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

8 Westworld Consulting, L.L.C.,
9
10 Plaintiff,

No. CV16-03361-PHX-DGC

ORDER

11 v.

12 Vanity Group Pty Ltd.; Vanity Group; John
13 Does I-XX; Jane Does I-XX; XYZ Entities
1-100.

14 Defendants.

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16 Plaintiff Westworld Consulting, LLC, filed a complaint against Defendants Vanity
17 Group Pty. Ltd. and Vanity Group (collectively “Vanity”) seeking monetary and
18 injunctive relief for an alleged breach of contract, promissory estoppel, conversion,
19 negligence, and fraud. Doc. 1. Vanity has moved to dismiss for lack of personal
20 jurisdiction. Doc. 19. The motion is fully briefed and oral argument will not aid the
21 Court’s decision. *See* Fed. R. Civ. P. 78(b); LRCiv 7.2(f). For the reasons set forth
22 below, the Court will deny Vanity’s motion.

23 **I. Background.**

24 Plaintiff is an Arizona company that offers consulting and networking services for
25 business clients throughout the United States and abroad. Doc. 1 ¶ 1. Its principal place
26 of business is Scottsdale, Arizona, and Arizona resident Mike Dunlap is its managing
27 member. *Id.*; Doc. 23-1 at 1. Vanity is an Australian company that supplies luxury hotel
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1 amenities. Doc. 19-1 at 1-2. It is incorporated and headquartered in Sydney, Australia.
2 *Id.*

3 In November 2015, Vanity used LinkedIn to recruit Dunlap for the role of Vice
4 President of Business Development for North America. Doc. 23-1 at 2-3. Vanity
5 initiated the communication with an invitation to connect. *Id.*; Doc. 19-1 at 11; Doc. 27
6 ¶ 17. At the time, Vanity had no physical presence or customers in Arizona. Doc. 19-1
7 at 2. After preliminary discussions, Vanity invited Dunlap to interview in its Sydney
8 office for the position. Doc. 23-1 at 3-4.

9 Dunlap visited Sydney in January 2016, and the parties agreed to a long-term
10 relationship in which Dunlap would serve as Vanity's Vice President of Business
11 Development for North America. *Id.* Although Vanity attempted to draft a one-year
12 contract compliant with U.S. law, no written contract was ever executed. *Id.* at 6;
13 Doc. 19-1 at 6, 32-35. Dunlap's responsibilities included the facilitation of business
14 relationships with potential clients throughout the United States. Doc. 23-1 at 4. The
15 parties agreed that Dunlap would act as Vanity's agent and operate from an office in
16 Scottsdale, Arizona. *Id.* Vanity provided Dunlap with Vanity business cards and a
17 Vanity email-signature block, both of which contained a Scottsdale address. *Id.* at 5-6.

18 Upon his return to Arizona, Dunlap began promoting Vanity's business in
19 Arizona, California, Texas, and Nevada. *Id.* at 4. He started negotiating sales
20 agreements with several national hotel chains. *Id.* at 6-7. Vanity paid Dunlap for this
21 work and associated travel expenses. *Id.* at 8-9. Meanwhile, Vanity introduced Dunlap
22 to customer contacts in the United States as its Vice President of Business Development
23 for North America. *Id.* at 7.

24 Vanity terminated its relationship with Dunlap in February 2016. *Id.* at 9.
25 Plaintiff filed this action in October 2016. Doc. 1. Vanity now moves to dismiss the
26 complaint for lack of personal jurisdiction. Doc. 19.

1 **II. Legal Standard.**

2 To withstand a 12(b)(2) motion, the plaintiff must show that the defendant is
3 properly subject to the court’s jurisdiction. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
4 F.3d 1218, 1223 (9th Cir. 2011). “Where, as here, the defendant’s motion is based on
5 written materials rather than an evidentiary hearing, the plaintiff need only make a prima
6 facie showing of jurisdictional facts to withstand the motion to dismiss.” *Id.* “The
7 plaintiff cannot ‘simply rest on the bare allegations of its complaint,’ but uncontroverted
8 allegations in the complaint must be taken as true.” *Id.* (quoting *Schwarzenegger v. Fred*
9 *Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). In ruling on such a motion, the
10 Court considers the pleadings and any materials submitted by the parties, accepting as
11 true any uncontroverted allegations in the complaint and resolving any factual conflicts in
12 the plaintiff’s favor. *Id.* “Conflicts between parties over statements contained in
13 affidavits must be resolved in the plaintiff’s favor.” *Schwarzenegger*, 374 F.3d at 800.

14 **III. Discussion.**

15 Arizona’s long-arm statute, Ariz. R. Civ. P. 4.2(a), applies in this diversity action.
16 *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 559 (9th Cir. 1995). That rule “provides
17 for personal jurisdiction co-extensive with the limits of federal due process.” *Doe v. Am.*
18 *Nat’l Red Cross*, 112 F.3d 1048, 1050 (9th Cir. 1997). “[A] corporation may be subject
19 to personal jurisdiction only when its contacts with the forum support either specific or
20 general jurisdiction.” *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1068 (9th Cir. 2014)
21 (citing *Int’l Shoe Co. v. Washington*, 326 U.S. 310 (1945)).

22 Plaintiff argues that Vanity is subject to specific jurisdiction. Doc. 23 at 5.
23 Specific jurisdiction exists if a foreign corporation’s contacts with the forum give rise to
24 the cause of action before the Court. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754 (2014).
25 The Ninth Circuit employs a three-prong test to determine whether a non-resident has
26 sufficient minimum contacts for specific jurisdiction:

- 27 (1) [T]he defendant must either purposefully direct his activities toward the
28 forum or purposefully avail himself of the privileges of conducting

1 activities in the forum; (2) the claim must be one which arises out of or
2 relates to the defendant's forum-related activities; and (3) the exercise of
3 jurisdiction must comport with fair play and substantial justice, i.e. it must
be reasonable.

4 *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). Plaintiff
5 has the burden of satisfying the first two elements. *Id.* If it does, Vanity must show that
6 the exercise of jurisdiction would be unreasonable. *Id.* at 1068-69.

7 **A. Purposeful Availment.**

8 A purposeful availment analysis is appropriate here because the claims sound
9 primarily in contract – the tort claims are all related to, and arise from, the contractual
10 relationship. *Boschetto v. Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008) (applying
11 purposeful availment analysis to case involving breach of contract, misrepresentation,
12 and fraud because the case sounded “primarily in contract”); *Sher v. Johnson*, 911 F.2d
13 1357, 1362 (9th Cir. 1990) (analyzing purposeful availment for both tort and contract
14 claims arising out of a contractual relationship).

15 “To have purposefully availed itself of the privilege of doing business in the
16 forum, a defendant must have performed some type of affirmative conduct which allows
17 or promotes the transaction of business within the forum state.” *Boschetto*, 539 F.3d at
18 1016 (internal quotation marks omitted). The defendant's conduct, not the plaintiff's,
19 must create a substantial connection with the forum. *Walden v. Fiore*, 134 S. Ct. 1115,
20 1121-22 (2014). “Due process requires that a defendant be haled into court in a forum
21 State based on his own affiliation with the State, not based on the ‘random, fortuitous, or
22 attenuated’ contacts he makes by interacting with other persons affiliated with the State.”
23 *Id.* at 1123.

24 Plaintiff contends that Vanity purposefully availed itself of the benefits of doing
25 business in Arizona by: (1) reaching out to Plaintiff in Arizona to begin preliminary
26 discussions about a contractual relationship; (2) establishing a long-term contractual
27 relationship with an Arizona resident; (3) contracting with Plaintiff to operate Vanity's
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1 business activities in Scottsdale, Arizona; (4) identifying a Scottsdale, Arizona, address
2 on Plaintiff's Vanity business cards and email-signature block; (5) employing Plaintiff to
3 perform business development from and in Arizona; (6) designating Plaintiff as an agent
4 to undertake business commitments on behalf of Vanity from Arizona; and (7) paying
5 Plaintiff for his business development work. Doc. 23-1 at 2-9.

6 Vanity argues that it has "never marketed its products, or directed its business to
7 the residents of Arizona." Doc. 19 at 3. Although Vanity did contract with Plaintiff to
8 engage in limited business development on a trial basis, "Vanity never requested, or
9 asked, or otherwise instructed [Plaintiff] to work from Arizona." Doc. 26 at 6. Vanity
10 further asserts that during negotiations Plaintiff suggested it could work from a "virtual"
11 office anywhere in the United States. *Id.* The fact that Plaintiff chose to work from
12 Arizona, Vanity argues, "does not translate into a direct connection between Vanity and
13 the State of Arizona." *Id.* at 8.

14 As noted above, Plaintiff "need make only a prima facie showing of jurisdictional
15 facts to withstand the motion," and the Court must draw all reasonable inferences and
16 resolve all factual disputes in Plaintiff's favor. *Mavrix Photo, Inc*, 647 F.3d at 1223.
17 Plaintiff has made a prima facie case for jurisdiction. Regardless of who chose Arizona
18 as the location for Plaintiff's work, Vanity contracted with an Arizona resident to
19 represent Vanity and pursue business opportunities, designated the resident as its vice
20 president, created business cards showing the Arizona resident as its agent, and paid the
21 agent for business development work. Vanity disputes a number of these facts, but, as
22 noted above, "[c]onflicts between parties over statements contained in affidavits must be
23 resolved in the plaintiff's favor." *Schwarzenegger*, 374 F.3d at 800.

24 Vanity's reliance on *Walden v. Fiore* is misplaced. Doc. 19 at 12 (citing 134 S.
25 Ct. at 1125). In *Walden*, the defendant was a Georgia police officer who seized Nevada
26 residents' money in Georgia and wrote a false affidavit to justify the seizure. 134 S. Ct.
27 at 1119-20. Although the Nevada residents felt harm in Nevada, "no part of [the
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1 defendant's] course of conduct occurred in Nevada.” *Id.* at 1124-25. The defendant
2 never “conducted activities within, contacted anyone in, or sent anything or anyone to
3 Nevada.” *Id.* at 1124. Vanity, by contrast, reached into Arizona to recruit an Arizona
4 resident, employed the Arizona resident, held the resident out as a Vanity employee
5 located in Arizona, and compensated the resident for work performed in Arizona.

6 **B. Arising Out Of.**

7 The claims in this case must also arise out of Defendants’ contacts with Arizona.
8 The Ninth Circuit uses a “but for” test. A claim arises out of a defendant’s forum
9 contacts if, “but for” the contacts, the cause of action would not have arisen. *Menken v.*
10 *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007).

11 The test is satisfied here. Plaintiff alleges that Vanity contracted with him to
12 conduct business from an address in Arizona. But for this agreement, Plaintiff “would
13 not have performed services or turned over proprietary information to [Vanity].” Doc. 23
14 at 12. It is Plaintiff’s performance and Vanity’s alleged breach of this contract that gave
15 rise to the complaint.

16 **C. Reasonableness.**

17 Once the first two prongs are satisfied, there is a strong presumption of
18 reasonableness. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1117 (9th Cir. 2002). The
19 burden shifts to the defendant to ““present a compelling case that the presence of some
20 other considerations would render jurisdiction unreasonable.”” *Id.* at 1114 (quoting
21 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)). Reasonableness is
22 evaluated using the following factors:

- 23 (1) [T]he extent of the defendants’ purposeful injection into the forum
24 state’s affairs; (2) the burden on the defendant of defending in the forum;
25 (3) the extent of the conflict with the sovereignty of the defendant’s state;
26 (4) the forum state’s interest in adjudicating the dispute; (5) the most
27 efficient judicial resolution of the controversy; (6) the importance of the
28 forum to the plaintiff’s interest in convenient and effective relief; and
(7) the existence of an alternative forum.

1 *Id.*

2 The first factor – the extent of Vanity’s purposeful injection into Arizona – weighs
3 in favor of Plaintiff. Granted, Vanity’s relationship with Plaintiff lasted less than a
4 month, it has no other employees, facilities, or clients in Arizona, and it does not sell or
5 distribute products here. Doc. 19 at 2. But Vanity nonetheless reached into Arizona to
6 recruit Plaintiff, identified a Vanity office in Scottsdale, and directed Plaintiff to develop
7 business in Arizona, among other states.

8 The second factor – the burden on Vanity – weighs in favor of Vanity. It would
9 undoubtedly be more burdensome for an Australian company to litigate in Arizona. *See*
10 *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017)
11 (“primary concern is the burden on the defendant” (internal quotation marks omitted)).
12 But this factor does not carry heavy weight because “modern advances in
13 communications and transportation have significantly reduced the burden of litigating in
14 another country.” *Dole Food Co., Inc.*, 303 F.3d at 1115 (quoting *Sinatra v. Nat’l*
15 *Enquirer*, 854 F.2d 1191, 1199 (9th Cir. 1988)). And Vanity does not face the burden of
16 overcoming a language barrier. *See id.* (fluency in English is a “mitigating factor”).

17 The third factor – conflict with Australian sovereignty – also weighs in favor of
18 Vanity. The Supreme Court has indicated that “[g]reat care and reserve should be
19 exercised when extending our notions of personal jurisdiction into the international
20 field.” *Asahi Metal Indus. Co., Ltd. v. Superior Court of Cal.*, 480 U.S. 102, 115 (1987)
21 (internal quotation marks omitted). But “this factor is not dispositive because, if given
22 controlling weight, it would always prevent suit against a foreign national in a United
23 States court.” *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*, 784 F.2d 1392,
24 1401-02 (9th Cir. 1986) (internal quotation marks omitted).

25 The fourth factor – Arizona’s interest in adjudicating the dispute – weighs in favor
26 of Plaintiff. Arizona has a strong interest in ensuring that its residents are compensated
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1 for their injuries. *Ochoa v. J.B. Martin and Sons Farms, Inc.*, 287 F.3d 1182, 1193 (9th
2 Cir. 2002).

3 The fifth factor – the most efficient judicial resolution – favors neither party. The
4 Ninth Circuit looks “primarily at where the witnesses and the evidence are likely to be
5 located.” *Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th Cir. 1993).
6 Vanity contends that the most efficient resolution would be in Australia, “where the
7 anticipated relationship was negotiated.” Doc. 19 at 16. Yet neither party contends that a
8 majority of the witnesses and evidence is located in Australia or Arizona. *Id.*; Doc. 23 at
9 14. Also relevant is the choice of law applicable to the case. *See Dole Food Co., Inc.*,
10 303 F.3d at 1116. The parties dispute whether the law of Arizona or Australia would
11 govern the contract, but the Court must resolve this dispute in favor of Plaintiff at this
12 stage. Plaintiff avows that Defendant contemplated a contract compliant with U.S. law.
13 Doc. 23-1 at 6; *see also* Doc. 19-1 at 32-35 (although Vanity shared a standard Australian
14 contract to give Plaintiff notice of the general terms, Vanity attempted to secure a
15 contract compliant with U.S. law).

16 The sixth factor – Plaintiff’s convenience – weighs in favor of Plaintiff. Litigating
17 in Australia would surely be inconvenient for an Arizona resident. Nonetheless, the
18 Court does not weigh Plaintiff’s convenience heavily. *See Ziegler v. Indian River Cty.*,
19 64 F.3d 470, 476 (9th Cir. 1995).

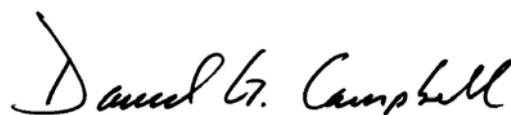
20 The final factor – the existence of an alternative forum – weighs in favor of
21 Vanity. Plaintiff does not dispute that Australia is an alternative forum. *See* Doc. 23
22 at 15.

23 The first, fourth, and sixth factors favor Plaintiff; the second, third, and seventh
24 factors favor Vanity; and the fifth factor favors neither party. Because the factors do not
25 clearly favor either party, the Court cannot conclude that Vanity has made a compelling
26 case of unreasonableness. *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 129 (9th
27 Cir. 1995) (“given the closeness of the factors, we conclude that [defendant] has not
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1 presented a ‘compelling case’ that exercising jurisdiction over it would be
2 unreasonable”). Ninth Circuit cases “emphasize the heavy burden on both domestic and
3 foreign defendants in proving a ‘compelling case’ of unreasonableness to defeat
4 jurisdiction.” *Dole Food Co., Inc.*, 303 F.3d at 1117.

5 **IT IS ORDERED** that Vanity’s motion to dismiss for lack of personal jurisdiction
6 (Doc. 19) is **denied**.

7 Dated this 29th day of November, 2017.

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12 David G. Campbell
13 United States District Judge
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