

1 **WO**

NOT FOR PUBLICATION

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
89 Damon P. Humphries,
10 Plaintiff,

No. CV-17-01606-PHX-JJT

11 v.

ORDER12 Allstate Insurance Company, *et al.*,
13 Defendants.
14

15 At issue are Defendant Allstate Insurance Company's Motion to Dismiss Plaintiff's
16 First Amended Complaint (Doc. 32, Mot.), to which Plaintiff Damon P. Humphries filed
17 a Response (Doc. 38, Resp.), and Defendant filed a Reply (Doc. 39, Reply); and
18 Defendant's prior Motion to Dismiss (Doc. 17)—filed before Plaintiff amended her
19 Complaint—to which Plaintiff filed a Response (Doc. 31) and Defendant filed a Reply
20 (Doc. 35). The Court has reviewed the parties' briefs and finds these matters appropriate
21 for decision without oral argument. *See* LRCiv 7.2(f).

22 **I. LEGAL STANDARD**

23 The Court must have personal jurisdiction over the parties to adjudicate a matter.
24 *Ins. Corp. of Ir. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 701 (1982). The
25 party invoking the jurisdiction of the Court has the burden of establishing that personal
26 jurisdiction exists. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)
27 (citing *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182-83 (1936)); *Data*
28 *Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1285 (9th Cir. 1977). Prior to trial, a

1 defendant may move to dismiss the complaint for lack of personal jurisdiction. *Data*
2 *Disc*, 557 F.2d at 1285; Fed. R. Civ. P. 12(b)(2). In that instance, the plaintiff is
3 “obligated to come forward with facts, by affidavit or otherwise, supporting personal
4 jurisdiction.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (quoting *Amba Mktg.*
5 *Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)).

6 To demonstrate the Court’s jurisdiction over a defendant, the plaintiff must show
7 that (1) the state’s long-arm statute confers personal jurisdiction over the defendant, and
8 (2) the exercise of jurisdiction comports with constitutional principles of due process. *Id.*;
9 *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995). Under
10 Arizona’s long-arm statute, the exercise of personal jurisdiction is allowed to the same
11 extent as the United States Constitution. *See* Ariz. R. Civ. P. 4.2(a); *Cybersell v.*
12 *Cybersell*, 130 F.3d 414, 416 (9th Cir. 1997); *A. Uberti & C. v. Leonardo*, 892 P.2d 1354,
13 1358 (Ariz. 1995) (stating that under Arizona Rule of Civil Procedure 4.2(a), “Arizona
14 will exert personal jurisdiction over a nonresident litigant to the maximum extent allowed
15 by the federal constitution”). A court in Arizona may exercise personal jurisdiction over a
16 nonresident defendant when doing so comports with constitutional principles of due
17 process. *Cybersell*, 130 F.3d at 416.

18 Constitutional requirements of due process require that the nonresident defendant
19 have certain “minimum contacts” with the forum state such that the suit does not offend
20 “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*,
21 326 U.S. 310, 316 (1945); (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)); *see*
22 *also Data Disc*, 557 F.2d at 1287. A court may assert general or specific jurisdiction over
23 the nonresident defendant. *Cybersell*, 130 F.3d at 416.

24 **II. ANALYSIS**

25 **A. General Jurisdiction**

26 General jurisdiction exists where the nonresident defendant’s activities within a
27 state are “substantial” or “continuous and systematic.” *Daimler AG v. Bauman*, 134 S. Ct.
28 746, 754 (2014); *Data Disc*, 557 F.2d at 1287. The “paradigm bases” for general

1 jurisdiction over a corporation are at their place of incorporation and principal place of
2 business. *BNSF Ry. Co. v. Tyrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler*, 134 S.
3 Ct. at 760). However, a corporation is not rendered at home in only these forums; “in an
4 exceptional case,” a corporation’s operations in another forum “may be so substantial and
5 of such nature as to render the corporation at home in that State.” *Id.* (quoting *Daimler*,
6 134 S. Ct. at 761 n.19.) “[T]he general jurisdiction inquiry does not focus solely on the
7 magnitude of the defendant’s in-state contacts [R]ather, the inquiry calls for an
8 appraisal of a corporation’s activities in their entirety.” *Id.* at 1559 (quoting *Daimler*, 134
9 S. Ct. at 761 n.20) (internal quotations omitted). But “a corporation that operates in many
10 places can scarcely be deemed at home in all of them.” *Id.* (quoting *Daimler*, 134 S. Ct. at
11 761 n.20).

12 Defendant argues that under *BNSF*, there is no general jurisdiction over it in
13 Arizona because it is incorporated in Delaware and has headquarters and a principal place
14 of business in Illinois. (Mot. at 6; Reply at 2.) Plaintiff does not dispute these facts, but
15 argues that Defendant has continuous and substantial contacts within Arizona in the
16 context of its entire activities, which is sufficient to establish general jurisdiction.
17 Specifically, Plaintiff contends Defendant is the “second or third largest property and
18 casualty insurer in the nation; a company licensed in 49 states, including Arizona; . . .
19 [and] a company that advertises nationally.” (Resp. at 2.) However, Plaintiff fails to
20 provide any supporting evidence of these points, as she is required to do. *See Scott*, 792
21 F.2d at 927.

22 To the extent Plaintiff did attempt to provide evidence to support the position that
23 Defendant has sufficient contacts in Arizona, Plaintiff simply attached Exhibits to her
24 Motion without an affidavit, declaration, or any foundation. The Court cannot find this
25 “evidence,” such as it is, to be reliable. For example, in support of Plaintiff’s claim that
26 Defendant is licensed to write insurance in Arizona, Plaintiff provides what appears to be
27 a screenshot of an internet search that shows Allstate Insurance Company’s “statutory
28 home office” to be in Illinois. (Resp. Ex. A.) Nothing on the screenshot appears to link

1 Allstate to Arizona, let alone demonstrate Allstate is “active in Arizona,” as Plaintiff
2 argues it demonstrates. (Resp. at 8; Ex. A.) In its utter lack of relevant content and
3 reliability, this Exhibit does nothing to support Plaintiff’s claims.

4 Plaintiff also provides what appears to be a 1996 power of attorney document
5 between Defendant and the Arizona Department of Insurance (Resp. Ex. B); a 1958
6 “Certified Copy of Resolutions of the Board of Directors” of Defendant stating it desires
7 “to transact business in every state” (Resp. Ex. C); and page 3 of an unknown document
8 (that Plaintiff contends is an “excerpt from [a] sample Allstate policy”) purporting to
9 show that Defendant’s insurance policy applies to losses within the United States of
10 America and Canada (Resp. Ex. D). These exhibits are utterly lacking in foundation,
11 reliability or probative value, and Plaintiff has thus provided the Court with no evidence
12 that the Court can consider to find Defendant has the requisite continuous and substantial
13 contacts in Arizona.¹ Because Plaintiff has failed to meet her burden to proffer sufficient
14 facts supporting general personal jurisdiction, *see Scott*, 792 F.2d at 927, the Court
15 cannot conclude it has general jurisdiction over Defendant.

16 Plaintiff next contends that, regardless of whether *BNSF*’s test for general
17 jurisdiction is met, parties may consent to personal jurisdiction, thereby allowing courts
18 to exercise general jurisdiction over the consenting party. (Resp. at 4 (citing *Pennsylvania*
19 *Fire Ins. Co. of Phil. v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917); *Ins. Corp.*
20 *of Ir., Ltd.*, 456 U.S. at 701; and *Nat’l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311
21 (1964)).) In particular, Plaintiff argues Defendant’s 1958 appointment of power of
22 attorney to the Arizona Director of Insurance in Arizona constitutes express consent to
23 personal jurisdiction in Arizona. (Resp. at 6-7, Ex. B.) Again, Plaintiff has provided no
24 reliable evidence to support her claim. Even if the Court found Plaintiff’s claim to be
25 supported by facts, Plaintiff appears to disregard the Supreme Court’s note of caution in

26
27 ¹ Plaintiff also uses a footnote to try to demonstrate Defendant has an office in
28 Arizona, providing a hyperlink that leads to a website that itself appears to have links to
Allstate’s regional offices. (Resp. at 9 n.5.) This “evidence” fails for all of the same
reasons.

1 *Burnham v. Superior Court of California, County of Marin*, 495 U.S. 604, 617-18 (1990).
2 In *Burnham*, the Supreme Court addressed states’ requirements that nonresident
3 corporations appoint in-state agents upon whom process could be served and providing
4 for in-state substituted service for nonresident motorists who left the state before service
5 could be accomplished. *Id.* at 617. The Court explained that, although it had initially held
6 these requirements to be consent to personal jurisdiction in that state because such
7 requirements were compliant with *Pennoyer*’s rigid requirements, such consent or
8 presence under these agreements was really “fictional.” *Id.* at 617-18.

9 *International Shoe* cast aside those fictions, requiring the inquiry into jurisdiction
10 over nonconsenting defendants who are not present in the forum to turn on an
11 examination of the “quality and nature of activity in relation to the forum.” *Id.* at 618
12 (quoting *Int’l Shoe*, 326 U.S. at 319). The general jurisdiction analysis was further
13 clarified in *BNSF*, where the Supreme Court required the inquiry to be an appraisal of a
14 corporation’s activities in their entirety. *BNSF Ry. Co.*, 137 S. Ct. at 1559.

15 In *Daimler*, the Supreme Court noted that changes in the technology of
16 transportation and communication, along with the growth of interstate business, meant
17 that the strict territorial approach to jurisdiction must yield to a less rigid understanding
18 of jurisdiction. 134 S. Ct. at 753-54 (citing *Burham*, 495 U.S. at 617). A categorical
19 assertion of general jurisdiction where the corporation complies with a state’s registration
20 and appointment laws would essentially contradict *Daimler* and *BNSF*’s limitation of
21 general jurisdiction to a corporation’s place of incorporation, principal place of business,
22 and *exceptional* cases where contacts with the forum state are substantial and of such
23 nature to render it at home. With regard to the weight the Court is to give a defendant’s
24 appointment of an agent within the forum state, *Perkins v. Benguet Consolidated Mining*
25 *Company* stated: “The corporate activities of a foreign corporation which, under state
26 statute, make it necessary for it to secure a license and to designate a statutory agent upon
27 whom process may be served provide a helpful but not conclusive test.” 342 U.S. 437,
28 445 (1952); *see also Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 639 (2d Cir. 2016)

1 (“[T]he sweeping interpretation that a state court gave to a routine registration statute and
2 an accompanying power of attorney that *Pennsylvania Fire* credited as a general consent
3 has yielded to the doctrinal refinement in *Goodyear* and *Daimler* and the Court’s 21st
4 century approach to general and specific jurisdiction in light of expectations created by
5 the continuing expansion of interstate and global business.”).

6 As this Court already noted, Plaintiff has provided no actual evidence of
7 Defendant’s contacts in Arizona and, even when considering Defendant’s alleged
8 appointment of an agent in Arizona, Plaintiff has failed to demonstrate Defendant has
9 been rendered at home in the state of Arizona. Thus, the Court must find that it has no
10 general jurisdiction over Defendant.

11 **B. Specific Jurisdiction**

12 A court may exercise specific jurisdiction where the defendant’s specific contacts
13 have a substantial connection to the forum state and give rise to the claim in question.
14 *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414 (1984). Thus,
15 whether a court may exercise specific jurisdiction in a given case turns on the extent of
16 the defendant’s contact with the forum and the degree to which the plaintiff’s suit is
17 related to the defendant’s contacts. *Yahoo! Inc. v. La Ligue Contre Le Racisme et*
18 *L’Antisemitisme*, 433 F.3d 1199, 1210 (9th Cir. 2006). The Ninth Circuit uses the
19 following approach to determine whether a court may exercise specific jurisdiction over a
20 nonresident defendant: (1) the nonresident defendant must do some act in or consummate
21 some transaction with the forum, or perform some act by which it purposefully avails
22 itself of the privilege of conducting activities in the forum, thereby invoking the benefits
23 and protections of its laws; (2) the claim must be one which arises out of or results from
24 the defendant’s forum-related activities; and (3) the exercise of jurisdiction must be
25 reasonable. *Data Disc*, 557 F.2d at 1287.

26 The plaintiff bears the burden of establishing the first two requirements of the test.
27 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If the
28 plaintiff establishes the first two requirements, the burden shifts to the defendant to

1 establish that the third requirement is not met. *Mavrix Photo, Inc. v. Brand Techs., Inc.*,
2 647 F.3d 1218, 1228 (9th Cir. 2011) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S.
3 462, 476-78 (1985)). All three requirements must be met for the exercise of jurisdiction
4 to comport with constitutional principles of due process. *Omeluk*, 52 F.3d at 270.

5 With regard to specific jurisdiction, Plaintiff first argues that, because the Court
6 has personal jurisdiction over another Defendant in this matter, CorVel Corporation
7 (since CorVel did not contest personal jurisdiction), and because CorVel was an agent of
8 Defendant when it managed Plaintiff's health care, the Court also has personal
9 jurisdiction over Defendant. This argument suffers the same deficiency as Plaintiff's
10 general jurisdiction argument: it is unsupported by any evidence.

11 Defendant contests that CorVel acted as an agent for Defendant in its care of
12 Plaintiff, arguing "CorVel had no authority when it came to paying benefits on
13 [Plaintiff's] claim or deciding whether to adjust her attendant care." (Reply at 7-8.)
14 Defendant contends its office in Michigan arranged for CorVel to conduct "an
15 independent medical exam" of Plaintiff, which had to take place in Arizona, where
16 Plaintiff now lives. (Reply at 8.) As the Court stated above, upon a challenge to personal
17 jurisdiction, Plaintiff is "obligated to come forward with facts, by affidavit or otherwise,
18 supporting personal jurisdiction." *Scott*, 792 F.2d at 927 (internal quotations omitted); *see*
19 *also Menken v. Emm*, 503 F.3d 1050, 1056 (9th Cir. 2007) (stating a plaintiff attempting
20 to demonstrate personal jurisdiction "cannot simply rest on the bare allegations of its
21 complaint"). Plaintiff's unsupported argument as to agency is insufficient to demonstrate
22 the Court's personal jurisdiction over Defendant.

23 Plaintiff next argues the Court should ignore the cases cited by Defendant showing
24 its contacts with the forum state are inadequate to confer personal jurisdiction, and look
25 instead to a "better line of cases"—one from Ohio state court and two from the Eleventh
26 Circuit—to conclude that, because Defendant's policy allegedly covered accidents in the
27 entire United States, Defendant purposefully availed itself of the privileges and benefits
28 of doing business in every state, including Arizona. (Resp. at 16.) This argument is in the

1 same vein as Plaintiff’s general jurisdiction argument, which the Court concluded
2 Plaintiff failed to adequately support with evidence, as discussed above. This argument
3 also fails to address the specific jurisdiction requirements that Plaintiff demonstrate that
4 Defendant has the requisite contacts with Arizona *in this case* and that Plaintiff’s claim is
5 *related to those contacts*. See *Yahoo!* 433 F.3d at 1210. Indeed, Plaintiff provides no
6 applicable legal authority supporting her argument that the Court should exercise specific
7 jurisdiction over Defendant in this matter. (See Resp. to MTD at 13-16.)

8 If anything, Plaintiff’s argument amounts to the proposition that, because Plaintiff
9 moved to Arizona and Defendant reduced her benefits payments four years after she
10 arrived in Arizona, Defendant performed an act directed at Arizona. The Supreme Court
11 has explicitly held that “the plaintiff cannot be the only link between the defendant and
12 the forum. Rather, it is the defendant’s conduct that must form the necessary connection
13 with the forum State that is the basis for its jurisdiction over him.” *Walden v. Fiore*, 134
14 S. Ct. 1115, 1119 (2014) (concluding that due process did not permit a Nevada court to
15 exercise personal jurisdiction over a Georgia Drug Enforcement Agency officer who
16 seized cash from airline passengers returning to Nevada, even if he knew his conduct
17 would affect any return of the funds to the Nevada-bound passengers, because the
18 passengers’ contacts with Nevada were insufficient to create the requisite connection
19 between the officer and Nevada). Here, Plaintiff has provided no evidence to show that
20 Defendant had the requisite connections to Arizona, let alone that those connections
21 played a role in Defendant’s decision to reduce Plaintiff’s benefits payments. From
22 Plaintiff’s allegations, the Court can only conclude that Plaintiff would have received the
23 same decision from Defendant regardless of the location of Plaintiff’s residence. In other
24 words, the only connection that Plaintiff has shown Defendant has with Arizona in this
25 case is through Plaintiff. This is insufficient. *See id.*

26 Because Plaintiff has failed to meet her burden to show that Defendant has the
27 requisite minimum contacts with Arizona, the Court’s exercise of personal jurisdiction
28

1 over Defendant does not comport with constitutional principles of due process. As a
2 result, the Court must grant Defendant’s Motion to Dismiss for lack of jurisdiction.

3 **C. Plaintiff’s Request to Transfer**

4 In her Response, Plaintiff requests that, in the event the Court concludes it has no
5 personal jurisdiction over Defendant, the Court apply 28 U.S.C. § 1631 to transfer
6 Plaintiff’s claims against Defendant to the Northern District of Illinois—the location of
7 Defendant’s headquarters. (Resp. at 16-17.) Plaintiff fears that a “[t]ransfer anywhere else
8 (with the exception of Delaware, [Defendant’s] state of incorporation) would raise
9 specific jurisdiction issues yet again (including in Michigan).” (Resp. at 17.) But Plaintiff
10 provides no analysis as to which venue would be best under the change of venue statute,
11 28 U.S.C. § 1404. In a footnote, Plaintiff states that her claims against the other
12 Defendant in this matter, CorVel, could be severed and remain before this Court. (Resp.
13 at 17 n.13.)

14 In its Reply, Defendant asks the Court to transfer Plaintiff’s claims against it to the
15 Eastern District of Michigan—the location of Defendant’s office that handled Plaintiff’s
16 claim. (Reply at 8-9.) Defendant argues that all of the relevant events in this litigation
17 occurred in Michigan, and in its first Reply, it examined each of the venue factors under
18 § 1404. (Doc. 35 at 10-11 (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99
19 (9th Cir. 2000)). Defendant also recognizes that Plaintiff’s claims against CorVel could
20 be severed and remain in this Court. (Reply at 8.)

21 Under 28 U.S.C. §1631, which addresses the Court’s transfer of a case to cure
22 want of jurisdiction, the Court can transfer this case to “any other such court in which the
23 action . . . could have been brought at the time it was filed.” Venue is proper where “any
24 defendant resides” or where “a substantial part of the events of omissions giving rise to
25 the claim occurred.” 28 U.S.C. § 1391(b). While a plaintiff’s choice of venue is
26 ordinarily entitled to deference, that presumption has less force when the plaintiff’s
27 choice is not its home forum. *Sinochem Int’l Co. v. Malaysia Int’l Shipping Corp.*, 549
28 U.S. 422, 430 (2007).

1 Both Plaintiff's choice of venue—the Northern District of Illinois—and Defendant's
2 choice of venue—the Eastern District of Michigan—are proper here. Defendant essentially
3 concedes that it will be subject to personal jurisdiction in the Eastern District of Michigan,
4 which addresses the only concern expressed by Plaintiff regarding whether that District is
5 the best venue for this matter. (*See Reply* at 8-9.) Otherwise, the Court must agree with
6 Defendant that, from Plaintiff's allegations, no events giving rise to Plaintiff's claims
7 occurred in the Northern District of Illinois, and all or almost all of them occurred in the
8 Eastern District of Michigan. Considering the venue factors laid out in *Jones*, it is beyond
9 dispute that the Eastern District of Michigan is the most appropriate venue to hear
10 Plaintiff's claims against Defendant. *See* 211 F.3d at 498-99.

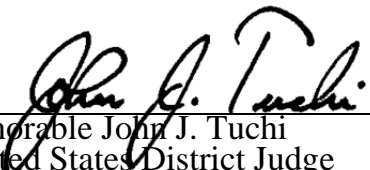
11 For the reasons stated above, the Court finds it is in the interest of justice under
12 28 U.S.C. § 1631 to transfer Plaintiff's claims against Defendant to the Eastern District of
13 Michigan. The parties have not demonstrated that Plaintiff's claims against the other
14 Defendant, CorVel, must remain with her claims against Defendant Allstate, so the Court
15 will sever Plaintiff's claims against CorVel, and those shall remain pending before this
16 Court.

17 **IT IS THEREFORE ORDERED** granting Defendant Allstate Insurance
18 Company's Motion to Dismiss Plaintiff's First Amended Complaint (Doc. 32).

19 **IT IS FURTHER ORDERED** denying as moot Defendant Allstate Insurance
20 Company's Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 17).

21 **IT IS FURTHER ORDERED** severing Plaintiff's claims against Defendant
22 Allstate Insurance Company and directing the Clerk of Court to transfer those claims to the
23 Eastern District of Michigan as soon as is practicable. Plaintiff's claims against Defendant
24 CorVel Corporation shall remain pending in this Court.

25 Dated this 27th day of March, 2018.

26
27
28 
Honorable John J. Tuchi
United States District Judge