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FILED  
Clerk  
District Court

AUG 13 2003

For The Northern Mariana Islands  
By [Signature]  
(Deputy Clerk)

- For Publication on Web Site -

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

FRANCES SABLAN	)	Civil Action No. 03-0006
BENAVENTE,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	DEFENDANT WYETH'S
v.	)	MOTION TO DISMISS FOR
	)	LACK OF PERSONAL
WYETH, PACIFIC MEDICAL	)	JURISDICTION AND
CENTER, INC., and DR. AHMAD	)	GRANTING PLAINTIFF'S
AL-ALOU,	)	MOTION TO REMAND
	)	
Defendants.	)	
	)	
_____	)	

THIS MATTER came before the court on July 17, 2003 for hearing on  
defendant Wyeth's Motion to Dismiss for Lack of Personal Jurisdiction and  
plaintiff's Motion to Remand.

1 Attorney Joseph Horey appeared on behalf of plaintiff. Attorneys Richard W.  
2 Pierce, Mark J. Spooner (via telephone) and Ruth Holt (via telephone) appeared on  
3 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 plaintiff's Motion to Remand is GRANTED as set forth below:  
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### 9 FACTUAL BACKGROUND

10 Plaintiff Frances Sablan Benavente (hereinafter "plaintiff") is a resident of  
11 Saipan, Commonwealth of the Northern Mariana Islands (hereinafter "CNMI").  
12 First Amended Complaint ¶ 3 (Jan. 7, 2003). On January 6, 2003, plaintiff filed a  
13 lawsuit against defendants Wyeth, Dr. Ahmad Al-Alou<sup>1</sup> and Pacific Medical Center  
14 Inc.,<sup>2</sup> alleging various causes of action, including negligence, design and marketing  
15 defect, inadequate and improper warnings, and misrepresentation, due to the alleged  
16 injuries she sustained as a result of the use of the weight loss medications  
17 fenfluramine and/or dexfenfluramine. *Id.* at ¶¶ 10, 48-97.  
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21 Defendant Wyeth is incorporated in the State of Delaware and its principal  
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24 Defendant Dr. Ahmad Al-Alou is a resident of Saipan, CNMI. *Id.* at ¶ 5.

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26 Defendant Pacific Medical Center, Inc. is incorporated in the CNMI. *Id.*  
at ¶ 6.

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

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16 On or about, February 22, 1997, plaintiff was prescribed fenfluramine  
17 (Pondimin) by Dr. Ahmad Al-Alou. See Wyeth's Memo. in Support of its Mot. to  
18 Dismiss for Lack of Personal Juris. Ex. 4 (Declaration of Dr. Ahmad Al-Alou) ¶ 2  
19 (Apr. 24, 2003). Dr. Al-Alou continued to prescribe Pondimin for plaintiff until July  
20 12, 1997. *Id.* Dr. Al-Alou first learned about Pondimin from a patient who had  
21 initially been prescribed this drug in the mainland United States and who had  
22 reported successful weight loss while on this medication. *Id.* at ¶ 3. Dr. Al-Alou  
23 contacted Major Pharmaceuticals in San Diego, California and placed an order for  
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1 Pondimin. Id. at ¶ 4. Dr. Al-Alou was never contacted by a Wyeth or American  
2 Home Products Corporation<sup>3</sup> sales agent or pharmaceuticals representative. Id. at ¶  
3 5. Nor did he receive any brochures or other advertisements from Wyeth or  
4 American Home Products Corporation. Id. The Pondimin that Dr. Al-Alou  
5 provided the plaintiff was purchased from Major Pharmaceuticals in San Diego,  
6 California. Id. at ¶ 4.  
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9 Wyeth's sales records from 1993 through 1997 show that there were no sales  
10 or shipments of Pondimin and other Wyeth products to customers in the CNMI.  
11 Decl. of Frank J. Cirone at ¶¶ 9, 11. Wyeth sells some products to distributors and  
12 wholesalers located outside the CNMI, and those entities might resell some products  
13 to customers in the CNMI. Id. at ¶ 10. However, Wyeth does not have any  
14 contracts or understanding with any distributor or wholesaler directing the  
15 distributor or wholesaler to resell Pondimin or other Wyeth products in the CNMI.<sup>4</sup>  
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20 Wyeth was formerly known as American Home Products Corporation.  
21 See Wyeth's Memo. in Support of its Mot. to Dismiss for Lack of Personal Juris.  
22 Ex. 3 (Declaration of John M. Alivernini) ¶ 1 (Apr. 24, 2003). In March 2002,  
23 American Home Products Corp. changed its name to Wyeth. Id. at ¶ 2.

24 4

25 Wyeth's records do not show sales or shipping activity to Major  
26 Pharmaceuticals in San Diego, California. Id. at ¶ 13. Major Pharmaceuticals  
may have some affiliation with Harvard Drugs. Id. Wyeth has sold its products  
to Harvard Drugs in Florida and Michigan. Id. However, Wyeth has no  
agreement with Harvard Drugs whereby it would distribute Pondimin in the

(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.<sup>5</sup> 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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21 <sup>4</sup>(...continued)

22 CNMI or whereby it would resell Pondimin to Major Pharmaceuticals or any  
23 other entity for resale in the CNMI. Id.

24 <sup>5</sup>

25 The following is a list of pharmaceutical and veterinary products, whose  
26 names are registered trademarks of Wyeth, that have been sold in the CNMI:  
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 (9<sup>th</sup> 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.<sup>6</sup>

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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1986).

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17 Plaintiff 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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23 A district court sitting in diversity applies the long-arm statute of the state  
24 in which the court sits, if no federal statute governing personal jurisdiction is  
25 applicable. Dole Food Co., 303 F.3d at 1108. The Commonwealth’s long-arm  
26 statute, 7 N. Mar. I. Code § 1101 et seq. (1999), “subjects both residents and non-  
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. Plaintiff argued that the sales of these products are substantial, continuous  
2 and systematic contacts, and give rise to general jurisdiction. The court disagrees.

3  
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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1986).

### 17 1. Purposeful Availment

18 Plaintiff 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.<sup>7</sup>  
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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 Plaintiff 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.<sup>8</sup> Plaintiff argued that

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6 <sup>7</sup>(...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*  
16 *jurisdiction over a corporation that delivers its products into the stream of*  
17 *commerce with the expectation that they will be purchased by consumers in*  
18 *the forum State.*

19 Id. (emphasis added).

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21 The United States Supreme Court revisited the “stream of commerce”  
22 theory in Asahi Metal Industry Co. v. Superior Court of California, 480 U.S. 102  
23 (1987). In Asahi, with regard to the “stream of commerce” theory, two principal  
24 views were expressed in two separate opinions, one authored by Justice Brennan  
25 and the other by Justice O’Connor. Justice Brennan reaffirmed the “stream of  
26 commerce” theory of World-Wide Volkswagen that, the “forum State 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 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,<sup>9</sup> 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 <sup>8</sup>(...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 (9<sup>th</sup> Cir.  
2 1997) (quoting Shute v. Carnival Cruise Lines, 897 F.2d 377, 381 (9<sup>th</sup> 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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8  
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.<sup>10</sup> 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, plaintiff has not properly shown that the defendant purposefully  
10 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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16           See Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284  
17 F.3d 1114, 1123 (9<sup>th</sup> Cir. 2002) (emphasis in original) (citing Burger King, 471  
18 U.S. at 475) ("Whether dealing with specific or general jurisdiction, the  
19 touchstone remains purposeful availment. By requiring that contacts  
20 proximately result from actions by the defendant *himself* that create a substantial  
21 connection with the forum State, the Constitution ensures that a defendant will  
22 not be haled into a jurisdiction solely as a result of random, fortuitous, or  
23 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.

3  
4 Plaintiff argued that her 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.

9  
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  
13 However, plaintiff's claims relate to defendant's product, Pondimin, which is not  
14 advertised, marketed, distributed or sold in the CNMI. Defendant Wyeth's sales  
15 records from 1993 through 1997 show that there were no sales or shipments of  
16 Pondimin or other Wyeth products to customers in the CNMI. Defendant Wyeth  
17 does not have any contracts or understanding with any wholesaler or distributor to  
18 resell Pondimin or other Wyeth products in the CNMI. Plaintiff has failed to show  
19 that defendant Wyeth directed sales or shipments of any of its products, including  
20 Pondimin, to the CNMI. *See id.* at 1124 (holding that specific jurisdiction is not  
21 proper over defendant because plaintiff's claim did not arise out of defendant's  
22 conduct "directed at or related to" the forum).  
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1 Plaintiff cites 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 plaintiff's claims would  
4 not have arisen "but for" the defendant's contacts with the forum. Plaintiff's 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, plaintiff has failed to show that she would not have been injured "but  
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1 for” defendant Wyeth’s contacts with the CNMI. Accordingly, plaintiff has not  
2 properly alleged that her claims arise out of defendant’s forum-related activities.

3  
4 **3. Reasonableness**

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 (9<sup>th</sup> Cir. 1995).  
9 Because the court previously found that plaintiff has not properly alleged defendant’s  
10 purposeful availment of the forum or that her claims arise out of or relate to  
11 defendant’s forum-related activities, the court will not address the third test for  
12 reasonableness. *See supra* Peterson, 771 F.2d at 1261 (noting that each element of the  
13 three-part test must be satisfied to permit a court to exercise specific jurisdiction over  
14 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  
21 **II. Motion to Remand**

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 plaintiff and all properly joined defendants. Id. at ¶ 7.  
3  
4 Wyeth alleged that the plaintiff has no intention of pursuing her claims against  
5 defendants Dr. Ahmad Al-Alou and Pacific Medical Center, Inc. (hereinafter  
6 “PMC”), and that she has failed to state a valid cause of action against either Dr. Al-  
7 Alou or PMC. Id. at ¶¶ 7-31. As a result, Wyeth alleged that defendants Dr. Ahmad  
8 Al-Alou and PMC are fraudulently joined defendants. Id. at ¶ 7.

9  
10 On March 20, 2003, plaintiff moved the court to remand this matter to the  
11 Commonwealth Superior Court arguing that there was no fraudulent joinder.  
12 Plaintiff also argued that, despite defendant Wyeth’s contention that any claims  
13 against it are barred by the statute of limitations, local law is not clear as to the  
14 “accrual date” for the CNMI statute of limitations. Plaintiff argued that remand is  
15 proper because a novel issue of local law is present in this matter. On April 10, 2003,  
16 defendant Wyeth opposed the motion arguing that the plaintiff does not intend to  
17 pursue her claims against the local defendants, and that the plaintiff fails to state a  
18 valid cause of action against defendants Dr. Al-Alou and PMC.<sup>11</sup>

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22 The court finds plaintiff’s 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 13<sup>th</sup> day of August, 2003.

  
\_\_\_\_\_  
ALEX R. MUNSON  
Chief Judge