

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**KEIKO EDGAR, DENA BURGE, LEIGH
HOCKETT, JORDAN FURLAN, GINA
GILOMEN-STUDY, UHA HEALTH
INSURANCE, ANNE ARUNDEL
COUNTY, and ROGERS MACHINERY
COMPANY, INC., individually and on
behalf of all others similarly situated,**

Plaintiffs,

v.

**TEVA PHARMACEUTICAL
INDUSTRIES, LTD., TEVA
PHARMACEUTICALS USA, INC., TEVA
PARENTERAL MEDICINES, INC.,
TEVA NEUROSCIENCE, INC., TEVA
SALES & MARKETING, INC., and
CEPHALON, INC.,**

Defendants.

Case No. 22-2501-DDC-TJJ

MEMORANDUM AND ORDER

This matter comes before the court on defendant Teva Pharmaceutical Industries Ltd.’s (“Teva Israel”)¹ Motion to Dismiss (Doc. 48). Plaintiffs responded with a Motion for Jurisdictional Discovery (Doc. 55). Plaintiffs move the court for an order permitting discovery on facts material to the court’s jurisdiction over Teva Israel. Teva Israel opposes plaintiffs’

¹ Plaintiffs refer to this entity as “Teva Ltd.” in the Amended Complaint and in their papers. *See generally* Doc. 42 (1st Am. Compl.). In its Motion to Dismiss for Lack of Personal Jurisdiction (Doc. 48), defendant Teva Pharmaceutical Industries Ltd. calls that company “Teva Israel.” This Memorandum and Order uses defendant’s term.

request for jurisdictional discovery. Doc. 60. As explained below, the court agrees with plaintiffs. This Order thus grants plaintiffs' request.

I. Background

Plaintiffs' claims arise from their purchases of the drug Nuvigil. The court simultaneously has entered a Memorandum and Order explaining plaintiffs' claims in great detail. So, it won't repeat those details here and assumes the reader's familiarity with the case. In a nutshell, plaintiffs allege that defendants used a reverse payment settlement to delay entry of generic Nuvigil.² Doc. 42 at 4–5 (1st Am. Compl. ¶¶ 1–4). Plaintiffs have sued the following defendants: Teva Israel, Teva Pharmaceuticals USA, Inc., Teva Parenteral Medicines, Inc., Teva Neuroscience, Inc., Cephalon, Inc., and Teva Sales & Marketing, Inc.³ *Id.* at 4 (1st Am. Compl. ¶ 1). Plaintiffs allege that all defendants “were individually and collectively involved in the alleged schemes.” *Id.* at 8 (1st Am. Compl. ¶ 20).

Teva Israel has filed its own Motion to Dismiss (Doc. 48), arguing that this court lacks personal jurisdiction over it. Teva Israel is an Israeli corporation, with its principal place of business in Israel. Doc. 48-1 at 2 (Shanahan Decl. ¶ 2). Teva Israel argues that it has no suit-related contacts with Kansas or the United States. Doc. 48 at 7. Plaintiffs disputed this assertion and have asked the court for permission to conduct jurisdictional discovery. Doc. 55.

II. Legal Standard

“‘When a defendant moves to dismiss for lack of jurisdiction, either party should be allowed discovery on the factual issues raised by that motion.’” *GCIU-Emp. Ret. Fund v.*

² Plaintiffs initially sued defendants for blocking generic access to two drugs: the EpiPen and Nuvigil. *See generally* Doc. 42 (1st Am. Compl.). Plaintiffs since have dismissed their EpiPen-related claims. Doc. 63 at 13.

³ Plaintiffs initially included William S. Marth as a defendant. Doc. 42 at 4 (1st Am. Compl. ¶ 1). The parties since have stipulated to the dismissal of all claims against Mr. Marth. Doc. 58.

Coleridge Fine Arts, 700 F. App'x 865, 871 (10th Cir. 2017) (quoting *Budde v. Ling-Temco-Vought, Inc.*, 511 F.2d 1033, 1035 (10th Cir. 1975)). The court “may not refuse to grant jurisdictional discovery ‘if either the pertinent jurisdictional facts are controverted or a more satisfactory showing of the facts is necessary.’” *Proud Veterans, LLC v. Ben-Menashe*, No. 12-CV-1126-JAR, 2012 WL 6681888, at *1 (D. Kan. Dec. 21, 2012) (quoting *Health Grades, Inc. v. Decatur Mem’l Hosp.*, 190 F. App'x 586, 589 (10th Cir. 2006)). The court should permit jurisdictional discovery unless plaintiffs’ personal jurisdiction claims are “clearly frivolous.” *7240 Shawnee Mission Holding, LLC v. Memon*, No. 08-2207-JWL, 2008 WL 4001159, at *4 (D. Kan. Aug. 26, 2008).

A district court has “broad discretion” when deciding whether to allow jurisdictional discovery. *Bell Helicopter Textron, Inc. v. Heliquest Int’l, Ltd.*, 385 F.3d 1291, 1298–99 (10th Cir. 2004). A “refusal to grant jurisdictional discovery constitutes an abuse of discretion if the denial results in prejudice to the litigant and that prejudice is present where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.” *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1189 (10th Cir. 2010) (citation, brackets, ellipsis, and internal quotation marks omitted). And plaintiffs, as the party moving for discovery, bear the burden to demonstrate that they’re entitled to it. *Id.* at 1189 n.11.

III. Analysis

At bottom, the court must determine whether a factual dispute exists about Teva Israel’s contacts with Kansas and the United States. The court must determine whether plaintiffs have submitted evidence supporting their arguments, including evidence to controvert Teva Israel’s submissions. *See 7240 Shawnee Mission*, 2008 WL 4001159, at *4 (permitting jurisdictional discovery where plaintiffs submitted evidence supporting their position on jurisdiction and

evidence controverted defendant's jurisdictional facts). The court concludes that plaintiffs have done so here. Plaintiffs identify three areas of disputed, pertinent facts: (1) Teva Israel's contacts with the United States and Kansas, (2) Teva Israel's control over its subsidiaries, and (3) Teva Israel's involvement in this lawsuit. The court examines each factual issue, below. But, first, it addresses a threshold question: whether plaintiffs have made a prima facie showing of jurisdiction.

A. Prima Facie Basis for Jurisdiction

A plaintiff seeking jurisdictional discovery must first make a prima facie showing of jurisdiction. *Schlumberger Tech. Corp. v. Greenwich Metals Inc.*, No. 07-2252-KHV, 2008 WL 4758589, at *5 n.7 (D. Kan. Oct. 27, 2008). This initial burden is a light one, as demonstrated by the familiar motion to dismiss standard. At the motion to dismiss stage, "the plaintiff's burden is light." *Wenz v. Memery Crystal*, 55 F.3d 1503, 1505 (10th Cir. 1995) (citation omitted). The "plaintiff need only make a prima facie showing that jurisdiction exists." *Id.* "The plaintiff may make this prima facie showing by demonstrating, via affidavit or other written materials, facts that if true would support jurisdiction over the defendant." *OMI Holdings, Inc. v. Royal Ins. Co.*, 149 F.3d 1086, 1091 (10th Cir. 1998). And "a Plaintiff's prima facie showing is sufficient notwithstanding the contrary presentation by the moving party." *Axtra, LLC v. Axia Issuer, Inc.*, No. 22-CV-0144-SWS, 2023 WL 5886650, at *3 (D. Wyo. Aug. 9, 2023) (citing *Behagen v. Amateur Basketball Ass'n of U.S.A.*, 744 F.2d 731, 733 (10th Cir. 1984)).

Plaintiffs here have asserted several grounds for jurisdiction in this action: (1) Teva Israel's contacts with Kansas; (2) Teva Israel's contacts with the United States; (3) the Clayton Act; (4) RICO; and (5) the contacts of Teva Israel's subsidiaries. Teva Israel argues that plaintiffs have failed to show a prima facie case for jurisdiction on any of these grounds. But Teva Israel's prima facie arguments largely reassert its Motion to Dismiss arguments. *See Doc.*

60 at 8–11. The court need not reach those arguments here, because the legal standard for jurisdictional discovery requires the court to determine merely whether plaintiffs’ Amended Complaint and submitted materials, if true, establish a nonfrivolous basis for jurisdiction. *See 7240 Shawnee Mission*, 2008 WL 4001159, at *4. Plaintiffs need only one basis for jurisdiction. And the court concludes that plaintiffs have made a prima facie showing of jurisdiction based on plaintiffs’ agency or alter ego theory.⁴

Plaintiffs allege that defendants Teva Neuroscience, Inc. (“Teva Neuroscience”) and Teva Sales & Marketing, Inc. (“Teva Sales”) are Delaware corporations with their principal places of business in Kansas. Doc. 42 at 8 (1st Am. Compl. ¶¶ 16, 18). Plaintiffs allege that Teva Neuroscience and Teva Sales are wholly owned subsidiaries of Teva Israel that acted as Teva Israel’s agent. *Id.* As “all corporations must necessarily act through agents, a wholly owned subsidiary may be an agent and when its activities as an agent are of such a character as to amount to doing business of the parent, the parent is subject to the in personam jurisdiction of the state.” *Quarles v. Fuqua Indus., Inc.*, 504 F.2d 1358, 1364 (10th Cir. 1974) (citation omitted); *see also Energy Rsrvs. Grp., Inc. v. Superior Oil Co.*, 460 F. Supp. 483, 510 (D. Kan. 1978) (“[I]n cases where an agency relationship was found between a non-resident and an affiliate in the forum, the ‘presence’ of the agent was sufficient to constitute the non-resident’s ‘doing business’ in the forum sufficient to support jurisdiction.”). And the “finding of the presence of an agent in the forum has also justified the constitutional exercise of jurisdiction when the extent of the agent’s activities has been deemed sufficient to satisfy International Shoe standards.” *Energy Rsrvs. Grp.*, 460 F. Supp. at 510.

⁴ Though the court decides plaintiffs’ prima facie showing solely on this basis because it suffices to decide the current motion, the court doesn’t intend for its analysis to limit plaintiffs’ jurisdictional discovery here to agency and alter ego theories. Plaintiffs are entitled to probe for other bases for jurisdiction to exist.

Plaintiffs here also argue that these subsidiaries are Teva Israel's alter-ego. Plaintiffs allege that Teva Israel has attempted to integrate and control its subsidiaries. Teva Israel "controls, directs, and supervises the sales and marketing activities" of its subsidiaries. Doc. 42 at 9 (1st Am. Compl. ¶ 21). Teva Israel describes itself as a single, global entity. *Id.* (1st Am. Compl. ¶ 22). Teva Israel depicts itself as "One global brand, One story, One Teva[.]" *Id.* at 9–10 (1st Am. Compl. ¶ 23). Teva Israel's indirect subsidiaries directly report to it. *Id.* Teva Israel's CEO ultimately is responsible for allocating all of Teva's resources. *Id.* In 2018, Teva Israel implemented an organizational structure that sought to integrate Teva into one commercial organization. *Id.* Plaintiffs allege that this blurred the separation between Teva Israel and its subsidiaries. *Id.* Teva Israel also asserts it operates one fully integrated research and development function that has 100 pending first-to-file Abbreviated New Drug Applications and 270 product registrations with the FDA in the United States. *Id.* at 10 (1st Am. Compl. ¶ 24).

Also, plaintiffs allege that Teva Israel controls the day-to-day activities of its subsidiaries. The head of Teva Israel's Global Research and Development division controls Teva's product formulation, design, and commercial execution. *Id.* And Teva Israel has implemented guidelines that allow it to nominate, select, and approve executive committee and subcommittee members for itself and its U.S. subsidiaries. *Id.* As a result, Teva Israel possesses substantial control over its subsidiaries' marketing, administration, manufacturing, research and development, purchasing of supplies, finance, and other significant supporting operations. *Id.* Teva Israel controls the operations of its subsidiaries through an integrated management team. *Id.* at 10–11 (1st Am. Compl. ¶ 25). And Debra Barnett, a Teva USA employee, coordinated and directed advocacy, lobbying, and policy development across the entire Teva group of companies. *Id.* Before Teva Israel or its subsidiaries make a corporate contribution or engage in political

activity, Teva Israel's Global Government Affairs and Public Policy Department must review and approve it. *Id.* Teva Israel also maintains global policies, standards, and practices. *Id.* at 11–13 (1st Am. Compl. ¶¶ 26–28).

The court concludes that these facts establish a *prima facie* case of jurisdiction over Teva Israel. *See Patin v. Thoroughbred Power Boats Inc.*, 294 F.3d 640, 653 (5th Cir. 2002) (“[F]ederal courts have consistently acknowledged that it is compatible with due process for a court to exercise personal jurisdiction over an individual or corporation that would not ordinarily be subject to personal jurisdiction in that court when the individual or corporation is an alter ego or successor of a corporation that would be subject to personal jurisdiction in that court.”). Defendants argue that plaintiffs' allegations are insufficient, but defendants rely heavily on their arguments from their Motion to Dismiss. Doc. 60 at 10. The court declines to reach those arguments here because, taking plaintiffs' allegations as true, the court concludes plaintiffs have asserted a non-frivolous basis for jurisdiction.

With a *prima facie* case of jurisdiction established, the court next considers whether plaintiffs have identified a factual dispute that warrants jurisdictional discovery.

B. Factual Disputes

Plaintiffs identify three areas of factual dispute that warrant jurisdictional discovery. The court examines each one, in turn, below.

1. A factual dispute exists about Teva Israel's contacts with Kansas and the United States.

The court concludes that plaintiffs have shouldered their burden to show a factual dispute about Teva Israel's contacts with Kansas and the United States. Starting with Kansas, as mentioned above, plaintiffs allege that two of Teva Israel's subsidiaries are headquartered in Kansas. Doc. 42 at 8 (1st Am. Compl. ¶¶ 16, 18). Teva Israel responds that their subsidiaries no

longer are headquartered in Kansas; these subsidiaries now are headquartered in New Jersey. Doc. 48 at 9 n.1; *see also* Doc. 48-3 at 2 (Shanahan Decl. Ex. 1); Doc. 48-4 at 2 (Shanahan Decl. Ex. 2). Plaintiffs point out that Teva Israel doesn't say when these subsidiaries relocated their headquarters. Doc. 55 at 7. And plaintiffs proffer evidence that these subsidiaries maintained their Kansas locations until at least 2021. Doc. 55-4 at 2 (Pls.' Ex. C); Doc. 55-5 at 2 (Pls.' Ex. D). Plaintiffs thus have identified a factual dispute about the Kansas contacts of Teva Israel's subsidiaries.

Likewise, plaintiffs argue that Teva Israel has pervasive contacts with the United States, but Teva Israel disputes this assertion. Teva Israel submitted an affidavit emphasizing that it "is not incorporated in, or qualified to do business in, any state in the United States." Doc. 48-1 at 2 (Shanahan Decl. ¶ 3). And "Teva Israel has not filed, or sought to file, articles of incorporation or qualifications to do business in any state in the United States." *Id.* (Shanahan Decl. ¶ 4). Teva Israel doesn't have an office, facility, telephone number, mailing address, or manufacturing facility in the United States. *Id.* (Shanahan Decl. ¶¶ 5–6). Teva Israel also "does not own, lease, possess, or maintain any real or personal property, office, residence, or place of business in the United States." *Id.* at 2–3 (Shanahan Decl. ¶ 7). And it never has done so. *Id.* Nor has Teva Israel designated an authorized agent for service of process in the United States. *Id.* at 3 (Shanahan Decl. ¶ 8).

To support their view that there's a factual dispute about Teva Israel's contacts with the United States, plaintiffs cite litigation documents where Teva Israel called itself "a multinational pharmaceutical company that develops, manufactures, and distributes a broad portfolio of pharmaceutical products in the United States and abroad." Doc. 55 at 6. Plaintiffs also proffer evidence from other litigation: the State of New York's suit against Teva Israel. *See* Doc. 55-2

(Pls.’ Ex. A). In that suit, the court had dismissed Teva Israel and the State filed a motion to vacate that dismissal. *Id.* According to the State’s filing, Teva Israel “swore unequivocally . . . that it transacted *no* business in the United States and that it had *no* office, property, employees, or registered agent within the country.” *Id.* at 7. But, according to the State, Teva Israel’s representations were “demonstrably false.” *Id.* Defendants point out that a litigation opponent made this claim, and they call it misleading. But the court need not weigh evidence at this stage. The court merely must determine whether plaintiffs have adduced evidence to controvert defendants’ jurisdictional facts. *7240 Shawnee Mission*, 2008 WL 4001159, at *4. The court concludes that plaintiffs have shouldered that burden here, and a factual dispute exists about Teva Israel’s contacts with the United States.

2. A factual dispute exists about Teva Israel’s control of its subsidiaries.

Recall that plaintiffs’ Amended Complaint alleges that Teva Israel has integrated its subsidiaries and controls some of their daily activities. Teva Israel disputes this allegation. Teva Israel submitted a declaration testifying, “Teva Israel does not dominate, control, direct, or supervise the day-to-day operations” of its subsidiaries. Doc. 48-1 at 4–5 (Shanahan Decl. ¶ 17).⁵

Plaintiffs’ response emphasizes that the allegations in their Amended Complaint about Teva Israel’s control of its subsidiaries come from other litigation. Specifically, plaintiffs cite *City and County of San Francisco v. Purdue Pharma L.P.*, where the Northern District of California found a factual dispute about Teva Israel’s relationship with its American subsidiaries. 491 F. Supp. 3d 610, 637–38 (N.D. Cal. 2020). The California federal court noted Teva Israel

⁵ Plaintiffs respond by arguing that Teva Israel’s declarant, Mr. Shanahan, can’t testify about Teva Israel’s activities because Mr. Shanahan serves as in-house counsel for Teva USA.

“depicts itself as ‘One global brand, One story, One Teva,’ . . . and its indirect subsidiaries report directly to Teva” Israel. *Id.* at 636. The California court also referenced a 2018 Memorandum providing, “Teva [Israel’s] CEO is ultimately responsible for allocating all of Teva’s resources.” *Id.* (record citation and quotation marks omitted). And the court mentioned Teva’s organizational structure, which sought “to help integrate Teva into one commercial organization, thereby blurring the layers of separation between Teva [Israel] and its subsidiaries.” *Id.* (record citation and quotation marks omitted). Critically, the court also mentioned Teva Israel’s guidelines for executive committee members for itself and its subsidiaries, which give Teva Israel “substantial control over the subsidiaries’ marketing, administration, manufacturing, research and development, purchase of supplies, finance, and other significant supporting operations conducted in shared and commingled assets.” *Id.* at 636–37. This court finds the California court’s order highly persuasive. Plaintiffs also cite Teva Israel’s public statements about its subsidiary control. Doc. 55 at 10. Plaintiffs emphasize that Teva Israel has described publicly a highly integrated structure across its marketing, audit, tax and compliance, and customer relation functions. *Id.* at 10–11.

In sum, though Teva Israel asserts that it doesn’t control the day-to-day operations of its subsidiaries, the court concludes that plaintiffs have shouldered their burden to show a factual dispute about Teva Israel’s subsidiary control.

3. A factual dispute exists about Teva Israel’s conduct relevant to this lawsuit.

The basis of plaintiffs’ lawsuit is an alleged reverse payment settlement between defendants and Mylan—a generic drug manufacturer—that compensated Mylan for staying out of the Nuvigil market, thus delaying entry of generic Nuvigil into the market. Teva Israel asserts that it had no involvement in the Nuvigil patent litigation. Doc. 48-1 at 6 (Shanahan Decl. ¶ 23).

Teva Israel also emphasizes that it never has held or submitted an FDA New Drug Application for Nuvigil. *Id.* (Shanahan Decl. ¶ 22). And Teva Israel maintains that it never has manufactured, promoted, sold, or distributed Nuvigil in Kansas or the United States. *Id.* (Shanahan Decl. ¶ 24).

Plaintiffs dispute all these assertions. They point out that Teva Israel issued a press release announcing the settlement of the Nuvigil patent litigation with Mylan. Doc. 55 at 13. Plaintiffs also aver that Nuvigil is important to Teva Israel’s bottom line. *Id.* at 13–14. And plaintiffs mention Teva Israel’s claim to have a fully integrated R&D function that has directed and conducted Nuvigil research. *Id.* at 14. The court thus concludes that plaintiffs have shown a factual dispute exists.

The court briefly addresses one of Teva Israel’s final arguments. Teva Israel emphasizes that these allegations—even if the court accepts all of plaintiffs’ disputed allegations examined above—can’t provide a basis for jurisdiction over Teva Israel. The court rejects this argument because it’s premature. The court declines to reach Teva Israel’s substantive personal jurisdiction arguments because the factual disputes identified by plaintiffs have cascading ramifications for the court’s personal jurisdiction analysis. Take, for example, the issue of Teva Israel’s subsidiary control. This is an “extremely fact dependent” inquiry. 4A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1069.4 (4th ed. 2023). Indeed, the *City and County of San Francisco* court found Teva Israel’s control of its subsidiaries “raise[d] questions of fact[.]” 491 F. Supp. 3d at 637–38. And this inquiry’s resolution has far-reaching consequences for analyzing Teva Israel’s minimum contacts with the United States and Kansas. To say the obvious, if the court can impute the contacts of Teva Israel’s subsidiaries onto Teva

Israel, then Teva Israel will face an uphill battle to argue that personal jurisdiction is improper here.

C. Proposed Discovery

Teva Israel argues that the court should deny plaintiffs' request for jurisdictional discovery because plaintiffs have failed to identify the discovery they seek. Doc. 60 at 11. Indeed, some courts have required plaintiffs to identify specific documents that they want to acquire through discovery. *Breakthrough Mgmt. Grp.*, 629 F.3d at 1190. But that's not always the case. Plaintiffs identify several cases where the court granted jurisdictional discovery without requiring the party to identify specific documents. *See, e.g., Dickenson v. Brenntag N. Am., Inc.*, No. 22-2068-JAR-ADM, 2022 WL 2191761 at *2 (D. Kan. June 17, 2022); *Worley v. Lowe's Home Ctrs., LLC*, No. 20-cv-2285-SAC-TJJ, 2021 WL 4268750, at *3 (D. Kan. Sept. 3, 2021). These cases demonstrate that jurisdictional discovery is committed to the trial court's broad discretion. The court exercises that discretion here and concludes that plaintiffs need not identify the specific discovery they seek because plaintiffs have identified three distinct areas of factual dispute.

The court remains mindful that foreign "nationals usually should not be subjected to extensive discovery in order to determine whether personal jurisdiction over them exists." *Cent. States, Se. & Sw. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 94 (7th Cir. 2000) (citation omitted). "To protect the defendant from a fishing expedition, the magistrate judge will limit discovery to what she permits." *Worley v. Lowe's Home Ctrs., LLC*, No. 20-2285-SAC-JPO, 2021 WL 4263653, at *1 (D. Kan. Sept. 20, 2021).

IV. Conclusion

The court thus grants plaintiffs' Motion for Jurisdictional Discovery (Doc. 55). The magistrate judge will manage limited discovery on this personal jurisdiction issue. The court

also denies Teva Israel's Motion to Dismiss (Doc. 48) without prejudice. *See Water Pik, Inc. v. H2OFloss*, No. 17-cv-02082-CMA-MJW, 2018 WL 1706276, at *4 (D. Colo. Apr. 9, 2018) (granting motion for jurisdictional discovery and denying related motion to dismiss without prejudice because "limited jurisdictional discovery could lead to changes in the underlying nature of the parties' jurisdictional dispute" and denying motion to dismiss would "streamline the presentation of these issues").

IT IS THEREFORE ORDERED BY THE COURT THAT Teva Pharmaceutical Industries Ltd.'s Motion to Dismiss (Doc. 48) is denied without prejudice.

IT IS FURTHER ORDERED THAT plaintiffs' Motion for Jurisdictional Discovery (Doc. 55) is granted.

IT IS SO ORDERED.

Dated this 26th day of March, 2024, at Kansas City, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge