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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WILLIAM LUND, an individual;)	Case No. CV 13-02776 DDP (VBKx)
VICTORIA LUND, an)	
individual,)	
)	ORDER DENYING DEFENDANT'S MOTION
Plaintiffs,)	TO DISMISS AND GRANTING
)	PLAINTIFFS' REQUEST FOR LIMITED
v.)	JURISDICTIONAL DISCOVERY
)	
3M COMPANY a/k/a MINNESOTA)	
MINING & MANUFACTURING)	[Dkt. No. 131]
COMPANY, et al.,)	
)	
Defendants.)	
)	
_____)	

Presently before the court is Defendant's Motion to Dismiss Plaintiffs' Complaint ("Motion"). Having reviewed the parties' moving papers, the court denies the Motion without prejudice, grants Plaintiffs' request for jurisdictional discovery, and adopts the following Order.

I. BACKGROUND

Plaintiff William Lund alleges that he suffers from mesothelioma as a result of asbestos exposure during his time working for the U.S. Navy from 1958 to 1977. (Complaint ¶ 6.)¹

¹All references are to the original Complaint. While there is (continued...)

1 During his time in the Navy, Mr. Lund handled asbestos-containing
2 products. (Compl. ¶ 6.) Mr. Lund alleges that his work with these
3 products occurred on a variety of Navy ships, some of which were in
4 California. (Compl. ¶ 6.) Mr. Lund alleges that he handled
5 gaskets, packing, and millboard containing asbestos provided by
6 Niantic Seal, Inc. ("NSI"), individually and as a successor-in-
7 interest to Niantic Rubber Company and Northeast Rubber Products,
8 Inc. (Compl. ¶ 8.)

9 NSI moves to dismiss the Complaint against it based on a lack
10 of personal jurisdiction. In response, Plaintiffs seek
11 jurisdictional discovery to determine whether the Defendants have
12 sufficient California contacts.

13 **II. LEGAL STANDARD**

14 When a defendant moves to dismiss for lack of personal
15 jurisdiction, the plaintiff bears the burden of demonstrating that
16 the court has jurisdiction over the defendant. Pebble Beach Co. v.
17 Caddy, F.3d 1151, 1154 (9th Cir. 2006). To demonstrate a court's
18 jurisdiction over a defendant, a plaintiff must show that personal
19 jurisdiction is (1) permitted under the applicable state's long-arm
20 statute and that (2) the exercise of jurisdiction does not violate
21 federal due process. Id. California's long-arm statute allows
22 personal jurisdiction on any basis not inconsistent with the
23 Constitution. Cal. Code. Civ. Pro. § 410.10.

24

25 ¹(...continued)

26 a First Amended Complaint, it was never filed in state court
27 because the complaint was amended via Order. (Docket No. 1.) The
28 amendment changed defendant Elementis Chemicals, Inc., f/k/a
Harcross Chemical, Inc., to Elementis Chemicals, Inc., f/k/a
Harcross Chemical, Inc., individually and as a successor in
interest to Harrisons & Crossfield (Pacific) Inc.

1 A federal district court may exercise either general or
2 specific jurisdiction over a non-forum defendant. See Helicopteros
3 Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 (1984).
4 Demonstrations of general or specific jurisdiction require that the
5 plaintiff make a prima facie showing of jurisdictional facts, facts
6 that if taken as true would support jurisdiction and withstand the
7 motion to dismiss. Id.

8 Any disputed facts for the purposes of the motion to dismiss
9 are construed in favor of the plaintiff. Id. However, a court may
10 permit discovery to help determine whether it has personal
11 jurisdiction, especially in circumstances where pertinent facts are
12 controverted. Data Disc, Inc., v. Systems Tech. Assoc. Inc., 557
13 F.2d 1280, 1285 n.1 (9th Cir. 1977).

14 **III. DISCUSSION**

15 **A. Personal Jurisdiction**

16 The standard for establishing general jurisdiction requires
17 that the defendant have sufficient contacts to "constitute the kind
18 of continuous and systematic general business contacts that
19 'approximate physical presence.'" Glencore Grain Rotterdam B.V. v.
20 Shivnath Rai Harnarain Co., 284 F.3d 1114, 1124 (9th Cir.
21 2002)(citing Bancroft & Masters, Inc. v. Augusta National Inc., 223
22 F.3d 1082, 1086 (9th Cir. 2000)). Factors taken into account when
23 analyzing general jurisdiction include whether the defendant "makes
24 sales, solicits, or engages in business in the state, serves the
25 state's markets, designates an agent for service of process, holds
26 a license, or is incorporated there." Bancroft, 223 F.3d at 1086.
27 Even with many of these factors present, courts have found general
28 jurisdiction lacking. See, e.g., Helicopteros, 466 U.S. at 408

1 (holding that a Colombian corporation was not subject to general
2 jurisdiction in Texas even though the company negotiated a deal,
3 purchased helicopter parts, trained pilots, and had bank accounts
4 in Texas).

5 More often, a court can exercise specific jurisdiction over a
6 nonforum defendant if the defendant's contacts with the state are
7 the basis of the present claim. Schwarzenegger v. Fred Martin
8 Motor Co., 374 F.3d 797, 801-02 (9th Cir. 2004). Under Ninth
9 Circuit law, a court may exercise specific jurisdiction over a
10 nonresident defendant when: (1) a defendant purposefully directs
11 her activities or consummates some transaction with the forum or
12 resident thereof, or performs some act by which she purposefully
13 avails herself of the privilege of conducting activities in the
14 forum, thereby invoking the benefits and protections of its laws;
15 (2) the plaintiff's claim arises out of or relates to the
16 defendant's forum related activities; and (3) the exercise of
17 jurisdiction comports with fair play and substantive justice, i.e.
18 it must be reasonable. Id.

19 Defendant NSI alleges that it is not incorporated in
20 California; does not have its principal place of business here; and
21 does not have employees, branches, bank accounts, or even any
22 officers domiciled here. (See Declaration of Edmund M. Mauro III
23 ("Mauro Decl.")) Nowhere do the Plaintiffs allege specific facts
24 that would grant this Court the ability to exercise jurisdiction
25 over the Defendant. Normally, Plaintiffs' failure to do so would
26 be sufficient to dismiss the claim for lack of personal
27 jurisdiction; however, the Plaintiffs point out inconsistencies
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1 between Mr. Mauro's testimony and NSI's website giving this Court
2 reason to grant jurisdictional discovery.

3 **B. Jurisdictional Discovery**

4 A court may grant jurisdictional discovery when "pertinent
5 facts bearing on the question of jurisdiction are controverted or
6 where a more satisfactory showing of the facts is necessary."
7 Borschetto v. Hansing, 539 F.3d 1011, 1020 (9th Cir. 2008). That
8 is, if more facts are needed to determine jurisdiction, a granting
9 of jurisdictional discovery is proper. Laub v. U.S. Dep't of the
10 Interior, 343 F.3d 1080, 1093 (9th Cir. 2003).

11 Here, Plaintiffs ask the court to allow discovery based on
12 factual inconsistencies between Mr. Mauro's testimony and NSI's
13 website. First, Mr. Mauro claimed that NSI does not have a
14 relationship with Northeast Rubber Products Inc. However, NSI's
15 website advertises Northeast Rubber Products, Inc. as a division of
16 NSI. (See Mauro Decl. ¶ 11; [http://www.inscogroup.com/niantic-
17 seal/about-niantic-seal/default.html](http://www.inscogroup.com/niantic-seal/about-niantic-seal/default.html), Exhibit "B" to the
18 Declaration of Tiffany S. Woods.) Second, Mr. Mauro claimed that
19 NSI was created in 2006 and did not exist in the 1950s-1970s;
20 however, NSI's website claims it has been providing services "[f]or
21 over 47 years", meaning that NSI, or one of its predecessors, could
22 have been the company responsible for producing the asbestos-
23 containing products that William Lund encountered between 1958 and
24 1977. (See Mauro Decl. ¶ 11; [http://www.inscogroup.com/niantic-
25 seal/products/default.html](http://www.inscogroup.com/niantic-seal/products/default.html), Exhibit "A" to the Declaration of
26 Tiffany S. Woods.) In addition, the Plaintiffs point to Mr.
27 Mauro's silence in his affidavit about NSI's subsidiaries',
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1 including Niantic Rubber Company and Northeast Rubber Products,
2 Inc., connections to California.

3 The inconsistencies support a finding that more facts are
4 needed to determine jurisdiction, especially in light of the
5 absence of any discussion regarding NSI as a successor-in-interest
6 to Niantic Rubber Company and Northeast Rubber Products, Inc. In
7 addition to clarifying NSI's relationship with California,
8 jurisdictional discovery may also shed light on two issues:(1)
9 whether NSI is a successor-in-interest or parent company to either
10 Niantic Rubber Company or Northeast Rubber Products, Inc. and (2)
11 whether Niantic Rubber Company or Northeast Rubber Products, Inc.
12 have sufficient California contacts that, if able to be imputed to
13 NSI, would allow this court to exercise personal jurisdiction over
14 NSI. Williams v. Bowman Livestock Equip. Co., 927 F. 2d 1128, 1132
15 (10th Cir. 1991).

16 Therefore the court finds that 90 days of discovery related to
17 this court's exercise of personal jurisdiction over NSI², Northeast
18 Rubber Products, Inc., and Niantic Rubber Company is appropriate.

19 **IV. CONCLUSION**

20 For the above reasons, Defendant Niantic Seal, Inc.'s motion
21 to dismiss is DENIED, without prejudice. The court grants
22 Plaintiffs William and Victoria Lund 90 days from the date of this
23 order to conduct jurisdictional discovery. Should Niantic Seal,
24 Inc. continue to challenge personal jurisdiction on its own behalf

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26 ²Although NSI appears to have brought this motion on behalf of
27 itself and not as a successor-in-interest, the motion raises
28 sufficient questions about the three companies that the court finds
it appropriate to grant jurisdictional discovery with respect to
all three.

1 and/or as a successor-in-interest to either Niantic Rubber Company
2 and Northeast Rubber Products, Inc., it shall renew its motion to
3 dismiss within two weeks of the conclusion of the jurisdictional
4 discovery period.

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6 IT IS SO ORDERED.

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9 Dated: July 3, 2013



DEAN D. PREGERSON
United States District Judge

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