

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BROOK + WHITTLE LTD,

Plaintiff,

v.

NESTLÉ USA, INC., ET AL.,

Defendants.

Case No. 2:24-CV-00735-JRG-RSP

**DEFENDANT FUJI SEAL INTERNATIONAL, INC.'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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I. PRELIMINARY STATEMENT

Personal jurisdiction in Texas over Defendant Fuji Seal International, Inc. ("FSI"), a Japanese-based holding company, is woefully lacking. FSI has *never* "purposefully directed activities at [Texas] residents"—let alone activities "related to" any of the products accused of infringement in the complaint filed by Plaintiff Brook + Whittle Ltd ("B+W"). B+W's allegations, therefore, fail to satisfy the "minimum contacts" requirement to establish personal jurisdiction in Texas. *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1231 (Fed. Cir. 2010).

B+W knowingly makes numerous false allegations about FSI's purported activities, including, most notably, that FSI manufactures, makes, or directs the manufacture of the accused products. (Dkt. No. 1 ¶¶ 6, 18, 20-22, 25, 31, 33, 39, 40, 61, 62.) Additional false allegations in B+W's complaint include that FSI: does substantial business in Texas; imports the accused products into Texas; sells or offers to sell the accused products in Texas (*id.* ¶ 6); and has wholly-owned subsidiaries or agents, distributors, and other entities located in Texas (*id.* ¶ 18). Because B+W has been involved in licensing discussions with FSI's U.S. subsidiary, American Fuji Seal, Inc. ("AFS") (*id.* ¶ 16), B+W knows that none of these allegations are true.

Moreover, this case "could have been brought" in Kentucky, where one of FSI's subsidiaries is located and where two of FSI's employees live; thus, jurisdiction in Texas cannot be found under Rule 4(k)(2). *Merial Ltd. v. Cipla Ltd.*, 681 F.3d 1283, 1294 (Fed. Cir. 2012). Because the case could have been brought in Kentucky and because FSI does not have the requisite minimum contacts in Texas, the Court should dismiss B+W's patent infringement complaint against FSI under Fed. R. Civ. P. 12(b)(2).

II. STATEMENT OF FACTS

On September 8, 2024, B+W filed a complaint against FSI and Nestlé USA, Inc. ("NUSA"), for alleged infringement of U.S. Patent No. 11,961,422 ("the '422 Patent"). (Dkt. No. 1 ¶ 1.) Specifically, B+W alleges that NUSA's Nesquik products ("Accused Products") infringe the '422 Patent (*id.* ¶ 36) and that FSI infringes the '422 Patent "by making, using, selling, offering for sale, and/or importing into the United States its Accused Products" (*id.* ¶ 40). FSI, however, does *not* make, use, sell, offer for sale, and/or import into the United States any products, let alone the Accused Products. (Ex. A, Takahashi Decl., ¶ 4.)

Moreover, B+W alleges that this Court has personal jurisdiction over FSI because "Fuji Seal has sufficient minimum contacts with the State of Texas." (Dkt. No. 1 ¶ 26.) B+W premises such allegations on the following assertions: FSI does substantial business in Texas, imports the accused products into Texas, and sells or offers to sell the accused products in Texas. (*Id.* ¶ 6.) Alternatively, B+W alleges that FSI has "placed one or more infringing products into the stream of commerce . . . by directly or indirectly working with its wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas to ensure their products reach the State of Texas and this District." (*Id.* ¶ 18.) The facts, however, demonstrate that each of the above allegations is incorrect.

FSI is a company incorporated in Japan with its principal place of business in Osaka, Japan. (Ex. A, Takahashi Decl., ¶ 2.) It does not operate in the United States in any capacity, make any of the Accused Products for the United States market or any market worldwide, or offer products or services to customers in the United States and beyond. (*Id.* ¶ 3.) Instead, FSI is and has always been a holding company, which serves as a parent company for its subsidiaries. (*Id.* ¶ 4.) As a holding company, FSI does not itself manufacture, sell, offer for sale, export, import, or otherwise distribute any of the Accused Products in any respect in the United States, including in Texas, or

elsewhere. (*Id.*) Nor has FSI distributed any of the Accused Products through established distribution channels anywhere in the United States, including in Texas, or elsewhere. (*Id.*)

FSI does not do business of any kind in Texas. (*Id.* ¶ 5.) It is not authorized, registered, or licensed to do business in Texas and has no place of business, sales, or presence in Texas. (*Id.*) FSI does not engage in any sales, advertising, or marketing efforts targeting Texas or anywhere else in the United States. (*Id.*) FSI does not sell or offer to sell any products or services on its website, including the Accused Products or any services related to the Accused Products. (*Id.*) FSI has no bank accounts, real property, personal property, telephone listing, or any other assets in Texas or anywhere else in the United States. (*Id.*) FSI does not store or maintain documents in Texas. (*Id.*) And FSI has no employees in Texas. (*Id.*)

FSI is the parent holding company for its subsidiaries, including AFS. (*Id.* ¶ 6.) AFS is incorporated in Delaware and maintains a principal place of business in Bardstown, Kentucky. (*Id.*) AFS owns real estate in Indiana, Kentucky, and North Carolina. AFS is not registered to do business in Texas. (*Id.*)

AFS is the sole entity responsible for manufacturing, selling, offering for sale, or otherwise distributing the Accused Products in the United States. (*Id.* ¶ 7.) AFS does not import the Accused Products into the United States because AFS makes the Accused Products in the United States. (*Id.*) And no other subsidiary of FSI manufactures, sells, offers for sale, or otherwise distributes the Accused Products in the United States. (*Id.*)

FSI and AFS are separate legal entities. FSI is not involved in the daily business activities or decision-making process of AFS pertaining to the manufacture, use, sale, offer for sale, marketing, or distribution of the Accused Products in the United States, and AFS's business activities with respect to the Accused Products do not depend on the approval of FSI. (*Id.* ¶ 8.) In

other words, FSI does not work with AFS to manufacture, market, offer to sell, or sell any of the Accused Products. (*Id.*) And, although there are two officers or directors in common between FSI and AFS, both of whom work and reside in Kentucky, neither officer has representative authority, neither has concurrent duties as a director, and neither has any concurrent duties as an employee in his respective role as an executive officer at FSI. (*Id.* ¶ 13.) There are nine other executive officers at FSI and six members on its board of directors, three of which are outside independent directors. None of those additional officers or directors are in common with AFS or reside in the United States. (*Id.* ¶ 12.)

Additionally, FSI files separate tax returns from AFS. FSI files its tax returns in Japan, while AFS files its tax returns in the United States. (*Id.* ¶ 14.) FSI also does not have any role or ownership interest in any of the property owned by AFS in the United States. (*Id.* ¶ 15.) Other than the two aforementioned officers, no FSI employees work out of or use any of AFS's properties in the United States. (*Id.* ¶ 13.)

FSI has not entered into any contractual relationships, including contracts related to any of the Accused Products, with any person or entity located in Texas. (*Id.* ¶ 9.) Moreover, FSI has not entered into any distribution, sales, or marketing agreements with AFS, or any other United States subsidiary related to any of the Accused Products. (*Id.*) FSI is also not involved in any manufacturing, sales, advertising, or marketing activities for AFS. (*Id.*)

Finally, B+W knows that FSI has no active role in manufacturing or distributing the Accused Products. For this reason, prior to filing suit, B+W specifically sought out AFS, not FSI, to engage in discussions regarding business opportunities and licensing of the '422 Patent. (*Id.* ¶ 16.)

III. LEGAL STANDARD

"Federal Rule of Civil Procedure 12(b)(2) requires a court to dismiss a claim if the court does not have personal jurisdiction over the defendant." *Cunningham v. CBC Conglomerate, LLC*, 359 F. Supp. 3d 471, 476 (E.D. Tex. 2019). "Personal-jurisdiction analysis for patent-infringement claims is governed by Federal Circuit law." *Univ. of Mass. v. L'Oreal S.A.*, 36 F.4th 1374, 1384 (Fed. Cir. 2022) (citations omitted). "Personal jurisdiction over an out-of-state defendant is appropriate if the relevant state's long-arm statute permits the assertion of jurisdiction without violating federal due process." *Nuance*, 626 F.3d at 1230. "Because Texas's long-arm statute is coextensive with the Due Process Clause of the Fourteenth Amendment, the two inquiries merge." *Carmona v. Leo Ship Mgmt., Inc.*, 924 F.3d 190, 193 (5th Cir. 2019) (citation omitted).

To satisfy due process under the Fourteenth Amendment, a defendant must have "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (internal quotations and citations omitted). "The Federal Circuit applies a three-prong test to determine if specific jurisdiction exists: (1) whether the defendant purposefully directed activities at residents of the forum; (2) whether the claim arises out of or relates to those activities; and (3) whether assertion of personal jurisdiction is reasonable and fair." *Nuance*, 626 F.3d at 1231.¹

The plaintiff bears the burden to show that the defendant has minimum contacts with the forum under the first two prongs. *Elecs. for Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1350 (Fed. Cir. 2003) (citations omitted). If the plaintiff satisfies its burden, the defendant then bears the burden to prove unreasonableness. *Id.* A defendant may defeat personal jurisdiction by

¹ B+W does not (and cannot) allege that general jurisdiction exists over FSI.

"present[ing] 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).

Federal Rule of Civil Procedure 4(k)(2) also permits a court to exercise personal jurisdiction over a defendant; however, "the plaintiff's claim must arise under federal law, the defendant must not be subject to jurisdiction in any state's courts of general jurisdiction, and exercise of jurisdiction must comport with due process." *Touchcom, Inc. v. Bereskin & Parr*, 574 F.3d 1403, 1412 (Fed. Cir. 2009). Rule 4(k)(2) applies, however, only if "the defendant contends that he cannot be sued in the forum state and refuses to identify any other where suit is possible[.]" *Id.* at 1415 (citation omitted). In other words, a court may not exercise personal jurisdiction over a defendant under Rule 4(k)(2) if the defendant identifies another state in which the "case could have been brought." *Merial*, 681 F.3d at 1294.

IV. THE COURT SHOULD DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION OVER FSI

B+W cannot meet its burden to prove that the Court has personal jurisdiction over FSI, a Japanese-based parent holding company, where FSI has *no contacts* with Texas—let alone the requisite "minimum contacts." Specifically, FSI has not purposefully directed any activities at Texas residents. And FSI has not placed the Accused Products into the stream of commerce because FSI does not make, use, sell, offer for sale, and/or import into the United States the Accused Products. Because FSI does not have any contacts with Texas, B+W's patent infringement claim cannot arise out of or relate to such (non-existent) contacts and the assertion of personal jurisdiction over FSI would not be reasonable and fair. Finally, this case "could have been brought" in Kentucky, where one of FSI's subsidiaries is located and where two of FSI's employees live; thus, jurisdiction in Texas cannot be found under Rule 4(k)(2). Therefore, the Court should dismiss the complaint for lack of personal jurisdiction over FSI.

A. FSI Has *No Contacts* with Texas—Let Alone Minimum Contacts

1. FSI Did Not Purposefully Direct Activities At Texas Residents

B+W alleges "Fuji Seal has sufficient minimum contacts with the State of Texas such that it is subject to specific personal jurisdiction for the matters alleged in this Complaint." (Dkt. No. 1 ¶ 26.) Such an allegation, however, is premised on *several falsehoods* in the complaint, including that: (i) FSI does substantial business in Texas (*id.* ¶ 6); (ii) FSI manufactures or makes the Accused Products (*id.* ¶¶ 6, 18, 20-22, 25, 31, 33, 39, 40); (iii) FSI directs the manufacture of the Accused Products (*id.* ¶¶ 6, 20, 61, 62); (iv) FSI imports the Accused Products into Texas (*id.* ¶ 6); (v) FSI sells or offers to sell the Accused Products in Texas (*id.* ¶ 6); (vi) FSI derives substantial revenue from selling the Accused Products to Texas residents (*id.* ¶ 19); (vii) FSI has wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas (*id.* ¶ 18); (viii) FSI owns the "factories" located in Indiana, Kentucky, and North Carolina listed on FSI's website (*id.* ¶ 20); (ix) FSI developed the Accused Products; (*id.* ¶¶ 21, 25); and (x) FSI is aware that NUSA is located in this District (*id.* ¶ 21). None of these allegations are true, each of which is addressed in turn below.

First, FSI has never done any kind of business in Texas. (Ex. A, Takahashi Decl., ¶ 5.) FSI has never: maintained any places of business, sales, or presence in Texas; maintained any bank accounts, real property, personal property, telephone listing, or any other assets in Texas; stored or maintained any documents in Texas; or employed any person in Texas. (*Id.*) And FSI has never engaged in any sales, advertising, or marketing efforts targeting Texas. (*Id.*)

Second, FSI does not manufacture or make the Accused Products. (*Id.* ¶ 4.) FSI is and has been a holding company, which serves as a parent company for its subsidiaries. (*Id.*) As a holding company, FSI does not itself manufacture or make any of the Accused Products in the United States, including in Texas. (*Id.*) Instead, FSI's subsidiary, AFS—which is a separate legal

entity from FSI—is the entity responsible for manufacturing, selling, offering for sale, or otherwise distributing in the United States the Accused Products. (*Id.* ¶ 7.)

Third, FSI does not direct the manufacture of the Accused Products. (*Id.* ¶ 8.) FSI is not involved in the daily business activities and decisions of AFS pertaining to the manufacture, use, sale, offer for sale, marketing, or distribution in the United States of the Accused Products, and AFS does not need the approval of FSI with respect to those business activities. (*Id.*) In other words, FSI does not work with AFS to manufacture, market, offer to sell, or sell any of the Accused Products. (*Id.*)

Fourth, FSI does not import the Accused Products into Texas. (*Id.* ¶ 4.) Again, as a parent holding company, FSI does not itself manufacture or make the Accused Products and, thus, there are no Accused Products for FSI to import into the United States, including into Texas. (*Id.*)

Fifth, FSI does not sell or offer to sell the Accused Products in Texas. (*Id.*) Once again, FSI, a parent holding company, does not itself sell or offer for sale any of the Accused Products in the United States, including in Texas. (*Id.*) Instead, FSI's subsidiary, AFS—which is a separate legal entity from FSI—is the entity responsible for selling and offering for sale the Accused Products. (*Id.* ¶ 7.) And FSI does not sell or offer to sell any products or services on its website, including the Accused Products or any services related to the Accused Products. (*Id.* ¶ 5.)

Sixth, FSI does not derive substantial revenue from selling the Accused Products to Texas residents. (*Id.* ¶ 4.) Because FSI does not sell the Accused Products at all, including to Texas residents, FSI does not derive any revenue from selling the Accused Products. (*Id.*)

Seventh, FSI does not have wholly-owned subsidiaries or agents, distributors, and other entities located in Texas. (*Id.* ¶ 6-7.) Rather, FSI has a U.S. subsidiary with locations in Kentucky, Indiana, and North Carolina—not Texas. (*Id.* ¶ 6.) And FSI does not have any established

distribution channels located in Texas. (*Id.* ¶ 4.)

Eighth, FSI does not own the "factories" located in Kentucky, Indiana, and North Carolina listed on FSI's website. (*Id.* ¶ 6.) AFS, not FSI, owns such real estate located in Kentucky, Indiana, and North Carolina. (*Id.*)

Ninth, FSI did not develop the Accused Products. (*Id.* ¶ 3.)

Tenth, FSI is not aware that NUSA is located in this District. (*Id.* ¶ 9.) FSI does not have a business relationship with NUSA to know whether it is located in this District. (*Id.*) But FSI knows that it has never entered into any contractual relationships, including contracts related to the Accused Products, with any person or entity located in Texas, which would include this District. (*Id.*)

As evidenced above, FSI has ***no contacts*** with Texas—let alone the requisite "minimum contacts" to establish personal jurisdiction.

2. FSI Did Not Place the Accused Products into the Stream of Commerce

The minimum contacts test can be satisfied if a defendant "delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1566 (Fed. Cir. 1994) (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297-98 (1980)). The Federal Circuit has explained that defendants fall under the stream of commerce theory where "defendants, acting in consort, placed the accused [product] in the stream of commerce, they knew the likely destination of the products, and their conduct and connections with the forum state were such that they should reasonably have anticipated being brought into court there." *Id.* at 1566.

"The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State. Additional conduct of the defendant may indicate an intent or purpose to serve the market in the forum State, for example, designing

the product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State." *Asahi Metal Indus. Co. v. Superior Ct. of California, Solano Cnty.*, 480 U.S. 102, 112 (1987). The existence of an "established distribution channel into the forum" is a "significant factor" when evaluating the strength of a non-movant's stream of commerce theory. *Beverly Hills Fan*, 21 F.3d at 1565, n.15.

Here, the exercise of personal jurisdiction under the stream of commerce theory is improper for at least two reasons. First, unlike the foreign defendant parent companies in *Orange Elec.* and *Nuance*, FSI **does not** make, use, sell, offer for sale, or import the Accused Products into the United States, including Texas (Ex. A, Takahashi Decl., ¶¶ 3-4). See *Orange Elec. Co. v. Autel Intelligent Tech. Corp.*, No. 2:21-CV-00240-JRG, 2022 WL 4368160, at *3 (E.D. Tex. Sept. 21, 2022) (finding jurisdiction in Texas over foreign defendant parent company under stream of commerce theory where **parent company sold the manufactured products** directly to its defendant United States subsidiary that managed distribution to retailers that were located in Texas); see also *Nuance*, 626 F.3d at 1233-34 (finding jurisdiction in California over foreign defendant parent company under stream of commerce theory where **parent company made the accused products and imported them** into California, making those products available for sale through its established distribution chain, the United States subsidiary located in California). Thus, because FSI does not manufacture, distribute, or import the Accused Products, there are no products for FSI to "deliver[] [] into the stream of commerce with the expectation that they will be purchased by consumers in the forum state." *Beverly Hills Fan*, 21 F.3d at 1566; see also *Asahi*, 480 U.S. at 112 ("The placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward the forum State.").

Additionally, as evidenced above, B+W is simply wrong in alleging that FSI has "placed one or more infringing products into the stream of commerce . . . by directly or indirectly working with its wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas to ensure their products reach the State of Texas and this District." (Dkt. No. 1 ¶ 18.) Again, FSI does not have any subsidiaries, agents, or other entities located in Texas or registered to do business in Texas (Ex. A, Takahashi Decl., ¶¶ 6-8), unlike in *Universal Connectivity* and *Eireog*. See *Universal Connectivity Techs. Inc. v. Lenovo Grp. Ltd.*, No. 2:23-CV-00449-JRG, 2024 WL 4519760, at *3 (E.D. Tex. Oct. 17, 2024) (finding jurisdiction under stream of commerce theory where non-party subsidiaries of foreign defendant parent company were **registered to do business in Texas**); see also *Eireog Innovations Ltd. v. Lenovo Grp. Ltd.*, No. 2:24-CV-00239-JRG, 2024 WL 4519763, at *3 (E.D. Tex. Oct. 17, 2024) (*same*). FSI's subsidiaries, including non-party AFS, are located in Kentucky, Indiana, or North Carolina—not Texas. (Ex. A, Takahashi Decl., ¶ 6.) And, as discussed at length above, FSI does not direct or control AFS's manufacture, use, sale, offer for sale, advertising, marketing, or distribution of the Accused Products. (*Id.* ¶ 8.) Thus, the "significant factor" of a defendant having an "established distribution channel into the forum" is absent here. *Beverly Hills Fan*, 21 F.3d at 1565, n.15.

Second, as established above, FSI has **no contacts** with Texas. (Ex. A, Takahashi Decl., ¶ 5.) It follows then that there is no "conduct and connections with the forum state . . . that [FSI] should reasonably have anticipated being brought into court [here]." *Beverly Hills Fan*, 21 F.3d at 1566.

Finally, because FSI did not place the Accused Products into the stream of commerce, FSI could not have "kn[own] the likely destination of the products." *Id.* Thus, personal jurisdiction over FSI in Texas cannot be established under a stream of commerce theory.

B. Because FSI Does Not Have Any Contacts with Texas, B+W's Claim Cannot Arise Out of or Relate to Such Lack of Contacts

As established above, FSI does not have any contacts with Texas. Thus, there are no contacts for B+W's patent infringement claim against FSI to arise out of or relate to.

C. Assertion of Personal Jurisdiction over FSI Is Not Reasonable and Fair

To determine whether exercising personal jurisdiction would comport with traditional notions of fair play and substantial justice, the Court considers "(1) the burden on the defendant; (2) the interests of the forum state; (3) the plaintiff's interest in obtaining relief; (4) the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and (5) the interest of the states in furthering their social policies." *Synthes (U.S.A.) v. G.M. Dos Reis Jr. Ind. Com de Equip. Medico*, 563 F.3d 1285, 1299 (Fed. Cir. 2009) (citing *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen*, 444 U.S. at 292)).

Here, exercising personal jurisdiction over FSI in Texas would not be reasonable and fair because FSI is a Japanese-based parent holding company that does not manufacture, sell, offer for sale, export, import, or otherwise distribute any of the Accused Products in the United States, including in Texas, and does not have any contacts in Texas. In this respect, the burden on FSI as a wrongfully-named defendant in this case weighs against exercising personal jurisdiction over FSI being reasonable or fair.

Moreover, Texas has no interest as the forum state in exercising jurisdiction over a mis-named defendant that has nothing to do with the subject matter of the suit.

And although B+W certainly has an interest in obtaining relief, any relief should be obtained against the party that allegedly makes and sells the Accused Products in the United States, i.e., AFS, which has filed a declaratory judgment action against B+W in United States District Court for the District of Delaware. *See American Fuji Seal, Inc. v. Brook + Whittle, Ltd.*, C.A.

No. 1:24-CV-01215-MN (D. Del.). The role of AFS as the sole corporate entity responsible for manufacturing and distributing the Accused Products in the United States—and the fact that AFS has entered into the fray with a DJ action in Delaware—presents a compelling case that other considerations render jurisdiction over FSI unreasonable. This compelling case is amplified by the fact that B+W knew that (1) AFS is the exclusive manufacturer and distributor of the Accused Products in the United States, and that (2) FSI has no role in manufacturing and distributing the Accused Products in the United States. That B+W knew both of these facts is clearly evinced by B+W's attempting to negotiate a possible license of the '422 Patent with AFS and *not FSI*. (Ex. A, Takahashi Decl., ¶ 16.) Despite this knowledge, B+W chose to sue FSI here in Texas rather than AFS (a Delaware corporation headquartered in Kentucky) in a proper venue demonstrates blatant forum shopping. Thus, exercising personal jurisdiction over FSI in Texas is not reasonable or fair—the infringement dispute should be between B+W and AFS, and that dispute has already begun in Delaware.

D. Personal Jurisdiction over FSI Is Not Proper under Rule 4(k)(2)

Fed. R. Civ. P. 4(k)(2) provides that "[f]or a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if: (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and (B) exercising jurisdiction is consistent with the United States Constitution and laws." Here, the Court cannot exercise personal jurisdiction over FSI under Rule 4(k)(2). *See Merial*, 681 F.3d at 1294. FSI is subject to the general jurisdiction of the courts of the Commonwealth of Kentucky because it has regular contacts with Kentucky because of its two employees that live in Kentucky and because its subsidiary, AFS, is headquartered in Kentucky. *Lifetime Brands, Inc. v. QIMA Ltd.*, No. 2:23-CV-00216-JRG, 2024 WL 896344, at *4 (E.D. Tex. Mar. 1, 2024) (finding that foreign defendant parent company was not subject to jurisdiction in Texas under Rule 4(k)(2)).

where defendant argued that it was "subject to the general jurisdiction of the courts of the State of New York" because it had "regular contacts with New York," including with its testing laboratories located in New York and with its subsidiaries located in New York). Because this case "could have been brought" in Kentucky, jurisdiction in Texas cannot be found under Rule 4(k)(2). *Merial*, 681 F.3d at 1294. Moreover, for the reasons set forth above, exercising jurisdiction over FSI in Texas is neither consistent with the United States Constitution nor United States law.

V. **CONCLUSION**

For all the foregoing reasons, the Court should grant this motion to dismiss.

Dated: December 12, 2024

Respectfully submitted,

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Fuji Seal International, Inc.*

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

The undersigned hereby certifies that: (1) Defendant Fuji Seal International, Inc. is authorized to file this Motion and the attachments under seal in accordance with Paragraph 16 of the governing Protective Order in this case (Dkt. No. 27); (2) the foregoing Motion, the attached Exhibit A (Declaration of Fumiaki Takahashi), and the Appendix B thereto contain Protected Material that is designated "CONFIDENTIAL" by Defendant Fuji Seal International, Inc. pursuant to the Protective Order; and (3) within seven days, Defendant Fuji Seal International, Inc. will publicly file a redacted version of the foregoing Motion and the attachments in accordance with Local Rule CV-5(a)(7)(E).

Dated: December 12, 2024

/s/ Amy E. LaValle
Amy E. LaValle

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of the foregoing document, DEFENDANT FUJI SEAL INTERNATIONAL, INC.'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, via email per Local Rule CV-5(a)(7)(D).

Dated: December 12, 2024

/s/ Amy E. LaValle
Amy E. LaValle

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