APPENDIX

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALEMEDA

IN RE RANTIDINE CASES	ORDER ON MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT. Date: 5/17/22 Time: 10:00 a.m. Dept.: 21

The motion of defendants to quash service of summons and complaint came on for hearing on 5/17/22, in Department 21 of this Court, the Honorable Evelia Grillo presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendant. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Motion to quash service of summons and complaint is GRANTED IN PART and DENIED IN PART.

BACKGROUND

Plaintiffs in the JCCP have filed claims alleging personal injuries arising from the purchase and use of Zantac in California. Zantac was manufactured by various Brand Defendants as ownership of the brand was transferred from entity to entity. GSK owned the brand from 1983-1995, GSK and Warner-Lambert owned the brand from 1995-1998, Warner-Lambert owned the brand from

1998-2000, Pfizer owned the brand 2000-2006, BIPI owned the brand 2006-2106, and Sanofi owned the brand 2016-present. (Cpt para 53-61)

The Brand Defendants seek an order quashing the service of summons for lack of personal jurisdiction with respect to (1) claims based on the use of generic ranitidine; (2) claims based on the use of brand-name Zantac after the relevant Brand Defendant relinquished control of the medicine's label; and (3) claims of Plaintiffs who cannot prove that they used brand-name Zantac during the time when the Brand Defendant had control of the label.

FOCUS ON "JURISDICTION"

The motion is to quash based on lack of personal jurisdiction over the Brand Defendants for certain claims. The motion is based on lack of jurisdiction. Jurisdiction concerns whether it is consistent with due process for a defendant to be required to defend a claim in any given court. *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186.) Jurisdiction is not whether the plaintiff has a legally cognizable interest (standing) or whether the state has an interest in applying its laws (choice of law), or whether the plaintiff can prove the claim (merits), or whether the plaintiff has suffered injury (damages), or whether it would be convenient for judicial economy.

The parties expand "jurisdiction" to encompass arguments that are not related to jurisdiction. Defendants seem to argue that if a plaintiff cannot prove a claim (merits) then the court has no jurisdiction over the case because there was

no injury in the jurisdiction. *(Wagner v. Terumo Medical Corporation* (S.D. Cal. 2018) 2018 WL 6075951) Plaintiffs seem to argue that if California has an interest in enforcing its laws (choice of law) then a California court must have jurisdiction over a defendant in a case. Plaintiffs rely on *TH. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, and Conte v. Wyeth, Inc. (2008) 168 Cal.App.4th 89, both of which concern liability rather than jurisdiction. Case are not authority for propositions not considered. Plaintiffs suggest that jurisdiction can consider the efficient administration of justice. (Oppo at 13) In *Bristol-Myers Squibb Co. v. Superior Court (2017)* 137 S.Ct. 1773, 1781, the Supreme Court held that the court cannot exercise jurisdiction over a defendant on claims that in isolation would not properly be in that court on the basis that the court has jurisdiction over similar or identical claims against the same defendant that are properly in that court.

GOVERNING LEGAL PRINCIPLES

When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. *(Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.) Plaintiff must meet the burden by competent evidence in affidavits and authenticated documents; an unverified complaint may not be considered as supplying the necessary facts. *(Nobel Floral, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657-658.)

Once facts showing minimum contacts with the forum state are established, it becomes the

defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. *(Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.)

When there are disputes in the evidence, the trial court weighs the evidence. *(Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1286; *In re Automobile Antitrust Cases I & 11* (2005) 135 Cal.App.4th 100, 113-114.)

California courts may exercise jurisdiction on any basis consistent with the Constitutions of California and the United States. (CCP 410.10.)

Personal jurisdiction can be general (all-purpose) or specific (case-linked). A court has general jurisdiction over defendants who are at home in the court's forum; general jurisdiction allows a court to hear any claim against a defendant, regardless of where the underlying events occurred. In contrast, specific jurisdiction allows a court to adjudicate only those disputes relating to the defendant's contact with the forum. *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186; *LG Chem, Ltd. v. Superior Court of San Diego County* (2022) 2022 WL 2301004.)

GENERAL JURISDICTION

The Brand defendant are not citizens of California. (Complaint para 25-32.) Plaintiff does not present evidence of or argue for general jurisdiction.

SPECIFIC JURISDICTION – GENERALLY

"Specific jurisdiction exists where (1) the defendant has purposefully availed itself of a forum's benefits; (2) the controversy relates to or arises out of the defendant's contacts with the forum; and (3) the exercise of jurisdiction comports with fair play and substantial justice." *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186.) (See also *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 141 S.Ct. 1017, 1024-1025.)

Regarding the requirement that "the controversy relates to or arises out of the defendant's contacts with the forum," a plaintiff must show '"an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation."' *(Ford Motor Co.,* 141 S.Ct. at 1025.) The claim must "arise out of *or relate to* the defendant's contacts with the forum." *(Ford Motor Co.,* 141 S.Ct. at 1026.) "The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing." *(Ford Motor Co.,* 141 S.Ct. at 1026.)

The specific jurisdiction analysis is specific to the claim. A defendant that purposefully availed itself of doing business in a state might be subject to specific jurisdiction in the state for causes of action related to or arising from those contacts but not be subject to specific jurisdiction in that same state for different causes of action that are not related to or arising from those contacts. *(LG Chem, Ltd. v. Superior Court of San Diego County* (2022) 2022 WL

2301004 [no jurisdiction over consumer claims where defendant made commercial sales in state but did not make consumers sales in state].)

CLAIMS BASED ON CONSUMPTION OF GENERIC RANTIDINE

The motion to quash is GRANTED regarding the claims against the Brand Defendants based on the use of generic ranitidine.

Under California law, plaintiffs can allege claims against the Brand Defendants based on the consumption of generic ranitidine because under the FDA regulations the Brand Defendants control the labels that are on the generic ranitidine. *(TH. v. Novartis Pharm. Corp.* (201 7) 4 Cal. 5th 145, 165; *Conte v. Wyeth, Inc.* (2008) 168 Cal. App. 4th 89.)

Defendants present evidence and argue that they made their labelling decisions in their home states for purposes of their own products they did not purposefully avail themselves of California when the generic manufacturers later (and as required by federal law) adopted those labels for the generic products. Plaintiffs present evidence that the Brand Defendants controlled the labelling of the brand products and thereby determined the labelling of the generic products and that the generic products were sold in California.

The federal trial judge overseeing the federal Zantac MDL has already addressed this issue. *(In re: Zantac (Ranitidine) Products Liability Litigation* (S.D. Fla., 2021) 546 F.Supp.3d 1192.) The MDL court states "The innovator-liability theory adds a

layer of uniqueness and complexity to the traditional specific personal jurisdiction analysis because it seeks to hold brand-name product manufacturers liable for injuries caused by products that they did not manufacture, distribute, or sell. ... The link is established because of the federal regulations that require a generic product's label to match the label of the brand-name product, which arises from the brand manufacturer's labeling decisions." (546 F.Supp.3d at 121 at 211.) The MDL court states that plaintiffs put on evidence that the Brand Defendants had extensive marketing campaigns in California. (546 F.Supp.3d at 1211.)

The MDL court found that on the first prong that the Brand Defendants purposefully availed themselves of doing business in California. The MDL court found on the second prong that plaintiffs did not prove the that the actions of the Brand Defendants in California were related to the claims in California. The MDL court states: "the Court concludes that the Defendants' only conduct that gives rise to Plaintiffs' claims is Defendants' alleged failure to update the warning label for brand-name ranitidine products, not the alleged misrepresentations about the safety and efficacy of Zantac that Defendants made in the course of sales and marketing activities." (546 F.Supp.3d at 1212-1 213.) This trial court finds that analysis persuasive.

The MDL judge's jurisdictional analysis in the MDL was merely a gateway to other issues in the MDL. The MDL court held that a federal California court did not have jurisdiction over a defendant based on an innovator liability claim, but that would not preclude a plaintiff from filing the same claim in

the state where the defendant was headquartered and the state had general jurisdiction. That case could then also find its way to the MDL, with the difference that it was originally filed in a different federal court in a different state. The MDL court would then address the issues of whether California law would apply under the choice of law principles of the state of the court that has general jurisdiction and whether California law on innovator liability has extraterritorial application. The federal MDL trial judge declined to address these issues. (546 F.Supp.3d at 1214-1215.)

The court also independently considers the issue.

On "purposeful availment," the Brand Defendants purposefully availed themselves of doing business in California when they were selling brand name Zantac in California. When a generic manufacturer was selling generic Zantac in California, it was the generic manufacturer that was purposefully availing itself of doing business in California. The situation is similar to *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, where the Court held that a New York auto dealer was not subject to the jurisdiction of an Oklahoma court because the New York Dealer sold a car that became involved in an accident in Oklahoma. In this case, the generic manufacturer made the decision to sell product in California much like the owner of the vehicle in World-Wide Volkswagen made the decision to drive through Oklahoma.

On "related to," the court applies the "related to" standard in *Ford Motor Company v. Montana*

Eighth Judicial District Court (2021) 141 S.Ct. 1017, 1024-1025, and does not require strict but-for causation.

The court finds that plaintiffs have not demonstrated relatedness for purposes of jurisdiction. The trial court has weighed the evidence on "related to." *(Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1286; *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 113-114.) The Brand Defendants made the labelling decisions for the purpose of their own products. The labelling decisions of the Brand Defendants related to the labels that they put on their own brand drugs that were sold in California, but were not related to the labels on the generic products that the generic manufacturers sold in California.

This is the inverse of the issue in *Ford.* In *Ford,* the court held that there could be a finding of relatedness for jurisdictional purposes without a finding of causation for merits purposes. In this case, plaintiff demonstrates that there is likely causation for merits purposes, but has not shown that the claim arises out of or relates to the defendant's purposeful contacts with the forum for jurisdictional purposes.

The court has considered *Whaley v. Merck & Co., Inc.* (S.D. Cal., 2022) 2022 WL 1153151, where the court held that California had jurisdiction over out of state Merck regarding the label on generic drugs based on sales of generic drugs in California. *Whaley 's* jurisdictional analysis seems to have been based in a choice of law analysis. *Whaley* states: "Defendants' challenge is really aimed at California's

warning label liability law. Defendants do not think their California activities should count. But they count because California law assigns liability to Defendants for the label on their ... product." (Id at *8.) *Whaley* seemed to overlook that plaintiffs could assert their claims in a court where jurisdiction was proper and then under choice of law principles apply California law to the claims of California residents for injuries in California.

The court has considered plaintiffs argument that when defendants focus on the labelling decision and downplay the marketing activity that defendants are attempting to impose a but-for causation standard on the relatedness inquiry. *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 141 S.Ct. 1017, 1024-1025, hold that relatedness is not a but-for standard. The Ford decision states that relatedness has limits consistent with due process. (141 S.Ct. at 1026.) Under *Ford,* relatedness for jurisdictional purposes requires a lesser showing than proof of causation for merits purposes. There can be jurisdiction even if the plaintiff ultimately cannot prove causation in the forum state. Inversely, there is not always jurisdiction where there is causation in the forum state because otherwise a defendant could be haled into a foreign court due to circumstances beyond its control.

CLAIMS BASED ON USE OF BRAND ZANTAC AFTER THE DEFENDANT RELINQUSHED CONTROL OF THE BRAND

The motion to quash is GRANTED regarding the claims against the Brand Defendants based on

the use of brand-name Zantac after the relevant Brand Defendant relinquished control of the medicine's label.

The argument that the Brand Defendants are not subject to jurisdiction in California for sales of brand-name Zantac after the relevant Brand Defendant relinquished control of the medicine's label is based on the same logic as the argument that Brand Defendants are not subject to jurisdiction in California for sales of generic products. In both situations, the Brand Defendant's labelling was for purposes of its own products and the use of that labelling by another party (generic manufacturer or subsequent owners of the Brand) is not related to the Brand Defendant's actions in California.

On "purposeful availment," the Brand Defendants purposefully availed themselves of doing business in California when they were selling brand name Zantac in California but did not purposefully avail themselves of doing business in California regarding Zantac after they stopped selling brand name Zantac in California.

Underlying this analysis is that specific jurisdiction is specific to a time frame and has temporal limits. A person or business that does business in California can be subject to specific jurisdiction for claims arising from the defendant's in-state activity while the defendant was doing business in the state. That same person or business can check out of the state by ceasing to do business, but it can never leave the state's ability to assert jurisdiction claims arising from or related to the prior activity in the state. That person or business

can, however, check out of the state by ceasing to do business and thereby leave the state's ability to assert jurisdiction claims arising from or related to a third party's actions after the defendant has left the state.

The temporal scope of "purposeful availment" is simpler for a product sold in the state because the business sold the product in the state and the product remains in the state and can cause injury in the state long after the defendant stopped selling new products in the state. The issue is more difficult for marketing in the state because there is the factual issue of whether the marketing in the state while the Brand Defendant owned the brand was "purposeful availment" just for that time period or was designed to build a brand that would last beyond the time period of the marketing efforts. For example, when a Brand defendant sold the brand to another Brand defendant, the sale price presumably include both the right to the sell the product and the value of the brand as created through prior marketing. Similarly, a consumer might see an advertisement in one month and purchase the product many months later based in part on the advertisement.

On "purposeful availment," the court finds for purposes of jurisdiction that plaintiffs have demonstrated purposeful availment between marketing in one time period and the purchase and use in another time period. The purpose of marketing and advertising is to create enduring long term brand value, not just to sell products on the specific date of the marketing or advertising. This is

a fact issue and the trial court has weighed the evidence.

On "related to," the court finds that plaintiffs have not demonstrated relatedness for purposes of jurisdiction. The court follows the above analysis regarding generic ranitidine. The Brand Defendants made the labelling decisions for the purpose of their own products when they owned the brand. The labelling decisions of the Brand Defendants related to the labels that they put on their own brand drugs during the time period when they were selling their own products in California. The labelling decisions of the Brand Defendants were not related to the labels on the Brand products that any successor Brand Defendant sold in California.

CLAIMS WHERE PLAINTIFF CANNOT PROVE THE CLAIM.

The motion to quash is DENIED regarding the claims against the Brand Defendants based on the argument that the court has no jurisdiction over the claims of Plaintiffs who cannot prove that they used brand-name Zantac during the time when the Brand Defendant had control of the label.

Defendants are seeking an advisory opinion on the merits on the cases in the guise of a motion regarding whether the court has jurisdiction over the defendants. The court will not issue an advisory opinion.

Defendants cite to *Wagner v. Terumo Medical Corporation* (S.D. Cal. 2018) 2018 WL 6075951, for

the proposition that absent proof of use there is no basis for specific jurisdiction.

This California trial court is not required to follow unpublished federal trial court opinions. *(Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 468.)

The court does not follow *Wagner* because it seems to conflate jurisdiction with the ability to prove a claim on the merits. In *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 789, the court noted that standing to file a claim and the ability to prove that claim are different things. *Clayworth* states: "While Manufacturers argue that ultimately Pharmacies suffered no compensable loss because they were able to mitigate fully any injury by passing on the overcharges, this argument conflates the issue of standing with the issue of the remedies to which a party may be entitled. That a party may ultimately be unable to prove a right to damages (or, here, restitution) does not demonstrate that it lacks standing to argue for its entitlement to them." (49 Cal.4th at 789.)

This court follows the reminder in *Clayworth* to pay attention to the distinction between legal issues. A court can properly exercise jurisdiction over a defendant even if the plaintiff ultimately cannot prove a claim against the defendant. If a plaintiff asserts that she purchased and used a product in California during a time period when the defendant sold the product in California, then a California court has jurisdiction over the defendant

for purposes of that claim even if the plaintiff cannot prove her claim.

SPECIFICS OF ORDER

The court ORDERS the parties to prepare an order that applies the above to the specifics the individual cases. (CRC 3.1312.)

A potential template is:

Adams v. GlaxoSmithKline, LLC., No. 22CV005319: Plaintiff Adams alleges that he consumed OTC Zantac and generic prescription ranitidine from 2004 to 2008. The court has no jurisdiction over GSK regarding the claims based on innovator and predecessor liability because GSK owned the brand from 1983-1995. The court has jurisdiction over Pfizer regarding the claims of use of branded OTC Zantac used during the period when Plaintiff used Zantac and Pfizer held the rights to OTC Zantac (from 2004 to 2006). The court has jurisdiction over BIPI regarding the claims of use of branded OTC Zantac used during the period when Plaintiff used Zantac and when BIPI held the rights to OTC Zantac (from 2006 to 2008).

EFFECT OF ORDER

The order finds that the court cannot exercise jurisdiction over certain defendants on certain claims. The claim-specific nature of specific jurisdiction is the logical consequence of the law on specific jurisdiction. If a plaintiff cannot bring a claim against a defendant in a California court, then the plaintiff can bring the claim in a court in the

state where the defendant resides (general jurisdiction) or the state where the defendant made the relevant decision or took the relevant action (specific jurisdiction). *(Bristol-Myers Squibb Co. v. Superior Court* (2017) 13 7 S.Ct. 1773, 1783.) This is not an efficient process for the litigants or for the courts, but it is the law. (137 S.Ct. at 1784, 1788-1789 [Sotomayor, dissenting] ["the Court's opinion in this case will make it profoundly difficult for plaintiffs who are injured in different States by a defendant's nationwide course of conduct to sue that defendant in a single, consolidated action"].)

This could result in a plaintiff asserting some claims against a defendant in this court and other claims against the same defendant in another court. A plaintiff's use of brand or generic Zan tac over a period of years when it was sold by different defendants could result in different, but related, cases filed in different jurisdictions. The claims are arguably based on a series of discrete and recurring consumer purchases rather than a single continuous course of purchasing. *(Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 11 85, 1198-1199 [distinguishing between continuous accrual and continuing violation].) A defendant might have waived any defense of claim splitting by filing and prevailing on this motion. Judicial estoppel might apply as well. The filing in this court might have tolled the statute of limitations for a case filed in another court. The point is paragraph that this order is about jurisdiction and not the merits. If this court lacks jurisdiction over certain claims against certain defendants, then plaintiffs may pursue those claims in courts where jurisdiction is appropriate.

EVIDENCE. The Court has considered all the declarations submitted, as well as the exhibits attached thereto. The Court's consideration of the evidence is limited to the motion to quash and should not be construed as an indication of admissibility in future motions or at trial.

Dated: July 25, 2022

[Signature]
Evilio Grillo
Judge of the Superior Court

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

IN RE RANTIDINE CASES	No. JCCP 5150 No. RG20061705 (Goetz) No. 21CV002172 (Bautista) REVISITED ORDER ON MOTIONS TO QUASH SERVICE OF SUMMONS AND COMPLAINT Date: 12/07/22 Time: 1:30 p.m. Dept.: 21

The revisited motion of defendants to quash service of summons and complaint came on for hearing on 12107122, in Department 21 of this Court, the Honorable Evelia Grillo presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendants. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The Motion to quash service of summons and complaint is GRANTED IN PART and DENIED IN PART.

BACKGROUND

Plaintiffs in the JCCP have filed claims alleging personal injuries arising from the purchase and use of prescription Zantac, OTC Brand Zantac, and OTC generic Ranitidine in California. The claims concern the manufacture, storage, and labelling of the Zantac.

GSK marketed and sold Prescription Zantac in California at all relevant times. GSK was responsible for the label on Prescription Zantac at all relevant times.

Brand Defendants[1] marketed and sold OTC Zantac in California as ownership of the brand was transferred from entity to entity. GSK owned the OTC brand from 1983-1995, GSK and Warner-Lambert owned the OTC brand from 1995-1998, Warner-Lambert owned the OTC brand from 1998-2000, Pfizer (flea Warner-Lambert) owned the OTC brand 2000-2006, BIPI owned the OTC brand 2006-2106, and Sanofi owned the OTC brand 2016-present. (Cpt para 53-61) Each Brand Defendant was responsible for the content of OTC Brand Zantac during the time period when it owned the brand. (21 USC 352(f)(2); *TH. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145; *Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89.)

Brand Defendants were required to update the labels on Zantac as ownership of the brand was transferred from entity to entity. 21 USC 352(f)(2) requires the Brand Defendant to update the label. 21 USC 355(j)(2)(A)(v) requires the generic to have the same label as the brand.

Under California law, the Brand Defendant can be liable for failing to update the label that by law the generic manufacturer must put on the generic drug. *(TH. v. Novartis Pharmaceuticals*

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[1] The "Brand Defendants" are GlaxoSmithKline LLC, Pfizer Inc., Boehringer Ingelheim Pharmaceuticals, Inc., Boehringer Ingelheim USA Corporation, Sanofi US Services Inc., and Sanofi-Aventis U.S. LLC.

Corp. (2017) 4 Cal.5th 145.) As a result of this law, each Brand Defendant was responsible for the label on both OTC Zantac and OTC generic ranitidine during the time period when it owned the brand.

GSK and the Brand Defendants seek an order quashing the service of summons for lack of personal jurisdiction with respect to (1) claims based on the use of OTC generic ranitidine; (2) claims based on the use of OTC brand Zantac after the relevant Brand Defendant relinquished control of the medicine's label; and (3) claims of Plaintiffs who cannot prove that they used OTC brand Zantac during the time when the Brand Defendant had control of the label.

PROCEDURAL ISSUES

Plaintiffs properly initiated the process. On 7/25/22, the court issued an order on the motion to quash. Plaintiffs filed a motion regarding implementation, which was in effect a motion for reconsideration. On 8/10/22 the court stated at the hearing that there was the need for further briefing and ordered further briefing. The parties filed briefs and submitted evidence. All the issues are before the court and the court will decide the issues. *(Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1096.) This is a revisited order on the motion of defendants to quash.

Plaintiffs raised new arguments at various stages of the briefing. Plaintiffs should have presented all their arguments in opposing the initial motion to quash. The receipt of an unfavorable order is not a basis for a motion for a motion for

reconsideration. (*Corns v. Miller* (1986) 181 Cal.App.3d 195, 202 ["The only thing newly discovered was the inaccuracy of Bradbury's guess about what the court would rule"].)

The court will address all the arguments and consider all the evidence presented. This is a JCCP proceeding, which is complex litigation, and it may include complaints by hundreds of individual plaintiffs. (Order of 7/7/21 [ordering one plaintiff per complaint].) The court is directed to actively manage the JCCP. (CCP 3.400; Std Jud Adm. 3.10; *Volkswagen of America, Inc. v. Superior Court* (2001) 94 Cal.App.4th 695, 704-705.) A JCCP proceeding is most efficient if a court order can be applied to all the cases in the JCCP. The court and the parties all have a significant interest in the court deciding issues with the benefit of all the arguments and all the relevant evidence so that the order can be applied to all the cases in the JCCP. It would not be effective case management to decide a common issue such as jurisdiction for the first set of cases (the bellwether cases) and to then have second or third motions to address the same issue for other cases because the court did not consider certain arguments or evidence when the court heard the issue the first time.

The court's goal is to establish a legal framework that can then be applied to the facts for any given plaintiffs claims against any given defendant. The court strives for simplicity, but the framework must consider that there were sales of prescription Zan tac by GSK, sales of OTC Zantac by the Brand Defendants, and sales of genetic Ranitidine by generic manufacturers.

Defendants did not waive the jurisdictional arguments. Plaintiffs argue that certain defendants failed to timely file motions to quash and have therefore consented to the court's jurisdiction. Defendants raised the jurisdictional arguments early in the case. The court finds no waiver of the jurisdictional arguments.

The court does not continue the motion for jurisdictional discovery. (Pltf Oppo filed 9/14/22 at 5:17.) Plaintiffs have access to the extensive discovery already exchanged in the federal MDL proceeding. Plaintiffs have submitted extensive evidence. Plaintiffs did not identify any specific discovery that they need to adequately address the issue of specific jurisdiction.

The court repeats much of the text in the order of 7/25/22 in the interest of having a single comprehensive order that can be the subject of the likely appellate review.

EVIDENCE.

The Court has considered all the declarations submitted, as well as the exhibits attached thereto. The Court's consideration of the evidence is limited to the motion to quash and should not be construed as an indication of admissibility in future motions or at trial.

When there are disputes in the evidence, the trial court has weighed the evidence. *(Schneer v. Llaurado* (2015) 242 Cal.App.4th 1276, 1286; *In re Automobile Antitrust Cases I & 11(2005)* 135 Cal.App.4th 100, 113-114.)

FOCUS ON "JURISDICTION"

The motion is to quash based on lack of personal jurisdiction over the Brand Defendants for certain claims. Jurisdiction concerns whether it is consistent with due process for a defendant to be required to defend a claim in any given court. *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186.) Jurisdiction is not whether the plaintiff has a legally cognizable interest (standing) or whether the state has an interest in applying its laws (choice of law), or whether the plaintiff can prove the claim (merits), or whether the plaintiff has suffered injury (damages), or whether it would be convenient for judicial economy.

The parties expand "jurisdiction" to encompass arguments that are not related to jurisdiction. Defendants seem to argue that if a plaintiff cannot prove a claim (merits) then the court has no jurisdiction over the case because there was no injury in the jurisdiction. *(Wagner v. Terumo Medical Corporation* (S.D. Cal. 2018) 2018 WL 6075951) Plaintiffs seem to argue that if California has an interest in enforcing its laws (choice of law) then a California court must have jurisdiction over a defendant in a case. Plaintiffs rely on *T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, and *Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, both of which concern liability rather than jurisdiction. Plaintiffs argue that jurisdiction should be based on the efficient administration of justice. (Oppo at 13)

GOVERNING LEGAL PRINCIPLES

California courts may exercise jurisdiction on any basis consistent with the Constitutions of California and the United States. (CCP 410.10.)

When a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction. *(Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.) Plaintiff must meet the burden by competent evidence in affidavits and authenticated documents; an unverified complaint may not be considered as supplying the necessary facts. *(Nobel Floral, Inc. v. Pasero* (2003) 106 Cal.App.4th 654, 657-658.)

Once facts showing minimum contacts with the forum state are established, it becomes the defendant's burden to demonstrate that the exercise of jurisdiction would be unreasonable. *(Snowney v. Harrah's Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1062.)

Personal jurisdiction can be general (all-purpose) or specific (case-linked). A court has general jurisdiction over defendants who are at home in the court's forum; general jurisdiction allows a court to hear any claim against a defendant, regardless of where the underlying events occurred. In contrast, specific jurisdiction allows a court to adjudicate only those disputes relating to the defendant's contact with the forum. *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186; *LG Chem, Ltd. v. Superior Court of San Diego County* (2022) 80 Cal.App.5th 348, 360.)

The legal analysis is "intensely fact-specific" and "is not susceptible of mechanical application." *(LG Chem,* 80 Cal.App.5th at 361-362.)

GENERAL JURISDICTION

The Brand defendant are not citizens of California. (Complaint para 25-32.) Plaintiff does not present evidence of or argue for general jurisdiction.

SPECIFIC JURISDICTION - GENERALLY

"Specific jurisdiction exists where (1) the defendant has purposefully availed itself of a forum's benefits; (2) the controversy relates to or arises out of the defendant's contacts with the forum; and (3) the exercise of jurisdiction comports with fair play and substantial justice." *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186.) (See also *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 141 S.Ct. 1017, 1024-1025.)

Regarding the requirement that "the controversy relates to or arises out of the defendant's contacts with the forum," a plaintiff must show "'an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" *(Ford Motor Co.,* 141 S.Ct. at 1025.) The claim must "arise out of or relate to the defendant's contacts with the forum." *(Ford Motor Co.,* 141 S.Ct. at 1026.) "The first half of that standard asks about causation; but the back half, after the "or," contemplates that some relationships will support jurisdiction without a causal showing." *(Ford Motor Co.,* 141 S.Ct. at 1026.)

The specific jurisdiction analysis is specific to causes of action. "A "controversy" for purposes of specific jurisdiction is similar to a "cause of action" for purposes of claim preclusion (res judicata)." *(VHS Liquidating Trust v. Blue Cross of California* (Cal Superior 2022) 2022 WL 4445330 at *5.) A defendant that purposefully availed itself of doing business in a state might be subject to specific jurisdiction in the state for causes of action related to or arising from those contacts but not be subject to specific jurisdiction in that same state for different causes of action that are not related to or arising from those contacts. *(LG Chem, Ltd. v. Superior Court of San Diego County* (2022) 80 Cal.App.5th 348, 364-370 [no jurisdiction over consumer claims where defendant made commercial sales in state but did not make consumers sales in state].)

Plaintiffs distinguish between two types of legal theories: (1) the "Products Claims" which are based on the manufacture and marketing of the drugs consumed by each plaintiff and are based on defects in design, manufacture, transportation, storage, or labelling and (2) the "Label" claims which are based on a failure to update the label. The distinction between controversies can be relevant to the jurisdictional analysis given that plaintiff must demonstrate that "the controversy relates to or arises out of the defendant's contacts with the forum." *(LG Chem,* 80 Cal.App.5th at 364.) The court does not need to do a legal theory by legal theory analysis where the causes of action arise from the same set of facts and circumstances. (*VHS Liquidating Trust v. Blue Cross of California* (Cal Superior 2022) 2022 WL 4445330 at *5.)

On the facts of the cases in this JCCP, the claims all concern a single cause of action related to the consumption of prescription, brand OTC, or generic OTC ranitidine. If there is jurisdiction under one legal theory related to consumption and resulting illness then there is jurisdiction over all legal theories related to consumption and resulting illness. This is not a situation where plaintiffs have one set of claims based on the sale and consumption of one drug in California and are trying to extend jurisdiction to claims arising from the sale and consumption of an entirely different drug that was not sold in California. (Compare *VHS Liquidating,* 20222022 WL 4445330 at *5-6.)[2]

CLAIMS AGAINST BRAND DEFENDANTS BASED ON CONSUMPTION OF GENERIC RANTIDINE

The motion to quash is DENIED regarding the claims against the Brand Defendants based on the use of generic ranitidine. The court makes substantial changes from the Order of 7/25/22.

Under California law, plaintiffs can allege "innovator liability" claims against the Brand Defendants based on the consumption of generic ranitidine because under the FDA regulations the Brand Defendants control the labels that are on the generic ranitidine. *(TH. v. Novartis Pharm. Corp.*

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[2] On 7/26/22, the court informed counsel in this case that the court would hear the motions to quash in *Ranitidine.* JCCP 5010 and in *VHS Liquidating Trust* at the same time because they concerned somewhat similar jurisdictional issues. The court heard the motions in the two cases independently, but the court tries to be consistent in its analysis.

(2017) 4 Cal. 5th 145, 165; *Conte v. Wyeth, Inc.* (2008) 168 Cal. App. 4th 89.)

Defendants present evidence and argue that they made their labelling decisions in their home states for purposes of their own products and argue that they did not purposefully avail themselves of California when the generic manufacturers later (and as required by federal law) adopted those labels for the generic products. Plaintiffs present evidence that the Brand Defendants sold the Brand drugs in California during certain time periods and during those time periods they controlled the labelling of the brand products and argue that the Brand Defendants thereby determined the labelling of the generic products that were sold in California.

PURPOSEFUL AVAILMENT. The court finds that plaintiffs have demonstrated purposeful availment. The Brand Defendants purposefully availed themselves of doing business in California during the time periods when they owned the OTC Zantac brand and were selling brand name OTC Zantac in California. The alleged obligation of a Brand Defendant to update the label is concurrent with the Brand Defendant's ownership of the brand.

ARISE OUT OF OR RELATE TO THE CONTROVERSY.

The court finds that plaintiffs demonstrated "arise out of or related to" for purposes of jurisdiction. Plaintiffs distinguish between two different claims.

First, there are the products liability claims that are based on the drug. For those claims, a plaintiff's claim "arises out of or relates to" the drug that the plaintiff consumed. For purposes of this order on jurisdiction, the court assumes that a plaintiff cannot state a products liability claim against a Brand Defendant based on the plaintiff's consumption of generic ranitidine.

Second, there are the label-based claims. For those claims, a plaintiff's claim "arises out of and relates to" the label on the generic drug. A Brand Defendant has potential liability because 21 USC 355(j)(2)(A)(v) requires the generic to have the same label as the brand, 21 USC 352(f)(2) requires the Brand Defendant to update the label, and *TH v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, holds that the Brand Defendant can therefore be liable for failing to update the label that by law the generic manufacturer must put on the generic drug.

There is no California appellate authority relating to jurisdiction in this context. The federal trial court opinions are in conflict. There is no federal appellate authority.

The court finds that a label claim under California law "arises out of and relates to" a Brand Defendant's actions. The "arising from or related to" part of the analysis requires only that the claim arises from or relates to the defendant's action in the forum state that is the basis for the cause of action. "Purposeful" is not part of this part of the analysis.

On the facts of these cases, there is a close relationship among the following: (1) the Brand Defendants purposefully sold the Brand drugs in California, (2) under federal law the Brand Defendants are responsible for updating the OTC label, (3) under federal law the generic manufacturers must use the OTC label, (4) under California law the person with the obligation to update the label can be liable when that same label is used by third parties as required by federal law, (5) California consumers allegedly relied on the label, and (6) California consumers were injured. The duty that the Brand Defendants owe to California consumers for the labels on the generic drugs is a legal consequence of the Brand Defendants being responsible for updating the label on their own drugs. This legal consequence meets the "arising from" standard. The fact that the Brand Defendants and the generic manufacturers all sold OTC Zantac or ranitidine with the same label and the Brand Defendants were responsible for the content of that common label meets the "relating to" standard.

This appears somewhat unfair because the Brand Defendants are subject to California jurisdiction regarding the labels on generic drugs not from any purposeful act of the Brand Defendants to assist in the sale of the generic drugs in California but rather as the result of the combination of purposefully doing business in California, the obligations under federal statutes when doing that business, and the resulting duties under California case law. But it meets the "arising from or related to" analysis. If that seems unfair, then that is part of the "fair play and substantial justice" analysis.

The court considers the various trial court decisions on the subject in chronological order. It is well settled that decisions by the lower federal courts "are neither binding nor controlling on matters of state law." *(T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145, 175.) Out of-state trial court decisions are also not binding.

Case #1. *Quinn-White v. Novartis Pharmaceuticals Corporation,* (C.D. Cal., 3/7/2018) 2018 WL 6133637 at *3-5. Court finds jurisdiction. The court examined jurisdiction in the context of California "innovator liability." The court did not address "purposeful availment." The court stated: "[Defendant's] actions in California form the basis of Plaintiffs' case even though Quinn-White did not purchase or ingest Tegretol in California." *Quinn-White* found jurisdiction because: "Defendant's "exploitation of California markets by its sales, marketing, and advertising of its drug Tegretol, while simultaneously failing to adequately warn of and affirmatively misrepresenting its dangers in California, directly resulted in injury to a California resident in California when her California-based physician relied on the Tegretol label and prescribed the drug."

Case #2. *Henry v. Angeli Pharma, Inc.* (E.D. Cal., 3/31/2020) 2020 WL 1532174. Court finds no jurisdiction. The court did not distinguish between "purposeful availment" and "arising from or related to." The court found the in-state contacts too attenuated from the injury to support jurisdiction. The court stated: "Plaintiff fails to explain how the actions of a single salesman in California, marketing and selling a drug Plaintiff *did not take* to an

unknown number of practitioners, four to five years before an injury that was caused by a different drug manufactured by Teva, has anything to do with Plaintiffs claims."

Case #3. *Stirling v. Novartis Pharmaceuticals Corp.* (Idaho, 7/13/2020) 2020 WL 4259035. Court finds no jurisdiction. The court did not distinguish between "purposeful availment" and "arising from or related to." The court found the in-state contacts too attenuated from the injury to support jurisdiction. The court states: "Plaintiffs' evidence of contacts fails to establish that Brethine was marketed to Idaho as a tocolytic .... Important to the Court's decision is the lapse in time between the alleged contacts with Idaho (Horizon's marketing Brethine in calls in 1999) and Plaintiff Michelle's use of the generic form of Terbutaline Sulfate in 2007 .... It finds is unreasonable that Novartis was on notice that it may be called into Idaho courts to answer for use of a generic form of Brethine as a tocolyctic that was ingested six years after Novartis sold Brethine's NDA and seven years after its agent's direct marketing activity into Idaho."

Case #4. *In re: Zantac (Ranitidine) Products Liability Litigation* (S.D. Fla., 6/30/2021) 546 F.Supp.3d 1192.) Court finds no jurisdiction. The court examined jurisdiction in the context of California "innovator liability." The MDL court found that the Brand Defendants purposefully availed themselves of doing business in California. The MDL court found that plaintiffs did not prove "arising from or related to." The MDL court focused on the California law that "innovator liability" arises from the defendant's "failure to update the label"

and that "Plaintiffs conceded at the Hearing that they do not allege that Defendants made labeling decisions related to brand-name ranitidine products in California or Massachusetts." (546 F.Supp.3d at 1212-1213.) Based on that, the court found that the "innovator liability" claims of California plaintiffs did not arise from or relate to any actions of the defendants in California.

This court does not find the MDL *Zantac* analysis persuasive. A labelling claim by a California consumer against a Brand Defendant regarding the label on a generic drug (the "controversy") arises from the label on the generic drug in California. Under the combination of federal and California law, the Brand Defendant's ownership of the Brand and the resulting federal obligation to update the label makes the Brand Defendant responsible for the content of the labels on both the brand and the generic drug that are sold in California.

The court also considered two hypotheticals. If a Brand Defendant with business in California made an active misrepresentation on the label for its drugs with the result that the active misrepresentation was on the labels for generic drugs in California, then the resulting California claims would "arise from or relate to" the duty that the Brand Defendant had to the California consumers of brand and generic drugs. If the same Brand Defendant made a negligent omission on the label for its drugs, then the claim would similarly "arise from or relate to" the duty that the Brand Defendant had to the California consumers of brand and generic drugs. If in the former hypothetical the court's focus would be on the defendant's labels in California (whether

placed on its own branded products or placed on generic products), then in the latter hypothetical the focus should be the same. *(VHS Liquidating Trust v. Blue Cross of California* (Cal Superior 2022) 2022 WL 4445330 at *6 [the "controversy" is the action that directly causes the injury].) The court is not persuaded by the argument that the state where the defendant made the labelling decision instead of the state where the defendant purposefully did business is the state where jurisdiction lies, particularly where the operation of federal and state law support a state law duty to update the label that protects the consumers of both the brand and generic drug.

Case #5. *Whaley v. Merck & Co., Inc.* (S.D. Cal., 4/12/2022) 2022 WL 1153151. Court finds jurisdiction. The court examined jurisdiction in the context of California "innovator liability." "Purposeful availment" was not at issue. Defendants argued that there was no "arising from or related to" because the labelling decisions occurred in New Jersey and Pennsylvania. *Whaley* reasoned that the Supreme Court in *Ford* "explicitly rejected" the narrow focus on causation and the *Whaley* opinion therefore rejected the defendants' narrow focus on the label activities. *Whaley* considered and rejected the MDL *Zantac* analysis. *Whaley* states: "California law places liability on the Defendants for [the brand drug's] label even when Plaintiffs' do not ingest that drug. Accordingly, Defendants' [brand drug] activities in California relate to Plaintiffs' warning label claims even though [plaintiff] ingested generic montelukast. . . . To hold otherwise would impermissibly ignore binding California Supreme Court precedent." *Whaley* considered both the *Quinn*

White and *Zantac* trial court decisions. This court finds *Whaley* persuasive.

Case# 6. *Elabbassy v. Las Vegas Med. Grp., LLC,* (Sept. 9, 2022 Nev. D. Ct. (Clark Cnty.)) Case No. A-21-835385-C, at pp 3-6 (Wisner Dec Filed 9/15/22. PX 50). Court finds jurisdiction. The state court examined jurisdiction in the context of California "innovator liability." The court found "purposeful availment" from GSK's sales of Zantac in Nevada. Regarding "arise out of or relate to," the court stated: "But when a company "exercises the privilege of conducting activities within a state- thus enjoy[ing] the benefits and protection of [its] laws- the State may hold the company to account for related misconduct." The court held that Nevada had jurisdiction over out of state GSK regarding claims arising from the plaintiff's consumption of "branded and the generic versions of Zan tac." (Id at 3:4.) *Elabbassy* considered both the *Quinn White* and *Zantac* trial court decisions. This court finds *Elabbassy* persuasive.

Conclusion. Having considered its own analysis and the analysis in the above federal trial court cases, the court finds that the court has specific jurisdiction over the Brand defendants regarding the claims based on the labels on the generic OTC ranitidine. The court finds the analysis of "relate to" in *Ford* particularly applicable. The Brand Defendants sold their Brand drugs in California (purposeful availment) and as a matter of federal and California law the ownership of the Brand makes the Brand Defendants potentially liable for the label on the generic products sold to California consumers ("arises from or relates to"). If

a drug manufacturer purposefully does business in California, then California courts have jurisdiction over the manufacturer for claims by California consumers for failure to update the label without regard to whether the injury is (1) caused directly from a label on a brand drug or (2) caused indirectly from a label on a generic drug because federal law requires the generic to use the brand label.

At the hearing on 12/6/22, defendants tried to re-frame the question. Defendants argued that the existence of a California duty does not equate to California jurisdiction. The court agrees with that abstract proposition. A defendant that did not purposefully avail itself of doing business in California is not subject to California jurisdiction merely because it has a duty under California law to a California resident. But the facts of this case are not abstract. The Brand Defendants purposefully availed themselves of selling OTC Zantac in California, under federal law the ownership of the brand created an obligation to update the label, under California law the obligation to update the label creates a duty to all California consumers who rely on the label without regard whether the label was on brand or generic Zantac, California consumers allegedly relied on the label, and California consumers were allegedly injured.

The analysis is "intensely fact-specific" and "is not susceptible of mechanical application." *(LG Chem,* 80 Cal.App.5th at 361-362.) The exercise of jurisdiction over the brand defendants on claims by California consumers the claims based on their federal obligation to update the label comports with the federal and California Constitutions because the

defendants had "minimum contacts with the state" and "the assertion of jurisdiction does not violate traditional notions of fair play and substantial justice." *(Pavlovich,* 29 Cal.4th at 268.)

CLAIMS BASED ON USE OF BRAND ZANTAC AFTER THE DEFENDANT RELINQUSHED CONTROL OF THE BRAND

The motion to quash is GRANTED regarding the claims against the Brand Defendants based on the use of brand-name Zantac after the relevant Brand Defendant relinquished control of the medicine's label. The court has jurisdiction over each Brand Defendant for claims based on a failure to update the label during the time when the Brand Defendant owned the OTC Zantac brand. The court makes changes from the Order of 7/25/22 but reaches the same conclusion.

The argument that the Brand Defendants are not subject to jurisdiction in California for sales of brand-name Zantac after the relevant Brand Defendant relinquished control of the medicine's label is based on the same logic as the argument that Brand Defendants are not subject to jurisdiction in California for the labels on generic drugs. In both situations, the Brand Defendants argue that they updated the labelling for own drugs and the federally required use of that labelling by another party (generic manufacturer or subsequent owners of the Brand) is not related to the Brand Defendant's actions in California. The difference is that the liability for the label on generic drugs is based on a contemporaneous obligation to update the label whereas the liability for the label on subsequent

Brand OTC Zantac rests on whether there is a continuous, or continuing, obligation to update the label that persists or lingers after the sale of the brand.

PURPOSEFUL AVAILMENT. On "purposeful availment," the Brand Defendants purposefully availed themselves of doing business in California when they owned the Brand and were marketing and selling brand OTC Zantac in California. In contrast, the Brand Defendants did not purposefully avail themselves of doing business in California regarding OTC Zantac after they transferred the brand and stopped marketing and selling brand name Zantac in California.

Underlying this analysis is that specific jurisdiction is specific to a time frame and has temporal limits. A person or business that purposefully does business in California can be subject to specific jurisdiction for claims arising from the defendant's in-state activity while the Defendant was doing business in the state. That same person or business can check out of the state by ceasing to do business *(Ford,* 141 S.Ct. at 1030), but it can never leave the state's ability to assert jurisdiction claims arising from or related to the prior activity in the state.

The temporal scope of "purposeful availment" is simpler for a product sold in the state because the business sold the product in the state and the product remains in the state and can cause injury in the state long after the defendant stopped selling new products in the state. The issue is more difficult for marketing in the state because there is the

factual issue of whether the marketing in the state while the Brand Defendant owned the brand was "purposeful availment" just for that time period or was designed to build a brand that would last beyond the time period of the marketing eff01is. For example, when a Brand defendant sold the brand to another Brand defendant, the sale price presumably included both the right to the sell the product and the value of the brand as created through prior marketing. Similarly, a consumer might see an advertisement in one month and purchase the product many months later based in part on the advertisement.

On "purposeful availment," the court divides the analysis into three categories.

The first category. Plaintiffs have demonstrated that the Brand Defendants purposefully availed themselves of doing business in California during the time periods when they owned the OTC Zantac brand.

The second category. Plaintiffs have demonstrated that Brand Defendant GSK (but not BIPI) purposefully availed itself of doing business in California when it continued to have a continuing material interest in the financial success of the OTC Zantac brand after selling the brand. The specific jurisdictional analysis as a whole is "intensely fact-specific" and "both the United States Supreme Court and our high court have cautioned that the" 'minimum contacts' test ... is not susceptible of mechanical application." *(LG Chem,* 80 Cal.App.5th at 361-362.)

The evidence regarding continuing material interest in the financial success of the OTC Zantac brand falls into two sub-categories: (1) manufacture of component parts of the drug by GSK and BIPI and (2) licensing agreements that provided GSK with a continuing revenue stream from sales of the brand label OTC Zantac.

Manufacture. The evidence regarding manufacture is:

Manufacture by GSK. In December 2006, GSK sold the Zantac OTC brand to BIPI. After GSK sold the Zantac OTC brand to BIPI, GSK manufactured some of the actual ranitidine API used in BIPI's OTC Zantac products. There is evidence that GSK sold ranitidine API to BIPI in 2007, 2009, and 2010. The sales totaled 40,000 kgs (over 440 tons) of ranitidine powder. (PX 11 at 3279249; PX 12 at 3279259.)

Manufacture by BIPI. In January 2017, BIPI sold the OTC Zantac brand to Sanofi. After that sale, BIPI continued to manufacture the product for Sanofi until October 2019, when Sanofi recalled all Zantac. (Exh. 10 at 1533353.)

The law on manufacture is that a party is not subject to jurisdiction in all states when it puts a product in the stream of commerce and can anticipate that the product will be sold in all states or, more attenuated, will be incorporated into a product that will be sold in all states. "[P]lacing a product into the stream of commerce, may be felt nationwide- or even worldwide-but, without more, it is not an act purposefully directed toward the forum state. *(Pavlovich v. Superior Court* (2002) 29 Cal.4th

262, 274.) "[M]ere foreseeability is not enough for jurisdiction." *(Pavlovich,* 29 Cal.4th at 277.)

The court finds that a defendant did not purposefully avail itself of California solely on the basis that the defendant manufactured a component part of Zantac for sale to a company that in tum made the final product and then sold the final product in California. After the sale of the brand, the party that manufactured the component part was in the same relationship with California regarding the sale of the finished product in California as any other manufacturer of a component part. Under *Pavlovich,* California does not have jurisdiction over a person that merely manufactured a component part that made it into a product that another person sold in California.

Licensing. The evidence regarding licensing is:

License Agreement.[3] GSK and Warner-Lambert (later known as Pfizer) owned the OTC brand from 1995-1998. In December 1998, GSK sold its portion of the OTC brand to Warner-Lambert. (PX 8 [0001103525].) As part of the 1998 transaction between GSK and Warner-Lambert, GSK retained a continuing interest in the sale of OTC Zantac. Specifically, in the event that Warner-Lambert's net sales of OTC Zantac in any calendar year exceeded $130 million, Warner-Lambert was to pay GSK "an

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[3] The court requested evidence and briefing on this point. (Evid Code 775; *People v. Spector* (2011) 194 Cal.App.4th 1335, 1368-1369 ["it is not merely the right but the duty of a trial judge to see that the evidence is fully developed before the trier of fact and to assure that ambiguities and conflicts in the evidence are resolved insofar as possible"].)

amount equal to 12% of that portion of such Net Sales exceeding $130 mission in such year. (PX 8 [0001103527].) Warner-Lambert's obligation to make these continuing payments to GSK ceased when the payments reached an aggregate of$25 million. (PX 8 [0001103527].)

In 2006, Pfizer (flea Warner-Lambert) sold the OTC Zantac brand to BIPI. As part of the 2006 transaction, Pfizer and BIPI discussed whether under the 1998 contract there was "an acceleration in royalty payments upon change of control." The parties to the 2006 transaction concluded that there was no acceleration in royalty payments, that Pfizer would not make "a one time payment that would extinguish future royalty payments" and that BIPI "would need to take on those royalty payments [to GSK] for annual sales in excess of $130mm." (PX 8 [0001103521].)

GSK received continuing royalty payments from the sale of OTC Zantac brand after GSK sold its interest to Warner-Lambert in December 1998 and also after Pfizer (fka Warner Lambert) sold the OTC Zantac brand to BIPI in 2006. The evidence supports the conclusion that GSK continued receiving royalties from the sale of OTC brand Zantac through December 2016. Plaintiff acknowledged that "It is unknown whether Sanofi took in those royalty obligations when it purchased OTC Zantac in January 20178." (Pltf Supp brief on royalties at 5:5-8.)

The court finds that plaintiffs have demonstrated that GSK purposefully availed itself of doing business in California regarding OTC Zantac

during the period when GSK continued to receive royalties from the sale of OTC Zantac in California . A licensing agreement regarding the sale of OTC Zantac in California can be the "purposeful availment" of doing business in California. *(Rivelli v. Hemm* (2021) 6 Cal.App.5th 380, 397.) The court has considered *Red Wing Shoe Co., Inc. v. Hockerson-Halberstadt, Inc.* (Fed. Cir. 1998) 148 F.3d 1355, and finds it distinguishable because in that case the receipt of payments was the only contact related to the transaction.

The court does not look at the royalty payments in isolation. The court considers the continuing royalty payments for OTC Zantac in light of GSK's manufacture of component parts of OTC Zantac and its GSK's continued ownership of prescription Zantac.

The court considers that GSK had the opportunity to ""structure [its] primary conduct" to lessen or even avoid the costs of state-court litigation." *(Ford,* 141 S.Ct. at 1030.) The law on jurisdiction "allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit.'" *(Pavlovich,* 29 Cal.5th at 285 [dissent, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462,472, in tum quoting *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 297].) This case stands in contrast with *LG Chem,* where "LG Chem deliberately structured its transactions to prevent 18650 batteries from being used by individual California consumers ... as standalone replacement batteries." *(LG Chem,* 80 Cal.App.5th at 368.) In this case, GSK decided in the

1998 contact with Warner-Lambert to retain an ongoing stream of payments from the sale of OTC Zantac. (PX 8 [0001103527.) GSK retained that ongoing stream of payments from the sale of OTC Zantac through December 2016. GSK did not "structure its conduct" to make a clean break with the OTC Zantac Brand.

This is a fact specific decision based on the evidence in this case. That noted, the court has considered the implications if the court were to permit a business to nominally cease its purposeful availment of California for purposes of selling a product while at the same time retaining a financial interest in the sales of that product in California. The opportunities for creative structuring a business for jurisdiction avoidance similar to tax avoidance are obvious. The court's analysis in this case therefore puts an emphasis on the concept of the "clean break." If a business decides to not make purposeful sales of a product in in California and to forego the financial benefits of selling the product in California, then it can structure its business so that it does not market or sell the product in California. *(LG Chem,* 80 Cal.App.5th at 368.) But a business that has a substantial interest in the ongoing sale of a product in California has not made a clean break with California. (Civil Code 3528 ["The law respects form less than substance"].)

The third category. Plaintiffs have not demonstrated that the Brand Defendants purposefully availed themselves of doing business in California after they sold the brand and made a clean break from the brand. The court finds that for the defendants who made a clean break with the sale

of OTC Zantac in California that the plaintiffs have not demonstrated "purposeful availment" for purposes of jurisdiction after the clean break.

Those sales were: OTC Zantac was manufactured and sold by various Brand Defendants as ownership of the brand was transferred from entity to entity. GSK owned the OTC brand from 1983-1995 [no clean break for GSK], GSK and Warner-Lambert owned the OTC brand from 1995-1998 [no clean break for GSK], Warner-Lambert owned the OTC brand from 1998-2000 [no clean break for GSK], Pfizer (fka Warner-Lambert) owned the OTC brand 2000-2006 [no clean break for GSK], BIPI owned the OTC brand 2006-2106 [clean break for GSK in December 2016], and Sanofi owned the OTC brand 2016-present. (Cpt para 53-61; evidence in supplemental briefing on licensing and royalties.)

ARISE OUT OF OR RELATE TO THE CONTROVERSY.

The claims of the plaintiffs against the Brand Defendants for labelling does "arise out of or relate to" the actions in California for the time periods when the Brand Defendants owned the Brand.

Conversely, the claims of the plaintiffs against the Brand Defendants for labelling does not "arise out of or relate to" the actions in California for the time periods when the Brand Defendants did not own the Brand and were not responsible for updating the label.

Regarding GSK, although GSK purposefully availed itself of California regarding the sales of

OTC Zantac from 1983-2016, the claims against GSK are nevertheless limited to those "arising from and related to" GSK's manufacturing, sales, and labelling of OTC Zantac from 1983-1998 because GSK manufactured, sold, had labeling responsibility for OTC Zantac only from 1983-1998.

In Plaintiffs' brief filed 9/14/22 at 11-12, plaintiffs raised the issue of whether the court has jurisdiction over a defendant (GSK) for claims based on action or inaction while it owned the brand but arising after it sold the brand. Plaintiffs' "successor liability" argument[4] was focused on the foreseeability that GSK's label would continue to be used even after GSK lost control over the OTC Zantac label in January 1999. (Pltf brief filed 9/14/22 at 11-12.) This argument conflates issues of specific jurisdiction with issues of causation.

The court has jurisdiction over GSK for claims arising from or related to GSK's OTC Zantac labelling responsibilities from 1983-1998. If plaintiff thinks that GSK's failure to update the OTC Zantac label before December 1998 caused an injury to a plaintiff in or after January 1999, then plaintiff can make that argument. If GSK wants to argue that under 21 USC 352(f)(2) the obligation to update the label transfers when the brand is transferred and that the labelling obligation of the new owner under federal law eclipses the obligations of the former

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[4] "Successor liability" is an established equitable theory that applies when a corporation sells its assets to a successor corporation and either the purchasing corporation is a mere continuation of the seller or the transfer of assets was to escaping liability for the seller's debts. *(Rubio v. CIA Wheel Group* (2021) 63 Cal.App.5th 82, 102.)

owner and cuts off any causation as a matter of law, then GSK can make that argument. That might be a common issue that the parties can agree to present to the court for summary adjudication. (CCP 437c(t).) The court will not decide that issue of substantive law in the context of a jurisdictional motion.

CLAIMS WHERE PLAINTIFF CANNOT PROVE THE CLAIM.

The motion to quash is DENIED regarding the claims against the Brand Defendants based on the argument that the court has no jurisdiction over the claims of Plaintiffs who cannot prove that they used brand-name Zantac during the time when the Brand Defendant had control of the label. There is no change from the Order of 7/25/22.

Defendants are seeking an advisory opinion on the merits on the cases in the guise of a motion regarding whether the court has jurisdiction over the defendants. The court will not issue an advisory opinion.

Defendants cite to *Wagner v. Terumo Medical Corporation* (S.D. Cal. 2018) 2018 WL 6075951, for the proposition that absent proof of use there is no basis for specific jurisdiction.

This California trial court is not required to follow unpublished federal trial court opinions. (*Governor Gray Davis Com. v. American Taxpayers Alliance* (2002) 102 Cal.App.4th 449, 468.)

The court does not follow *Wagner* because it seems to conflate jurisdiction with the ability to prove a claim on the merits. In *Clayworth v. Pfizer, Inc.* (2010) 49 Cal.4th 758, 789, the court noted that standing to file a claim and the ability to prove that claim are different things. *Clayworth* states: "this argument conflates the issue of standing with the issue of the remedies to which a party may be entitled. That a party may ultimately be unable to prove a right to damages (or, here, restitution) does not demonstrate that it lacks standing to argue for its entitlement to them." (49 Cal.4th at 789.)

This court follows the reminder in *Clayworth* to pay attention to the distinction between legal issues. A court can properly exercise jurisdiction over a defendant even if the plaintiff ultimately cannot prove a claim against the defendant. If a plaintiff asserts that she purchased and used a product in California during a time period when the defendant sold the product in California (or had a legal obligation to update the labels used on products sold in California), then a California court has jurisdiction over the defendant for purposes of that claim even if the plaintiff cannot prove her claim.

FAIRPLAY AND SUBSTANTIAL JUSTICE.

If the plaintiffs meet their burden on "purposeful availment" and "arise out of or relate to," then the burden shifts to the defendants to show that jurisdiction is not reasonable. "A determination of reasonableness rests upon a balancing of interests: the relative inconvenience to defendant of having to defend an action in a foreign state, the interest of plaintiff in suing locally, and the

interrelated interest the state has in assuming jurisdiction." *(Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 591.)

Regarding the defendants' interests, the venue is not inconvenient. The Brand Defendants can present evidence and argument in a California court. "[B]ecause 'modem transportation and communications have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity,' it usually will not be unfair to subject him to the burdens of litigating in another forum for disputes relating to such activity." *(Swenberg v. Dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 300 [quoting *Burger King,* 471 US at 474, in turn quoting *McGee v. International Life Ins. Co* (1957) 355 US 220, 222-223].)

Regarding the defendants' interests, the exercise of California jurisdiction is reasonable when the underlying duty is based on the federal obligation to update the label and California case law on duty. When defendants chose to own the brand and to do business in California, they did so knowing they would be subject to California law. Starting with *Conte v. Wyeth, Inc.* (2008) 168 Cal.App.4th 89, California case law has been clear that a name-brand prescription drug manufacturer's duty to use due care when providing product warnings extends to persons whose prescriptions are filled with the generic version of the drug. *Conte* applies to claims arising before 2008 based on the long settled "general rule that judicial decisions are given retroactive effect." *(Newman v. Emerson Radio Corp.* (1989) 48 Cal.3d 973, 978-979.)

Regarding the plaintiffs' interests, the plaintiffs are California residents, they seek to prosecute the claims in California, and they can reasonably prosecute the claims in California.

Regarding the state interest, "California has a manifest interest in providing a local forum for its residents to redress injuries inflicted by out-of-state defendants." *(Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 591.)

Regarding the court's interest in the efficient administration of justice, the court finds that it is better for California courts to interpret and apply California law than for out-of-state or federal courts to interpret and apply California law. This is particularly appropriate on an issue where California is one of only two states to have recognized the doctrine. *(Zantac,* 546 F.Supp.3d at 1198 ["California or Massachusetts, the only two states that recognize Plaintiffs' theory of liability"].) Out-of-state and federal courts are understandably reluctant to step into novel issues of California law. *(Zantac,* 546 F.Supp.3d at 1213 ["considerations of comity and federalism counsel that [the federal court] proceed gingerly when venturing into uncharted waters of state substantive law"].) It is better to have a California trial court (and perhaps a California Court of Appeal) interpret and apply California law than to have an out-of-state court try to guess how California would apply uncharted California law.

Regarding the court's interest in the efficient administration of justice, the court finds that the it would serve the efficient administration of justice if

the court exercised jurisdiction over all of the claims against each of the Brand Defendants. *World-Wide Volkswagen Corp. v. Woodson* (1980) 444 U.S. 286, 292, states that a relevant factor is "the interstate judicial system's interest in obtaining the most efficient resolution of controversies." In *Daimler Trucks North America LLC v. Superior Court* (2022) 80 Cal.App.5th 946, 960, the court expressly considered judicial efficiency in finding that the court had jurisdiction over Daimler. The court stated: "That California has jurisdiction over the other defendants reinforces the notion that jurisdiction over Daimler comports with fair play. The rights of all the defendants can be adjudicated in one setting, not one part in California and another part in Oklahoma or Oregon or Delaware. A single suit is more economical, avoids the possibility of inconsistent judgments, and places post judgment proceedings, including any enforcement efforts, in one locale."

In *BMS,* 13 7 S.Ct at 1780, the Court omitted the factor of judicial efficacy when it listed the "variety of interests" that a court is to consider in determining whether personal jurisdiction is present. The court's Westlaw search shows that the United States Supreme Court has not used the phrase "interstate judicial system's interest in obtaining most efficient resolution of controversies" in any case in the 42 years after *World-Wide Volkswagen.* The court can harmonize *World-Wide Volkswagen* with *BMS* with the observation that in *BMS* the court focused on the areas where the plaintiff has the burden of proof ("purposeful availment" and "arise out of or relate to") and did not

reach the area where the defendant has the burden of proof (fair play and judicial efficiency).

On the claims where plaintiffs have met their burdens, the Brand Defendants have not demonstrated that it would be unfair for the court to extend jurisdiction over them on those claims.

Assuming that plaintiffs had met their burdens on all the causes of action asserted by plaintiffs against each of the defendants related to Prescription Zantac, brand OTC Zantac, or generic OTC ranitidine, then the court would find that each defendant can reasonably and efficiently defend against all the asserted claims against that defendant in a California state court.

In addition, it would enhance judicial efficiency if defendants defended all the claims against them in a series of single California cases rather than defending against some claims in cases filed in California courts and other related cases filed in the courts of other states or in federal courts. *(Daimler,* 80 Cal.5th at 960.)

SUMMARY OF ORDER

The court has jurisdiction over the defendants on the following claims:

GSK- Prescript	Prescription Zantac claims at all time.

GSK - OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 1996-1998.
GSK - Generic	Generic claims arising from labelling 1996-1998.
Pfizer-OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 1999-2006.
Pfizer - Generic	Generic claims arising from labelling 1999-2006.
BIPI - OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 2007-2016.
BIPI - Generic	Generic claims arising from labelling 2007-2016.
Sanofi -OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 2017-2019.
Sanofi - Generic	Generic claims arising from labelling 2017-2019.

PREPARATION OF FINAL ORDER

The court ORDERS that within five days of this order that plaintiffs as the prevailing parties prepare an order that summarizes the order in a manner similar to the above table and applies the order to the specifics of the individual cases. The court ORDERS that within five days thereafter that defendants either give notice of agreement that the proposed order properly summarizes the order in table and applies the order to the specifics of the

individual cases or file a statement of reasons for disapproval and an alternative proposed order. (CRC 3.131 2(a).) The court will then enter the final order.

The proposed final order must identify the specific date that one defendant sold the OTC brand to another defendant. The briefing referred to years of brand ownership rather than to the specific dates the defendants transferred ownership of the brand.

The court encourages a proposed final order that states clearly for each plaintiff and case: (1) what are the time frame(s) of consumption, (2) what are the products (prescription Zantac, OTC Zantac, OTC generic ranitidine), (3) what defendants are implicated, (4) what is the legal theory for the implication (ownership of brand liability, innovator liability), and (5) whether the court has jurisdiction. The court does not dictate any particular format for the order and encourages counsel to focus on the goals of accuracy and clarity.

INTERLOCUTORY REVIEW - CCP 166.1

At the hearing on 12/7/22, Defendants requested a CCP 166.1 finding that the order was appropriate for interlocutory review. Plaintiffs opposed the request. The court denies the request as unnecessary.

Defendants have a statutory right to seek immediate review of the order denying the motion to quash. CCP 418.10(c) states: "If the motion [contesting jurisdiction] is denied by the trial court, the defendant, ..., may petition an appropriate reviewing court for a writ of mandate to require the

trial court to enter [an] order quashing the service of summons or staying or dismissing the action." A trial court CCP 166.1 finding would be superfluous.

WAIVER OF OBJECTION TO JURISDICTION

The parties did not address whether defendants have waived any objection to jurisdiction by appearing and participating in discovery. *(State Farm General Ins. Co. v. JT's Frames, Inc.* (2010) 181 Cal.App.4th 429, 437-444.) In the bellwether case of *Goetz v. GlaxoSmithKline,* RG20061705, *Sargon* motions have been filed and are set for 1/25/23, motions for summary judgment have been filed and are set for 2/2/23, and trial is set for 2/14/23. It is unclear to the court, and the court does not decide, whether defendants have waived any objection to jurisdiction given that neither party has raised that issue or presented a factual record on which the court could consider the issue. The court identifies the issue only to state that it might be an issue and that the court is not addressing it.

Dated:
December 08, 2022

[Signature]
Evelio Grillo
Judge of the
Superior Court

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

IN RE RANTADINE CASES	No. JCCP 5150 No. RG20061705 (Goetz) No. 21CV002172 (Bautista) ORDER IMPLEMENTING REVISITED ORDER ON MOTION TO QUASH SERVICE OF SUMMONS AND COMPLAINT ENTERED ON 12/8/22. Date: N/A Time: N/A Dept.: 21

BACKGROUND AND EXPLANATION OF ORDER

The revisited motion of defendants to quash service of summons and complaint came on for hearing on l2/07/22, in Department 21 of this Court, the Honorable Evelia Grillo presiding. Counsel appeared on behalf of Plaintiff and on behalf of Defendants. On December 8/22/22, the court entered its order. The order concludes:

The court has jurisdiction over the defendants on the following claims:

GSK - Prescript	Prescription Zantac claims at all time.
GSK - OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 1996-1998.
GSK-Generic	Generic claims arising from labelling 1996-1 998.
Pfizer- OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 1999-2006.
Pfizer - Generic	Generic claims arising from labelling 1999-2006.
BIPI -OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 2007-2016.
BIPI - Generic	Generic claims arising from labelling 2007-2016.
Sanofi - OTC	OTC Zantac claims arising from design, manufacture, transportation, storage, or labelling 2017-2019.
Sanofi - Generic	Generic claims arising from labelling 2017-2019.

The order directed the parties to propose orders that specifically applied the framework to the individual cases. The proposed orders and the argument on 12/20/22 highlighted two areas where the order of 12/8/22 could have been clearer.

SPECIFIC LEGAL THEORIES. The above chart could be read to suggest that specific jurisdiction is based on the specific legal theories asserted. As a matter of law, specific jurisdiction is not parsed on a legal theory by legal theory basis. Rather, specific jurisdiction exists as to a party and a "cause of action" as that phrase is used in the concept of a primary right. The order of 12/8/22 states that "The specific jurisdiction analysis is specific to causes of action" and "The court does not

need to do a legal theory by legal theory analysis where the causes of action arise from the same set of facts and circumstances" and "If there is jurisdiction under one legal theory related to consumption and resulting illness then there is jurisdiction over all legal theories related to consumption and resulting illness." (Order of 12/8/22 at 8:1-9:3.) The court acknowledges that this court could have been clearer in the distinction between legal theory, claim in complaint, and cause of action/primary right. (Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2022) Section 6:108 [discussing definition of "cause of action"].)

The references to legal theories in the chart in the order of 12/8/22 should not have been be taken to suggest either that the specific jurisdiction analysis is applied on a legal theory by legal theory basis, or that the court's jurisdiction over those defendants is limited to claims for injuries under those legal theories but not other legal theories.

The attention to specific legal theories also risks conflating jurisdiction and the merits of a particular claim asserted. The specific jurisdiction analysis under CCP 410.10 and constitutional due process does not consider whether a cause of action might have merit. A court can have jurisdiction over an out-of-state defendant on causes of action where the defendant might successfully defend itself on the merits of some of the legal theories. The order of 12/8/22 was careful to distinguish issues of jurisdiction from issues of duty, breach, and causation. (Order of 12/8/22 at 5:13-6:16; 23:19-24: 14; 24:16-19.) The patties should not interpret the

order on jurisdiction as an order on the merits of the causes of action.

TEMPORAL SCOPE IS DEFINED BY THE PRESENCE AND OBLIGATIONS OF THE DEFENDANT

The order of 12/8/22 is unclear regarding whether the temporal scope of jurisdiction is determined by (1) a defendant's presence in the state and resulting legal obligations during the relevant time-period or (2) a plaintiffs purchase or use of the product during the relevant time period. The argument on 12/20/22 brought this to the court's attention.

Suggesting a focus on the defendant's actions, the order at 17:3-6 states "The court has jurisdiction over each Brand Defendant for claims based on *a failure to update* the label during the time when the Brand Defendant owned the OTC Zantac brand." (Order at 17:3-16.) The order at 24:3-5, states "The com1 has jurisdiction over GSK for claims arising from or related to GSK's OTC Zantac *labelling responsibilities* from 1983-1998." The chart in the order at 29:1-11 refers to *"claims arising_from design, manufacture, transportation, storage, or labelling" during certain time periods.*

Suggesting a focus on the plaintiffs purchase or use, the Order at 17:3-5 refers to "the *use* of brand-name Zantac after" certain time periods. (Order of 12/8/22 at 17:3-5.) The order at 25:14-18 states: "If a plaintiff asserts that she *purchased and used* a product in California during a time period when the defendant sold the product in California

(or had a legal obligation to update the labels used on products sold in California), then a California court has jurisdiction over the defendant for purposes of that claim."

The court clarifies that the exercise of jurisdiction is limited to a time-period based on (1) a defendant's presence in the state and (2) the legal obligations imposed on the defendant during the time that the defendant was present. This is not a change in the order. The order at 18:7-10 observed "The temporal scope of "purposeful availment" is simpler for a product sold in the state because the business sold the product in the state and the product remains in the state and can cause injury in the state long after the defendant stopped selling new products in the state." The order's analysis at 23:19-24:13 expressly states that GSK's alleged breach of the legal obligation to update a label in a time period when a court has jurisdiction over GSK might have an effect in a later time period, and that the relevant issue is causation between the alleged breach in the first time period and the injury in the second time period. The court's specific consideration of an issue in one pai1 of an order reflects the court's reasoning better than (unfortunate and inconsistent) word choice elsewhere in the order. The court's reasoning in the order at 23:19-24:13 was in the context of OSK but logically applies equally to all defendants.

Putting the focus on the defendant's presence in the state during a time-period and its legal obligations during that time-period is consistent with the jurisdictional analysis 's focus on the actions of the defendant and not on the actions of the

plaintiff. Although the jurisdictional analysis is based generally on the "relationship among the defendant, the forum, and the litigation" *(Ford,* 141 S.Ct. 1017, 1028, 1030), the specific jurisdiction analysis focuses on whether, or during what time frame, the defendant purposefully availed itself of doing business in the forum state. *(Bader v. Avon Products, Inc.* (2020) 55 Cal.App.5th 186.) Consistent with the focus on the defendant, the court clarifies that the com1 has jurisdiction over a defendant for claims arising from the time-period when the defendant was purposefully availing itself of doing business in the state and acted, or was legally obligated to act, even if the plaintiffs use of the product or the resulting injury happened afterwards.

In the chart attached to this order, the court states that the court has jurisdiction over a defendant for "causes of action arising from legal responsibilities when defendant owned the NDA." This is intended to be equivalent to the language in the chart in the order of 12/8/22 that the court has jurisdiction over a defendant for "claims arising from design, manufacture, transportation, storage, or labelling" when defendant owned the NDA. Again, the court's ability to exercise jurisdiction over a defendant regarding a controversy is not an indication that the plaintiffs causes of action or legal theories regarding that controversy have any merit.

FACTS ADDED BY DEFENDANTS IN THE PROPOSED ORDER

The order of 12/8/22 states: "The proposed final order must identify the specific date that one defendant sold the OTC brand to another

defendant." Defendants provided the missing specific dates.

GlaxoSmithKline LLC (or its predecessor companies) (collectively, "GSK") controlled the New Drug Application ("NDA") for prescription brand name Zantac between June 9, 1983 and the present.

GSK controlled the NDA for over-the-counter ("OTC") brand-name Zantac between December 19, 1995 and December 31, 1998, at which point exclusive control over OTC Zantac transitioned to Warner-Lambert Consumer Healthcare.

Pfizer Consumer Healthcare (or its predecessor Warner-Lambert Consumer Healthcare) (collectively, "Pfizer") controlled the NDA for OTC brand-name Zantac between January 1, 1999, until December 20, 2006, at which point through a series of divestures, it was transitioned to Boehringer Ingelheim Pharmaceuticals, Inc. ("BI").

BI controlled the NDA for OTC brand-name Zantac between December 20, 2006, and December 31, 2016.

Sanofi US Services Inc. and Sanofi-Aventis U.S. LLC ("Sanofi") controlled the NDA for OTC brand-name Zan tac between January 1, 2017, and the present.

ORDER

The Court enters the following order implementing its Revisited Order on Motion to Quash Service of Summons and Complaint entered on December 8, 2022. In an effort for completeness,

the court identifies combinations and permutations of jurisdiction even if they were not disputed in the motion.

The Motion did not address causes of action against GSK involving use of prescription brand Zantac.

The Motion did not address causes of action against GSK involving use of prescription generic ranitidine.

The Motion is DENIED as to causes of action against GSK, Pfizer, BIPI, and Sanofi based on the use of OTC generic ranitidine at any time arising from design, manufacture, transportation, storage, or labelling" during the time-period when the relevant Defendant held the NDA for OTC brand-name Zantac. (Order at 9:3-16:22.)

The Motion is DENIED as to causes of action against GSK, Pfizer, BIPI, and Sanofi based on the use of OTC brand-name Zantac at any time arising from design, manufacture, transportation, storage, or labelling" during the time-period when the relevant Defendant held the NDA for OTC brand-name Zantac. The court has jurisdiction over a defendant for claims "arising from design, manufacture, transportation, storage, or labelling" during the relevant time-period even if the plaintiffs use of the product or resulting injury happened afterwards.

The Motion is GRANTED as to causes of action against GSK, Pfizer, BIPI, and Sanofi based on the use of OTC brand-name Zantac at any time

arising from design, manufacture, transportation, storage, or labelling" during any time-period when the relevant Defendant did not hold the NDA for OTC brand-name Zantac. (Order 17: 1- 24:14.)

The Motion is GRANTED as to Defendant Pfizer in *Boyd* (21 CV002 l 65), *Hughes* (21 CV002908), and *Pratt* (21 STCV 42316). The parties agree on this.

Attached to this Order is a table summarizing and applying this Order to each of the sixteen Plaintiffs that are the subject of this Order.

IT IS SO ORDERED

Dated: Dec 22 2022 [Signature]
Hon. Judge Evelio Grillo

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
Apodaca	21STCV411	Generic prescription	3/2012 – 5/2019	GSK	Innovator	Yes	Denied
Bautista	21CV002172	Brand & generic OTC	9/2009 – 6/2019	GSK	Successor, Innovator	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
					Sanofi	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Boyd	21CV002165	Generic Prescription	2013 – 2019	GSK	Innovator	Yes	Denied
		Brand &	2013 – 2019	Pfizer	Successor,	No	Granted

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
		generic OTC			Innovator		
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				Sanofi	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Browne	21CV002136	Brand & generic OTC	10/1996 – 6/2013	GSK	Owner of NDA, Innovator	Yes	Denied
		Brand & generic OTC	10/1996 – 6/2013	Pfizer	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of	Yes for causes of	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
					NDA	action arising from legal responsibilities when defendant owned the NDA.	
Cantlay	21CV003164 Harper (Cantlay Estate) 22CV017341	Brand & generic OTC	2012-2017	GSK	Successor, Innovator	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Caratti	RG20061712	Generic prescription	10/2010 – 10/2018	GSK	Innovator	Yes	Denied
Cook	CGC-21-596815	Brand & generic OTC	2004 – 2016	GSK	Successor, Innovator	Yes for causes of action arising from legal responsibilities when defendant	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
						owned the NDA.	
				Pfizer	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Eiss	21CV002163	Brand & generic prescription	1983 – 11/2014	GSK	Owner of NDA, Innovator	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
		Brand &	1983 –	Pfizer	Owner of	Yes for causes of action arising from	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
		generic OTC	11/2014		NDA	legal responsibilities when defendant owned the NDA.	
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Goetz	RG20061705	Brand & generic prescription	Late 1980's – 4/2020	GSK	Owner of NDA, Innovator	Yes	Denied
		Brand & generic OTC	Late 1980's – 4/2020	BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
				Sanofi[1]	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Hughes	21CV002908	Brand OTC	12/2008 – 9/2011	GSK	Successor	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				Pfizer	Successor	No	Granted
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant	Denied

[1] Plaintiff Goetz is dismissing his claims against Pfizer.

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
						owned the NDA.	
Pratt	21STCV42316	Generic prescription	11/2016 – 4/2020	GSK	Innovator	Yes	Denied
		Brand OTC	9/2016 – 11/2016	Pfizer	Successor, Innovator	No	Granted
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Price	21CV002170	Generic prescription	2015 – 8/2020	GSK	Innovator	Yes	Denied
Riggio	RG200773389	Brand & generic OTC	2008 – 7/2019	GSK	Successor, Innovator	Yes for causes of action arising from legal responsibilities when defendant	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
						owned the NDA.	
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Russell	RG20061561	Generic prescription	2017 – 12/2019	GSK	Innovator	Yes	Denied
		Brand & generic OTC	2001 – 2017	Pfizer	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
						owned the NDA.	
				Sanofi	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
Stewart	21CV001687	Generic prescription	7/2003 – 12/2018	GSK	Innovator	Yes	Denied
		Brand & generic OTC	7/2003 – 12/2018	Pfizer	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied
				BI	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant	Denied

Plaintiff	Case No.	Alleged Product Use	Dates of Alleged Product Use	Defendants	Claim Theory	Jurisdiction	Ruling
						owned the NDA.	
Warwick	21CV002181	Brand & generic OTC	5/1995 – 5/2008	GSK[2]	Owner of NDA	Yes for causes of action arising from legal responsibilities when defendant owned the NDA.	Denied

[2] Plaintiff Warwick is dismissing her claims against Pfizer.

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT
DIVISION TWO

GLAXOSMITHKLINE, LLC, et al., Petitioners, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; STEPHANE APODACA et al., Real Parties in Interest	A166778 (Alameda County Super. Ct. No. JCCP 5150)

BY THE COURT:

The petition for writ of mandate is denied. Petitioners have failed to establish that the superior court erred in denying their motion to quash. (See *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court* (2021) 592 U.S.__, 141 S.Ct. 1017, 1026 [rejecting "causation-only approach" to specific jurisdiction]; *Bueno & Merck & Co., Inc.* (S.D.Cal. 2022) 626 F.Supp.3d 1154, 1158-1161.) In reviewing the superior court's challenged rulings, which present pure questions of law based on undisputed facts, this court reviews the rulings and is not bound by the superior court's stated reasons or rationale. *(Earnest v. Commission on Teacher Credentialing* (2023) 90 Cal.App. 5th 62, 74.)

As far as this court is aware, since the United States Supreme Court's decision in *Ford Motor Co. v. Mont. Eighth Judicial Dist. Court, supra,* 592 U.S. __, 141 S.Ct. 1017, California state courts and federal courts in California have without exception rejected jurisdictional claims similar to those made by petitioners. Further, insofar as petitioners contend the legal issue presented will recur unless there is published authority resolving it, the court observes that the issue will not evade review if a court ultimately grants a motion to quash based on the arguments petitioners urge this court to adopt. In that instance, an aggrieved party would presumably have a right to appeal a judgment entered against it. In any event, and while not a basis for this court's denial of the petition, the byzantine facts of this complex coordinated proceeding make it a particularly ill-suited vehicle to address the underlying legal question.

Further, and again not a basis for this court's denial of the petition, the court observes that the voluminous record supporting the petition does not comply in many respects with applicable rules of court. Among other things, the electronic files are not consecutively paginated even within individual exhibits, individual electronic files exceed 300 pages in length and in several cases vastly exceed the allowable size of an electronic file (25 MB), and the petition in many cases fails to cite page numbers within exhibits offered as support. (Cal. Rules of Court, rules 8. 7 4(a)(2), (a)(5) & (a)(6)(A), 8.204(a)(l)(C), 8.485(a).)

Petitioners' motion to seal is granted. (Cal. Rules of Court, rule 8.46(b).) The clerk of this court

is directed to maintain the unredacted versions of the following exhibits under seal: H, H-1, H-2, L, L-1, L-2, L-3, L-4, Q, and Q-1.

DATED: 10/23/2023 Stewart, P.J., P.J.

Court of Appeal, First Appellate District,
Division Two – No. A166778

S282560

IN THE SUPREME COURT OF CALIFORNIA

En Banc

GLAXOSMITHKLINE, LLC, et al., Petitioners,

v.

SUPERIOR COURT OF ALAMEDA COUNTY,
Respondent;

STEPHANE APODACA et al., Real Parties in Interest.

The petition for review is denied.