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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ELITE SEMICONDUCTOR, INC.,
Plaintiff,
v.
ANCHOR SEMICONDUCTOR, INC., et
al.,
Defendants.

Case No. [5:20-cv-06846-EJD](#)

**ORDER GRANTING MOTION TO
DISMISS FOR IMPROPER SERVICE
AND LACK OF PERSONAL
JURISDICTION**

Re: Dkt. No. 36

Elite Semiconductor, Inc. (“ESI”) brings this suit against its former employee Chin-Hsen Lin (“Lin”), Anchor Semiconductor, Inc. (“Anchor”), and Anchor’s president and chief executive officer Chen Ming Hu (“Hu”) in connection with the alleged misappropriation of ESI’s trade secrets. Lin now moves to dismiss the claims asserted against him for insufficient service of process and for lack of personal jurisdiction. ESI opposes the motion. For the reasons discussed below, Lin’s motion to dismiss is **GRANTED** for insufficient service of process and lack of personal jurisdiction.¹

I. BACKGROUND

ESI’s operative complaint (“Compl.”) alleges the following facts. Dkt. No. 1. ESI, a corporation headquartered in Hscinchu, Taiwan, is a software company known for its semiconductor manufacturing verification tools. Compl. ¶ 1, 15. ESI has developed defect identification technology which allows for defects in the inspection image to be reviewed

¹ The Court took this motion under submission without oral argument pursuant to Civil Local Rule 7-1(b).

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1 automatically by a machine, system, or computer such that the defect judgment can be achieved
2 accurately in a small period of time. *Id.* ¶ 18.

3 In March 2009, ESI hired Lin as its chief technology officer (“CTO”). *Id.* ¶ 24. ESI
4 alleges that as CTO, Lin had access to ESI’s electronic source code repository and the electronic
5 platforms where ESI trade secrets were stored. *Id.* ¶ 25, 31. This meant Lin had access to ESI’s
6 confidential software architectural plans, patent invention disclosures, product plans and
7 strategies, and the company’s trade secret files. *Id.* ¶¶ 25, 27. In January 2010, ESI began
8 creating the Killer Defect Screen System which would become a primary product for the
9 company. *Id.* ¶ 30. Lin helped create ESI’s trade secret software code for the Killer Defect
10 Screen System and continued to have access to all electronic and paper records related to ESI’s
11 trade secrets. *Id.* While serving as CTO, however, ESI believes Lin was “secretly hired” by
12 Anchor. *Id.* ¶ 24. ESI contends the Anchor Defendants made this hire so Lin could maintain
13 access to and take ESI’s intellectual property for Anchor’s benefit. *Id.* ¶ 68.

14 ESI notes that in April 2011, Lin gained access to and made a copy of patent invention
15 disclosure documents related to four of the company’s U.S. patents so that he could transmit the
16 disclosure documents to Anchor. *Id.* ¶ 50. After receiving the patent invention disclosure
17 documents, Anchor allegedly copied “ESI’s technology” described in the documents and
18 incorporated the information in its own U.S. patent application, which Anchor filed in April 2011.
19 *Id.* ¶ 86. ESI also alleges Lin visited its offices after hours in June 2012 and several times
20 thereafter to download source code and system architecture documents from the ESI server. *Id.* ¶¶
21 45, 52. According to ESI, Lin did this to transfer ESI’s trade secrets to the Anchor Defendants
22 who knew of and encouraged the taking and using of ESI’s trade secrets to develop its own defect
23 detection products. *Id.* ¶¶ 46, 67. ESI claims Lin and the Anchor Defendants made direct and
24 deliberate use of ESI’s trade secrets in order to develop Anchor’s competing products, including
25 its HPA detection tool. *Id.* ¶¶ 70, 76. Anchor’s use of ESI’s trade secrets is alleged to have
26 increased the timeline for the development and production of its products. *Id.* ¶ 70.

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1 Lin served as ESI’s CTO until January of 2013, when he transitioned to a senior consultant
2 position within the company. *Id.* ¶ 24. According to ESI, Lin told ESI he wanted to become a
3 consultant so he could take care of his wife in the United States. *Id.* ¶ 83. ESI contends, however,
4 that Lin actually left his position as CTO so “he could join Defendant Anchor and pillage trade
5 secret information from ESI. . . .” *Id.* He continued to serve as a senior consultant until January
6 of 2017 when he resigned. *Id.* ¶ 24. As part of his resignation, Lin agreed to and signed a
7 Confidentiality Agreement and Departure Clearance Checklist (collectively “Departure
8 Agreement”) which asked Lin to indicate whether he had taken any source code. *Id.* ¶ 61. By
9 signing, Lin asserted that he had not taken any ESI source code with him and agreed to not
10 disclose any of ESI’s trade secrets or intellectual property. *Id.*

11 On September 30, 2021, ESI filed its complaint against Lin, Hu, and Anchor. Dkt. No. 1.
12 The Complaint contains five claims: (1) a claim for misappropriation of trade secrets in violation
13 of California’s Uniform Trade Secrets Act (CUTSA), California Civil Code § 3426 *et seq.*, against
14 all defendants, (2) a claim for violation of the Defense of Trade Secrets Act, 18 U.S.C. § 1836 *et*
15 *seq.*, against all Defendants, (3) a common law breach of contract claim against Lin, (4) a claim
16 for tortious interference with contract against Hu and Anchor, and (5) a conversion claim against
17 all Defendants. *Id.* ¶¶ 103-143.

18 On January 4, 2021, Lin moved to dismiss the claims asserted against him for insufficient
19 service of process and for lack of personal jurisdiction. Motion to Dismiss for Improper Service
20 and Lack of Jurisdiction (“Mot.”), Dkt. No. 36. ESI filed an opposition to Lin’s motion
21 (“Opp’n”), to which Lin has filed a reply (“Reply iso Mot.”). Dkt. Nos. 47, 49.

22 **II. LEGAL STANDARDS**

23 **A. Motion to Dismiss for Insufficient Service of Process**

24 A federal court lacks personal jurisdiction over a defendant “unless the defendant has been
25 served in accordance with Fed. R. Civ. P. 4.” *Travelers Cas. & Sur. Co. of Am. v. Brenneke*, 551
26 F.3d 1132, 1135 (9th Cir. 2009) (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986)).

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1 Accordingly, Rule 12(b)(5) permits a court to dismiss an action for insufficient service of process.
 2 Fed. R. Civ. P. 12(b)(5). Rule 12(b)(5) also allows the defendant to attack the manner in which
 3 service was, or was not, attempted. *Id.* When the validity of service is contested, the burden is on
 4 the plaintiff to prove that service was valid under Rule 4. *Brockmeyer v. May*, 383 F.3d 798, 801
 5 (9th Cir. 2004). If the plaintiff does not satisfy this burden, the Court has the discretion to either
 6 dismiss the action or retain the action and quash the service of process. *Stevens v. Sec. Pac. Nat.*
 7 *Bank*, 538 F.2d 1387, 1389 (9th Cir. 1976).

8 Rule 4(e) provides that an individual may be served by “doing any of the following: (A)
 9 delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a
 10 copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and
 11 discretion who resides there; or (C) delivering a copy of each to an agent authorized by
 12 appointment or by law to receive service of process.” Fed. R. Civ. P. 4(e)(2). Service may also be
 13 carried out in any manner allowed by the law of the state in which the federal court sits or where
 14 service is made. Fed. R. Civ. P. 4(e)(1).

15 **B. Motion to Dismiss for Lack of Personal Jurisdiction**

16 Rule 12(b)(2) authorizes a defendant to seek dismissal of an action for lack of personal
 17 jurisdiction. Fed. R. Civ. P. 12(b)(2). When a defendant moves to dismiss for lack of personal
 18 jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction over the
 19 defendant. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).
 20 “Where, as here, a motion to dismiss is based on written materials rather than an evidentiary
 21 hearing, the plaintiff need only make a prima facie showing of jurisdictional facts.” *Love v.*
 22 *Associated Newspapers, Ltd.*, 611 F.3d 601, 608 (9th Cir. 2010). The Court then “only inquire[s]
 23 into whether [the plaintiff’s] pleadings and affidavits make a prima facie showing of personal
 24 jurisdiction.” *Caruth v. Int’l Psychoanalytical Ass’n*, 59 F.3d 126, 128 (9th Cir. 1995). A prima
 25 facie showing means that “the plaintiff need only demonstrate facts that if true would support
 26 jurisdiction over the defendant.” *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001).

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

12 Further, personal jurisdiction may either be authorized by federal statute or permissible to
 13 the extent provided under state law. With respect to the latter, “the district court applies the law of
 14 the state in which the court sits.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223
 15 (9th Cir. 2011). Under California law, courts may exercise jurisdiction “to the full extent that such
 16 exercise comports with due process.” *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th
 17 Cir. 2017) (citing Cal. Civ. Proc. Code § 410.10). As a result, “the jurisdictional analyses under
 18 state law and federal due process are the same.” *Mavrix Photo, Inc.*, 647 F.3d at 1223.

19 Due process “constrains a state’s authority to bind a nonresident defendant to a judgment
 20 of its courts.” *Walden v. Fiore*, 571 U.S. 277, 283 (2014). Although a nonresident’s physical
 21 presence within the territorial jurisdiction of the court is not required, the nonresident generally
 22 must have “certain minimum contacts . . . such that the maintenance of the suit does not offend
 23 traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. State of Wash., Off. of*
 24 *Employment Comp. & Placement*, 326 U.S. 310, 316 (1945) (quotation marks and citation
 25 omitted). “The strength of contacts required depends on which of the two categories of personal
 26 jurisdiction a litigant invokes: specific jurisdiction or general jurisdiction.” *Ranza v. Nike, Inc.*,

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1 793 F.3d 1059, 1068 (9th Cir. 2015) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014)).

2 **C. Leave to Amend**

3 If the Court determines that a complaint should be dismissed, it must then decide whether
4 to grant leave to amend. Under Federal Rule of Civil Procedure 15(a), leave to amend “shall be
5 freely given when justice so requires,” bearing in mind “the underlying purpose of Rule 15 to
6 facilitate decisions on the merits, rather than on the pleadings or technicalities.” *Lopez v. Smith*,
7 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (alterations and internal quotation marks omitted).
8 When dismissing a complaint for failure to state a claim, “a district court should grant leave to
9 amend even if no request to amend the pleading was made, unless it determines that the pleading
10 could not possibly be cured by the allegation of other facts.” *Id.* at 1130 (internal quotation marks
11 omitted). Accordingly, leave to amend generally shall be denied only if allowing amendment
12 would unduly prejudice the opposing party, cause undue delay, be futile, or if the moving party
13 has acted in bad faith. *Leadsinger, Inc. v. BMG Music Pub.*, 512 F.3d 522, 532 (9th Cir. 2008).

14 **III. DISCUSSION**

15 **A. Improper Service**

16 Lin first argues that this Court lacks jurisdiction over him as service was improper.
17 “[B]efore a court may exercise personal jurisdiction over a defendant, there must be more than
18 notice to the defendant and a constitutionally sufficient relationship between the defendant and the
19 forum. There also must be a basis for the defendant’s amenability to service of summons.”
20 *Omni Cap. Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104 (1987). Here, ESI contends
21 Lin has been properly served with process twice, once in California and the other time in Taiwan.
22 The Court addresses both instances in turn.

23 **1. Attempt to Serve Process in California**

24 According to Lin, ESI attempted service on October 18, 2020. ESI’s process server made
25 a substituted service on Lin by leaving a copy of the summons and complaint at a residence
26 located at 985 Joshua Place in Fremont, California (“Fremont Residence”) with Lin’s adult son

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1 Derek Lin. *See* Dkt. No. 22. The process server then mailed a copy of the summons and
 2 complaint to Lin at the same address. *Id.* On October 22, 2020, ESI filed the proof of service for
 3 the October 18, 2020 service. *Id.*

4 California law allows for substituted service if the summons and complaint cannot be
 5 personally served with reasonable diligence. Section 415.20 of the California Code of Civil
 6 Procedure provides the following:

7 (b) If a copy of the summons and complaint cannot with reasonable
 8 diligence be personally delivered to the person to be served . . . a
 9 summons may be served by leaving a copy of the summons and
 10 complaint at the person's *dwelling house, usual place of abode, usual*
 11 *place of business, or usual mailing address* other than a United States
 Postal Service post office box, in the presence of a competent member
 of the household or a person apparently in charge of his or her office,
 place of business . . .

12 Cal. Civ. Proc. Code § 415.20(b). (emphasis added).

13 Based on the evidence presented, the Court finds that ESI has not established it properly
 14 effectuated substituted service on Lin in California. First, before relying on substituted service,
 15 the serving party must show that the summons and complaint could not “with reasonable diligence
 16 be personally serviced.” Cal. Civ. Proc. Code § 415.20(b); *see, e.g., Am. Express Centurion Bank*
 17 *v. Zara*, 199 Cal. App. 4th 383, 389 (2011) (stating that “an individual may be served by substitute
 18 service only after a good faith effort at personal service has first been made: the burden is on the
 19 plaintiff to show that the summons and complaint ‘cannot with reasonable diligence be personally
 20 delivered’ to the individual defendant”); *Espindola v. Nunez*, 199 Cal. App. 3d 1389, 1392 (1988)
 21 (stating that, “[o]rdinarily, . . . two or three attempts at personal service at a proper place should
 22 fully satisfy the requirement of reasonable diligence and allow substituted service to be made”).
 23 Here, there is nothing to indicate that a reasonably diligent attempt at personal delivery was made
 24 prior to resort to substituted service. Indeed, the proof of service submitted by ESI suggests that
 25 no attempts were made. *See* Dkt. No. 22.

26 Second, even if reasonable diligence were not an issue, ESI has not presented sufficient

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1 evidence establishing that it left a copy of the summons and complaint at Lin’s “dwelling house,
2 usual place of abode, usual place of business, or usual mailing address.” *See* Cal. Civ. Proc. Code
3 § 415.20(b). A dwelling house or usual place of abode means the place where the defendant holds
4 out as his or her principal residence, and where he or she is most likely to receive actual notice.”
5 *Zirbes v. Stratton*, 187 Cal. App. 3d 1407, 1415-17 (1986). Although Lin does not contest that he
6 is the owner of the Fremont Residence, he states that he has not lived at the residence or in the
7 United States since 2013 and therefore it is not his dwelling house or usual place of abode. Decl.
8 of Chin-Hsen Lin (“Lin Decl.”), Dkt. No. 36-1 ¶ 4; *see also* Decl. of Derek Lin (“D. Lin Decl.”),
9 Dkt. No 49-2 ¶ 11. ESI offers the following evidence in support of its contention that the Fremont
10 Residence was Lin’s place of usual abode in October of 2020:

11 -An invoice from a casino in Macau dating from March 2013 for Lin,
12 which lists the Fremont Residence. Decl. of Iyun Leu (“Leu Decl.”),
Ex. A, Dkt. No. 47-2

13 -An undated blank check from an E*Trade account in Lin’s name
14 made out to a casino in Macau listing the Fremont Residence. Leu
Decl., Ex. B, Dkt. No. 47-3

15 -An unsigned registered mail receipt from January 2020 for a piece of
16 mail addressed to Lin and sent to the Fremont Residence by ESI’s
chief executive officer Iyun Kevin Leu (“Leu”). Leu Decl., Ex. C,
17 Dkt. No. 47-4.²

18 -ESI asserts it has access to Lin’s California tax returns from 2011
and that Lin still had checking accounts with Citibank. Leu Decl. ¶
19 19.

20 -Lin executed a confidentiality agreement and departure clearance
checklist in 2017 which listed the Fremont Residence’s address and
21 a Taiwanese address. *See* Compl., Ex A, Dkt. No. 1-1.

22 -Lin emailed ESI’s president in March 2020 and again on October 22,
2020 informing him that he had received registered mail in January
23 2020 and the “litigation document” informing him of the action
brought by ESI. Decl. of Jennifer Shih (“Shih Decl.”), Dkt. No. 47-6,
24 ¶ 4, Ex. B. Lin also told ESI’s president in March 2020 that he had
“returned to Taipei and [was] now under quarantine at home” and
25

26 ² ESI alleges that Lin signed the receipt of the express mail service on January 25, 2020, but the
27 documents submitted by ESI do not establish that Lin was the individual who signed for receipt of
the express mail.

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1 provided a hotel address. *Id.* In his October 2020 email, Lin provided
 2 ESI's president with the mobile phone number he would be using
 "during [his] stay in Taipei." *Id.*

3 Much of this evidence documents Lin's activities and possible location years prior to the
 4 attempted service. Moreover, ESI's belief that Lin was in the United States during 2020 because
 5 he informed ESI's president in March 2020 that he was staying at a quarantine hotel" in Taiwan
 6 does not provide support for its argument. *See* Opp'n 7-8. Lin presents evidence that he had just
 7 returned to Taipei from Seoul, South Korea in December 2019 and not the United States. Decl. of
 8 Chin-Hsen Lin in Support of Motion to Dismiss for Improper Service and Lack of Personal
 9 Jurisdiction ("Supp. Lin. Decl."), Dkt. No. 49-1 ¶¶ 10-13, Exs. A-B. Thus, upon review of the
 10 allegations and evidence presented, the Court finds that ESI has not presented sufficient evidence
 11 establishing that the Fremont Residence was Lin's dwelling house or usual place of abode in
 12 October 2020. Process on Defendant Lin was therefore not properly served through substituted
 13 service in California.

14 In opposition, ESI also argues that service in California was proper under § 413.30 of
 15 California Code of Civil Procedure because Lin received actual notice of the complaint. Opp'n at
 16 4. Section 413.30 provides that a court "may direct that summons be served in a manner which is
 17 reasonably calculated to give actual notice to the party served." "To satisfy constitutional norms
 18 of due process, the alternative method of service must be 'reasonably calculated, under all the
 19 circumstances, to apprise the interested parties of the action and afford them an opportunity to
 20 present their objections.'" *Facebook, Inc. v. Banana Ads, LLC*, No. C-11-3619-YGR, 2012 WL
 21 1038752, at *1 (N.D. Cal. Mar. 27, 2012) (quoting *Rio Properties, Inc. v. Rio Int'l Interlink*, 284
 22 F.3d 1007, 1016 (9th Cir. 2002)).

23 Courts within this district have authorized service upon individuals via certified mail when
 24 personal service was unsuccessful. For example, a court permitted service by certified mail under
 25 California Code of Civil Procedure § 413.30 when the plaintiff alleged five unsuccessful attempts
 26 at addresses found in corporate filings and six attempts at a personal address, a gated home with an
 27 intercom. *Lagree Techs., Inc., v. Spartacus 20th L.P.*, No. 17-CV-00795-JST, 2017 WL 1374598,

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1 at *1 (N.D. Cal. Apr. 17, 2017). The Court found that the plaintiff had adequately alleged the
2 defendant “lived in the gated property and evaded process servers.” *Id.* at *3. Therefore, the Court
3 determined that certified mail was a “reasonable alternative likely to provide [defendants] with
4 actual notice.” *Id.*

5 As discussed above, ESI has not shown it made any attempts to serve Lin prior to its
6 substituted service attempt in October 2020. Still, ESI argues that service on Lin was proper
7 because he received actual notice of this action after ESI completed substituted service at the
8 Fremont Residence and then mailed a copy of service to the same residence. This however is not
9 sufficient to establish that the service attempt was adequate. Service of process may not be upheld
10 solely on the ground that the defendant received actual notice when service does not
11 “substantial[ly] comply” with Rule 4. *Benny*, 799 F.2d at 492; *see also Travelers Cas. and Sur.*
12 *Co. of America*, 551 F.3d at 1135; *American Express Centurion Bank*, 199 Cal. App. 4th at 392
13 (“Actual notice of the action alone is not a substitute for proper service and is not sufficient to
14 confer jurisdiction.”). Although “service of process should be liberally construed to effectuate
15 service and uphold the jurisdiction of the court if actual notice has been received by the
16 defendant,” the Court concludes that actual notice is not sufficient here because the service did not
17 substantially comply with Rule 4. *Summers v. McClanahan*, 140 Cal. App. 4th 403, 410–11
18 (2006) (internal quotation marks and citations omitted); *see also Travelers Cas. And Sur. Co. of*
19 *America*, 551 F.3d at 1135.

20 2. Attempt to Serve Process in Taiwan

21 ESI next claims that it effected service on Lin pursuant to Rule 4(f)(2)(A) when counsel
22 for ESI mailed a copy of the summons and complaint from Irvine, California to an address in
23 Taiwan via Federal Express in January 2021. *See* Opp’n at 8-9; *see also* Shih Decl. ¶ 5, Ex. C. In
24 support, ESI presents a shipment tracking document which it argues establishes that Lin received a
25 copy of the summons and complaint on January 13, 2021. The exhibit ESI relies on lacks a
26 specific address and indicates that it was signed for by “S. Yang.” Shih Decl., Ex. C. ESI,
27

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1 however, does not inform the Court however of who “S. Yang” is or provide additional
 2 information about which Taiwanese address it mailed the documents to. Still, ESI argues that this
 3 method of service satisfies Rule 4(f)(2)(A) because it employed a method that is “prescribed by
 4 Taiwanese law for service in Taiwan in an action in the Taiwanese courts of general jurisdiction.”
 5 Opp’n at 6. According to ESI, Taiwan does not prohibit service of process by mail and courts in
 6 Taiwan will serve litigation documents through the post office. Opp’n at 9 (citing *Power*
 7 *Integrations, Inc. v. Sys. Gen. Corp.*, No. C 04-02581 JSW, 2004 WL 2806168, at *3 (N.D. Cal.
 8 Dec. 7, 2004)).

9 Setting aside the factual deficiencies in ESI’s evidence, the Court finds that its attempt to
 10 serve process on Lin in Taiwan was improper. In *Brockmeyer v. May*, the Ninth Circuit held that
 11 Rule 4(f)(2)(A) does not include service by international mail. 383 F.3d at 806. The court
 12 provided several justifications for its conclusion. First, the court noted that “the common
 13 understanding of Rule 4(f)(2)(A) is that it is limited to personal service.” *Id.* Next, the court
 14 noted the “explicit mention of international registered mail in Rule 4(f)(2)(C)(ii) and the absence
 15 of any such mention in Rule 4(f)(2)(A).” *Id.* Third, the court considered the British
 16 Government’s preferences regarding service of process. Specifically, in considering the British
 17 Government’s laws regarding service of process, the court found that the British Government’s
 18 desire to exclude international mailing from Rule 4(f)(2)(A) supported its decision that service
 19 through international mail to England was not a proper method under the rule. *Id.* at 807.

20 Finally, the court cited a string of cases rejecting service of process by international mail
 21 under Rule 4(f)(2)(A). *Id.* (citing *Prewitt Enterprises, Inc. v. Org. of Petroleum Exporting*
 22 *Countries*, 353 F.3d 916, 925 (11th Cir. 2003)) (rejecting plaintiff’s argument that Rule 4(f)(2)(A)
 23 authorizes service of process on OPEC by international registered mail sent to Austria); *Res.*
 24 *Ventures, Inc. v. Res. Mgmt. Int’l, Inc.*, 42 F. Supp. 2d 423, 430 (D. Del. 1999) (holding that
 25 service of process by international registered mail to Indonesia was not an appropriate method of
 26 service under Rule 4(f)(2)(A)); *Dee-K Enterprises Inc. v. Heveafil Sdn. Bhd.*, 174 F.R.D. 376,

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1 378–79 (E.D. Va. 1997) (holding that Rule 4(f)(2)(A) did not authorize service of process by
2 international mail to Indonesia or Malaysia).

3 Accordingly, ESI’s attempted service through international mail via Federal Express did
4 not comport with the requirements of Rule 4(f)(2)(A). ESI’s attempt to serve process in Taiwan
5 was thus invalid. Because ESI’s two separate attempts to serve process on Lin were improper, the
6 Court now has the discretion to either quash service of process or dismiss the case.

7 **B. Lack of Personal Jurisdiction**

8 As noted above, Lin also moves to dismiss this action against him for lack of personal
9 jurisdiction. *See* Mot. at 1. In opposition to Lin’s motion, ESI asserts that Lin can be subject to
10 both general jurisdiction and specific jurisdiction in this district based on his contacts with the
11 forum State. The Court first considers whether the Court can assume general jurisdiction over
12 Lin.

13 **1. General Jurisdiction**

14 General jurisdiction refers to personal jurisdiction over a defendant to adjudicate any and
15 all claims against the defendant, regardless of whether those claims arise from the defendant’s
16 contacts with the forum. *Coremetrics, Inc. v. Atomic Park.com, LLC*, 370 F. Supp. 2d 1013, 1016
17 (N.D. Cal. 2005). The standard for establishing general jurisdiction is “exacting” and requires that
18 the defendant’s contacts be “so substantial and of such a nature as to justify suit against [the
19 defendant] on causes of action arising from dealings entirely distinct from those activities .”
20 *Daimler AG*, 571 U.S. at 118 (quoting *Int’l Shoe Co.*, 326 U.S. at 318).

21 The “paradigm” for general jurisdiction over an individual is “the individual’s domicile.”
22 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2853 (2011). But courts
23 have, in rare instances, exercised general jurisdiction over an individual when the individual’s
24 contacts with a forum are so substantial that “the defendant can be deemed to be ‘present’ in that
25 forum for all purposes” so that exercising general jurisdiction over the defendant does not offend
26 traditional notions of fair play and substantial justice. *Yahoo! Inc. v. La Ligue Contre Le Racisme*

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1 *Et L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006). An individual's frequent visits to a
2 forum, or even his owning property in a forum, do not, alone, justify the exercise of general
3 jurisdiction over him. *See Span Const. & Eng'g, Inc. v. Stephens*, No. CIVF 06-0286 AWIDLB,
4 2006 WL 1883391, at *5 (E.D. Cal. July 7, 2006).

5 Lin argues that general jurisdiction over him is improper because he has not lived in
6 California since 2013 and is currently domiciled in Taiwan. *See* Lin Decl. ¶ 4; D Lin Decl. ¶¶ 3,
7 10-12. ESI counters, arguing Lin should be subject to general jurisdiction in California because
8 Lin is the owner of the Fremont Residence and still has an outstanding mortgage on the property.
9 Opp'n at 10; Shih Decl., Ex. A. ESI also alleges Lin maintains an E*Trade Financial account, and
10 as of 2011, still had checking accounts with Citibank. Opp'n at 10; Leu Decl. ¶ 19, Ex. B. The
11 Court does not find this sufficient to establish general jurisdiction. As discussed above, property
12 ownership in the forum State can justify the exercise of general jurisdiction over a defendant, but
13 this alone is not enough. "Courts in this Circuit have required far more than property ownership
14 prior to the exercise of general jurisdiction." *Cardenas v. McLane FoodService, Inc.*, No.
15 SACV10473DOCFMX, 2010 WL 11465450, at *2 (C.D. Cal. Oct. 25, 2010). Moreover, ESI's
16 additional allegations do not connect Lin to California, nor do they concern the relevant time
17 period.³ As such, Lin's contacts with California are not so substantial as to approximate his
18 physical presence here. Thus, the Court finds Lin's contacts do not meet the "exacting standard"
19 required for this Court to assume general jurisdiction over Lin. *See Schwarzenegger*, 374 F.3d at
20 804.

21 2. Specific Jurisdiction

22 "The inquiry whether a forum State may assert specific jurisdiction over a nonresident
23 defendant 'focuses on the relationship among the defendant, the forum, and the litigation.'"
24

25 ³ ESI relies on the declaration of its chief executive officer, Iyun Kevin Leu, and his purported
26 knowledge of Lin's Citibank checking accounts because of his access to Lin's tax returns from
27 2011. Leu Decl. ¶ 19. The E*Trade account evidence which lists the Fremont Residence address
28 does not include any date.

1 *Walden*, 571 U.S. at 283–84 (quoting *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 775 (1984)).
 2 There are two principles undergirding the defendant-focused inquiry. First, the relationship
 3 between the nonresident defendant, the forum, and the litigation “must arise out of contacts that
 4 the ‘defendant himself’ creates with the forum State.” *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*,
 5 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting *Walden*, 571 U.S. at 284). “Second, the minimum
 6 contacts analysis examines ‘the defendant’s contacts with the forum State itself, not the
 7 defendant’s contacts with persons who reside there.’” *Id.* (quoting *Walden*, 571 U.S. at 285).

8 The Ninth Circuit has set forth a three-prong test for the exercise of specific jurisdiction:
 9 (1) the defendant either “purposefully direct[s]” its activities or “purposefully avails” itself of the
 10 benefits afforded by the forum’s laws; (2) the plaintiff’s claim “arises out of or relates to the
 11 defendant’s forum-related activities; and (3) the exercise of jurisdiction [] comport[s] with fair
 12 play and substantial justice, i.e., it [is] reasonable.” *Williams*, 851 F.3d at 1023 (alterations in
 13 original) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). The burden is
 14 on the plaintiff to establish the first two prongs. *Axiom Foods, Inc.*, 874 F.3d at 1068 (citing
 15 *Schwarzenegger*, 374 F.3d at 802). If the plaintiff satisfies the first two prongs then the defendant
 16 must present a “‘compelling case’ that exercise of jurisdiction would not be reasonable.”
 17 *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th Cir. 2011) (quoting *Burger*
 18 *King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)).

19 With respect to the first prong, the Ninth Circuit has said that “purposeful availment” and
 20 “purposeful direction” are “two distinct concepts.” *Schwarzenegger*, 374 F.3d at 802
 21 (acknowledging that the Ninth Circuit has sometimes “use[d] the phrase ‘purposeful availment,’ in
 22 shorthand fashion, to include both purposeful availment and purposeful direction”). In tort cases,
 23 the Court typically inquires whether a defendant “purposefully direct[s] his activities” at the forum
 24 State. *Yahoo!*, 433 F.3d at 1206 (citing *Schwarzenegger*, 374 F.3d at 803). In contract cases, the
 25 Court inquires whether a defendant “purposefully avails itself of the privilege of conducting
 26 activities” or “consummate[s] [a] transaction” in the forum, focusing on activities such as

1 delivering goods or executing a contract. *Id.* Because ESI alleges both trade secret
 2 misappropriation and breach of contract claims, the Court analyzes the “purposeful availment”
 3 prong for both. *See Hong Kong uCloudlink Network Tech. Ltd. v. SIMO Holdings Inc.*, No. 18-
 4 CV-05031-EMC, 2019 WL 331161, at *4 (N.D. Cal. Jan. 25, 2019) (finding a purposeful direction
 5 analysis appropriate because trade secret misappropriation claims “are based in tort, not
 6 contract.”).

7 **a. Purposeful Direction**

8 For ESI’s trade secret misappropriation claims, the Court employs the purposeful direction
 9 analysis, also known as the “effects” test from *Calder v. Jones*, 465 U.S. 783 (1984). *See Axiom*
 10 *Foods, Inc.*, 874 F.3d at 1069. This test requires that the defendant have “(1) committed an
 11 intentional act, (2) expressly aimed at the forum State, (3) causing harm that the defendant knows
 12 is likely to be suffered in the forum State.” *Id.* (internal quotation marks and citation omitted).
 13 ESI contends that the trade secret misappropriation claims asserted against Lin are based on direct
 14 contacts that Lin had with California, but the argument is not persuasive for several reasons.

15 First, the theft of trade secrets itself appears to have taken place in Taiwan, not California.
 16 The second prong of the “effects test” requires that the defendant act in a way that is wrongful and
 17 targeted at the forum State. *See Dole Food Co.*, 303 F.3d at 1111. *Under Walden v. Fiore*, 571
 18 U.S. 277 (2014), the Court’s analysis must take into consideration the defendant’s contacts with
 19 California, not simply the effects of the contacts with the Plaintiff. *Walden* rejected the Ninth
 20 Circuit’s then-existing view that knowledge of a plaintiff’s forum connections – combined with
 21 foreseeable effects in that forum – are enough to constitute “minimum contacts.” *Walden*, 571
 22 U.S. at 286 (“Due process requires that a defendant be haled into court in a forum State based on
 23 his own affiliation with the State . . .”) (emphasis added). Instead, courts should focus “on the
 24 relationship among the defendant, the forum, and the litigation” and examine the “various
 25 contacts” the defendants have with the forum State. *Id.* at 277, 287.

26 In opposition, ESI argues that the claims arise out of Lin’s forum related activities in

1 California because when trade secrets were allegedly misappropriated, Lin was working remotely
 2 from California. Opp'n at 10. The allegations in the complaint, however, are contradictory. ESI,
 3 for example, alleges in its complaint that Lin "visited ESI's offices [located in Taiwan] after hours
 4 during the middle of the night and the weekends and unlawfully and without authorization
 5 downloaded ESI's [t]rade [s]ecrets." Compl. ¶ 43. ESI also alleges that Lin gained access to
 6 ESI's server and downloaded materials such as source code, architectural documents, and patent
 7 invention disclosure documents in 2011 and 2012. *Id.* ¶¶ 45, 50. Moreover, Lin has stated that all
 8 of the work he performed for ESI was performed in Taiwan and that all ESI offices, facilities, and
 9 the server referenced in the complaint are located in Taiwan. Lin Decl. 6-8. In this instance, ESI
 10 does not make a prima facie showing over Lin. ESI has not alleged it has any connections with
 11 California and given the evidence presented, there is no reasonable way this Court can construe
 12 Lin's alleged wrongful actions as targeted at the forum State.

13 Second, ESI attempts to argue that there are California contacts because Lin conspired with
 14 Anchor and its principals to transmit ESI's trade secrets to Anchor, a company with its principal
 15 place of business in California. Opp'n at 10. The Ninth Circuit, however, has declined to find
 16 jurisdiction based on a "bare allegation of a conspiracy between the defendant and a person within
 17 the personal jurisdiction" of this Court. *Chirila v. Conforte*, 47 F. App'x 838, 842-43 (9th Cir.
 18 2002) (holding that knowledge and consent of unlawful activity in the forum State do not
 19 constitute intentional acts committed in the forum State.). Here, ESI makes a bare allegation that
 20 Lin entered into a conspiracy with Anchor and its principals to make use of ESI trade secrets and
 21 bring the trade secrets to Anchor. Opp'n at 10; *see also* SAC ¶¶ 69, 84. Such allegations are the
 22 kind of knowledge and consent of intentional acts allegedly committed in the forum State that do
 23 not confer jurisdiction without "something more" that shows Lin targeted the forum State itself.
 24 *Id.*

25 Accordingly, ESI has failed to show how Lin purposefully directed his conduct at
 26 California to the extent that this Court can hale him into the forum State without violating due

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1 process.

2 **b. Purposeful Availment**

3 For ESI's breach of contract claim, a "purposeful availment" analysis is relevant here. "To
4 be subject to specific jurisdiction, a defendant must have 'purposefully avail[ed] itself of the
5 privilege of conducting activities within the forum State, thus invoking the benefits and
6 protections of its laws.'" *Sher v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990) (quoting *Burger*
7 *King Corp.*, 471 U.S. at 475). "[T]he 'purposeful availment' requirement is satisfied if the
8 defendant has taken deliberate action within the forum State or if he has created continuing
9 obligations to forum residents." *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995) (citing
10 *Hirsch v. Blue Cross, Blue Shield of Kansas City*, 800 F.2d 1474, 1478 (9th Cir. 1986)).

11 As mentioned, "[a] showing that a defendant purposefully availed himself of the privilege
12 of doing business in a forum State typically consists of evidence of the defendant's actions in the
13 forum, such as executing or performing a contract there." *Schwarzenegger*, 374 F.3d at 802. Still,
14 the mere existence of a contract does not necessarily constitute sufficient minimum contacts for
15 jurisdiction. *Burger King Corp.*, 471 U.S. at 478. Rather, a court must look to "prior negotiations
16 and contemplated future consequences, along with the terms of the contract and the parties' actual
17 course of dealing to determine if the defendant's contacts are 'substantial' and not merely
18 'random, fortuitous, or attenuated.'" *Id.* at 479, 480 (internal quotations omitted).

19 The focus of ESI's breach of contract claim is the Departure Agreement Lin signed when
20 he resigned from the company in 2017. *See* Compl. ¶ 58; Lin Decl. ¶ 9. Specifically, the
21 Departure Agreement asked Lin to verify whether he had taken any source code and agree to not
22 disclose any of ESI's trade secrets or intellectual property. Compl. ¶ 61. For jurisdiction
23 purposes, however, ESI does not discuss the necessary additional substantial contacts with
24 California aside from the fortuitous fact that Anchor's principal place of business is in California.
25 The work Lin did for ESI was performed in Taiwan, where Lin was based, and where the alleged
26 theft of trade secrets took place. Lin Decl. ¶ 6-9. Accordingly, the Court finds the evidence in the

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1 record does not demonstrate that Lin “has taken deliberate action within [California and] has [not]
2 created continuing obligations to [California] residents.” *Ballard*, 65 F.3d at 1498 (citing *Hirsch*,
3 800 F.2d at 1478.

4 Because ESI has not met its burden of establishing that Lin “purposely directed” or
5 “purposefully availed” himself to California, ESI has failed to establish a prima facie case that Lin
6 is subject to specific personal jurisdiction in this Court.

7 **IV. CONCLUSION**

8 In light of the foregoing, Lin’s motion to dismiss is **GRANTED**. ESI may be able to
9 furnish additional allegations and arguments with respect to general jurisdiction upon amendment.
10 Thus, the dismissal shall be with leave to amend. Any amended complaint is due within **thirty**
11 **(30) days**. ESI is directed to file a redlined complaint as an attachment to its amended complaint.
12 ESI shall also ensure that proper service of process as to Lin is executed.

13 **IT IS SO ORDERED.**

14 Dated: July 19, 2021



EDWARD J. DAVILA
United States District Judge

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