UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JOSHUA ROSEWOLF,

Plaintiff,

v.

MERCK & CO., INC., et al.,

Defendants.

MARK STARR,

Plaintiff,

v.

MERCK & CO., INC., et al.,

Defendants.

TYLER SKINNER,

Plaintiff,

v.

MERCK & CO., INC., et al.,

Defendants.

SHAUNA GIBSON,

Plaintiff,

v.

MERCK & CO., INC., et al.,

Defendants.

Case Nos. 22-cv-2072, 22-cv-02138-JSW, 22-cv-02260, and 22-cv-2263

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTIONS TO DISMISS AND SETTING DEADLINES AND CASE MANAGEMENT CONFERENCE

Re: Dkt. Nos. 18 (Rosewolf), 8 (Starr and Skinner), and 9 (Gibson)

Now before the Court for consideration are motions to dismiss filed by Defendants Merck & Co., Inc., Merck Sharp & Dohme Corp., Organon & Co., and Organon, LLC ("Defendants"). The Court has considered the parties' papers, relevant legal authority, and the record in this case, and it HEREBY GRANTS, IN PART, AND DENIES, IN PART, Defendants' motions.

BACKGROUND[1]

A. Regulatory Background for New and Generic Drugs.

In order to place Plaintiffs' claims in context, the Court begins with some background of the law and regulations relating to the manufacture and sales of new and generic drugs. When a drug manufacturer wants to market a new drug, it must submit a New Drug Application ("NDA") to the FDA and then "undergo a long, comprehensive, and costly testing process[.]" *FTC v. Activis, Inc.*, 570 U.S. 136, 141 (2013). When a manufacturer wants to market a generic version of an FDA approved new drug, it can file an Abbreviated New Drug Application ("ANDA") and "piggy-back" on the brand-name manufacturer's NDA by "show[ing] that the generic drug has the same active ingredients as, and is biologically equivalent to, the brand-name drug." *Caraco Pharm. Labs., Ltd. v. Novo Nordisk A/S*, 566 U.S. 399, 405 (2012) (citing 21 U.S.C. §§ 355(j)(2)(A)(ii), (iv)).

As part of the NDA process, the manufacturer of the new drug must submit and the FDA must approve "the exact text in the proposed label." *Wyeth v. Levine*, 555 U.S. 555, 568 (2009); *see also* 21 U.S.C. § 355; 21 C.F.R. § 314.105(b). Under the ANDA process, the manufacturer of a generic drug must "show that the safety and efficacy labeling proposed ... is the same as the

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[1] In addition to the captioned cases, the Court has related four other cases that involve identical, or nearly identical claims, against Defendants. (*See Rosewolf*, Dkt. Nos. 28, 30, 36, 50.) On August 9, 2022, the Court granted Defendants' motion to sever and denied the Plaintiffs' cross-motion to consolidate in *Rosewolf* and *Gibson*. (*Id.,* Dkt. No. 46.) On August 16, 2002, the Court granted Defendants' motion to dismiss Rosewolf's claims, with leave to amend, on the basis that his claims were time barred. (*Id.*, Dkt. No. 47.)

The substance of Defendants' pending motions to dismiss also are identical or nearly so, although Defendants did not move to dismiss Rosewolf's claims for lack of personal jurisdiction. In their opposition briefs, Starr, Skinner, and Gibson incorporated by the arguments Rosewolf raised in his opposition brief on Defendants' challenges to the substance of Plaitntiffs' claims. Accordingly, that is the brief on which the Court has relied to resolve Defendants' Rule 12(b)(6) motions.

labeling approved for the brand-name drug." *PLIVA, Inc. v. Mensing*, 564 U.S. 604, 612-13 (2011) (internal alterations and quotations omitted). Thus, "[a] brand-name manufacturer seeking new drug approval is responsible for the accuracy and adequacy of its label[,]" whereas a generic manufacturer "is responsible for ensuring that its warning label is the same as the brand name's" label. *Id.* at 613 (citations omitted). Although any drug manufacturer can apply to the FDA to change an existing drug label, only the manufacturer of the branded drug can "add or strengthen a contraindication, warning, precaution, or adverse reaction" warning without waiting for FDA approval. *Wyeth*, 555 U.S. at 568 (citing 21 C.F.R. § 314.70(c)(6)(iii)(A), (C)).

B. Factual Background.

Defendants manufacture and sell the brand-name drug "Singulair," and each Plaintiff alleges that Singulair's active ingredient, montelukast, causes neuropsychiatric injury by crossing the blood-brain barrier. Plaintiffs also allege that Defendants knew montelukast could cause these types of injuries but failed to warn of those risks and failed to maintain the accuracy and adequacy of Singulair's warning label. (*See, e.g., Starr* Compl. ¶¶ 32-85.) Defendants held patent rights on montelukast until August 2012, when the patent expired. (*Id.* ¶¶ 2, 27.) At that point, other companies began to manufacture and sell generic montelukast. (*Id.* ¶ 86.) Plaintiffs allege that Defendants "engaged in an extensive campaign to educate physicians in California about the alleged benefits of Singulair" but misrepresented its safety in that campaign. (*Id.* ¶ 19.)

Plaintiffs also allege that on March 4, 2020, the FDA required Defendants to add a Black Box Warning to Singulair's label and required a new medication guide. (*Id.* ¶ 3.) The Black Box Warning states:

> Serious neuropsychiatric events have been reported in patients taking Singulair. These include:
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> agitation, aggressive behavior or hostility, anxiousness, depression, disorientation, disturbance in attention, dream abnormalities, dysphagia (stuttering), hallucinations, insomnia, irritability, memory impairment, obsessive-compulsive symptoms, restlessness, somnambulism, suicidal thoughts and behavior (including suicide), tic, and tremor …
>
> Psychiatric disorders: agitation including aggressive behavior or hostility, anxiousness, depressions, disorientation, dream abnormalities, hallucinations, insomnia, irritability, restlessness,

> somnambulism, suicidal thinking and behavior (including suicide), tremor [*see Warnings and Precautions (5.4)*].

(*Id.* ¶ 4 (emphasis in original)). The Black Box Warning also states that "the benefits of Singulair may not outweigh the risks, and the FDA issued a press release in which it stated that "many patients and health care professionals are not fully aware of these risks." (*Id.*)

Plaintiffs allege they were prescribed Singulair during various periods after 2012, which "were filled with branded and/or generic Singulair."[2] (*Starr* Compl. ¶¶ 7-8; *Skinner* Compl. ¶¶ 7-8; *Gibson* Compl. ¶¶ 7-8.) According to Plaintiffs, if they or their physicians had known that Singulair "could cause [them] to suffer neuropsychiatric events, [their physicians] would not have prescribed Singulair," and they would not have ingested it. (*Starr* Comp. ¶ 11; *Skinner* Compl. ¶ 10; *Gibson* Compl. ¶ 11.) Based on these and other allegations that the Court shall address as necessary, Plaintiffs assert the following claims for relief: Count I - strict liability (design defect); Count II – strict liability (failure to warn); Count III – negligence; Count IV – negligent misrepresentation; Count V – breach of express warranty; and Count VI – breach of implied warranty.

The Court will address additional facts as necessary in its analysis.

ANALYSIS

A. The Court Concludes It Has Personal Jurisdiction Over Defendants.

1. Applicable Legal Standards.

Defendants move to dismiss Plaintiffs' claims for lack of personal jurisdiction, under Federal Rule of Civil Procedure 12(b)(2). Due process requires that a defendant have "minimum contacts" with the forum state "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Court's focus when evaluating personal jurisdiction is on the "nature and extent of 'the defendant's relationship to the forum

[2] Unlike Starr, Skinner, and Gibson, Rosewolf alleges he was prescribed Singulair before Defendants' patent expired.

state.'" *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, -- U.S. --, 141 S.Ct. 1017, 1024 (2021) (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of California*, 582 U.S. --, 137 S. Ct 1773, 1779 (2017)) ("*Ford*"); *see also Walden v. Fiore*, 577 U.S. 277, 290 (2014) ("The proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way.").

Plaintiffs argue the Court has specific jurisdiction over Defendants, which requires them to show: (1) Defendants purposefully directed their activities at California or purposefully availed themselves of California's laws; (2) Plaintiffs' claims arise out of or relate to Defendants' activities in California; and (3) exercising jurisdiction would be reasonable. *See, e.g., Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004). In *Ford*, the Court addressed the meaning of the phrase "arise out of or relate to" and concluded that

> [t]he 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. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase "relate to" incorporates real limits, as it must to adequately protect defendants foreign to a forum. But again, we have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i.e.*, proof that the plaintiff 's claim came about because of the defendant's in-state conduct.

Ford, 141 S.Ct. at 1026.

Plaintiffs bear the burden of proving the first two prongs. *Schwarzenegger*, 347 F.3d at 802. If Plaintiffs meet their burden, "the burden then shifts to [Defendants] to present a compelling case that the exercise of jurisdiction would not be reasonable." *Id.* (internal quotation marks omitted).

2. Analysis.

Defendants challenge Plaintiffs' allegations on the second prong of the specific jurisdiction test, and and the parties dispute what contacts are jurisdictionally relevant in light of Plaintiff's theory of warning label liability. The California Supreme Court has reasoned that because a brand-name manufacturer is responsible for the content of a drug's warning label, it "knows to a legal certainty … that any deficiencies in the label for its drug will be perpetrated in the label for its generic bioequivalent." *T.H. v. Novartis Pharm. Corp.*, 4 Cal. 5th 145, 166 (2017). Thus,

California has extended liability for failure to warn to a brand-name manufacturer of a prescription drug "regardless of whether the consumer is prescribed the brand-name drug or its generic bioequivalent." *Id.* at 165 (internal quotations and citations omitted).

Defendants argue that because they made decisions about the contents of Singulair's label either in New Jersey or in Pennsylvania, there are no contacts in California that give rise to or relate to Plaintiffs' claims. (*See Starr* Dkt. No. 8-2, Declaration of Shannon Beamer, ¶ 3, Ex. 1 (Declaration of Margaret McCann, ¶¶ 3-4).) Plaintiffs counter by arguing the Court can, and should, consider a broader range of activities, including research Defendants conducted in California, sales of Singulair in California, and Defendants' marketing and advertising to consumers and physicians in California. The parties each have authority to support their positions.

Defendants argue the Court should follow *In re Zantac (Ranitidine) Prod. Liab. Litig.*, 546 F. Supp. 3d 1192, 1213 (S.D. Fla. 2021) ("*Zantac*"). In that case, the court dismissed California plaintiffs' claims for negligent misrepresentation, which related to the safety of ranitidine, the active ingredient in Zantac. *Id.* at 1199. It found plaintiffs' allegations regarding the defendant's sales and marketing were sufficient to establish the defendants purposefully availed themselves of a California forum. *Id.* at 1211-12. It also acknowledged that, under *Ford*, the plaintiffs were not required to show "but for" causation to establish jurisdiction. *Id.* at 1198 n.5, 1203-04. However, it reasoned that any misrepresentations the defendants made about Zantac's safety in sales and marketing material were not necessary to state a claim under warning label liability. Thus, it held that those contacts were not jurisdictionally relevant. *Id.* at 1212-13.

Defendants also rely on *R.S.B. v. Merck & Co.*, and argue that, unlike the defendants in *Ford,* they did not benefit from the contacts on which Plaintiffs rely. No. 20-C-1402-WCG, 2021 WL 6113765, at *3 (E.D. Wis. Dec. 27, 2021). In *R.S.B*, the court concluded the plaintiffs' negligent misrepresentation claim was barred under Wisconsin's product liability statute, which requires a plaintiff to show a defendant, *inter alia*, "promotes" a product. The court rejected the plaintiffs' argument that, by being responsible for Singulair's label, Defendants promoted the generic version of the drug. "A company, no matter what precarious position it may be in, does not intend to promote a competitor's product to the detriment of its own sales." *Id.*, at *5. *R.S.B.*

is not a case about personal jurisdiction, and that court was not called upon to construe California law, which has accepted warning label liability as a viable theory. For those reasons, the Court does not find Defendants' reliance on *R.S.B.* persuasive.

T.H. also is not a case about personal jurisdiction. However, the defendant argued that warning label liability claims are unfair to brand-name manufacturers because they would hold them liable for harm caused by a competitor's product, from which they "derive[] no revenue or profit." 4 Cal. 5th at 172. The California Supreme Court was not persuaded. It reasoned the plaintiffs' claim was not about whether the generic drug was defectively designed or inherently dangerous. "It is that [the drug's] warning label failed to mention the risk … and Novartis was responsible for the deficient label. So the alleged fault here lies with Novartis, not with its generic competitors." *Id.* The court also reasoned that any burden falling on brand-name manufacturers would be "more than offset by the substantial benefits federal law confers on the brand-name manufacturer" for the life of its patents. *Id.*

Plaintiffs, in turn, rely on *Whaley v. Merck & Co., Inc.*, in which the court considered and rejected many of the same arguments Defendants raise in this case. 21-cv-01985-H-BLM, 2022 WL 1153151 (S.D. Cal. Apr. 12, 2022). In *Whaley*, the court reasoned that adopting Defendants' argument would require a court to find "a causal link between the activity and the cause of action," a requirement rejected by the Supreme Court in *Ford*. *Id.* at *5. The court also noted that Defendants' marketing and sales activities would encompass both the drug and the label. "Federal law combines these two parts into the same product and California law recognizes a cause of action concerning the warning label part." *Id.,* at *6. The court also reasoned that, like the defendant in *T.H.*, Defendants misconstrued the nature of the plaintiffs' claims by casting the claims as related only to generic montelukast, not Singulair. The court determined the plaintiffs' claim was "not that [montelukast] is defectively designed or inherently dangerous. It is that [montelukast's] warning label failed to mention the risk ... and that [Merck] was responsible for the deficient label. So the alleged fault here lies with [Merck], not with its generic competitors." *Id.* (quoting *T.H.*, 4 Cal. 5th at 172 (brackets as in *Whaley*)); *see also Bueno v. Merck & Co., Inc.*, No. 22-cv-522-H-BLM, 2022 WL 4125231, at *5 (S.D. Cal. Sept. 8, 2022) ("Defendants' forum-

based advertising, marketing, and selling of Singulair – the product that is at the heart of Plaintiffs' claim – are jurisdictional activities under *Ford* that are within the 'real limits' of the 'relates to' element of the specific jurisdiction test," even if they "only ingested generic montelukast.")

The Court finds *Whaley* and *Bueno* more persuasive than *Zantac* and agrees that Defendants' jurisdictional challenge is, in actuality, a challenge "aimed at California's warning label liability law." *Whaley*, 2022 WL 1153151, at *8; *see also Bueno*, 2022 WL 4125231, at *5. Even if Plaintiffs received and ingested generic montelukast, Defendants' activities selling and promoting Singulair "count because California law assigns liability to Defendants for the label on their Singulair product;" that label is part and parcel of the drug Defendants have marketed and sold within California. *Whaley*, 2022 WL 1153151, at *8; *cf. T.H.*, 4 Cal. 5th at 172 (stating that federal law "bundles – and indeed, only makes available – benefits" associated with a new drug "along with the responsibility to maintain an adequate warning label").

Defendants also argue that if the Court follows *Whaley,* it should still grant the motion because Plaintiffs fail to include specific facts showing their doctors were exposed to any of the alleged marketing activities and also failed to provide detail about the nature of Defendants' advertising and marketing campaigns. In *Bueno,* the court noted that the plaintiffs' allegations were less detailed than in *Whaley*. It still found them sufficient and concluded that "maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Bueno*, 2022 WL 4125231. at *5, n.6.[3] The Court concludes the allegations here also are sufficient to allege the Court has jurisdiction over Defendants.

Accordingly, the Court DENIES Defendants' motions to dismiss on this basis.

[3] Plaintiffs have also alleged far more contacts than the plaintiff in *Henry v. Angelini Pharma, Inc.*, No. 17-cv-2593-TLN-KJN, 2020 WL 1532174, at *4 (E.D. Cal. Mar. 31, 2020), on which Defendants rely, and the Court finds that case distinguishable. *Cf. Whaley,* 2022 WL 1153151, at *8. The Court also finds *LNS Enter. LLC v. Cont'l Motors, Inc.* distinguishable. 22 F.4th 852 (9th Cir. 2022). There, the Ninth Circuit did not address the theory of warning label liability. Further, unlike the defendant in that case, when Defendants marketed and sold Singulair in California, they marketed and sold a warning label which, by law, generic manufacturers were bound to include on their products.

B. Plaintiffs Have Stated Claims for Relief, in Part.

1. Applicable Legal Standards.

Defendants also move to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Under Rule 12(b)(6), the Court's inquiry generally "is limited to the allegations in the complaint, which are accepted as true and construed in the light most favorable to the plaintiff." *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008). Even under the liberal pleading standard of Federal Rule of Civil Procedure 8(a)(2), "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Pursuant to *Twombly*, a plaintiff must not merely allege conduct that is conceivable but must instead allege "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556).

A plaintiff must state fraud based claims with particularity but can plead intent, knowledge, and other matters relating to state of mind generally. Fed. R. Civ. P. 9(b). A claim is "grounded in fraud" if the plaintiff alleges a unified course of fraudulent conduct and relies entirely on that course of conduct as the basis of his or her claim." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1104 (9th Cir. 2003). Rule 9(b)'s particularity requirements must be read in harmony with Rule 8, which requires a "short and plain" statement of the claim. The particularity requirement is satisfied if the complaint "identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." *Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 540 (9th Cir. 1989). Accordingly, "[a]verments of fraud must be accompanied by 'the who, what, when, where, and how' of the misconduct charged." *Vess*, 317 F.3d at 1107 (quoting *Cooper v. Pickett*, 137 F.3d 616, 627 (9th Cir. 1997)).

If the allegations are insufficient to state a claim, a court should grant leave to amend,

unless amendment would be futile. *See, e.g., Reddy v. Litton Indus., Inc.*, 912 F.2d 291, 296 (9th Cir. 1990); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv., Inc.*, 911 F.2d 242, 246-47 (9th Cir. 1990).

2. Analysis.

a. Plaintiffs' Concessions.

Plaintiffs concede that Count I and the portion of Count III that is not based on a failure to warn should be dismissed. Accordingly, the Court GRANTS, IN PART, the motions on that basis.

b. Plaintiffs' allegations on the failure to warn claims are adequate.

Counts II, III, and IV are premised on Plaintiffs' allegations that Defendants failed to include adequate warnings on Singulair's label regarding the likelihood that it could cause neuropsychiatric injuries. In California, "in the case of prescription drugs, the duty to warn runs to the *physician*, not to the patient." *Carlin v. Super. Ct.*, 13 Cal. 4th 1104, 1116 (1996) (emphasis in original). In *Bueno*, the court considered the three cases on which Defendants rely to support their position: *Fisher v. Boston Sci. Corp.*, No. SACV 19-02106 JVS (DFM), 2020 WL 2300138 (C.D. Cal. Mar. 25, 2020), *Marroquin v. Pfizer, Inc.*, 367 F. Supp. 3d 1152 (E.D. Cal. 2019), and *Tapia v. Davol, Inc.*, 116 F. Supp. 3d 1149 (S.D. Cal. 2015). It concluded that although the plaintiffs did not include the names of their physicians, the allegations were directed to the plaintiffs in particular, rather than to patients and physicians in general, and were sufficient to state a claim. *Bueno*, 2022 WL 4125231, at *6; *see also Whaley*, 2022 WL 1153151, at *12 (finding allegations sufficient to state a claim).

Unlike the plaintiff in *Tapia*, Plaintiffs do not make "allegations as to 'physicians' in general, and the 'healthcare community.'" *Tapia*, 116 F. Supp. 3d at 1158. Plaintiffs' allegations here also are distinguishable from the allegations in *Fischer.* There the plaintiff alleged the defendant failed to warn her "and/or her physician" of alleged defects in the product but also included allegations about numerous safety issues. The plaintiff did not, however, clearly specify which of those allegations applied to her. *Fisher*, 2020 WL 2300138, at *3. Finally, in *Marroquin,* the court concluded the plaintiff's allegations were not sufficient, in part, because the

plaintiff alleged that "'ordinary consumers' could not have recognized the potential risks of the" drug and did not include facts to show "how or why the warnings provided were inadequate. … Merely stating that the Defendants failed to 'adequately warn'" of the alleged risks "is a bare legal conclusion." *Marroquin*, 367 F. Supp. 3d at 1161-62. Here, although Plaintiffs do not provide the names of their physicians, they have included facts that describe the information available to Defendants about the risk of severe neuropsychotic events and the likelihood that montelukast crossed the blood-brain barrier, as well as facts to show why Singulair's label allegedly did not adequately warn of those dangers.

Accordingly, the Court concludes Plaintiffs' allegations pass muster under Rule 8. *Cf. Whaley*, 2022 WL 1153151, at *12. The Court DENIES, IN PART, Defendants' motions on this basis as well.[4]

c. Plaintiffs' allegations on the negligent misrepresentation claims are adequate.

Defendants argue that Plaintiffs' claims for negligent misrepresentation fail to comply with Rule 9(b) because Plaintiffs do not describe with particularity the statements contained in media or advertisements, do not identify what individuals made statements on Defendants' behalf, and do not provide the dates on which Plaintiffs and/or their physicians saw these statements. Plaintiffs did not directly address this argument in their opposition.

Plaintiffs allege why Singulair's label (what) failed to describe the risks associated with the Drug. Plaintiffs allege that Defendants created Singulair's label (who), and at this stage the Court will not fault them for being unable to specifically identify the particular employees who may have made those decisions. Finally, Plaintiffs allege the time period during which they were prescribed Singulair or a generic equivalent and allege they were prescribed and ingested Singulair or its equivalent in California (when and where). Finally, Plaintiffs provided detailed allegations about why and how Singulair's label failed to sufficiently disclose the risks involved and allege their physicians would not have prescribed Singulair had those risks been disclosed.

[4] The Court does not reach Plaintiffs' alternative argument that Defendants also could be held liable based on direct marketing to consumers.

The Court concludes Plaintiffs' allegations are sufficient under Rule 9(b) and DENIES Defendants' motion to dismiss on this basis as well.

d. Plaintiffs' allegations on their breach of warranty claims are adequate.

Defendants also argue the Court should dismiss Plaintiffs' claims for breach of express or implied warranty because they have failed to adequately allege their physicians relied on any purported warranties. For the reasons set forth in Section B.2.b and B.2.c, the Court concludes Plaintiffs' allegations are sufficient to withstand Defendants' motions. Accordingly, the Court DENIES Defendants' motions to dismiss on this basis as well.

CONCLUSION

For the foregoing reasons, the Court GRANTS, IN PART, and DENIES IN PART, Defendants' motions to dismiss. Pursuant to the Court's Order granting Defendants' motion to dismiss Rosewolf's claims, with leave to amend, Rosewolf shall file an amended complaint by no later than November 2, 2022. Defendants shall respond to Rosewolf's amended complaint by no later than November 23, 2022, and shall respond to the remaining Plaintiffs' complaints by November 2, 2022.

The parties shall appear on December 9, 2022 at 11:00 a.m. for a case management conference in these cases, and they shall file a joint case management conference statement by December 2, 2022.

IT IS SO ORDERED.

Dated: October 12, 2022

JEFFREY S. WHITE
United States District Judge