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**United States District Court
Central District of California**

11 HUDSON-MUNOZ, LLC, a California
12 Limited Liability Company,
13 Plaintiff,

14 v.

15 U.S. WAFFLE COMPANY, INC., a South
16 Carolina Corporation; and DOES 1-10,
17 Defendants.

Case No: 2:19-cv-01960-ODW (RAO)

**ORDER GRANTING DEFENDANT’S
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION [6]**

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I. INTRODUCTION

Pending before the Court is Defendant U.S. Waffle Company, Inc.’s (“U.S. Waffle”) Motion to Dismiss for Lack of Personal Jurisdiction. (Mot. to Dismiss (“Mot.”), ECF No. 6.) For the reasons below, the Court **GRANTS** U.S. Waffle’s Motion.¹

II. FACTUAL AND PROCEDURAL BACKGROUND

This action arises from Plaintiff Hudson-Munoz’s (“Hudson”) allegations that U.S. Waffle, a pancake and waffle producer incorporated in South Carolina, breached

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¹ Having carefully considered the papers filed in connection to the instant Motion, the Court deemed the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 an oral contract whereby U.S. Waffle would complete and deliver Hudson’s orders of
2 frozen waffles. (Notice of Removal Ex. A (“Compl.”), ¶¶ 2, 11, ECF No. 1.) Hudson
3 alleges that in or around April 4, 2018, the parties entered into an oral agreement to
4 have U.S. Waffle produce and package Hudson’s waffles. (Compl. ¶ 11.) However,
5 Hudson alleges that U.S. Waffle failed on multiple instances to meet the agreed-upon
6 delivery dates, including on April 18 and May 16 of 2018. (Compl. ¶¶ 12–20.) U.S.
7 Waffle’s delays in delivering the waffles allegedly caused Hudson to suffer monetary
8 damages, damage to relationships with Hudson’s customers, and discontinuation of
9 Hudson’s products in stores. (Compl. ¶¶ 20–21.)

10 On October 11, 2018, Hudson filed suit against U.S. Waffle in the Superior
11 Court of the State of California, County of Los Angeles, claiming causes of action for:
12 (1) breach of contract; (2) negligent misrepresentation; and (3) intentional
13 misrepresentation. (Compl. ¶¶ 24–51.) U.S. Waffle removed the matter to this Court
14 on March 15, 2019, on the basis of diversity jurisdiction. (Notice of Removal ¶ 7.)
15 On March 22, 2019, U.S. Waffle moved to dismiss for lack of personal jurisdiction.
16 (*See generally* Mot.) Hudson opposes the dismissal and requests that it be allowed to
17 conduct jurisdictional discovery. (Opp’n to Mot. (“Opp’n”) 1–2, ECF No. 7.) This
18 Motion is now before the Court for decision.

19 III. LEGAL STANDARD

20 Pursuant to Federal Rule of Civil Procedure 12(b)(2), a party may seek to
21 dismiss an action for lack of personal jurisdiction. Once a party seeks dismissal under
22 Rule 12(b)(2), the plaintiff has the burden of demonstrating that the exercise of
23 personal jurisdiction is proper. *Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007).
24 Where the motion is based on written materials rather than an evidentiary hearing,
25 “the plaintiff need only make a prima facie showing of jurisdictional facts.” *Sher v.*
26 *Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990). Accordingly, a court only “inquire[s]
27 into whether [the plaintiff’s] pleadings and affidavits make a prima facie showing of
28 personal jurisdiction.” *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 128 (9th

1 Cir. 1995). Although the plaintiff cannot “simply rest on the bare allegations of its
2 complaint,” uncontroverted allegations in the complaint must be taken as true. *Amba*
3 *Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977); *see AT&T v.*
4 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). Factual disputes are
5 resolved in the plaintiff’s favor. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1554
6 (9th Cir. 2006).

7 A court may exercise personal jurisdiction over a non-resident defendant if the
8 defendant has “at least ‘minimum contacts’ with the relevant forum such that the
9 exercise of jurisdiction ‘does not offend traditional notions of fair play and substantial
10 justice.’” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1110–11 (9th Cir. 2002)
11 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). A district court
12 may exercise either general or specific personal jurisdiction over non-resident
13 defendants. *Fed. Deposit Ins. Corp. v. British-Am. Ins. Co.*, 828 F.2d 1439, 1442 (9th
14 Cir. 1987). Under California’s long-arm statute, courts may only exercise personal
15 jurisdiction if doing so “comports with the limits imposed by federal due process.”
16 *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014).

17 IV. DISCUSSION

18 A. General Jurisdiction

19 For general jurisdiction to exist over a defendant, the defendant’s affiliations
20 with the state must be so “continuous and systematic” so as to render it essentially “at
21 home” in the forum state. *Daimler AG*, 571 U.S. at 139. U.S. Waffle is incorporated
22 in South Carolina, and its principal place of business is in South Carolina. (*See Decl.*
23 *of Mark Dion* (“Dion Decl.”) ¶ 2, ECF No. 6-1.) U.S. Waffle does not maintain a
24 place of business, have employees, produce products, advertise, travel, or regularly
25 conduct business in California. (*Dion Decl.* ¶¶ 3–5, 7, 9–10.) Hudson has not shown
26 that U.S. Waffle has any systematic or continuous affiliation with California.
27 Therefore, U.S. Waffle cannot be considered “at home” in California. *See Hirsch v.*

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1 *Blue Cross, Blue Shield*, 800 F.2d 1474, 1478 (9th Cir. 1986) (holding there was no
2 general jurisdiction where the defendant had limited activities in the forum state).

3 Hudson does not dispute that this court lacks general jurisdiction over U.S.
4 Waffle. (Reply 2–3, ECF No. 8; *see* Opp’n 4–5.) As such, only specific jurisdiction
5 is at issue here.

6 **B. Specific Jurisdiction**

7 Specific jurisdiction over a non-resident defendant exists where: (1) the
8 “defendant purposefully direct[s] his activities or consummate[s] some transaction
9 with the forum or resident thereof[,] or perform[s] some act by which he purposefully
10 avails himself of the privilege of conducting activities in the forum, thereby invoking
11 the benefits and protections of its laws”; (2) the claim is one that “arises out of or
12 relates to” the defendant’s activities in the forum state; and (3) the exercise of
13 jurisdiction comports with “fair play and substantial justice, i.e. it must be
14 reasonable.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir.
15 2004). The plaintiff has the burden of establishing the first two prongs, and only
16 where established does the burden shift to the defendant to present a compelling case
17 that the exercise of jurisdiction would not be reasonable. *Id.*

18 *1. Purposeful Availment or Direction*

19 Under the first prong of the three-part test, “purposeful availment” includes
20 both purposeful availment and purposeful direction, which are two distinct concepts.
21 *Id.* Purposeful availment “typically consists of evidence of the defendant’s actions in
22 the forum, such as executing or performing a contract there.” *Id.* This test is satisfied
23 when a defendant reaches out beyond one state to “create continuing relationships and
24 obligations with citizens of another state.” *Burger King Corp. v. Rudzewicz*, 471 U.S.
25 462, 473 (1985). “A contract alone does not automatically establish the requisite
26 minimum contacts necessary for the exercise of personal jurisdiction.” *Gray & Co. v.*
27 *Firstenberg Mach. Co.*, 913 F.2d 758, 760 (9th Cir. 1990).

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1 Here, U.S. Waffle’s alleged oral contract did not establish a substantial and
2 continuing relationship with Hudson and the State of California—it did not solicit its
3 business with Hudson in California or take any other action in California. (Dion Decl.
4 ¶ 6.) Instead, U.S. Waffle submits an affidavit under penalty of perjury that the
5 relationship was initiated outside of California and that U.S. Waffle never went to
6 California to finalize their arrangement. (Dion Decl. ¶ 6–7.) The burden is on
7 Hudson to provide specifics of the parties’ prior negotiations, which Hudson did not
8 mention in its pleadings. Rather, Hudson merely states, that the parties entered an
9 arrangement to deliver waffles to “Plaintiff’s facility in Los Angeles, California.”
10 (Decl. of Burt Munoz in Supp. of Opp’n (“Munoz Decl.”) ¶¶ 4–5, ECF No. 7-1.)

11 In addition, the nature and subject of the contract itself does not indicate that
12 U.S. Waffle “would have continuing and extensive involvement with the forum.”
13 *Roth v. Garcia Marquez*, 942 F.2d 617, 622 (9th Cir. 1991). In *Roth*, the plaintiff
14 solicited a foreign defendant for the agreement, and the defendant had minimal
15 presence in the forum state. *Id.* at 622. Despite being a foreign defendant and having
16 minimal presence, the court found purposeful availment existed when considering the
17 future consequences of the contract, as most of the work for the contract would have
18 been performed in the forum state. *Id.* Here, the parties’ agreement was that U.S.
19 Waffle would prepare the waffles in South Carolina and deliver them to Hudson in
20 California, with no further activity on the part of U.S. Waffle within California. Even
21 taking into consideration Hudson’s general claim that U.S. Waffle previously paid and
22 arranged for shipment of its products to Hudson in California, there is no evidence
23 that U.S. Waffle would be involved in anything further once Hudson received the
24 products. Therefore, the Court finds purposeful availment lacking in this case. *See*
25 *Gray & Co.*, 913 F.2d at 760–61 (holding purposeful availment lacking where the
26 plaintiff initiated the negotiations and made an oral contract with an out-of-state
27 defendant).

1 While purposeful avilment is the more common analysis in contract cases, a
2 showing of purposeful direction might be appropriate in torts-based claims² and
3 “usually consists of evidence of the defendant’s actions outside the forum state that
4 are directed at the forum, such as the distribution in the forum state of goods
5 originating elsewhere.” *Schwarzenegger*, 374 F.3d at 802–03. The Ninth Circuit has
6 held that the relevant inquiry for purposeful direction is whether the defendant has
7 “(1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing
8 harm that the defendant knows is likely to be suffered in the forum state.” *Id.* at 803.

9 While U.S. Waffle may have committed an intentional act in entering into an
10 agreement with Hudson, Hudson provides no evidence that U.S. Waffle expressly
11 aimed its actions at the forum state. The Ninth Circuit has found that the requirement
12 of express aiming is satisfied “when the defendant is alleged to have engaged in
13 wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of
14 the forum state.” *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1087
15 (9th Cir. 2000), abrogated on other grounds by *Yahoo! Inc. v. La Ligue Contre Le*
16 *Racisme Et L’ Antisemitisme*, 433 F.3d 1199 (9th Cir. 2006). Hudson does not dispute
17 that it solicited U.S. Waffle outside of California for the alleged oral agreement.
18 (Dion Decl. ¶ 6; *see generally* Opp’n.)

19 Hudson argues that U.S. Waffle advertises itself online as being able to provide
20 products “nation-wide,” but “maintenance of a passive website alone cannot satisfy
21 the express aiming prong.” *Mavrix Photo Inc. v. Brand Techs., Inc.*, 647 F.3d 1218,
22 1229 (9th Cir. 2011). Although “operating even a passive website in conjunction with
23 ‘something more’ . . . is sufficient,” U.S. Waffle has not specifically targeted Hudson
24 or the state of California, nor has U.S. Waffle done anything “more” that would
25 support a finding of purposeful direction. *Id.* at 1229 (internal quotation marks
26 omitted); *see also Pebble Beach Co*, 453 F.3d at 1158 (stating “an internet domain

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28 ² In addition to a breach of contract claim, Hudson also brings causes of action for negligent and intentional misrepresentation. (Compl. ¶¶ 32–51.)

1 name and passive website alone are not ‘something more’ . . . and . . . alone are not
2 enough to subject a party to jurisdiction”). There is no evidence that U.S. Waffle
3 acted with a desire to appeal to or exploit a California market. Without being able to
4 find that U.S. Waffle committed an act that was expressly aimed at the forum state,
5 there can be no finding of purposeful direction.

6 2. *Arising Out Of*

7 Even if Plaintiff satisfied the first requirement, which it has not, the second
8 requirement for the Court to exercise specific personal jurisdiction “is that the claim
9 asserted in the litigation arises out of the defendant’s forum related activities.”
10 *Panavision Int’l, L.P. v. Toebben*, 141 F.3d 1316, 1322 (9th Cir. 1998). To determine
11 whether a plaintiff’s claim arises out of the defendant’s forum-related activities, courts
12 use a “but for” causation analysis. *Bancroft & Masters, Inc.*, 223 F.3d at 1088.

13 To find that Hudson’s claims arose from U.S. Waffle’s forum-related activities,
14 Hudson first must present evidence that U.S. Waffle acted in California. Here, U.S.
15 Waffle states that the contract was negotiated outside of California, and Hudson
16 provides no evidence otherwise. (Dion Decl. ¶¶ 6–8; *see generally* Compl.) Hudson
17 alleges that U.S. Waffle breached the contract, specifically by failing to deliver the
18 agreed upon products to California. (Compl. ¶¶ 11–12.) Therefore, the claim arises
19 solely from U.S. Waffle’s failure to perform.

20 While U.S. Waffle may have previously arranged and paid for shipment of its
21 products to Hudson in California, those previous shipments are not at issue. At most,
22 there is a failure to take action for the specific contract at issue, which merely shows
23 an absence of activity in the forum state. In fact, Hudson states that in the breach at
24 issue, U.S. Waffle did not arrange for the transportation of the products to California,
25 further evidencing a lack of activity in connection with the state. (Compl. ¶¶ 13, 16–
26 19; Opp’n 8.) U.S. Waffle states that any statements or representations made to
27 Hudson were made outside of California, and Hudson does not argue otherwise.
28 (Dion Decl. ¶ 8; *see generally* Opp’n.) The burden is on Hudson to make a prima

1 facie showing of specific, forum-related activities by U.S. Waffle that resulted in
2 Hudson’s claims. Hudson has not met its burden here.

3 3. *Reasonableness*

4 As Plaintiff has not made a prima facie showing of the first two prongs of
5 specific jurisdiction, the Court does not reach the issue of reasonableness.

6 **C. Request for Jurisdictional Discovery**

7 A court may grant jurisdictional discovery “where pertinent facts bearing on the
8 question of jurisdiction are controverted . . . or where a more satisfactory showing of
9 the facts is necessary.” *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406,
10 430 n.24 (9th Cir. 1977) (alteration in original). “[T]o obtain discovery on
11 jurisdictional facts, the plaintiff must at least make a ‘colorable’ showing that the
12 Court can exercise personal jurisdiction over the defendant.” *Mitan v. Feeney*, 497 F.
13 Supp. 2d 1113, 1119 (C.D. Cal. 2007). “This ‘colorable’ showing should be
14 understood as something less than a prima facie showing, and could be equated as
15 requiring the plaintiff to come forward with ‘some evidence’ tending to establish
16 personal jurisdiction” *Id.*

17 In its request for jurisdictional discovery, Hudson reiterates allegations as set
18 forth in its pleadings. (Opp’n 5–8.) It is unclear what evidence Hudson believes can
19 be obtained through jurisdictional discovery that would demonstrate a basis for
20 personal jurisdiction. Hudson does not explain why any facts relating to the
21 contractual relationship and contacts between the parties would not already be in its
22 possession and instead available solely through jurisdictional discovery. The only
23 additional information to which Hudson claims it lacks access and which could be
24 discovered is the possibility of a showing that U.S. Waffle has shipped products to
25 California under other agreements with other manufacturers or distributors. This
26 speculative possibility is based on U.S. Waffle’s advertisements claiming to provide
27 service nationwide. (Opp’n 8.) However, not only is this insufficient to establish a
28 “colorable” basis to conduct jurisdictional discovery, such facts would also be

1 irrelevant to a showing of a specific jurisdiction. *See Boschetto v. Hansing*, 539 F.3d
2 1011, 1020 (9th Cir. 2008) (affirming denial of jurisdictional discovery where the
3 plaintiff’s request was based on “little more than a hunch”). As such, the Court
4 declines to grant jurisdictional discovery.

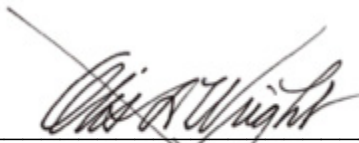
5 **V. CONCLUSION**

6 For the reasons discussed above, the Court **ORDERS** as follows:

- 7 (1) The Court **GRANTS** the Defendant’s Motion to Dismiss (ECF No. 6);
8 (2) The Court **DENIES** Plaintiff’s request for jurisdictional discovery; and
9 (3) The Clerk of the Court shall close the case.

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11 **IT IS SO ORDERED.**

12
13 August 5, 2019

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17 **OTIS D. WRIGHT, II**
18 **UNITED STATES DISTRICT JUDGE**