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10 **Attorneys for Defendant PROEX TRADING, INC.**

11 **UNITED STATES DISTRICT COURT**  
 12 **CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

13 MUSTEK, INC.,  
 14 Plaintiff,

15 vs.

16 PROEX, TRADING, INC., a  
 17 corporation, PROEX, INC., a  
 18 corporation, and DOES 1 through 50,  
 19 inclusive,  
 20 Defendants.

21 Case No. **SACV08-01464 JVS (CWx)**  
 22 ASSIGNED TO HONORABLE JUDGE  
 23 JAMES V. SELNA AND FOR  
 24 DISCOVERY PURPOSES TO  
 25 HONORABLE MAGISTRATE JUDGE  
 26 CARLA WOEHRLE  
 27 **NOTICE OF MOTION AND MOTION**  
 28 **TO DISMISS DEFENDANT PROEX**  
**TRADING, INC FOR LACK OF**  
**PERSONAL JURISDICITON;**  
**MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT**  
**THEREOF**  
**F.R.C.P. 12(b)(2)**  
**[Filed concurrently with Declarations**  
**of Abbas Abrarpour, Arash Alizadeh,**  
**and David Jafari]**  
 DATE: March 2, 2009  
 TIME: 1:30 p.m.  
 PLACE: 10C  
 Complaint Filed: November 12, 2008  
 (Orange County  
 Superior Court, CJC)

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:


2 PLEASE TAKE NOTICE THAT on March 2, 2009 at 1:30 p.m. or as soon  
3  
4 thereafter as counsel may be heard, in Courtroom 10C of Honorable Judge James  
5 V. Selna, in the United States District Courthouse – Santa Ana, 411 West Fourth  
6 Street, Santa Ana, California 92701, defendant Proex Trading, Inc., a Florida  
7 Corporation (hereinafter “Defendant”) appearing for the limited purpose of  
8 challenging personal jurisdiction, will and does hereby move the Court for  
9  
10 dismissal of this action as to Defendant, pursuant to Rule 12(b)(2) of the Federal  
11 Rules of Civil Procedure (2008). This Motion is made on the grounds that this  
12 Court lacks jurisdiction over the person of Defendant in this action because  
13  
14 Defendant has never been a citizen or resident of the State of California; Defendant  
15 has never been to California; Defendant does not sell goods to any persons within  
16 California; Plaintiff’s Florida representative solicited Defendant’s business in  
17 Florida; Plaintiff subsequently directly solicited Defendant’s business by visiting  
18 Defendant’s office in Florida; Defendant’s only contact with California has been,  
19 at most, 3 purchase orders during a 5 month period; Defendant never foresaw that  
20 it was subjecting itself to jurisdiction of California courts; and the burden on  
21 Defendant and its employees in defending this case in California would be great  
22 given that it has no offices, employees, officers, representatives, or managers  
23  
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26  
27  
28 outside Florida.

1 In the interest of justice, this Court alternatively should issue an order  
2 pursuant to 28 U.S.C. Section 1631 (2008) transferring this case to the United  
3 States District Court – Southern District of Florida.  
4

5 This motion is made and based upon this Notice, the accompanying  
6 Memorandum of Points and Authorities, Declaration of Abbas Abrarpour,  
7 Declaration of Arash Alizadeh, Declaration of David Jafari, all the pleadings,  
8 documents, and records in the files of this Court in this action, all additional  
9 matters of which this Court takes judicial notice, and any oral argument and further  
10 written argument permitted by this Court.  
11  
12  
13

14 DATE: 1/6/09

JAFARI LAW GROUP, INC.

15  
16  
17 By:   
18 DAVID V. JAFARI,  
19 Attorney for Defendant PROEX  
20 TRADING, INC.  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant Proex Trading, Inc., a Florida Corporation (hereinafter, “Proex  
3 Trading” or “Defendant”), appearing for the limited purpose of challenging  
4 personal jurisdiction, moves this Court to dismiss the Complaint of plaintiff  
5 Mustek, Inc. (hereinafter “Plaintiff”) against it for lack of personal jurisdiction  
6 pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure (2008). In the  
7 interest of justice, this Court alternatively should issue an order pursuant to 28  
8 U.S.C. § 1631 transferring this case to the United States District Court – Southern  
9 District of Florida.  
10

11 Pursuant to California Code of Civil Procedure section 415.40 (2008),  
12 Plaintiff served the Summons and Complaint Defendant’s accountant via certified  
13 or registered mail, as persons outside of California. See Proof of Service, attached  
14 to Declaration of Abbas Abrarpour as Exhibit “B”). Defendant is a Florida  
15 resident and citizen with its principal place of business in Florida. Defendant has  
16 never been incorporated or registered to do business in California nor does it have  
17 any employees, warehouses or offices in California. It does not advertise or sell in  
18 California. It does not have any bank accounts or other tangible real or personal  
19 property in California. Defendant does not sell its goods within the U.S.,  
20 particularly California. There are no facts to establish the requisite minimum  
21 contacts with California. The heart of Plaintiff’s basis for jurisdiction is 2 or 3  
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1 purchase orders, placed by Defendant through email, with Plaintiff. Defendant has  
2 never solicited Plaintiff; rather Plaintiff approached Defendant in Florida to  
3 procure Defendant's business. Therefore, it would be improper for this Court to  
4 exercise general or limited personal jurisdiction over the person of Defendant, and  
5 to unreasonably require a Florida corporation and citizen, with only three  
6 employees, to defend themselves in a California court.  
7

8  
9 This motion is made following the conference of counsel pursuant to L.R. 7-  
10 3 which took place on December 19, 2008, when Defendant's attorney, David  
11 Jafari called and discussed with Plaintiff's counsel regarding the basis of Plaintiff's  
12 assertion of California jurisdiction over the person of Defendant. The parties were  
13 not able to resolve the issues presented in this motion. (Declaration of David  
14 Jafari, ¶ 5).  
15  
16

17  
18 **I. STATEMENT OF THE CASE**

19  
20 **A. BACKGROUND FACTS**

21 Defendant Proex Trading is a corporation in good standing duly formed  
22 under the laws of the state of Florida. (Declaration of Abbas Abrarpour, ¶ 10,  
23 Declaration of Arash Alizadeh ¶ 9, Declaration of Arash Alizadeh Exhibit "H").  
24 Proex Trading is engaged in the business of buying and selling mostly electronic  
25 goods from manufacturers to non-U.S. retailers. Proex Trading does not sell any  
26 goods to U.S. residents. (Declaration of Abbas Abrarpour, ¶ 7). Proex Trading  
27  
28

1 employs 3 employees that are Florida residents. (*Id.*, ¶ 9). Proex Trading has  
2 always had its principal place of business in State of Florida, City of Miami. (*Id.*, ¶  
3 11). Proex Trading does not have any employees in the State of California. (*Id.*, ¶  
4 12). Proex Trading does not advertise, solicit or offer its products to California  
5 residents. (*Id.*, ¶ 13). Defendant, or any of its representatives, has never been in  
6 California for any matter related to Defendant's business. Defendant has never had  
7 any employees working in California, nor has it ever contracted with persons  
8 residing in California to act in California, or elsewhere, on its behalf to market,  
9 distribute or service any of Proex Trading's products. (*Id.*, ¶ 14).

14 Defendant has never had any offices, warehouses or sales outlets outside of  
15 Florida, and has never had any telephone listings or mailing addresses outside of  
16 Florida. (Declaration of Abbas Abrarpour, ¶ 16). Defendant does not have any  
17 real, personal, or intangible property in California. (*Id.*, ¶ 17). Defendant has never  
18 had any checking or saving accounts in California. (*Id.*, ¶ 18).

21 Defendant's first contact with Plaintiff was through a third party Florida  
22 corporation selling Plaintiff's products in Florida. Future Generation, Inc. is a  
23 Florida Corporation with its principal place of business at 11001 N. Federal  
24 Highway, Suite 303, Hallandale Beach, Florida 33008-0910, phone number is 305-  
25 891-6383. Paul Zawadski is a representative for Future Generation, Inc. Future  
26 Generation, Inc. represents electronic industry manufacturers, and acted as an  
27  
28

1 agent for Plaintiff, among other manufacturers, in procuring new business from  
2 various buyers, such as Defendant, in exchange for a commission. (Declaration of  
3 Abbas Abrarpour, ¶ 21; Declaration of Arash Alizadeh ¶ 10, Exhibit “I”).

4  
5 Mr. Abbas Abrarpour has been the president of Defendant corporation since  
6 its incorporation in 1992. (Declaration of Abbas Abrarpour, ¶ 1, line 2). Mr.  
7 Abrarpour is solely responsible for management of all of Proex Trading’s business  
8 affairs, including negotiation, execution, and performance of any transactions.  
9  
10 (*Id.*, ¶ 8) In the regular course of his duties as president of Proex Trading, Mr.  
11 Abrarpour is fully familiar with Proex Trading’s business operations, and the  
12 books and records of Proex Trading relating to its conduct, in terms of where Proex  
13 Trading was formed, where it has its offices and where and how it does business.  
14  
15 (*Id.*, ¶ 6). Mr. Abrarpour has never been to California. (*Id.*, ¶ 5).

16  
17  
18 In early 2004, Mr. Abrarpour was approached by Paul Zawadski, Future  
19 Generation, Inc.’s representative, regarding forming a business relationship, which  
20 Mr. Abrarpour agreed to. Then after, Defendant began purchasing electronic  
21 goods, including Plaintiff’s goods, through Future Generations, Inc., via Mr.  
22 Zawadski. Mr. Abrarpour negotiated terms of any purchases with Future  
23 Generations, Inc. He placed orders through Future Generations, Inc. (*Id.*, ¶ 22).  
24 Defendant never executed a written agreement with Future Generations, Inc. (*Id.*,  
25 ¶ 23).

1 Up until April 2008, Defendant conducted substantially all its purchases  
2 from Plaintiff through Future Generations, including any negotiations of terms  
3 and/or placing purchase orders. Mr. Abrarpour never contacted Plaintiff directly  
4 while Future Generations, Inc. represented Plaintiff. The only contact with  
5 Plaintiff in California was that Defendant received invoices from Plaintiff and  
6 remitted payments to Plaintiff in California (Declaration of Abbas Abrarpour, ¶  
7 24).

8  
9  
10  
11 At all times during Mr. Abrarpour's dealings with Future Generations, Inc., Future  
12 Generations, Inc. was geographically located in Florida. The phone number that  
13 Mr. Abrarpour used to contact Future Generations, Inc. is a Florida phone number.  
14 (*Id.*, ¶ 25).

15  
16 On or around April 2008, Future Generations, Inc.'s relationship with  
17 Plaintiff Mustek broke down. Consequently, Plaintiff, via its sales representative  
18 Javier Loureiro, approached Mr. Abrarpour to directly deal with Plaintiff for any  
19 future transactions. To secure Defendant's business, Mr. Loureiro visited  
20 Defendant's office in Florida once. After Mr. Abrarpour's initial meeting with Mr.  
21 Loureiro, all future communications with Mr. Loureiro were via email. (See  
22 Exhibit "C" attached hereto). Although Mr. Abrarpour agreed to place any future  
23 orders directly with Plaintiff, Mr. Abrarpour never executed a written agreement  
24 with Plaintiff. (*Id.*, ¶ 26). During its direct dealings with Plaintiff, and after Mr.  
25  
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1 Loureiro visited Mr. Abrarpour, Mr. Abrarpour never even called Plaintiff. (*Id.*, ¶  
2 26, Page 6, line 7). Between April 2008 and September 2008, Defendant placed  
3 approximately 2 or 3 orders, mostly for Portable DVD players with Plaintiff.  
4 These transactions were all conducted via email. See Exhibit “C” attached hereto.  
5 (*Id.*, ¶ 27). The transaction that gave rise to this lawsuit was related to an order,  
6 placed directly with Plaintiff around August 2008, for 2500 Portable DVD player.  
7 The Portable DVD players were intended for resale to a retailer in Brazil, South  
8 America. (*Id.*, ¶ 28).  
9

10  
11  
12 **B. THE CURRENT LAWSUIT**

13  
14 On November 12, 2008, Plaintiff filed a Complaint in the Superior Court  
15 captioned as MUSTEK, INC., Plaintiff v. PROEX, TRADING, INC., a corporation  
16 PROEX, INC., a corporation, and DOES 1 through 50, inclusive, Defendants.  
17 (Superior Court of California, County of Orange, Central Justice Center, Case  
18 Number 30-2008-00114646). The Complaint alleges causes of action for 1)  
19 Breach of Written Contract, 2) Work, Labor, Services and Materials, and 3)  
20 Account Stated. Plaintiff prays for judgment against Defendant for compensatory  
21 damages in the amount of at least \$92,083.00, plus pre-judgment interest at the rate  
22 of ten percent (10%) per annum or as permitted by law, attorneys fees and costs.  
23 (Complaint page 4, line 16 to 20, attached to the Declaration of Abbas Abrarpour  
24 as Exhibit “A”).  
25  
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1 On December 3, 2008, Defendant propounded to Plaintiff a set of Form  
2 Interrogatories and a set of Request For Production of Documents. These  
3 discovery request were intended for the limited purpose of determining  
4 jurisdiction. (Declaration of Arash Alizadeh, ¶ 12; Declaration of Arash Alizadeh,  
5 Exhibit “K”; Declaration of David Jafari, ¶ 3; Declaration of David Jafari, Exhibit  
6 “B”). On December 5, 2009, Defendant extended Plaintiff’s time to respond to  
7 discovery to January 9, 2009 so both parties have an opportunity to discuss  
8 resolution of the case. (Declaration of Arash Alizadeh, ¶ 3, Line 8; Letter from  
9 Christopher Wesierski, attached as Exhibit “D” to Declaration of Arash Alizadeh).  
10 On December 19, 2009, upon insistence of Plaintiff’s counsel, Mr. Christopher  
11 Wesierski, that said discovery requests waives jurisdiction, Defendant withdrew its  
12 discovery requests.<sup>1</sup> (Declaration of Arash Alizadeh, ¶ 8; Letter to Christopher  
13 Wesierski, attached as Exhibit “G” to Declaration of Arash Alizadeh).

14 Plaintiff does allege that “Defendant Proex Trading, Inc. is, and was at all  
15 times mentioned [in the Complaint], a corporation organized and existing under,  
16 and by virtue of the laws of the State of Florida, and maintains its principal place  
17 of business in Miami, Florida.” (Complaint ¶ 2). However, Plaintiff further alleges  
18 that “Proex Trading, Inc. entered into the contract alleged herein by contacting  
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27 <sup>1</sup> Defendant’s counsel found ambiguity in the law on the area of the scope of limited discovery for the purpose of  
28 determining jurisdiction. Accordingly, to preserve its client’s interest, counsel withdrew its discovery requests with  
ample time remaining for Plaintiff to respond. Plaintiff was not prejudiced by Defendant’s discovery requests  
because at the time of the withdrawal, there was 20 days remaining for Plaintiff to respond and Plaintiff’s counsel

1 Plaintiff in the State of California and placing an order for products with Plaintiff  
2 in the State of California.” (Complaint ¶ 2). This allegation is the linchpin of  
3  
4 Plaintiff’s allegation for the determining jurisdiction. However, in view of the  
5 background facts, this allegation simply mischaracterizes the parties’ relationship.  
6  
7 As more fully discussed below, Defendant’s placement of, at most, 3 orders with  
8 Plaintiff, in response to Plaintiff’s purposefully reaching out to Defendant and  
9 seeking Defendant’s business, does not satisfy due process requirement of  
10  
11 minimum contacts.

12           The established fact supporting dismissal are that Defendant has never been  
13  
14 a citizen or resident of the State of California; Defendant has never been to  
15 California, Defendant does not sell goods to any persons within California;  
16 Plaintiff’s Florida representative solicited Defendant’s business in Florida; Plaintiff  
17 subsequently directly solicited Defendant’s business by visiting Defendant’s office  
18 in Florida; Defendant’s only contact with California has been, at most, 3 purchase  
19 orders during a 5 month period; Defendant never foresaw that it was subjecting  
20  
21 itself to jurisdiction of California courts; and the burden on Defendant and its  
22 employees in defending this case in California would be great given that it has no  
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24 offices, employees, officers, representatives, or managers outside Florida.  
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was expecting to reach a resolution without further proceedings. (Letter from Christopher Wesierski, attached to Declaration of Arash Alizadeh as Exhibit “D”)

1 **II. JURISDICTION CAN BE EXERCISED OVER PROEX TRADING**  
2 **ONLY IN ACCORD WITH DUE PROCESS STANDARDS**  
3

4 Although it is also necessary to take into account California's long-arm  
5 statute,<sup>2</sup> as California has expressly adopted federal standards,<sup>3</sup> it is established that  
6 the federal decisions cover California as well as federal requirements. Gordy v.  
7 The Daily New L.P., 95 F.3d 829, 831 (9<sup>th</sup> Cir. 1996). Defendant has an  
8 "individual liberty interest" that is protected by the Due Process Clause. Insurance  
9 Company of Ireland Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694,  
10 701-703 (1982). The Due Process Clause is a "guarantor against inconvenient  
11 litigation," and it creates a standard "typically described in terms of  
12 'reasonableness' and 'fairness' . . .". Worldwide Volkswagen Corp. v. Woodson,  
13 444 U.S. 286, 292 (1980).  
14

15 Plaintiffs must demonstrate that Defendant Proex Trading had sufficient  
16 "minimum contacts" with California, so that requiring Defendant to defend this  
17 suit in a distant forum from Defendant's residence, State of Florida, is in accord  
18 with "traditional notions of fair play and substantial justice," which requires this  
19 Court to make an ". . . estimate of the inconvenience which result to . . ."  
20 Defendant Proex Trading. Int'l Shoe Co. v. Washington, 326 U.S. 310, 316-317  
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28 <sup>2</sup> "Jurisdiction must comport with the State long-arm an with the constitutional requirement of  
due process." Omelk v. Langston, etc., 52 F.3d 267, 269 (9<sup>th</sup> Cir. 1995).

<sup>3</sup> Cal. Civ. Proc. Code § 410.10 (2008) ["A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States."]



1 (1945). Absent such minimum contacts, Plaintiffs cannot meet their burden of  
2 showing that defendants had a “reasonable anticipation” that it would be sued in  
3 California. Shaffer v. Heitner, 433 U.S. 186, 216 (1977).

4  
5 **III. CALIFORNIA DOES NOT HAVE MINIMUM CONTACTS OVER**  
6 **PROEX TRADING**

7 In an action by a resident plaintiff against a non-resident defendant, the  
8 burden is on the plaintiff to show that the non-resident defendant has sufficient  
9 contacts with California to subject the defendant to personal jurisdiction in the  
10 state. Alexander v. Heater, 193 Cal.App.3d 1241, 1246 (1987). A Plaintiff can  
11 satisfy this burden by establishing either general or limited jurisdiction.  
12

13  
14 **A. GENERAL JURISDICTION DOES NOT EXIST OVER PROEX**  
15 **TRADING**

16  
17 General jurisdiction exists when a defendant has so many contacts with the  
18 forum state that a court may lawfully entertain any claim against it, even one  
19 unrelated to the contacts. Perkins v. Benguet Consolidated Mining Co., 342 US  
20 437, 445; 72 S.Ct. 413, 418 (1952). Such activities must be “extensive or wide  
21 ranging, or substantial, continuous and systematic.” *Id* at 447-48. Stated another  
22 way, the defendant must have “continuous and systematic general business  
23 contacts” with the forum state. Helicopteros Nacionales de Colombia, S.A. v. Hall,  
24 466 U.S. 408, 416; 104 S.Ct. 1868, 1873 (1984) (purchasing goods and services in  
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1 the forum state, even at regular intervals, is not enough by itself to subject a  
2 nonresident to general jurisdiction.)  
3

4 The sole basis for personal jurisdiction alleged in the Complaint is that  
5 “Proex Trading, Inc. entered into the contract alleged herein by contacting Plaintiff  
6 in the State of California and placing an order for products with Plaintiff in the  
7 State of California.” (Complaint ¶ 2). Not only does this allegation  
8 mischaracterize the parties’ relationship, Defendant’s contacts with California are  
9 not at all the type of substantial, continuous and systematic contacts that are  
10 required to exercise general personal jurisdiction over Defendant. Helicopteros,  
11 *Supra*.  
12  
13  
14

15 **B. LIMITED JURISDICTION DOES NOT EXIST**

16 To establish limited jurisdiction, the Plaintiff “must demonstrate that  
17 defendants (1) had purposeful contacts [or availment] with [the forum], (2) that the  
18 present cause of action arose out of those contacts, and (3) that exercising  
19 jurisdiction over defendants would not be unreasonable.” Peterson v. Highland  
20 Music, Inc., 140 F.3d 1313, 1320 (9th Cir. 1998), cert den., 525 U.S. 983, 119  
21 S.Ct. 446, 142 L.Ed.2d 401 (1998). Importantly, all three prongs of the minimum  
22 contacts test must be satisfied to establish limited personal jurisdiction. McGlinchy  
23 v. Shell Chem. Co., 845 F.2d 802, 817-18, n. 10 (9th Cir. 1988). Plaintiff cannot  
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1 satisfy the first or third prongs required to exercise limited jurisdiction over  
2 Defendant as a matter of law.

3  
4 **1. PROEX TRADING DID NOT PURPOSEFULLY AVAIL**  
5 **ITSELF OF CALIFORNIA**

6  
7 The purposeful availment requirement is designed to ensure that a  
8 nonresident is not haled into local courts solely as a result of “random, fortuitous or  
9 attenuated contacts,” and that the defendant has deliberately “engaged in  
10 significant activities within a state or has created continuing obligations between  
11 himself and the forum.” Gray & Co. v. Firstenberg Machinery Company, Inc., 913  
12 F.2d 758, 760 (9th Cir. 1990) citing Burger King Corp. v. Rudzewicz, 471 U.S.  
13 462, 475-76; 105 S.Ct. 2174, 2183-84 (1985).

14  
15  
16 In contract cases such as the case at bar, a “highly realistic” approach is  
17 required to determine whether a nonresident contracting party is subject to local  
18 jurisdiction. Courts recognize that the “contract is ordinarily but an intermediate  
19 step serving to tie up prior business negotiations with future consequences which  
20 themselves are the real object of the business transaction.” Burger King, supra, 471  
21 U.S. at 478, 105 S.Ct. at 2185. **Thus, the mere fact that a nonresident enters**  
22 **into a contract with a forum resident does not establish ‘minimum contacts’**  
23 **between the nonresident and the forum state.** Gray & Co. v. Firstenberg  
24 Machinery Co., 913 F.2d. 758, 760 (9th Cir. 1990). **Nor is jurisdiction**

1 established automatically because the forum was the ‘place of contracting’ or  
2 ‘place of performance’; or because breach has ‘caused an effect’ (financial  
3 loss) in the forum state. Burger King Corp., supra, 471 U.S. at 479 (“[p]rior  
4 negotiations and contemplated future consequences, along with the terms of the  
5 contract and the parties' actual course of dealing” are the factors to be considered).  
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8 The factors critical to the purposeful availment analysis in the contract arena  
9 include: (1) the parties' prior negotiations; (2) contemplated future consequences of  
10 the agreement; (3) the terms of the contract; and (4) the parties' actual course of  
11 dealings. Burger King Corp., supra. Under this analysis, “[t]he predominant rule in  
12 both the Ninth Circuit and in California state courts is that a non-resident making a  
13 one-time purchase of goods from a seller in the forum state cannot be  
14 constitutionally subject to the exercise of personal jurisdiction by the courts of the  
15 seller's state.” Hunt v. Superior Ct., 81 Cal.App.4th 901, 906 (2000), see also Gray,  
16 supra, at 761; Futuresat Industries, Inc. v. Superior Ct., 3 Cal.App.4th 155 (1992);  
17 Interdyne Co. v. SYS Computer Corp., 31 Cal.App.3d 508 (1973).  
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22 All of the Burger King factors conclusively establish that Defendant did not  
23 purposefully avail itself of California. First, Plaintiff and Defendant prior  
24 negotiation were conducted entirely in Florida. Future Generations, Inc., on behalf  
25 of Plaintiff, contacted Defendant in Florida in 2004. Thereafter, for the following  
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28 4 years, Plaintiff's dealing with Defendant was exclusively via its Florida sales

1 representative, Future Generations, Inc. After Plaintiff's relations with Future  
2 Generations, Inc. broke down, Plaintiff visited Defendant's office in Florida to  
3 procure Defendant's business. Defendant never solicited Plaintiff. All  
4 negotiations, except for price and delivery terms that are unique for each  
5 transaction, were negotiated in Florida.  
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8         Second, the transaction at issue in the Complaint did not contemplate any  
9 future consequences or obligation whatsoever between the parties. There was no  
10 written agreement between the parties other than purchase orders and invoices.  
11 The parties did not agree on a forum for resolving disputes. The parties did not  
12 agree on an attorney's fees clause. There was no obligation on the parties other  
13 than delivery of goods ordered and remitting payment. The attenuated email  
14 contacts here are simply not the types of contacts than can support a claim of  
15 purposeful availment as a matter of law. *See, e.g., Gray, supra*, at 761 (contacts  
16 relating to single sale that did not contemplate continuing relationship are  
17 attenuated contacts which are insufficient to establish purposeful availment); Thos.  
18 P. Gonzales Corp. v. Consejo Nacional de Produccion de Costa Rica, 614 F.2d  
19 1247, 1252 (9th Cir. 1980), *quoting Interdyne, supra*, at 510 (“[w]hen a California  
20 business seeks out purchasers in other states ... [and] deals with them by out-of-  
21 state agents or by interstate mail and telephone, it is not entitled to force the  
22 customer to come to California to defend an action on the contract”); Kerry Steel,

1 Inc. v. Paragon Indus., Inc., 106 F.3d 147, 151 (6th. Cir. 1997) (plaintiff telephone  
2 of offer to defendant, followed by purchase orders and payments by defendant to  
3 plaintiff constituted an isolated transaction and thus did not subject defendant to  
4 personal jurisdiction in plaintiff's jurisdiction - - - the transaction had no realistic  
5 impact on commerce in the forum state); Burger King, *supra*, 471 U.S. at 480, 105  
6 S.Ct. at 2186 (the purposeful availment prong is not satisfied where the defendant  
7 does not take deliberate actions within the forum or create continuing obligations).<sup>4</sup>

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11 Where, as here, the out of state buyer was itself solicited, purposeful  
12 availment does not exist as a matter of law. See, e.g., Vetrotex Certainteed Corp. v.  
13 Consolid. Fiber Glass Products Co., 75 F.3d 147, 151-52 (3rd Cir. 1996 (no  
14 jurisdiction over passive buyer); see also Bell Paper Box, Inc. v. Trans Western  
15 Polymers, Inc., 53 F.3d 920 (8th Cir. 1995) (single contract insufficient for  
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20 <sup>4</sup> Interdyne, *supra*, is also directly on point. The Interdyne court stated that "when a California  
21 business seeks out purchasers in other states - purchasers who are not "present" in California for  
22 a general purpose, and deals with them only by out-of-state agents or by interstate mail and  
23 telephone, that California corporation "is not entitled to force the customer to come to California  
24 to defend the action on the contract." *Id* at 511-12. Stated another way, the Interdyne court held  
25 that personal jurisdiction was improper because the out of state buyer's communications with the  
26 California seller through an agent or via phone calls were too minimal to constitute purposeful  
27 availment. *Id.* at 510-512. Indeed, personal jurisdiction is improper where all relevant events  
28 connected to a nonresident's efforts to buy and to arrange financing occur *outside the forum*  
*state*. Hunt, *supra* at 907.

Similarly in Tiffany Records, *supra*, the court held that "foreign purchasers of products  
from California resident could not be sued in California despite substantial purchases...because  
the out-of-state defendants engaged only in out-o-state activities such as placing telephone calls  
and mailing orders. Tiffany Records, *supra*, 276 Cal.App.2d at 619.

1 jurisdiction where defendant was solicited, “particularly ... when the nonresident  
2 defendant is a buyer rather than a seller”).  
3

4 Third, as noted above, the terms of Plaintiff’s order at issue herein  
5 contemplate no future dealings between the parties. Again, the transaction simply  
6 involved the purchase of Portable DVD Players in exchange for monies. Parties  
7 contemplated no future dealings with each. Defendant obligations to Plaintiff  
8 terminated upon payment. This was simply one of about 2 or 3 isolated  
9 transactions between the parties. Such isolated transactions cannot form the basis  
10 of a claim for personal jurisdiction as a matter of law. If Plaintiff had a strong  
11 interest in litigating this case in California, it simply could have required, at the  
12 time Plaintiff solicited Defendant, a written agreement from Defendant with a  
13 forum selection clause designating California as the appropriate forum.  
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18 Finally, the parties’ actual course of dealings would suggest Florida is the  
19 most appropriate forum. It bears repeating that Plaintiff’s and Defendant’s prior  
20 negotiation were conducted entirely in Florida. Future Generations, Inc., on behalf  
21 of Plaintiff, contacted Defendant in Florida in 2004. Thereafter, until April 2008,  
22 Plaintiff’s dealing with Defendant was exclusively via its Florida sales  
23 representative, Future Generations, Inc. After Plaintiff’s relations with Future  
24 Generations, Inc. broke down, Plaintiff visited Defendant’s office in Florida to  
25 procure Defendant’s business. Substantially all negotiations between the parties,  
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1 except for price and delivery terms that are unique for each transaction, occurred in  
2 Florida. In light of the parties' prior course of dealing, it would be unreasonable to  
3  
4 expect Defendant to anticipate being haled to California to defend this lawsuit.

5 In summary, the facts of this case present substantially fewer contacts  
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7 between the defendant and the forum state than those at issue in Gray & Co, supra,  
8 Interdyne supra, and other cases cited herein that declined to find personal  
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10 jurisdiction over out-of-state residents. Proex Trading never approached Plaintiff.  
11 Plaintiff approached Defendant in Florida. Most of prior dealings between the  
12  
13 parties occurred through a third party, Future Generations, Inc., which was itself  
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15 doing business in Florida. No future services were contemplated with the Plaintiff.  
16 Accordingly, by definition, the purchase order at issue is the type of attenuated and  
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18 remote conduct that does not confer jurisdiction as a matter of law. Since there was  
19  
20 no purposeful availment, Proex Trading is not subject to jurisdiction before this  
21  
22 Court, and this case should be dismissed.

21 **2. EXERCISE OF JURISDICTION WOULD BE**  
22 **UNREASONABLE**

23  
24 Assuming, *arguendo*, that the court finds in favor of the Plaintiff on the first  
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26 prong, jurisdiction would still be wanting because the exercise of personal  
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28 jurisdiction would be unreasonable in this case. In the Ninth Circuit,  
"reasonableness" is determined by seven intertwined factors: (1) the extent of



1 purposeful interjection; (2) the burden on the defendant to defend the suit in the  
2 chosen forum; (3) the extent of conflict with the sovereignty of the defendant's  
3 state; (4) the forum state's interest in the dispute; (5) the most efficient forum for  
4 judicial resolution of the dispute; (6) the importance of the chosen forum to the  
5 plaintiff's interest in convenient and effective relief; and (7) the existence of an  
6 alternative forum. Shute v. Carnival Cruise Lines, 897 F.2d 377, 386 (9th Cir.  
7 1990). In fact, where, as here, the exercise of jurisdiction is clearly unreasonable,  
8 personal jurisdiction may be defeated. *See* Fed. Deposit Ins. Corp. v. British-  
9 American Ins. Co. Ltd., 828 F.2d 1439, 1442 (9th Cir. 1987).

10  
11 Under all seven factors, personal jurisdiction over Defendant in California is  
12 unreasonable. First, Proex Trading did not purposefully interject itself into the  
13 forum state. A contract alone is not sufficient to establish purposeful injection into  
14 the forum state. *See* Burger King, *supra* at 471 U.S. at 478-479, 105 S.Ct. at 2185.  
15 Rather, Plaintiff approached Defendant, and negotiated to procure Defendant's  
16 business in Florida.

17  
18 Second, where as here the defendant has "done little to reach out to the  
19 forum state," the burden of defending itself in a foreign state militates against  
20 exercising jurisdiction. Fed. Deposit Ins. Corp. supra at 1444 citing, Ins. Co. of N.  
21 Am. v. Marina Salina Cruz, 649 F.2d 1266, 1272 (9th Cir. 1981). Indeed, "the law  
22 of personal jurisdiction is asymmetrical and is primarily concerned with the  
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1 defendant's burden.” Terracom v. Valley Nat'l Bank, 49 F.3d 555, 561 (9th Cir.  
2 1995). As noted, Defendant did not reach out to California. Rather, it was solicited  
3 in Florida.  
4

5 Further, critical witnesses are located in states *other than* California.  
6 Defendant itself resides in Miami, Florida. Abbas Abrarpour resides in Miami. All  
7 of Defendant employee reside in southern Florida. Defendant’s accountant, whom  
8 Plaintiff served the complaint on, resides in Southern Florida. The Portable  
9 DVD’s ordered by Defendant were to be shipped to a third party in Southern  
10 Florida. (Email of July 9, 2008 sent from Abbas Abrarpour, attached as Exhibit  
11 “C” to Declaration of Abbas Abrarpour) The only important witness in California  
12 is Plaintiff. Given the above, it would be unreasonable to exercise jurisdiction  
13 under this factor, because as a matter of law, even when all factors are equal, the  
14 burden on defendant in defending the action locally is likely to be decisive.  
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19 The third factor also does not weigh in favor of the California forum. Since  
20 any alternative forum would be within the United States, any conflicting  
21 sovereignty interests are best accommodated through choice-of-law rules rather  
22 than through jurisdictional rules. *See Gray & Co., supra*, at 761 *citing Hirsch v.*  
23 Blue Cross, Blue Shield, of Kansas City, 800 F.2d 1474, 1482 (9th Cir. 1986).  
24  
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26 Fourth, California does not have a special interest in this run-of-the-mill  
27 breach of contract case. California's interest would be greater, for example, where  
28

1 the nonresidents engaged in commercial activity that is subject to explicit statutory  
2 regulation in California such as the sale of insurance. FDIC, *supra*, at 1444.

3  
4 Further, a particular state's interest in a dispute is not particularly great where as  
5 here the contract at issue does not implicate an ongoing relationship. Gray & Co.,  
6 *supra*, at 761. Additionally, a ruling in favor of Plaintiff would have the ripple  
7 effect of shying away out of state business from California. Buyers will be hesitant  
8 to buy from a California seller, given they could be haled into to defend a lawsuit  
9 that arouse out of a purchase order.  
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12 Fifth, Florida is a far more convenient and efficient forum for resolving this  
13 dispute than is California. As discussed above, Defendant and most key witnesses  
14 are located in Florida. The burden to the Defendant of litigating in California  
15 clearly outweighs any burden to Plaintiff to litigating in Florida.  
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18 Finally, Florida is an available alternative forum. Given these circumstances,  
19 it would be unreasonable as a matter of law to litigate this case in California.  
20

21 **IV. CONCLUSION**

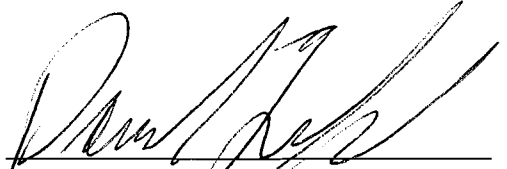
22 For the foregoing reasons, Defendant respectfully requests that this Court  
23 grant its motion to dismiss based on lack of personal jurisdiction.  
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25 In the interest of Justice, this Court alternatively should issue an order  
26 pursuant to 28 U.S.C. § 1631 (2008) transferring this case to the United States  
27 District Court – Southern District of Florida.  
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DATE: 1/6/09

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