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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 AMERICAN ORTHODONTICS  
12 CORPORATION,

Plaintiff,

13 v.  
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15 MIDATLANTIC ORTHODONTICS,  
16 INC., ATLANTIC DENTAL, INC., AND  
MIDATLANTIC DENTAL, INC. ,

17 Defendants.  
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Case No.: 3:17-cv-01129-BEN-AGS

**ORDER GRANTING MOTION TO  
DISMISS**

19 Now before the Court is a motion to dismiss brought by Defendants MidAtlantic  
20 Orthodontics, Inc., Atlantic Dental, Inc. and MidAtlantic Dental, Inc. (collectively  
21 “Defendants” or “Atlantic”).<sup>1</sup> (Mot., ECF No. 22.) Plaintiff opposed. (Opp’n, ECF No.  
22 24.) For the reasons stated below, the Court **GRANTS** the motion to dismiss.

23 **BACKGROUND**

24 Plaintiff American Orthodontics Corporation (“AO”) is a privately-held  
25 manufacturer of orthodontic appliances, incorporated and operated in Wisconsin.  
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28 <sup>1</sup> Atlantic Dental, Inc. contends that MidAtlantic Orthodontics, Inc. and MidAtlantic  
Dental, Inc. are incorrectly named DBAs.

1 (Compl. ¶ 11.) Beginning February 21, 2013, AO used the mark IFIT in association with  
2 the marketing, promotion, and sale of its orthodontic goods, including but not limited to,  
3 orthodontic tubes. (Id. ¶ 14.) AO is an owner of United States Federal Trademark  
4 Registration No. 4,437,574 for the trademark IFIT, listing goods as “orthodontic tubes  
5 and brackets.” (Id. ¶ 20.)

6 Atlantic operates an orthodontic supply business primarily through internet  
7 commerce via the web domain www.midatlanticortho.com. (Id. ¶ 27.) It is incorporated  
8 in New Jersey, with its principal place of business in New Jersey. (Id. ¶ 4.) Atlantic is  
9 owned and operated, at least in part, by Anthony Prusich. (Id. ¶ 28.) Atlantic introduced  
10 a new orthodontic product in March 2017 under the name “FiT.20.” (Id. ¶ 29.) Atlantic  
11 uses the FiT.20 name on orthodontic goods, namely, orthodontic brackets and tubes. (Id.  
12 ¶ 30.)

13 On March 21, 2017, AO, through its attorneys, sent a letter to Mr. Prusich, alerting  
14 him to AO’s ownership of the U.S. Trademark Registration for the mark IFIT and  
15 demanding that Atlantic cease and desist from use of the FiT.20 name. (Id. ¶ 40.)  
16 Despite the letter, Atlantic prominently advertised and promoted orthodontic goods  
17 bearing the FiT.20 name at the American Association of Orthodontists (“AAO”) Annual  
18 Session in San Diego, California from April 21 to April 25, 2017. (Id. ¶ 41.) AO also  
19 attended the AAO Annual Session. (Id. ¶ 43.)

20 On April 25, 2017, Atlantic’s counsel sent a letter responding to AO’s March  
21 letter, advising that “we do not believe there is any likelihood of confusion between IFIT  
22 and FiT.20” and refusing to cease and desist from its infringing activity. (Id. ¶ 44.) On  
23 May 3, 2017, AO’s counsel replied to Atlantic’s counsel and requested that Atlantic stop  
24 use of the FiT.20 name by May 10, 2017. (Id. ¶45.) On May 10, 2017, Atlantic’s  
25 counsel responded, saying that they would consider AO’s position and would need time  
26 to discuss the matter with their client. (Id. ¶46.) AO’s counsel replied on the same day,  
27 stating that Atlantic should stop marketing FiT.20 products until the company discusses  
28 the issue with its counsel. (Id. ¶ 47.) Atlantic did not respond. (Id. ¶ 48.) On May 17,

1 2017, Atlantic launched a “FiT Self-Ligating Promotion” via email and on its website.  
2 (Id. ¶ 49.)

3 AO now brings suit, alleging two claims for relief. AO’s first claim for relief  
4 alleges a violation of 15 U.S.C. § 1114 for trademark infringement. AO’s second claim  
5 for relief alleges violation of 15 U.S.C. § 1125(a) for false designation of origin and  
6 unfair competition. Defendants move to dismiss for lack of personal jurisdiction or,  
7 alternatively, improper venue pursuant to Federal Rules of Civil Procedure 12(b)(2) and  
8 12(b)(3).

### 9 DISCUSSION

10 Atlantic moves to dismiss the complaint for lack of personal jurisdiction pursuant  
11 to Federal Rule of Civil Procedure 12(b)(2). On a Rule 12(b)(2) motion, the plaintiff  
12 bears the burden of establishing personal jurisdiction. *Wash. Shoe Co. v. A-Z Sporting*  
13 *Goods, Inc.*, 704 F.3d 668, 671-72 (9th Cir. 2012). Where, as here, the motion is based  
14 on written materials and affidavits rather than an evidentiary hearing, a plaintiff is only  
15 required to make a “prima facie showing of jurisdictional facts to withstand the motion to  
16 dismiss.” *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014) (quoting  
17 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). A  
18 “prima facie” showing means that the plaintiff need only demonstrate facts that, if true,  
19 would support jurisdiction over the defendant. *Lindora, LLC v. Isagenix Int’l, LLC*, 198  
20 F. Supp. 3d 1127, 1135 (S.D. Cal. 2016). In determining whether a plaintiff has met his  
21 burden, “uncontroverted allegations in [the] complaint must be taken as true, and  
22 ‘conflicts between the facts contained in the parties’ affidavits must be resolved in [the  
23 plaintiff’s] favor for purposes of deciding whether a prima facie case for personal  
24 jurisdiction exists.” *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586,  
25 588-89 (9th Cir. 1996) (quoting *WNS, Inc. v. Farrow*, 884 F.2d 200, 203 (5th Cir. 1989)  
26 (internal citations omitted)).

27 “Where, as here, no federal statute authorizes personal jurisdiction, the district  
28 court applies the law of the state in which the court sits.” *Mavrix Photo, Inc. v. Brand*

1 Techs., Inc., 647 F.3d 1218, 1223 (9th Cir. 2011) (internal citations omitted).  
2 California’s long-arm statute permits its courts to exercise personal jurisdiction “on any  
3 basis not inconsistent with the Constitution of this state or of the United States.” *Daimler*  
4 *AG v. Bauman*, 134 S. Ct. 746, 753 (2014) (quoting Cal. Civ. Proc. Code § 410.10).  
5 Thus, “California’s long-arm statute allows the exercise of personal jurisdiction to the  
6 full extent permissible under the U.S. Constitution,” and the Court must ensure that its  
7 assertion of personal jurisdiction over a party comports with the limits imposed by  
8 federal due process. *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464  
9 (1985)). The traditional bases of personal jurisdiction that comport with due process are  
10 service while physically present in the forum, domicile, or consent. None of the  
11 traditional bases of jurisdiction are at issue here. Absent the traditional bases, a  
12 defendant must have such “minimum contacts” with the forum state that “maintenance of  
13 the suit does not offend traditional notions of fair play and substantial justice.” *Int’l Shoe*  
14 *Co. v. Washington*, 326 U.S. 310, 316 (1945).

15 Personal jurisdiction can be either “general” or “specific.” See *Helicopteros*  
16 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415–16 (1984). Atlantic argues that  
17 AO has not met its burden to show that the Court has either general or specific  
18 jurisdiction over Atlantic. AO concedes that this Court lacks general jurisdiction over  
19 Defendants. The issue is whether the Court may exercise specific personal jurisdiction  
20 over Defendants.

21 Specific jurisdiction exists “when a case ‘aris[es] out of or relate[s] to the  
22 defendant’s contacts with the forum.’” *Martinez*, 764 F.3d at 1066 (quoting  
23 *Helicopteros*, 466 U.S. at 414 n.8); *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., San*  
24 *Francisco Cnty.*, 137 S. Ct. 1773, 1780 (2017) (“In order for a state court to exercise  
25 specific jurisdiction, ‘the suit’ must ‘aris[e] out of or relat[e] to the defendant’s contacts  
26 with the forum.’” (emphasis in original)); *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014)  
27 (“For a State to exercise jurisdiction consistent with due process, the defendant’s suit-  
28 related conduct must create a substantial connection with the forum State.”).

1 The Ninth Circuit uses a three-part test to determine whether a defendant's  
2 contacts with the forum state are sufficient to subject it to specific jurisdiction:

- 3 (1) The non-resident defendant must purposefully direct his activities or  
4 consummate some transaction with the forum or resident thereof, or perform  
5 some act by which he purposefully avails himself of the privilege of conducting  
6 activities in the forum, thereby invoking the benefits and protections of its laws;  
7 (2) The claim must be one which arises out of or relates to the defendant's forum-  
8 related activities; and  
9 (3) The exercise of jurisdiction must comport with fair play and substantial justice,  
10 i.e., it must be reasonable.

11 *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2015). The Supreme Court has  
12 emphasized that "it is the defendant, not the plaintiff or third parties, who must create  
13 contacts with the forum State" itself, not with persons who reside there. *Walden*, 134 S.  
14 Ct. at 1123-26. The plaintiff has the burden of proving the first two prongs and, if met,  
15 the burden shifts to the defendant to "set forth a compelling case" as to the third. *Picot*,  
16 780 F.3d at 1212.

17 Here, AO argues that this Court has jurisdiction over Atlantic because of Atlantic's  
18 voluntary presence and participation at the AAO tradeshow in San Diego. According to  
19 AO, Atlantic used the AAO Annual Session to market and sell its products with the  
20 FiT.20 mark, which constitutes purposeful direction. (See Opp'n at 7 (citing *Greenbroz*,  
21 *Inc. v. Laeger Built, LLC*, No. 16-cv-2946-CAB, 2017 WL 1427139, at \*3 (S.D. Cal.  
22 Apr. 21, 2017) ("By attending a convention to market the Product in California,  
23 Defendant's purposefully directed their alleged infringement activities to California."))).  
24 AO argues that its claims arise out of and relate to Atlantic's activities in the San Diego  
25 tradeshow: "It is difficult to grasp how Atlantic Dental can believe that these intentional,  
26 infringing activities in California could somehow not be expected to give rise to [AO's]  
27 claims of trademark infringement and unfair competition, particularly when Atlantic

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1 Dental was put on notice of plaintiff’s infringement claims before the show.” (Opp’n at  
2 13.)

3 This Court has previously rejected the notion that “a single appearance at an  
4 international trade show constitutes ‘purposefully direct[ing] its activities’ at California  
5 residents.” *ASM Assembly Sys. Switz. GmbH v. QTS Eng’g*, No. 15-cv-714-BEN, 2016  
6 WL 278734, at \*2 (S.D. Cal. Jan. 22, 2016) (granting motion to dismiss for lack of  
7 personal jurisdiction where defendant’s only contact with California was its appearance  
8 at a trade show in San Diego). In an attempt to distinguish this case from ASM, Plaintiff  
9 contends that ASM is not relevant because Atlantic’s conduct “involved much more  
10 tha[n] a happenstance appearance at a trade show.” (Opp’n at 8). Plaintiff states that  
11 Atlantic not only attended the AAO Annual Session, it also “actively promoted their San  
12 Diego appearance prior to the show,” “displayed the infringing ‘FiT’ product at the show  
13 for the purposes of selling the product,” and even made two sales to California residents  
14 as a result of its efforts at the trade show. (*Id.*; Decl. of Tony Prusich ¶ 27.)

15 Even assuming these activities distinguish this case from ASM such that Atlantic’s  
16 participation in the tradeshow is sufficient to satisfy the first prong in the specific  
17 jurisdiction analysis, AO has not demonstrated that its claims arise out of or relate to  
18 Atlantic’s exhibition at the show. The Ninth Circuit applies a “but for” test to determine  
19 whether a claim arises out of or relates to defendant’s forum-related activities. *Menken v.*  
20 *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007). AO must show that but for Defendants’  
21 contacts with California, AO’s claims against Defendants would not have arisen. It  
22 cannot satisfy that test because it admits that its claim arose in March 2017, before the  
23 tradeshow, when Atlantic first started using the mark FiT.20 to promote its products.  
24 (Compl. ¶ 29.) AO even sent a cease and desist letter to Atlantic on March 21, 2017, a  
25 month before the AAO Annual Session. (*Id.* ¶ 40.)

26 Furthermore, even if the Court assumed AO met its burden as to the first two  
27 prongs, this is the rare case where the Court still lacks personal jurisdiction because the  
28 exercise of jurisdiction would not comport with fair play and substantial justice. The

1 third prong—the reasonableness determination—requires the Court to consider several  
2 factors: (1) the extent of the defendant’s purposeful interjection into the forum state, (2)  
3 the burden on the defendant in defending in the forum, (3) the extent of the conflict with  
4 the sovereignty of the defendant’s state, (4) the forum state’s interest in adjudicating the  
5 dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of  
6 the forum to the plaintiff’s interest in convenient and effective relief, and (7) the  
7 existence of an alternative forum. *Bancroft & Masters, Inc. v. Augusta Nat’l, Inc.*, 223  
8 F.3d 1082, 1088 (9th Cir. 2000); see also *Burger King*, 471 U.S. at 476-77.

9       Here, the exercise of personal jurisdiction is not reasonable. There is a significant  
10 burden in having a New Jersey corporation with no connection to California beyond its  
11 incidental attendance at a national and international tradeshow in San Diego, which  
12 resulted in two sales reflecting approximately 0.1% of Atlantic’s total sales in the first  
13 half of 2017, defend an action on the other side of the country when all the documents  
14 and witnesses related to this action are in New Jersey and Wisconsin. See *ASM*, 2016  
15 WL 278734, at \*2 (same); Decl. of Tony Prusich ¶¶ 10-27; Opp’n at 16. The forum state,  
16 California, has no interest in adjudicating a dispute between two foreign corporations that  
17 have no to little connection to California. There is no reason this forum is more  
18 convenient than another given the insignificant connection between California and any of  
19 the parties. Indeed, an alternative, more convenient forum exists in the District of New  
20 Jersey. “In short, it does not comport with fair play and substantial justice to subject a  
21 defendant to personal jurisdiction on the other side of the country based solely on  
22 attendance at one international trade show when the plaintiff does not even have a  
23 connection to the forum.” *ASM*, 2016 WL 278734, at \*2.

24       The Court lacks personal jurisdiction.

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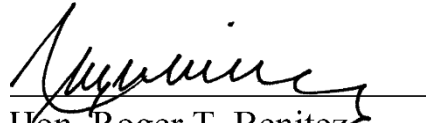
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1 **CONCLUSION**

2 The Court **GRANTS** Defendants' motion to dismiss for lack of personal  
3 jurisdiction. The case is **DISMISSED without prejudice.**

4 **IT IS SO ORDERED.**

5 Dated: September 18, 2017

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7 Hon. Roger T. Benitez  
8 United States District Judge  
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