 actions, Piper avails itself of the privilege of doing business in Arizona. The first prong
4 of the Ninth Circuit’s specific jurisdiction test is satisfied.¹

5 **B. Arising Out Of.**

6 Purposeful availment is not enough; the claims in this case must also arise out of
7 Piper’s contacts with Arizona. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d
8 1082, 1088 (9th Cir. 2000). As the parties agree, the Ninth Circuit uses a “but for” test –
9 a claim arises out of a defendant’s forum contacts if, “but for” the contacts, the cause of
10 action would not have arisen. *Id.*; *Terracom*, 49 F.3d at 561.

11 Piper argues that this suit did not arise out of Piper’s contacts with Arizona. Piper
12 argues that the plane was initially sold in Florida to an Oregon purchaser before being
13 sold in used condition to Cutter. Furthermore, Keystone, not Cutter, is the authorized
14 Piper dealer for Arizona, and the engine failure occurred in Colorado.

15 The Court is not persuaded by these arguments. McDermott avows that he wanted
16 to buy his plane “only from an authorized Piper dealer” located in Arizona. Doc. 20-1,
17 ¶¶ 5, 10. McDermott further avows that “[i]f Cutter had not been an authorized Piper
18 dealer I would not have purchased the Aircraft.” *Id.*, ¶ 28. Stated differently, “but for”
19 Piper’s designation of Cutter as an authorized dealer, McDermott would not have
20 purchased the airplane and this cause of action would not have arisen. The second prong
21 in the specific jurisdiction inquiry is satisfied.

22 **C. Reasonableness.**

23
24 ¹ Piper’s reply includes a declaration stating that Keystone (located in Utah) is the
25 Piper authorized dealer for Arizona and Cutter (located in Arizona) is the authorized
26 dealer for other western states. Doc. 25 at 14. The declaration also suggests that Piper
27 does not directly supervise or regulate service centers. *Id.* at 15. In addition to the fact
28 that the Court normally will not consider factual material presented for the first time in a
reply brief, *United States v. Rearden*, 349 F.3d 608, 614 n. 2 (9th Cir. 2003), Piper’s
website clearly identified Cutter as an authorized dealer and Landmark and Ratliff as
“Authorized Piper Service Center[s]” in Arizona. Doc. 20-1 at 42-43. The Court finds
these Piper representations sufficient to satisfy Plaintiffs’ prima facie case of personal
jurisdiction.

1 Once the first two prongs are satisfied, the burden is on the defendant to “‘present
2 a compelling case that the presence of some other considerations would render
3 jurisdiction unreasonable’ in order to defeat personal jurisdiction.” *Dole Food Co., Inc.*
4 *v. Watts*, 303 F.3d 1104, 1114 (9th Cir. 2002) (citing *Burger King*, 471 U.S. at 477).
5 Reasonableness is evaluated using the following factors:

6 (1) the extent of the defendants’ purposeful injection into the forum state’s
7 affairs; (2) the burden on the defendant of defending in the forum; (3) the
8 extent of the conflict with the sovereignty of the defendant’s state; (4) the
9 forum state’s interest in adjudicating the dispute; (5) the most efficient
10 judicial resolution of the controversy; (6) the importance of the forum to the
11 plaintiff’s interest in convenient and effective relief; and (7) the existence
12 of an alternative forum.

13 *Id.*

14 Piper argues that specific jurisdiction would be unreasonable because Piper “has
15 no offices and conducts no business” in Arizona, and the transaction “in no way involved
16 or included Piper.” Doc. 25 at 10. As noted above, however, Piper has designated
17 authorized dealers and authorized service centers in Arizona. More importantly, Piper
18 presents no argument on reasonableness factors 2 through 7. The Court concludes that it
19 has not meet its burden of showing that jurisdiction in this case is unreasonable.

20 **IT IS ORDERED** that Piper’s motion to dismiss for lack of personal jurisdiction
21 (Doc. 4) is **denied**.

22 Dated this 2nd day of December, 2016.

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25 David G. Campbell
26 United States District Judge
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