

1 none of the acts giving rise to the litigation occurred here. (*Id.* at 1.) In support of its motion, TXU
2 filed declarations from Taisa Ware and Jermaine Hunt, employees of TXU and a TXU affiliate,
3 respectively. (Ware Decl., ECF No. 10-3; Hunt Decl., ECF No. 10-2).

4 Chyba contends jurisdiction is proper. (Compl. 2.) She filed a “cross motion” to dismiss
5 TXU’s motion (Cross-mot., ECF No. 12) as well as a response (Resp., ECF No. 15). The Court
6 construes both documents as Chyba’s opposition. Chyba also filed supporting documents, including
7 an affidavit (Chyba Aff., ECF No. 12-2), a “judicial notice/cognizance with claim of rights” (ECF No.
8 12-3), and a “motion in objection” to the declarations of Hunt and Ware (Objection, ECF No. 12-4).³
9 TXU filed a reply. (Reply, ECF No. 18.)

10 Having reviewed the parties’ filings and applicable law, the Court concludes TXU’s connection
11 to California is simply too tenuous. TXU’s motion to dismiss is **GRANTED**.

12 **BACKGROUND**

13 Chyba contends that she is a San Diego resident who “has never been a resident of Texas,
14 worked in Texas, or held any type of Texas issued identification.” (Aff. ¶ 7.) She makes the following
15 factual allegations. She discovered the negative credit entry in August 2011 and tried in vain to correct
16 it. (Compl. 2-3.) First, she sent a letter to TXU by certified mail. (*Id.* at 3.) She didn’t hear back.
17 (*Id.*) When she followed up with a telephone call in February, a TXU representative “could not
18 validate or provide any specifics and stated someone would call back within five days.” (*Id.*) That
19 call never came. (*Id.*) Chyba sent a second letter. (*Id.*) Again, nothing. (*Id.*) On “several occasions,”
20 she disputed the entry with a credit bureau but was told that it was consistent with information
21 provided by TXU. (*Id.* at 3.) The gist of Chyba’s complaint is that TXU never informed the credit
22 bureau that her debt was in dispute and has continued updating her credit report with bad information.
23 (*Id.* at 4.)

24 TXU makes the following factual allegations. Chyba incurred the debt in 2009 at residences
25

26 ³ Chyba objects to the declarations based on: (1) lack of firsthand knowledge, (2) irrelevance,
27 (3) lack of probative value, (4) hearsay, and (5) “unnotarized and unverified testimony.” (Objection
28 2.) She moves to strike Hunt’s declaration because TXU’s corporate disclosure statement “was not
disclosed as required.” (*Id.*) Chyba is incorrect. TXU filed its statement on May 31, 2012. (ECF No.
9.) The Court finds no grounds to strike the declaration.

1 in Grand Prairie, Texas and Crowley, Texas. (Ware Decl. ¶¶ 3-4.) In 2011, TXU reported the account
2 to a collection agency at its Arizona office. (*Id.* ¶ 3.) In September of that year, TXU sent Chyba a
3 debt verification letter in response to her inquiries. (*Id.* ¶ 4, Ex. 1.) Chyba’s mailing address is listed
4 on the letter as a San Diego post office box. (*Id.*)

5 TXU asserts that all of its facilities and business operations are in Texas. (Hunt Decl. ¶ 4.)
6 It “has no offices, employees, customers, management, operations, or presence in California.” (*Id.*)
7 It has “no bank accounts or assets in California.” (*Id.*) “TXU Energy does not own or lease any real
8 estate in California.” (*Id.*) It “does not maintain an agent for service of process in California.” (*Id.*)
9 It “does not maintain a telephone number, street address, post office box, mailing address, or any other
10 contact information in California.” (*Id.*) It “does not transact, conduct, or solicit any business in the
11 State of California and has no contracts to supply services or goods in California.” (*Id.* ¶ 5.) “TXU
12 Energy is not qualified to do business in California, and none of its members is a citizen of the State
13 of California.” (*Id.*)

14 DISCUSSION

15 1. LEGAL STANDARD

16 Once a defendant moves to dismiss for lack of personal jurisdiction, it is the plaintiff’s burden
17 to establish that jurisdiction is proper. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223
18 (9th Cir. 2011). If there is no evidentiary hearing, the plaintiff need only make, through pleadings and
19 affidavits, “a prima facie showing of the jurisdictional facts.” *Myers v. Bennett Law Offices*, 238 F.3d
20 1068, 1071 (9th Cir. 2001). Although “uncontroverted allegations in the complaint must be taken as
21 true,” and “[c]onflicts between parties over statements contained in affidavits must be resolved in the
22 plaintiff’s favor,” *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002), “‘bare bones’
23 assertions of minimum contacts with the forum or legal conclusions unsupported by specific factual
24 allegations will not satisfy a plaintiff’s pleading burden,” *Swartz v. KPMG LLP*, 476 F.3d 756, 766
25 (9th Cir. 2007). The Court will draw “reasonable inferences from the complaint in favor of the
26 plaintiff where personal jurisdiction is at stake, and will assume credibility.” *Fiore v. Walden*, 688
27 F.3d 558, 575 (9th Cir. 2012).

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1 **2. PERSONAL JURISDICTION**

2 A forum state’s long-arm statute establishes the boundaries of a court’s jurisdiction over non-
3 residents. “California’s long-arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with federal
4 due process requirements, so the jurisdictional analyses under state law and federal due process are
5 the same.” *Mavrix*, 647 F.3d at 1223. To comport with due process, a court “may subject a defendant
6 to judgment only when the defendant has sufficient contacts with the sovereign such that the
7 maintenance of the suit does not offend traditional notions of fair play and substantial justice.” *J.*
8 *McIntyre Mach., Ltd. v. Nicastro*, 131 S. Ct. 2780, 2787 (2011) (citation and internal quotation marks
9 omitted).

10 Jurisdiction can be either “general” or “specific.” *Mavrix*, 647 F.3d at 1223, 1227. “For
11 general jurisdiction to exist, a defendant must engage in continuous and systematic general business
12 contacts that approximate physical presence in the forum state.” *Id.* at 1223-24 (citations and internal
13 quotation marks omitted). “The standard is met only by ‘continuous corporate operations within a
14 state [that are] thought so substantial and of such a nature as to justify suit against [the defendant] on
15 causes of action arising from dealings entirely distinct from those activities.’” *King v. Am. Family*
16 *Mut. Ins. Co.*, 632 F.3d 570, 579 (9th Cir. 2011) (alterations in original) (quoting *Int’l Shoe Co. v.*
17 *Washington*, 326 U.S. 310, 318 (1945)). For example, merely appointing an agent for service of
18 process does not subject a company to general jurisdiction. *Id.* at 572.

19 Chyba does not assert TXU is susceptible to general jurisdiction, and it is evident from the
20 facts alleged that the company does not have “continuous and systematic contacts” with California.
21 A closer question, however, is whether specific jurisdiction lies against TXU. Specific jurisdiction
22 is “premised on the particular circumstances underlying the lawsuit sought to be litigated.” *Fiore*, 688
23 F.3d at 573. The Ninth Circuit uses the three-prong *Schwarzenegger* test for determining whether
24 specific jurisdiction applies in a particular case:

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

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

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

3 *Fiore*, 688 F.3d at 573-74 (emphases added) (quoting *Schwarzenegger v. Fred Martin Motor Co.*, 374
4 F.3d 797, 802 (9th Cir. 2004)).

5 Chyba bears the burden of satisfying prongs one and two. *Mavrix*, 647 F.3d at 1228. If she
6 succeeds, the burden shifts to TXU “to set forth a ‘compelling case’ that the exercise of jurisdiction
7 would not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78
8 (1985)). Because Chyba fails to demonstrate “purposeful direction,” the Court’s analysis starts and
9 ends at prong one.

10 “The first part of the *Schwarzenegger* test is subdivided into purposeful direction, which most
11 often applies in tort cases, and purposeful availment, which most often applies in contract cases.”
12 *Fiore*, 688 F.3d at 576. Because Chyba has alleged FCRA violations, purposeful direction analysis
13 applies. *See Gordon v. DTE Energy*, 680 F. Supp. 2d 1282, 1285-86 (D. Wash. 2010). Purposeful
14 direction requires its own three-part test. A party must have “(1) committed an intentional act, (2)
15 expressly aimed at the forum state, (3) causing harm that the defendant knows is likely to be suffered
16 in the forum state.” *Dole*, 303 F.3d at 1111. Liberally construed, Chyba’s allegations satisfy the first
17 and third elements. Reporting a delinquent account to a credit bureau is an intentional act, and “harm
18 due to violations of the FCRA occurs where the plaintiff feels the consequences, not where the event
19 complained of occurred.” *Gordon*, 680 F. Supp. 2d at 1285-86.

20 It is the “express aiming” element where Chyba falls short. Express aiming describes a
21 situation in which a defendant “engaged in wrongful conduct targeted at a plaintiff whom the
22 defendant knows to be a resident of the forum state.” *Bankcroft & Masters, Inc. v. Augusta Nat’l Inc.*,
23 223 F.3d 1082, 1087 (9th Cir. 2002); *Gordon*, 680 F. Supp. 2d at 1285 (“Knowledge of the plaintiff’s
24 residence is the crucial element.”) Chyba has not shown that TXU expressly aimed its alleged
25 misconduct toward California. Specifically, Chyba has not alleged facts that demonstrate TXU knew
26 she had any substantial, ongoing connection to the state. *See Fiore*, 688 F.3d at 578 (finding personal
27 jurisdiction where a defendant “definitely knew” of plaintiffs’ “significant connection” to the forum
28 state); *Gordon*, 680 F. Supp. 2d 1282 (finding jurisdiction where “Plaintiff has demonstrated that
Defendant was aware of its Washington residence”); *Cisneros v. Trans Union, LLC*, 293 F. Supp. 2d

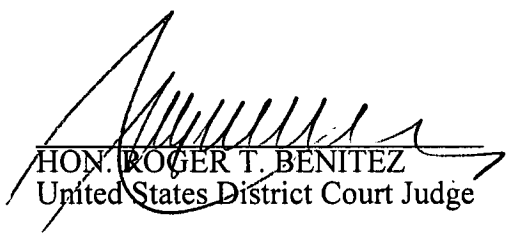
1 1156, 1166 (D. Haw. 2003) (finding no jurisdiction in Hawaii where there was “no indication
2 [defendants] were aware that Plaintiff resided in Hawaii or that any injury would occur in Hawaii”).
3 Chyba assumes that if TXU has been “reporting erroneous and inaccurate information to Plaintiff’s
4 (a California resident) credit report monthly,” then TXU “clearly” has California contact information.
5 (Cross-Mot. 2.) But she provides no factual support for that assertion. Chyba herself has alleged only
6 unilateral contacts—that she contacted TXU twice by letter and once by phone. She asserts that TXU
7 never responded. (Compl. 3.) TXU does appear⁴ to have responded to Chyba’s debt verification
8 request, but it did so by writing to a California *post office box*, which is not by itself evidence that
9 Chyba had a “significant connection” to the state. (Ware Decl. ¶ 3, Ex. 1.) Beyond that, TXU asserts
10 that it simply reported the debt to a collections agency’s office in Arizona. (*Id.*) This is too thin a reed
11 to support the exercise of personal jurisdiction. *See Harris v. Trans Union*, 197 F. Supp. 2d 200, 207
12 (E.D. Pa. 2002) (finding two plaintiff-initiated phone calls about a disputed debt an insufficient basis
13 for asserting specific jurisdiction over an out-of-state utility in Pennsylvania).

14 **CONCLUSION**

15 Because Chyba has not satisfied her burden of establishing a prima facie case of personal
16 jurisdiction, her complaint is **DISMISSED** without prejudice. The Court need not address whether
17 venue is proper.

18 **IT IS SO ORDERED.**

19
20 DATED: December 7, 2012

21 
22 HON. ROGER T. BENITEZ
23 United States District Court Judge
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28 ⁴ Chyba appears to dispute ever getting this letter. (Compl. 3 (“The Defendant has never responded to the Plaintiff.”).)