

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Carol Harter, et al.,

10 Plaintiffs,

11 v.

12 Ascension Health, et al.,

13 Defendants.
14

No. CV-15-00343-TUC-RM

ORDER

15 Pending before the Court is Defendant Ascension Health's Motion to Dismiss.
16 (Doc. 72). The Motion is fully briefed. (Docs. 83, 88.) For the following reasons, the
17 Motion will be granted.

18 **I. Background**

19 On August 5, 2015, Plaintiff Carol Harter filed a Complaint against Carondelet
20 Health Network d/b/a St. Joseph's Medical Hospital and Carondelet Neurological
21 Institute, an Arizona corporation ("Carondelet Health Network"). (Doc. 1.) Harter
22 alleged various discrimination claims arising from visits to St. Joseph's Hospital and
23 Carondelet Neurological Institute ("CNI") in August 2013, where Harter avers she
24 received inadequate accommodations for her disability. (*See id.* at 16–23.)

25 On March 15, 2016, Harter and Carondelet Health Network stipulated to the filing
26 of the First Amended Complaint ("FAC"), which added Plaintiffs Gerald Brown and
27 Leticia Moran. (Docs. 13, 15.) Brown and Moran alleged the same discrimination
28 claims as Harter, based on their visit to St. Mary's Hospital in November 2015 where

1 they allege Brown received inadequate accommodations for his disability. (*See* Doc. 15
2 at 24–31.) To reflect the addition of Brown and Moran’s claims, the case caption was
3 amended to identify the defendant as Carondelet Health Network d/b/a St. Joseph’s
4 Medical Hospital, Carondelet Neurological Institute, and St. Mary’s Hospital, an Arizona
5 corporation. (*See id.* at 1.)

6 Carondelet Health Network filed its Amended Answer to the FAC on June 15,
7 2016. (Doc. 30.) Carondelet Health Network admitted doing business as St. Joseph’s
8 Hospital, CNI, and St. Mary’s Hospital in August 2013 (when Harter was treated), but
9 denied doing business as St. Mary’s Hospital in November 2015 (when Brown was
10 treated). (*Id.* ¶ 12.) Carondelet Health Network affirmatively alleged that SMSJ Tucson
11 Holdings, LLC operated St. Mary’s Hospital in November 2015 and currently operates all
12 three medical facilities at issue in this case. (*Id.*)

13 On May 1, 2017, Plaintiffs filed a Motion for Leave to File Second Amended
14 Complaint. (Doc. 45.) The motion sought to add Dennis and Julie Lotz as plaintiffs
15 based on allegations they received inadequate accommodations for their disabilities
16 during visits to St. Mary’s Hospital in December 2015, February 2016, July 2016, and
17 September 2016. (*See* Doc. 45-1 at 21–32.) Carondelet Health Network opposed the
18 motion, arguing in part that SMSJ Tucson Holdings, LLC owned and operated the
19 medical facilities when the Lotzes were treated in December 2015 and thereafter. (Doc.
20 49 at 4–5.)

21 To aid the Court in determining whether the change in ownership barred Plaintiffs’
22 theory of a policy of discrimination, Carondelet Health Network was ordered to provide
23 information regarding the relationship between the entities that held an ownership interest
24 during the time periods in which Plaintiffs’ claims arose. (Doc. 53.) In response to that
25 Order, Carondelet Health Network set forth the following ownership structure: when
26 Harter was treated in August 2013, the hospitals were owned by Carondelet Health
27 Network. (Doc. 57-1, ¶ 8.) Thereafter, Carondelet Health Network changed its name to
28

1 Ascension Arizona.¹ (*Id.*) When Brown and the Lotzes began receiving treatment in
2 November 2015, the hospitals were owned by SMSJ Tucson Holdings, LLC. (*Id.* ¶¶ 9–
3 10.) SMSJ Tucson Holdings is owned by CHN Holdings, LLC, which is a joint venture
4 between Ascension Arizona, Tenant Healthcare, and Dignity Health. (*Id.* ¶ 9.)

5 The Court rejected the change in ownership as a basis for denying joinder of the
6 Lotzes because, although now twice removed from direct ownership, “Ascension Arizona
7 had an interest in the medical facilities at all times relevant.” (Doc. 60 at 8.) Finding all
8 other requirements for leave to amend satisfied, Plaintiffs’ motion was granted and the
9 Second Amended Complaint (“SAC”) was filed. (*Id.* at 11; Doc. 69.)

10 In accordance with the caption of Plaintiffs’ SAC, the Court ordered that
11 “Ascension Health d/b/a Carondelet Health Network, a nonprofit corporation; and SMSJ
12 Tucson Holdings, LLC, d/b/a Carondelet Health Network, a Delaware limited liability
13 company” be substituted as Defendants in place of Ascension Arizona. (Doc. 60 at 11.)
14 Plaintiffs’ voluntary dismissal of Ascension Arizona and naming of Ascension Health,
15 the foreign parent corporation of Ascension Arizona, serves as the basis for the pending
16 Motion to Dismiss.²

17 **II. Standard of Review**

18 **A. Motion to Dismiss**

19 A plaintiff opposing a motion to dismiss for lack of personal jurisdiction bears the
20 burden of establishing that jurisdiction exists. *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068
21 (9th Cir. 2015) (quoting *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073
22 (9th Cir. 2011)). When “the defendant’s motion is based on written materials rather than
23 an evidentiary hearing, the plaintiff need only make a prima facie showing of
24 _____

25 ¹ To avoid confusion, the Court will refer to this entity hereafter as
26 “Ascension Arizona,” even when referring to periods of time it was known as
“Carondelet Health Network.”

27 ² There seems to be no dispute that Ascension Arizona was subject to the
28 Court’s jurisdiction. Given the inaccuracy of Plaintiffs’ allegations regarding Ascension
Health, it appears that Plaintiffs may have intended that Ascension Arizona remain a
defendant and that the substitution was an error.

1 jurisdictional facts to withstand the motion to dismiss.” *Id.* (internal quotation marks
2 omitted) (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127
3 (9th Cir. 2010)). “A plaintiff may not simply rest on the ‘bare allegations of [the]
4 complaint.’” *Id.* (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800
5 (9th Cir. 2004)). Uncontroverted allegations are taken as true, and factual disputes are
6 resolved in the plaintiff’s favor. *Id.* But allegations that are controverted by affidavit are
7 not presumed true. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223 (9th
8 Cir. 2011).

9 **B. Principles of Personal Jurisdiction**

10 Due process requires that federal courts obtain personal jurisdiction over the
11 parties before adjudicating those parties’ rights. *Ins. Corp. of Ireland, Ltd. v. Compagnie*
12 *des Bauxites de Guinee*, 456 U.S. 694, 701–02 (1982). Federal courts may exercise
13 personal jurisdiction if (1) the forum State’s long-arm statute is satisfied, and (2) the
14 exercise of jurisdiction would comport with the constitutional requirement of due
15 process. *Lee v. City of Los Angeles*, 250 F.3d 668, 692 (9th Cir. 2001) (quoting *Omeluk*
16 *v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 269 (9th Cir. 1995)). Arizona’s long-
17 arm statute permits jurisdiction to the fullest extent permitted by the U.S. Constitution.
18 *Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1141 (9th Cir. 2017) (citing Ariz. R. Civ. P.
19 4.2(a)). Therefore, the jurisdictional analyses under state and federal law are identical,
20 and the Court need only determine whether the exercise of personal jurisdiction would
21 comport with due process. *Id.*; *Picot v. Weston*, 780 F.3d 1206, 1211 (9th Cir. 2015).

22 Due process requires that a nonresident defendant have certain minimum contacts
23 with the forum State “such that the maintenance of the suit does not offend ‘traditional
24 notions of fair play and substantial justice.’” *Walden v. Fiore*, 134 S. Ct. 1115, 1121
25 (2014) (quoting *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). Depending on
26 the quantity and nature of the nonresident’s contacts, personal jurisdiction may be either
27 general or specific. *Bristol-Myers Squibb Co. v. Superior Court of Cal., S.F. Cty.*, 137 S.
28 Ct. 1773, 1779–80 (2017).

1 A court with general (or “all-purpose”) jurisdiction over a defendant may hear any
2 claim against that defendant, whether or not the conduct underlying the claim took place
3 in the forum State. *Id.* at 1780. A corporation is subject to general jurisdiction when its
4 “affiliations with the State are so ‘continuous and systematic’ as to render [the
5 corporation] essentially at home in the forum State.” *Goodyear Dunlop Tires*
6 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). For corporations, the place of
7 incorporation and principal place of business are the “paradigmatic forums” for the
8 exercise of general jurisdiction. *Daimler AG v. Bauman*, 134 S. Ct. 746, 760 (2014)
9 (citing *Goodyear*, 564 U.S. at 924). Only in an “exceptional case” will general
10 jurisdiction be available anywhere else. *Id.* at 761 n.19.

11 A court has specific (or “case-linked”) jurisdiction over a defendant when the
12 claim “aris[es] out of or relate[s] to the defendant’s contacts with the forum.” *Id.* at 754
13 (quoting *Helicopteros Nacionales de Columbia, S.A. v. Hall*, 466 U.S. 408, 414 n.8
14 (1984)). “In other words, there must be ‘an affiliation between the forum and the
15 underlying controversy, principally, [an] activity or an occurrence that takes place in the
16 forum State and is therefore subject to the State’s regulation.’” *Bristol-Myers Squibb*,
17 137 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 919).

18 **III. Discussion**

19 **A. General Jurisdiction**

20 Plaintiffs argue Ascension Health has sufficient contacts with Arizona to establish
21 a prima facie case of general jurisdiction. Ascension Health disputes whether Plaintiffs
22 have alleged general jurisdiction and argues that, in any event, Plaintiffs cannot make a
23 prima facie showing.

24 As it pertains to Ascension Health, Arizona is not one of the “paradigmatic
25 forums” for the exercise of general jurisdiction. Plaintiffs allege in the SAC that
26 Ascension Health is “an Arizona non-profit corporation” with “a principal place of
27 business in Tucson, Arizona.” (Doc. 69, ¶ 9.) However, the records presented to the
28 Court plainly establish that Ascension Health was incorporated in Missouri. (*See* Doc.

1 72-1, ¶ 4; Doc. 84, Ex. A.) Furthermore, in its filings with the ACC, Ascension Health
2 lists an address in St. Louis, Missouri as its “Principal Office Address.” (Doc. 84, Ex.
3 A.)

4 Therefore, Plaintiffs must establish this is one of the “exceptional cases” where a
5 corporation is subject to general jurisdiction elsewhere. *Daimler*, 134 S. Ct. at 761 n.19;
6 *see Ranza*, 793 F.3d at 1069 (explaining that plaintiffs who wish to invoke general
7 jurisdiction must meet an “exacting standard”). The determinative inquiry “is not
8 whether a foreign corporation’s in-forum contacts can be said to be in some sense
9 ‘continuous and systematic,’ it is whether that corporation’s ‘affiliations with the State
10 are so “continuous and systematic” as to render [it] essentially at home in the forum
11 State.” *Daimler*, 134 S. Ct. at 761 (quoting *Goodyear*, 564 U.S. at 919). As explained
12 below, Plaintiffs have failed to show Ascension Health is “essentially at home” in
13 Arizona.

14 Plaintiffs submit a number of documents in an attempt to show that exercise of
15 general jurisdiction would be proper. (*See* Doc. 84.) Among the documents are ACC
16 filings showing that Ascension Health is registered to transact business in Arizona, that it
17 has appointed an agent for service of process in Arizona, and that it annually files a
18 Report & Certificate of Disclosure with the ACC. (*Id.*, Exs. A–F.) Plaintiffs also submit
19 an agreement for Ascension Health to administer the disability-benefits plan for
20 Ascension Arizona employees. (*Id.*, Ex. I.) Although these are relevant factors, *see*
21 *Helicopteros*, 466 U.S. at 416, their existence is not determinative. The general
22 jurisdiction analysis requires examination of “a corporation’s activities in their entirety,
23 nationwide and worldwide. A corporation that operates in many places can scarcely be
24 deemed at home in all of them.” *Daimler*, 134 S. Ct. at 762 n.20. Ascension Health is
25 “the parent corporation of a national Catholic health care system with more than one
26 hundred health care facilities.” (Doc. 72-1, ¶ 5.) Arizona is only one of twenty-two
27 States in which Ascension Health has operations. (Doc. 84, Ex. H.) In this context, the
28 ability to transact business and appointment of an agent for service of process do not

1 make Ascension Health “essentially at home” in Arizona. *Cf. Wal-Mart Stores, Inc. v.*
2 *LeMaire*, 395 P.3d 1116, 1122 (Ariz. Ct. App. 2017) (holding foreign corporation—Wal-
3 Mart, Arizona’s second largest employer—not subject to general jurisdiction in Arizona).

4 Nor do Plaintiffs’ exhibits “directly contradict” the assertion of Jenna Mihm,
5 Associate General Counsel for Ascension Health, that “Ascension Health does not do
6 business [in] Arizona.” (Doc. 72-1, ¶ 4.) Plaintiffs overlook the distinction between
7 having the ability to transact business (which is what the documents show) and actually
8 transacting business (which the documents do not show). Plaintiffs also question the
9 verity of Mihm’s statement that Ascension Health has never “operated any hospitals in
10 Arizona, or managed, hired, or supervised any employees providing patient care or
11 arranging for services” at the hospitals. (*Id.* ¶ 11.) Plaintiffs also contend that Ascension
12 Health falsely suggests “it has no operational involvement at all with the Tucson
13 hospitals.” They argue that Ascension Health’s role as the disability-benefits
14 administrator is “substantial evidence . . . that Ascension Health was involved directly in
15 the operation of the hospitals and the compensation and management of their
16 employees.” Plaintiffs’ argument, however, is directed at an inaccurate interpretation of
17 Mihm’s statement. Taken in proper context, Mihm was communicating that Ascension
18 Health, “as the parent corporation of a national Catholic health care system,” does not
19 directly manage hospitals or hospital employees in *the daily activities relating to patient*
20 *care*, not that Ascension Health has *no* involvement in the hospitals’ operations. (Doc.
21 72-1, ¶¶ 5, 11.)

22 Next, Plaintiffs point to isolated contacts between Ascension Health and Arizona,
23 comprising of a lawsuit filed in 2003 and the recording of documents in Pima County in
24 2006 and 2015. (Doc. 84, Exs. G, J–K.) These contacts fall far short of establishing
25 “continuous and systematic” activity by Ascension Health in Arizona. *See Daimler*, 134
26 S. Ct. at 751 (explaining that general jurisdiction requires corporation’s contacts with
27 forum State to be “constant and pervasive”); *CollegeSource*, 653 F.3d at 1074–75
28 (holding that “a few discrete acts over a relatively short period of time” did not support

1 exercise of general jurisdiction).

2 Plaintiffs also rely on Ascension Health’s status as sole owner of Ascension
3 Arizona to argue that general jurisdiction is proper. They contend there is “little doubt”
4 that the sole owner “would likely have actively managed, supervised, and/or involved
5 itself in the Arizona operations” For support, Plaintiffs rely on a press release issued
6 by Tenant Healthcare in July 2015 and two news articles dated July 2014 and July 2015,
7 which they contend show Ascension Health holds itself out as owner and operator of the
8 hospitals. (Doc. 84, Exs. L–N.) The press release announces the joint venture between
9 Tenant Healthcare, Dignity Health, and “Ascension” and contains a statement from
10 Robert J. Henkel, who is identified as “Executive Vice President of Ascension and
11 President and CEO of Ascension Health.” (*Id.*, Ex. L.) The Arizona Daily Star article
12 published in July 2015 states that “Missouri-based Ascension is the current owner of . . .
13 Carondelet St. Joseph’s and . . . Carondelet St. Mary’s hospitals, both in Tucson.” (*Id.*,
14 Ex. M.) The St. Louis Post-Dispatch article published in July 2014 states that
15 “Ascension Health . . . announced plans to sell a majority interest of its Arizona hospitals
16 to two other health systems through the creation of a joint venture.” (*Id.*, Ex. N.)

17 These articles do not establish that Ascension Health is “essentially at home” in
18 Arizona. They suggest only that Ascension Health was involved in the management of
19 its subsidiary’s assets, which is unsurprising given that Ascension Health is the “parent
20 corporation of a national Catholic health care system with more than one hundred health
21 care facilities.” (Doc. 72-1, ¶ 5.) Furthermore, even assuming for the sake of argument
22 that Ascension Health “actively managed, supervised and/or involved itself” in hospital
23 operations, Plaintiffs have not explained why that conduct is “exceptional” such that
24 general jurisdiction would be proper. *See Daimler*, 134 S. Ct. at 762 n.20 (explaining
25 that “at home” is not synonymous with “doing business”); *Wal-Mart Stores*, 395 P.3d at
26 1121–22 (explaining that Wal-Mart’s substantial business activities in Arizona were not
27 “exceptional” so as to give rise to general jurisdiction).

28 To the extent Plaintiffs suggest Ascension Arizona’s contacts should be imputed

1 to Ascension Health due to the latter entity holding itself out as owner, they are incorrect.
2 “The existence of a parent-subsidary relationship is insufficient, on its own, to justify
3 imputing one entity’s contacts with a forum state to another for the purpose of
4 establishing personal jurisdiction.” *Ranza*, 793 F.3d at 1070. A subsidiary’s contacts
5 with a forum State may be imputed to the parent if the two entities are “alter egos”; that
6 is, they are “not really separate entities.” *Id.* at 1071. This requires proof “(1) that there
7 is such unity of interest and ownership that the separate personalities [of the two entities]
8 no longer exist and (2) that failure to disregard [their separate identities] would result in
9 fraud or injustice.” *Id.* at 1073 (internal quotation marks omitted) (quoting *Doe v.*
10 *Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001)). Plaintiffs provide no allegations in the
11 SAC regarding the parent-subsidary relationship between Ascension Health and
12 Ascension Arizona. Nor do they provide any arguments that track either of the alter ego
13 requirements. Plaintiffs make much of the press release and news articles, but those do
14 not establish (or even suggest) that Ascension Health exercises “pervasive control over
15 the subsidiary” such that it would be fair to impute Ascension Arizona’s contacts. *Id.*
16 The evidence suggests only that Ascension Health was involved in the management of its
17 subsidiary’s assets, which is insufficient by itself to meet the “unity of interest”
18 requirement. *See id.* at 1073–74 (explaining that parent’s involvement in subsidiaries’
19 acquisitions and divestments does not negate corporate separateness where each entity
20 observes corporate formalities (citing *Unocal*, 248 F.3d at 927–28)).

21 Even considering all of the aforementioned contacts together, Plaintiffs have
22 failed to show that Ascension Health’s contacts with Arizona are so continuous and
23 systematic that Ascension Health is “essentially at home” here. Consequently, Ascension
24 Health is not subject to general jurisdiction.

25 **B. Specific Jurisdiction**

26 Ascension Health contends that the Court lacks specific jurisdiction. Plaintiffs
27 disagree, arguing there is sufficient evidence showing their claims are directly related to
28 Ascension’s Health’s forum contacts such that specific jurisdiction exists. The Court

1 agrees with Ascension Health and finds that it lacks specific jurisdiction.

2 The Ninth Circuit has articulated a three-part test to determine whether a
3 defendant is subject to specific jurisdiction:

4 (1) The non-resident defendant must purposefully direct his
5 activities or consummate some transaction with the forum or resident
6 thereof; or perform some act by which he purposefully avails
7 himself of the privilege of conducting activities in the forum, thereby
8 invoking the benefits and protections of its laws;

9 (2) the claim must be one which arises out of or relates to the
10 defendant's forum-related activities; and

11 (3) the exercise of jurisdiction must comport with fair play and
12 substantial justice, i.e. it must be reasonable.

13 *Morrill*, 873 F.3d at 1142 (quoting *Schwarzenegger*, 374 F.3d at 802). It is the plaintiff's
14 burden to establish the first two prongs; failure to satisfy either prong means specific
15 jurisdiction does not exist. *Id.* Plaintiffs are unable to satisfy the second prong;
16 therefore, the remaining requirements for specific jurisdiction are not addressed.³

17 The Ninth Circuit uses the "but for" test in determining whether a plaintiff's
18 claim "arises out of or relates to the defendant's forum-related activities." *Menken v.*
19 *Emm*, 503 F.3d 1050, 1058 (9th Cir. 2007) (citing *Myers v. Bennett Law Offices*, 238
20 F.3d 1068, 1075 (9th Cir. 2001)). Plaintiffs argue that Ascension Health is "directly
21 related to the people creating liability" because Ascension Arizona uses the employee
22 disability-benefits plan of Ascension Health. The proper inquiry, however, is whether
23 Plaintiffs' alleged injuries would have occurred "but for" Ascension Health administering
24 the disability benefits of Ascension Arizona's employees. *See id.* For specific
25 jurisdiction to exist, the answer must be "no." The Court is unable to discern any causal

26 ³ Plaintiffs assert that "Ascension Health falsely contends it has never availed
27 itself of Arizona law, or directed actions toward or in Arizona" These statements
28 appear nowhere in Ascension Health's brief or Mihm's affidavit. Furthermore,
Ascension Health's failure to mention the lawsuit or recorded documents does not
establish that Ascension Health attempted to mislead the Court. As explained above,
Plaintiff's alleged injuries plainly did not arise out of those contacts. (*See Doc. 72 at 4*
(*"Plaintiffs cannot show that Ascension Health has any direct contacts with Arizona*
sufficient for the Court to exercise personal jurisdiction over it." (emphasis added)).)

1 relationship between administration of employee benefits and discriminatory acts against
2 third parties by employees receiving benefits. Therefore, the inquiry must be answered in
3 the affirmative, and that contact cannot form the basis for specific jurisdiction.

4 Next, Plaintiffs argue that Ascension Health is “directly related to the entities who
5 [discriminated against] Plaintiffs” because it owns the entity (Ascension Arizona) that
6 owned and operated the hospitals. This position is untenable. The general rule is to
7 respect the separateness of distinct corporate entities, including parents and their
8 subsidiaries. *Ranza*, 793 F.3d at 1070. Accordingly, a foreign parent corporation may
9 not be forced to litigate in a particular forum merely because it has a subsidiary there.
10 *See Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 459 (9th Cir. 2007) (“It
11 is well established that, as a general rule, where a parent and subsidiary are separate and
12 distinct corporate entities, the presence of one . . . in a forum state may not be attributed
13 to the other . . .”). As explained above, the separateness of affiliated entities may be
14 disregarded only when the entities are “alter egos” of each other. *Ranza*, 793 F.3d at
15 1071. Plaintiffs’ SAC and response brief are devoid of allegations or argument that the
16 entities are “alter egos.” The Court declines to find specific jurisdiction based solely on
17 what Plaintiffs term an “ownership contact”; to do otherwise would violate basic tenets of
18 business organizations law and due process.

19 The remaining contacts identified by Plaintiffs—including the lawsuit and the
20 recording of documents in Pima County—plainly were not a “but for” cause of Plaintiffs’
21 alleged injuries. Therefore, Plaintiffs have failed to show their claims “arise[] out of or
22 relate[] to the defendant’s forum-related activities.” *Morrill*, 873 F.3d at 1142 (quoting
23 *Schwarzenegger*, 374 F.3d at 802).

24 **C. Jurisdictional Discovery**

25 Jurisdictional discovery is proper in lieu of dismissal “where pertinent facts
26 bearing on the question of jurisdiction are controverted or where a more satisfactory
27 showing of the facts is necessary.” *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir.
28 2008) (quoting *Data Disc, Inc. v. Sys. Tech. Assocs. Inc.*, 557 F.2d 1280, 1285 n.1 (9th

1 Cir. 1977)). District courts may deny jurisdictional discovery that is requested “based on
2 little more than a hunch that it might yield jurisdictionally relevant facts.” *Id.* It is the
3 plaintiff’s burden to allege in the complaint or an affidavit what evidence he or she
4 believes could be obtained through discovery that would properly permit the exercise of
5 jurisdiction. *Id.*; *see Ariz. Sch. Risk Retention Tr., Inc. v. NMTC, Inc.*, 169 F. Supp. 3d
6 931, 942–43 (D. Ariz. 2016) (denying jurisdictional discovery where plaintiff failed to
7 identify what evidence it believed it could obtain through discovery). But, where the
8 plaintiff’s jurisdictional allegations are contradicted by declarations denying those
9 allegations, district courts need not permit even limited discovery. *Pebble Beach Co. v.*
10 *Caddy*, 453 F.3d 1151, 1160 (9th Cir. 2006) (quoting *Terracom v. Valley Nat’l Bank*, 49
11 F.3d 555, 562 (9th Cir. 1995)); *see MMI, Inc. v. Baja, Inc.*, 743 F. Supp. 2d 1101, 1113
12 (D. Ariz. 2010) (denying jurisdictional discovery where plaintiff failed to rebut
13 declaration denying jurisdictional allegations).

14 The Court will deny Plaintiffs’ request for jurisdictional discovery. Plaintiffs
15 generally assert that jurisdictional discovery may show that additional entities are liable
16 for their alleged injuries, but they do not indicate what evidence they believe could be
17 obtained that would show jurisdiction is proper over Ascension Health. Nor have
18 Plaintiffs presented evidence rebutting Ascension Health’s declaration denying the
19 SAC’s jurisdictional allegations.

20 Furthermore, the evidence and uncontroverted allegations do not indicate that
21 Ascension Health was ever the direct owner or operator of the relevant medical facilities.
22 Rather, the evidence is that Ascension Arizona (the original, former defendant) owned
23 and operated the facilities when Harter received treatment (*see* Doc. 72-1, ¶ 12), and the
24 uncontroverted allegations are that SMSJ Tucson Holdings, LLC owned and operated the
25 facilities when the remaining Plaintiffs received treatment (*see* Doc. 69, ¶¶ 21, 25, 27).
26 In the absence of allegations which, if true, establish Ascension Health should be liable
27 for the conduct of its subsidiaries, jurisdictional discovery would have no effect on the
28 Court’s conclusions.


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

Accordingly,

IT IS ORDERED that Defendant Ascension Health’s Motion to Dismiss (Doc. 72) is **granted**. Ascension Health is **dismissed without prejudice** for lack of personal jurisdiction.⁴

IT IS FURTHER ORDERED that Plaintiffs are **granted leave to amend** the Second Amended Complaint. Plaintiffs may file a third amended complaint on or before **January 29, 2018**. Plaintiffs are limited to amending the parties and allegations concerning the parties.

Dated this 19th day of January, 2018.



Honorable Rosemary Márquez
United States District Judge

⁴ The general rule is that dismissal for lack of personal jurisdiction must be without prejudice. *See Fiorani v. Berenzweig*, 441 Fed App’x 540, 541 (9th Cir. 2011) (mem.). Ascension Health does not provide a persuasive reason to depart from that rule.