

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

Case No. 1:18-cv-20341-KMM

DAVID M. GOLDSTEIN

Plaintiff,

v.

JOHNSON & JOHNSON, *et al.*

Defendants.

ORDER

THIS CAUSE came before the Court upon Defendant Johnson & Johnson's ("J&J") Motion to Dismiss ("Motion") (ECF No. 22) the Complaint ("Compl.") (ECF No. 1). Plaintiff David Goldstein ("Plaintiff") responded (ECF No. 26) and J&J replied (ECF No. 27). The matter is now ripe for review. For the reasons that follow, J&J's Motion is GRANTED.

I. BACKGROUND

Plaintiff brings the instant action against Defendants J&J, Janssen Research & Development, LLC ("JRD"), and Janssen Pharmaceuticals, Inc. ("JPI") (collectively, the "Defendants") for the Defendants' allegedly negligent design, manufacture, marketing, and distribution of the pharmaceutical drug Levaquin. Compl. ¶ 1. Plaintiff alleges that after consuming Levaquin, he suffered a tear to his aortic heart valve, which necessitated open heart surgery to replace the torn valve. *Id.* ¶ 60.

J&J moves to dismiss, pursuant to Federal Rule of Civil Procedure 12(b)(2), for lack of personal jurisdiction. *See generally* Motion. J&J argues that although it is the corporate parent of JRD and JPI, J&J is a holding company with no "relevant contacts with the State of Florida."

Id. at 1, 7. J&J adds that JPI, not J&J, manufactures, markets, and sells Levaquin, and that J&J should therefore be dismissed from this action due to a lack of personal jurisdiction. *See id.* at 1.

In support of its Motion, J&J submitted an affidavit from Tina Snyder French, an Assistant Secretary for J&J, with knowledge of J&J's corporate structure. Decl. of J&J Assistant Secretary Tina French ("French Declaration") ¶ 4. Therein, Ms. French states that J&J is a New Jersey corporation with its principal place of business in New Jersey. *Id.* ¶¶ 5–6; *see also* Compl. ¶ 3 (stating same). J&J is also a holding company for J&J subsidiaries, all of whom operate independently of J&J. *Id.* ¶ 6. J&J is neither registered nor qualified to do business in Florida, nor does it have any offices or otherwise own any real estate in Florida. *Id.* ¶¶ 7–8. Moreover, J&J does not ship any products into Florida, nor does it design, manufacture, market, or distribute any product at all. *Id.* ¶¶ 8–9.

II. DISCUSSION

J&J argues that this Court lacks personal jurisdiction over J&J because it has not purposefully availed itself of the jurisdiction of the state of Florida. Motion at 5. In response, Plaintiff argues that J&J's ubiquitous brand name and various products bearing the J&J logo distributed throughout Florida warrant the assertion of personal jurisdiction over J&J. Response at 1, 7.

Because federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons, a federal court sitting in Florida must conduct a two-step inquiry to determine whether it has personal jurisdiction over a non-resident defendant. *See Diamond Crystal Brands, Inc. v. Food Movers Int'l Inc.*, 593 F.3d 1249, 1257–58 (11th Cir. 2010); *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014). The court must determine "(1) whether personal jurisdiction exists over the nonresident defendant . . . under Florida's long-arm statute,

and (2) if so, whether that exercise of jurisdiction would violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.” *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013).

“The Florida long-arm statute provides for jurisdiction over defendants for any cause of action arising from conduct occurring within Florida, including . . . committing a tortious act within the state[] or causing injury to a person in the state arising out of an act or omission that occurred outside of the state.” *Riley v. Cardozo*, No. 17–14032–HH, 2018 WL 4354561, at *1 (11th Cir. Apr. 27, 2018) (internal citations omitted). Even if a plaintiff establishes compliance with Florida’s long–arm statute, however, a defendant must nonetheless have “the minimum contacts necessary to support personal jurisdiction only where the defendant purposefully avails herself of the privilege of conduct activities with the forum, thus invoking the benefits and protections of its laws.” *Id.* (internal citation omitted). These minimum contacts “must be such that the defendant should reasonably anticipate being haled into court in the forum.” *Id.*

Here, the Court need not determine whether Plaintiff has complied with the requirements of Florida’s long–arm statute.¹ Even assuming that Plaintiff meets those requirements, and for the reasons that follow, the Court finds that exercising jurisdiction over J&J would violate the due process clause of the Fourteenth Amendment because Plaintiff has not “alleged any facts showing that [] J&J purposefully availed itself of the benefit of” Florida laws. *See Brazil v. Janssen Research & Dev. LLC*, 249 F. Supp. 3d 1321, 1335 (S.D. Ga. 2016).

¹ Florida’s long–arm statute provides a basis for asserting personal jurisdiction over defendants alleged to have committed tortious acts within the state. Fla. Stat. § 48.193(1)(b) (2016). The Court will assume, without explicitly so holding, that this provision would provide a basis for this Court to assert personal jurisdiction over J&J, subject to the Court’s Fourteenth Amendment analysis *infra*.

1. The Court Does Not Have General Jurisdiction Over J&J

J&J argues that the Court cannot assert general jurisdiction over J&J because J&J is not effectively “at home” in Florida. Motion at 6. Plaintiff argues that the ubiquity of J&J brand products shipped to and distributed in Florida establishes personal jurisdiction over J&J. Response at 7 (internal quotation marks and citation omitted).

“General personal jurisdiction arises from a party’s contacts with the forum state that are unrelated to the litigation.” *See Madara v. Hall*, 916 F.2d 1510, 1516 n. 7 (11th Cir. 1990). “A court may assert general jurisdiction over foreign (sister–state or foreign–country) corporations,” without offending due process “when their affiliations with the State are ‘so continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 131 S. Ct. 2846, 2851 (2011) (internal citation and quotation marks omitted). General jurisdiction over a foreign corporation will not lie “unless the corporation’s activities in the forum closely approximate the activities that ordinarily characterize a corporation’s place of incorporation or principal place of business.” *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1205 (11th Cir. 2015).

As Plaintiff concedes, J&J is a New Jersey corporation with its principal place of business in New Brunswick, New Jersey. Compl. ¶ 3; French Decl. ¶ 5. J&J therefore appears to only be “at home” in New Jersey. *Brown*, 131 S. Ct. at 2851; *Brazil*, 249 F. Supp. 3d at 1334 (holding that the District Court for the Southern District of Georgia does not have general jurisdiction over J&J because it is a New Jersey corporation principally stationed in New Jersey). Even if J&J brand products are sold in Florida, J&J itself does not appear to have any “offices, employees, bank accounts, or other assets” within the state and therefore “cannot be said to be at home in this forum.” *Brazil*, 249 F. Supp. 3d at 1334; French Decl. ¶¶ 7–9 (stating that J&J does

not own any real estate in Florida, does not ship any products into Florida, and does not have any offices, warehouses or plants in Florida). Accordingly, the Court finds no basis for the assertion of general jurisdiction over J&J.

2. The Court Lacks Specific Jurisdiction Over J&J

To determine whether the Court has specific jurisdiction over J&J, it must analyze whether the requirements of due process are satisfied. *See Madara*, 916 F.2d at 1514.

“[T]he due process clause of the United States Constitution protects an individual’s liberty interest in not being subject to the binding judgments of a forum with which he has established no meaningful ‘contacts, ties, or relations.’” *Licciardello v. Lovelady*, 544 F.3d 1280, 1284 (11th Cir. 2008). The exercise of personal jurisdiction over a defendant comports with the Fourteenth Amendment when the defendant has minimum contacts with the forum state and jurisdiction over the defendant does not offend traditional notions of fair play and substantial justice.” *Horizon Aggressive Growth, L.P. v. Rothstein-Kass, P.A.*, 421 F.3d 1162, 1166 (11th Cir. 2005) (internal quotation marks and citation omitted). Due process requires that the defendant have “fair warning” that his actions might subject him to the jurisdiction of a foreign sovereign. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985). “This fair warning requirement is satisfied if the defendant has purposefully directed his activities at residents of the forum, and the litigation results from alleged injuries that arise out of or relate to those activities.” *Licciardello*, 544 F.3d at 1284.

Plaintiff alleges that J&J: (1) conducts business within the State of Florida, (2) derives substantial revenue from its goods and products used in Florida, (3) designed, manufactured, marketed, and sold Levaquin, and, as a result, “expected, or should have expected, its acts to have consequences within the State of Florida.” Compl. ¶¶ 3–7. In response, J&J states that,

contrary to Plaintiff's allegations, J&J does not do any business in, nor ship any products into, Florida. French Decl. ¶¶ 8–9. Nor does J&J design, manufacture, market, nor sell any product whatsoever because it is a “mere holding company,” and functions as an entirely distinct entity from its subsidiaries. *Id.* ¶¶ 9–13.

The French Declaration “contested the jurisdictional facts” alleged by Plaintiff, thereby shifting the burden to Plaintiff to show by counter-affidavit that this Court has personal jurisdiction over J&J. *See Rensin v. State, Office of Att’y Gen., Dep’t of Legal Affairs*, 18 So.3d 572, 575 (Fla. 1st DCA 2009); *Hilltopper Holding Corp. v. Estate of Cuchin*, 955 So.2d 598, 601 (Fla. 2d DCA 2007); *Venetian Salami Co. v. J.S. Parthenais*, 554 So.2d 499, 502 (Fla. 1989). Plaintiff, however, included no such counter-affidavit in his response. Instead, Plaintiff states that because J&J’s “product brand name on multiple products” is distributed in Florida, J&J should expect to be “hailed into court in this state.” Response at 1. Plaintiff further claims that “[t]he number of products sold in Florida with J&J’s brand name and logos, alone, constitute sufficient contacts within the state of Florida to satisfy” due process requirements. *Id.* at 7.

Plaintiff fails to cite to any authority for the contention that the use of a company’s brand name or logo within a particular state by itself constitutes sufficient contacts with that state for personal jurisdiction purposes. In fact, this Court has suggested otherwise. *See NF Imp. & Exp., Inc. v. Via Mat Int’l AG*, 2012 WL 13013235, at *3 (S.D. Fla. May 8, 2012) (holding that similarities between the logo of a parent entity and its subsidiary do not necessarily trigger personal jurisdiction of the parent for the alleged acts of the subsidiary). Moreover, Plaintiff fails to dispute that (1) J&J is a mere holding company entirely separate from its subsidiaries and (2) JPI, rather than J&J, designed, manufactured, sold, and distributed Levaquin, the drug at issue in this case. *See Brazil*, 249 F. Supp. 3d at 1335. Accordingly, “given the minimal factual

allegations” within Plaintiff’s Complaint regarding J&J’s jurisdiction, coupled with the evidence asserted within J&J’s Motion, the Court finds no basis to assert specific jurisdiction over J&J.

See id.

3. Jurisdictional Discovery is Not Warranted

Plaintiff requests an opportunity to conduct jurisdictional discovery. *See* Response at 4 n.

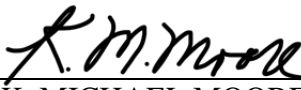
1. “[A] plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of a federal court by withholding information on its contacts with the forum.” *Mother Doe I v. Maktoum*, 632 F. Supp. 2d 1130, 1145 (S.D. Fla. 2007) (internal citations and quotations omitted). In evaluating whether to grant a request for jurisdictional discovery, the Court looks to the timing and nature of the request. *Id.* at 1146.

Plaintiff’s request for discovery, embedded within a footnote of its Response, does not constitute a “formal motion or other showing as to scope of any proposed jurisdictional discovery request.” Response at 4 n. 1; *Mother Doe*, 632 F. Supp. 2d at 1146 (denying request for jurisdictional discovery made within a footnote of response to motion to dismiss in part because the request was not made in a formal motion); *Peruyero v. Airbus S.A.S.*, 83 F. Supp. 3d 1283, 1289–1290 (S.D. Fla. 2014) (holding that because the plaintiff “failed to move for leave to seek jurisdictional discovery . . . his request for that particular relief is procedurally flawed.”). To this day, approximately one year after filing the Complaint, Plaintiff has not filed any formal motion seeking leave for jurisdictional discovery. Moreover, Plaintiff has not specified with sufficient particularity what jurisdictional discovery could reveal, even if the Court granted Plaintiff’s request. *See Millennium Indus. Network, Inc. v. Hitti*, 2014 WL 324656, at *3 (S.D. Fla. Jan. 28, 2014). Plaintiff’s request for jurisdictional discovery is therefore denied.

III. **CONCLUSION**

Accordingly, UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED and ADJUDGED that this Court does not have personal jurisdiction over J&J in this matter. J&J's Motion to Dismiss (ECF No. 22) is therefore GRANTED. The Clerk of the Court is instructed to TERMINATE J&J as a Defendant in this matter.

Done and ordered in Chambers at Miami, Florida, this 21st day of January, 2019.



K. MICHAEL MOORE
UNITED STATES CHIEF DISTRICT JUDGE

c: Counsel of record