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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 KEY TRONIC CORPORATION, a
8 Washington corporation,

9 Plaintiff,

10 v.

11 SMART TECHNOLOGIES ULC, a
12 Canadian corporation; et al.,

13 Defendants.

No. 2:16-CV-0028-TOR

ORDER GRANTING DEFENDANT
STEEL TECHNOLOGIES' MOTION
TO DISMISS FOR LACK OF
PERSONAL JURISDICTION

14 BEFORE THE COURT is Defendant Steel Technologies de Mexico, S.A.,
15 de C.V.'s Motion to Dismiss (ECF No. 90). This matter was submitted for
16 consideration without oral argument. The Court has reviewed the completed
17 briefing and record and files herein, and is fully informed.

18 **BACKGROUND**

19 Plaintiff Key Tronic Corporation ("Key Tronic") filed the instant action on
20 February 1, 2016. ECF No. 1. In its Third Amended Complaint (ECF No. 54) Key
Tronic asserts several causes of action against Defendant Steel Technologies de

ORDER GRANTING DEFENDANT STEEL TECHNOLOGIES' MOTION TO
DISMISS FOR LACK OF PERSONAL JURISDICTION ~ 1

1 Mexico, S.A. de C.V. (“Steel Tech Mexico”), arising out of a contractual dispute
2 related to the supply of components to be used in the manufacture of electronic
3 white boards. ECF No. 54 at ¶¶ 138-185. Steel Tech Mexico now moves the
4 Court to dismiss the claims against it for lack of (1) personal jurisdiction and (2)
5 service. ECF No. 90. Key Tronic requests the Court deny the motion or, in the
6 alternative, allow for jurisdictional discovery. ECF NO. 105 at 29. For the reasons
7 discussed below, the Court **GRANTS** Defendant Steel Tech Mexico’s Motion to
8 Dismiss (ECF No. 90) for lack of personal jurisdiction and **DENIES** Plaintiff’s
9 request for jurisdictional discovery.

10 **FACTS**¹

11 ***Steel Tech Mexico***

12 Steel Tech Mexico is a steel processing company with its principal place of
13 business in Juarez, Mexico. ECF No. 90 at 4. The company was first formed and
14 incorporated in Mexico in 1987 and has continued to operate its steel processing
15

16 ¹ The facts are construed in a light most favorable to Plaintiff, as factual
17 disputes are settled in favor of Plaintiff and uncontroverted allegations in the
18 complaint are taken as true; but bare allegations are not accepted as true where the
19 pleading is contradicted by affidavit. *See Mavrix Photo, Inc. v. Brand*
20 *Technologies, Inc.*, 647 F.3d 1218, 1223 (9th Cir. 2011).

1 wholly within the borders of Mexico. *Id.* Steel Tech Mexico is a Mexico
2 corporation based in Mexico with no offices or operations in the United States.
3 ECF No. 90 at 3. Steel Tech Mexico does not own any real property in
4 Washington or the United States, it does not employ any individuals in Washington
5 or the United States, it does not pay Washington or United States income taxes,
6 and it is not registered to do business in either Washington or any other state in the
7 United States. ECF No. 90 at 4.

8 ***Key Tronic – Steel Tech Mexico Initial Meeting***

9 Key Tronic has operations in both the United States and Mexico. Its Mexico
10 operations are managed by its subsidiary, Key Tronic Juarez S.A. de C.V. (“Key
11 Tronic Mexico”).² ECF No. 90 at 5. The relationship between Key Tronic Mexico
12 and Steel Tech Mexico arose in 2013 after Key Tronic, the parent corporation,
13 purchased a manufacturing facility located in Juarez, Mexico from a company
14 called Sabre Manufacturing S. de R.L. de C.V. (“Sabre”). Steel Tech Mexico had
15 a prior business relationship with Sabre, and through this connection Steel Tech
16

17 ² Although Key Tronic, the parent corporation, is distinguished from Key
18 Tronic Mexico, the subsidiary, the order does not distinguish between the two
19 beyond this sub-section because the parties did not make the distinction clear; and,
20 in any event, the distinction does not materially affect the remaining analysis.

1 Mexico and Key Tronic Mexico entered into business relations.³ ECF No. 90 at 5.
2 Before entering into negotiations, both parties entered into a non-disclosure
3 agreement (“NDA”) that included a Washington choice of law provision. ECF No.
4 105 at 5-6 (the NDA was to be “construed and interpreted in accordance with the
5 laws of the State of Washington without regard to its choice of law rules.”)

6 ***Purchase Orders Underlying the Dispute***

7 In the fall of 2013, Key Tronic sent an email to Steel Tech Mexico’s office
8 in Mexico requesting a quote for a new project involving electronic whiteboards
9 for one of Key Tronic’s customers (the “SMART Project”). ECF No. 90 at 5.
10 Steel Tech Mexico responded and transmitted a quote via email back to Key
11 Tronic. *Id.* Key Tronic issued its first purchase order to Steel Tech Mexico for the
12 SMART project on December 18, 2013. ECF No. 91-3 at 2. In February of 2014,
13 Key Tronic submitted additional purchase orders to Steel Tech Mexico via email,
14

15 ³ The parties dispute whether Steel Tech Mexico or Key Tronic initially
16 pursued the relationship, but this is irrelevant as both parties agree the relationship
17 first arose as a result of Steel Tech Mexico’s prior relationship with Sabre
18 combined with Key Tronic’s acquisition of the Sabre manufacturing plant in
19 Mexico. *See* ECF Nos. 105 at 5; 118 at 4. As such, this is not a contact with
20 Washington, regardless of who reached out first.

1 which Steel Tech Mexico accepted and began performing in Mexico. ECF No. 90
2 at 6. From February 2014 until the time Steel Tech Mexico and Key Tronic parted
3 ways in the middle of 2015, Steel Tech Mexico continued to process the steel
4 needed for the SMART Project exclusively in Mexico. *Id.*

5 Between July 25, 2013 and July 21, 2015 Key Tronic and Steel Tech issued
6 at least one hundred and twelve (112) purchase orders, each prepared and sent
7 from Key Tronic's Spokane Valley, Washington offices to representatives at Steel
8 Tech Mexico's Juarez facilities. ECF No. 105 at 6. Steel Tech would accept and
9 confirm receipt of each purchase order by sending an email back to Spokane
10 Valley, Washington. ECF No. 105 at 6. Steel Tech would then send invoices to
11 the specified address in Washington. ECF No. 105 at 7. The purchase orders
12 included an indemnification provision whereby Steel Tech Mexico was required to
13 indemnify the Buyer, who was listed as "Barbara S. Kowalski." *See, e.g.*, ECF No.
14 91-3. The purchase order designated that the product was to be shipped to
15 "Keytronic Juarez S.A. DE CV" in Juarez, Mexico. *See, e.g., id.*; ECF No. 90 at 6.
16 Steel Tech Mexico made all such deliveries to this facility in Mexico, and never
17 sent any steel to Key Tronic in Washington. ECF 90 at 6.

18 ***Communication between Key Tronic and Steel Tech Mexico***

19 Throughout the duration of the SMART Project, Steel Tech Mexico and Key
20 Tronic met in Juarez, Mexico at Steel Tech Mexico's facility for no less than forty

1 meetings, where the parties discussed various aspects of the SMART Project. *Id.*
2 at 7. During this time, Key Tronic and Steel Tech executed over 100 contracts (all
3 of which were drafted and prepared in Washington State and accepted by return
4 communication to Washington State) requiring Steel Tech to provide the steel for
5 Key Tronic’s manufacture of interactive whiteboard products. ECF No. 105 at 2.
6 In furtherance of these contracts, Steel Tech sent over 560 communications to Key
7 Tronic in Washington State—both from its corporate headquarters located in
8 Louisville, Kentucky and its manufacturing facilities in Juarez, Mexico. ECF No.
9 105 at 8.

10 ***Performance***

11 According to Steel Tech, “Steel Tech Mexico negotiated its agreement with
12 Key Tronic in Mexico, performed under its agreement in Mexico, and delivered its
13 goods to a Mexico facility owned by Key Tronic.” ECF No. 90 at 3; ECF No. 108
14 at 28 (Key Tronic purchase order showing “Ship To” address is “Keytronic Juarez
15 S.A. DE CV”). Key Tronic does not dispute this claim, *see generally* ECF No.
16 105, and the purchase orders support the assertion that Steel Tech Mexico
17 produced and delivered the products entirely in Mexico to a facility in Mexico.
18 *See* ECF No. 108 at 28. However, according to Key Tronic, the “supply
19 relationship [between Key Tronic and Steel Tech Mexico] was solely managed
20 by—and all of Steel Tech’s correspondence was directed to—Key Tronic’s

1 corporate offices in Spokane Valley, Washington.” ECF No. 105 at 6.

2 Unfortunately, issues arose with the first and subsequent purchase orders regarding
3 the quality of the products being delivered, which is the subject matter of the
4 present suit. *See* ECF No. 105 at 8.

5 ***Events after Dispute***

6 After issues between Key Tronic and Steel Tech Mexico arose, the parties
7 agreed to meet to discuss some of the issues. ECF No. 90 at 7. On two occasions
8 Steel Tech Mexico sent representatives to Spokane Washington to meet with Key
9 Tronic representatives. ECF No. 105 at 16. Importantly, according to Key Tronic,
10 Steel Tech Mexico’s “breaches of purchase orders necessitated [the meetings] in
11 Washington to resolve supply issues.” ECF No. 105 at 8 (capitalization altered).

12 **DISCUSSION**

13 **A. Personal Jurisdiction**

14 Personal jurisdiction is the power of the Court over the person. *S.E.C. v.*
15 *Ross*, 504 F.3d 1130, 1138 (9th Cir. 2007) (“*In personam* jurisdiction, simply
16 stated, is the power of a court to enter judgment against a person.”). When
17 opposing a motion to dismiss for lack of personal jurisdiction under Federal Rule
18 of Civil Procedure 12(b)(2), “the plaintiff bears the burden of establishing that
19 jurisdiction is proper.” *Mavrix*, 647 F.3d at 1223 (citation omitted).

1 Determination of jurisdiction is reviewed *de novo*. *Harris Rutsky & Co. Ins. Servs.*
2 *v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128 (9th Cir. 2003).

3 Where “the defendant’s motion is based on written materials rather than an
4 evidentiary hearing, the plaintiff need only make a prima facie showing of
5 jurisdictional facts to withstand the motion to dismiss.” *Mavrix*, 647 F.3d at 1223
6 (citation omitted). Under this standard, plaintiff’s “materials [must] demonstrate
7 facts which support a finding of jurisdiction in order to avoid a motion to dismiss.”
8 *Data Disc, Inc. v. Systems Technology Associates, Inc.*, 557 F.2d 1280, 1285 (9th
9 Cir. 1977) (citing *U. S. Ry. Equip. Co. v. Port Huron & Detroit R.R. Co.*, 495 F.2d
10 1127, 1128 (7th Cir. 1974); and *O’Hare Int’l Bank v. Hampton*, 437 F.2d 1173,
11 1176 (7th Cir. 1971)). The plaintiff cannot “simply rest on the bare allegations of
12 its complaint,” but uncontroverted allegations in the complaint must be taken as
13 true. *Mavrix*, 647 F.3d at 1223 (citation omitted). The courts “may not assume the
14 truth of allegations in a pleading which are contradicted by affidavit[.]” *Data Disc*,
15 557 F.2d at 1284, but factual disputes are resolved in the plaintiff’s favor, *Pebble*
16 *Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). *Mavrix*, 647 F.3d at
17 1223.

18 Personal jurisdiction in federal courts is determined by the law of the State
19 in which it sits. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015).

20 Washington state law permits personal jurisdiction over defendants to the full

1 extent permitted by the Due Process Clause of the United States Constitution.
2 *Shute v. Carnival Cruise Lines*, 113 Wash.2d 763, 766-67 (1989). Under the Due
3 Process Clause, a court may exercise personal jurisdiction over a defendant only
4 where “the defendant [has] certain minimum contacts with the forum state such
5 that the maintenance of the suit does not offend traditional notions of fair play and
6 substantial justice.” *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015) (quoting
7 *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)) (internal quotation marks
8 and brackets omitted).

9 There are two types of personal jurisdiction: general and specific. General
10 jurisdiction requires connections with the forum “so continuous and systematic as
11 to render the foreign corporation essentially at home in the forum State[.]” *Ranza*,
12 793 F.3d at 1069.⁴ Specific jurisdiction, in contrast, will lie “when a case arises
13 out of or relates to the defendant’s contacts with the forum.” *Id.* at 1068 (internal
14 quotation marks and brackets omitted) (quoting *Helicopteros Nacionales de*
15 *Colombia, S.A. v. Hall*, 466 U.S. 408, 414 n.8 (1984)).

16 The Ninth Circuit uses the following three-part test when determining if
17 specific personal jurisdiction exists:

18 (1) The non-resident defendant must . . . perform some act by which he
19 *purposefully avails himself* of the privilege of conducting activities in the
20 forum, thereby invoking the benefits and protections of its laws;

⁴ General jurisdiction is not at issue. *See* ECF No. 105 at 13.

1 (2) the claim must be one which arises out of or relates to the defendant’s
forum-related activities; and
2 (3) the exercise of jurisdiction must comport with fair play and substantial
justice, i.e. it must be reasonable.
3

4 *Mavrix*, 647 F.3d at 1227-28 (emphasis in original). The plaintiff has the burden
5 of proving the first two prongs. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653
6 F.3d 1066, 1076 (9th Cir. 2011). Once established, the burden shifts to the
7 defendant to “set forth a ‘compelling case’ that the exercise of jurisdiction would
8 not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,
9 477 (1985)); *Picot*, 780 F.3d at 1211–12. As discussed below, Key Tronic has not
10 met its burden in establishing the first prong: purposeful availment.

11 ***Purposeful Availment***

12 As the Supreme Court emphasized in *Hanson v. Denckla*, “it is essential in
13 each case that there be some act by which the defendant *purposefully avails itself*
14 of the privilege of conducting activities within the forum State, thus invoking the
15 benefits and protections of its laws.” 357 U.S. 235, 253 (1958) (emphasis added).
16 The rationale is that a party who “purposely avails itself of the privilege of
17 conducting activities within the forum state” must also “submit to the burdens of
18 litigation in that forum as well.” *Hanson*, 357 U.S. at 253; *Burger King*, 471 U.S.
19 at 476. Where “the defendant *deliberately* has engaged in significant activities
20 within a State . . . or has created continuing obligations between himself and

1 residents of the forum . . . he manifestly has availed himself of the privilege of
2 conducting business there.” *Burger King*, 471 U.S. at 476 (emphasis added).

3 The jurisdictional “inquiry is limited to examining contacts that proximately
4 result from actions by the defendant *himself*.” *Burger King*, 471 U.S. at 475-76
5 (emphasis original). This is because:

6 Purposeful availment analysis examines whether the defendant’s contacts
7 with the forum are attributable to his own actions or are solely the actions of
8 the plaintiff. In order to have purposefully availed oneself of conducting
9 activities in the forum, the defendant must have performed some type of
affirmative conduct which allows or promotes the transaction of business
within the forum state.

10 *Roth v. Garcia Marquez*, 942 F.2d 617, 621 (9th Cir. 1991) (citation omitted). In
11 other words, the defendant’s relationship with the state must be analyzed with
12 regard to the defendant’s deliberate, purposeful, and affirmative contacts with the
13 forum itself, not with persons residing there. *Walden v. Fiore*, 134 S.Ct. 1115,
14 1118 (2014) (citing *Int’l Shoe*, 326 U.S. at 319). Stated plainly, “[t]he plaintiff
15 cannot be the only link between the defendant and the forum.” *Id.* This limit on
16 the Court’s jurisdiction “ensures that a defendant will not be haled into a
17 jurisdiction solely as a result of random, fortuitous, or attenuated contacts . . . or of
18 the unilateral activity of another party or a third person.” *Burger King*, 471 U.S. at
19 475 (internal citations and quotation marks omitted); *Picot*, 780 F.3d at 1212

1 (contacts that are merely “random, fortuitous, or attenuated” are not sufficient for
2 establishing jurisdiction).

3 The inquiry is further limited to examining contacts that occurred *prior* to
4 the event causing the litigation. *Steel v. United States*, 813 F.2d 1545, 1549 (9th
5 Cir. 1987); *Farmers Ins. Exchange v. Portage La Prairie Mut. Ins. Co.*, 907 F.2d
6 911, 913 (9th Cir. 1990). This is because the Due Process Clause “requires that
7 individuals have fair warning that a particular activity may subject them to the
8 jurisdiction of a foreign sovereign,” and this “fair warning” must arise “when the
9 events that gave rise to the suit occurred.” *Steel*, 813 F.2d at 1549 (internal
10 quotation marks and brackets omitted) (quoting *Burger King*, 471 U.S. at 472
11 (quoting *Shaffer v. Heitner*, 433 U.S. 186, 218 (1977) (Stevens, J., concurring))).

12 For claims sounding in contract, the “purposeful availment” analysis asks
13 whether a defendant has “purposefully availed himself of the privilege of
14 conducting activities within the forum State, thus invoking the benefits and
15 protections of its laws.” *Picot*, 780 F.3d at 1212 (internal citations and brackets
16 omitted); *Hanson*, 357 U.S. at 253; *see, e.g., World–Wide Volkswagen Corp. v.*
17 *Woodson*, 444 U.S. 286, 295 (1980) (finding no personal jurisdiction in Oklahoma
18 where defendants “avail[ed] themselves of none of the privileges and benefits of
19 Oklahoma law”). “When a [business from one state] seeks out purchasers in other
20 states . . . and deals with them by out-of-state agents or by interstate mail and

1 telephone, [that business] is not entitled to force the customer to come to [its home
2 state] to defend an action on the contract.” *Roth*, 942 F.2d at 621–22 (original
3 brackets omitted) (quoting *Thos. P. Gonzalez Corp. v. Consejo Nacional de*
4 *Produccion de Costa Rica*, 614 F.2d 1247, 1252 (9th Cir. 1980) (quoting *Interdyne*
5 *Co. v. SYS Computer Corp.*, 31 Cal.App.3d 508, 510, 107 Cal.Rptr. 499 (1973))).

6 A mere contractual relationship “with an out-of-state party *alone* [cannot]
7 automatically establish sufficient minimum contacts in the other party’s home
8 forum[.]” *Burger King*, 471 U.S. at 478 (emphasis in original); *Picot*, 780 F.3d at
9 1212. Moreover, “the fact that a contract envisions one party discharging his
10 obligations in the forum state cannot, standing alone, justify the exercise of
11 jurisdiction over another party to the contract.” *Picot*, 780 F.3d at 1212–13.

12 Rather, the defendant must have “performed some type of affirmative conduct
13 which allows or promotes the transaction of business within the forum state.” *Sher*
14 *v. Johnson*, 911 F.2d 1357, 1362 (9th Cir. 1990) (quoting *Sinatra v. Nat’l*
15 *Enquirer, Inc.*, 854 F.2d 1191, 1195 (9th Cir. 1988)). “A showing that a defendant
16 purposefully availed himself of the privilege of doing business in a forum state
17 typically consists of evidence of the defendant’s actions in the forum, such as
18 executing or performing a contract there.” *Schwarzenegger v. Fred Martin Motor*
19 *Co.*, 374 F.3d 797, 802 (9th Cir. 2004) (citing *Hanson*, 357 U.S. at 253).

1 Importantly, personal jurisdiction does not turn on “mechanical tests” or on
2 “conceptualistic . . . theories of the place of contracting or of performance.”
3 *Burger King*, 471 U.S. at 478 (citing *Int’l Shoe*, 326 U.S. at 319; and *Hoopeston*
4 *Canning Co. v. Cullen*, 318 U.S. 313, 316 (1943)). Rather, the court must follow a
5 “highly realistic” approach that recognizes that a “contract” is “ordinarily but an
6 intermediate step serving to tie up prior business negotiations with future
7 consequences which themselves are the real object of the business transaction.” *Id.*
8 at 479 (citation omitted). As a consequence “prior negotiations and contemplated
9 future consequences, along with the terms of the contract and the parties’ actual
10 course of dealing . . . must be evaluated in determining whether the defendant
11 purposefully established minimum contacts within the forum.” *Id.*

12 Moreover, “a defendant’s transitory presence will support jurisdiction only if
13 it was meaningful enough to ‘create a substantial connection with the forum
14 State.’” *Picot*, 780 F.3d at 1213 (quoting *Burger King*, 471 U.S. at 475).
15 However, for jurisdiction to attach, Defendants need not have “*physically enter[ed]*
16 *the forum state.*” *Burger King*, 471 U.S. at 476 (emphasis original). It is enough if
17 the nonresident defendant intentionally transacted business in the forum state for a
18 court to find sufficient minimum contacts to subject it to personal jurisdiction.
19 *Logan Productions, Inc. v. Optibase, Inc.*, 103 F.3d 49, 53 (7th Cir. 1996); *see*
20 *Burger King*, 471 U.S. at 476 (In modern commercial life, “it is an inescapable fact

1 . . . that a substantial amount of commercial business is transacted solely by mail
2 and wire communications across state lines, thus obviating the need for physical
3 presence[.]”). Which party initiated contact is not determinative of personal
4 jurisdiction, but determining who “started it” is just “one helpful factor in the
5 jurisdictional equation.” *Logan*, 103 F.3d at 53 (citation omitted).

6 Here, there is nothing—or at the most very little—to suggest Steel Tech
7 Mexico availed itself of the protections and benefits of the laws of Washington, as
8 there appears to be no deliberate conduct on the part of Steel Tech Mexico to
9 associate itself with Washington. In opposing Steel Tech Mexico’s Motion to
10 Dismiss (ECF No. 90), Key Tronic points to several “contacts” to establish
11 purposeful availment. *See* ECF No. 105 at 14-18.

12 Notably, some of the “contacts” on which Key Tronic relies are not
13 appropriate for this analysis, or at the most do little to establish sufficient contacts
14 between Steel Tech Mexico and Washington. First, although the parties entered
15 into a NDA governed by Washington law, this “contact” is not germane to any
16 dispute at issue, and is thus not relevant for purposes of specific personal
17 jurisdiction. *Ranza*, 793 F.3d at 1068 (case must “arise out of or relate to”
18 contacts). Even if relevant, this “contact” with Washington is minimal and merely
19 incidental to the overall goal of the parties in establishing a supply relationship.
20 Moreover, the purchase orders did not designate Washington law as the choice of

1 law, and that is the crux of the dispute, not the NDA. As such, this is distinct from
2 *Burger King*, where the contract underlying the suit contained the relevant choice
3 of law provision, required a twenty-year term relationship, and also provided “that
4 the franchise relationship is established in [Florida].” 471 U.S. at 465-66. Second,
5 Steel Tech Mexico’s two visits to Washington—the only physical presence in
6 Washington alleged—occurred after the dispute at hand arose (i.e. breach of
7 contract and warranty), and is thus not a contact for purposes of personal
8 jurisdiction. *Steel*, 813 F.2d at 1549; ECF No. 105 at 8 (Key Tronic conceding that
9 Steel Tech Mexico’s “breaches of purchase order necessitated a meeting in
10 Washington to resolve supply issues.”) (capitalization altered).

11 Beside these, Key Tronic alleges little more than (1) e-mail communication
12 between Steel Tech Mexico and Key Tronic employees in Washington, (2)
13 purchase orders being drafted in Washington and sent to Mexico, and (3) Steel
14 Tech Mexico’s sending invoices to Washington.⁵ However, these so-called

16 ⁵ Steel Tech Mexico also has a website displaying its capabilities in producing
17 steel products, but Key Tronic does not present this as a contact to be considered
18 for personal jurisdiction. *See* ECF No. 105 at 14-18; www.steeltechnologies.com.
19 While the existence of a website can be a relevant contact for purposes of
20 jurisdiction, because the website at issue is merely passive and informational—as

1 “contacts” with Washington resulted from Key Tronic’s choices and conduct—
2 namely, administering the sales and billing of Key Tronic Mexico in
3 Washington—rather than a deliberate choice on the part of Steel Tech Mexico.
4 *Burger King*, 471 U.S. at 475 (defendant must “deliberately” engage in conduct).
5 As a result, any contacts between Steel Tech Mexico and the state of Washington
6 were merely “random, fortuitous, [and] attenuated” and arose only because of Key
7 Tronic’s “unilateral activity” in choosing to administer the billing and sales from
8 Washington, rather than Mexico, where the product is delivered. *Burger King*, 471
9 U.S. at 475 (internal citations and quotation marks omitted). Moreover, ordinarily
10 “use of the mails, telephone, or other international communications simply do not
11
12

13 compared to interactive—this potential “contact” carries little, if any, weight, as
14 the website is not “aimed” at Washington. *See Pebble Beach*, 453 F.3d at 1156.
15 After all, the website does not directly sell any products, although potential
16 customers can submit a request for a quote for products. *Id.* Moreover, there is no
17 allegation that the dispute has anything to do with the website, so this is not
18 relevant for purposes of specific personal jurisdiction. *Ranza*, 793 F.3d at 1068
19 (the case must “arise[] out of or relate[] to the defendant’s contacts with the
20 forum.”).

1 qualify as purposeful activity invoking the benefits and protection of the forum
2 state.” *Roth*, 942 F.2d at 622 (brackets and citation omitted).

3 Finally, Key Tronic points to the terms of the purchase orders—specifically
4 the requirement that Steel Tech Mexico must indemnify the “buyer.” ECF No. 105
5 at 17. Although Key Tronic takes the next step and claims Steel Tech Mexico
6 “agreed to indemnify a Washington corporation,” this is not necessarily the case.
7 The “buyer” on the purchase order is listed as “Barbara S. Kowalski.”
8 Presumably, Ms. Kowalski is acting in her representative capacity for Key Tronic,
9 but it is unclear whether she is acting on behalf of the parent or subsidiary
10 company. Either way, this supposed “contact” is not a result of any intended act
11 on Steel Tech Mexico’s part, and this contact with Washington is merely incidental
12 to the overall relationship, at best. After all, the initial interest between the parties
13 revolved around the purchase of a manufacturing plant in Mexico, and only later
14 did Key Tronic send a purchase order in which it chose who to designate as the
15 buyer.

16 These “contacts” are similar to that in *Picot* to the extent both “grew
17 incidentally out of broader efforts” to perform under the respective agreements.
18 780 F.3d at 1213. However, the “contacts” alleged here do not even rise to the
19 level found in *Picot*, as Steel Tech Mexico’s travel to Mexico is not a “contact” to
20 be considered, in contrast to *Picot*, and all performance was undertaken in Mexico.

1 *Id.*; see also *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 816 (9th Cir. 1988)
2 (finding no purposeful availment, despite the contract being signed in the forum
3 state, because (1) the contract was negotiated—i.e. the substance of the
4 relationship was formed—outside the forum state, (2) the contract made no
5 reference to the forum state, (3) no agents of the defendant performed or executed
6 any portion of the contract in the forum state, and (4) the defendants visit to the
7 forum state was only a result of plaintiff’s invitation). On the other hand, the facts
8 presented are distinct from *Roth* in that most of the performance—if not all—takes
9 place in Mexico rather than Washington. 942 F.2d at 622 (“the *future*
10 *consequences*” of the contract heavily impacted the forum state where “most of the
11 work . . . would have been performed.”).

12 Importantly, Mexico was the gravitas of nearly every aspect of Steel Tech
13 Mexico’s involvement with Key Tronic. Steel Tech Mexico and Key Tronic first
14 became acquainted with each other as a result of Key Tronic purchasing a
15 manufacturing facility located in Mexico from a company whom Steel Tech
16 Mexico had previous business relations. ECF No 105 at 5. Before any purchase
17 orders were filled, Key Tronic inspected Steel Tech Mexico’s facility located in
18 Mexico. ECF No. 105 at 5. Further, numerous meetings between the companies
19 were held in Mexico (over forty, although some are not relevant because they took
20 place after the dispute arose), and the only two visits to Washington by Steel Tech

1 Mexico occurred after the present dispute arose, and is thus not appropriate for
2 consideration. *Steel*, 813 F.2d at 1549; ECF Nos. 90 at 7, 105 at 8. Moreover, all
3 purchase orders were filled by Steel Tech Mexico delivering the product to Key
4 Tronic Mexico’s facility in Juarez. *See, e.g.*, ECF No. 91-3. As such, at no point
5 did Steel Tech Mexico deliver any product to Key Tronic in Washington. ECF No.
6 118 at 11. Finally, Steel Tech Mexico’s alleged breach occurred entirely in
7 Mexico, where it allegedly failed to produce the relevant products to Key Tronic’s
8 standards. *Id.* As a result, the future consequences of the contract were entirely in
9 Mexico—i.e. the “real object” of the agreement was production and delivery of
10 products in Mexico. *Burger King*, 471 U.S. at 478. Under these facts, the contract
11 does not have “a *substantial* connection with that State.” *Id.* at 479 (emphasis
12 original) (citing *Mcgee v. Int’l Life Ins. Co.*, 355 U.S. 220, 223 (1957)).

13 The reality of the relationship shows Steel Tech Mexico wanted to continue
14 the business it had with Sabre before Key Tronic purchased the Sabre
15 manufacturing facility. This facility was in Mexico. Steel Tech Mexico did not
16 reach out to Key Tronic before it bought the Mexico facility. Steel Tech Mexico’s
17 connections to Washington are tenuous at best, as all communications to which
18 Key Tronic points that relate to Washington were administrative in nature, whereas
19 the initial interaction, inspection, performance, delivery, and alleged breach all
20 arose in Mexico.

1 Key Tronic’s position would allow a company to delegate its administrative
2 functions to a subsidiary or parent located in a state of its choice and thereby
3 manufacture personal jurisdiction over its business parties. This is akin to creating
4 personal jurisdiction by looking to the Plaintiff’s activities, and would mistakenly
5 allow the “plaintiff’s contacts with the defendant and forum to drive the
6 jurisdictional analysis.” *Walden*, 134 S.Ct. at 1125; *Picot*, 780 F.3d at 1213. This
7 is the exact concern warned of in *Roth*:

8 When a [business from one state] seeks out purchasers in other states . . . and
9 deals with them by out-of-state agents or by interstate mail and telephone,
10 [that business] is not entitled to force the customer to come to [its home
11 state] to defend an action on the contract.

11 *Roth*, 942 F.2d at 621–22 (citations and original brackets omitted).

12 In sum, Steel Tech Mexico has not purposefully availed itself of the laws
13 and protections of the State of Washington, as Steel Tech Mexico’s conduct was
14 not directed toward Washington and the only contacts with Washington was a
15 result of Key Tronic’s choice to delegate the administrative functions to its office
16 in Washington. Steel Tech Mexico’s connection with Washington, at most, was
17 merely incidental to its interest in producing and delivering steel in Mexico. The
18 remaining issues regarding jurisdiction are moot, as Key Tronic has failed to
19 establish the first prong required for personal jurisdiction.

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1 **B. Jurisdictional Discovery**

2 Plaintiff Key Tronic requests, in the alternative to denying the motion to
3 dismiss, the opportunity to perform jurisdictional discovery concerning Steel Tech
4 Mexico’s contacts with Washington State. ECF No. 105 at 29.

5 Jurisdictional discovery is not explicitly discussed in the Federal Rules of
6 Civil Procedure, but is rather a judicial creation based on the broad principles of
7 discovery and the courts’ inherent power to establish their own jurisdiction. S.I.
8 Strong, *Jurisdictional Discovery in United States Federal Courts*, 67 Wash. & Lee
9 L. Rev. 489, 497 (2010) (citing *Gen. Indus. Co. v. Birmingham Sound*
10 *Reproducers, Ltd.*, 26 F.R.D. 559, 561 (E.D.N.Y. 1961) (announcing that the court
11 has jurisdiction to determine its own jurisdiction)). “If the pleadings and other
12 submitted materials raise issues of credibility or disputed questions of fact with
13 regard to jurisdiction, the district court has the discretion to take evidence at a
14 preliminary hearing in order to resolve the contested issues.” *Data Disc*, 557 F.2d
15 at 1285 (citing 5 C. Wright & A. Miller, *Federal Practice and Procedure* s 1373, at
16 pp. 714-15 (1969); and 4 J. Moore, *Federal Practice* s 26.56(6), at p. 26-190
17 (1976)). In other words, “[d]iscovery may be appropriately granted where
18 pertinent facts bearing on the question of jurisdiction are controverted or where a
19 more satisfactory showing of the facts is necessary.” *Boschetto v. Hansing*, 539
20 F.3d 1011, 1020 (9th Cir. 2008) (citing *Data Disc*, 557 F.2d at 1285 n.1 (citing

1 *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406, 430 n.24 (9th Cir.
2 1977))). “Because jurisdictional discovery takes place prior to a determination that
3 the court actually has jurisdiction over this dispute and this defendant, it is
4 particularly important to avoid imposing undue burdens on a party who may not
5 even be subject to the court’s power.” 67 Wash. & Lee L. Rev. at 492.

6 A grant or denial of jurisdictional discovery is reviewed for abuse of
7 discretion. *Harris Rutsky*, 328 F.3d at 1135. The district court’s refusal to provide
8 such discovery, “will not be reversed except upon the clearest showing that denial
9 of discovery results in actual and substantial prejudice to the complaining litigant.”
10 *Boschetto*, 539 F.3d at 1020. Courts do not abuse their discretion in denying a
11 request for jurisdictional discovery where neither the complaint nor any supporting
12 affidavit allege (material) facts that need additional support requiring discovery.
13 *See id.*; *see also Butcher’s Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535,
14 540 (9th Cir. 1986) (holding that district court did not abuse its discretion by
15 refusing jurisdictional discovery where the plaintiffs “state only that they ‘believe’
16 that discovery will enable them to demonstrate sufficient California business
17 contacts to establish the court’s personal jurisdiction”). On the other hand,
18 denying a request for jurisdictional discovery is an abuse of discretion where
19 discovery on an issue raised in the pleadings “might well demonstrate facts
20 sufficient to constitute a basis for jurisdiction.” *See Harris Rutsky.*, 328 F.3d at

1 1135 (abuse of discretion to deny request for discovery to determine whether the
2 alter ego or agency test are met).

3 Here, the facts as discussed are taken in the light most favorable to Key
4 Tronic, and even under this lens, the issues underlying the Motion to Dismiss are
5 disposed of completely, without any need of additional discovery. Moreover, it is
6 not clear how additional discovery on any factual issue raised could have any
7 bearing on the outcome of the Motion to Dismiss (ECF No. 90). Indeed, Key
8 Tronic should have access to any information it may want to seek, as the only
9 information relevant for specific personal jurisdiction would necessarily relate to
10 the underlying dispute at issue. While discovery may lead to evidence Steel Tech
11 Mexico has other contacts with Washington, these contacts would not be relevant
12 for specific personal jurisdiction in the matter before the Court. Key Tronic has
13 not attempted to state what information could be gained from discovery, and the
14 Court does not see any benefit in allowing such, as the facts are sufficiently clear-
15 cut to decide the issue of personal jurisdiction.

16 It is not the case that the “record is simply not sufficient[.]” to determine any
17 material issue underlying specific personal jurisdiction over Steel Tech Mexico.
18 *Harris Rutsky*, 328 F.3d at 1135. Key Tronic’s allegations are relatively
19 numerous, supported by adequate evidence and, in the main, are not controverted
20 by Steel Tech Mexico. Rather, Steel Tech Mexico mostly accepts Key Tronic’s

1 allegations as true, but disagrees as to the legal conclusion. In this situation,
2 allowing jurisdictional discovery is not proper.

3 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 4 1. Defendant's Motion to Dismiss (ECF No. 90) is **GRANTED**.
- 5 2. Plaintiff's Request for Jurisdictional Discovery (ECF No. 108) is
6 **DENIED**.

7 The District Court Executive is directed to enter this Order and furnish
8 copies to counsel.

9 **DATED** December 5, 2016.



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Thomas O. Rice
THOMAS O. RICE
Chief United States District Judge