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**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Christopher Walsh,	}	No. CV-18-01545-PHX-SPL
	}	
Plaintiff,	}	<b>ORDER</b>
vs.	}	
	}	
LG Chem America, et al.,	}	
	}	
Defendants.	}	

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Before the Court is Defendant LG Chem, Ltd.’s Motion to Dismiss (Doc. 33). Having considered the briefing (Docs. 33, 40, 41),<sup>1</sup> the Court rules as follows.

**I. Background**

On October 28, 2019, Plaintiff purchased two LG HG2 18650 (“HG2”) batteries from retailer Oueis Gas in Mesa, Arizona (Doc. 30 at ¶¶ 8–9). The HG2 batteries were designed, manufactured, tested, marketed, and sold by LG Chem, a company based in Seoul, South Korea (Doc. 30 at ¶ 2, 8).

On November 18, 2016, while sitting at a table in a restaurant, the subject batteries exploded and set Plaintiff on fire (Doc. 30 at ¶ 10). Plaintiff spent two weeks in a burn unit, underwent physical therapy, missed two months of work, incurred over \$170,000 in medical bills, and ultimately suffered third-degree burns over 8% of his body (Doc. 30 at

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<sup>1</sup> Because it would not assist in resolution of the instant issues, the Court finds the pending motion is suitable for decision without oral argument. *See* LRCiv. 7.2(f); Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 ¶ 11).

2 Plaintiff initiated this product liability action, alleging four causes of action: (1)  
3 negligent design, (2) negligent failure to warn, (3) strict liability/design defect, and (4)  
4 strict liability/information defect (Docs. 1, 30). Defendant LG Chem now moves to dismiss  
5 the claims against it for lack of personal jurisdiction (Doc. 33).

## 6 **II. Legal Standard**

7 A “[p]laintiff bears the burden of establishing personal jurisdiction.” *Repwest Ins.*  
8 *Co. v. Praetorian Ins. Co.*, 890 F. Supp. 2d 1168, 1184 (D. Ariz. 2012). When a defendant  
9 moves to dismiss a complaint for lack of personal jurisdiction, “the plaintiff is ‘obligated  
10 to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction’”  
11 over the defendant. *Cummings v. W. Trial Lawyers Ass’n*, 133 F. Supp. 2d 1144, 1151 (D.  
12 Ariz. 2001) (citation omitted). “Where, as here, the defendant’s motion is based on written  
13 materials rather than an evidentiary hearing, the plaintiff need only make a prima facie  
14 showing of jurisdictional facts to withstand a motion to dismiss.” *Mavrix Photo, Inc. v.*  
15 *Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011). The Court may not, however,  
16 “assume the truth of allegations in a pleading that are controverted by affidavit.” *Id.*  
17 (citation omitted).

18 Because no applicable federal statute governing personal jurisdiction exists,  
19 Arizona’s long-arm statute applies. *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 559  
20 (9th Cir. 1995). Arizona’s long-arm statute provides for personal jurisdiction “to the  
21 maximum extent permitted by the Arizona Constitution and the United States  
22 Constitution.” Ariz. R. Civ. P. 4.2(a). Ultimately, “the jurisdictional analyses under state  
23 law and federal due process are the same.” *Schwarzenegger v. Fred Martin Motor Co.*,  
24 374 F.3d 797, 801 (9th Cir. 2004). Absent traditional bases for personal jurisdiction, the  
25 Due Process Clause requires that a nonresident have certain minimum contacts with the  
26 forum state such that the exercise of personal jurisdiction “does not offend traditional  
27 notions of fair play and substantial justice.” *Id.* (quoting *Int’l Shoe Co. v. Washington*, 326  
28 U.S. 310, 316 (1945)). “In determining whether a defendant had minimum contacts[,] . . .

1 courts focus on ‘the relationship among the defendant, the forum, and the litigation.’”  
2 *Brink v. First Credit Res.*, 57 F. Supp. 2d 848, 860 (D. Ariz. 1999). “Depending on the  
3 nature and extent of the defendant’s contacts with the forum state, the court may exercise  
4 either general or specific jurisdiction over the defendant.” *Id.*

5 Here, Plaintiff does not allege that LG Chem is subject to general jurisdiction (Doc.  
6 40 at 2, § III(A)). Instead, Plaintiff alleges that LG Chem is subject to specific jurisdiction  
7 (Doc. 40 at 2, § III(A)–(C)). In determining whether a defendant has contacts with the  
8 forum state sufficient to establish specific jurisdiction, courts apply a three-prong test:

9 (1) The non-resident defendant must purposefully direct his  
10 activities or consummate some transaction with the forum or  
11 resident thereof; or perform some act by which he purposefully  
12 avails himself of the privilege of conducting activities in the  
13 forum, thereby invoking the benefits and protections of its  
14 laws; (2) the claim must be one which arises out of or relates  
15 to the defendant’s forum-related activities; and (3) the exercise  
16 of jurisdiction must comport with fair play and substantial  
17 justice, i.e. it must be reasonable.

18 *Schwarzenegger*, 374 F.3d at 802. Plaintiff bears the burden of satisfying the first two  
19 prongs. *Id.* If Plaintiff succeeds, the burden shifts to Defendant to “present a compelling  
20 case” that the exercise of specific jurisdiction would be unreasonable. *Id.*

### 21 **A. Purposeful Availment & Purposeful Direction**

22 The first prong of the test “may be satisfied by purposeful availment of the privilege  
23 of doing business in the forum; by purposeful direction of activities at the forum; or some  
24 combination thereof.” *Yaoo! Inc. v. La Ligue Contre Le Racisme Et L’Antisemitisme*, 433  
25 F.3d 1199, 1206 (9th Cir. 2006). “Purposeful availment requires that the defendant engage  
26 in some form of affirmative conduct allowing or promoting the transaction of business  
27 within the forum state. This focus upon the affirmative conduct of the defendant is  
28 designed to ensure that the defendant is not haled into court as the result of random,  
fortuitous or attenuated contacts.” *Gray & Co. v. Firstenberg Mach. Co., Inc.*, 913 F.2d  
758, 760 (9th Cir. 1990) (citation omitted). Ultimately, a defendant is found to have  
purposefully availed himself of the forum’s benefits if he has intentionally “engaged in

1 significant activities within a State or has created ‘continuing obligations’ between himself  
2 and the residents of the forum.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S.  
3 462, 476 (1985)). In contrast, purposeful direction is evaluated using the “effects test”  
4 articulated in *Calder v. Jones*, 465 U.S. 783 (1984), which assesses whether the defendant  
5 has “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing  
6 harm that the defendant knows is likely to be suffered in the forum state.” *Dole Food Co.,*  
7 *Inc. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002). “A purposeful availment analysis is  
8 most often used in suits sounding in contract. A purposeful direction analysis, on the other  
9 hand, is most often used in suits sounding in tort.” *Schwarzenegger v. Fred Martin Motor*  
10 *Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (internal citation omitted). Because the *Calder*  
11 effects test only applies to *intentional* torts, however, the Court will analyze the first prong  
12 using the purposeful availment test. *See J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873,  
13 880 (2011) (“In products-liability cases like this one, it is the defendant’s purposeful  
14 availment that makes jurisdiction consistent with ‘traditional notions of fair play and  
15 substantial justice.’”); *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460  
16 (9th Cir. 2007) (“[I]t is well established that the *Calder* test applies only to intentional torts,  
17 not to the breach of contract and negligence claims presented here.”).

18 Defendant argues that Plaintiff’s negligence and strict liability claims are based  
19 solely on a stream-of-commerce argument, which is insufficient to establish specific  
20 jurisdiction (Doc. 8-9):

21 The placement of a product into the stream of commerce,  
22 without more, is not an act purposefully directed toward a  
23 forum state. Even a defendant’s awareness that the stream of  
24 commerce may or will sweep the product into the forum state  
does not convert the mere act of placing the product into the  
stream of commerce into an act purposefully directed toward  
the forum state.

25 *Holland Am. Line, Inc.*, 485 F.3d at 459. Plaintiff, on the other hand, argues that Defendant  
26 engaged in purposeful availment in: (1) setting design and manufacturing specifications,  
27 (2) getting the product to a United States distributor, (3) filing patent applications, (4)  
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1 testing the product, (5) non product specific advertisement, (6) selling a large quantity of  
2 the product, and (7) litigating in Arizona (Doc. 40 at 6-7).

3 First, there is nothing in the record to indicate that Defendant designs, manufactures,  
4 tests, or maintains the HG2 batteries anywhere in the United States, let alone in Arizona  
5 (see Doc. 33-1 at ¶ 17; Doc. 44. at ¶ 3). See *Carpenter v. Sikorsky Aircraft Corp.*, 101  
6 F.Supp.3d 911, 923 (C.D. Cal. 2015) (noting there were “no allegations that any part of the  
7 [product] was manufactured, designed or maintained [*in the forum state*].”). Next, once  
8 Defendant sold its product to distributors, it relinquished all control of the product to those  
9 independent corporations (Doc. 33-1 at ¶¶ 18, 20, 27).<sup>2</sup> Defendant was not involved in the  
10 distribution process, nor was it involved in any direct marketing to consumers.<sup>3</sup> To the  
11 extent Plaintiff argues that the sale of thirteen million units annually in the United States is  
12 a strong indication of purposeful availment, this stream-of commerce argument, without  
13 more, is unavailing. See *Ariz. Sch. Risk Retention Trust, Inc. v. NMTC, Inc.*, 169 F.Supp.3d

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15 <sup>2</sup> To the extent Plaintiff alleges that Defendant transferred product specifically to  
16 Super Engine, an Arizona distributor, the claim is solely supported by allegations in a  
17 complaint in an unrelated federal case. See *State Farm Fire & Cas. Co. v. Amazon.com*  
18 *Inc.*, 2:17-cv-01994-JAT at Doc. 72. Accordingly, the Court finds that argument to be  
19 unpersuasive. See *Quanta Indem. Co. v. Amberwood Dev. Inc.*, No. CV-11-01807-PHX-  
20 JAT, 2014 WL 1246144, at \*18 n.28 (D. Ariz. Mar. 26, 2014) (“[T]he allegations of a  
21 complaint are not admissible evidence to prove the truth of those allegations because the  
22 drafter of a non-verified complaint has no knowledge of the facts alleged.”). To the extent  
23 Plaintiff alleges that Defendant licenses Arizona service providers, the website referenced  
24 specifically refers to Energy Storage System partners, has no specific reference to the HG2  
25 batteries, and provides no evidence that Defendant “owns, controls, or has any kind of  
26 economic relationship whatsoever with the [product] service centers located in the forum.”  
27 *Cottle v. W. Skyways, Inc.*, No. 1:17-cv-00049-DAD-BAM, 2017 WL 1383277, at \*5 (E.D.  
28 Cal. April 18, 2017) (see Doc. 40-1 at ¶ 5); LG Chem, ESS Battery Division,  
<https://www.lgesspartner.com/front/normal/en/product/productInstaller.dev> (last visited  
September 12, 2019).

23 <sup>3</sup> The Court further finds Plaintiff’s reference to non-product specific advertising to  
24 be equally unavailing. “[T]he likelihood that personal jurisdiction can be constitutionally  
25 exercised is directly proportionate to the nature and quality of commercial activity that an  
26 entity conducts over the internet.” *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419  
27 (9th Cir. 1997) (citation omitted). Plaintiff’s reference does not reveal that Defendant has  
28 in any way conducted commercial activity over the internet in Arizona—the link does not  
permit sales, nor does it target Arizona consumers. In fact, only 7 of the 31 images are in  
English. See LG Chem, Advertisements, [https://www.lgchem.com/global/lg-chem-  
company/information-center/advertising-media](https://www.lgchem.com/global/lg-chem-company/information-center/advertising-media) (last visited Sept. 12, 2019). Accordingly,  
the Court cannot find, based on the digital marketing materials, that Defendant deliberately  
directed any marketing efforts toward the forum state.

1 931, 939 (D. Ariz. 2016) (“[A] stream of commerce approach that dispenses with an  
2 examination and weighing of the nonresident defendant’s contacts with the forum and that  
3 imposes personal jurisdiction *on no more than the defendant’s use of a national distributor*  
4 *which directs the product of any quantity to the forum* must be rejected.” (emphasis  
5 added)). Finally, the Court finds the references to other litigation in Arizona to be  
6 inapposite, as Defendant maintained its defense of lack of personal jurisdiction within those  
7 actions (Doc. 41-1 at ¶ 71, 41-2 at ¶ 9) . *See State Farm Fire & Cas. Co. v. Amazon.com*  
8 *Inc., et al.*, 2:17-cv-01994-JAT at Doc. 13, ¶ 71 (filed July 30, 2018); *Garcia, et al. v. The*  
9 *Vapor Shop, et al.*, No. CV2016-052257 (May 19, 2017).

10 The Court agrees with Plaintiff, however, that Defendant’s 11 patents and 11  
11 additional patent applications related to the HG2 batteries is a strong indicator of  
12 purposeful availment (Doc. 40-1 at ¶ 6). *See Deprenyl Animal Health, Inc. v. Univ. of*  
13 *Toronto Innovations Found.*, 297 F.3d 1343, 1353 (Fed. Cir. 2002) (“Obtaining such a  
14 patent is a meaningful contact with the United States; it requires a patentee purposefully  
15 avail him or herself of a significant benefit of the United States law.”). Accordingly, the  
16 Court finds the first prong of the specific jurisdiction test is satisfied.

### 17 **B. Arising From Forum-Related Activities**

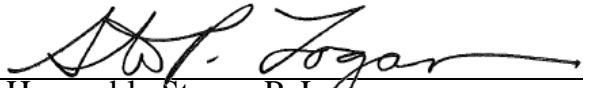
18 The second prong of the specific jurisdiction test “explores the relationship between  
19 the cause of plaintiff’s harm and the defendant’s acts identified as creating purposeful  
20 contacts with the forum state.” *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). “The .  
21 . . test is met if ‘but for’ the contacts between the defendant and the forum state, the cause  
22 of action would not have arisen.” *Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 561 (9th  
23 Cir. 1995). Under the present circumstances, the Court cannot conclude that Plaintiff  
24 would not have sustained his injury but for Defendant’s patents and patent applications.  
25 Accordingly, the Court finds that Plaintiff has failed to meet his burden for establishing  
26 specific jurisdiction.

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1           **IT IS THEREFORE ORDERED** that Defendant LG Chem Ltd.'s Motion to  
2 Dismiss for Lack of Personal Jurisdiction (Doc. 33) is **granted**.

3           Dated this 13th day of September, 2019.

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5   
6 Honorable Steven P. Logan  
7 United States District Judge  
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