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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
27 **FOR THE COUNTY OF ALAMEDA**

28 **IN RE AMIODARONE CASES**

CASE NO. JCCP 4956


**NOTICE OF ORDER ISSUED
JANUARY 10, 2019 REGARDING
SPECIALLY APPEARING DEFENDANTS'
MOTION TO QUASH SERVICE OF
SUMMONSES AND AMENDED
SUMMONSES FOR LACK OF PERSONAL
JURISDICTION**

1 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on January 10, 2019, the Court issued an Order granting
3 Specially Appearing Defendants Wyeth Pharmaceuticals, Inc., Sandoz Inc., Eon Labs, Inc., Teva
4 Pharmaceuticals USA, Inc., Par Pharmaceutical Companies, Inc., Par Pharmaceutical, Inc., Zydus
5 Pharmaceuticals USA, Inc., Taro Pharmaceuticals USA, Inc., Upsher-Smith Laboratories, LLC, Barr
6 Pharmaceuticals, LLC, Mayne Pharma Inc., and Aurobindo Pharma USA, Inc.'s Motion to Quash
7 Service of Summonses and Amended Summonses for Lack of Personal Jurisdiction. The Court
8 ruled Plaintiffs' summonses and amended summonses are quashed as to Plaintiffs who are not
9 residents of California. A copy of the Order is attached hereto as Exhibit A.

10
11 DATED: January 14, 2019

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EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

FILED
ALAMEDA COUNTY

JAN 10 2019

In re Amiodarone Cases

Case No. JCCP 4956

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

Order Granting Motion to Quash Service of
Summons and Amended Summons for
Lack of Personal Jurisdiction for Non-
California Plaintiffs

Specially-Appearing Defendants Wyeth Pharmaceuticals, Inc., Sandoz Inc., Eon Labs, Inc., Teva Pharmaceuticals USA, Inc., Par Pharmaceutical Companies, Inc., Par Pharmaceutical, Inc., Zydus Pharmaceuticals USA, Inc., Taro Pharmaceuticals USA, Inc., Upsher-Smith Laboratories, LLC, Barr Pharmaceuticals, LLC, Mayne Pharma Inc., and Aurobindo Pharma USA, Inc.'s (collectively, "Specially-Appearing Defendants") Motion to Quash Service of Summons and Amended Summons for Lack of Personal Jurisdiction is GRANTED.

On May 22, 2018, Plaintiffs filed a Master Administrative Complaint ("MAC") in this coordinated action, asserting claims arising out of injuries and death resulting from the ingestion of Amiodarone. On September 27, 2018, Plaintiffs filed an amended Exhibit A to the MAC, listing 274 individuals who were significantly injured or died as a result of ingesting Amiodarone, and claims on behalf of 113 spouses who suffered loss of consortium due to the injuries incurred by their spouses. Specially-Appearing Defendants contend that of the 336 Plaintiffs—all but 20 allegedly reside outside of California. The Specially-Appearing Defendants include nine out-of-state generic manufacturers of the drug amiodarone and Wyeth, another out-of-state entity who

manufactured and distributed Amiodarone products nationwide. Plaintiffs also sued one in-state pharmaceutical wholesaler, McKesson Corporation (“McKesson”).

Specially-Appearing Defendants contend that there is no personal jurisdiction over the claims of non-California residents asserted in this action under *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.* (2017) 137 S. Ct. 1773 (hereinafter, “*Bristol-Myers*”).

PERSONAL JURISDICTION

“It has long been established that the Fourteenth Amendment limits the personal jurisdiction of state courts.” (*Bristol-Myers*, 137 S. Ct. at 1779.) “Because ‘[a] state court’s assertion of jurisdiction exposes defendants to the State’s coercive power,’ it is ‘subject to review for compatibility with the Fourteenth Amendment’s Due Process Clause,’ . . . which ‘limits the power of a state court to render a valid personal judgment against a nonresident defendant[.]’” (*Id.*) “The primary focus of our personal jurisdiction inquiry is the defendant’s relationship to the forum State.” (*Id.*)

“In determining whether personal jurisdiction is present, a court must consider a variety of interests.” (*Bristol-Myers*, 137 S. Ct. at 1780.) “These include ‘the interests of the forum State and of the plaintiff in proceeding with the cause in the plaintiff’s forum of choice.’” (*Id.*) “But the ‘primary concern’ is ‘the burden on the defendant.’” (*Id.*) “Assessing this burden obviously requires a court to consider the practical problems resulting from litigating in the forum, but it also encompasses the more abstract matter of submitting to the coercive power of a State that may have little legitimate interest in the claims in question.” (*Id.*) “[R]estrictions on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation.’” (*Id.*) “They are a consequence of territorial limitations on the power of the respective States.” (*Id.*) Thus,

“[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.” (*Id.* at 1780-81.)

The concept of “general jurisdiction” is “exercisable when a foreign corporation’s ‘continuous corporate operations within a state [are] 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.’” (*Daimler AG v. Bauman* (2014) 571 U.S. 117.) As the Court has noted previously, none of the parties contend that general jurisdiction is applicable to the Specially-Appearing Defendants. (*See* June 15, 2018 Order re Jurisdictional Discovery at p. 1.) Thus, the Court turns to the question of whether specific personal jurisdiction is present here.

“In order for a state court to exercise specific jurisdiction, ‘the suit’ must ‘aris[e] out of or relat[e] to the defendant’s contacts with the forum.’” (*Bristol-Myers*, 137 S. Ct. at 1780.) “For this reason, ‘specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.’” (*Id.*) “[T]here must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.’” (*Id.* at 1781.) “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” (*Id.* [noting that “[e]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales”].) “For specific jurisdiction, a defendant’s general

connections with the forum are not enough.” (*Id.*) “[A] corporation's ‘continuous activity of some sorts within a state ... is not enough to support the demand that the corporation be amenable to suits unrelated to that activity.’” (*Id.*)

Moreover, “it is the defendant, not the plaintiff or third parties, who must create contacts with the forum State.” (*Walden v. Fiore* (2014) 571 U.S. 277, 291.) “[T]he mere fact that [a defendant’s] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.” (*Id.*) Lastly, each defendant’s contacts must be evaluated separately, and may not be aggregated to establish jurisdiction among multiple defendants. (*Rush v. Savchuk* (1980) 444 U.S. 320, 331–32 [“The requirements of International Shoe, however, must be met as to each defendant over whom a state court exercises jurisdiction.”].)

BURDEN OF PROOF

“The procedural rules that apply when a defendant moves to quash service of summons for lack of jurisdiction are [] well settled.” (*In re Auto. Antitrust Cases I & II* (2005) 135 Cal. App. 4th 100, 110.) “Although the defendant is the moving party, the plaintiff must carry the initial burden of demonstrating facts by a preponderance of evidence justifying the exercise of jurisdiction in California.” (*Id.*) “The merits of the complaint are not at issue at this stage of proceedings.” (*Id.*) “However, when personal jurisdiction is asserted on the basis of a nonresident defendant's alleged activities in this state, facts relevant to jurisdiction may also bear on the merits of the complaint.” (*Id.*) “The jurisdictional facts shown must pertain to each separate nonresident defendant[.]” (*Id.*)

“The plaintiff must do more than merely allege jurisdictional facts.” (*In re Auto. Antitrust Cases I & II*, 135 Cal. App. 4th at 110.) “It must present evidence sufficient to

justify a finding that California may properly exercise jurisdiction over the defendant.” (*Id.*) “The plaintiff must provide affidavits and other authenticated documents in order to demonstrate competent evidence of jurisdictional facts.” (*Id.*) “Allegations in an unverified complaint are insufficient to satisfy this burden of proof.” (*Id.*) In addition, “[d]eclarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction.” (*Id.*) “Once the plaintiff satisfies the initial burden of proof of showing a defendant’s minimum contacts in California, the burden shifts to the defendant to present a compelling case demonstrating that the exercise of jurisdiction by our courts would be unreasonable.” (*Id.* at 110-111.)¹

BRISTOL-MYERS

In *Bristol-Myers*, 137 S. Ct. at 1777, the U.S. Supreme Court reversed the California Supreme Court’s decision, finding that there was no specific personal jurisdiction over non-resident claims, where “[m]ore than 600 plaintiffs, most of whom are not California residents, filed [a] civil action in a California state court against Bristol-Myers Squibb Company (BMS), asserting a variety of state-law claims based on injuries allegedly caused by a BMS drug called Plavix.” There “the nonresidents were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California.” (*Id.* at 1781; *id.* at 1778 [“[T]he nonresident plaintiffs did not allege that they obtained Plavix through California physicians or from any other California source; nor did they claim that they were injured by Plavix or were treated for their injuries in California.”].) And although

¹ Defendants make evidentiary objections to plaintiffs’ evidence and note that evidence has not been submitted as to every defendant. Since the court finds that plaintiffs’ submissions insufficient to establish personal jurisdiction even if all evidentiary objections are overruled, it is not necessary for the court to address the objections.

the defendant in *Bristol-Myers* “engages in business activities in California and sells Plavix there,” the Court noted that “[it] did not develop, create a marketing strategy for, manufacture, label, package, or work on the regulatory approval for Plavix in the State.” (*Id.* at 1775.)

The U.S. Supreme Court noted that “[t]he mere fact that other plaintiffs were prescribed, obtained, and ingested Plavix in California—and allegedly sustained the same injuries as did the nonresidents—does not allow the State to assert specific jurisdiction over the nonresidents’ claims.” (*Bristol-Myers*, 137 S. Ct. at 1781 [noting that “a defendant’s relationship with a ... third party, standing alone, is an insufficient basis for jurisdiction.”].) “This remains true even when third parties (here, the plaintiffs who reside in California) can bring claims similar to those brought by the nonresidents.” (*Id.*)

In addition, activities unrelated to the claims at issue in an action are irrelevant to the question of specific personal jurisdiction. (*See Bristol-Myers*, 137 S. Ct. at 1781 [“Nor is it sufficient—or even relevant—that BMS conducted research in California on matters unrelated to Plavix.”].) “What is needed—and what is missing [in *Bristol-Myers*—is a connection between the forum and the specific claims at issue.” (*Id.*)

MOTION TO QUASH

The Court noted in its June 15, 2018 Order that Plaintiffs “assert two bases for liability: First, defendants promoted a dangerous ‘off label’ use of their product without providing adequate warnings. Second, defendants did not provide an FDA-mandated Medication Guide (which warned of the drugs’ dangerous side-effects) to plaintiffs.” (*See* June 15, 2018 Order re Jurisdictional Discovery at pp. 4-5.) The Court stated that “the focus for specific jurisdiction is the relationship between defendant’s forum contacts and the ‘specific claims at issue.’” (*Id.* at p. 5.)

CHOICE OF LAW CLAUSES

Plaintiffs rest their jurisdictional claims on contracts between defendants. As noted below, plaintiffs identify no conduct by defendants other than that evidenced by these agreements. Plaintiffs contend that each Specially-Appearing Defendant entered into agreements (hereinafter “Supplier Agreements”) with McKesson to supply Amiodarone to McKesson and its subsidiaries for distribution, re-packaging and/or re-labeling, including “Supplier Agreements” that contain a “Choice of Law” provision. (Declaration of Chris W. Cantrell [“Cantrell Dec.”], Exs. D-F.) The Choice of Law clause states that the agreements “shall be construed in accordance with the laws of the State of California, without regard to the provisions of Section 1654 of the California Civil Code or the rules regarding conflicts of laws.” (*Id.* at ¶ 8.3.) The Court finds that this Choice of Law provision applicable to disputes between McKesson and Specially-Appearing Defendants is unrelated to the nonresident claims at issue in this action, and therefore this is not a contact for jurisdictional purposes. (*Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 482 [noting that a choice-of-law “provision standing alone would be insufficient to confer jurisdiction”].)

Plaintiffs also assert that the Supplier Agreements incorporate by reference McKesson’s Supplier Terms and Conditions (“Supplier T&C”) and “Buying Terms.” (*Id.*, Exs. G-H (Supplier T&C), I-J (Buying Terms).) The Supplier T &C includes a choice of law and choice of venue provision for any action for proceedings brought “to enforce Supplier’s [defense and indemnification of McKesson and its subsidiaries]” for “any claims, liability, or expenses . . . alleged to have arisen through the purchase, use, consumption or recall of Supplier’s products, whether involving a defect in the product, its labeling or packaging.” That provision states that California law should apply to a

proceeding brought under that indemnification provision, and submits to the jurisdiction of San Francisco Superior Court, waiving all claims of lack of personal jurisdiction and inconvenient forum. Plaintiffs contend that the waivers should read to apply to the underlying claim for which the Supplier may be obligated to defend/indemnify McKesson and its subsidiaries. The Court finds that this is contrary to the plain language of the Supplier T&C and is not evidence of a contact for jurisdictional purposes.

Plaintiffs also contend that these indemnification provisions demonstrate that they are third-party beneficiaries under the Supplier Agreements such that they can enforce the personal jurisdiction waiver. The Court finds that Plaintiffs were not intended third party beneficiaries under these agreements simply because the agreements are associated with a chain of distribution to Plaintiffs. Further, the waiver is expressly limited to disputes regarding indemnification, not any dispute concerning Specially-Appearing Defendants' supplied products.

COMPLIANCE CLAUSES

Plaintiffs assert that the Supplier Agreements contain certain compliance clauses. The Compliance provision in the Supplier Agreement requires that Specially-Appearing Defendants comply with laws and regulations concerning the Agreements and concerning the "manufacture, handling, sale or distribution of the Products[.]" (*See, e.g., Cantrell Dec., Ex. D at ¶ 8.6.*) The Supplier T&C includes terms requiring compliance with all governing laws, rules and regulations, a warranty that no drug supplied will be adulterated or misbranded, and that the products will be manufactured, sold, classified, described, packaged, marked, labeled or shipped in accordance with the Prescription Drug Marketing Act. These compliance clauses are agreements between Specially-

Appearing Defendants and McKesson, and Plaintiffs fail to demonstrate how those compliance agreements demonstrate a contact affiliated with the claims at issue.

Plaintiffs contend that the “Medication Guide failure flows through California (for McKesson as well as the other California entities distributing or re-selling Defendants’ Amiodarone)” and therefore “establishes additional forum contacts.” (Opp. at p. 8.) However, Plaintiffs provide no evidence that the failure to provide the Medication Guide happened in California, or that McKesson and Specially-Appearing Defendants acted jointly to fail to provide the Medication Guide in California. Thus, the Court does not find that Plaintiff has demonstrated a jurisdictional contact based on this argument.

Plaintiffs also contend that under applicable regulations Specially-Appearing Defendants must provide McKesson with the Medication Guide, and McKesson must then give the Medication Guide to pharmacists and patients. Plaintiffs point to these regulations and the agreements between McKesson and Specially-Appearing Defendants, as evidence that there is a “requisite connection between California and the claims of these non-resident Plaintiffs [] to satisfy due process concerns.” (Opp. at. 9.) While “a defendant's contacts with the forum State may be intertwined with his transactions or interactions with the plaintiff or other parties . . . a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction.” (*Walden*, 571 U.S. at 286.) “Due process requires that a defendant be haled into court in a forum State based on his own affiliation with the State, not based on the ‘random, fortuitous, or attenuated’ contacts he makes by interacting with other persons affiliated with the State.” (*Id.*) However, Plaintiffs provide no evidence that the Amiodarone ingested by nonresident Plaintiffs, were: (1) distributed by McKesson and/or any other distributor contracted with by a Specially-Appearing Defendant from California, and (2) that the

Amiodarone ingested was supplied to the California distributors by Specially-Appearing Defendants. While the parties debate whether the obligation to supply the Medical Guide is joint or several, the debate misses the jurisdictional point—plaintiff has not identified any California based conduct by the defendants that gives rise to jurisdiction. The Court finds Plaintiffs’ conjectures based on the contracts and the regulations insufficient to establish jurisdiction.

INDEMNIFICATION CLAUSES

Plaintiffs also point to the indemnification clause in the Supplier Agreements, which state that each Specially-Appearing Defendant “further agrees to defend, indemnify and hold McKesson harmless from any liability arising out of or due to Supplier’s nonadherence with such legal or regulatory requirements.” (*See, e.g.*, Cantrell Dec., Ex. D at ¶ 8.6.)

The Supplier T &C also contains an indemnification provision wherein Suppliers agreed to “defend, indemnify and hold McKesson Corporation and its subsidiaries harmless against any claims, liability or expenses . . . alleged to have arisen through the purchase, use, consumption or recall of Supplier’s products, whether involving a defect in the product, its labeling or packaging, unless and until it is proven to be due to McKesson’s negligent handling of the products after shipment by Supplier[.]” (Cantrell Dec., Ex. G at p. 7.)

Plaintiffs contend that these indemnification provisions created derivative liability by Specially-Appearing Defendants for McKesson’s conduct. However, Plaintiffs provided no legal authority—and the Court can identify none—in support of their broad claim that any agreement to indemnify another is evidence of derivative liability. Plaintiffs cite to a single case interpreting an indemnity agreement for purposes of

determining insurance coverage, not jurisdiction or even to determine whether a party may be derivatively liable. In that case, a subcontractor agreed to indemnify a contractor and owner for “liability of every nature arising from injury to persons or property resulting from Subcontractor's performance of this Agreement.” (*Ins. Co. of N. Am. v. Nat'l Am. Ins. Co.* (1995) 37 Cal. App. 4th 195, 199.) The court distinguished the indemnification agreement as “focuse[d] on creating derivative liability for the negligence of others” from a work-performed exclusion that barred coverage for an insured’s liability for his own work. (*Id.*) The Court does not find this limited holding concerning insurance coverage stands for the proposition that all indemnification agreements impose derivative liability for purposes of determining jurisdiction.

At the hearing on this matter plaintiff cited *Vons Companies v. Seabest Foods, Inc.* (1996) 14 Cal. 4th 434 in support of their assertion that an indemnity agreement would suffice to establish jurisdiction. *Vons*, however, relied on the “sliding scale” approach overruled by *Bristol-Myers Squibb Co.* See *Vons* at 452-453, cited and relied upon by the California Supreme Court as a basis for its “sliding scale” approach in *Bristol-Myers* at 1 Cal. 5th at 803-806. That approach was emphatically rejected by the United States Supreme Court when it reversed the California Supreme Court. *Vons* is accordingly no longer good law.

DISTRIBUTION & PURPORTED RE-PACKAGING AGREEMENTS

Along with the Supplier Agreements with McKesson, Plaintiffs also contend that Teva, Sandoz, Upsher-Smith and Zydus sold bulk Amiodarone to McKesson and/or its subsidiaries, or other California-based re-labelers and/or re-packagers, who then re-packed or re-labeled the Amiodarone with new NDC numbers for re-sale. (Cantrell Dec., Ex. L-M.) However, Plaintiffs have provided no evidence that any of the nonresident

Plaintiffs ingested Amiodarone that was distributed by one of these California entities, or any evidence that Specially-Appearing Defendants agreed to have their product re-packaged or re-labeled by these California distributors. (Reply at p. 5 n.10.)

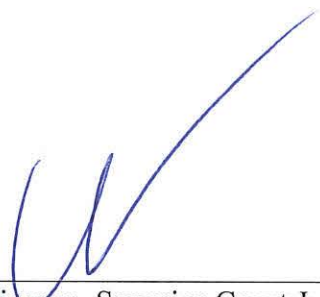
As noted in *Bristol-Myers*, a distribution contract with a California entity alone is insufficient to establish personal jurisdiction over a non-resident defendant. In *Bristol-Myers*, the plaintiffs argued that defendant's "decision to contract with a California company [McKesson] to distribute [Plavix] nationally" was a sufficient basis for personal jurisdiction. (137 S. Ct. at 1783.) However, the U.S. Supreme Court rejected that argument, stating that "it is not alleged that [defendant] engaged in relevant acts together with McKesson in California," "[n]or is it alleged that [defendant] is derivatively liable for McKesson's conduct in California," and there was "no evidence to show how or by whom the Plavix they took was distributed to the pharmacies that dispensed it to [the nonresident plaintiffs]." (*Id.*) The Court concluded that "[t]he bare fact that [defendant] contracted with a California distributor is not enough to establish personal jurisdiction in the State." (*Id.*) Thus, the Court finds that the agreements between Specially-Appearing Defendants and California-based distributors, re-packagers, or re-labelers, are insufficient on their own to establish specific personal jurisdiction.

Contrary to *Bristol-Myers*, Plaintiffs contend that "the broader Amiodarone related contacts with California are sufficient to establish jurisdiction as to all non-resident Plaintiffs." (Opp. at p. 8.) Plaintiffs contend that "[e]very non-resident Defendant has contractual agreements with McKesson, the largest distributor of generic drugs in the United States to distribute, re-package and/or re-label their Amiodarone across the United States." (*Id.*) Plaintiffs also argue that many of the non-resident Specially-Appearing Defendants also "utilized McKesson and other California companies

to re-package and re-label their Amiodarone for distribution across the United States is a contact that 'relates to' the 'controversy' at issue." (*Id.*) However, as stated explicitly in *Bristol-Myers*, a nonresident defendant's contacts with third parties in California alone may not establish specific personal jurisdiction. Plaintiffs fail to explain how these third party contacts relate to nonresident Plaintiffs' claims in this case. The Court finds this insufficient to satisfy Plaintiffs' burden of demonstrating jurisdiction.

Based on the foregoing, the Court finds that Plaintiffs have failed to meet their burden of providing evidence of jurisdiction, and therefore GRANTS Specially-Appearing Defendants' Motion to Quash.

Dated: January 10, 2019



Brad Seligman, Superior Court Judge

CLERK'S CERTIFICATE OF SERVICE

I certify that I am not a party to this cause and that a true and correct copy of this Order was emailed to the addresses shown on at the bottom of this document.

Dated: January 10, 2019

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