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

8  
9 Arturo Leon,

10 Plaintiff,

11 v.

12 Peterbilt Motors Company, et al.,

13 Defendants.

No. CV-18-02122-PHX-ROS

**ORDER**

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15 In 2017, Plaintiff Arturo Leon purchased a truck from a business in Tennessee.  
16 Defendants Peterbilt Motors Company (“Peterbilt”) and Cummins, Inc. (“Cummins”),  
17 were involved in the manufacture of that truck and its component parts. Peterbilt and  
18 Cummins both provided Plaintiff with written warranties regarding the truck’s  
19 performance. Not long after buying the truck, Plaintiff experienced a variety of problems  
20 that could not be repaired to his satisfaction. In 2018, Plaintiff filed the present suit in  
21 Maricopa County Superior Court against Peterbilt and Cummins. Plaintiff asserted claims  
22 for “breach of factory warranty” and “breach of Magnuson-Moss Warranty Act.” (Doc. 1-  
23 3 at 15-16). Peterbilt filed a motion to dismiss based on lack of personal jurisdiction as  
24 well as a motion to dismiss for failure to state a claim on which relief can be granted.  
25 Cummins joined the latter motion but did not join the jurisdictional motion. Because  
26 “jurisdictional questions ordinarily must precede merits determinations in dispositional  
27 order,” the Court will address the matter of personal jurisdiction first. *Sinochem Int’l Co.*  
28 *v. Malaysia Int’l Shipping Corp.*, 549 U.S. 422, 431 (2007).

1 Plaintiff “bear[s] the burden of demonstrating that [personal] jurisdiction is  
2 appropriate.” *Dole Food Co. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002). When, as  
3 here, the Court does not hold an evidentiary hearing, Plaintiff need only make “a prima  
4 facie showing of jurisdictional facts” establishing personal jurisdiction. *Pebble Beach Co.*  
5 *v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). That showing requires the Court accept  
6 Plaintiff’s version of events where there are disputes. *Schwarzenegger v. Fred Martin*  
7 *Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). But the Court can rely on evidence provided  
8 by Peterbilt if Plaintiff does not controvert it. *Id.*

9 Here, Peterbilt has offered a variety of facts regarding the manufacture, distribution,  
10 and purchase of the relevant truck. Plaintiff has not controverted any of those facts.  
11 Accordingly, the following is based on Peterbilt’s representations regarding the relevant  
12 facts.

13 Peterbilt is “an unincorporated division of PACCAR Inc.” (Doc. 9-1 at 2).  
14 Accordingly, the proper defendant is PACCAR, not Peterbilt. PACCAR and its various  
15 divisions are in the business of designing, manufacturing, and assembling “a variety of  
16 vehicles that serve a wide range of commercial applications in the United States.” (Doc.  
17 9-1 at 2). PACCAR is incorporated in Delaware but its “corporate affairs” are managed  
18 from its office in Bellevue, Washington. PACCAR “performs design and marketing  
19 functions in Denton, Texas.” (Doc. 9-1 at 2). PACCAR has no offices, plants, or facilities  
20 in Arizona. Thus, PACCAR does not design or manufacture vehicles in Arizona.

21 In March 2016 at its facilities in Texas, PACCAR manufactured and assembled a  
22 “glider kit.” As defined by PACCAR, “[a] glider kit is an incomplete vehicle without an  
23 engine or transmission and in some instances, a rear axle.” (Doc. 9 at 2). After it was  
24 assembled, that glider kit was sold to “Peterbilt of Atlanta, an independent dealer located  
25 in Kennesaw, Georgia.” (Doc. 9-1 at 3). The glider kit was subsequently sold to Fitzgerald  
26 Truck and Part Sales, LLC (“Fitzgerald Truck”) in Byrdstown, Tennessee. Fitzgerald  
27 Truck “is a wholly separate entity unrelated to PACCAR.” Fitzgerald Truck “performed  
28 the final stage of manufacturing” by adding the necessary components to the glider kit to

1 create a truck. Fitzgerald Truck then sold the completed truck to Plaintiff in June 2017.<sup>1</sup>  
2 (Doc. 1-3 at 9). At some point during the assembly process, an engine manufactured by  
3 Defendant Cummins, Inc., was incorporated into the truck.

4 Shortly after he purchased the truck, Plaintiff experienced a wide variety of  
5 problems with it. Plaintiff took the truck to various service providers for repairs under the  
6 written warranties provided by PACCAR and Cummins. Some of the problems were  
7 minor, such as a rattling door. (Doc. 1-3 at 19). Other problems were much more  
8 substantial, such as the speedometer malfunctioning. (Doc. 1-3 at 14). The service  
9 providers repaired what they could but Plaintiff was not satisfied. In May 2018, Plaintiff  
10 filed the present suit against PACCAR and Cummins in Maricopa County Superior Court.  
11 Cummins removed the suit to federal court based on diversity jurisdiction. (Doc. 1 at 3).

12 Shortly after removal, PACCAR filed a motion to dismiss arguing personal  
13 jurisdiction does not exist. Plaintiff responded by arguing PACCAR “has expressly  
14 consented to personal jurisdiction in Arizona” and PACCAR has sufficient minimum  
15 contacts with Arizona. (Doc. 15 at 3). Put in terms of the two types of personal jurisdiction  
16 courts have recognized, these arguments are that PACCAR has consented to “general  
17 personal jurisdiction” in Arizona and that PACCAR has sufficient contacts with Arizona  
18 such that “specific personal jurisdiction” exists. *Freestream Aircraft (Bermuda) Ltd. v.*  
19 *Aero Law Grp.*, 905 F.3d 597, 602 (9th Cir. 2018). Plaintiff has not, however, pointed to  
20 sufficient facts establishing either type of jurisdiction.

#### 21 **A. General Jurisdiction**

22 Usually, general personal jurisdiction requires a defendant’s “contacts with the  
23 forum state [be] so ‘continuous and systematic’ as to render the defendant essentially ‘at  
24 home’ in that forum.” *Id.* at 602 n.2 (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 127  
25 (2014)). For a corporation, those contacts usually exist only in the state where the

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26 <sup>1</sup> The documents reflect “Arturo Leon” as the “Customer” on the “Sales Order” but the  
27 “Warranty Transfer Agreement” indicates the “Purchaser” was “Out the West Transport  
28 LLC.” According to PACCAR, Out the West is owned by Plaintiff. For present purposes,  
it does not matter whether Plaintiff or Out the West was the actual purchaser. Going  
forward, however, Plaintiff must confirm he is the correct party to assert breach of warranty  
claims against Cummins.

1 corporation is incorporated and where it has its principal place of business. *Daimler AG v.*  
2 *Bauman*, 571 U.S. 117, 137 (2014). General personal jurisdiction for a corporation,  
3 however, can also exist if it has affirmatively consented to being sued in a particular forum.  
4 *See, e.g., King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 573 (9th Cir. 2011) (discussing  
5 general personal jurisdiction through consent). Plaintiff argues PACCAR has consented  
6 to general personal jurisdiction in Arizona by appointing and registering an agent for  
7 service of process in Arizona.

8 Plaintiff has not cited the specific statutes under which PACCAR appointed and  
9 registered an agent for service of process but it appears PACCAR did so pursuant to  
10 Arizona’s statutes regarding foreign corporations who wish to “transact business” in the  
11 state. A.R.S. § 10-1501(A). Under those statutes, a foreign corporation wishing to  
12 “transact business” in Arizona must be granted authority to do so by the Arizona  
13 Corporation Commission. A corporation obtains such permission by submitting an  
14 application containing information such as its date of incorporation and the address of its  
15 principal office. A.R.S. § 10-1503(A). The Corporation Commission then reviews the  
16 application and, if complete, the corporation “is granted authority to transact business in  
17 [Arizona].” A.R.S. § 10-1503(C). Under these statutes, each corporation “authorized to  
18 transact business” in Arizona must maintain a statutory agent. A.R.S. § 10-1507. And  
19 pursuant to A.R.S. § 10-1510, a foreign corporation authorized to transact business in  
20 Arizona may be served by serving the corporation’s statutory agent.

21 The statute regarding service on a statutory agent provides, in relevant part:

22 The statutory agent appointed by a foreign corporation is an agent of the  
23 foreign corporation on whom process, notice or demand that is required or  
24 permitted by law to be served on the foreign corporation may be served and  
that, when so served, is lawful personal service on the foreign corporation.

25 Ariz. Rev. Stat. Ann. § 10-1510. Plaintiff seems to believe this language should be  
26 interpreted as PACCAR having consented to general personal jurisdiction in Arizona.

27 Determining whether PACCAR’s registration as a foreign corporation rendered it  
28 subject to general personal jurisdiction requires “look[ing] to state statutes and case law.”

1 *King v. Am. Family Mut. Ins. Co.*, 632 F.3d 570, 576 (9th Cir. 2011). The appropriate  
2 inquiry, therefore, is what Arizona law, as interpreted by Arizona courts, provides  
3 regarding the act of registering as a foreign corporation.

4 In 2017, the Arizona Court of Appeals concluded a foreign corporation registering  
5 pursuant to A.R.S. § 10-1501 *et seq.*, did not create general personal jurisdiction over that  
6 corporation. *Wal-Mart Stores, Inc. v. LeMaire*, 395 P.3d 1116, 1119 (Ariz. Ct. App. 2017).  
7 That court reasoned a foreign corporation’s registration did not qualify as either “express  
8 consent” or “implied consent” to general personal jurisdiction. *Id.* Registration could not  
9 be deemed “express consent” because the statutory language contained no indication the  
10 “legislature intended to endow Arizona courts with the ability to hear all cases . . . against  
11 all registered foreign corporations.” *Id.* And registration could not be deemed “implied  
12 consent” because the statutory language “give[s] no notice that” registering will result in  
13 the corporation being subject to general personal jurisdiction.<sup>2</sup> *Id.* In support of this latter  
14 point, the court noted “[t]he concept of consent implied from registration statutes originated  
15 in response to *Pennoyer v. Neff* . . . in which the Supreme Court held that state courts’  
16 jurisdiction was based on physical presence in the forum.” *Id.* But “the modern doctrine  
17 of specific jurisdiction” has largely abandoned the approach of *Pennoyer v. Neff* such that  
18 consent implied from registration statutes should also be abandoned.<sup>3</sup> *Id.* at 1120.

19 Because the Arizona Court of Appeals has ruled registration under § 10-1501 *et seq.*  
20 is insufficient to confer general personal jurisdiction, this Court must follow that decision  
21 unless Plaintiff can point to “convincing evidence that the state supreme court would decide  
22 [the issue] differently.” *Ryman v. Sears, Roebuck & Co.*, 505 F.3d 993, 995 (9th Cir. 2007).  
23 Plaintiff has not pointed to any such evidence. Thus, the Court will follow the Arizona  
24 Court of Appeals and conclude PACCAR’s registration under § 10-1501 *et. seq.*, did not

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26 <sup>2</sup> It is not clear why the court believe implied consent would only exist if the statutory  
27 language expressly provided that result. If the statutory language were clear, there would  
28 be no need to imply a specific intent.

<sup>3</sup> The Arizona Court of Appeals reached the opposite conclusion regarding the impact of a  
different registration statute for insurers. *Bohreer v. Erie Insurance Exchange*, 165 P.3d  
186 (Ariz. Ct. App. 2007). As it is undisputed PACCAR did not register under the statute  
applicable to insurers, the *Bohreer* decision is irrelevant.

1 confer general personal jurisdiction.

2 **B. Specific Jurisdiction**

3 As an alternative to general personal jurisdiction, Plaintiff also argues specific  
4 personal jurisdiction exists. To establish specific personal jurisdiction, Plaintiff must make  
5 at least a preliminary showing of two facts:

6 (1) PACCAR purposefully directed its activities or consummated some transaction with  
7 Arizona or an Arizona resident; or PACCAR performed some act by which it  
8 purposefully availed itself of the privilege of conducting activities in Arizona; and

9 (2) Plaintiff's claims arose out of or related to PACCAR's Arizona-related activities.  
10 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). If Plaintiff  
11 makes a preliminary showing of these two facts, the burden shifts to PACCAR to show  
12 "the exercise of jurisdiction would not be reasonable." *Id.*

13 Plaintiff does not point to *any* evidence of Arizona-based activities conducted by  
14 PACCAR. Instead, Plaintiff merely argues PACCAR is a large company with substantial  
15 business activities in Arizona. Presumably Plaintiff believes PACCAR's size and activities  
16 are sufficient, on their own, to establish the first requirement that PACCAR purposefully  
17 directed its activities at Arizona. But without specifics, Plaintiff has not satisfied his  
18 burden of establishing Arizona-related activity. Moreover, even assuming Plaintiff's  
19 vague statements were sufficient, he has not established his claims arise out of PACCAR's  
20 Arizona-based activities.

21 If Plaintiff had pointed to Arizona-related activities by PACCAR, he would also  
22 need to make a preliminary showing that his particular claims arose out of those Arizona-  
23 related activities. The Ninth Circuit applies a "but for" test to determine whether a  
24 particular claim arises out of forum-related activities." *Ballard v. Savage*, 65 F.3d 1495,  
25 1500 (9th Cir. 1995). Application of that test request Plaintiff make a preliminary showing  
26 that "but for" PACCAR's contacts with Arizona, his claims would not have arisen. *Id.* In  
27 other words, Plaintiff must point to a "direct nexus" between PACCAR's Arizona-related  
28 activities and his claims. *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716,  
742 (9th Cir. 2013). Here, Plaintiff has not pointed to any connection between PACCAR's

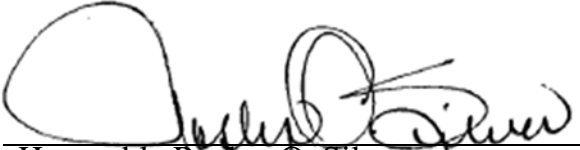
1 Arizona-related activities and his claims. PACCAR's contacts with Arizona, whatever  
2 they may be, seem to have no connection with the claims at issue in this suit. Specific  
3 personal jurisdiction does not exist. The motion to dismiss for lack of personal jurisdiction  
4 will be granted.

5 Finally, PACCAR also filed a motion to dismiss for failure to state a claim on which  
6 relief can be granted. Cummins joined that motion. Plaintiff did not respond. Pursuant to  
7 Local Rule 7.2(i), Plaintiff's failure to respond will be deemed as consenting to the granting  
8 of the motion.

9 Accordingly,

10 **IT IS ORDERED** the Motion to Dismiss (Doc. 9) and Motion to Dismiss (Doc. 10)  
11 are **GRANTED**. No later than **March 1, 2019**, Plaintiff shall file an amended complaint.  
12 The Clerk of Court is directed to enter a judgment of dismissal with prejudice in the event  
13 no amended complaint is filed by that date.

14 Dated this 21st day of February, 2019.

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19 Honorable Roslyn O. Silver  
20 Senior United States District Judge  
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