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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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

15 Plaintiffs Lavinia Aircraft Leasing, LLC (“Lavinia”) and Thomas McDermott
16 (“McDermott”) have sued Defendant Pratt & Whitney Canada Corp. (“PWC”) and others
17 for the failure of a PWC engine in a Piper Meridian aircraft. PWC filed a motion to
18 dismiss Plaintiffs’ claims for lack of personal jurisdiction (Doc. 21), and the motion was
19 fully briefed (Docs. 28, 30). After finding that Plaintiffs had failed to establish personal
20 jurisdiction over PWC, the Court elected to delay issuing a final decision and instead
21 allowed Plaintiffs to conduct jurisdictional discovery. Doc. 35. The time period for
22 jurisdictional discovery has closed, and supplemental briefing is complete. Docs. 41, 42.
23 Oral argument will not aid in the Court’s decision. *See* Fed. R. Civ. P. 78(b); *Partridge*
24 *v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998). PWC’s motion to dismiss will be granted.

25 **I. Background.**

26 **A. Case History.**

27 Plaintiff Thomas McDermott is an Arizona resident and the sole member of
28 Lavinia. Doc. 28-1, ¶ 2. He and Lavinia own a 2001 Piper Meridian aircraft and allege

1 that the aircraft's engine exploded on July 7, 2014. *Id.*, ¶¶ 7, 9, 12. Defendant PWC is a
2 foreign corporation with its principal place of business in Quebec, Canada. Doc. 1-
3 1, ¶ 10.

4 PWC designs, manufactures, distributes, and markets aircraft engines, including
5 the engine installed in Plaintiffs' plane. *Id.*, ¶ 13. On November 7, 2013, Plaintiff
6 McDermott purchased a used 2001 Piper Meridian aircraft from Cutter Southwest
7 Aviation Aircraft Sales, LLC ("Cutter"). *Id.*, ¶ 7. On July 7, 2014, McDermott was
8 preparing to take off from a Colorado airport when the engine exploded. *Id.*, ¶¶ 7, 9, 12.
9 After the engine failure, McDermott purchased a PWC replacement engine through PWC
10 employees in Arizona. *Id.*, ¶ 22, 23, 25.

11 On July 6, 2016, Plaintiffs filed suit asserting theories of strict product liability,
12 negligence, and breach of warranties. Doc. 1-1. On August 25, 2016, the action was
13 removed to this Court based on diversity of citizenship. Doc. 1.

14 **B. Additional Discovery.**

15 In its December 20, 2016 order, at Plaintiffs' request, the Court agreed that
16 "Plaintiffs may engage in jurisdictional discovery between [December 20, 2016] and
17 February 3, 2017." Doc. 35 at 7. The Court further ordered that "Plaintiffs shall file a
18 supplemental memorandum . . . setting forth the additional evidence that supports
19 specific personal jurisdiction, on or before February 8, 2017." *Id.* On February 9, 2017,
20 Plaintiffs filed their supplemental memorandum. Doc. 41.

21 Plaintiffs submit no additional evidence obtained from jurisdictional discovery.
22 *See id.* The docket shows that Plaintiffs took no discovery during the extended discovery
23 period. Instead, Plaintiffs' supplemental brief alleges new facts in an attempt to establish
24 specific personal jurisdiction over PWC. *Id.* at 3-4. PWC does not argue that the Court
25 may not consider these new facts that were apparently available, but not raised, at the
26 time of Plaintiffs' response brief. Doc. 42. Instead, PWC addresses Plaintiff's argument
27 on the merits and contends that Plaintiffs still fail to establish specific jurisdiction over
28 PWC in Arizona. *Id.* at 2-6.

1 **II. Legal Standard.**

2 Plaintiffs bear the burden of proving that the Court may exercise specific
3 jurisdiction over PWC. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.
4 2006). “Where, as here, the defendant’s motion is based on written materials rather than
5 an evidentiary hearing, the plaintiff need only make a prima facie showing of
6 jurisdictional facts to withstand the motion to dismiss.” *Mavrix Photo, Inc. v. Brand*
7 *Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011) (citing *Brayton Purcell LLP v.*
8 *Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010)). “The plaintiff cannot
9 ‘simply rest on the bare allegations of its complaint,’ but uncontroverted allegations in
10 the complaint must be taken as true.” *Id.* (quoting *Schwarzenegger v. Fred Martin Motor*
11 *Co.*, 374 F.3d 797, 800 (9th Cir. 2004)).

12 **III. Analysis.**

13 Arizona’s long-arm statute, Ariz. R. Civ. P. 4.2(a), applies in this diversity
14 action. *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 559 (9th Cir. 1995). Rule 4.2(a)
15 “provides for personal jurisdiction co-extensive with the limits of federal due
16 process.” *Doe v. Am. Nat’l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997) (citation
17 omitted). A corporation “may be subject to personal jurisdiction only when its contacts
18 with the forum state support either specific or general jurisdiction.” *Martinez v. Aero*
19 *Caribbean*, 764 F.3d 1062, 1068 (9th Cir. 2014) (citing *Int’l Shoe*, 326 U.S. 310).

20 Plaintiffs allege PWC is subject to specific jurisdiction. Doc. 28. A court may
21 exercise specific jurisdiction over a foreign defendant if its contacts with the forum give
22 rise to the cause of action. *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). The
23 Ninth Circuit employs a three-prong test to determine whether a party has sufficient
24 minimum contacts for specific jurisdiction to exist:

- 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*, 374 F.3d at 802. Plaintiffs have the burden of satisfying the first two
4 elements. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir.
5 2011). If they do, Defendant must show that the exercise of jurisdiction would be
6 unreasonable. *Id.*

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 PWC has sufficient contacts with Arizona to meet the purposeful availment
17 requirement. It is undisputed that PWC has sales employees in Arizona and directs
18 Arizona residents to these representatives on the PWC webpage. Doc. 28-5 at 2-3. By
19 taking these actions to facilitate sales in Arizona, PWC avails itself of the privilege of
20 doing business here. The first prong of the specific jurisdiction test is satisfied.

21 **B. Arising Out Of.**

22 Purposeful availment is not enough; the claims in this case must also arise out of
23 PWC’s contacts with Arizona. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d
24 1082, 1088 (9th Cir. 2000). As the parties agree, the Ninth Circuit uses a “but for” test –
25 a claim arises out of a defendant’s forum contacts if, “but for” the contacts, the cause of
26 action would not have arisen. *Id.*; *Terracom*, 49 F.3d at 561.

27 In its prior order, the Court held that the “but for” requirement was not satisfied.
28 Plaintiffs had not shown that their claim arose out of PWC’s contacts with Arizona:

1 The Court cannot hold that “but for” PWC’s activities in Arizona, the suit
2 would not have arisen. PWC has a network of contacts in Arizona, but
3 Plaintiffs do not argue that they purchased the engine because of those
4 contacts or that the engine malfunction arose from those contacts.

5 PWC did not manufacture, distribute, or place the engine into Plaintiffs’
6 plane in Arizona. Doc. 21-1, ¶¶ 7, 8, 9. PWC’s website lists Arizona
7 marketers and sellers, but Plaintiffs do not allege that they used this website
8 or the website’s recommended contacts to make the engine purchase.
9 Plaintiffs did not buy the engine from a PWC salesperson or from a PWC
10 sales facility. Rather, the engine came standard in the plane that Plaintiffs
11 purchased from Cutter. [Plaintiffs allege that] PWC has service centers in
12 Arizona, but Plaintiffs do not contend that McDermott’s purchase of the
13 plane was based on or impacted by the existence of those centers. Nor do
14 Plaintiffs contend that the accident was due to any PWC engine repairs in
15 Arizona.

16 Doc. 35 at 4-5.

17 Addressing this conclusion by the Court, Plaintiffs argue in their supplemental
18 memorandum that they “would not have purchased the Aircraft and PWC’s PT6 engine
19 without PWC’s marketing efforts in Arizona regarding the performance and reliability of
20 the PT6 and more importantly the fact that PWC had authorized repair facilities in
21 Arizona in the event there was a problem with the PWC PT6 engine.” Doc. 41 at 4.
22 Thus, Plaintiffs contend, their “claims rise directly from PWC’s conduct toward
23 Arizona.” *Id.* A closer look at the evidence actually submitted by Plaintiffs, however,
24 shows that they have not satisfied the “but for” causation requirement.

25 **1. McDermott’s Declarations.**

26 The Court may consider affidavits and other materials when weighing a motion to
27 dismiss for lack of personal jurisdiction under Rule 12(b)(2), and, in the absence of an
28 evidentiary hearing, the affidavits and other material must establish only a prima facie
case of personal jurisdiction. The showing, however, must be based on admissible
evidence. *Travelers Cas. & Sur. Co. of Am. v. Telstar Const. Co.*, 252 F. Supp. 2d 917,
922 (D. Ariz. 2003) (“It is equally as clear, however, that Plaintiff’s affidavits and
exhibits submitted in support of [personal jurisdiction] must comply with the Rules of
Evidence.”); *Fujitsu-ICL Sys. Inc. v. Efmarm Serv. Co.*, No. 00-CV-0777-W-(LSP), 2000
WL 1409760, at *3 (S.D. Cal. June 29, 2000) (“a prima facie showing means that

1 plaintiff has produced admissible evidence, which, if believed, would be sufficient to
2 establish the existence of personal jurisdiction”); *Hancock v. Hitt*, No. C-98-960-MMC-
3 (ARB), 1998 WL 345392, at *2 (N.D. Cal. June 9, 1998) (“plaintiff must produce
4 admissible evidence to support the court’s exercise of personal jurisdiction”); *see also*
5 *Beydoun v. Wataniya Restaurants Holding, Q.S.C.*, 768 F.3d 499, 506 (6th Cir. 2014)
6 (improper to rely on hearsay statements or statements lacking personal knowledge in
7 opposing motion to dismiss for lack of personal jurisdiction); *United Techs. Corp. v.*
8 *Mazer*, 556 F.3d 1260, 1278 (11th Cir. 2009) (affirming district court’s refusal to rely on
9 inadmissible hearsay in affidavits attempting to show personal jurisdiction). “Prima
10 facie” means “[s]ufficient to establish a fact or raise a presumption unless disproved or
11 rebutted.” Black’s Law Dictionary at 1310 (9th ed.). And evidence will be sufficient to
12 establish a fact, even if unrebutted, only if the evidence is admissible.

13 In support of their new argument, Plaintiffs submit a second declaration from
14 Plaintiff Thomas McDermott. *See* Doc. 41 at 4-5; Doc. 41-1 at 1-3. McDermott states in
15 the second declaration that, in 2013, he became interested in purchasing a Piper Aircraft
16 with a PWC PT6A-42A turbo prop engine. Doc. 41-1, ¶ 3. McDermott asserts that
17 Cutter Southwest Aviation Aircraft Sales is “an authorized Piper dealer and repair facility
18 specializing in PWC engines,” that “PWC has many authorized repair facilities located in
19 Arizona and more specifically the Phoenix area,” and that he “would not have purchased
20 the Aircraft if PWC did not have authorized repair facilities in Arizona [to which] I could
21 take the Aircraft.” *Id.*, ¶¶ 4-5, 10. In other words, Plaintiffs assert that McDermott
22 specifically relied on the presence of PWC authorized service centers in Arizona when he
23 decided to buy the airplane. But Plaintiffs present no evidence, other than McDermott’s
24 assertions, that PWC has such centers in Arizona.

25 PWC argues that “Plaintiff McDermott’s unsubstantiated assertions – of which he
26 does not purport to have personal knowledge – are incompetent and cannot be relied upon
27 to create contacts between [PWC] and the state of Arizona which do not exist.” Doc. 42
28 at 4. The Court agrees. Rule 602 of the Federal Rules of Evidence states that “[a]

1 witness may testify to a matter only if evidence is introduced sufficient to support a
2 finding that the witness has personal knowledge of that matter.” Fed. R. Evid. § 602. It
3 is significant that while McDermott obviously has personal knowledge of why he
4 purchased the Aircraft, he provides no basis for any personal knowledge of whether PWC
5 has authorized service centers in Arizona. Plaintiffs make no attempt to show that
6 McDermott has such knowledge. Plaintiffs could have conducted discovery concerning
7 PWC service centers in Arizona during the jurisdictional discovery period allowed by the
8 Court, they did not.

9 Plaintiffs’ memorandum does assert that “Plaintiffs researched these issues” (Doc.
10 41 at 2), but this statement is not contained in McDermott’s declaration. The declaration
11 says nothing about researching PWC service centers. *See* Doc. 41-1. Plaintiffs’
12 memorandum also asserts that McDermott “wanted a PWC PT6 engine due to PWC’s
13 advertising efforts in Arizona regarding the reliability of the PT6A” (Doc. 41 at 2), but
14 McDermott’s declaration says nothing about advertising efforts in Arizona. Doc. 41-1.
15 He says that he was interested in purchasing the PWC engine “because of the PWC
16 advertising regarding its performance” (Doc. 41-1, ¶ 7), but the declaration does not say
17 that such advertising occurred in or was directed to Arizona. *See* Doc. 41-1.

18 Thus, the only new evidence submitted by Plaintiffs that would support a
19 conclusion that the claims in this case arose out of PWC’s contacts with Arizona are
20 McDermott’s unsupported assertions that PWC has authorized service centers in
21 Arizona.¹ In addition to the fact that those assertions would not be admissible under Rule
22 602, PWC submits evidence that Cutter Aviation – the only facility Plaintiffs identify – is
23 not an authorized PWC facility. PWC submits a list of all PWC factory-authorized
24 facilities as posted on its website, showing no such facilities in Arizona. Doc. 30 at 18-

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26 ¹ The declaration states (again, without support) that PWC ships parts into
27 Arizona, and McDermott asserted in his earlier declaration that he took various steps to
28 acquire a new PWC engine after the accident, but nothing in the declaration connects the
shipment of parts to his decision to buy the engine, and events occurring after the
accident cannot provide a basis for personal jurisdiction over Plaintiffs’ claims arising out
of the accident.

1 26 (showing authorized facilities in California, Vermont, West Virginia, Kansas, and
2 Georgia, but none in Arizona). PWC also submits a declaration from Cutter Aviation
3 Vice President and Chief Financial Officer, Steven Prieser. Doc. 42-1. Prieser avers that
4 “Cutter Aviation is not a Pratt & Whitney Canada factory-authorized service repair center
5 for Pratt & Whitney Canada engines,” and that “Cutter Aviation does not have any
6 contractual relationship with Pratt & Whitney Canada to provide service or repairs to its
7 engines.” Doc. 42-1 at 2.

8 In short, Plaintiffs have submitted no competent evidence that PWC has
9 authorized service centers in Arizona – the fact they claim to have relied upon in
10 purchasing the engine. Even if McDermott genuinely believed that PWC had such
11 service facilities in this State, his belief cannot establish specific jurisdiction over PWC.
12 The defendant’s conduct, not the plaintiff’s, must create a substantial connection with the
13 forum state, out of which the claim arises. *Walden*, 134 S. Ct. at 1121. Plaintiffs also
14 assert that McDermott relied on PWC advertising regarding performance of its engines,
15 but they provide no evidence about the nature or content of such advertising, or where or
16 when it was seen, and no evidence that the advertising was directed to Arizona.

17 **2. PWC’s Arizona Contacts Do Not Give Rise to Plaintiffs’ Claims.**

18 Plaintiffs provide no additional evidence to support their argument that was not
19 considered in the Courts’ first order. After the opportunity for jurisdictional discovery, it
20 remains undisputed that PWC did not design, manufacture, sell, or distribute the subject
21 engine in Arizona. Nor do Plaintiffs assert that PWC or a PWC authorized maintenance
22 facility performed repairs or service on the subject PT6 engine at any time. Plaintiffs
23 provide no competent evidence that PWC’s contacts with Arizona gave rise to Plaintiffs’
24 claims, which was the very purpose of allowing further discovery.

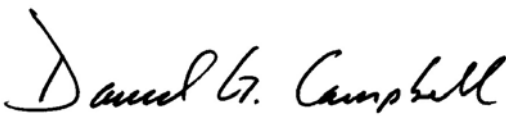
25 Based on the facts and evidence provided, the Court cannot conclude that “but for”
26 PWC’s activities in Arizona, Plaintiffs’ lawsuit would not have arisen. Thus, Plaintiffs
27 have failed to satisfy the second prong of the Ninth Circuit’s test for establishing specific
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jurisdiction, and the Court will grant PWC's motion to dismiss. *See Bancroft*, 223 F.3d at 1088; *Terracom*, 49 F.3d at 561.

IT IS ORDERED: Defendant PWC's motion to dismiss for lack of personal jurisdiction (Doc. 21) is **granted**.

Dated this 11th day of April, 2017.



David G. Campbell
United States District Judge