UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT,

Plaintiff,

v.

EXXON MOBIL CORPORATION,

Defendant.

Case No. 3:20-cv-01555-JCH

November 13, 2020

DEFENDANT'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(2)

Defendant Exxon Mobil Corporation hereby moves to dismiss Plaintiff's complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure. Plaintiff's complaint should be dismissed for the reasons stated in the accompanying Memorandum of Law.

Dated: November 13, 2020

Respectfully Submitted,

ORAL ARGUMENT REQUESTED

EXXON MOBIL CORPORATION,

By its attorneys,

Patrick J. Conlon (*pro hac vice*, phv10908)
patrick.j.conlon@exxonmobil.com
22777 Springwoods Village Parkway Spring, TX 77389 Tel: (832) 624-6336

WIGGIN & DANA LLP

/s/ Kevin M. Smith
Kevin M. Smith
Tadhg Dooley
ksmith@wiggin.com
tdooley@wiggin.com
One Century Tower
265 Church Street
New Haven, CT 06510-7001
Tel: (203) 498-4400
Fax: (203) 782-2889

Robert M. Langer
rlanger@wiggin.com
20 Church Street
Hartford, CT 06103-1250
Tel: (860) 297-3700
Fax: (860) 297-3799

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Theodore V. Wells, Jr. (*pro hac vice*, phv10835)
Daniel J. Toal (*pro hac vice*, phv10907)
twells@paulweiss.com
dtoal@paulweiss.com 1285 Avenue of the Americas New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990

Justin Anderson (*pro hac vice*, phv10837)
janderson@paulweiss.com
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7300 Fax: (202) 223-7420

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

STATE OF CONNECTICUT, Plaintiff, v. EXXON MOBIL CORPORATION, Defendant.	Case No. 3:20-CV-01555 (JCH)

MEMORANDUM OF DEFENDANT EXXON MOBIL CORPORATION IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION

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PRELIMINARY STATEMENT

In this lawsuit, the Attorney General challenges ExxonMobil's national production, promotion, and sale of oil and gas. But none of the challenged conduct was undertaken by a Connecticut resident, none of it took place inside Connecticut, and none of it was specifically directed at Connecticut. The claims in this suit are connected to Connecticut only by the Attorney General's unilateral decisions to file suit in his home jurisdiction and to invoke Connecticut's consumer protection statute. Neither provides a valid basis for personal jurisdiction over ExxonMobil under the U.S. Constitution or Connecticut state law. In the absence of a valid connection to this forum, ExxonMobil cannot be haled into this Court to respond to claims arising from challenged conduct that took place outside Connecticut's borders.

ExxonMobil is not subject to general personal jurisdiction in Connecticut. As the Complaint acknowledges, ExxonMobil is a New Jersey corporation headquartered in Texas. And the Complaint does not allege facts suggesting that ExxonMobil has any substantial presence in Connecticut, much less one so exceptional that it could be considered "at home" here.

ExxonMobil is not subject to specific personal jurisdiction in Connecticut either. For the exercise of specific jurisdiction to comport with the Due Process Clause, the Attorney General must establish that his claims arise from ExxonMobil's activities in Connecticut. They do not. The gravamen of the Attorney General's Complaint is that ExxonMobil allegedly made deceptive statements of opinion regarding future energy demand, its products, and its corporate activities, all of which were conceived, developed, and published outside of Connecticut. For example, the Attorney General takes issue with statements ExxonMobil's then-CEO gave to a Detroit trade group 25 years ago discussing climate science, but alleges no link whatsoever to Connecticut. And the Attorney General sues over videos ExxonMobil has produced (outside of Connecticut) that

publicize the advancements it has made (outside of Connecticut) in researching alternatives to fossil fuels. Those videos, along with all other advertising referenced in the Complaint, were prepared for distribution across the entire country. Under well-settled law, advertising prepared for uniform publication across the United States market does not support personal jurisdiction in all of the states where it is published. The Attorney General's claims thus arise solely from ExxonMobil's out-of-state activities.

The Complaint identifies only two connections to Connecticut in support of personal jurisdiction, but the Attorney General's claims do not arise out of either. *First*, the Attorney General relies on the existence of service stations in Connecticut that operate under the "Exxon" and "Mobil" brand names. But the Complaint does not allege that any of the challenged speech took place in or was distributed through the service stations. To the extent the Attorney General claims ExxonMobil should have warned consumers about climate change at Connecticut service stations, the absence of warnings is insufficient to support personal jurisdiction. Inactivity inside the forum cannot provide a basis for personal jurisdiction consistent with due process. And, in any event, ExxonMobil has not owned or operated those stations for nearly a decade. As a result, action or inaction by their owners cannot be attributed to ExxonMobil for purposes of the jurisdictional analysis. *Second*, the Attorney General relies on a long-closed industrial films manufacturing plant in Connecticut that ExxonMobil once operated. That plant has nothing to do with the claims brought in the Complaint because it made films for industrial customers, not the consumer products that are the subject of the allegations in the Complaint.

This case is governed by a simple principle: out-of-state defendants can be brought into a Connecticut court only for actions directed at or occurring in the state and for claims that arise out of such actions. The Attorney General's Complaint does not satisfy that requirement. He cannot

escape the fact that his lawsuit is not focused on any Connecticut conduct at all, but instead on attempting to use Connecticut courts to police and curtail ExxonMobil's national production, promotion, and sale of oil and gas. Those efforts exceed the bounds of the U.S. Constitution and Connecticut's long-arm statute. As a result, this lawsuit should be dismissed with prejudice.

STATEMENT OF FACTS[1]

A. ExxonMobil Has No Employees, Operations, or Physical Presence in Connecticut.

ExxonMobil is a publicly traded company incorporated in New Jersey, with its principal place of business in Texas. (Compl. ¶ 47.) The company has no offices or refineries in Connecticut. (Johansen Aff. ¶¶ 4, 6.) Thirteen years ago, ExxonMobil closed a films manufacturing plant in Stratford, Connecticut. (*Id.* ¶ 5.) That plant had produced films for industrial uses, such as in food packaging. (Compl. ¶ 60; Johansen Aff. ¶ 5.) It did not produce oil or gas or any consumer products. (Johansen Aff. ¶ 5.)

ExxonMobil has not owned or operated service stations (including those branded "Exxon" and "Mobil") in Connecticut since 2011. (Johansen Aff. ¶ 8.) Connecticut Exxon- and Mobil-branded service stations have operated independently since at least that time. (*Id.* ¶¶ 7–8.) Under

[1] To the extent ExxonMobil relies on facts alleged in the Complaint, it is for purposes of this motion only. As shown in the attached Affidavit of Austin Johansen ("Johansen Aff."), many of the Attorney General's allegations of jurisdictional nexus are premised on unsupportable conclusory assertions. When deciding a motion to dismiss for lack of personal jurisdiction before trial, a court "may determine the motion on the basis of affidavits alone," and need not convert it to a motion for summary judgment. *Johnson* v. *UBS AG*, 791 F. App'x 240, 241 (2d Cir. 2019) (quoting *Dorchester Fin. Sec., Inc.* v. *Banco BRJ, S.A.*, 722 F.3d 81, 84 (2d Cir. 2013) (per curiam)). Even though the court will construe "the pleadings and affidavits in favor of the plaintiffs," the burden of production remains with the plaintiff, who must establish that all elements of the personal jurisdiction analysis have been met. *Id.* at 241–42; *see also Metro. Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996) ("On a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, the plaintiff bears the burden of showing that the court has jurisdiction over the defendant.")

agreements that govern the use of ExxonMobil's branding by independent owners and operators, the independent owners of service stations control their own operations, staffing, and sales; ExxonMobil provides only routine support services. (*Id.* ¶ 9.)

B. ExxonMobil's Advertising and Statements about Climate Science and Alternative Fuels Were Not Made in or Directed Towards Connecticut.

In print, television, radio, and online, ExxonMobil discusses its investments in alternative energy sources and its efforts to lower its own emissions. (Compl. ¶¶ 150, 157.) Some of those efforts include national campaigns that publicize ExxonMobil's research into and development of alternative fuels, including algae-based biofuels. (*Id.* ¶¶ 154–56.) Others discuss the benefits of existing ExxonMobil products, including those that reduce emissions and improve fuel economy. (*Id.* ¶ 165.) The Complaint labels these advertisements "greenwashing." (*Id.* ¶ 150.) The campaigns with which the Attorney General takes issue are not alleged to be prepared for the Connecticut market. The Complaint does not allege that any were produced in Connecticut, aimed at Connecticut consumers specifically, or placed in Connecticut-specific publications or outlets. (*Id.*)

ExxonMobil has also participated in public discourse about climate change, climate policy, and energy policy. As the Attorney General alleges, ExxonMobil executives have offered opinions about these matters of public concern in speeches and publications. (Compl. ¶¶ 119, 122, 123, 125, 126, 128, 129, 131, 132.) None of those speeches took place in Connecticut, none of those publications were issued in Connecticut, and none of them targeted a Connecticut audience. For example, the Complaint alleges ExxonMobil's then-CEO, Lee Raymond, spoke to the Economic Club of Detroit in 1996 about the state of climate science at the time, and then expanded on those remarks while in Europe later that year. (*Id.* ¶ 123.)

The Complaint also alleges that ExxonMobil or its predecessor companies placed advertorials discussing climate change in nationally distributed print publications, including the *New York Times*, the *Washington Post*, *National Journal*, *USA Today*, and the *Financial Times*, between 1972 and 2007. (Compl. ¶¶ 137, 140.) The Attorney General does not allege that any of the commentary by ExxonMobil executives or any of the company's alleged advertisements were made in Connecticut or directed specifically at Connecticut. None of ExxonMobil's advertising campaigns are prepared specifically for the state. (Johansen Aff. ¶ 11.)

ARGUMENT

The Complaint should be dismissed for lack of personal jurisdiction because ExxonMobil is an out-of-state resident and the Attorney General's claims challenge ExxonMobil's statements and activities outside this forum.

A court's exercise of personal jurisdiction over a defendant may be either general or specific. *Brown* v. *Lockheed Martin Corp*., 814 F.3d 619, 624 (2d Cir. 2016). General personal jurisdiction "permits a court to adjudicate any cause of action against the corporate defendant, wherever arising, and whoever the plaintiff." *Id.* Specific personal jurisdiction "is available when the cause of action sued upon arises out of the defendant's activities in a state." *Id.* In federal court, the determination of whether personal jurisdiction exists is governed by the law of the forum state and the bounds set by the U.S. Constitution. *Id.* (citing Fed. R. Civ. P. 4(k)(1)(A)).

The plaintiff bears the burden of establishing that personal jurisdiction exists over a non-resident defendant. *Cogswell* v. *Am. Transit Ins. Co.*, 923 A.2d 638, 647 (Conn. 2007). In attempting to satisfy its burden, a plaintiff cannot rely on conclusory allegations. *Matthews* v. *SBA, Inc.*, 89 A.3d 938, 964 (Conn. 2014). When opposing personal jurisdiction, a defendant may submit affidavits asserting facts that support dismissal for lack of personal jurisdiction. *Johnson*

v. *UBS AG*, 791 F. App'x 240, 241 (2d Cir. 2019). If a defendant does so, the burden shifts to the plaintiff to produce particularized allegations, affidavits, or other evidence to meet its burden of showing that jurisdiction is proper as a matter of law. *Id.* at 242; *Metro. Life Ins. Co.* v. *Robertson-Ceco Corp.*, 84 F.3d 560, 566 (2d Cir. 1996).

The Attorney General has failed to allege facts supporting personal jurisdiction over ExxonMobil in Connecticut for the claims asserted here. *First*, there is no general personal jurisdiction because the company is not incorporated or headquartered in Connecticut, and it does not have Connecticut contacts that are so substantial as to render it effectively "at home" in the state. *Second*, an exercise of specific personal jurisdiction would offend principles of due process because the Attorney General's cause of action arises from ExxonMobil's alleged actions outside of Connecticut. The limited Connecticut contacts that are alleged—branding relationships with independent owners and operators of service stations, and operation of the Stratford films plant, which produced food packaging materials for industrial use and closed more than ten years ago—do not give rise to the Attorney General's cause of action. *Finally*, even if specific personal jurisdiction could be exercised without offending the Due Process Clause, there is no jurisdiction under Connecticut's long-arm statute.

I. ExxonMobil Is Not Subject to General Personal Jurisdiction in Connecticut.

A corporate defendant is normally subject to general personal jurisdiction only in its state of incorporation and in the state in which it maintains its principal place of business. *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d Cir. 2016). Neither criteria permits jurisdiction here. ExxonMobil is incorporated in New Jersey and maintains its principal place of business in Texas. (Compl. ¶ 47.)

The only other circumstance where a corporation is subject to general personal jurisdiction is in the "exceptional" case where its contacts with a forum are "so continuous and systematic as to render it essentially at home in the forum." *Brown*, 814 F.3d at 627 (quoting *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 (2014)) (emphasis omitted). The Attorney General does not even attempt to argue that ExxonMobil's contacts with Connecticut were so continuous and systematic that it should be deemed "at home" here. In fact, the only in-state contacts the Attorney General references are branded service stations that are independently owned and operated and a long-closed films manufacturing plant. (Compl. ¶ 60.) None of the "Exxon" and "Mobil" branded service stations in Connecticut have been owned by ExxonMobil for nearly a decade. And in 2007, ExxonMobil closed the films plant, which manufactured food packaging products. These allegations fall well short of the continuous and systematic contacts that render a company at home in the state. *See Brown*, 814 F.3d at 627.

The Attorney General also alleges that ExxonMobil is registered with the Connecticut Secretary of State as a foreign corporation authorized to do business in the state. (Compl ¶ 47.) But the Second Circuit has held that such registration under the Connecticut business registration statute, Conn. Gen. Stat. § 33-920(a), does not establish general personal jurisdiction or reflect consent to such jurisdiction in Connecticut courts. *Brown*, 814 F.3d at 641. This "binding construction" of Connecticut law compels the rejection of an exercise of general jurisdiction. *Mossack Fonseca & Co., S.A.* v. *Netflix, Inc.*, No. 3:19CV1618 (JBA), 2019 WL 5298171, at *4 (D. Conn. Oct. 17, 2019).

II. The Attorney General's Allegations Are Insufficient under the Due Process Clause to Support Specific Personal Jurisdiction.

A plaintiff seeking to establish specific personal jurisdiction must, under the Due Process Clause, show that its cause of action "arise[s] out of" the defendant's contacts with the forum. *Walden* v. *Fiore*, 571 U.S. 277, 284 (2014); *Cogswell* v. *Am. Tr. Ins. Co.*, 923 A.2d 638, 651 (Conn. 2007). To satisfy this nexus requirement, the Attorney General must show "some causal relationship between an entity's in-forum contacts and the proceeding at issue." *In re del Valle Ruiz*, 939 F.3d 520, 530 (2d Cir. 2019) (emphasis omitted).

In this case, there is no nexus between the Attorney General's cause of action and ExxonMobil's alleged connections to Connecticut. In particular, the Attorney General challenges ExxonMobil's national production, promotion, and sale of oil and gas, including its advertisements and public statements on climate change and alternative energy. None of those activities or statements, however, are alleged to occur in or be directed at Connecticut. And there is no connection whatsoever between the Attorney General's claims and either the long-closed Stratford films plant or independently owned and operated service stations. Accordingly, the Attorney General has failed to allege facts sufficient to support the exercise of specific jurisdiction over ExxonMobil.

A. The Statements the Attorney General Challenges Were Made Outside Connecticut and Were Not Specifically Aimed at the Forum.

Specific jurisdiction is lacking here because "all the conduct giving rise to the [Attorney General's] claims occurred elsewhere." *Bristol-Myers Squibb Co.* v. *Super. Ct. of Calif.*, 137 S. Ct. 1773, 1782 (2017). The Attorney General claims ExxonMobil was able to produce, sell, and promote oil and gas through a supposed "campaign of deception" arising from ExxonMobil's public statements about climate science and policy, including advertorials placed in national

newspapers. (Compl. ¶¶ 6, 39, 57–58.) The Complaint also alleges a so-called "greenwashing" campaign promoting ExxonMobil's efforts to develop alternative fuels and products to increase vehicle fuel economy. (*Id.* ¶¶ 12, 40, 144, 153.)

But the Complaint does not allege that any of the challenged conduct—the nationwide advertising, the *New York Times* advertorials, the underlying climate science research—occurred in Connecticut or specifically targeted Connecticut. Rather, the Attorney General admits that the challenged statements were placed in the print editions of national publications like the *New York Times*, the *Washington Post*, the *Financial Times*, *National Journal*, and *USA Today*, (Compl. ¶¶ 139–40), as well as other unnamed "print, television, radio and online platforms including social media." (*Id.* ¶ 153.) The Complaint does not allege that any challenged public-facing material, nor the internal research that supposedly contradicted it, was Connecticut-specific or purposely targeted Connecticut.

The Attorney General alleges that ExxonMobil's statements ultimately were heard by Connecticut consumers and caused those consumers to make decisions about whether to buy fossil fuel products and in what quantities. (Compl. ¶¶ 35–36.) But the mere fact that an advertisement or advertorial may have ultimately reached the residents of a forum does not constitute an in-forum contact under the Due Process Clause. "[E]vidence of mere placement of advertisements in nationally distributed papers or journals" does not constitute conduct within or directed at a forum sufficient to support personal jurisdiction. *Federated Rural Elec. Ins. Corp.* v. *Kootenai Elec. Co-op.*, 17 F.3d 1302, 1305 (10th Cir. 1994); *accord Miller* v. *Meadowlands Car Imps., Inc.*, 822 F. Supp. 61, 65 (D. Conn. 1993).

In *Miller*, the court considered claims against Meadowlands Car Imports, a New Jersey corporation, regarding contracts entered into in New Jersey that were later assigned to the plaintiff

in Connecticut. 822 F. Supp. 61 at 63. Plaintiff asserted that Connecticut courts had personal jurisdiction over Meadowlands solely because it had placed advertisements in the *New York Times*. *Id.* at 65. Rejecting that argument, the court held that exercising personal jurisdiction over the defendant "would 'offend notions of fair play and substantial justice,'" as all of the defendant's conduct was "conducted on a nationwide basis, and none [was] solely aimed at Connecticut." *Id.* (quoting *Int'l Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)); *see also Neato, Inc.* v. *Great Gizmos*, No. 3:99CV958 (AVC), 2000 WL 305949, at *5 (D. Conn. Feb. 24, 2000) (holding that posting internet advertisement that was not "expressly or intentionally aim[ed]" at Connecticut did not support personal jurisdiction).[2] Accordingly, ExxonMobil's statements outside of Connecticut, in the *New York Times* and other publications, do not constitute contacts with Connecticut that would support personal jurisdiction.

Nor may the Attorney General base personal jurisdiction on the Connecticut "effects" of the out-of-state conduct, such as the purchase decisions of Connecticut consumers after viewing the challenged content, (Compl. ¶ 167). A plaintiff seeking to base jurisdiction on in-state effects of out-of-state conduct must show that Connecticut was the "focal point" of the challenged statements. *Waldman* v. *Palestine Liberation Org.*, 835 F.3d 317, 340 (2d Cir. 2016) (quoting *Calder* v. *Jones*, 465 U.S. 783, 789 (1984)) (emphasis omitted). The Attorney General, however,

[2] Courts across the country have held similarly. *See, e.g.*, *Pebble Beach Co.* v. *Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006) (holding advertising that lacks "individualized targeting of California" was insufficient); *Kootenai Elec. Co-op.*, 17 F.3d at 1305 (holding defendants' placement of "advertisements in the Midwest edition of the *Wall Street Journal*" did not "rise to the level of purposeful contact with" the forum of Nebraska); *Cherdak* v. *Am. Arbitration Ass'n Inc.*, 443 F. Supp. 3d 134, 148 (D.D.C. 2020) ("Plaintiffs make no factual allegation that the advertisements were particularly targeted to the District of Columbia.").

has not alleged anything about the challenged advertorials or advertisements themselves supporting a theory that Connecticut is their "focal point."

As alleged, the advertorials discussed ExxonMobil's views on climate policy and related initiatives by the company, (Compl. ¶ 144), and the advertisements discussed specific alternative fuel projects and the fuel-saving effects of certain consumer products, (*Id.* ¶¶ 154–56, 165). Neither category of statements, however, are alleged to address Connecticut specifically. They are not alleged to even mention Connecticut at all. Any connection between the statements and effects felt in Connecticut is "random, fortuitous, or attenuated," and therefore not enough to provide a basis for haling ExxonMobil into Connecticut court. *Walden*, 571 U.S. at 286 (quoting *Burger King*, 471 U.S. at 475). To hold otherwise would be to adopt a "loose and spurious form" of personal jurisdiction that the Supreme Court has squarely rejected. *Bristol-Myers*, 137 S. Ct. at 1782.

B. Connecticut Service Stations Do Not Give Rise to the Attorney General's Claims.

The Complaint appears to premise personal jurisdiction on the existence of independent service stations branded "Exxon" or "Mobil" in Connecticut. (Compl. ¶¶ 59-60, 182.) Allegations about in-state activities matter, however, only when the activities give rise to the claims in the case—the analysis is limited to whether the "*suit-related conduct* . . . creates a substantial connection with the forum State pursuant to the [cause of action]." *Waldman*, 835 F.3d at 335 (emphasis added). The Attorney General's claims do not arise from activities at the branded service stations in the state.

The Complaint contains no allegations that the service stations made the advertorial or advertising statements the Attorney General challenges here. Nor does the Attorney General allege that ExxonMobil directed any other third-party retailer to distribute challenged advertorials or

advertisements as part of an agreement to distribute ExxonMobil's consumer products in Connecticut. Insofar as the service stations displayed corporate advertising prepared for a national market, and not tailored to or specifically targeting Connecticut, that does not constitute contacts sufficient to support personal jurisdiction. *See Neato, Inc.*, 2000 WL 305949, at *5.

The Attorney General seemingly attempts to base an exercise of personal jurisdiction on allegations that branded service stations failed to warn customers about climate risks. (Compl. ¶ 36.) An "omission" or a "failure to act," however, cannot "furnish the minimum contact with that state that is needed to confer jurisdiction." *Chlebda* v. *H.E. Fortna & Bro., Inc.*, 609 F.2d 1022, 1023–24 (1st Cir. 1979); *Zapata* v. *HSBC Holdings plc*, No. 1:16-CV-030, 2017 WL 6939209, at *1 (S.D. Tex. Sept. 14, 2017) (holding that "inaction" is an "insufficient" contact to "justify the assumption of jurisdiction"); *cf. Filus* v. *LOT Polish Airlines*, 907 F.2d 1328, 1333 (2d. Cir. 1990) (holding that, under Foreign Sovereign Immunities Act, "a failure to warn does not constitute an 'act performed in the United States' in connection with a commercial activity of the foreign state elsewhere'" (citation omitted)). Allowing the exercise of jurisdiction based on omissions in the forum would upend the entire jurisdictional analysis, which requires that a defendant has engaged in challenged *acts* in the forum state, "thus invoking the benefits and protections of its laws." *Chlebda*, 609 F.2d at 1024. (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 253 (1958)) (emphasis added); *see also Carty* v. *Beech Aircraft Corp.*, 679 F.2d 1051, 1061 (3d Cir. 1982) (recognizing that basing jurisdiction on alleged omissions would "dangerously trench upon the constitutional prohibition against assertion of jurisdiction where the defendant" has no relevant forum contacts). But even if in-state omissions could create jurisdiction, the Complaint does not identify the information that purportedly should have been disclosed, and the allegations related to omissions in the state are far too "[v]ague and conclusory" to support jurisdiction. *Doe*

v. *Bausch & Lomb, Inc.*, 443 F. Supp. 3d 259, 267–68 (D. Conn. 2020) (internal quotation omitted). Accordingly, the Attorney General cannot invoke the jurisdiction of Connecticut courts based on claimed omissions.

Should the Court find that the Attorney General can establish that his claims arose from inaction by service stations, those allegations would be insufficient to establish personal jurisdiction over ExxonMobil. The service stations are independently owned and operated. (Johansen Aff. ¶ 7.) They are entirely distinct from ExxonMobil, and their owners' actions (or inaction) cannot be attributed to ExxonMobil for the purposes of identifying in-state contacts for personal jurisdiction. *Moore* v. *Home Servs. Alliance*, No. CV960151514S, 1996 WL 704380, at *3 (Conn. Super. Ct. Dec. 2, 1996) ("[T]he activities of a foreign corporation's franchisees cannot be attributed to the franchisor for purposes of establishing personal jurisdiction.").

Indeed, even in cases where defendants have wholly owned subsidiaries in Connecticut—an actual ownership relationship that is not present between ExxonMobil and independently operated fueling stations—courts have found that those subsidiaries' contacts cannot be imputed to the non-resident defendant parent unless the parent corporation has "such domination of finances, policies and practices that the [subsidiary] has . . . no separate mind, will or existence of its own and is but a business conduit for its principal." *Gerald Metals, S.A.* v. *Great N. Ins. Co.*, No. 3:06CV1207(AWT), 2007 WL 9753903, at *4 (D. Conn. Sept. 27, 2007); *see also Savage* v. *Scripto-Tokai-Corp.*, 147 F. Supp. 2d 86, 93–94 (D. Conn. Apr. 30, 2001) (rejecting plaintiff's argument "that establishing a national distribution system [including in Connecticut] through a wholly owned subsidiary" justified the exercise of jurisdiction). The Attorney General has failed to allege any such control and now bears the burden of rebutting ExxonMobil's supporting

evidence that ExxonMobil lacks control over various aspects of independent service stations' operations. (Johansen Aff. ¶¶ 9–10.)

C. The Stratford Plant That Closed More Than a Decade Ago and Made Films for Industrial Customers Does Not Give Rise to the Attorney General's Claims.

The Attorney General attempts to create a jurisdictional hook by mentioning Exxon's former operation of a films manufacturing plant in Stratford, Connecticut, that shut down more than a decade ago. (Compl. ¶ 60; Johansen Aff. ¶ 5.) The allegation is a non sequitur: the 46-page Complaint mentions the Stratford films plant only once, and when it does so there is no attempt to allege that the plant gives rise to the causes of action being brought. (Compl. ¶ 60.) That is because ExxonMobil's operation of the plant, which ceased in 2007, has nothing to do with the conduct challenged in the case. The plant did not produce gasoline or fossil fuel-based products, such as engine oil or other lubricants, sold to consumer customers. (Johansen Aff. ¶ 5.) Instead, it manufactured films, such as those used in food packaging. (*Id.*) Those films were sold to industrial customers, not consumers. (*Id.*) Therefore, the Stratford films plant does not provide a sufficient in-state contact because the Attorney General's claims do not arise from it.

III. The Attorney General's Allegations Are Insufficient under the Connecticut Long-Arm Statute to Support Personal Jurisdiction.

Even if the exercise of personal jurisdiction were proper under the U.S. Constitution (and it is not), the Attorney General also must show that its claims satisfy the requirements of Connecticut's long-arm statute. The Attorney General has failed to do so.

The first prong of the long-arm statute allows the exercise of jurisdiction over actions arising out of "any contract made in this state or to be performed in this state." Conn. Gen. Stat.

§ 33-929(f)(1). This case does not arise from any contracts at all, much less contracts made in or to be performed in Connecticut.

The second prong of the long-arm statute allows the exercise of jurisdiction over actions arising out of "business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business." Conn. Gen. Stat. § 33-929(f)(2). Claims based on a defendant's nationwide advertising efforts, without any allegations of specific efforts to target Connecticut, are insufficient. The Superior Court's decision in *F&F Screw Products, Inc.* v. *Clark Screw Machine Products Co.* is instructive. *See* No. CV000500360S, 2002 WL 31894843, at *4 (Conn. Super. Ct. Dec. 10, 2002). In *F&F Screw*, the defendant's website "serve[d] all of North America" and the plaintiff accordingly argued that the defendant "actively solicit[ed] its product nationwide." *Id.* Nevertheless, the court held it could not exercise personal jurisdiction under the long-arm statute because the defendant did "not direct its advertising to Connecticut specifically or offer any special service, product, pricing or other advantage to Connecticut residents." *Id.* Here, there are no allegations that ExxonMobil targeted its advertising to "Connecticut specifically" or offered a "special service, product, pricing or other advantage" to Connecticut residents. *Id.*; *see also On Site Gas Sys., Inc.* v. *USF Techs., Inc.*, 553 F. Supp. 2d 182, 185 (D. Conn. 2008) (finding that national magazine advertisements did not support personal jurisdiction under subsection (f)(2)).

The third prong of the long-arm statute allows the exercise of jurisdiction over actions arising out of "the production, manufacture or distribution of goods by [a] corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed." Conn. Gen. Stat. § 33-929(f)(3). There is no jurisdiction under this prong because the Attorney General's claims arise out of ExxonMobil's advertising activities and public statements outside of Connecticut. The distribution of goods produced by ExxonMobil to consumers through

independent service stations and retailers is not conduct that gives rise to the cause of action asserted here, and even if it did, such a stream of commerce argument would fail under the Due Process Clause.

The fourth prong of the long-arm statute allows the exercise of jurisdiction over actions arising out of "tortious conduct in" Connecticut. Conn. Gen. Stat. § 33-929(f)(4). The Complaint contains no allegations that ExxonMobil engaged in any tortious act in Connecticut. Rather, the challenged conduct is alleged to have taken place elsewhere, and there are only conclusory allegations that the *effects* of that conduct occurred in Connecticut. For jurisdictional purposes, it does not matter whether the Attorney General, or the citizens of the state, are alleged to have suffered injuries in Connecticut. *TransAct Techs., Inc.* v. *FutureLogic, Inc.*, No. 3:05cv0818 (PCD), 2006 WL 8449240, at *4 (D. Conn. Aug. 31, 2006). In *TransAct Technologies*, for example, the court rejected the argument that the location of the injury is relevant to personal jurisdiction, explaining "that the Defendant must affirmatively perform some act in the state." *Id.* Without more, "an injury to Plaintiff in Connecticut . . . is insufficient to support personal jurisdiction under the Connecticut long-arm statute." *Id.*; *see also Success Sys., Inc.* v. *Excentus Corp.*, 439 F. Supp. 3d 31, 55 (D. Conn. 2020) ("Connecticut courts have rejected the argument that a tort should be deemed to have been committed in Connecticut simply because the injury is felt in Connecticut." (citations and internal quotations omitted)).[3] Because the Attorney General

[3] *See also On-Line Techs.* v. *Perkin Elmer Corp.*, 141 F. Supp. 2d 246, 264 (D. Conn. 2001) ("Allowing jurisdiction based on the in-state effects of conduct 'would obliterate the longstanding distinction between long-arm statutes that reach tortious conduct in a given state and those that reach conduct which causes tortious injury in the state by action outside the state."). *Compare* Conn. Gen. Stat. § 33-929(f)(4) (providing jurisdiction over foreign corporations on a cause of action arising "out of *tortious conduct in this state*" (emphasis added)) *with* Conn. Gen. Stat. § 52-59b(a)(3) (providing jurisdiction over nonresident individuals, foreign partnerships, and foreign voluntary associations on a cause of action arising from "a tortious act *outside the state causing injury . . . within the state*" (emphasis added)).

alleges, at most, effects on consumers in Connecticut based on ExxonMobil's conduct outside Connecticut, there is no claim of "tortious conduct" in the state. The fourth prong of the long-arm statute, just like the other three prongs, does not apply here.

CONCLUSION

The Attorney General cannot establish general personal jurisdiction over ExxonMobil because the company is not "at home" in Connecticut. Nor can the Attorney General establish specific personal jurisdiction because its claims arise exclusively from activities conducted outside the state. The Attorney General's attempted grab bag of alleged in-state contacts do not meet the requirements of the Due Process Clause, because none of those contacts gives rise to the causes of action the Attorney General asserts here. And even if jurisdiction were allowed under the Constitution, Connecticut's long-arm statute would not allow it in this case. For those reasons, this Court should dismiss the Complaint for lack of personal jurisdiction.

EXXON MOBIL CORPORATION,

By its attorneys,

Patrick J. Conlon (*pro hac vice*, phv10908)
patrick.j.conlon@exxonmobil.com
22777 Springwoods Village Parkway Spring, TX 77389 Tel: (832) 624-6336

WIGGIN & DANA LLP

/s/ Kevin M. Smith
Kevin M. Smith
Tadhg Dooley
ksmith@wiggin.com
tdooley@wiggin.com
One Century Tower
265 Church Street
New Haven, CT 06510-7001
Tel: (203) 498-4400
Fax: (203) 782-2889

Robert M. Langer
rlanger@wiggin.com
20 Church Street
Hartford, CT 06103-1250
Tel: (860) 297-3700
Fax: (860) 297-3799

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

Theodore V. Wells, Jr. (*pro hac vice*, phv10835)
Daniel J. Toal (*pro hac vice*, phv10907)
twells@paulweiss.com
dtoal@paulweiss.com 1285 Avenue of the Americas New York, NY 10019-6064
Tel: (212) 373-3000
Fax: (212) 757-3990

Justin Anderson (*pro hac vice*, phv10837)
janderson@paulweiss.com
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7300 Fax: (202) 223-7420