UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MAPLE LEAF ADVENTURES CORPORATION, Petitioner, v. JET TERN MARINE CO. LTD., and DOES 1 THROUGH 10, inclusive, Respondent.	Case No.: 15-CV-02504-AJB-BGS **ORDER DENYING PETITIONER'S PETITION TO CONFIRM ARBITRATION AWARD AND GRANTING REQUEST FOR JURISDICTIONAL DISCOVERY** (Doc. Nos. 1, 6)

Presently before the Court is Petitioner Maple Leaf Adventure Corporation's ("Maple Leaf") petition to confirm an arbitration award ("Petition") pursuant to 9 U.S.C. § 207 entered against Respondent Jet Tern Marine Co. Ltd. ("Jet Tern"). The Court finds the matter suitable for decision on the papers, without oral argument, pursuant to Local Civil Rule 7.1.d.1. For the reasons set forth below, the Court **DENIES WITHOUT PREJUDICE** Maple Leaf's Petition, (Doc. No. 1), but **GRANTS** Maple Leaf's request to conduct jurisdictional discovery, (Doc. No. 6).

BACKGROUND

Maple Leaf is a corporation organized under the laws of the Province of British Columbia, Canada with its principal place of business in Canada. (Doc. No. 1 ¶ 1.) Jet

Tern is a corporation incorporated under the laws of Taiwan with shipyards in Zhuhai and Dongguan, People's Republic of China, and an office in Taiwan. (*Id.* ¶ 2.)

This case arises from Jet Tern's breach of the parties' contract under which Jet Tern agreed to build and deliver a "Young 78" 022 Catamaran Yacht ("Yacht") to Maple Leaf for the price of $3,750,000 ("Contract").[1] Jet Tern breached the contract by failing to build the Yacht to contract specifications, stopping work on the Yacht, and demanding from Maple Leaf to be paid ahead of the build progress and a higher ultimate price. (Doc. No. 1-2 ¶ 5.) Upon this breach, Maple Leaf invoked its rights under Clause 18 of the Contract, which entitled Maple Leaf to rescission of the Contract and full refund of payments made, as well as interest thereon. (*Id.* at 18–19.) Maple Leaf informed Jet Tern of its rescission of the Contract on October 23, 2013. (Doc. No 1 ¶ 17.) Jet Tern did not comply with Maple Leaf's request for repayment. (*Id.* ¶ 18.)

Thereafter, on November 25, 2013, Maple Leaf invoked its rights under Clause 12 of the Contract to compel arbitration of the parties' dispute. (*Id.*; Doc. No. 1-2 at 14–15 Cl. 12.2.) Maple Leaf chose Oslo, Norway as the location for arbitration. (Doc. No. 1 ¶ 18.) An arbitrator was appointed, who ultimately rendered a decision and issued an award in favor of Maple Leaf. (*Id.* ¶ 22; Doc. No. 1-2 at 62–63 ¶ 31.) While Jet Tern wholly failed to participate in the arbitration proceedings, the arbitrator stressed he did not issue the award merely because of Jet Tern's failure to participate. (Doc. No. 1-2 at 48 ¶ 24(1).) Rather, the arbitrator fulfilled his "duty to consider the submissions and evidence presented so as to be satisfied as to the merits of [Maple Leaf's] claim[.]" (*Id.*) The arbitrator also found Jet Tern "was informed of the proceedings and the case being

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[1] On December 8, 2015, the Court ruled on Maple Leaf's *ex parte* motion seeking permission to effect service of process on Jet Term via Federal Express, which was granted. (*See* Doc. No. 5.) In that order, the Court summarized the case's factual background. The Court assumes familiarity with that order and accordingly will recite here only those facts necessary to understand the case's current posture with respect to the instant order.

advanced against it, and had a full opportunity of participating to defend itself had it so wished." (*Id.* ¶ 24(2).)

On November 4, 2015, Maple Leaf filed the Petition in this Court, seeking an order confirming the arbitration award. (Doc. No. 1.) On December 1, 2015, Maple Leaf filed an *ex parte* motion seeking an order permitting Maple Leaf to serve Jet Tern via Federal Express pursuant to Federal Rule of Civil Procedure 4(f)(3). (Doc. No. 3.) The Court granted that request on December 8, 2015. (Doc. No. 5 at 6–10.) At that time, the Court noted its reservations concerning whether personal jurisdiction over Jet Tern exists in this case. (*Id.* at 10–12.) The Court therefore requested supplemental briefing on the issue of personal jurisdiction over Jet Tern, (*id.*), which Maple Leaf submitted on December 22, 2015, (Doc. No. 6).

LEGAL STANDARD

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("Convention"), 9 U.S.C. § 201 *et seq.*, grants federal district courts the power to enforce arbitral awards arising from commercial transactions, contracts, or agreements entered in cases involving at least one noncitizen of the United States. *See* 9 U.S.C. §§ 202–03, 207. However, the Convention does not automatically grant courts jurisdiction over any and all persons and corporations who entered an arbitration agreement covered by the Convention. *See Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1120–22 (9th Cir. 2002); *see also* 9 U.S.C. § 207 (permitting parties to apply to "any court *having jurisdiction* . . . for an order confirming the award" (emphasis added)). Rather, "in suits to confirm a foreign arbitral award under the Convention, due process requires that the district court have jurisdiction over the defendant against whom enforcement is sought or his property." *Glencore Grain Rotterdam B.V.*, 284 F.3d at 1122.

"Personal jurisdiction over a nonresident defendant is tested by a two-part analysis." *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th Cir. 1994). The exercise of jurisdiction must satisfy the requirements of both the applicable state long-

arm statute and federal due process. *Id.* at 1404–05. California's long-arm statute is coextensive with the limits of due process. Cal. Civ. Proc. § 410.10; *Doe v. Unocal Corp.*, 248 F.3d 915, 923 (9th Cir. 2001). Accordingly, the Court need only consider the requirements of due process. *Fed. Deposit Ins. Co. v. British-Am. Ins. Co.*, 828 F.2d 1439, 1441 (9th Cir. 1987) (citing *Pac. Atl. Trading Co. v. M/V Main Express*, 758 F.2d 1325, 1327 (9th Cir. 1985)).

Due process requires that a nonresident defendant have certain minimum contacts with the forum state such that the exercise of jurisdiction does not offend "'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). This test is satisfied where the court in the forum state may permissibly exercise either general or specific jurisdiction over the defendant. *Daimler AG v. Bauman*, 134 S. Ct. 746, 754–55 (2014); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 839 (9th Cir. 1986).

While a defect in personal jurisdiction is generally a defense that may be asserted or waived by a party, *see* Fed. R. Civ. P. 12(h)(1), "when a court is considering whether to enter a default judgment, it may dismiss an action *sua sponte* for lack of personal jurisdiction," *In re Tuli*, 172 F.3d 707, 712 (9th Cir. 1999) (citation omitted). In fact, "[w]hen entry of judgment is sought against a party who has failed to plead or otherwise defend, a district court has an affirmative duty to look into its jurisdiction over both the subject matter and the parties." *In re Tuli*, 172 F.3d at 712 (citation omitted). The plaintiff bears the burden of establishing the court's personal jurisdiction over a defendant. *Unocal*, 248 F.3d at 922 (citing *Cubbage v. Merchent*, 744 F.2d 665, 667 (9th Cir. 1984)). The court may decide the issue of personal jurisdiction on the basis of affidavits and documentary evidence by the parties or hold an evidentiary hearing regarding the matter. *See Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1997). If the motion is based on the former, the plaintiff need only make a prima facie showing of facts establishing personal jurisdiction. *Id.*

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DISCUSSION

Maple Leaf asks the Court to enforce the arbitral award entered against Jet Tern pursuant to its powers under the Convention. (Doc. No. 6 at 2; *see* Doc. No. 1-3.) Maple Leaf contends the Court has the authority to do so because the Court has general jurisdiction over Jet Tern. (Doc. No. 6 at 4–10.) Maple Leaf further argues that if the Court finds general jurisdiction does not exist, the Court should permit it to conduct jurisdictional discovery. (*Id.* at 10–11.)

I. Whether the Court May Exercise General Jurisdiction Over Jet Tern

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) (citing *Int'l Shoe Co.*, 326 U.S. at 317). "This is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801 (9th Cir. 2004). "With respect to a corporation, the place of incorporation and principal place of business are 'paradig[m] . . . bases for general jurisdiction." *Daimler AG*, 134 S. Ct. at 760 (citation omitted). Outside of these paradigm bases, only "in an exceptional case" should a court find a corporation's operations in the forum to be "so substantial and of such a nature as to render the corporation at home in that State." *Id.* at 761 n.19.

Here, Jet Tern is a Taiwanese corporation incorporated under the laws of Taiwan with its principal place of business in China and Taiwan. (Doc. No. 1 ¶ 2.) As such, to establish general jurisdiction over Jet Tern, Maple Leaf must make a prima facie showing that this is an "exceptional case" where Jet Tern's contacts with California are "so substantial and of such a nature as to render [it] at home" in the forum. *Daimler AG*, 134 S. Ct. at 761 n.19. Maple Leaf contends it has done so here based on three theories, two of which rely on the fact that Maple Leaf's wholly owned subsidiary, Selene California,

is incorporated under the laws of the state of California with its principal place of business in San Diego, California: (1) the incorporation of a wholly owned subsidiary is, by itself, sufficient to confer general jurisdiction over the parent corporation; (2) Jet Tern is accustomed to litigation in the forum and maintains local counsel here; and (3) Selene California is Jet Tern's alter ego, and the Court may therefore impute Selene California's contacts with the forum to Jet Tern. (Doc. No. 6 at 4–10.) The Court will consider each argument in turn.

A. Whether Selene California's Incorporation in the Forum Confers General Jurisdiction Over Jet Tern

Maple Leaf first argues that general jurisdiction exists over Jet Tern in California because "[c]ourts within the Ninth Circuit [may] exercise personal jurisdiction over foreign corporate defendants where the foreign corporation chooses to incorporate a controlled subsidiary in the forum and where the subsidiary's principal place of business is in the forum." (Doc. No. 6 at 4) (citing *Hendricks v. New Video Channel Am., LLC*, No. 2:14-cv-02989-RSWL-SSx, 2015 WL 3616983 (C.D. Cal. June 8, 2015)).

As noted above, "in an exceptional case," a court may exercise general jurisdiction over a defendant corporation in a forum other than the paradigm bases of general jurisdiction where the "corporation's affiliations with the State are 'so continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG*, 134 S. Ct. at 761 & n.19 (quoting *Goodyear*, 131 S. Ct. at 2851). However, "[t]he existence of a parent-subsidiary relationship is insufficient, on its own, to justify imputing one entity's contacts with a forum state to another for the purpose of establishing personal jurisdiction." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015) (citing *Unocal Corp.*, 248 F.3d at 925–26); *see also Transure, Inc. v. Marsh & McLennan, Inc.*, 766 F.2d 1297, 1299 (9th Cir. 1985) (same).

In *Daimler AG*, the Supreme Court held out *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952), as "'the textbook case of general jurisdiction appropriately exercised over a foreign corporation that has not consented to suit in the

forum.'" *Daimler AG*, 134 S. Ct. at 755–56 (quoting *Goodyear*, 131 S. Ct. at 2856). In *Perkins*, the foreign corporation defendant was incorporated under the laws of the Philippines. 342 U.S. at 439. The Supreme Court nonetheless affirmed the lower court's finding of general jurisdiction over the corporation in Ohio based on the corporation's temporarily moving its principal place of business to Ohio to avoid the Japanese occupation of the Philippines during World War II. *Id.* at 447–48. "Although the claim-in-suit did not arise in Ohio, th[e Supreme] Court ruled that it would not violate due process for Ohio to adjudicate the controversy" because "the corporation's president maintained his office [in Ohio], kept the company files in that office, and supervised from [that] Office 'the necessarily limited wartime activities of the company.'" *Goodyear*, 131 S. Ct. at 2856 (quoting *Perkins*, 342 U.S. at 447–48).

Maple Leaf does not contend that Jet Tern has its principal place of business in San Diego, thus distinguishing this case from the "textbook" example of *Perkins*. Nor does Maple Leaf contend it does a majority—or even a sizeable portion—of its business in California through Selene California. In fact, Maple Leaf provides no information whatsoever concerning the volume of business Jet Tern conducts in California as opposed to in Taiwan, China, or one of the four other locations in the United States.[2] *See Royal & Sun Alliance Ins. PLC v. Castor Transport, LLC*, No. 13-cv-01811-BAS(DHB), 2016 WL 633443, at *4 (S.D. Cal. Feb. 17, 2016) ("No evidence has been presented that address Castores' business volume in California, economic impact in California, or any solicitation of business from California residents beyond a passive website."); *see also Int'l Shoe*, 326 U.S. at 318 (stating a corporation's "continuous activity of some sorts

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[2] Maple Leaf does provide an exhibit it asserts evidences that "Jet Tern imports its Selene yachts to Selene California." (Doc. No. 6 at 6; Norton Decl., Exh. L.) However, it is impossible to decipher from this exhibit how many yachts were imported or the time frame the exhibit covers. Even if this information were provided, Maple Leaf provides no information concerning Jet Tern's overall sales. As such, the Court cannot conduct any meaningful comparison from which it may assess the importance of its California sales to its overall business.

within a state is not enough to support the demand that the corporation be amenable to suits unrelated to that activity"). *Cf. Gator.Com Corp. v. L.L. Bean, Inc.*, 341 F.3d 1072, 1074, 1078 (9th Cir. 2003) (finding general jurisdiction existed in part because defendant sold "millions of dollars worth of products" in California).

Maple Leaf nonetheless argues general jurisdiction is proper in this case based exclusively on the fact that Jet Tern's wholly owned subsidiary, Selene California, is incorporated with its principal place of business in the forum. (Doc. No. 6 at 4–7.) Maple Leaf points to many factors to establish that Selene California is Jet Tern's wholly owned subsidiary subject to Jet Tern's complete control: (1) Jet Tern owns the Selene trademark and copyright, (Doc. No. 6-1 ["Norton Decl."], Exhs. F, G, K); (2) Howard Chen, Jet Tern's Chief Executive Officer, is listed first on Selene California's website, and his visits to California are advertised, (Norton Decl., Exhs. A, D); (3) the "About Selene" section of Selene California's website is exclusively devoted to reciting Jet Tern's history, (Norton Decl., Exh. B); (4) Selene California holds itself out as Selene Ocean Trawlers, the same name under which Jet Tern does business, (Doc. No. 6 at 5–6; Norton Decl., Exhs. B, K); (5) Selene California's website advertises itself as the factory direct representative for Selene yachts, (Norton Decl., Exhs. C, H); (6) Selene California solicits business for Jet Tern in California and facilitates transactions on behalf of Jet Tern, evidenced by a letter Chen addressed to "Selene owners and future Selene owners" in which he states that "Jet Tern deals exclusively with four dealers in the USA," (Norton Decl., Exh. E); (7) Selene California is listed on Jet Tern's website as one of these four dealers, (Norton Decl., Exhs. F, I); (8) Jet Tern advertised Selene California's opening, (Norton Decl., Exh. H); (9) Jet Tern has imported its Selene yachts to Selene California, (Norton Decl., Exh. L); and (10) advertisement for Selene yachts require payment FOB Hong Kong, (Norton Decl., Exh. N).

Maple Leaf points to the Central District of California's decision in *Hendricks v. New Video Channel America, LLC*, No. 2:14-cv-02989-RSWL-SSx, 2015 WL 3616983 (C.D. Cal. June 8, 2015), to support its position. In *Hendricks*, the district court

concluded the plaintiff made a prima facie showing of general jurisdiction based on facts similar to this case. For example, the defendant Canadian corporation's subsidiary was "both incorporated and has its principal place of business in California[.]" *Id.* at *3. The court substantiated its decision based on additional factors, including that the defendant's subsidiary was its sole subsidiary; the defendant referred to its subsidiary as its "LA office" and "US office"; the same individuals controlled both corporations; and both corporations were in the same business. The district court found these facts sufficient to support its exercise of general jurisdiction over the defendant corporation. The court, however, conceded that while "the Supreme Court [did not] completely reject[] a theory of general jurisdiction based on a parent corporation's contacts with a forum through its subsidiary, [] the bounds of such general jurisdiction are unclear." *Id.* at *3 n.2.

While the court in *Hendricks* found facts similar to those present in this case sufficient to permit its exercise of general jurisdiction over the defendant foreign corporation, the Court declines to so find here. It is true the Supreme Court did not "completely reject[] a theory of general jurisdiction based on a parent corporation's contacts with a forum through its subsidiary . . . ." *Id.* The Court, however, is disinclined to rely on dicta from *Daimler AG*, *see* 134 S. Ct. at 761 (noting that "neither [the parent corporation] nor [the subsidiary] were incorporated in California, nor [did] either entity have its principal place of business there"), that would run contrary to that opinion's holding, *see id.* at 749, 761 (holding the proper inquiry "is whether [a] corporation's 'affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State" (quoting *Goodyear*, 131 S. Ct. at 2851)). The Supreme Court was clear that outside the paradigm bases for general jurisdiction—*i.e.*, a corporation's place of incorporation and principal place of business— it is only in an "exceptional case" that courts should find general jurisdiction exists. *Id.* at 761 n.19. To find general jurisdiction permissible simply by virtue of a wholly owned subsidiary's incorporation or principal place of business in the forum would render ordinary what was intended to be "exceptional."

The Ninth Circuit's post-*Daimler AG* decision, *Ranza v. Nike, Inc.*, 793 F.3d 1059 (9th Cir. 2015), supports the Court's conclusion. There, the Ninth Circuit addressed "under what circumstances a court may attribute a parent company's contacts with the forum state to its foreign subsidiary for the purpose of exercising general personal jurisdiction over the subsidiary." *Id.* at 1065. In rejecting the plaintiff's argument that the two companies were sufficiently close to attribute the parent company's contacts to its foreign subsidiary, the Ninth Circuit noted the Supreme Court abrogated the Ninth Circuit's agency theory of general jurisdiction.[3] *Id.* at 1075. The Ninth Circuit therefore held imputation of "a local entity's contacts to its foreign affiliate" is permissible only where the plaintiff "demonstrates an alter ego relationship between the entities[.]" *Id.* at 1078.

While *Ranza* addresses whether a local parent corporation's contacts can properly be imputed to its foreign subsidiary, the Court finds *Ranza* dictates the same outcome where, as here, a plaintiff (or petitioner) seeks to impute a local subsidiary's contacts to its foreign parent corporation. In rejecting the defendant foreign subsidiary's argument that its local parent company's contacts could not be imputed to it, the Ninth Circuit observed that "[b]ecause the parent and subsidiary a[re] 'not really separate entities' if they satisfy the alter ego analysis, there is no greater justification for bringing the parent into the subsidiary's forum than for doing the reverse." *Id.* at 1072 (citations omitted). The Ninth Circuit concluded that "the alter ego test may be used to extend personal jurisdiction to a foreign parent *or* subsidiary when, in actuality, the foreign entity is not really separate from its domestic affiliate." *Id.* (emphasis in original).

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[3] Under the agency theory, one entity's contacts with a forum could be imputed to a related entity where a plaintiff showed the local entity "'perform[ed] services that [were] sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services.'" *Daimler AG*, 134 S. Ct. at 759 (quoting *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 920 (9th Cir. 2011)).

Corporate law further supports the Court's conclusion. A basic tenant of American corporate law is that "a parent and subsidiary comprise two wholly separate entities . . . ." *United States v. Bennett*, 621 F.3d 1131, 1137 (9th Cir. 2010) (citation omitted). "As a general principle, corporate separateness insulates a parent corporation from liability created by its subsidiary, notwithstanding the parent's ownership of the subsidiary." *Ranza,* 793 F.3d at 1070 (citing *United States v. Bestfoods*, 524 U.S. 51, 61 (1998)). Accordingly, it is only where "the parent and subsidiary are not really separate entities" that "the local subsidiary's contacts with the forum may be imputed to the foreign parent corporation." *Unocal Corp.*, 248 F.3d at 926 (citation omitted).

Accepting Maple Leaf's argument and imputing Selene California's contacts with the forum to Jet Tern, based solely upon their relationship as parent and subsidiary,[4] would run afoul of the basic tenant of American corporate law that a parent company and its subsidiary are separate entities. *Bennett*, 621 F.3d at 1137. Such a holding would be contrary to established Ninth Circuit precedent that makes clear "[t]he existence of a parent-subsidiary relationship is insufficient, on its own, to justify imputing one entity's contacts with a forum state to another for the purpose of establishing personal jurisdiction." *Ranza*, 793 F.3d at 1070 (citing *Unocal Corp.*, 248 F.3d at 925–26). It would also be contrary to the explicit holding of *Daimler AG*, for "[e]xercising general

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[4] The Court acknowledges that Maple Leaf has pointed to other factors suggesting that the line between Jet Tern and Selene California as separate entities is blurred. However, "[w]hile [Maple Leaf] has pointed to various factors which indicate that [Jet Tern] exercises some control over [Selene California], '[t]he corporate separation, though perhaps merely formal, [is] real.'" *Transure, Inc.*, 766 F.2d at 1299 (quoting *Cannon Mfg. Co. v. Cudahy Packing Co.*, 267 U.S. 333, 337 (1925)). To the extent Maple Leaf suggests Jet Tern and Selene California are actually one in the same, such an issue is appropriately addressed under the alter ego theory of imputing one entity's contacts with a forum to another. *See infra* Discussion Section I.C. Absent a prima facie showing that Selene California is Jet Tern's alter ego, the Court declines to circumvent clear Ninth Circuit precedent. *See Unocal Corp.*, 248 F.3d at 926 (stating it is only where "the parent and subsidiary are not really separate entities" that "the local subsidiary's contacts with the forum may be imputed to the foreign parent corporation" (citation omitted)).

jurisdiction over a foreign [corporation] merely because it [has a local subsidiary in the forum] resembles the agency theory of imputed jurisdiction the [Supreme] Court rejected in *Daimler*." *Ranza*, 793 F.3d at 1075. For all these reasons, the Court respectfully declines to follow the reasoning in *Hendricks* and rejects Maple Leaf's argument that Selene California's incorporation and principal place of business within California is, by itself, sufficient to make a prima facie showing of general jurisdiction over Jet Tern.

B. Whether Jet Tern's Contacts with California Renders It Essentially "At Home" in the Forum

Maple Leaf next argues general jurisdiction is proper over Jet Tern because "Jet Tern is accustomed to litigation in [California] and maintains local counsel in this forum." (Doc. No. 6 at 7.) Maple Leaf asserts that because Jet Tern has been sued in California state court in 2009 and subsequently removed that case to the Central District of California, and because Jet Tern has had regular local counsel here since at least October 2008, the Court may exercise general jurisdiction over Jet Tern. (*Id.* at 7–8.)

The Court does not agree. As an initial matter, Maple Leaf provides no support for its novel position that a party's litigation history within the forum permits a court to exercise general jurisdiction over that party in unrelated matters. *See In re Morrissey*, 349 F.3d 1187, 1189 (9th Cir. 2003) ("the duty of the court is not [to] develop [the party's] arguments for him [or] find the legal authority to support those arguments" (internal quotation marks omitted)).

Even had Maple Leaf done so, Jet Tern's litigation history provides the Court with no insight into whether Maple Leaf's contacts with California are "so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG*, 134 S. Ct. at 761 (quoting *Goodyear*, 131 S. Ct. at 2851). The Court gives no weight to the fact that Jet Tern removed the 2009 action to federal court. Jet Tern clearly stated in its removal petition that it "intend[ed] to seek dismissal for lack of personal jurisdiction" and the removal of the action did "not waive any objections or defenses they may have[.]" (Norton Decl., Exh. M ¶¶ 17–18.) Furthermore, Maple Leaf provides the Court with no

information concerning how that action was ultimately adjudicated.

In sum, the Court finds that the removal of an unrelated case filed against Jet Tern in 2009, coupled with local counsel's knowledge of this case and his representation of Jet Tern in 2008 when he registered the Selene trademark, is insufficient to support a finding of general jurisdiction over Jet Tern in the instant matter.[5] Such sporadic litigation activity is simply "not enough to support the demand that the corporation be amenable to suits unrelated to that activity[.]" *Int'l Shoe*, 326 U.S. at 318. For this reason, the Court rejects Maple Leaf's second argument.[6]

C. Whether Selene California is an Alter Ego of Jet Tern

Maple Leaf last argues general jurisdiction is proper in California because Selene California is a mere alter ego of Jet Tern. (Doc. No. 6 at 9–10.) Maple Leaf points to many factors it alleges are sufficient to make out a prima facie showing of its theory: (1) Jet Tern established Selene California as its California branch and factory direct representative, (Norton Decl., Exhs. C, H); (2) Selene California holds itself out as Selene Ocean Trawlers, the name under which Jet Tern does business, (Norton Decl., Exh. I); (3)

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[5] Maple Leaf places great emphasis on the allegations in the complaint filed against Jet Tern in 2009. (*See* Doc. No. 6 at 7.) For example, the plaintiff there alleged facts that support Maple Leaf's position that Selene California is merely an alter ego of Jet Tern. (*See id.*) However, that a private litigant levels allegations in a separate case does not somehow convert those allegations into evidence for the Court's purposes in this case. *See Briggs v. Blomkamp*, 70 F. Supp. 3d 1155, 1166 (N.D. Cal. 2014) ("allegations in a complaint are not evidence" (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986))).

[6] The Court notes that in presenting its other two arguments, Maple Leaf points to some evidence of Jet Tern's own contacts with the forum: (1) Chen's visits to California, (Doc. No. 6 at 5; Norton Decl., Exhs. A, D); (2) Jet Tern's ownership and control of the Selene trademark and copyright, which is used in California, (Doc. No. 6 at 2, 5, 7; Norton Decl., Exhs. F, G, K); and (3) Jet Tern's sales of yachts in California, (Doc. No. 6 at 6; Norton Decl., Exh. N). However, these factors do not alter the Court's conclusion because they do not cure the deficiency already noted, namely, that Maple Leaf has proffered *no* information concerning the volume of business Jet Tern conducts in the forum. *See* discussion *supra* pp. 7–8. Without this information, the Court is hesitant to find this is an "exceptional case" permitting the Court's exercise of general jurisdiction.

Chen controls both Jet Tern and Selene California, (Norton Decl., Exh. B); (4) Jet Tern is the majority owner of Selene California, has a direct hand in Selene California's operations, and has exercised the same extent of control over the three other US branches, (Norton Decl., Exhs. B, K); and (5) Jet Tern owns the Selene trademark and copyright, (Norton Decl., Exhs. F, G, K).

While "[t]he existence of a parent-subsidiary relationship is insufficient, on its own, to justify imputing one entity's contacts with a forum state to another for the purpose of establishing personal jurisdiction," *Ranza*, 793 F.3d at 1070 (citing *Unocal Corp.*, 248 F.3d at 925–26), a district court may nonetheless impute to a foreign corporation its local related entity's contacts with the forum if the local entity is a mere alter ego of the foreign corporation, *see Unocal Corp.*, 248 F.3d at 926. To demonstrate that the alter ego doctrine applies, a plaintiff "must make out a prima facie case '(1) that there is such unity of interest and ownership that the separate personalities [of the two entities] no longer exist and (2) that failure to disregard [their separate entities] would result in fraud or injustice.'" *Unocal Corp.*, 248 F.3d at 926 (quoting *Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)).

To meet the first prong, a plaintiff must show "the parent controls the subsidiary 'to such a degree as to render the latter a mere instrumentality of the former.'" *Id.* (quoting *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995)). "This test envisions pervasive control over the subsidiary, such as when a parent corporation 'dictates every facet of the subsidiary's business—from broad policy decisions to routine matters of day-to-day operation.'" *Ranza*, 793 F.3d at 1073 (quoting *Am. Tel. & Tel. Co.*, 94 F.3d at 591).

Here, Maple Leaf contends it has made a prima facie showing that Selene California is a mere instrumentality of Jet Tern because, among other things, Chen controls both corporations, and those at Jet Tern "had a direct hand in [Selene California's] operation . . . ." (Doc. No. 6 at 9; Norton Decl. ¶ 15.) However, Maple Leaf provides no information from which the Court may determine that Jet Tern's control is so

pervasive over Selene California that Jet Tern dictates "every facet of [Selene California's] business—from broad policy decisions to routine matters of day-to-day operation." *Ranza*, 793 F.3d at 1073 (quoting *Am. Tel. & Tel. Co.*, 94 F.3d at 591). The Court finds Maple Leaf's conclusory assertion of Jet Tern having a "direct hand in [Selene California's] operation" is insufficient to carry its burden on this Petition.

The Court similarly finds unpersuasive the fact that Chen is seemingly the CEO of both corporations.[7] As the Supreme Court has noted, "[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary . . . ." *Bestfoods*, 524 U.S. at 69 (citation omitted); *see also Stewart v. Screen Gems-EMI Music, Inc.*, 81 F. Supp. 3d 938, 956 (N.D. Cal. 2015) (stating "it is well-settled that common ownership is not dispositive" of whether a subsidiary is its parent's alter ego). The Court acknowledges that Maple Leaf has pointed to other factors it argues support its position, such as Selene California being Jet Tern's factory direct representative. (Doc. No. 6 at 9; Norton Decl., Exhs. C, H.) However, "[w]hile [Maple Leaf] has pointed to various factors which indicate that [Jet Tern] exercises some control over [Selene California], '[t]he corporate separation, though perhaps merely formal, is real.'" *Transure, Inc.*, 766 F.2d at 1299 (quoting *Cannon Mfg. Co.*, 267 U.S. at 337).

With respect to the second prong, Jet Tern contends "injustice would result if Selene California were deemed a distinct entity" because "Jet Tern would be permitted to continue moving its assets through Selene California and profit while continuing to prevent [Maple Leaf] from being made whole through enforcement of the Award." (Doc. No. 6 at 10.) Yet Maple Leaf provides no explanation why it cannot seek relief in an appropriate forum such as Taiwan or China, the countries in which Jet Tern is incorporated and has its principal places of business. Nor does Maple Leaf suggest in the

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[7] While Chen is indisputably the CEO of Jet Tern, it is unclear what Chen's role is with respect to Selene California. Maple Leaf only presents evidence that "[t]he first person listed for 'Selene California's Team' on its website is 'Howard Chen, CEO, Jet Tern Marine' . . . ." (Doc. No. 6 at 5.)

Petition or the Norton declaration that Jet Tern purposefully keeps its corporation undercapitalized to, for example, prevent its creditors from seeking relief. *See Unocal Corp.*, 248 F.3d at 927 ("[U]nder California law, 'inadequate capitalization of a subsidiary may alone be a basis for holding the parent corporation liable for the acts of the subsidiary.'" (quoting *Slottow v. Am. Cas. Co.*, 10 F.3d 1355, 1360 (9th Cir. 1993))). For all these reasons, the Court rejects Maple Leaf's argument that it has made a prima facie showing that Selene California is Jet Tern's alter ego.

II. Whether Maple Leaf Should be Permitted Jurisdictional Discovery

Given the Court's rejection of Maple Leaf's arguments that general jurisdiction is proper over Jet Tern, Maple Leaf asks the Court to permit it to conduct jurisdictional discovery. (Doc. No. 6 at 10–11.) Specifically, Maple Leaf seeks to "pursue subpoenas against Selene California and its principals to obtain additional facts bearing on its relationship with Jet Tern and Jet Tern's property in the forum." (*Id.* at 11.) Maple Leaf contends that granting its relief is appropriate because "it has at least made 'a sufficient start toward establishing jurisdiction by showing its position to be non-frivolous.'" (Doc. No. 6 at 11) (quoting *Hume v. Farr's Coach Lines, Ltd.*, No. 12-CV-6378-FPG, 2015 WL 5773632, at *3 (W.D.N.Y. Sept. 30, 2015).

Jurisdictional discovery "may appropriately be granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary." *Data Disc, Inc.*, 557 F.2d at 1285 n.1. "A plaintiff who seeks jurisdictional discovery needn't first make a prima facie showing that jurisdiction actually exists." *NuboNau, Inc. v. NB Labs, Ltd.*, No. 10cv2631-LAB (BGS), 2011 WL 5237566, at *3 (S.D. Cal. Oct. 31, 2011). Given that such a showing is necessary on Maple Leaf's Petition, "[i]t would . . . be counterintuitive to require [Maple Leaf], *prior* to conducting discovery, to meet the same burden that would be required in order to" enforce the arbitral award. *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 673 (S.D. Cal. 2001) (emphasis in original).

However, Maple Leaf "must make at least a colorable showing that personal jurisdiction exists." *NuboNau, Inc.*, 2011 WL 5237566, at *3 (citing *Mitan v. Feeney*, 497 F. Supp. 2d 1113, 1119 (C.D. Cal. 2007)). "This 'colorable' showing should be understood as something less than a prima facie showing, and could be equated as requiring the plaintiff to come forward with 'some evidence' tending to establish personal jurisdiction over the defendant." *Mitan*, 497 F. Supp. 2d at 1119. Accordingly, a mere hunch that discovery "might yield jurisdictionally relevant facts" is insufficient. *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008).

"Courts are afforded considerable discretion in deciding whether parties may conduct discovery relating to jurisdictional issues . . . ." *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com. De Equip. Medico*, No. 07cv0309 L(AJB), 2007 WL 2238900, at *2 (S.D. Cal. Aug. 2, 2007); *see also Myhre v. Seventh-Day Adventist Church Reform Movement Am. Union Int'l Missionary Soc'y*, 298 F.R.D. 633, 645 (S.D. Cal. 2014) (noting some "courts have permitted plaintiffs to take jurisdictional discovery to support an alter ego [] theory of personal jurisdiction" (citing *Circle Click Media LLC v. Regus Mgmt. Grp. LLC*, No. 12-04000 SC, 2013 WL 57861, at *4–5 (N.D. Cal. Jan. 3, 2013))). Accordingly, a court's denial of a plaintiff's request for jurisdictional discovery "will not be reversed except on the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant." *Data Disc, Inc.*, 557 F.2d at 1285 n.1.

Here, the Court finds that limited jurisdictional discovery is appropriate. While Maple Leaf has not made a prima facie showing at this time that general jurisdiction exists over Jet Tern, the Court acknowledges that Maple Leaf has "come forward with 'some evidence' tending to establish personal jurisdiction over [Jet Tern]." *Mitan*, 497 F. Supp. 2d at 1119. Accordingly, the Court **GRANTS** Maple Leaf leave to conduct jurisdictional discovery.

Given Jet Tern's complete failure to participate in this action, the Court finds the most expeditious and efficient way to fully vet the issue of general jurisdiction is to permit Maple Leaf to seek some discovery from Jet Tern's purported wholly owned

subsidiary, Selene California. The Court therefore permits Maple Leaf to conduct jurisdictional discovery against Selene California, but **LIMITS** Maple Leaf's discovery to **one** deposition of a corporate representative of Selene California pursuant to Federal Rule of Civil Procedure 30(b)(6) with regard to jurisdictional facts **only**. The deposition is limited to seven hours of time on the record. Maple Leaf is also given leave to subpoena records from Selene California with regard to jurisdictional facts **only**. The Court finds this limited jurisdictional discovery strikes an appropriate balance between Maple Leaf's need for discovery and any impact on nonparty Selene California.

The Court **ORDERS** Maple Leaf to complete this discovery no later than ***April 25, 2016***, and to submit a supplemental brief on the issue of general jurisdiction no later than ***May 9, 2016***. The Court will schedule further argument on the matter as needed.

CONCLUSION

In sum, the Court **DENIES WITHOUT PREJUDICE** Maple Leaf's petition to confirm arbitration award. (Doc. No. 1.) The Court **GRANTS** Maple Leaf's request for jurisdictional discovery. (Doc. No. 6.) Maple Leaf is **LIMITED** to **one** deposition of a corporate representative of Selene California pursuant to Federal Rule of Civil Procedure 30(b)(6) with regard to jurisdictional facts **only** and to subpoena records from Selene California with regard to jurisdictional facts **only**. This discovery must be completed no later than ***April 25, 2016***. The Court **ORDERS** Maple Leaf to file a supplemental brief on the issue of general jurisdiction no later than ***May 9, 2016***.

Dated: March 11, 2016

Hon. Anthony J. Battaglia
United States District Judge