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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Arizona School Risk Retention Trust,
Inc.,

Plaintiff,

vs.

NMTC, Inc. d/b/a Matco Tools, et al.,

Defendants.

No. CV-14-08009-PCT-PGR

ORDER

Among the motions pending before the Court is Techway Industrial Company Limited’s Motion to Dismiss the Plaintiff’s Complaint Under Fed.R.Civ.P. 12(b)(2) and 12(b)(5) (Doc. 123). Having considered the parties’ memoranda in light of the relevant record, the Court finds that defendant Techway Industrial Company Limited (“Techway”) should be dismissed from this action pursuant to Fed.R.Civ.P. 12(b)(2) because the Court lacks personal jurisdiction over it.¹

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No party has asked for a hearing on Techway’s motion and the Court concludes that oral argument would not aid the decisional process.
Because the Court concludes that it has no personal jurisdiction over Techway, it does not reach the issue raised in the Rule 12(b)(5) portion of Techway’s motion as to whether the plaintiff has properly served Techway. For that reason, the plaintiff’s two pending motions related to additional service on Techway are moot.

1 Background

2 This action arose from a fire that destroyed a transportation building belonging
3 to the Round Valley Unified School District No. 5 in Eager, Arizona on May 12, 2013.
4 The school district is a participating member of plaintiff Arizona School Risk
5 Retention Trust, Inc. (“plaintiff”) and its membership agreement with the plaintiff
6 provides the plaintiff with a right of subrogation. The plaintiff’s contention is that the
7 fire originated in an allegedly defective lithium-ion battery in a rechargeable drill that
8 the plaintiff asserts was manufactured and/or supplied by Techway; the drill at issue
9 was one from co-defendant Matco Tools (“Matco”) that Matco alleges it purchased
10 from co-defendant Professional Tool Products L.L.C. (“PTP”). According to the
11 plaintiff, the drill was manufactured by Techway with a battery purchased from
12 proposed new defendant Samsung SDI Co., Ltd. The First Amended Complaint
13 (Doc. 48) alleges claims of negligence (Count I), strict liability/products liability
14 (Count II), and breach of implied warranties of merchantability and fitness for a
15 particular purpose (Count III) against Techway, as well as against the other named
16 defendants without distinguishing among them.

17 Personal Jurisdiction-Related Evidence

18 It is undisputed that Techway is incorporated in Taiwan and has its principal
19 place of business in Taiwan. In support of its contention that the Court lacks
20 personal jurisdiction over it, Techway has submitted the affidavit of Chung, Fu-
21 Hsiang, Techway’s president.² The affidavit sets forth the following: (1) that
22 Techway is in the business of designing and manufacturing battery packs and
23 chargers, among other things; (2) that Techway does not sell or ship any products

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25 The Court notes that in resolving the Rule 12(b)(2) motion it has not
26 relied on the evidence Techway submitted with its reply.

1 to Arizona; (3) that Techway has no distributors in Arizona; (4) that Techway has no
2 knowledge that its products will be shipped to or sold in Arizona; (5) that Techway
3 is not licensed, authorized, or registered to do any business in the United States,
4 including Arizona; (6) that Techway has never executed a contract in Arizona; (7)
5 that Techway has never provided any services in Arizona nor has it ever provided
6 any services to any person in Arizona; (8) that Techway has never paid taxes in
7 Arizona; (9) that Techway has never owned, rented or leased any real or personal
8 property in Arizona; (10) that Techway has never maintained any place of business
9 in Arizona, and it has never maintained a telephone number, telex or telefax number,
10 or address in Arizona; (11) that Techway has no assets in Arizona; (12) that
11 Techway has never had an agent for service of process in Arizona; (13) that
12 Techway has never had any employees, including sales persons, representatives,
13 agents or servants, conduct business in Arizona; (14) that Techway has no
14 employees who attend trade shows or conduct meetings in Arizona; and (15) that
15 Techway has never been a party to another lawsuit in Arizona.

16 In support of its opposition to the Rule 12(b)(2) motion, the plaintiff has
17 submitted an affidavit from Marty Huguet, the president of co-defendant PTP, which
18 is located in South Carolina. The Huguet affidavit states: (1) that PTP purchased
19 the battery-powered drill, battery charger and battery pack at issue from Techway,
20 and PTP then sold the drill to co-defendant Matco for Matco to sell through its
21 nationwide distributor base, which includes distributors in Arizona; (2) that in 2008-
22 2009, PTP entered into a Supplier Agreement with Techway for Techway to supply
23 drills to PTP at PTP's South Carolina facility that would be developed in a Matco-
24 style housing and brand which PTP would then sell to Matco for Matco to distribute
25 nationally, that there was an understanding that this item would be exclusive to
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1 PTP/Matco in the United States market in that housing and style, that under this
2 agreement, Techway supplied its designed and manufactured products that
3 Techway knew at the time of the agreement would be distributed to all Matco
4 distributors throughout the United States, including Arizona, and that with this
5 assurance, Techway agreed to the exclusivity provision³; (3) that Matco utilizes a
6 different marketing and distribution model than other competitors in that Matco tools
7 may only be purchased from an authorized vendor located within a specific coverage
8 area, and there are such authorized vendors in Arizona; (4) that during the product
9 development process, Techway provided copies of quality and certification and
10 testing by its own and standardized laboratory facilities, including but not limited to
11 UL listing; (5) that as a further condition of the Supplier Agreement, PTP required
12 Techway to acquire insurance covering any claims in the United States that might
13 arise out of its merchandise, including the drills, that Techway provided PTP with a
14 certificate of insurance for coverage in the United States, which included insurance
15 coverage for Arizona, and that based on this assurance, PTP purchased
16 merchandise, including the drill, and that PTP has bought many thousands of
17 Techway products for distribution throughout the United States, including Arizona;
18 and (6) that PTP and Matco agree on the warranty statement and PTP provides to
19 Techway the artwork for the warranty statement to be printed by Techway on every
20 product instruction manual, and PTP provides related warranty information to
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23 At the end of Paragraph 7 of Huguet's affidavit is a reference to an
24 "Exhibit A para 3[,]" which the Court assumes is meant to refer to a supporting
25 exhibit, but the plaintiff's submitted evidence does not include any document labeled
26 "Exhibit A" and no item of submitted evidence other than Huguet's affidavit contains
any information about the referenced Supplier Agreement between Techway and
PTP. A copy of the Supplier Agreement is not part of the record.

1 Techway on an annual basis, and this includes information concerning warranty
2 information related to products in Arizona.⁴

3 The plaintiff has also submitted as evidence supporting its jurisdiction-related
4 argument (1) copies of six exemplar United States patents issued to Techway, none
5 of which has anything to do with the allegedly defective rechargeable drill at issue
6 here⁵, and (2) a copy of a certificate for products liability insurance, dated October
7 7, 2014, issued to Techway by Fubon Insurance, another Taiwanese company, for
8 worldwide coverage, including the United States and Canada, for the cordless power
9 tools and battery pack/battery chargers Techway distributes, but with a policy period
10 of July 01, 2014 to July 01, 2015, which does not include the date the fire at issue
11 here occurred, which was on May 12, 2013.

12 Discussion

13 Techway has moved to dismiss this action as to it pursuant to Fed.R.Civ.P.
14 12(b)(2) for lack of personal jurisdiction; it argues that the Court has neither general
15 nor specific personal jurisdiction over it. Since the plaintiff only argues in its

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17 Techway objects to portions of Huguet's affidavit pursuant to
18 Fed.R.Evid. 602 based on Huguet's failure to set forth his personal knowledge about
19 such matters in his affidavit as Techway's design and manufacturing process,
20 Techway's knowledge of PTP's distribution plans, or Techway's reasons for entering
21 into an agreement with PTP. While the Court shares Techway's admissibility
22 concerns about some of Huguet's statements, the Court concludes that it need not
23 resolve the evidentiary issues because the plaintiff has not established the existence
24 of personal jurisdiction even if the entirety of Huguet's affidavit is considered to be
25 admissible evidence.

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27 The submitted patents are for a derailleur cable detecting assembly for
28 an electric-auxiliary bicycle, an electric caulking gun (issued after the event at issue
29 here), an electric grinding gun, a lubricant gun, a motor-driving device of an electric
30 caulking gun (issued after the event at issue here), and a rechargeable motor-driven
31 ratchet wrench having power-off protection.

1 response that specific jurisdiction exists here, the Court will resolve Techway's Rule
2 12(b)(2) motion only on that ground.

3 The burden of proof is on the plaintiff to show that specific personal jurisdiction
4 is appropriate over Techway, and it needs to make that showing as to each claim
5 asserted against Techway. Picot v. Weston, 780 F.3d 1206, 1211 (9th Cir.2015).
6 Since the Court is only considering the parties' pleadings and their submitted written
7 materials without holding an evidentiary hearing, the plaintiff need only make a prima
8 facie showing of jurisdictional facts to defeat the motion to dismiss, Martinez v. Aero
9 Caribbean, 764 F.3d 1062, 1066 (9th Cir.2014), *i.e.*, it need only demonstrate
10 admissible facts that if true would support jurisdiction over Techway. Ballard v.
11 Savage, 65 F.3d 1495, 1498 (9th Cir.1995). Only contacts occurring prior to the
12 event causing the litigation, *i.e.*, the May 12, 2013 fire, may be considered by the
13 Court. Farmers Ins. Exchange v. Portage La Prairie Mutual Ins. Co., 907 F.2d 911,
14 913 (9th Cir.1990).

15 Where, as here, there is no applicable federal statute governing personal
16 jurisdiction, the Court applies the law of the state in which it sits. Martinez, at 1066.
17 Arizona's long-arm statute provides that an Arizona court may exercise personal
18 jurisdiction over a nonresident defendant to the maximum extent permitted under the
19 Due Process Clause of the United States Constitution. Ariz.R.Civ.P. 4.2(a); A. Uberti
20 and C. v. Leonardo, 892 P.2d 1354, 1358 (Ariz.1995). The Constitution permits a
21 court to exercise personal jurisdiction over a nonresident defendant if that defendant
22 has at least "minimum contacts" with the forum such that the exercise of jurisdiction
23 "does not offend traditional notions of fair play and substantial justice." International
24 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (internal quotation marks
25 omitted). The "'minimum contacts' inquiry principally protects the liberty of the
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1 nonresident defendant, not the interests of the plaintiff.” Walden v. Fiore, 134 S.Ct.
2 1115, 1125 n.9 (2014).

3 Since the issue here is specific jurisdiction over a nonresident of Arizona, the
4 inquiry turns on whether the suit-related conduct that Techway itself created
5 constituted a substantial connection with Arizona at the time of the fire. *Id.*, at 1121-
6 22. This inquiry is resolved through a three-prong test: (1) Techway must have
7 purposefully directed its activities or consummated some transaction with Arizona
8 or an Arizona resident, or performed some act by which it purposefully availed itself
9 of the privilege of conducting activities in Arizona, thereby invoking the benefits and
10 protections of its laws; (2) the claim must be one which arises out of or relates to
11 Techway’s Arizona-related activities; and (3) the exercise of jurisdiction must
12 comport with fair play and substantial justice, *i.e.*, it must be reasonable. Picot v.
13 Weston, 780 F.3d at 1211. All three factors must exist for personal jurisdiction to
14 apply. Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 270 (9th Cir.1995).
15 The burden of proving that the exercise of jurisdiction would not be reasonable shifts
16 to Techway only if the plaintiff first meets its burden of proving the first two prongs.
17 Picot, at 1212. Since the Court concludes that the plaintiff has failed to meet its
18 burden with respect to the first prong of the specific personal jurisdiction test, the
19 Court need not, and does not, reach the issues involved with whether the second
20 and third prongs have been met.

21 The first prong of the test, and the deciding prong here, is analyzed under
22 either a purposeful availment standard or a purposeful direction standard, which are
23 two distinct concepts. Washington Shoe Co. v. A-Z Sporting Goods Inc., 704 F.3d
24 668, 672 (9th Cir. 2012). Since the plaintiff’s claims against Techway are breach of
25 contract and nonintentional tort-related ones, the Court will utilize the purposeful
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1 availment standard. See Holland America Line Inc. v. Wärtsilä North America, Inc.,
2 485 F.3d 450, 460 (9th Cir.2007) (“[I]t is well established that the *Calder* [purposeful
3 direction] test applies only to intentional torts, not to the breach of contract and
4 negligence claims[.]”); see *also*, Marvix Photo, Inc. v. Brand Technologies, Inc., 647
5 F.3d 1218, 1228 (9th Cir.2011) (noting that the Supreme Court’s plurality in J.
6 McIntyre Machinery, Ltd. v. Nicastro, 131 S.Ct. 2780 (2011), used a purposeful
7 availment test to determine whether specific personal jurisdiction existed in a product
8 liability case.)

9 The purposeful availment standard focuses on whether a nonresident
10 defendant’s conduct and connection with the forum are such that it should
11 reasonably anticipate being haled into court there. World-Wide Volkswagen Corp.
12 v. Woodson, 444 U.S. 286, 297 (1980). It is based on the presumption that it is
13 reasonable to require a defendant to be subject to the burden of litigating in a state
14 in which it conducts business and benefits from its activities in that state. Brainerd
15 v. Governors of the University of Alberta, 873 F.2d 1257, 1259 (9th Cir.1989). This
16 requirement is met if the contacts proximately result from actions by the defendant
17 itself that create a substantial connection with the forum, such as where the
18 defendant has deliberately engaged in significant activities within the forum or has
19 created continuing obligations between itself and forum residents. Burger King
20 Corp. v. Rudzewicz, 471 U.S. 462, 474-76 (1985). But the defendant may not be
21 haled into a jurisdiction as a result of the defendant’s random, fortuitous, or
22 attenuated contacts with the forum, or on the unilateral activity of another party or
23 a third person. *Id.* at 475.

24 Underlying the plaintiff’s specific jurisdiction argument in this product liability
25 action is a “stream of commerce” theory: “[I]f Techway designed and manufactured
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1 power drills to be sold in the United States national market, knowingly availed itself
2 of a national distribution system for its product that included Arizona, and supplied
3 large numbers of products into that national distribution system that included
4 Arizona, it should reasonably have been on notice that it was subject to jurisdiction
5 in Arizona.” As the plaintiff notes, a majority of the Supreme Court has not agreed
6 on a stream of commerce rationale for specific jurisdiction. See Asahi Metal Industry
7 Co. v. Superior Court of California, Solano County, 480 U.S. 102 (1987) (“Asahi”)
8 and J. McIntyre Machinery, Ltd. v. Nicastro, 131 S.Ct. 2780 (2011) (“J. McIntyre”).

9 Asahi arose from a motorcycle accident in California involving an allegedly
10 defective motorcycle tire. Asahi Metal Industry Co., a Japanese company,
11 manufactured the tire tube’s valve assembly in Japan and then sold it in Taiwan to
12 Cheng Shin Rubber Industrial Co., a Taiwanese company, which then included the
13 valve assembly in the tire tube it manufactured. Chen Shin, after being sued in
14 California as a result of the accident, filed a cross-complaint seeking indemnification
15 from Asahi. The California Supreme Court held that because the stream of
16 commerce brought some valves that Asahi sold Cheng Shin into California, Asahi’s
17 awareness that its valves would be sold in California was sufficient to permit
18 California to exercise personal jurisdiction over Asahi. The Supreme Court reversed,
19 unanimously concluding that no personal jurisdiction existed. What the Supreme
20 Court could not agree on was a majority rationale for the lack of jurisdiction.

21 Justice O’Connor, with the concurrence of three other justices, adopted what
22 has become known as the “stream of commerce plus” test. She concluded that:

23 The placement of a product into the stream of commerce, without more,
24 is not an act of the defendant purposefully directed toward the forum
25 State. Additional conduct of the defendant may indicate an intent or
26 purpose to serve the market in the forum State, for example, designing

1 the product for the market in the forum State, advertising in the forum
2 State, establishing channels for providing regular advice to customers
3 in the forum State, or marketing the product through a distributor who
4 has agreed to serve as the sales agent in the forum State. But a
5 defendant's awareness that the stream of commerce may or will sweep
6 the product into the forum State does not convert the mere act of
7 placing the product into the stream into an act purposefully directed
toward the forum State.

8 480 U.S. at 112. Justice O'Connor further concluded that no personal jurisdiction
9 existed even if Asahi was aware that some of the valves it sold to Cheng Shin would
10 be incorporated into tire tubes sold in California because Asahi had not purposefully
11 availed itself of the California market inasmuch as it did not do business in California,
12 it had no office, agents, employees, or property in California, it did not advertise or
13 otherwise solicit business in California, it did not create, control, or employ the
14 distribution system that brought the valves to California, and there was no evidence
15 that it designed its product in anticipation of sales in California. *Id.* at 112-13.

16 Justice Brennan, also with the concurrence of three other justices, while
17 concurring in the judgment that no personal jurisdiction existed, did not agree with
18 Justice O'Connor's stream of commerce theory. Noting that the stream of
19 commerce refers to the regular and anticipated flow of products from manufacture
20 to distribution to retail sale, Justice Brennan concluded that no "additional conduct"
21 by the nonresident defendant was necessary for jurisdiction to comport with due
22 process because "[a]s long as a participant in this process is aware that the final
23 product is being marketed in the forum State, the possibility of a lawsuit there cannot
24 come as a surprise." *Id.* at 117.

25 Subsequent to Asahi, the Ninth Circuit adopted Justice O'Connor's "stream
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1 of commerce plus” theory of specific jurisdiction. See Holland America Line Inc. v.
2 Wärtsilä North America, Inc., 485 F.3d at 459 (Citing to Asahi, the court stated: “The
3 placement of a product into the stream of commerce, without more, is not an act
4 purposefully directed to a forum state. Even a defendant’s awareness that the
5 stream of commerce may or will sweep the product into the forum state does not
6 convert the mere act of placing the product into the stream of commerce into an act
7 purposefully directed toward the forum.”) (internal citation omitted).

8 J.McIntyre, the Supreme Court’s most recent pronouncement on specific
9 personal jurisdiction involving a product liability action, involved a New Jersey state
10 litigation against the English manufacturer of an allegedly defective metal-shearing
11 machine that injured the plaintiff in New Jersey. A majority of the Supreme Court
12 held that the English defendant was not subject to specific personal jurisdiction in
13 New Jersey, although, as in Asahi, there was no majority rationale for the decision.
14 The relevant facts in J.McIntyre were (1) the English defendant, which manufactured
15 its machines in England, did not sell its machines to buyers in the United States
16 other than to its independent United States distributor, but the defendant wanted its
17 distributor to sell its machines in the United States to anyone willing to buy them, (2)
18 the defendant’s officials attended annual recycling trade shows in the United States,
19 but not in New Jersey, (3) up to four of the defendant’s machines ended up in New
20 Jersey, (4) the defendant had no office in New Jersey, (5) the defendant did not own
21 any property or pay any taxes in New Jersey, (6) the defendant did not advertise in
22 New Jersey, (7) the defendant did not send any employees to New Jersey, (8) the
23 defendant held some United States patents on its recycling technology, and (9) the
24 defendant’s independent United States distributor structured its advertising and
25 sales efforts in accordance with the defendant’s direction and guidance whenever
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1 possible. The New Jersey Supreme Court held that the defendant could be sued in
2 New Jersey under a stream of commerce theory of jurisdiction, notwithstanding that
3 the defendant did not have a single contact with New Jersey other than the fact that
4 its machine in question ended up there, because the defendant knew or reasonably
5 should have known that its products were distributed in the United States through
6 a nationwide distribution system that might lead to its products being sold in any of
7 the states, including New Jersey.

8 Justice Kennedy, in a plurality opinion in which three other justices concurred,
9 adopted a more restrictive view of specific jurisdiction. In so doing, he rejected the
10 foreseeability-based stream of commerce theory adopted by Justice Brennan in his
11 Asahi concurrence, reasoning that “[t]he defendant’s transmission of goods permits
12 the exercise of jurisdiction only where the defendant can be said to have targeted
13 the forum; as a general rule, it is not enough that the defendant might have predicted
14 that its goods will reach the forum State.” 131 S.Ct. at 2788. Justice Kennedy also
15 concluded that the Supreme Court’s “precedents make clear that it is the defendant’s
16 actions, not his expectations, that empower a State’s courts to subject him to
17 judgment.” *Id.* at 2789. He further concluded that while the facts of the case may
18 reveal an intent to serve the United States market, they did not show that the
19 defendant purposefully availed itself of the New Jersey market. *Id.* at 2790.

20 Justice Breyer, joined by one other justice, concurred that there was no
21 specific personal jurisdiction in New Jersey based on the Supreme Court’s
22 precedents, which he noted had “held that a single sale to a customer who takes an
23 accident-causing product to a different State (where the accident takes place) is not
24 a sufficient basis for asserting jurisdiction[.]” *id.* at 2792, *i.e.*, that the Supreme Court
25 has “rejected the notion that a defendant’s amenability to suit travels with the
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1 chattel.” *Id.* at 2793 (internal quotation marks and brackets omitted). Justice Breyer
2 concluded that the facts found by the New Jersey Supreme Court neither showed
3 a regular flow or regular course of sales in New Jersey nor did they show “something
4 more” such as “special state-related design, advertising, advice, marketing, or
5 anything else,” or any specific effort by the defendant to sell in New Jersey. *Id.* at
6 2792.⁶

7 Since the Ninth Circuit has yet to apply J.McIntyre to a product liability action,
8 the Court, as many other courts have done, views the holding of the fragmented
9 J.McIntyre decision to be that of the narrow ground set forth in Justice Breyer’s
10 concurrence in the judgment. See Marks v. United States, 430 U.S. 188, 193 (1977)
11 (“When a fragmented [Supreme] Court decides a case and no single rationale
12 explaining the results enjoys the assent of five Justices, the holding of the Court may
13 be viewed as that position taken by those Members who concurred in the judgments
14 on the narrowest grounds[.]”) (internal quotation marks omitted). It can be discerned
15 from J.McIntyre, viewed from Justice Breyer’s prospective, that a stream of
16 commerce approach that dispenses with an examination and weighing of the
17 nonresident defendant’s contacts with the forum and that imposes personal
18 jurisdiction on no more than the defendant’s use of a national distributor which
19 directs product of any quantity to the forum must be rejected. Since this approach
20 is consistent with the Ninth Circuit’s approach in Holland, the Court therefore focuses
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23 Justice Ginsberg, joined by two other justices, filed a dissent wherein
24 she concluded that specific jurisdiction was present because the allegedly defective
25 machine did not randomly or fortuitously reach New Jersey, but was there as a result
26 of the defendant’s targeting of the United States as a single market through its
deliberate engagement of a local distributor to sell its products everywhere in the
United States the distributor could attract customers.

1 on Techway's efforts directed at Arizona that amount to something more than merely
2 placing its product at issue in the stream of commerce.

3 The plaintiff points to various acts by Techway that it argues meets the
4 purposeful availment factor, but the Court, viewing these acts as a whole, is not
5 persuaded that they are sufficient to subject Techway to personal jurisdiction in
6 Arizona because the plaintiff has failed to demonstrate the requisite extra showing.
7 First, the plaintiff argues that Techway contracted with a national distributor to sell
8 its products throughout the United States, including Arizona. But this is insufficient
9 evidence of purposeful availment directed at Arizona because the evidence
10 establishes only that Techway participated in a business arrangement with PTP in
11 South Carolina; there is no evidence that Techway in any way controlled the
12 distribution system of its product within the United States, much less in Arizona.
13 Rather than showing that Techway had any direct contacts with Arizona, the record
14 shows that Techway sold the product at issue exclusively to PTP, an independent
15 company, in South Carolina, that PTP then sold the product to Matco, which in turn
16 retailed the product through its national distribution system through one of its
17 unspecified vendors which apparently sold it to the Round Valley School District, but
18 whether that final sale actually occurred in Arizona is not a matter of record.
19 Furthermore, while the plaintiff relies on Huguet's conclusory statement in his
20 affidavit that PTP "has bought many thousands of Techway products for distribution
21 throughout the United States, including Arizona," presumably to show that Techway
22 had a regular flow of products into Arizona, the plaintiff has not provided any
23 evidence as to how many of these products included the product at issue, nor has
24 it provided any evidence as to how many of the product at issue were actually sold
25 in Arizona. In short, the plaintiff has not submitted any evidence that Techway
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1 directly marketed its product at Arizona or had any other presence in Arizona, and
2 it is simply insufficient that Techway may have foreseen that its product would end
3 up in Arizona.

4 Second, the plaintiff argues that Techway designed and manufactured its
5 product to be marketable in the United States, including Arizona, by designing it to
6 meet UL safety standards required in the United States and to work with the 110-volt
7 electrical supply used in the United States. This is not a sufficient showing of the
8 required “something more” because it does not indicate that Techway is even
9 focused solely on sales in the United States, much less on sales in Arizona. Even
10 if the product was designed to be used solely with a 110-voltage system, and there
11 is no evidence that it was, as opposed to being designed to use a globally-
12 acceptable 100-240 volt power supply, neither the 110-voltage standard nor the UL
13 standard are unique to the United States.

14 The plaintiff’s related argument that Techway has applied for and obtained at
15 least 36 United States patents “to protect its designs under United States law so that
16 an Arizona company or resident cannot copy their design” also does not establish
17 an Arizona focus. Assuming that the number of Techway’s patents is correct, and
18 the plaintiff has not submitted any evidence establishing that, none of the exemplar
19 patents specified by the plaintiff relate to the product at issue.

20 Third, the plaintiff argues that Techway, as a condition of its Supplier
21 Agreement with PTP, purchased “Arizona insurance to protect it from lawsuits within
22 the state[.]” This is insufficient because the only evidence of Techway’s insurance
23 coverage is affiant Huguet’s statement that Techway, at some unspecified date,
24 provided PTP with a certificate of insurance, for some unspecified duration, that
25 included coverage in the United States. Even assuming that this insurance
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1 coverage also applied to Matco, the national distributor of the product at issue, and
2 there is no evidence of that, and that the insurance was provided by an insurer
3 authorized to do business in Arizona, and there is also no evidence of that, it does
4 not show that Techway specifically purchased insurance to protect itself from claims
5 in Arizona arising from the sale of the product at issue, as opposed to claims arising
6 in the United States generally. At best, the insurance coverage only shows
7 Techway's awareness that its sale of its products to PTP in South Carolina might
8 subject it to litigation in the United States.

9 Fourth, the plaintiff argues that "Techway supplied and continues to supply
10 warranty services for its products within the state[,]" and that it has "ongoing
11 warranty responsibility for its products sold in Arizona and receives annual reports
12 from [PTP] on that warranty information." The only evidence of any such warranty
13 is set forth in two sentences in Huguet's affidavit and that evidence establishes no
14 more than that Techway prints warranty information provided by PTP and Matco on
15 its product instruction manuals and that Techway is annually provided some
16 unspecified warranty-related information by PTP. There is no evidence that
17 Techway was actually responsible for any warranty-related services in Arizona for
18 the product at issue at the time of the fire allegedly caused by the product.

19 Based on the record before it, the Court concludes that the plaintiff has failed
20 to establish a prima facie case that Techway purposefully availed itself of the
21 privilege of doing business in Arizona so as to subject it to specific personal
22 jurisdiction in Arizona. This conclusion is supported by other post-J.McIntyre
23 decisions by district courts within the Ninth Circuit. See e.g., Echard v. Townsend
24 Farms Inc., 992 F.Supp.2d 958 (D.Ariz.2014) (The plaintiff, who alleged that she was
25 injured in Arizona by consuming a drink product made with tainted pomegranate
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1 seeds, sued defendant Purely Pomegranate, a California company, in Arizona
2 because it sold the contaminated seeds to co-defendant Townsend Farms, an
3 Oregon company, which used them to manufacture a frozen drink which it sold to
4 Costco, a Washington company, which sold it across the western United States. In
5 concluding that the factual record relied on by the plaintiff was insufficient to
6 demonstrate a prima facie case for specific jurisdiction against Purely Pomegranate,
7 the court stated: "Purely Pomegranate did not retail the allegedly tainted product in
8 Arizona. It did not send the product to the company that retailed it in Arizona.
9 Instead, it shipped the ingredients to the company that sold the product to the
10 company that retailed the product in Arizona. Absent factual allegations establishing
11 a prima facie case that Purely Pomegranate did 'something more' to avail itself of the
12 benefits and protections of Arizona's laws - and that [the plaintiff]'s injury arises from
13 the forum-related activities - it is not subject to personal jurisdiction here."); Nevada
14 Power Co. v. Trench France SAS, 2015WL6737015 (D.Nev. Nov. 2, 2015) (A
15 Nevada company brought a product liability action in Nevada stemming from a
16 transformer fire in Nevada against the Austrian manufacturer of the transformer and
17 the French company that manufactured the allegedly defective bushing that the
18 Austrian company had installed in the transformer. The court rejected the plaintiff's
19 stream of commerce theory of specific personal jurisdiction over the French
20 company because the plaintiff had not submitted the required "something more"
21 showing that the French defendant had engaged in conduct expressly aimed at
22 Nevada, notwithstanding that hundreds of the French company's bushings had
23 entered Nevada. The court noted that, prior to the time of the fire, the French
24 company was not a party to the underlying transformer contract between the plaintiff
25 and the Austrian company, it had never advertised in Nevada, it had no agreement
26

1 with the Austrian company to serve as its sales agent or distributor, and it had not
2 designed its bushings for the plaintiff or for any other person or entity in Nevada.
3 The court rejected other Nevada-related contacts relied on by the plaintiff because
4 they had occurred subsequent to the fire.); Haller v. Advanced Industrial Computer
5 Inc., 2015WL854954 (D.Ariz. Feb. 27, 2015) (The court dismissed for lack of
6 personal jurisdiction a wrongful employment termination action brought in Arizona
7 by an Arizona resident against his employer, a California company, and a Taiwanese
8 manufacturer that sold its products in the United States through the California
9 company, which was its distributor. The Taiwanese company, which shared a
10 common president with its California distributor, had never done any business in
11 Arizona, did not own or lease property in Arizona, did not advertise in Arizona, did
12 not pay taxes in Arizona, and did not have any offices, employees, equipment,
13 operations, bank accounts, post office boxes or telephone listings in Arizona; its only
14 connection with Arizona was that its name appeared on a stock purchase agreement
15 with the plaintiff. The court rejected the plaintiff's stream of commerce-based specific
16 personal jurisdiction argument that the Taiwanese company had purposefully availed
17 itself of the privilege of doing business in Arizona by sending its products into the
18 Arizona market via the California distributor. In so doing, the court stated that while
19 it was plausible that the Taiwanese company knew that its products could enter the
20 Arizona market, there was no evidence that it targeted Arizona by marketing its
21 products to Arizona customers or shipping its products directly to Arizona, rather it
22 merely shipped its products to its California distributor based on the distributor's
23 shipping orders. The court concluded that the Taiwanese company should not be
24 haled into an Arizona court merely because its California distributor, a separate
25 corporate entity, shipped its products to Arizona.); Starbucks Corp. v. Wellshire

1 Farms, Inc., 2013WL6640124 (W.D.Wash. Dec. 17, 2013) (Starbucks sued a
2 Maryland company in Washington on the basis that it had placed a defective meat
3 product into the stream of commerce with knowledge it would be used in Starbucks'
4 sandwiches. The evidence showed that Starbucks had a contract with a nonparty
5 food assembler which sourced the ingredients for Starbucks' sandwiches, that the
6 food assembler contracted with a meat vendor, which in turn contracted with the
7 Maryland company. The court found that there was no personal jurisdiction because
8 Starbucks had failed to show that the Maryland company had engaged in the
9 requisite extra conduct necessary for the exercise of specific jurisdiction in that the
10 Maryland company did not attempt to serve the market in Washington, it did not
11 market in Washington, and did not otherwise direct its upstream commerce to
12 Washington.)⁷

13 As part of its response, the plaintiff has cursorily requested that it be allowed
14 to conduct discovery concerning Techway's ties to Arizona if the Court finds, as it
15 does, that the evidence submitted by the plaintiff is insufficient to establish a prima
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18 The Court concludes that the two product liability cases principally relied
19 on by the plaintiff, Patterson v. Home Depot, USA, Inc., 684 F.Supp.2d 1170
20 (D.Ariz.2010), a pre-J.McIntyre case, and Monje v. Spin Master Inc., 2013
21 WL2369888 (D.Ariz. May 29, 2013), both of which found the existence of specific
22 personal jurisdiction against a foreign defendant, are not persuasive given their
23 significant factual differences to this action. For example, in Patterson, which
24 involved a suit against the German manufacturer of a defectively designed ladder,
25 the court found that the German company had specifically established a subsidiary
26 in the United States to manufacture and disseminate its ladder. In Monje, an
Australian company, although contracting with a United States company to distribute
millions of sets of its defective toy, did not relinquish full control of the distribution
process in the United States; rather it remained sufficiently involved with the
distribution of the toy in the United States to be considered by the court to have
taken affirmative steps expressly aiming the toy into all of the states, including
Arizona.

1 facie case for specific personal jurisdiction. The Court concludes that no such
2 discovery is warranted here because the plaintiff has not set forth what evidence it
3 believes it could obtain through discovery from Techway, or from any other
4 defendant or entity, that would properly permit the invocation of specific personal
5 jurisdiction against Techway. See Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1160
6 (9th Cir.2006) (“[W]here a plaintiff’s claim of personal jurisdiction appears to be both
7 attenuated and based on bare allegations in the face of specific denials made by the
8 defendants, the Court need not permit even limited discovery[.]”); Martinez v. Aero
9 Caribbean, 764 F.3d at 1070 (Court concluded that it is not an abuse of discretion
10 to refuse to grant jurisdictional discovery when it is clear that additional discovery
11 would not demonstrate facts sufficient to constitute a basis for personal jurisdiction.);
12 Boschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008) (Court noted that the
13 denial of jurisdictional discovery is not an abuse of discretion when the plaintiffs’
14 request is based only on their belief that discovery will enable them to demonstrate
15 sufficient forum business contacts to establish the court’s personal jurisdiction.)

16 Therefore,

17 IT IS ORDERED that Techway Industrial Company Limited’s Motion to
18 Dismiss the Plaintiff’s Complaint Under Fed.R.Civ.P. 12(b)(2) and 12(b)(5) (Doc.
19 123) is granted to the extent that defendant Techway Industrial Company Limited is
20 dismissed from this action pursuant to Fed.R.Civ.P. 12(b)(2) for lack of personal
21 jurisdiction.

22 IT IS FURTHER ORDERED that the plaintiff’s Motion for Leave for Alternative
23 Service (Doc. 136) and the plaintiff’s Motion to Serve Foreign Corporation by Mail
24 (Doc. 137), both of which are directed at Techway Industrial Company Limited, are
25 denied as moot.

1 IT IS FURTHER ORDERED the plaintiff's Stipulated Motion to Amend
2 Complaint (Doc. 138) is granted to the extent that the plaintiff may file a second
3 amended complaint naming Samsung SDI Co. Ltd. as an additional defendant, but
4 which removes Techway Industrial Company Limited as a named defendant. The
5 amended complaint shall be filed no later than **March 25, 2016**.

6 IT IS FURTHER ORDERED that the parties shall file another joint report
7 concerning their mediation efforts no later than **May 6, 2016**.

8 DATED this 14th day of March, 2016.

9
10 
11 Paul G. Rosenblatt
United States District Judge