

DEC - 7 2002

For The Northern Mariana Islands
By [Signature]
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

TIMOTHY B. BRASUELL,

Plaintiff,

v.

FISKARS BRANDS, INC., and
DOES 1-10,

Defendant.

Civil Action No. 02-00036

ORDER DENYING
DEFENDANT'S MOTION
TO DISMISS FOR LACK OF
PERSONAL JURISDICTION

THIS MATTER came before the court on November 21, 2002 for
hearing on defendant's Motion to Dismiss for Lack of Personal
Jurisdiction.

1 Attorney Bruce Berline appeared on behalf of plaintiff. Attorney
2 Randall Todd Thompson appeared on behalf of defendant.

3
4 Upon consideration of the written and oral arguments of counsel,
5 defendant Fiskars Brands, Inc.’s Motion to Dismiss for Lack of Personal
6 Jurisdiction is DENIED as set forth herein.
7

8 **BACKGROUND**

9
10 Plaintiff Timothy B. Brasuell is a United States citizen residing in
11 Saipan, Commonwealth of the Northern Mariana Islands (hereinafter
12 “CNMI” or “Commonwealth”). See Complaint; Demand for Jury Trial ¶ 4
13 (Aug. 8, 2002). Defendant Fiskars Brands, Inc. (hereinafter “Fiskars”) is a
14 corporation organized and existing under the laws of Wisconsin, with its
15 principal place of business in Madison, Wisconsin. Id. at ¶ 5. Fiskars
16 Brands, Inc. is a fully owned subsidiary of Fiskars Corporation. See
17 Declaration of Plaintiff Timothy Brasuell in Support of Plaintiff’s
18 Opposition to Defendant Fiskars’ Motion to Dismiss for Lack of Personal
19 Jurisdiction Ex. D p. 2 (Oct. 22, 2002).

20 Prior to August 19, 2000, the plaintiff purchased a brand new plastic
21 outdoor garden chair from the Army Air Force Exchange Service store
22

1 (hereinafter “AAFES”) on Saipan, CNMI.’ See Compl. ¶ 11. On or about
2 August 19, 2000, the plaintiff was sitting on the garden chair on top of a
3 raised concrete structure located outside his apartment. Id. at ¶ 13. The
4 plaintiff was sitting and conversing with his friend, Mr. Mark Hanson. Id.
5 While the plaintiff was sitting, the back leg of the garden chair allegedly
6 buckled and collapsed causing the plaintiff to fall 15 feet headfirst into the
7 ground and suffer injuries. Id.

8 The plaintiff’s garden chair was allegedly designed, manufactured,
9 and marketed by the defendant, and then sold and distributed by the
10 defendant to AFEES. Id. at ¶ 9.

11 Defendant Fiskars is a global, multimillion dollar corporation that

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13 AAFES is a military retail and services organization headquartered in
14 Dallas, Texas that “operates 12,000 facilities worldwide, supporting 25
15 separate businesses in 25 countries and overseas areas, as well as in every state
16 of the union.” See Decl. of Pl. Brasuell Ex. A p. 5. This includes AAFES’s
17 1,423 retail exchanges, 1,410 food facilities, and 218 military clothing stores
18 located throughout the United States and the rest of the world. Id. Other
19 AAFES activities include theaters, personal service concessions, vending
20 centers, Class Six Stores and the overseas school lunch program. Id. The
21 retail exchanges are individually listed in the AAFES Supplier Handbook. Id.
22 at Ex. B pp. 24-57. AAFES distributes merchandise to its outlets through an
23 internal distribution network that consists of one transportation center, four
24 distribution centers, seven commercial consolidation centers, and six regional
25 distribution centers. Id. at Ex. B p. 22.

1 manufactures, sells, and markets consumer products for the home, office
2 and garden. See Decl. of Pl. Brasuell Ex. D p. 1. The defendant
3 manufactures and sells plastic garden furniture through its product line and
4 brand-name, “Syroco.” Id. at Ex. F p. 3. In 2001, the defendant had net
5 sales of over 654 million dollars and over 731 million dollars in 2000. Id. at
6 Ex. E p. 10. While the defendant maintains its own sales offices and a
7 worldwide distribution network, the defendant’s products are also
8 distributed through a network of leading hardware and home stores, retail
9 chains, and garden shops. Id. at Ex. D. pp. 6-7. These distributors include
10 Wal-Mart, Home Depot, and AAFES. Id.

1 In 2001, defendant Fiskars sold approximately one million five
2 hundred fifty-seven thousand, five hundred ninety-four dollars
3 (\$1,557,594.00) worth of products to AAFES.² Id. at Ex. C p. 16. This
4 ranked the defendant 530th out of 757 suppliers doing more than one
5 million dollars worth of business with AAFES. Id. In 2000, the defendant

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2 AAFES’s FY 2001 Million Dollar Vendors list lists “Fiskars, Inc.” as the
3 name of the company. See Decl. of Pl. Brasuell Ex. C p. 16. The court will
4 assume for the purposes of this motion that “Fiskars, Inc.” refers to the
5 defendant, “Fiskars Brands, Inc.” and its parent company, Fiskars
6 Corporation.

1 was ranked 520th overall and 635th in 1999. Id.

4 On August 8, 2002, the plaintiff filed a complaint against defendant
4 Fiskars alleging breach of duty of various negligence theories and for
4 violation of the CNMI's consumer protection laws due to the alleged
injuries he sustained due to his fall off the plastic outdoor garden chair. See
Compl. ¶¶ 16-64.

11 **DISCUSSION**

1 Defendant moved the court to dismiss plaintiff's claims pursuant to
1 Fed. R. Civ. P. 12(b)(2) arguing that the court lacks personal jurisdiction
1 over defendant Fiskars.

1 When a defendant "moves to dismiss a complaint for lack of personal
1 jurisdiction, the plaintiff bears the burden of demonstrating that
1 jurisdiction is appropriate." Dole Food Company v. Watts, 303 F.3d 1104,
1 1108 (9th Cir. 2002). When the motion is based on written material rather
2 than an evidentiary hearing, the court inquires into whether the plaintiff's
2 pleadings and affidavits make a prima facie showing of personal
2 jurisdiction. Id. The plaintiff cannot solely rely on the bare allegations of
2 his or her complaint. Id. However, uncontroverted allegations in the
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1 plaintiff's complaint must be taken as true. Id. "Conflicts between parties
2 over statements contained in affidavits must be resolved in the plaintiff's
3 favor." Id.

4
5 A district court sitting in diversity applies the long-arm statute of the
6 state in which the court sits where no federal statute governing personal
7 jurisdiction is applicable. Id. The Commonwealth's long-arm statute, 7 N.
8 Mar. I. Code § 1101 et seq. (1999), "subjects both residents and non-
9 residents to the Court's jurisdiction to the fullest extent allowable under
10 the due process standards of the United States Constitution." Monticello v.
11 Di-All Chemical Co., App. No. 97-020 (N. Mar. I. Nov. 23, 1998). The
12
13 Commonwealth's long-arm statute states in relevant part:

14
15 (a) Any person, whether or not a citizen or resident of the
16 Commonwealth, who in person or through an agent does
17 any of the acts enumerated in this section, thereby submits
18 such person, and, if not an individual, its personal
19 representative, to the jurisdiction of the courts of the
20 Commonwealth as to any cause of action arising from
21 the doing of any of the following acts:

22 . . .

23
24 (5) Causing tortious injury or damage within the
25 Commonwealth by an act or omission done outside the
26 Commonwealth by a person engaged in business or other
acts having impact within the Commonwealth, or who

derives income or revenue from supplying goods or services within the Commonwealth;

...

(7) Any act done outside the Commonwealth which causes or results in any harmful impact, injury or damages, including pollution of air, land or water within the Commonwealth; or

(8) Any other act done within or outside the Commonwealth from which a cause of action arises and for which it would not be unreasonable, unfair, or unjust to hold the person doing the act legally responsible in a court of the Commonwealth.

7 N. Mar. I. Code § 1102 (1999). Because the Commonwealth's long-arm statute is coextensive with federal due process requirements, "[j]urisdiction in this case is therefore constrained only by constitutional due process requirements." Caruth v. Int'l Psychoanalytical Ass'n, 59 F.3d 126, 127 (9th Cir. 1995).

Due process requires that, for a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least "minimum contacts" with the forum state so that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945).

1 There are two types of personal jurisdiction which the court can exercise
2 over a nonresident defendant: “general” and “specific” jurisdiction. Caruth,
3 59 F.3d at 127. The Ninth Circuit applies a three-part test to determine
4 whether specific jurisdiction may be applied to a defendant:

5 (1) The non-resident defendant must purposefully direct his
6 activities or consummate some transaction with the forum or
7 resident thereof; or perform some act by which he purposefully
8 avails himself of the privileges of conducting activities in the
9 forum, thereby invoking the benefits and protections of its
10 laws;

11 (2) The claim must be one which arises out of or relates to the
12 defendant’s forum-related activities; and

13 (3) The exercise of jurisdiction must comport with fair play and
14 substantial justice, i.e. it must be reasonable.

15 Dole Food Co., 303 F.3d at 1111 (emphasis added).

16 **A. Purposeful Direction or Availment**

17 The defendant argued that it has not purposefully availed itself of the
18 CNMI because it has no forum related activities or dealings in the CNMI,
19 and it has not engaged in any affirmative conduct which allowed or
20

1 promoted the transaction of business within the CNMI.³ The plaintiff
2 argued that the defendant placed its goods within the “stream of
3 commerce” and knew or should have known that its products would flow
4 into the CNMI.⁴ The court agrees.

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See generally Affidavit of Kathleen A. Metzger in Support of Motion to
Dismiss ¶¶ 4 (defendant does not maintain an office, agents, employees or
1 property in the CNMI), 5 (defendant does not market or solicit business in
1 the CNMI), and 6 (defendant does not design its garden chairs in anticipation
of sales in the CNMI) (Nov. 7, 2002).

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1 The United States Supreme Court discussed the applicability of the
1 “stream of commerce” theory in World-Wide Volkswagen Corp. v.
1 Woodson, 444 U.S. 286, 297-98 (1980). The Court held that manufacturers or
1 distributors who directly or indirectly place their goods into the stream of
commerce with the expectation that they will reach the forum state can be
subject to suit in the forum state. Id. The Court stated:

[I]f the sale of a product of a manufacturer or distributor... is
not simply an isolated occurrence, but arises from the efforts of
the manufacturer or distributor to serve directly *or indirectly*,
the market for its product in other States, it is not unreasonable
to subject it to suit in one of those States if its allegedly defective
merchandise has been the source of injury to its owner or to
22 others. *The forum State does not exceed its powers under the Due
Process Clause if it asserts personal jurisdiction over a corporation
that delivers its products into the stream of commerce with the
expectation that they will be purchased by consumers in the forum
State.*

2 Id. (emphasis added).

1 “Purposeful availment requires that the defendant engage in some
2 form of affirmative conduct allowing or promoting the transaction of
3 business within the forum state.” ~~Doe v. American National Red Cross~~,
4 112 F.3d 1048, 1051 (9th Cir. 1997) (quoting ~~Shute v. Carnival Cruise Lines~~,
5 897 F.2d 377, 381 (9th Cir. 1990), *rev’d on other grounds*, 499 U.S. 585
6 (1991)). “This requirement ensures that a defendant will not be haled into a
7 jurisdiction solely as a result of random, fortuitous, or attenuated contacts,
8 or of the unilateral activity of another party or third person.” *Id.* (citing
9 Burger King v. Rudzewicz, 471 U.S. 462, 475 (1985)).

1 Because the facts alleged in the plaintiff’s complaint sound in tort,
2 the purposeful availment prong is analyzed under the “effects” test. ~~Dole~~
3 Food Co., 303 F.3d at 1111. The “effects” test requires that the plaintiff
4 properly allege that defendant Fiskars committed (1) an intentional act, (2)
5 expressly aimed at the Commonwealth, (3) causing harm that defendant
6 Fiskars should have anticipated would be suffered in the Commonwealth.
7 *Id.*; see also Caruth, 59 F.3d at 128.

8 In this case, the plaintiff alleges that the defendant purposefully
9 directed its activities towards the Commonwealth by placing its goods

1 within the stream of commerce.⁵ The plaintiff alleges that although the
2 defendant does not directly market or distribute its products to the CNMI,

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6 The plaintiff argued that personal jurisdiction over defendant Fiskars is
7 appropriate under both “stream of commerce” theories: “stream of
8 commerce” and “stream of commerce plus.”

9 The United States Supreme Court revisited the “stream of commerce”
10 theory in Asahi Metal Industry Co. v. Superior Court of California, 480 U.S.
11 102 (1987). In Asahi, with regard to the “stream of commerce” theory, two
12 principal views were expressed in two separate opinions, one authored by
13 Justice Brennan and the other by Justice O’Connor. Justice Brennan
14 reaffirmed the “stream of commerce” theory of World-Wide Volkswagen
15 that, the “forum State does not exceed its powers under the Due Process
16 Clause if it asserts personal jurisdiction over a corporation that delivers its
17 products into the stream of commerce with the expectation that they will be
18 purchased in the forum state.” World-Wide Volkswagen, 444 U.S. at 293-294;
19 *see also Asahi*, 480 U.S. at 116-17. Justice O’Connor concluded that merely
20 placing a product into the stream of commerce and having it being swept into
21 the forum state does not establish the minimum contacts needed for personal
22 jurisdiction. Asahi, 480 U.S. at 112. Justice O’Connor stated:

23 The placement of a product into the stream of commerce,
24 *without more*, is not an act of the defendant purposefully
25 directed toward the forum State. *Additional conduct of the*
26 *defendant* may indicate an intent or purpose to serve the market
27 of the forum state....

28 *Id.* (emphasis added). Examples of the “additional conduct” discussed by
29 Justice O’Connor include, but are not limited to, “advertising in the forum
30 state, establishing channels for providing regular advice to customers in the
31 forum State, or marketing the product through a distributor who has agreed
32 to serve as the sales agent in the forum State.” *Id.*

1 the defendant deliberately placed its products into the AAFES distribution
2 system knowing that AAFES distributes to its retail outlets located
3 throughout the United States and the rest of the world, including Saipan.
4 The defendant is a worldwide manufacturer and marketer of consumer
5 goods who benefits greatly from the worldwide marketing and distribution
6 systems of large retail stores, such as, AAFES. The plaintiff alleges that this
7 is all part of the defendant's business strategy to market, sell, and distribute
8 to a network of large retail chains and home stores (i.e. AAFES, Wal-Mart,
9 and Home Depot) who possess vast national and worldwide distribution
10 systems so that its products will be marketed around the world, including
11 the CNMI. Thus, by purposefully availing itself of such marketing and
12 distribution strategies, the defendant must know, or at least should know,
13 that its products would end up in one of the AAFES retail outlets. More
14 specifically, the AAFES retail outlet located on Saipan, CNMI.

2 The court concludes that under the two "stream of commerce"
3 approaches and the Ninth Circuit "effects" test, the plaintiff's allegations
4 are sufficient to support personal jurisdiction over defendant Fiskars. The
5 defendant knew or should have known that its plastic garden chair would

1 flow into the Commonwealth because the defendant voluntarily marketed
2 and distributed its products to AAFES, knowing that AAFES distributes
4 merchandise to its 1,423 exchanges, one of which is located on Saipan.
6 Accordingly, the plaintiff has properly alleged that the defendant
8 purposefully availed itself of the Commonwealth.

9 **B. Claims Arising Out of Defendant's Activities**

10 Defendant Fiskars argued that the second requirement of the specific
12 jurisdiction test is not met because Fiskars has no forum-related activities
14 or dealings with the CNMI and its sole contact with the forum is that one
16 of its products wound up at the AAFES store in Saipan. The plaintiff
18 argued that his claims arise out of the defendant's manufacturing and
20 distribution of its allegedly dangerous and defective plastic garden chairs
22 throughout the United States, including the CNMI, and the world.

24 The Ninth Circuit has adopted a "but for" test to determine if claims
26 asserted by plaintiffs arise out of the defendant's contacts with the forum
state. Shute, 897 F.2d at 385. To satisfy the "but for" test, the plaintiff
need only show "some nexus between the cause of the action and the
defendant's activities in the forum." Id. The court concludes that but for

1 the defendant's manufacturing, marketing, and distribution of the allegedly
2 defective plastic garden chair into the worldwide marketing and
3 distribution system of AAFES, the plaintiff's claims would not exist.
4 Accordingly, the plaintiff has properly alleged that his claims arise
5 out of the defendant's forum-related activities.

6 C. Reasonableness

7 "Once purposeful availment has been established, the forum's
8 exercise of jurisdiction is presumptively reasonable. To rebut that
9 presumption, a defendant must present a compelling case that the exercise
10 of jurisdiction would, in fact, be unreasonable." Ziegler v. Indian River
11 County, 64 F.3d 470,476 (9th Cir. 1995).⁶ In evaluating reasonableness, the
12 Ninth Circuit balances seven (7) factors, "recognizing that none of the
13 factors is dispositive in itself." Terracom v. Valley National Bank, 49 F.3d
14 555, 560 (9th Cir. 1995). The factors are: (1) the extent of the defendant's
15 purposeful interjection into the forum state's affairs; (2) the burden on the

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17 See *also* Burger King, 471 U.S. at 477 (holding that once it has been
18 decided that a defendant has minimum contacts with a forum, the defendant
19 must present a compelling case that other considerations would render
20 jurisdiction unreasonable in order to defeat personal jurisdiction).

1 defendant of defending in the forum; (3) the extent of conflict with the
2 sovereignty of the defendant's state; (4) the forum state's interest in
3 adjudicating the dispute; (5) the most efficient judicial resolution of the
4 controversy; (6) the importance of the forum to the plaintiff's interest in
5 convenient and effective relief; and (7) the existence of an alternative
6 forum. Id.

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8 Defendant Fiskars argued that it has done little, if anything, to reach
9 out to the CNMI. It does not have any employees residing or domiciled in
10 the CNMI and it has no phone or mail listings there. Furthermore, given
11 the distance between Wisconsin and Saipan, it would be unduly
12 burdensome for the company to defend itself in this case. Lastly,
13 Defendant Fiskars argued that the CNMI would not be the most efficient
14 forum to adjudicate this matter because the acts or omissions for which the
15 defendant is being sued all occurred outside the CNMI. The plaintiff
16 argued that defendant Fiskars has failed to meet its heavy burden of
17 presenting compelling reasons why the court's exercise of personal
18 jurisdiction over it would be unreasonable. The court agrees.

1 **1. Purposeful Interjection**

2 The court has already concluded that defendant Fiskars directed its
3
4 activities to the Commonwealth to a degree sufficient to satisfy the
5 purposeful availment requirement. See discussion *supra*. Thus, the first
6 factor of purposeful interjection weighs heavily in the plaintiff’s favor.
7

8 **2. Burden on the Defense**

9 The court recognizes that it would be expensive for the defendant to
10 defend itself in the CNMI. However, this factor is not dispositive because
11 “[m]odern advances in communications and transportation have
12 significantly reduced the burden of litigating in another country.” Dole
13 Food Co., 303 F.3d at 1115. Defendant Fiskars is a global, multimillion
14 dollar corporation that had net sales of over 654 million dollars in 2001 and
15 over 731 million dollars in 2000. See Decl. of Pl. Brasuell Ex. E p. 10. On
16 the other hand, the plaintiff, a resident of the Commonwealth and a full-
17 time employee of the United States Department of Agriculture,
18 represented that it would be financially impossible for him to litigate this
19 case outside the CNMI. Id. at ¶¶ 2, 3, and 11. The court concludes that,
20 when balancing the respective burdens on the plaintiff and the defendant,
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1 the burden on defendant Fiskars is minimal given its substantial financial
2 resources.

3 4 **3. Conflict with Foreign State's Sovereignty**

5 The third factor concerns the extent to which the exercise of
6 jurisdiction would conflict the sovereignty of Wisconsin. The court
7 concludes that the third factor weighs in favor of the plaintiff because the
8 resolution of a single tort claim in the CNMI involving a corporate
9 defendant headquartered in Madison, Wisconsin will not significantly
10 interfere with Wisconsin's sovereignty.
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14 **4. Forum State Interest**

15 The Commonwealth has a strong interest in protecting its citizens
16 against the tortious acts of nonresidents, as evidenced by the
17 Commonwealth's Consumer Protection Act, codified at 4 N. Mar. I. Code
18 § 5101 et seq. (1999). See *also Shute*, 897 F.2d at 387 (stating that "[a] state is
19 deemed to have a strong interest in protecting its citizens against the
20 tortious acts of others."). The court concludes that the fourth factor
21 weighs in favor of the plaintiff.
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1 **5. Efficiency**

2 Efficiency of forum is evaluated by looking at where the witnesses
3 and the evidence are likely to be located. ~~Terracom~~, 49 F.3d at 561.
4 Defendant Fiskars argued that Wisconsin is a proper forum for this case
5 because the acts or omissions for which the defendant is sought to be held
6 liable all occurred outside the Commonwealth. In addition, the defendant
7 argued that its multiple expert witnesses all reside outside the CNMI. The
8 court concludes that this factor weighs in favor of the plaintiff because the
9 alleged injury occurred in the Commonwealth, the plaintiff and his one
10 eyewitness reside in the Commonwealth, the plaintiff’s attending physician
11 and primary physical therapist reside in the Commonwealth, and the
12 alleged defective chair is located in the Commonwealth.

1 **6. Importance of Forum to Plaintiff**

2 The Ninth Circuit has noted that the sixth factor remains
3 “nominally part of [the reasonableness] test [because] cases have cast doubt
4 on its significance.” Caruth, 59 F.3d at 129 (citing ~~Core-Vent Corp. v.~~
5 Nobel Indus. AB, 11F.3d 1482, 1490 (9th Cir. 1993) (“A mere preference on
6 the part of the plaintiff for its home forum does not affect the

balancing[.]”); Roth v. Garcia Marquez, 942 F.2d 617, 624 (9th Cir. 1991) (“[N]o doctorate in astrophysics is required to deduce that trying a case where one lives is almost always a plaintiff’s preference.”)). The court concludes that, although not dispositive, the sixth factor weighs in favor of the plaintiff because it would be a great inconvenience and substantial expense for the plaintiff to have to litigate this case in Wisconsin. Furthermore, given this expense, dismissal of the plaintiff’s chosen forum may effectively end his case. See Shute, 897 F.2d at 387 (“Dismissal of this suit from [the plaintiff’s chosen forum] effectively may prevent the Shutes from obtaining relief.”).

7. Unavailability of Alternative Forum

The plaintiff bears the burden of proving the unavailability of an alternative forum. Caruth, 59 F.3d at 129. In this case, the plaintiff argued that he might have alternative forums available to him assuming that the statute of limitations has not run in those other forums. The court concludes that the seventh factor weighs in the defendant’s favor because the plaintiff has not made a showing that his claims could not be effectively remedied in other jurisdictions.

1 **8. Balancing the Factors**

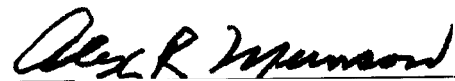
2 When balancing the seven factors, the court finds that defendant
3
4 Fiskars has failed to overcome the strong presumption of reasonableness of
5 the court's assertion of personal jurisdiction.

6 **CONCLUSION**

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8 After review of the complaint, pleadings, and affidavits, the court
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10 concludes that the plaintiff has demonstrated that this court's jurisdiction
11 over defendant Fiskars is appropriate and comports with due process.
12 Accordingly, defendant Fiskars Brands, Inc.'s Motion to Dismiss is
13 DENIED.

14 IT IS SO ORDERED.

15 DATED this 3rd day of December, 2002.

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18 _____
19 ALEX R. MUNSON

20 Judge
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