

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

**BACKJOY ORTHOTICS, LLC,**

**Plaintiff,**

v.

**Case No: 6:14-cv-249-Orl-41TBS**

**FORVIC INTERNATIONAL INC.,  
WOOK YOON, JOHN DOES, JANE  
DOES and ABC CORPORATIONS,**

**Defendants.**

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**ORDER**

Defendants Forvic International, Inc. (“Forvic”) and Wook Yoon have filed a Motion to Dismiss (Doc. 50), wherein they seek dismissal for lack of personal jurisdiction and for improper service. Plaintiff Backjoy Orthotics, LLC (“Backjoy”) responded, (*see* Doc. 52). A hearing was held on February 25, 2016. As set forth below, the Motion to Dismiss will be denied.

**I. FACTUAL BACKGROUND**

In 1984, Preston Willingham invented an orthotic seat, “which realigns various parts of the body” (the “BJ1 Device”). (Compl., Doc. 1, ¶¶ 3, 21). Since then, Plaintiff Backjoy and its predecessors, as assignees of rights in the BJ1 Device, have continued to market and sell the now-patented BJ1 Device, as well as other “back support and posture products.” (*Id.* ¶¶ 3, 5, 20–28).

In 2006, Mr. Willingham, on behalf of Backjoy, contacted Defendant Yoon, who is the Chief Executive Officer of Defendant Forvic, “seeking information regarding [Forvic’s] manufacturing capabilities.” (*Id.* ¶¶ 18, 30). After corresponding via e-mail, Mr. Yoon requested that Mr. Willingham send samples of the BJ1 Device. (*Id.* ¶ 31). Prior to doing so, Mr. Willingham e-mailed Mr. Yoon a copy of a Confidential Disclosure and Non-Compete Agreement (the

“NDA”), which, among other things, provides that Forvic “agrees to receive all proprietary and confidential information in confidence and to hold the same in confidence.” (*Id.* ¶ 31; NDA, Ex. E to Compl., Doc. 1-6, at 3–4).<sup>1</sup> The NDA further provides that Mr. Yoon “agrees not to use for his own benefit or for the benefit of others . . . any proprietary or confidential information about [Backjoy’s] [i]nvention, business, including . . . [Backjoy’s] trade secrets” and that Forvic “agrees not to compete with [Backjoy] by making or marketing a device substantially similar to the” BJ1 Device. (NDA at 1).

In response to receipt of the NDA, Mr. Yoon responded that “we read your attached agreement” and that “[b]asically, we agree [with] what you mean in this agreement.” (Jan. 3, 2007 E-mail, Ex. F to Compl., Doc. 1-7). Mr. Yoon further stated that “[o]f course, we will keep all information[] confiden[t]ial[] . . . and will train all people who are related with the development of your goods to treat all information[] for your goods confiden[t]ially.”<sup>2</sup> (*Id.*). Mr. Willingham responded to Mr. Yoon by stating that “[y]our comments made me fe[e]l more confident about proceeding.” (Jan. 4, 2007 E-mail, Ex. G to Compl., Doc. 1-8). Thereafter, Mr. Willingham sent samples of the BJ1 Device to Forvic and “start[ed] a manufacturing relationship with Defendants.” (Compl. ¶ 33). During the ensuing business relationship, Backjoy frequently provided Forvic with “confidential and proprietary materials,” including “drawings, photographs, molds, prototypes, and how-to instruction manuals.” (*Id.* ¶ 36).

Sometime thereafter, Backjoy developed a new device, which is described as “an orthotic seat with lumbar support that included adjustable height capabilities” (the “BJ2 Device”). (*Id.*

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<sup>1</sup> Where, as here, an attachment contains multiple documents, pinpoint citations will refer to the electronic page numbers.

<sup>2</sup> According to Mr. Willingham, “[t]he original executed version of the [NDA] exists[,] but” he has been “unable to find it despite a diligent search.” (Willingham Aff., Doc. 9-15, ¶ 12).

¶ 37). As a result, on July 16, 2007, Mr. Willingham e-mailed Defendants regarding his plans to further develop and produce the BJ2 Device, the purpose of which was to have Forvic also manufacture that device. (*Id.*). On December 11, 2008, Mr. Willingham showed prototypes of the BJ2 Device to Mr. Yoon. (*Id.*). After initially indicating that they would not be able to manufacture the new device, Forvic submitted different prototypes to Backjoy, which were purportedly rejected based on “sub-standard construction.” (*Id.* ¶ 38). As a result, sometime in 2010, Backjoy decided to employ a different company to manufacture the BJ2 Device; all the while, Forvic continued to manufacture the BJ1 Device for Backjoy. (*Id.* ¶¶ 39–40).

In 2013, Backjoy’s “authorized Korean distributor” purportedly discovered that Forvic had produced a number of products that were substantially similar to Backjoy’s products, including both the BJ1 and BJ2 Devices, and that Forvic was marketing those products at a trade show in South Korea. (*Id.* ¶ 50). Particularly, either Forvic, or a related entity, markets and sells various devices under its “S-Back” product line (the “S-Back Devices”), which “incorporate[] the design and know-how of the patented BJ1 Device[,] as well as the extremely confidential plans . . . for the BJ2 Device.” (*Id.* ¶ 41). According to Backjoy, Defendants have obtained foreign patents for the S-Back Devices, (*id.* ¶ 42), and Forvic has incorporated the “design, configuration[,] and distinctive features of [Backjoy’s] copyrighted” photographs, drawings, catalogues, and website into Forvic’s advertising and marketing materials, (*id.* ¶ 46).

Thereafter, Mr. Willingham arranged a November 23, 2013 meeting with Mr. Yoon. (*Id.* ¶ 52). During the meeting, Backjoy demanded “that Defendants cease any manufacturing and sale of the S-Back Device or any other products competing with Plaintiff’s [Backjoy] products.” (*Id.*). According to Backjoy, Defendants denied infringement and indicated that they would continue to

produce the S-Back Devices. (*Id.*). As a result, Backjoy terminated its business relationship with Defendants. (*Id.* ¶ 53).

## II. PROCEDURAL BACKGROUND

Backjoy filed the Complaint on February 13, 2014, which advances ten Counts—breach of contract; unfair competition under Section 43 of the Lanham Act, 15 U.S.C. § 1125(a); copyright infringement under the Copyright Act, 17 U.S.C. § 101 *et seq.*; patent infringement; unfair competition under Florida common law; breach of implied covenant of good faith and fair dealing; unjust enrichment; violation the Florida Uniform Trade Secrets Act (“FUTSA”), Fla. Stat. §§ 688.001–688.009; unfair competition under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.201–501.23; and fraud. (Compl. ¶¶ 64–124).

### A. TRO

On April 24, 2014, Backjoy moved for a temporary restraining order (“TRO”) based on selected claims. The TRO (Doc. 10) was subsequently entered by Judge Antoon, but only as to Backjoy’s FUTSA claim. Moreover, the TRO only enjoined Defendants “who receive actual notice of” the TRO. (*Id.* at 17). In granting the TRO, Judge Antoon specifically held that Backjoy was to “file proof of service with this Court within two days of being notified that personal service has been perfected on Defendants in accordance with the requirements of the Hague Convention.” (*Id.* at 18). Judge Antoon further held that, within two days of filing such notification, Backjoy was to “file its motion for preliminary injunction[] and all papers in support thereof.” (*Id.*). The TRO was to “remain in effect until a hearing on [Backjoy’s] subsequent preliminary injunction application.” (*Id.*).

### B. Initial Service-Related Background

Backjoy attempted to serve Forvic and Mr. Yoon at three different addresses. Backjoy first attempted service at Forvic’s purported address (“Forvic’s last-known address”). (*See* July 7, 2015 Order, Doc. 17, at 3).<sup>3</sup> Backjoy allegedly learned of that address from Forvic’s website, a November 16, 2013 Invoice from Forvic, and a Dun & Bradstreet Company Report. (*Id.*). The attempted service was effected through “the designated central authority in Korea,” on April 16, 17, and 18, 2014. (*Id.*). All three attempts failed. (*Id.*). The purported reason for the first two failures was: “Door locked,” and the reason for the third failure was: “Address unclear.” (*Id.*).

Second, Backjoy attempted service at Mr. Yoon’s purported personal address (“Yoon’s last-known address”). (*Id.* at 3–4). Backjoy allegedly learned of that address from Mr. Yoon’s Korean and U.S. patent applications. (*Id.* at 4). Service was attempted at that address on May 7, 2014. (*Id.*). That attempt failed; the apparent reason was: “Recipient absent.” (*Id.*).

Third, Backjoy twice attempted to serve Forvic and Mr. Yoon at a related entity—Forvic S Back, Ltd. (“Forvic S-Back”). (*Id.*). Those attempts took place on August 22, 2014. (*Id.*). Each attempt failed; the reason was: “Recipient unknown.” (*Id.*). Backjoy allegedly learned of those failures on October 30, 2014. (*Id.*).

Thereafter, in November 2014, Backjoy employed Korean Counsel (“Backjoy’s Korean Counsel”) to “check the public records to uncover any other locations where [Defendants] might be located or reached.” (*Id.*). According to Backjoy, those efforts failed, and Backjoy’s Korean Counsel advised Backjoy “that there are no other methods of service available under Korean law” through which to serve Defendants. (*Id.*).

### **C. Alternative Service**

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<sup>3</sup> This subsection is derived from the July 7, 2015 Order (Doc. 17), and all quotation marks correspond to the documents cited therein.

On March 10, 2015, this Court ordered Backjoy to show cause as to why this case should not be dismissed for lack of prosecution. (*See* Dec. 17, 2015 Order, Doc. 58, at 2).<sup>4</sup> In response, Backjoy moved to serve Defendants by alternative methods. (*Id.*). That motion was granted on July 7, 2015, and Backjoy was ordered to serve Defendants via: (1) six different e-mail addresses; (2) FedEx to Forvic’s last-known address; (3) FedEx to Yoon’s last-known address; (4) FedEx to Forvic S-Back’s address; and (5) FedEx to Defendants’ Korean counsel’s address. (*Id.*). Backjoy was also ordered to file corresponding proof of service. (*Id.*). The documents to be served included the Summons, Complaint, TRO, and the July 7, 2015 Order. (*Id.*).

As to the e-mails, that same day—July 7, 2015—Backjoy served Defendants at the required e-mail addresses. (*Id.*). On July 8, 2015, Defendants’ Korean counsel, who previously represented Defendants in a related patent invalidation proceeding in South Korea, advised that they no longer represented Defendants; however, according to Backjoy, Defendants’ Korean counsel continued to be listed as such in the invalidation proceedings. (*Id.*).

As to mail delivery, on July 8, 2015, Backjoy sent the documents to the required addresses by way of overnight delivery through the Korean postal service. (*Id.*). Delivery to Defendants’ Korean counsel was successful. (*Id.*). Delivery at Forvic’s address failed because “no one was present to accept delivery/business was closed”; delivery at Mr. Yoon’s address failed because “the intended recipient was not present to accept delivery”; delivery at Forvic S-Back failed because the documents “were refused by the intended recipient.” (*Id.*).

Also as to mail delivery, on July 8, 2015, Backjoy sent the documents by FedEx from the United States. (*Id.* at 3). Delivery to Defendants’ Korean counsel was successful. (*Id.*). Delivery

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<sup>4</sup> This subsection, as well as the next two, is derived from the December 17, 2015 Order (Doc. 58), and all quotation marks correspond to the documents cited therein.

was attempted at Forvic's address three times and failed "because the business was closed and/or the recipient was unavailable"; delivery at Mr. Yoon's address failed because it was "refused by Yoon's daughter who advised that Yoon was out of the country"; delivery at Forvic S-Back failed because "the business was closed or recipient was not available." (*Id.*).

In addition to the above, on July 15, 2015, Backjoy hired TeamOne Security Co., Ltd. ("TeamOne"), an investigative agency, to deliver the documents. (*Id.*) Delivery at Forvic's address failed because "the office was closed" and, according to the landlord, was "only occasionally used by Defendants." (*Id.*) TeamOne eventually located and left copies of the required documents in Forvic's mailbox. (*Id.*) Delivery at Mr. Yoon's address failed when TeamOne could not gain access to the premises; however, TeamOne was able to leave copies in Mr. Yoon's mailbox, which were eventually received. (*Id.*)

#### **D. Post-Service Proceedings**

The Court held a July 17, 2015 hearing on whether to convert the TRO into a preliminary injunction. (*Id.*) On July 28, 2015, the Court granted the preliminary injunction, thereby dissolving the TRO. (*Id.*) Specifically, Defendants "are enjoined from, or assisting others in, manufacturing, marketing, distributing, shipping, offering for sale, or selling any products developed through the use of Backjoy's trade secrets; or disclosing Backjoy's proprietary or trade secret information to others, including but not limited to Defendants' manufacturers." (*Id.*) Thereafter, Backjoy failed to obtain a clerk's default. (*Id.*)

#### **E. Receipt by Defendants**

Defendant Yoon admits to "receiv[ing] some packages at his home" "[a]round mid-July" 2015; apparently because he was not there, he purports to have first found the packages in early August. (*Id.* at 4). Thereafter, on August 12, 2015, he took those packages to his Korean counsel,

and counsel recommended that Defendants obtain U.S.-based counsel. (*Id.*). On August 25, 2015, Mr. Yoon revisited his Korean counsel, and on August 26 or 27, 2015, Defendants retained a California-based law firm: Lee, Hong, Degerman, Kang & Waimey. (*Id.*) On September 9, 2015, Defendants retained Florida-based counsel, and on September 10, 2015, Defendants moved for an extension of time to respond to the Complaint, which was granted. (*Id.*).

### III. DISCUSSION

Defendants seek dismissal for lack of personal jurisdiction and for improper service. The following analysis will begin with the latter basis.

#### A. Improper Service

Under Federal Rule of Civil Procedure 12(b)(5), a defendant may move to dismiss based on “insufficient service of process.” Under Federal Rule of Civil Procedure 4(h), if served outside of the United States, a “foreign corporation . . . must be served . . . in any manner prescribed by Rule 4(f) for serving an individual.” Under Rule 4(f)(1), a foreign defendant “may be served . . . by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents” (the “Hague Convention”). Both the United States and South Korea are parties to the Hague Convention. *Status Table*, Hague Conference on Private Int’l Law (Feb. 24, 2016), [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17).

“[C]ompliance with the [Hague] Convention is mandatory in all cases to which it applies,” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988), but it does not apply “where the address of the person to be served with the document is *not known*,” Hague Convention art. 1, Nov. 15, 1965, 20 U.S.T. 361 (emphasis added). While the “case law on this issue of whether or not an address is ‘known’ under Article One of the [Hague] Convention is not extensive,”

*Indagro, S.A. v. Nilva*, No. 2:07-cv-3742-MCA-LDW, 2014 WL 1515587, at \*4 (D.N.J. Apr. 17, 2014), “courts have repeatedly looked to the efforts plaintiffs have put forth in attempting to discover said addresses.” *Compass Bank v. Katz*, 287 F.R.D. 392, 394–95 (S.D. Tex. 2012) (citing cases). Particularly, before a plaintiff “can circumvent the methods for service of process authorized by the Hague Convention,” the plaintiff must “put forth *reasonable diligence* in attempting to discover [the] defendant’s address.” *Id.* at 395 (emphasis added); *see also Indagro*, 2014 WL 1515587 at \*4–5 (requiring reasonable diligence).

Here, via the July 7, 2015 Order, this Court previously held that Defendants’ addresses were “not known” within the meaning of the Hague Convention and permitted service by e-mail. Defendants’ present challenge is essentially a motion to reconsider the July 7, 2015 Order. *See Bazarian Int’l Fin. Assocs., L.L.C. v. Desarrollos Aerohotelco, C.A.*, —F. Supp. 3d—, No. 1:13-cv-1981-BAH, 2016 WL 471273, at \*8 (D.D.C. Feb. 2, 2016). District courts are afforded considerable discretion to reconsider prior decisions. *See Harper v. Lawrence Cty.*, 592 F.3d 1227, 1231–32 (11th Cir. 2010) (discussing reconsideration of interlocutory orders); *Lamar Advert. of Mobile, Inc. v. City of Lakeland*, 189 F.R.D. 480, 488–89, 492 (M.D. Fla. 1999) (discussing reconsideration generally and under Federal Rule of Civil Procedure 54(b)); *Sussman v. Salem, Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994) (discussing reconsideration under Rule 59(e) and Rule 60(b)). Courts in this District recognize “three grounds justifying reconsideration of an order: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *McGuire v. Ryland Grp., Inc.*, 497 F. Supp. 2d 1356, 1358 (M.D. Fla. 2007) (quotation omitted); *Montgomery v. Fla. First Fin. Grp., Inc.*, No. 6:06-cv-1639-Orl-31KRS, 2007 WL 2096975, at \*1 (M.D. Fla. July 20, 2007). “Reconsideration of a previous order is an extraordinary measure and should be applied

sparingly.” *Scelta v. Delicatessen Support Servs., Inc.*, 89 F. Supp. 2d 1311, 1320 (M.D. Fla. 2000).

At the outset, Defendants fail to address the standard for reconsideration, despite the Court’s indication during the October 14, 2015 hearing that any challenge to service would be treated as a motion for reconsideration. In any event, Defendants seem to raise two arguments for dismissal based on improper service; the first goes to a legal matter, and the second goes to factual matters.<sup>5</sup>

First, Defendants argue that—in determining whether an address is “not known,” in order to negate application of the Hague Convention—the proper inquiry is whether a plaintiff was reasonably diligent in *locating a defendant’s address*. According to Defendants, their addresses were correct, and the Court’s focus on whether Backjoy was reasonably diligent in *attempting to serve* Defendants was improper. This distinction—between (1) locating a defendant’s address and (2) attempting to serve a defendant—is, in this case, a distinction without a difference. *See BP Prods. N. Am., Inc. v. Dagra*, 232 F.R.D. 263, 264 (E.D. Va. 2005) (considering “attempts to serve defendant” in determining “defendant’s current whereabouts” or “address”).

As an initial matter, the crux of both endeavors is one in the same; the goal is to serve the defendant, and locating a defendant’s address is merely a step toward that goal. As is the case here, failed service attempts at a particular address leads to the conclusion that the address is incorrect; such failures bear on whether the defendant’s address is “not known.”

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<sup>5</sup> Defendants do not take issue with the constitutional sufficiency of the court-ordered service, i.e., whether such service was “reasonably calculated” to apprise Defendants of the pendency of this action. *See Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002).

Additionally, Defendants’ attempt to retroactively argue that the addresses were, in fact, known is unsoundly narrow. The Hague Convention’s use of the word “address” does not refer only to a static, physical address; rather, it refers broadly to the location of the defendant. *See Indagro*, 2014 WL 1515587 at \*4–5 (noting that an “address” follows the defendant; thus, service at a temporary address is proper). It is a place where a central authority “can have the documents served” on the defendant. *Id.* at \*5; *see also Merriam-Webster’s Collegiate Dictionary* 15 (11th ed. 2003) (defining “address” as “a place where a person or organization may be communicated with”). To hold otherwise would allow a similarly-situated defendant to establish a fixed address, all the while the defendant resides abroad, with no intention to visit that address. Such a defendant’s address would be “known” within the meaning of the Hague Convention, but they would be un-servable at that address. *Cf. McCormick v. Aderholt*, 293 F.3d 1254, 1257–58 (11th Cir. 2002) (per curiam) (discussing “domicile,” as equivalent to citizenship within the meaning of 28 U.S.C. § 1332(a), and defining as one’s “true, fixed, and permanent home and principal establishment, . . . to which he has the *intention of returning* whenever he is absent therefrom.” (emphasis added) (quotation omitted)). In such a scenario, the Hague Convention would be meaningless. *See Malone v. Highway Star Logistics, Inc.*, No. 08-cv-1534-RPM-KLM, 2009 WL 2139857, at \*1 (D. Colo. July 13, 2009) (“The Hague Service Convention is ‘intended to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad.’” (quoting *Volkswagenwerk Aktiengesellschaft*, 486 U.S. at 698)). Here, Defendants make no attempt to argue

that their last-known addresses were anything more than addresses in name<sup>6</sup>; as previously held, the evidence indicates otherwise.

Second, Defendants argue that Backjoy did not actually exercise “reasonable diligence,” as is required for Defendants’ addresses to be “not known.” To begin, Defendants’ attempt to nitpick the Court’s prior factual determination does not fall within the reconsideration standard; Defendants do not point to new evidence. In any event, there is no binding authority on whether an address is unknown or whether reasonable diligence has been exercised. Another district court has cited other fact patterns as follows:

*Compare RPost Holdings, Inc. v. Kagan*, No. 2:11-cv-238-JRG, 2012 WL 194388, at \*1, \*2 (E.D. Tex. Jan. 23, 2012) (granting substituted service on defendant only after plaintiff had attempted service through the Hague Convention on the address associated with defendant’s online business website and had requested defendant’s address from defendant’s attorney and been refused), and *Chanel, Inc. v. Song Xu*, 2010 WL 396357, at \*1, \*3 (rationalizing that, because plaintiff hired a private investigator in China who determined that the physical addresses provided by defendants did not identify street names, numerical street addresses or building numbers and that the addresses interchanged postal codes and sections for various cities, and who also conducted further searches of public databases and directories in China, unable to locate defendants, their addresses were unknown), and *Malone v. Highway Star Logistics, Inc.*, No. 08-cv-01534-RPM-KLM, 2009 WL 2139857, at \*2 (D. Co. July 13, 2009) (ruling that, due to plaintiff’s attempted service through the Hague Convention and through private process servers at defendants’ various foreign addresses on their vehicle registration certificates, their vehicle liability insurance cards, and their drivers’ licenses, as well as at the addresses provided by defendants, the court was satisfied that defendants’ addresses were unknown), and *BP Prods. N. Am., Inc. v. Dagra*, 232 F.R.D. 263, 264 (E.D. Va. 2005) (concluding that,

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<sup>6</sup> That Mr. Yoon’s daughter confirmed his association with the last-known address and confirmed that he was out of the country during Backjoy’s execution of alternate service does not change this result. First, Mr. Yoon’s daughter’s presence does not dispel the concerns about Mr. Yoon’s whereabouts. More importantly, the discovery was made after the Court had already ordered alternate service; the present inquiry is only concerned with pre-service knowledge of Defendants’ address.

after numerous attempts to serve defendant at his last two known addresses in Pakistan through the Hague Convention failed, and after plaintiffs hired an investigative firm in Pakistan who did “[a] month of searching through telephone records, utility records, property records, various housing authorities’ records, law enforcement records and other personal identifying databases” but were unable to find defendant’s whereabouts, defendant’s address was unknown), *with Progressive Southeastern Ins. Co. v. J & P Transp.*, No. 1:11-cv-137, 2011 WL 2672565, at \*2 (N.D. Ind. July 8, 2011) (determining that, even though plaintiff initially used a private investigator to locate defendants, plaintiff’s failure to ask the private investigator to perform any follow-up work after the initial attempted service through the Canadian Central Authority failed did not amount to reasonable diligence), *and Opella*, 2011 WL 2600707, at \*3, \*6 (holding that, because plaintiff did not personally check the voter registration records of Mexico, the drivers’ license registration records or the utility company records in an effort to locate defendant, plaintiff’s efforts to search for defendant in only certain municipalities of Mexico did not constitute reasonable diligence, and thus defendant’s address was not unknown), *and Jimena v. UBS AG Bank*, No. CV-F-07-367 OWW/SKO, 2010 WL 2465333, at \*9, \*10 (E.D. Cal. June 10, 2010) (refusing to authorize substituted service because plaintiff provided no information regarding his efforts to ascertain defendant’s address in Switzerland, had failed to conduct an appropriate investigation regarding defendant’s address, and had not attempted to effect service through the Hague Convention).

*Compass Bank*, 287 F.R.D. at 394–95 (footnote omitted). Here, Backjoy had the Korean Central Authority attempt service at three different addresses: Forvic’s last-known address; Yoon’s last-known address; and Forvic S Back, Ltd. *See Malone*, 2009 WL 2139857 at \*2 (permitting non-Hague service where the Canadian central authority could not successfully serve the defendants and where various addresses proved incorrect). Those addresses were gleaned from: Forvic’s website, Forvic’s invoices, Dun & Bradstreet reports, and patent applications. In all, service was attempted by the Korean Central Authority six times. Backjoy also employed Korean counsel to do additional research.<sup>7</sup> *See BP Prods.*, 232 F.R.D. at 264 (determining the defendant’s address to

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<sup>7</sup> However, Backjoy does not specify the type and extent of such research.

be unknown where service at the defendant's last two known addresses failed and where an investigate firm—by researching various public records—could not determine the defendant's whereabouts). All efforts failed. The Court is satisfied that Backjoy exercised reasonable diligence in determining Defendants' addresses; Backjoy's failures indicate that Defendants' addresses were not known, and therefore, the Hague Convention does not govern. Because the Hague Convention does not apply, it is irrelevant that South Korea has rejected service via postal channels. *See Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (“[S]ervice of process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country.”).

### **B. Personal Jurisdiction**

Under Federal Rule of Civil Procedure 12(b)(2),<sup>8</sup> a defendant may move to dismiss based on “lack of personal jurisdiction.” “A plaintiff seeking to establish personal jurisdiction over a nonresident defendant ‘bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction.’” *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). However, if “a defendant challenges personal jurisdiction ‘by submitting affidavit evidence in support of its position,’” the plaintiff then bears the burden of producing evidence supporting jurisdiction. *Id.* (quoting *United Techs.*, 556 F.3d at 1274). Nevertheless, “when ‘the

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<sup>8</sup> In passing, Defendants note that the personal jurisdiction inquiry should be undertaken on a defendant-by-defendant basis. Other than citing that proposition in the Motion to Dismiss, as well as hastily distinguishing between Defendants in the background section, Defendants make no legitimate attempt to pursue that argument. Indeed, Backjoy bears the initial burden as to personal jurisdiction; nevertheless, by not adequately presenting their argument—that Backjoy fails to particularize the personal jurisdiction inquiry as to each Defendant—Defendants have abandoned that argument. *See Sure Fill & Seal, Inc. v. GFF, Inc.*, No. 8:08-cv-882-T-17TGW, 2012 WL 5227676, at \*7 (M.D. Fla. Apr. 2, 2012); *Callahan v. Barnhart*, 186 F. Supp. 2d 1219, 1230 n.5 (M.D. Fla. 2002); *see also* Fed. R. Civ. P. 12(h)(1).

defendant's affidavits contain only conclusory assertions that the defendant is not subject to jurisdiction," the plaintiff need not rebut those assertions with supporting evidence. *Id.* (quoting *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 (11th Cir. 2006)). When the plaintiff's complaint and the defendant's evidence conflict, courts "must construe all reasonable inferences in favor of the plaintiff." *Stubbs*, 447 F.3d at 1360.

Backjoy relies on Federal Rule of Civil Procedure 4(k)(2) as a basis for personal jurisdiction.<sup>9</sup> Rule 4(k)(2) is termed the federal long-arm statute and provides,

For a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:

(A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and

(B) exercising jurisdiction is consistent with the United States Constitution and laws.

The Rule "thus sanctions personal jurisdiction over foreign defendants for claims arising under federal law when the defendant has sufficient contacts with the *nation as a whole* to justify the imposition of United States' law but without sufficient contacts to satisfy the long-arm statute of any particular state." *U.S. Sec. Exch. Comm'n v. Carrillo*, 115 F.3d 1540, 1543–44 (11th Cir. 1997) (emphasis added) (quotation omitted). By its plain language, Rule 4(k)(2) comprises three elements—(1) the claim arises under federal law; (2) the defendant is not subject to jurisdiction in any individual state's courts; and (3) exercising jurisdiction would comport with the Constitution and laws of the United States. *See Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1218 (11th Cir. 2009).

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<sup>9</sup> Backjoy also relies on the forum-selection clause in the NDA. Because Rule 4(k)(2) applies, the Court will not address the NDA, the execution of which goes to the merits of this case. (*See* Compl. ¶¶ 64–75 (count one for breach of the NDA)).

1. *Elements 1 and 2*

First, Backjoy brings several claims under federal law, including: the Lanham Act, the Copyright Act, and U.S. patent law. Insofar as Defendants attempt to sever the federal and nonfederal claims for purposes of the jurisdictional analysis, that effort is misguided. *See Brennan v. Roman Catholic Diocese of Syracuse N.Y., Inc.*, 322 F. App'x 852, 854 (11th Cir. 2009) (per curiam) (“If the forum’s long-arm statute provides jurisdiction over one claim, the district court has personal jurisdiction over the entire case so long as the claims arose from the same jurisdiction generating event.” (citing *Cronin v. Wash. Nat’l Ins. Co.*, 980 F.2d 663, 671 (11th Cir. 1993))).

Second, there is no indication that Defendants are subject to jurisdiction in any other state’s courts. Indeed, “[a] district court is not required to analyze the laws of all fifty states to ascertain whether any state court of general jurisdiction has jurisdiction over the defendant.” *Oldfield*, 558 F.3d at 1218 n.22. “[R]ather, if the defendant contends that he cannot be sued in the forum state and refuses to identify any other where suit is possible, then the federal court is entitled to use Rule 4(k)(2).” *Id.* (quotation omitted) (citing cases). Here, during the February 25, 2016 hearing, Defendants readily conceded that they would not be subject to personal jurisdiction in any other state.

2. *Element 3—due process*

The third element requires consideration of whether the exercise of personal jurisdiction over Defendants “would be consistent with the requirements of the Fifth Amendment’s Due Process Clause.” *Fraser v. Smith*, 594 F.3d 842, 849 (11th Cir. 2010). The analysis is guided by case law interpreting the Fourteenth Amendment’s Due Process Clause. *See id.* at 849 n.10 (citing *Oldfield*, 558 F.3d at 1219 n.25).

“The Due Process Clause protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 471–72 (1985) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)). Generally, the constitutional requirement is “satisfied when in personam jurisdiction is asserted over a nonresident corporate defendant that has ‘certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.’” *Helicopteros Nacionales de Colom., S.A. v. Hall*, 466 U.S. 408, 414 (1984) (alteration in original) (quoting *Int’l Shoe*, 326 U.S. at 316). Importantly, “where a federal court invokes Rule 4(k)(2), the applicable forum for the minimum contacts analysis is the United States.” *Oldfield*, 558 F.3d at 1220 (quotation omitted).

In terms of general jurisdiction, a defendant may be subject to personal jurisdiction “[e]ven when the cause of action does not arise out of or relate to the foreign [defendant’s] activities in the forum,” so long as the defendant has “continuous and systematic” contact with the forum. *Helicopteros Nacionales*, 466 U.S. at 414–15. However, Backjoy does not rely on general jurisdiction.

Rather, Backjoy relies on specific jurisdiction. “In specific personal jurisdiction cases,” the Eleventh Circuit characterizes the constitutional requirement as a “three-part due process test, which examines” the following:

- (1) whether the plaintiff’s claims “arise out of or relate to” at least one of the defendant’s contacts with the forum;
- (2) whether the nonresident defendant “purposefully availed” himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state’s laws; and
- (3) whether the exercise of personal jurisdiction comports with “traditional notions of fair play and substantial justice.”

*Louis Vuitton*, 736 F.3d at 1355; *see also Fraser*, 594 F.3d at 850 (applying the three-part test where Rule 4(k)(2) is invoked). “The plaintiff bears the burden of establishing the first two prongs,

and if the plaintiff does so, ‘a defendant must make a compelling case that the exercise of jurisdiction would violate traditional notions of fair play and substantial justice.’” *Louis Vuitton*, 736 F.3d at 1355 (quoting *Diamond Crystal Brands, Inc. v. Food Movers Int’l, Inc.*, 593 F.3d 1249, 1267 (11th Cir. 2010)).

*a. Prong One: Relatedness*

The first prong centers on whether a “plaintiff’s claim . . . arise[s] out of or relate[s] to at least one of defendant’s contacts with the forum.” *Oldfield*, 558 F.3d at 1222 (quotation omitted). The Eleventh Circuit has “not developed or adopted a specific approach to determining relatedness; instead, [the Eleventh Circuit has] heeded the Supreme Court’s warning against using mechanical or quantitative tests.” *Id.* (quotation omitted). “Necessarily, the contact must be a ‘but-for’ cause of the tort, yet the causal nexus between the tortious conduct and the purposeful contact must be such that the out-of-state resident will have ‘fair warning that a particular activity will subject [it] to the jurisdiction of a foreign sovereign.’” *Id.* at 1222–23 (quoting *Burger King*, 471 U.S. at 472).

In terms of contacts with the U.S., Backjoy first communicated with Defendants in late 2006; the ensuing business relationship lasted for almost seven years. Importantly, the crux of the relationship was the production of the BJ1 Device by Defendants—to be sold to Backjoy, a U.S. company, for sale in the U.S., to U.S. consumers. According to Mr. Yoon, Defendants manufactured a “few hundred thousand[]” BJ1 Devices for Backjoy, (Yoon Dep., Doc. 66, at 95:14), and Forvic received over \$5 million, (Howenstein Decl., Doc. 54, ¶ 8). The relationship involved extensive communication between Backjoy and Mr. Yoon, including the exchange of “thousands of e-mails and attachments.” (Mot. Extension, Doc. 35, at 2; *id.* at 14). The relevant

technology in the BJ1 Device was protected by a U.S. patent. The relationship also involved an attempt to establish a manufacturer-purchaser relationship as to the BJ2 Device.

The presently pending breach of contract claim involves the alleged breach of the NDA, which purports to govern the entirety of the business relationship and set parameters regarding the resultant exchange of information. The remaining claims take issue with the misuse of information that was acquired during the course of—and as a direct consequence of—the business relationship. For example, the FUTSA count takes direct aim at the alleged misappropriation of trade secrets and confidential information, which came into Defendants’ possession by way of the business relationship. As another example, the patent infringement claim takes issue with the practice of the BJ1 Device’s technology, which was the subject of the relationship and as to which Defendants gained familiarity via the relationship. Even the copyright infringement claim relates to the alleged misappropriation of materials used to market the BJ1 Device—the product at the core of the relationship. The inevitable conclusion is that Defendants’ contacts are sufficiently linked to the pending claims.

Defendants’ attempt to narrowly define the subject matter of this litigation is misguided. Specifically, Defendants maintain that this case deals only with the BJ2 Device; Defendants’ theory then goes—because Defendants never manufactured the BJ2 Device for Backjoy, they have no contact with the U.S. regarding that product. However, the initial premise is flawed; it is not entirely clear why Defendants suggest that this case is limited to the BJ2 Device. Particularly, as noted, this case broadly involves the misappropriation of proprietary information. Such information was purportedly used to manufacture and market the “Copy Products,” which are described as incorporating the “technology, confidential and proprietary information, and trade secrets regarding the BJ1 Device . . . and the BJ2 Device.” (Compl. ¶ 4). Elsewhere in the

Complaint, Backjoy ties the “Copy Products” to Defendants’ “S-Back Device,” (*id.* ¶ 51), which purportedly “incorporates the design and know-how of the patented BJ1 Device[,] as well as the extremely confidential plans of . . . the BJ2 Device,” (*id.* ¶ 41). Moreover, the ’951 Patent appears to relate to the BJ1 Device. Thus, this case is not as narrow as Defendants suggest; even if it was, the information that was allegedly used to develop the BJ2 Device-infringing products arose directly from the same relationship.<sup>10</sup>

In sum, Backjoy’s claims arise out of Defendants’ contacts with the U.S., and the first prong of the constitutional inquiry is satisfied.

*b. Prong Two: Purposeful Availment*

The second prong requires that “there . . . exist ‘some act by which the defendant purposefully avails itself of the privilege of conducting activities within the forum . . . , thus invoking the benefits and protections of its laws.’” *Oldfield*, 558 F.3d at 1220 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)). “This purposeful availment requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or a third person.” *Burger King*, 471 U.S. at 475 (quotations omitted). However, “[s]o long as it creates a ‘substantial connection’ with the forum, even a single act can support jurisdiction.” *Id.* at 475 n.18.<sup>11</sup>

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<sup>10</sup> It goes without saying that defining the scope of the relationship requires constraint; nevertheless, the pending claims relate directly to the manufacturer-purchaser relationship, and Defendants offer no reason for distinguishing the relationship as it related to the BJ2 Device.

<sup>11</sup> If any of the claims involve allegations of intentional conduct, purposeful availment can be determined through application of the “effects test,” which was developed in *Calder v. Jones*, 465 U.S. 783 (1984). See *Louis Vuitton*, 736 F.3d at 1356–57 (holding that, in intentional tort cases, courts may apply either the effects test or the traditional minimum contacts test for determining whether personal jurisdiction satisfies the Due Process Clause). “Under the ‘effects test,’ a nonresident defendant’s single tortious act can establish purposeful availment, without regard to whether the defendant had any other contacts with the forum state.” *Id.* at 1356. To satisfy the effects test, the tort must have: “(1) [been] intentional; (2) [been] aimed at the forum state; and

Lest there be any confusion, the purposeful availment issue in this case is not easily resolved; the parties' unexceptional briefing on the issue only complicates the matter. In any event, the Court finds the following decision from the Eleventh Circuit instructive—*Diamond Crystal Brands, Inc. v. Food Movers Int'l, Inc.*, 593 F.3d 1249 (11th Cir. 2010).<sup>12</sup>

There, a Georgia-based manufacturer of artificial sweeteners sued a California-based food distribution company, in Georgia, for breach of contract. *Id.* at 1254. The solicitations and negotiations regarding the underlying food-purchase agreement all took place in California. *Id.* at 1255. The agreement was structured so that the distributor submitted purchase orders through a California-based food broker. *Id.* The products were to be tendered “F.O.B. Savannah,” at the manufacturer’s facilities, and the distributor was also invoiced from the manufacturer’s Georgia facilities. *Id.* at 1255–56. Upon tender, the distributor would not actually take possession of the products; rather, having already negotiated subsequent sales to third-party customers, the distributor’s customers took delivery of the products from the manufacturer. *Id.* at 1256. The

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(3) caused harm that the defendant should have anticipated would be suffered in the forum state.” *Id.* (quotation omitted). Here, Backjoy does not address the *Calder* effects test, and therefore, neither will the Court. *See Louis Vuitton*, 736 F.3d at 1355 (noting that the plaintiff bears the burden on the second prong).

<sup>12</sup> In *Diamond Crystal*, the defendant was a non-forum buyer of goods manufactured in the forum. As will be explained, the non-forum buyer scenario differs from the present case, which involves a non-forum seller. Indeed, the present case may also fit within the “stream-of-commerce” case law, which provides that “[t]he placement of a product into the stream of commerce, *without more*, is not an act of the defendant purposefully directed toward the forum.” *Brown v. Bottling Grp., LLC*, —F. Supp. 3d—, No. 8:15-cv-325-T-23TGW, 2016 WL 437940, at \*3 (M.D. Fla. Feb. 4, 2016) (quoting *Asahi Metal Indus. Co. v. Superior Court of Cal.*, 480 U.S. 102, 112 (1987)); *see also J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2788–89 (2011). The stream-of-commerce cases typically arise in the products-liability context and involve the link between a non-forum seller and the ultimate consumer. While the present case can be said to involve the relationship between a non-forum seller and a forum buyer, the injury does not involve any product-based injury to a consumer; it relates to a breakdown in the relationship between the two parties, and as noted, the relatedness prong directs our inquiry to the relationship. This case more closely resembles the non-forum buyer scenario, wherein the contacts stem from the contractual relationship at issue. *See Diamond Crystal*, 593 F.3d at 1268.

distributor would send payment from its California bank account to the manufacturer in Georgia. *Id.* During the course of the parties' several-month relationship, the parties engaged in fourteen transactions, totaling more than \$1.9 million. *Id.* at 1255, 1256. When the distributor failed to make payment with regard to two transactions, the manufacturer initiated suit. *Id.* at 1256.

After removal to the U.S. District Court for the Southern District of Georgia, the district judge disposed of the distributor's personal jurisdiction concerns at the motion-to-dismiss stage, and following judgment on the pleadings in the manufacturer's favor, the distributor appealed the personal jurisdiction issue to the Eleventh Circuit. *Id.* at 1256–57.

On appeal, the Eleventh Circuit first determined that personal jurisdiction was proper under Georgia's long-arm statute. *Id.* at 1257–67. Next, with regard to the constitutional concerns, the court held that the distributor "established sufficient minimum contacts when it purposefully carried on a substantial and ongoing relationship with a Georgia manufacturer, specified delivery by 'customer pickup' in Savannah, took and transferred legal title to product in Savannah, and sent payments to Savannah on twelve of the fourteen transactions." *Id.* at 1267. In doing so, the court outlined a number of guiding principles. Particularly, where the minimum contacts are derived from a contractual relationship, courts focus "on the substance of the transaction: prior negotiations, contemplated future consequences, the terms of the contract, and the actual course of dealing." *Id.* at 1268. Moreover, the jurisdictional inquiry is instructed by a number of "plus factors," which include: "a defendant's initiating the contractual relationship, visiting the plaintiff's factory to assess or improve quality, sending materials to the plaintiff for inspection or use in shipping, participating in the manufacturing process, establishing a relationship by placing multiple orders, requiring performance in the forum," and "negotiating the contract via telefaxes or calls with the plaintiff." *Id.* at 1268–69 (footnotes omitted). In affirming the district court, the

Eleventh Circuit seemed to rely heavily on the quantity and size of the transactions, as well as the manner in which they were initiated—by the distributor. According to the panel, the distributor’s conduct “went beyond that of a mere ‘passive purchaser.’” *Id.* at 1270.

In this case, like in *Diamond Crystal*, Defendants engaged in a substantial and ongoing relationship with a forum-based company—Backjoy. Nevertheless, some notable differences between the present case and *Diamond Crystal* disfavor the exercise of personal jurisdiction. Particularly, here, it does not appear that Defendants initiated any of the relevant transactions; rather, it was Backjoy. Additionally, it appears that title to the BJ1 Devices passed abroad, prior to shipment to the U.S., (*see* Ex. B to Howenstein Decl., Doc. 54-2, at 5–6 (denoting “FOB Qingdao”)); in *Diamond Crystal*, title passed in the forum. Additionally, some of the “plus factors” might be said not to apply in this case—there is no indication that Mr. Yoon ever visited the U.S.; nor is there any indication that performance by Defendants took place in the U.S.

Despite the above, other differences lead to the conclusion that the Defendants’ contacts in this case exceed those of the distributor in *Diamond Crystal*. An obvious distinction is that the duration of the relationship in this case, as well as the number and size of the transactions, far surpasses the relationship in *Diamond Crystal*. There, the “substantial and ongoing relationship” spanned a couple months and involved fourteen transactions for over \$1.9 million; whereas here, the relationship spanned almost seven years and involved the production of a “few hundred thousand” devices and the receipt of over \$5 million. While “the number of transactions, standing alone, [cannot] give rise to minimum contacts,” *Diamond Crystal*, 593 F.3d at 1270–71 (citing *Banton Indus., Inc. v. Dimatic Die & Tool Co.*, 801 F.2d 1283, 1284–85 (11th Cir. 1986)), the relationship in this case was far more collaborative than that in *Diamond Crystal*. It involved

thousands of e-mails, in-person meetings, the exchange of prototypes, and the degree of synergy necessary to enable Defendants to produce Backjoy's products.

Another obvious and important distinction is that *Diamond Crystal* involved a defendant-buyer; this case involves a defendant-seller. Thus, Defendants were not merely purchasing products from the forum; they were manufacturing devices for a forum-based buyer, to be transported to the forum, to be sold in the forum to forum consumers. *See J. McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2789 (2011) (addressing stream-of-commerce precedent and noting that the “question is whether a defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign”). While Defendants did not make payment *to* the forum, they received payment *from* the forum. (*See* Payment History, Ex. D to Howenstein Decl., Doc. 54-4). While title may have passed abroad, Defendants tendered the devices for transportation to the forum. While Defendants did not receive invoices from the forum, they sent invoices to the forum. (*See* Ex. B to Howenstein Decl. at 2–3). The essence of the relationship was that Defendants were manufacturing devices for the forum, either for its forum-based customer or, ultimately, the forum's market. *J. McIntyre Mach.*, 131 S. Ct. at 2788 (noting that “a defendant may in an appropriate case be subject to jurisdiction without entering the forum . . . as where manufacturers or distributors ‘seek to serve’ a given [forum's] market” (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980))). Despite Defendants' attempt to plead ignorance as to the ultimate destination of the devices, the record indicates that Mr. Yoon was aware, from the first shipment, that the BJ1 Devices would be distributed in the U.S. (*See* Jan. 22, 2009 E-mail from Yoon, Ex. A to Howenstein Decl., Doc. 54-1, at 2 (expressing concern that, following marketing in the U.S., others may develop imitation products in “China or Korea”)).

In addition to the above, regardless of whether the NDA was signed, Mr. Yoon admits to having read the NDA, which expressly includes a Florida choice-of-law provision. The discussion of legal issues tends to show a knowing invocation of the benefits and protections of U.S. law. *See Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 933 (11th Cir. 2007) (attributing jurisdictional significance to the non-forum buyer’s proposal for an exclusive supplier arrangement with the forum manufacturer). Lastly, insofar as Defendants maintain that they purposefully avoided selling their competing S-Back Devices in the U.S., so as to avoid U.S. litigation, that argument assumes the answer to the presently-pending jurisdictional question; the argument is without merit.

In sum, Defendants have purposefully availed themselves of the privilege of conducting activities in the forum. Defendants’ contacts were neither random, fortuitous nor attenuated, nor were they the result of unilateral activity. The second prong of the constitutional inquiry is satisfied.

*c. Prong Three: Fair play and substantial justice*

As noted, with regard to the third prong, Defendants bear the burden of establishing that the exercise of jurisdiction would violate traditional notions of fair play and substantial justice. *See Louis Vuitton*, 736 F.3d at 1355. This inquiry requires consideration of the following factors: (1) “the burden on the defendant”; (2) “the forum’s interest in adjudicating the dispute”; (3) “the plaintiff’s interest in obtaining convenient and effective relief”; and (4) “the [interstate] judicial system’s interest in resolving the dispute.” *Licciardello v. Lovelady*, 544 F.3d 1280, 1288 (11th Cir. 2008) (citing *World-Wide Volkswagen*, 444 U.S. at 292). “[M]inimum requirements inherent in the concept of ‘fair play and substantial justice’ may defeat the reasonableness of jurisdiction even if the defendant has purposefully engaged in forum activities.” *Burger King*, 471 U.S. at 477–78.

Here, as noted, Backjoy has satisfied its burden with regard to the first two prongs; thus, Defendants “must make a ‘compelling case’ that the exercise of jurisdiction would violate traditional notions of fair play and substantial justice.” *Diamond Crystal*, 593 F.3d at 1267 (quoting *Burger King*, 471 U.S. at 477). In attempting to do so, Defendants only pursue two arguments. (See Mot. Dismiss at 12). First, Defendants argue that this litigation would be burdensome because they are a small company. While the accuracy of such a statement is not doubtful, it says nothing about whether litigation *in the forum* would be particularly burdensome. See *Diamond Crystal*, 593 F.3d at 1274 (holding that the defendant-buyer failed to uphold its burden as to the third prong where the defendant “d[id] not even attempt to explain why litigating in [the forum] would be especially onerous”); see also *Sloss*, 488 F.3d at 933–34. Next, Defendants argue that there are no interests in adjudicating this case in the forum because Defendants have no contacts with the forum. This argument also assumes the answer and is of little help. Thus, Defendants have failed to uphold their burden with regard to the third prong.

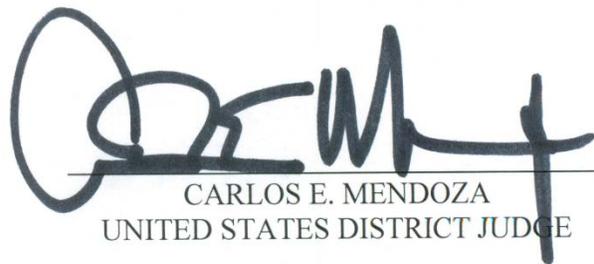
In sum, the exercise of personal jurisdiction over Defendants comports with the Due Process Clause of the Fifth Amendment. Therefore, the third element of the Rule 4(k)(2) analysis is satisfied, and personal jurisdiction is appropriate under Rule 4(k)(2).

#### IV. CONCLUSION

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants’ Motion to Dismiss (Doc. 50) is **DENIED**.
2. On or before **March 17, 2016**, the parties shall file an Amended Case Management Report. (*Cf.* Case Mgmt. Report, Doc. 59).

**DONE and ORDERED** in Orlando, Florida on March 7, 2016.



CARLOS E. MENDOZA  
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record