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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BACA GARDENING AND)
LANDSCAPING, INC., a)
California Corporation,)
Plaintiff,)
v.)
PRIZM VINYL CORPORATION,)
a Delaware corporation,)
EDWARD SHAPIRO,)
individually and DOES 1-)
10, inclusive,)
Defendants.)

Case No. EDCV 08-1328-VAP
(JCx)
**[Motion filed on October 8,
2008]**
**ORDER GRANTING MOTION TO
DISMISS**

The Court has received and considered the papers
filed in support of, and in opposition to, Defendant
Prizm Vinyl Corporation and Edward Shapiro's Motion to
Dismiss Pursuant to Federal Rule of Civil Procedure
12(b)(2). The matter is appropriate for resolution
without a hearing pursuant to Local Rule 7-15. The
hearing on the matter, set on November 17, 2008 at 10:00
a.m., is VACATED. For the following reasons, the Court
GRANTS Defendants' Motion to Dismiss.

1 I. BACKGROUND

2 A. Factual Allegations

3 Plaintiff Baca Gardening and Landscaping, Inc. is a
4 California corporation with its principal place of
5 business in Fontana, California. (See Compl. at ¶ 1.)
6 Defendant Prizm Vinyl Corporation is a Delaware
7 corporation with its principal place of business in York,
8 Pennsylvania. (See Compl. at ¶ 2; Not. Removal at ¶
9 3(a)(ii).) Defendant Edward Shapiro resides in
10 Pennsylvania, is a citizen of Pennsylvania, and is
11 alleged to be the "managing agent and/or principal of
12 Defendant Prizm." (Compl. at ¶¶ 4-5; Not. Removal at ¶
13 3(a)(iii).) Defendants are retail sellers of vinyl
14 fencing products. (See Compl. at ¶ 9.)

15
16 After viewing Defendants' Internet website, Plaintiff
17 contacted Defendants by telephone to purchase vinyl
18 fencing. (See Opp'n at 3; Baca Decl. at ¶ 3.) The
19 parties reached an agreement about the quantity and price
20 of the fencing Plaintiff would purchase. (See Compl. at
21 ¶¶ 10-11.) Defendants shipped the fencing to New Mexico,
22 where it was installed on Plaintiff's property. (See
23 Opp'n at 4.)

24
25 Shortly after installation, the fencing began "to
26 warp, bend, bow, distress, move and otherwise become
27 defective." (Compl. at ¶ 13.) Plaintiff contacted
28

1 Defendants on several occasions to complain about the
2 defects. (Id. at ¶¶ 15-17.) After the fence was
3 inspected in January 2008, Defendants assured Plaintiff
4 that the defective fencing would be replaced by
5 Defendants. (Id.) Defendants have not honored "their
6 assurances, promises, and warranties." (Id. at ¶ 17.)
7

8 **B. Procedural History**

9 On August 26, 2008, Plaintiff Baca Gardening and
10 Landscaping, Inc. filed a Complaint in the Superior Court
11 of California, County of San Bernardino, naming as
12 Defendants Prizm Vinyl Corporation and Edward Shapiro.
13 (See Compl.) The Complaint listed the following claims:
14 (1) "Breach of Contract;" (2) "Breach of Implied
15 Warranties;" (3) "Breach of Implied Warranties (Mag-
16 Moss);" (4) "Breach of Express Warranties;" (5) "Breach
17 of Express Warranties (Mag-Moss);" (6) "Breach of Express
18 Warranties (Comm. Code § 2313);" (7) "Breach of Express
19 Warranties (Song-Beverly)." (Id.) Defendants removed
20 the case to the United States District Court, Central
21 District of California, on September 29, 2008.
22

23 Defendants filed a Motion to Dismiss Pursuant to
24 Federal Rule of Civil Procedure 12(b)(2) ("Motion") on
25 October 8, 2008 and the Declarations of Prizm Vinyl
26 Corporation ("Prizm Decl.") and Edward Shapiro ("Shapiro
27 Decl."). Plaintiff filed Opposition ("Opp'n") on
28

1 November 3, 2008 and the Declaration of Joe Baca ("Baca
2 Decl."). Defendants filed a Reply on November 10, 2008
3 and the Declaration of Kristen Hurd ("Hurd Decl.").
4

5 **II. LEGAL STANDARD**

6 Federal Rule of Civil Procedure 12(b)(2) governs
7 dismissal for lack of personal jurisdiction. "In order
8 to exercise personal jurisdiction over a nonresident
9 defendant in a case presenting a federal question, the
10 district court must first determine that 'a rule or
11 statute potentially confers jurisdiction over the
12 defendant and then conclude that asserting jurisdiction
13 does not offend the principles of Fifth Amendment due
14 process.'" Doe I v. Unocal Corporation, 248 F.3d 915,
15 921-22 (9th Cir. 2001), citing Go-Video, Inc. v. Akai
16 Electric Co., Ltd., 885 F.2d 1406, 1413 (9th Cir. 1989).
17
18

19 Due process requires that nonresident defendants have
20 certain "minimum contacts" with the forum state so that
21 the exercise of jurisdiction does not offend traditional
22 notions of fair play and substantial justice. Int'l Shoe
23 v. Washington, 326 U.S. 310 (1945). "[I]t is essential
24 in each case that there be some act by which the
25 defendant purposefully avails itself of the privilege of
26 conducting activities within the forum State, thus
27 invoking the
28

1 benefits and protections of its law." Hanson v. Denckla,
2 357 U.S. 235, 253 (1958).

3
4 A court may exercise personal jurisdiction over a
5 nonresident defendant generally or specifically. Doe v.
6 Am. Nat'l Red Cross, 112 F.3d 1048, 1050 (9th Cir. 1997).

7 Specific jurisdiction exists when: (1) the defendant
8 purposefully avails himself of the "privilege of
9 conducting activities in the forum," (2) the claims
10 arises "from the defendant's forum-related activities,"
11 (3) is reasonable. See Data Disc, Inc. V. Sys. Tech.
12 Assocs., Inc., 557 F.2d 1280, 1287 (9th Cir. 1977).

13 Alternatively, a court has general jurisdiction when the
14 defendant's activities within a state are "substantial"
15 or "continuous and systematic." Id.

16
17 The plaintiff has the burden to establish a court's
18 personal jurisdiction over a defendant. Cubbage v.
19 Merchant, 744 F.2d 665, 667 (9th Cir. 1984), cert.
20 denied, 470 U.S. 1005 (1985). The plaintiff need only
21 demonstrate facts that if true would support jurisdiction
22 over the defendant. Ballard v. Savage, 65 F.3d 1495,
23 1498 (9th Cir. 1995) (citations omitted); see also AT&T
24 v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th
25 Cir. 1996) (where trial court rules on jurisdictional
26 issue based on affidavits and discovery materials without
27 holding evidentiary hearing, plaintiff need only make

1 prima facie showing). "[C]onflicts between the facts
2 contained in the parties' affidavits must be resolved in
3 [plaintiffs'] favor for purposes of deciding whether a
4 prima facie case for personal jurisdiction exists." Id.
5 (Citations omitted.)
6

7 **III. DISCUSSION**

8 Defendants move the Court to dismiss Plaintiff's
9 Complaint for lack of personal jurisdiction over
10 Defendants, who are out of state residents. (See Mot.)
11 Plaintiff opposes Defendants' Motion and argues the Court
12 has specific jurisdiction over the Defendants.¹ (See
13 Opp'n.) In the alternative, Plaintiff argues the Court
14 should allow the Plaintiff to conduct limited discovery
15 about jurisdiction or transfer the case to another
16 District Court. (Id.)
17

18 **A. Specific Jurisdiction**

19 As stated above, Plaintiff has the burden of showing
20 the Court has specific jurisdiction over the Defendants
21 by demonstrating the following: (1) the Defendants have
22 availed themselves purposefully of the benefits and
23 protections of the laws of the forum state; (2)
24 Plaintiff's claims arise out of or relate to Defendants'
25

26 ¹ The Plaintiff argues only that the Court has
27 specific jurisdiction over Defendants, not general
28 jurisdiction. (See Opp'n at 6.) Thus, the Court limits
its discussion to specific jurisdiction.

1 forum-related activities; and (3) the Court's exercise of
2 personal jurisdiction over Defendants is reasonable. See
3 Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,
4 801-02 (9th Cir. 2004). Without an evidentiary hearing,
5 "the plaintiff need only make a prima facie showing of
6 jurisdictional facts." Sher v. Johnson, 911 F.2d 1357,
7 1361 (9th Cir. 1990).

8
9 **1. Purposeful Availment**

10 Defendants argue they have not availed themselves
11 purposefully of the benefits or protections of the laws
12 of California. (See Mot. at 9.) According to
13 Defendants, Plaintiff, located in California, entered
14 into a contract with Defendants² over the telephone,
15 followed by a written agreement, for the purchase of
16 vinyl fencing. (Id. at 10.) The fencing was shipped to
17 Plaintiff in Pennsylvania; Plaintiff arranged to have the
18 fencing transported from Pennsylvania to Plaintiff's
19 property in New Mexico, where the fencing was installed.
20 (Id.) Further, Defendants argue their written agreement
21 with Plaintiff stated the contract was to "be construed
22 and accepted in accordance with the laws of the
23 Commonwealth of Pennsylvania." (Id. at 3.) Finally,

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26
27 ² Defendant Prizm is a "Delaware corporation with its
28 principal place of business located in York,
Pennsylvania." (Mot. at 2.) Defendant Shapiro is "a
resident of and is domiciled in Pennsylvania." (Id.)

1 Defendants argue, "[t]he transaction at issue here was
2 but a one-time
3 contract for the sale of a good which has only an
4 insignificant connection to California because it is
5 where the purchaser happened to be located, but otherwise
6 created no "substantial connection" or ongoing obligation
7 there." (Id. at 10.)

8
9 Plaintiff argues Defendants have availed themselves
10 purposefully of California's benefits and protections.
11 Plaintiff alleges Defendants held themselves out to have
12 a "California representative," that Defendants made
13 several telephone calls and sent numerous facsimiles to
14 Plaintiff in California, and that Defendants sent sample
15 fencing to Plaintiff in California. (See Opp'n at 7-8.)
16 According to Plaintiff, Defendants have "benefitted
17 economically by dealing with a California resident and
18 benefitted from California through entering into
19 contracts with [Plaintiff], which would be enforceable
20 under California law." (Id. at 8.)

21
22 Plaintiff also argues Defendants have purposefully
23 availed themselves of the benefits and protections of
24 California's laws because the contract documents were
25 sent by facsimile transmission to and executed by

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1 Plaintiff in California and Plaintiff suffers the damage
2 from the alleged breach in California.³ (Id. at 9.)

3

4 As this is a contract dispute, the Court must examine
5 whether the Defendants "purposefully avail[ed]
6 [themselves] of the privilege of conducting activities or
7 consummat[ed] a transaction in the forum." Yahoo! Inc.
8 v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433
9 F.3d 1199, 1206 (9th Cir. 2006) (citation omitted)
10 (internal quotations omitted). Generally, the fact that
11 a nonresident entered into a contract with a forum
12 resident is not a sufficient minimum contact, alone, with
13 the forum state to satisfy specific jurisdiction. See
14 Gray & Co. v. Firstenberg Machinery Co, 913 F.2d 758, 760
15 (9th Cir. 1990); Boschetto v. Hansing, 539 F.3d 1011,
16 1019 (9th Cir. 2008). In fact, the Supreme Court has
17 stated, a "contract is but an intermediate step to
18 serving to tie up prior business negotiations with future
19 consequences which themselves are the real object of the
20 business transaction." Burger King Corp. v. Rudzewicz,
21 471 U.S. 462, 478-79 (1985).

22

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25

26 ³ As an initial matter, it is not sufficient to
27 demonstrate purposeful availment that Plaintiff resides
28 in California and suffers the effects of Defendants'
alleged breach of contract there. See Casualty Assurance
Risk Ins. Brokerage Co. v. Dillon, 976 F.2d 596, 601 (9th
Cir. 1992).

1 Jurisdiction is not established automatically because
2 the forum state was the place of contracting, the place
3 of performing, or because the breach caused harm in the
4 forum state; viewing the contract as an intermediate
5 step, the Court must weigh the following factors: (1)
6 prior negotiations between the parties; (2) contemplated
7 future consequences; (3) course of dealings between the
8 parties; and (4) whether or not a choice of law provision
9 was included in the contract. Id. at 479.

10
11 Here, the parties present no evidence of prior
12 negotiations. In fact, the parties demonstrate this
13 contract was their first and only instance of negotiating
14 with one another. (See Mot. at 2-3; Opp'n at 3-4.)
15 Thus, this factor does not weigh heavily in the Court's
16 analysis.

17
18 Furthermore, the parties present no evidence of an
19 intent to contract in the future or of the future
20 consequences of entering into the contract at issue in
21 this case. Thus, this factor also does not weigh heavily
22 in the Court's analysis.

23
24 As to the third factor, the course of performance
25 between the parties was very limited. It consisted of
26 Plaintiff contacting the Defendants by telephone, after
27 visiting Defendants' Internet website. (See Opp'n at 3-
28

1 4.) According to Plaintiff, several telephone calls
2 between Plaintiff and Defendants' employees took place
3 and Defendants sent Plaintiff a sample of the fencing
4 before the parties entered into the contract. (Id.)
5 Based on Plaintiff's proffer, Defendants knew or should
6 have known they were negotiating with a California
7 resident, given the phone number and address to which
8 they directed their communications. This weighs in favor
9 of finding purposeful availment.

10
11 As to the final factor, Defendants allege there was a
12 choice of law term in the contract. Defendants submit a
13 contract as an exhibit to the Motion; in the contract, it
14 states it is to "be construed and accepted in accordance
15 with the laws of the Commonwealth of Pennsylvania."
16 (Mot. at 3.)

17
18 Plaintiff objects to Defendants' exhibit, claiming it
19 never received it or was presented with it, and it does
20 not bear Plaintiff's handwriting. (See Opp'n at 11.)
21 The Court sustains Plaintiff's objection because the
22 document itself is not authenticated properly by any
23 declaration submitted by Defendants. Defendants'
24 Declaration of Prizm Vinyl Corporation, signed by Edward
25 Shapiro, does present testimony, however, that "[t]he
26 terms and conditions of Plaintiff's purchase of the
27 fencing set forth that the purchase was to be construed
28

1 and was accepted in accordance with the laws of the
2 Commonwealth of Pennsylvania." (See Prizm Decl. at ¶
3 18.) The Court considers this as evidence that there was
4 a choice of law provision dictating Pennsylvania law be
5 applied to the
6 contract. This weighs against finding purposeful
7 availment.

8
9 Based on the totality of the circumstances, the Court
10 finds Defendants did not avail themselves purposefully of
11 the benefits and protections of the laws of California
12 simply by responding to one inquiry by a California
13 resident and subsequently negotiating a contract with
14 that resident. See Boschetto, 539 F.3d at 1019.
15 Plaintiff offers no evidence that Defendants sought out
16 or induced it to enter into a contract; rather, Plaintiff
17 presents evidence that it initiated the contact, based on
18 finding and reviewing Defendants' Internet website,⁴ not
19 attributable to any act of Defendants. (See Opp'n at 3-
20 4; Baca Decl. at ¶¶ 2-7.)

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25 ⁴ Plaintiff does not argue that Defendants' Internet
26 website created personal jurisdiction over the
27 Defendants. Also, Plaintiff does not argue whether or
28 not Defendants' Internet website is passive or active.
Thus, the Court does not consider whether Defendants'
Internet website, alone, could confer specific personal
jurisdiction in this case. See, e.g., Int'l L.P. v.
Toeppen, 141 F.3d 1316, 1320 (9th Cir. 1998).

1 In Gray & Co. v. Firstenberg Machinery Co., an Oregon
2 resident called a California company to ask about
3 purchasing used equipment. 913 F.2d 758, 759 (9th Cir.
4 1990). Based on the telephone call, the company sold to
5 the Oregon resident equipment located in Illinois, on an
6 "as is, where is" basis. Id. The company had no other
7 relationship to or contact with Oregon and the agreement
8 did not contemplate a continuing relationship between the
9 parties. Id. at 760-61. There, the Ninth Circuit found
10 the defendant's contacts with Oregon to be "attenuated"
11 and insufficient to establish purposeful availment. Id.
12 at 761.

13
14 Gray & Co. controls here. As in Gray & Co.,
15 Plaintiff has offered no evidence that Defendant has any
16 contact with California, save its limited communications
17 and negotiations with Plaintiff about entering into a
18 contract, solicited by Plaintiff. Plaintiff has also
19 failed to show the parties contemplated or agreed to a
20 continuing relationship, besides the single vinyl fencing
21 contract. Defendants' contact with California is too
22 attenuated to demonstrate purposeful availment. See Gray
23 & Co., 913 F.2d at 761; see also Kerry Steel, Inc. v.
24 Paragon Industries, Inc., 106 F.3d 147, 151 (6th Cir.
25 1997) (finding no purposeful availment when defendant had
26 one isolated transaction with plaintiff, initiated over
27 the telephone by plaintiff in forum state, where the
28

1 parties came to agreement, facsimile was sent confirming
2 the agreement, and plaintiff sent payment).

3
4 Plaintiff has not made out a prima facie case that
5 Defendants "expressly aimed [their] acts at California."
6 See Schwarzenegger, 374 F.3d at 807; cf. Keeton v.
7 Hustler Magazine, Inc., 465 U.S. 770, 774-75 (1984)
8 (finding purposeful availment where defendant published
9 magazines in Ohio and circulated them in the forum state
10 of New Hampshire); Mattel, Inc. v. MCA Records, Inc., 296
11 F.3d 894, 899 (9th Cir. 2002) (finding purposeful
12 availment where defendant distributed its European
13 products in the forum state of California); World-Wide
14 Volkswagen v. Woodson, 444 U.S. 286, 297-98 ("forum State
15 does not exceed its powers under the Due Process Clause
16 if it asserts personal jurisdiction over a corporation
17 that delivers its products into the stream of commerce
18 with the expectation that they will be purchased by
19 consumers in the forum State"); Plant Food Co-Op v.
20 Wolfkill Feed & Fertilizer Corp., 633 F.2d 155, 158-60
21 (9th Cir. 1980) (Canadian distributor that shipped
22 defective product to Montana may be subjected to personal
23 jurisdiction there).

24
25 Plaintiff has not satisfied its burden of
26 demonstrating Defendants' purposeful availment of the
27 benefits and protections of the laws of California.

28

1 **2. Claims Arising Out Of Or Relating To Defendants'**
2 **Forum-Related Activities**

3 The Ninth Circuit employs the "but for" causation
4 analysis to determine whether a claim arises out of the
5 defendant's forum-related activities; the plaintiff must
6 show, but for the defendant's forum-related activities,
7 plaintiff would not have been harmed. See Doe v. Unocal
8 Corp., 248 F.3d 915, 924 (9th Cir. 2001); Ballard v.
9 Savage, 65 F.3d 1495, 1500 (9th Cir. 1995).

10
11 Defendants argue they have no forum-related
12 activities, thus this prong of the specific jurisdiction
13 test cannot be met. (See Mot. at 11.) In the
14 alternative, Defendants argue none of their activities
15 relating to California "cause[d] Plaintiff to suffer any
16 damages." (Id.)

17
18 Plaintiff argues this prong is met. According to
19 Plaintiff, but for Defendants' alleged breach of their
20 contract, Plaintiff would not have suffered any damage.
21 (See Opp'n at 8.)

22
23 Applying the Ninth Circuit's "but for" test, the
24 Court must ask whether or not Plaintiff's alleged injury
25 could be attributed to Defendant's forum-related
26 activities. First, it is necessary to define Defendants'
27 forum-related activities. Here, Defendants' only alleged
28

1 contact with California is their communications and
2 negotiations with Plaintiff, located in California, and
3 subsequently entering into a contract with Plaintiff.
4 Thus, Defendants' relevant activities only relate to the
5 formation of the contract with Plaintiff.

6
7 Plaintiff does not allege injury from the formation
8 of the contract, but only the alleged breach of that
9 contract. Plaintiff does not allege that Defendants
10 engaged in any forum-related activities following the
11 formation of the contract. Plaintiff does not allege
12 Defendants breached the contract in California; Plaintiff
13 simply felt the damage resulting from the alleged breach,
14 in California. Thus, Plaintiff has failed to demonstrate
15 how Defendants' forum-related activities, relating to the
16 formation of the contract, could have had a causal
17 connection to Plaintiff's alleged injury from the alleged
18 breach of contract.

19
20 **3. Reasonableness**

21 Plaintiff has failed to satisfy its burden on the
22 first two prongs of the specific jurisdiction test, thus
23 the Court need not determine whether or not the exercise
24 of jurisdiction is nonetheless reasonable here. See
25 Menken v. Emm, 503 F.3d 1050, 1057 (9th Cir. 2007) ("If
26 the plaintiff fails to satisfy either of [the first two
27 specific jurisdiction] prongs, personal jurisdiction is
28

1 not established in the forum state" (citation omitted)).
2 In any event, given the Court's findings on the first two
3 specific jurisdiction prongs, it would be unreasonable
4 for the Court to exercise specific jurisdiction over the
5 Defendants in this case. See id.; Sinatra v. National
6 Enquirer, Inc., 854 F.2d 1191, 1198-99 (9th Cir. 1988).

7
8 **B. Alternative Request For Limited Jurisdictional**
9 **Discovery**

10 Given the Court's determination that there is no
11 specific jurisdiction over the Defendants, the Court sees
12 granting Plaintiff's request for limited jurisdictional
13 discovery to be futile. Plaintiff fails to specify the
14 discovery it would propound and how that discovery would
15 lead to information that would help it overcome the
16 jurisdictional deficiencies discussed above. Thus,
17 Plaintiff's request is denied.

18
19 **C. Alternative Request to Transfer**

20 Plaintiff requests that the Court, in lieu of
21 dismissing the case for lack of personal jurisdiction
22 over Defendants, transfer the case to a district that
23 would have personal jurisdiction over them, namely a
24 District Court that sits in a judicial district that
25 includes Santa Fe, New Mexico. (See Opp'n at 12.)
26 Plaintiff voices concerns that, should the Court dismiss
27 the case rather than transfer it and Plaintiff would be

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1 forced to re-file the case in another jurisdiction,
2 Plaintiff's claims would be barred by applicable statutes
3 of limitations. (Id.) Also, Plaintiff expresses
4 concerns about incurring burdensome financial costs by
5 bringing the claims in a Pennsylvania court; it would be
6 easier for Plaintiff to prosecute the case from a
7 location closer to California. (Id.)

8 Defendants do not object to the transfer of the case;
9 Defendants urge the Court to transfer the matter to the
10 Commonwealth of Pennsylvania. (See Reply at 4.)
11 Defendants point out that Plaintiff would have four
12 years, under 42 Pa. C.S.A. § 5525, to bring the contract
13 claims in Pennsylvania. (See id. at n.1.)

14
15 Transfer to another District Court to cure a personal
16 jurisdiction deficiency is permissible when (1) a court
17 exists in which the case could have been brought
18 originally and (2) it is in the interest of justice. See
19 28 U.S.C. § 1631; Clark v. Busey, 959 F.2d 808, 812 (9th
20 Cir. 1992). Although jurisdiction would be proper in the
21 Commonwealth of Pennsylvania, Defendants' principal place
22 of business, the Court considers Plaintiff's arguments
23 about whether to transfer the case to the District of New
24 Mexico, in light of Plaintiff's arguments about it being
25 less financially burdensome to prosecute the case in New
26 Mexico.

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1 Plaintiff's case could have been brought in the
2 District of New Mexico; that Court has subject matter
3 jurisdiction, on the basis of diversity jurisdiction,
4 over Plaintiff's claims, just as does this Court. Also,
5 personal jurisdiction over the Defendants may be
6 satisfied in that forum. According to Defendants,
7 "[b]ecause the fencing was delivered to Plaintiff in
8 Pennsylvania and shipped to and installed in New Mexico,
9 any further obligations between the Plaintiff and Prizm
10 would be in either Pennsylvania or New Mexico." (See
11 Mot. at 10.) Defendants' argument could be construed as
12 conceding that Plaintiff's claims could be brought in New
13 Mexico because Defendants have sufficient minimum
14 contacts in that state for personal jurisdiction to be
15 proper.

16
17 At the very least, Defendants knew, at the time of
18 contracting with Plaintiff, that Plaintiff was purchasing
19 the materials to be installed in its property in New
20 Mexico; Defendants arranged with Plaintiff to have the
21 materials sent through a common carrier to New Mexico
22 from Pennsylvania. (See Mot. at 3.) Defendants' acts
23 satisfy the inquiry into whether personal jurisdiction
24 over Defendants in New Mexico is proper. See, e.g.,
25 Plant Food Co-Op, 633 F.2d at 158-60.

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1 Defendants offer no argument about why the Court
2 should transfer the case to the Commonwealth of
3 Pennsylvania instead of to New Mexico, except noting that
4 Plaintiff has four years to bring its contract claims in
5 Pennsylvania. (See Reply at 4, n.1.)

6 ///

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11 In the interest of justice and after consideration of
12 the parties' arguments, the Court transfers this case to
13 the federal District Court in the District of New Mexico.

14

15

IV. CONCLUSION

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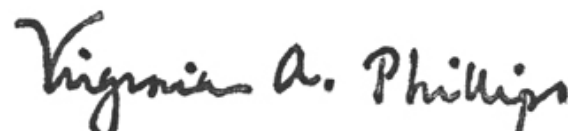
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Dated: November 12, 2008



VIRGINIA A. PHILLIPS
United States District Judge