

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

FIRST CALL INTERNATIONAL, INC.

Plaintiff,

v.

No. 4:23-CV-00199-P

**S&B GLOBAL AMERICA, INC.,
S&B GLOBAL, INC.,
SUNG JAE HWANG, AND
BO YOON CHI**

Defendants.

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS AND
REQUEST FOR JURISDICTIONAL DISCOVERY**

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This is Plaintiff's Response to Defendant's Motion To Dismiss. See ECF No. 15.

I. STANDARDS OF REVIEW

"[W]hether personal jurisdiction can be exercised over a defendant is a question of law and subject to de novo review." *In re Chinese Manufactured Drywall Prods. Liab. Litig.*, 742 F.3d 576, 584 (5th Cir. 2014). "The plaintiff has the burden to make a *prima facie* showing that personal jurisdiction is proper." *Monkton Ins. Servs., Ltd. v. Ritter*, 768 F.3d 429, 431 (5th Cir. 2014) (emphasis added). "We must accept the plaintiff's uncontroverted allegations, and resolve in [its] favor all conflicts between the facts contained in the parties' affidavits and other documentation." *Eastern Concrete Materials v. Ace American Ins.*, 948 F. 3d 289, 295 (5th Cir. 2020). (quoting *Revell v. Lidov*, 317 F.3d 467, 469 (5th Cir. 2002)). "When a nonresident defendant presents a motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of establishing that in personam jurisdiction exists." *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir. 1985); *D.J. Invs., Inc. v. Metzeler Motorcycle Tire Agent Gregg Inc.*, 754 F.2d 542, 545-46 (5th Cir. 1985). The plaintiff need not, however, establish personal jurisdiction by a preponderance of the evidence; *prima facie* evidence of personal jurisdiction is sufficient. *Wyatt v. Kaplan*, 686 F.2d 276, 280 (5th Cir. 1982). The court may resolve a jurisdictional issue by reviewing pleadings, affidavits, interrogatories, depositions, oral testimony, exhibits, any part of the record, and any combination thereof. *Stuart*, 772 F.2d at 1192. Allegations in the plaintiff's complaint are taken as true except to the extent that they are contradicted by defendant's affidavits. *Wyatt*, 686 F.2d at 282-83 n.13 (citing *Black v. Acme Markets, Inc.*, 564 F.2d 681, 683 n.3 (5th Cir. 1977)). Any genuine, material conflicts between the facts established by the parties' affidavits and other evidence are resolved in favor of plaintiff for purposes of determining whether a *prima facie* case exists. *Bullion v. Gillespie*, 895 F.2d 213, 217 (5th Cir. 1990). Where minimum contacts are present, courts must consider: (1) the burden on the defendant; (2) the

forum state's interests; (3) the plaintiff's interest in convenient and effective relief; (4) the judicial system's interest in efficient resolution of controversies; and (5) the several states' shared interest in furthering fundamental social policies. *Stroman Realty, Inc. v. Wercinski*, 513 F.3d 476, 487 (5th Cir. 2008).

II. DEFENDANTS ARE IN CALIFORNIA

Plaintiff has joined three California defendants. This precludes dismissal.

Defendant Sung Jae Hwang incorporated Defendant S&B Global America, Inc. in California on May 24, 2015, before most of the events that form the basis of Plaintiff's causes of action. Defendant Bo Yoon Choi is Chief Financial Officer, Director, and Agent for Service of Process for Defendant S&B Global America, Inc. All Defendants operate out of their coastal mansion in Newport Beach, California. Defendant Sung Jae Hwang and Defendant Bo Yoon Choi are married to each other and perform commodity brokerage out of their Newport Beach, California house.

Not only are Defendants in California, so is Soomi Ko, their certified translator. ECF No. 6-3 at 4; ECF No. 20-1 at 10. Soomi Ko lists her phone number with a Los Angeles area code and describes herself as a "certified Korean Court Interpreter approved by the United States District Courts, certified by the State of California and the Los Angeles County Superior Courts" and "I am Court Certified interpreter for the State of California as described in GC68561." *Id.*

Defendant Sung Jae Hwang and Defendant Bo Yoon Choi worked together and conspired in a common enterprise and through their two companies (one located in California) to undermine and interfere with Plaintiff's contracts and business interests and contracts.

Both the Plaintiff and Defendants are in this country. Jurisdiction should remain in the US and, more specifically, in Fort Worth, Texas.

III. JURISDICTION IS PROPER IN TEXAS EVEN WITHOUT DEFENDANTS' CALIFORNIA CONTACTS

Jurisdiction would still be proper in the Northern District of Texas even without Defendants' California contacts.

A. Joseph Pavlov's Statements Are A Prima Facie Showing Against Fed.R.Civ.P. 12(b) Dismissal

Dismissal is not permitted and personal jurisdiction is established upon Plaintiff's *prima facie* showing. *Wilson v. Belin*, 20 F.3d 644, 648 (5th Cir.), cert. denied, 513 U.S. 930, 115 S.Ct. 322, 130 L.Ed.2d 282 (1994); *International Trans., Ltd. v. Embotelladora Agral., Reg.*, 277 F. Supp. 2d 654, 665 (N.D. Tex. 2002).

Plaintiff successfully makes its *prima facie* showing of Defendants' systematic contacts in Texas, and thereby defeats Defendant's Motion To Dismiss, through the Affidavit of Joseph Pavlov. Appendix 3. Joseph Pavlov is the owner and President of Plaintiff. Plaintiff highlighted Joseph Pavlov's most pertinent statements as required by this Court's rules. Judge Mark T. Pittman Specific Requirements, Rule II.C.1.

Joseph Pavlov's statements establish, among other things and without rebuttal from Defendants, that:

- Defendant Sung Jae Hwang regularly visited Plaintiff in Fort Worth Texas throughout the relevant periods. These meetings lasted all day over several days.
- Defendant Sung Jae Hwang and Joseph Pavlov regularly met all day over several days in Fort Worth, Texas.

- Defendant Sung Jae Hwang represented himself as Plaintiff's brokering agent to Plaintiff's existing and prospective Korean customers.
- Defendant Sung Jae Hwang directed business leads from Korean companies to Plaintiff in Fort Worth, Texas.
- From Plaintiff's Fort Worth headquarters, Plaintiff directed Defendant Sung Jae Hwang's brokering efforts with Korean companies.
- As a result of Defendant Sung Jae Hwang's brokering efforts, Plaintiff placed bids on aircraft parts supply contracts with Korean companies from Plaintiff's headquarters in Fort Worth, Texas.
- As a result of Defendants' brokering efforts with Korean companies, Korean companies purchased aircraft parts from Plaintiff in Fort Worth, Texas.
- From its headquarters in Fort Worth, Texas, Plaintiff supplied the aircraft parts that the Korean companies purchased from Plaintiff.
- Korean companies paid Plaintiff in Fort Worth, Texas for the aircraft parts they purchased from Plaintiff.
- From its headquarters in Fort Worth, Texas, Plaintiff paid brokerage commissions to Defendant.
- Plaintiff shared confidential and sensitive information with Defendant Sung Jae Hwang during his regular business trips to Fort Worth, Texas.

- Without Plaintiff's knowledge or permission, Defendant Sung Jae Hwang started working for and representing Adept Fasteners in Korea.
- Adept Fasteners was and is Plaintiff's direct competitor in Korea.
- Adept Fasteners has a branch in Arlington, Texas.
- Defendants directed business leads with Korean companies to Plaintiff in Fort Worth, Texas.
- Thanks to Defendants' efforts with Korean companies, the Korean companies purchased aircraft parts from Plaintiff in Fort Worth, Texas.

B. Law Professor Hong Establishes That There Is No Alternative Forum In Korea

Attached is the Declaration of Law Professor Dae Un Hong. Appendix at 7. Plaintiff highlighted Joseph Pavlov's most pertinent statements as required by this Court's rules. Judge Pittman's Rule II.C.1.

Professor Hong has been a visiting scholar at both Harvard Law School and Cornell Law School. The curriculum vitae attached to his Declaration lists the academic and professional articles he has written. Professor Hong is an Assistant Professor of Law at Dongguk University in Seoul, Korea and an Adjunct Professor of Law at Cornell Law School. He is admitted to practice in both Korea and the United States (District of Columbia) and has litigated on behalf of clients or provided advice to clients on matters of commercial law, including international business transactions.

In Professor Hong's opinion, Korea is not a feasible forum for Plaintiff's tortious interference cause of action and will not allow Plaintiff to perform the discovery that Plaintiff needs to investigate and support his causes of action. Furthermore, Korea will not permit the jury trial that Plaintiff has requested in this litigation.

C. Defendants Purposely Directed Activities To Texas

Defendants claim that they never purposely directed activities to Texas. *Id.* at 10. To highlight the incongruity of Defendants' argument, Plaintiff here again quotes the same passage from Defendants' Motion To Dismiss:

S&B Global identifies Korean business leads that would be beneficial to non-Korean clients who engage the services of S&B Global. In the event a Korean business expresses an interest in purchasing products from one of S&B Global's non-Korean vendors or manufacturers, S&B Global will convey the offer as well as any response provided.

Id.

Plaintiff hired Defendants for the business opportunities directed to Plaintiff in Fort Worth, Texas. It does not matter that Defendants were not a party to the actual Plaintiff's sale of the aircraft parts. Defendants earned commissions from the business leads that they directed to Plaintiff in Fort Worth, Texas. Defendants also maliciously directed business opportunities away from Fort Worth, Texas by interfering with Plaintiff's existing and prospective contracts in Korea. Unlike in Korea, tortious interference is recognized as a cause of action in this jurisdiction. See *Deauville Corp. v. Federated Dep't Stores, Inc.*, 756 F.2d 1183 (5th Cir. 1985); *Nursery Decals & More, Inc. v. Neat Print, Inc.*, 568 F. Supp. 3d 681 (N.D. Tex.), reconsideration denied, 575 F. Supp. 3d 740 (N.D. Tex. 2021); *Super-Sparkly Safety Stuff, LLC v. Skyline USA, Inc.*, No. 3:18-CV-0587-N, 2021 WL 9145415 (N.D. Tex. Mar. 24, 2021);

Roehrs v. Conesys, Inc., No. 3:05-CV-829-M, 2006 WL 8437473 (N.D. Tex. Jan. 18, 2006); *McGowan & Co. v. Bogan*, 93 F. Supp. 3d 624 (S.D. Tex. 2015); *ProTradeNet, LLC v. Predictive Profiles, Inc.*, 369 F. Supp. 3d 788 (W.D. Tex. 2019); *Pureshield, Inc. v. Allied Bioscience, Inc.*, No. 4:20-CV-734-SDJ, 2021 WL 4492861 (E.D. Tex. Sept. 30, 2021); and *Priority Design & Serv., Inc. v. Plaza*, No. SA-19-CV-00058-OLG, 2019 WL 2124677 (W.D. Tex. May 15, 2019).

D. It Is Irrelevant That Defendants Did Not Design, Manufacture, Or Sell Products In Texas

Defendants seek to be excused from this Court's jurisdiction because they did not design, manufacture, or sell products in Texas. ECF No.15 at 2. Defendants' argument is irrelevant. Plaintiff has never claimed that Defendants designed, manufactured, or sold products in Texas or anywhere else. It is almost as if Defendants do not even read their own Motion To Dismiss:

S&B Global identifies Korean business leads that would be beneficial to non-Korean clients who engage the services of S&B Global. In the event a Korean business expresses an interest in purchasing products from one of S&B Global's non-Korean vendors or manufacturers, S&B Global will convey the offer as well as any response provided.

Id. Plaintiff is suing Defendants over the failures and betrayals in its brokerage services to Plaintiff and not because Defendants designed, manufactured, or sold products. Defendants are service providers, not manufacturers or sellers, and Plaintiff is suing them as its brokerage agents, not as manufacturers or sellers.

E. The Korean Appellate Court's Decision Moots Defendants' Abstention Request

Defendants urge this Court to abstain and defer to the parties' proceedings before the Korean Appellate Court. *Id.* at 17. As Defendants' recently recorded, the Korean Appellate Court rendered its final decision and affirmed the lower court's decision in their favor. ECF No. 18-4. Plaintiff will not be appealing that decision. Appendix at 3. The Korean litigation has ended. There is no forum in Korea that could benefit from this Court's abstention. Moreover, there is no forum in Korea to entertain Plaintiff's causes of action or that will permit Plaintiff to conduct the needed discovery or argue its case before a jury. Appendix at 7. Thus, Defendants' abstention request is moot.

F. Defendants Misrepresent The Nature Of Their Contacts In Texas

Defendants claim that there are insufficient contacts to Texas because "nothing in the agreement required S&B Global to perform the contract, or conduct any other business, in Texas." *Id.* at 19. This is either misdirection or a misunderstanding of the contractual arrangement between the parties. Plaintiff retained Defendants to seek out business leads in Korea for the benefit of Plaintiff in Fort Worth, Texas. That Defendants were tasked with securing Korean customers, not Texas customers, does not diminish the deeply indelible contacts that they made in Texas. Defendants regularly visited Plaintiff in Fort Worth, Texas to plan Defendants' brokerage work on Plaintiff's behalf. Their meetings were regular, long, detailed, demanding, and consequential. Plaintiff directed Defendants sales brokerage activities from its Fort Worth, Texas headquarters. Korean companies paid Plaintiff in Fort Worth, Texas. Plaintiff paid commissions to Defendants from Fort Worth, Texas. Plaintiff fulfilled the sales orders from its stock in Fort Worth, Texas.

In addition, Plaintiff's tortious interference cause of action is not limited or defined by the parties' contract.

G. The Public Interest

The public interest is served by retaining jurisdiction in the Northern District of Texas. The public interest is defined by an opinion that the Defendants rely on from Fifth Circuit Court of Appeals *Dickinson Marine Inc. v. Panalpina, Inc.*, 179 F.3d 331 (5th Cir. 1999) ECF No.15 at 18. According to *Dickinson Marine Inc.*, there are five public interest factors that should decide whether another an alternative forum is preferable under *Forum Non-Conveniens*.

[1] The administrative difficulties flowing from court congestion; [2] the local interest in having localized controversies decided at home; [3] the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; [4] the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and [5] the unfairness of burdening citizens in an unrelated forum with jury duty.

Id. at 342. The second and most relevant factor is “the local interest in having localized controversies decided at home.” *Id.*

Plaintiff sued in Fort Worth, Texas, its “home” because Plaintiff trusts that our local courts, whether state or federal, will provide a forum to fully discover and fairly redress the crushingly terrible wrongs that it has suffered at the hands of the Defendants. Joe Pavlov, president and owner of Plaintiff, merely seeks what every American seeks and that is the opportunity to be heard and to be seen as a matter of justice and in keeping with our nation's priorities.

Plaintiff is a small exporter of aircraft parts. Our nation strictly regulates and licenses the exports of aircraft parts for many reasons, including to protect national security and promote economic development. Plaintiff must constantly comply with a dizzying array of regulations

from the Bureau of Industry and Security, the US Census Bureau, and the Directorate of Defense Trade Controls. In return, our federal government promises to protect and promote our nation's small exporters. This unwavering commitment to small exporters is codified into law and is enthusiastically embraced as national policy that cuts across all political parties and presidential administrations. Here are just a few examples:

- 15 USC § 4728(a) reads: “Statement of policy - It is the policy of the United States to promote exports as an opportunity for small businesses. In exercising their powers and functions in order to advance that policy, all Federal agencies shall work constructively with State and local agencies engaged in export promotion and export financing activities.”
- President Joe Biden, *A Proclamation on World Trade Week, 2022*, (“We have set a bold goal to double the number of businesses receiving export assistance from the Department of Commerce, with particular emphasis on engaging with businesses in historically underserved communities. We have made it possible for small and medium enterprises engaged in export-oriented manufacturing projects to benefit from medium- and long-term loans and loan guarantees offered by the Export-Import Bank of the United States.”), May 13, 2022, [tinyurl.com/4bb3sf4j](https://www.tinyurl.com/4bb3sf4j).
- President Joe Biden, *Statement from President Biden on Trade in Goods and Services*, June 7, 2022 (“U.S. goods exports hit a record in April, even after adjusting for inflation, which in turn narrowed the trade deficit. While monthly trade data can be volatile, this suggests American businesses and farmers are selling record

numbers of their goods abroad, as we continue to make more in America.”),
tinyurl.com/4t3f44n6.

- The US Trade and Development Agency, (“The US Trade and Development Agency helps companies create US jobs through the export of US goods and services for priority infrastructure projects in emerging economies.”), ustda.gov.

Not only is Plaintiff’s well-being as a small exporter worth defending as a matter of national priority, but, as recognized by *Dickinson Marine Inc.*, doing so also helps the local community. *Supra*.

Unlike Defendants’ luxurious trappings, Plaintiff’s headquarters straddle Haltom City, Texas, one of the poorest communities in Texas. See *Haltom City, Texas (TX) Poverty Rate Data*, <https://www.city-data.com/poverty/poverty-Haltom-City-Texas.html>. It is a city that over the years has come to desperately rely on the few remaining businesses, including Plaintiff, to sustain the local economy and tax base. Dismissing this lawsuit and thereby denying Plaintiff a local forum to air and redress its legal grievances will certainly hurt Plaintiff financially, but Haltom City will also surely take a devastating hit.

H. The Practical Wisdom Of Continuing The Litigation In Fort Worth, Texas

Defendants protest:

S&B Global faces a substantial burden by being dragged into litigation across the globe. Though technology has alleviated this burden to some degree, litigating [sic] such a matter will expend a vastly greater number of resources from Korea. For example, S&B Global representatives must fly from Korea to Texas. ECT 15 at 16.

California is not "across the globe" from Fort Worth, Texas. Also, the distance from Korea to Fort Worth is equal to the distance from Texas to Korea.

Defendants' presence in California eliminates Korea as a possible forum. If their California contacts are somehow not decisive enough, Professor Hong details why Korean courts are not an alternative forum for Plaintiff's causes of action. Appendix at 7.

Moreover, Plaintiff expects most of the witnesses and information that it needs for this litigation are to be found in Texas and California.

If discovery in Korea is needed, and as Defendants concede, the technology exists to allow the parties to easily perform discovery there.

The parties have already invested considerable time and energy litigating before this Court. The parties met and agreed on their Proposed Scheduling Report before Defendants filed the Motion To Dismiss. The Court's Scheduling Order set a trial date for just thirteen months from now. The parties have filed flurry of pleadings. Changing venues and jurisdiction mid-stream would impose huge costs and inconveniences for all parties, but especially for Plaintiff.

I. The Court Should Ignore Defendants' Unpublished Opinions

Defendants' Motion To Dismiss relies heavily on three unpublished opinions from the Fifth Circuit Court of Appeals: *Anderson-Tully Lumber Co. v. Int'l Forest Prods, S.R.L.*, 306 F. App'x 858 (5th Cir. 2009), *Bowles v. Ranger Land Sys.*, 527 F. App'x 319 (5th Cir. 2013), and *Henderson v. Republic of Texas*, 672 F. App'x 383 (5th Cir. 2016). These unpublished opinions have no authority as precedents and should be disregarded when determining the fate of this litigation. The courts that rendered those opinions emphasized that their opinions were not precedent: "Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R.

47.5” In addition, Defendants did not attach a copy of the unpublished opinions thereby violating this Court’s rules. *Judge Mark T. Pittman Specific Requirements*, Rule II.D. Thus, the Court should not give any weight to the three unpublished opinions.

Even if their respective courts had deemed them worthy as precedents, the unpublished opinions would still not support dismissal. In the *Anderson-Tully Lumber Co.* case, the Fifth Circuit’s first question was whether an alternative forum exists. *Id.* at 4. The answer is no in the instant case. The foreign country in *Anderson-Tully Lumber Co.* was Italy, not Korea. Korea does not allow for juries and does not recognize tortious interference. In *Anderson-Tully Lumber Co.*, the district court made its decision based on the witnesses documents list. There are no witness or document lists for this Court to review. Finally, and more significantly, the defendants did not have contacts and a presence in the USA. In *Bowles v. Ranger Land Sys.*, the parties did not dispute that the alleged conduct giving rise to plaintiff’s claims occurred in the foreign country and was unrelated to any of the defendant’s contacts with Texas. *Id.* at 319. Of course, the instant litigation could not be more dissimilar. Defendants’ contacts with Texas are inextricably and solidly linked to the wrongful deeds by Defendants as described in Plaintiff’s Second Amended Complaint. As for the *Henderson* case, that case is irrelevant to the merits of the Motion To Dismiss.

Unpublished opinions are not Defendant’s only procedural error. Defendants did not compile their affidavits and other exhibits into one self-contained document and did not follow the requisite formatting for an appendix as required by Local Rule 7.1(i) or the highlighting requirement imposed by this Court. *Judge Mark T. Pittman Specific Requirements*, Rule II.C.1. Therefore, the Court should similarly discount Defendants’ exhibits.

J. Defendants' Counsel Will Protect Their Clients Against Unfairness Or Injustice In This Jurisdiction

Defendants complain about the certain unfairness and injustice that they will suffer from litigating before this Court. ECF No.15 at 14-16.

These are crocodile tears.

Defendants retained the 68th largest law firm in the country to represent their interests in this lawsuit. *Website of Nelson Mullins*, <https://www.nelsonmullins.com/firm/history> (“Nelson Mullins is ranked the 68th largest law firm in the nation in 2020 with more than 850 attorneys and professionals by The American Lawyer.”). The law firm has twenty-two attorneys in Plano, Texas alone. <https://www.nelsonmullins.com/locations/dallas-tx?#professionals>. Their small army of lawyers will certainly make sure that Defendants do not suffer any unfairness from litigating in this jurisdiction.

IV. REQUEST FOR JURISDICTIONAL DISCOVERY

There is no reason whatsoever to dismiss this cause of action. Three Defendants are in California and their contacts in Fort Worth, Texas are systematic, obvious, frequent, and pervasive. Furthermore, Korea does not recognize Plaintiff’s causes of action or allow for discovery or trial by jury. Every fact in this litigation screams out for jurisdiction to remain in this Court.

However, if the Court determines Plaintiff has not quite yet achieved its *prima facie* showing to establish personal jurisdiction over Defendants, instead of dismissing this case outright, Plaintiff requests that the Court grant Plaintiff the opportunity to conduct jurisdictional discovery. Discovery of jurisdictional facts is appropriate when the existing record is inadequate to support personal jurisdiction and the plaintiff establishes that it can supplement its

jurisdictional allegations through discovery. A district court has broad discretion regarding whether to permit a party to conduct jurisdictional discovery. *Wyatt*, 689 F.2d at 283-84.

In this instant case, Plaintiff would depose Defendants and seek discovery of documents and information that are relevant to Defendants' contacts in the USA, particularly in California and Fort Worth, Texas.

Respectfully submitted,

/s/ Oscar Gonzalez

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CERTIFICATE OF SERVICE

On the same that I filed this pleading, I emailed opposing counsel the PACER CM/ECF Document Filing System link to this pleading to allow opposing counsel to download this pleading.

/s/ Oscar Gonzalez

OSCAR GONZALEZ