DOCKET NO. HHDCV206132568S

STATE OF CONNECTICUT

v

EXXON MOBIL CORPORATION

SUPERIOR COURT

JUDICIAL DISTRICT OF HARTFORD

JULY 23, 2024

MEMORANDUM OF DECISION ON MOTION TO DISMISS

In *Talenti* v. *Morgan & Brother Manhattan Storage Co.,* 113 Conn. App. 845, 854-55, 968 A.2d 933 (2009), the court held that "when a foreign corporation complies with the requisites of General Statutes § 33–920 by obtaining a certificate of authority and complies with the requisites of General Statutes § 33–926 by authorizing a public official to accept service of process, it has consented to the exercise of jurisdiction over it by the courts of this state. . . . [and] nothing in [General Statutes] § 33–929 (f) limits the court's exercise of personal jurisdiction over the corporation." (Citations omitted.) Based on that conclusion, the court held further that "[a]s the defendant has consented to jurisdiction, the exercise of jurisdiction by the court does not violate due process. Therefore, the court does not need to undertake an analysis of any constitutional due process issues." Id., 856 n.14. Both conclusions have been either criticized, derogated as dicta, or both. In the present case the court is asked to follow *Talenti*, buttressed by the Supreme Court's decision in *Mallory* v. *Norfolk Southern Railway Co.*, 600 U.S. 122, 143 S.Ct. 2028, 216 L.Ed.2d 815 (2023), and hold that because the defendant, Exxon Mobil Corporation, is registered to do business in Connecticut as a foreign corporation, it is subject to personal jurisdiction in this state and that the court need not address any due process concerns raised by the defendant.

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The Appellate Court's holdings in *Talenti* are not dicta. The court is bound by the *Talenti* court's conclusion that by registering to do business in Connecticut as a foreign corporation the defendant has consented to jurisdiction. With respect to the necessity of a due process analysis, although the *Talenti* court's conclusion conflicts with the Appellate Court's own precedent on that question, Supreme Court and other federal caselaw establish that a due process analysis is unnecessary. Although the court concludes that under *Talenti* the defendant is subject to personal jurisdiction in Connecticut, considering the substantial criticisms that other courts have directed to both holdings in the *Talenti* case, the court also undertakes a traditional jurisdictional analysis to determine whether the long arm statute for foreign corporations applies to the defendant in this case and, if so, whether exercising jurisdiction over the defendant comports with due process. The court concludes there is jurisdiction under that analysis as well.

FACTUAL AND PROCEDURAL BACKGROUND

The plaintiff, the state of Connecticut, commenced this action in September, 2020 under the Connecticut Unfair Trade Practices Act (CUTPA), General Statutes § 42-110a et seq., alleging that the defendant has engaged in a "systematic campaign of deception" concerning the impact of its fossil fuel products on the earth's climate. In its amended complaint the plaintiff alleges that the defendant has contributed to climate change by selling fossil fuels and petroleum products "that emit large quantities of greenhouse gases responsible for trapping atmospheric heat that causes global warming." The plaintiff claims that the defendant "knew decades ago that the release of greenhouse gases, including carbon dioxide ("CO2"), when fossil fuels are combusted, was a substantial factor in causing global warming." As early as the 1950s and 1960s the defendant allegedly was aware that the combustion of fossil fuels was impacting the

climate, and by the early 1980s the defendant was able to predict "the concentration of carbon dioxide in the atmosphere and the corresponding temperature increase for the year 2020."

The plaintiff alleges that despite the defendant's knowledge of the harmful effects of its fossil fuel products, it "continuously advertised and sold those products at multiple locations in Connecticut" throughout the 1970s and up to the present day. While doing so, according to the plaintiff, the defendant engaged in a "campaign to deceive Connecticut consumers about the harmful climatic effects of its fossil fuel products. . . ." The plaintiff alleges that the defendant carried out this campaign in "advertisements, public speeches, articles, media statements and published writings during the last five decades. . . [which] knowingly deceived consumers by systematically and routinely misrepresenting and/or omitting information about ExxonMobil's products' effects on the climate, its knowledge about the effect of its products on the climate, and scientific consensus about the effects of [its] products on the climate." The defendant also is alleged to have funded and collaborated with third party groups who spread disinformation about the effects of fossil fuel products on the climate. The plaintiff alleges that these actions were "in furtherance of ExxonMobil's objective to sell product in Connecticut's marketplace."

The plaintiff cites "national advertising campaigns" targeting consumers throughout the country, including in Connecticut. These campaigns have included "advertorials in *The New York Times*. . . a national newspaper that has historically targeted and continues to specifically target the tri-state (Connecticut, New York, New Jersey) area. . . ." With a circulation of "tens of thousands of readers in Connecticut," by advertising in The New York Times, as well as in other national publications that are read by Connecticut consumers, the defendant is alleged to have "knowingly availed itself of Connecticut's marketplace." The plaintiff claims the defendant has otherwise "intentionally reached Connecticut consumers through print, television, radio and

online platforms including social media. . . ." and the defendant's efforts have "deprived Connecticut consumers of accurate information about their purchasing decisions." An uncontested affidavit from Jeff Bricker, the defendant's Business Development Manager for U.S. Retail, states that "none of ExxonMobil's advertising campaigns are prepared specifically for Connecticut."

The defendant is a New Jersey corporation with its principal place of business in Texas. It is registered to do business in Connecticut as a foreign corporation and maintains a registered agent for service of process in Connecticut. The defendant was formed in 1999 by the merger of Exxon Corporation and Mobil Oil Corporation and the complaint targets the knowledge and conduct of both predecessor corporations, as well as other affiliated entities. The complaint alleges that the defendant has continuously sold its products in Connecticut throughout the 1970s and up to the present day. During this period, the defendant has allegedly sold its products at company-owned gas stations and through branded wholesalers. The defendant allegedly operated numerous retail gas stations in Connecticut through 1999, when a settlement with the Federal Trade Commission resulted in the defendant's divestiture of those businesses. The company continues to maintain branded franchises throughout the state. The Bricker affidavit states, "At no point in the last twelve years has ExxonMobil (1) sold fossil fuel-derived products to consumers in Connecticut, or (2) owned or operated a single retail store or gas station in the state." The branded franchise gas stations in Connecticut are "supplied by authorized independent branded wholesalers." The complaint references a branding agreement between the defendant and Alliance Energy, LLC, to maintain the Mobil brand name for 88 retail stations located in Connecticut. According to the Bricker affidavit, the defendant "supplies routine support services to operators of service stations in Connecticut, but does not control the

operations, staffing, or sales of any service station." It provides the independent branded wholesalers with "brand guidelines. . . for the benefit of service station operators and reserves the right to review trademark usage for compliance." From 1973 until 2007 the defendant owned and operated an industrial plant in Stratford, Connecticut that manufactured and sold products to industrial customers, not to consumers.

The plaintiff alleges that the defendant's activities impacted Connecticut and its citizens in several ways. They have allegedly harmed the natural environment in the state, including but not limited to the state's "lands, waters, coastlines, infrastructure, fish and wildlife, natural resources and critical ecosystems." They have allegedly caused "sea level rise, flooding, drought, increases in extreme temperatures and severe storms, decreases in air quality, contamination of drinking water, increases in the spread of diseases, and severe economic consequences." Every purchase of the defendant's products in the state is a result of the defendant's "affirmative misrepresentations, omissions of material fact, and half-truths" concerning the contribution made by those products to climate change in Connecticut and elsewhere, according to the plaintiff. The plaintiff claims that the defendant's "campaign of deception has undermined and delayed the creation of alternative technologies, driven by informed consumer choice, which could have avoided the most devastating effects of climate change, and it has stifled an open marketplace for renewable energy, thereby leaving consumers unable to reasonably avoid the detrimental consequences of fossil fuel combustion." The defendant's conduct is alleged to have "delayed the needed transition to clean energy in Connecticut. . . . [causing] a significant negative financial impact on the people of the State of Connecticut." Connecticut consumers allegedly have suffered or will suffer harm due to "an increase in illness, infectious disease and death" and the state's infrastructure has been damaged

and will continue to suffer damage, causing "serious detrimental economic impacts on the State of Connecticut, its people, businesses and municipalities. . . ."

Following the commencement of this action in September, 2020, the defendant removed the case to federal court. The district court remanded the case to this court on June 2, 2021 (*Connecticut* v. *Exxon Mobil Corp.*, United States District Court, Docket No. 3:20-cv-1555 (JCH) (2021 WL 2389739), a decision affirmed on appeal on September 27, 2023. *Connecticut* v. *Exxon Mobil Corp.*, 83 F.4th 122 (2d Cir. 2023). The plaintiff filed an amended complaint on November 20, 2023 and the defendant moved to dismiss the action based on a lack of personal jurisdiction on December 14, 2023. The motion was briefed by the parties and argued on March 25, 2024. No jurisdictional discovery was sought and no evidentiary hearing was requested by either party. The court relies on the facts as they appear in the record and are recited herein, without foreclosing the development of additional jurisdictional facts as the case progresses.

DISCUSSION

I. Procedural Standards

"A motion to dismiss tests, inter alia, whether, on the face of the record, the court is without jurisdiction. . . . When, as in the present case, the defendant challenging the court's personal jurisdiction is a foreign corporation or a nonresident individual, it is the plaintiff's burden to prove the court's jurisdiction." (Citations omitted; internal quotation marks omitted.) *North Sails Group, LLC* v. *Boards & More GmbH*, 340 Conn. 266, 269, 264 A.3d 1 (2021). "When a defendant challenges personal jurisdiction in a motion to dismiss, the court must undertake a two part inquiry to determine the propriety of its exercising such jurisdiction over the defendant. The trial court must first decide whether the applicable state [long arm] statute authorizes the assertion of jurisdiction over the [defendant]. If the statutory requirements [are]

met, its second obligation [is] then to decide whether the exercise of jurisdiction over the [defendant] would violate constitutional principles of due process." Id., 273.

"In deciding a jurisdictional question raised by a motion to dismiss, a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . In most instances, the motion must be decided on the complaint alone. However, when the complaint is supplemented by undisputed facts established by affidavits submitted in support of the motion to dismiss. . . the trial court, in determining the jurisdictional issue, may consider these supplementary undisputed facts and need not conclusively presume the validity of the allegations of the complaint. . . Rather, those allegations are tempered by the light shed on them by the [supplementary undisputed facts]. . . If affidavits and/or other evidence submitted in support of a defendant's motion to dismiss conclusively establish that jurisdiction is lacking, and the plaintiff fails to undermine this conclusion with counteraffidavits . . . or other evidence, the trial court may dismiss the action without further proceedings." (Citations omitted; internal quotation marks omitted.) Id., 269-70.

The parties have not presented any factual disputes to the court in connection with the defendant's motion to dismiss. The court therefore "takes the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader. . . . [but] tempered by the light shed on them" by the Bricker affidavit. Id., 269. In some respects the parties draw different inferences bearing on the jurisdictional issues, particularly concerning the significance of the New York Times advertorials. Additional details concerning the jurisdictional facts may also emerge. For this reason and because the court has not conducted an evidentiary hearing, the court reserves the

jurisdictional issue for final determination at the time of trial, applying a preponderance of the evidence standard to any disputed facts impacting the court's analysis of issues raised under the long arm statute and Due Process. At present, the court applies a prima facie standard on the defendant's motion to dismiss.[1] *Designs for Health, Inc.* v. *Miller*, 187 Conn. App. 1, 11-14, 201 A.3d 1125 (2019).

II. Statutory Basis for Jurisdiction

Because the defendant is a foreign corporation, the statutory basis for jurisdiction derives from Chapter 601 of the General Statutes governing business corporations. Part XVI of Chapter 601 (General Statutes §§ 33-920 to 33-944) deals specifically with foreign corporations.

General Statutes § 33-920 (a) provides that a foreign corporation "may not transact business in this state until it obtains a certificate of authority from the Secretary of State. . . ." General Statutes § 33-922 (a) provides that a foreign corporation "may apply for a certificate of authority to transact business in this state by delivering an application to the Secretary of the State for filing. The application shall set forth. . . (5) the address of its registered office in this state and the name of its registered agent at that office. . . ." Pursuant to General Statutes § 33-924 (b), a foreign corporation registered to do business in Connecticut "has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by sections 33-600 to 33-998, inclusive, is subject to the same duties, restrictions, penalties and liabilities imposed on, a domestic corporation of like character." General Statutes § 33-926 (a) requires that "[e]ach foreign corporation authorized to transact business in this state shall continuously maintain in this state: (1) A registered office that may be the same as any of its

[1] For clarity, left to the existing record, the court would find the facts as set forth herein under a preponderance of the evidence standard. These facts are, however, without prejudice to further development and contest at the time of trial.

places of business; and (2) a registered agent at such registered office. . . ." General Statutes § 33-929 (a) provides that "[t] he registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation. When the registered agent is other than the Secretary of the State and his successors in office, service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state." According to the complaint, the defendant has complied with these statutes and appointed as its registered agent for service of process, Corporation Service Company, 100 Pearl Street, Hartford, Connecticut. The record reflects that service upon the defendant was made on its registered agent.

General Statutes § 33-929 is captioned "Service of process on foreign corporation." In addition to providing for service upon a registered agent under subsection (a), the statute addresses circumstances pursuant to which a foreign corporation is "subject to suit" in Connecticut. Section 33-929 (e) provides that "[e]very foreign corporation which transacts business in this state in violation of section 33-920 shall be subject to suit in this state upon any cause of action arising out of such business." Section 33-929 (f) provides:

> Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; (3) out of the production, manufacture or distribution of goods by such corporation with the

> reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

The defendant maintains that none of the statutes in Part XVI of Chapter 601 afford a statutory basis for the court's exercise of personal jurisdiction over the defendant. The plaintiff argues that the court has jurisdiction by virtue of the defendant's compliance with §§ 33-920 and 33-926 and, alternatively, because the facts satisfy the requirements of § 33-929 (f).

A. Consent to Jurisdiction Pursuant to §§ 33-920, 33-926 and 33-929

Relying upon *Talenti* v. *Morgan & Brother Manhattan Storage Co.,* supra and *Wallenta* v. *Avis Rent a Car System, Inc.*, 10 Conn. App. 201, 522 A.2d 820 (1987), the plaintiff argues that compliance with §§ 33-920 and 33-926 constitutes implicit consent to jurisdiction in Connecticut, on any cause of action, in accordance with § 33-929. No statute within Part XVI of Chapter 601 explicitly states that by obtaining a certificate of authority to do business in Connecticut and appointing an agent for service of process, a foreign corporation agrees that it shall be subject to the jurisdiction of Connecticut courts on any cause of action. *Talenti* and *Wallenta* conclude, however, that a foreign corporation's registration to do business constitutes consent to jurisdiction under these statutes.

In *Wallenta*, the court applied the predecessor to § 33-929, General Statutes § 33-411,[2] in a case where the plaintiff was an injured passenger in a motor vehicle rented in Alabama by a

[2] Neither party has argued that the differences between § 33-411 and § 33-929 are material for purposes of determining whether compliance with the registration statutes constitutes consent to personal jurisdiction. Section 33-411 provided, in full, as follows.

> (a) Any process, notice or demand in connection with any action or proceeding required or permitted by law to be served upon a foreign corporation authorized to transact business in this state which is subject to the

provisions of section 33-400 may, when timely made, be served upon such corporation by any proper officer or other person lawfully empowered to make service, as follows: (1) When the secretary of the state and his successors have been appointed such corporation's agent for service of process, by leaving two true and attested copies thereof together with the required fee at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office. The secretary of the state shall file one copy of such process and keep a record of the date and hour of such receipt. He shall, within two business days after such service, forward by registered or certified mail the other copy of such process to the corporation at the address of its executive offices as last shown on his records or at such other address as has been designated as provided in subsection (b) of section 33-300. Service so made shall be effective as of the date and hour received by the secretary of the state as shown on his record; (2) when an agent other than the secretary of the state and his successors has been appointed such corporation's agent for service of process, by serving the same upon such agent. If it appears from the records of the secretary of the state that such corporation has failed to maintain such agent for service of process, or if it appears by affidavit attached to the process, notice or demand of the officer or other person directed to serve any process, notice or demand upon such corporation's agent appearing on the records of the secretary of the state that such agent cannot, with reasonable diligence, be found at the address shown on such records, service of such process, notice or demand on such corporation may be made by such officer or other proper person by: (A) Leaving a true and attested copy thereof, together with the required fee, at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office, and (B) depositing in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy thereof, together with a statement by such officer that service is being made pursuant to this section, addressed to such corporation at the address of its executive offices as last shown on the records of the secretary of the state or at such other address as has been designated as provided in subsection (b) of section 33-300. The secretary of the state shall file the copy of each process, notice or demand received by him as provided in subdivision (2) of this subsection and keep a record of the day and hour of such receipt. Service so made shall be effective as of such day and hour.

(b) Every foreign corporation which transacts business in this state in violation of section 33-395 or 33-396 shall be subject to suit in this state upon any cause of action arising out of such business.

(c) Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; or (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; or (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(d) In any action brought (1) under subsection (b) or (c) of this section or (2) under subsection (e) of section 33-371, or in any foreclosure or other action involving real property located in this state in which a foreign corporation, although not transacting business in the state, owns or claims to own an interest, the secretary of the state shall be deemed the agent of the corporation in this state and service of process on such corporation shall be made as provided in subsection (a) of this section, except that the secretary of the state shall address the copy thereof to the corporation at the address of its executive offices or, if it has no such office, to such corporation's last office as shown in the official registry of the state or country of its incorporation, which address shall be set forth in the writ or other process. Upon service being so made, the court may proceed to a hearing at the first term or session, or thereafter, as it deems proper.

national car rental company that was registered to do business in Connecticut. The company contested personal jurisdiction. The court first contrasted § 33-411 (b) with § 33-411 (c).[3] Subsection (b) applied to foreign corporations transacting business in the state without having obtained a certificate of authority to do so. In those circumstances, a foreign corporation was "subject to suit in this state upon any cause of action arising out of such business." General Statutes § 33-411 (b). Subsection (c) applied "whether or not such foreign corporation is transacting or has transacted business in this state. . . ." General Statutes § 33-411 (c). Recognizing this distinction, the court observed that a foreign corporation's registration to conduct business in the state "confers jurisdiction over some causes of action without regard to whether a foreign corporation is transacting business here and without regard to any causal connection between the plaintiff's cause of action and the defendant's presence in this state." *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206. The court cited *Lombard Bros., Inc.* v. *General Asset Management Co.*, 190 Conn. 245, 251-54, 460 A.2d 481 (1983), where the court made the same observation but connected it directly to the "various subparts of subsection (c)" spelling out the limited circumstances that may give rise to a cause of action for which a registered foreign corporation would be "subject to suit" in Connecticut, whether or not it transacts business in the state. In *Wallenta*, the court disregarded that connection, resting on the idea that registered foreign corporations are subject to suit in Connecticut even when the cause of action asserted against it is unconnected to the transaction of business in the state.

In *Wallenta*, instead of turning to the limited, specified circumstances set forth in § 33-411 (c), the court turned to § 33-411 (a) and opined that subsection (b) aims to place an

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(e) Nothing in this section shall limit or affect the right to serve any process required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

[3] Former § 33-411 (b) corresponds to § 33-929 (e) and former § 33-411 (c) corresponds to § 33-929 (f).

unregistered foreign corporation transacting business in Connecticut in the same position as one that is registered. From there the court reasoned that "it is logical to conclude that General Statutes § 33–411(a) means that a foreign corporation which has appointed an agent for service of process because it has acknowledged that it is conducting business within this state will be subject to suit in this state upon any cause of action arising out of such business." *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The court saw "no good reason to provide a greater shield to foreign corporations which have acknowledged they do business here than to corporations which have not acknowledged the same or which, in fact, do not ordinarily transact business in this state." Id, 207.

Although the court in *Wallenta* at first appeared to limit the scope of jurisdiction to causes of action arising out of business conducted in the state, the court went further to say that "such business" did not have to involve the business of renting cars in Connecticut, but merely the "general business" of renting cars to Connecticut residents wherever that business might be conducted. Id. "The courts of this state have the authority to determine whether personal jurisdiction may be asserted against a foreign corporation doing business here arising out of a cause of action for activities which occurred in another state and which were unconnected to the activities of the corporation here." Id. Citing the Restatement (Second), Conflict of Laws § 44,[4]

[4] Restatement (Second), Conflict of Laws § 44 provides: "A state has power to exercise judicial jurisdiction over a foreign corporation which has authorized an agent or a public official to accept service of process in actions brought against the corporation in the state as to all causes of action to which the authority of the agent or official to accept service extends." In *Wallenta*, the court cites comment (a) to this section, which states, "By authorizing an agent or public official to accept service of process in actions brought against it, the corporation consents to the exercise by the state of judicial jurisdiction over it as to all causes of action to which the authority of the agent or official extends. This consent is effective even though no other basis exists for the exercise of jurisdiction over the corporation." The court in *Wallenta* did not reference comment (c) which specifies that the scope of the agent's authority is, in part, a function of the terms of the statute. Comment (c) does also state, however, that "[b]y qualifying under one of these [registration] statutes, the corporation renders itself subject to whatever suits may be brought against it within the terms of the statutory consent as interpreted by the local courts provided that this interpretation is one that may fairly be drawn from the language of the enactment."

the court held, "Since the defendant consented to the personal jurisdiction of this state, the plaintiff did not have to allege facts to establish that the defendant had made itself amenable to suit here. . . . The allegation that the defendant was licensed to do business in this state was sufficient to show that this state had authorized the assertion of jurisdiction over the defendant, and that the defendant had consented to that assertion of jurisdiction." Id., 208. In reaching this conclusion, the court appears to have untethered the jurisdictional inquiry concerning a registered foreign corporation from the limits imposed by § 33-411 (c).

In *Talenti*, nonresident individual plaintiffs brought an action against a foreign corporation, headquartered in Connecticut,[5] arising out of the alleged wrongful discharge of one of the plaintiffs, an employee of the company, at the defendant's corporate headquarters. The plaintiff's discharge was immediately followed by the distribution of an email, sent by the defendant from the same location to all its employees in Connecticut, New York and New Jersey, advising that the plaintiff had failed a drug test. The defendant moved to dismiss on the grounds that the plaintiffs could not invoke the long arm statute governing foreign corporations, then and now General Statutes § 33-929,[6] because the plaintiffs were not Connecticut residents. Section

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[5] Pursuant to General Statutes § 33-602 (18) a foreign corporation is "a corporation incorporated under a law other than the law of this state."

[6] § 33-929. Service of process on foreign corporation (footnote continued on page 15)

(a) The registered agent of a foreign corporation authorized to transact business in this state is the corporation's agent for service of process, notice or demand required or permitted by law to be served on the foreign corporation. When the registered agent is other than the Secretary of the State and his successors in office, service may be effected by any proper officer or other person lawfully empowered to make service by leaving a true and attested copy of the process, notice or demand with such agent or, in the case of an agent who is a natural person, by leaving it at such agent's usual place of abode in this state.

(b) A foreign corporation may be served by any proper officer or other person lawfully empowered to make service by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation: (1) Has no registered agent or its registered agent cannot with reasonable diligence be served; (2) has withdrawn from transacting business in this state under section 33-932; or (3) has had its certificate of authority revoked under section 33-936.

33-929 (f) provides that foreign corporations are subject to suit "by a resident of this state" when the other requirements of that subsection are met. See *Matthews v. SBA, Inc.*, 149 Conn. App. 513, 555, 89 A.3d 938 (2014) ("explicit language of § 33–929 (f) empowers only 'a resident of this state' or a 'person having a usual place of business in this state' to sue a foreign corporation in a Connecticut court."). Absent a statutory basis for the exercise of jurisdiction, the defendant

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(c) When the Secretary of the State and his successors in office have been appointed a foreign corporation's registered agent, a foreign corporation may be served by any proper officer or other person lawfully empowered to make service by leaving two true and attested copies thereof together with the required fee at the office of the Secretary of the State or depositing the same in the United States mail, by registered or certified mail, postage prepaid, addressed to said office. The Secretary of the State shall file one copy of such process and keep a record of the date and hour of such receipt. He shall, within two business days after such service, forward by registered or certified mail the copy of such process to the corporation at the address of its principal office as last shown on his records.

(d) Service is effective under subsection (b) of this section at the earliest of: (1) The date the foreign corporation receives the mail; (2) the date shown on the return receipt, if signed on behalf of the foreign corporation; and (3) five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage prepaid and correctly addressed. In the case of service on the Secretary of the State, service so made shall be effective as of the date and hour received by the Secretary of the State as shown on his records.

(e) Every foreign corporation which transacts business in this state in violation of section 33-920 shall be subject to suit in this state upon any cause of action arising out of such business.

(f) Every foreign corporation shall be subject to suit in this state, by a resident of this state or by a person having a usual place of business in this state, whether or not such foreign corporation is transacting or has transacted business in this state and whether or not it is engaged exclusively in interstate or foreign commerce, on any cause of action arising as follows: (1) Out of any contract made in this state or to be performed in this state; (2) out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business, whether the orders or offers relating thereto were accepted within or without the state; (3) out of the production, manufacture or distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers; or (4) out of tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance.

(g) In any action brought under subsection (e) or (f) of this section, or in any foreclosure or other action involving real property located in this state in which a foreign corporation, although not transacting business in this state, owns or claims to own an interest, service of process on such corporation may be made as provided in subsection (b) of this section, except that the service shall be addressed to the corporation at its principal office or, if it has no such office or the address of such office is not known, to such corporation's last office as shown in the official registry of the state or country of its incorporation, which address shall be set forth in the writ or other process.

(h) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

argued, the court lacked personal jurisdiction over the defendant. The plaintiffs argued that because they served two of the defendant's officers at their Connecticut residence and at corporate headquarters respectively, the court acquired jurisdiction pursuant to General Statutes § 52-57 (c), which governs the service of process on private corporations other than foreign corporations. Section 33-929, including the residency requirement set forth in subsection (f), was not applicable according to the plaintiffs.

The court first concluded there was jurisdiction under the foreign corporation statutes in Part XVI of Chapter 601. Citing *Wallenta*, and again disregarding the limits imposed by § 33–920 (f), the court held that "when a foreign corporation complies with the requisites of General Statutes § 33–920 by obtaining a certificate of authority and complies with the requisites of General Statutes § 33–926 by authorizing a public official to accept service of process, it has consented to the exercise of jurisdiction over it by the courts of this state." (Footnotes omitted.) *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 854-55. "[N]othing in § 33–929 (f) limits the court's exercise of personal jurisdiction over the corporation. . . . the defendant has voluntarily consented to the personal jurisdiction of it by the courts of this state." Id., 855. The court also agreed with the plaintiffs that § 52-57 (c) provided a basis for the assertion of personal jurisdiction. Id., 856.

Faced with these decisions, the defendant argues that the court's conclusion in *Talenti,* that registration as a foreign corporation constitutes voluntary consent to personal jurisdiction unencumbered by the limitations set forth in § 33–929 (f), is nonbinding dictum and the defendant attempts to distinguish *Wallenta*.[7] The defendant reads *Wallenta* to authorize, under §

[7] *Wallenta* is distinguishable to the extent that, after concluding there was a statutory basis for the assertion of jurisdiction, it remanded the case to the trial court for purposes of conducting a due process analysis. *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 208-09. In *Talenti*, the court held no due process analysis was

33–411 (a), the assertion of jurisdiction over a registered foreign corporation beyond the specific circumstances identified in § 33–411 (c). Apart from those circumstances, according to the defendant's reading of *Wallenta*, a foreign corporation that not only is registered but actually conducts business in the state, is subject to jurisdiction under § 33–411 (a), but only for causes of action arising out of that business. At one point in *Wallenta* the court does say that under § 33–411 (a) a registered foreign corporation that "has acknowledged that it is conducting business within this state will be subject to suit in this state upon *any cause of action arising out of such business*." (Emphasis added.) *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The court goes on to say, however, that by registering to conduct business a foreign corporation acknowledges that it is doing business in the state and is subject to suit for causes of action that are "unconnected to the activities of the corporation here. . . ." and a plaintiff does "not have to allege facts to establish that the defendant had made itself amenable to suit here." Id., 207-08.

As to *Talenti*, the defendant dismisses as dictum the court's conclusion that by registering to conduct business and authorizing an agent to accept service of process, a foreign corporation "has consented to the exercise of jurisdiction over the corporation." *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 854-55. The defendant argues this holding is dictum because, based on the facts of the case, there were other grounds upon which the court could have concluded the exercise of jurisdiction was proper. The facts do reflect that the defendant in *Talenti* was headquartered in Connecticut and much of the alleged tortious conduct occurred in Connecticut, the record thus affording a basis for both general and specific

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required because the defendant had voluntarily consented to jurisdiction. *Talenti* v. *Morgan & Brother Manhattan Storage Co.*, supra, 113 Conn. App. 856 n.14. The court will separately address the question whether a due process analysis is required notwithstanding consent to statutory jurisdiction.

jurisdiction. For whatever reason, the court chose not to rely on those grounds and instead held, relying on *Wallenta*, that simply by registering to do business, "the defendant has voluntarily consented to the personal jurisdiction of it by the courts of this state." Id., 856. Contrary to the defendant's suggestion, this court cannot dismiss this holding as dictum.

Dictum is a statement in a judicial opinion that does not express the court's resolution of an issue before it. "[A] court's discussion of matters necessary to its holding is not mere dictum. . . . Dictum includes those discussions that are merely passing commentary. . . those that go beyond the facts at issue . . . and those that are unnecessary to the holding in the case. . . . [I]t is not dictum [however] when a court . . . intentionally takes up, discusses, and decides a question germane to, though not necessarily decisive of, the controversy. . . . Rather, such action constitutes an act of the court [that] it will thereafter recognize as a binding decision." (Citation omitted; internal quotation marks omitted.) *Cruz* v. *Montanez*, 294 Conn. 357, 376-77, 984 A.2d 705 (2009). The defendant's focus on the facts of *Talenti* is understandable. In *Talenti*, at least on the surface, it appears there were grounds for concluding that § 33–929 (f) (4) provided a basis for finding statutory jurisdiction for "tortious conduct in this state," and that the presence of the defendant's headquarters in Connecticut dispensed with any potential due process challenges. The court, however, deliberately chose to base its decision on different grounds -- the defendant's voluntary consent to jurisdiction by virtue of its registration. Right or wrong, that was the court's holding. The fact that the court could have reached the same result based on a different holding does not render the holding it relied upon dictum. Nor does the court's alternative holding, that service pursuant to § 52-57 (c) supported the same result, render the principal ground dictum. "[W]here there are two grounds, upon either of which an appellate court may rest its decision, and it adopts both, the ruling on neither is obiter [dictum], but each is the judgment of the court,

and of equal validity with the other." (Internal quotation marks omitted.) *Rosenthal Law Firm, LLC* v. *Cohen*, 190 Conn. App. 284, 291-92, 210 A.3d 579 (2019), quoting *United States v. Title Ins. & Trust Co.*, 265 U.S. 472, 486, 44 S. Ct. 621, 68 L.Ed. 1110 (1924).

The Appellate Court's decisions concluding that a foreign corporation's registration to conduct business in the state constitutes consent to jurisdiction on any cause of action have been criticized. Most pointedly, in *Brown* v. *Lockheed Martin Corp.*, 814 F.3d 619 (2d Cir. 2016), the Second Circuit criticized *Talenti's* construction of Connecticut's foreign corporation registration statutes. Construing § 33–929, the court maintained that the statute "provides for service of process on foreign corporations, and appears designed to confer what can fairly be characterized as specific jurisdiction in primarily two provisions: § 33–929 (e) (unregistered corporation 'subject to suit' in the state with respect to causes of action 'arising out of' its business in the state) and § 33–929 (f) (corporations 'subject to suit in the state' on listed causes of action related to in-state matters). Section 33–929 nowhere expressly provides that foreign corporations that register to transact business in the state shall be subject to the 'general jurisdiction' of the Connecticut courts or directs that Connecticut courts may exercise their power over registered corporations on any cause asserted by any person. Indeed, it appears to limit the ability of out-of-state plaintiffs to proceed against foreign corporations registered in Connecticut even with respect to certain listed matters bearing a connection to Connecticut." Id., 634. See also *Peeples* v. *State Farm Mutual Auto. Ins. Co.*, Superior Court, judicial district of Stamford, Docket No. CV-18-6036595-S (Aug. 8, 2019) (2019 WL 4201550, *5) ("Subsections (a) through (d) and subsections (g) and (h) address service of process and agents for service. Subsections (e) and (f), by contrast, address jurisdiction—entities coming within the scope of those subsections are 'subject to suit in this state.'").

This court agrees that the Appellate Court's analysis of § 33–929 attributes a jurisdictional function to § 33–929 (a) that is not apparent from the language of the statute. The premise for doing so was the court's logic that registered foreign corporations should be treated no differently than unregistered corporations that conduct business in Connecticut despite their failure to register. *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 206-07. The only way to ground that logic in the statute was to construe subsection (a), authorizing service of process on a registered foreign corporation's agent "in connection with any action or proceeding required or permitted by law. . ." as a source of statutory long arm jurisdiction. General Statutes § 33–411 (a), now codified as § 33–929 (a).[8] The result may be logical, but the legislature's logic appears to differ. The statute does treat registered and unregistered foreign corporations differently. As the court pointed out in *Brown*, one obvious difference is that § 33–929 (f) limits the class of plaintiffs who may sue a registered foreign corporation by imposing a residency requirement. *Brown* v. *Lockheed Martin Corp.*, supra, 814 F.3d 634; see *Matthews v. SBA, Inc.*, supra, 149 Conn. App. 555. No such restriction is placed on plaintiffs suing unregistered foreign corporations transacting business in Connecticut under § 33–929 (e). Attributing a jurisdictional function to subsection (a) also calls the utility of subsection (f) into question. "[I]f the mere maintenance of a registered agent to accept service under § 33–926 effected an agreement to submit to general jurisdiction, it seems to us that the specific jurisdiction provisions of the long-arm statute, § 33–929 (for registered corporations), wouldn't be needed except with regard to *un*registered corporations: Registered corporations would be subject to jurisdiction with regard to all matters simply by virtue of process duly served on its appointed agent. And the restrictions imposed by § 33–929 (f) on the class of plaintiffs entitled to avail themselves of the long-arm

[8] Section 33-929 (a) also authorizes service of process on a foreign corporation's agent "required or permitted by law to be served on the foreign corporation."

statute would seem to be meaningless, since for registered corporations the agent's mere availability to receive process would suffice." (Emphasis in original.) *Brown* v. *Lockheed Martin Corp.*, supra, 814 F.3d 636.

The plaintiff seeks to bolster the court's holding in *Talenti* by relying on the language in § 33-924 (b), providing that a foreign corporation registered to do business in Connecticut "has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by sections 33-600 to 33-998, inclusive, is *subject to the same duties, restrictions, penalties and liabilities imposed on, a domestic corporation of like character*." (Emphasis added.) Neither *Talenti* nor *Wallenta* mention this statutory language, but it is the central focus of other courts interpreting similar foreign corporation registration statutes to determine whether they provide for implied consent to personal jurisdiction. *Madsen* v. *Sidwell Air Freight*, United States District Court, Docket No. 1:23-cv-0008-JNP (N. D. Utah, March 18, 2024) (2024 WL 1160204 *9). The argument is that this language "must be read as to establish consent because all domestic [] corporations are subject to general jurisdiction and, through registration, a foreign corporation is subject to the same 'duties' and 'liabilities' as a domestic corporation, including general jurisdiction. Therefore, allowing a registered foreign corporation to avoid general jurisdiction would impermissibly grant a foreign corporation 'greater rights and privileges' than a domestic corporation." Id. While this language, standing alone, might raise an ambiguity, § 33-929 (f) clarifies the circumstances under which a foreign corporation is subject to jurisdiction in Connecticut. Other courts construing the "same duties, restrictions, penalties and liabilities" language have concluded "[i]t would stretch the words beyond their plain meanings to define 'duties, restrictions, penalties, and liabilities' as general personal jurisdiction." *K&C Logistics, LLC* v. *Old Dominion Freight Line, Inc.*, 374 So.3d 515, 524

(Miss. 2023). In *K&C Logistics* and *Madsen*, separate statutes disavowed the notion that registering to conduct business, by itself, creates the basis for personal jurisdiction. The Connecticut statutes contain no such disclaimer. Nevertheless, most modern courts construing registration statutes that do not explicitly provide for consent to jurisdiction have concluded they do not provide for implied consent. *Madsen* v. *Sidwell Air Freight*, supra, 2024 WL 1160204 *8 n.12 (collecting cases).

These critiques of the statutory language, and particularly of *Talenti*, do not mean that the Appellate Court's determination of the scope of jurisdiction established by §§ 33-920, 33-926 and 33-929 was merely dicta. In *Brown*, the court labeled the Appellate Court's determination as dicta, but only because there were alternative holdings available to the court based on the factual record. The Second Circuit did not analyze the function performed by the Appellate Court's conclusions on the registration issue in that court's ultimate decision that the court had jurisdiction. The determination of the registration issue was not "passing commentary." *Cruz* v. *Montanez*, supra, 294 Conn. 376-77. The court's determination that the defendant voluntarily consented to jurisdiction was an essential premise for the court's conclusion that the court had personal jurisdiction over the defendant. In *Brown*, it was unnecessary for the court to conclude that *Talenti's* determination of the issue was dicta; the court bypassed the holding in *Talenti* by treating it as the decision of a lower court that was not binding on a federal court. *Brown* v. *Lockheed Martin Corp.*, supra, 814 F.3d 636 n.17. The court concluded the "Appellate Court erred" and the court proceeded to rely upon its own construction of the statutes. Id., 636. This court does not have that option. *Reville* v. *Reville*, 312 Conn. 428, 458 n.29, 93 A.3d 1076 (2014). The court concludes, therefore, that by obtaining a certificate of authority and

appointing a registered agent for service of process the defendant voluntarily consented to jurisdiction in Connecticut.

B. Long-Arm Jurisdiction Under General Statutes § 33-929 (f)

While maintaining that statutory jurisdiction is established by the defendant's compliance with the registration statutes, the plaintiff also argues that the specific grounds identified in § 33-929 (f) are satisfied. The plaintiff argues that the facts alleged in the complaint, tempered by the facts set forth in the Bricker affidavit, are sufficient to establish jurisdiction under subsections (2), (3) and (4) of § 33-929 (f). The plaintiff argues that its claims against the defendant arise out of the defendant's solicitation of business in Connecticut, its distribution of goods in the state and its tortious conduct in the state.

1. Solicitation of Business (§ 33-929 (f) (2))

Section 33-929 (f) (2) provides for jurisdiction "on any cause of action arising. . . out of any business solicited in this state by mail or otherwise if the corporation has repeatedly so solicited business. . ." In support of its motion to dismiss the defendant argues that the only acts of solicitation alleged in the complaint involve nationwide advertisements that are not specifically targeted at Connecticut residents. Although the defendant concedes that its national advertising does relate to the plaintiff's claims, citing the Bricker affidavit the defendant argues that its national advertising campaigns were not directed at Connecticut. The complaint alleges that the defendant "has engaged in national advertising campaigns that have deliberately targeted consumers throughout the United States, including Connecticut, in order to increase its sales and enhance its reputation." More specifically, the plaintiff alleges that starting in 1970 and continuing until at least 2007, the defendant "purchased advertising—in the form of 'advertorials'—to influence consumers about climate change with the goal of selling more of its

product." During this period the defendant purchased advertorials in The New York Times. Quantifying the extent of this New York Times advertising, the plaintiff alleges that "[b]etween 1972 and 2001, the advertorials were published nearly every Thursday and occasionally on other days of the week." The plaintiff alleges further that The New York Times "has historically targeted and continues to specifically target the tri-state (Connecticut, New York, New Jersey) area. . . ." and that during the relevant period "had a circulation of tens of thousands of readers in Connecticut." The plaintiff argues that the defendant's many "advertorials" in the New York Times, as well as in other national publications read by Connecticut residents, satisfies the requirements of § 33-929 (f) (2).

The plaintiff relies principally upon *Thomason* v. *Chemical Bank*, 234 Conn. 281, 661 A.2d 595 (1995) in support of its position, while the defendant emphasizes the court's decision in *Lombard Bros., Inc.* v. *General Asset Management Co.*, 190 Conn. 245, 460 A.2d 481 (1983). Neither case provides a direct answer to the question raised, whether and under what circumstances advertising in a nationally distributed publication that reaches Connecticut consumers may supply a foundation for jurisdiction under § 33-929 (f) (2). In *Thomason*, the court addressed the construction of the phrase "arising out of" as it is used in § 33-411 (c) (2) (now § 33-929 (f) (2)), against the backdrop of the United States Supreme Court's construction of that phrase in the context of a due process analysis. *Thomason* v. *Chemical Bank*, supra, 234 Conn. 281. While the case did involve advertising in the New York Times and the Wall Street Journal, the court was not focused on whether these and other activities constituted the solicitation of business in Connecticut. The court was principally concerned with the question whether the phrase "arising out of" meant that a causal relationship between the solicitations and the plaintiff's cause of action was required. The court concluded that a causal relationship was

not required where there was a basis for the assertion of general jurisdiction over the defendant. At the time, general jurisdiction was understood to exist where a "defendant's contacts in the forum were of a 'continuous and systematic' nature." *Adams* v. *Aircraft Spruce & Specialty Co.*, 345 Conn. 312, 352, 284 A.3d 600 (2022). "*Thomason* predates sea changes to personal jurisdiction jurisprudence: the narrowing of the scope of general jurisdiction and the elevation of interstate federalism in the specific jurisdiction inquiry." Id., 351. In *Adams*, the court recognized that with respect to its construction of the phrase "arising out of" in a due process context *Thomason* had been abrogated by the Supreme Court in *Daimler AG* v. *Bauman*, 571 U.S. 117, 134 S. Ct. 746, 187 L. Ed. 2d 624 (2014) and *Bristol-Myers Squibb Co.* v. *Superior Court*, 582 U.S. 255, 137 S. Ct. 1773, 198 L. Ed. 2d 395 (2017). *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 352-53.

In *Thomason*, the defendant bank's solicitations included advertisements in national publications distributed in Connecticut, but those advertisements also specifically mentioned Connecticut. Further, the defendant sent advertisements directly to its credit card customers in Connecticut. To the extent that *Thomason* sheds light on the meaning of "business solicited in this state" as that phrase is used in § 33-929 (f) (2), the facts of the case are distinguishable from the facts in the present case. The defendant's reliance on *Lombard*, however, is equally unavailing.

In *Lombard*, the defendant was a New York securities dealer that conducted all its business in New York and had not dealt directly with the plaintiff. The plaintiff maintained there was personal jurisdiction over the defendant pursuant to § 33-411 (c) (2) based on two advertisements placed in the New York Times and the Wall Street Journal. The court disagreed. "The only conduct of the defendant that can even arguably be characterized as solicitation is its

placement, sporadically, of advertisements in the New York Times and the Wall Street Journal. Such advertisements, without more, cannot constitute repeated solicitation of business." *Lombard Bros., Inc.* v. *General Asset Management Co.*, supra, 190 Conn. 257. In the present case, the defendant argues that this holding in *Lombard* establishes that advertising in The New York Times does not satisfy § 33-929 (f) (2). *Lombard* does not establish that proposition. The defendant overlooks the distinction drawn by the court in *Lombard* between the case before it and "genuine solicitation cases such as *McFaddin* v. *National Executive Search, Inc.*, 354 F. Supp. 1166, 1168-70 (D. Conn. 1973)." Id. In *McFaddin*, a Connecticut plaintiff purchased a United Kingdom executive recruiting franchise from a Delaware corporation owned by a Wisconsin resident. The defendant franchisor, who was not registered to do business in Connecticut, approved the sale. The plaintiff sued the franchisor, who moved to dismiss based on a lack of personal jurisdiction. The court concluded there was jurisdiction under § 33-411 (c) (2) because the "defendant advertised the United Kingdom franchise in the *Wall Street Journal* approximately once a month for four months, and on at least two other occasions ran similar ads for other available franchises. The placing of at least six franchise ads over a six-month period in a newspaper whose circulation clearly includes Connecticut... demonstrates a sufficiently repetitious pattern to satisfy subsection (c)(2)."[9] *McFaddin* v. *National Executive Search, Inc.*, supra, 354 F. Supp 1169.

In the present action, the defendant argues that the frequency of advertising in a national publication "does not transform the advertisements into conduct *targeted* at a particular state."

[9] The defendant had placed weekly advertisements in The New York Times and the Wall Street Journal promoting the services offered by the franchises, and included a Greenwich, Connecticut franchise on a list of suggested contacts. The court, however, found the Wall Street Journal advertisements for the sale of franchises, which did not mention and were not explicitly aimed at Connecticut, "most relevant." *McFaddin* v. *National Executive Search, Inc.*, supra, 354 F. Supp. 1168.

(Emphasis in original.)[10] Another case relied upon by the defendant supports the opposite proposition. In *Marcoccia* v. *Post*, Superior Court, judicial district of Fairfield, Docket No. CV-05-5000471-S (May 20, 2008) (45 Conn. L. Rptr. 572), the court said "the frequency of the advertising and the natural audience of the medium in which the advertising appeared is something to be considered apart from mere content. Connecticut courts, in determining whether to assert personal jurisdiction over a defendant, have examined the frequency of a defendant's advertising in conjunction with whether those advertisements can naturally be expected to be observed by Connecticut residents."

The complaint alleges that The New York Times had "tens of thousands of readers in Connecticut" during the relevant period of 1970 to 2007. Those Connecticut readers were exposed to weekly advertorials between 1970 and 2001. The New York Times, though considered a national publication now available on the internet, was largely a print publication that had to be physically delivered to homes and retail outlets during that period. There is "nothing distinctively 21st century" about this case. *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, 592 U.S. 351, 372, 141 S.Ct. 1017, 209 L.Ed.2d 225 (2021) (*Alito, J.* concurring). The complaint alleges that the defendant placed these advertorials in the New York Times "with the goal of selling more of its product." If so, its objective must have been to do so within the principal area of the newspaper's distribution, which includes Connecticut. It is not necessary for the advertisements to specifically mention Connecticut to draw that conclusion.

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[10] The defendant also relies on the court's discussion in *Adams* v. *Aircraft Spruce & Specialty Co.*, supra 345 Conn. 351 concerning the abrogation of *Thomason's* foreseeability standard in the context of a due process analysis, but *Adams* does not construe § 33-929 (f) (2). The defendant further relies on cases involving website advertising where courts must consider issues such as the interactivity of the website and other indicia of targeting Connecticut to determine the applicability of § 33-929 (f) (2). *West World Media, LLC* v. *Ikamobile Ltd.*, 809 F. Supp. 2d 26 (2011); *On Site Gas Systems, Inc.* v. *USF Technologies, Inc.*, 553 F. Supp. 2d 182 (D. Conn. 2008). These cases are not useful in the context of the present case involving print advertising physically distributed in the state.

McFaddin v. *National Executive Search, Inc.*, supra, 354 F. Supp. 1168 (Wall Street Journal advertisements "most relevant"); *Lombard Bros., Inc.* v. *General Asset Management Co.*, supra, 190 Conn. 257 (*McFaddin* a "genuine solicitation case[]"). The court concludes the record facts, including the volume of advertising and its widespread physical distribution in Connecticut, establish at this stage that the defendant's advertorials were sufficiently targeted to satisfy § 33-929 (f) (2)'s provision for personal jurisdiction over foreign corporations that have solicited business in this state.[11]

2. Distribution of Goods (§ 33-929 (f) (3))

Section 33-929 (f) (3) provides for jurisdiction arising out of the "distribution of goods by such corporation with the reasonable expectation that such goods are to be used or consumed in this state and are so used or consumed, regardless of how or where the goods were produced, manufactured, marketed or sold or whether or not through the medium of independent contractors or dealers." The defendant argues this subsection is inapplicable because the case arises out of its alleged misrepresentations, not its sale of goods into Connecticut. The plaintiff argues that in a misrepresentation case, the "arising out of" limitation is satisfied if the defendant advertises goods that are consumed in this state and it is reasonably foreseeable that it may be haled into court by the entity charged with enforcing the consumer protection laws of the jurisdiction where the advertisements ran.

The plaintiff relies on the distinction drawn in *Thomason* between the meaning of the phrase "arising out of" as it is used in § 33-929 (f) and the use of that phrase in a due process analysis. In *Thomason* the court held that, for purposes of establishing general as opposed to

[11] The plaintiff retains the burden to prove by a preponderance of the evidence at trial that the defendant's advertising activities establish a basis for jurisdiction under § 33-929 (f) (2). *Designs for Health, Inc.* v. *Miller*, supra, 187 Conn. App. 11-14.

specific jurisdiction, the "arising out of" language in § 33-929 does not require a causal connection between the cause of action and the jurisdictional contacts in question – in that case the solicitation of business and for present purposes the distribution of goods. *Thomason* v. *Chemical Bank*, supra, 234 Conn. 292. The plaintiff carries that distinction forward notwithstanding the narrowing of the scope of general jurisdiction as recognized in *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 352.

In *Thomason*, the court held that the "arising out of" language in § 33-411 (c) requires only that the plaintiff demonstrate it was "reasonably foreseeable" that, as a result of the defendant's conduct in the state, the defendant could be sued in Connecticut. Our appellate courts have not revisited the construction of the "arising out of" language used in § 33-929 (f) since *Thomason*. In *Adams*, the trial court had concluded that no causal connection between the cause of action and the defendant's conduct in Connecticut was required for purposes of the statute, but then concluded that a causal connection was necessary for purposes of satisfying due process. On appeal, the defendant did not challenge the trial court's conclusion that § 33-929 (f) was satisfied, despite the absence of a causal connection, and the court limited its review to whether the exercise of personal jurisdiction would violate due process. Id., 323.

Although the court in *Adams* did not revisit *Thomason's* construction of the statute, if it had done so it may have adapted the statutory analysis to the change in constitutional law. Just as the court's understanding of general jurisdiction informed the court's construction of the statute in *Thomason*, it is possible that the narrowing of the scope of general jurisdiction would prompt a change in the statutory analysis as well. As it stands, however, *Thomason's* foreseeability standard still governs the construction of the "arising out of" language in § 33-929 (f), and courts continue to follow that construction. See *Rice* v. *American Talc Co.*, Superior

Court, judicial district of Fairfield, Docket No. CV-15-6053658-S (Sept. 7, 2017) (2017 WL 4873098). Consequently, the court applies the *Thomason* foreseeability standard and concludes that § 33-929 (f) (3) provides a basis for long arm jurisdiction over the defendant. Given the scale of the defendant's direct and indirect sale and distribution of its products in Connecticut over the decades at issue, it is reasonably foreseeable that the defendant may be haled into court by the Connecticut Attorney General in an action seeking to enforce the consumer protection laws as they relate to the advertising that generated those sales.[12]

3. Tortious Conduct in This State (§ 33-929 (f) (4))

Section 33-929 (f) (4) provides for jurisdiction arising out of "tortious conduct in this state, whether arising out of repeated activity or single acts, and whether arising out of misfeasance or nonfeasance." The defendant argues that the misconduct alleged in the complaint occurred outside Connecticut, even though some of the alleged effects of the conduct were felt in Connecticut. The plaintiff argues, citing *Knipple* v. *Viking Communications, Ltd.*, 236 Conn. 602, 674 A.2d 426 (1996), that misrepresentations entering Connecticut from outside the state constitute tortious conduct in the state for purposes of § 33-929 (f) (4). In *Knipple*, the plaintiffs received a solicitation offering business opportunities. They responded and started receiving communications from the defendant, a foreign corporation with no apparent ties to Connecticut. As a result of these communications, the plaintiffs purchased a business from the defendant. They subsequently sued the defendant for fraud and misrepresentation, asserting a claim under CUTPA. The defendant's challenge to personal jurisdiction failed under the court's holding that "[f]alse representations entering Connecticut by wire or mail constitute tortious conduct in

[12] Again, the plaintiff retains the burden to prove by a preponderance of the evidence at trial that the defendant's sale and distribution of goods in the state establishes a basis for jurisdiction under § 33-929 (f) (3). *Designs for Health, Inc.* v. *Miller*, supra, 187 Conn. App. 11-14.

Connecticut under § 33-411 (c) (4)." Id., 610. The defendant distinguishes *Knipple* on the basis that the alleged misrepresentations at issue in the present case did not enter Connecticut "by wire or mail" but rather by publication in the New York Times. While the means of communication need not be restricted to wire or mail, the principle underlying this distinction appears to be that the alleged misrepresentation must be communicated directly to a Connecticut recipient to constitute tortious conduct in this state. In *Knipple*, for example, the alleged misrepresentations were communicated directly to the plaintiffs by personal mail and telephone calls. Id., 605.

The line of personal jurisdiction cases reflecting the holding in *Knipple* are collected in R. Langer et al., 12 Connecticut Practice Series: Connecticut Unfair Trade Practices, Business Torts and Antitrust (2023–2024 Ed.) § 3:7, n.59. All but one of the cases address only direct communications with the plaintiff that contain alleged misrepresentations. The exception is *McFaddin* v. *National Executive Search, Inc.*, supra, 354 F. Supp. 1166. In *McFaddin*, the source of the misrepresentations, potentially newspaper advertising, was unclear and the court deferred the issue of personal jurisdiction based on tortious conduct within the state to allow further development of the facts. Id., 1171-72. In addressing the issue, the court cited with approval cases that "rejected any distinction based upon the method by which [a] false representation reached the forum state. . . ." Id., 1171. In particular, the court relied upon *Buckley* v. *New York Post Corp.*, 373 F.2d 175 (2d Cir. 1967), where the court concluded that Connecticut had personal jurisdiction over the New York Post for a cause of action arising out of the publication of defamatory information concerning a Connecticut resident. Because the newspaper was physically distributed to a substantial number of subscribers in Connecticut, the court concluded that the alleged tort had been committed within Connecticut for purposes of § 33-411 (c) (4). Id., 180.

This analysis contrasts with the broader proposition cited by the defendant, outside the context of libel, that tortious conduct does not occur within the state simply because its effects are felt in the state. "[J]urisdiction may be founded on § 33-929 (f) (4) only if the tortious conduct occurred in Connecticut, regardless of whether the injury was felt in Connecticut from tortious activity occurring outside Connecticut." *Amerbelle Corp.* v. *Hommell*, 272 F. Supp. 2d 189, 194 (D. Conn. 2003) (foreign corporation alleged to have tortiously interfered with Connecticut employment contract not subject to personal jurisdiction under § 33-929 (f) (4)). In *Amerbelle*, the court contrasted the text of General Statutes § 52-59b, the long arm statute applicable to individuals, with § 33–929 (f) (4) governing foreign corporations. "Section 52-59b... has two distinct sub-sections. One applies to tortious acts done 'within the state' and the other applies to tortious acts done 'outside the state, causing injury to a person within the state.' Section 33–929 (f)... limits jurisdiction to causes of action arising out of tortious conduct 'in this state'.... If the Legislature intended Connecticut's long-arm statute to reach foreign corporations who commit torts outside of Connecticut, it would have expressly done so as it did with § 52-59b." Id., 195.

In *TransAct Technologies, Inc.* v. *FutureLogic, Inc.*, United States District Court, Docket No. 3:05cv0818 (PCD) (D. Conn. Aug 31, 2006) (2006 WL 8449240, **3-4), relied upon by the defendant, the court followed *Amerbelle*'s reasoning to hold that an allegedly false press release issued in California, which reached the websites of the Washington Post and other publications and harmed a Connecticut corporation, did not establish a basis to assert jurisdiction under § 33-929 (f) (4). The court distinguished *Buckley*, which also involved defamatory statements originating out of state, because in *Buckley* the statements were "*affirmatively distributed in Connecticut* or expressly and directly aimed at Connecticut...." (Emphasis added.) Id., *5.

This distinction applies in the present case, and it is consistent with the distinction drawn in *Amerbelle*, because in the present case some of the defendant's conduct, the physical distribution of actionable statements, occurred in Connecticut. It must be emphasized that during the period in question, the 1970s through the 1990s, newspapers predominantly circulated by means of physical distribution and, as alleged, Connecticut had tens of thousands of subscribers in Connecticut exposed to over 1500 advertorials.

There is a dearth of authority from the Connecticut appellate courts on the reach of § 33–929 (f) (4). Whether more precisely targeted conduct is required, as the defendant advocates, or merely some physical activity in Connecticut that occurs in the natural course of committing the tort is an open question. The federal precedents described above place the present case more in the realm of *Buckley* than *Amerbelle*. Consequently, the court concludes that the defendant is subject to personal jurisdiction under § 33-929 (f) (4).[13]

III. Due Process

The court must address two issues concerning due process. First, is a due process analysis required when a foreign corporation is deemed to have voluntarily consented to jurisdiction by registering to do business in Connecticut? Second, considering the court's conclusions on the presence of specific jurisdiction under the long arm statute, is due process satisfied in the present case?

[13] As with the other subsections of § 33-929 (f), the plaintiff retains the burden to prove by a preponderance of the evidence at trial that the defendant's advertising activities establish a basis for jurisdiction under § 33-929 (f) (4). *Designs for Health, Inc.* v. *Miller*, supra, 187 Conn. App. 11-14.

A. Consent Jurisdiction

There are three categories of personal jurisdiction for purposes of due process analysis -- general jurisdiction, specific jurisdiction, and consent jurisdiction. *Fuld v. Palestine Liberation Organization*, 82 F.4th 74 (2d Cir. 2023). In *Talenti* v. *Morgan & Brother Manhattan Storage Co.,* supra, 113 Conn. App. 856 n.14, the court concluded that no due process analysis was required when a foreign corporation impliedly consents to jurisdiction by registering to do business in Connecticut. This conclusion was inconsistent with the same court's earlier determination that a due process analysis was required, even though implied consent had been established. *Wallenta* v. *Avis Rent a Car System, Inc.*, supra, 10 Conn. App. 208-09. In *Mallory* v. *Norfolk Southern Railway Co.*, supra, 600 U.S. 122, the Court held that due process does not prohibit a state from requiring consent to jurisdiction under a business registration statute that expressly required such consent. In doing so, the Court confirmed the vitality of *Pennsylvania Fire Ins. Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, 243 U.S. 93, 37 S.Ct. 344, 61 L.Ed. 610 (1917). In *Pennsylvania Fire*, the Court concluded that due process was not violated where a state court asserted personal jurisdiction over a foreign corporation by construing its business registration statute, which did not expressly provide for consent, to provide implied consent to jurisdiction. *Pennsylvania Fire Ins. Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, supra, 243 U.S. 95 ("the construction did not deprive the defendant of due process of law even if it took the defendant by surprise"). Still, under some circumstances, a statute that commands consent to jurisdiction may be subjected to scrutiny for compliance with due process. *Fuld v. Palestine Liberation Organization*, supra (due process incompatible with provision of Promoting Security and Justice for Victims of Terrorism Act (PSJVTA) deeming defendant to have consented to personal jurisdiction).

The defendant argues that in *Mallory* the Court held that a statute must provide "explicit notice" to a foreign corporation that registration to do business amounts to voluntary consent to personal jurisdiction. The court disagrees with that reading of *Mallory*. The majority in *Mallory* did limit its holding to the "statutory scheme and set of facts" before the Court. *Mallory* v. *Norfolk Southern Railway Co.*, supra, 600 U.S. 135. "It is enough to acknowledge that the state law and facts before us fall squarely within *Pennsylvania Fire's* rule." Id., 135-36. But the majority held that "*Pennsylvania Fire* controls this case" and rejected the proposition that "intervening decisions from this Court had implicitly overruled *Pennsylvania Fire*." (Internal quotation marks omitted.) Id., 134, 136. This court is not free to disregard *Pennsylvania Fire* based on *Mallory's* limited holding. *Pennsylvania Fire* remains good law and, as the Court in *Mallory* said, "If a precedent of this Court has direct application in a case, as *Pennsylvania Fire* does here, a lower court should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." (Internal quotation marks omitted.) Id., 136.

In *Pennsylvania Fire*, a Pennsylvania insurance provider issued an insurance policy to an Arizona company. To recover for losses sustained on its Colorado property, the Arizona company sued the Pennsylvania insurer in Missouri, where the insurer had obtained a license to do business. In compliance with a Missouri statute, when obtaining that license, the insurer had consented to service of process upon the superintendent of insurance. The statute contained no express condition that registration to do business amounted to consent to personal jurisdiction. The Supreme Court of Missouri held nevertheless that the insurer had consented to be sued in Missouri when it obtained a license to do business in the state. *Gold Issue Mining & Milling Co.*

v. *Pennsylvania Fire Ins. Co. of Philadelphia*, 184 S.W. 999, 1005 (Mo. 1916).[14] On appeal, the Supreme Court did not review Missouri's construction of its own statute and held "[t]he construction of the Missouri statute thus adopted hardly leaves a constitutional question open." *Pennsylvania Fire Ins. Co. of Philadelphia* v. *Gold Issue Mining & Milling Co.*, supra, 243 U.S. 95. Thus, under *Pennsylvania Fire*, consent to personal jurisdiction under a state business registration statute need not be based on an explicit consent provision in the statute when a state court has construed the statute to provide that registered businesses have consented to jurisdiction.

Shortly after the Court's decision in *Pennsylvania Fire*, it encountered a corollary circumstance in *Robert Mitchell Furniture Co.* v. *Selden Breck Const. Co.*, 257 U.S. 213, 42 S.Ct. 84, 66 L.Ed. 201 (1921). In *Robert Mitchell*, a business registration statute that did not explicitly require consent to jurisdiction had not been construed by a state court. The Court held that no such consent should be inferred from a registration statute "[u]nless the state law either expressly or by local construction" provides for consent. Id., 216. The Court noted, however, that "[o]f course when a foreign corporation appoints [an agent for service of process] as required by statute it takes the risk of the construction that will be put upon the statute and the scope of the agency by the State Court." Id., 215-16, citing *Pennsylvania Fire*. Courts continue to respect this deference paid to state courts' construction of their registration statutes, as providing for consent to jurisdiction, even when the statute does not expressly provide for consent. *Fidrych* v. *Marriott International, Inc.*, 952 F.3d 124, 137 (4th Cir. 2020) (Under *Pennsylvania Fire* and *Robert Mitchell*, registration amounts to consent where state courts have

[14] This construction of the statute was overruled by the Missouri Supreme Court eleven years later in *State ex rel. American Cent. Life Ins. Co.* v. *Landwehr*, 300 S.W. 294 (Mo. 1927), overruled on other grounds, *State ex rel. Phoenix Mut. Life Ins. Co. of Hartford, Conn.* v. *Harris*, 121 S.W.2d 141 (Mo. 1938).

interpreted the statute as imposing that condition); *Madsen* v. *Sidwell Air Freight*, supra, 2024 WL 1160204 *9 ("whether compliance with a registration statute constitutes consent is a question of state law").

The circumstances in the present case are not unlike those confronted by the Georgia Supreme Court in *Cooper Tire & Rubber Co.* v. *McCall*, 863 S.E.2d 81 (Ga. 2021), cert. denied, 143 S.Ct. 2689, 216 L.Ed.2d 1255 (2023). In 1992, that court construed its business registration statute and held that compliance with the statute by a foreign corporation amounts to consent to personal jurisdiction. *Allstate Insurance Co.* v. *Klein*, 422 S.E.2d 863 (Ga. 1992). It did so despite the absence of any express provision in the statute placing foreign corporations on notice that registration in accordance with the statute would constitute consent to jurisdiction.[15] It further concluded, in a footnote, that no constitutional issues were implicated by its holding. Id., 865 n.3. In *Cooper Tire*, issued nearly two years prior to *Mallory*, a foreign corporation challenged the validity and constitutionality of the *Klein* decision. The court upheld the constitutionality of *Klein's* construction of the statute based on its determination that *Pennsylvania Fire* remained good law. *Cooper Tire & Rubber Co.* v. *McCall*, supra, 863 S.E.2d 89. As in *Pennsylvania Fire*, the Georgia statute provided no express notification of consent to jurisdiction, but the *Klein* court's construction of the statute in 1992 did provide such notice. "Georgia's Business Corporation Code does not expressly notify out-of-state corporations that obtaining authorization to transact business in this State and maintaining a registered office or registered agent in this State subjects them to general jurisdiction in our courts. . . . However, our

[15] To reach this result the court relied on an "inverse implication" drawn from the definition of "nonresident" that included "a corporation which is not organized or existing under the laws of this state *and* is not authorized to do or transact business in this state...." (Emphasis added.) *Allstate Insurance Co.* v. *Klein*, supra, 422 S.E.2d 865. In *Cooper Tire* the court explained this result, reasoning that in the absence of implied consent to jurisdiction, the plain language of the definition would have created a gap in Georgia law that would eliminate any basis for personal jurisdiction over a foreign corporation. *Cooper Tire & Rubber Co.* v. *McCall*, supra, 863 S.E.2d 91.

general-jurisdiction holding in *Klein* does notify out-of-state corporations that their corporate registration will be treated as consent to general personal jurisdiction in Georgia. . . . . Unless and until the United States Supreme Court overrules *Pennsylvania Fire*, that federal due process precedent remains binding on this Court and lower federal courts." Id., 90. See *K&C Logistics, LLC* v. *Old Dominion Freight Line, Inc.*, supra, 374 So.3d 526-27 (distinguishing *Cooper Tire*).

In the present case, the Appellate Court's 1987 and 2009 constructions of the Connecticut registration statutes in *Wallenta* and *Talenti* are the functional equivalent of the *Klein* decision in Georgia. While in 2021 the Georgia Supreme Court was in a position to reconsider the validity of its decision in *Klein*, this court is not in a position to disregard the Appellate Court's construction of our statutes. With respect to *Wallenta's* remand for a due process hearing, the requirements of due process are a matter of federal law and the Supreme Court's decisions in *Pennsylvania Fire* and *Robert Mitchell* are dispositive. "Under the rules set out in *Pennsylvania Fire* and *Robert Mitchell Furniture*, obtaining the necessary certification to conduct business in a given state amounts to consent to general jurisdiction in that state only if that condition is explicit in the statute *or* the state courts have interpreted the statute as imposing that condition." (Emphasis added.) *Fidrych* v. *Marriott International, Inc.*, supra, 952 F.3d 137. Where consent to jurisdiction pursuant to a registration statute is present, no due process analysis is required. *Mallory* v. *Norfolk Southern Railway Co.*, supra, 600 U.S. 135.[16] [17]

[16] *Fuld v. Palestine Liberation Organization*, supra, is not to the contrary. The distinguishing factor in *Fuld* was that the federal statute at issue conferred no benefit on the defendants as consideration for their "deemed" consent to jurisdiction. *Fuld v. Palestine Liberation Organization*, supra, 82 F.4th 94-97. On that basis the court distinguished the business registration cases falling within the scope of *Pennsylvania Fire* and *Mallory*. Id.

[17] In a footnote at the conclusion of its opening brief, the defendant references an argument presaged by Justice Alito in *Mallory* that consent jurisdiction based on compliance with business registration statutes imposes an undue burden on interstate commerce and thus violates the dormant commerce clause. *Mallory* v. *Norfolk Southern Railway Co.*, supra, 600 U.S. 157-63 (*Alito, J.*, concurring in part and concurring in the judgment). The Court did not address the issue in *Mallory* because it had not been addressed in the courts below. Id., 150. In the present case

B. Due Process Under Long Arm Jurisdiction

The court's conclusion that there is statutory long arm jurisdiction under § 33-929 (f) (2), (3) and (4) must be subjected to a due process analysis. There is no claim, nor any basis for one, that the defendant is subject to general jurisdiction in Connecticut. In addition to consent jurisdiction, the plaintiff claims there is specific jurisdiction in accordance with § 33-929 (f). "In the context of specific jurisdiction. . . the due process test can be said to have the following elements: (1) the defendant purposefully availed itself of the privilege of conducting activities within the forum, (2) the plaintiff's claim arises out of or relates to the defendant's forum related contacts, and (3) if the first two elements favor the plaintiff's choice of forum, the exercise of jurisdiction is ultimately fair and reasonable under the circumstances." *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 325.

1. Purposeful Availment

"[T]he purposeful availment inquiry represents a rough quid pro quo: when a defendant deliberately targets its behavior toward the society or economy of a particular forum, the forum should have the power to subject the defendant to judgment regarding that behavior. . . . The cornerstones of this inquiry are voluntariness and foreseeability." (Internal quotation marks omitted.) *North Sails Group, LLC* v. *Boards & More GmbH*, supra, 340 Conn. 278, 264 A.3d 1. "Foreseeability means that the defendant's conduct and connection with the forum [s]tate are such that he should reasonably anticipate being haled into court there. . . . The requirement of purposeful availment, therefore, ensures that a defendant will not be haled into a jurisdiction

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the court does not address the issue because it is inadequately briefed. *Simms* v. *Zucco*, 214 Conn. App. 525, 527 n.1, 280 A.3d 1226, cert. denied, 345 Conn. 919, 284 A.3d 982 (2022) (declining review of federal constitutional claims due to inadequate briefing).

solely as a result of random, fortuitous, or attenuated contacts . . . ." (Citations omitted; internal quotation marks omitted.) *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 326.

The defendant has purposely availed itself of the privilege of conducting activities within Connecticut. The uncontested allegations of the complaint establish that, beyond its registration to conduct business in the state, the defendant has engaged in substantial business activities in Connecticut for decades and continues to do so. For decades during the relevant period, from 1970 to the present, the defendant chose to regularly and systematically advertise in the New York Times, a newspaper with significant circulation in Connecticut that, according to the complaint, "has historically targeted and continues to specifically target" the tri-state area including Connecticut. Over the same period the defendant has sold its products directly to Connecticut consumers and it continues to do so through independent contractors and retail gas stations bearing its brands. For over thirty years during the relevant period the defendant operated a chemical plant in Stratford, Connecticut. These and other activities make it plain that the defendant has purposely availed itself of the privilege of conducting business activities within Connecticut. *Keeton* v. *Hustler Magazine, Inc.*, 465 U.S. 770, 781, 104 S. Ct. 1473, 79 L. Ed. 2d 790 (1984) (when corporation "has continuously and deliberately exploited [a state's] market, it must reasonably anticipate being haled into [that state's] court[s]"). Unsurprisingly then, the defendant does not contest this aspect of the due process analysis.

2. Case-Linkage

The defendant's due process argument focuses on the case-linkage element of the analysis. As recent Supreme Court decisions have made clear, a defendant's purposeful availment of the privilege of conducting activities in the state is not sufficient to satisfy due process. Two elements were subsumed in the traditional "minimum contacts" analysis,

purposeful availment as discussed, and whether a plaintiff's claim "arises out of or relates to the defendant's forum related contacts." *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 323-26. Connecticut has characterized this second element as "case-linkage." Id., 326. "[W]hereas the purposeful availment element of specific jurisdiction focuses exclusively on whether the defendant has a sufficiently meaningful affiliation with the forum, the case-linkage element focuses on whether the *plaintiff's specific claim* is sufficiently connected to the defendant's forum contacts . . . . The case-linkage element therefore considers only those forum contacts of the defendant that have a connection to the specific claim brought by the plaintiff. (Citation omitted; emphasis in original.) Id., 337. Under the case-linkage analysis, "the forum does not exercise regulatory power over the defendant per se, but over some aspect of the defendant's conduct or activity—conduct or activity that takes place in *or causes an effect in the forum*." (Emphasis in original.) Id., 338.

The defendant argues that case-linkage is lacking because all its acts of alleged deceit and misrepresentation occurred outside Connecticut, and its in-state activities are distinct from those allegations. The sale of its products in Connecticut and its ongoing activities in support of those sales do not, it argues, involve the alleged national campaign of deception concerning the impact those products have on climate change. The defendant argues that the mere fact that "national" advertising may have reached Connecticut residents does not create an in-forum contact for purposes of due process. The defendant cites cases supporting the general proposition that the placement of advertising in a publication with national circulation, without more, does not constitute conduct directed to a particular forum sufficient to satisfy due process. See *Federated Rural Insurance Corp.* v. *Kootenai Electric Co-op*, 17 F.3d 1302, 1305 (10th Cir. 1994). The defendant cites *Marcoccia* v. *Post*, supra, 45 Conn. L. Rptr 572, as illustrative of its argument.

In *Marcoccia*, a Connecticut resident who had surgery at a New York hospital performed by a surgeon residing in New Jersey brought a medical malpractice claim in Connecticut. Both defendants moved to dismiss for lack of personal jurisdiction. To establish jurisdiction over the hospital the plaintiff relied upon advertising published in several New York newspapers, including monthly advertisements placed in the New York Times Magazine. The court held this was insufficient because that publication was not "aimed primarily at Connecticut . . . ." Id., *2. Significantly, however, the advertising at issue in *Marcoccia* was not promoting products or services offered in Connecticut. In the present case, the defendant's advertising supported the defendant's alleged goal of selling more of its product in Connecticut and elsewhere.

The court has already determined that the complaint alleges that the defendant solicited business in Connecticut through its New York Times advertorials and, based on *Knipple* v. *Viking Communications, Ltd.*, supra and *Buckley* v. *New York Post Corp.*, supra, that the alleged misrepresentations constitute tortious conduct in Connecticut. The court has concluded there is statutory long arm jurisdiction under § 33-929 (f) (2) and (4). Assuming the validity of those conclusions, it is not difficult to conclude that the alleged misconduct "arises out of or relates to the defendant's forum related contacts." *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 325. The case-linkage element "requires an activity or occurrence in the forum that is sufficiently material to the litigation and, in turn, to the forum's interest in that litigation." Id., 343. "The forum state's interest is at its zenith when either tortious conduct is committed in the forum or tortious injury occurs in the forum." Id., 345. The court's exercise of jurisdiction under § 33-929 (f) (3) also satisfies the requirements of due process because of the linkage between the defendant's advertising and the sale and distribution of its products in Connecticut.

The defendant's focus on the "national" nature of its advertising and its effort to detach that activity from the substantial volume of its sales in this forum creates a framework of analysis that narrows the field of jurisdictions capable of exercising consumer protection authority to the defendant's home and the home of its advertising outlets, despite the ubiquitous presence of the products promoted by that advertising in many other jurisdictions. The defendant's argument also overlooks the relevant allegations in the complaint concerning the New York Times. The complaint alleges, and the defendant has not contested, that during the relevant period the New York Times specifically targeted three states, including Connecticut. The Times' circulation in more remote locations might create a more tenuous connection to a particular forum, but not to a forum at the heart of the advertising's anticipated distribution.[18] It would be factitious to ignore the prolific sales of the defendant's products in Connecticut when analyzing the case-linkage between the alleged misrepresentations in its advertising aimed at supporting those sales and the defendant's contacts with the state.

In *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, supra, 592 U.S. 351, personal injury lawsuits arose out of alleged defects in Ford automobiles in Montana and Minnesota. Neither of the vehicles had been sold in either of those states. In contesting personal jurisdiction, Ford conceded the purposeful availment element, as the defendant has done in the present case, but argued that the alleged defects did not arise out of or relate to its in-state activities. Ford advocated for a narrow scope of case-linkage, arguing that jurisdiction attaches "only if the defendant's forum conduct *gave rise* to the plaintiff's claims." (Emphasis in

[18] The court agrees with the defendant that, at this juncture, the plaintiff has not established a connection between the defendant and any advertising conducted by the retail outlets currently selling its products to Connecticut consumers. cf. *Exxon Mobil Corporation* v. *Attorney General*, 94 N.E.3d 786 (Mass. 2018). For a significant portion of the relevant period however, while the defendant's advertorials were being distributed in Connecticut, it owned and operated those outlets.

original; internal quotation marks omitted.) Id., 361. The Court formulated the question more broadly. "[W]e have never framed the specific jurisdiction inquiry as always requiring proof of causation—i.e., proof that the plaintiff 's claim came about because of the defendant's in-state conduct." Id., 362. Instead, the court reaffirmed its view as expressed in *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 293, 100 S.Ct. 580, 62 L.Ed.2d 490 (1980); that jurisdiction lies when the plaintiff's claim arises from the defendant's efforts "to serve, directly or indirectly, the market. . . ." *Ford Motor Co.* v. *Montana Eighth Judicial District Court*, supra, 363. "[W]hen a corporation has continuously and deliberately exploited [a State's] market, it must reasonably anticipate being haled into [that State's] court[s] to defend actions based on products causing injury there." (Internal quotation marks omitted.) Id., 364; *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 335 (Ford had "systematically served a market").

Case-linkage requires "an activity or occurrence in the forum that is sufficiently material to the litigation and, in turn, to the forum's interest in that litigation." *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn. 343. The fact that the present case is not a product liability case does not distinguish *Ford Motor Co.*'s formulation of case-linkage. In a case-linkage analysis, the defendant's alleged misrepresentations simply cannot be disconnected from the direct and indirect sales generated by those misrepresentations. Throughout most of the relevant period, the defendant's sales were direct. Even after the defendant divested its ownership of the retail outlets in 1999, the defendant continued selling its fossil fuel products in Connecticut through independent contractors and branded franchises and it provided "support services" to those retail outlets. These activities continue to the present day. Case-linkage requires "an activity or occurrence in the forum that is sufficiently material to the litigation and, in turn, to the forum's interest in that litigation." *Adams* v. *Aircraft Spruce & Specialty Co.*, supra, 345 Conn.

343. The plaintiff alleges that by means of substantial and sustained advertising distributed in Connecticut, which knowingly concealed the harmful climatic effects of its fossil fuel products, the defendant enabled and promoted extensive sales of those products throughout the state. The defendant's marketing and sale of its products in Connecticut is directly linked to the plaintiff's claim that the state and its residents were harmed by the deceptive nature of its advertising. The case-linkage element of the due process analysis is satisfied.

3. Fairness

"Once it has been decided that a defendant purposefully established minimum contacts within the forum [s]tate, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with fair play and substantial justice." (Internal quotation marks omitted.) *North Sails Group, LLC* v. *Boards & More GmbH*, supra, 340 Conn. 274-75. The defendant does not contest this final element of the due process analysis, nor does the record reflect any basis for such a challenge.

CONCLUSION

Pursuant to binding appellate authority, by registering to conduct business in Connecticut, the defendant consented to personal jurisdiction in the state and, pursuant to United States Supreme Court authority, no due process analysis is required for the exercise of jurisdiction in accordance with the consent given by the defendant. Alternatively, the allegations of the complaint, tempered by the Bricker affidavit, provide a prima facie factual basis for concluding, pursuant to the applicable long arm statute, § 33-929 (f), that the plaintiff's claims arise out of the defendant's solicitation of business in this state, distribution of goods in this state, and tortious conduct in this state. Further, the exercise of jurisdiction pursuant to § 33-929 (f) is consistent with the requirements of due process. The court's findings and conclusions with

respect to the applicability of the long arm statute, and the satisfaction of due process requirements for the exercise of specific jurisdiction, are subject to the plaintiff's ultimate burden to establish long arm jurisdiction at trial by a preponderance of the evidence. The motion to dismiss is denied.

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Farley, J.