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**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
SOUTHERN REGION OF THE CENTRAL DIVISION**

FOUR CORNERS HEALTH CARE CORP.,
a Utah corporation,

Plaintiff,

vs.

ROOTS HOME HEALTH CARE INC., a
New Mexico corporation, KENDRICK
GOLDTOOTH, an individual resident of New
Mexico, JANE AND JOHN DOES 1-10; and
DOE BUSINESS ENTITIES 1-10,

Defendants.

**RULE 12(b)(2) MOTION TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION**

Case No. 4:21-cv-00037-DN-PK

Chief Judge David Nuffer

Magistrate Judge Paul Kohler

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STATEMENT OF RELIEF SOUGHT AND SPECIFIC GROUNDS FOR MOTION

Defendants Roots Home Health Care Inc. (“Roots”) and Kendrick Goldtooth (“Mr. Goldtooth”) (collectively, “Defendants”) move to dismiss the Complaint and Jury Demand¹ (the “Complaint”) filed by plaintiff Four Corners Health Care Corp. (“Four Corners”), for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) and Local Rule DUCivR 7-1.

INTRODUCTION

Roots is a home health care company providing needed medical services to individuals in New Mexico and Arizona, as well as to tribal members living on Indian reservation lands. Mr. Goldtooth is a registered member of the Navajo Nation, and an employee of Roots. Four Corners, a Utah corporation, also provides home health care services to individuals in Utah, Arizona, and New Mexico. Four Corners does not like to compete. As it admits in its Complaint, Four Corners is the largest provider of home health care services to patients receiving care under certain federal programs designed for individuals exposed at government facilities to unhealthy levels of radiation and other toxic substances. Four Corners enjoys its monopoly. So, when Roots started providing similar services a few years ago, Four Corners fought back immediately with a cease and desist letter. Since Four Corners’ claims were baseless, and since Roots had the right to continue operating its business, Roots continued to provide services to patients. As a result, Four Corners filed this lawsuit.

What the Complaint fails to mention, though, is that Roots does not operate in Utah, Mr. Goldtooth is a registered member and resident of the Navajo Nation, and that all of Roots’

¹ [ECF 2](#).

patients are either located in New Mexico, Arizona, or on tribal reservation lands. Roots has no patients in Utah. Mr. Goldtooth does not visit patients in Utah. And neither defendant has minimum contacts—or any contacts—with Utah sufficient to justify personal jurisdiction. Thus, this Court should dismiss the Complaint for lack of personal jurisdiction.

STATEMENT OF RELEVANT FACTS

Four Corners is a home health care company, with its principal place of business in Utah.² Roots, a New Mexico corporation, provides home health care to residents in New Mexico, Arizona, and to tribal members on Indian reservation lands.³ Both Four Corners and Roots are registered providers of home health care services to beneficiaries of the Energy Employees Occupational Illness Compensation Program Act (“EEOICPA”) and the Radiation Exposure Compensation Act (“RECA”).⁴ These programs are meant to compensate and provide services for present and former employees of the U.S. Department of Energy who have been diagnosed with a radiogenic cancer and other maladies resulting from exposure to radiation, beryllium, or silica while employed at government facilities or for any occupational illnesses linked to toxic exposures in the mining work environment.⁵ Beneficiary patients (“beneficiaries” or “patients”) must be qualified as eligible for program benefits by the U.S. Department of Labor,⁶ but, as is consistent with patient choice laws, these patients have a right to receive healthcare benefits from the provider of their choice.

² [Compl. ¶¶ 1, 10.](#)

³ [Id. ¶ 2; Declaration of Jared Foutz](#) (“Foutz Declaration”), ¶¶ 2, 3, attached as Exhibit A.

⁴ [Compl. ¶ 10.](#)

⁵ [Id. ¶ 11.](#)

⁶ [Id. ¶ 16.](#)

Four Corners is one of the largest home health care providers for EEOICPA beneficiaries, and was one of the first.⁷ The business is a lucrative one, and highly competitive.⁸ Companies provide home nurses, certified nurse assistants, respiratory therapists, and other medical providers for the EEOICPA patients.⁹ Home health companies also hire and support individual home health aides (“HHA”), who are typically close family members of the patient.¹⁰ Essentially, the family members become assisted care givers.

Mr. Jared Foutz and Mr. Tom Nystrom, both registered nurses, started Roots in New Mexico in 2016.¹¹ They initially intended to serve the Medicare population, but were persuaded into providing services for EEOICPA patients by former coworkers who were familiar with the program.¹² Roots’ gradual success in expanding its patient base is due in large part to “word of mouth” advertising of its patients, as many of the program participants are family members, neighbors, friends, community members, and church members in the close-knit communities in which Roots operates.¹³ Current Roots patients often refer their family members or close friends as patients.¹⁴

⁷ [*Id.* ¶¶ 14, 21.](#)

⁸ [*Id.* ¶ 17.](#)

⁹ [*Id.* ¶ 16.](#)

¹⁰ [*Id.* ¶ 24.](#)

¹¹ [*Foutz Decl.* ¶ 4.](#)

¹² [*Id.*](#)

¹³ [*Id.* ¶ 5.](#)

¹⁴ [*Id.*](#)

Roots operates somewhat differently than Four Corners and other home health companies providing these services in a way that benefits both employees and patients.¹⁵ Roots hires its home health aides as employees, as opposed to independent contractors. While it costs Roots more in tax and insurance expenses, this practice gives employees peace of mind and stability. In addition, Roots provides care using the skills of registered nurses rather than lessor trained nurses than its competitors use. Finally, Roots provides respiratory therapy services to its patients who need such services, which competing providers, like Four Corners, do not provide because the reimbursement rates are comparatively lower.¹⁶ Thus, patients, and employees, are often eager to work with Roots.

Roots hired Mr. Goldtooth, who was a former employee of a separate home health company, in the fall of 2020 after he approached Roots and inquired about employment.¹⁷ Mr. Goldtooth is a registered member of the Navajo Nation and lives on Navajo reservation land adjacent to the state of Arizona.¹⁸ Mr. Goldtooth has never been an employee of Four Corners.¹⁹ Because of Mr. Goldtooth's close ties to the community and his longstanding experience in the home health care industry, especially his experience with the EEOICPA program, Mr. Goldtooth has been able to recruit patients to work with Roots. However, only one patient has switched

¹⁵ [Id. ¶ 6.](#)

¹⁶ [Id.](#)

¹⁷ [Id. ¶ 7; Declaration of Kendrick Goldtooth](#) ("Goldtooth Decl."), ¶ 3, attached as Exhibit B.

¹⁸ [Goldtooth Decl. ¶ 2.](#)

¹⁹ [Id. ¶ 3.](#)

from Four Corners to Roots due to Mr. Goldtooth's efforts, and that patient lives on Navajo reservation land adjacent to Arizona.²⁰

In all, Roots has five patients who are members of the Navajo Nation, who live on Navajo reservation lands adjacent to the state of Utah. Only three of those patients transferred from Four Corners, which is their right under relevant patient choice laws.²¹ Roots and Roots' employees provide all of the services for these five patients on reservation land. Employees do not drive on Utah roads to get to these five patients' homes—nurses for four of these patients start from Roots' office in New Mexico and travel through reservation land to reach the patients' homes, and one nurse for the remaining patient sets out from her home, which is on reservation land. These five patients do not even have physical addresses in Utah—they have P.O. boxes that are located on the reservation lands adjacent to Utah. In short, these five patients are not Utah residents, they are members of the sovereign Navajo Nation.²²

In fact, Roots does not operate in Utah, is not registered to do business in Utah, and the Utah Department of Health does not issue Roots a Home Health license for its work on the reservation. Roots does not provide services to individuals living in Utah. Roots does not employ Utah residents, or maintain Utah bank accounts. Roots employs one nurse who lives on Indian reservation lands adjacent to Utah, as well as approximately 11 family member HHAs who also all live on reservation lands adjacent to Utah. Roots has no physical location or address in Utah. Roots does not target advertising or marketing to Utah residents. Roots does not have a social

²⁰ [Id. ¶ 5.](#)

²¹ [Foutz Decl. ¶ 8](#); [Goldtooth Decl. ¶ 6.](#)

²² [Foutz Decl. ¶ 8.](#)

media presence directed at Utah residents. Roots' other patients are located in New Mexico, Arizona, and other reservation lands. In short, Roots has no Utah contacts and does not engage in any activities in Utah.²³

Mr. Goldtooth is a tribal member who lives on Navajo reservation land adjacent to the state of Arizona. Mr. Goldtooth has never visited the five patients who live on Navajo reservation lands adjacent to Utah. He has never solicited business from Utah residents, and has never interacted with the five Roots patients living on Indian reservation land adjacent to Utah. He does not own property in Utah and has never lived in Utah. Finally, Mr. Goldtooth has never transacted business in Utah and owns no bank accounts in Utah.²⁴

PROCEDURAL HISTORY

Four Corners filed this lawsuit on April 6, 2021 based on federal diversity jurisdiction.²⁵ Four Corners has alleged Roots is illegally competing with Four Corners through the following conduct: (1) offering gifts to Four Corners' patients and their HHAs, (2) offering to increase HHAs' pay, (3) submitting reimbursement claims under the EEOIPCA for hours beyond what HHAs actually worked, (4) submitting claims for equipment that is not required, (5) offering to increase patients' impairment ratings in order to obtain more benefits, (6) making extra payments to HHAs in the form of cash or gifts, and (7) soliciting Four Corners' patients through illegal kickbacks and bribes.²⁶ Four Corners' Complaint brings four claims against Roots, including

²³ [Foutz Decl. ¶¶ 9, 10.](#)

²⁴ [Goldtooth Decl. ¶¶ 2, 6, 7, 8.](#)

²⁵ [ECF 2.](#)

²⁶ [Compl. ¶ 28.](#)

tortious interference with economic relations in Utah, tortious interference with economic relations in Arizona, tortious interference with economic relations in New Mexico, and violations of Utah’s Unfair Practices Act, Utah Code § 13-5-1 et seq.²⁷

ARGUMENT

Because Defendants have no minimum contacts with Utah, exercise of personal jurisdiction over them would offend due process. The Court should therefore dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(2).

I. Legal Standard.

A. *Standard of review.*

“The plaintiff has the burden of establishing personal jurisdiction”²⁸ and “must make this showing with respect to each of the claims alleged.”²⁹ “The Court will accept the well-pleaded allegations of the complaint as true to determine whether plaintiff has made a prima facie showing that personal jurisdiction exists.”³⁰

B. *Personal jurisdiction over nonresident defendants in a diversity action.*

With regard to establishing personal jurisdiction, Four Corners “must show that jurisdiction is legitimate under the laws of the forum state and that the exercise of jurisdiction

²⁷ [*Id.* ¶¶ 30-62.](#)

²⁸ [*XMission, L.C. v. Fluent LLC*](#), 955 F.3d 833, 839 (10th Cir. 2020).

²⁹ [*Dental Dynamics, LLC v. Jolly Dental Grp., LLC*](#), 946 F.3d 1223, 1228 (10th Cir. 2020) (citation omitted).

³⁰ [*Aurora Bank FSB v. Network Mortg. Servs.*](#), Civil Action No. 13-cv-00047-PAB-KLM, 2014 U.S. Dist. LEXIS 35285, at *2 (D. Colo. Mar. 17, 2014).

does not offend the due process clause of the Fourteenth Amendment.”³¹ Because Utah’s long-arm statute confers jurisdiction “to the fullest extent permitted by the due process clause,”³² “[t]he two-step analysis thus collapses here into a single due-process inquiry.”³³ “The Due Process Clause authorizes personal jurisdiction if two elements are met. First, a defendant must have ‘purposefully established minimum contacts within the forum state.’”³⁴ “This minimum-contacts standard may be satisfied by showing general or specific jurisdiction.”³⁵ “Second, the assertion of personal jurisdiction must comport with traditional notions of fair play and substantial justice.”³⁶

“General jurisdiction allows a forum state to resolve any dispute involving that party, not just the dispute at issue.”³⁷ Roots would only be subject to general jurisdiction in Utah “if its affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State, with the paradigmatic examples being the place of incorporation and principal place of business.”³⁸ Specific jurisdiction, on the other hand, “grants a court jurisdiction over a

³¹ [*Soma Med. Int’l v. Standard Chartered Bank*](#), 196 F.3d 1292, 1295 (10th Cir. 1999) (internal quotation omitted).

³² [Utah Code Ann. § 78B-3-201\(3\)](#).

³³ [*XMission*](#), 955 F.3d at 839.

³⁴ [*Dental Dynamics*](#), 946 F.3d at 1229 (quoting [*Int’l Shoe Co. v. Washington*](#), 326 U.S. 310, 316 (1945)).

³⁵ [*Employers Mut. Cas. Co. v. Bartile Roofs, Inc.*](#), 618 F.3d 1153, 1160 (10th Cir. 2010).

³⁶ [*Dental Dynamics*](#), 946 F.3d at 1229 (citing [*Burger King Corp. v. Rudzewicz*](#), 471 U.S. 462, 476 (1985)).

³⁷ [*H.A. Folsom & Assocs. v. Capel*](#), No. 2:16-cv-00160-DN, 2016 U.S. Dist. LEXIS 111040, at *14 (D. Utah Aug. 19, 2016) (quotation omitted).

³⁸ [*Id.*](#) (quotations omitted).

party only with respect to a specific dispute.”³⁹ For tort claims, which are at issue here, “specific jurisdiction is determined by considering two elements. First, an out-of-state defendant must have ‘purposefully directed’ its activities at residents of the forum state. Second, the plaintiff’s injuries must ‘arise out of’ defendant’s forum-related activities.”⁴⁰

C. “*Purposefully Directed*” Analysis.

To find purposeful direction, the Tenth Circuit requires the plaintiff to establish three elements: “(1) [an] intentional action, (2) express aiming at the forum state, and (3) knowledge that the brunt of the injury would be felt in the forum state.”⁴¹ In 2014, in *Walden v. Fiore*, the Supreme Court of the United States “issued a reminder that the minimum contacts inquiry in the context of specific jurisdiction properly ‘focuses on the relationship among the defendant, the forum, and the litigation.’”⁴² “For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.”⁴³

Plaintiff cannot demonstrate these required elements, and therefore the Court lacks personal jurisdiction over Defendants.

II. The Court Does Not Have Personal Jurisdiction over Defendants.

The Court does not have jurisdiction over Defendants in this case. First, the Navajo Nation is a separate and distinct sovereign, and contacts with the Navajo Nation do not constitute

³⁹ [*Id.*](#)

⁴⁰ [*Id.* at *14-15](#) (quotations omitted).

⁴¹ [*Newsome v. Gallacher*](#), 722 F.3d 1257, 1268 (10th Cir. 2013) (citing [*Dudnikov v. Chalk & Vermilion Fine Arts*](#), 514 F.3d 1063, 1072 (10th Cir. 2008)).

⁴² [*H.A. Folsom & Assocs.*](#), 2016 U.S. Dist. LEXIS 111040, at *16 (quoting [*Walden v. Fiore*](#), 571 U.S. 277, 134 S. Ct. 1115, 1121 (2014)).

⁴³ [*Walden*](#), 134 S. Ct. at 1121.

contacts with Utah. Second, Four Corners cannot establish general jurisdiction over either defendant. Finally, Four Corners cannot establish specific jurisdiction over Defendants, and therefore the Court lacks jurisdiction.

A. *The Navajo Nation is separate and distinct from the State of Utah for purposes of minimum contacts.*

The Navajo Nation is “a federally recognized Indian tribe.”⁴⁴ As such, it is inherently sovereign.⁴⁵ “Because the Tribe retains all inherent attributes of sovereignty that have not been divested by the Federal Government, the proper inference from silence . . . is that the sovereign power . . . remains intact.”⁴⁶ “In the absence of congressional legislation, . . . tribal governments retain regulatory authority over all matters falling within their inherent sovereignty.”⁴⁷ “The two primary sources of explicit limitations on tribal sovereignty or political independence are treaties and federal legislation dealing with Indians; the Indian tribes thus retain all aspects of tribal sovereignty not *specifically* withdrawn.”⁴⁸ Even more, general principles of diversity jurisdiction do not override tribal sovereignty.⁴⁹ “The diversity statute, 28 U. S. C. § 1332, makes no reference to Indians and nothing in the legislative history suggests any intent to render inoperative the established federal policy promoting tribal self-government.”⁵⁰ Therefore,

⁴⁴ [Navajo Nation v. San Juan Cty.](#), 162 F. Supp. 3d 1162, 1164 (D. Utah 2016).

⁴⁵ [MacArthur v. San Juan Cty.](#), 405 F. Supp. 2d 1302, 1323-24 (D. Utah 2005).

⁴⁶ [Iowa Mut. Ins. Co. v. LaPlante](#), 480 U.S. 9, 18, 107 S. Ct. 971, 977-78 (1987) (quotation omitted).

⁴⁷ [MacArthur v. San Juan County](#), 497 F.3d 1057, 1068 (10th cir. 2007).

⁴⁸ [NLRB v. Pueblo of San Juan](#), 280 F.3d 1278, 1283-84 (10th Cir. 2000) (quotation omitted) (emphasis in original).

⁴⁹ [Iowa Mut. Ins. Co. v. LaPlante](#), 480 U.S. 9, 17, 107 S. Ct. 971, 977 (1987).

⁵⁰ [Id.](#)

because the Navajo Nation is a federally recognized Indian tribe, and because the activities Plaintiff complains of occurred entirely on tribal lands, jurisdiction is not proper in this case.

B. *Four Corners cannot make a prima facie showing of general jurisdiction.*

Four Corners has not made a prima facie showing of general jurisdiction in its Complaint. Defendants are only subject to general jurisdiction if they have “continuous and systematic general business contacts” in Utah.⁵¹ Because Defendants are not domiciled in Utah,⁵² they are not subject to general jurisdiction in Utah. With regard to Roots, general jurisdiction against a corporation exists only when the “continuous corporate operations within a state [are] thought so substantial and of such a nature as to justify suit against it on causes of action arising from dealings entirely distinct from those activities.”⁵³ Four Corners has not and cannot allege that Roots engaged in substantial and continuous activity in Utah.⁵⁴ Roots is a New Mexico company that does not do business in Utah, is not licensed to do business in Utah, does not own property in Utah, does not maintain offices, employees or bank accounts in Utah, does not have shareholders in Utah, does not advertise or solicit business in Utah, does not pay taxes in Utah, does not visit potential customers in Utah, does not recruit employees in Utah, and does not generate a substantial percentage—or any percentage—of its revenue in Utah.⁵⁵ Nor has Four Corners alleged such.

⁵¹ [*Helicopteros Nacionales de Colombia v. Hall*](#), 466 U.S. 408, 416 (1984).

⁵² [Compl. ¶¶ 2-3](#).

⁵³ [*Int’l Shoe v. State of Washington*](#), 326 U.S. 310, 318 (1945).

⁵⁴ See generally [Foutz Decl. ¶¶ 8-10](#) (attesting to Roots’ lack of connections to Utah).

⁵⁵ See [*Soma Med. Int’l v. Standard Chtd. Bank*](#), 196 F.3d 1292, 1295-96 (10th Cir. 1999) (affirming dismissal of diversity action for lack of personal jurisdiction over corporate defendant).

Similarly, Four Corners cannot establish general jurisdiction over Mr. Goldtooth, who is a resident of Navajo reservation lands adjacent to Arizona, does not work in Utah, and does not own property in Utah.⁵⁶ A “conclusory statement” that a defendant sold products in Utah is insufficient to establish general jurisdiction.⁵⁷ Similarly, allegations that a defendant “occasionally conduct[s] business in the State of Utah” is not enough.⁵⁸ In this case, though, Plaintiffs have failed to allege *any* activities by Mr. Goldtooth *in Utah*. Accordingly, this Court does not have general jurisdiction over Roots or Mr. Goldtooth in Utah.

C. *Four Corners cannot make a prima facie showing of specific jurisdiction.*

To establish jurisdiction in this case, Four Corners must demonstrate Defendants are subject to specific jurisdiction in Utah. Specific jurisdiction “is premised on something of a quid pro quo: in exchange for ‘benefitting’ from some purposive conduct directed at the forum state, a party is deemed to consent to the exercise of jurisdiction for claims related to those contacts.”⁵⁹ “Specific jurisdiction is proper if (1) the out-of-state defendant ‘purposefully directed’ its activities at residents of the forum State, and (2) the plaintiff’s alleged injuries ‘arise out of or relate to those activities.’”⁶⁰

⁵⁶ [Goldtooth Decl. ¶¶ 2, 7, 8.](#)

⁵⁷ [ITN Flix, Ltd. Liab. Co. v. Hinojosa](#), No. 1:13-cv-00022-RJS, 2014 U.S. Dist. LEXIS 80367, at *12-13 (D. Utah June 9, 2014) (allegations that defendants “sold, distributed, or promoted films, actors, or products in Utah” not sufficient to establish general jurisdiction).

⁵⁸ [Id.](#) at *12.

⁵⁹ [XMission](#), 955 F.3d at 840 (quotation omitted).

⁶⁰ [Id.](#) (quoting [Burger King Corp.](#), 471 U.S. at 472).

1. Four Corners cannot establish purposeful direction.

“The Tenth Circuit has developed three primary frameworks for determining whether purposeful direction requirements have been satisfied: (1) continuing relationships with forum state residents (‘continuing relationships’); (2) deliberate exploitation of the forum state market (‘market exploitation’); and (3) harmful effects in the forum state (‘harmful effects’).”⁶¹ As to torts, “‘purposeful direction’ has three elements: ‘(a) an intentional action . . . that was (b) expressly aimed at the forum state . . . with (c) knowledge that the brunt of the injury would be felt in the forum state[.]’”⁶² Plaintiff cannot demonstrate these required elements.

a. *The Complaint failed to plead relevant intentional action.*

Under the first prong, the “intentional action[s]” at issue all revolve around Defendants’ alleged tortious interference with patients and contractors⁶³ “in Utah, New Mexico, and Arizona.”⁶⁴ Alleged interference with patients and contractors in New Mexico and Arizona cannot form the basis for personal jurisdiction over nonresident Defendants in Utah. Thus, only the allegations relating to interference with Utah patients and contractors are relevant here. But those allegations are too weak to support jurisdiction. First, the allegations lump activities in the three states together and fail to partition out which activities are alleged to have occurred in Utah.⁶⁵ Second, any intentional acts that *might* have occurred in Utah did not in fact take place in

⁶¹ [*Larada Scis., Inc., v. Pediatric Hair Sols. Corp.*](#), No. 2:18-cv-00551, 2020 U.S. Dist. LEXIS 161574, at *8 (D. Utah Sept. 3, 2020) (some internal quotations omitted).

⁶² [*Newsome*](#), 722 F.3d at 1264-65 (quoting [*Dudnikov*](#), 514 F.3d at 1072).

⁶³ Four Corners uses HHAs as independent contractors; Roots hires HHAs as employees.

⁶⁴ [*Compl.* ¶ 29.](#)

⁶⁵ [*Id.* ¶¶ 25, 29.](#)

Utah—they took place on Navajo reservation lands. Again, Roots only has *three* patients on Navajo reservation land adjacent to Utah that have transferred from Four Corners that Four Corners can complain of.⁶⁶

b. *The Complaint does not allege activities expressly aimed at Utah.*

With respect to the second prong, the Complaint fails to show that the intentional acts alleged were expressly aimed *at Utah*. The Tenth Circuit “has taken a somewhat more restrictive approach to the ‘expressly aimed’ element, holding that the forum state itself must be the focal point of the tort.”⁶⁷ “‘The proper question is not where the plaintiff experienced a particular injury or effect’ because, ‘regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State.’”⁶⁸ Again, the allegations in the Complaint center around three states – Utah, Arizona, and New Mexico. But the allegations fail to describe any *Utah specific* activity. Four Corners does not set forth any specific factual allegations that Defendants’ alleged tortious actions toward Four Corners’ business relationships or patients are connected with Utah in any way. In fact, the Complaint does not identify a single relationship or contract that Defendants have allegedly interfered with.

⁶⁶ [Foutz Decl. ¶ 8](#). Roots has five total patients who live on reservation lands adjacent to Utah. Three transferred from Four Corners.

⁶⁷ [Larada Scis., Inc.](#), 2020 U.S. Dist. LEXIS 161574, at *8 (quotations omitted).

⁶⁸ [H.A. Folsom & Assocs., Inc.](#), 2016 U.S. Dist. LEXIS 111040, at *21 (D. Utah Aug. 19, 2016) (quoting [Walden v. Fiore](#), 571 U.S. at 289). See also, e.g., [STV Int’l Mktg. v. Cannondale Corp.](#), 750 F. Supp. 1070, 1075 (D. Utah 1990) (“[T]he place where the business was lost reflects the economic reality of impact injury in commercial torts such as this. It is reasoned that loss of profits within a state in which a place of business is maintained simply is an insufficient basis on which to find that the injury occurred within that state as compared with the impact of actual business lost in another state.”).

For example, the Complaint alleges Defendants offered gifts to Plaintiff's patients but fails to allege where those gifts were given or where those patients live.⁶⁹ The Complaint alleges Defendants offered to increase the pay of HHAs and gave them cash or gifts, but fails to allege where those HHAs live and where Defendants were when such offers were made.⁷⁰ Plaintiff alleges Defendants submitted claims for reimbursement in excess of what is allowed and for unnecessary equipment, and offered to increase impairment ratings to obtain more benefits, but again, failed to allege *where* such claims were submitted or where such offers were made.⁷¹ Finally, Plaintiff alleges Defendants offered patients illegal kickbacks and bribes to switch companies, but the allegations do not include where such offers were made or where such patients live.⁷²

Thus, these allegations fail to establish a Utah connection. Even where the Complaint's first claim for relief alleges that "Defendants' tortious interference" has resulted in damage to Four Corners "through the loss of patients and contractors in the state of Utah," Four Corners still failed to allege how Defendants' conduct was expressly aimed at Utah. Four Corners cannot demonstrate the "expressly aimed" element by merely alleging that Defendants directed their conduct towards a known Utah entity.⁷³ In short, Plaintiff failed to allege activities expressly aimed at Utah.

⁶⁹ [Compl. ¶ 28\(a\)](#).

⁷⁰ [Id. ¶¶ 28\(b\), \(f\)](#).

⁷¹ [Id. ¶¶ 28\(c\), \(d\), \(e\)](#).

⁷² [Id. ¶ 28\(g\)](#).

⁷³ [Miner v. Rubin & Fiorella, LLC](#), 242 F. Supp. 2d 1043, 1046 (D. Utah 2003) (*quoting* [Far W. Capital, Inc. v. Towne](#), 46 F.3d 1071, 1079 (10th Cir. 1995), to conclude that alleging that an out-of-state defendant's tortious conduct "injure[d] a forum resident 'does not necessarily

- c. *The Complaint fails to allege that Defendants knew the injury would be felt in Utah.*

Four Corners fares no better under the third prong relating to knowledge of the injury being felt in the forum state. Four Corners makes no allegations regarding Roots' knowledge that its actions would somehow affect Utah. Regardless, "the mere foreseeability of causing an injury in the forum state is, standing alone, insufficient to warrant an assertion of personal jurisdiction over a defendant."⁷⁴

In *All American Security Corp. v. Borealis Mining Co., LLC*, the plaintiff alleged the defendant had intentionally interfered with its business relationships and employees.⁷⁵ The plaintiff was a Utah corporation. The defendant, though, lived and operated in Nevada. The defendant argued the court did not have personal jurisdiction because the allegations centered on business relationships and employees performing services in Nevada, not Utah.⁷⁶ The court found that the defendant's conduct did not "connect[] him to the forum in a meaningful way."⁷⁷ Similarly in this case, Four Corners has failed to allege any conduct that connects Defendants to

establish that the defendant possesses the constitutionally required minimum contacts"). See also, e.g., *Raser Techs., Inc. by & through Houston Phoenix Grp., LLC v. Morgan Stanley & Co., LLC*, 2019 UT 44, ¶¶ 59-60, 449 P.3d 150, 164 (2019) ("Plaintiffs' allegations that Defendants 'knew that Raser's headquarters was in Utah, and, accordingly, that a large number of insiders were located in Utah,' and that 'the scheme was intended to drive [Raser] into bankruptcy,' which resulted in injuries suffered in Utah, without more, is insufficient."); *All Am. Sec. Corp. v. Borealis Mining Co., LLC*, No. 2:15-cv-00582, 2015 U.S. Dist. LEXIS 173103, at *9 (D. Utah Dec. 30, 2015) ("All American cannot establish sufficient minimum contacts by merely alleging that Borealis directed its conduct towards a known Utah resident.").

⁷⁴ *H.A. Folsom & Assocs., Inc.*, 2016 U.S. Dist. LEXIS 111040, at *24 (quotation omitted).

⁷⁵ See *All Am. Sec. Corp.*, 2015 U.S. Dist. LEXIS 173103.

⁷⁶ *Id.* at *11.

⁷⁷ *Id.* at *9.

Utah, and indeed cannot show that Defendants purposefully availed themselves of quid pro quo jurisdiction in this forum. Accordingly, Plaintiff cannot meet the third prong of the purposeful direction test and personal jurisdiction over Defendants is therefore not proper.

2. Four Corners’ injuries do not “arise out of” Defendants’ forum-related activity.

Even if Defendants had purposefully directed their conduct to Utah, Four Corners’ claims do not arise out of Defendants’ alleged Utah-related activities. “Aside from purposeful direction, the specific personal jurisdiction test requires the plaintiff’s injuries [to] arise out of defendant’s forum-related activities.”⁷⁸ “The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant’s conduct connects him to the forum in a meaningful way.”⁷⁹

Four Corners’ Complaint fails to satisfy this inquiry. The forum-related activity Four Corners alleges includes alleged activity “in Utah, New Mexico, and Arizona.”⁸⁰ This is insufficient to determine if their alleged injuries arose out of Defendants’ forum-related conduct. As to the forum-related conduct alleged, again, Four Corners has failed to allege any specific Utah conduct. Regardless, only *three* of Defendants’ patients who live on Navajo reservation land adjacent to Utah transferred from Four Corners.⁸¹ Thus, the injury Four Corners complains of—indeed over \$400,000 worth—could not have resulted from Defendants’ forum-related

⁷⁸ [Newsome](#), 722 F.3d at 1269 (quotation omitted; alteration in original).

⁷⁹ [Walden v. Fiore](#), 571 U.S. at 290.

⁸⁰ [Compl. ¶ 29](#).

⁸¹ [Foutz Decl. ¶ 8](#).

activities (of which there are none).⁸² “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.”⁸³

In sum, Four Corners failed to allege sufficient facts to allow this Court to draw the reasonable inference that the exercise of personal jurisdiction over Defendants in Utah is proper. Accordingly, this Court should dismiss the Complaint for lack of personal jurisdiction.

D. *The assertion of personal jurisdiction in this case violates traditional notions of fair play and substantial justice.*

Due process requires a second inquiry: whether the exercise of personal jurisdiction over Defendants would violate traditional notions of fair play and substantial justice. In this case, the applicable factors weigh against the exercise of jurisdiction: (1) forcing Defendants to litigate in a foreign forum imposes a significant burden as Roots is a New Mexico corporation and Mr. Goldtooth is a member of the Navajo Nation, both without any substantial connection to Utah, (2) Utah has little interest in adjudicating a dispute relating solely to activities on Navajo reservation lands arising out of business activities of a New Mexico corporation, and (3) the interstate judicial system has a greater interest in resolving this case in the place where the business is located, the employees are located, the witnesses are located, and the records are located—New Mexico.⁸⁴

⁸² [Compl. ¶ 60](#).

⁸³ [Bristol-Myers Squibb Co. v. Superior Court](#), 137 S. Ct. 1773, 1781 (2017) (no specific jurisdiction over nonresident purchasers of pharmaceutical where plaintiffs failed to establish purchase in state, injury in state, or treatment in state).

⁸⁴ [OMI Holdings, Inc. v. Royal Ins. Co. of Canada](#), 149 F.3d 1086, 1095 (10th Cir. 1998) (listing and analyzing factors).

III. Even if Plaintiffs could establish minimum contacts, comity concerns require dismissal in this case.

Even if the Court finds that jurisdiction is appropriate under a minimum contacts analysis, comity concerns require dismissal in this case. “Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty.”⁸⁵ “Civil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute.”⁸⁶ The Supreme Court has held that the principles of diversity jurisdiction do not override this general federal policy of deference to tribal courts, especially for cases arising out of activity occurring on tribal lands.⁸⁷

Known as tribal exhaustion, this doctrine requires that cases in tribal courts be allowed to exhaust tribal remedies before being subject to suit in U.S. federal court. “Once the tribal courts have acted, their determination of jurisdiction is subject to review in federal court.”⁸⁸ This claim is not one of jurisdiction, but of comity.⁸⁹ Regardless, it is clear that “jurisdiction presumptively lies in the tribal court” for activities occurring almost exclusively on a Navajo reservation.⁹⁰ This

⁸⁵ *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18, 107 S. Ct. 971, 977 (1987). See also *Fisher v. Dist. Court of Sixteenth Judicial Dist.*, 424 U.S. 382, 390, 96 S. Ct. 943, 948 (1976) (“overriding federal policy [] is clearly adequate to defeat state jurisdiction over litigation involving reservation Indians”).

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Brown v. Washoe Hous. Auth.*, 835 F.2d 1327, 1329 (10th Cir. 1988).

⁸⁹ *Becker v. Ute Indian Tribe of the Uintah & Ouray Reservation*, 868 F.3d 1199, 1203 (10th Cir. 2017).

⁹⁰ *Smith v. Moffett*, 947 F.2d 442, 444 (10th Cir. 1991) (vacating and remanding for determination whether comity required dismissal).

is true “even when a case filed in federal court has not yet been filed in tribal court.”⁹¹

“Therefore, as a matter of comity, a federal court should not exercise jurisdiction over cases arising under its federal question or diversity jurisdiction, if those cases are also subject to tribal jurisdiction, until the parties have exhausted their tribal remedies.”⁹²

CONCLUSION

Based on the foregoing, this Court should dismiss the Complaint in its entirety for lack of personal jurisdiction over Defendants.

RESPECTFULLY SUBMITTED this 19th day of May 2021.

HOLLAND & HART LLP

/s/ Blaine J. Benard

Blaine J. Benard

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⁹¹ *Id.* (“The fact that Smith apparently has not yet presented his case to a tribal court does not diminish the comity considerations present in this case.”)

⁹² *Tillett v. Lujan*, 931 F.2d 636, 640 (10th Cir. 1991); *see also Fine Consulting, Inc. v. Rivera*, 915 F. Supp. 2d 1212, 1229 (D.N.M. 2013) (holding that claims for tortious interference with contracts related to activities on tribal lands are subject to comity concerns under tribal exhaustion doctrine).