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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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AURORA CORPORATION OF AMERICA, a California corporation,)	CV 13-03516 RSWL (JCx)
)	
Plaintiff,)	ORDER re: DEFENDANT'S MOTION FOR ORDER DISMISSING ACTION AS AGAINST DEFENDANT, MICHILIN PROSPERITY CO., LTD., FOR LACK OF PERSONAL JURISDICTION [FRCP Rule 12(b)(2)] [39]
v.)	
MICHLIN PROSPERITY CO., Ltd., a Taiwanese corporation; DOES 1-20, inclusive,)	
)	
Defendants.)	

Before the Court is Defendant's Motion for Order Dismissing Action as Against Defendant Michilin Prosperity Co., Ltd., for Lack of Personal Jurisdiction [39], Plaintiff's Request for Judicial Notice [42], and Defendant's Request for Judicial Notice [44-1]. The Court, having considered all arguments presented, **NOW FINDS AND RULES AS FOLLOWS:**

The Court **GRANTS** Defendant's Motion to Dismiss

1 pursuant to Federal Rule of Civil Procedure
2 ("F.R.C.P.") 12(b)(2) [39]. The Court **DENIES**
3 Plaintiff's Request for Judicial Notice [42]. The
4 Court **DENIES** Defendant's Request for Judicial Notice
5 [44-1]. The Court **DENIES** Plaintiff's request, in the
6 alternative, to conduct jurisdictional discovery.

7 I. BACKGROUND

8 Plaintiff Aurora Corporation of America
9 ("Plaintiff") is a California corporation authorized to
10 do business with the State of California. Compl. ¶ 1.
11 Defendant Michilin Prosperity Co., Ltd., ("Defendant")
12 is a Taiwanese corporation with its principal place of
13 business in Taipei, Taiwan. Compl. ¶2. At all
14 relevant times, Defendant was the designer and
15 manufacturer of the Aurora AS1000X 10CC Cross Cut Paper
16 Shredder ("Shredder"). Compl. ¶ 3. Plaintiff is the
17 distributor of the Shredder. Compl. ¶ 12. The
18 Shredder was manufactured at Defendant's plant located
19 in China. Compl. ¶ 13; See Compl., Ex. A, Affidavit of
20 Frank Chang ("Chang Affidavit") ¶ 6. After the
21 Shredder was manufactured, the Shredder was then
22 shipped to Plaintiff in Torrance, California. Compl. ¶
23 14; See Chang Aff. ¶ 6.

24 The present action arises out of a May 2008
25 incident involving a minor who was injured when she
26 stuck her hand into the Shredder. Compl. ¶ 8. As a
27 result of the incident, a lawsuit was filed with the
28 U.S. District Court for the Northern District of

1 Georgia. Id. See Askue v. Aurora Corporation, et al.,
2 Civil Action File No. 1:10-cv-0948-JEC ("the Georgia
3 action"). Plaintiff and Defendant were named
4 defendants in the Georgia action. Mot., 2:11-12.
5 Defendant was dismissed from the Georgia action for
6 lack of personal jurisdiction pursuant to F.R.C.P.
7 12(b)(2). Mot., 2:12-13.

8 The present action is an indemnity action filed by
9 Plaintiff against Defendant for amounts paid by
10 Plaintiff to defend and settle the Georgia action.
11 Mot., 2:4-9. On July 17, 2015, Defendant filed the
12 instant motion, requesting the Court to dismiss this
13 action against Defendant for lack of personal
14 jurisdiction. On July 28, 2015, Plaintiff filed its
15 Request for Judicial Notice. On August 04, 2015,
16 Defendant filed its Request for Judicial Notice.

17 II. DISCUSSION

18 A. Legal Standard

19 1. Judicial Notice

20 A court may take judicial notice of "a fact that is
21 not subject to reasonable dispute because it: (1) is
22 generally known within the court's territorial
23 jurisdiction; or (2) can be accurately and readily
24 determined from sources whose accuracy cannot
25 reasonably be questioned." Fed. R. Evid. 201(b).

26 2. Motion to Dismiss Pursuant to Fed R. Civ. P. 27 12(b)(2)

28 Pursuant to Federal Rule of Civil Procedure

1 12(b)(2), a district court cannot proceed against a
2 defendant over which it lacks personal jurisdiction,
3 unless that defendant has waived the requirement. See
4 Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites
5 de Guinee, 456 U.S. 694, 702-03 (1982). In states
6 where no applicable federal statute governs personal
7 jurisdiction, that state's long-arm statute applies.
8 See Panavision Int'l, L.P. v. Toeppen, 141 F.3d 1316,
9 1320 (9th Cir. 1998). The exercise of personal
10 jurisdiction over a nonresident defendant requires the
11 presence of two factors: (1) California's laws must
12 provide a basis for exercising personal jurisdiction,
13 and (2) the assertion of personal jurisdiction must
14 comport with due process. Hirsch v. Blue Cross, Blue
15 Shield of Kansas City, 800 F.2d 1474, 1477 (9th Cir.
16 1986). California's long arm statute permits the
17 exercise of personal jurisdiction to the fullest extent
18 permitted by due process. See Cal. Civ. Proc. Code §
19 410.10; Panavision, 141 F.3d at 1320. "Because
20 California's long-arm jurisdictional statute is
21 coextensive with federal due process requirements, the
22 jurisdictional analyses under state law and federal due
23 process are the same." Schwarzenegger v. Fred Martin
24 Motor Co., 374 F.3d 797, 800-01 (9th Cir. 2004). Thus,
25 only a due process analysis is required here.

26 Due process requires that a defendant have "certain
27 minimum contacts with [the forum state] such that the
28 maintenance of the suit does not offend traditional

1 notions of fair play and substantial justice." Int'l
2 Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)
3 (internal quotation marks omitted). The plaintiff
4 bears the burden of proving that the defendant has
5 sufficient minimum contacts with the forum state that
6 warrant the court's exercise of personal jurisdiction.
7 Harris Rutsky & Co. Ins. Servs., Inc. v. Bell &
8 Clements Ltd., 328 F.3d 1122, 1130 (9th Cir. 2003).
9 Depending on the nature and scope of the defendant's
10 contacts with the forum, jurisdiction may be general or
11 specific to a cause of action. Roth v. Garcia Marquez,
12 942 F.2d 617, 620 (9th Cir. 1991).

13 When a defendant's contacts with the forum state
14 are "substantial" or "continuous and systematic,"
15 general jurisdiction may be exercised over that
16 defendant for any cause of action, even if it is
17 unrelated to the defendant's activities within the
18 forum state. Schwarzenegger, 374 F.3d at 801-02; Data
19 Disc, Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1287
20 (9th Cir. 1977). In cases where a defendant's contacts
21 are insufficient to support an exercise of general
22 jurisdiction, more limited specific jurisdiction may be
23 found where a cause of action arises out of or is
24 related to the defendant's activities in the forum
25 state. Burger King Corp. v. Rudzewicz, 471 U.S. 462,
26 472-73 (1985); Ballard v. Savage, 65 F.3d 1495, 1498
27 (9th Cir. 1995). "Specific jurisdiction may be
28 exercised with a lesser showing of minimum contacts

1 than is required for the exercise of general
2 jurisdiction." ACORN v. Household Int'l, Inc., 211 F.
3 Supp. 2d 1160, 1164 (C.D. Cal. 2002). The Ninth
4 Circuit uses a three-part test to determine whether
5 there is specific jurisdiction over a defendant: (1)
6 the defendant must purposefully avail herself of the
7 privilege of conducting activities in the forum by some
8 affirmative act or conduct; (2) the plaintiff's claim
9 must arise out of, or result from, the defendant's
10 forum-related contacts; and (3) the extension of
11 jurisdiction must be 'reasonable.'" Adv. Skin & Hair,
12 Inc. v. Bancroft, 858 F. Supp. 2d 1084, 1089 (C.D. Cal.
13 2012) (citing Roth v. Garcia Marquez, 942 F.2d 617,
14 620-21 (9th Cir. 1991)).

15 As to the first prong, the Ninth Circuit generally
16 uses a purposeful direction analysis when an action
17 sounds in tort, whereas it uses a purposeful availment
18 analysis when an action sounds in contract. Wash. Shoe
19 Co. v. A-Z Sporting Goods Inc., 704 F.3d 668, 672-73,
20 n.2 (9th Cir. 2012).

21 "When a district court acts on a defendant's motion
22 to dismiss under Rule 12(b)(2) without holding an
23 evidentiary hearing, the plaintiff need make only a
24 prima facie showing of jurisdictional facts to
25 withstand the motion to dismiss." Ballard, 65 F.3d at
26 1498. In order to make a prima facie showing, the
27 plaintiff must produce admissible evidence, which, if
28 believed, would be sufficient to establish the Court's

1 personal jurisdiction. Enriquez v. Interstate Grp.,
2 LLC, No. 11-CV-05155 YGR, 2012 WL 3800801, at *3 (N.D.
3 Cal. Aug. 31, 2012). Accordingly, a district court is
4 to take uncontroverted allegations in the complaint as
5 true. AT&T Co. v. Compagnie Bruxelles Lambert, 94 F.3d
6 586, 588 (9th Cir. 1996). However, "mere allegations
7 of the complaint, when contradicted by affidavits, are
8 [not] enough to confer personal jurisdiction of a
9 nonresident defendant. In such a case, facts, not mere
10 allegations, must be the touchstone." Taylor v.
11 Portland Paramount Corp., 383 F.2d 634, 639 (9th Cir.
12 1967). See also Chem Lab Prods., Inc. v. Stepanek, 554
13 F.2d 371, 372 (9th Cir. 1977); Cummings v. W. Trial
14 Lawyers Ass'n, 133 F. Supp. 2d 1144, 1154 (D. Ariz.
15 2001). Parties may go beyond the pleadings and support
16 their positions with discovery materials, affidavits,
17 or declarations. Am. Inst. of Intradermal Cosmetics,
18 Inc. v. Soc'y of Permanent Cosmetic Prof's, No. CV 12-
19 06887 GAF JCGX, 2013 WL 1685558, at *4 (C.D. Cal. Apr.
20 16, 2013). "[C]onflicts between the facts contained in
21 the parties' affidavits must be resolved in [the
22 plaintiff's] favor for purposes of deciding whether a
23 prima facie case for personal jurisdiction exists."
24 AT&T, 94 F.3d at 588. "At the same time, however, the
25 plaintiff must submit admissible evidence in support of
26 its prima facie case." Id.

27 **B. Analysis**

28 1. Plaintiff's Requests for Judicial Notice

1 a. *Plaintiff's request that the Court*
2 *judicially notice the Affidavit of Frank*
3 *Chang*

4 In Plaintiff's Request for Judicial Notice [42],
5 Plaintiff requests that the Court take judicial notice
6 of the Chang Affidavit, pursuant to Federal Rule of
7 Evidence ("F.R.E.") 201(c)(2).

8 "There is a mistaken notion that taking judicial
9 notice of court records ... means taking judicial
10 notice of the existence of facts asserted in every
11 document of a court file, including pleadings and
12 affidavits. The concept of judicial notice requires
13 that the matter which is the proper subject of judicial
14 notice be a fact that is not reasonably subject to
15 dispute. Facts in the judicial record that are subject
16 to dispute, such as allegations in affidavits,
17 declarations, and probation reports, are not the proper
18 subjects of judicial notice even though they are in a
19 court record." Rivera v. Hamlet, 2003 WL 22846114, at
20 *5 (N.D. Cal. Nov. 25, 2003) (citing B. Jefferson,
21 California Evidence Benchbook (3d ed.2003 update), §
22 47.10).

23 Accordingly, this Court takes judicial notice of
24 the existence of the Chang Affidavit, but declines to
25 take judicial notice of any facts or statements
26 contained in the Chang Affidavit. Specifically, the
27 Court cannot take judicial notice that any facts
28 recited in the Chang Affidavit are true. The Court

1 hereby **DENIES** Plaintiff's request that the Court take
2 judicial notice of the Chang Affidavit, as to its
3 substance.

4 b. *Plaintiff's request that the Court*
5 *judicially notice the Opinion and Order in*
6 *Fellowes*

7 In Plaintiff's Request for Judicial Notice [42],
8 Plaintiff further requests that the Court take judicial
9 notice of the Opinion and Order issued in Fellowes,
10 Inc. v. Michlin Prosperity Co., 491 F. Supp. 2d 571
11 (E.D. Va., June 22, 2007).

12 Generally, a court may take judicial notice of the
13 existence of a court file in another court, however, it
14 cannot take judicial notice of factual findings made by
15 that court. "As a general rule, a court may not take
16 judicial notice of proceedings or records in another
17 cause so as to supply, without formal introduction of
18 evidence, facts essential to support a contention in a
19 cause then before it." M/V Am. Queen v. San Diego
20 Marine Constr. Corp., 708 F.2d 1483, 1491 (9th Cir.
21 1983); see also Wyatt v. Terhune, 315 F.3d at 1114 n. 5
22 ("Factual findings in one case ordinarily are not
23 admissible for their truth in another case through
24 judicial notice") (overruled on other grounds). Other
25 circuits have followed this general rule, holding that
26 a court cannot take judicial notice of factual findings
27 made by another court. See United States v. Jones, 29
28 F. 3d 1549, 1553 (11th Cir. 1994) (holding that it is

1 improper to take judicial notice of another court's
2 findings establishing nature of salary in dispute);
3 Liberty Mutual Ins. Co. v. Rotches Pork Packers, Inc.,
4 969 F.2d 1384, 1388-89 (2d Cir. 1992) (holding that it
5 is improper to take judicial notice of bankruptcy
6 court's finding that sellers provided notice to
7 preserve their trust rights and were cash sellers).

8 Accordingly, this Court will not take judicial
9 notice of any of the factual findings in the Fellowes
10 Opinion and Order. This Court cannot rely on the
11 findings of the Virginia court to establish facts
12 essential to support Plaintiff's contentions in the
13 present action. The Court therefore **DENIES** Plaintiff's
14 request to take judicial notice of the Opinion and
15 Order in Fellowes.

16 2. Defendant's Request for Judicial Notice

17 Defendant requests that the Court take judicial
18 notice of the opinion of the United States District
19 Court, Northern District of Georgia, issued in the
20 Georgia action, Askue v. Aurora Corporation of America,
21 2012 U.S. Dist. LEXIS 32626 (N.D. Ga. 2012). Def.'s
22 Reply, Ex. A.

23 As previously discussed, "a court may not take
24 judicial notice of proceedings or records in another
25 cause so as to supply, without formal introduction of
26 evidence, facts essential to support a contention in a
27 cause then before it." M/V Am. Queen v. San Diego
28 Marine Constr. Corp., 708 F.2d 1483, 1491 (9th Cir.

1 1983). As such, this Court **DENIES** Defendant's request
2 to judicially notice the Georgia District Court's
3 opinion in Askue.

4 3. Defendant's Motion to Dismiss for Lack of
5 Personal Jurisdiction

6 a. *General Personal Jurisdiction*

7 Plaintiff asserts that it "could make an argument"
8 that this Court has general jurisdiction over Defendant
9 based on Defendant's "significant presence and activity
10 in the United States and California," but that this
11 argument is "unnecessary" because sufficient minimum
12 contacts have been established. Opp'n. 4:14-19.

13 Plaintiff does not make any further argument in support
14 of this contention, and thus does not meet its burden
15 of proving that this Court should exercise general
16 personal jurisdiction over Defendant. As such, this
17 Court finds that it does not have general personal
18 jurisdiction over Defendant.

19 b. *Specific Personal Jurisdiction*

20 Specific jurisdiction is proper only when (1) the
21 defendant has performed some act by which he
22 purposefully avails himself of the privilege of
23 conducting activities in the forum, thereby invoking
24 the benefits and protections of its laws; (2) the claim
25 arises out of, or results from, the defendant's forum-
26 related activities; and (3) the exercise of
27 jurisdiction is "reasonable." Terracom v. Valley Nat'l
28 Bank, 49 F.3d 555, 560 (9th Cir. 1995) (citing Shute v.

1 Carnival Cruise Lines, 897 F.2d 377, 381 (9th Cir.
2 1990)).

3 Plaintiff bears the burden of satisfying the first
4 two prongs of the test. Schwarzenegger v. Fred Martin
5 Motor Co., 374 F.3d 797, 802 (citing Sher v. Johnson,
6 911 F.2d 1357, 1361 (9th Cir. 1990)). If the plaintiff
7 fails to satisfy either of these prongs, personal
8 jurisdiction is not established in the forum state.
9 Id. If the plaintiff succeeds in satisfying both of
10 the first two prongs, the burden then shifts to the
11 defendant to "present a compelling case" that the
12 exercise of jurisdiction would not be reasonable. Id.
13 "[A] plaintiff must make only a prima facie showing of
14 jurisdictional facts through the submitted materials in
15 order to avoid a defendant's motion to dismiss." Data
16 Disc, Inc. v. Sys. Tech. Associates, Inc., 557 F.2d
17 1280, 1285 (9th Cir. 1977).

18 Plaintiff relies on the shipment of the Shredder
19 from China to California as the basis for its indemnity
20 claims. See Compl. ¶¶ 16-24. Because Plaintiff's
21 claims are based on indemnity, the Court finds that
22 this action sounds primarily in contract. As such, the
23 first prong is analyzed under the "purposeful
24 availment" standard.¹

26 ¹See Repwest Ins. Co. v. Praetorian Ins. Co., 890 F. Supp.
27 2d 1168, 1188 (D. Ariz 2012) ("In cases arising out of
28 contractual relationships, including those involving related tort
claims, the Ninth Circuit applies the 'purposeful availment'
test").

1 i. *Purposeful Availment*

2 “To have purposefully availed itself of the
3 privilege of doing business in the forum, a defendant
4 must have ‘performed some type of affirmative conduct
5 which allows or promotes the transaction of business
6 within the forum state.’” Boschetto v. Hansing, 539
7 F.3d 1011, 1016 (9th Cir. 2008). A purposeful
8 availment analysis considers “whether the defendant’s
9 contacts with the forum are attributable to his own
10 actions or are solely the actions of the plaintiff.”
11 Amini Innovation Corp. v. JS Imports, Inc., 497
12 F.Supp.2d 1093 (C.D. Cal. 2007) (citing Sinatra v.
13 National Enquirer, 854 F.2d 1191, 1195 (9th Cir.
14 1988)).

15 In the present case, Plaintiff has asserted claims
16 for contractual indemnity, equitable indemnity, and
17 indemnity through course of conduct. Plaintiff makes
18 the following allegations to support a finding of
19 specific jurisdiction over Defendant: Plaintiff alleges
20 that Defendant

- 21 (a) shipped the subject Shredder from
22 Taiwan to the Plaintiff in Torrance,
23 California; (b) set the price of the
24 shredders for sale in the United States;
25 (c) contracted with major retailers in
26 the United States for sale of its
27 products; (d) sold the majority of its
28 shredders in the United States; (e)

1 advertised its shredders as receiving
2 awards from various office equipment
3 organizations in the United States; and
4 (f) profited significantly from the sale
5 of products to and throughout
6 California.

7 Opp'n 3:4-20, 8:23-26.

8 a. *Shipment of the Shredder*

9 Plaintiff alleges that the Shredder was shipped by
10 Defendant from Taiwan to California, and thereby
11 Michilin established significant contact with "the
12 United States and California." Id. at 3:1-6.

13 Plaintiff bases this allegation on statements contained
14 in paragraph five of the Chang Affidavit. Opp'n, 3:4-
15 6. As discussed above, the Court will not judicially
16 notice the substance of the Chang Affidavit, thereby
17 declaring the allegations made within as true.

18 Further, upon review of the Chang Affidavit,
19 Plaintiff's claim that "the subject Shredder was
20 shipped by *Michilin* from Taiwan to Aurora in
21 Torr[a]nce, California" is not substantiated by the
22 language of the cited paragraph. Id. (emphasis added)

23 It appears from the language of the Affidavit that
24 Plaintiff intended to reference paragraph six of the
25 Chang Affidavit. Nonetheless, paragraph six does not
26 support Plaintiff's contention that the Shredder was
27 shipped by *Defendant* from Taiwan to California, such
28 that the shipment was made at Defendant's direction or

1 while it was within Defendant's control. Rather,
2 paragraph six states that the "[S]hredder was then
3 shipped to Aurora Corporation of America...", with no
4 indication of who directed the shipment of the product.
5 Chang Aff. ¶ 6. The Chang Affidavit simply states:
6 "After the paper shredder was delivered to Aurora
7 Corporation of America, Michilin had no further
8 involvement with the distribution or sale of the
9 product." Id.

10 Plaintiff also cites paragraph five of the
11 Declaration of Frank Chang in Support of Defendant's
12 Motion to Dismiss ("the Chang Declaration") to support
13 its contention that Defendant shipped the Shredder to
14 California. Opp'n, 3:4-6. Again, the referenced
15 paragraph of the Chang Declaration does not
16 substantiate Plaintiff's claim that Defendant directed
17 the shipment of the Shredder from Taiwan to California.
18 See Pl.'s Mot., Chang Decl. ¶ 5 [39-2]. Plaintiff does
19 not offer any further evidence regarding this
20 allegation, and therefore has not met its burden of
21 proving that Defendant purposefully availed itself of
22 doing business in California by shipping the subject
23 Shredder to California. Again, it appears from the
24 language of the Declaration that Plaintiff intended to
25 reference paragraph six of the Chang Declaration.
26 Still, paragraph six of the Chang Declaration does not
27 support the contention that Defendant directed the
28 shipment of the Shredder to California. Rather,

1 paragraph six contradicts Plaintiff's allegation,
2 stating, "The Michilin model AS1000X paper shredders
3 were manufactured at Michilin's plant located in China.
4 Pursuant to specific order and direct instructions from
5 Aurora ... the AS1000x paper shredders were shipped
6 'Free on Board' (F.O.B.) Yan-Tain, China." Chang Decl.
7 ¶ 6.

8 Defendant argues that the Shredder was shipped
9 pursuant to Plaintiff's orders and instructions, and
10 that ownership of the Shredder transferred to Aurora
11 before departing China as the shredders were shipped
12 "Free On Board" (F.O.B.) Yan-Tain, China. Mot. 9:15-
13 21.

14 In an "F.O.B." contract, "[t]he seller's delivery
15 is complete (and the risk of loss passes to the buyer)
16 when the goods pass into the transporter's possession."
17 FREE ON BOARD, Black's Law Dictionary (10th ed. 2014).
18 The Ninth Circuit has yet to determine whether F.O.B.
19 shipments are sufficient to establish minimum contacts
20 in a state.² The Fifth Circuit has held that an "F.O.B

22 ² The United States District Court for the District of
23 Hawaii has held that "agreeing to delivery F.O.B. North Carolina
24 does not negate purposeful availment of the laws of Hawaii."
25 Rudolph v. Topsider Bldg. Sys., Inc., No. CIV 07-00225 SOM-BMK,
26 2007 WL 2156089, at *4 (D. Haw. July 24, 2007). In Rudolph, the
27 Court found that other factors despite the F.O.B. shipment
28 subjected the defendant to personal jurisdiction, including
discussions concerning using the shipped products in Hawaii, six
separate shipments to Hawaii, and a warranty and offer for
trouble-shooting that indicated contemplation of future
consequences. Id. at *5. The Court in Rudolph cited a case in
Maine, where minimum contacts were found despite shipment F.O.B.
Honeoye, New York due to extensive negotiations, a thirty-day

1 term does not prevent a court from exercising personal
2 jurisdiction over a non-resident defendant where other
3 factors, such as quantity and regularity of shipments,
4 suggest that jurisdiction is proper." Luv N' care,
5 Ltd. v. Insta-Mix, Inc., 438 F.3d 465, 471-72 (5th Cir.
6 2006). Precedent regarding F.O.B. shipments and
7 personal jurisdiction have required "other factors" to
8 be present in order for the Court to find purposeful
9 availment to establish personal jurisdiction.³

10 Here, Plaintiff has not put forth evidence of any
11 "other factors" that would make this Court's exercise
12 of personal jurisdiction over Defendant proper.
13 Plaintiff has not offered any admissible evidence of
14 extensive negotiations, warranties, multiple shipments,
15 or the amount of sales or revenue arising from
16 shipment(s) to California. Therefore, the Court finds
17 that the subject shipment, F.O.B. Yan-Tain, China, is
18 not joined by the requisite "other factors" to
19 establish sufficient minimum contacts to enable this
20 Court to exercise specific personal jurisdiction.

21 b. *Setting the Price of the Shredder*

22 Plaintiff alleges that Defendant purposefully
23

24 warranty, start-up assistance, and significant shipment of goods
25 into Maine. Id. at *4, see also Lucerne Farms v. Baling
Technologies, Inc., 226 F.Supp.2d, 25 (D.Me.2002).

26 ³In Luv N' care, the court found the defendant derived
27 substantial revenue from its shipments to the forum state through
28 evidence of sales of thousands of units into the forum state,
making up 4.5% of the defendant's total distribution. 438 F.3d
465 (5th Cir. 2006).

1 availed itself of doing business in California by
2 maintaining control over its products after they are
3 shipped to the United States. Opp'n., 7:23-27.
4 Plaintiff bases this allegation on statements made in
5 the Fellowes Opinion. As discussed above, the Court
6 will not take judicial notice of the substance of the
7 Opinion, as it consists of factual findings reached in
8 another court's proceeding. Even if the Court could
9 consider the findings of the Fellowes Opinion, the
10 Fellowes court's findings establish that Defendant
11 maintained control of its products after they were
12 shipped to the United States generally, which does not
13 support a finding of purposeful availment in California
14 specifically. Plaintiff provides no further evidence
15 in support of this allegation. As such, the Court
16 finds that Plaintiff's allegation that Defendant
17 maintained control over its products after they reached
18 the United States does not support a finding that
19 Defendant purposefully availed itself of California's
20 jurisdiction.

21 *c. Contracting with U.S. Retailers*

22 Plaintiff argues Defendant purposefully availed
23 itself of California's jurisdiction because Defendant
24 "contracts with and sells its products through Target,
25 Wal-Mart, Big Lots and Office Depot, all of which
26 maintain multiple locations within the United States,
27 including California." Opp'n, 4:23-26. To prove this
28 allegation, Plaintiff cites the same Fellowes Opinion

1 as discussed above, which the Court should not take
2 judicial notice of in order to establish its contents
3 as true. Plaintiff does not provide any further
4 evidence to support that Defendant contracts with
5 multiple stores located in California. Therefore, the
6 Court finds that Plaintiff's allegation is not
7 supported by sufficient evidence to warrant a finding
8 of purposeful availment.

9 d. *Majority of Shredders Sold in U.S.*

10 Plaintiff then argues Defendant purposefully
11 availed itself of California's jurisdiction through
12 additional evidence derived from the Fellowes Opinion,
13 alleging that "about 85% of Michilin's shredders [were]
14 available for sale in the United States in 2004."
15 Opp'n, 8:1-3. As discussed above, the Court cannot
16 judicially notice the contents of this Opinion. The
17 Plaintiff does not offer any other evidence to support
18 this assertion. Therefore, the Court should find that
19 this allegation does not support a finding of
20 purposeful availment.

21 e. *Advertisement of U.S. Awards*

22 Plaintiff asserts that Defendant's advertisement of
23 awards received from United States based office
24 equipment organizations on Defendant's website is
25 evidence of purposeful availment in California. Opp'n,
26 3:16-18. Plaintiff admits that Defendant's use is a
27 "public advertisement to the world" but that since the
28 awards are from U.S. companies, the use functions as an

1 example of Defendant doing business in and with the
2 United States. Opp'n. 8:12-15. In J. McIntyre
3 Machinery, Ltd., v. Nicastro, the defendant directed
4 marketing and sales efforts at the United States. 131
5 S. Ct. 2780 (2011). Justice Kennedy stated that "the
6 question concerns the authority of a New Jersey state
7 court to exercise jurisdiction, so it is petitioner's
8 purposeful contacts with New Jersey, not with the
9 United States, that alone are relevant." Id. at 2790.
10 Here, the question concerns California's authority to
11 exercise jurisdiction, thus Defendant's contacts with
12 the United States in general are not sufficient, as per
13 the Supreme Court's holding in J. McIntyre, to
14 establish purposeful availment of California's
15 jurisdiction. As such, the Court finds that
16 Defendant's advertisement of awards from U.S. companies
17 for its product does not establish that Defendant
18 purposefully availed itself of California's
19 jurisdiction specifically.

20 f. *Significant Profits from California*

21 Plaintiff further alleges that Defendant's contacts
22 with California include "significant profits from the
23 sale of products to and throughout California." Opp'n,
24 3:19-20. Plaintiff does not present any evidence
25 regarding Defendant's actual sales or profits arising
26 from California. Plaintiff relies solely on the above-
27 referenced allegation from the Fellowes Opinion that
28 because "85% of Michilin's shredders [were] available

1 for sale in the United States in 2004", this amounts to
2 Defendant receiving substantial revenue from these
3 sales. Id. at 8:1-7. Plaintiff then asserts that
4 therefore Defendant "knew it was generating significant
5 revenue based on products that would be sold to
6 California users." Id. Again, the Court will not
7 judicially notice the findings of the Fellowes court.
8 Plaintiff provides no further admissible evidence as to
9 the alleged "significant profits" Defendant acquires
10 "from the sale of products to an throughout
11 California." Plaintiff instead supports its contention
12 with conclusory allegations. Without further evidence,
13 the Court finds that Plaintiff has failed to establish
14 that Defendant purposefully availed itself of
15 California through alleged significant profits from
16 California.

17 g. *Entry of Products into Stream of*
18 *Commerce*

19 Plaintiff then asserts that Defendant was aware its
20 products would reach California users because it sold a
21 "large amount of products" to Plaintiff, a wholly-owned
22 California distributor. Id. at 7:18-20. Defendant
23 contends that their contact with Plaintiff in
24 California, if any, was incidental: Defendant sold its
25 products "in China to a California distributor who
26 imported the products into California for distribution
27 and sale in the United States." Reply 10:17-19.
28 Plaintiff does not offer any admissible evidence as to

1 its claim, but rather again simply cites the findings
2 of the Fellowes court. Id. at 7:12-22. Still,
3 evidence that Defendant engaged in transactions with a
4 California distributor for United States retailers is
5 insufficient to warrant the exercise of California's
6 specific personal jurisdiction. The mere fact that
7 Defendant opted to participate in a business
8 relationship with Plaintiff knowing that Plaintiff had
9 an office in California is insufficient to create
10 minimum contacts. See Dynamic Software Servs. v.
11 Cyberbest Tech., Inc., 2014 WL 3373924 at *9 (N.D. Cal.
12 July 9, 2014) ("Mere knowledge that the plaintiff is
13 based in the forum state is insufficient to establish
14 purposeful availment.")

15 Plaintiff argues that the "large volume of sales of
16 products that traveled to California end-users was not
17 random or fortuitous" and therefore Defendant "was
18 aware that a large amount of products it sold to
19 [Plaintiff] ... would reach California users." Opp'n
20 7:12-20. Plaintiff relies on Bridgestone Corp. v.
21 Superior Court, in which a California court exercised
22 jurisdiction based on "a manufacturer's placement of
23 goods in the stream of commerce with the expectation
24 that they will be purchased or used by consumers in
25 California [as] indicat[ing] an intention to serve the
26 California market 'directly or indirectly.'" 99 Cal.
27 App. 4th 767, 777 (Cal. Ct. App. 2002) (citing World-
28 Wide Volkswagen Corporation v. Woodson, 444 U.S. 286,

1 297 (1980)). However, Plaintiff did not consider the
2 court's whole statement. In the same sentence, the
3 California Court of Appeal explained that this
4 placement of goods in the stream of commerce
5 "constitutes purposeful availment if the income earned
6 by the manufacturer from sale or use of its product in
7 California is substantial." Id.

8 Plaintiff has not submitted any evidence as to
9 Defendant's income earned due to sales or use of the
10 product, if any, in California. Because the evidence
11 put forth by Plaintiff does not sufficiently prove
12 substantial income from sale or use of the product in
13 the state of California, the Court finds that Plaintiff
14 has not met its burden of proving purposeful availment
15 through the stream of commerce doctrine, as outlined in
16 Bridgestone.

17 Defendant argues that the Bridgestone court relied
18 on the "stream of commerce" doctrine of specific
19 jurisdiction.⁴ Reply 8:14-21. Defendant asserts that
20 the Court should apply the "stream of commerce plus"
21 doctrine, in which the Supreme Court reasoned that mere
22 foreseeability or awareness that a product may enter a
23 forum state is insufficient without "additional

24
25
26 ⁴The "stream of commerce" doctrine provides that "the forum
27 state does not exceed its powers under the Due Process Clause if
28 it asserts personal jurisdiction over a corporation that delivers
products into the stream of commerce with the expectation that
they will be purchased by consumers in the forum State." World-
Wide Volkswagen Corp. v. Woodson, 444. U.S. 286, 297-298 (1980).

1 conduct.”⁵ Opp’n 8:27-28, 9:1-17. In the present case,
2 Plaintiff has not provided sufficient evidence that
3 Defendant has engaged in any direct contact with
4 California. Further, Plaintiff has failed to provide
5 evidence of additional conduct directed at California
6 necessary to satisfy the “stream of commerce plus”
7 doctrine enumerated in Asahi and J. McIntyre.

8 In the present case, in accordance with the
9 “stream of commerce plus” doctrine discussed in both
10 the plurality opinions from Asahi and J. McIntyre, and
11 Justice Breyer’s concurrence in J. McIntyre, the Court
12

13 ⁵ Since World-Wide Volkswagen, Courts have differed as to
14 what evidence is sufficient to establish the “expectation” that a
15 product will be purchased by consumers in the forum State. The
16 United States Supreme Court has attempted to clarify the “stream
17 of commerce” doctrine in Asahi Metal Industry Co. v. Superior
18 Court, 480 U.S. 102 (1987), and J. McIntyre Machinery, Ltd. v.
19 Nicastro, 131 S.Ct. 2780 (2011), with both plurality opinions
20 noting that “something more” than “mere foreseeability” is
21 needed. However, the lack of a majority in both cases has
22 continued to leave circuits split as to the boundaries of the
23 “stream of commerce” doctrine. Justice O’Connor’s plurality
24 opinion in Asahi requires that the defendant engage in additional
25 conduct other than mere awareness that a given product will reach
26 the forum state. Justice Brennan’s concurrence in Asahi focuses
27 instead on foreseeability, in that “as long as a participant [in
28 the stream of commerce] is aware that the final product is being
marketed in the forum State, the possibility of a lawsuit there
cannot come as a surprise.” Asahi, 480 U.S. 102 at 117. In J.
McIntyre, the Supreme Court attempted to clarify its earlier
holding from Asahi. In Justice Kennedy’s plurality opinion in J.
McIntyre, the Court reinforced the requirement of additional
conduct purposefully directed at the forum state and rejected
Justice Brennan’s concurrence in Asahi. Justice Breyer’s
concurrence in J. McIntyre, followed by several Circuits as the
“narrowest grounds” from the holding, rejected the plurality’s
strict rule that limits jurisdiction “where a defendant does not
'inten[d] to submit to the power of sovereign' and cannot 'be
said to have targeted the forum.'” J. McIntyre, 131 S. Ct. 2780,
2793.

1 finds that Plaintiff has not made a sufficient showing
2 to establish that Defendant has purposefully availed
3 itself of California's jurisdiction.

4 ii. *Forum-Related Activities*

5 Plaintiff argues that the damages at issue in the
6 present action arose out of Defendant's contacts with
7 the forum. Plaintiff asserts that this "lawsuit arose
8 directly out of Michilin's contacts because all of
9 Michilin's products, including the subject Shredder,
10 were initially shipped to California, which were then
11 distributed throughout the state and country." Opp'n
12 8:23-26.

13 Defendant argues in response that Plaintiff fails
14 to establish that this action "[arose] out of or
15 relates to...forum-related activities", as required by
16 Bridgestone. Reply 10:27-11:2. Defendant posits that,
17 even "assuming the 'contact' was Michilin's sale of the
18 AS1000X paper shredders in China to Aurora, a
19 California distributor, with the knowledge or
20 expectation that the paper shredders would be sold in
21 the United States ... there is no evidence that
22 Aurora's indemnification claim arises out of or has a
23 substantial connection with Michilin's 'contact' with
24 California." Id. at 11:9-15. The Court finds
25 accordingly. Since the alleged accident occurred in
26 Georgia, see Askue v. Aurora Corp. Of America, 2012 WL
27 843939 at *4 (N.D.Ga. 2012), it does not follow that
28 Plaintiff's indemnification claims are related to

1 Defendant's alleged activities in California.

2 The Court finds that Plaintiff failed to put forth
3 sufficient evidence that the indemnity action arose out
4 of any of Defendant's alleged forum-related activities
5 to warrant the Court's exercise of personal
6 jurisdiction.

7 iii. *Reasonableness of Court's Exercise of*
8 *Personal Jurisdiction Over Defendant*

9 "If the plaintiff succeeds in satisfying both of
10 the first two prongs, the burden then shifts to the
11 defendant to 'present a compelling case' that the
12 exercise of jurisdiction would not be reasonable."
13 Adv. Skin & Hair, Inc. v. Bancroft, 858 F. Supp. 2d
14 1084, 1091 (C.D. Cal. 2012)(citing Schwarzenegger v.
15 Fred Martin Motor Co., 374 F.3d 797, 802 (9th Cir.
16 2004)). As discussed above, Plaintiff has not
17 satisfied either prong one or prong two of the specific
18 jurisdiction test, and thus the Defendant bears no
19 burden of proving prong three. Further, Plaintiff
20 applies the incorrect law in determining whether the
21 exercise of jurisdiction over a defendant is
22 reasonable. The Ninth Circuit has set forth seven
23 factors to be considered in determining whether the
24 exercise of jurisdiction over a nonresident defendant
25 is reasonable: (1) the extent to which the defendant
26 purposefully interjected itself into the affairs of the
27 forum state; (2) the burden on the defendant; (3)
28 conflicts of law between the forum and the defendant's

1 home jurisdiction; (4) the forum's interest in
2 adjudicating the dispute; (5) the most efficient
3 judicial resolution of the dispute; (6) the plaintiff's
4 interest in convenient and effective relief; and (7)
5 the existence of an alternative forum. Roth v. Garcia
6 Marquez, 942 F.2d 617, 623 (9th Cir. 1991).

7 Plaintiff improperly relies on Illinois case law
8 indicating that "other jurisdictions" have "explicitly"
9 recognized that an insurer doing business within a
10 state has a "weighty interest" in litigating in that
11 state, where an insurer has suffered serious losses due
12 to the defendant's product injuring one of its
13 insureds. Opp'n 9:11-18, Sentry Ins. Co. v. Bull HN
14 Info. Sys., Inc., No. 97 C 4211, 1999 WL 51801, at *2
15 (N.D. Ill. Jan. 29, 1999). Plaintiff calls attention
16 to Illinois' interest in "protecting the interest of
17 insurers of businesses in Illinois, thereby encouraging
18 business growth and rational risk management" as
19 weighing in favor of asserting jurisdiction. Id.

20 Plaintiff asserts that because Defendant's alleged
21 defective product harmed a minor child, Plaintiff paid
22 compensatory damages when a lawsuit was filed by the
23 child's parents. Opp'n 9:19-22. Plaintiff argues that
24 Plaintiff and California both have a significant
25 interest in "protecting the interests of its businesses
26 from defective products that cause damages." Id.
27 Plaintiff does not address any of Defendant's arguments
28 in regards to reasonableness.

1 Defendant, in turn, references the test from World-
2 Wide Volkswagen. Defendant asks the Court to consider:
3 "(1) the burden on Michilin, (2) the interests of the
4 forum state, (3) plaintiff's interest in obtaining
5 convenient and effective relief, (4) the interstate
6 judicial system's interest in obtaining convenient and
7 effective relief, and (5) the shared interest of the
8 various jurisdictions in furthering fundamental
9 substantive social policies." Mot. 14:14-22; See
10 World-Wide Volkswagen Corporation v. Woodson, 444 U.S.
11 286, 292 (1980).

12 The only instance of interjection into California
13 is the arrival of the Shredder to Plaintiff in
14 California. Compl. ¶14. Defendant contends that if it
15 is compelled to litigate in California, it will incur a
16 substantial burden by having to travel to California
17 for court appearances and to produce witnesses and
18 evidence for proceedings. Mot. 15:4-14. Defendant
19 does not address any of the prongs of the test other
20 than the burden on itself.

21 Applying the Ninth Circuit's test as set forth in
22 Roth, the Court weighs each factor individually.

23 a. *Purposeful Interjection*

24 In weighing the factor of purposeful interjection,
25 the extent of the defendant's purposeful interjection
26 into the forum is considered in regards to "the smaller
27 the element of purposeful interjection, the less is
28 jurisdiction to be anticipated and the less reasonable

1 its exercise." Core-Vent Corp. v. Nobel Indus. AB, 11
2 F.3d 1482, 1488 (9th Cir. 1993). Defendant argues that
3 its alleged wrongful conduct occurred in China, where
4 its business and employees are located, and that
5 Defendant has no physical sales force presence in the
6 state of California. Reply, 13:2-6. The only
7 interjection into California is a Defendant-
8 manufactured product, to which Defendant "surrendered
9 its custody, possession, and control in China." Mot.
10 15:1-3. As this element of purposeful interjection is
11 relatively small, the exercise of jurisdiction over
12 Defendant is less reasonable. Thus, the Court finds
13 that this factor does not weigh in favor of
14 reasonableness.

15 b. *Burden on Defendant to Litigate in*
16 *Forum*

17 Defendant argues that the burden of litigating in
18 California would be great because all of Defendant's
19 documents, communication, and witnesses are located in
20 China. Reply, 13:11-15. Defendant also argues that
21 there is a large burden of travel due to the mandatory
22 attendance requirements of this Court and Defendant has
23 no employees, agents, or representatives in California.
24 Mot., 15:4-10. In light of the above, the Court finds
25 that this factor does not weigh in favor of
26 reasonableness.

27 c. *Conflict with Sovereignty*

28 The third factor evaluates "the extent of any

1 conflict with sovereignty" of the defendant's home
2 country or state. Id. Defendant acknowledges that the
3 Supreme Court "has recently emphasized the importance
4 of international comity as an important factor," but
5 fails to provide any evidence that keeping this case in
6 California would affect "international comity." Mot.
7 14:20-22. Defendant has not provided any evidence of a
8 conflict with any sovereignty and thus the Court finds
9 that this factor weighs in favor of reasonableness.

10 d. *California's Interest*

11 The fourth factor "considers California's interest
12 in adjudicating the controversy." Adv. Skin & Hair,
13 858 F. Supp. 2d at 1091. Plaintiff alleges that
14 "defendants' defective product harmed a minor child"
15 which caused Plaintiff, a California corporation, to
16 pay compensatory damages in a lawsuit for the injury.
17 Plaintiff argues that California has a "significant
18 interest in protecting the interests of its businesses
19 from defective products that cause damages." Opp'n.
20 9:19-22. Defendant argues that this is "not a personal
21 injury-product liability action brought by a California
22 consumer against a foreign manufacturer, but is rather
23 a claim for reimbursement, brought by "a sophisticated
24 commercial distributor located in California against a
25 Taiwanese manufacturer." Reply 12:18-22. Because
26 California maintains a strong interest in "redressing
27 the injury of its citizen," the Court finds that this
28 factor weighs in favor of reasonableness. Adv. Skin &

1 Hair, 858 F. Supp. 2d at 1091.

2 e. *Efficient Judicial Resolution*

3 The fifth factor, focusing on the most efficient
4 judicial resolution of the controversy, "primarily
5 focuses on the location of the evidence and the
6 witnesses." Id. at 1092. Defendant argues that all of
7 the evidence relating to the subject product, as well
8 as Defendant's witnesses, are located in China. Reply,
9 13:11-13. Plaintiff has not offered any evidence
10 relating to this matter. Accordingly, the Court finds
11 that this factor does not weigh in favor of
12 reasonableness.

13 f. *Plaintiff's Interest in Relief*

14 The sixth factor is the importance of the forum to
15 a plaintiff's interest in convenient and effective
16 relief. Id. Nothing in the Parties' papers
17 establishes that effective relief is not available to
18 Plaintiff in China, Defendant's preferred choice of
19 forum. Defendant argues that there is "no contractual
20 obligation addressing the indemnification claim," and
21 that Plaintiff "can and should pursue its
22 indemnification claim against Michilin in China."
23 Reply 13:15-18. The Court finds that this factor
24 weighs slightly against a finding of reasonableness.

25 g. *Alternative Forum*

26 The final factor is the availability of an
27 alternative forum. Plaintiff has not alleged that
28 there are no alternative forums for its claims or that

1 Plaintiff could not bring its claims in China. Again,
2 Defendant has advised that Plaintiff should bring its
3 indemnification claim against Defendant in China. As
4 such, the Court finds that this factor does not weigh
5 in favor of reasonableness.

6 Since the majority of these factors weigh against a
7 finding of reasonableness, this Court finds that it
8 would be unreasonable for it to exercise personal
9 jurisdiction over the Defendant. Based on the
10 foregoing reasons, the Court finds that it cannot
11 exercise specific jurisdiction over Defendant.

12 Accordingly, the Court **GRANTS** Defendant's Motion
13 pursuant to Fed. R. Civ. P. 12(b)(2). This action
14 shall be dismissed for lack of personal jurisdiction.

15 4. Plaintiff's Request, in the Alternative, for
16 Jurisdictional Discovery

17 In its Opposition, Plaintiff requests that if the
18 Court is inclined to grant Defendant's motion to
19 dismiss, that Plaintiff be given an opportunity to
20 conduct jurisdictional discovery, in order to further
21 establish personal jurisdiction through minimum
22 contacts. Opp'n 10:2-8. Plaintiff has not proffered
23 any admissible evidence that Defendant has sufficient
24 minimum contacts with California to warrant the
25 exercise of specific personal jurisdiction over
26 Defendant. Plaintiff's allegations stem largely from
27 the findings in another court's proceeding and as such
28 do not rebut Defendant's evidence as to minimum

1 contacts.

2 Furthermore, Plaintiff's request for jurisdictional
3 discovery is not narrowly tailored to flesh out certain
4 instances of alleged minimum contacts, but rather
5 generally requests that the Plaintiff be given the
6 opportunity to further establish minimum contacts. Id.
7 See Dever v. Hentzen Coatings, Inc., 380 F.3d 1070,
8 1074, fn. 1 (8th Cir. 2004)(citing Carefirst of
9 Maryland, Inc. v. Carefirst Pregnancy Ctrs., Inc., 334
10 F.3d 390, 402 (4th Cir.2003) ("When a plaintiff offers
11 only speculation or conclusory assertions about
12 contacts with a forum state, a court is within its
13 discretion in denying jurisdictional discovery.")); see
14 also McLaughlin v. McPhail, 707 F.2d 800, 806 (4th
15 Cir.1983) (holding that district court *403 did not
16 abuse its discretion in denying jurisdictional
17 discovery when, "[a]gainst the defendants' affidavits,"
18 plaintiff "offered nothing beyond his bare allegations
19 that the defendants had had significant contacts with
20 the [forum] state of Maryland" (internal quotation
21 marks omitted)). Accordingly, this Court **DENIES**
22 Plaintiff's request, in the alternative, to conduct
23 jurisdictional discovery.

24 **IT IS SO ORDERED.**

25 DATED: September 29, 2015

s/ RONALD S.W. LEW
HONORABLE RONALD S.W. LEW
Senior U.S. District Judge

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28