

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 REGINA MARIE WAGNER,
11
12 Plaintiff,
13 v.
14 TERUMO MEDICAL CORPORATION,
15 Defendant.

Case No.: 18cv1007-MMA (MSB)

**ORDER GRANTING DEFENDANT
TERUMO MEDICAL
CORPORATION'S MOTION TO
DISMISS**

[Doc. No. 11]

16
17 On September 17, 2018, Plaintiff filed a First Amended Complaint (“FAC”)
18 alleging two causes of action for strict products liability and negligence against
19 Defendant Terumo Medical Corporation (“Terumo”).¹ See Doc. No. 9. Terumo now
20 moves to dismiss Plaintiff’s FAC for lack of personal jurisdiction pursuant to Federal
21 Rule of Civil Procedure 12(b)(2), and for failure to state a claim pursuant to Federal Rule
22 of Civil Procedure 12(b)(6). See Doc. No. 11-1. Plaintiff filed an opposition to
23 Terumo’s motion, to which Terumo replied. See Doc. Nos. 12, 13. The Court found the
24

25
26 ¹ Terumo previously moved to dismiss Plaintiff’s original Complaint. See Doc. No. 8. After
27 Plaintiff filed her FAC, the Court denied as moot Terumo’s Motion. See Doc. No. 10. In the instant
28 motion, Terumo requests the Court award costs and attorney’s fees incurred in filing the initial motion to
dismiss. However, Federal Rule of Civil Procedure 15(a)(1) expressly permits Plaintiff to amend her
Complaint once as a matter of course. See Fed. R. Civ. P. 15(a)(1). As such, the Court **DENIES**
Terumo’s request for costs and attorney’s fees.

1 matter suitable for determination on the papers and without oral argument pursuant to
2 Civil Local Rule 7.1.d.1. *See* Doc. No. 14. For the reasons set forth below, the Court
3 **GRANTS** Terumo’s motion to dismiss for lack of personal jurisdiction.

4 **BACKGROUND**²

5 Plaintiff Regina Wagner resides in San Diego, California. FAC ¶1. Defendant
6 Terumo is a medical corporation incorporated in Delaware, with its principle place of
7 business in New Jersey. Doc. No. 11-1 at 5.

8 Plaintiff had an Angio-Seal Vascular Closure Device (“Angio-Seal Device”)³
9 inserted into her right leg during a medical procedure. FAC ¶ 6. On or about May 18,
10 2016, Plaintiff’s treating physicians informed her that the Angio-Seal Device had failed.
11 *Id.* ¶ 7. The following day, Plaintiff’s physician attempted to surgically correct the failed
12 Angio-Seal Device, but was ultimately unsuccessful. *Id.* The failed device caused nerve
13 damage to Plaintiff’s right leg, resulting in Plaintiff’s pain and suffering. *Id.* ¶ 10.

14 Plaintiff alleges Terumo “owned, controlled, assembled and/or manufactured the
15 Angio-Seal Device.” *Id.* ¶ 8. Plaintiff contends her injury is attributable “to a defect in
16 the manufacturing or assembly process” of the Angio-Seal Device and/or Terumo’s
17 “failure to provide adequate warnings of danger(s) of said device.” *Id.* ¶ 12. Plaintiff
18 claims that she “was not provided or does not recall being provided any warnings”
19 relating to the dangers of the Angio-Seal Device. *Id.* ¶ 9. Based on these allegations,
20 Plaintiff commenced the instant action against Terumo, asserting two causes of action for
21 strict products liability and negligence.

22 ///

23
24
25 ² Because this matter is before the Court on a motion to dismiss, the Court must accept as true
the allegations set forth in the FAC. *See Hosp. Bldg. Co. v. Trs. of Rex Hosp.*, 425 U.S. 738, 740 (1976).

26
27 ³ The Angio-Seal Vascular Closure Device is used by surgeons to close arteries after certain
28 medical procedures. *See Gomez v. St. Jude Med. Daig Div. Inc.*, 442 F.3d 919, 924 (5th Cir. 2006). The
device places “a small plug of collagen on the outside of the artery wall to close [a] puncture site,”
which eliminates the need for manual compression to create clotting. *Id.*

1 LEGAL STANDARD

2 **1. Rule 12(b)(2)**

3 Under Federal Rule of Civil Procedure 12(b)(2), a defendant may move for
4 dismissal based on lack of personal jurisdiction. On a motion to dismiss for lack of
5 personal jurisdiction, “the plaintiff bears the burden of establishing that jurisdiction
6 exists.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002).
7 Uncontroverted allegations in a complaint must be taken as true when a prima facie
8 showing of personal jurisdiction is required. *See Am. Tel. & Tel. Co. v. Compagnie*
9 *Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996). However, the court “may not
10 assume the truth of allegations in a pleading which are contradicted by affidavit.” *Data*
11 *Disc, Inc. v. Systems Tech. Assocs. Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). Conflicts
12 between facts contained in the parties’ affidavits must be resolved in favor of the party
13 asserting jurisdiction when deciding whether there has been a prima facie showing of
14 personal jurisdiction. *See Am. Tel. & Tel.*, 94 F.3d at 588.

15 The Court applies the personal jurisdiction law of the forum state where, as here,
16 “there is no applicable federal statute governing personal jurisdiction[.]” *Dole Food Co.,*
17 *Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002); *see also* Cal. Civ. Proc. Code §
18 410.10. “California’s long-arm jurisdictional statute is coextensive with federal due
19 process requirements,” and so under California law a court can exert personal jurisdiction
20 over a defendant if doing so would be consistent with constitutional due process. *Dole*
21 *Food Co.*, 303 F.3d at 1110. A court may exercise personal jurisdiction “over a non-
22 resident defendant” without offending constitutional principles if that defendant has “at
23 least ‘minimum contacts’ with the relevant forum such that the exercise of jurisdiction
24 ‘does not offend traditional notions of fair play and substantial justice.’” *Id.* at 1110-11
25 (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

26 **2. Rule 12(b)(6)**

27 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. *See*
28 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A pleading must contain “a short

1 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R.
2 Civ. P. 8(a)(2). However, plaintiffs must also plead “enough facts to state a claim to
3 relief that is plausible on its face.” Fed. R. Civ. P. 12(b)(6); *Bell Atl. Corp. v. Twombly*,
4 550 U.S. 544, 570 (2007). The plausibility standard thus demands more than a formulaic
5 recitation of the elements of a cause of action, or naked assertions devoid of further
6 factual enhancement. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Instead, the complaint
7 “must contain allegations of underlying facts sufficient to give fair notice and to enable
8 the opposing party to defend itself effectively.” *Starr v. Baca*, 652 F.3d 1202, 1216 (9th
9 Cir. 2011).

10 In reviewing a motion to dismiss under Rule 12(b)(6), courts must assume the truth
11 of all factual allegations and must construe them in the light most favorable to the
12 nonmoving party. *Cahill v. Liberty Mut. Ins. Co.*, 80 F.3d 336, 337–38 (9th Cir. 1996).
13 The court need not take legal conclusions as true merely because they are cast in the form
14 of factual allegations. *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987).
15 Similarly, “conclusory allegations of law and unwarranted inferences are not sufficient to
16 defeat a motion to dismiss.” *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

17 In determining the propriety of a Rule 12(b)(6) dismissal, courts generally may not
18 look beyond the complaint for additional facts. *United States v. Ritchie*, 342 F.3d 903,
19 908 (9th Cir. 2003). “A court may, however, consider certain materials—documents
20 attached to the complaint, documents incorporated by reference in the complaint, or
21 matters of judicial notice—without converting the motion to dismiss into a motion for
22 summary judgment.” *Id.*; *see also Lee*, 250 F.3d at 688. “However, [courts] are not
23 required to accept as true conclusory allegations which are contradicted by documents
24 referred to in the complaint.” *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295–96
25 (9th Cir. 1998). Where dismissal is appropriate, a court should grant leave to amend
26 unless the plaintiff could not possibly cure the defects in the pleading. *Knappenberger v.*
27 *City of Phoenix*, 566 F.3d 936, 942 (9th Cir. 2009).

28 ///

1 **DISCUSSION**

2 **A. Requests for Judicial Notice**

3 As an initial matter, both parties request that the Court take judicial notice of
4 several documents in support of their respective briefs. Neither party filed an opposition
5 to the opposing party’s request for judicial notice.

6 Generally, a district court’s review on a 12(b)(6) motion to dismiss is “limited to
7 the complaint.” *Lee*, 250 F.3d at 688 (quoting *Cervantes v. City of San Diego*, 5 F.3d
8 1273, 1274 (9th Cir. 1993)). However, “a court may take judicial notice of matters of
9 public record.” *Id.* at 689 (internal quotations omitted). Additionally, the Ninth Circuit
10 recently held that when granting a request for judicial notice, the Court “must clearly
11 specify what fact or facts it judicially noticed.” *Khoja v. Orexigen Therapeutics Inc.*, 899
12 F.3d 988, 999 (9th Cir. 2018). The Ninth Circuit further explained, “[a] court must also
13 consider—and identify—which fact or facts it is noticing from such a transcript. Just
14 because the document itself is susceptible to judicial notice does not mean that every
15 assertion of fact within that document is judicially noticeable for its trust.” *Id.*

16 **1. Plaintiff’s Request for Judicial Notice**

17 Plaintiff requests the Court take judicial notice of various documents in support of
18 her opposition to Terumo’s motion to dismiss. *See* Doc. No. 12-1 (hereinafter “PRJN”).
19 Specifically, Plaintiff requests the Court take judicial notice of the following four
20 documents: (1) Exhibit A: Statement and Designation by Foreign Corporation; (2)
21 Exhibit B: List of Locations on Terumo’s Website; (3) Exhibit C: Business Search via
22 California Secretary of State Website; and (4) Exhibit D: Brochure for Angio-Seal
23 Device found on Terumo’s Website. *See id.* at 2.⁴

24 The Court finds that Exhibit A is the proper subject of judicial notice because it is
25 a matter of public record, filed with the California Secretary of State. *See* Fed. R. Evid.
26 201(b). Specifically, the Court takes judicial notice of the fact that Terumo is registered

27 _____
28 ⁴ Citations to this document refer to the pagination assigned by the CM/ECF system.

1 as a foreign corporation with California and has designated an agent for service of
2 process in the state. *See* PRJN at 4. Additionally, the Court finds that Exhibit B is also
3 the proper subject of judicial notice, as Terumo’s three affiliated offices in California,
4 displayed on Terumo’s website, can be readily and accurately determined. *See Matthews*
5 *v. Nat’l Football League Mgmt. Council*, 688 F.3d 1107, 1113 (9th Cir. 2012) (taking
6 judicial notice of statistics found on the NFL’s website because such information can be
7 readily determined). As such, the Court **GRANTS** Plaintiff’s request for judicial notice
8 as to Exhibits A and B.

9 With respect to Exhibit C, the Court need not rely on this exhibit in reaching its
10 conclusion below. As such, the Court **DENIES AS MOOT** Plaintiff’s request for
11 judicial notice as to Exhibit C. Further, the Court finds that the accuracy of the
12 information contained in the brochure, marked as Exhibit D, may be reasonably
13 questioned. *See Vitaulic Co. v. Tieman*, 499 F.3d 227, 236 (3d Cir. 2007) (“marketing
14 material is full of imprecise puffery that no one should take at face value”). Therefore,
15 the Court **DENIES** Plaintiff’s request for judicial notice with respect to Exhibit D.

16 **2. Terumo’s Request for Judicial Notice**

17 Terumo requests the Court take judicial notice of the following three documents in
18 support of its motion: (1) Exhibit 1: 1996 FDA Premarket Approval of Angio Seal; (2)
19 Exhibit 2: 2018 FDA Premarket Approval of Angio Seal; and (3) Exhibit 3: The Federal
20 Trade Commission’s “(FTC)” decision and order in *Abbott Laboratories & St. Jude*
21 *Medical, Inc.*, 1610126 F.T.C. C-6400 (Feb. 14, 2017). *See* Doc. No. 11-3 (hereinafter
22 “DRJN”).

23 With respect to Exhibits 1 and 2, the Court need not rely on either document in
24 reaching its conclusion below. Thus, the Court **DENIES AS MOOT** Terumo’s request
25 for judicial notice as to Exhibits 1 and 2. However, the Court finds that Exhibit 3, a copy
26 of the FTC’s opinion in *Abbott* is the proper subject of judicial notice. *See POM*
27 *Wonderful LLC v. Coca Cola Co.*, 166 F. Supp. 3d 1085, 1100 (C.D. Cal. 2016) (finding
28 that a FTC opinion was admissible under Federal Rule of Evidence 201(b)). The Court

1 specifically takes judicial notice of Sections XX, YY, GGG, and HHH in the FTC’s
2 order, which indicate that Terumo Corporation acquired the rights to the Angio-Seal line
3 of products in either December 2016 or January 2017. *See* DRJN at 20-21.⁵

4 Accordingly, the Court **GRANTS** Terumo’s request for judicial notice as to Exhibit 3.

5 **B. Personal Jurisdiction**

6 Terumo moves to dismiss Plaintiff’s claims for lack of personal jurisdiction on two
7 grounds. First, Terumo argues that the Court lacks general personal jurisdiction because
8 Terumo does not have systematic and continuous contacts with California. Second,
9 Terumo contends that the Court similarly lacks specific personal jurisdiction because
10 Plaintiff’s claims fail to show how her alleged injuries arose out of or relate to Terumo’s
11 conduct in or directed at California. Plaintiff fails to specify whether the Court has
12 general or specific personal jurisdiction over Terumo.⁶ As such, the Court addresses both
13 bases for personal jurisdiction.

14 **1. General Personal Jurisdiction**

15 Terumo argues that the Court lacks general personal jurisdiction because Terumo
16 is incorporated in Delaware and has its principal place of business in New Jersey. *See*
17 Doc. No. 11-1 at 5. Thus, Terumo contends it is not essentially at home in California.
18 *See id.* at 15. Plaintiff opposes, arguing the Court has personal jurisdiction because: (1)
19 Terumo is a registered foreign corporation with the state of California pursuant to
20 California Corporations Code Section 2100; and (2) Terumo has affiliate locations in the
21 state. *See* Doc. No. 12 at 4.

22
23
24 ⁵ Citations to this document refer to the pagination assigned by the CM/ECF system.

25 ⁶ For example, Plaintiff generally cites to California Code of Civil Procedure Section 410.10,
26 California’s long-arm statute, in support of her argument that the Court has personal jurisdiction over
27 Terumo. *See* Doc. No. 12 at 9. Because California’s long-arm statute “allows the exercise of personal
28 jurisdiction to the full extent permissible under the U.S. Constitution,” the Court must inquire whether
the exercise of jurisdiction over Terumo “comports with the limits imposed by federal due process.”
Daimler, 571 U.S. 117, 125 (2014). Section 410.10, in and of itself, does not confer personal
jurisdiction over Terumo.

1 Courts have general personal jurisdiction over nonresident defendants whenever
2 the defendants' activities within the forum state are "continuous and systematic."
3 *Perkins v. Benguet Consol. Mining Co.*, 342 U.S. 437, 445 (1952). General jurisdiction
4 has "an exacting standard ... because a finding of general jurisdiction permits a defendant
5 to be haled into court in the forum state to answer for any of its activities anywhere in the
6 world." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004).
7 Establishing general personal jurisdiction requires that the defendant's contacts with a
8 forum be "so substantial, continuous, and systematic that the defendant can be deemed to
9 be present in that forum for all purposes." *Yahoo! Inc. v. La Ligue Contre Le Racisme Et*
10 *L'Antisemitisme*, 433 F.3d 1199, 1205 (9th Cir. 2006) (internal quotations omitted).
11 Typically, a corporation is "at home" only in those states where it is incorporated or has
12 its principal place of business. *Daimler*, 571 U.S. at 137. "Only in an 'exceptional case'
13 will general jurisdiction be available anywhere else." *Martinez v. Aero Caribbean*, 764
14 F.3d 1062, 1070 (9th Cir. 2014) (quoting *Daimler*, 571 U.S. at 139 n.19).

15 Here, Plaintiff's reliance on California Corporations Code Section 2100 to support
16 general personal jurisdiction is misplaced. See PRJN at 4. Although Terumo's status as
17 a registered foreign corporation in California is relevant to the personal jurisdiction
18 inquiry, the Ninth Circuit has made clear that "California does not require corporations to
19 consent to general personal jurisdiction in that state when they designate an agent for
20 service of process or register to do business." *AM Trust v. UBS AG*, 681 F. App'x. 587,
21 588-89 (9th Cir. 2017); see also *Bristol-Myers Squibb Co. v. Super. Ct.*, 377 P.3d 874,
22 884 (Cal. 2016) ("The designation of an agent for service of process and qualification to
23 do business in California alone are insufficient to permit general jurisdiction.") (internal
24 quotation marks omitted), *rev'd on other grounds*, 137 S. Ct. 1773 (2017). As such,
25 Section 2100 does not provide a basis for general personal jurisdiction.

26 Moreover, Plaintiff's argument regarding Terumo's affiliate locations in the state is
27 unpersuasive. See PRJN at 10. The Supreme Court has held even where a corporation's
28 in state activities are in a sense "continuous and systematic," a court may not have

1 general personal jurisdiction over the corporation. *Daimler*, 571 U.S. at 138-39. The test
2 is whether “a corporation’s affiliations with the State are so continuous and systematic as
3 to render [it] essentially at home in the forum state.” *Id.* (internal citations and quotation
4 omitted). The presence of Terumo’s three affiliate locations in California, without more,
5 does not confer general personal jurisdiction over Terumo. *See id.* at 136-38
6 (“[S]ubject[ing] foreign corporations to general jurisdiction whenever they have an in
7 state subsidiary or affiliate” would be “unacceptably grasping”). Further, even if Plaintiff
8 could show that Terumo conducted regular business in California, that fact would still be
9 insufficient to render it “at home” in the state. *See id.* at 139 n.20 (“A corporation that
10 operates in many places can scarcely be deemed at home in all of them. Otherwise, ‘at
11 home’ would be synonymous with ‘doing business’ tests framed before specific
12 jurisdiction evolved in the United States.”). Accordingly, based on Plaintiff’s allegations,
13 and the present record, the Court concludes it lacks general personal jurisdiction over
14 Terumo.

15 **2. Specific Personal Jurisdiction**

16 Second, Terumo argues the Court lacks specific personal jurisdiction because
17 Plaintiff fails to allege facts that tie Terumo’s conduct to California or to the Plaintiff’s
18 alleged injury. *See* Doc. No. 13 at 8. Terumo further contends that it did not own the
19 rights to the Angio-Seal Device at the time of Plaintiff’s alleged injury. Plaintiff opposes,
20 asserting that the Court has specific personal jurisdiction because the alleged injury
21 occurred in California.⁷ *See* Doc. No. 12 at 9.

22 “[I]f a defendant has not had continuous and systematic contacts with the state
23

24 ⁷ Plaintiff also asserts that jurisdiction is proper pursuant to California Code of Civil Procedure
25 Section 395.5. *See* Doc. No. 12 at 9. However, Section 395.5 is relevant to establish proper venue for a
26 corporation, and does not confer specific jurisdiction over Terumo. *See S.E.C. v. Ross*, 504 F.3d 1130,
27 1140 n.11 (9th Cir. 2007) (noting that “the question of whether the court can exercise personal
28 jurisdiction over a party is distinct from the question of whether venue will properly lie in the court
exercising jurisdiction.”); *Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 505
n.8 (9th Cir. 2000) (recognizing that “the issues involved in personal jurisdiction disputes are different
from the issues involved in venue disputes”).

1 sufficient to confer ‘general jurisdiction,’” *Dole Food Co.*, 303 F.3d at 1111, specific
2 personal jurisdiction may be established by showing the following:

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

13 *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (citing *Schwarzenegger*, 374 F.3d
14 at 802). Plaintiff bears the burden of satisfying the first two prongs of the test for specific
15 jurisdiction. *Dole Food Co.*, 303 F.3d at 1108 (citing *Sher v. Johnson*, 911 F.2d 1357,
16 1361 (9th Cir. 1990)).

17 The Ninth Circuit has emphasized that under the first prong of the specific personal
18 jurisdiction test, purposeful availment and purposeful direction are two separate and
19 distinct concepts. Specifically, “[t]he exact form of our jurisdictional inquiry depends on
20 the nature of the claim at issue.” *Picot*, 780 F.3d at 1212. For claims sounding in
21 contract, courts generally apply the “purposeful availment” analysis, which considers
22 whether a defendant has purposefully availed himself of the privilege of conducting
23 business with the forum state. *Id.* (citing *Schwarzenegger*, 374 F.3d at 802). For claims
24 sounding in tort, courts apply a “purposeful direction” test, and analyze whether the
25 defendant “has directed his actions at the forum state, even if those actions took place
26 elsewhere.” *Id.* (citing *Schwarzenegger*, 374 F.3d at 802-03). Because Plaintiff’s FAC
27 sounds in tort, the latter test is applicable.

28 Here, even assuming Plaintiff’s allegation that Terumo “purposefully directed” its
activities at California because she was injured in California is sufficient to meet the first
prong of the specific personal jurisdiction test, the Court finds that Plaintiff has not met

1 her burden with respect to the second prong of the test. The second prong requires
2 Plaintiff’s claim to be one which “*arises out of or relates to the defendant’s forum-related*
3 *activities.*” *Picot*, 780 F.3d at 1211 (emphasis added). The Ninth Circuit has “referred to
4 the second prong of the specific jurisdiction test as a ‘but for’ test.” *In re W. States*
5 *Wholesale Natural Gas Antitrust Litig.*, 715 F.3d 716, 742 (9th Cir. 2013) (quoting *Shute*
6 *v. Carnival Cruise Lines*, 897 F.2d 377, 385 (9th Cir. 1990)). “Under the ‘but for’ test, ‘a
7 lawsuit arises out of a defendant’s contacts with the forum state if a direct nexus exists
8 between those contacts and the cause of action.’” *Id.* (quoting *Fireman’s Fund Ins. Co. v.*
9 *Nat’l Bank of Coops.*, 103 F.3d 888, 894 (9th Cir. 1996)); *see also Harlow v. Children’s*
10 *Hosp.*, 432 F.3d 50, 61 (1st Cir. 2005) (noting that when analyzing specific personal
11 jurisdiction, “contacts must generally be limited to those before and surrounding the
12 accrual of the cause of action.”).

13 Terumo Corporation⁸ did not acquire ownership of the Angio-Seal line of products
14 until the end of December 2016 or the beginning of January 2017. *See DRJN* at 20
15 (noting that the “Terumo Purchase Agreement” refers to the agreement between Abbott
16 Laboratories and Terumo Corporation dated December 6, 2016, and the letter agreement
17 with modifications dated January 5, 2017). Plaintiff claims that the Angio-Seal Device
18 failed on or about May 18, 2016. FAC ¶ 7. Plaintiff alleges that her physician attempted
19 to “surgically correct the failed” device the “following day,” but the Angio-Seal Device
20 “had already resulted in nerve damage to plaintiff’s right leg, which has caused plaintiff
21 pain and suffering to date.” *Id.* ¶ 10. As Terumo points out, however, “it is factually
22 impossible for Terumo to have manufactured or sold the product at issue,” as Terumo
23 acquired ownership of the products in late 2016 or early 2017. *Doc. No. 11-1* at 6. Thus,
24 because Plaintiff’s injury occurred several months *prior* to Terumo’s acquisition of the
25

26
27 ⁸ Terumo Medical Corporation, the Defendant in this action, is a wholly-owned subsidiary of
28 Terumo Americas Holdings, Inc., which is a wholly-owned subsidiary of Terumo Corporation, a
company publicly traded in Japan. *See Doc. No. 2* at 2.

1 Angio-Seal line of products, Plaintiff fails to show a causal nexus between Terumo’s
2 activities in the forum and her injury.⁹ Therefore, based on Plaintiff’s allegations, and in
3 considering the current record, the Court finds that it lacks specific personal jurisdiction
4 over Terumo.¹⁰

5 **3. Summary**

6 In sum, the Court finds that Plaintiff has not met her burden of demonstrating that
7 the Court has either general or specific personal jurisdiction over Terumo. Accordingly,
8 the Court **GRANTS** Terumo’s motion to dismiss pursuant to Rule 12(b)(2). However,
9 the Court “cannot conclude that there are no circumstances under which personal
10 jurisdiction over [Terumo] would be reasonable.” *Primarch Mfg., Inc. v. At Large*
11 *Nutrition, LLC*, No. 13-CV-3106 JM (KSC), 2014 WL 585632, at *5 (S.D. Cal. Feb. 14,
12 2014). Accordingly, dismissal is **without prejudice**, and Plaintiff may file an amended
13 complaint clarifying the basis for the exercise of personal jurisdiction over Terumo. *See*
14 *McKesson HBOC, Inc. v. N.Y. State Common Ret. Fund, Inc.*, 339 F.3d 1087, 1090 (9th
15 Cir. 2003) (noting that in the event of a jurisdictional defect, dismissal without leave to
16 amend is proper only if it is clear that the complaint could not be saved by any
17 amendment); *cf. Silicon Economics, Inc. v. Financial Accounting Foundation*, No. 10-
18 CV-1939-LHK, 2010 WL 4942468, at *1 (N.D. Cal. Nov. 24, 2010) (dismissing for lack
19 of personal jurisdiction without leave to amend where “the Plaintiff conceded at the
20 hearing on this Motion that if the case were dismissed” for lack of personal jurisdiction,
21 “it would not seek to allege additional facts supporting jurisdiction.”).

22 In light of the Court’s determination that based on the present record, it lacks

24 ⁹ As such, the Court need not address the third prong of the specific personal jurisdiction test,
25 which shifts the burden to Terumo.

26 ¹⁰ Neither party addresses whether successor liability could serve as the basis for personal
27 jurisdiction. *See Lefkowitz v. Scyt USA*, No. 15-cv-05005-JSC, 2016 WL 537952, at *3 (N.D. Cal. Feb.
28 11, 2016) (noting that in California, a court “will have personal jurisdiction over a successor company if
(1) the court would have had personal jurisdiction over the predecessor[;] and (2) the successor company
effectively assumed the subject liabilities of the predecessor.”) (citation omitted)).

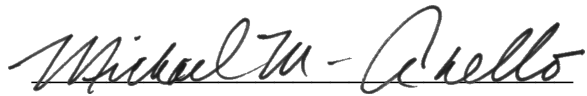
1 personal jurisdiction over Terumo, the Court declines to address Terumo's motion to
2 dismiss pursuant to Federal Rule 12(b)(6).

3 **CONCLUSION**

4 Based on the foregoing, the Court **GRANTS** Terumo's motion to dismiss pursuant
5 to Federal Rule of Civil Procedure 12(b)(2), and **DISMISSES** Plaintiff's FAC **with leave**
6 **to amend**. Plaintiff must file her amended complaint on or before **December 7, 2018**.

7
8 **IT IS SO ORDERED.**

9
10 Dated: November 20, 2018

11 

12 HON. MICHAEL M. ANELLO
13 United States District Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28