

1
2 UNITED STATES DISTRICT COURT
3 WESTERN DISTRICT OF WASHINGTON
4 AT TACOMA

5 MEGAN STONE and CHRISTINE
6 CAROSI,

7 Plaintiff,

8 v.

9 GOVERNMENT EMPLOYEES
10 INSURANCE COMPANY, et al.,

11 Defendants.

CASE NO. C16-5383 BHS

ORDER GRANTING
DEFENDANTS' MOTION
TO DISMISS

12 This matter comes before the Court on Defendants GEICO Advantage Insurance
13 Company, GEICO Casualty Company, GEICO Choice Insurance Company, GEICO
14 General Insurance Company ("GEICO General"), GEICO Indemnity Company, GEICO
15 Secure Insurance Company, Government Employees Insurance Company's (collectively
16 "Defendants") motion to dismiss Non-contracting GEICO Defendants and motion to
17 strike. Dkt. 11. The Court has considered the pleadings filed in support of and in
18 opposition to the motion and the remainder of the file and hereby grants the motion for
19 the reasons stated herein.

20 **I. PROCEDURAL HISTORY**

21 On June 17, 2015, Plaintiff Megan Stone ("Stone") filed a class action complaint
22 against Defendants in Pierce County Superior Court. Dkt. 3-2. Stone claims Defendants

1 failed to pay her for “loss of use” damages. *Id.* ¶¶ 1.6–1.7. Stone collectively referred to
2 Defendants as “GEICO” and sought to certify the following class:

3 All GEICO insureds with Washington policies issued in Washington
4 State, where GEICO determined the loss to be covered under the
5 Underinsured Motorist (UIM) coverage, and their vehicle suffered a loss
6 requiring repair, or the vehicle was totaled, during which time they were
7 without the use of their vehicle, for a day or more.

8 Excluded from the Class are the assigned judge, the judge’s staff and
9 family, GEICO employees, those who received payment for substitute
10 transportation from GEICO during the entire period they were without the
11 use of their vehicle

12 *Id.* ¶¶ 5.3, 5.4.

13 On May 10, 2016, Stone filed an amended complaint, which added Plaintiff
14 Christine Carosi (“Carosi”) as a named plaintiff. Dkt. 1-2 (“Comp.”). Carosi was
15 involved in a rear-end collision and was unable to use her car for about 35 days while her
16 car was being repaired. *Id.* ¶¶ 1.6, 1.8, 3.2. Plaintiffs’ amended complaint contains the
17 same proposed class definition, class allegations, breach of contract claim, and requests
18 for relief. *Compare* Dkt. 3-2, *with* Comp.

19 On May 27, 2016, Defendants moved to dismiss all defendants except GEICO
20 General (the “Non-contracting Defendants”) and strike paragraphs in the complaint
21 referring to these defendants. Dkt. 11. On June 20, 2016, Stone and Carosi (“Plaintiffs”)
22 responded. Dkt. 19. On June 24, 2016, Defendants replied. Dkt. 22. The Court
remanded the matter and removed this motion from consideration. After vacating the
order of remand, this motion is now ripe for consideration.

1 **II. FACTUAL BACKGROUND**

2 On August 2, 2015, GEICO General issued an insurance policy to Carosi. Dkt.
3 12, Declaration of Stephanie Bloomfield, Exh. 1 at 2.

4 On March 5, 2014, GEICO General issued an insurance policy to Stone. *Id.*, Exh.
5 2 at 2.

6 **III. DISCUSSION**

7 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows for a motion to
8 dismiss based on lack of subject matter jurisdiction. Federal courts are courts of limited
9 jurisdiction. *Vacek v. U.S. Postal Serv.*, 447 F.3d 124, 1250 (9th Cir. 2006). “A federal
10 court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively
11 appears.” *A-Z Int’l v. Phillips*, 323 F.3d 1141, 1145 (9th Cir. 2003). Courts lacks subject
12 matter jurisdiction over actions in which the plaintiff lacks standing. *See Bernhardt v.*
13 *County of Los Angeles*, 279 F.3d 862, 868 (9th Cir. 2002). The burden falls on the
14 plaintiff to establish that subject matter jurisdiction is proper. *Kokkonen v. Guardian Life*
15 *Ins. Co.*, 511 U.S. 375, 377 (1994); *Vacek*, 447 F.3d at 1250.

16 A motion brought under Rule 12(b)(1) may be either facial, where the inquiry is
17 limited to the allegations in the complaint, or factual, where the court may look beyond
18 the complaint to consider extrinsic evidence. *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th
19 Cir. 2004); *Savage v. Glendale Union High School Dist. No. 205*, 343 F.3d 1036, 1039
20 n.2 (9th Cir. 2003). When a defendant makes a facial challenge to jurisdiction, all
21 material allegations in the complaint are taken as true, and the question for the court is
22 whether the lack of jurisdiction appears from the face of the pleading itself. *See Wolf*,

1 392 F.3d at 362; *Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir. 2000). The court
2 must assume the truth of the allegations in a complaint unless controverted by undisputed
3 facts in the record. *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
4 2003). At this stage of pleading, the nonmoving party need only show that the facts
5 alleged, if proved, would confer standing. *Id.*

6 “If the moving party converts the motion to dismiss into a factual motion by
7 presenting affidavits or other evidence properly brought before the court, the party
8 opposing the motion must furnish affidavits or other evidence necessary to satisfy its
9 burden of establishing subject matter jurisdiction.” *Wolf*, 392 F.3d at 362 (internal
10 quotation marks omitted). For purposes of considering a motion to dismiss on the
11 grounds of subject matter jurisdiction, a court may consider matters outside of the
12 pleadings. *Association of American Medical Colleges v. U.S.*, 217 F.3d 770, 778 (9th
13 Cir. 2000).

14 In this case, Defendants move to dismiss the Non-contracting Defendants because
15 they have no relationship to Plaintiffs’ claims. Dkt. 11. This argument is valid because
16 Plaintiffs entered into contracts only with GEICO General. Although it is a rather
17 straightforward notion that one has a claim for breach of contract only against the other
18 party to the contract, Plaintiffs argue that Defendants’ argument “ignores how the GEICO
19 Group does business” and allege that the Defendants “are agents and alter egos of each
20 other” and/or are “juridically linked as it relates to this matter so that they can be treated
21 as a single entity for purposes of Class Certification.” Dkt. 1-2, ¶ 2.9. These arguments,
22 however, are without merit.

1 First, even if the other entities are agents of each other, Plaintiffs fail to show that
2 they have independent causes of actions against those agents. In other words, if
3 Plaintiffs’ breach of contract claim is against the principal, they have failed to show that
4 they have independent causes of action against the agents based on the alleged breach of
5 contract with the principal. *See Houser v. City of Redmond*, 91 Wn.2d 36, 40 (1978) (A
6 corporation can “act only through its agents.”).

7 Second, Plaintiffs fail to allege facts that establish an alter ego theory. In order to
8 establish an alter ego relationship, “the plaintiff must make out a prima facie case (1) that
9 there is such unity of interest and ownership that the separate personalities [of the two
10 entities] no longer exist and (2) that failure to disregard [their separate identities] would
11 result in fraud or injustice.” *American Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*,
12 94 F.3d 586, 591 (9th Cir. 1996). The plaintiff must show that the parent controls the
13 subsidiary “to such a degree as to render the latter the mere instrumentality of the
14 former.” *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (quoting *Calvert v.*
15 *Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995)). Plaintiffs have failed to allege facts or
16 submit evidence to show either that the parent controls the subsidiaries such that the latter
17 are mere instrumentalities or that failure to disregard the corporate form would result in
18 fraud or injustice. In fact, they fail to allege anything more than they “anticipate, upon
19 information and belief,” other members of the class entered into contracts with Non-
20 contracting Defendants that were subsequently breached. Dkt. 1-2, ¶ 3.3. Such a
21 hypothetical injury is insufficient to establish Article III standing. *See Lewis v. Casey*,
22 518 U.S. 343, 357 (1996) (“named plaintiffs who represent a class must allege and show

1 that they personally have been injured, not that injury has been suffered by other,
2 unidentified members of the class to which they belong and which they purport to
3 represent.” (quotation omitted)).

4 Third, Plaintiffs allege that Defendants are “juridically linked.” Dkt. 1-2, ¶ 2.9.
5 Defendants counter that “[c]ourts in the Ninth Circuit consistently hold that the juridical
6 link does not apply to Article III standing.” Dkt. 22 at 10 (citing numerous cases). The
7 Court agrees with Defendants. Moreover, Plaintiffs offer no plausible argument to
8 undermine or distinguish these authorities. *See* Dkt. 19 at 12–18.

9 Finally, Plaintiffs ask for a continuance to obtain discovery to support their
10 position. *Id.* at 18–19. The Court declines to grant a continuance, but will dismiss the
11 Non-contracting Defendants without prejudice. If Plaintiffs obtain evidence to support
12 claims against these entities, they may file a motion to amend their complaint.

13 IV. ORDER

14 Therefore, it is hereby **ORDERED** that Defendants’ motion to dismiss non-
15 contracting GEICO Defendants and motion to strike Dkt. 11 is **GRANTED** and the Non-
16 contracting Defendants are **DISMISSED without prejudice**. The Clerk shall terminate
17 these parties.

18 Dated this 17th day of January, 2017.

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BENJAMIN H. SETTLE
21 United States District Judge
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