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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Radial Spark LLC,  
10 Plaintiff,  
11 v.  
12 Talend Incorporated,  
13 Defendant.  
14

No. CV-23-00653-PHX-SMM  
**ORDER**

15 Pending before the Court is Defendant's Motion to Dismiss. (Doc. 9). For the  
16 following reasons, the Motion is granted.

17 **I. Background**

18 On July 11, 2021, Plaintiff Radial Spark, an Arizona-based LLC, entered into a  
19 written Master Services Agreement ("MSA") with Defendant Talend, a Delaware  
20 corporation headquartered in California. (Doc. 1-3 at 4).<sup>1</sup> Under the MSA, Plaintiff agreed  
21 to supply Defendant with "tasks and services"—to be specified in subsequent Statements  
22 of Work ("SOWs")—in exchange for compensation. (*Id.* at 9-10). The MSA states that  
23 Plaintiff "shall comply . . . with all applicable [Defendant] rules, regulations, and policies."  
24 (*Id.* at 9). It also states, "[t]he services will be performed at the following facilities:  
25 REMOTE." (*Id.* at 26) (capitals in original). After signing the MSA, the parties executed  
26 three SOWs: on June 20, 2021; June 7, 2022; and July 26, 2022. (*Id.* at 4-5).

27 Plaintiff alleges that it performed its duties in accordance with the MSA and the

28 <sup>1</sup> Plaintiff attached the MSA to its Complaint as an exhibit and Defendant does not dispute its authenticity.

1 three SOWs. (Id. at 5). Plaintiff alleges that Defendant failed to perform its duties by failing  
2 to compensate Plaintiff for the services Plaintiff provided and by wrongly disputing  
3 Plaintiff's invoices. (Id. at 6).

4 On March 30, 2023, Plaintiff filed its Complaint in state court, presenting claims for  
5 breach of contract and breach of covenant of good faith. (Doc. 1-3). On April 18, 2023,  
6 Defendant removed the case to federal court, based on diversity jurisdiction. (Doc. 1). On  
7 May 9, 2023, Defendant filed the present Motion. (Doc. 8). Plaintiff has filed a Response  
8 (Doc. 13) and Defendant a Reply (Doc. 14).

## 9 **II. Discussion**

10 Defendant moves the Court to dismiss the Complaint on three grounds. (Doc. 9 at  
11 1). First, for lack of personal jurisdiction under Rule 12(b)(2). (Id.) Second, for failure to  
12 state a claim upon which relief may be granted, under Rule 12(b)(6). (Id. at 1-2). Third,  
13 under either 12(b)(1) or (b)(6) because the MSA contains an arbitration provision. In the  
14 alternative, Defendant moves the court to stay proceedings pending arbitration. (Id. at 2).

### 15 **A. Personal Jurisdiction**

16 A plaintiff bears the burden of establishing personal jurisdiction over the defendant.  
17 Ziegler v. Indian River County., 64 F.3d 470, 473 (9th Cir. 1995) (citing Farmers Ins. Exch.  
18 v. Portage La Prairie Mut. Ins. Co., 907 F.2d 911, 912 (9th Cir. 1990)). A district court  
19 deciding a 12(b)(2) motion to dismiss without first holding an evidentiary hearing must  
20 determine whether the plaintiff presents a *prima facie* showing of jurisdictional facts.  
21 Omeluk v. Langsten Slip & Batbyggeri A/S, 52 F.3d 267, 268 (9th Cir. 1995). Plaintiff  
22 “need only demonstrate facts that if true would support jurisdiction over the defendant.”  
23 Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd., 328 F.3d 1122, 1129 (9th Cir.  
24 2003) (quoting Doe v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001)). A plaintiff's  
25 version of the facts is taken as true unless directly contravened, and conflicts between the  
26 facts contained in the parties' affidavits must be resolved in plaintiff's favor. Id.

27 This Court may exercise personal jurisdiction over a defendant in a diversity action  
28 if Arizona's long-arm statute authorizes such an exercise and if such an exercise would be

1 consistent with the due process requirements of the United States Constitution. See, e.g.,  
2 Fireman’s Fund Ins. Co. v. Nt’l Bank of Coops., 103 F.3d 888, 893 (9th Cir. 1996).  
3 Arizona's long-arm statute permits jurisdiction over a non-resident defendant to the limits  
4 of the United States Constitution. See Davis v. Metro Prod., Inc., 885 F.2d 515, 520 (9th  
5 Cir. 1989). The statutory and constitutional considerations “therefore merge into a single  
6 due process test.” Fireman's Fund, 103 F.3d at 893.

7 The due process clause of the Constitution requires that a defendant have minimum  
8 contacts with the forum state such that the exercise of jurisdiction “does not offend  
9 ‘traditional notions of fair play and substantial justice.’” See Int’l Shoe Co. v. Wash., 326  
10 U.S. 310, 316 (1945) (citation omitted). “Minimum contacts are shown if the defendant  
11 has ‘continuous and systematic general business contacts’ with a forum state (general  
12 jurisdiction), or if the defendant has sufficient contacts arising from or related to specific  
13 transactions or activities in the forum state (specific jurisdiction).” Morrill v. Scott Fin.  
14 Corp., 873 F.3d 1136, 1142 (9th Cir. 2017) (quoting Schwarzenegger v. Fred Martin Motor  
15 Co., 374 F.3d 797, 800-02 (9th Cir. 2004)).

16 **(i) General Jurisdiction**

17 “General jurisdiction exists when a defendant’s contacts with the forum state are so  
18 ‘continuous and systematic’ so as to render the defendant essentially ‘at home’ in that  
19 forum.” Freestream Aircraft (Bermuda) Ltd. v. Aero L. Grp., 905 F.3d 597, 602 n.2 (9th  
20 Cir. 2018) (citing Daimler AG v. Bauman, 571 U.S. 117 (2014)). Typically, a corporation  
21 is considered ‘at home’ in the state in which it is incorporated and the state in which it has  
22 its principal place of business. Daimler AG, 571 U.S. at 137.

23 Plaintiff does not present a fully-formed argument that general jurisdiction exists  
24 here, instead simply noting in a footnote that, “upon information and belief,” Defendant is  
25 a global company that provides services and products to every state, including Arizona,  
26 and that “such contacts *may* provide a basis for general jurisdiction . . . .” (Doc. 13 at 3 n.2)  
27 (emphasis added). The Supreme Court, in Daimler AG, rejected the argument that a  
28 company’s sizable sales in multiple states establish general jurisdiction over the company

1 in each of those states. 571 U.S. at 118-119. Defendant is incorporated in Delaware and  
2 has its principal place of business in California. The fact that it allegedly provides services  
3 and sales in Arizona does not render it “at home” in the state.<sup>2</sup> This Court does not have  
4 general jurisdiction over Defendant.

5 **(ii) Specific Jurisdiction**

6 To assess whether a defendant has sufficient contacts with the forum necessary to  
7 establish specific jurisdiction, courts in the Ninth Circuit generally conduct a three-part  
8 inquiry, commonly referred to as the minimum contacts test. Freestream, 905 F.3d at 603.  
9 In order to establish specific jurisdiction:

- 10 (1) The non-resident defendant must purposefully direct his activities or  
11 consummate some transaction with the forum or resident thereof; or perform  
12 some act by which he purposefully avails himself of the privilege of conducting  
13 activities in the forum, thereby invoking the benefits and protections of its laws;
- 14 (2) The claim must be one which arises out of or relates to the defendant’s forum-  
15 related activities; and
- 16 (3) The exercise of jurisdiction must comport with fair play and substantial justice,  
17 i.e., it must be reasonable.

18 Freestream, 905 F.3d at 603 (citing Schwarzenegger, 374 F.3d at 802)). The plaintiff  
19 bears the burden of satisfying the first two prongs of the test. Morrill, 873 F.3d at 1142  
20 (citing Schwarzenegger, 374 F.3d at 802). If the plaintiff succeeds, the burden then shifts  
21 to the defendant to “present a compelling case” that the exercise of jurisdiction would not  
22 be reasonable. Id. (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 476-78 (1985)).

23 Under the first prong of the test, a defendant has purposefully availed itself of the  
24 privilege of doing business in the forum state if it “‘deliberately’ . . . engaged in significant  
25 activities within a State.” Burger King, 471 U.S. at 475-76 (quoting Keeton v. Hustler

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26  
27 <sup>2</sup> While significant sales in a state may be enough to establish *specific* jurisdiction, Plaintiff  
28 does not make this argument and does not allege any facts pertaining to Defendant’s sales  
in Arizona. See Ayla, LLC v. Aly Skin Pty. Ltd., 11 F.4<sup>th</sup> 972, 981 (9th Cir. 2021) (finding  
that ten percent of sales to a forum, alongside defendant’s marketing and operations,  
demonstrates that defendant purposefully availed itself of that forum).

1 Mag., Inc., 465 U.S. 770, 781 (1984)). There is no purposeful availment where a  
2 defendant's contacts with the forum state are "random," "fortuitous," or "attenuated." Id.  
3 at 475.

4 Plaintiff argues that Defendant purposefully availed itself of this forum. (Doc. 13 at  
5 1). To support this argument, Plaintiff points to Defendant's performance of three acts, or  
6 sets of acts. (Id. at 1-6). First, while acknowledging that Defendant did not negotiate the  
7 terms of the agreement in Arizona, Plaintiff notes that it signed its agreement with  
8 Defendant in Arizona. (Id. at 4). Second, while Plaintiff acknowledges that Defendant did  
9 not have a physical presence in Arizona, it argues that Defendant "controlled the work of  
10 an Arizona citizen [Plaintiff] while that Arizona citizen was working with the State of  
11 Arizona." (Id. at 5). Third, Plaintiff notes that Defendant deposited payments into  
12 Plaintiff's bank, which is located in Arizona. (Id.) The Court will address each of these  
13 activities in turn.

14 First, the fact that Plaintiff signed the MSA in Arizona does not establish specific  
15 jurisdiction. Specific jurisdiction analysis requires a court to examine the actions of the  
16 defendant, not the plaintiff. As Plaintiff acknowledges, Defendant did not sign the  
17 agreement in Arizona. Further, "the formation of a contract with a nonresident defendant  
18 is not, standing alone, sufficient to create jurisdiction." Boschetto v. Hansing, 539 F.3  
19 1011, 1017 (9th Cir. 2008) (citing Burger King, 471 U.S. at 478)).

20 Second, Plaintiff points to language in the MSA that it believes shows that  
21 Defendant controlled Plaintiff's work, work which was completed in Arizona. (Doc. 13 at  
22 5). The MSA states that Plaintiff "shall comply . . . with all applicable [Defendant] rules,  
23 regulations, and policies." (Id.) It also states, "[t]he services will be performed at the  
24 following facilities: REMOTE." (Id.) (capitals in original). Plaintiff does not provide any  
25 caselaw supporting its argument that such contractual language establishes specific  
26 jurisdiction.

27 Defendant counters that this language did not require Plaintiff to perform its work  
28 in Arizona. (Doc. 14 at 4). This point is well taken. The MSA does not mandate or even

1 foresee that Plaintiff performs its duties in Arizona—indeed, it does not reference the State  
2 of Arizona at all. Under the MSA, Plaintiff can perform such duties anywhere, remotely.  
3 The fact that Plaintiff chose to perform such duties in Arizona does not mean that  
4 Defendant purposefully availed itself of the privileges of doing business in Arizona.  
5 Similarly, the fact that Plaintiff’s performance of its duties under the MSA had to comply  
6 with Defendant’s rules, regulations, and policies is not evidence that Defendant  
7 purposefully availed itself of the privileges of doing business in Arizona. Again, nothing  
8 in the MSA mandates that Plaintiff perform such duties in Arizona and Plaintiff does not  
9 provide any authority for the proposition that its own citizenship in Arizona creates specific  
10 jurisdiction over Defendant.

11 Third, Plaintiff argues that Defendant’s payments to Plaintiff, for invoices made  
12 pursuant to the MSA and subsequent SOWS, establish specific jurisdiction over Defendant  
13 because Defendant made these payments “directly into [Plaintiff’s] bank located in  
14 Arizona.” (Doc. 13 at 5). Again, Plaintiff provides no authority for the proposition that an  
15 out-of-state defendant’s payment into a bank located in the forum state demonstrates that  
16 the defendant purposefully availed itself of the privileges of conducting business in the  
17 forum state. Neither is the Court able to locate any such authority.

18 Even taking these three activities together, Plaintiff has not alleged facts that, taken  
19 as true, demonstrate that Defendant purposefully availed itself of the privilege of doing  
20 business in Arizona. As such, Plaintiff has failed to meet the first prong of the minimum  
21 contacts test and the Court need not address the remaining two prongs. Plaintiff has failed  
22 to present a *prima facie* showing that personal jurisdiction exists and the Court must  
23 therefore grant Defendant’s 12(b)(2) motion to dismiss for lack of personal jurisdiction.

24 **(iii) Discovery**

25 In its Response, Plaintiff requests that the Court allow jurisdictional discovery  
26 before granting Defendant’s 12(b)(2) motion to dismiss. (Doc. 13 at 8-9). “Discovery  
27 should ordinarily be granted where ‘pertinent facts bearing on the question of jurisdiction  
28 are controverted or where a more satisfactory showing of the facts is necessary.’” Butcher’s

1 Union Loc. No. 498 v. SDC Inv., Inc., 788 F.2d 535, 540 (9th Cir. 1986) (quoting Data  
2 Disc, Inc. v. Sys. Tech. Assocs., Inc., 557 F.2d 1280, 1285 n.1 (9th Cir. 1977)). “But a  
3 mere hunch that discovery might yield jurisdictionally relevant facts, or bare allegations in  
4 the face of specific denials are insufficient reasons for a court to grant jurisdictional  
5 discovery.” LNS Enters. V. Cont’l Motors, 22 F.4th 852, 864-65 (9th Cir. 2022) (cleaned  
6 up) (quoting Boschetto, 539 F.3d at 1020 and Terracom v. Valley Nat’l Bank, 49 F.3d 555,  
7 562 (9th Cir. 1995)).

8 Here, Plaintiff does not suggest any relevant facts that jurisdictional discovery might  
9 bring to light. Instead, Plaintiff simply refers to documents already before the court to  
10 reiterate its arguments as to the minimum contacts test. (Doc. 13 at 9). There are no readily  
11 apparent missing facts and no disputed facts. Plaintiff’s request therefore appears to be  
12 based on a mere hunch. The Court will not allow jurisdictional discovery.

13 **B. Remaining Arguments**

14 Because the Court will grant Defendant’s Motion to Dismiss based on lack of  
15 personal jurisdiction, it will not consider Defendant’s remaining arguments under  
16 (12)(b)(6) or (12)(b)(1).

17 **III. Conclusion**

18 Because this Court does not have personal jurisdiction over Defendant, it will grant  
19 Defendant’s Motion to Dismiss and dismiss Plaintiff’s Complaint pursuant to Rule  
20 12(b)(2).

21 Accordingly,

22 **IT IS HEREBY ORDERED granting** Defendant’s Motion to Dismiss. (Doc. 9).

23 **IT IS FURTHER ORDERED dismissing without prejudice** Plaintiff’s  
24 Complaint for lack of personal jurisdiction, pursuant to Rule 12(b)(2).

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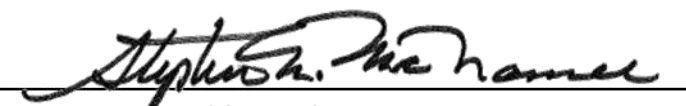
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**IT IS FURTHER ORDERED directing** the Clerk of the Court to terminate this action.

Dated this 21st day of June, 2023.

  
Honorable Stephen M. McNamee  
Senior United States District Judge