UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ABBOTT LABORATORIES et al.,

Plaintiffs,

-against-

ADELPHIA SUPPLY USA et al.,

Defendants.

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NOT FOR PUBLICATION
MEMORANDUM & ORDER
15-CV-5826 (CBA) (LB)

AMON, United States District Judge:

Defendants Smartway Pharmaceuticals Ltd. ("Smartway"), Smartway PW Holdings Ltd., Kirti Patel, and Bhanumati Patel (collectively, "Smartway Defendants") move to dismiss the complaint in this trademark-infringement action for lack of personal jurisdiction as well as for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and forum non conveniens. For the following reasons, the Court determines that it does not have personal jurisdiction over Smartway Defendants and grants their motion to dismiss under Rule 12(b)(2).

STANDARD OF REVIEW

To survive a motion to dismiss for lack of personal jurisdiction, plaintiffs must "make a prima facie showing that jurisdiction exists." Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 673 F.3d 50, 59 (2d Cir.) ("Licci I") (citation omitted); see also Troma Entm't, Inc. v. Centennial Pictures Inc., 729 F.3d 215, 217 (2d Cir. 2013) ("A plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit." (internal quotation marks and citation omitted)). This showing "must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant." Chloé v. Queen Bee of Beverly Hills, LLC, 616 F.3d 158, 163 (2d Cir. 2010) (alterations omitted). In reviewing the motion, "[t]he allegations in the complaint must be taken as true to the extent they

are uncontroverted by the defendant's affidavits" and, "if the parties present conflicting affidavits, all factual disputes are resolved in the plaintiff's favor." In re Terrorist Attacks on Sept. 11, 2001, 714 F.3d 659, 673 (2d Cir. 2013). The Court is not required, however, to "draw 'argumentative inferences' in the plaintiff's favor" or to "accept as true a legal conclusion couched as a factual allegation." Id. (internal quotation marks and citation omitted).

When confronted with challenges to the Court's jurisdiction and challenges to the complaint on other grounds, the Court must resolve jurisdictional disputes first. See Arrowsmith v. United Press Int'l, 320 F.2d 219, 221 (2d Cir. 1963) (holding that "logic compel[s] initial consideration of the issue of jurisdiction over the defendant" because "a court without such jurisdiction lacks power to dismiss a complaint for failure to state a claim" and it is "error for the district court to proceed" otherwise); Blakeman v. The Walt Disney Co., 613 F. Supp. 2d 288, 300 (E.D.N.Y. 2009) ("Because the court should first determine whether a party is properly present before considering substantive issues, the Court will first address the motion to dismiss . . . for lack of personal jurisdiction and then address the substantive issues . . . .").

BACKGROUND

The details of this case, primarily a trademark-infringement action, are set forth in detail in the Court's prior orders. (See, e.g., D.E. # 131 ("First P.I. M&O").) The Court summarizes here only the allegations pertinent to its resolution of the instant motions to dismiss. As discussed above, these allegations are assumed to be true for the purpose of this motion except where contradicted by defendants' affidavits. MacDermid, Inc. v. Deiter, 702 F.3d 725, 727–28 (2d Cir. 2012). Where affidavits conflict, all factual disputes are resolved in Abbott's favor. In re Terrorist Attacks, 714 F.3d at 673.

In the introduction to its complaint, Abbott alleges that all defendants conspired "to import diverted international FreeStyle test strips whose labeling has not been cleared by regulators for sale in the United States and is likely to confuse U.S. consumers." (D.E. # 307 ("Second Am. Compl.") ¶ 3.) Wholesalers "import, market, and distribute large volumes of diverted international FreeStyle test strips for distribution to pharmacies," who are then "marketing and selling the diverted FreeStyle test strips to U.S. consumers and submitting fraudulent reimbursement claims to insurance companies, Medicare, Medicaid, and other third-party payors, claiming to have sold domestic FreeStyle test strips." (Id. ¶ 5.) Smartway is alleged to be among these conspirators. The only cause of action that specifically alleges a conspiracy is the RICO claim, which has been dismissed. (See id. ¶¶ 616–22; D.E. # 892.)

Smartway is a corporation organized under the laws of England with a principal place of business in Leicester, England. (Second Am. Compl. ¶¶ 183–86.) The complaint alleges that "in the past 24 months, Smartway has supplied diverted international FreeStyle test strips to defendant Able Wholesalers." (Id. ¶ 483; see also id. ¶ 441.) The complaint further alleges that defendant Able Wholesalers, a Tennessee corporation with a Tennessee principal place of business, (id. ¶ 70),[1] has in the past 24 months sold international FreeStyle test strips to defendants Drugplace Inc., HMF Distributing Inc., Wholesale Diabetic Supplies Inc., and Z Worldwide Inc., in additional to buying them from Smartway and defendant H&H Wholesale Services, Inc., (id. ¶ 441).

[1] Smartway argues that it did not sell to Able Wholesalers in the United States, but in England. (See Smartway Reply at 12–13; Patel Decl. ¶ 9.) Abbott contests this, producing customs documents showing that Smartway shipped international test strips to Able Wholesalers into Florida. (See Abbott Mem. at 4–5; Potter Decl. Ex. 2.) The Court resolves this factual dispute in Abbott's favor and assumes for the sake of this motion that Smartway sold international test strips into Florida to Able Wholesalers, not to Able in England. See In re Terrorist Attacks, 714 F.3d at 673.

DISCUSSION

Smartway Defendants move to dismiss for lack of personal jurisdiction. "The lawful exercise of personal jurisdiction by a federal court requires satisfaction of three primary requirements." Licci I, 673 F.3d at 59. First, and not contested here, plaintiff must effect procedurally proper service of process on Smartway Defendants. Id. Second, there must be a statutory basis for personal jurisdiction; "[t]he available statutory bases in federal courts are enumerated by Federal Rule of Civil Procedure 4(k)." Id. Third, "the exercise of personal jurisdiction must comport with the constitutional due process principles." Id. The Court first considers Abbott's statutory arguments under the New York long-arm statute. The Court then considers Abbott's alternative argument for jurisdiction over Smartway Defendants, namely Federal Rule of Civil Procedure 4(k)(2). Finally, the Court turns to the constitutional due-process considerations.[2]

I. Statutory Bases

Abbott asserts two statutory bases for the Court's personal jurisdiction: (1) New York's long-arm statute, applicable under Rule 4(k)(1)(A); and (2) Rule 4(k)(2). The Court addresses each in turn.

A. Personal Jurisdiction under New York Law

Abbott alleges personal jurisdiction under N.Y. C.P.L.R. § 302.[3] As relevant here, New York authorizes personal jurisdiction "as to a cause of action arising from any of the acts

[2] Abbott's memorandum in opposition was written in response to motions by two groups of defendants who each moved to dismiss for lack of personal jurisdiction. During the pendency of this decision, one of those groups, Fifty50 Medical, LLC and George (Rick) Lynch, entered into a stipulation of dismissal with Abbott. (D.E. # 1035.) Accordingly, in those instances where Abbott's papers refer to "defendants" in plural, the Court has inserted instead "[Smartway]."

[3] The Second Amended Complaint also asserted personal jurisdiction under N.Y. C.P.L.R. § 301, New York's general-jurisdiction statute. (See Second Am. Compl. ¶ 334.) Abbott has now abandoned that position. (See Abbott Mem.

enumerated in this section" over "any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state . . . ; or
2. commits a tortious act within the state . . . ; or
3. commits a tortious act without the state causing injury to person or property within the state . . . if he (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce . . . ."

N.Y. C.P.L.R. § 302(a). Abbott asserts personal jurisdiction under § 302(a)(1) based on Smartway's direct contacts with New York or alternatively Smartway's participation in a conspiracy in which its co-conspirators had contacts with New York. At oral argument, Abbott disclaimed any reliance on § 302(a)(2) for jurisdiction over Smartway. (D.E. # 826 ("OA Tr.") at 42:5–9.) Abbott further conceded that to the extent that it still relies upon § 302(a)(3) as the basis for jurisdiction, its argument "boils down to the same" conspiracy analysis that it relies on to succeed under § 302(a)(1), (id.), and that "[o]bviously, if there is no conspiracy, then there is no jurisdiction," (id. at 18:22–23). As explained below, Abbott fails to show either that Smartway had direct contacts with New York or that Smartway had co-conspirators who had contacts with New York. Abbott's theory under § 302(a)(3) that relies on the same unsubstantiated conspiracy allegation therefore fails as well.

1. Transacting Business Within New York under § 302(a)(1)

a. Direct Violation

A defendant "transacts business within [New York]" within the meaning of § 302(a)(1) through "purposeful activity," that is "'some act by which the defendant purposefully avails itself

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at 16 n.4 ("Abbott does not assert that [Smartway has] sufficient business contacts with New York to assert general jurisdiction over them.").)

of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.'" Best Van Lines, Inc. v. Walker, 490 F.3d 239, 246–47 (2d Cir. 2007) (quoting McKee Elec. Co. v. Rauland–Borg Corp., 229 N.E.2d 604, 607 (N.Y. 1967)). A "single act" or "proof of one transaction in New York is sufficient to invoke jurisdiction, even though the defendant never enters New York, so long as the defendant's activities here were purposeful and there is a substantial relationship between the transaction and the claim asserted." Deutsche Bank Sec., Inc. v. Montana Bd. of Invs., 850 N.E.2d 1140, 1142 (N.Y. 2006). Nevertheless, "no single event or contact connecting defendant to the forum state need be demonstrated; rather, the *totality of all defendant's contacts* with the forum state must indicate that the exercise of jurisdiction would be proper." Grand River Enters. Six Nations, Ltd. v. Pryor, 425 F.3d 158, 166 (2d Cir. 2005). "Generally, telephone and mail contacts do not provide a basis for jurisdiction under CPLR § 302(a)(1)." Pincione v. D'Alfonso, 506 F. App'x 22, 24 (2d Cir. 2012) (internal quotation marks and citations omitted). Ultimately, however, "it is the quality of the defendant['s] New York contacts that is the primary consideration" when evaluating jurisdiction under § 302(a)(1). Licci I, 673 F.3d at 62 (quoting Fischbarg v. Doucet, 880 N.E.2d 22, 26 (N.Y. 2007)). Smartway argues that, under this standard, it did not "transact business in" New York.

The Court finds that no showing has been made that Smartway transacted business in New York. Abbott alleges no purposeful activity Smartway conducted with New York; it alleges only that Smartway, an English company, and its principals sold international test strips to Able Wholesalers, a Tennessee company. (Second Am. Compl. ¶ 483.) Abbott's response—that "Smartway sold to defendant (and co-conspirator) Able Wholesalers, who sold to, among other defendants, Drugplace, which in turn sold to New York-based defendant (and co-conspirator) Adelphia," (Abbott Mem. at 8)—is facially insufficient to show that Smartway "purposefully

avail[ed] itself of the privilege of conducting activities within" New York. See Best Van Lines, 490 F.3d at 246–47. "*[T]he totality of all defendant's contacts* with the forum state must indicate that the exercise of jurisdiction would be proper." Grand River, 425 F.3d at 166. Smartway's alleged contacts with New York total zero. Therefore, a direct violation of § 302(a)(1) cannot serve as the statutory basis for the Court's jurisdiction over Smartway Defendants.

b. Conspiracy

Abbott also advances a conspiracy to violate the Lanham Act as a basis for jurisdiction under § 302(a)(1). (See Abbott Mem. at 12–14; OA Tr. at 16:10–19:17.) At oral argument, Abbott clarified that the conspiracy upon which it claimed jurisdiction could be based was not the RICO conspiracy, which claim this Court has dismissed. (See OA Tr. at 17:21–25; 26:20–25.) It is rather an unpleaded conspiracy to violate the Lanham Act by selling "diverted misbranded international products in the United States," the underlying facts of which Abbott claims it has sufficiently alleged for the purposes of obtaining personal jurisdiction over the defendants. (Id. at 26:23–24.) Although the "failure to specifically plead a cause of action for conspiracy will not, for jurisdictional purposes, preclude [Abbott] from resorting to § 302(a), as long as [it] allege[s] facts demonstrating the existence of a conspiracy," the Court finds that Abbott's factual allegations against Smartway are insufficient to establish jurisdiction on this ground. 777388 Ontario Ltd. v. Lencore Acoustics Corp., 142 F. Supp. 2d 309, 318 (E.D.N.Y. 2001)

"Acts committed in New York by a co-conspirator of an out-of-state defendant pursuant to a conspiracy may subject that out-of-state defendant to jurisdiction in New York under § 302(a) of the CPLR." Campaniello Imports, Ltd. v. Saporiti Italia S.P.A., No. 95-CV-7685 (RPP), 1996 WL 437907, at *6 (S.D.N.Y. Aug. 2, 1996), aff'd, 117 F.3d 655 (2d Cir. 1997). Although some courts have suggested that § 302(a)(1) is not a proper basis for jurisdiction founded on a

conspiracy, see Levisohn, Lerner, Berger & Langsam v. Med. Taping Sys., Inc., 10 F. Supp. 2d 334, 342 (S.D.N.Y. 1998), other "New York courts have held that 'a co-conspirator can be an agent' for purposes of § 302(a)(1)," Jones v. Warren, No. 12-CV-5346 (FB), 2013 WL 3439969, at *2 (E.D.N.Y. July 9, 2013) (quoting Small v. Lorillard Tobacco Co., 252 A.D.2d 1, 17 (1st Dep't 1998)). See also Sea Trade Mar. Corp. v. Coutsodontis, No. 09-CV-488 (BSJ), 2012 WL 3594288, at *7 (S.D.N.Y. Aug. 16, 2012); New Media Holding Co. LLC v. Kagalovsky, 97 A.D.3d 463, 464 (1st Dep't 2012).

Even assuming that § 302(a)(1) can confer jurisdiction over an out-of-state defendant on the basis of a conspiracy, "New York law seems to be clear that the bland assertion of conspiracy or agency is insufficient to establish jurisdiction." Lehigh Val. Indus., Inc. v. Birenbaum, 527 F.2d 87, 93–94 (2d Cir. 1975). Rather, there must be "allegations of specific facts which would connect [the defendant] with any New York activity." Id. Thus a plaintiff must "(1) make a prima facie factual showing of a conspiracy, and (2) allege specific facts warranting the inference that [defendants] were members of the conspiracy." In re Sumitomo Copper Litig., 120 F. Supp. 2d 328, 338–39 (S.D.N.Y. 2000) (citations omitted). For the prima facie case of conspiracy, the Court considers whether Abbott has alleged a co-conspirator over whom the Court has jurisdiction pursuant to § 302(a)(1), and the four elements of conspiracy: "1. a corrupt agreement between two or more parties; 2. an overt act in furtherance of the agreement; 3. the parties' intentional participation in the furtherance of the plan or purpose; and 4. the resulting damage or injury." Emerald Asset Advisors, LLC v. Schaffer, 895 F. Supp. 2d 418, 432 (E.D.N.Y. 2012); see also Foremost Guar. Corp. v. Pub. Equities Corp., No. 86-CV-6421 (CSH), 1988 WL 125667, at *4 (S.D.N.Y. Nov. 10, 1988). In determining whether Smartway was part of a conspiracy, "the Court considers whether: (1) the out-of-state coconspirator had an awareness of the effects of the activity

in New York, (2) the New York coconspirators' activity was for the benefit of the out-of-state conspirators, and (3) that the coconspirators in New York acted at the behest of or on behalf of, or under the control of the out-of-state conspirators." Emerald Asset Advisors, 895 F. Supp. 2d at 431 (internal quotation marks and citation omitted).

Abbott's allegations of a conspiracy among Smartway and the rest of the defendants, (see Abbott Mem. at 12–14), are insufficient to establish jurisdiction on this ground. Assuming without deciding that Abbott makes a prima facie showing of a conspiracy, it does not "allege specific facts warranting the inference" that Smartway was a conspirator. In re Sumitomo, 120 F. Supp. 2d at 338–39. Indeed, the sole relevant specific fact alleged is Smartway's sale to Able Wholesalers in Florida. (Second Am. Compl. ¶ 483.) Notably absent are allegations of Smartway's specific awareness of the effects of the activity in New York. See Emerald Asset Advisors, 895 F. Supp. 2d at 431. Instead, Abbott alleges only that defendants—all 300 or more of them—"are well aware" of the fraud underpinning the market for international test strips. (Second Am. Compl. ¶ 372.) Any inference of awareness is undercut by Smartway's status as a foreign entity operating abroad. (See id. ¶¶ 183–86). And Abbott does not allege a New York co-conspirator's act performed at the behest of or to benefit Smartway. See Emerald Asset Advisors, 895 F. Supp. 2d at 431. Smartway is not alleged to have controlled any New York co-conspirator. See id. Indeed Abbott has not even alleged that Smartway had any interactions with a New York co-defendant. Abbott's allegations plainly constitute a "bland assertion of conspiracy" devoid of "allegations of specific facts which would connect [defendant] with any New York activity." Lehigh Val. Indus., 527 F.2d at 93–94. Such "legal conclusion[s] couched as a factual allegation" are not entitled to "argumentative inferences in the plaintiff's favor" and are insufficient to carry Abbott's burden to establish the Court's jurisdiction. See Licci I, 673 F.3d at 59 (citations omitted). Therefore,

§ 302(a)(1) cannot serve as the statutory basis for the Court's jurisdiction over Smartway Defendants.

Given that at oral argument Abbott disclaimed reliance on § 302(a)(2) and conditioned its § 302(a)(3) argument on this Court's finding that Smartway was party to a conspiracy with a co-defendant over whom § 302(a) rendered jurisdiction, Abbott has failed to demonstrate that this Court has personal jurisdiction under New York's long-arm statute. The Court therefore considers Abbott's remaining statutory ground for jurisdiction, Federal Rule of Civil Procedure 4(k)(2).[4]

II. Jurisdiction over Smartway as a Foreign Defendant under Rule 4(k)(2)

The Court considers both the statutory and constitutional prongs of the personal jurisdiction analysis based on Rule 4(k)(2) below and concludes that it does not have personal jurisdiction over Smartway Defendants pursuant to Rule 4(k)(2).

Under Rule 4(k)(2), a court may exercise personal jurisdiction over a properly served defendant if (1) the "claim . . . arises under federal law"; (2) "the defendant is not subject to jurisdiction in any state's courts of general jurisdiction"; and (3) "exercising jurisdiction is consistent with the United States Constitution and laws." Fed. R. Civ. P. 4(k)(2); see also Porina v. Marward Shipping Co., 521 F.3d 122, 127 (2d Cir. 2008) (setting forth these three elements).

Abbott's claims arise under the Lanham Act, so the first factor is met.

The second factor is not met. Aside from its primary contention that New York's long-arm statute confers personal jurisdiction over Smartway in New York, Abbott merely assumes that

[4] Abbott also asserted that this Court has personal jurisdiction over Smartway by virtue of the federal RICO statute's grant of personal jurisdiction over a defendant in a civil RICO case "in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs." 18 U.S.C. § 1965. However, in light of this Court's January 4, 2017 Memorandum and Order dismissing Abbott's RICO claims against all defendants, (D.E. # 892), this basis for personal jurisdiction is now unavailable.

no other state would have jurisdiction if not New York. (See Abbott Mem. at 15.) Such an assumption is insufficient. "[T]he Second Circuit has [not] determined whether the plaintiff bears the burden of proving that jurisdiction is not proper in any other state under Rule 4(k)(2)." Aqua Shield, Inc. v. Inter Pool Cover Team, No. 05-CV-4880 (CBA), 2007 WL 4326793, at *8 (E.D.N.Y. Dec. 7, 2007). Courts in this Circuit have therefore made use of the "burden-shifting framework" of the First Circuit, which requires that, to satisfy this element, the plaintiff "must certify that, based on the information that is readily available to the plaintiff and his counsel, the defendant is not subject to suit in the courts of general jurisdiction of any state." Id. (citing United States v. Swiss Am. Bank, Ltd., 191 F.3d 30, 40 (1st Cir. 1999)); see also, e.g., Fed. R. Civ. P. 4(k)(2); In re M/V MSC FLAMINIA, 107 F. Supp. 3d 313, 322 (S.D.N.Y. 2015) (relying on this framework); Tamam v. Fransabank Sal, 677 F. Supp. 2d 720, 731 (S.D.N.Y. 2010) (same); NewLead Holdings Ltd. v. Ironridge Glob. IV Ltd., No. 14-CV-3945 (WHP), 2014 WL 2619588, at *6 (S.D.N.Y. June 11, 2014) (rejecting 4(k)(2) jurisdiction where "there is no evidence that [the defendant] is also not subject to jurisdiction in each of the other 49 states").

Abbott has made no such certification here. To the contrary, Abbott has argued that sale of a single infringing good suffices to confer jurisdiction under C.P.L.R. § 302(a)(1). (See Abbott Mem. at 7 (citing Chloé, 616 F.3d at 171; Editorial Musical Latino Americana, S.A. v. Mar Int'l Records, Inc., 829 F. Supp. 62, 64 (S.D.N.Y. 1993)).) This raises the question why jurisdiction would not be proper over Smartway in Florida, where Abbott maintains Smartway shipped the test strips to Able Wholesalers (which is based in Tennessee). See In re M/V MSC FLAMINIA, 107 F. Supp. 3d at 322–23 (finding Rule 4(k)(2) not met where "the facts as alleged suggest that

personal jurisdiction may exist elsewhere in the United States").[5] Abbott has failed to make any showing that Smartway would not be subject to jurisdiction in another state.

Abbott has also failed to show that "exercising jurisdiction is consistent with the United States Constitution." Fed. R. Civ. P. 4(k)(2)(B). The constitutional analysis "has two related components: the 'minimum contacts' inquiry and the 'reasonableness' inquiry." Chloé, 616 F.3d at 164.

First, the minimum-contacts inquiry requires the Court to determine "whether the defendant has sufficient contacts with the forum state to justify the court's exercise of personal jurisdiction." Id. (citing Int'l Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)). "For purposes of this inquiry, a distinction is made between 'specific' jurisdiction and 'general' jurisdiction." Id. Here Abbott argues only specific jurisdiction, (see Abbott Mem. at 16 n.4), which exists when "a State exercises personal jurisdiction over a defendant in a suit arising out of or related to the defendant's contacts with the forum." Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 & n.8 (1984). When evaluating whether the quality and nature of those contacts should have reasonably apprised the defendant of the possibility of being haled into court in the forum state, the Court considers the totality of all defendant's contacts with the state. See Best Van Lines, 490 F.3d at 242; Grand River, 425 F.3d at 166.

Second, the reasonableness inquiry requires the Court to determine "whether the assertion of personal jurisdiction comports with 'traditional notions of fair play and substantial justice'—

[5] At oral argument, Abbott contended that because Smartway shipped the test strips to a Tennessee-based company via shipment to Florida, "there is a real question as to . . . whether you'd find [personal jurisdiction] in Florida or whether jurisdiction is nationwide," but in the same sentence conceded that Abbott "would argue that there is jurisdiction in Florida." (OA Tr. at 31:16–24.) Abbott attempted to salvage its 4(k)(2) claim by asserting that this Court would "have to find that there is, in fact, jurisdiction in Florida to reject the 4(k)(2) argument." (Id. at 33:9–11.) This confuses the Court's role with that of Abbott's. It is Abbott's responsibility—not the Court's—to at least certify that Smartway cannot be sued in another jurisdiction. But by Abbott's own admission, it believes that Smartway is in fact amenable to suit in Florida.

that is, whether it is reasonable to exercise personal jurisdiction under the circumstances of the particular case." Chloé, 616 F.3d at 164 (quoting Int'l Shoe, 326 U.S. at 316). Courts must evaluate the following factors under this "reasonableness" analysis: "(1) the burden that the exercise of jurisdiction will impose on the defendant; (2) the interests of the forum state in adjudicating the case; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of the controversy; and (5) the shared interest of the states in furthering substantive social policies." Id. (citing Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102, 113–14 (1987)). Even if the plaintiff shows defendant's sufficient minimum contacts, defendants can offer "a compelling case that the presence of some other considerations would render jurisdiction unreasonable." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 477 (1985).

Turning first to the minimum-contacts inquiry, the Court concludes that Smartway's contacts are insufficient to establish specific jurisdiction for much the same reason that New York's long-arm statute is not satisfied under § 302(a)(1). See Best Van Lines, 490 F.3d at 247 ("New York decisions . . . at least in their rhetoric, tend to conflate the long-arm statutory and constitutional analyses by focusing on the constitutional standard: whether the defendant's conduct constitutes 'purposeful availment'"); Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 170 (2d Cir. 2013) ("Licci II") ("It would be unusual, indeed, if a defendant transacted business in New York and the claim asserted arose from that business activity within the meaning of section 302(a)(1), and yet, in connection with the same transaction of business, the defendant cannot be found to have purposefully availed itself of the privilege of doing business in the forum . . . . Indeed, we have been pointed to no such decisions in this Circuit." (internal quotation mark omitted)). As explained above, Smartway has not purposefully availed itself of New York's laws

through the actions Abbott alleges. Smartway merely sold to a Tennessee distributor, who sold the goods to other distributors, some of whom then sold the goods into New York, (id. ¶¶ 428–30, 483). See Helicopteros, 466 U.S. at 417 ("[The] unilateral activity of another party or a third person is not an appropriate consideration when determining whether a defendant has sufficient contacts with a forum State to justify an assertion of jurisdiction."). Abbott therefore fails to show the minimum contacts with New York required for this Court to exercise specific jurisdiction over Smartway Defendants within the bounds of due process.

Because Smartway lacked minimum contacts with New York, there is no constitutional basis to assert jurisdiction, and the Court need not consider whether it would violate "traditional notions of fair play and substantial justice" to do so despite such contacts. Int'l Shoe, 326 U.S. at 316.

CONCLUSION

For the reasons set forth above, the Court concludes that it lacks statutory or constitutional grounds to exercise personal jurisdiction over Smartway. Smartway Defendants' motion to dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2) is therefore granted.[6] The Clerk of Court is directed to enter judgment accordingly.

SO ORDERED.

Dated: March 30, 2017
Brooklyn, New York

s/Carol Bagley Amon

Carol Bagley Amon
United States District Judge

[6] Because the Court determines it does not have jurisdiction over Smartway Defendants, it does not—indeed, cannot—consider the alternative grounds for dismissal, namely failure to state a claim and forum non conveniens. See Arrowsmith, 320 F.2d at 221.