

1 Stanislav Arbit
2 5344 E Diamond Ave
3 Mesa, AZ 85206
4 Phone: 480-818-4418
5 Email: stan@securepower.io
6 Plaintiff

7
8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA
10 PHOENIX DIVISION
11

12
13 **Stanislav Arbit**) CASE NO.:CV23-00533-PHX-SPL
14 Plaintiff,)
15) RESPONSE IN OPPOSITION TO
16 vs.) DEFENDANT’S MOTION TO DISMISS
17 **Schneider Electric SE, a**) COMPLAINT
18)
19 foreign entity,)
20 Defendant.) MEMORANDUM OF POINTS AND
21) AUTHORITIES
22)
23)
24)
25)
26) Complaint Filed: 03/29/23
27) Judge Steven P. Logan
28)

TABLE OF CONTENTS

1		
2	INTRODUCTION	5
3	I. SCHNEIDER ELECTRIC SE WAS SERVED BY U.S.M.S. ACCORDING TO	
4	INSTRUCTIONS GIVEN BY SCHNEIDER ELECTRIC SE'S COUNSEL	5
5	II. PLAINTIFF HAS ESTABLISHED PERSONAL JURISDICTION OVER	
6	SCHNEIDER ELECTRIC	7
7	A. The Attached Declaration Establishes Prima Facie Evidence	
8	Supporting Jurisdiction	8
9	B. The Allegations Made in the Complaint and Supported by this	
10	Response and the Attached Declaration are sufficient to allow the Court	
11	to Exercise Jurisdiction and are True and Correct.	9
12	1. Schneider Electric SE is Subject to General Jurisdiction in	
13	Arizona	10
14	2. Schneider Electric SE is Subject to Specific Jurisdiction in	
15	Arizona	10
16	a. Schneider Electric SE Has Purposely Directed Activities	
17	Toward Arizona	11
18	b. The Claims Pled in the Complaint Arise Out of and Relate	
19	to Contacts in Arizona	11
20	c. It Is Reasonable for the Court to Exercise Specific	
21	Jurisdiction Over Schneider Electric SE in This Case	11
22	C. Venue is Proper in this District F. R. Civ P. 12(b)(3)	11
23	III. DEFENDANT'S MOTION FOR DISMISSAL WAS NOT SERVED ON	
24	PLAINTIFF WITHIN A REASONABLE AMOUNT OF TIME AND SHOULD BE	
25	DISPOSED OF SUMMARILY	11
26	IV. DEFENDANT FAILED TO MEET AND CONFER IN GOOD FAITH	12
27	V. LOCAL RULE LRCIV 7.2 LIMITS MOTION LENGTH AND DEFENDANT'S	
28	MOTION DOES NOT CONFORM AND SHOULD BE DISPOSED OF	
	SUMMARILY	12
	CONCLUSION	12

TABLE OF AUTHORITIES

CASES

Whidbee v. Pierce Cty., 857 F.3d 1019, 1023 (9th Cir. 2017).....6

Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc. , 840 F.2d 685, 688 (9th Cir. 1988)6

United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984).6,7

Alexander v. State, Dist. Court, D. Nevada 2014.....6

The United States Court of Appeals for the Ninth Circuit held in *Benny v. Pipes*, 799 F.2d 489 (1986)6,7

Jackson v. Hayakawa, 682 F.2d 1344, 1347 (9th Cir. 1982)7

The Court of Appeals in *Chan v. Society Expeditions*, 39 F. 3d 1398, 1404 (9th Cir 2013), *FDIC v. Swager*, 773 F.Supp. 1244, 1249 (D.Minn.1991)7

SIEMENS MEDICAL SOLUTIONS USA, INC. v. SEQUOIA TECHNOLOGIES, Dist. Court, D. Arizona 20067

Young v. Univ. of Haw., No. 20-cv-00231-DKW-RT, 2020 WL 4612380, at *5 (D. Haw. Aug. 11, 2020)7

Kische USA LLC v. Simsek, No. C16-0168JLR, 2016 WL 72125348

Canzoni v. Countrywide Bank, No. C16-5239-RBL, 2016 WL 3251403, at *1 (W.D. Wash. June 13, 2016).....8

AT&T v. Compagnie Bruxelles Lambert, 94 F.3d 586, 588 (9th Cir. 1996).....8

Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800 (9th Cir. 2004)9, 10

Bancroft & Masters, Inc. v. Augusta Nat'l, Inc., 223 F.3d 1082, 1087 (9th Cir. 2000).....10

Lake v. Lake, 817 F.2d 1416, 1421 (9th Cir. 1987)10

Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985)11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RULES

Federal Rules of Civil Procedure 12(b)(5).....5
Federal Rules of Civil Procedure 46, 7
Federal Rules of Civil Procedure 81(c)(1).....6
Federal Rules of Civil Procedure 12(b)(2).....7
Federal Rules of Civil Procedure 88
Federal Rules of Civil Procedure 12(b)(3).....11
LRCiv 7.2.....12
Federal Rules of Civil Procedure Rule 5(a)(1)(D).....12
Federal Rules of Civil Procedure Rule 5(b)(2)12
LRCiv 7.2(b)12
LRCiv 7.2(i)12,13
LRCiv 7.2(e)13

1 Plaintiff respectfully requests that this Court deny Defendant’s Motion to Dismiss Plaintiff’s
2 Complaint. In support, Plaintiff states as follows:

3
4 PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN
5 IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS COMPLAINT

6
7 INTRODUCTION

8 Defendant’s Motion for Dismissal was not served on Plaintiff within a reasonable
9 amount of time. Defendant failed to meet and confer in good faith. Defendant was given
10 actual notice and served a summons according to instructions provided by Defendant’s
11 counsel, and has indicated intent to defend—making the service of summons a moot point. As
12 stated in the declaration, Defendant has sustained substantial, continuous, and systematic
13 operations in the United States and Arizona specifically. The declaration attached herewith
14 serves as evidence of compliance with laws governing the service of the summons and proper
15 jurisdiction and venue.

16
17 I. SCHNEIDER ELECTRIC SE WAS SERVED BY U.S.M.S. ACCORDING TO
18 INSTRUCTIONS GIVEN BY SCHNEIDER ELECTRIC SE’S COUNSEL
19 [FEDERAL RULES OF CIVIL PROCEDURE 12(b)(5)]

20 Mrs. Clayton, Mr. Paul, and Mr. Sharma are senior officers of Schneider Electric SE in
21 the United States. *Attached Declaration.*

22 While Schneider Electric SE is also known by its other brands and aliases, it is one
23 global integrated company. Schneider Electric has sustained substantial, continuous, and
24 systematic operations in the United States and Arizona specifically. *Attached Declaration.*

25 Mrs. Clayton, Mr. Paul, and Mr. Sharma were given actual notice by email regarding
26 this trademark infringement lawsuit in March of this year. An in-house legal representative
27 was copied into the email chain and provided the address that was used by U.S. Marshals
28

1 (Doc. 15). If the service was defective, then it's the result of Defendant's intentional actions
2 to evade service. Furthermore, Mr. Strand has made numerous "appearances" in this case by
3 filing a response to a motion (Doc. 29) and requesting additional time to answer (Doc. 16).
4 Additional "appearances" including, Pro hac vice motion(s) granted for John Strand, Tonia A
5 Sayour on behalf of Defendant Schneider Electric SE and Pro hac vice motion(s) granted for
6 Kira-Khanh McCarthy on behalf of Defendant Schneider Electric SE are all clear indicators
7 of intention to defend. *Attached Declaration*.

8 Defendant cites *Whidbee v. Pierce Cty.*, 857 F.3d 1019, 1023 (9th Cir. 2017) for
9 claiming that "neither actual notice nor simply naming the defendant in the complaint will
10 provide personal jurisdiction" but this is referencing a Washington State law and when the
11 case was appealed in federal court the court ruled as follows:

12 The Federal Rules of Civil Procedure govern service of process in federal court, see
13 Fed. R. Civ. P. 4, and apply to a civil action after removal, see Fed. R. Civ. P. 81(c)(1).
14 " Rule 4 is a flexible rule that should be liberally construed so long as a party receives
15 sufficient notice of the complaint." *Direct Mail Specialists, Inc. v. Eclat Computerized*
16 *Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (quoting *United Food & Commercial*
17 *Workers Union v. Alpha Beta Co.*, 736 F.2d 1371, 1382 (9th Cir. 1984)). Thus, unlike
18 Washington law, federal law does not require strict compliance with service
19 requirements.

20 The case law for Rule 4 defines the rule as a flexible rule which should be liberally
21 construed. In this case, Doc. 23 describes all of the actions undertaken for substantial
22 compliance with Rule 4 making the service of summons a moot point.

23 *Alexander v. State, Dist. Court, D. Nevada 2014. The United States Court of Appeals*
24 *for the Ninth Circuit held in Benny v. Pipes, 799 F.2d 489 (1986), that "a federal court*
25 *is without personal jurisdiction over a defendant unless the defendant has been served*
26 *in accordance with Fed. R. Civ. P. 4." 799 F.2d at 492, citing Jackson v. Hayakawa,*
27 *682 F.2d 1344, 1347 (9th Cir. 1982). "Substantial compliance" with Rule 4 is required.*
28

1 *However, as Defendants note (Doc. # 119 at 2), the Court of Appeals also stated in*
2 *Benny that Rule 4 is a "flexible rule" which should be "liberally construed." 799 F.2d*
3 *at 492, citing, United Food & Commercial Workers Union, Local 197, et al. v. Alpha*
4 *Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984).*

5 *The Court of Appeals in Chan v. Society Expeditions, 39 F. 3d 1398, 1404 (9th Cir*
6 *2013), similarly held Rule 4 is a flexible rule that should be liberally construed to*
7 *uphold service as long as a party receives sufficient notice of the complaint, citing*
8 *United Food & Commercial Workers Union, 736 F.2d at 1382. The court concluded at*
9 *p. 1404 that technical defects in a summons do not justify dismissal unless a party is*
10 *able to demonstrate actual prejudice, citing FDIC v. Swager, 773 F.Supp. 1244, 1249*
11 *(D.Minn.1991), and United Food, 736 F.2d at 1382.*

12 *SIEMENS MEDICAL SOLUTIONS USA, INC. v. SEQUOIA TECHNOLOGIES, Dist.*
13 *Court, D. Arizona 2006*

14
15
16 II. PLAINTIFF HAS ESTABLISHED PERSONAL JURISDICTION OVER SCHNEIDER
17 ELECTRIC

18 [FEDERAL RULES OF CIVIL PROCEDURE 12(b)(2)]

19 Defendant states in the motion to dismiss that the fundamental flaw they address is the
20 named Defendant, Schneider Electric SE, has no relationship to this forum as they do not
21 conduct any business in the State of Arizona. This statement is factually inaccurate and a
22 complaint needs to only state the facts and not provide any evidence. See *Young v. Univ. of*
23 *Haw.*, No. 20-cv-00231-DKW-RT, 2020 WL 4612380, at *5 (D. Haw. Aug. 11, 2020)
24 (denying a request for early discovery because the “case is still in the pleading stage” and
25 “not in the evidence stage”; and stating that “at this point, Plaintiff need only allege facts that
26 will support his claims, he need not produce (or seek to obtain) evidence to prove them at this
27 time.”); *Kische USA LLC v. Simsek*, No. C16-0168JLR, 2016 WL 7212534, at *17 (W.D.
28

1 Wash. Dec. 13, 2016) (“[A] motion to dismiss tests the sufficiency of a plaintiff’s allegations,
2 not [its] evidence.” (second alteration in original) (quotation omitted)); *Canzoni v.*
3 *Countrywide Bank*, No. C16-5239-RBL, 2016 WL 3251403, at *1 (W.D. Wash. June 13,
4 2016) (denying a motion to continue pending motions to dismiss and compel discovery
5 because a plaintiff “need only state a plausible claim, not prove it, in order to survive the
6 motion.”).

7 In the complaint (Doc. 1) Paragraph 12 on page 4 under the title III. Jurisdiction and
8 Venue, Plaintiff states, “This Court has personal jurisdiction over Schneider Electric because,
9 on information and belief, (1) Schneider Electric has marketed, offered for sale, and/or sold
10 products within the state of Arizona, including products from the mission-critical physical
11 information technology infrastructure line of business. (2) Schneider Electric regularly
12 conducts business in the state of Arizona. (3) Schneider Electric has otherwise made or
13 established contacts within the state of Arizona sufficient to permit the exercise of personal
14 jurisdiction.” F.R.C.P. Rule 8 General Rules of Pleading requires that claims for relief, the
15 court’s jurisdiction, and demands for relief are stated. *Attached Declaration*.

16 Uncontroverted allegations in the complaint must be taken [**7] as true. *AT&T v.*
17 *Compagnie Bruxelles Lambert*, 94 F.3d 586, 588 (9th Cir. 1996).

18 **A. The Attached Declaration Establishes Prima Facie Evidence Supporting**
19 **Jurisdiction**

20 Schneider Electric, not only employs a direct sales team in the Arizona District but has
21 a company named LDP Associates that acts as a manufacturer’s representative in the region
22 and is tasked with engaging with the engineering, architectural, and construction community
23 in the region to promote the sale of Schneider Electric SE products. They also act as systems
24 engineers and are compensated, by Schneider Electric SE, a percentage of every sale they
25 assist with, and for many products, their assistance is required by Schneider Electric SE, even
26 when it is sold through other APC partners. They are also allowed to buy and resell when
27 working directly with end users without any other Schneider Electric Partners involved. As a
28

1 former LDP Associates employee, I have witnessed the negotiation and execution of the
2 exclusive contract to represent Schneider Electric. *Attached Declaration.*

3 APC, a Schneider Electric brand, has 30 trained partners in the Phoenix metropolitan
4 area. I was a former partner and I have first-hand knowledge that partners have training and
5 support from Schneider Electric. *Attached Declaration.*

6 Schneider Electric is contracted with various end users in Arizona to provide onsite
7 start-up, preventative maintenance, and emergency repairs by technicians employed by
8 Schneider Electric. *Attached Declaration.*

9 The aforementioned activities constitute (1) purposeful direct actives with the Phoenix
10 metropolitan area by Schneider Electric, using direct sales personnel and agents; (2)
11 Schneider Electric is specifically engaged in the same trademark class and direct competition
12 with Plaintiff in the Phoenix metropolitan area. Schneider Electric has more than “minimum
13 contacts” with Arizona and jurisdiction does not offend traditional notions of fair play and
14 substantial justice. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir.
15 2004). *Attached Declaration.*

16 As stated in the declaration filed herewith, Schneider Electric SE has, for many years,
17 sustained substantial, continuous, and systematic operations in the State of Arizona qualifying
18 it for general and specific personal jurisdiction in this Court.

19 **B. The Allegations Made in the Complaint and Supported by this Response and**
20 **the Attached Declaration are sufficient to allow the Court to Exercise Jurisdiction**
21 **and are True and Correct.**

22 With more than six years of experience selling Schneider Electric products, and more
23 than 10 MM in attributable sales representing Schneider Electric, I have extensive knowledge
24 of their go-to-market strategy and organizational structure and can state with certainty that the
25 Arizona market was specifically targeted and Schneider Electric SE executed contracts in the
26 State of Arizona. Plaintiff makes no argument regarding subsidiaries because Schneider
27 Electric SE operates as one integrated global company. For example, APC is not a subsidiary
28

1 but a brand of Schneider Electric and has employees living in Arizona who are assigned to
2 manage the Phoenix market. *Attached Declaration*.

3 **See attached declaration for a prima facie showing of personal jurisdiction.** According
4 to *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) Conflicts
5 between parties over statements contained in affidavits must be resolved in the plaintiff's
6 favor.d.; see *Bancroft & Masters, Inc. v. Augusta Nat'l, Inc.*, 223 F.3d 1082, 1087 (9th Cir.
7 2000) ("Because the prima facie jurisdictional analysis requires us to accept the plaintiff's
8 allegations as true, we must adopt [the plaintiff's] version of events for purposes of this
9 appeal.")

10 **1. Schneider Electric SE is Subject to General Jurisdiction in Arizona**

11 Plaintiff incorporates all points and authorities stated in the preceding paragraphs.

12 Schneider Electric SE's activities are so extensive, continuous, and systematic that
13 they are essentially "at home" in Arizona.

14 See the declaration for additional details.

15 **2. Schneider Electric SE is Subject to Specific Jurisdiction in Arizona**

16 Plaintiff incorporates all points and authorities stated in the preceding paragraphs

17 The three-prong test for analyzing a claim of specific personal jurisdiction, as
18 described in *Schwarzenegger v. Fred Martin Motor Co.* is satisfied in this case. The third
19 prong, (3) the exercise of jurisdiction must comport with fair play and substantial
20 justice, i.e. it must be reasonable is up to the defendant as expressed in *Lake v. Lake*, 817 F.2d
21 1416, 1421 (9th Cir. 1987). The plaintiff bears the burden of satisfying the first two prongs of
22 the test. *Sher*, 911 F.2d at 1361. If the plaintiff fails to satisfy either of these prongs, personal
23 jurisdiction is not established in the forum state. If the plaintiff succeeds in satisfying both of
24 the first two prongs, the burden then shifts to the defendant to "present a compelling case"
25 that the exercise of jurisdiction would not be reasonable. *Burger King Corp. v. Rudzewicz*,
26 471 U.S. 462, 476-78, 85 L. Ed. 2d 528, 105 S. Ct. 2174 (1985). Plaintiff has made a
27 compelling argument for personal jurisdiction, thereby shifting the burden to Defendant.
28

1 Defendant has failed to present a compelling case that the exercise of jurisdiction would not
2 be reasonable. See the declaration for additional details.

3 **a. Schneider Electric SE Has Purposely Directed Activities Toward**
4 **Arizona**

5 Plaintiff incorporates all points and authorities stated in the preceding paragraphs and
6 the attached declaration.

7 **b. The Claims Pled in the Complaint Arise Out of and Relate to**
8 **Contacts in Arizona**

9 Plaintiff incorporates all points and authorities stated in the preceding paragraphs and
10 the attached declaration.

11 **c. It Is Reasonable for the Court to Exercise Specific Jurisdiction**
12 **Over Schneider Electric SE in This Case**

13 Plaintiff incorporates all points and authorities stated in the preceding paragraphs and
14 the attached declaration.

15 **C. Venue is Proper in this District F. R. Civ P. 12(b)(3)**

16 Plaintiff incorporates all points and authorities stated in the preceding paragraphs and
17 the attached declaration. A substantial part of the acts or omissions giving rise to Plaintiff's
18 claims occurred in this District. I, Stanislav Arbit, Plaintiff, live in Arizona and manage the
19 SecurePower trademark in Arizona.
20

21 **III. DEFENDANT'S MOTION FOR DISMISSAL WAS NOT SERVED ON PLAINTIFF**
22 **WITHIN A REASONABLE AMOUNT OF TIME AND SHOULD BE DISPOSED OF**

23 **SUMMARILY**

24 [LRCIV 7.2]

25 As stated in the declaration attached herewith, Defendant failed to promptly serve the
26 memorandum setting forth the points and authorities relied upon in the Motion to Dismiss the
27 Complaint. More specifically, nothing was received by First-Class Mail® until September 8,
28

1 2023. Defendant does not have written permission to serve papers at the email address
2 referenced in the Certificate of Service found in the Motion to Dismiss (Doc 25).

3 Rule 5(a)(1)(D) requires written motions to be served on every party. As the attached
4 declaration states, Plaintiff did not receive the motion or notice of the motion or the
5 memorandum of points and authorities from Defendant by any of the methods described in
6 Rule 5(b)(2) within a reasonable amount of time.

7 Under LRCiv 7.2(b) Memorandum by Moving Party. Unless otherwise ordered by the
8 court, upon any motion, the moving party shall **serve** and file with the motion's papers a
9 memorandum setting forth the points and authorities relied upon in support of the motion.
10 LRCiv(i) authorizes the Court to dispose of motions that violate LRCiv 7.2. Defendant's
11 motion to dismiss memorandum of points and authorities was untimely and should be
12 disposed of for not conforming to LRCiv 7.2(b).

13
14 IV. DEFENDANT FAILED TO MEET AND CONFER IN GOOD FAITH

15 [Fed. R. Civ. P. 12(b)]

16 As stated in the declaration attached herewith, Defendant never provided Plaintiff with
17 a final set of written issues as requested by Plaintiff and prescribed by the Judge's order (Doc.
18 8) and Fed. R. Civ. P. 12(b).

19
20 V. LOCAL RULE LRCIV 7.2 LIMITS MOTION LENGTH AND DEFENDANT'S
21 MOTION DOES NOT CONFORM AND SHOULD BE DISPOSED OF SUMMARILY

22 [LRCIV 7.2]

23 Defendant's motion to dismiss (Doc. 25) has exceeded the page limit allowed by
24 LRCiv 7.2(e). LRCiv 7.2(i) authorizes the Court to dispose of motions that violate LRCiv 7.2.
25 Defendant's motion to dismiss should be disposed of for not conforming to LRCiv 7.2(e).

26
27 CONCLUSION

1 For all of the foregoing reasons, it is respectfully requested that the court deny
2 Defendant's Motion to Dismiss Complaint.

3
4 Respectfully submitted,

5
6
7
8 By: Stanislav Arbit
9 5344 E Diamond Ave
10 Mesa, AZ 85206
11 Phone: 480-818-4418
12 Email: stan@securepower.io
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28