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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JONATHAN SALAS,

Plaintiff,

v.

**FACULTATIEVE TECHNOLOGIES THE
AMERICAS, INC.; INCINERATOR
SPECIALISTS, INC.; and DOES 1 through
100, inclusive,**

Defendants.

1:17-cv-00335-LJO-BAM

**MEMORANDUM DECISION AND
ORDER RE MOTION OF
FACULTATIEVE TECHNOLOGIES
LIMITED, FACULTATIEVE
TECHNOLOGIES UK LIMITED AND
FACULTATIEVE TECHNOLOGIES
SUPPLIES LIMITED TO DISMISS FOR
LACK OF PERSONAL JURISDICTION
(ECF No. 15)**

I. PRELIMINARY STATEMENT TO PARTIES AND COUNSEL

Judges in the Eastern District of California carry the heaviest caseloads in the nation, and this Court is unable to devote inordinate time and resources to individual cases and matters. Given the shortage of district judges and staff, this Court addresses only the arguments, evidence, and matters necessary to reach the decision in this order. The parties and counsel are encouraged to contact the offices of United States Senators Feinstein and Harris to address this Court’s inability to accommodate the parties and this action. The parties are required to reconsider consent to conduct all further proceedings before a Magistrate Judge, whose schedules are far more realistic and accommodating to parties than that of U.S. Chief District Judge Lawrence J. O’Neill, who must prioritize criminal and older civil cases.

1 Civil trials set before Chief Judge O’Neill trail until he becomes available and are subject to
2 suspension mid-trial to accommodate criminal matters. Civil trials are no longer reset to a later date if
3 Chief Judge O’Neill is unavailable on the original date set for trial. Moreover, this Court’s Fresno
4 Division randomly and without advance notice reassigns civil actions to U.S. District Judges throughout
5 the Nation to serve as visiting judges. In the absence of Magistrate Judge consent, this action is subject
6 to reassignment to a U.S. District Judge from inside or outside the Eastern District of California.

7 **II. INTRODUCTION**

8 In this personal injury lawsuit, Plaintiff, Jonathan Salas, alleges that he was injured while
9 operating a mechanical loading table used in conjunction with a cremator on or about December 12,
10 2014, at the Salas Brothers Funeral Chapel (“Salas Brothers”) in Modesto, California. ECF No. 7, First
11 Amended Complaint (“FAC”) at 5. Plaintiff’s initial Complaint, filed in Stanislaus County Superior
12 Court, named Facultatieve Technologies The Americas, Inc. (“FT-The Americas”), and Incinerator
13 Specialists, Inc., as defendants. Following removal of this case on March 7, 2017, the parties stipulated
14 to permit Plaintiff to file an amended complaint. ECF No. 4. The FAC named as additional defendants
15 three foreign companies: Facultatieve Technologies Supplies Limited (“FT-Supplies”), Facultatieve
16 Technologies Limited (“FT”), and Facultatieve Technologies UK Limited (“FT-UK”) (collectively, “UK
17 FT Defendants”). ECF No. 7.

18 On August 31, 2017, responding to the First Amended Complaint, UK FT Defendants filed the
19 instant motion to dismiss for lack of personal jurisdiction, pursuant to Federal Rule of Civil Procedure
20 12(b)(2). ECF No. 15 (“Motion”). On September 18, Plaintiff filed his opposition to the motion. ECF
21 No. 16 (“Opp.”). On September 25, UK FT Defendants filed a reply in support of their motion. ECF
22 No. 20 (“Reply”). This matter is now ripe for review and is suitable for disposition without oral
23 argument. *See* Local Rule 230(g).

24 **III. BACKGROUND**

25 In support of its motion to dismiss, UK FT Defendants submit two declarations from Jean E.

1 Stratton, Secretary of Facultatieve Technologies, Ltd, a company organized under the laws of the United
2 Kingdom, with its principal registered office in Leeds, UK. ECF No. 15-3 ¶ 2. Stratton testifies that at
3 all times relevant to the allegations in this suit, FT-The Americas and Incinerator Specialists, Inc., each
4 had control of their own day-to-day business and operated independently of FT, had their own
5 management team, determined their own pricing and marketing, held their own bank accounts,
6 implemented their own policies, and managed and paid their own employees. *Id.* ¶ 3. FT has no offices,
7 manufacturing plants, or other facilities in California. *Id.* ¶ 4. FT did not manufacture, sell, warrant,
8 service, or repair the equipment that Plaintiff alleges caused his injury. *Id.* ¶ 5.

9 Stratton further testifies that FT-UK and FT-Supplies are both “inactive and ceased trading in
10 2004” and that since that time, neither “has performed any kind of business activity, received any form
11 of earnings or had any employees.” ECF No. 15-2 ¶ 3.

12 In response, Plaintiff submits his own declaration, ECF No. 17, along with declarations from his
13 attorneys, ECF Nos. 18-19. In his declaration, Plaintiff testifies that his employer, Salas Brothers,
14 purchased the “Cremator and associated Insertion System” at issue in this case in approximately July
15 2008. ECF No. 17, Salas Decl., ¶¶ 3-4. At the time of purchase, Salas Brothers and its employees
16 “were provided the Operation and Maintenance Instructions” for the Cremator and Cremulator. *Id.* ¶ 4.
17 Those manuals note on every page that they are copyrighted by Facultatieve Technologies Limited and
18 “repeatedly instruct the reader to contact Facultatieve UK regarding maintenance or technical issues.”
19 Opp. at 3.

20 In addition, Plaintiff testifies that in October 2007, FT-The Americas informed Salas Brothers
21 that another funeral chapel in Visalia, California, had purchased the same model of the product that
22 Salas Brothers purchased approximately nine months later. *Id.* ¶ 3. He also avers that at an unspecified
23 time, FT-The Americas told him that his “maintenance request, question and/or concern regarding the
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1 nylon wheels for the carriage of the subject product . . . needed to be referred to Facultatieve UK.”¹ *Id.* ¶
2 6. Finally, the declaration states his belief that the product at issue contains a computer system that has
3 the capacity to or actually does communicate or transmit information to Facultatieve UK. *Id.* ¶ 5.

4 One of the declarations from Plaintiff’s attorneys attach as exhibits documents received in
5 discovery in this case from FT-The Americas and Incinerator Specialists, Inc. ECF No. 18, Ebsworth
6 Decl. ¶ 3. Invoices for the sale of the component parts of the product at issue from FT to FT-The
7 Americas show that all but one of the parts had a “UK” prefix, and one of the invoices states that it is for
8 “the Salas Project.” ECF No. 18, Ebsworth Decl., Ex. 1. The commissioning manual, service manual,
9 service logs, and record sheets for the product all state that they are “the intellectual property of
10 Facultatieve Technologies Limited.” *Id.*, Exs. 2-4. The service logs and record sheets include the
11 service performed, date of service, and name of the person who performed it. *Id.*, Ex. 4.

12 Another declaration from Plaintiff’s attorneys attaches as an exhibit emails from counsel for FT-
13 The Americas, in which he represented that FT designs Facultatieve products and that FT-The Americas
14 assembles them. ECF No. 19, Mastagni Decl., Ex. 1 at 1. That declaration further attests that an
15 attorney in Ohio who has “previously represented former employees of Facultatieve Technologies The
16 Americas, Inc.” represented during the course of a conversation that “persons from Facultatieve UK
17 would regularly work at Facultatieve Technologies The Americas, Inc.” Mastagni Decl. ¶ 4.

18 **IV. LEGAL STANDARD**

19 On a motion to dismiss for lack of personal jurisdiction brought pursuant to Fed. R. Civ. P.
20 12(b)(2), the plaintiff bears the burden of demonstrating that the court’s exercise of jurisdiction is
21 proper. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011). When the
22

23 ¹ The parties are inconsistent in the names they use to refer to the defendants. While the UK FT Defendants use a separate
24 designation for each defendant, Plaintiff refers to the three of them collectively as “Facultatieve UK.” Opp. at 1.
25 Defendants use “FT-UK” to refer solely to Facultatieve Technologies UK Limited. Motion at 2; Reply at 2. Though the
Reply appears to assume that Plaintiff’s use of “Facultatieve UK” in his briefing and supporting affidavits referred only to
Facultatieve Technologies UK Limited, the Court will read the objections and arguments raised in the Reply to apply to all
three UK FT Defendants.

1 court's determination is based on written materials rather than an evidentiary hearing, "the plaintiff need
2 only make a prima facie showing of jurisdictional facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1015
3 (9th Cir. 2008 (quotation marks and citation omitted). In resolving the motion on written materials, the
4 court must "only inquire into whether [the plaintiff's] pleadings and affidavits make a prima facie
5 showing of personal jurisdiction." *Id.* (alteration in original) (quotation marks omitted) (quoting *Caruth*
6 *v. Int'l Psychoanalytical Ass'n*, 59 F.3d 126, 128 (9th Cir. 1995)). "That is, the plaintiff need only
7 demonstrate facts that if true would support jurisdiction over the defendant." *Ballard v. Savage*, 65 F.3d
8 1495, 1498 (9th Cir. 1995). A plaintiff cannot solely rest on the bare allegations of its complaint, but
9 uncontroverted allegations in the complaint must be taken as true. *Boschetto*, 539 F.3d at 1015.
10 "Conflicts between the parties over statements contained in affidavits must be resolved in the plaintiff's
11 favor." *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). In
12 addition, "[t]he court may consider evidence presented in affidavits to assist it in its determination and
13 may order discovery on the jurisdictional issues." *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir.
14 2001). However, "conflicts between the facts contained in the parties' affidavits must be resolved in
15 [plaintiff's] favor for purposes of deciding whether a prima facie case for personal jurisdiction exists."
16 *AT & T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

17 **V. DISCUSSION**

18 **A. Personal Jurisdiction**

19 Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over
20 persons. *See* Fed. R. Civ. P. 4(k)(1)(A). Under California's long-arm statute, courts may exercise
21 personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United
22 States." Cal. Civ. Proc. Code Ann. § 410.10 (2004). Because California's long-arm statute allows the
23 exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution, the question
24 here is whether assertion of personal jurisdiction over the UK FT Defendants comports with the limits
25 imposed by federal due process. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985). It is

1 well established that the Fourteenth Amendment’s Due Process Clause limits the power of a court to
2 exercise jurisdiction over out-of-state defendants who do not consent to jurisdiction. *Goodyear Dunlop*
3 *Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). There are two kinds of personal jurisdiction that
4 a court may exercise over a foreign defendant. *Id.* at 919. The first, known as “general jurisdiction,”
5 exists if the defendant’s contacts with the forum are “so substantial and of such a nature as to justify suit
6 against it on causes of action arising from dealings entirely distinct from those activities.” *International*
7 *Shoe Co. v. Washington*, 326 U.S. 310, 318 (1945). The second, known as “specific jurisdiction,” exists
8 where the litigation is derived from obligations that “arise out of or are connected with the [company’s]
9 activities within the state.” *Id.* at 319. Plaintiff has argued only that the Court has specific jurisdiction
10 over the defendants.

11 **1. Specific Jurisdiction**

12 The touchstone for asserting specific jurisdiction over a nonresident defendant is “the
13 relationship among the defendant, the forum, and the litigation.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121
14 (2014) (citation omitted). “The proper question is whether the defendant’s conduct connects him to the
15 forum in a meaningful way.” *Id.* at 1125. The Ninth Circuit has established a three-prong test for
16 analyzing a claim of specific personal jurisdiction: (i) the defendant must “purposefully direct his
17 activities or consummate some transaction with the forum or resident thereof”; (ii) the cause of action
18 must “arise[] out of or relate[] to the defendant’s forum-related activities”; and (iii) “the exercise of
19 jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.”
20 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). The plaintiff bears the
21 burden of satisfying the first two prongs of the test. *Id.* Once the plaintiff carries this burden, the
22 defendant must come forward with a “compelling case” that the exercise of jurisdiction would not be
23 reasonable. *Id.*

24 **a. Purposeful Direction**

25 The test’s first prong encompasses both purposeful direction and purposeful availment. *Yahoo!*

1 *Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006). This
2 prong may be satisfied by “purposeful availment of the privilege of doing business in the forum; by
3 purposeful direction of activities at the forum; or by some combination thereof.” *Id.* In tort cases, the
4 purposeful direction test ordinarily applies and requires satisfaction of all three prongs of the Supreme
5 Court’s effects test from *Calder v. Jones*, 465 U.S. 783, 789-90 (1984). *Schwarzenegger*, 374 F.3d at
6 805.² That test requires showing that the defendant (1) has committed an intentional act; (2) expressly
7 aimed at the forum state; (3) causing harm that the defendant knows is likely to be suffered in the forum
8 state. *Id.*

9 **(1) Intentional Act**

10 Under the first element of this test, Plaintiff must demonstrate that the defendants committed an
11 “intentional act.” The Ninth Circuit “construe[s] ‘intent’ in the context of the ‘intentional act’ test as
12 referring to an intent to perform an actual, physical act in the real world, rather than an intent to
13 accomplish a result or consequence of that act.” *Schwarzenegger*, 374 F.3d at 806.

14 The parties contest this element. The unrebutted evidence shows that FT-UK and FT-Supplies
15 ceased operations in 2004. Jean Stratton testifies in an affidavit that neither company has “performed
16 any kind of business activity, received any form of earnings or had any employees since the year 2004.”
17 ECF No. 15-2 ¶ 3. Though Plaintiff refers to all three UK FT Defendants collectively throughout his
18 briefing and supporting affidavits, none of the documentary evidence he has put forward mentions FT-
19 UK or FT-Supplies. The operations manuals, service logs, record sheets, and invoices all make
20 reference to FT alone. The hearsay email from counsel for FT-The Americas itself states that “the
21 company that designs the products is Facultatieve Technologies Limited” (FT) without mention of FT-

22
23 ² In some cases, the Ninth Circuit has limited the “purposeful direction” test to claims involving intentional torts. *See*
24 *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 460 (9th Cir. 2007) (“[I]t is well established that the *Calder*
25 [purposeful direction] test applies only to intentional torts, not to the breach of contract and negligence claims[.]”); *but cf.*
Menken v. Emm, 503 F.3d 1050, 1059 (9th Cir. 2007) (applying *Calder* purposeful direction test to claims of negligence,
wrongful interference with contractual relations, civil extortion, and fraudulent recording of document because they are all
claims that sound in tort).

1 UK or FT-Supplies.³ Plaintiff has put forward nothing to challenge the Stratton affidavit, and the Court
2 finds that Plaintiff has not carried his burden to make a prima facie case as to FT-UK or FT-Supplies.

3 The parties also contest FT's participation. A second Stratton affidavit states that FT-The
4 Americas operates independently of FT and that FT did not manufacture, design, sell, warrant, service,
5 or repair the product at issue. In response, Plaintiff submits manuals for the product at issue showing
6 that they are copyrighted by FT and that the user can procure additional copies of instructions from FT;
7 service logs and record sheets that state that they are the property of FT; and invoices showing that FT
8 sent items bearing a "UK" prefix to FT-The Americas for sale to Salas Brothers, including an invoice
9 from FT to FT-The Americas identifying the items as being for "the Salas Project." This is sufficient to
10 satisfy the intentional act prong because it demonstrates intent by FT to sell the items in question to
11 Salas Brothers.

12 (2) **Express Aiming**

13 A court's exercise of jurisdiction over a non-resident defendant requires that the defendant "have
14 certain minimum contacts . . . such that the maintenance of the suit does not offend traditional notions of
15 fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). This due
16 process analysis focuses on whether a nonresident defendant's conduct and connection with the forum
17 state are such that it should reasonably anticipate being haled into court there. *World-Wide Volkswagen*
18 *Corp. v. Woodson*, 444 U.S. 286, 297 (1980). It is based on the presumption that it is reasonable to
19 require a defendant to be subject to the burden of litigating in a state in which it conducts business and
20 benefits from its activities in that state. *Brainerd v. Governors of the University of Alberta*, 873 F.2d
21 1257, 1259 (9th Cir. 1989). This requirement is met if the contacts proximately result from actions by
22 the defendant itself that create a substantial connection with the forum, such as where the defendant has
23

24 ³ A printout from the FT website does identify a "FT United Kingdom." Ebsworth Decl., ECF No. 18, Ex. 5, at PDF p. 72.
25 This appears to refer to FT's operations in various countries (FT The Netherlands, FT Czech Republic, FT France, etc.) rather
than identify the name of the corporate entity involved with the operations there.

1 deliberately engaged in significant activities within the forum or has created continuing obligations
2 between itself and forum residents. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–76 (1985). But
3 the defendant may not be haled into a jurisdiction as a result of the defendant’s random, fortuitous, or
4 attenuated contacts with the forum, or on the unilateral activity of another party or a third person. *Id.* at
5 475.

6 Plaintiff argues that the Court has specific jurisdiction of the UK FT Defendants under a “stream
7 of commerce” theory: UK FT Defendants “were fully aware and intended that the product that they
8 designed, manufactured, warranted, sent replacement parts, provided instruction for, invited ongoing
9 questions about and otherwise continued to be involved with, could, would, and did end up in
10 California.” *Opp.* at 8. As Plaintiff notes, a majority of the Supreme Court has not agreed on a stream
11 of commerce test for specific jurisdiction. *See Asahi Metal Industry Co. v. Superior Court of California,*
12 *Solano County*, 480 U.S. 102 (1987) and *J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873 (2011).

13 *Asahi* involved a motorcycle accident in California resulting from an allegedly defective
14 motorcycle tire. Asahi Metal Industry Co., a Japanese company, manufactured a component of the tires
15 and then sold them in Taiwan to a Taiwanese tire tube company that was later sued in California as a
16 result of the accident. The Taiwanese company filed a cross-complaint against Asahi, seeking
17 indemnification. The California Supreme Court had held that Asahi’s awareness that its products would
18 enter the stream of commerce and be sold in California was enough for California to exercise personal
19 jurisdiction over Asahi. The Supreme Court reversed, unanimously concluding that California did not
20 have personal jurisdiction but with none of the three opinions commanding a majority.

21 Justice O’Connor, writing for herself and three other justices, applied what has become known as
22 the “stream of commerce plus” standard:

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

1 State, or marketing the product through a distributor who has agreed to serve as the sales
2 agent in the forum State. But a defendant's awareness that the stream of commerce may
3 or will sweep the product into the forum State does not convert the mere act of placing
4 the product into the stream into an act purposefully directed toward the forum State.

5 *Asahi*, 480 U.S. at 112. Justice Brennan, also writing for himself and three other justices, disagreed that
6 a plaintiff need show a defendant's "additional conduct" directed toward the forum before a court could
7 exercise jurisdiction over a defendant. *Id.* at 116-17. "The stream of commerce refers not to
8 unpredictable currents or eddies, but to the regular and anticipated flow of products from manufacture to
9 distribution to retail sale," such that a defendant who has participated "in this process is aware that the
10 final product is being marketed in the forum State, [and] the possibility of a lawsuit there cannot come
11 as a surprise." *Id.* at 117. Finally, Justice Stevens, joined by two others, concurred in the result but
12 disagreed that the Court need articulate any test under the circumstances beyond the factors set forth in
13 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980). Even assuming that the test was
14 appropriate, he emphasized *Asahi's* "regular course of dealing" and that the constitutional determination
15 would be "affected by the volume, the value, and the hazardous character of the components." *Id.*

16 The Ninth Circuit adopted Justice O'Connor's "stream of commerce plus" formulation of
17 specific jurisdiction, holding that "[t]he placement of a product into the stream of commerce, without
18 more, is not an act purposefully directed toward a forum state. . . . Even a defendant's awareness that
19 the stream of commerce may or will sweep the product into the forum state does not convert the mere
20 act of placing the product into the stream of commerce into an act purposefully directed toward the
21 forum state." *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007) (citing
22 *Asahi*, 480 U.S. at 112).

23 The Supreme Court's most recent pronouncement on personal jurisdiction in a product liability
24 action involving a foreign defendant did not alter this legal landscape. In *J. McIntyre*, a plaintiff injured
25 by an allegedly defective metal-shearing machine filed suit in New Jersey state court against the English
manufacturer of the product at issue. The New Jersey Supreme Court held that the English defendant

1 was amenable to suit in New Jersey, “rel[ying] most heavily on three primary facts”: (1) the American
2 distributor on one occasion sold a single machine to a New Jersey customer; (2) the British manufacturer
3 permitted its American distributor to sell its machines “to anyone in America willing to buy them”; and
4 (3) the British manufacturers’ representatives had attended trade shows in various cities in the United
5 States, though never in New Jersey. 564 U.S. at 888. The Supreme Court, in a 6-3 opinion, held that
6 these facts were not sufficient for New Jersey courts to exercise jurisdiction over the British
7 manufacturer.

8 Like *Asahi*, the case did not produce a majority opinion. Justice Kennedy, joined by three
9 justices, adopted a more restrictive view of personal jurisdiction, rejecting Justice Brennan’s stream-of-
10 commerce theory and reasoning that “personal jurisdiction requires a forum-by-forum, or sovereign-by-
11 sovereign, analysis.” 564 U.S. at 884. Justice Breyer, joined by one other justice, agreed that New
12 Jersey courts could not properly exercise over the defendant but wrote a more narrow opinion that
13 “adhere[s] strictly to our precedents.” *Id.* at 893. Each of the three opinions in *Asahi* “strongly
14 suggested that a single sale of a product in a State does not constitute an adequate basis for asserting
15 jurisdiction over an out-of-state defendant.” *Id.* at 888. Only a single sale fails to meet the “regular . . .
16 flow” or “regular course” of sales articulated in the opinions of Justices Brennan and Stevens,
17 respectively, in *Asahi*. *Id.* at 889. A single sale also falls short of demonstrating “‘something more,’
18 such as such as special state-related design, advertising, advice, or marketing” under Justice O’Connor’s
19 test that would permit the assertion of jurisdiction. *Id.* at 889 (citing *Asahi*, 480 U.S. at 111, 112
20 (opinion of O’Connor, J.). Under any of the formulations outlined in *Asahi*, the plaintiff had failed to
21 demonstrate that an exercise of jurisdiction would comport with due process.

22 Because no opinion commanded a majority, Justice Breyer’s opinion, the narrowest ground
23 adopted by a majority of the justices, controls. See *Marks v. United States*, 430 U.S. 188, 193 (1977)
24 (“When a fragmented [Supreme] Court decides a case and no single rationale explaining the results
25 enjoys the assent of five Justices, the holding of the Court may be viewed as that position taken by those

1 Members who concurred in the judgments on the narrowest grounds[.]”). Justice Breyer’s opinion in *J.*
2 *McIntyre* is consistent with the Ninth Circuit’s approach outlined in *Holland*, and the Court focuses its
3 analysis on the FT’s efforts directed at California that amount to something more than merely placing
4 the product at issue into the stream of commerce.

5 Plaintiff argues that the evidence he has submitted, taken together, demonstrates that the UK FT
6 Defendants engaged in something more than passively introducing the subject product into the stream of
7 commerce. FT contends that it operates independently of -FT The Americas and that it did not
8 manufacture, design, sell, warrant, service, or repair the product at issue in this case, and that Plaintiff’s
9 evidence is lacking in foundation.

10 Plaintiff’s evidence presented to demonstrate “something more” more falls into two categories.
11 First, he has produced invoices showing that the product and component parts were sent from FT to FT-
12 The Americas (including, in one instance, listing that they were for “the Salas Project”) and instruction
13 manuals for operations and maintenance of the product that were created by FT. The manuals list that
14 they are the intellectual property of FT and were created by a systems engineering manager at FT. They
15 state that FT will provide on-site training, answer questions relating to operations and safety, and
16 provide additional copies of instruction manuals. Opp. at 3. Second, Plaintiff has produced hearsay
17 evidence indicating that FT had at least one other sale in California, that information from the machine
18 may have been relayed to FT, and that in at least once instance FT-The Americas referred Plaintiff’s
19 maintenance question to FT.

20 Plaintiff’s argument is that FT sent the product to FT-The Americas with the purpose that it be
21 sent along to Salas Brothers and that because the manuals announce that FT would continue to respond
22 to questions, provide on-site training, and send replacement parts or manuals, FT targeted California and
23 satisfied the “something more” required in a stream-of-commerce analysis. Plaintiff has not, however,
24 provided a foundation for where the manuals came from, asserting only that they “were provided” at the
25 time of sale, ECF No. 17, Salas Decl., ¶ 4, conceding that he “has no information regarding where said

1 document came from,” Opp. at 7.

2 Without a direct connection between the manuals and FT, their statements cannot be read as an
3 intentional effort to target California. If FT was unaware that the manual was traveling to California, it
4 cannot be evidence that FT “had an intent or purpose to serve the market in” California by “establishing
5 channels for providing regular advice to customers in” California or otherwise targeting the state. *Asahi*,
6 480 U.S. at 112 (O’Connor, J.).

7 Because Plaintiff has not met his burden of demonstrating that FT purposefully directed its
8 activities at California, the Court need not undertake the rest of the personal jurisdiction analysis.

9 **B. Jurisdictional Discovery**

10 Plaintiff requests that in the event that the Court finds that he has not made a prima facie
11 showing of jurisdiction, he be permitted to conduct limited jurisdictional discovery. Jurisdictional
12 discovery “may be appropriately granted where pertinent facts bearing on the question of jurisdiction are
13 controverted or where a more satisfactory showing of the facts is necessary.” *Boschetto v. Hansing*, 539
14 F.3d 1011, 1020 (9th Cir. 2008). The Court finds that limited jurisdictional discovery could yield
15 additional facts about the relationship between FT and the product at issue in this case, and the
16 relationship between FT and FT-The Americas. FT disclaims any involvement with the manufacture,
17 design, sale, and warranty of the product, while Plaintiff has produced manuals, invoices, service logs,
18 and record sheets for the product at issue that all bear indications of FT involvement. Because the
19 jurisdictional facts are controverted and “a more satisfactory showing of the facts is necessary,” *id.*, the
20 Court will allow discovery on this issue.

21 Accordingly, the Court grants Plaintiff’s request for limited jurisdictional discovery.

22 **VI. CONCLUSION AND ORDER**

23 For the foregoing reasons, UK FT Defendants’ motion to dismiss is GRANTED as to
24 Facultatieve Technologies Supplies Limited and Facultatieve Technologies UK Limited and DENIED
25 WITHOUT PREJUDICE as to Facultatieve Technologies Limited.

1 The parties are directed to meet and confer regarding the appropriate scope and length of the
2 jurisdictional discovery period, taking into account any discovery completed during the pendency of this
3 motion. The parties are directed to submit a stipulation and proposed order detailing the scope and
4 length of the jurisdictional discovery period no later than 14 days from the date of this order. If the
5 parties cannot reach a stipulated agreement, the parties shall submit the dispute through a joint discovery
6 letter brief to the Magistrate Judge. The deadline to file a joint letter brief on the scope and length of
7 jurisdictional discovery shall be no later than 21 days from the date of this order.

8 IT IS SO ORDERED.

9 Dated: October 25, 2017

/s/ Lawrence J. O'Neill
UNITED STATES CHIEF DISTRICT JUDGE