

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Rene C. Davidson Courthouse

JOHN E. MARICICH, JR. et al
Plaintiff/Petitioner(s)
VS.
CHATTEM, INC., individually
et al
Defendant/Respondent
(s)

No. 25CV116787

Date: 11/19/2025

Time: 4:30 PM

Dept: 18

Judge: Patrick McKinney

ORDER re: Ruling on Submitted
Matter

The Court, having taken the matter under submission on 11/10/2025, now rules as follows: Specially appearing defendant PTI Union, LLC's ("Defendant") Motion to Quash Service of Summons for Lack of Personal Jurisdiction ("Motion to Quash") was heard on November 10, 2025. After consideration of the supporting and opposition papers, and the arguments of counsel at the hearing, Defendant's Motion to Quash is DENIED.

Plaintiffs' Request to conduct further jurisdictional discovery is DENIED as moot.

APPLICABLE LAW

"When a defendant challenges jurisdiction through a motion to quash, the plaintiff bears the burden to demonstrate facts, as to each nonresident defendant, justifying the exercise of jurisdiction by a preponderance of evidence." (Strasner v. Touchstone Wireless Repair & Logistics, LP (2016) 5 Cal.App.5th 215, 221-222.)

"The plaintiff must do more than merely allege jurisdictional facts. It must present evidence sufficient to justify a finding that California may properly exercise jurisdiction over the defendant. The plaintiff must provide affidavits and other authenticated documents in order to demonstrate competent evidence of jurisdictional facts. Allegations in an unverified complaint are insufficient to satisfy this burden of proof. Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction." (In re Automobile Cases I & II (2005) 135 Cal.App.4th 100, 110 [internal citations omitted].)

A defendant's "minimum contacts" with California can establish the Court's personal jurisdiction over the defendant in two ways: generally (i.e., as to all claims and causes of action) or specifically (i.e., as to causes of action related to the contacts themselves). (See Bristol-Meyers Squibb Co. v. Superior Court of California (2017) 137 S.Ct. 1773, 1779-1780.)

To afford general jurisdiction to a state's courts, a defendant's contacts with the state must be so systematic and extensive that the corporation is "fairly regarded as at home" in the state. (Daimler AG v. Bauman (2014) 571 U.S. 117, 137-139.) The paradigm examples of corporations

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at home in California include those which are incorporated here or have their principal place of business within the state. (Daimler AG, *supra*, 571 U.S. at p.137; Goodyear Dunlop Tires Ops., S.A. v. Brown (2011) 564 U.S. 915, 923-924.)

A state court can constitutionally exercise “specific” specific personal jurisdiction over an out-of-state corporate defendant as to causes of action or claims when: (1) the defendant purposely established contacts with the forum state; (2) a plaintiff’s cause of action “arises out of” or is “related to” the defendant’s contacts with the forum state; and (3) the forum’s exercise of personal jurisdiction in the particular case comports with “fair play and substantial justice.” (Burger King Corp. v. Rudzewicz (1985) 471 U.S. 462, 477-478.) “In order for a court to exercise specific jurisdiction over a claim, there must be an ‘affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.’” (Bristol-Meyers, *supra*, 137 S.Ct. at p.1781.) “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.” (Ibid.) Further, “specific jurisdiction is confined to adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction.” (Bristol-Meyers, *supra*, 137 S.Ct. at p. 1780.)

Plaintiff has the burden of production of evidence on the first two elements of the specific personal jurisdiction analysis stated above. (LG Chem, Ltd. v. Sup.Ct. of San Diego County (2022) 80 Cal.App.5th 348, 361.) “It is [plaintiff’s] burden to prove this second prong of the specific jurisdictional analysis, and he must do that with “‘competent evidence of jurisdictional facts.’” (80 Cal.App.5th at 365, quoting Rivelli v. Hemm (2021) 67 Cal.App.5th 380, 393.) “In the sphere of specific jurisdiction, the phrase ‘relate to’ incorporates real limits, as it must to adequately protect defendants foreign to a forum.” (80 Cal.App.5th at 367, quoting Ford Motor Co. (2021) 141 S.Ct. 1017, 1026.) “Where ... the defendant’s motion is based on written materials rather than an evidentiary hearing, the plaintiff need only make a prima facie showing of jurisdictional facts to withstand the motion to dismiss.” (Yamashita v. LG Chem, Ltd. (9th Cir. 2023) 62 F.4th 496, 502,

Merely selling a product that ends up being used in California is insufficient to create specific personal jurisdiction unless the sale was purposefully targeted to California. (Bombardier Recreational Prods., Inc. v. Dow Chem. Canada ULC (2013) 216 Cal.App.4th 591, 603-604; see also World-Wide Volkswagen Corp. (1980) 444 U.S. 286, 297 [presence of defendant’s product in forum state, even if foreseeable, is insufficient if the defendant did not direct it there].)

ANALYSIS OF MOTION

In the May 5, 2025 moving papers, Defendant presents evidence that it was originally formed as a Delaware limited liability company, is presently a North Carolina limited liability company and has its principal place of business in Missouri. (Brasher Dec. ¶ 3.) Defendant presents evidence that it blended and bottled talcum powder products under the Dr. Scholl’s brand name pursuant to contract with the owners of the rights to the Dr. Scholls brand name and product lines (“Owner”), including as relevant here Dr. Scholls brand foot powder. (Id. at ¶ 4, 7 and 8.) The Dr. Scholls brand name/product line owners provided the product formulations and specifications for the talcum powder products including designation of the raw materials, the raw materials suppliers and the content and design of the labeling to be used on the Dr. Scholls brand

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talcum powder products Defendant blended and bottled. (Id. at ¶ 9.) Plaintiffs in Opposition object to, *inter alia*, ¶ 9 of the Brasher Declaration, but Plaintiffs in Opposition after three rounds of briefing present no evidence Defendant provided product formulations and specifications with respect to Dr. Scholls brand foot powder. Plaintiffs also object to ¶¶ 1-13 of the Brasher Declaration, but they present no evidence in Opposition that the Dr. Scholls owners did not take possession of the products at Defendant's facility in Missouri or that Defendant ever shipped the products into California or made any decisions about where the products would be distributed once the Dr. Scholls owners took possession of the products.

Defendant's moving papers contain no evidence whether it has ever been authorized to conduct business in California, has ever had an agent for service of process in California, has ever owned or leased any property in California or has ever employed anyone in California. The Court observes that the California Secretary of State's business search website has no record that any corporate entity with "PTI Union" in its name has ever been authorized to conduct business in California. Plaintiffs in Opposition present no evidence that Defendant has ever had any of these California forum contacts.

In Opposition, Plaintiffs present evidence that Defendant was the exclusive blender and bottler of Dr. Scholls brand foot powder for the Owner's "U.S. requirements" during the period between 4/1/2008 until 2019, pursuant to a series of written contracts going back to 1997 between the then current owner of the Dr. Scholls trademark and product lines and Defendant's predecessor in interest with respect to blending and bottling certain Dr. Scholls brand talcum powder products, including Dr. Scholls foot powder. (10/28/25 Supp. Stewart Decl. Exh. 1 at 11:18-23, 14:16-22 Plaintiffs also present evidence that Mr. Maricich was exposed to Dr. Scholls foot powder from his childhood until approximately 2010. (See Exh. 1 to 7/2/2025 Stewart Declaration.) Plaintiffs also present evidence that during the 2008 to 2019, Defendant blended and bottled between 600,000 and 800,000 bottles of Dr. Scholls powder products per year. (10/28/25 Supp. Stewart Decl. Exh. 1 at 17:15-18.)

The only evidence Plaintiffs present of any California forum directed activity by Defendant is a series of emails in 2015, five years after Mr. Maricich's last claimed use of Dr. Scholls foot powder, regarding the provision of "target fill weights" that needed to be sent or provided to California, which Plaintiffs argue is connected to requirements under the California Safe Cosmetics Act (Cal. Health & Safety Code § 111791 et seq.). (10/28/2025 Supp. Stewart Dec. Exh. 11.) There is no evidence in the record whether Defendant was responding directly to a request from California regulators to Defendant or if this was a request from the Owner, and there is no evidence whether Defendant transmitted its substantive response directly to California regulators or to the Owner.

"[T]he minimum contacts test asks whether the 'quality and nature' of the defendant's activity is such that it is 'reasonable' and 'fair' to require him to conduct his defense in that State. ... The test 'is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite 'affiliating circumstances' are present. (Bombardier Recreational Prods., Inc. v. Dow Chem. Canada ULC (2013) 216 Cal.App.4th 591, 597.)

The Court's tentative ruling for the initial 6/3/2025 hearing on this Motion to Quash requested that the parties' supplemental briefing "address which of [the decisions L.W. v. Audi AG (2025)

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108 Cal.App.5th 95 and Bombardier] or any other decisions are controlling” in the present circumstances. However, neither of Plaintiffs’ two subsequent briefs address the Bombardier decision at all. Bombardier remains pertinent to the current analysis, because L.W. quotes Bombardier at some length at 108 Cal.App.5th at 112 and nowhere states that it disagrees with Bombardier’s reasoning or that in the L.W. Court’s opinion, Bombardier was wrongly decided on its facts. Thus, L.W. strongly indicates that Bombardier is good law and correctly decided on its facts, which are in certain respects distinguishable from L.W.’s facts.

This Court notes that Bombardier clearly relies on what the L.W. Court refers to as the “stream-of-commerce plus” theory of specific personal jurisdiction, where “mere foreseeability, at least where products are not sold in a state as part of the regular and anticipated flow of commerce into that state, is not enough to establish minimum contacts with the forum state.” (216 Cal.App.4th at 597; 108 Cal.App.5th at 110.) In comparison, L.W. relies more on a straight “stream-of-commerce” theory “because the record shows that [auto manufacturer] Audi, through its [sole] distributor VWGoA, intentionally placed its vehicles into the regular flow of commerce to the United States, including to California.” (108 Cal.App.5th at 114.) However, L.W. further states:

“[W]e are mindful that ... the United States Supreme Court has not agreed on the precise requirements necessary to establish specific jurisdiction under a stream-of-commerce theory beyond foreseeability that a product may enter the forum state. However, under any of the analyses articulated by the various lead opinions, there is enough in this particular case for Audi to be properly summoned.” (Ibid.)

Yamashita v. LG Chem, Ltd. (9th Cir. 2023) 62 F.4th 496, 503-504, indicates that the Ninth Circuit applies a stream-of-commerce plus test. However, the relevant facts of *Yamashita* are quite different from either Bombardier or L.W.

The present facts fall somewhere in between Bombardier and L.W. In Bombardier, a Sea-Doo brand personal watercraft manufactured by defendant Bombardier Recreational Products, Inc. (“BRPI”) caught fire injuring plaintiff, allegedly due to a defective fuel tank manufactured by Dow Chemical Canada ULC (“Dow Chem”), a Canadian company based in Calgary, Alberta. BRPI cross-claimed against Dow Chem, and Dow Chem moved to quash the cross-complaint based on lack of personal jurisdiction in California. Although the trial court sustained Dow Chem’s objections to BRPI’s evidence showing that Dow Chem knew the Sea-Doo watercraft incorporating Dow Chem’s fuel tanks would be marketed and sold in California, the Court of Appeal’s decision is clear that even if Dow Chem had such knowledge, that evidence did not change the outcome under the totality of the circumstances. The Bombardier decision cites to no evidence regarding the number of or regularity with which Sea-Doo watercraft incorporating Dow Chem fuel tanks were sold in California.

This Court notes that Bombardier relies heavily on *Asahi Metal Industry Co. v. Sup.Ct. of Solano* (1987) 480 U.S. 102, a case which unanimously found that the California trial court lacked personal jurisdiction over a Taiwanese motorcycle tire manufacturing corporation’s cross-claims against a Japanese manufacturer of tire valves arising out of a motorcycle accident in California. However, no majority of justices could agree on theories that (1) the stream-of-commerce plus test had not been satisfied, or (2) that trying the cross-claims in California would

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not comport with fair play and substantial justice where the Taiwanese corporate cross-complainant could just as easily pursue the claims in a Taiwanese or Japanese court. Although the Bombardier Court did not expressly address this alternative fair play and substantial justice argument, a reasonable inference is that corporate cross-complainant BRPI could have pursued its cross-claims against Dow Chem in a court in Canada, where the opinion states both the fuel tank sales occurred and BRPI manufactured its personal watercraft before distributing them into the United States. (216 Cal.App.4th at 595.)

In L.W., plaintiffs' minor child was allegedly injured when an Audi Q7 automobile plaintiff had placed in "park" mode nevertheless "surged forward" and pinned the child to a garage wall after plaintiff exited the vehicle. Plaintiffs brought suit against both German auto manufacturer Audi AG ("Audi") and Audi's exclusive distributor for Audi brand vehicles in the United States, including California, Volkswagen Group of America, Inc. ("VWGoA"). The opinion is unclear whether VWGoA is a second-tier subsidiary of Audi; however, the opinion states that pursuant to contract Audi has the right to designate the directors of Audi of America, LLC, VWGoA's parent corporate entity.

Although Audi had no direct forum contacts with California, did not sell vehicles directly to consumers in the United States, and did not exercise day-to-day control over VWGoA, Audi was responsible for the design and manufacture of Audi brand vehicles distributed and sold in the United States exclusively by VWGoA. However, Audi has registered its trademarks in the United States, has litigated in federal court to protect those trademarks, has authorized numerous car dealerships in California to use those trademarks, including the Audi name, and Audi vehicles are regularly and in large numbers distributed into California for sale by VWGoA.

In the present action, the Court finds that talc-containing Dr. Scholls foot powder was a product that between 2008 and 2019 was intentionally placed into the regular flow of commerce in the United States and was routinely distributed and sold in California. Although Defendant argues it would not have known that the Owners of the Dr. Scholls brand intended to distribute Dr. Scholls foot powder into California, like in L.W., "there is enough in this particular case for [Defendant] to be properly summoned." Dr. Scholls foot powder is a nationally distributed, retailed and advertised product, and the only surprise would have been if the Owners had elected not to distribute Dr. Scholls foot powder into California.

However, in other respects the present facts are more like Bombardier. The evidence before the Court supports a finding that Defendant was a mere contractor to the Owners of the Dr. Scholls brand who provided blending and bottling services based on formulas and raw materials inputs determined by the Owners. Unlike L.W., where Audi was entirely responsible for the design and manufacture of the Audi Q7 and employed a wholly controlled entity as the exclusive distributor for that product in the United States, including California, Dr. Scholls foot powder was the Owners' product, which the Owners designed and for which the Owners decided the inputs.

However, L.W. states in relevant part: "Tellingly, J. McIntyre [Machinery, Ltd. v. Nicastro (2011) 564 U.S. 873] confirms that 'additional efforts' are required only if 'regular flow' or 'regular course of sales' in the forum state are not shown." As stated above, Dr. Scholls foot powder was a nationally distributed and retailed product during the relevant period, and Defendant was indisputably directly involved in the manufacture of that product between April

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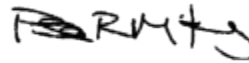
2008 and 2019, overlapping with the period of Mr. Maricich's use of Dr. Scholls foot powder. Further, unlike Bombardier or Asahi, the Owners are not cross-claiming against Defendant with respect to the Motion to Quash. Instead, Plaintiffs are suing Defendant directly for their injuries under, inter alia, a strict liability theory.

Upon consideration of the facts and the applicable controlling authorities, the Court elects to follow L.W.'s stream of commerce approach. Here, Defendant, when it contracted to manufacture Dr. Scholls foot powder, a product it knew or reasonably should have known would be distributed nationally, including into California, Defendant should have been prepared to face suit sounding in product defect in any United States forum where it could reasonably have anticipated the product would be distributed and sold.

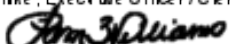
Wherefore, the Court DENIES Defendant's Motion to Quash.

The Court SUSTAINS Plaintiffs' Objections to the Brasher Declaration based on lack of adequate foundation for personal knowledge, but notes that Plaintiffs bear the burden to present evidence of Defendant's California forum contacts or other evidence supporting a finding of this Court's personal jurisdiction on this Motion to Quash.

Dated : 11/19/2025



Patrick McKinney / Judge

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 11/19/2025
PLAINTIFF/PETITIONER: JOHN E. MARICICH, JR. et al	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy
DEFENDANT/RESPONDENT: CHATTEM, INC., individually et al	P. Drummer-Williams
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 25CV116787

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order re: Ruling on Submitted Matter entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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Dated: 11/19/2025

By:



P. Drummer-Williams, Deputy Clerk

SHORT TITLE: MARICICH, JR., et al. vs CHATTEM, INC.,
INDIVIDUALLY, et al.

CASE NUMBER: 25CV116787

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