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APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STANISLAV ARBIT, Plaintiff-Appellant, v. SCHNEIDER ELECTRIC SE, a foreign entity, Defendant-Appellee.	No. 24-35 D.C. No. 2:23-CV-00533-SPL MEMORANDUM*

Appeal from United States District Court

for the District of Arizona

Steven Paul Logan, District Judge, Presiding

Submitted May 21, 2025**

Before: SILVERMAN, LEE, and VANDYKE, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

* * The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Stanislav Arbit appeals pro se from the district court's judgment dismissing his trademark infringement action for lack of personal jurisdiction. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(2). *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017). We affirm.

The district court properly dismissed Arbit's action for lack of personal jurisdiction after an evidentiary hearing because Arbit failed to establish that Schneider Electric SE had such continuous and systematic contacts with Arizona to establish general personal jurisdiction, or sufficient claim-related contacts with Arizona to provide the court with specific personal jurisdiction over Schneider Electric SE. See *DaimlerAG v. Bauman*, 571 U.S. 117, 122 (2014) (explaining that general jurisdiction over a corporation is only appropriate when the corporation's affiliations with the state are "so constant and pervasive as to render it essentially at home in the forum State" (citation and internal quotation marks omitted and alteration adopted)); *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1071 (9th Cir. 2015) (explaining that after *Daimler*, the "agency test" is no longer available to establish general jurisdiction); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (setting forth test for specific personal jurisdiction).

The district court did not abuse its discretion by denying Arbit's motion to impose service costs because Schneider Electric SE had good cause to refuse to waive service of process, and Arbit personally incurred no service-related costs. See Fed. R. Civ. P. 4(d)(2) (providing that if defendant fails, without good cause, to waive service of process, the court must impose on the defendant the expenses later incurred in making service); *Est. of Darulis v. Garate*, 401 F.3d 1060, 1063 (9th Cir. 2005) (setting forth standard of review).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. See *Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Stanislav Arbit, Plaintiff, vs. Schneider Electric SE, Defendant.	No. CV-23-00533-PHX-SPL ORDER

Before the Court are Defendant Schneider Electric SE's ("Defendant") Motion to Dismiss for Improper Service, Lack of Personal Jurisdiction, and Improper Venue (Doc. 25), Plaintiff Stanislav Arbit's ("Plaintiff") Response (Doc. 34) with supporting Declaration (Doc. 35), and Defendant's Reply (Doc. 40). Also before the Court is Plaintiff's Motion for Sanctions. (Doc. 23).[1] The Court rules as follows.[2]

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[1] The Court denies Plaintiff's Motion for Sanctions (Doc. 23) as service was executed by the U.S. Marshalls service and not Plaintiff who is proceeding In Forma Pauperis. Therefore, Plaintiff is not entitled to recover the fees for service Under Fed. R. Civ. P. 4(d)(2). Additionally, Defendant has shown good cause for failure to accept waiver of service as they have argued improper service of process. (Doc. 25 at 8).

[2] Because it would not assist in resolution of the instant issues, the court finds the pending motions are suitable for decision without oral arguments. See LRCiv 7.2(f); Fed. R. Civ. P. 78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

I. BACKGROUND

Plaintiff Stanislav Arbit ("Plaintiff"), proceeding pro se, alleges that Defendant Schneider Electric SE ("Defendant") engaged in trademark infringement, unfair competition, deceptive trade practices, trademark dilution, and unjust enrichment arising from the purported use of the alleged mark "SecurePower." (Doc. 1 at 5). Plaintiff is the owner of Arbit LLC, a "value-added reseller of mission-critical physical information technology infrastructure." (Id. at 1). Plaintiff claims to own the trademark "SecurePower" and that Defendant used the mark without his permission. (Id. at 2).

On August 15, 2023, Defendant filed a Motion to Dismiss arguing that (1) Plaintiff did not properly serve them, (2) the Court lacks personal jurisdiction over them, and (3) venue is improper. (Doc. 25). On November 2, 2023, the Court held an evidentiary hearing to resolve multiple disputes of fact that arose in the pleadings regarding the issue of personal jurisdiction.

II. LEGAL STANDARD

Federal Rule of Civil Procedure ("Rule") 12(b)(2) authorizes dismissal for lack of personal jurisdiction. When a defendant moves to dismiss for lack of personal jurisdiction, "the plaintiff" bears the burden of demonstrating that jurisdiction is appropriate." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) ("*Schwarzenegger*"). When the motion is based on written materials rather than an evidentiary hearing, the Court must determine "whether the plaintiff's pleadings and affidavits make a prima facie showing of personal jurisdiction." Id. (citation, quotation marks, and alteration omitted). A plaintiff "cannot 'simply rest on the bare allegations of its complaint,'" but "uncontroverted allegations in the complaint must be taken as true." Id. (citation omitted). That being said, a court

"may not assume the truth of allegations in a pleading which are contradicted by affidavit." *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977). "If the pleadings and other submitted materials raise issues of credibility or disputed questions of fact with regard to jurisdiction, the district court has the discretion to take evidence at a preliminary hearing in order to resolve the contested issues." Id. at 1285. At that hearing, it is the Plaintiff's burden to establish that a court has personal jurisdiction over the defendant by a preponderance of the evidence. *Data Disc, Inc.*, 557 F.2d at 1285 ("In this situation, where plaintiff is put to his full proof, plaintiff must establish the jurisdictional facts by a preponderance of the evidence, just as he would have to do at trial.").

When no federal statute is applicable to govern personal jurisdiction, "the district court applies the law of the state in which the district court sits." *Id.* "Arizona's long-arm jurisdictional statute is co-extensive with federal due process requirements; therefore, the analysis of personal jurisdiction under Arizona law and federal due process is the same." *Biliack v. Paul Revere Life Ins. Co.*, 265 F. Supp. 3d 1003, 1007 (D. Ariz. 2017). For a court to exercise personal jurisdiction, federal due process requires that a defendant have "certain minimum contacts" with the forum state "such that maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310. 316 (1945) (citation omitted). Personal jurisdiction can be general or specific. *Biliack*, 265 F. Supp. 3d at 1007.

III. DISCUSSION

As Defendant has raised the issues of improper service of process and venue in the alternative, the Court will first address the Motion to Dismiss for Lack of Personal Jurisdiction. Plaintiff argues that he has sufficiently alleged that the Court

has personal jurisdiction over Defendant because Defendant has regularly conducted business within Arizona. (Doc. 34 at 8). At the November 2, 2023, evidentiary hearing, Plaintiff also raised the argument of Defendant placing products in the stream of commerce that would foreseeably flow into Arizona, thus creating personal jurisdiction. (Doc. 65 at 80). Defendant argues that it has no contacts with the state of Arizona, and that its corporate structure insulates them from any contacts within the forum. (Doc. 25 at 10). Initially, both Plaintiff and Defendant submitted affidavits which countered each other's factual account (Compare Doc. 25-1 and Doc. 35), however the Court heard evidence directly addressing these disputes of fact at the evidentiary hearing.

A. General Personal Jurisdiction

A court may exercise general jurisdiction over a corporation only when the corporation's contacts with the forum are "so continuous and systematic" that it is "at home" or "comparable to a domestic enterprise in that state." *Daimler AG v. Bauman*, 571 U.S. 117, 133, n.11 (2014). A corporation is regarded as "at home" in the forum of its "place of incorporation" and its "principal place of business." Id. at 137. The term "principal place of business" means "the place where a corporation's officers direct, control, and coordinate the corporation's activities. It is the place that Courts of Appeals have called the corporation's 'nerve center.' And in practice it should normally be the place where the corporation maintains its headquarters-provided that the headquarters is the actual center of direction, control, and coordination." *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93 (2010).

Here, Defendant is incorporated in France, thus is not a "resident" of Arizona. (Doc. 40 at 5). The parties do not dispute this. (*Id.*). Defendant further asserts that it does not have any local headquarters in Arizona, or that their officers direct,

control, and coordinate the corporation from Arizona. (Doc. 25 at 12-13). Defendant claims that it only has one office, located in France, and that it has only two employees. (Doc. 25-1 at 4). Defendant argues that it is a holding company for various subsidiaries, and that all direction, control, and coordination needed to accomplish this comes from their office in France. (Doc. 65 at 61). At the evidentiary hearing, Plaintiff did not provide any evidence to the contrary. (Id. at 73). Therefore, under the *Hertz* "nerve center" test, Plaintiff has not demonstrated general personal jurisdiction. *Hertz Corp.*, 559 U.S. at 92-93. Plaintiff's only evidence of Defendant's potential connection to the forum is its relationship with its subsidiary, "Schneider Electric ITC." (Doc. 65 at 11). This is also insufficient on its own to demonstrate that Defendant's relationship with Arizona was so "continuous and systematic" as to say it is "at home" in the state. *Daimler AG*, 571 U.S. at 136-137 (holding that the presence of a subsidiary company in a forum does not give rise to general jurisdiction to the parent company, even if the services performed by the subsidiary were "important"). Plaintiff has not demonstrated general personal jurisdiction here.

B. Specific Personal Jurisdiction

The Ninth Circuit applies a three-prong test to assess whether a defendant has sufficient contacts with the forum state to be subject to specific personal jurisdiction:

> "(1) The non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident thereof; or perform some act by which he purposefully avails himself of the privilege of conducting activities in the forum, thereby invoking the benefits and protections of its laws;
>
> (2) the claim must be one which arises out of or relates to 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."

Schwarzenegger, 374 F.3d at 802. A plaintiff bears the burden of establishing the first two prongs. Id. If a plaintiff satisfies them, the burden shifts to the defendant "to 'present a compelling case' that the exercise of jurisdiction would not be reasonable." Id. (citation omitted).

1. Purposeful Availment or Direction

The first prong of *Schwarzenegger*, purposeful availment, is established when "a defendant 'purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" *Schwarzenegger*, 374 F.3d at 802 (citation omitted). The defendant must have "deliberately reached out beyond its home by, for example, exploiting a market in the forum State or entering a contractual relationship centered there." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Cr.*, 141 S. Ct. 1017, 1025 (2021) (citation, quotation marks, and alteration omitted). In tort claims, purposeful availment is referred to as purposeful direction, and a showing of purposeful direction requires evidence of the defendant's actions outside the forum state that are directed at the forum. *Schwarzenegger*, 374 F.3d at 803.

Specifically, Ninth Circuit has clarified that purposeful direction is evaluated under the three-part "effects" test, traceable to the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984) ("Calder"). The *Calder* test "requires that the defendant allegedly have (1) committed an intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered in the forum state." *Schwarzenegger*, 374 F.3d at 803. "A forum State's exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional

conduct by the defendant that creates the necessary contacts with the forum." *Walden v. Fiore*, 571 U.S. 277, 286 (2014). While "a single act can support jurisdiction," the act must first "create[ ] a 'substantial connection' with the forum." *Burger King Corp. v. Rudzewicz*. 471 U.S. 462, 475 n.18 (1985). Put differently, 'some single or occasional acts' related to the forum may not be sufficient to establish jurisdiction if 'their nature and quality and the circumstances of their commission' create only an 'attenuated' affiliation with the forum." *Id.* (quoting *Int'l Shoe*, 326 U.S. at 318). A defendant's ""random, fortuitous, or attenuated' contacts" will not suffice. *Walden*, 571 U.S. at 286 (quoting *Burger King*, 471 U.S. at 475). "[The plaintiff cannot be the only link between the defendant and the forum." Id. at 285.

i. *An Intentional Act*

In the present case, Plaintiff has satisfied none of the three prongs under the *Calder* test. First, Plaintiff has not shown that Defendants committed an intentional act. Plaintiff has alleged that Defendants used his trademark "SecurePower" within Arizona but has not shown any evidence of this, let alone a preponderance of the evidence. At the evidentiary hearing it was unclear if it was even Defendants who committed the conduct in question by allegedly using the mark. (Doc. 65 at 48 "Q. When you worked at LDP Associates, did Schneider Electric describe its uninterruptible power supplies using the phrase 'Secure Power'? A. No."). All evidence at the hearing indicated that Plaintiff's interactions were with the subsidiaries of Defendant, and not Defendant itself. Alleging misconduct of a subsidiary with contacts in the forum is by itself insufficient to impute specific personal jurisdiction upon a parent corporation. *Axiom Foods, Inc. v. Acerchem Intil, Inc.*, 874 F.3d 1064 (9th Cir. 2017); *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007) ("It is well established that, as a general rule,

where a parent and a subsidiary are separate and distinct corporate entities, the presence of one... in a forum state may not be attributed to the other[.]"). While the decision to form a parent-subsidiary corporate structure may have been intentional by Defendant, Plaintiff produced no evidence showing this structure was formed to evade accountability for intentionally infringing on the mark "SecurePower." Thus, this was not an "intentional act" under the Calder test, and fails the first prong of Schwarzenegger.[3]

ii. *Expressly Aimed at the Forum State*

The Supreme Court has held that under the second prong of the Calder test, the express aiming requirement, courts must focus on a defendant's "own contacts" with the forum and not on the plaintiff's connections to the forum. See *Axiom*, 874 F.3d at 1070. The "express aiming" analysis "depends, to a significant degree, on the specific type of tort or other wrongful conduct at issue." *Picot v. Weston*, 780 F.3d 1206, 1214 (9th Cir. 2015) (quoting *Schwarzenegger*, 374 F.3d at 807). To be satisfied, the "express aiming" inquiry requires "something more" than "a foreign act with foreseeable effects in the forum state." *Washington Shoe Co. v. A-Z Sporting Goods Inc.*, 704

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[3] Even assuming that an agency relationship theoretically existed between Defendant and its subsidiaries in Arizona, Plaintiff has not shown any evidence of this. While such a relationship might be "relevant to the existence of specific jurisdiction," *Daimler AG*, 571 U.S. at 135 n. 13 (2014), it is Plaintiff's burden to put for forth a preponderance of the evidence that one exits, see Williams v. Yamaha Motor Co., 851 F.3d 1015, 1024–25 (9th Cir. 2017) ("[U]nder any standard for finding an agency relationship, the parent company must have the right to substantially control its subsidiary's activities."). Nor has Plaintiff spelled out an alter ego theory of liability allowing the Court to attribute the activities of the parent entity to the subsidiary. See id. At 1021 ("[A] plaintiff must make out a prima facie case (1) that there is such unity of interest and ownership that the separate personalities of the two entities no longer exist and (2) that failure to disregard their separate identities would result in fraud or injustice." (citation omitted)).

F.3d 668, 675 (9th Cir. 2012) (citing *Bancroft & Masters, Inc. V. Augusta Nat'l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000)). For instance, the delivery or consumption of products in the forum state that are "random," "fortuitous," or "attenuated" does not satisfy the express aiming analysis. *Mavrix Photo, Inc. v. Brand Technologies, Inc.*, 647 F.3d 1218, 1230 (9th Cir. 2011) (quoting *Burger King Corp.*, 471 U.S. at 486).

Plaintiff alleges that Defendant sells equipment in Arizona, using agents and direct employees, and has contracts with Arizona-based end users. (Doc. 47-1 at 5). Plaintiff further alleges that these services directly compete with Plaintiff's business and infringe on his trademark "SecurePower." (Id.). If these allegations were proven to be more probable than not, then Plaintiff likely would have met this prong. However, the testimony at the evidentiary hearing severely lowered the credibility of these allegations.

Plaintiff produced no evidence that Defendant employed agents in Arizona. Many of the witnesses who were employees of Defendant's subsidiaries had not even heard of the parent company "Schneider Electric SE." Further, the Chief IP Counsel for Schneider Electric SE testified that Defendant did no business outside of working with their subsidiaries. (Doc. 65 at 62). Specifically, she stated that Defendant did no business in the State of Arizona. (*Id.*). Furthermore, Defendant directly examined Plaintiff and elicited testimony showing that his perceived contractual relationship with Defendant was actually with a subsidiary company instead. In sum, Plaintiff has not demonstrated by a preponderance of the evidence that Defendant's alleged conduct was "expressly aimed at the forum state." *Schwarzenegger*, 374 F.3d at 803.

iii. *Causing Harm that the Defendant Knows is Likely to be Suffered in the Forum State*

The final prong of the *Calder* test considers whether a defendant's actions "caused harm that it knew was likely to be suffered in the forum." *Yahoo! Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 433 F.3d 1199, 1206 (9th Cir. 2006) (internal citation omitted). "The touchstone of this requirement is not the magnitude of the harm, but rather its foreseeability." *Id.* at 1207. There is foreseeable harm when a jurisdictionally sufficient amount of harm is suffered in the forum state. Id. However, "[the foreseeability of injury in a forum" alone is not enough to confer personal jurisdiction in that forum. *Axiom Foods*, 874 F.3d at 1070. The third prong of the Calder test also partially mirrors the foreseeability analysis of the seminal case *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-298 (1980). ("*World-Wide Volkswagen Corp.*"). Similarly, in *Schwarzenegger* the Ninth Circuit noted that *Calder* does not stand for "the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific (personal] jurisdiction.'" 374 F.3d at 803 (quoting *Bancroft & Masters, Inc.*, 223 F.3d at 1087). see *Calder*, 465 U.S. at 789 (*The mere fact that [defendants] can 'foresee' that the [allegedly libelous] article will be circulated and have an effect in [the forum state] is not sufficient for an assertion of [specific personal] jurisdiction."); *Burger King*, 471 U.S. at 474 (Although it has been argued that foreseeability of causing injury in another State should be sufficient to establish such contacts there when policy considerations so require, the Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction." (quoting *World-Wide Volkswagen*, 444 U.S. at 295) (footnote omitted)).

In *World-Wide Volkswagen Corp*, the Supreme Court found that no personal jurisdiction existed where a corporation sold an automobile in the tri-state region but was later sued for the car's design defects in Oklahoma. Id. at 298. The Court

held that while it was foreseeable that the purchasers of the cars in the tristate area may take them to Oklahoma, the mere "unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum State." *Id.* (internal quotation and citation omitted).

In the present case, Plaintiff argues that because Defendant allegedly placed its products into the stream of commerce with expectation that they will be purchased by consumers in Arizona, the Court has personal jurisdiction here. (Doc. 65 at 80). Plaintiff cites *World-Wide Volkswagen Corp.* to make this point, but his analogy to this case ignores several key points. First, while Defendant is also foreign actor who may have been aware that its downstream products would reach the forum, *World-Wide Volkswagen Corp.* makes it clear that this fact on its own is insufficient to demonstrate specific personal jurisdiction. This was the basis for denying specific personal jurisdiction in that case, not granting it as Plaintiff uses it. Here, Plaintiff here has provided no evidence that it was more than than merely foreseeable that Defendant's contacts would engage with the forum. Thus, Plaintiff has alleged no more foreseeability on the part of Defendant than the plaintiffs did in *World-Wide Volkswagen Corp.* For the same reasons, this is insufficient to establish specific personal jurisdiction.

Further, *World-Wide Volkswagen Corp.* did not involve a parent-subsidiary corporate structure. This impacts the foreseeability analysis here because this type of relationship is intentionally set up to allow the subsidiary to operate independently. This independence indicates a lack of foreseeability of the subsidiary's actions on the part of the parent corporation. The testimony at the evidentiary hearing confirmed that this was the case here. (Doc. 65 at 78 "Q. Is the holding company Schneider Electric SE involved in that process? A. No, it is not.").

Plaintiff's only evidence against this is that Defendant's website uses the name "Schneider Electric" without clarifying whether it is referring to the parent company "Schneider Electric SE" or one of the subsidiaries such as "Schneider Electric ITC." Therefore, according to Plaintiff, there is a lack of independence between the parent and the subsidiary, and the subsidiary's actions in the forum were the foreseeable results of the parent's decisions. This is incorrect as a matter of law. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006) ("First, there can be no doubt that we still require 'something more' than just a foreseeable effect to conclude that personal jurisdiction is proper. [quoting Bancroft, 223 F.3d at 1087). Second, an internet domain name and passive website alone are not 'something more,' and, therefore, alone are not enough to subject a party to jurisdiction. [citing *Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1020 (9th Cir.2000)]."). Plaintiff simply has not provided extrinsic evidence of "something more" than the existence of the website "www.SE.com" which can be accessed in Arizona. *Pebble Beach Co.*, 453 F.3d at 1158. Moreover, it was also not clear from the evidentiary hearing whether a consumer could even buy products from the website that Plaintiff repeatedly referenced. Plaintiff's confusion over the website is not evidence of the foreseeability here. Therefore, Plaintiff has not met his burden in demonstrating that Defendant's actions "caused harm that it knew was likely to be suffered in the forum." *Schwarzenegger*, 374 F.3d at 803.

IV. Conclusion

In sum, Plaintiff has failed to meet his burden of demonstrating that this Court has personal jurisdiction over Defendant by a preponderance of the evidence. Therefore, Plaintiff's claims against Defendant will be dismissed for lack of personal

jurisdiction. See *Fiorani v. Berenzweig*, 441 F. App' x 540, 541 (9th Cir. 2011) (holding that dismissals for lack of personal jurisdiction must be without prejudice).

Accordingly,

IT IS ORDERED that Defendant Schneider Electric SE's Motion to Dismiss for Improper Service, Lack of Personal Jurisdiction, and Improper Venue (Doc. 25) is granted. Plaintiff's claims are **dismissed without prejudice.**

IT IS FURTHER ORDERED that the Clerk of Court shall **terminate** this action and **enter final judgment accordingly**.

Dated this 22nd day of November, 2023.

Additional material from this filing is available in the Clerk's Office.