

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

**WO**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Catherine Dougherty, et al.,	)	No. CV10-0978 PHX DGC
Plaintiffs,	)	
vs.	)	<b>ORDER</b>
Lincare, Inc., a foreign corporation, et al.,	)	
Defendants.	)	

Defendant Lincare Holdings, Inc. (“LHI”) has filed a motion to dismiss for lack of personal jurisdiction. Doc. 10. For reasons stated below, the Court will grant the motion.

**I. Background.**

LHI is a Delaware-incorporated holding company that owns 100% of the stock of Lincare, Inc. (“Lincare”), a Delaware corporation that provides respiratory therapy services and medical equipment to patients in Arizona and 47 other states. Doc. 1 at 2; Doc. 14 at 3. Plaintiffs Richard and Catherine Dougherty filed this lawsuit against both LHI and Lincare, alleging they were injured by the negligent acts or omissions of an employee of Lincare and asserting claims of negligence, negligent supervision, negligent infliction of emotional distress, and loss of consortium. Doc. 1-1.

**II. Legal Standard.**

Plaintiffs bear the burden of establishing personal jurisdiction. *See Ziegler v. Indian River County*, 64 F.3d 470, 473 (9th Cir. 1995). Because the Court is resolving the motion to dismiss before discovery has been conducted and without an evidentiary hearing, plaintiffs

1 “need make only a prima facie showing of jurisdictional facts to withstand the motion.”  
2 *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995). That is, plaintiffs “need only  
3 demonstrate facts that if true would support jurisdiction[.]” *Id.*; *see Bancroft & Masters, Inc.*  
4 *v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1087 (9th Cir. 2000) (“[T]he prima facie jurisdictional  
5 analysis requires us to accept the plaintiff’s allegations as true.”).

6 Because no applicable federal statute governing personal jurisdiction exists, Arizona’s  
7 long-arm statute applies to this case. *See Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 559  
8 (9th Cir. 1995); Ariz. R. Civ. P. 4.2(a). Absent traditional bases for personal jurisdiction  
9 (i.e., physical presence, domicile, and consent) the Due Process Clause requires that  
10 nonresident defendants have certain “minimum contacts” with the forum state such that the  
11 exercise of personal jurisdiction does not offend traditional notions of fair play and  
12 substantial justice. *See Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

13 A court may exercise either “general” or “specific” jurisdiction over a defendant. *See*  
14 *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414-15 nn.8-9 (1984); *Ziegler*,  
15 64 F.3d at 473. A court may assert general jurisdiction if the defendant’s activities in the  
16 forum state are substantial or continuous and systematic, even if the cause of action is  
17 unrelated to those activities. *Haisten v. Grass Valley Med. Reimbursement Fund, Ltd.*,  
18 784 F.2d 1392, 1396 (9th Cir. 1986)). A court may assert specific jurisdiction if (1) the  
19 defendant purposefully availed himself of the privileges of conducting activities in the forum,  
20 thereby invoking the benefits and protections of its laws, or purposely directs conduct at the  
21 forum that has effects in the forum; (2) the claim arises out of the defendant’s forum-related  
22 activities; and (3) the exercise of jurisdiction comports with fair play and substantial justice,  
23 i.e., it is reasonable. *See, e.g., Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082,  
24 1086 (9th Cir. 2000) (citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 417 (9th Cir.  
25 1997)); *Burger King*, 471 U.S. at 472-76.

26 A corporate defendant can be subject to personal jurisdiction due to its own contacts  
27 with the forum state. If a corporation owns a subsidiary, it can also be subject to personal  
28

1 jurisdiction based on actions of its subsidiary if certain requirements are met. Under Ninth  
2 Circuit law, a parent-subsidiary relationship, standing alone, is insufficient to establish  
3 personal jurisdiction over the parent company. *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th  
4 Cir. 2001). However, “a subsidiary’s contacts may be imputed to the parent company where  
5 the subsidiary is the parent’s alter ego, or where the subsidiary acts as the general agent of  
6 the parent.” *Harris Rutsky & Co. Ins. Services, Inc. v. Bell & Clements, Ltd.*, 328 F.3d 1122,  
7 1134 (9th Cir. 2003); *Doe*, 248 F.3d at 926.

### 8 **III. Analysis.**

9 Plaintiffs do not dispute that LHI has no contacts with Arizona other than through its  
10 subsidiary Lincare. Doc. 14. As a result, the question before the Court is whether LHI, as  
11 the parent of Lincare, is subject to personal jurisdiction based on Lincare’s acts. Plaintiffs  
12 must show either that Lincare is LHI’s alter ego or that Lincare is the general agent of LHI.  
13 *Harris Rutsky*, 328 F.3d at 1134; *Unocal*, 248 F.3d at 926. Plaintiffs have failed to make  
14 either showing.

#### 15 **A. Alter Ego.**

16 For a subsidiary to be considered its parent’s alter ego, “the plaintiff must make out  
17 a prima facie case ‘(1) that there is such unity of interest and ownership that the separate  
18 personalities of the two entities no longer exist and (2) that failure to disregard their separate  
19 identities would result in fraud or injustice.’” *Unocal*, 248 F.3d at 926 (quoting *AT&T Co.*  
20 *v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996)). “Underlying both of  
21 these factors is a general presumption in favor of respecting the corporate entity.” *Calvert*  
22 *v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995).

23 Plaintiffs argue that because LHI owns 100% of Lincare’s stock and Lincare functions  
24 as LHI’s representative nationwide, there is such a unity of interest and ownership that  
25 separate entities do not exist. Doc. 14 at 7. Plaintiffs argue further that LHI wrongfully uses  
26 Lincare “as a marketing conduit in order to shield itself from liability [for Lincare’s]  
27 activities” and that the separation of the two corporations “is only a device to divert attention  
28 away from the holding company and solely to the subsidiary, which does not control the

1 financial purse strings.” *Id.* Plaintiffs add the following facts: Lincare and LHI have identical  
2 officers and directors; Lincare and LHI have held themselves out to the public as one  
3 company; LHI has referred to itself as “Lincare” and represented its services as those of  
4 Lincare in correspondence with the Centers for Medicare & Medicaid Services; LHI’s Board  
5 of Directors oversees the risk management process; there are cross-references to LHI on  
6 Lincare’s website, such as direction for correspondence sent to Lincare to be addressed to  
7 LHI; LHI’s corporate office is responsible for Lincare’s executive functions, human  
8 resources, accounting, information systems, marketing and business development, and  
9 acquisitions; and LHI and its subsidiaries report their assets and liabilities as jointly held in  
10 statements filed with the Securities and Exchange Commission. Doc. 14 at 10-12.

11 Plaintiffs fail to cite any Ninth Circuit authority showing that these facts, standing  
12 alone or taken together, are sufficient to show a unity of ownership such that regarding LHI  
13 and Lincare as separate entities would result in a fraud or injustice.<sup>1</sup> *Id.* at 8. Several of  
14 these have been held insufficient by courts in the Ninth Circuit. *See, e.g., Harris Rutsky*, 328  
15 F.3d at 1135 (“100% control through stock ownership does not by itself make a subsidiary  
16 the alter ego of the parent,” nor does the fact that the companies are run by the same directors  
17 or share an office and staff); *Unocal*, 248 F.3d at 926, 928 (“references in the parent’s annual  
18 reports to subsidiaries . . . do not establish the existence of an alter ego”; “appropriate  
19 parental involvement includes monitoring of the subsidiary’s performance, supervision of the  
20 subsidiary’s finance and capital budget decisions, and articulation of general policies and  
21 procedures”; “[i]t is entirely appropriate for directors of a parent corporation to serve as  
22 directors of its subsidiary”). Other courts have rejected Plaintiffs’ additional facts, including  
23 the sharing of human resource services and information systems, *see Action Manufacturing*  
24 *Co. v. Simon Wrecking Co.*, 375 F.Supp.2d 411, 425 (E.D. Pa. 2005) (holding that the  
25

---

26 <sup>1</sup> The only case cited by Plaintiffs is *Bellomo v. Pennsylvania Life Co.*, 488 F. Supp.  
27 744 (S.D.N.Y. 1980). *Bellomo* merely stands for the proposition that a holding company  
28 which is a mere corporate shell could be subject to personal jurisdiction based on its  
subsidiary’s actions. There is no evidence that LHI is a mere corporate shell.

1 sharing of services does not show unity between the parent and subsidiary when other  
2 corporate formalities are respected), and the failure to distinguish between a parent and  
3 subsidiary on web pages, *see J.L.B. Equities, Inc. v. Ocwen Financial Corp.*, 131 F.Supp.2d  
4 544, 550 (S.D.N.Y. 2001). Moreover, Plaintiffs have failed to provide any evidence that a  
5 failure to treat LHI and Lincare as a single company would sanction a fraud or promote  
6 injustice.

7 **B. Agency.**

8 To satisfy the agency exception, the plaintiff must make out a prima facie case that  
9 the subsidiary represents the parent corporation by performing services sufficiently important  
10 to the parent corporation that if it did not have a representative to perform them, the parent  
11 corporation would undertake to perform substantially similar services. *Harris Rutsky*, 328  
12 F.3d at 1135 (citing *Chan v. Society Expeditions, Inc.*, 39 F.3d 1398, 1405 (9th Cir. 1994)).  
13 Plaintiffs argue that “[t]hrough Lincare, LHI promotes activities in Arizona,” “files reports  
14 jointly with Lincare, and would have to individually act but for the presence of Lincare.”  
15 Doc. 14 at 9-10. But Plaintiffs cite no evidence to support these assertions. Moreover, even  
16 if the Court accepted Plaintiffs’ alleged facts as true, they do not show that Lincare performs  
17 services sufficiently important to LHI that LHI would undertake to perform substantially  
18 similar services if Lincare did not exist. *See Harris Rutsky*, 328 F.3d at 1135.

19 **IT IS ORDERED** that Defendant LHI’s motion to dismiss (Doc. 10) is **granted**.

20 DATED this 13th day of August, 2010.

21  
22  
23 

24 \_\_\_\_\_  
25 David G. Campbell  
26 United States District Judge  
27  
28