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UNITED STATES DISTRICT COURT

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EASTERN DISTRICT OF CALIFORNIA

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10 GEMINI BIOPRODUCTS, INC., a  
California Corporation,

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Plaintiff,

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v.

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14 SERUM SOURCE INTERNATIONAL, Inc.,  
a North Carolina corporation; and  
DOES 1-50, Inclusive,

15

Defendants.

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No. 2:17-cv-01551-JAM-KJN

**ORDER GRANTING SERUM SOURCE  
INTERNATIONAL, INC.'S  
MOTION TO DISMISS**

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Plaintiff, Gemini Bioproducts, Inc. ("Gemini") claims that it bought a bad shipment of Fetal Bovine Serum ("FBS") for \$209,912.95 from Defendant Serum Source, International ("SSI"). Compl., ECF No. 1-1, ¶ 9. SSI rejected Gemini's request for a refund. Compl. ¶¶ 11-16. As a result, Gemini filed this action against SSI. SSI moves to dismiss for lack of personal jurisdiction. Mem., ECF No. 6-1. For the reasons explained below, the Court grants Defendant's motion with leave to amend.<sup>1</sup>

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for Oct. 17, 2017. In deciding this motion, the Court takes as true all well-pleaded facts in the operative complaint.

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1 I. FACTUAL AND PROCEDURAL BACKGROUND

2 Gemini is a California corporation headquartered in West  
3 Sacramento. Decl. of Bertram J. Polan In Support of Opp'n  
4 ("Polan Decl."), ECF No. 9-2, ¶ 3. It manufactures and sells  
5 cell culture sera like FBS. Id. ¶ 4. SSI is a North Carolina  
6 corporation with its headquarters in Charlotte. Decl. of  
7 Jonathan Jacobs In Support of Mot'n, ECF No. 6-3, ¶ 2. SSI has  
8 done business with Gemini and at least four other businesses in  
9 California that are not parties to this litigation. Polan Decl.  
10 ¶¶ 7-8.

11 Since 2006, Gemini has purchased 46 lots of FBS from SSI.  
12 Compl. ¶ 36. In February 2016, Gemini bought 967 bottles of FBS  
13 from SSI for \$209,912.95. See Compl. ¶ 9. The bottles arrived a  
14 couple of weeks later. See id. But when Gemini marketed the  
15 bottles to its customers, they complained about cells dying or  
16 growing very slowly in the FBS. See id. ¶¶ 10-11. In over 30  
17 years of being in business, this was the first time Gemini did  
18 not have a 100% rate of acceptance of FBS. Id. ¶ 10.

19 In September 2016, Gemini complained to SSI that the FBS it  
20 bought in February was not of the quality that SSI represented or  
21 that was standard for the industry. See id. ¶ 12. SSI told  
22 Gemini it was trying to resolve the problem but also reminded  
23 Gemini that it knew the quality of the FBS it was buying. See  
24 id. ¶ 14. Gemini now demands a full refund and has sued SSI on  
25 the following claims: breach of contract; breach of the implied  
26 covenant of good faith and fair dealing; open book account; and  
27 unfair competition. See generally Compl.

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1 Gemini filed suit in the Superior Court of California,  
2 County of Yolo, on June 19, 2017, and served SSI a week later.  
3 Notice of Removal, ECF No. 1. The case was removed to federal  
4 court a month after SSI received the Complaint, on the basis of  
5 diversity jurisdiction and the amount in controversy being more  
6 than \$75,000. See Notice of Removal at 2-3. SSI has moved to  
7 dismiss for lack of personal jurisdiction. See generally Mem.

8  
9 II. OPINION

10 A. Personal Jurisdiction

11 When a defendant moves to dismiss for lack of personal  
12 jurisdiction, the plaintiff must make a prima facie showing that  
13 the court has jurisdiction over the defendant. Pebble Beach Co.  
14 v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006). Still, a  
15 plaintiff cannot simply rest on the bare allegations of the  
16 complaint. Ranza v. Nike, Inc., 793 F.3d 1059, 1068 (9th Cir.  
17 2015). In making its prima facie showing, the plaintiff can  
18 offer affidavits that the Court can choose to consider. Data  
19 Disc, Inc. v. Sys. Tech. Assocs., 557 F.2d 1280, 1285 (9th Cir.  
20 1977).

21 There are two types of personal jurisdiction: general and  
22 specific. Goodyear Dunlop Tires Operations, S.A. v. Brown, 564  
23 U.S. 915, 919-20 (2011) (internal citation omitted). General  
24 jurisdiction lies where a foreign corporation's affiliations  
25 with the forum state are sufficiently continuous and systematic  
26 to render them at home in the forum state. Goodyear, 564 U.S.  
27 at 919-20. A court may have general jurisdiction over a  
28 defendant even when the claims at issue are distinct from the

1 defendant's activities in that forum. Id. Specific  
2 jurisdiction lies where the defendant has established minimum  
3 contacts with the forum state and the dispute arises from those  
4 contacting activities with the forum state. Yahoo! Inc. v. La  
5 Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1204-  
6 05 (9th Cir. 2006).

7 B. Discussion

8 1. General Jurisdiction

9 Gemini argues this Court has general jurisdiction over SSI  
10 because of a continual and longstanding course of conduct and  
11 business between Gemini and SSI. See Opp'n at 6-7. Not so.

12 General jurisdiction requires Gemini to show that SSI's own  
13 affiliations with California are sufficiently "continuous and  
14 systematic" and that California basically operates as a home to  
15 SSI. Goodyear Dunlop Tires Operations, S.A., 564 U.S. at 919  
16 (internal citation and quotation marks omitted). "This is an  
17 exacting standard, as it should be, because a finding of general  
18 jurisdiction permits a defendant to be hauled into court in the  
19 forum state to answer for any of its activities anywhere in the  
20 world." Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797,  
21 801 (9th Cir. 2004).

22 Here, Gemini concedes SSI is a North Carolina Corporation  
23 organized and existing under the laws of that state. Opp'n at  
24 6. But Gemini contends that its purchase of 46 lots of FBS from  
25 SSI since 2006 constitute the continuous and systematic contacts  
26 required for general jurisdiction. See id. This specific  
27 relationship that Gemini has with SSI does not mean SSI has a  
28 systematic and continuous relationship with California. General

1 jurisdiction deals with a corporation's general contacts with a  
2 state and not its case-specific contacts. See Goodyear, 564  
3 U.S. at 919. General jurisdiction does not lie here.

#### 4 2. Specific Jurisdiction

5 Gemini argues specific jurisdiction lies over SSI because:  
6 (1) SSI purposefully availed itself of California's laws by  
7 entering into a contract with Gemini through electronic  
8 communication and marketing its products in California;  
9 (2) Gemini's claim arises out of SSI's conduct within California;  
10 and (3) the exercise of personal jurisdiction over SSI is  
11 reasonable. See Opp'n at 9-10.

12 To decide whether specific jurisdiction lies, the Court  
13 applies a three-part test. First, the non-resident defendant  
14 must either: (1) purposefully direct their activities or  
15 consummate some transaction with the forum or resident thereof;  
16 or (2) perform an act by which they purposefully avail themselves  
17 of the privilege of conducting activities in the forum, thereby  
18 invoking the benefits and protections of its laws.

19 Schwarzenegger, 374 F.3d at 802 (internal citations and quotation  
20 marks omitted). Second, the claim must arise from or relate to  
21 the defendant's forum-related activities. Id. Finally, the  
22 exercise of jurisdiction must comport with fair play and  
23 substantial justice, i.e. be reasonable. Id.

24 Plaintiff has the burden on the first two prongs. Boschetto  
25 v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008). If it fails to  
26 meet that burden, the jurisdictional inquiry ends and the case  
27 must be dismissed. Id. But if Plaintiff succeeds in meeting the  
28 burden, Defendant must then present a compelling case that

1 exercising jurisdiction would be unreasonable. Id.

2 The first prong in the test for specific jurisdiction  
3 requires the Court to conduct a purposeful availment inquiry to  
4 determine if the contract claims justify exercising specific  
5 jurisdiction. Schwarzenegger, 374 F.3d at 802. To satisfy this  
6 prong, Gemini must allege that SSI affirmatively acted to promote  
7 the transaction of business within California. Sher v. Johnson,  
8 911 F.3d 1357, 1362 (9th Cir. 1990). Formation of a contract  
9 with a nonresident defendant by itself is not enough to create  
10 jurisdiction. Boschetto, 539 F.3d at 1017. To decide whether a  
11 contract establishes minimum contacts, the Court considers the  
12 following facts: (1) previous negotiations; (2) contemplated  
13 future consequences; and (3) the terms of the contract and the  
14 parties' actual course of dealing. Gray & Co. Firstenberg Mach.  
15 Co., 913 F.3d 758, 760 (9th Cir. 1990) (internal citations and  
16 quotation marks omitted).

17 Here, Gemini argues it meets the standard for purposeful  
18 availment because SSI sold 46 previous lots to Gemini over the  
19 past ten years and marketed its products to Gemini while knowing  
20 Gemini was a California business. See Opp'n at 10-12. But these  
21 general allegations about facts not related to the specific  
22 transaction at issue are insufficient to justify specific  
23 jurisdiction. Gemini has not pleaded anything specific about  
24 those 46 prior transactions and how any negotiations,  
25 contemplations, or terms of those transactions affected the  
26 purchase giving rise to this action.

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1 Gemini also argues that SSI has purposefully availed itself  
2 of California's laws by conducting business with at least four  
3 other businesses in California. See Opp'n at 12; see also Polan  
4 Decl. ¶¶ 7-8. SSI's business transactions with third-parties  
5 outside this litigation are not relevant to this Court's specific  
6 jurisdiction analysis. "Specific jurisdiction is confined to  
7 adjudication of issues deriving from, or connected with, the very  
8 controversy that establishes jurisdiction." Goodyear Dunlop  
9 Tires Operations, 564 U.S. at 919 (internal citation and  
10 quotation marks omitted). As they are alleged, the relevant  
11 actions for the Court's specific jurisdiction analysis are  
12 Gemini's January and February 2016 communications with Gemini  
13 over buying FBS in 2016, entry into the purchase transaction, and  
14 SSI's shipment of the FBS on February 19, 2016. See Compl. ¶¶ 7-  
15 9.

16 These actions do not establish purposeful availment. Gemini  
17 has not alleged that the parties engaged in significant  
18 negotiations in California or that the invoice between the  
19 parties established a continuing commitment on either side. As  
20 in Boschetto, once the FBS was delivered, the parties could go  
21 their separate ways. Boschetto, 539 F.3d at 1017 ("[Plaintiff]  
22 did not create any ongoing obligations with Boschetto in  
23 California; once the car was sold the parties were to go their  
24 separate ways."); see also Gray, 913 F.2d at 761 ("There is no  
25 evidence the sale contemplated a continuing relationship between  
26 Gray and the defendants."). The parties did not engage in the  
27 type of negotiations in California which would support a  
28 purposeful availment finding and there are no continuing

1 obligations between the parties. Gemini's allegations do not  
2 meet the burden for purposeful availment.

3 Since Gemini cannot meet its burden on the first prong of  
4 the three-part specific jurisdiction test, the Court's inquiry  
5 ends. The Court also does not and need not reach Defendant's  
6 Fed. R. Civ. P. 12(b)(6) arguments. The Court finds that  
7 Plaintiff might still be able to plead sufficient facts to  
8 maintain its claim against Defendant and therefore grants this  
9 motion to dismiss with leave to amend.

### 10 11 III. SANCTIONS

12 The Court issued its Order re Filing Requirements ("Order")  
13 on July 27, 2017. ECF No. 2-2. The Order limits memoranda in  
14 support of and in opposition to motions to dismiss to fifteen  
15 pages and reply memoranda in support of motions to dismiss to  
16 five pages. The Order also states that an attorney who exceeds  
17 the page limits must pay monetary sanctions of \$50.00 per page  
18 and that the Court will not consider any arguments made past the  
19 page limit. Gemini's opposition memorandum exceeds the page  
20 limit by five pages. The Court has not considered any arguments  
21 made after page fifteen of the opposition brief. The Court  
22 ORDERS Gemini's counsel to pay \$250.00 in sanctions. Sanctions  
23 shall be paid to the Clerk of the Court within five days of the  
24 date of this Order.

### 25 26 IV. ORDER

27 The Court GRANTS WITH LEAVE TO AMEND SSI's motion to  
28 dismiss. If Genesis amends its complaint, it shall file a First

1 Amended Complaint within twenty days of this Order. Defendant's  
2 responsive pleading is due twenty days thereafter.

3 IT IS SO ORDERED.

4 Dated: November 9, 2017

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6 JOHN A. MENDEZ,  
7 UNITED STATES DISTRICT JUDGE  
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