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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ARIIX, LLC,

Plaintiff,

v.

NUTRISEARCH CORPORATION,
et al.,

Defendants.

Case No.: 17CV320-LAB (BGS)

**ORDER GRANTING MOTION TO
DISMISS [Dkt. 54]**

Plaintiff Ariix, LLC (“Ariix”) is a nutritional supplement company that brings this suit against its competitor, USANA Health Sciences, Inc. (“USANA”), as well as NutriSearch Corporation (“NutriSearch”), the publisher of the *NutriSearch Comparative Guide to Nutritional Supplements* (“*Guide*”), and Lyle MacWilliam, the *Guide*’s author. The *Guide* offers reviews of various companies’ products, like those of both Ariix and USANA, and it is relied on by consumers and professionals, including independent sales representatives who make decisions based in part on ratings in the *Guide*. Ariix contends that NutriSearch and MacWilliam, despite widely promoting the *Guide* as using an objective rating system, were in fact directly funded by USANA so that it could achieve the *Guide*’s number-one rating.

Ariix’s Second Amended Complaint (“SAC”) brings a Lanham Act claim

1 against Defendants under a false advertising theory. USANA now moves to
2 dismiss the SAC for lack of personal jurisdiction and for failure to state a claim
3 upon which relief can be granted. For the following reasons, the Court **GRANTS**
4 USANA's Motion to Dismiss for lack of personal jurisdiction.

5 **I. MOTION TO DISMISS**

6 A defendant may move to dismiss a complaint for lack of personal jurisdiction
7 pursuant to Federal Rule of Civil Procedure 12(b)(2). Once a defendant moves to
8 dismiss on this basis, it is the plaintiff's burden to establish that jurisdiction is
9 proper. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th Cir.
10 2011). If there is no evidentiary hearing, the plaintiff need only make "a prima facie
11 showing of the jurisdiction facts" through pleadings and affidavits. *Myers v. Bennett*
12 *Law Offices*, 238 F.3d 1068, 1071 (9th Cir. 2001). Although "uncontroverted
13 allegations in the complaint must be taken as true," and "[c]onflicts between parties
14 over statements contained in affidavits must be resolved in the plaintiff's favor,"
15 *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002), "bare bones'
16 assertions of minimum contacts with the forum or legal conclusions unsupported
17 by specific factual allegations will not satisfy a plaintiff's pleading burden," *Swartz*
18 *v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007).

19 A forum state's long-arm statute establishes the boundaries of a court's
20 jurisdiction over non-residents. *Mavrix*, 647 F.3d at 1223. "California's long-arm
21 statute, Cal. Civ. P. Code § 410.10, is coextensive with federal due process
22 requirements, so the jurisdictional analyses under state law and federal due
23 process are the same." *Id.* To comport with due process, a court "may subject a
24 defendant to judgment only when the defendant has sufficient contacts with the
25 sovereign 'such that the maintenance of the suit does not offend traditional notions
26 of fair play and substantial justice.'" *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S.
27 873, 880 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).
28 Jurisdiction can be either "general" or "specific." *Mavrix*, 647 F.3d at 1227.

1 The Court proceeds by assessing whether personal jurisdiction over USANA
2 comports with federal due process requirements under either general or specific
3 jurisdiction.

4 **A. General Jurisdiction**

5 “For general jurisdiction to exist, a defendant must engage in continuous and
6 systematic general business contacts that approximate physical presence in the
7 forum state.” *Id.* at 1223–24 (citations and internal quotation marks omitted). “The
8 standard is met only by ‘continuous corporate operations within a state [that are]
9 thought so substantial and of such a nature as to justify suit against [the defendant]
10 on causes of action arising from dealings entirely distinct from those activities.’”
11 *King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 579 (9th Cir. 2011) (quoting *Int’l*
12 *Shoe Co.*, 326 U.S. at 318) (alterations in original).

13 Ariix doesn’t assert that USANA, a Utah-based company, is subject to
14 general jurisdiction, and it is evident from the facts alleged that USANA does not
15 have contacts “so continuous and systematic as to render [it] essentially at home
16 in [California].” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Ariix has not
17 carried its burden to prove the Court has general jurisdiction over USANA.

18 **B. Specific Jurisdiction**

19 A closer question here is whether the Court has specific jurisdiction over
20 USANA. Specific jurisdiction exists where “the defendant’s suit-related
21 conduct . . . create[s] a substantial connection with the forum State.” *Walden v.*
22 *Fiore*, 571 U.S. 277, 284 (2014). The Ninth Circuit uses a three-part test to
23 determine whether specific jurisdiction applies in a particular case:

- 24 (1) the defendant must either ‘purposefully direct his
25 activities’ toward the forum or ‘purposefully avail[] himself
26 of the privileges of conducting activities in the forum’;
- 27 (2) ‘the claim must be one which arises out of or relates to
28 the defendant’s forum-related activities’; and (3) the
exercise of jurisdiction must comport with fair play and
substantial justice, i.e. it must be reasonable.

1 *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017)
2 (quoting *Dole Food Co., Inc.*, 303 F.3d at 1111) (alteration in original). The plaintiff
3 bears the burden of satisfying the first two prongs. *Id.* “If any of the three
4 requirements is not satisfied, jurisdiction in the forum would deprive the defendant
5 of due process of law.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir.
6 2006).

7 **1. Purposeful Direction**

8 A plaintiff may satisfy the first prong in the analysis by demonstrating that the
9 defendant “purposefully directed” its conduct toward the forum state, or
10 “purposefully availed” itself of the privilege of doing business in the forum.
11 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).
12 Courts typically utilize the “purposefully directed” standard in tort cases, whereas
13 the “purposeful availment” test is most useful for contract-based claims. *Id.* To
14 establish the defendant “purposefully directed” its conduct toward the forum, the
15 plaintiff usually produces “evidence of the defendant’s actions outside the forum
16 state that are directed at the forum, such as the distribution in the forum state of
17 goods originating elsewhere.” *Id.* at 803. Thus, the court applies “an ‘effects’ test
18 that focuses on the forum in which the defendant’s actions were felt, whether or
19 not the actions themselves occurred within the forum.” *CollegeSource, Inc. v.*
20 *AcademyOne, Inc.*, 653 F.3d 1066, 1077 (9th Cir. 2011) (quoting *Yahoo! Inc. v. La*
21 *Ligue Contre Le Racisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (en banc)). Derived
22 from *Calder v. Jones*, 465 U.S. 783 (1984), the “effects test” “requires that ‘the
23 defendant allegedly must have (1) committed an intentional act, (2) expressly
24 aimed at the forum state, (3) causing harm that the defendant knows is likely to be
25 suffered in the forum state.’” *Id.* (quoting *Brayton Purcell LLP v. Recordon &*
26 *Recordon*, 606 F.3d 1124, 1128 (9th Cir. 2010)); see also *Axiom Foods, Inc. v.*
27 *Acerchem Int'l, Inc.*, 874 F.3d 1064, 1069 (9th Cir. 2017).

28 Ariix fails to satisfy the effects test. Under the first requirement, courts

1 “construe ‘intent’ in the context of the ‘intentional act’ test as referring to an intent
2 to perform an actual, physical act in the real world, rather than an intent to
3 accomplish a result or consequence of that act.” *Schwarzenegger*, 374 F.3d at
4 806. Ariix alleges that USANA sells its product worldwide—including to residents
5 of California—through “independent sales representatives.” (SAC ¶¶ 82(d)). It also
6 alleges that the *Guide* “is marketed and sold throughout the United States and
7 around the world,” including in California, as an effort to promote the sale of its
8 products in California. (*Id.* ¶¶ 3, 5). Because USANA acted intentionally in
9 developing, promoting, and selling its products, the Court finds that Ariix has
10 carried its burden to show an intentional act by USANA.

11 The Court next looks to whether USANA’s intentional acts were “expressly
12 aimed at the forum state.” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142 (9th Cir.
13 2017). Express aiming “is satisfied when the defendant is alleged to have engaged
14 in wrongful conduct targeted at a plaintiff whom the defendant knows to be a
15 resident of the forum state.” *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223
16 F.3d 1082, 1087 (9th Cir. 2000); *see also Calder*, 465 U.S. at 788. However, simply
17 placing a product into the stream of commerce does not constitute a purposeful
18 act directed toward the forum state. *Asahi Metal Indus. Co. v. Superior Court*, 480
19 U.S. 102, 112 (1987). Indeed, placing “a product into the stream of commerce”—
20 even if the defendant is aware “that the stream of commerce may or will sweep the
21 product into the forum state”—“does not convert the mere act of placing the
22 product into the stream of commerce into an act” of purposeful availment. *Holland*
23 *Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007).

24 The crux of Ariix’s allegations is that NutriSearch and MacWilliam, despite
25 widely promoting the *Guide* as using an objective rating system, were in fact
26 directly funded by USANA so that it could achieve the *Guide*’s number-one rating
27 among numerous other nutritional supplement companies. (SAC ¶¶ 21). The SAC
28 advances two theories as to why USANA is subject to personal jurisdiction in

1 California: (1) “by virtue of its efforts to promote sales of its products in California,
2 including the sale and use of the [*Guide*] by USANA representatives in California”;
3 and (2) “due to its agency relationship with NutriSearch and MacWilliam.” (*Id.* ¶ 3).

4 As support for its first theory, Ariix alleges that USANA “sell[s] [its]
5 supplement products throughout the United States through independent sales
6 representatives,” (SAC ¶ 82(d)), and that the *Guide* “is marketed and sold
7 throughout the United States and around the world,” (*id.* ¶ 82(a)), “including in
8 California,” (*id.* ¶ 5). Ariix emphasizes in its Opposition that USANA sales
9 representatives, including “thousands of California-based associates,” were
10 actively encouraged to purchase and promote the *Guide* to help them sell USANA
11 products. (Dkt. 59 at 6–8).¹ It argues that these constitute intentional acts that were
12 purportedly directed at California.

13 But a finding of purposeful direction cannot “be based on the mere fact that
14 [a company] provides services to customers nationwide, including but not limited
15 to California.” *Caces-Tiamson v. Equifax*, No. 20-CV-00387-EMC, 2020 WL
16 1322889, at *3 (N.D. Cal. Mar. 20, 2020). “The placement of a product into the
17 stream of commerce, without more, is not an act the defendant purposefully
18 directed toward the forum state.” *Id.* (quoting *Asahi Metal Indus. Co., Ltd.*, 480
19 U.S. at 112). Yet that is the essence of Ariix’s allegations, which, even if relevant
20 for a viable Lanham Act claim, don’t explain how USANA’s alleged activity was
21 specifically targeted at California. Noticeably lacking from Ariix’s complaint are any
22 allegations about USANA’s forum-specific conduct, such as, perhaps, any direct
23 efforts to sell or advertise its products in California, tailor its products or
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26 ¹ The Opposition references USANA’s alleged annual sales in California, and
27 additionally states that USANA sales executives sell USANA products full-time, but
28 these assertions are unsupported by the cited record or any supporting declaration
or affidavit. (Dkt. 59 at 6). The Court, therefore, does not consider these allegations
in its analysis.

1 advertisements specifically for California audiences, or instruct its sales
2 representatives to focus on the California market. See *Asahi Metal Indus. Co. v.*
3 *Superior Ct. of California, Solano Cty.*, 480 U.S. 102, 112 (1987) (“Additional
4 conduct of the defendant may indicate an intent or purpose to serve the market in
5 the forum State, for example, designing the product for the market in the forum
6 State, advertising in the forum State, establishing channels for providing regular
7 advice to customers in the forum State, or marketing the product through a
8 distributor who has agreed to serve as the sales agent in the forum State.”); *Elliot*
9 *v. Cessna Aircraft Co.*, No. 820CV00378SBAD SX, 2021 WL 2153820, at *3 (C.D.
10 Cal. May 25, 2021) (quoting *AMA Multimedia, LLC v. Wanat*, 970 F.3d 1201, 1210
11 (9th Cir. 2020)) (“A defendant is required to do ‘something more’—namely, the
12 defendant must engage in ‘conduct directly targeting the forum,’ such as to display
13 content or advertisements that ‘appeal[] to, and profit[] from, an audience in a
14 particular state.’”) (alterations in original).

15 In response, USANA argues that worldwide distribution of its products,
16 without any allegations that its efforts were directed in any way towards California,
17 is insufficient to establish personal jurisdiction. (Dkt. 54 at 7–8). The Declaration of
18 Michael King, attached in support of its Motion to Dismiss, confirms that nearly all
19 900 of USANA’s U.S.-based employees are located in Utah, with only two of its
20 employees located in California. (Dkt. 54-1 ¶ 6).² It also states that USANA
21 independently contracts with sales representatives (or “Associates”), operating in
22 all fifty states and across the world, to market and sell its products directly to
23 consumers, and that USANA does not direct or control the manner in which these
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26 ² See *Payrovi v. LG Chem Am., Inc.*, 491 F. Supp. 3d 597, 602 (N.D. Cal. 2020)
27 (citing *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir.
28 1977)) (“The Court may consider evidence presented in affidavits and declarations
in determining personal jurisdiction.”).

1 independent contractors choose to sell the products. (*Id.* ¶¶ 8–9). USANA
2 contends that it simply placed its products “into the stream of commerce” but did
3 not take any actions aimed at California in particular or make any efforts to promote
4 the *Guide* specifically among its California sales representatives. (*Id.* at 7–8 (citing
5 *Asahi Metal Indus. Co.*, 480 U.S. at 112; *Walsh v. LG Chem Ltd.*, 834 F. App’x
6 310, 311–12 (9th Cir. 2020))). Accordingly, the Court finds that Ariix’s first theory
7 in support of a finding of personal jurisdiction is not enough to satisfy the express
8 aiming requirement. See *Baton v. Ledger SAS*, No. 21-CV-02470-EMC, 2021 WL
9 5226315, at *9 (N.D. Cal. Nov. 9, 2021) (“Plaintiff’s bare allegation that [Defendant]
10 ‘solicits customers in the United States and California,’ . . . and evidence . . . that
11 7.03% of [Defendant]’s worldwide revenue comes from California, is not enough
12 to establish [Defendant] ‘anticipated, desired, and achieved a substantial’
13 customer-base in California like the defendant in *Mavrix*[,] 647 F.3d at 1230. Nor
14 does it demonstrate [Defendant]’s forum-specific focus on California, given that the
15 market for its hardware products is global.”) (alterations omitted); *Elliot*, 2021 WL
16 2153820, at *3 (“The question is not whether California consumers have
17 purchased engines from Defendant generating significant revenue; rather, the
18 question is whether Defendant specifically targeted California consumers. There
19 is no indication that Defendant engages in any sort of advertising or marketing in
20 California to accomplish its sales here.”).

21 Ariix’s second theory based on an agency relationship between Defendants
22 is even more attenuated. It is well-established that the “unilateral activity of another
23 party or a third person is not an appropriate consideration when determining
24 whether a defendant has sufficient contacts with a forum State to justify an
25 assertion of jurisdiction.” *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466
26 U.S. 408, 417 (1984). Nevertheless, and notwithstanding the uncertainty in the
27 Ninth Circuit concerning whether an agency theory can even establish specific
28 jurisdiction, such a theory would first “require[] a showing that the principal

1 maintained control over the agent’s actions” such that the actions of the agent can
2 be attributed to the principal. *Sivilli v. Wright Med. Tech., Inc.*, No. 18-CV-2162-
3 AJB-JLB, 2019 WL 2579794, at *5 (S.D. Cal. June 24, 2019) (citing *Williams v.*
4 *Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1024 (9th Cir. 2017)). Here, Ariix alleges
5 that USANA provides consideration to NutriSearch and MacWilliam to give it a top
6 rating in the *Guide*, namely by paying them “hundreds of thousands of dollars per
7 year” and by promoting the *Guide* to its sales representatives. (SAC ¶¶ 26–27).
8 But these allegations merely demonstrate that the parties may not have actually
9 been independent from one another—not that USANA substantially controlled the
10 activities of NutriSearch and MacWilliam or that they were agents of USANA.
11 Because Ariix has failed to show that USANA exercises substantial control over
12 NutriSearch and MacWilliam’s activities, Ariix’s agency theory fails to confer
13 specific jurisdiction over USANA. See *Born v. Celtic Mktg. LLC*, No. 8:19-CV-
14 01950-JLS-ADS, 2020 WL 3883273, at *4 (C.D. Cal. May 20, 2020) (rejecting
15 agency theory for imputing forum contacts of agent to principal where the plaintiff
16 failed to show “the principal’s right of control” over the agent’s activities); *AirWair*
17 *Int’l Ltd. v. Pull & Bear Espana SA*, No. 19-CV-07641-SI, 2020 WL 2113833, at *4
18 (N.D. Cal. May 4, 2020) (same); *Delacruz v. Serv. Corp. Int’l*, No.
19 118CV00154LJOEPG, 2018 WL 2287962, at *7 (E.D. Cal. May 18, 2018) (same).

20 Moreover, although the SAC states that USANA must be subject to
21 jurisdiction because NutriSearch and MacWilliam have already consented to the
22 jurisdiction of this Court, (SAC ¶ 3), the Opposition does not pursue this faulty line
23 of argument. Instead, Ariix contends that personal jurisdiction may be established
24 based on the alleged conspiracy between the Defendants, wherein “NutriSearch
25 and MacWilliam agreed to help U[SANA] juice its sales through a sophisticated
26 marketing ploy in exchange for money while cloaking themselves as objective and
27 independent product reviewers.” (Dkt. 59 at 19). However, not only is this theory
28 for establishing jurisdiction tenuous in this Circuit, but, as Ariix concedes,

1 “substantial acts in furtherance of the conspiracy” must have been performed in
2 the forum state, and “the co-conspirator knew or should have known that the acts
3 would be performed in the forum state.” (*Id.* at 18–19 (quoting *Underwager v.*
4 *Channel 9 Austl.*, 69 F.3d 361, 364 (9th Cir. 1995)). As previously discussed, the
5 Court finds Ariix’s allegations lacking with respect to USANA’s forum-related
6 conduct, and Ariix may not rely on this theory of conspiracy to confer jurisdiction
7 on USANA. See *In re Automobile Antitrust Cases I and II*, 135 Cal. App. 4th 100,
8 113, 37 Cal. Rptr. 3d 258 (2005) (“Allegations of a conspiracy do not establish as
9 a matter of law that if one conspirator comes within the personal jurisdiction of our
10 courts, then California may exercise jurisdiction over other non-resident
11 defendants who are alleged to be part of that same conspiracy. Personal
12 jurisdiction must be based on forum-related acts that were personally committed
13 by each non-resident defendant.”).

14 The Court finds that the second prong of the *Calder* effects test is not
15 satisfied and Ariix has failed to make a prima facie showing of specific personal
16 jurisdiction over USANA.

17 **2. Arising Out of or Relating to Forum Activities**

18 Even if Ariix had demonstrated that USANA purposefully directed its sale
19 activities to California, it fails to satisfy the second prong of the specific jurisdiction
20 analysis: the claims must “arise out of” USANA’s forum-related activities. See
21 *Morrill*, 873 F.3d at 1142. The Ninth Circuit applies a “but for” test to analyze this
22 question. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 742
23 (9th Cir. 2013). Under this test, “a lawsuit arises out of a defendant’s contacts with
24 the forum state if a direct nexus exists between those contacts and the cause of
25 action.” *Id.* In other words, “[t]he plaintiff must show that *but for* the defendant[’s]
26 contacts with the forum state, the plaintiff’s claims would not have arisen.” *Rippey*
27 *v. Smith*, 16 Fed. Appx. 596, 599 (9th Cir. 2001). In *Rippey*, the plaintiff filed an
28 action for investment fraud in a California court against a British solicitors’ firm. *Id.*

1 at 597. Plaintiff alleged that the defendants had sent a fraudulent opinion letter
2 which prompted him to make a bad investment. *Id.* at 599. Under these facts, the
3 court found that the plaintiff had successfully met the second prong of the test,
4 given that the plaintiff's claim for investment fraud would not have arisen but for
5 defendant's fraudulent conduct in the forum. *Id.*

6 The question in the present action is whether Ariix's claim would have arisen
7 *but for* USANA's activity in California. See *id.* Ariix's Lanham Act claim is based on
8 allegations that USANA financially influenced NutriSearch and MacWilliam to
9 make false and misleading representations about USANA's products, despite
10 claims that the *Guide* is not influenced by any manufacturer or product. Ariix
11 contends that these "misstatements directly reduced Ariix's revenues by causing
12 both consumers and professionals to select U[SANA] over Ariix." (SAC ¶ 85).
13 Despite Ariix's assertions that it conducted over \$5 million in sales in California in
14 2016, (Dkt. 59 at 9 n.3), there is no suggestion that Ariix's Lanham Act claim is
15 inextricably tied to California, or that the claim would not have arisen but for
16 USANA's conduct in California. Indeed, as previously discussed, there is hardly
17 even mention in the SAC of USANA's alleged conduct in California. Ariix's
18 argument is even more attenuated given its admission that the *Guide* is marketed
19 and sold throughout the United States and worldwide, and both USANA and Ariix
20 also sell their supplement products throughout the United States. (SAC ¶ 82). The
21 SAC in no way ties the Lanham Act claim to California and instead directs the
22 allegations to wrongful conduct affecting Ariix's nationwide sales.

23 The Court concludes that the first two prongs of the jurisdictional test are not
24 met, and Ariix has failed to establish specific personal jurisdiction over USANA.
25 The Court therefore doesn't reach the issue whether exercising jurisdiction over
26 USANA in this District would be reasonable. See *In re Cathode Ray Tube (CRT)*
27 *Antitrust Litig.*, 27 F. Supp. 3d 1002, 1011 (N.D. Cal. 2014) (citing *Sher v. Johnson*,
28 911 F.2d 1357, 1361 (9th Cir.1990)) ("The plaintiff bears the burden of satisfying

1 the first two prongs, and if he or she fails to satisfy either, specific jurisdiction is not
2 established.”).

3 II. REQUESTS TO SEEK DISCOVERY, AMEND, OR TRANSFER

4 The Court next turns to Ariix’s alternative requests in its Opposition brief.
5 First, having concluded that the Court lacks personal jurisdiction over USANA in
6 this case, Ariix seeks leave to conduct jurisdictional discovery. (Dkt. 59 at 12–15).
7 The decision whether to grant jurisdictional discovery is typically within the
8 discretion of the district court. *Wells Fargo & Co. v. Wells Fargo Exp. Co.*, 556 F.2d
9 406, 430 n.24 (9th Cir. 1977). “[W]here pertinent facts bearing on the question of
10 jurisdiction are in dispute, discovery should be allowed.” *American West Airlines,*
11 *Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989). However, “where a
12 plaintiff’s claim of personal jurisdiction appears to be both attenuated and based
13 on bare allegations in the face of specific denials made by the defendants, the
14 Court need not permit even limited discovery.” *Pebble Beach Co.*, 453 F.3d at 1160
15 (quoting *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995)).

16 In the present case, Ariix does not identify any factual dispute warranting
17 discovery,³ nor does there appear to be a reasonable likelihood that additional
18 facts may be uncovered to support jurisdiction. Indeed, Ariix does not even state
19 what information it hopes to uncover in discovery that would cure the deficiencies
20 identified in this Order. Other than its bare suggestion that discovery is warranted
21 here, Ariix fails to show discovery is likely to help cure these deficiencies. The
22 Court **DENIES** the request. See *Frank Valli & The Four Seasons v. EMI, Music*

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25 ³ The Court has considered the declaration attached in support of USANA’s Motion
26 to Dismiss, (Dkt. 54-1), as well as USANA’s declaration filed in a separation action
27 in the Eastern District of California and attached as Exhibit A to Ariix’s Opposition
28 brief, (Dkt. 59-1). The Court concludes that the statements contained therein are
not contradictory, nor do they raise a factual dispute warranting jurisdictional
discovery on the matter.

1 *Publ'g Ltd.*, No. CV 17-7831-MWF (JCx), 2018 WL 6136818, *8 (C.D. Cal. May 22,
2 2018) (denying jurisdictional discovery where the “evidence already before the
3 court demonstrates” that personal jurisdiction does not exist).

4 In the alternative, Ariix requests that the Court grant it leave to amend its
5 complaint to include additional facts related to Defendants’ specific contacts with
6 California. Ariix identifies six topics of information it would add in support of a
7 finding of personal jurisdiction, but these topics mainly relate to Defendants
8 generally, not USANA in particular, and none are suggestive of information that
9 would establish personal jurisdiction over USANA. Nevertheless, the Court will
10 grant Ariix the opportunity to file a motion for leave to amend its complaint by **April**
11 **1, 2022**. The motion must demonstrate that further amendment would not be futile
12 and would cure the deficiencies identified herein. It is not to exceed five (5) pages
13 and is to be filed in accordance with the Southern District’s CivLR 15.1.

14 Finally, Ariix requests in its Opposition that, to the extent it cannot exercise
15 personal jurisdiction over USANA in this District, the Court should sever the claim
16 against USANA and transfer it to the District of Utah pursuant to Rules 20(b) and
17 21 of the Federal Rule of Civil Procedure and 28 U.S.C. §§ 1404, 1406, or 1631.
18 Ariix cites the language in Sections 1404, 1406, and 1631, which permit the Court
19 to transfer a case “in the interest of justice” if the Court finds that jurisdiction would
20 be appropriate elsewhere. However, absent a showing that the interest of justice
21 require transfer of the case, the Court has discretion to dismiss. *Costlow v. Weeks*,
22 790 F.2d 1486, 1488 (9th Cir. 1986). Beyond a conclusory statement otherwise,
23 Ariix has not shown that the interest of justice requires it here. Its Opposition
24 provides hardly any analysis or discussion about why severance and transfer of
25 the claim against USANA is warranted. The Court therefore denies the request.

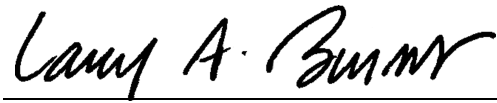
26 **III. CONCLUSION**

27 Because this Court doesn’t have personal jurisdiction over USANA,
28 USANA’s Motion to Dismiss is **GRANTED** and Ariix’s claims against USANA are

1 **DISMISSED WITHOUT PREJUDICE.** Ariix may file a motion for leave to amend
2 its complaint by April 1, 2022.

3 **IT IS SO ORDERED.**

4 Dated: March 21, 2022



Hon. Larry Alan Burns
United States District Judge

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