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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

O.T., through her guardian ad litem,

Plaintiff,

v.

BABYBJÖRN AB, BABYBJÖRN
HOLDING AB, and LILLEMOR
DESIGN AB,

Defendants.

Case No. 2:20-cv-04517-MCS-KS

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS [37]**

Defendants BabyBjörn AB (“BB AB”), BabyBjörn Holding AB (“BB Holding”) and Lillemor Design AB (“Lillemor”) (collectively “BabyBjörn Defendants”) move to dismiss Plaintiff’s First Amended Complaint (“FAC”) for lack of personal jurisdiction. Mot., ECF No. 37. Plaintiff filed an Opposition and BabyBjörn Defendants filed a Reply. Opp’n, ECF No. 39; Reply, ECF No. 40. For the following reasons, the Court **GRANTS in part** and **DENIES in part** the Motion.

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1 **I. BACKGROUND**

2 Defendants BB AB, BB Holding, and Lillemor are Swedish corporations. FAC
3 ¶¶ 5–7, ECF No. 34. BB Holding dissolved and merged with Lillemor. Decl. of Josefin
4 Kleremo ISO Mot. (“Kleremo Decl.”), ¶ 3, ECF No. 37-1. BB AB and Lillemor
5 maintain their principal places of business in Solna, Sweden. *Id.* at ¶¶ 2, 4. Plaintiff
6 alleges the following against the BabyBjörn Defendants. BabyBjörn Defendants created
7 and sold a baby carrier that is the relevant product in this litigation. FAC ¶ 19.
8 BabyBjörn maintains a website that can use a California resident’s location to
9 recommend a store that sells the baby carrier. *Id.* at ¶ 60. There are “at least six” stores
10 “within approximately 20 miles of” Plaintiff’s current residence. *Id.* Before BabyBjörn
11 discontinued the baby carriers, customers could also buy the baby carrier directly from
12 the website. *Id.* at 59. Various movies and television shows, many of which were filmed
13 in California, featured the baby carrier. Decl. of Leland H. Belew ISO Opp’n (“Belew
14 Decl.”) ¶¶ 2, 3, ECF No. 39-1. Further, a California company helped market the baby
15 carrier and ensure various television shows utilized the baby carrier. *Id.* at ¶ 1, Ex. 1,
16 ECF No. 39-2 .

17 According to BabyBjörn Defendants, BB AB sold baby carriers to a Cleveland,
18 Ohio Distributor. Kleremo Decl. ¶ 10. BB AB is not licensed to do business in
19 California and has never directly sold to any US consumers. *Id.* at ¶ 11. BB AB does
20 not own, lease, or rent any real property in California; does not have any offices or
21 employees in California; does not have any California bank accounts or assets; and does
22 not pay California state taxes. *Id.* at ¶ 13.

23 In 2012, Plaintiff’s guardian (“Guardian Natalie”) “and her husband signed up
24 for a gift registry” at a Babies “R” Us store in Torrance, California and added a baby
25 carrier to the registry. FAC ¶ 20. Guardian Natalie carried Plaintiff in the baby carrier
26 and the baby carrier “caused Plaintiff O.T. to develop hip dysplasia.” *Id.* at ¶ 24. After
27 surgeries, hospitalizations, a body cast, and other procedures, Plaintiff brought this
28 lawsuit against the BabyBjörn Defendants. *Id.* at ¶¶ 24–27.

1 II. LEGAL STANDARD

2 A defendant can move to dismiss for lack of personal jurisdiction under Rule
3 12(b)(2). Fed. R. Civ. P. 12(b)(2). The party asserting the existence of jurisdiction bears
4 the burden of establishing it. *Mattel, Inc. v. Greiner & Hausser GmbH*, 354 F.3d 857,
5 862 (9th Cir. 2003). If the court does not require an evidentiary hearing, a plaintiff “need
6 only make a prima facie showing of the jurisdictional facts.” *Boschetto v. Hansing*, 539
7 F.3d 1011, 1015 (9th Cir. 2008) (internal quotation marks omitted).

8 Uncontroverted allegations in the complaint must be taken as true, and
9 “[c]onflicts between parties over statements contained in affidavits must be resolved in
10 the plaintiff’s favor.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800
11 (9th Cir. 2004). Depending on the nature and extent of a defendant’s contacts, if any,
12 with a forum state, the appropriate exercise of personal jurisdiction may be either
13 general—that is, the party is subject to any claims in that forum—or specific—that is,
14 the party is subject only to claims arising out of its forum-related activities. *See*
15 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011).

16 To establish personal jurisdiction over a defendant, a plaintiff must show both
17 that the long-arm statute of the forum state confers personal jurisdiction over an out-of-
18 state defendant, and that the exercise of jurisdiction is consistent with federal due
19 process requirements. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154–55 (9th Cir.
20 2006). California’s long-arm statute is coextensive with the scope of what is permitted
21 by due process. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d
22 1122, 1129 (9th Cir. 2003) (citing Cal. Civ. Proc. Code § 410.10). Constitutional due
23 process requires that jurisdiction be exercised over a nonresident party only if that party
24 has “minimum contacts” with the forum, such that the exercise of jurisdiction “does not
25 offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v.*
26 *Washington*, 326 U.S. 310, 316 (1945) (internal quotation marks omitted); *accord*
27 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985).

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1 III. DISCUSSION

2 A. Personal Jurisdiction

3 Plaintiff concedes that the Court does not have general jurisdiction over
4 BabyBjörn Defendants, Opp’n 2 n.2, and instead alleges the Court has specific personal
5 jurisdiction over them. The Ninth Circuit employs a three-prong test for specific
6 personal jurisdiction:

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

15 *Schwarzenegger*, 374 F.3d at 802 (citation omitted). “If any of the three
16 requirements is not satisfied, jurisdiction in the forum would deprive the defendant of
17 due process of law.” *Pebble Beach*, 453 F.3d at 1155 (internal quotation marks omitted).
18 The plaintiff bears the burden of satisfying the first two prongs of the test. *Id.* The first
19 prong may be satisfied with facts sufficient to show either “purposeful availment or
20 purposeful direction, which, though often clustered together under a shared umbrella,
21 ‘are, in fact, two distinct concepts.’” *Brayton Purcell LLP v. Recordon & Recordon*,
22 606 F.3d 1124, 1128 (9th Cir. 2010) (quoting *Pebble Beach*, 453 F.3d at 1155).

23 Courts in the Ninth Circuit “generally apply the purposeful availment test when
24 the underlying claims arise from a contract, and the purposeful direction test when they
25 arise from alleged tortious conduct.” *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1142
26 (9th Cir. 2017). Courts also apply the purposeful availment test to products liability
27 cases. *Macias v. LG Chem*, No. SA CV 20-02416-DOC-(ADSx), 2021 WL 2953162, at
28 *3 (C.D. Cal. May 7, 2021) (“Because plaintiff’s action is based upon
strict products liability, negligent products liability, and negligence . . . this Court
applies the purposeful availment framework.”) (internal quotation marks omitted);

1 *accord Nolte v. CEC Ent. Inc.*, No. CV 19-2463 PA (JPRX), 2019 WL 6972685, at *3
2 (C.D. Cal. Sept. 13, 2019).

3 The Parties apply the purposeful availment test. Mot. 11–14; Opp’n 4–16. “[T]he
4 ‘purposeful availment’ requirement is satisfied if the defendant has taken deliberate
5 action within the forum state or if he has created continuing obligations to forum
6 residents.” *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). Evaluating
7 purposeful availment “requires a qualitative evaluation of the defendant’s contact with
8 the forum state.” *Harris Rutsky & Co.*, 328 F.3d at 1130 (internal quotation marks
9 omitted).

10 Plaintiff relies in part on the following as evidence of purposeful availment:
11 BabyBjörn Defendants advertised the baby carrier in California; BabyBjörn Defendants
12 hired a marketing firm to help place the baby carrier in movies and television shows;
13 and BabyBjörn Defendants maintain a website customers can use to order the baby
14 carrier or locate a California retail store that sells the baby carrier. Opp’n 8–15.

15 1. Personal Jurisdiction Over Lillemor and BabyBjörn Holding AB

16 As an initial matter, the Court addresses whether it has jurisdiction over all three
17 BabyBjörn Defendants. Mot. 16 (arguing that BB Holding did not exist during the time
18 of the incident and has now merged with Lillemor and Lillemor is a “holding company
19 that has no involvement in BB AB’s daily operations”); Reply 4, 11 (“Plaintiff’s
20 opposition [] fails to specify which” entity “she is referring to in any given argument”);
21 *but see* Opp’n 1 n.1. Plaintiff alleges the following about the three defendants. The
22 BabyBjörn Defendants are alter egos of each other and exert control over each other.
23 FAC ¶ 9. Each defendant “expressly or impliedly agreed to work with and assist each
24 other” with all aspects of creating and selling the baby carrier. *Id.* at ¶ 10. Each
25 defendant aided in breaching the duty to Plaintiff and knew of the breach. *Id.* at ¶ 12.
26 Each defendant was either “engaged in . . . or [] a successor in interest to” entities
27 involved in creating, marketing, and selling the baby carrier. *Id.* at ¶ 14.

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1 The BabyBjörn Defendants disagree. The BabyBjörn Defendants argue that
2 Lillemor “has no involvement in the daily business activities of BB AB.” Kleremo Decl.
3 ¶ 7. They also state that BB Holding was first registered on March 26, 2018 and
4 dissolved on June 29, 2020. *Id.* at ¶ 3. According to the BabyBjörn Defendants, “the
5 only operative entity is BB AB.” *Id.* at ¶ 6.

6 Plaintiff has not alleged facts sufficient to establish personal jurisdiction over all
7 three BabyBjörn Defendants. Plaintiff’s FAC only contains conclusory allegations
8 about the relationship between the Parties. To the extent Plaintiff intends to argue the
9 entities are alter egos of each other, Plaintiff has to allege sufficient facts. *Sarafian v.*
10 *Wright Med. Tech., Inc.*, No. 2:15-cv-09397-CAS(KSx), 2016 WL 1305087, at *5 (C.D.
11 Cal. Apr. 1, 2016) (“conclusory statements” about alter ego status are insufficient). The
12 Court **DISMISSES** Lillemor and BB Holding.¹

13 2. Personal Jurisdiction Over BB AB

14 a. Purposeful Availment

15 The Court next addresses whether it has personal jurisdiction over BB AB.
16 Plaintiff relies on a “‘stream of commerce plus’ theory identified in *Asahi Metal Indus.*
17 *Co. v. Superior Court of California, Solano Cnty.*, 480 U.S. 102, 107 S.Ct. 1026, 94
18 L.Ed.2d 92 (1987).” *Macias*, 2021 WL 2953162, at *3; Opp’n 4–7. The *Asahi Metal*
19 *Indus. Co.* Court stated that while “[t]he placement of a product into the stream of
20 commerce, without more, is not an act of the defendant purposefully directed toward
21 the forum State,” it is possible that “[a]dditional conduct of the defendant may indicate
22 an intent or purpose to serve the market in the forum State.” *Asahi Metal Indus. Co.*,

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24 ¹ It is unclear if Plaintiff requests jurisdictional discovery on this issue. Plaintiff
25 requests jurisdictional discovery “to determine the precise scope of Defendants’
26 contacts with California.” See Opp’n 12 n.6. Plaintiff’s grouping of all three
27 defendants together makes it difficult to determine whether Plaintiff seeks discovery
28 on the extent of each defendant’s contact with California or whether Plaintiff seeks
discovery on issues such as the amount of retail stores selling the baby carrier and the
volume of sales. Given the lack of clarity, the Court **DENIES** Plaintiff’s request for
jurisdictional discovery.

1 480 U.S. at 112. “Additional conduct” includes “designing the product for the market
2 in the forum State, advertising in the forum State, establishing channels for providing
3 regular advice to customers in the forum State, or marketing the product through a
4 distributor who has agreed to serve as the sales agent in the forum State.” *Id.*

5 Here, BB AB maintained a website that allowed potential California customers
6 to either purchase the baby carrier from the website or identify California stores that
7 sold the baby carrier. Belew Decl. ¶¶ 4, 11, 12, 13, Exs. 3, 12, 13, ECF Nos. 39-4, 39-
8 12, 39-13, 39-14; *see Advanced Skin & Hair, Inc. v. Bancroft*, 858 F. Supp. 2d 1084,
9 1090 (C.D. Cal. 2012) (finding that a defendant “purposefully availed herself of the
10 benefits of doing business in California” by selling the products in dispute to California
11 customers through a “commercial website”). BB AB worked with a California
12 marketing agency to promote its baby carriers through product placements. Belew Decl.
13 ¶ 2, Ex. 1, ECF No. 39-2. Various movies and television shows made in California
14 featured the baby carriers. Belew Decl. ¶ 2. Guardian Natalie recalls seeing
15 advertisements for the baby carriers at a California Babies “R” Us store. Decl. of Natalie
16 Del Real-Trujillo ISO Opp’n (“Del Real-Trujillo Decl.”) ¶ 4, ECF No. 39-19; *see Asahi*
17 *Metal Indus. Co.*, 480 U.S. at 112 (“advertising in the forum State” can be considered
18 “[a]dditional conduct [that] may indicate an intent or purpose to serve the market in the
19 forum State”). BB AB disputes Plaintiff’s statements, but at this stage, all conflicts in
20 the Parties’ affidavits must be construed in Plaintiff’s favor. *Schwarzenegger*, 374 F.3d
21 at 800 (“Conflicts between parties over statements contained in affidavits must be
22 resolved in the plaintiff’s favor.”).

23 In light of all of these facts, BB AB has purposefully availed itself of the
24 privileges of conducting activities in California. *Macias*, 2021 WL 2953162, at *3
25 (“Whether the ‘additional conduct’ alleged is sufficient to constitute purposeful
26 availment is a case-by-case analysis particular to each Defendant”).²

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28 ² The Court declines to address Plaintiff’s other arguments as they are unnecessary for

1 b. Arising Under Defendant’s Contacts With the Forum

2 In order for a state court to exercise specific jurisdiction, ““the *suit*’ must ‘aris[e]
3 out of or relat[e] to the defendant's contacts with the *forum*.”” *Bristol-Myers Squibb Co.*
4 *v. Superior Ct. of California, San Francisco Cnty.*, 137 S. Ct. 1773, 1780 (2017)
5 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 118, (2014)) (alterations in original).³

6 Plaintiff has satisfied this prong. After viewing advertisements in California, *see*
7 Del Real-Trujillo Decl. ¶ 3, Guardian Natalie added the baby carrier to her Babies “R”
8 Us gift registry in California and a California friend of family member purchased the
9 baby carrier for her. FAC ¶¶ 20, 21. Plaintiff now brings claims related to the use of this
10 baby carrier. *Id.* at ¶¶ 66–107. Plaintiff has established that her claims arise under BB
11 AB’s contacts with the forum.

12 c. Fair Play and Substantial Justice

13 Because Plaintiff has made a prima facie case of personal jurisdiction, the Court
14 now considers whether exercising personal jurisdiction over BB AB comports with “fair
15 play and substantial justice.” *Schwarzenegger*, 374 F.3d at 802 (citation omitted). “The
16 Supreme Court has expounded several factors for a district court to consider: (1) the
17 burden on the defendant, (2) the forum state's interests, (3) the plaintiff's interest in
18 obtaining relief, (4) the interstate judicial system's interest in obtaining the most
19 efficient resolution of controversies, and (5) the several states' shared interest in

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23 this analysis.

24 ³ Though the Ninth Circuit has traditionally used a “but for” test whereby a plaintiff
25 has to show that “he would not have suffered an injury ‘but for’ [the defendant’s]
26 forum-related conduct,” *Menken v. Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007), the
27 Supreme Court appears to have called this test into question. *Ford Motor Co. v.*
28 *Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1033, 209 L. Ed. 2d 225 (2021)
(Alito, J. concurring) (“Ford, however, asks us to adopt an unprecedented rule under
which a defendant's contacts with the forum State must be proven to have been a but-
for cause of the tort plaintiff’s injury. The Court properly rejects that argument.”); *see*
also Clarke v. Dutton Harris & Co., PLLC, No. 2:20-cv-00160-JAD-BNW, 2021 WL
1225881, at *4 (D. Nev. Mar. 31, 2021) (stating *Ford Motor Co. v. Montana Eighth*
Jud. Dist. “appears to have recently done away” with the Ninth Circuit’s approach).

1 furthering fundamental substantive social policies.” *LegalZoom.com, Inc. v. Macey*
2 *Bankr. L., P.C.*, No. 2:13-cv-8620-ODW (MRWx), 2014 WL 808854, at *3 (C.D. Cal.
3 Feb. 28, 2014) (citing *World–Wide Volkswagen Corp. v. Woodsen*, 444 U.S. 286, 292
4 (1980)). BB AB carries the burden of making “a ‘compelling case’ that the exercise of
5 jurisdiction would not be reasonable.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647
6 F.3d 1218, 1228 (9th Cir. 2011) (quoting *Burger King Corp.*, 471 U.S. at 476–78). The
7 Court “does not lightly consider exercising jurisdiction over a foreign corporation.”
8 *Falco v. Nissan N. Am. Inc.*, 96 F. Supp. 3d 1053, 1060–61 (C.D. Cal. Apr. 6, 2015).

9 Here, “there is a strong interest in adjudicating the claims in California” because
10 Plaintiff resides in California. FAC ¶ 4; *Purely Pomegranate, Inc. v. Fallon Trading*
11 *Co.*, No. SACV 15-0840-DOC (JCGx), 2015 WL 13283452, at *6 (C.D. Cal. Nov. 24,
12 2015). Plaintiff asserts California law claims against BB AB. FAC ¶¶ 66–107. BB AB
13 merely provides largely conclusory allegations that do not lay out “a ‘compelling case’”
14 that exercising jurisdiction would be unreasonable. *Mavrix Photo, Inc.*, 647 F.3d at
15 1228 (quoting *Burger King Corp.*, 471 U.S. at 476–78). The Court finds that exercising
16 personal jurisdiction over BB AB comports with “fair play and substantial justice.”
17 *Schwarzenegger*, 374 F.3d at 802 (citation omitted).

18 **IV. LEAVE TO AMEND**

19 As a general rule, leave to amend a complaint that has been dismissed should be
20 freely granted unless it is clear the complaint could not be saved by any amendment.
21 Fed. R. Civ. P. 15(a); *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025,
22 1031 (9th Cir. 2008). Here, the Court grants Plaintiff leave to amend the First Amended
23 Complaint.

24 **V. CONCLUSION**

25 The Court **GRANTS in part** and **DENIES in part** BabyBjörn Defendants’
26 Motion. The Court dismisses Lillemor and BabyBjörn Holding AB without prejudice.
27 Plaintiff may file an amended complaint no later than 14 days from the date of this
28 Order, if it can do so consistent with Federal Rule of Civil Procedure 11(b) and this

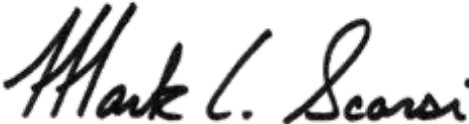
1 Order. Failure to file a timely amended complaint will waive the right to do so. Leave
2 to add new defendants or claims must be sought by a separate, properly noticed motion.

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4 **IT IS SO ORDERED.**

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6 Dated: September 8, 2021



MARK C. SCARSI
UNITED STATES DISTRICT JUDGE

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