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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Sarah Nathreen Nakanwagi,

10 Plaintiff,

11 v.

12 Tenet Healthcare Corporation,

13 Defendant.  
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No. CV-15-01596-PHX-DGC

**ORDER**

15 Plaintiff Sarah Nathreen Nakanwagi filed a complaint against Defendant Tenet  
16 Healthcare Corporation seeking monetary damages for alleged tortious conduct. Doc. 13.  
17 Defendant has filed a motion to dismiss for lack of personal jurisdiction pursuant to Rule  
18 12(b)(2) of the Federal Rules of Civil Procedure. Doc. 30. The motion is fully briefed  
19 (Docs. 30, 37, 38), and the Court concludes that oral argument is not necessary. For the  
20 reasons set forth below, the Court will grant Defendant's motion to dismiss.

21 **I. Background.**

22 Defendant is a Nevada corporation with its principal place of business in Dallas,  
23 Texas. Doc. 30 at 3. Defendant is the parent corporation of VHS Acquisition  
24 Corporation, a wholly owned subsidiary. *Id.* VHS is an Arizona corporation which  
25 "owns, operates and does business as Maryvale Hospital[]" in Arizona. *Id.* Plaintiff – a  
26 legal permanent resident domiciled in Arizona – was allegedly injured when she received  
27 treatment for menstrual pain at Maryvale Hospital on January 11, 2015. Doc. 13, ¶¶ 2-8.  
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## 1     **II.     Legal Standard.**

2           “When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff  
3 bears the burden of demonstrating that the court has jurisdiction over the defendant.”  
4 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). “Where, as here, the  
5 defendant’s motion is based on written materials rather than an evidentiary hearing, the  
6 plaintiff need only make a prima facie showing of jurisdictional facts to withstand the  
7 motion to dismiss.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th  
8 Cir. 2011). “The plaintiff cannot ‘simply rest on the bare allegations of its complaint,’  
9 but uncontroverted allegations in the complaint must be taken as true.” *Id.* (quoting  
10 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)). The  
11 Court may not assume the truth of allegations in a pleading that are contradicted by an  
12 affidavit, but factual disputes are resolved in Plaintiff’s favor. *Id.*

## 13     **III.    Personal Jurisdiction.**

14           “Federal courts ordinarily follow state law in determining the bounds of their  
15 jurisdiction over persons.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (citation  
16 omitted). Arizona has authorized its courts to exercise jurisdiction to the maximum  
17 extent permitted by the Due Process Clause of the U.S. Constitution. *See* Ariz. R. Civ. P.  
18 4.2(a). Thus, courts in the District of Arizona may exercise jurisdiction over a defendant  
19 who is not physically present in Arizona if the defendant has minimum contacts with the  
20 State, such that the suit can be maintained without offending traditional notions of fair  
21 play and substantial justice. *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).

22           The Court may assert “general” personal jurisdiction over a defendant whose  
23 activities in the forum state are substantial or continuous and systematic, even if the  
24 plaintiff’s claims are unrelated to those activities. *See Haisten v. Grass Valley Med.*  
25 *Reimbursement Fund, Ltd.*, 784 F.2d 1392, 1396 (9th Cir. 1986) (citing *Data Disc, Inc. v.*  
26 *Syst. Tech. Assoc., Inc.*, 557 F.2d 1289, 1287 (9th Cir. 1977)). Alternatively, “specific”  
27 personal jurisdiction can be established when the defendant purposely directed conduct at  
28 the forum, the claim arises out of the defendant’s forum-related activities, and

1 the exercise of jurisdiction comports with fair play and substantial justice. *Mavrix Photo*,  
2 647 F.3d at 1227-28. The first requirement – purposeful direction – can be satisfied  
3 when a defendant (1) commits an intentional act, (2) expressly aimed at the forum,  
4 (3) which causes foreseeable harm in the forum. *Id.* This test is sometimes referred to as  
5 the “effects test.” *Id.*

6 The effects test does not “stand for the broad proposition that a foreign act with  
7 foreseeable effects in the forum state always gives rise to specific jurisdiction.” *Wash.*  
8 *Shoe Co. v. A-Z Sporting Goods Inc.*, 704 F.3d 668, 675 (9th Cir. 2012) (citation and  
9 quotation marks omitted). Nor does the effects test mean that specific jurisdiction may  
10 be based solely on a defendant’s knowledge that the subject of his tortious activity resides  
11 in a particular state. *See Walden*, 134 S.Ct. at 1125. “The proper question is not where  
12 the plaintiff experienced a particular injury or effect but whether the defendant’s conduct  
13 connects him to the forum in a meaningful way.” *Id.*

14 Defendant argues that it is not subject to this Court’s general jurisdiction because  
15 Defendant is not at home in Arizona, and is not subject to specific jurisdiction because  
16 Plaintiff’s claims do not arise out of Defendant’s activities in the State. Doc. 30.  
17 Plaintiff does not allege that Defendant has had any direct contact with the forum.  
18 Rather, Plaintiff relies on the parent-subsidary relationship between Defendant and  
19 Maryvale Hospital. Doc. 37, ¶ 12. Plaintiff argues that “Tenet is subject to jurisdiction  
20 in Arizona in light of having entered into a carefully structured parent-subsidary  
21 relationship that envisioned continuing and wide-reaching contacts with the healthcare  
22 system in Arizona.” *Id.* Plaintiff also argues that Defendant has such pervasive control  
23 over Maryvale hospital that Maryvale is Defendant’s “agent, instrumentality, or alter-  
24 ego.” *Id.*, ¶¶ 17, 19. As a result, Plaintiff claims, Maryvale’s contacts in Arizona can be  
25 attributed to Defendant for purposes of asserting personal jurisdiction. *Id.*, ¶¶ 20, 31-32.  
26 Defendant does not dispute that Maryvale hospital is a wholly owned subsidiary of  
27 Defendant, but maintains that Defendant and Maryvale hospital are distinct corporate  
28 entities. Doc. 38 at 8. Thus, the only question before this Court is whether Maryvale’s

1 contacts with Arizona can be attributed to Defendant.

2 Plaintiff's agency theory cannot succeed. The Ninth Circuit once recognized an  
3 agency theory for personal jurisdiction, *Doe v. Unocal Corp.*, 248 F.3d 915, 928 (9th Cir.  
4 2001), but the Supreme Court rejected that theory, noting that it would "subject foreign  
5 corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate,"  
6 *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014). The Court therefore will focus only  
7 on Plaintiff's alter ego argument.

8 **A. Alter Ego Choice of Law.**

9 The parties do not address what law should govern the alter ego analysis. Plaintiff  
10 cites cases from a range of circuits and district courts. Defendant relies primarily on two  
11 cases from the Ninth Circuit, *Doe v. Unocal Corp.*, 248 F.3d 915 (9th Cir. 2001), and  
12 *Ranza v. Nike*, 793 F.3d 1059 (9th Cir. 2015). *Unocal* looked mostly to California law,  
13 but also cited federal court decisions from New York, Illinois, Delaware, and Florida.  
14 *See Unocal*, 248 F.3d at 926-27. *Ranza* applies the alter ego standard set forth in *Unocal*.  
15 *See Ranza*, 793 F.3d at 1071, 73-74. In the absence of any assertion that the law of some  
16 other jurisdiction should apply, the Court will also look to *Unocal* and *Ranza*.

17 **B. Alter Ego Analysis.**

18 In *Ranza*, the Ninth Circuit provided this explanation of the alter ego test, relying  
19 primarily on *Unocal*:

20 To satisfy the alter ego test, a plaintiff must make out a prima facie case  
21 (1) that there is such unity of interest and ownership that the separate  
22 personalities of the two entities no longer exist and (2) that failure to  
23 disregard their separate identities would result in fraud or injustice. The  
24 "unity of interest and ownership" prong of this test requires a showing that  
25 the parent controls the subsidiary to such a degree as to render the latter the  
26 mere instrumentality of the former. This test envisions pervasive control  
27 over the subsidiary, such as when a parent corporation dictates every facet  
28 of the subsidiary's business – from broad policy decisions to routine  
29 matters of day-to-day operation. Total ownership and shared management  
30 personnel are alone insufficient to establish the requisite level of control.

31 *Id.* at 1073 (quotation marks, brackets, and citations omitted).

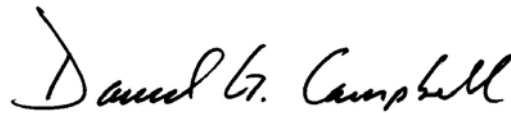
1 Plaintiff alleges that Defendant actively advertises the services of its subsidiary  
2 hospitals, including Maryvale, on its website. Doc. 37, ¶ 7. Defendant’s website also  
3 advertises employment opportunities available in these subsidiary hospitals, as well as  
4 health insurance products tailored to the residents of Arizona. *Id.* Plaintiff further  
5 contends that Defendant is involved in setting the rates at Maryvale hospital, including by  
6 engaging in negotiations with insurance companies. *Id.*, ¶ 8; *Id.* at 16 (Exhibit B).  
7 Plaintiff also argues that Defendant “had the employees in its subsidiary embrace its  
8 organizational culture[,]” and that “Defendant invested money in the information  
9 technology infrastructure (medical records, upgrading the clinical and financial systems  
10 in the Phoenix market) of its subsidiaries in Arizona, including Maryvale hospital.” *Id.*,  
11 ¶¶ 23-24. Finally, Plaintiff alleges that Defendant utilized the benefits and advantages of  
12 Arizona law to obtain stock in Maryvale and profit from the activities of the hospital. *Id.*,  
13 ¶¶ 29-30.

14 These contentions are simply not sufficient to meet the high burden of showing  
15 “such unity of interest and ownership that the separate personalities [of Defendant and  
16 Maryvale hospital] no longer exist.” *Ranza*, 793 F.3d at 1073. Plaintiff alleges that  
17 Maryvale hospital “operational activities are controlled by” Defendant (Doc. 37, ¶ 31),  
18 but provides no facts to show “pervasive control over the subsidiary, such as when a  
19 parent corporation ‘dictates every facet of the subsidiary’s business – from broad policy  
20 decisions to routine matters of day-to-day operation.’” *Id.* As the Ninth Circuit has  
21 noted “[a] parent corporation may be directly involved in financing and macro-  
22 management of its subsidiaries . . . without exposing itself to a charge that each  
23 subsidiary is merely its alter ego.” *Unocal Corp.*, 248 F.3d at 927. Plaintiff provides no  
24 evidence to suggest that Defendant and Maryvale hospital have “fail[ed] to observe their  
25 respective corporate formalities.” *Ranza*, 793 F.3d at 1074. What is more, Defendant  
26 entirely disregards the second element of the alter ego test recognized in *Ranza* and  
27 *Unocal*: “that failure to disregard their separate identities would result in fraud or  
28 injustice.” *Id.* at 1073.

1 Plaintiff has failed to show that Maryvale hospital is an alter ego of Defendant.  
2 Because Plaintiff has not alleged any direct contact between Defendant and the State of  
3 Arizona, this Court does not have personal jurisdiction over Defendant.

4 **IT IS ORDERED** that Defendant's motion to dismiss (Doc. 30) is **granted**.  
5 The Clerk of Court is directed to terminate this matter.

6 Dated this 30th day of January, 2017.

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11 David G. Campbell  
12 United States District Judge  
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