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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN JOSE DIVISION**
6

7 SHAWNA ALLEN,
8 Plaintiff,
9 v.
10 SHUTTERFLY, INC., et al.,
11 Defendants.

Case No. [20-cv-02448-BLF](#)

**ORDER GRANTING MOTION TO
DISMISS DEFENDANTS LIFETOUCH,
INC. AND LIFETOUCH SCHOOL
STUDIOS, INC. FOR LACK OF
PERSONAL JURISDICTION**

[Re: ECF 22]

12
13 Plaintiff, Shawna Allen, brings this consumer fraud class action against Shutterfly, Inc.,
14 (“Shutterfly”), Lifetouch, Inc. and Lifetouch National School Studios, Inc. (together, “Lifetouch”
15 or “Lifetouch entities”) arising from the purchase of school portraits. Before the Court is Lifetouch’s
16 Motion to Dismiss for Lack of Personal Jurisdiction. Motion, ECF 22.

17 The Court heard oral arguments on August 14, 2020. For the reasons stated below, the Court
18 GRANTS Lifetouch’s Motion WITH LEAVE TO AMEND.

19 **I. BACKGROUND**

20 Plaintiff resides in Olathe, Kansas and has children who attend schools in the Olathe School
21 District. Complaint (“Compl.”) ¶¶ 7, 26, 30, ECF 1-1. Defendants are in the business of selling
22 school pictures, by contracting with schools to provide bi-annual portrait sessions within schools
23 and sell the portraits to students’ parents and guardians. Id. ¶ 1. Defendants have described
24 themselves as “the national leader in school portraits.” Id. ¶ 18.

25 Plaintiff’s claims arise from the pictures sold through a “Family Approval” model. Compl.
26 ¶ 2. Under this model, the students’ portraits are taken in school; the students are sent home with
27 the portraits (and/or other products printed with the students’ pictures); and their parents or
28

1 guardians are directed to pay for the products or return them. Id. ¶ 26. Parents and guardians are
2 not asked to and do not pre-order the portraits and products. Id. ¶ 48. Plaintiff alleges that
3 Defendants sent unordered portraits and/or products home with Plaintiff’s children each spring
4 during the past three years under the Family Approval model. Id. ¶¶ 29-30.

5 Plaintiff contends these portraits and products are “unconditional gifts that do not require
6 payment or return.” Compl. ¶ 49. According to Plaintiff, the Family Approval model is “illegal,
7 misleading and unconscionable” because it “unfairly pressures” parents into buying the portraits “or
8 risk disappointing their children and/or face embarrassment in front of teachers and school
9 administrators.” Id. ¶ 54. Plaintiff seeks to represent a class of “[a]ll individuals who received and
10 paid for unordered school portraits and/or products from Defendants within the past four years.” Id.
11 ¶ 59.

12 Plaintiff brings the following causes of action under California law: (1) Solicitation of
13 Payment for Unordered Goods in violation of California Civil Code § 1716; (2) Violation of
14 California Civil Code § 1584.5; (3) Violation of the California Consumers Legal Remedies Act,
15 Civil Code § 1750 et seq.; (4) Violation of the California Unfair Competition Law, Business and
16 Professional Code § 17200 et seq.; and (5) Unjust Enrichment. See generally, Compl.

17 Defendant Shutterfly, Inc. is incorporated in Delaware and has its principal place of business
18 in Redwood City, California. Compl. ¶ 8. Defendants Lifetouch, Inc. and its wholly owned
19 subsidiary, Lifetouch National School Studios, Inc., are Minnesota corporations with their principal
20 place of businesses in Minnesota. Id. ¶ 9.

21 Lifetouch submits, and Plaintiff does not dispute, that there has been a recent corporate
22 restructuring amongst Defendants. See Motion at 1 n.1. At the time of Plaintiff’s most recent
23 transactions, Shutterfly, Inc. was the parent company of both Lifetouch, Inc. and Lifetouch National
24 School Studios, Inc. See Declaration of John Grant (“Grant Decl.”) ¶¶ 4–7, ECF 22-1. On October
25 31, 2019, Shutterfly, Inc. was converted to a limited liability company under Delaware law and
26 renamed Shutterfly, LLC, with its principal place of business remaining in Redwood City,
27 California. Id. ¶ 4. On the same day, Lifetouch, Inc. was converted to a limited liability company
28 and then on December 31, 2019, it merged into Shutterfly, LLC. Id. ¶ 4. Similarly, Lifetouch

1 National School Studios, Inc. was converted into a limited liability company on October 31, 2019
2 and then on December 31, 2019, it was renamed Shutterfly Lifetouch, LLC. Id. ¶ 6. Thus,
3 Defendant Lifetouch, Inc. no longer exists. Defendant Lifetouch National School Studios, Inc. is
4 now named Shutterfly Lifetouch, LLC, is organized under the laws of Minnesota and has its
5 principal place of business in Eden Prairie, Minnesota. Id. ¶ 6.

6 II. LEGAL STANDARDS

7 Federal Rule of Civil Procedure 12(b)(2) authorizes a defendant to seek dismissal of an
8 action for lack of personal jurisdiction. See Fed. R. Civ. P. 12(b)(2). “In opposing a defendant’s
9 motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that
10 jurisdiction is proper.” *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir.
11 2011). Courts may consider evidence presented in affidavits and declarations in determining
12 personal jurisdiction. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). “Where, as here,
13 the defendant’s motion is based on written materials rather than an evidentiary hearing, the plaintiff
14 need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.”
15 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015) (internal quotation marks and citation
16 omitted).

17 “Uncontroverted allegations in the complaint must be taken as true, and factual disputes are
18 construed in the plaintiff’s favor.” *Freestream Aircraft (Bermuda) Ltd. v. Aero Law Grp.*, 905 F.3d
19 597, 602 (9th Cir. 2018). If, however, the defendant adduces evidence controverting the allegations,
20 the plaintiff must “come forward with facts, by affidavit or otherwise, supporting personal
21 jurisdiction,” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986), for a court “may not assume the
22 truth of allegations in a pleading which are contradicted by affidavit.” *Data Disc, Inc. v. Sys. Tech.*
23 *Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). Moreover, conclusory allegations or “formulaic
24 recitation of the elements” of a claim are not entitled to the presumption of truth. *Ashcroft v. Iqbal*,
25 556 U.S. 662, 681 (2009). “Nor is the court required to accept as true allegations that are . . .
26 unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d
27 1049, 1055 (9th Cir. 2008).

28 “When no federal statute governs personal jurisdiction, the district court applies the law of

1 the forum state.” *Id.*; see Fed. R. Civ. P. 4(k)(1)(A) (service of process is effective to establish
2 personal jurisdiction over a defendant “who is subject to the jurisdiction of a court of general
3 jurisdiction in the state where the district court is located”). “California’s long-arm statute allows
4 the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution.”
5 *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014) (citing Cal. Civ. Proc. Code Ann. § 410.10).
6 Constitutional due process, in turn, requires that a defendant “have certain minimum contacts” with
7 the forum state “such that the maintenance of the suit does not offend traditional notions of fair play
8 and substantial justice.” *Freestream Aircraft*, 905 F.3d at 602 (quoting *Int’l Shoe Co. v. Washington*,
9 326 U.S. 310, 316 (1945)).

10 “The strength of contacts required depends on which of the two categories of personal
11 jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction.” *Ranza*, 793 F.3d at 1068
12 (citing *Daimler AG*, 571 U.S. at 127). General jurisdiction exists when the defendant’s contacts
13 “are so continuous and systematic as to render [it] essentially at home in the forum State.” *Daimler*
14 *AG*, 571 U.S. at 127 (internal quotation marks omitted). Where a defendant is subject to general
15 jurisdiction, it may be sued “on any and all claims,” *id.* at 137, including claims “arising from
16 dealings entirely distinct” from its forum-related activities, *id.* at 127 (internal quotation marks
17 omitted). By contrast, specific jurisdiction is proper when the defendant’s contacts with the forum
18 state are may be more limited but the plaintiff’s claims “arise out of or relate to” those contacts.
19 *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773,
20 1786 (2017).

21 **III. DISCUSSION**

22 Lifetouch challenges this Court’s personal jurisdiction over Lifetouch entities. Lifetouch
23 argues that the Complaint’s factual allegations fail to establish either general or specific jurisdiction
24 as to Lifetouch because Lifetouch entities are undisputedly Minnesota companies and Plaintiff’s
25 claims arise from events that occurred entirely in Kansas – where Plaintiff lives, where her children
26 go to school, and where the school portraits at issue were taken and purchased. See Motion at 3-5.
27 Lifetouch further contends that jurisdiction cannot be established through Shutterfly, Inc. (the
28 California parent company) because Plaintiff’s theory of agency is not sufficiently pled. *Id.* at 5-7.

1 Finally, Lifetouch argues that the forum selection clause in Lifetouch Terms of Service agreement
2 does not waive personal jurisdiction. *Id.* at 7-8.

3 Plaintiff responds that determination of this Court’s personal jurisdiction over Lifetouch is
4 “premature” because “Plaintiff does not know the inner workings of the corporate restructuring or
5 operations of their various entities[.]” *Opp’n* at 3-4. Plaintiff also argues that the Complaint makes
6 a *prima facie* case that Lifetouch is subject to the jurisdiction of this Court. *Id.* at 2 (citing *Compl.*
7 ¶¶ 6, 11, 12, 26, 28). Plaintiff identifies the following paragraphs from the Complaint as factual
8 support for the Court’s personal jurisdiction over Lifetouch:

9 6. As a result of Defendants’ violations, thousands of individuals
10 throughout the United States including individuals within the state of
11 California received unsolicited portraits of their children that were not
12 ordered or requested. *Compl.* ¶ 6.

13 11. Plaintiffs are informed, believe, and thereon allege that each of
14 the Defendants herein was, at all times relevant in this action, the
15 agent, employee, representing partner, officer, director, subsidiary,
16 affiliate, parent corporation, successor and/or predecessor in interest
17 and/or joint venture of the remaining Defendants and was acting
18 within the course and scope of that relationship. Plaintiffs are further
19 informed, believe, and thereon allege that each of the Defendants
20 herein gave consent to, ratified, adopted, approved, controlled, aided
21 and abetted, and/or otherwise authorized the acts alleged herein to the
22 remaining Defendants. *Compl.* ¶ 11.

23 12. This Court has personal jurisdiction over the Defendants because
24 they have purposefully availed themselves of the privilege of
25 conducting business in California insofar as Shutterfly has its
26 principal place of business in the State and Defendants maintain
27 systematic and continuous business contacts with California. *Compl.*
28 ¶ 12.

29 26. Defendants began selling Spring portraits under a “Family
30 Approval” model in some markets, including in the Olathe School
31 District and, on information and belief, other communities throughout
32 the nation including California, whereby portraits and/or products are
33 sent home with students, and their parents and guardians are directed
34 to pay for the portraits and/or products or return them. *Compl.* ¶ 26.

35 28. During the relevant time, Defendants have sold Spring portraits
36 and/or products throughout the country including California under the
37 “Family Approval” model. *Compl.* ¶ 28.

38 **A. General Jurisdiction**

To establish general jurisdiction over a foreign entity, that entity’s affiliations with the forum

1 State must be “so continuous and systematic as to render it essentially at home in the forum State.”
2 Daimler AG v. Bauman, 571 U.S. 117, 119 (2014) (quotation and alterations omitted). “[I]n the
3 paradigmatic circumstance for exercising general jurisdiction, the corporate defendant is
4 incorporated or has its principal place of business in the forum state.” Williams v. Yamaha Motor
5 Co., 851 F.3d 1015, 1020 (9th Cir. 2017). These principles apply equally to limited liability
6 companies. See Miranda v. R&L Carriers Shared Servs., LLC, No. 18-CV-04940-TSH, 2018 WL
7 6199931, at *4 (N.D. Cal. Nov. 28, 2018) (finding no general jurisdiction in California over an Ohio
8 limited liability company with its principal place of business in Ohio).

9 Here, there is no dispute that both Lifetouch Defendants were Minnesota corporations with
10 their principal places of business in Minnesota. Compl. ¶ 9. And the Complaint is devoid of any
11 facts establishing that Lifetouch was “essentially at home” in California. Even after the corporate
12 restructuring, the remaining Lifetouch entity (Shutterfly Lifetouch, LLC) is organized under the
13 laws of Minnesota and has its principal place of business in Minnesota. Grant Decl. ¶ 6. Plaintiff
14 makes no arguments as to the existence of general jurisdiction. See generally, Opp’n. Accordingly,
15 there is no basis on which the Court could find general jurisdiction exists over Lifetouch.

16 **B. Specific Jurisdiction**

17 Next, Lifetouch argues the Complaint fails to allege a sufficient basis for the Court to
18 exercise specific jurisdiction over Lifetouch. Motion at 4. Lifetouch points out that all events
19 relevant to Plaintiff’s claims took place in Kansas: (1) Plaintiff resides in Kansas, (2) her children
20 attend school in Kansas, (3) Lifetouch took their school portraits in Kansas, (4) the unordered
21 portraits were sent to her home in Kansas, and (5) she paid for them in Kansas. Motion at 4-5.
22 Plaintiff responds that the Complaint makes a prima facie case that Lifetouch is subject to the
23 jurisdiction of this Court. Opp’n at 2 (citing Compl. ¶¶ 6, 11, 12, 26, 28).

24 But the portions of the Complaint Plaintiff cites for establishing prima facie of personal
25 jurisdiction are too conclusory to state a claim. **First**, Plaintiff alleges “[a]s a result of Defendants’
26 violations, thousands of individuals throughout the United States including individuals within the
27 state of California received unsolicited portraits of their children that were not ordered or requested.”
28 Compl. ¶ 6; see also id. ¶ 12 (“[O]n information and belief, other communities throughout the nation

1 including California, whereby portraits and/or products are sent home with students, and their
2 parents and guardians are directed to pay for the portraits and/or products or return them.”). But
3 even accepting these allegations as true, there is no connection between *Plaintiff’s claim* and any
4 action Lifetouch took in California. It is well established that to confer specific jurisdiction, “it is
5 the named plaintiff’s claim that ‘must arise out of or result from the defendant’s forum-related
6 activities,’ not the claims of the unnamed members of the proposed class, who are not party to the
7 litigation absent class certification.” *Ambriz v. Coca Cola Co.*, No. 13-CV-03539-JST, 2014 WL
8 296159, at *6 (N.D. Cal. Jan. 27, 2014). Here, whether unnamed putative class members in
9 California received portraits under the Family Approval model is irrelevant to Plaintiff’s claims,
10 which arise from the purchase of her children’s school portraits in Kansas.

11 Moreover, Plaintiff may not plead requisite jurisdictional facts by lumping all Defendants
12 together. This is because for the purposes of determining personal jurisdiction, “the actions of one
13 defendant cannot be attributed to another; instead, plaintiff must satisfy its prima facie showing with
14 regard to each defendant.” *ADO Fin., AG v. McDonnell Douglas Corp.*, 931 F. Supp. 711, 714
15 (C.D. Cal. 1996); see also *Skurkis v. Montelongo*, No. 16-cv-0972 YGR, 2016 WL 4719271, at *4
16 (N.D. Cal. Sept. 9, 2016) (rejecting the grouping of defendants in the jurisdictional allegation and
17 explaining “the Court must determine whether plaintiffs have made a prima facie case of personal
18 jurisdiction as to each defendant based on each defendant’s own contacts with California.”)
19 (emphasis in original).

20 **Second**, Plaintiff alleges “[t]his Court has personal jurisdiction over the Defendants because
21 they have purposefully availed themselves of the privilege of conducting business in California
22 insofar as Shutterfly has its principal place of business in the State and Defendants maintain
23 systematic and continuous business contacts with California.” Compl. ¶ 12. This allegation is
24 entirely conclusory as to Lifetouch. There is simply no factual basis in the Complaint about
25 Lifetouch’s “systematic and continuous business contacts with California” and even if there was,
26 those contact are not alleged to be related to Plaintiff’s claim.

27 “Specific jurisdiction is based on the defendant’s connections to the state with regard to the
28 particular controversy at issue.” *In re Samsung Galaxy Smartphone Mktg. & Sales Practices Litig.*,

1 No. 16-CV-06391-BLF, 2018 WL 1576457, at *2 (N.D. Cal. Mar. 30, 2018). Simply put, Plaintiff's
2 individual claims arise solely from conduct that occurred in Kansas and have no connection with
3 the sale of products in California. Thus, there is no basis for the Court to find specific jurisdiction
4 over Lifetouch.

5 **C. Agency Theory of Jurisdiction through Shutterfly**

6 Lifetouch also argues that jurisdiction over Lifetouch cannot be established by imputing
7 Shutterfly Inc.'s (or its successor Shutterfly, LLC's) California contacts to Lifetouch under an
8 agency theory. Motion at 5.

9 In a conclusory (an illogical) paragraph titled "Agency," Plaintiff alleges "each of the
10 Defendants herein was, at all times relevant in this action, the agent, employee, representing partner,
11 officer, director, subsidiary, affiliate, parent corporation, successor and/or predecessor in interest
12 and/or joint venture of the remaining Defendants[.]" Compl. ¶ 11. To establish jurisdiction on the
13 basis of an agency relationship, the plaintiff must state facts showing the defendant "had the right
14 to control" its alleged agent's activities. *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1025 (9th
15 Cir. 2017). Plaintiff's allegations, however, are a conclusory legal statement unsupported by any
16 facts regarding Shutterfly Inc.'s control over Lifetouch. Thus, an agency relationship is not
17 sufficiently pled to support a basis for personal jurisdiction. See *Page v. Minnesota Life Ins. Co.*,
18 No. SACV1801208AGKESX, 2019 WL 3059561, at *4 (C.D. Cal. Mar. 11, 2019) (finding no
19 specific jurisdiction based on conclusory assertion of agency not supported by sufficient facts); see
20 also *Williams*, 851 F.3d at 1025 n.5 (declining to credit a conclusory legal statement unsupported
21 by any factual assertion that "Defendants ... were the agents or employees of each other and were
22 acting at all times within the course and scope of such agency and employment ... and are legally
23 responsible because of their relationship with their co-Defendants.").

24 Plaintiff also asserts that "[e]ach entity files consolidated reports with the SEC," Opp'n at 3
25 & n.1, in support of her agency theory, but under California law, consolidated reporting does not
26 establish agency for purposes of jurisdiction. *Pitt v. Metro. Tower Life Ins. Co.*, No. 18-CV-06609-
27 YGR, 2020 WL 1557429, at *7 (N.D. Cal. Apr. 1, 2020) (quoting *F. Hoffman-La Roche, Ltd. v.*
28 *Superior Court*, 130 Cal. App. 4th 782, 801 (2005)); *Evangelista v. Just Energy Mktg. Corp.*, No.

1 SACV1702270CJCSSX, 2018 WL 4850380, at *4 (C.D. Cal. June 11, 2018) (“[T]he cases are
2 unanimous that consolidated reporting is standard business practice and will not support jurisdiction
3 in the absence of evidence establishing an agency relationship.”) (citation omitted).

4 Moreover, even if an agency relationship was sufficiently pled (and it is not), the Complaint
5 still fails to allege any Shutterfly contacts with California that relate to *Plaintiff’s claims*. “The
6 existence of a parent-subsidary relationship is insufficient, on its own, to justify imputing one
7 entity’s contacts with a forum state to another for the purpose of establishing personal jurisdiction.”
8 Ranza, 793 F.3d at 1070; see also Daimler, 571 U.S. at 136 (rejecting the notion that a foreign
9 corporation is subject to general jurisdiction whenever it has an in-state subsidiary or affiliate).

10 Plaintiff argues that she does not know the “inner workings” of Defendants after
11 restructuring. Opp’n at 3. That may be true, but the fact remains that the new Lifetouch entity
12 (Shutterfly Lifetouch LLC) is also a Minnesota company and Plaintiff’s claims arise from events
13 that occurred entirely in Kansas. Whatever those “inner workings” are, there are no allegations they
14 are related to Plaintiff’s claims and thus do not support a finding of personal jurisdiction.

15 In short, the Complaint fails to make a plausible claim that Shurretfly Inc.’s or Shutterfly
16 LLC’s contacts with California may be imputed to Lifetouch under an agency theory.

17 **D. Jurisdiction through Forum Selection Clause in the Terms of Service**

18 The forum selection clause in the Lifetouch Terms of Service provides:

19 **14. Miscellaneous**

20 Subject to and without waiving or limiting the mandatory
21 Arbitration Agreement set forth in paragraph 16, to the extent you or
22 Lifetouch are before a court (for instance, to enforce an arbitrator’s
23 award), you agree to submit to the exclusive jurisdiction of any State
24 or Federal court located in the County of Santa Clara, California,
25 United States of America, and waive any jurisdictional, venue or
26 inconvenient forum objections to such courts.

27 Exh. 1 to Compl., ECF 1-1 Compl. ¶ 13 (quoting Ex. A at ¶ 14).

28 Lifetouch argues that this provision does not waive personal jurisdiction because Plaintiff’s
claims are within the scope of the arbitration agreement and are therefore carved out of the forum
selection clause. Motion at 7. “Plaintiff agrees with Defendants that the forum selection clause
does not apply[.]” Opp’n at 1, 4. Because the parties are in agreement that the forum selection

1 clause in Lifetouch Terms of Service is inapplicable to Plaintiff’s claims, the Court concludes that
2 the said provision does not confer personal jurisdiction on this Court.

3 ***

4 In conclusion, the Court finds that Plaintiff’s factual allegations in the Complaint fail to
5 make a prima facie case for personal jurisdiction as to Lifetouch.

6 **E. Jurisdictional Discovery**

7 Plaintiff plans to amend her Complaint to name Shutterfly, LLC (which replaces the now-
8 merged Shutterfly, Inc. and Lifetouch, Inc.) and Shutterfly Lifetouch, LLC (which replaces
9 Lifetouch National Studios, Inc.). Opp’n at 2. Accordingly, Plaintiff argues that “the Court should
10 wait to determine personal jurisdiction until after an amended complaint has been filed naming the
11 current corporate entities and some limited jurisdictional discovery has occurred.” Id. at 3.

12 The parties do not dispute that Shutterfly, LLC is a California company and subject to
13 general personal jurisdiction of this Court. That leaves Shutterfly Lifetouch, LLC – which remains
14 a Minnesota company. Thus, the corporate restructuring changes nothing in the Court’s analysis of
15 personal jurisdiction. The new Lifetouch entity (Shutterfly Lifetouch, LLC) is a Minnesota limited
16 liability company and Plaintiff’s claims arise out of events in Kansas.

17 And other than not knowing the “inner workings” of the restructured companies, Plaintiff
18 provides no basis, let alone a plan, for her request for jurisdictional discovery. Courts may properly
19 deny jurisdictional discovery where there is insufficient evidence to give rise to more than a “hunch”
20 that discovery will make out a case for exercising personal jurisdiction over a defendant. See
21 *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). Plaintiff’s conclusory allegations and
22 arguments supply the Court with nothing but her “hunch” that jurisdictional discovery might reveal
23 facts helpful to her cause. This is not enough.

24 Moreover, Plaintiff has not “articulated what discovery [she] wish[es] to take, or what [she]
25 believe[s] might be revealed by further discovery.” *Mercantile, Inc v. E.I. DuPont De Nemours &*
26 *Co.*, No. 13-CV-01180-BLF, 2015 WL 4755335, at *12 (N.D. Cal. Aug. 11, 2015) (denying
27 jurisdictional discovery). Accordingly, on this record, the Court finds highly unlikely that
28 jurisdictional discovery would result in any useful new evidence regarding personal jurisdiction.

1 Thus, the Court DENIES Plaintiff's request for jurisdictional discovery WITHOUT PREJUDICE
2 to submitting a properly supported request.

3 **F. Leave to Amend**

4 In deciding whether to grant leave to amend, the Court must consider the factors set forth by
5 the Supreme Court in *Foman v. Davis*, 371 U.S. 178 (1962), and discussed at length by the Ninth
6 Circuit in *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048 (9th Cir. 2009). A district court
7 ordinarily must grant leave to amend unless one or more of the *Foman* factors is present: (1) undue
8 delay, (2) bad faith or dilatory motive, (3) repeated failure to cure deficiencies by amendment, (4)
9 undue prejudice to the opposing party, or (5) futility of amendment. *Eminence Capital*, 316 F.3d at
10 1052. "[I]t is the consideration of prejudice to the opposing party that carries the greatest weight."
11 *Id.* However, a strong showing with respect to one of the other factors may warrant denial of leave
12 to amend. *Id.*

13 The Court notes that Plaintiff has articulated no argument, either in her papers or at the
14 Hearing, as to how an amendment might cure the deficiencies in the Complaint as to personal
15 jurisdiction over Lifetouch. There is no dispute that Lifetouch, Inc. and Lifetouch National School
16 Studios, Inc. were Minnesota corporations with their principal places of business in Minnesota.
17 There is also no dispute that Lifetouch, Inc. no longer exists and has merged into the new Shutterfly,
18 LLC, a California company, over which the Court undisputedly has personal jurisdiction. There is
19 also no dispute that Shutterfly Lifetouch, LLC (Lifetouch National School Studios, Inc.'s successor)
20 remains a Minnesota company. Finally, there is no dispute that all events giving rise to Plaintiff's
21 claims occurred in Kansas. The portraits at issue were marketed, taken, delivered, and paid for in
22 Kansas.

23 In addition, Lifetouch has submitted a declaration stating that Shutterfly (the California
24 Defendant) is an online image publishing platform and "does not take school portraits, under the
25 Family Approval program or otherwise" and "was not involved in the development or
26 implementation of the Family Approval program." Declaration of Stacy Knudson ¶¶ 11-15, ECF
27 36-1. Accordingly, it appears that it will not be an easy feat for Plaintiff to allege additional facts
28 to state a plausible claim that a Minnesota company's contacts with California gave rise to Plaintiff's

United States District Court
Northern District of California

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claims about her purchases of school portraits in Kansas. But because this is Plaintiff’s first opportunity for an amendment, and because amendments are liberally granted in this Circuit, *Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 798 (9th Cir. 1991), the Court GRANTS Lifetouch’s Motion WITH LEAVE TO AMEND.

IV. ORDER

For the foregoing reasons, the Court GRANTS Lifetouch’s Motion to Dismiss for Lack of Personal Jurisdiction at ECF 22 WITH LEAVE TO AMEND. Any amended complaint shall be filed within 30 days of this Order.

Plaintiff’s request for jurisdictional discovery is DENIED WITHOUT PREJUDICE. If Plaintiff intends to submit a further request for jurisdictional discovery, she must meet and confer with Defendants and submit a properly supported discovery request and plan not to exceed five (5) pages. If such a request is submitted, Plaintiff may also request an extension to the 30-day deadline for amending her complaint to complete discovery.

Although the Court is allowing Plaintiff leave to amend the complaint, in light of the Court’s concurrently-filed Order granting Shutterfly’s motion to compel arbitration, Plaintiff can anticipate a similar outcome if the court finds personal jurisdiction over Lifetouch.

IT IS SO ORDERED.

Dated: September 14, 2020


BETH LABSON FREEMAN
United States District Judge