

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PLUMBERS' LOCAL UNION NO.	:	
690 HEALTH PLAN,	:	
Plaintiff,	:	CIVIL ACTION
	:	No. 16-665
v.	:	
	:	
APOTEX CORP., et al.,	:	
Defendants.	:	

July 24, 2017

Anita B. Brody, J.

MEMORANDUM

I. INTRODUCTION

Plaintiff Plumbers Local Union No. 690 Health Plan (“Plumbers”) brings this putative class action against a multitude of Defendants alleging claims under Pennsylvania state law for violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, negligent misrepresentation/fraud, unjust enrichment, civil conspiracy, and aiding and abetting. Plumbers also brings claims against Defendants for violations of the consumer protection laws of forty-eight additional states and two territories.¹ Plumbers is a health insurance plan that provides prescription drug coverage to members of Plumbers Local Union No. 690 (“Plumbers’ Members”) and Defendants are companies involved in the generic prescription pharmaceutical drug business.

¹ I exercise subject matter jurisdiction over this putative class action pursuant to 28 U.S.C. § 1332, as amended by the Class Action Fairness Act (“CAFA”). CAFA grants the Court original jurisdiction over this putative class action because (1) it involves a proposed plaintiff class of 100 or more members; (2) the amount in controversy exceeds \$5,000,000 in the aggregate, exclusive of interest and costs; and (3) the parties are minimally diverse—any member of the proposed class is a citizen of a State different from any defendant. 28 U.S.C. §§ 1332(d)(2), (5)(B).

Fifteen Defendants (“Jurisdiction Defendants”) move to dismiss the Amended Complaint for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).² Eleven of the Jurisdiction Defendants (“Selling Defendants”) concede that they sell their generic prescription drugs in Pennsylvania.³ Three of the eleven Selling Defendants (“Registration Defendants”) also concede that they are foreign corporations registered to do business in Pennsylvania.⁴ Four of the Jurisdictional Defendants (“Non-Selling Defendants”)⁵ do not manufacture, market, distribute, or sell any prescription drugs in Pennsylvania.⁶

For the reasons set forth below, I will grant in part and deny in part the motions to dismiss of the eight Selling Defendants who are not also Registration Defendants. I will deny Registration Defendants’ motions to dismiss for lack of personal jurisdiction. I will grant Non-Selling Defendants’ motions to dismiss for lack of personal jurisdiction.

² Jurisdiction Defendants are: (1) Actavis Elizabeth LLC; (2) Actavis Totowa, LLC; (3) Actavis Kadian, LLC; (4) Actavis Mid-Atlantic, LLC; (5) Actavis South-Atlantic, LLC; (6) Watson Pharma, Inc.; (7) Forest Pharmaceuticals, Inc.; (8) Forest Laboratories, Inc.; (9) Inwood Laboratories, Inc.; (10) Apotex Corp.; (11) Watson Laboratories, Inc.; (12) Andrx Corporation; (13) Dr. Reddy’s Laboratories Ltd.; (14) Teva Pharmaceutical Industries, Ltd.; and (15) Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. Jurisdiction Defendants are listed by their names as they appear in the Amended Complaint. Although Actavis, Inc. was formerly known as Watson Pharmaceuticals, Inc., both are named as separate Defendants in the Amended Complaint.

³ Selling Defendants are: (1) Actavis Elizabeth LLC; (2) Actavis Totowa, LLC; (3) Actavis Kadian, LLC; (4) Actavis Mid-Atlantic, LLC; (5) Actavis South-Atlantic, LLC; (6) Watson Pharma, Inc.; (7) Forest Pharmaceuticals, Inc.; (8) Forest Laboratories, Inc.; (9) Inwood Laboratories, Inc.; (10) Apotex Corp.; and (11) Watson Laboratories, Inc.

⁴ The following Selling Defendants are also Registration Defendants: (1) Watson Pharma, Inc.; (2) Forest Laboratories, Inc.; and (3) Watson Laboratories, Inc.

⁵ The terms “Selling Defendants” and “Non-Selling Defendants” are used to distinguish between those Jurisdiction Defendants who sell generic drugs in Pennsylvania and those who do not.

⁶ Non-Selling Defendants are: (1) Andrx Corporation; (2) Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; (3) Teva Pharmaceutical Industries, Ltd.; and (4) Dr. Reddy’s Laboratories Ltd.

II. BACKGROUND⁷

Jurisdiction Defendants are companies involved in the generic prescription pharmaceutical drug business. Am. Compl. ¶ 1. Jurisdiction Defendants are not incorporated in Pennsylvania and do not have their principal place of business in Pennsylvania. Am. Compl. ¶¶ 32, 38, 44, 60, 126, 134, 135. Plumbers resides in Pennsylvania, maintains a principal place of business in Pennsylvania, and has members who live in Pennsylvania. Am. Compl. ¶¶ 29, 154.

Plumbers provides a health insurance plan that includes prescription drug coverage to members of Plumbers Local Union No. 690. *See, e.g.*, Am. Compl. ¶ 157. Prescription drugs are dispensed to Plumbers' Members through medical professionals who administer the drugs to members or through pharmacies that are authorized by medical professionals to dispense the drugs to members. Am. Compl. ¶ 163. After a pharmacist or medical professional provides a drug to a member, the provider then seeks reimbursement from Plumbers. The provider typically bills Plumbers based on the Average Wholesale Price ("AWP") for the drug. Am. Compl. ¶¶ 165, 169. Plumbers reimburses the providers of the prescription drugs based on a formula, which includes AWP as "a key component" in determining the amount of reimbursement. Am. Compl. ¶ 157.

A. Selling Defendants

Selling Defendants are pharmaceutical companies that manufacture generic prescription

⁷ "In deciding a motion to dismiss for lack of personal jurisdiction, we take the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996) (citation omitted). Plumbers and Selling Defendants rely on the facts in the Amended Complaint and do not present any evidence. Accordingly, the facts related to Selling Defendants are taken primarily from the Amended Complaint. Non-Selling Defendants provide either declarations or affidavits to support their jurisdictional defenses. The facts related to Non-Selling Defendants are taken from this competent evidence.

drugs and sell their generic drugs in Pennsylvania.⁸ Plumbers' Members made numerous purchases of Selling Defendants' generic drugs in Pennsylvania.⁹ Selling Defendants reported the AWP's for their prescription drugs to pricing compendia, including First Databank's Blue Book, Medical Economics' Red Book, and Medispan. Am. Compl. ¶¶ 158, 180. Plumbers obtained the AWP's from these compendia and relied on them in its drug reimbursement formula. Am. Compl. ¶¶ 1158-59.

Since at least 1991 to the present, the AWP's relied on by Plumbers have not reflected the actual average wholesale prices of prescription drugs, and Selling Defendants' generic prescription drugs have increased in price at a rate much faster than the actual average wholesale price. Am. Compl. ¶ 171. Selling Defendants have intentionally inflated their reported AWP's, and the prescription drug providers have billed Plumbers at these inflated AWP's for Selling Defendants' generic drugs, Am. Compl. ¶¶ 163, 200. Consequently, Plumbers has reimbursed the prescription drug providers for its members' purchases of Selling Defendants' generic drugs on the basis of these inflated AWP's. Am. Compl. ¶ 29.

“Throughout the relevant time period, the defendants were aware that a figure called the AWP was the embedded standard used by virtually all payors for drug products . . . to determine how much to reimburse and pay for a given drug.” Am. Compl. ¶ 173. Selling Defendants “deliberately and intentionally” inflated their AWP's “so that the medical providers who purchased and dispensed these drugs at a low cost would bill patients and their insurers at the inflated AWP's, and thereby earn a substantial profit from the ‘spread’ between the real cost and the various AWP-related reimbursement rates.” Am. Compl. ¶¶ 208- 09. Selling Defendants

⁸ Defendants admitted this fact on the record during the conference held on June 14, 2017.

⁹ In Plaintiff's Omnibus Opposition to Individual Defendants' Motions to Dismiss, Plaintiff alleges that the “Jurisdiction Defendants marketed and sold hundreds of different generic drugs to Plaintiff *in Pennsylvania*, thousands of times over the course of more than a decade.” ECF No. 254 at 2. Selling Defendants do not contest these allegations.

inflated their AWP's to provide higher financial remuneration to providers, which encouraged providers to purchase more of their generic drugs thereby increasing Selling Defendants' market share for their prescription drugs. Am. Compl. ¶¶ 176, 188. Accordingly, Selling Defendants "knew, or should have known, that when they did not report actual average wholesale prices to the compendia, those inflated AWP's would increase and distort reimbursement levels," Am. Compl. ¶ 184, which would harm third party payors, like Plumbers, who reimburse the cost of prescription drugs for its members, Am. Compl. ¶ 185.

B. Non-Selling Defendants

Non-Selling Defendants do not manufacture, market, distribute, or sell any prescription drugs in Pennsylvania. Decl. Andrew S. Boyer ¶ 6, ECF No. 209-2 [hereinafter Boyer Decl.]; Aff. Brian Shanahan ¶ 10, ECF No. 211-2 [hereinafter Shanahan Aff.]; Decl. Abhijit Mukherjee ¶¶ 4, 16, ECF No. 227-2 [hereinafter Mukherjee]; Decl. Martin Shindler ¶ 4, ECF No. 232 [hereinafter Shindler Decl.]. Additionally, Non-Selling Defendants are not registered to conduct business in Pennsylvania. Boyer Decl. ¶ 5; Shanahan Aff. ¶ 9; Mukherjee Decl. ¶ 7; Shindler Decl. ¶ 3. Two of the Non-Selling Defendants, Andrx Corporation (n/k/a Andrx LLC) ("Andrx Corporation") and Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc. (n/k/a Allergan Finance LLC) ("Allergan Finance"), are holding companies that "exist[] for the purpose of holding shares of companies rather than producing [their] own goods or services." Boyer Decl. ¶ 7; Shindler Decl. ¶ 5. Two of the Non-Selling Defendants, Dr. Reddy's Laboratories Ltd. ("DRL Limited") and Teva Pharmaceutical Industries Ltd. ("Teva Ltd."), are foreign corporations. Shanahan Aff. ¶ 4; Mukherjee Decl. ¶ 4. Although the indirect subsidiary of DRL Limited and subsidiaries and affiliates of Teva Ltd. conduct business in Pennsylvania, these subsidiaries and affiliates are separate legal entities with separate boards of directors that are managed and supervised

independently of DRL Limited and Teva Ltd. Shanahan Aff. ¶ 15; Mukherjee Decl. ¶¶ 17-19.

III. STANDARD OF REVIEW

If a defendant moves to dismiss a lawsuit for lack of personal jurisdiction, then the plaintiff bears the burden of demonstrating the facts that establish jurisdiction. *Metcalf v. Renaissance Marine, Inc.*, 566 F.3d 324, 330 (3d Cir. 2009). “[W]hen the court does not hold an evidentiary hearing on the motion to dismiss, the plaintiff need only establish a prima facie case of personal jurisdiction and the plaintiff is entitled to have its allegations taken as true and all factual disputes drawn in its favor.” *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 97 (3d Cir. 2004). Thus, “[i]n deciding a motion to dismiss for lack of personal jurisdiction, we take the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper.” *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996) (citation omitted); *see also Metcalf v. Renaissance Marine, Inc.*, 566 F.3d 324, 330–31 (3d Cir. 2009).

IV. DISCUSSION

“Federal courts ordinarily follow state law in determining the bounds of their jurisdiction over persons.” *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014) (citing Fed. R. Civ. P. 4(k)(1)(A)). Pennsylvania’s long-arm statute provides for jurisdiction “based on the most minimum contact with th[e] Commonwealth allowed under the Constitution of the United States.” 42 Pa. Cons. Stat. Ann. § 5322(b). Accordingly, “[t]he Due Process Clause of the Fourteenth Amendment sets the outer boundaries of [Pennsylvania’s] authority to proceed against a defendant.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011). In order for a court to exercise personal jurisdiction over an out-of-state defendant, due process requires that the defendant have “certain minimum contacts with [the 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)).

There are two types of personal jurisdiction: general jurisdiction and specific jurisdiction. *O’Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007). “As th[e] Court has increasingly trained on the ‘relationship among the defendant, the forum, and the litigation,’ *i.e.*, specific jurisdiction, general jurisdiction has come to occupy a less dominant place in the contemporary scheme.” *Daimler*, 134 S. Ct. at 758 (footnote omitted) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)).

A Plaintiff may demonstrate that a court’s exercise of personal jurisdiction is proper, by establishing that a court has either general jurisdiction or specific jurisdiction over the defendant, or by establishing that the defendant has consented to jurisdiction. *See Bane v. Netlink, Inc.*, 925 F.2d 637, 640 (3d Cir. 1991).

Plumbers contends that this Court has both general jurisdiction and specific jurisdiction over Jurisdiction Defendants. Additionally, Plumbers contends that several Jurisdiction Defendants consented to personal jurisdiction in Pennsylvania.

A. General Jurisdiction

“[O]nly a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there.” *Daimler*, 134 S. Ct. at 760. “A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so ‘continuous and systematic’ as to render them essentially at home in the forum State.” *Goodyear*, 564 U.S. at 919. The paradigm forums, in which a corporation is reasonably regarded as at home, are the place of incorporation and the

principal place of business. *Daimler*, 134 S. Ct. at 760. “The exercise of general jurisdiction is not limited to these forums; in an ‘exceptional case,’ a corporate defendant’s operations in another forum ‘may be so substantial and of such a nature as to render the corporation at home in that State.’” *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017) (quoting *Daimler*, 134 S. Ct. at 761, n.19). However, “the exercise of general jurisdiction in every State in which a corporation ‘engages in a substantial, continuous, and systematic course of business’ . . . , is unacceptably grasping.” *Daimler*, 134 S. Ct. at 761 (citation omitted). “The Fourteenth Amendment due process constraint described in *Daimler*. . . applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued.” *Tyrrell*, 137 S. Ct. at 1558–59.

Jurisdiction Defendants are not incorporated in Pennsylvania and do not have their principal place of business in Pennsylvania. Plumbers contends that this Court has general jurisdiction over Jurisdiction Defendants because of their continuous and systematic contacts with Pennsylvania. *Daimler* establishes, however, that engaging in a substantial, continuous, and systematic course of business is insufficient to establish general jurisdiction. A court may only assert general jurisdiction in a forum in which the corporation is regarded as home—typically, the place of incorporation or the principal place of business. Plumbers does not argue that this is an exceptional case in which Jurisdiction Defendants’ operations in Pennsylvania are so substantial and important as to render them at home in Pennsylvania. Because Jurisdiction Defendants are not incorporated in Pennsylvania and do not have their principal place of business in Pennsylvania, they are not at home in Pennsylvania. Accordingly, this Court lacks general jurisdiction over Jurisdiction Defendants.

B. Specific Jurisdiction

The analysis of whether a forum state has sufficient minimum contacts to exercise specific jurisdiction over a nonresident defendant “focuses on ‘the relationship among the defendant, the forum, and the litigation.’” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 775 (1984) (quoting *Shaffer*, 433 U.S. at 204). “For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related conduct must create a substantial connection with the forum State.” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014). The minimum contacts necessary to create specific jurisdiction “must arise out of contacts that the ‘defendant *himself*’ creates with the forum State.” *Id.* at 1122 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)). The “analysis looks to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id.* “[A]lthough physical presence in the forum is not a prerequisite to jurisdiction, physical entry into the State—either by the defendant in person or through an agent, goods, mail, or some other means—is certainly a relevant contact.” *Id.* (citation omitted). Specific jurisdiction “depends on an ‘affiliation between the forum and the underlying controversy,’ principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State’s regulation.” *Goodyear*, 564 U.S. at 919 (citation omitted).

Accordingly, specific personal jurisdiction over a defendant exists when: (1) the defendant “purposefully directed [its] activities” at the forum; and (2) the litigation “arise[s] out of or relate[s] to” at least one of the defendant’s activities in Pennsylvania. *O’Connor*, 496 F.3d at 317 (internal quotation marks omitted). If the “purposeful availment” and “relatedness” requirements are met, a court may exercise personal jurisdiction as long as the assertion of jurisdiction “comport[s] with ‘fair play and substantial justice’.” *Burger King*, 471 U.S. at 476

(citation omitted).

While a court usually determines specific jurisdiction on a claim-by-claim basis, claim specific analysis may not be necessary “for certain factually overlapping claims.” *O’Connor*, 496 F.3d 312, 317 n.3 (3d Cir. 2007); *see also Bhd. of Locomotive Eng’rs & Trainmen v. United Transp. Union*, 413 F. Supp. 2d 410, 417 (E.D. Pa. 2005) (“[W]here the considerations in analyzing jurisdiction do not differ between particular claims, a claim specific analysis is not necessary.”). Because Plumbers’ claims all stem from the same conduct of Jurisdiction Defendants—the alleged intentional misrepresentation of the AWP’s for their generic drugs—a claim-specific analysis is not necessary. Plumbers’ Pennsylvania state law claims (“Pennsylvania Claims”), however, require separate analysis from Plumbers’ claims against Jurisdiction Defendants for violations of the consumer protection laws of forty-eight additional states and two territories (“Non-Pennsylvania Claims”).

1. Pennsylvania Claims

a. Selling Defendants

Selling Defendants sold their generic drugs in Pennsylvania to Plumbers’ Members. The inquiry is whether Selling Defendants purposefully directed their activities at Pennsylvania when they sold their generic drugs in Pennsylvania, and whether Plumbers’ claims arise out of or relate to the sale of these drugs. If the purposeful availment and relatedness requirements are met, then the final inquiry is whether the exercise of jurisdiction “comport[s] with ‘fair play and substantial justice.’” *Burger King*, 471 U.S. at 476 (citation omitted).

i. Purposeful Availment

The threshold inquiry is whether a defendant “purposefully avails itself of the privilege of conducting activities within the forum State.” *Hanson v. Denckla*, 357 U.S. 235, 253 (1958).

Physical presence in the forum is not required, “[b]ut what is necessary is a deliberate targeting of the forum.” *O’Connor*, 496 F.3d at 317. Thus, “a defendant may in an appropriate case be subject to jurisdiction without entering the forum—itsself an unexceptional proposition—as where manufacturers or distributors ‘seek to serve’ a given State’s market. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (plurality opinion). Purposeful availment occurs when a defendant sends goods into a forum state “only where the defendant can be said to have targeted the forum.” *Nicastro*, 564 U.S. at 882. Where “the sale of a product . . . is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve . . . the market for its product in [several] States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

While “the absence of direct sales or shipments [of goods] into the forum is not dispositive . . . , the presence of direct shipments will show the defendant’s purposeful availment.” *Renner v. Lanard Toys Ltd.*, 33 F.3d 277, 282 (3d Cir. 1994). Direct sales of goods into a forum will also establish purposeful availment. *Arch Ins. Co. v. Tech. Invs., LLC*, No. 15-1223, 2016 WL 1257618, at *6 (E.D. Pa. Mar. 31, 2016) (finding that four direct sales of products to Pennsylvania customers are sufficient to establish purposeful availment).

Here, Selling Defendants concede that they regularly sell their generic drugs in Pennsylvania. Selling Defendants have purposefully availed themselves of conducting activities in Pennsylvania because they seek to serve the Pennsylvania market by targeting Pennsylvania as a place to sell their drugs.

ii. Relatedness

Because Selling Defendants meet the first specific jurisdiction requirement—purposeful

availment, the inquiry now turns to whether they meet the second requirement—relatedness. “[S]pecific jurisdiction is confined to adjudication of ‘issues deriving from, or connected with, the very controversy that establishes jurisdiction.’” *Goodyear*, 564 U.S. at 919 (citation omitted). “What is needed . . . is a connection between the forum and the specific claims at issue.” *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773, 1781 (2017).

Accordingly, a plaintiff’s claims must “arise out of or relate to” a defendant’s forum contacts. For claims to “arise out of or relate to” a defendant’s contacts, “the causal connection can be somewhat looser than the tort concept of proximate causation, but it must nonetheless be intimate enough to keep the quid pro quo proportional and personal jurisdiction reasonably foreseeable.” *O’Connor*, 496 F.3d at 323 (citation omitted). The inquiry is “necessarily fact-sensitive.” *Id.* “[B]ut-for causation provides a useful starting point for the relatedness inquiry.” *Id.* at 322. “[A]lthough the analysis may begin with but-for causation, it cannot end there. The animating principle behind the relatedness requirement is the notion of a tacit quid pro quo that makes litigation in the forum reasonably foreseeable.” *Id.*

Selling Defendants’ contacts with Pennsylvania meet the relatedness requirement. Plumbers’ claims all stem from the same conduct of Jurisdiction Defendants—the alleged intentional misrepresentation of the AWP’s for their generic drugs. Selling Defendants were aware that third-party payors like Plumbers relied upon AWP’s to determine how much to reimburse and pay for a given drug. Selling Defendants intentionally inflated their AWP’s so that prescription drug providers “who purchased and dispensed these drugs at a low cost would bill patients and their insurers at the inflated AWP’s, and thereby earn a substantial profit from the ‘spread’ between the real cost and the various AWP-related reimbursement rates.” Am. Compl. ¶¶ 208- 09. Selling Defendants sought to increase the profits of prescription drug providers in

order to encourage the providers to purchase more of their generic drugs. Selling Defendants' contacts with Pennsylvania are the but-for cause of all of Plumbers' Pennsylvania claims. But for Selling Defendants sale of generic drugs to prescription drug providers in Pennsylvania, Plumbers' Members would not have purchased the drugs in Pennsylvania and Plumbers would not have reimbursed these prescription drug providers based on the inflated AWP that were set by Selling Defendants.

Selling Defendants' contacts are more than the but for cause of Plumbers' Pennsylvania claims. Selling Defendants availed themselves of the benefits and protections of Pennsylvania law when they sold their generic drugs to Plumbers' Members in Pennsylvania. In exchange for these benefits and protections, came Selling Defendants' obligation to market and sell their drugs in compliance with Pennsylvania law. When Selling Defendants decided to inflate the AWP of their generic drugs and then sell their generic drugs to Pennsylvania prescription drugs providers, they intended to benefit Pennsylvania prescription drug providers, and understood that it would harm Pennsylvania third-party payors like Plumbers who would reimburse the drug providers at the inflated AWP. Thus, it was reasonably foreseeable to Selling Defendants that they would be required to litigate these claims in Pennsylvania.

iii. Fair Play and Substantial Justice

The exercise of jurisdiction must also "comport with 'fair play and substantial justice.'" *Burger King*, 471 U.S. at 476 (citation omitted). "The existence of minimum contacts makes jurisdiction presumptively constitutional, and the defendant 'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.'" *O'Connor*, 496 F.3d at 324 (citation omitted). When determining jurisdictional reasonableness, courts "may evaluate the burden on the defendant, the forum State's interest in adjudicating the dispute, the

plaintiff's interest in obtaining convenient and effective relief, [and] the interstate judicial system's interest in obtaining the most efficient resolution of controversies.” *Burger King*, 471 U.S. at 477 (internal quotation marks omitted). “When minimum contacts have been established, often the interests of the plaintiff and the forum in the exercise of jurisdiction will justify even the serious burdens placed on the alien defendant.” *Asahi Metal Indus. Co. v. Superior Court of California*, 480 U.S. 102, 114 (1987).

Because Plumbers has established that minimum contacts exist between Pennsylvania and Selling Defendants, the exercise of personal jurisdiction is “presumptively constitutional,” and Selling Defendants must demonstrate a compelling reason that would “render jurisdiction unreasonable.” *See O’Connor*, 496 F.3d at 324. Selling Defendants have made no such showing. Selling Defendants neither discuss this final jurisdictional requirement nor provide any reason why the exercise of jurisdiction in Pennsylvania would be unreasonable or burdensome. Accordingly, the Court’s exercise of personal jurisdiction over Selling Defendants “comport[s] with ‘fair play and substantial justice.’” *Burger King*, 471 U.S. at 476 (citation omitted).

b. Non-Selling Defendants

i. Purposeful Availment

Non-Selling Defendants do not manufacture, market, distribute, or sell any prescription drugs in Pennsylvania. Moreover, they have not created any contacts with Pennsylvania. Thus, Non-Selling Defendants contend that they have not purposefully directed their activities at Pennsylvania. Plumbers attempts to invoke the “stream of commerce” and “*Calder* effects” theories to establish that Non-Selling Defendants purposefully availed themselves of the privileges of conducting activities within Pennsylvania. Plumbers also attempts to invoke the conspiracy theory of jurisdiction.

The “stream of commerce” theory is based on the premise that jurisdiction may be established over a defendant who places its products into the stream of commerce and those products ultimately reach the forum state. *See Nicastro*, 564 U.S. 873; *Asahi*, 480 U.S. 102. Under the “stream of commerce” theory, however, “[a] defendant must do more than simply place a product into the stream of commerce. Some purposeful act directed at the forum state is required.” *Lambeth Magnetic Structures, LLC v. Toshiba Corp.*, No. 14-1526, 2017 WL 782892, at *5 (W.D. Pa. Mar. 1, 2017) (citing *Nicastro*, 564 U.S. at 880-85 (Kennedy, J.) (concluding in a plurality opinion that “purposeful availment” in the form of “target[ing] the forum” is required under the stream of commerce theory); *id.* at 890-91 (Breyer, J., concurring) (rejecting the idea that “a producer is subject to jurisdiction . . . so long as it knows or reasonably should know that its products are distributed through a nationwide distribution system that might lead to those products being sold in any of the fifty states”); *Asahi*, 480 U.S. 111-12 (O’Connor, J.) (requiring “something more than that the defendant was aware of its product’s entry into the forum State through the stream of commerce”)).

Plumbers fails to plead in the Amended Complaint that any of Non-Selling Defendants’ generic drugs were ever sold in Pennsylvania and Non-Selling Defendants have made no concession regarding their sales. There is no allegation or evidence that Non-Selling Defendants’ generic drugs entered Pennsylvania through the stream of commerce or that Non-Selling Defendants took any act purposefully directed toward Pennsylvania. Therefore, Plumbers cannot successfully establish specific jurisdiction under the “stream of commerce” theory.

Plumbers also cannot establish purposeful availment under the “*Calder* effects” test. To establish purposeful availment under the “*Calder* effects” test, a plaintiff must demonstrate:

- (1) The defendant committed an intentional tort;
- (2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort;
- (3) The defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity

IMO Indus., Inc. v. Kiekert AG, 155 F.3d 254, 265–66 (3d Cir. 1998) (footnote omitted).

Moreover, “[a] forum State’s exercise of jurisdiction over an out-of-state intentional tortfeasor must be based on intentional conduct by the defendant that creates the necessary contacts with the forum.” *Walden*, 134 S. Ct. at 1123.

Because there is no allegation or evidence that Non-Selling Defendants’ generic drugs were ever sold in Pennsylvania, they have not engaged in any intentional conduct that creates the necessary contacts with Pennsylvania. Furthermore, there is no allegation or evidence that Non-Selling Defendants expressly aimed their tortious conduct at Pennsylvania. Plumbers cannot successfully establish specific jurisdiction under the “stream of commerce” theory.

Additionally, Plumbers cannot succeed based on the conspiracy theory of jurisdiction. “Under certain circumstances district courts in this Circuit have adopted Pennsylvania’s ‘co-conspirator jurisdiction’ under which ‘the court imputes the contacts of the “resident” co-conspirator over whom it has jurisdiction to the “foreign” co-conspirator to see if there are sufficient contacts to exercise jurisdiction over the latter.’” *Doe v. Hesketh*, 15 F. Supp. 3d 586, 595 (E.D. Pa. 2014) (citation omitted). To establish jurisdiction under the conspiracy theory, “the plaintiff must allege that substantial acts in furtherance of the conspiracy occurred within the forum state and that the foreign defendant was, or should have been, aware of them.” *Id.* “It is not enough that the non-forum co-conspirator is part of the conspiracy as plaintiff must plead

the defendant's involvement with specificity." *Sugartown Worldwide LLC v. Shanks*, No. 14-5063, 2015 WL 1312572, at *4 (E.D. Pa. Mar. 24, 2015); *see also Doe*, 15 F. Supp. 3d at 595.

There is no need to explore whether the conspiracy theory is a viable means of asserting jurisdiction because Plumbers fails to allege Non-Selling Defendants' involvement in the conspiracy with any specificity. Moreover, Plumbers does not allege that any substantial acts in furtherance of the conspiracy occurred within Pennsylvania. Thus, Plumbers cannot establish jurisdiction based on the conspiracy theory.

Therefore, this Court cannot exercise specific jurisdiction over Non-Selling Defendants because they have not purposefully directed their activities at Pennsylvania.

2. Non-Pennsylvania Claims

In addition to Pennsylvania claims, Plumbers brings claims against Jurisdiction Defendants for violations of the consumer protection laws of forty-eight additional states and two territories. Plumbers asserts these claims on behalf of putative class members. Plumbers does not allege where the generic drugs involved in these claims were sold or where they were purchased.

a. Selling Defendants

i. Purposeful Availment

As previously discussed, Selling Defendants have purposefully availed themselves of conducting activities in Pennsylvania because they seek to serve the Pennsylvania market by targeting Pennsylvania as a place to sell their drugs.

ii. Relatedness

Although Selling Defendants meet the first specific jurisdiction requirement—purposeful availment, the Court lacks specific jurisdiction over the Non-Pennsylvania Claims brought

against Selling Defendants because these claims are not related to Selling Defendants contacts with Pennsylvania.

A plaintiff's claims must "arise out of or relate to" a defendant's forum contacts. In *Demaria v. Nissan North America, Inc.*, No. 15-3321, 2016 WL 374145 (N.D. Ill. Feb. 1, 2016), the plaintiffs brought a putative class action, in the United States District Court for the Northern District of Illinois, against the defendant for claims related to allegedly defective vehicles. In addition to bringing suit for claims under Illinois law, the plaintiffs also brought claims under various states' consumer protection laws. *Id.* at *1. In ruling on a motion to dismiss for lack of personal jurisdiction, the court found that the defendant had sufficient contacts with Illinois because it had promoted, sold, marketed, and distributed the purportedly defective cars in Illinois. *Id.* at *7. The district court held that it could exercise jurisdiction over the Illinois plaintiff's claims because the Illinois plaintiff had purchased her car in Illinois; therefore, her Illinois state law claims arose out of the defendant's contacts with the forum. *Id.* The district court held that it could not exercise specific jurisdiction over the claims based on other states' consumer protection laws because the complaint did not allege that the defendant's activities in Illinois had anything to do with any of the claims based on other states' consumer protection laws. *Id.*

In *Demedicis v. CVS Health Corp.*, No. 16-5973, 2017 WL 569157 (N.D. Ill. Feb. 13, 2017), the plaintiff brought a putative class action, in the United States District Court for the Northern District of Illinois, against the defendants for claims related to supplements with misleading and inaccurate labels. In addition to bringing suit under Illinois law, the plaintiff also brought suit under various states' consumer fraud laws. *Id.* at * 1. The district court held: "Because specific personal jurisdiction is based on claims arising out of a defendant's conduct

within the forum state, this Court has no jurisdiction over claims based on out-of-state consumer fraud laws.” *Id.* at *4. Accordingly, it dismissed the claims based on other states’ consumer fraud laws for lack of personal jurisdiction. *Id.* at *5.

Only Plumbers’ Pennsylvania Claims arise out of or relate to Selling Defendants’ sales of generic drugs in Pennsylvania. Similar to *Demaria* and *Demedicis*, the Non-Pennsylvania Claims do not arise out of or relate to any of Selling Defendants’ conduct within the forum state. Accordingly, the Court cannot exercise specific jurisdiction over the Non-Pennsylvania Claims brought against Jurisdiction Defendants.

b. Non-Selling Defendants

i. Purposeful Availment

As previously discussed, Non-Selling Defendants have not purposefully directed their activities at Pennsylvania. Therefore, the Court lacks specific jurisdiction over all claims against Non-Selling Defendants, including the Non-Pennsylvania Claims.

C. Consent to Jurisdiction

Plumbers contends that Registration Defendants (Watson Pharma, Inc. (n/k/a Actavis Pharma, Inc.), Forest Laboratories, Inc. (n/k/a Forest Laboratories, LLC), and Watson Laboratories, Inc.) consented to personal jurisdiction in Pennsylvania when they registered as foreign corporations in Pennsylvania.¹⁰ Registration Defendants concede that they registered as

¹⁰ Plumbers also argues that Teva Ltd., DRL Limited, and Allergan Finance consented to jurisdiction by participating in completely separate civil actions in the United States District Court for the Eastern District of Pennsylvania either by filing an action or removing an action to this district without contesting personal jurisdiction. Although Teva Ltd. and DRL Limited reject Plumbers’ factual assertions, it is unnecessary to determine whether they are correct because Plumbers’ legal contention lacks merit. “A party’s consent to jurisdiction in one case . . . extends to that case alone. It in no way opens that party up to other lawsuits in the same jurisdiction in which consent was given, where the party does not consent and no other jurisdictional basis is available.” *Klinghoffer v. S.N.C. Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in Amministrazione Straordinaria*, 937 F.2d 44, 50 n.5 (2d Cir. 1991).

foreign corporations in Pennsylvania. They argue, however, that registration cannot create a basis for general jurisdiction over them because it exceeds the limits of due process.

Plumbers also contends that Andrx Corporation consented to personal jurisdiction in Pennsylvania when it registered as a foreign corporation in Pennsylvania. Andrx Corporation asserts that it did not consent to personal jurisdiction because it did not register as a foreign corporation in Pennsylvania.

1. Registration Defendants

Pennsylvania law explicitly states that qualification as a foreign corporation under the laws of Pennsylvania provides a sufficient basis for the exercise of personal jurisdiction. *See* 42 Pa. Stat. and Cons. Stat. Ann. § 5301(a). The statute provides, in relevant part:

The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person . . . (2) Corporations.-- (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth. (ii) Consent, to the extent authorized by the consent.

42 Pa. Stat. and Cons. Stat. Ann. § 5301(a). In *Bane v. Netlink, Inc.*, the Third Circuit held that a foreign corporation has consented to personal jurisdiction in Pennsylvania by registering to do business in Pennsylvania. 925 F.2d 637, 640-41 (3d Cir. 1991). Plumbers relies on *Bane* to argue that Registration Defendants consented to personal jurisdiction. Registration Defendants contend that the Supreme Court implicitly overruled *Bane* with its decisions in *Daimler* and *Tyrrell*.¹¹

In *Daimler*, the Supreme Court held that, in order to comport with due process, general jurisdiction is only proper in the forums where a corporation is reasonably regarded as home—

¹¹ Registration Defendants also contend that section 5301(a) does not actually state that a foreign corporation consents to do jurisdiction because it is registered to do business in Pennsylvania. This argument is unavailing because the Third Circuit held in *Bane* that “registration by a foreign corporation carries with it consent to be sued in Pennsylvania courts.” 925 F.2d at 640.

the place of incorporation and the principal place of business, or in the “exceptional case” another forum where the corporation’s operations are “so substantial and of such a nature as to render the corporation at home in that State.” *Daimler*, 134 S. Ct. at 761 n.19. In *Tyrell*, the Supreme Court reiterated: “The Fourteenth Amendment due process constraint described in *Daimler* . . . applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or business enterprise sued.” *Tyrell*, 137 S. Ct. at 1558–59. The Supreme Court further expounded that “in-state business . . . does not suffice to permit the assertion of general jurisdiction over claims . . . that are unrelated to any activity occurring in [the forum state].” *Id.* at 1559.

Registration Defendants argue that an assertion of general jurisdiction over them based on their registration as foreign corporations would violate the holdings of *Daimler* and *Tyrell*, and would not comport with the Due Process Clause of the Fourteenth Amendment. Neither *Daimler* nor *Tyrell*, however, addressed the interplay between consent to jurisdiction and the due process limits of general jurisdiction. Because the Supreme Court has not addressed the viability of consent to jurisdiction post-*Daimler*, courts in this district have continued to apply the precedent established by the Third Circuit in *Bane* to hold that registration to do business in Pennsylvania constitutes consent to jurisdiction. *Hegna v. Smitty’s Supply, Inc.*, No. 16-3613, 2017 WL 2563231, at *3-4 (E.D. Pa. June 13, 2017); *Bors v. Johnson & Johnson*, 208 F. Supp. 3d 648, 652-55 (E.D. Pa. 2016). I will deny Registration Defendants’ motions to dismiss for lack of personal jurisdiction because as foreign corporations registered to do business in Pennsylvania they have consented to jurisdiction.¹²

¹² Registration Defendants also argue that the imposition of general personal jurisdiction over foreign defendants who must register to do business in Pennsylvania or be subject to penalty for failure to register violates the dormant Commerce Clause.

2. Andrx Corporation

Plumbers brings suit against Andrx Corporation. Andrx Corporation submits a sworn declaration that it is now known as Andrx LLC, and attaches the Certificate of Conversion of Andrx Corporation, a Delaware domestic corporation, into Andrx LLC, a Delaware Limited Liability Company. Boyer Decl. ¶ 2, Ex. 2. The declaration states that Andrx LLC is not registered to conduct business in Pennsylvania and that it has not appointed a registered agent for service of process in Pennsylvania. Boyer Decl. ¶ 5.

In the Amended Complaint, Plumber alleges that Andrx Corporation is also known as Andrx Pharmaceuticals, Inc. and that Andrx Pharmaceuticals Inc. is registered to do business in Pennsylvania; thus Andrx Corporation has consented to personal jurisdiction in Pennsylvania. Andrx Corporation contends that Andrx Pharmaceuticals, Inc. is a separate corporation now known as Andrx Pharmaceuticals Sales and Marketing, Inc., and that Andrx Corporation has established by sworn declaration that it is not registered as a foreign corporation in Pennsylvania.

“In deciding a motion to dismiss for lack of personal jurisdiction, we take the allegations of the complaint as true. But once a defendant has raised a jurisdictional defense, a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper.” *Dayhoff*, 86 F.3d at 1302 (citation omitted). Plumbers provides neither an affidavit nor any other

“The Commerce Clause of the United States Constitution grants Congress plenary authority to regulate commerce among the states, and ‘has long been understood to have a “negative” aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce.’” *Tri-M Grp., LLC v. Sharp*, 638 F.3d 406, 418 (3d Cir. 2011) (quoting *Or. Waste Sys., Inc. v. Dep’t of Env’tl. Quality*, 511 U.S. 93, 98 (1994)).

Whether the Pennsylvania statute violates the dormant Commerce has not been fully briefed by the parties. At this juncture, I will deny Registration Defendants’ motions to dismiss for lack of personal jurisdiction. Given the difficult constitutional question of whether consent based on registration to do business remains valid *Post-Daimler*, and the additional constitutional question regarding the dormant Commerce Clause, I will entertain a motion for reconsideration with further briefing after resolution of all pending motions to dismiss on these limited issues.

competent evidence to refute that Andrx Corporation is now known as Andrx LLC and that it is not registered to do business in Pennsylvania. Therefore, Plumbers has not met its burden of demonstrating facts that establish personal jurisdiction over Andrx Corporation based on consent to jurisdiction.

V. CONCLUSION

For the reasons set forth above, I will grant the motions to dismiss on the Non-Pennsylvania Claims of the eight Selling Defendants. I will deny the motions to dismiss on the Pennsylvania Claims of the eight Selling Defendants. I will deny Registration Defendants' motions to dismiss for lack of personal jurisdiction. I will grant Non-Selling Defendants' motions to dismiss for lack of personal jurisdiction.¹³

s/Anita B. Brody

ANITA B. BRODY, J.

Copies **VIA ECF** on _____ to:

¹³ Plumbers moves to compel jurisdictional discovery prior to dismissal of these claims for lack of personal jurisdiction. Jurisdiction Defendants contend that jurisdictional discovery is unwarranted and move for an order from the Court that directs Plumbers to pay for Jurisdiction Defendants' fees and costs incurred in responding to the motion to compel.

"If a plaintiff presents factual allegations that suggest 'with reasonable particularity' the possible existence of the requisite 'contacts between [the party] and the forum state,' the plaintiff's right to conduct jurisdictional discovery should be sustained." *Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (quoting *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir.1992)). "A plaintiff may not, however, undertake a fishing expedition based only upon bare allegations, under the guise of jurisdictional discovery." *Eurofins Pharma US Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 157 (3d Cir. 2010).

In the Amended Complaint, Plumbers does not allege that Jurisdiction Defendants sell their generic drugs in Pennsylvania or that Plumbers' Members made any purchases of these drugs in Pennsylvania. While Selling Defendants do not contest the sale and purchase of their generic drugs in Pennsylvania, Non-Selling Defendants contest these assertions and provide evidentiary support for their contention that they do not manufacture, market, distribute, or sell any prescription drugs in Pennsylvania. For the Non-Pennsylvania claims, Plumbers also does not allege where the generic drugs involved in these claims were sold or where they were purchased, and Jurisdiction Defendants make no concessions regarding the Non-Pennsylvania Claims. I will deny Plumbers' motion to compel jurisdictional discovery because Plumbers has not presented factual allegation that suggest with reasonable particularity the existence of personal jurisdiction over any of Non-Selling Defendants' claims or over the eight Selling Defendants' Non-Pennsylvania Claims. I will also deny Jurisdiction Defendants' motion for fees and costs.