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Counsel for Defendant Aircraft Cylinders of America, Inc.

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF IDAHO

BROOK NEF and NEF FLYING)
 SERVICE, INC., an Idaho corporation,)
)
 Plaintiffs,)
)
 vs.)
)
 ENGINE COMPONENTS, INC., a)
 foreign corporation; TULSA AIRCRAFT)
 ENGINES, INC., a foreign corporation;)
 AIRCRAFT CYLINDERS OF AMERICA,)
 INC., a foreign corporation,)
)
 Defendants.)
 _____)

CASE NO. CIV-04-362-E-BLW

**ACA'S MEMORANDUM IN
 OPPOSITION TO PLAINTIFFS'
 MOTION FOR STAY OR DEFER
 RULING AND FOR ORDER
 ALLOWING JURISDICTIONAL
 DISCOVERY**

TULSA AIRCRAFT ENGINES, INC.,)
a foreign corporation,)
Counterclaimant,)
vs.)
BROOK NEF and NEF FLYING)
SERVICE, INC., an Idaho corporation,)
Counterdefendants.)

TULSA AIRCRAFT ENGINES, INC.,)
a foreign corporation,)
Cross-Plaintiff,)
vs.)
ENGINE COMPONENTS, INC.,)
a foreign corporation,)
Cross-Defendant.)

COMES NOW DEFENDANT, Aircraft Cylinders of America, Inc. (hereinafter "ACA"), by and through counsel of record, and submits the following Memorandum in Opposition to Plaintiffs' Motion to Stay or Defer Ruling on ACA's Motion to Dismiss. In Plaintiffs' Brief Opposing Motion to Dismiss and in Support of Motion for Stay or Defer Ruling and for Order Allowing Jurisdictional Discovery, Plaintiffs argue that they should be allowed to conduct discovery aimed at jurisdiction issues prior to the Court ruling on Defendant ACA's motion to dismiss. The Court should reject Plaintiffs' arguments and grant the motion to dismiss.

PROCEDURAL HISTORY and FACTUAL BACKGROUND

In support of their argument, Plaintiffs claim that dismissal of their claims at this time would necessarily be based upon incomplete facts. Docket No. 23 at p. 11. They argue that evidence of ACA's "sales activities, contracts and the presence of the defendants' agents in Idaho are important factors in establishing personal jurisdiction." *Id.*

In Nef's Complaint and Demand for Jury Trial, Counts Seven through Ten are directed towards ACA. Docket No. 2. Those Counts contain claims for negligence, strict liability, and breach of warranties. *Id.* In their Complaint and Demand for Jury Trial, Plaintiffs provide no other basis for their claim that the Court has jurisdiction in this matter other than the following statements:

1. Statement at Paragraph 5: "This court has jurisdiction over the defendants and each of them pursuant to Idaho Code § 5-514 and the due process cause [sic] of the U.S. Constitution." *Id.* at p. 2; and
2. Statement at Paragraph 15: labeling ACA – without further explanation – as a manufacturer. *Id.* at pp. 3-4.

The following information about ACA is contained in the Affidavit of Rama Palepu in support of ACA's Motion to Dismiss for Lack of Personal Jurisdiction and is relevant to ACA's Motion to Dismiss for Lack of Personal Jurisdiction:

1. ACA is a member of the aircraft engine cylinder reconditioning industry. ACA developed a chroming process known as Nu-Chrome. Nu-Chrome is used on aircraft cylinders to improve cylinder durability and corrosion resistance while minimizing oil consumption.

2. ACA does not manufacture aircraft cylinders. It simply applies Nu-Chrome to cylinders shipped to ACA by the owner of the cylinder.
3. During the Nu-Chrome application process, ACA does not disassemble the cylinder.
4. It is neither the usual nor customary practice for ACA to x-ray the cylinder for hairline fractures in the cylinder, nor is it the usual custom or practice of the aircraft cylinder reconditioning industry to do so. ACA visually inspects the cylinder on at least four or more occasions during the time the cylinder is in ACA's control. During each inspection, lighted mirrors are inserted into the barrel of the cylinder. The established practice and procedure upon finding any defect in the cylinder is to reject the cylinder and to immediately notify the customer. A cylinder with a crack cannot be successfully chromed. In thirty years in this industry, Mr. Palepu has only found cracks in incoming cylinders on two or three occasions.

APPLICABLE LAW AND ANALYSIS

A trial court has jurisdiction to determine its own jurisdiction. *Wells Fargo & Co. v. Wells Fargo Express Co.*, 556 F.2d 406 n. 24 (9th Cir. 1977). A court may allow discovery to aid in determining whether the court has subject matter jurisdiction. *Id.* In granting discovery, a trial court is vested with "broad discretion and will not be reversed except upon the clearest showing that denial of discovery results in actual and substantial prejudice to the complaining litigant." *Data Disc, Inc. V. Technology Assoc., Inc.*, 557 F.2d 1280 n. 1 (9th Cir. 1977). A refusal to grant jurisdictional discovery is not an abuse of discretion when it is clear that further discovery would not provide facts sufficient to constitute a jurisdictional basis. *Wells Fargo*, 556 F.2d 406 n. 24.

In *Butcher's Union Local No. 498 v. SDC Investment, Inc.*, 788 F.2d 535, 540 (9th Cir. 1986), the Ninth Circuit held that appellant Unions, who were seeking review of an order from the district court granting a motion to dismiss for lack of personal jurisdiction, failed to allege sufficient facts to demonstrate minimum contacts under a due process analysis. The Unions also contested the district court's denial of personal jurisdiction discovery; however, the Court held that the denial was proper. *Id.* The Ninth Circuit first recognized that a trial court's decision to deny jurisdictional discovery would not be reversed except "upon the clearest showing that denial of discovery results in **actual and substantial prejudice** to the complaining litigant." *Id.* (quoting *Data Disc*, 557 F.2d at 1285 n. 1) (emphasis added). The Court then went on to conclude that the Unions had only proffered that discovery would allow them to demonstrate sufficient California business contacts to establish the trial court's personal jurisdiction. *Id.*, 788 F.2d at 540. The Ninth Circuit found, however, that such speculative claims do not satisfy the requirement that the Unions make "the clearest showing" of both actual and substantial prejudice. *Id.*

In this case, Plaintiffs' entire jurisdictional discovery argument hinges on whether ACA is considered a manufacturer and/or whether the chroming process is considered a product. ACA has refuted both of these allegations. Docket No. 18 at pp. 8-11. If Plaintiffs cannot meet their burden of proof on this issue, then they fail to satisfy Idaho's long arm statute. *Id.* Even if the Court somehow determines that they have met that burden of proof, Plaintiffs fail the due process requirement because they cannot show ACA has taken some affirmative conduct to avail itself of the protection of Idaho's laws. *Id.* at pp. 16-17.

These determinations simply do not require discovery. The Court can make these findings without additional information; therefore, the denial of discovery is not an abuse of discretion

because it is clear that further discovery would not provide facts sufficient to constitute a jurisdictional basis. Discovery will not assist the Court in determining the issues before it.

Furthermore, just as in *Butcher's Union*, the Plaintiffs have only proffered that discovery would allow them to demonstrate sufficient Idaho business contacts (sales activities, contracts and the presence of agents in Idaho) to establish the Court's personal jurisdiction over this matter. According to the Ninth Circuit, such claims are speculative and do not satisfy the requirement that the Plaintiffs make "the clearest showing" of both **actual and substantial prejudice**. *Butcher's Union*, 788 F.2d at 540.

CONCLUSION

Based on the analysis above, ACA respectfully requests that the Court deny Plaintiffs' Motion for Stay or Defer Ruling and for Order Allowing Jurisdictional Discovery.

DATED this 15th day of October, 2004.

COOPER & LARSEN



JAMES D. RUCITI

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2004, I served a true and correct copy of the foregoing to:

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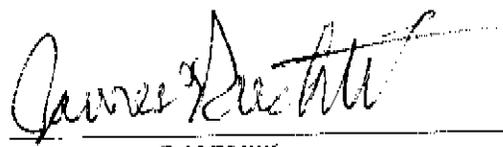
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DATED this 15th day of October, 2004.

COOPER & LARSEN



JAMES D. RUCHTI

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I hereby certify that on the 15th day of October, 2004, I served a true and correct copy of the foregoing to:

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