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FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

BY  Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

LANCE;
BIANCHI;
BROWN;
RIPPERGER,

Plaintiffs,

v.

Bayer Essure Inc., Bayer Corporation, Bayer
HealthCare LLC, and Bayer HealthCare
Pharmaceuticals, Inc.

Defendants.

Case No. RG16809860;
RG16813262;
RG16813616;
RG16804878.

ORDER ON FORUM NON
CONVENIENS MOTION AND
PERSONAL JURISDICTION
MOTION

The Motion of defendants Bayer Corporation, Bayer HealthCare LLC, Bayer Essure Inc. and Bayer Healthcare Pharmaceuticals Inc. ("Defendants") To Dismiss or Stay on the Grounds of Forum Non Conveniens and To Quash Service of Process and Dismiss as to Bayer Corporation and Bayer Healthcare Pharmaceuticals Inc. For Lack of Personal Jurisdiction ("Motion") came on regularly for hearing on July 29, 2016 in Department 21 of this Court, the Honorable Winifred Y. Smith, presiding. Appearances are reflected in the

attendance sheet filed on the date of the hearing.

After full consideration of the moving papers, the opposition thereto, the authorities cited by the parties, as well as arguments presented at the hearing, and the matter having been submitted for decision, and good cause appearing,

IT IS HEREBY ORDERED as follows:

PROCEDURAL BACKGROUND:

Currently before the court are eleven lawsuits against Defendants arising from the use by the plaintiffs of a medical permanent birth control device manufactured, formulated, tested, packaged, labeled, produced, created, made, constructed, assembled, marketed, advertised, promoted, distributed, and sold by Defendant called "Essure." Represented in these eleven suits are fourteen women in whom the device was implanted, and six spouses with loss of consortium claims.

Of the eleven suits, four (RG16809860, Lance v. [Defendants]; RG16809292, Migliaccio v. [Defendant]; RG16813262, Bianchi v. [Defendants]; and RG16813616, Brown v. [Defendants]) utilized complaints that are virtually identical to one another, except for the section entitled "Plaintiff's History" (hereafter, "Lance Complaint"). Similarly, the other seven cases (RG16809875, Birruete v. [Defendants]; RG16812313, Hyde & Keller v. [Defendants]; RG16810409, Journey, Thomas & Melgar v. [Defendants]; RG16809878, Mattern v. [Defendants]; RG16804887, Parades & Moreno v. [Defendants]; RG16804878,

Ripperger v. [Defendants]; and RG16809876, Webb v. [Defendants]) utilize complaints that are virtually identical to one another, again with the exception of the section entitled "Plaintiff's History" ("Birruete Complaint").

The Lance Complaint includes causes of action for (1) Negligent Failure to Warn, (2) Negligence, (3) Strict Products Liability, and (4) Fraud, and the Birruete Complaint includes causes of action for (1) Negligent Failure to Warn, (2) Strict Products Liability - Inadequate Warnings; (3) Negligence / Negligence Per Se, (4) Breach of Express Warranty, (5) Negligent Misrepresentation, and (6) Fraud. Four of the Birruete Complaints also include a cause of action for Loss of Consortium.

By agreement of the parties, Defendants' challenges to the pleading in these eleven cases have been coordinated. Concurrently with this Motion, the court will rule separately on whether, or to what extent, Plaintiffs' claims are preempted by the Medical Device Act ("MDA") ("Preemption Demurrer"), and whether the claims of certain plaintiffs are barred by the applicable statute of limitations ("SOL Demurrer").

MOTION:

This Motion is directed to four cases in which the plaintiffs do not allege that they purchased Essure in California, that their physicians treated them or recommended Essure in California, or that they saw or relied upon any of the "misrepresentations" they allege in their complaints while in California. These are cases RG16813262, Bianchi v. [Defendants]; RG16804878, Ripperger v.

[Defendants]; RG16809860, Lance v. [Defendants]; and RG16813616, Brown v. [Defendants].

Forum Non Conveniens -

Defendants argue that these cases should be dismissed or stayed under the doctrine of forum non conveniens (Code of Civil Procedure section 410.30(a).)

Defendants assert that these are non-California plaintiffs whose injuries occurred elsewhere, that each has a suitable alternative forum in their home state, that private interest factors show California in an inconvenient forum, and that public interest factors also weigh against California adjudication. (Citing, inter alia, *Stangvik v. Shiley Inc.* (1991) 54 Cal.3d 744, 751-763 ["*Stangvik*"].)

In support of their opposition, Plaintiffs have submitted a substantial volume of materials under cover of the Declaration of Thomas V. Ayala. Having reviewed these materials, and the briefing submitted by both parties, the court concludes that Defendants' have failed to meet their burden under CCP section 410.30. While Defendants have shown that suitable forums exist for three of the four cases (Ripperger is currently a California resident), they have not otherwise overcome the strong presumption of appropriateness attending plaintiffs' choice of forum by demonstrating that California is a seriously inconvenient forum. (*Ford Motor Co. v. Insurance Co. of North America* (1995) 35 Cal.App.4th 604, 610-611.) Accordingly, to the extent it seeks an order dismissing or staying these cases on the basis of the doctrine of forum non conveniens, the court, in its sound

discretion (*ibid*), DENIES the Motion.

Personal Jurisdiction -

Two of the Defendants, Bayer Corporation ("BC") and Bayer HealthCare Pharmaceuticals Inc. ("BHP") also move to quash service and to dismiss these four cases against them for lack of personal jurisdiction. In support of this part of the Motion, BC and BHP have submitted the brief Declaration of Keith R. Abrams stating the state of incorporation and principle place of business for each, and that neither "owned, leased, or operated a facility in California at which Essure was or is manufactured."

Plaintiffs' showing with respect to the non-discretionary question of personal jurisdiction over BC and BHP falls short. Plaintiffs do not suggest that their showing is adequate to establish general jurisdiction, although Defendant's assertion in their reply that Plaintiffs concede this point is not accurate. What Plaintiffs say is that they would need to do discovery. As to specific jurisdiction, Plaintiffs' must show (a) purposeful availment, and (b) that the controversy is related to Defendants' contacts with the forum, before moving on to "traditional notions of fair play and substantial justice." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446-448.) Here, Plaintiffs' evidence is sufficient to show purposeful availment, but it falls short of showing that Plaintiffs' causes of action "arise out of or ha[ve] a substantial connection with" BC and BHP's activities in California. As noted by Defendants in their reply, while

Plaintiffs have submitted certain documents that were published by BC and BHP (Ayala declaration exhibits S, T, V, W and X), it appears that those documents may have published in New Jersey, and none of these Plaintiffs claim to have seen any such materials in California. Furthermore, none of Plaintiffs' evidence otherwise shows that BC or BHP had anything to do with Essure in California. In sum, the current state of the record does not support a finding of personal jurisdiction over BC or BHP.

Having said that, the court will allow Plaintiffs to conduct limited jurisdictional discovery before ruling on this portion of the Motion. Emphasis on the word "limited." Initially, Plaintiffs will be permitted to notice the deposition of [a] person[s] to testify on behalf of BC and BHP on topics strictly limited to the involvement by BC and BHP in any aspect of the development, manufacture, labeling and promotion of Essure, whether in California or elsewhere. Document production by BC and BHP in connection with the deposition[s] will not be made mandatory at this time. Following the completion of the deposition[s], Plaintiffs may request an order for specific document production by way of a separate noticed motion, provided such a request is clearly supported by excerpts from the deposition testimony of the corporate designee[s].

The Motion is CONTINUED to September 9, 2016 at 10:00 a.m. in Department 21. Plaintiffs' supplemental opposition, limited only to the presentation of new evidence and further explanatory briefing of no more than five pages, must

be filed and served no later than August 31, 2016. Defendants' supplemental reply thereto, also limited to five pages, must be filed and served no later than September 6, 2016. The court will only consider extending these deadlines if (a) the parties stipulate to do so, or (b) if Plaintiffs have a motion for further jurisdictional discovery pending.

August 1, 2016

Date



Winifred Y. Smith
Judge of the Superior Court

Superior Court of California, County of Alameda
Department 21, Administration Building

Case Number: RG16809860, RG16813262, RG16813616, RG16804878
Case Name: Lance VS Bayer Corp., an Indian Corporation

RE: ORDER ON FORUM NON CONVENIENS MOTION AND PERSONAL
JURISDICTION MOTION

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, California.

Executed on August 2, 2016

Executive Officer/Clerk of the Superior Court

By Christopher Wright
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