

1 Attorney Joseph Horey appeared on behalf of plaintiffs. Attorneys Richard
2 W. Pierce, Mark J. Spooner (via telephone) and Ruth Holt (via telephone) appeared
3 on behalf of defendant Wyeth.
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5 Upon consideration of the written and oral arguments of counsel, defendant
6 Wyeth's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED without
7 prejudice and plaintiffs' Motion to Remand is GRANTED as set forth below:
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9 FACTUAL BACKGROUND

10 Plaintiffs Balbina K. Wabol and Francisco T. Wabol (hereinafter "plaintiffs")
11 are a residents of Saipan, Commonwealth of the Northern Mariana Islands
12 (hereinafter "CNMI"). First Amended Complaint ¶¶ 3, 4 (Jan. 10, 2003). On
13 January 6, 2003, plaintiffs filed a lawsuit against defendants Wyeth, Dr. Ahmad Al-
14 Alou¹ and Pacific Medical Center Inc.,² alleging various causes of action, including
15 negligence, design and marketing defect, inadequate and improper warnings, and
16 misrepresentation, due to the alleged injuries plaintiff Balbina Wabol sustained as a
17 result of the use of the weight loss medications fenfluramine and/or dexfenfluramine.
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21 Id. at ¶¶ 11, 49-100.

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25 Defendant Dr. Ahmad Al-Alou is a resident of Saipan, CNMI. Id. at ¶ 6.

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Defendant Pacific Medical Center, Inc. is incorporated in the CNMI. Id.
at ¶ 7.

1 Defendant Wyeth is incorporated in the State of Delaware and its principal
2 place of business is in New Jersey. See Wyeth's Memorandum in Support of its
3 Motion to Dismiss for Lack of Personal Jurisdiction Ex. 2 (Declaration of Frank J.
4 Cirone) ¶ 5 (Apr. 24, 2003). Wyeth is a publicly traded corporation that
5 manufactures and distributes a variety of health care products, including prescription
6 pharmaceuticals and consumer health care products. *Id.* at ¶ 7. Prior to September
7 15, 1997, one of Wyeth's prescription drugs was Pondimin, which was Wyeth's
8 brand name for a compound known as fenfluramine hydrochloride. *Id.* In 2002,
9 Wyeth had annual sales of nearly \$14.6 billion dollars and its products sold in more
10 than 140 countries. See Opposition to Wyeth's Motion to Dismiss for Lack of
11 Personal Jurisdiction Ex. B p. 10 (Jun. 12, 2003). Wyeth markets itself as a "global
12 health care leader" having a "strong global presence." *Id.* at Ex. B pp. 10, 26.

13 On or about, March 6, 1997, plaintiff Balbina Wabol was prescribed
14 fenfluramine (Pondimin) by Dr. Ahmad Al-Alou. See Wyeth's Memo. in Support of
15 its Mot. to Dismiss for Lack of Personal Juris. Ex. 4 (Declaration of Dr. Ahmad Al-
16 Alou) ¶ 2 (Apr. 24, 2003). Dr. Al-Alou continued to prescribe Pondimin for plaintiff
17 Balbina Wabol until August 1997. *Id.* Dr. Al-Alou first learned about Pondimin
18 from a patient who had initially been prescribed this drug in the mainland United
19 States and who had reported successful weight loss while on this medication. *Id.* at ¶
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1 3. Dr. Al-Alou contacted Major Pharmaceuticals in San Diego, California and placed
2 an order for Pondimin. Id. at ¶ 4. Dr. Al-Alou was never contacted by a Wyeth or
3 American Home Products Corporation³ sales agent or pharmaceuticals
4 representative. Id. at ¶ 5. Nor did he receive any brochures or other advertisements
5 from Wyeth or American Home Products Corporation. Id. The Pondimin that Dr.
6 Al-Alou provided the plaintiff was purchased from Major Pharmaceuticals in San
7 Diego, California. Id. at ¶ 4.

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10 Wyeth's sales records from 1993 through 1997 show that there were no sales
11 or shipments of Pondimin and other Wyeth products to customers in the CNMI.
12 Decl. of Frank J. Cirone at ¶¶ 9, 11. Wyeth sells some products to distributors and
13 wholesalers located outside the CNMI, and those entities might resell some products
14 to customers in the CNMI. Id. at ¶ 10. However, Wyeth does not have any
15 contracts or understanding with any distributor or wholesaler directing the
16 distributor or wholesaler to resell Pondimin or other Wyeth products in the CNMI.⁴

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21 Wyeth was formerly known as American Home Products Corporation.
22 See Wyeth's Memo. in Support of its Mot. to Dismiss for Lack of Personal Juris.
23 Ex. 3 (Declaration of John M. Alivernini) ¶ 1 (Apr. 24, 2003). In March 2002,
24 American Home Products Corp. changed its name to Wyeth. Id. at ¶ 2.

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26 Wyeth's records do not show sales or shipping activity to Major
Pharmaceuticals in San Diego, California. Id. at ¶ 13. Major Pharmaceuticals
may have some affiliation with Harvard Drugs. Id. Wyeth has sold its products
(continued...)

1 Id. at ¶¶ 10, 12. Wyeth has not engaged a distributor or wholesaler to serve as
2 Wyeth's sales agent for Pondimin or its other products in the CNMI. Id. at ¶¶ 10,
3 12. However, some of Wyeth's products are found in the CNMI. See Opposition to
4 Wyeth's Mot. to Dismiss for Lack of Personal Juris. Ex. B p. 6. The following is a
5 list of some of Wyeth's over the counter consumer health care products that are sold
6 in the CNMI: Advil, Anacin, Aleve, Robitussin, Dimetapp, Centrum, Preparation H,
7 and Chap Stick.⁵ Id.

10 Wyeth does not maintain an office, station any employees or sales agents, or
11 keep any company files in the CNMI. Decl. of Frank J. Cirone at ¶ 8. Wyeth does
12 not own or lease any real property, hold shareholder or director meetings, maintain
13 telephone listings or bank records, or file or pay taxes in the CNMI. Id. Nor has
14 Wyeth designated an agent for service of process in the CNMI. Id.

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20 ⁴(...continued)

20 to Harvard Drugs in Florida and Michigan. Id. However, Wyeth has no
21 agreement with Harvard Drugs whereby it would distribute Pondimin in the
22 CNMI or whereby it would resell Pondimin to Major Pharmaceuticals or any
23 other entity for resale in the CNMI. Id.

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24 The following is a list of pharmaceutical and veterinary products, whose
25 names are registered trademarks of Wyeth, that have been sold in the CNMI:
26 Alesse, ALTACE Capsules, Cordarone, Diamox, Effexor XR Extended-Release
Capsules, Minocin, Norplant System, Dicural, EtoGesic, Ketaset, Nolvasan,
Polyflex, ProHeart 6, and Torbugesic-SA. Id. at Ex. C ¶ 2, D ¶ 2.

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DISCUSSION

I. Motion to Dismiss for Lack of Personal Jurisdiction

Defendant Wyeth moved the court to dismiss plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(2) arguing that the court lacks personal jurisdiction over it.

When a defendant "moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate." Dole Food Company v. Watts, 303 F.3d 1104, 1108 (9th Cir. 2002).

When the motion is based on written material rather than an evidentiary hearing, the court inquires into whether the plaintiff's pleadings and affidavits make a prima facie showing of personal jurisdiction. Id. The plaintiff cannot solely rely on the bare allegations of his or her complaint. Id. However, uncontroverted allegations in the plaintiff's complaint must be taken as true. Id.

Due process requires that, for a court to exercise personal jurisdiction over a nonresident defendant, that defendant must have at least "minimum contacts" with the forum state so that the exercise of personal jurisdiction does not offend "traditional notions of fair play and substantial justice." International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945). A court's exercise of personal jurisdiction over a defendant may be either general or specific. See Helicopteros Nacionales de Columbia v. Hall, 466 U.S. 408, 414 (1984). These same principals apply in the

1 CNMI.⁶

2 **A. General Jurisdiction**

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4 A court may exercise general jurisdiction over a defendant whose contacts
5 with a forum state are “substantial” or “continuous and systematic.” Bancroft &
6 Masters, Inc. v. Augusta National Inc., 223 F.3d 1082, 1086 (9th Cir. 2000). General
7 jurisdiction is a high standard in practice, “...and requires that the defendant’s
8 contacts be of the sort that approximate physical presence.” Id. In determining
9 whether it has general jurisdiction, the court “examine[s] all of the defendant’s
10 activities that impact the state, including whether the defendant makes sales, solicits
11 or engages in business, serves the state’s markets, designates an agent for service of
12 process, holds a license, has employees, or is incorporated there.” Hirsch v. Blue
13 Cross, Blue Shield of Kansas City, 800 F.2d 1474, 1478 (9th Cir. 1986).

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17 Plaintiffs argued that general jurisdiction is proper over defendant Wyeth
18 because it produces a wide array of prescription medicines, veterinary products and
19 over the counter consumer healthcare products, some of which are sold in the

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22 A district court sitting in diversity applies the long-arm statute of the state
23 in which the court sits, if no federal statute governing personal jurisdiction is
24 applicable. Dole Food Co., 303 F.3d at 1108. The Commonwealth’s long-arm
25 statute, 7 N. Mar. I. Code § 1101 et seq. (1999), “subjects both residents and non-
26 residents to the Court’s jurisdiction to the fullest extent allowable under the due
process standards of the United States Constitution.” Monticello v. Di-All
Chemical Co., App. No. 97-020 (N. Mar. I. Nov. 23, 1998).

1 CNMI. Plaintiffs argued that the sales of these products are substantial, continuous
2 and systematic contacts, and give rise to general jurisdiction. The court disagrees.

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4 While some of the defendant's products are present in the CNMI, the
5 defendant itself has no physical presence in the CNMI. Defendant Wyeth has no
6 sales agents in the CNMI. It did not directly sell or ship any of its products to the
7 CNMI. Defendant Wyeth is incorporated in the State of Delaware and its principal
8 place of business is in New Jersey. It does not own, lease or maintain an office in the
9 CNMI. Furthermore, the defendant does not hold shareholder or director meetings,
10 maintain company files or bank accounts, or pay taxes in the CNMI. Defendant
11 Wyeth's contacts with the CNMI are not the "substantial, continuous and
12 systematic" contacts required to give rise to general jurisdiction. Accordingly, the
13 court does not have general jurisdiction over defendant Wyeth.

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17 **B. Specific Jurisdiction**

18 If a defendant's contacts with the forum do not give rise to general
19 jurisdiction, then a court may assert "specific jurisdiction," if the cause of action arises
20 out of or is related to a defendant's forum related activities. Helicopteros Nacionales,
21 466 U.S. at 414. The Ninth Circuit applies a three-part test to determine whether
22 specific jurisdiction may be applied to a defendant:
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- 25 (1) The non-resident defendant must purposefully direct his activities or
26 consummate some transaction with the forum or resident thereof; *or* perform

1 some act by which he purposefully avails himself of the privileges of
2 conducting activities in the forum, thereby invoking the benefits and
3 protections of its laws;

4 (2) The claim must be one which arises out of or relates to the defendant's
5 forum-related activities; and

6 (3) The exercise of jurisdiction must comport with fair play and substantial
7 justice, i.e. it must be reasonable.

8 Dole Food Co., 303 F.3d at 1111 (emphasis added). Each of the tests must be satisfied
9 to permit a court to exercise specific jurisdiction over a non-resident defendant.

10 Peterson v. Kennedy, 771 F.2d 1244, 1261 (9th Cir. 1985), *cert. denied*, 475 U.S. 1122
11 (1986). Specific jurisdiction may be exercised when the nature and quality of the
12 defendant's contacts with the forum state are significant in relation to the specific
13 claim for relief. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 839
14 (9th Cir. 1986).

17 1. Purposeful Availment

18 Plaintiffs argued that the court's exercise of specific jurisdiction over the
19 defendant is proper because defendant Wyeth placed Pondimin within the "stream of
20 commerce" and knew or should have known that it would flow into the CNMI.⁷

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24 The United States Supreme Court discussed the applicability of the "stream
25 of commerce" theory in World-Wide Volkswagen Corp. v. Woodson, 444 U.S.
26 286, 297-98 (1980). The Court held that manufacturers or distributors who
directly or indirectly place their goods into the stream of commerce with the

(continued...)

1 Plaintiffs argued that personal jurisdiction over defendant Wyeth is also appropriate
2 under the “stream of commerce plus” theory because Wyeth is a large company with
3 world-wide operations that markets its products globally.⁸ Plaintiffs argued that

6 ⁷(...continued)

7 expectation that they will reach the forum state can be subject to suit in the forum
8 state. Id. The Court stated:

9 [I]f the sale of a product of a manufacturer or distributor... is not
10 simply an isolated occurrence, but arises from the efforts of the
11 manufacturer or distributor to serve directly *or indirectly*, the market
12 for its product in other States, it is not unreasonable to subject it to
13 suit in one of those States if its allegedly defective merchandise has
14 been the source of injury to its owner or to others. *The forum State*
15 *does not exceed its powers under the Due Process Clause if it asserts personal*
jurisdiction over a corporation that delivers its products into the stream of
commerce with the expectation that they will be purchased by consumers in
the forum State.

16 Id. (emphasis added).

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18 The United States Supreme Court revisited the “stream of commerce”
19 theory in Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102
20 (1987). In Asahi, with regard to the “stream of commerce” theory, two principal
21 views were expressed in two separate opinions, one authored by Justice Brennan
22 and the other by Justice O’Connor. Justice Brennan reaffirmed the “stream of
23 commerce” theory of World-Wide Volkswagen that, the “forum State does not
24 exceed its powers under the Due Process Clause if it asserts personal jurisdiction
25 over a corporation that delivers its products into the stream of commerce with
26 the expectation that they will be purchased in the forum state.” World-Wide
Volkswagon, 444 U.S. at 293-294; *see also Asahi*, 480 U.S. at 116-17. Justice
O’Connor concluded that merely placing a product into the stream of commerce
and having it being swept into the forum state does not establish the minimum
contacts needed for personal jurisdiction. Asahi, 480 U.S. at 112. Justice

(continued...)

1 Pondimin did not wander into the CNMI by accident, but arrived as part of some
2 purposeful marketing plan,⁹ as evidenced by the presence of so many Wyeth products
3 in the CNMI. Defendant argued that it did not purposefully avail itself of the
4 privilege of selling Pondimin in the CNMI. Rather, the entry of Pondimin into the
5 CNMI was the result of the unilateral activity of a single physician who reached out
6 of the CNMI and obtained Wyeth's product from a wholesaler or distributor in
7 California, which did not obtain the product directly from Wyeth. The court agrees.

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10 "Purposeful availment requires that the defendant engage in some form of
11 affirmative conduct allowing or promoting the transaction of business within the
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15 ⁸(...continued)
16 O'Connor stated:

17 The placement of a product into the stream of commerce, *without more*,
18 is not an act of the defendant purposefully directed toward the forum
19 State. *Additional conduct of the defendant* may indicate an intent or
purpose to serve the market of the forum state....

20 Id. (emphasis added). Examples of the "additional conduct" discussed by Justice
21 O'Connor include, but are not limited to, "advertising in the forum state,
22 establishing channels for providing regular advice to customers in the forum
23 State, or marketing the product through a distributor who has agreed to serve as
the sales agent in the forum State." Id.

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25 See Opposition to Wyeth's Mot. to Dismiss for Lack of Personal Juris. Ex.
26 B p. 26 (Wyeth's Internet website states that, "Wyeth brings products to the
people who need them around the world. We are proud of our global
presence.").

1 forum state.” Doe v. American National Red Cross, 112 F.3d 1048, 1051 (9th Cir.
2 1997) (quoting Shute v. Carnival Cruise Lines, 897 F.2d 377, 381 (9th Cir. 1990), *rev’d*
3 *on other grounds*, 499 U.S. 585 (1991)). “This requirement ensures that a defendant
4 will not be haled into a jurisdiction solely as a result of random, fortuitous, or
5 attenuated contacts, or of the unilateral activity of another party or third person.”
6 Id. (citing Burger King v. Rudzewicz, 471 U.S. 462, 475 (1985)).
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9 In this case, defendant Wyeth did not directly sell Pondimin in the CNMI.
10 Nor did it appoint a distributor to sell Pondimin in the CNMI. The record before
11 the Court establishes that plaintiff’s doctor, Dr. Al-Alou, first learned about
12 Pondimin from another patient. Dr. Al-Alou was never called on by any Wyeth
13 sales representatives, and he never received any brochures or other advertisements
14 from Wyeth. Dr. Al-Alou obtained the Pondimin by contacting Major
15 Pharmaceuticals in San Diego, California, a wholesaler or distributor that Wyeth has
16 no record of doing business with. Defendant Wyeth represented that Major
17 Pharmaceuticals may be affiliated with Harvard Drugs, a company which Wyeth has
18 sold and shipped products to in Michigan and Florida. However, Wyeth has no
19 agreement with Harvard Drugs whereby it would distribute Pondimin in the CNMI
20 or would resell Pondimin to Major Pharmaceuticals or any other entity for resale in
21 the CNMI.
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1 The court finds that the purposeful availment requirement cannot be satisfied
2 based on these facts. Whatever contacts defendant Wyeth has with the CNMI are
3 too random and attenuated.¹⁰ It would be unreasonable for the court to assume that
4 by shipping Pondimim to Harvard Drugs in Michigan and Florida, defendant Wyeth
5 could expect or was aware that the Pondimin would be shipped to another
6 distributor (Major Pharmaceuticals) in California, who in turn, would sell the
7 Pondimin to a customer in the CNMI (Dr. Al-Alou), after that customer contacted
8 the distributor in the mainland United States to obtain the product.

9 Accordingly, plaintiffs have not properly shown that the defendant
10 purposefully availed itself of the CNMI.

11 2. Claims Arising Out of Defendant's Activities

12 The Ninth Circuit has adopted a "but for" test to determine if claims asserted
13 by plaintiffs arise out of the defendant's contacts with the forum state. Glencore
14 Grain, 284 F.3d at 1123; Shute, 897 F.2d at 385. To satisfy the "but for" test, the
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22 See Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284
23 F.3d 1114, 1123 (9th Cir. 2002) (emphasis in original) (citing Burger King, 471
24 U.S. at 475) ("Whether dealing with specific or general jurisdiction, the
25 touchstone remains purposeful availment. By requiring that contacts
26 proximately result from actions by the defendant *himself* that create a substantial
connection with the forum State, the Constitution ensures that a defendant will
not be haled into a jurisdiction solely as a result of random, fortuitous, or
attenuated contacts.")).

1 plaintiff "...must show that it would not have been injured "but for" [Wyeth's]
2 contacts with [the CNMI]." Glencore Grain, 284 F.3d at 1123.

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4 Plaintiffs argued that their claim would not have arisen but for Wyeth's
5 marketing of Pondimin. Defendant argued that it does not engage in forum-related
6 activities, and the fact that some of its products are sold in the CNMI does not make
7 the exercise of jurisdiction proper because plaintiff's cause of action relates to
8 Pondimin, not to the other Wyeth products sold in the CNMI.

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10 The court acknowledges that some of defendant's pharmaceutical, veterinary,
11 and over the counter consumer health care products are sold in the CNMI.
12 However, plaintiff's claims relate to defendant's product, Pondimin, which is not
13 advertised, marketed, distributed or sold in the CNMI. Defendant Wyeth's sales
14 records from 1993 through 1997 show that there were no sales or shipments of
15 Pondimin or other Wyeth products to customers in the CNMI. Defendant Wyeth
16 does not have any contracts or understanding with any wholesaler or distributor to
17 resell Pondimin or other Wyeth products in the CNMI. Plaintiffs have failed to
18 show that defendant Wyeth directed sales or shipments of any of its products,
19 including Pondimin, to the CNMI. See id. at 1124 (holding that specific jurisdiction
20 is not proper over defendant because plaintiff's claim did not arise out of defendant's
21 conduct "directed at or related to" the forum).
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1 Plaintiffs cite this court's Order in Brasuell v. Fiskars Brands, Inc., Civ. No.
2 02-0036 (D.N.M.I.) Order Denying Defendant's Motion to Dismiss for Lack of
3 Personal Jurisdiction (Dec. 3, 2002), for the proposition that plaintiffs' claims would
4 not have arisen "but for" the defendant's contacts with the forum. Plaintiffs' reliance
5 on the Brasuell case is misplaced. In Brasuell, this court found that personal
6 jurisdiction was proper because defendant Fiskars Brands knew or should have
7 known that its product would end up in the CNMI because Fiskars Brands placed its
8 product into the worldwide marketing and distribution system of AAFES, which has
9 an outlet in Saipan. In contrast, there are no allegations that the Pondimin arrived
10 into the CNMI through defendant's regular and anticipated distribution channels.
11 Rather, the record reflects that the Pondimin dispensed by Dr. Al-Alou did not arrive
12 in the CNMI through "regular and anticipated" channels, but rather as a result of
13 "unpredictable currents or eddies" caused by the "unilateral activity of another party
14 or third person," i.e. Dr. Al-Alou reaching out of the CNMI to Major
15 Pharmaceuticals in California to obtain the Pondimin. See Asahi, 480 U.S. at 117
16 ("The stream of commerce refers not to unpredictable currents or eddies, but to the
17 regular and anticipated flow of products from manufacture to distribution to retail
18 sale...."); Burger King, 471 U.S. at 475.

19 In sum, plaintiffs have failed to show that they would not have been injured
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1 “but for” defendant Wyeth’s contacts with the CNMI. Accordingly, plaintiffs have
2 not properly alleged that their claims arise out of defendant’s forum-related activities.

3 3. Reasonableness

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5 “Once purposeful availment has been established, the forum’s exercise of
6 jurisdiction is presumptively reasonable. To rebut that presumption, a defendant
7 must present a compelling case that the exercise of jurisdiction would, in fact, be
8 unreasonable.” Ziegler v. Indian River County, 64 F.3d 470, 476 (9th Cir. 1995).
9 Because the court previously found that plaintiffs have not properly alleged
10 defendant’s purposeful availment of the forum or that their claims arise out of or
11 relate to defendant’s forum-related activities, the court will not address the third test
12 for reasonableness. *See supra* Peterson, 771 F.2d at 1261 (noting that each element of
13 the three-part test must be satisfied to permit a court to exercise specific jurisdiction
14 over a non-resident defendant).
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18 Accordingly and for the above mentioned reasons, defendant Wyeth’s Motion
19 to Dismiss for Lack of Personal Jurisdiction is GRANTED without prejudice.

20 II. Motion to Remand

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22 On February 20, 2003, defendant Wyeth removed this action from the
23 Commonwealth Superior Court to this court. *See* Notice of Removal of Action
24 Under 28 U.S.C. §§ 1332, 1441 (Diversity) (Feb. 20, 2003). Removal was based on
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1 diversity of citizenship. *Id.* at ¶ 1. Defendant Wyeth contends that complete
2 diversity exists between the plaintiffs and all properly joined defendants. *Id.* at ¶ 7.
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4 Wyeth alleged that plaintiffs have no intention of pursuing their claims against
5 defendants Dr. Ahmad Al-Alou and Pacific Medical Center, Inc. (hereinafter
6 “PMC”), and that they have failed to state a valid cause of action against either Dr.
7 Al-Alou or PMC. *Id.* at ¶¶ 7-31. As a result, Wyeth alleged that defendants Dr.
8 Ahmad Al-Alou and PMC are fraudulently joined defendants. *Id.* at ¶ 7.

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10 On March 20, 2003, plaintiffs moved the court to remand this matter to the
11 Commonwealth Superior Court arguing that there was no fraudulent joinder.
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13 Plaintiffs also argued that, despite defendant Wyeth’s contention that any claims
14 against it are barred by the statute of limitations, local law is not clear as to the
15 “accrual date” for the CNMI statute of limitations. Plaintiffs argued that remand is
16 proper because a novel issue of local law is present in this matter. On April 10, 2003,
17 defendant Wyeth opposed the motion arguing that the plaintiffs do not intend to
18 pursue their claims against the local defendants, and that the plaintiffs fail to state a
19 valid cause of action against defendants Dr. Al-Alou and PMC.¹¹

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22 The court finds plaintiffs’ motion well taken. However, because the court
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25 On April 11, 2003, defendants Dr. Ahmad Al-Alou and Pacific Medical
26 Center, Inc. joined in defendant Wyeth’s Opposition to Plaintiff’s Motion to Remand.

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previously dismissed Wyeth for lack of personal jurisdiction, this court no longer has diversity jurisdiction over the subject matter of this lawsuit. *See* 28 U.S.C. § 1332(a)(1) (common citizenship of plaintiff and defendant destroy court's subject matter jurisdiction for lack of diversity of citizenship between the adverse parties). Accordingly, as the court lacks subject matter jurisdiction, remand is mandated. Plaintiff's Motion to Remand is GRANTED. This matter is REMANDED back to the Commonwealth Superior Court.

IT IS SO ORDERED.

DATED this 13th day of August, 2003.



ALEX R. MUNSON
Chief Judge