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IN THE UNITED STATES DISTRICT COURT EASTERN
DISTRICT OF TEXAS
MARSHALL DIVISION

Brook + Whittle LTD,

Plaintiff,

v.

Nestlé USA, Inc., Fuji Seal International, Inc.

Defendants.

CASE NO. 2:24-CV-00735-JRG-RSP

JURY TRIAL DEMANDED

**PLAINTIFF BROOK + WHITTLE LTD'S OPPOSITION TO DEFENDANT
FUJI SEAL INTERNATIONAL, INC.'S MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION (DKT. 32)**

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I. INTRODUCTION

Plaintiff Brook + Whittle LTD. (“B+W”) filed this action against Defendant Fuji Seal International, Inc. (“Fuji”) and Defendant Nestlé USA, Inc. (“Nestlé”) because their labels infringe U.S. Patent No. 11,961,422 (the “’422 Patent”).

Fuji is a Japanese-based global manufacturer and distributor of the Accused Products, which are shrink-wrap labels that have unique recyclability and light-blocking elements. Fuji manufactures these labels and distributes them to customers throughout the world, including to defendant Nestlé. Nestlé, among other customers of Fuji’s Accused Products, then place the labels on final products (including Nesquik chocolate milk products) that are then sold in Texas. Fuji knows this, and indeed touts to investors and the public its immense success in the United States, which represents roughly 30–40% of its revenue.

Fuji brings a Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 32) (“Motion”) arguing that, contrary to all information pleaded in the Complaint and available publicly, Fuji does not manufacture, distribute, or have any role in the accused shrink-wrap labels. For the purposes of its motion, Fuji tells this Court that it is merely a “holding company” with no responsibility or involvement in the Accused Products. But to the world, Fuji tells a very different story: that it is the head of a vast “Fuji Seal Group” and controls the design, development, manufacture, and distribution of the Accused Products through a singular global network comprising fully-owned and controlled subsidiaries.

Fuji’s protestations are no different than those in other cases where this Court has looked past defendants’ self-serving declarations that they are mere holding companies—especially when they tell the world the exact opposite. Fuji cannot contradict the well-pleaded facts nor its own statements to the public and investors, which all demonstrate that Fuji itself (not some other entity) is responsible for the manufacture and distribution of the Accused Products and is fully aware of

the profits it makes by directing those products into the United States and into the second-largest state by GDP: Texas. Fuji's acts of manufacturing and distributing the Accused Products are sufficient to establish personal jurisdiction under a straightforward stream of commerce theory.

Even if Fuji's allegations are taken as true, namely that Fuji's wholly-owned American subsidiary – American Fuji Seal (“AFS”) – is the entity that manufactures the Accused Product, Fuji remains properly subject to personal jurisdiction under this Court's precedents. Fuji portrays itself as one part of an inseparable corporate whole, a corporate whole who has minimum contacts with Texas (as Fuji admits). As pleaded in B+W's Complaint, Fuji consistently refers to itself as Fuji Seal Group and consistently refers to American Fuji Seal, Inc. (“AFS”) as one of its “[g]lobal [l]ocations” on its website. Dkt. 1, ¶ 20, Dkt. 1-7 (Ex. G). And Fuji admits that it is “responsible for strategic and managerial functions as well as internal audit of the group companies.” Ex. 1 (Fuji Website, Company Overview (<https://www.fujiseal.com/en/about/company.html>)). Fuji also “formulate[s] and execute[s] IP strategies” for the group. Dkt. 32, Ex. A, Appx. A at 7. Most tellingly, Fuji's corporate officers have dual roles in Fuji and its subsidiaries.

Finally, Fuji makes a number of hyperbolic statements accusing B+W of making “false allegations.” Fuji's contentions are without merit. B+W's Complaint relies directly on Fuji's public statements, shareholder disclosures, and other publicly available facts. The facts demonstrate that Fuji is properly subject to personal jurisdiction in Texas.

II. FACTUAL BACKGROUND

A. B+W and Its Patented Technology

B+W is a leading provider of recyclable packaging and the first to design, manufacture, and sell recyclable light-blocking shrink sleeve labels. *See* Dkt. 1, ¶ 28. It sells millions of these labels a year and obtained the patent-in-suit to protect this innovation. *See id.*, ¶ 29. It is a private

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company organized under the laws of Delaware with its principal place of business in Connecticut. *See id.*, ¶ 2.

B. Fuji, Its Operations, and its United States Locations

Fuji is a Japanese corporation with its principal place of business in Japan. *Id.*, ¶ 4. Fuji's credo is: "Each day with renewed commitment we create new value through packaging." Ex. 2; Ex. 3 (translated). Fuji is listed on the Tokyo Stock Exchange and pulls in revenue from the United States of America. *See* Exs. 3, 4.

Fuji portrays itself and its subsidiaries as the Fuji Seal Group, which provides the Accused Products into the United States and Texas. *See infra*, § IV.B. Fuji controls the Fuji Seal Group to promote the widespread use of the Accused Products in the United States. *See id.* For example, Fuji's corporate officers have dual roles in AFS, and Fuji dictates the Fuji Seal Group's intellectual property strategy (including prosecution and ownership of trademarks and patents). *See id.* Fuji specifically targets Texas through a supply chain that it established and controls. *See id.* Moreover, Fuji enjoys significant revenues from sales of the Accused Products in Texas. *See id.* Fuji also has an interactive website where it appears to hire employees in Texas and provides interactive pages related to the Accused Products. *See id.*

Fuji argues that it is merely a holding company, but it is not. *See* Dkt. 32 at 2 ("As a holding company, [Fuji] 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.") (citing Dkt. 32-1 (Takahashi Decl.), ¶ 4). Rather, Fuji is a multinational corporation directly involved with the sale and manufacture of shrink sleeve labels, including the Accused Products. Specifically, Fuji refers to its foreign operations (including those in the United States) as "[g]lobal [l]ocations" on its website. Dkt. 1, ¶ 20, Dkt. 1-7 (Ex. G). According to Fuji's articles of incorporation, Fuji is "a

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company . . . engaged in . . . *[p]rinting, manufacturing and sales* of labels, tickets, etc.”¹ Ex. 5 (translated). And Fuji’s President and CEO describes Fuji as a “*manufacturer*” in Fuji’s 2024 report to investors. Ex. 6 at 6 (“As a packaging manufacturer, we take the stance that we will use whatever material we can use, whether plastic or paper.”). Fuji also touts in this same report that “[w]e *revised selling prices* [of shrink sleeve labels] to address the pressure on profits caused by rising raw material costs.” *Id.* at 13. In contrast, AFS’s website does not mention shrink labels. *See* Ex. 7 (AFS Website, Products & Markets Overview (<https://americanfujiseal-pouch.com/products/>)) (listing only flexible pouch containers).

Fuji also asserts that “[it] does not have any role or ownership interest in any of the property owned by AFS in the United States.” Dkt. 32 at 4 (citing Dkt. 32-1 (Takahashi Decl.), ¶ 15). However, Fuji describes at least one factory in the United States as “*our* Kentucky factory” in a 2023 report to investors. Ex. 8 at 28.

Fuji also admits that its executives overlap with AFS’s executives. *See* Dkt. 32 at 4. At Fuji, Satoru Kawasaki is an “Executive Officer” who is “in charge of the American region” (Ex. 9) as well as being the “president of AFS.” Dkt. 32-2, ¶ 13. Similarly, Hideaki Umeda is Fuji’s “Executive Officer” who is “in charge of the Shrink Sleeve Labels Division” (Ex. 9) while also serving as AFS’s VP of Operations, a role which Fuji confirms encompasses the manufacture of shrink sleeve labels. Dkt. 32-2, Appx. B at 3; *see* Dkt. 32 at 3.

C. Lead Up to this Lawsuit

Fuji incorrectly asserts that “B+W attempt[ed] to negotiate a possible license of the [patent-in-suit] with AFS and *not [Fuji]*.” Dkt. 32 at 13 (emphasis in original). [REDACTED]

[REDACTED] *See* Ex. 36; Pollard

¹ All emphasis added unless otherwise noted.

Decl., ¶ 5. [REDACTED]. Ex. 36; Pollard Decl., ¶ 5. [REDACTED]
[REDACTED]

III. LEGAL STANDARD

Federal Circuit law applies to the question of personal jurisdiction over patent suits. *Elec. For Imaging, Inc. v. Coyle*, 340 F.3d 1344, 1348 (Fed. Cir. 2003). “[T]he Fifth Circuit relies on the same analysis as the Federal Circuit in deciding whether personal jurisdiction exists.” *Truesight Commc’ns LLC v. Lenovo Grp. Ltd.*, Case No. 2:24-CV-00031-JRG, 2024 WL 5110057, at *1 (E.D. Tex. Dec. 13, 2024) (citations omitted). And “[t]he Texas long-arm statute is coextensive with federal due process, so the Court need only look to the federal due process inquiry.” *Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, 697 F. Supp. 3d 635, 648 (E.D. Tex. 2023).

The Federal Circuit has “summarized the Supreme Court’s due process jurisprudence in a three-factor test: (1) whether the defendant purposefully directed its activities at residents of the forum; (2) whether the claim arises out of or relates to the defendant’s activities with the forum; and (3) whether assertion of personal jurisdiction is reasonable and fair.” *Xilinx, Inc. v. Papst Licensing GmbH & Co. KG*, 848 F.3d 1346, 1353 (Fed. Cir. 2017) (citations and internal quotations omitted). The first two prongs comprise the “minimum contacts” test. *AX Wireless LLC v. Lenovo Grp. Ltd.*, No. 2:22-CV-00280-RWS-RSP, 2023 WL 7105701, at *2 (E.D. Tex. Sept. 6, 2023).

The Supreme Court has held that “the stream of commerce theory provides a valid basis for finding requisite minimum contacts.” *Beverly Hills Fan Co. v. Royal Sovereign Corp.*, 21 F.3d 1558, 1566 (Fed. Cir. 1994) (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, (1980)). As the Supreme Court explained, “[a] forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the

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forum State. *World-Wide Volkswagen Corp.*, 444 U.S. at 297–98. In *Asahi Metal Industry Co. v. Superior Court*, 480 U.S. 102 (1987), the Supreme Court was split “over the exact requirements for the application of the [stream of commerce] theory.” *Beverly Hills Fan*, 21 F.3d at 1566; *Universal Connectivity Techs. Inc. v. Lenovo Grp. Ltd.*, No. 2:23-CV-00449-JRG, 2024 WL 4519760, at *2 (E.D. Tex. Oct. 17, 2024). The Federal Circuit has “refused to endorse either articulation of the stream of commerce theory.” *Universal Connectivity*, 2024 WL 4519760, at *2. “Instead, the Federal Circuit’s approach is to determine whether the plaintiff can establish minimum contacts—or has failed to establish minimum contacts—under both theories, making the choice between theories unnecessary.” *Id.* “The Federal Circuit has explained that defendants are subject to jurisdiction 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.* (quoting *Beverly Hills Fan*, 21 F.3d. at 1566) (emphasis in original).

“[A] foreign company need not itself sell the accused goods in the forum” and “need not itself manufacture the accused goods.” *AX Wireless*, 2023 WL 7105701, at *3 (generally citing *Nuance Commc’ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1232–1233 (Fed. Cir. 2010)); *ACQIS LLC v. Lenovo Grp. Ltd.*, 572 F. Supp. 3d 291, 305-07 (W.D. Tex. 2021). And “a domestic distributor or manufacturer need not be a named defendant in the case for personal jurisdiction over the foreign defendant.” *AX Wireless*, 2023 WL 7105701, at *3 (citing *Orange Elec. Co. v. Autel Intelligent Tech. Corp.*, No. 2:21-CV-00240-JRG, 2022 WL 4368160, at *1 (E.D. Tex. Sept. 21, 2022)).

After a plaintiff shows that the minimum contacts test has been met, the defendant bears the burden on the third prong to prove that maintaining the suit would be unreasonable and unfair. *Elecs. for Imaging*, 340 F.3d at 1351–52. “In *rare circumstances*, a defendant may defeat the exercise of personal jurisdiction by ‘present[ing] a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’” *Orange*, 2022 WL 4368160, at *2 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 477 (1985)).

Finally, “[i]n the procedural posture of a motion to dismiss, a district court must accept the uncontroverted allegations in the plaintiff’s complaint as true and resolve any factual conflicts in the affidavits in the plaintiff’s favor.” *Elecs. For Imaging*, 340 F.3d at 1349. It is well established that the Court may consider facts outside the complaint in analyzing personal jurisdiction at this stage: “[f]acts presented through affidavits and exhibits may be considered alongside the well-pleaded allegations in the complaint.” *Power Funding, Ltd. v. Chabad Lubavitch of Sunrise Inc.*, No. 6:23-CV-00398, 2024 WL 2022289, at *3 (E.D. Tex. May 7, 2024) (citing *Simon v. United States*, 644 F.2d 490, 497 (5th Cir. 1981)). And “where the district court’s disposition as to the personal jurisdictional question *is based on affidavits and other written materials in the absence of an evidentiary hearing, a plaintiff need only to make a prima facie showing that defendants are subject to personal jurisdiction.*” *Elecs. For Imaging*, 340 F.3d at 1349.

IV. ARGUMENT

A. Fuji Has The Requisite Minimum Contacts Based on Stream of Commerce

This Court has personal jurisdiction over Fuji because Fuji itself places products into the stream of commerce knowing they will be sold in Texas and because Fuji “acts in consort” with its U.S.-based subsidiary. *Beverly Hills Fan*, 21 F.3d at 1566 (citing *World-Wide Volkswagen*, 444 U.S. 286). As explained in further detail below, courts in this District have routinely applied the Federal Circuit precedent to find personal jurisdiction in similar circumstances.

1. *This Suit Arises Out of Contacts With Texas*

Fuji does not contest that this suit arises out of the sale of the Accused Products in Texas. See Dkt. 32. See also *Canon, Inc. v. TCL Elecs. Holdings Ltd.*, No. 2:18-CV-00546-JRG, 2020 WL 1478356, at *3 (E.D. Tex. Mar. 25, 2020) (“[Plaintiff]’s claims for patent infringement arise out of and relate to the direct and/or indirect making, selling, offering for sale, importing, and/or using of those Accused Products.”) (quotations omitted, brackets removed).

2. *As Pleaded, Fuji Itself Place Products Into the Stream of Commerce*

To establish personal jurisdiction, the Court need only find that Fuji “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum state.” *Beverly Hills*, 21 F.3d at 1566 (quoting *World-Wide Volkswagen*, 444 U.S. at 297–98). B+W does not need to show—and the Court does not need to find—that Fuji itself directly manufactures or sells the accused products. *AX Wireless*, 2023 WL 7105701, at *3.

As pleaded, Fuji is a Japanese corporation based in Osaka, Japan. Dkt. 1, ¶ 4. Fuji designs and manufactures the Accused Products, including through its U.S.-based factories that it identifies as its “Global Locations.” *Id.*, ¶¶ 18, 20. Fuji purposefully and voluntarily places these products into the stream of commerce, including by selling the products to Defendant Nestlé, who distributes the Accused Products throughout the United States, including Texas. *Id.*, ¶¶ 22, 24. These Accused Products include, *inter alia*, the labels on Nesquik Chocolate Milk, which is sold in this District, including at the Walmart located on 1701 E End Blvd N in Marshall, Texas. *Id.*, ¶¶ 10–12. These facts are more than sufficient to establish a *prima facie* case of personal jurisdiction, and these facts alone merit denial of Fuji’s motion. *Beverly Hills Fan*, 21 F.3d at 1566 (quoting *World-Wide Volkswagen*, 444 U.S. at 297–98). See also *Orange*, 2022 WL 4368160, at *3 (finding personal jurisdiction over foreign defendant where defendant “purposefully directed

its activities to Texas by placing the Accused Products into the stream of commerce” and “[was] aware that the Accused Products will be sold in Texas”).

a. *Fuji’s Public Statements Confirm The Well-Pleaded Facts And Confirm Personal Jurisdiction Is Appropriate Here*

Fuji’s public statements also confirm these well-pleaded facts. Fuji represents to the world that it (1) designs, develops, and manufactures the Accused Products; (2) specifically targets distribution into the United States and Texas with those Accused Products; (3) generates substantial revenue from its sales in the United States (and thus Texas); (4) prosecutes U.S. Patents purportedly related to the Accused Products; (5) prosecutes U.S. trademarks purportedly related to the Accused Products; and (6) employs individuals in the United States, and specifically in Texas, to facilitate the design, development, manufacture, and distribution of the Accused Products in the United States and Texas.

By way of background, Fuji manages its worldwide operations through a marketing name it calls the Fuji Seal Group.² Ex. 10 (Fuji Website, Fuji Seal Group Code of Ethics (<https://www.fujiseal.com/en/about/standard.html>)) (stating the Fuji Seal Group includes all “[c]ompanies in which [Fuji] holds a majority of issued voting shares or equity,” and other companies that [Fuji] determines). The Fuji Seal Group is comprised of Fuji and its subsidiaries, including its U.S.-based subsidiary. *Id.*; see Ex. 11 (American Fuji Seal LinkedIn) (“Fuji Seal America is part of Fuji Seal Group”). Fuji states that it is responsible for strategic and managerial functions of the Fuji Seal Group. *Id.*

Fuji repeatedly and regularly tells the world and its investors that Fuji and its Fuji Seal Group design, develop, and distribute labels, including the Accused Products. Ex. 1 (Fuji Website,

² The Fuji Seal Group does not appear to be a legal entity, but rather is what Fuji holds itself and its subsidiaries out to be. Ex. 12 (Capital IQ Company Search for “fuji seal group”).

Company Overview (<https://www.fujiseal.com/en/about/company.html>)) (“*Fuji Seal Group* provides shrink sleeve labels, pressure sensitive labels, spouted pouches and label-application systems.”); Ex. 6 (Fuji Integrated Report 2024) at 13 (Hideaki Umeda (Fuji’s Executive Officer in charge of the Shrink Sleeve Labels Division) stating, “I believe that everyone involved in Shrink Sleeve Labels is responsible for growing this business as the *Fuji Seal Group (FSG)’s core business* and generating profits.”). These products are manufactured at Fuji’s “global locations” throughout the world, including at what it calls “our” factory in Kentucky. Ex. 8 (Fuji Integrated Report 2023) at 28.

Indeed, Fuji specifically has explained that it promotes the widespread use and sale of the Accused Products in the United States and thus to Texas (Ex. 6 (Fuji Integrated Report 2024) at 30 (“In 2019, the *U.S.-based Association of Plastic Recyclers (APR)* recognized the RecShrink™ label [the Accused Product] developed by [Fuji Seal Group] as a shrink sleeve label that can be recycled together with PET bottles into PCR-containing PET bottles. *In the Americas, we will continue our efforts to apply this technology to bottles* for products of our customers, mainly beverage manufacturers, thereby *promoting its more widespread use* to accelerate resource recycling.”). Fuji likewise controls the supply chain for the Accused Products (Ex. 13 (Fuji Website, Supply Chain (<https://www.fujiseal.com/en/csr/procurement.html>)) (“[W]e have established *Requests for [Fuji Seal Group] Business Partners*, and *ask our business partners to understand, agree with, and comply with* the purpose of the Course of Action.”).

As a result of its substantial and well-publicized efforts to distribute its products to the United States and its second-largest state by GDP, Texas, Fuji enjoys significant revenue that accounts for roughly 30–40% of its global sales. Ex. 5 (Fuji Website, Net Sales by Product (<https://www.fujiseal.com/en/ir/financial/sales.html>)) (stating in 2024, Fuji has sales of ¥57,873

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million (roughly \$370 million USD) in the Americas accounting for roughly 30% of global sales); Ex. 6 (Fuji Integrated Report 2024) at 15 (stating in 2023 Fuji’s shrink sleeve label net sales in the Americas accounted for ¥47.3 billion (roughly \$300 million USD) accounting for roughly 39% of global sales)). These statements confirm that Fuji “delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in [Texas].” *Beverly Hills Fan*, 21 F.3d at 1566; *AX Wireless*, 2023 WL 7105701, at *2 (same); *Sportscaster Inc. v. Sportradar Grp.*, AG, No. 2:23-CV-00472-JRG, 2024 WL 4219252, at *6 (E.D. Tex. Sept. 17, 2024) (same); *Eireog Innovations Ltd. v. Lenovo Grp. Ltd.*, No. 2:24-CV-00239-JRG, 2024 WL 4519763, at *2 (E.D. Tex. Oct. 17, 2024) (same); *Universal Connectivity*, 2024 WL 4519760, at *2 (same).

Fuji also aggressively develops its U.S.-based intellectual property (Ex. 14 (Fuji’s IP Strategy) at 7 (stating Fuji “[i]dentifies efficient overseas [*i.e.*, the United States] patent application channels”)), owning patents that purportedly are directed to the Accused Products (*see* Ex. 15 (U.S. Pat. No. 10,777,100, titled “Cylindrical Shrink Label and Method for Producing Same”)), and owning all of the U.S. trademarks and patents related to the Accused Products and all U.S.-based Fuji operations (Exs. 16–22 (showing that AFS assigned its only four trademarks to Fuji in 2004)).

To ensure its success in the United States, Fuji runs its American subsidiaries with two of its own officers: Satoru Kawasaki, serving simultaneously as one of Fuji’s executive officers and AFS’s president, and Hideaki Umeda, serving simultaneously as one of Fuji’s executive officers and AFS’s vice president. Dkt. 32-1 (Declaration of F. Takahashi), ¶ 13. Fuji also hires employees in Maypearl, Texas (Ex. 23 (Fuji Website, Careers Portal (<https://www.paycomonline.net/v4/ats/web.php/jobs?jobSearchSettingsId=8682&clientkey=AB8>)).

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4831F4A49A1C630177C265EFD3657)) (Fuji’s career portal having a search filter for “Remote AFTS TX - Maypearl, TX, 76064”); Ex. 24 (J. Boteler LinkedIn (<https://www.linkedin.com/in/joseph-boteler-49597211a/>)) (stating that J. Boteler is a “Field Services Engineer at American Fuji Seal” located in “Maypearl, Texas”).

Accordingly, this is a straight-forward case of personal jurisdiction: there can be no doubt that Fuji, by its own repeated statements, makes great efforts to direct the Accused Products to Texas, where they are sold at stores in this district and infringe B+W’s Asserted Patent. *Beverly Hills Fan*, 21 F.3d at 1566 (“[T]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.”)

3. *Fuji Also “Act[s] In Consort” With Its U.S. Subsidiaries To Place Products In the Stream of Commerce*

This Court also has personal jurisdiction over Fuji because Fuji “act[s] in consort” with its wholly-owned U.S. subsidiaries to place the products into the stream of commerce. *See Universal Connectivity*, 2024 WL 4519760, at *2. In cases where a purported parent holding company uses a subsidiary as a distributor of goods, courts look to several indicia to determine whether the parent company is subject to personal jurisdiction. *Id.* For example, courts in the Eastern District of Texas have consistently found a *prima facie* showing of personal jurisdiction when the parent company (1) “portrays itself and its subsidiaries as . . . a single global company,” (2) “specifically targets the U.S. market,” (3) “enjoys revenues from sales of Accused Products,” and (4) “conducts business with customers through [its website].” *AX Wireless*, 2023 WL 7105701, at *4; *see Sportscastr*, 2024 WL 4219252, at *2 (finding *prima facie* showing of personal jurisdiction in light of similar facts); *Eireog*, 2024 WL 4519763, at *3 (same); *Universal Connectivity*, 2024 WL 4519760, at *3 (same); *Cardsoft, Inc. v. Verifone Holdings, Inc.*, No. 2-08-CV-098 (TJW), 2009

WL 361069, at *1 (E.D. Tex. Feb. 10, 2009) (same). Thus, even if (as Fuji alleges) “AFS is the entity responsible for manufacturing, selling, offering for sale, or otherwise distributing in the United States the products accused of infringement” (Dkt. 32, Ex. A, at 2), then Fuji’s acts “in consort” with AFS show that this Court still has control over Fuji as the two parties worked together to place the Accused Products into Texas. *See Universal Connectivity*, 2024 WL 4519760, at *2.

a. *Fuji Portrays Itself and Its Subsidiaries as a Single Global Entity*

Fuji represents to the world that it operates a single global entity with its U.S.-based entity, including because Fuji: (1) repeatedly represents that its U.S. entity is merely one of Fuji’s “Global Locations”; (2) controls all branding associated with that U.S. entity; (3) runs the U.S. entity through the leadership of two of Fuji’s own Executive Officers; (4) is responsible for all strategic and managerial functions of its U.S. entity; and (5) owns all intellectual property related to the Accused Product, including all trademarks and patents. B+W discusses each in turn below.

As B+W alleges in the Complaint and described in more detail above in Section IV.A.2.a, Fuji consistently refers to itself and its subsidiaries (including AFS) as Fuji Seal Group—a single global company—and refers to its subsidiaries as its “Global Locations.”³ Dkt. 1, ¶ 20, Dkt. 1-7 (Ex. G). *See AX Wireless*, 2023 WL 7105701, at *4 (finding personal jurisdiction when defendant “portrays itself and its subsidiaries as . . . a single global company”); *Eireog*, 2024 WL 4519763, at *3 (same). Indeed, Fuji explains that the Fuji Seal Group—not AFS—is responsible for providing the Accused Products. Ex. 1 (Fuji Website, Company Overview)

³ AFS is a wholly-owned subsidiary of Fuji and together, both comprise Fuji Seal Group. Ex. 25 (Fuji Seal Group 2004 Annual Report) at 8 (“[I]n May 2004, we acquired the remaining 15% ownership interest of American Fuji Seal, Inc., . . . making it *our wholly-owned subsidiary*.”); Ex. 11 (American Fuji Seal LinkedIn) (“Fuji Seal America is part of Fuji Seal Group . . .”).

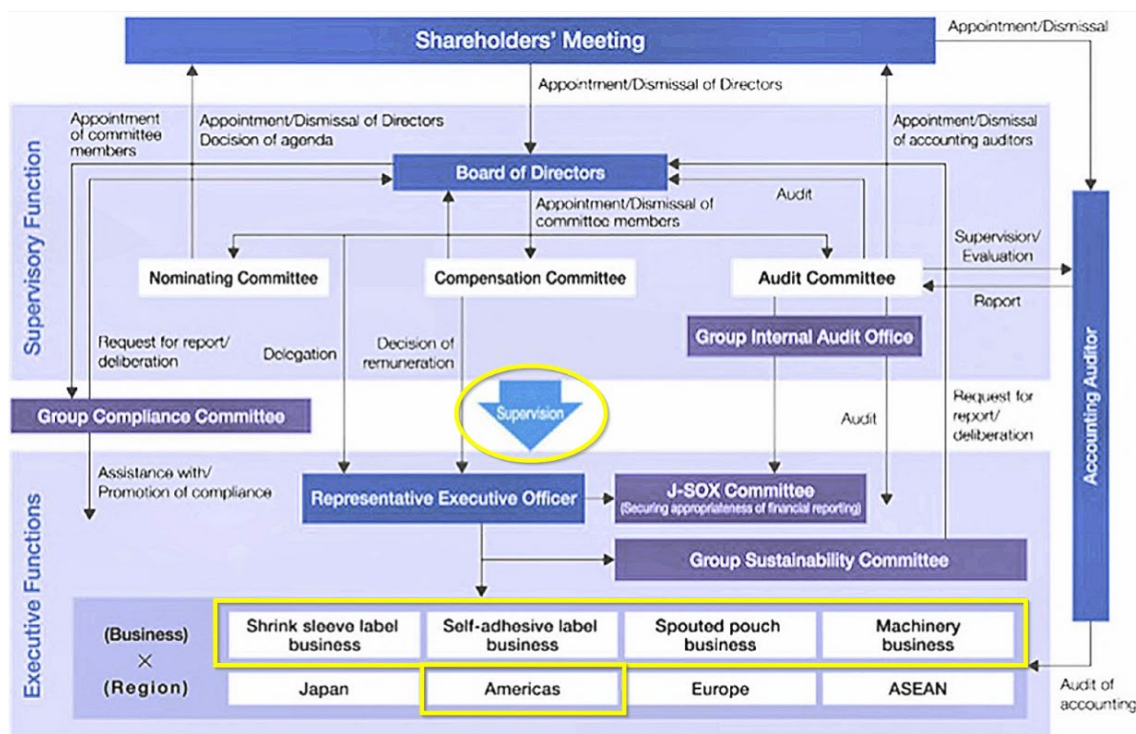
(<https://www.fujiseal.com/en/about/company.html>) (“**Fuji Seal Group** provides shrink sleeve labels, pressure sensitive labels, spouted pouches and label-application systems.”); Ex. 6 (Fuji Integrated Report 2024) at 13 (Hideaki Umeda (Fuji’s executive officer in charge of the Shrink Sleeve Labels Division) stating, “I believe that everyone involved in Shrink Sleeve Labels is responsible for growing this business as the **Fuji Seal Group (FSG)’s core business** and generating profits.”).

Anything the Fuji Seal Group does, including through AFS, must follow Fuji’s strict branding and marketing guidelines. For example, according to Fuji’s own “Brand Book,” the primary symbol Fuji uses does not merely represent Fuji’s Japanese entity but rather “represents the corporate image of the Fuji Seal Group.” Ex. 26 (Fuji’s Brand Book) at 9. Consistently, the website “www.afseal.com” redirects to Fuji’s own Japanese website at “fujiseal.com/jp.” Shi Decl., ¶ 41.⁴

Fuji also exercises complete control over its U.S. entities’ management and strategic functions, confirming that its organization operate as a “single global entity.” For example, Fuji explains that it is “**responsible for** strategic and managerial functions as well as internal audit of the **group companies**”—which includes the management of subsidiaries such as AFS. Ex. 1 (Fuji Website, Company Overview (<https://www.fujiseal.com/en/about/company.html>)). Indeed, Fuji Seal Group’s corporate governance chart shows that Fuji’s Board of Directors control AFS’s operations by providing “[s]upervision,” “[a]ssistance,” “[a]udit[s],” and “deliberation” to its **American** businesses:

⁴ Fuji even seems to hire employees for its subsidiaries, including the U.S. entity, through Fuji’s Japanese website. *See infra*, § IV.A.3.d.

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Dkt. 32, Ex. A, Appx. A (Fuji's Corporate Governance Report) at 43 (annotated).

Fuji also “formulate[s] and execute[s]” Fuji Seal Group’s IP strategies. *Id.* at 7 (“*We formulate and execute IP strategies* that support and even lead business strategies to create new value for packages and to create new businesses that will become new pillars of FSG.”); Ex. 14 (Fuji’s IP Strategy) at 2 (discussing “Offensive” and “Defensive IP Strategy”). Indeed, in accordance with Fuji’s IP policy, public records indicate that Fuji (not AFS) owns and prosecutes U.S. patents purportedly related to the Accused Products through its U.S. counsel in Texas. *See* Ex. 15 (U.S. Pat. No. 10,777,100, prosecuted by Frost Brown Todd LLC); Ex. 27 (Frost Brown Todd Locations (<https://frostbrowntodd.com/about/locations>)) (listing Dallas, TX office).

And all U.S. trademarks related to Fuji and the Accused Products are all owned by Fuji, not AFS. For example, the U.S. Patent & Trademark Office (“USPTO”) database shows that in 2004, AFS assigned its only four trademarks to Fuji. Ex. 16 (USPTO Trademark Search, “THERMO-SHIELD” Serial No. 78447965); Ex. 17 (USPTO Trademark Search, “DURACORE”

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Serial No. 75198687); Ex. 18 (USPTO Trademark Search, “DURAPLAS” Serial No. 75198686); Ex. 19 (USPTO Trademark Search, “CONTOUR-PAK” Serial No. 74389602). Moreover, Fuji owns a “FUJI SEAL” illustration trademark (Ex. 20 (USPTO Trademark Search, Serial No. 79081571)) and is actively prosecuting a “FUJI SEAL” standard character trademark “intended to cover [] categories of shrink labelers” used in the Accused Products (Ex. 21 (USPTO Trademark Search, Serial No. 79294475)). Fuji also owns “RECSHRINK” (Ex. 22 (USPTO Trademark Search, Serial No. 90581262)), which is specifically directed towards recyclable labels used in the Accused Products. (Ex. 28 (Fuji Website, Shrink Sleeve Labels (<https://www.fujiseal.com/en/product/shrink.html>))).

This centralized control of the Fuji “single global company” is executed, in part, by Fuji’s placement of its own Executive Officers in key leadership roles at AFS. Specifically, Hideaki Umeda serves as “Executive Officer” and simultaneously serves as AFS’s vice president, while Satoru Kawasaki serves as Fuji’s “Executive Officer” and simultaneously serves as AFS’s president. Dkt. 32-1 (Declaration of F. Takahashi), ¶ 13. These actions go beyond those of a mere holding company and shows Fuji’s control of both the global company and underlying subsidiaries, further evidencing a lack of separation between the two entities and confirming the Court’s proper jurisdiction over Fuji. *See Eireog*, 2024 WL 4519763, at *3 (finding personal jurisdiction where “corporate officers have dual roles in both [defendant] and its subsidiaries”); *Universal Connectivity*, 2024 WL 4519760, at *3 (similar); *AX Wireless*, 2023 WL 7105701, at *4 (similar); *Nuance*, 626 F.3d at 1235 (finding evidence against defendant’s claim that it was merely a “holding company” where company officers held dual roles in both parent and subsidiary).

Fuji’s initial disclosures in this case confirm that it operates a single global entity; indeed, in its initial disclosures, Fuji listed only one Fuji employee (*i.e.*, no AFS employees) as having an

“understanding of the ’422 Patent and the Accused Product *produced by American Fuji Seal*.”

Ex. 29 (Fuji’s Initial Disclosures) at 4 (listing Ms. Izumi Hongo, Fuji’s “General Manager of Intellectual Property Center”).

In summary, Fuji’s unified control of all entities at issue supports a finding of jurisdiction. *See Eireog*, 2024 WL 4519763, at *3 (finding personal jurisdiction when “the board of directors of [defendant] controls the entire Lenovo family, including Lenovo U.S.”); *Universal Connectivity*, 2024 WL 4519760, at *4 (similar). As explained above, Fuji portrays itself and its subsidiaries as a single global company, and the Court’s exercise of personal jurisdiction over Fuji is proper.

b. *Fuji Specifically Targets the U.S. and Texas Markets*

Fuji is also subject to this Court’s jurisdiction because it specifically targets the Texas market and “concentrate[s] [its] management resources in . . . the Americas to increase profitability.”⁵ Ex. 6 (Fuji Integrated Report 2024) at 14. For example, Fuji promotes the “widespread use” of its shrink sleeve labels in the United States. *Id.* at 30 (“In 2019, the ***U.S.-based Association of Plastic Recyclers (APR)*** recognized the RecShrink™ label developed by FSG as a shrink sleeve label that can be recycled together with PET bottles into PCR-containing PET bottles. ***In the Americas, we will continue our efforts to apply this technology to bottles*** for products of our customers, mainly beverage manufacturers, thereby ***promoting its more widespread use*** to accelerate resource recycling.”); *see* Ex. 28 (Fuji Website, Shrink Sleeve Labels (<https://www.fujiseal.com/en/product/shrink.html>)) (stating Fuji’s shrink sleeve labels are sold in the “Americas”). Fuji’s presence is so entrenched in the United States that a “major U.S. customer”

⁵ Fuji’s website shows that the “Americas” include the United States and Texas. Ex. 30 (Fuji Website, Global Business Expansion (<https://www.fujiseal.com/en/about/global.html>)) (highlighting in green a map of the “Americas” that includes both the United States and Texas).

“thought Fuji Seal was a U.S. company.” Ex. 8 (Fuji Integrated Report 2023) at 5 (Fuji’s President/CEO stating, “I heard that one of our sales representatives was told by a major U.S. customer, ‘I thought Fuji Seal was a U.S. company.’ That made me feel really happy.”).

Moreover, Fuji Seal Group has established a supply chain directly into Texas over which Fuji asserts control. *See Dean Foods Co. v. American Fuji Seal, Inc.*, No. 19-36313-DRJ, Dkt. 1 (S.D. Tex. Apr. 29, 2021), No. 19-36313-DRJ, Dkt. 1 at 4, 6 (stating that AFS “entered into agreements for the purchase of goods and/or services from [AFS]” with the “largest processor and direct-to-store distributor of fresh fluid milk and other dairy and dairy case products in the United States” which was headquartered in Dallas, Texas); Ex. 13 (Fuji Website, Supply Chain) (“[W]e have established *Requests for FSG Business Partners*, and *ask our business partners to understand, agree with, and comply with* the purpose of the Course of Action.”). This supply chain is a “significant factor” supporting personal jurisdiction over Fuji. *Universal Connectivity*, 2024 WL 4519760, at *2.

Fuji also targets Texas through its hiring efforts. For example, Fuji’s careers portal has a search filter for “Remote AFTS TX - Maypearl, TX, 76064” (Ex. 23 (Fuji Website, Careers Portal (<https://www.paycomonline.net/v4/ats/web.php/jobs?jobSearchSettingsId=8682&clientkey=AB84831F4A49A1C630177C265EFD3657>))) and at least one Fuji Seal Group employee appears to be based in Maypearl, Texas. *See, e.g.,* Ex. 24 (J. Boteler LinkedIn (<https://www.linkedin.com/in/joseph-boteler-49597211a/>)) (stating that J. Boteler is a “Field Services Engineer at American Fuji Seal” located in “Maypearl, Texas”).

As explained above, Fuji further targets Texas through its IP strategy (*see supra*, § IV.A.3.a), including through its numerous federal trademarks and patents which provide protections in Texas. *Id.* Indeed, Fuji has “Offensive” and “Defensive IP Strategy” and

“identif[ies] efficient overseas [*i.e.*, the United States] patent application channels[.]” Ex. 14 (Fuji’s IP Strategy) at 7. This supports a finding of personal jurisdiction. *See AX Wireless*, 2023 WL 7105701, at *4 (finding personal jurisdiction when defendant “specifically targets the U.S. market through . . . statements from [defendant’s] CEO regarding U.S. strategy”).

c. *Fuji Enjoys Significant Revenues From Sales of the Accused Products in Texas*

Personal jurisdiction over Fuji is proper because it enjoys significant revenues from sales of the Accused Products in Texas. *See id.* (finding personal jurisdiction when defendant “enjoys revenues from sales of Accused Products”). From 2019 to 2024, at least 55% of Fuji’s net sales were from the Accused Products and at least 20% of Fuji’s net sales were made in the Americas. Ex. 5 (Fuji Website, Net Sales by Product (<https://www.fujiseal.com/en/ir/financial/sales.html>)) (stating in 2024 Fuji has sales of ¥57,873 million (roughly \$370 million USD) in the Americas accounting for roughly 30% of global sales); *see* Ex. 6 (Fuji Integrated Report 2024) at 15 (stating in 2023 Fuji’s shrink sleeve label net sales in the Americas accounted for ¥47.3 billion (roughly \$300 million USD) accounting for roughly 39% of global sales). The Accused Products include common beverages (*e.g.*, Nestlé’s Nesquik chocolate milk) that are commonly sold in retail store chains (*e.g.*, Walmart) throughout Texas. Dkt. 1, Ex. D; *see generally Sportscastr*, 2024 WL 4219252, at *6 (finding personal jurisdiction when “no evidence exists showing that Defendants opted to limit the availability of its Accused Produces to exclude Texas or to change the functionality of its Accused Products to operate in a different (*e.g.*, non-infringing) way in Texas”). Common sense dictates that a significant portion of these sales naturally come from Texas, since it has the second highest population and gross domestic product of any state. Ex. 31 (Bureau of Economic Analysis, *Gross Domestic Product by State and Personal Income by State, 3rd Quarter*

2024), Table 1 (stating Texas’s 2024 GDP was roughly \$2.7 trillion or 9.3% of the entire US market). Thus, Fuji enjoys significant revenue from sales of the Accused Products in Texas.

d. *Fuji’s Website Also Supports a Finding of Personal Jurisdiction Because Customers Can Interact with Fuji Through It*

Fuji’s website also supports a finding of personal jurisdiction as Fuji’s customers in Texas can conduct business with Fuji through the website. *See AX Wireless*, 2023 WL 7105701, at *4 (finding personal jurisdiction when defendant “conducts business with customers through [its website]”); *Cardsoft*, 2009 WL 361069, at *1 (same); *Orange*, 2022 WL 4368160, at *5 (same). This alone is sufficient for finding personal jurisdiction over Fuji. *Id.* (“Autel ITC’s interactive website is sufficient to conclude that personal jurisdiction exists.”). To this end, courts “‘examin[e] the level of interactivity and commercial nature of the exchange of information that occurs on the Web site’ to determine whether the defendant has subjected itself to personal jurisdiction” *Id.*, at *4. Tellingly, AFS’s website makes no mention of the Accused Products (*i.e.*, shrink sleeve labels). *See* Ex. 7 (AFS Website, Products & Markets Overview (<https://americanfujiseal-pouch.com/products/>)). Instead, U.S. customers must access Fuji’s website (Ex. 28) to learn about Fuji’s Accused shrink sleeve business. Several other examples demonstrate that Fuji “clearly does business over the internet” and into Texas through its interactive website. *See Orange*, 2022 WL 4368160, at *4 (“Whether personal jurisdiction over a defendant is established is viewed on a spectrum—personal jurisdiction most likely exists where the defendant ‘clearly does business over the internet’ and least likely exists where the defendant simply posts accessible information.”).

First, Fuji’s website includes interactive pages for customers in the Americas to interact with Fuji. Ex. 32 (Fuji Website, Contact Us (*Americas*) (<https://www.fujiseal.com/en/contact/contact-americas.html>)); Ex. 33 (Fuji Website, Our Global Locations (<https://www.fujiseal.com/en/about/group.html>)). Fuji’s website also provides the

address, phone, and fax for its U.S. offices. *Id.* Moreover, it has an interactive map that allows users to get directions to Fuji's locations from a user's current location. *Id.* Users can submit inquiries on Fuji's shrink sleeve labels. *Id.* (having "Shrink Sleeve Labels" dropdown in the "Segments" section). Fuji's website also lists detailed information on its shrink sleeve labels sold in the U.S. Ex. 28 (Fuji Website, Shrink Sleeve Labels (<https://www.fujiseal.com/en/product/shrink.html>)) (Fuji's shrink sleeve "specifications," "[l]abeling process," "[i]nitiatives," trademarks (e.g., "RecShrink™"), "[p]roduct [f]eature[s]," "[c]ertifications," and "[a]pplication example[s]."). Fuji's website additionally includes links to reports where users can get "[m]ore [i]nformation." *Id.*

Second, Fuji's website has an interactive "Career" page for finding employees in the United States (and Texas). Ex. 34 (Fuji Website, Career (<https://www.fujiseal.com/en/career/>)). Through Fuji's Careers Portal, users can view job descriptions, apply to current postings, and attach their resume. Ex. 23 (Fuji Website, Careers Portal (<https://www.paycomonline.net/v4/ats/web.php/jobs?jobSearchSettingsId=8682&clientkey=AB84831F4A49A1C630177C265EFD3657>)). As explained above, this career portal has filters for a remote position in Maypearl, TX, where at least one employee appears to be located. *See supra*, § IV.A.3.b. This Careers Portal appears to be Fuji's and AFS's only method of accepting online applications, since AFS does not have any job listings.

At bottom, Fuji's website further supports personal jurisdiction because it is an interactive website where Fuji operates its U.S. shrink label business. *See AX Wireless LLC*, 2023 WL 7105701, at *4 (Lenovo USA's parent "conducts business with customers through Lenovo.com, which allows customers to purchase the Accused Products and obtain technical support.").

4. *Fuji’s Factual Assertions to The Contrary Fail Because They Are Legally Irrelevant*

Fuji puts forward a number of factual assertions in its Motion—including by casting aspersions on B+W’s Complaint and by characterizing itself merely as a “holding company”—in an attempt to avoid personal jurisdiction. These assertions are strikingly inconsistent with Fuji’s own statements and contrary to the well-pleaded complaint, and may be safely disregarded.

First, the Court need not credit Fuji’s factual assertions, as the procedural posture on a motion to dismiss requires the Court to resolve “any factual conflicts in the affidavits in the plaintiff’s favor.” *Elecs. For Imaging*, 340 F.3d at 1349. There can be no dispute that Fuji’s Motion attempts to create such factual conflicts, since Fuji repeatedly refers to B+W’s pleadings as “false allegations.” Dkt. 32 at 1. Accordingly, this dooms Fuji’s motion, as any factual conflict drummed up by Fuji’s assertions and affidavits should be resolved in B+W’s favor. *See Elecs. For Imaging*, 340 F.3d at 1349.

Second, even if credited, Fuji’s arguments are identical to several unsuccessful arguments made by similarly situated international global companies who have attempted to avoid this Court’s jurisdiction. *See* Dkt. 32 at 6–9 (arguing FSI is “a holding company” and that its subsidiary AFS “is the entity responsible for manufacturing, selling, offering for sale, or otherwise distributing in the United States the Accused Products”).

For example, the Defendant in *AX Wireless LLC v. Lenovo Grp. Ltd.* contended that “(1) it is nothing more than a holding company, (2) it does not design, manufacture, sell, or import products anywhere, and (3) non-parties Lenovo US [its subsidiary] and Motorola are solely responsible for importing, marketing, advertising, offering for sale, and selling Lenovo and Motorola branded products in the United States.” 2023 WL 7105701, at *3. This Court, however, rejected those arguments because “a domestic distributor or manufacturer need not be a named

defendant in the case for personal jurisdiction over the foreign defendant.” *Id.* In that case, the Court relied on similar facts to find a *prima facie* showing of jurisdiction, including that: (1) the parent “portrays itself and its subsidiaries as ‘*the Lenovo Group* – a single global company” (here, Fuji portrays itself and subsidiaries as “Fuji Seal International”); (2) the companies “*share[] executives* and management teams” (here, Fuji and AFS share common executives); (3) the parent holding company “*enjoys revenues* from sales of Accused Products by related entities” (here, Fuji enjoys AFS’s revenues); and (4) the parent company “conducts business with customers through *Lenovo.com*” (here, Fuji interacts with customers through its website fujiseal.com). *Id.*, at *4; *see also, e.g., Sportscastr*, 2024 WL 4219252, at *1 (finding *prima facie* showing of personal jurisdiction and rejecting defendant’s argument that it was a mere holding company whose “primary operating subsidiary [] was the ‘entity responsible for the creation, development, maintenance, and servicing of the accused [] products’”); *Eireog*, 2024 WL 4519763, at *3 (same); *Universal Connectivity*, 2024 WL 4519760, at *3 (same); *see Cardsoft*, 2009 WL 361069, at *1 (same when parent “only argues it is merely a far removed parent company to the company who performs the allegedly infringing conduct”). These circumstances are identical to those that contradict Fuji’s arguments here (*see supra*, § IV.A.3.a), and Fuji’s arguments do not withstand the weight of this authority.

Fuji’s remaining arguments to avoid this Court’s jurisdiction also fail. Fuji first argues that it “*does not* make, use, sell, offer for sale, or import the Accused Products into the United States, including Texas.” Dkt. 32 at 10. While this is plainly contradicted by Fuji’s own statements above (*see, e.g., supra*, §§ IV.A.2.a, IV.A.3.a, IV.A.3.c), the cases discussed above confirm that personal jurisdiction can be found (and is repeatedly exercised) over a purported holding company that claims not to manufacture, import, or sell the accused products. *Sportscastr*, 2024 WL 4219252,

at *1; *AX Wireless*, 2023 WL 7105701, at *3; *Eireog*, 2024 WL 4519763, at *3; *Universal Connectivity*, 2024 WL 4519760, at *3; *see Cardsoft*, 2009 WL 361069, at *1.

Moreover, the cases Fuji cites confirm that its argument is irrelevant, as none of the conduct Fuji disclaims is a prerequisite to personal jurisdiction. For example, in *Nuance*, one of the defendants moved to dismiss for lack of personal jurisdiction by arguing it was merely a holding company. *Nuance*, 626 F.3d at 1230 (“Abbyy Production develops software and provides Abbyy USA with master copies of that software.”); *id.* at 1235 (“Appellees maintain that Abbyy Software is simply a holding company that neither imports nor sells goods in California or elsewhere.”). The *Nuance* court vacated the dismissal of the purported holding company and ordered further discovery even though that company did not manufacture, import, or sell that accused products. *Id.* at 1228. Similarly, in *Orange*, this Court found personal jurisdiction over the defendant despite its arguments that it did not “manufacture, sell, or offer for sale” or import any accused products in the United States. *Orange*, 2022 WL 4368160, at *2. Thus, personal jurisdiction over Fuji is proper even if the Court credits the assertion that Fuji itself does not make, use, sell, offer for sale, or import the Accused Products.

Fuji also argues, inaccurately, that it “does not have any subsidiaries, agents, or other entities located in Texas or registered to do business in Texas” Dkt. 32 at 11. As explained above, Fuji employs residents of Texas. *See, e.g., supra*, §§ IV.A.2.a, IV.A.3.b, IV.A.3.d. Moreover, Fuji cites *Universal Connectivity* and *Eireog* to argue that a subsidiary reseller “registered to do business in Texas” is necessary to find personal jurisdiction over a parent company under a stream of commerce theory. Dkt. 32 at 11. Fuji’s argument misstates the law. In these cases (which involved the same defendant), the Court did not scrutinize where the subsidiaries were registered, but instead holistically considered all record evidence that the parent

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and subsidiaries acted in consort to place products in Texas. *Universal Connectivity*, 2024 WL 4519760, at *4 (“LGL uses its multi-level corporate structure to place the accused products into the stream of commerce—resulting in the accused products being sold or offered for sale in Texas.”); *Eireog*, 2024 WL 4519763, at *5 (same). Indeed, other cases confirm that personal jurisdiction is proper under a stream of commerce theory even if a distributor is not registered in the forum state. *Sportscast*, 2024 WL 4219252, at *1 (Texas court finding a *prima facie* showing of personal jurisdiction over a foreign company whose US subsidiary distributor was “a Swiss company with its headquarters and principal place of business in St. Gallen, Switzerland”); *Orange*, 2022 WL 4368160, at *1 (Texas court finding same when U.S.-based subsidiary distributor was “headquartered in Port Washington, New York”); *Beverly Hills Fan*, 21 F.3d at 1560 (Virginia court finding same when U.S.-based distributor was “incorporated in New Jersey” and “d[id] not have a license to do business in Virginia”). Moreover, Fuji Seal Group does contract with third-party distributors registered to do business in Texas. *See Dean Foods*, Dkt. 1 at 4, 6 (stating that AFS “entered into agreements for the purchase of goods and/or services from [AFS]” with the “largest processor and direct-to-store distributor of fresh fluid milk and other dairy and dairy case products in the United States” which was headquartered in Dallas, Texas). Thus, even if this Court credits Fuji’s assertions that it has no subsidiaries, agents, or other entities in Texas (which would be incorrect), this does not defeat a finding of personal jurisdiction over Fuji.

Finally, Fuji argues that it does not know that Texas is a “likely destination” of the Accused Products. Dkt. 32 at 11. As discussed above, that is untenable. Fuji publicly announces that it enjoys significant revenues from the United States. *See supra*, § IV.A.3.c. This is because Fuji directly targets the United States and has customers in the United States. *See supra*, § IV.A.3.b. Texas is the second-largest state by GDP in the United States. Ex. 31 (Bureau of Economy

Analysis, *Gross Domestic Product by State and Personal Income by State, 3rd Quarter 2024*), Table 1. The Accused Products include popular beverages sold throughout Texas. *See supra* § IV.A.3.b. It defies logic for Fuji to argue that Texas is **not** a likely destination of commonly sold drinks such as Nesquik chocolate milk—one of the Accused Products.

Thus, according to the well-pleaded complaint, this Court can properly find that B+W has established a *prima facie* case of personal jurisdiction.

5. *Fuji's Factual Assertions to The Contrary Should Be Given No Weight Because They Are Contradicted by Fuji's Own Public Statements*

As explained above, the Court need not consider Fuji's factual assertions because the Court must resolve all factual disputes in B+W's favor. *See supra*, §§ III, IV.A.4. Troublingly, however, Fuji's factual assertions (borne out in sworn declarations and attorney argument) appear to directly contradict Fuji's own statements and representations to the public and its investors. Fuji may not rewrite history to avoid personal jurisdiction. *See Matter of Highland Cap. Mgmt., L.P.*, 116 F.4th 422, 433 (5th Cir. 2024) (excluding defendants' declaration that was "not supported by *their own* divergent statements") (emphasis in original).

B+W's properly pleaded Complaint relied, in part, on Fuji's public statements and representations, which the Court may consider in deciding this motion. *Power Funding*, 2024 WL 2022289, at *3. B+W summarizes key examples below that undermine Fuji's assertions:

- Fuji asserts that it is a "falsehood" that "[Fuji] does substantial business in Texas[.]" Dkt. 32 at 7. Fuji further asserts that it is a "falsehood" that "[Fuji] derives substantial revenue from selling the Accused Products to Texas residents[.]" Fuji is incorrect on both counts. As Fuji's 2024 Integrated Report shows, approximately \$366.9 million in sales are directly attributable to sales of its shrink sleeve labels in the U.S. market. *See Ex. 6*. Texas is the eighth-largest economy in the world, and the second-largest state by GDP in the U.S. It is unrealistic to suppose that none of the Accused Products—including, *e.g.*, Nesquik products commonly found in supermarkets across the world—would ever be found in Texas.
- Fuji asserts that it is a "falsehood" that "[Fuji] manufactures or makes the Accused Products[.]" Dkt. 32 at 7–8. Likewise, Fuji asserts that it is a "falsehood" that "[Fuji] directs the manufacture of the Accused Products[.]" *Id.* at 7–8. But as indicated in B+W's Complaint (¶ 20), Fuji does

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make and/or manufacture the Accused Products. Fuji does not deny that the Accused Products are manufactured at factories in the U.S. *See* Dkt. 1, ¶ 20. Moreover, Fuji publicly touts ownership of at least one of these factories, describing it as “*our* Kentucky factory[.]” Ex. 8 at 28. And even if Fuji does not directly manufacture the Accused Products, it directs their manufacture and sales—as evidenced by Fuji’s claim of ownership of “our Kentucky factory,” showing a close enough relationship between Fuji and the manufacturing division for Fuji to call the Kentucky factory “our[s][.]” *Id.* Moreover, Fuji controls sales prices of the Accused Products as it claims to have “revised selling prices [of shrink sleeve labels] to address the pressure on profits caused by rising raw material costs.” Ex. 6 at 13.

- Fuji asserts that it is a “falsehood” that “[Fuji] imports the Accused Products into Texas[.]” Dkt. 32 at 7–8. Fuji also asserts that it is a “falsehood” that “[Fuji] sells or offers to sell the Accused Products in Texas[.]” *Id.* These assertions are wrong. The Accused Products are manufactured by Fuji and are sold in Texas. *See* Exs. 6, 33.
- Fuji asserts that it is a “falsehood” that “[Fuji] has wholly-owned subsidiaries or agents, distributors, and other entities located in the State of Texas[.]” Dkt. 32 at 7–9. But, at the very least, the Accused Products are undoubtedly distributed throughout Texas as evidenced by the fact that these products (*e.g.*, labels on Nesquik bottles and Coffee mate bottles) are indeed available for purchase in the District. *See* Dkt. 1, ¶ 11. Further, B+W has pleaded sufficient facts for minimum contacts even without subsidiaries or agents in the State.
- Fuji asserts that it is a “falsehood” that “[Fuji] developed the Accused Products[.]” Dkt. 32 at 7, 9. But Fuji tells the world that it created some of the key technology underlying the Accused Products: RecShrink. *See* Ex. 6.
- Fuji asserts that it is a “falsehood” that “[Fuji] owns the ‘factories’ located in Indiana, Kentucky and North Carolina[.]” Dkt. 32 at 7, 9. But B+W never asserted that Fuji owns these factories. Fuji simply pointed out that Fuji describes these locations as “Factor[ies]” and calls them “Our Global Locations[.]” Ex. 33 (Dkt. 1, ¶ 20, Dkt. 1-7 (Ex. G)).

In sum, Fuji cannot run away from its own statements made to the public about its location, technology, manufacturing capacity, and management. B+W has properly relied upon Fuji’s own representations in the Complaint.

B. It Is Reasonable and Fair for This Court to Exercise Personal Jurisdiction

Because Fuji has minimum contacts with Texas based on a stream of commerce theory, it is Fuji’s burden to prove “a compelling case that the presence of some other considerations would render jurisdiction unreasonable.” *AX Wireless*, 2023 WL 7105701, at *5 (quotations omitted). There are five relevant factors: “(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 shared interest of the several States in furthering substantive social policies." *Id.* (citing *Patent Rts. Prot. Grp., LLC v. Video Gaming Techs., Inc.*, 603 F.3d 1364, 1369 (Fed. Cir. 2010)).

Fuji has not, and cannot, meet its burden. Fuji's motion fails to address these five factors. Nor could Fuji do so successfully here: "these cases [in which jurisdiction was improper] are limited to the *rare situation* in which the plaintiff's interest and the state's interest in adjudicating the dispute in the forum are *so attenuated* that they are clearly outweighed by the burden of subjecting the defendant to litigation within the forum." *Beverly Hills Fan*, 21 F.3d at 1568. Moreover, there is minimal burden on Fuji to litigate here when it tells the Court it can litigate in Kentucky, seeing that the Eastern District of Texas and the Western District of Kentucky are approximately the same distance from Fuji's headquarters in Osaka. *See* Dkt. 32 at 13–14; Ex. 35. Moreover, "Texas . . . [has] an interest in enforcing federal patent laws[.]" *Universal Connectivity*, 2024 WL 4519760, at *5. It is most efficient to proceed with suit here, where discovery has already opened and a schedule entered. *See id.*; Dkts. 12, 16, 17. Additionally, B+W has an interest in obtaining relief in its forum of choice, as is its right. *Hanby v. Shell Oil Co.*, 144 F. Supp. 2d 673, 677 (E.D. Tex. 2001) ("a plaintiff's right to choose a forum is well-established"). "As to the fifth factor, the United States and Texas have an interest in furthering their social policies to discourage patent infringement." *Universal Connectivity*, 2024 WL 4519760, at *5.

Instead of discussing any of these factors, Fuji spends nearly two pages arguing that "exercising personal jurisdiction over [Fuji] would not be reasonable and fair" but cites only one case—*Synthes*—from which Fuji attempts to derive a general rule. Dkt. 32 at 12–13. Fuji does not even begin to argue that the facts and holding of *Synthes* are applicable here (because they are not)

or that it shows that any of the five factors counsels against personal jurisdiction. This alone demonstrates that this case is not one of those “*rare circumstances*, [where] a defendant may defeat the exercise of personal jurisdiction by ‘present[ing] a compelling case that the presence of some other considerations would render jurisdiction unreasonable.’” *Orange*, 2022 WL 4368160, at *2 (quoting *Burger King*, 471 U.S. at 477).

In any event, Fuji’s *Synthes*-based argument lacks merit. The thrust of Fuji’s position is that it was “wrongfully-named” since “B+W knew that (1) AFS is the exclusive manufacturer and distributor of the Accused products in the United States and that (2) [Fuji] has no role in manufacturing and distributing the Accused Products in the United States.” Dkt. 32 at 12–13. But as explained in detail above, Fuji’s own statements show that it *does* play a key role in manufacturing and distributing the Accused Products in the United States. *See, e.g., supra*, §§ IV.A.2.a, IV.A.3.c, IV.A.5.

Fuji also argues that B+W’s decision to bring this suit in front of this Court constitutes “blatant forum shopping” because B+W did not name AFS, and argues that this renders personal jurisdiction unreasonable and unfair. *See* Dkt. 32 at 13. This is wrong for at least three reasons. **First**, B+W owns valuable patent rights and as the patentee and plaintiff, B+W is entitled to choose the venue. B+W properly exercised this right. *In re Volkswagen of Am., Inc.*, 506 F.3d 376, 384 (5th Cir. 2007), *on reh’g en banc*, 545 F.3d 304 (5th Cir. 2008) (“Plaintiff’s choice of forum is entitled to deference.”). **Second**, B+W does not have to sue AFS and Fuji offers no support for its assertion to the contrary. *See Glancy v. Taubman Centers, Inc.*, 373 F.3d 656, 669 (6th Cir. 2004) (“[P]laintiff has the power to choose which parties it wishes to sue”); *Brown-Morris v. 15414 Kuykendahl Rd., LLC*, No. CV H-19-3207, 2021 WL 5155666, at *1 (S.D. Tex. Jan. 19, 2021) (similar). Moreover, Fuji’s actions (and inaction) undermine its argument that B+W should have

sued AFS, as Fuji did not move to dismiss this action for failure to name an indispensable party. **Third**, this Court has repeatedly found that personal jurisdiction over a foreign parent is reasonable and fair even if a domestic subsidiary was not named. *See, e.g., Sportscastr*, 2024 WL 4219252; *Eireog*, 2024 WL 4519763, at *3.

C. To The Extent Necessary, B+W Requests Jurisdictional Discovery

B+W submits that it has alleged sufficient facts for personal jurisdiction against Fuji, and Fuji's Motion should be denied based on the pleadings, the evidence attached to the pleadings, and to the extent necessary, the evidence submitted in connection with this Opposition. But to the extent the Court finds otherwise, B+W respectfully requests jurisdictional discovery.⁶ *See Digital Broad. Sols., LLC v. DISH Network L.L.C.*, No. 2:22-CV-00335-JRG, 2023 WL 11805298 (E.D. Tex. Jan. 19, 2023); *see also Lifetime Brands, Inc. v. QIMA Ltd.*, No. 2:23-CV-00216-JRG, 2024 WL 896344 (E.D. Tex. Mar. 1, 2024).

V. CONCLUSION

For the foregoing reasons, B+W respectfully submits that Fuji's motion (Dkt. 32) should be denied.

⁶ Among other things, further discovery might confirm that Fuji is not a passive holding company (as its public statements reflect), that AFS's actions should be imputed to Fuji, and/or that AFS is an alter ego of Fuji. *See, e.g., Celgard, LLC v. SK Innovation Co.*, 792 F.3d 1373, 1379 (Fed. Cir. 2015) ("For purposes of specific personal jurisdiction, the contacts of a third-party may be imputed to the defendant under either an agency or alter ego theory.").

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Respectfully submitted,

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CERTIFICATE OF AUTHORIZATION TO SEAL

The undersigned hereby certifies that pursuant to the protective order in the above-captioned case, this motion and/or the exhibits thereto contain confidential information.

Accordingly, this document is to be filed under seal.

/s/ *Brandon H. Brown*

Brandon H. Brown

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served to counsel representing Nestlé USA, Inc. and Fuji Seal International, Inc. via email per Local Rule CV-5(7)(D).

/s/ Brandon H. Brown

Brandon H. Brown