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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

<p>SUREFIRE, LLC, a California company,</p> <p style="text-align: right;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>CASUAL HOME WORLDWIDE, INC., a New York corporation d/b/a FENIXGEAR.COM; and FENIXLIGHT LIMITED, a company located in the People's Republic of China,</p> <p style="text-align: right;">Defendants.</p>	
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CASE NO. 12cv125 - IEG (MDD)

**ORDER**

**(1) GRANTING IN PART AND  
DENYING IN PART  
DEFENDANTS' MOTION TO  
DISMISS**

[Doc. No. 14]

**(2) DENYING AS MOOT  
PLAINTIFF'S MOTION FOR  
JURISDICTIONAL DISCOVERY**

[Doc. No. 16]

Presently before the Court is Defendants Casual Home Worldwide, Inc. ("Casual Home") and Fenixlight, Ltd. ("Fenixlight") (collectively "Defendants")'s motion to dismiss Plaintiff Surefire, LLC ("Surefire")'s complaint for lack of personal jurisdiction. [Doc. No. 14.] Fenixlight also moves to dismiss Surefire's complaint for improper service, or, in the alternative, to quash service. [Id.] For the reasons below, the Court **GRANTS IN PART** and **DENIES IN PART** Defendants' motion to dismiss.

**BACKGROUND**

This is a patent infringement action. On January 17, 2012, Surefire, a California company with its principal place of business in Fountain Valley, California, filed the present action against

1 Defendants alleging infringement of U.S. Patent No. RE40,125 (the “125 patent”) and U.S. Patent  
2 No. 7,722,209 (the “209 patent”) (collectively “the patents-in-suit”). [Doc. No. 1, Compl.]  
3 Specifically, Surefire alleges that certain flashlights imported and sold by the Defendants,  
4 including the PD20 and TK10 models, infringe the patents-in-suit. [Id. ¶¶ 14-15, 17, 22.]

5 Casual Home is a New York Corporation with its principal place of business in Amityville,  
6 New York. [Doc. No. 14-3, Declaration of Ming Chiang (“Chiang Decl.”) ¶ 3.] Casual Home is  
7 not incorporated in California, is not qualified to do business in California, and has no subsidiaries  
8 incorporated or qualified to do business in California. [Id. ¶ 4.] None of Casual Home’s officers,  
9 members, directors, employees, or agents reside or are domiciled in California. [Id. ¶¶ 5-6.]  
10 Casual Home does not have any offices or comparable facilities, telephone numbers, or bank  
11 accounts in California, does not own any real or personal property in California, and does not enter  
12 into contracts in California. [Id. ¶¶ 7-9, 12-13.] Casual Home asserts that it does not direct any of  
13 its advertising specifically toward California residents or advertise in any publications that are  
14 targeted or directed primarily toward California residents. [Id. ¶ 15.]

15 Casual Home operates the website Fenixgear.com as an online retailer of lighting products.  
16 [Doc. No. 14-3, Chiang Decl. ¶ 3.] Casual Home’s annual sales of the accused products, the PD20  
17 and TK10 flashlights, in California are: 201 units (\$8,003.15) in 2010; 94 units (\$3,777) in 2011;  
18 and 13 units (\$458.85) for the first four months of 2012. [Doc. No. 19-1, Reply Declaration of  
19 Ming Chiang (“Chiang Reply Decl.”) ¶ 5.] These amounts represent 0.39877% in 2010, 0.1646%  
20 in 2011, and 0.0461% in the first four months of 2012 of Casual Homes’s overall annual sales of  
21 all its products. [Id. ¶ 6.]

22 Fenixlight is a Chinese limited liability company with its principal place of business in  
23 Shenzhen, China. [Doc. No. 14-2, Declaration of Karrass Su (“Su Decl.”) ¶ 3.] Fenixlight does  
24 not directly ship the accused products to California. [Id. ¶ 20.] Rather, it ships the products by air  
25 to resellers that are located in other states. [Id.]

26 By the present motion, Defendants move to dismiss Plaintiff’s complaint for lack of  
27 personal jurisdiction. [Doc. No. 14.] In addition, Fenixlight moves to dismiss Plaintiff Surefire’s  
28 complaint for improper service, or, in the alternative, to quash service. [Id.]

1 **DISCUSSION**

2 **I. Fenixlight’s Motion to Dismiss for Improper Service, or in the Alternative, Motion to**  
3 **Quash**

4 Fenixlight moves to dismiss Surefire’s complaint for improper service, or in the alternative,  
5 to quash service. [Doc. No. 14.] In response, Surefire argues that it properly served Fenixlight  
6 pursuant to Federal Rule of Civil Procedure 4(h)(1)(B). [Doc. No. 15 at 11-12.]

7 **A. Legal Standards on Insufficient Service of Process**

8 A federal court lacks personal jurisdiction over a defendant if service of process is  
9 insufficient. Omni Capital Int’l v. Rudolf Wolff & Co., 484 U.S. 97, 104 (1987). Under Federal  
10 Rule of Civil Procedure 12(b)(5), a defendant may move to dismiss the plaintiff’s complaint for  
11 “insufficient service of process.” “Once service is challenged, plaintiff[] bear[s] the burden of  
12 establishing that service was valid under Rule 4.” Brockmeyer v. May, 383 F.3d 798, 801 (9th  
13 Cir. 2004). A signed return of service creates a presumption of valid service which can only be  
14 rebutted by strong and convincing evidence. S.E.C. v. Internet Solutions for Business, Inc., 509  
15 F.3d 1161, 1166 (9th Cir. 2007); Tejada v. Sugar Foods Corp., 2010 U.S. Dist. LEXIS 116544, at  
16 \*9 (C.D. Cal. Oct. 18, 2010)

17 “Upon deciding that process has not been properly served on the defendant, a district court  
18 has broad discretion to either dismiss the complaint or quash service of process.” Schagene v.  
19 Grumman, 2012 U.S. Dist. LEXIS 7693, at \*4 (S.D. Cal. Jan. 24, 2012) (citing Umbenhauer v.  
20 Woog, 969 F.2d 25, 31 (3d Cir. 1992)). “However, if it appears that effective service can be made  
21 and there has been no prejudice to the defendant, a court will quash service rather than dismiss the  
22 action.” Id.

23 **B. Analysis**

24 Surefire argues that it properly served Fenixlight, Ltd. pursuant to Federal Rule of Civil  
25 Procedure 4(h)(1)(B). [Doc. No. 15 at 11-12.] Under Rule 4(h)(1)(B), valid service of process on  
26 a corporation, partnership, or association requires “delivering a copy of the summons and of the  
27 complaint to an officer, a managing or general agent, or any other agent authorized by appointment  
28 by law to receive service of process.” FED. R. CIV. P. 4(h)(1). On March 6, 2012, Surefire filed a

1 proof of service stating that Fenixlight was served through its authorized agent Ming Chiang.<sup>1</sup>

2 [Doc. No. 11.]

3         However, Fenixlight has provided the Court with both a declaration from Ming Chiang, the  
4 president of Casual Home, and a declaration from Karrass Su, the president of Fenixlight, stating  
5 that Ming Chiang is not an officer, member, director, employee, or manager of Fenixlight Limited,  
6 nor an agent authorized to receive service of process on behalf of Fenixlight. [Doc. No. 14-2, Su  
7 Decl. ¶ 22; Doc. No. 14-3, Chiang Decl. ¶ 22.] Although the signed return of service creates a  
8 rebuttal presumption of valid service, these two declarations constitute “strong and convincing  
9 evidence” sufficient to rebut that presumption. See, e.g., Schagene, 2012 U.S. Dist. LEXIS 7693,  
10 at \*7; Cheng v. AIM Sports, Inc., 2011 U.S. Dist. LEXIS 11666, at \*7-9 (C.D. Cal. Jan. 26, 2011).  
11 Surefire has provided no evidence or legal argument establishing that Ming Chiang has authority  
12 to accept service on behalf of Fenixlight. Surefire merely argues that Ming Chiang indicated to  
13 the process server that he was authorized to accept service on behalf of Fenixlight. However,  
14 Surefire has not provided the Court with a declaration from the process server testifying to those  
15 facts, and, in contrast, Fenixlight has provided the Court with a declaration from Ming Chiang  
16 stating that he did not tell the process server that he was authorized to accept service on behalf of  
17 Fenixlight. [Doc. No. 19-1, Chiang Reply Decl. ¶ 3.] In addition, “even if a person states that he  
18 or she is authorized to accept service, that is not proof that the person actually has the authority to  
19 do so.” United States CFTC v. Paron Capital Mgmt., LLC, 2012 U.S. Dist. LEXIS 49154, at \*8  
20 (N.D. Cal. Apr. 6, 2012).

21         In addition, Surefire argues that service should be deemed valid because Fenixlight  
22 unquestionably has actual notice of the complaint because it has filed the present motion to  
23 dismiss. [Doc. No. 15 at 12.] However, actual notice does not provide the Court with personal  
24 jurisdiction over a defendant absent substantial compliance with Rule 4. Benny v. Pipes, 799 F.2d  
25 489, 492 (9th Cir. 1986). For the reasons stated above, Surefire has failed to show that it has

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28         <sup>1</sup> The proof of service incorrectly spelled Mr. Chiang’s last name as “Chang.” [Doc. No. 11.]

1 substantially complied with the requirements of Rule 4.<sup>2</sup>

2 Because Surefire has failed to properly serve Fenixlight, the Court has the discretion to  
3 dismiss the complaint or quash service. See Schagene, 2012 U.S. Dist. LEXIS 7693, at \*4. It  
4 appears that effective service can be made on Fenixlight,<sup>3</sup> and Fenixlight has not been prejudiced  
5 by the improper service because it has actual notice of this action. Therefore, exercising its  
6 discretion, the Court concludes it is appropriate to quash service rather than dismiss the complaint.  
7 See id. at \*7-8. Accordingly, the Court **QUASHES** service upon Fenixlight.

## 8 **II. Casual Home's Motion to Dismiss for Lack of Personal Jurisdiction**

9 Casual Home moves to dismiss Surefire's complaint for lack of personal jurisdiction.  
10 [Doc. No. 14-1 at 8-17.] In response, Surefire argues that this Court has specific jurisdiction over  
11 Casual Home.<sup>4</sup> [Doc. No. 15 at 5-8.]

### 12 A. Legal Standards on Personal Jurisdiction

13 In a patent case, the law of the Federal Circuit applies to the determination whether the  
14 district court can properly exercise personal jurisdiction over an out-of-state accused defendant.  
15 Nuance Communs., Inc. v. Abby Software House, 626 F.3d 1222, 1230 (Fed. Cir. 2010).  
16 "Personal jurisdiction over an out-of-state defendant is appropriate if the relevant state's long-arm  
17 statute permits the assertion of jurisdiction without violating federal due process." 3D Sys., Inc. v.  
18 Aarotech Labs., Inc., 160 F.3d 1373, 1376-77 (Fed. Cir. 1998). "Because California's long-arm  
19 statute is co-extensive with federal due process requirements, the jurisdictional analyses under

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21 <sup>2</sup> In its opposition, Surefire argues that if the Court determines that service on Fenixlight was  
22 insufficient, then Surefire should be allowed to take jurisdictional discovery to test Mr. Chiang's  
23 denial that he was an authorized agent for service of process. [Doc. No. 15 at 12.] However,  
24 jurisdiction discovery on this issue is unnecessary. As explained above, even if Surefire could prove  
25 that Mr. Chiang did tell the process server he was an authorized agent for Fenixlight, that by itself is  
26 not proof that he actually has the authority to accept service on behalf of Fenixlight. United States  
CFTC, 2012 U.S. Dist. LEXIS 49154, at \*8. Therefore, Surefire is not entitled to jurisdictional  
27 discovery on this issue. See, e.g., Hickory Travel Sys. v. Tui Ag, 213 F.R.D. 547, 555 (N.D. Cal.  
28 2003) (denying request for jurisdictional discovery where plaintiff's showing of proper service was  
lacking in both law and fact).

26 <sup>3</sup> Fenixlight concedes in its motion that it can be properly served through the Hague  
27 Convention. [Doc. No. 14-1 at 6.]

28 <sup>4</sup> Surefire also argues that this Court has general jurisdiction over Casual Home. [Doc. No.  
15 at 8-9.] Because, for the reasons discussed below, the Court finds that it has specific jurisdiction  
over Casual Home, the Court does not address whether it also has general jurisdiction.

1 California law and federal law are the same.” Nuance, 626 F.3d at 1230.

2 Under federal law, “due process requires only that in order to subject a defendant to a  
3 judgment in personam, if he be not present within the territory of the forum, he have certain  
4 minimum contacts with it such that the maintenance of the suit does not offend traditional notions  
5 of fair play and substantial justice.” Int’l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)  
6 (internal quotation marks omitted). There are two types of personal jurisdiction a court may have  
7 over a defendant: general and specific. See Avocent Huntsville Corp. v. Aten Int’l Co., 552 F.3d  
8 1324, 1330 (Fed. Cir. 2008). “To establish specific jurisdiction, a plaintiff must demonstrate that  
9 the defendant has purposefully directed his activities at residents of the forum, and the litigation  
10 results from alleged injuries that arise out of or relate to those activities.” Id. (internal quotation  
11 marks and citations omitted). Specifically the Federal Circuit employs a three-prong test, in which  
12 the court must determine whether:

13 (1) the defendant purposefully directed its activities at residents of the forum, (2)  
14 the claim arises out of or relates to those activities, and (3) assertion of personal  
15 jurisdiction is reasonable and fair. With respect to the last prong, the burden of  
16 proof is on the defendant, which must “present a compelling case that the presence  
of some other considerations would render jurisdiction unreasonable under the  
five-factor test articulated by the Supreme Court in Burger King.

17 Breckenridge Pharm., Inc. v. Metabolite Labs., Inc., 444 F.3d 1356, 1363 (Fed. Cir. 2006) (citation  
18 omitted). The five Burger King factors include: include: (1) the burden on the defendant, (2) the  
19 forum State’s interest in adjudicating the dispute, (3) the plaintiff’s interest in obtaining  
20 convenient and effective relief, (4) the interstate judicial system’s interest in obtaining the most  
21 efficient resolution of controversies, and (5) the shared interest of the several States in furthering  
22 fundamental substantive social policies. Avocent, 552 F.3d at 1331. In the ordinary patent  
23 infringement suit where the plaintiff accuses the defendant of selling infringing products or  
24 services, the specific jurisdiction “inquiry is relatively easily discerned from the nature and extent  
25 of the commercialization of the accused products or services by the defendant in the forum.” Id. at  
26 1332.

27 Where, as here, the motion is based on written materials rather than an evidentiary hearing,  
28 the plaintiff need only make a prima facie showing of jurisdictional facts. Avocent, 552 F.3d at  
1328-29. In addition, when there has been no jurisdictional discovery, the court must resolve all

1 factual disputes in the plaintiff’s favor. Nuance, 626 F.3d at 1231.

2 B. Analysis

3 i. Purposeful Direction and Arising Out of or Relating to Those Activities

4 Casual Home has presented the Court with evidence showing that it has sold 308 units of  
5 the accused products, representing \$12,239 in revenue, in California over a 28 month period.  
6 [Doc. No. 19-1, Chiang Reply Decl. ¶ 5.] This evidence by itself is sufficient to satisfy the first  
7 two-prongs of the general jurisdiction test. See, e.g., Beverly Hills Fan Co. v. Royal Sovereign  
8 Corp., 21 F.3d 1558, 1565 (Fed. Cir. 1994) (“The allegations are that defendants purposefully  
9 shipped the accused fan into Virginia through an established distribution channel. The cause of  
10 action for patent infringement is alleged to arise out of these activities. No more is usually  
11 required to establish specific jurisdiction.”); North Am. Philips Corp. v. American Vending Sales,  
12 35 F.3d 1576, 1580-81 (Fed. Cir. 1994).

13 Casual Home argues that Beverly Hills Fan is a “stream of commerce” case, and it is  
14 unclear whether the Federal Circuit’s holding will continue to be followed in light of the Supreme  
15 Court’s recent decision in J. McIntyre Mach., Ltd. v. Nicastro, 131 S. Ct. 2780 (2011). In J.  
16 McIntyre, a four justice plurality held that a “defendant’s transmission of goods permits the  
17 exercise of jurisdiction only where the defendant can be said to have targeted the forum; as a  
18 general rule, it is not enough that the defendant might have predicted that its goods will reach the  
19 forum State.” 131 S. Ct at 2788 (Kennedy, J., plurality opinion). However, because a Supreme  
20 Court plurality opinion is not binding law, Beverly Hills Fan remains good law and binding  
21 precedent on this Court. See CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 81 (1987);  
22 United States v. Brobst, 558 F.3d 982, 991 (9th Cir. 2009). Moreover, even if the Federal Circuit  
23 were to adopt the plurality holding from J. McIntyre, this would be of no consequence to the  
24 present case. As Surefire correctly notes in its opposition, this is not a “stream of commerce” case.  
25 Casual Home directly sells the accused products in California, [Doc. No. 19-1, Chiang Reply Decl.  
26 ¶ 5], rather than merely placing the products in a chain of distribution. See J. McIntyre, 131 S. Ct.  
27 at 2788 (explaining that the term “stream of commerce” “refers to the movement of goods from  
28 manufacturers through distributors to consumers”). Therefore, the jurisdictional facts in this case

1 are more compelling than in Beverly Hills Fan because Casual Home intentionally targeted  
2 California consumers by directly selling the accused products to them.

3 Casual Home’s direct sale of 308 accused products over the at least a 28 month period in  
4 California satisfies the “purposeful direction” prong. In addition, because the products sold in  
5 California are the products accused of infringement, Surefire’s cause of action “arises out of”  
6 Casual Home’s contacts with the forum state. Casual Home attempts to characterize its sale of the  
7 infringing products as “de minimus” because they represent such a small percentage of Casual  
8 Home’s sales of all its products throughout the United States. However, the Court finds that the  
9 sale of 308 accused products in the forum state over the last 28 months is a substantial amount of  
10 sales and not “de minimus.” Cf. North Am. Philips, 35 F.3d at 1577 (finding personal jurisdiction  
11 proper despite defendants characterization of their sales of the accused products in the forum state  
12 as “modest” and “negligible”). Accordingly, the first two prongs of the Federal Circuit’s general  
13 jurisdiction test are met in this case.

14 ii. Whether Exercising Jurisdiction Over Casual Home Is Reasonable and Fair

15 Casual Home argues that this Court’s assertion of jurisdiction over it would not comport  
16 with fair play and substantial justice. [Doc. No. at 16-17.] In support of its argument, Casual  
17 Home relies on a declaration from its president stating:

18 it would be unreasonable to require CASUAL HOME to defend this action in  
19 California for the following reasons: the burdens of defending the lawsuit  
20 approximately 3000 miles from Amityville, New York, where CASUAL HOME  
conducts business; CASUAL HOME has not purposefully interjected itself into  
California; California has little interest in adjudicating this dispute.

21 [Doc. No. 14-3, Chiang Decl. ¶ 21.]

22 This conclusory declaration is insufficient for Casual Home to meet its heavy burden of  
23 presenting a compelling case that jurisdiction would be unreasonable. California has a significant  
24 interest in discouraging patent infringement injuries that occur within its state. See Beverly Hills  
25 Fan, 21 F.3d at 1568; Fujitsu Ltd. v. Belkin Int’l, Inc., 782 F. Supp. 2d 868, 885 (N.D. Cal. 2011).  
26 This interest is even greater where the patent holder is a California company. Casual Home cannot  
27 claim that it has not purposefully interjected itself into California when it concedes that it has sold  
28 a substantial amount of accused products in California. In addition, ““progress in communications



1 and transportation” has made the defense of a lawsuit in a court on the other side of the country  
2 less burdensome. Beverly Hills Fan, 21 F.3d at 1569 (finding it reasonable for a court in Virginia  
3 to exercise jurisdiction over a Chinese corporation); see also, e.g., Fujitsu, 782 F. Supp. 2d at 885  
4 (finding it reasonable for a court in California to exercise jurisdiction over a Taiwanese company).  
5 Therefore, the exercise of personal jurisdiction over Casual Home would be fair and reasonable.

6 iii. Conclusion

7 In sum, all three-prongs of the Federal Circuit’s specific jurisdiction test are met in this  
8 case. Accordingly, the Court **DENIES** Casual Home’s motion to dismiss the complaint for lack of  
9 personal jurisdiction.

10 **III. Surefire’s Motion for Jurisdictional Discovery**

11 In addition to its response in opposition to Defendants’ motion, Surefire filed a motion for  
12 jurisdictional discovery to establish facts supporting this Court’s jurisdiction over the Defendants.  
13 [Doc. No. 16.] Because the Court denies Casual Home’s motion to dismiss and quashes service  
14 upon Fenixlight, Surefire’s motion for jurisdictional discovery is moot. Accordingly, the Court  
15 **DENIES AS MOOT** Surefire’s motion for jurisdictional discovery.

16 CONCLUSION

17 For the reasons above, the Court **GRANTS IN PART** and **DENIES IN PART**  
18 Defendants’ motion to dismiss and **DENIES AS MOOT** Plaintiff’s motion for jurisdictional  
19 discovery. The Court **QUASHES** service upon Fenixlight and **GRANTS** Surefire 60 days from  
20 the date this Order is filed to perfect serve upon Defendant Fenixlight in accordance with the  
21 requirements of Federal Rule of Civil Procedure 4. Plaintiff is cautioned that failure to perfect  
22 service upon Fenixlight will result in Fenixlight’s dismissal with prejudice.

23 **IT IS SO ORDERED.**

24 **DATED:** June 26, 2012



25 **IRMA E. GONZALEZ**  
26 **United States District Judge**