

2 Rico citizen, the defendant maintains, diversity of citizenship is lacking. Docket # 5. Plaintiff
3 opposed. Docket # 8.

4 **Standard of Review**

5 Fed. R. Civ. P. 12(b)(1) is the appropriate vessel for challenging a court's subject-matter
6 jurisdiction. Valentín v. Hospital Bella Vista, 254 F.3d 358, 362-63 (1st Cir. 2001). In
7 reviewing a motion to dismiss under this rule, the court construes the plaintiffs' allegations
8 liberally and "may consider whatever evidence has been submitted, such as . . . depositions and
9 exhibits." Carroll v. United States, 661 F.3d 87, 94 (1st Cir. 2011) (internal quotation marks and
10 citations omitted). Accordingly, courts are empowered to "[w]eigh the evidence and make
11 factual determinations, if necessary, to determine whether it has jurisdiction to hear the case."
12 Massachusetts Delivery Ass'n v. Coakley, 671 F.3d 33, 40 n. 8 (1st Cir. 2012) (citing Torres-
13 Negrón v. J & N Records, LLC, 504 F.3d 151, 163 (1st Cir. 2007)). When faced with a
14 jurisdictional challenge courts must credit the plaintiffs' well-pleaded factual averments and
15 indulge every reasonable inference in the pleader's favor. Merlonghi v. United States, 620 F.3d
16 50, 54 (1st Cir. 2010) (citing Valentin, 254 F.3d at 363). Nonetheless, it is beyond dispute that
17 a plaintiff faced with a subject-matter jurisdiction challenge has the burden to demonstrate its
18 existence. Johansen v. United States, 506 F.3d 65, 68 (1st Cir. 2007) (citations omitted).

19 **Applicable Law and Analysis**

20 *Diversity of citizenship*

21 It goes without saying that "federal courts, as courts of limited jurisdiction, may not
22 presume the existence of subject matter jurisdiction, but, rather, must appraise their own
23 authority to hear and determine particular cases." Calderón-Serra v. Wilmington Trust Co., 715
24 F.3d 14, 17 (1st Cir. 2013) (quoting Cusumano v. Microsoft Corp., 162 F.3d 708, 712 (1st Cir.
25 1998)). As relevant here, diversity jurisdiction requires that the "parties be citizens of different
26 states and that the amount in controversy exceed \$75,000 . . ." McKenna v. Wells Fargo Bank,
N.A., 693 F.3d 207, 212 (1st Cir. 2012) (citing 28 U.S.C. §§ 1332(a)).

2 The defendant does not dispute that Hernández is a Puerto Rico citizen, nor that the
3 statutory jurisdictional amount, see 28 U.S.C. § 1332(a), is satisfied. Rather, the controversy
4 boils down to whether or not AML is a Puerto Rico citizen for purposes of diversity jurisdiction;
5 if the defendant were a Puerto Rico citizen, of course, there would be no diversity of citizenship.
6 See, e.g., Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546, 553 (2005) (“[T]he
7 presence in the action of a single plaintiff from the same State as a single defendant deprives
8 the district court of original diversity jurisdiction over the entire action.”).

9 Congress has crafted the statutory framework for federal diversity jurisdiction, providing
10 that a corporation is a citizen of every state in which it is incorporated and in the state in which
11 it has its principal place of business. 28 U.S.C. § 1332(c)(1); e.g., In re Hannaford Bros. Co.
12 Customer Data Sec. Breach Litig., 564 F.3d 75, 78 (1st Cir. 2009). But a corporation’s presence
13 in the state of a plaintiff’s residence, without more, is insufficient to defeat diversity
14 jurisdiction. See Wierman v. Casey’s Gen’l Stores, 638 F.3d 984, 1004 (8th Cir. 2011). While
15 a corporation is “not deemed a citizen of every State in which it conducts business or is
16 otherwise amenable to personal jurisdiction,” Wachovia Bank v. Schmidt, 546 U.S. 303, 318
17 (2006), it “can have only one principal place of business.” Diaz-Rodríguez v. Pep Boys Corp.,
18 410 F.3d 56, 59 (1st Cir. 2005) (citation omitted).

19 The critical issue in this case is the location of AML’s principal place of business. “In
20 determining a corporation’s principal place of business,” the First Circuit has said, “a district
21 court’s inquiry must focus *solely* on the business activities of the corporation whose principal
22 place of business is at issue” Taber Partners, I v. Merit Builders, Inc., 987 F.2d 57, 61 (1st
23 Cir. 1993); accord, e.g., Johnson v. SmithKline Beecham Corp., 724 F.3d 337, 351 (3d Cir.
24 2013). There is, however, “an exception to this general rule” — to wit, “where there is evidence
25 that the separate corporate identities of a parent and subsidiary have been ignored.” Taber
26 Partners, 987 F.2d at 61. Put another way, “where there is no evidence that the integrity of the
corporate form has been violated, the separate corporate identities of a parent and subsidiary

2 should be honored when determining either one’s principal place of business.” Id. (collecting
3 First Circuit case law on this point).

4 Here, all agree that AML is incorporated in Bermuda, so it is a “citizen” of Bermuda.
5 Now, in order for AML to also be a California citizen (as alleged in the complaint and required
6 for diversity jurisdiction), AML’s “actual center of direction, control, and coordination,” i.e.,
7 its “nerve center,” Hertz Corp. v. Friend, 559 U.S. 77, 80-81 (2010), must be located in
8 California. No one disputes that Hertz, the landmark 2010 case in which the Supreme Court
9 held that “the phrase ‘principal place of business’ refers to the place where the corporation’s
10 high level officers direct, control, and coordinate the corporation’s activities” (often
11 “metaphorically,” id., called its nerve center), controls this aspect of the matter. Hertz also
12 teaches that “in practice . . . [the nerve center] should normally be the place where the
13 corporation maintains its headquarters— provided that the headquarters is the actual center of
14 direction, control, and coordination,” and “not simply an office where the corporation holds its
15 board meetings.” Id. at 93; see Funai Elec. Co., Ltd. v. Daewoo Electronics Corp., 616 F.3d
16 1357, 1380 (Fed. Cir. 2010). The Court follows this eminently correct approach here. See Harris
17 v. Rand, 682 F.3d 846, 851 (9th Cir. 2012) (noting that Hertz “provided a uniform test for courts
18 to apply when determining the principal place of business for federal diversity jurisdiction
19 purposes”); accord Santiago v. Baxter Healthcare S.A., No. 12-2029, 2013 WL 1352595, at *1
20 (D.P.R. Apr. 3, 2013).

21 To support its assertion that the parties are not fully diverse, AML furnishes a copy of
22 Amgen and AML’s Articles of Incorporation. Docket # 11-1, pp. 7-23. It also comes forward
23 with affidavits from two AML directors, one of whom (AML’s Executive Director of Human
24 Resources) is a high-level executive. They attest, among many other things, that while AML is
25 a corporation organized under the laws of Bermuda, Docket # 5-1, ¶ 3, AML’s “principal
26 offices” are in Juncos, Puerto Rico; that is where “its operations and activities are carried out
27” Id. ¶ 5; Docket # 11-1, p. 3 ¶ 16. It is in Juncos, according to the affiants, where AML’s
28 officers, including its “Vice President Site Operations, Vice President Manufacturing, Vice

2 President Quality, Executive Director Finance, Executive Director Engineering, Executive
3 Director Supply Chain, and Executive Director Human Resources are located” Docket #
4 5-1. AML’s Chairman, President, and General Manager’s sole office is located there, and that
5 is where he leads AML’s operations. Docket # 11-1, p. 3 ¶ 18.

6 On the other hand, a footnote in the motion to dismiss sheds light on a critical and
7 evident datum: Plaintiff “seems to be confusing AML with Amgen, Inc., its parent Company,
8 which is located in Thousand Oaks, California.” Docket # 5, p. 3 n. 2. AML, goes the
9 clarification, “is in Puerto Rico, the only place where it has business activities.” Id. So for
10 diversity-jurisdiction purposes, it reasons, “AML is a citizen both of its place of incorporation,
11 Bermuda, and the place where its principal place of business is located, Juncos, Puerto Rico.”
12 Docket # 5, p. 3. And because Plaintiff is also a citizen of Puerto Rico, there is no diversity
13 jurisdiction, depriving the Court of subject-matter jurisdiction. Id. AML’s reasoning is entirely
14 sound.

15 Plaintiff, however, resists this reasonable conclusion. Attempting to overcome the force
16 of AML’s syllogism, but ignoring the subsidiary/parent relationship between AML and Amgen,
17 Plaintiff himself marshals an affidavit. Because of his “personal experience” at AML, Plaintiff
18 says, “most of the important decisions regarding the defendant’s operations were not taken in
19 Juncos, Puerto Rico but in Thousand Oaks, California.” Docket # 8-1, ¶ 3. For instance, he
20 maintains that whenever “there was an important problem with the quality of the products
21 manufactured in Juncos[,] the final decision as to what was to be done was taken by people . .
22 . assigned to Defendant’s offices in Thousand Oaks[,] California.” Id. ¶ 4. He similarly says that
23 “the Defendant’s Chief Executive Office[r] . . . works on Thousand Oaks[,] California and not
24 in Juncos, Puerto Rico.” Id. ¶ 12. In short, he submits that AML’s place of business is in
25 California, not Juncos, Puerto Rico. See Docket # 8, p. 3.

26 The main problem with Plaintiff’s opposition is that it makes no effort whatsoever to
address AML’s sensible explication regarding the confusion created by his choice of litigation
strategy — namely, ignoring (or failing to concede) the self-evident fact that defendant AML

2 and Amgen (AML's parent company) are two different entities. See Docket # 11-1, p. 3 ¶ 13.

3 In doing so, Hernández ignores the bedrock principle elucidated above: A parent corporation
4 maintains separate citizenship from its subsidiary, at least for purposes of diversity of
5 citizenship. See, e.g., Topp v. CompAir Inc., 814 F.2d 830, 835 (1st Cir. 1987). As the First
6 Circuit has repeatedly made plain:

7 [t]he mere fact that a subsidiary company does business within a state does not
8 confer jurisdiction over its nonresident parent, even if the parent is sole owner of
9 the subsidiary. There is a presumption of corporate separateness that must be
10 overcome by clear evidence that the parent in fact controls the activities of the
11 subsidiary.

12 Negrón-Torres v. Verizon Commc'ns, Inc., 478 F.3d 19, 27 (1st Cir. 2007) (quoting Escude
13 Cruz v. Ortho Pharm. Corp., 619 F.2d 902, 905 (1st Cir.1980)); see also U.S.I. Properties Corp.
14 v. M.D. Const. Co., Inc., 860 F.2d 1, 7 (1st Cir. 1988).¹ “If this were not so,” Judge Campbell
15 wrote for the First Circuit over two decades ago, “every independently incorporated, wholly
16 owned subsidiary which is part of a large conglomerate would be treated (for diversity
17 jurisdiction purposes) as a mere division of a large company rather than a separate corporation.”
18 Topp, 814 F.2d at 835. This principle applies with equal force here.

19 Failing to recognize this antecedent question — and concede the obvious point — that
20 AML is not Amgen, it is no surprise that Plaintiff makes no developed argument in this context.
21 For instance, one could argue that the corporate veil between AML and Amgen, whose principal
22 place of business is in California, “has been disregarded by the companies.” Del Rosario-Ortega
23 v. Star-Kist Caribe, Inc., 130 F. Supp. 2d 277, 281 (D.P.R. 2001). But Plaintiff does not. Nor
24 could he, not least because of his litigation strategy and double burden of having to offer “clear
25 evidence that the parent in fact controls the activities of the subsidiary.” Escude Cruz, 619 F.2d
26 at 905 (emphasis added); see Media Duplication Serv., Ltd. v. HDG Software, Inc., 928 F.2d

24 ¹See also, e.g., Torres Vazquez v. Commercial Union Ins. Co., 417 F. Supp. 2d 227, 235 (D.P.R.
25 2006) (“[T]he general rule is that those subsidiaries which are incorporated as separate entities from
26 parent corporations must be considered as having their own principal place of business.”); Escude Cruz,
619 F.2d at 905 (“Jurisdiction over the parent therefore becomes unfair to the extent that the
independence of the local subsidiary is a reality.”) (citation and internal quotation marks omitted).

2 1228, 1235 (1st Cir.1991) (“Once jurisdictional allegations are challenged, the party asserting
3 diversity has the burden of establishing those allegations with competent proof.”).² The upshot
4 is that the Court disregards (as it must, see, e.g., Topp, 814 F.2d at 835) Amgen’s parent status
5 from the determination of AML’s principal place of business, and therefore rejects Plaintiff’s
6 misguided approach of obfuscating AML with Amgen. No more is needed to conclude that
7 Plaintiff falls short of shouldering his burden of establishing — with “competent proof,” Hertz,
8 559 U.S. at 96-97, and by a “preponderance of the evidence,” Roca-Barnett v. Caribbean Int’l
9 News Corp., 920 F. Supp. 2d 238, 240 (D.P.R. 2013) — that AML’s principal place of business
is California.

10 While the foregoing determination ends the matter, it follows quite naturally that AML’s
11 nerve center is in Juncos, Puerto Rico — and thus that is where its principal place of business
12 is located. The record makes manifest that AML’s “officers direct, control, and coordinate the
13 corporation’s activities,” Hertz, 559 U.S. at 80-81; see, e.g., Lugo-Vina v. Pueblo International,
14 Inc., 574 F.2d 41, 43 (1st Cir. 1978), from Juncos, Puerto Rico. It reflects that AML is a
15 manufacturing facility physically located in Juncos, Docket # 11-1, p. 3 ¶¶ 14-16; that its
16 manufacturing activities take place in Puerto Rico, id.; its corporate offices are located in Puerto
17 Rico, and its official mailing address is a Puerto Rico address, id. at ¶¶ 14-18; and AML
18 employs almost 2,000 employees, the vast majority of whom are located and perform their
19 duties at the site in Puerto Rico. Id. ¶ 15. And contrary to Plaintiff’s intimations, see Docket #8,
20 p. 6, AML neither owns nor controls any manufacturing plants, sites, laboratories, or
21 distribution centers in locations other than in Puerto Rico, Docket # 11-1, p. 3 ¶ 16, and in fact,

22 ²Hernández’s limited perception regarding the way Amgen and AML functioned is undercut by
23 the fact that he did not make or participate in, nor was he privy to, any decisions made by AML
24 management regarding the direction of the daily operations of AML, nor did he have insight into those
25 decisions or how they were made.” Docket # 11-1, p. 2 ¶ 8. Accordingly, none of the allegations made
26 in his affidavit constitutes “clear evidence” for purposes of destroying the presumption that a parent’s
subsidiary is a separate entity for purposes of diversity jurisdiction. See Escude Cruz, 619 F.2d at 905.
And because Hernández lacks the requisite “personal knowledge of the matter,” Fed. R. Ev. 602, his
testimony is disregarded.

2 the vast majority of AML’s corporate officers maintain their offices in Juncos, Puerto Rico.

3 One could go on citing evidence, but that would overstate the point, thereby contravening one
4 of Hertz’s guiding considerations: Establishing a simple and clear-cut jurisdictional rule that
5 eschews resource-intensive litigation for “administrative simplicity.” Hertz, 559 U.S. at 94
6 (disavowing “the sort of vague boundary that is to be avoided in the area of subject-matter
7 jurisdiction wherever possible” (quoting Sisson v. Ruby, 497 U.S. 358, 375 (1990) (Scalia, J.,
8 concurring in judgment)); cf. Topp, 814 F.2d at 837 (“[W]e can discern no value in having the
9 federal district courts get mired down in the hopeless and unnecessary task of deciphering the
10 internal power struggles going on between a parent corporation and its subsidiaries.”)).

11 In sum, because AML’s nerve center is in Puerto Rico, its principal place of business is
12 located in the Commonwealth. And because Plaintiff, who is a Puerto Rico citizen, offers no
13 persuasive reason to question AML’s representation that it is a citizen of Bermuda and Puerto
14 Rico, the parties are not of diverse citizenship. The Court is therefore deprived of subject-matter
15 jurisdiction.³

16 *Jurisdictional discovery*

17 As a fallback, Hernández requests that he be allowed to conduct jurisdictional discovery.
18 Docket # 8, p. 7. This request is without merit. As a threshold matter, Plaintiff’s one-sentence
19 invocation of Valentín v. Hospital Bella Vista, 254 F.3d 358, 363-4 (1st Cir. 2001), a case
20 which is not even on point, is insufficient to escape waiver. See, e.g., CMM Cable Rep, Inc. v.
21 Ocean Coast Props., Inc., 97 F.3d 1504, 1525-6 (1st Cir.1996) (three sentences with three
undiscussed citations did not defeat waiver). And his three-sentence discussion only reinforces

22 ³To be sure, the Court does not reach this holding based only on the complaint’s patently
23 insufficient allegations regarding AML’s place of business; Hertz does not mandate a “heightened”
24 jurisdictional pleading standard. See Harris, 682 F.3d at 850 (establishing that a complaint that follows
25 the general framework set forth in Form 7(a) in the Appendix of Forms to the Federal Rules of Civil
26 Procedure is sufficient to satisfy Rule 8(a)(1)’s jurisdictional pleading requirement); but see Roca-
Barnett, 920 F. Supp. 2d at 240 (dismissing after finding complaint’s “allegations insufficient under the
Supreme Court’s ‘principal place of business’ standard enunciated in Hertz”). Rather, the Court
considered the evidence submitted by Plaintiff: His own affidavit.

2 the conclusion that this request has been adverted to in a perfunctory manner, and is therefore
3 deemed waived. See id.⁴

4 But even putting that flaw aside, the same conclusion would follow. Plaintiff’s request
5 for jurisdictional discovery fails on the merits as well. It is well settled in this circuit that “a
6 diligent plaintiff who sues an out-of-state corporation and who makes out a colorable case for
7 the existence of in personam jurisdiction may well be entitled to a modicum of jurisdictional
8 discovery if the corporation interposes a jurisdictional defense.” Negrón-Torres, 478 F.3d 19,
9 27 (1st Cir. 2007) (quoting United States v. Swiss Am. Bank, Ltd., 274 F.3d 610, 626 (1st
10 Cir.2001)). “In addition to making a colorable claim, it is also incumbent upon the plaintiff to
11 ‘present facts to the court which show why jurisdiction would be found if discovery were
12 permitted.’” Id. (citation omitted).

13 “There is clearly a controversy,” Plaintiff’s one-sentence argument goes, “as to the scope
14 of the Defendant’s operations both in the Island and globally and the flimsy evidence attached
15 to the Motion to Dismiss has not put this Honorable Court in a position to make a ruling that
16 it has no jurisdiction to hear it.” Docket # 8, p. 7. There are so many problems with this
17 asseveration.

18 First, and as concluded above, the premise of this argument still (incorrectly) conflates
19 AML and Amgen. Second, and accepting arguendo (and dubitante), that this line of inquiry is
20 relevant, there is no controversy as to the “scope” of AML’s operations; they are circumscribed
21 to Puerto Rico. Third, contrary to Plaintiff’s unpersuasive offering, the defendant has provided
22 the court with ample and credible evidence to successfully contradict the allegation that AML
23 has its place of business in California. Above all, and as correctly noted by the defendant, see
24 Docket # 11, p. 10, Plaintiff fails to “present facts to the court which show why jurisdiction
25 would be found if discovery were permitted.” Crocker v. Hilton Int’l Barbados, Ltd., 976 F.2d

26 ⁴See also, e.g., Silverstrand Investments v. AMAG Pharmaceuticals, Inc., 707 F.3d 95, 107 (1st
Cir. 2013); Machado v. Shinseki, 700 F.3d 48, 49 (1st Cir. 2012) (per curiam); United States v.
Zannino, 895 F.2d 1, 17 (1st Cir.1990).

2 797, 801 (1st Cir.1992). Because Plaintiff cannot make a colorable claim for jurisdictional
3 discovery, this request is **DENIED**.⁵

4 **Conclusion**

5 For the reasons stated, Plaintiff falls short of shouldering his burden of establishing
6 diversity jurisdiction with competent proof. There being no other basis to exercise jurisdiction,
7 the Court lacks subject-matter jurisdiction to entertain this action. Consequently, the
8 defendant's motion to dismiss is **GRANTED**, and this case is **DISMISSED without
prejudice**.

9 **IT IS SO ORDERED.**

10 In San Juan, Puerto Rico, this 30th day of October, 2013.

11 *S/Salvador E. Casellas*
12 SALVADOR E. CASELLAS
U.S. Senior District Judge

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25 ⁵On this record, Plaintiff fails to show how any discovery would support the now-frivolous
26 argument that AML's principal place of business is in California. See Blair v. City of Worcester, 522
F.3d 105, 111 (1st Cir. 2008).