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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Dan L. Boger,

10 Plaintiff,

11 v.

12 General Automobile Insurance Services
13 Incorporated, et al.,

14 Defendants.

No. CV-19-05094-PHX-GMS

ORDER

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16 Pending before the Court is Defendant The General Automobile Insurance Services
17 Incorporated (“The General”)’s Motion to Dismiss The General Automobile Insurance
18 Services, Inc. for Lack of Personal Jurisdiction (Doc. 18). The Motion is granted.¹

19 **BACKGROUND**

20 The facts as alleged in the complaint are as follows. Plaintiff Dan Boger
21 (“Plaintiff”), a resident of Maryland, alleges that on June 21, 2019, he received a
22 telemarketing call on his cell phone from Defendant Spanish Quotes, Inc. (“Spanish
23 Quotes”), an Arizona corporation with its principal place of business in Phoenix, AZ.
24 Plaintiff alleges that the call was placed using an automatic telephone dialing system to
25 Plaintiff’s cell phone number, which is registered on the National Do Not Call Registry,
26 and that Plaintiff spoke with a “Shawn Jr.” from “US Auto Care,” who solicited insurance

27 ¹ The General has requested oral argument. That request is denied because the parties have
28 had an adequate opportunity to discuss the law and evidence and oral argument will not
aid the Court’s decision. *See Lake at Las Vegas Investors Group, Inc. v. Pac. Malibu Dev.*,
933 F.2d 724, 729 (9th Cir. 1991).

1 services. Plaintiff further alleges that the call was eventually transferred to “Elise” at The
2 General, a California corporation with its principal place of business in Tennessee, who
3 provided Plaintiff with a call back number matching The General’s corporate office. Based
4 on this phone call, Plaintiff filed a class action complaint (Doc. 1) on September 5, 2019,
5 alleging that The General and Spanish Quotes had entered into an agreement to direct
6 automated telemarketing calls to him and other class members without their prior express
7 written consent in violation of the Telephone Consumer Protection Act (“TCPA”), 47
8 U.S.C. § 227. This motion followed.

9 DISCUSSION

10 I. Legal Standard

11 A federal court sitting in diversity “applies the personal jurisdiction rules of the
12 forum state provided the exercise of jurisdiction comports with due process.” *Scott v.*
13 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). The Arizona long arm statute is co-extensive
14 with the limits of federal due process. *See Doe v. Am. Nat’l Red Cross*, 112 F.3d 1048,
15 1050 (9th Cir. 1997) (citing *Batton v. Tenn. Farmers Mut. Ins. Co.*, 153 Ariz. 268, 270,
16 736 P.2d 2, 4 (1987)); *see also* Ariz. R. Civ. P. 4.2(a). “Due process requires that
17 nonresident defendants have certain minimum contacts with the forum state, so that the
18 exercise of personal jurisdiction does not offend traditional notions of fair play and
19 substantial justice.” *Doe*, 112 F.3d at 1050 (citing *Int’l Shoe Co. v. Wash.*, 326 U.S. 310,
20 316 (1945)).

21 There are two types of personal jurisdiction—general and specific. *See Daimler AG*
22 *v. Bauman*, 571 U.S 117, 126–27 (2014). Plaintiff does not argue that The General is
23 subject to general personal jurisdiction in Arizona; thus, only specific personal jurisdiction
24 need be considered. Courts can exercise specific personal jurisdiction when: (1) the
25 defendant purposefully directed its activities or consummated some transaction with the
26 forum or a resident of the forum, or performed some act by which it purposefully availed
27 itself of the privileges of conducting activities in the forum; (2) the claim arises out of or
28 relates to the defendant’s forum-related activities; and (3) the exercise of jurisdiction is

1 reasonable. *Harris Rutsky & Co. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1129 (9th Cir.
2 2003). On a motion to dismiss for lack of personal jurisdiction brought pursuant to Fed. R.
3 Civ. P. 12(b)(2), the plaintiff bears the burden of demonstrating that the court’s exercise of
4 jurisdiction is proper. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th
5 Cir. 2011). However, where, as here, the district court decides a motion to dismiss for lack
6 of personal jurisdiction without an evidentiary hearing, the plaintiff need only make a
7 prima facie showing of the jurisdictional facts. Uncontroverted allegations in the plaintiff’s
8 complaint must be taken as true, and conflicts between the parties over statements
9 contained in affidavits must be resolved in the plaintiff’s favor. *Boschetto v. Hansing*, 539
10 F.3d 1011, 1015 (9th Cir. 2008).

11 **II. Analysis**

12 In determining whether a defendant purposefully established minimum contacts
13 within a forum in the context of a contractual relationship, courts consider “prior
14 negotiations and contemplated future consequences, along with the terms of the contract
15 and the parties’ actual course of dealing.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,
16 482 (1985). A “contract with an out-of-state party alone can[not] . . . establish sufficient
17 minimum contacts in the other party’s home forum”; however, if the contract demonstrates
18 that a defendant contemplated a long-term interdependent relationship in the forum state,
19 the defendant cannot argue that its relationship to that state is “random,” “fortuitous,” or
20 “attenuated.” *Id.* at 479. For example, in *Burger King*, Burger King, a Florida corporation,
21 brought an action in Florida federal district court when Rudzewicz, a Burger King franchise
22 owner, refused a termination order and continued to operate a Burger King restaurant in
23 Michigan. *Id.* at 482. The court found that although Rudzewicz did not maintain offices in
24 or ever visit Florida, the franchise dispute grew directly out of “a contract which had a
25 substantial connection with [Florida]” because Rudzewicz deliberately “reach[ed] out
26 beyond” Michigan and “entered into a carefully structured 20-year relationship that
27 envisioned continuing and wide-reaching contacts with Burger King in Florida.”² *Id.* at

28 ² The 20-year contract required franchisees to pay monthly royalties, advertising and sales promotion fees, and rent. Franchisees also agreed to submit to Burger King’s exacting

1 479–480. Consequently, the court held that the Florida district court’s exercise of
2 jurisdiction did not offend due process.

3 Here, The General’s contract with Spanish Quotes “mandates the application of the
4 law and courts of Tennessee, not Arizona,” (Doc. 25 at 5n2), and The General “did not
5 enter into any agreements with [Spanish Quotes] in Arizona,” (Doc. 18-1 at 2). Plaintiff
6 has not alleged any facts in his Complaint or in his Opposition to suggest that The General’s
7 “prior negotiations,” “contemplated future consequences,” “terms of the contract,” or
8 “actual course of dealing” with Spanish Quotes might establish minimum contacts with
9 Arizona. *Burger King*, 471 U.S. at 479.

10 In *Calder v. Jones*, 465 U. S. 783 (1984), a California actress brought a libel suit in
11 California state court against a reporter and an editor who worked for the National Enquirer
12 at its headquarters in Florida. The plaintiff’s libel claims were “based on an article written
13 and edited by the defendants in Florida for publication in the National Enquirer, a national
14 weekly newspaper with a California circulation of roughly 600,000.” *Walden v. Fiore*, 571
15 U.S. 277, 286 (2014). The Supreme Court found the forum contacts in that case to be
16 “ample” because,

17 The defendants relied on phone calls to “California sources” for the
18 information in their article; they wrote the story about the plaintiff’s activities
19 in California; they caused reputational injury in California by writing an
20 allegedly libelous article that was widely circulated in the State; and the
21 “brunt” of that injury was suffered by the plaintiff in that State. . . . However
22 scandalous a newspaper article might be, it can lead to a loss of reputation
23 only if communicated to (and read and understood by) third persons. . . .
24 Accordingly, the reputational injury caused by the defendants’ story would
25 not have occurred but for the fact that the defendants wrote an article for
26 publication in California that was read by a large number of California
27 citizens. Indeed, because publication to third persons is a necessary element
28 of libel . . . the defendants’ intentional tort actually occurred in California....
In this way, the “effects” caused by the defendants’ article—i.e., the injury to
the plaintiff’s reputation in the estimation of the California public—connected
the defendants’ conduct to California, not just to a plaintiff who lived there.
That connection, combined with the various facts that gave the article a
California focus, sufficed to authorize the California court’s exercise of
jurisdiction.

regulation of every conceivable aspect of their operations. The documents also emphasized
that Burger King’s operations are conducted and supervised from the Miami headquarters,
that all relevant notices and payments must be sent there, and that the agreements were
made in and enforced from Miami.

1 *Id.* at 286-88. Unlike in *Calder*, the injury The General allegedly caused did not occur in
2 Arizona; nor were events that occurred in Arizona a but-for cause of Plaintiff’s injury. The
3 effects of The General’s actions as alleged in Plaintiff’s complaint do not connect The
4 General to Arizona beyond the fact of Spanish Quotes’ presence in Arizona.³

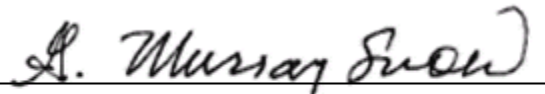
5 Plaintiff has not met his burden of demonstrating that this Court’s exercise of
6 jurisdiction is proper. The Court therefore grants The General’s Motion to Dismiss.⁴

7 **CONCLUSION**

8 Defendant has not met his burden of demonstrating sufficient minimum contacts
9 between Defendant The General and this forum.

10 **IT IS THEREFORE ORDERED** that The General’s Motion to Dismiss The
11 General Automobile Insurance Services, Inc. for Lack of Personal Jurisdiction (Doc. 18)
12 is **GRANTED**. Plaintiff’s claims as to The General Automobile Insurance Services, Inc.
13 are dismissed without prejudice.

14 Dated this 3rd day of January, 2020.

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17 G. Murray Snow
18 Chief United States District Judge

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24 ³ In his Response, Plaintiff asserts that he “bases specific personal jurisdiction on The
25 General’s purposeful acts in contracting with SQI, an Arizona corporation, to send illegal
26 calls” and that his “claims arise directly from this relationship, nor [sic] from the purported
locus of where the call was physically dialed.” (Doc. 23 at 2.) Accordingly, the Court does
not consider the location of the call in establishing personal jurisdiction.

27 ⁴ Plaintiff also requests jurisdictional discovery. That request is denied. *See Boschetto*, 539
28 F.3d at 1020 (finding that because neither plaintiff’s complaint nor his affidavit alleged
jurisdictionally relevant actions by defendants, the district court’s denial of plaintiff’s
request for discovery, “which was based on little more than a hunch that it might yield
jurisdictionally relevant facts,” was not an abuse of discretion).