

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

---

IN RE: PHILIPS RECALLED CPAP,	:	Master Docket: No. 21-mc-1230-JFC
BI-LEVEL PAP, AND MECHANICAL	:	
VENTILATOR PRODUCTS	:	MDL No. 3014
LITIGATION	:	
	:	(Oral Argument Requested)
This Document Relates to: Consolidated	:	
Third Amended Class Action Complaint	:	
for Economic Losses (ECF No. 785)	:	
	:	

---

**DEFENDANT KONINKLIJKE PHILIPS N.V.'S MEMORANDUM  
IN SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT  
FOR LACK OF PERSONAL JURISDICTION**

Michael H. Steinberg  
SULLIVAN & CROMWELL LLP  
1888 Century Park East  
Los Angeles, CA 90067

Tracy Richelle High  
William B. Monahan  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, NY 10004

## TABLE OF CONTENTS

	<i>Page</i>
<b>PRELIMINARY STATEMENT .....</b>	<b>1</b>
<b>PLAINTIFFS’ HIGHLY LIMITED ALLEGATIONS .....</b>	<b>3</b>
<b>KPNV’S LIMITED SPECIFIC PERSONAL JURISDICTION IN PENNSYLVANIA ON NEGLIGENT RECALL CLAIM .....</b>	<b>4</b>
<b>ARGUMENT .....</b>	<b>4</b>
I.    THE RELEVANT STANDARDS ON THIS MOTION .....	4
II.   THIS COURT LACKS GENERAL PERSONAL JURISDICTION OVER KPNV .....	6
III.  KPNV IS NOT SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN ANY RELEVANT FORUM FOR THE ORIGINAL PURCHASE OR ACQUISITION CLAIMS .....	8
A.    Plaintiffs’ Non-Recall Claims Do Not Arise Out of KPNV’s Alleged Conduct in Any Relevant Forum .....	8
B.    KPNV Did Not Purposefully Avail Itself of Any Forum .....	11
C.    Each Circuit’s Fairness Factors Favor KPNV .....	12
IV.   FOR THE NEGLIGENT RECALL CLAIM, KPNV IS NOT SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN ANY RELEVANT FORUM OTHER THAN PENNSYLVANIA .....	13
V.    KPNV WAS NOT RESPIRONICS’S “ALTER EGO” AT THE TIME PLAINTIFFS PURCHASED OR ACQUIRED THEIR DEVICES OR AT THE LATER TIME OF THE RECALL .....	14
VI.   PLAINTIFFS HAVE NOT PLED ALLEGATIONS SUFFICIENT TO ESTABLISH PERSONAL JURISDICTION UNDER 18 U.S.C. § 1965 .....	15
<b>CONCLUSION .....</b>	<b>15</b>

## TABLE OF AUTHORITIES

Page(s)

## CASES

<i>Adams v. N.E. Scaffolding</i> , 2016 WL 6514090 (D. Mass. Oct. 28, 2016) .....	7
<i>Asahi Metal Indus. v. Super. Ct.</i> , 480 U.S. 102 (1987) .....	<i>passim</i>
<i>In re Asbestos Prod. Liab. Litig.</i> , 611 F. App'x 86 (3d Cir. 2015) .....	4
<i>In re Asbestos Prods. Liab. Litig. (No. VI)</i> , 2014 WL 5394310 (E.D. Pa. Oct. 23, 2014) .....	5
<i>Baker v. LivaNova</i> , 210 F. Supp. 3d 642 (M.D. Pa. 2016) .....	9, 12
<i>Beneplace v. DaVita</i> , 2021 WL 2905417 (W.D. Tex. July 9, 2021) .....	7
<i>Bulkley &amp; Assocs. v. Dep't of Indus. Rels.</i> , 1 F.4th 346 (5th Cir. 2021) .....	6
<i>Carmouche v. Tamborlee Mgmt.</i> , 789 F.3d 1201 (11th Cir. 2015) .....	7
<i>Chavez v. Dole Food Co.</i> , 796 F.3d 261 (3d Cir. 2015) .....	7
<i>Componentone v. Componentart</i> , 2007 WL 2359827 (W.D. Pa. Aug. 16, 2007) .....	9
<i>Copia Commc'ns v. AMResorts</i> , 812 F.3d 1 (1st Cir. 2016) .....	6
<i>Craig v. Lake Asbestos of Quebec</i> , 843 F.2d 145 (3d Cir. 1988) .....	14
<i>Daimler AG v. Bauman</i> , 571 U.S. 117 (2014) .....	6, 7
<i>Danziger &amp; De Llano v. Morgan Verkamp</i> , 948 F.3d 124 (3d Cir. 2020) .....	8, 10

<i>Diamond Crystal Brands v. Food Movers Int’l</i> , 593 F.3d 1249 (11th Cir. 2010) .....	6
<i>D’Jamoos v. Pilatus Aircraft</i> , 566 F.3d 94 (3d Cir. 2009) .....	9, 11
<i>In re Enterprise Rent-A-Car Wage &amp; Hour Emp. Pracs. Litig.</i> , 735 F. Supp. 2d 277 (2010) .....	14
<i>Fesniak v. Equifax Mortg.</i> , 2015 WL 2412119 (D.N.J. May 21, 2015) .....	11
<i>Gehling v. St. George’s Sch. of Med.</i> , 773 F.2d 539 (3d Cir. 1985) .....	13
<i>Goodyear Dunlop Tires v. Brown</i> , 564 U.S. 915 (2011) .....	6, 11
<i>Gray &amp; Co. v. Firstenberg Machinery</i> , 913 F.2d 758 (9th Cir. 1990) .....	6
<i>Greene v. New Dana Perfumes Corp.</i> , 287 B.R. 328 (D. Del. 2002) .....	14
<i>Helicopteros Nacionales de Colombia v. Hall</i> , 466 U.S. 408 (1984) .....	6, 8
<i>Int’l Shoe Co. v. Washington</i> , 326 U.S. 310 (1945) .....	5
<i>Kaplan v. First Options of Chi.</i> , 19 F.3d 1503 (3d Cir. 1994) .....	2
<i>Laurel Gardens v. Mckenna</i> , 948 F.3d 105 (3d Cir. 2020) .....	15
<i>Mavrix Photo v. Brand Techs.</i> , 647 F.3d 1218 (9th Cir. 2011) .....	7
<i>Miller v. Bearman Indus.</i> , 2022 WL 1194396 (D. W. Va. Apr. 21, 2022) .....	6
<i>Miller Yacht v. Smith</i> , 384 F.3d 93 (3d Cir. 2004) .....	5
<i>Murphy v. Humboldt Clothing Co.</i> , 2021 WL 307541 (W.D. Pa. Jan. 29, 2021) .....	12

<i>O'Connor v. Sandy Lane Hotel</i> , 496 F.3d 312 (3d Cir. 2020) .....	13
<i>Orefice v. Laurelview Convalescent Ctr.</i> , 66 F.R.D. 136 (E.D. Pa. 1975) .....	7
<i>Otsuka Pharm. v. Mylan Inc.</i> , 106 F. Supp. 3d 456 (D.N.J. 2015) .....	8
<i>Perkins v. Benguet Consol. Min. Co.</i> , 342 U.S. 437 (1952) .....	7
<i>Regan v. Loewenstein</i> , 292 F. App'x 200 (3d Cir. 2008) .....	6
<i>Rocke v. Pebble Beach</i> , 541 F. App'x 208 (3d Cir. 2013) .....	8
<i>Roman v. Affinity Worldwide</i> , 2020 WL 8339208 (W.D. Mo. Apr. 23, 2020) .....	7
<i>Ryan v. Union Mut. Fire Ins. Co.</i> , 2011 WL 3666492 (E.D. Pa. Aug. 15, 2011) .....	12
<i>Spuglio v. Cabaret Lounge</i> , 344 F. App'x 724 (3d Cir. 2009) .....	12
<i>T.M. Hylwa, M.D. v. Palka</i> , 823 F.2d 310 (9th Cir. 1987) .....	6
<i>Toys "R" Us v. Step Two</i> , 318 F.3d 446 (3d Cir. 2003) .....	7, 10
<i>UHS of Del. v. United Health Servs.</i> , 2013 WL 12086321 (M.D. Pa. Mar. 26, 2013) .....	14
<i>In re WellNx Mktg. &amp; Sales Pracs. Litig.</i> , 2010 WL 3652457 (D. Mass. Sept. 15, 2010) .....	5
<i>Zippo Mfg. v. Zippo Dot Com</i> , 952 F. Supp. 1119 (W.D. Pa. 1997) .....	10
<i>Zoch v. Magna Seating</i> , 810 F. App'x 285 (5th Cir. 2020) .....	9

**FEDERAL STATUTE AND RULE**

18 U.S.C. § 1965 .....	15
Fed. R. Civ. P. 12(b)(2) .....	5

**STATE STATUTES AND RULE**

Cal. Code Civ. Proc. § 410.10 .....	5
Ga. Code Ann. § 9-10-91 .....	5, 8
Mass. Gen. Laws ch. 223A, § 3 .....	5, 8
Or. R. Civ. P. 4L .....	5
42 Pa. Cons. Stat. Ann. § 5322(b) .....	5
Tex. Civ. Prac. & Rem. Code § 17.042 .....	5
W. Va. Code § 56-3-33 .....	5, 8
W. Va. Code § 31D-15-1501(d) .....	6

## PRELIMINARY STATEMENT

Since the outset of this MDL, the Dutch parent company, Koninklijke Philips N.V. (“KPNV”), has made clear that its exceedingly few contacts with either the United States or the development, marketing and sale of the relevant devices by its indirect subsidiary, Philips RS North America LLC (“Respironics”), prevent the exercise of personal jurisdiction over it. Plaintiffs’ Third Amended Complaint (the “TAC”) does nothing to address this core threshold issue. Plaintiffs’ assertion that KPNV sat at the head of a “global unified company” has nothing to do with the legal standards for pleading a basis for either general or specific personal jurisdiction over KPNV, a Dutch *naamloze vennootschap* that owns interests in more than 270 subsidiaries worldwide and is separated from Respironics by two different layers of solvent subsidiaries. Even after significant discovery, Plaintiffs do not even begin to provide a factual basis for a U.S. court to exercise specific personal jurisdiction over KPNV over any claim related to Plaintiffs’ original purchase or acquisition of any of the Respironics devices.

Originally, Plaintiffs recognized KPNV’s limited potential contacts with the United States by filing their lawsuits in a total of just seven states.<sup>1</sup> Even now, in the TAC, Plaintiffs still offer *zero* allegations concerning KPNV’s contacts with *six* of these seven states (*i.e.*, all states other than Pennsylvania, where Respironics is headquartered). Because Plaintiffs can plead nothing related to these six states, Plaintiffs have elected instead to focus all of their jurisdictional allegations on KPNV’s alleged contacts with Pennsylvania, but only *after* the June 2021 recall, in support of a newly added “negligent recall” claim (Count 3) asserting liability principally on account of the recall’s speed. With respect to this newly pled negligent recall claim (which is

---

<sup>1</sup> Prior to transfer to this MDL, Plaintiffs filed suit in Pennsylvania (88 suits), California (3 suits), Georgia (5 suits), Massachusetts (23 suits), Oregon (1 suit), Texas (1 suit), and West Virginia (1 suit). A table showing where Plaintiffs originally filed suit is included in the Proposed Order attached to the Motion.

fatally flawed for reasons set forth in other briefs), KPNV does *not* contest personal jurisdiction in Pennsylvania. KPNV has been supporting its indirect subsidiary, Respironics, with its recall, and the Respironics recall emanates from Respironics's headquarters in Pennsylvania. The problem for Plaintiffs is that KPNV is not subject to personal jurisdiction in Pennsylvania or the other six states on any of their *other* claims, including, in particular, all of their claims relating to Plaintiffs' *original* purchase or acquisition of the devices. Most notably, Plaintiffs do not allege a *single* action taken by KPNV directed at any state in the country *before 2021*, when Respironics announced its voluntary recall. KPNV's post-recall efforts to support the ongoing Respironics recall concern only Plaintiffs' claims of *negligent recall* and offer no plausible basis for personal jurisdiction on any of Plaintiffs' claims relating to the *original* purchase or acquisition of the recalled Respironics devices months or years earlier.

Even more, Plaintiffs' allegations about KPNV's untargeted, nationwide activities, both in governing its subsidiaries' U.S. businesses *and* in supporting the Respironics recall, do not establish that KPNV availed itself of California, Georgia, Massachusetts, Oregon, Texas or West Virginia, or that subjecting KPNV to jurisdiction in these fora would be reasonable. Nor do KPNV's interactions with its U.S. subsidiaries—which amount to nothing more than typical cross-enterprise brand support—rise to the level of pervasive influence and control that would subject KPNV to personal jurisdiction through its subsidiaries on an alter ego or agency theory, particularly given the absence of factual allegations that KPNV was an alter ego or agent of Respironics at the time any of the Plaintiffs purchased or acquired their devices.<sup>2</sup>

---

<sup>2</sup> Plaintiffs must meet the extraordinary burden of showing that the separate corporate entity structure was entirely “an artifice and a sham to execute illegitimate purposes and an abuse of the corporate fiction and immunity that it carries.” *Kaplan v. First Options of Chi.*, 19 F.3d 1503, 1521 (3d Cir. 1994). The TAC comes nowhere close to meeting this high bar.



In sum, there is no basis pled for this Court to exercise personal jurisdiction over KPNV (a) for those Plaintiffs who originally filed suit outside of Pennsylvania, or (b) for any claims connected to Plaintiffs' *original* purchase or acquisition of the devices, whether filed in Pennsylvania or any of the other states relevant to this Motion. KPNV concedes, however, that it is subject to personal jurisdiction in Pennsylvania with respect to Plaintiffs' negligent recall claim (Count 3) for those Plaintiffs who filed suit originally in Pennsylvania.

### **PLAINTIFFS' HIGHLY LIMITED ALLEGATIONS**

KPNV is a Dutch *naamloze vennootschap* headquartered in Amsterdam, the Netherlands. (TAC ¶ 151.) KPNV owns 100% of Philips Holding USA, Inc. (a Delaware corporation headquartered in Massachusetts), and Philips Holding USA, Inc., in turn, owns 100% of Philips RS North America Holding Corporation (a Delaware corporation headquartered in Massachusetts). Respironics, headquartered in Pennsylvania, is a wholly owned subsidiary of Philips RS North America Holding Corporation, and thus KPNV is separated from Respironics by two subsidiaries.

The few jurisdictional allegations Plaintiffs make are minimal and conclusory, alleging only that “[e]ach Philips Defendant has significant contacts with the Western District of Pennsylvania such that they are subject to personal jurisdiction of the Court.” (TAC ¶ 192.)<sup>3</sup> In support of this claim, Plaintiffs allege that all the Philips Defendants have “engaged in substantial, systematic and continuous contacts with Pennsylvania by, *inter alia*, regularly conducting and soliciting business [and] deriving substantial revenue from products and/or services provided to persons in Pennsylvania.” (*Id.* ¶ 193.) The closest Plaintiffs come to facts is the allegation that KPNV “was involved with and controlled . . . the sales and marketing of the Recalled Devices.”

---

<sup>3</sup> Even this allegation does not attempt to plead jurisdiction for the Plaintiffs who originally filed suit in California, Georgia, Massachusetts, Oregon, Texas or West Virginia.

(*Id.* ¶ 190.) But the *only* examples provided of this “involve[ment]” and “control[.]” are 11 general press announcements that KPNV released concerning Respironics’s product lines, nearly all of which were issued *outside* of the United States. (*Id.* ¶¶ 221-37.)

Plaintiffs also allege that in 2021, KPNV and Respironics announced the Respironics recall. (*Id.* ¶ 387.) Plaintiffs do not allege that KPNV’s involvement with the recall was directed toward California, Georgia, Massachusetts, Oregon, Texas or West Virginia, precisely because they cannot. Instead, Plaintiffs attempt to tie KPNV’s recall conduct to its Pennsylvania-based subsidiary, Respironics, alleging that KPNV has “directly been involved with” Respironics’s recall. (*Id.* ¶¶ 425-27.)

#### **KPNV’S LIMITED SPECIFIC PERSONAL JURISDICTION IN PENNSYLVANIA ON NEGLIGENT RECALL CLAIM**

While Plaintiffs’ negligent recall claim (Count 3) fails—and should be dismissed—for the reasons set forth in other briefs, KPNV consents to the exercise of personal jurisdiction in Pennsylvania *solely* as to Plaintiffs’ negligent recall claim for Plaintiffs who initially filed their lawsuits in Pennsylvania. In doing so, KPNV does not concede, and affirmatively disputes, (a) that the TAC adequately alleges minimum contacts with Pennsylvania, any other state, or the United States as a whole sufficient to subject KPNV to personal jurisdiction on any other claim, and (b) that the TAC pleads any basis for personal jurisdiction over KPNV on the negligent recall claim in any state other than Pennsylvania.

### **ARGUMENT**

#### **I. THE RELEVANT STANDARDS ON THIS MOTION**

As this Court has previously instructed, the first issue to be resolved on a motion to dismiss is choice of law. *First*, to evaluate the adequacy of Plaintiffs’ *pleading* of personal jurisdiction, Third Circuit law applies. *See In re Asbestos Prod. Liab. Litig.*, 611 F. App’x 86, 89

(3d Cir. 2015) (in MDL, “[b]ecause pleading rules are procedural in nature, the transferee court must apply federal law as interpreted by the court of the district where the transferee court sits”). Therefore, Third Circuit law on Rule 12(b)(2) pleading standards applies: to “survive a motion to dismiss for lack of personal jurisdiction, [] plaintiff[s] bear[] the burden of establishing the court’s jurisdiction over the moving defendants.” *Miller Yacht v. Smith*, 384 F.3d 93, 97 (3d Cir. 2004).

*Second*, to assess the sufficiency of Plaintiffs’ factual allegations to support personal jurisdiction, the laws of the transferor courts continue to apply to Plaintiffs’ claims. *See, e.g., In re Asbestos Prods. Liab. Litig. (No. VI)*, 2014 WL 5394310, at \*1 (E.D. Pa. Oct. 23, 2014) (“In the MDL setting, the transferee court applies the personal jurisdiction law of the state where the case was filed.”); *In re WellNx Mktg. & Sales Pracs. Litig.*, 2010 WL 3652457, at \*1 (D. Mass. Sept. 15, 2010) (“In an MDL case, personal jurisdiction is derived from the transferor court.”).

While the seven states that are relevant to this motion are in the First, Third, Fourth, Fifth, Ninth, and Eleventh Circuits, the law relevant to this motion is not meaningfully different, and produces the same results. (*See Appendix A.*) For convenience, this brief discusses specifically Third Circuit law, which is applicable to those Plaintiffs who filed suit originally in Pennsylvania (where a majority of Plaintiffs’ lawsuits were first filed), but the claims of those Plaintiffs who filed suit originally in the other Circuits should be dismissed for the same reasons.

In every relevant forum, under the Due Process Clause, KPNV is subject to personal jurisdiction only where it has “certain minimum contacts” such that the maintenance of each lawsuit would not offend “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).<sup>4</sup> Such minimum contacts are present in two

---

<sup>4</sup> Every state also has a long-arm statute that limits the reach of jurisdiction. *See* Cal. Code Civ. Proc. § 410.10; Or. R. Civ. P. 4L; 42 Pa. Cons. Stat. Ann. § 5322(b); Tex. Civ. Prac. & Rem. Code § 17.042; Ga. Code Ann. § 9-10-91; Mass. Gen. Laws ch. 223A, § 3; W. Va. Code § 56-3-

circumstances. *First*, when a defendant has “continuous and systematic general business contacts” with a forum, it may be subject to *general* personal jurisdiction there even “in a suit not arising out of or related to the defendant’s contacts with the forum.” *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n.9, 416 (1984). *Second*, a defendant may instead be subject to *specific* personal jurisdiction for claims “deriving from, or connected with, the very controversy that establishes jurisdiction.” *Goodyear Dunlop Tires v. Brown*, 564 U.S. 915, 919 (2011).

## II. THIS COURT LACKS GENERAL PERSONAL JURISDICTION OVER KPNV.

KPNV is not subject to general personal jurisdiction in any U.S. forum, either directly or as the alleged alter ego or agent of Respirationics. General jurisdiction applies only where a “corporation’s ‘affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum State’”—an inquiry which asks if a particular state is “a corporation’s place of incorporation [or] principal place of business.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014) (quoting *Goodyear*, 564 U.S. at 919). KPNV, headquartered in the Netherlands, is not “at home” in any of the states in which Plaintiffs sued, including Pennsylvania.

---

33 & W. Va. Code § 31D-15-1501(d). The long-arm statutes of California, Oregon, Pennsylvania and Texas are coextensive with the outer limits of federal due process. *See T.M. Hylwa, M.D. v. Palka*, 823 F.2d 310, 313 (9th Cir. 1987) (California); *Gray & Co. v. Firstenberg Machinery*, 913 F.2d 758, 760 (9th Cir. 1990) (Oregon); *Regan v. Loewenstein*, 292 F. App’x 200, 204 (3d Cir. 2008) (Pennsylvania); *Bulkley & Assocs. v. Dep’t of Indus. Rels.*, 1 F.4th 346, 351 (5th Cir. 2021) (Texas). The long-arm statutes of Georgia, Massachusetts and West Virginia are more restrictive, which only bolsters the argument that KPNV cannot be subject to personal jurisdiction in those states. *See Diamond Crystal Brands v. Food Movers Int’l*, 593 F.3d 1249, 1261 (11th Cir. 2010) (“[T]ransacting business within Georgia remains a precondition to long-arm jurisdiction that is independent from the dictates of due process.”); *Copia Commc’ns v. AMResorts*, 812 F.3d 1, 4 (1st Cir. 2016) (“Massachusetts’s long-arm statute might impose more restrictive limits on the exercise of personal jurisdiction than does the Constitution” because of its long-arm requirements); *Miller v. Bearman Indus.*, 2022 WL 1194396, at \*2 & n.1 (D. W. Va. Apr. 21, 2022) (courts “must use [the] two-step approach” and consider the form of contact enumerated in West Virginia’s statutes).

Nor is this the “exceptional case” in which “a corporation’s operations in a [foreign] forum . . . may be so substantial and of such a nature as to render the corporation at home in that [foreign] State.” *Daimler AG*, 571 U.S. at 139 n.19. The TAC fails to allege KPNV’s presence in any of these fora, describing not a single element that could show an exceptional case: no “bank accounts,” no “payroll preparation and delivery,” and no “payments for routine company purchases and transactions.” *Orefice v. Laurelvieview Convalescent Ctr.*, 66 F.R.D. 136, 140 (E.D. Pa. 1975) (citing *Perkins v. Benguet Consol. Min. Co.*, 342 U.S. 437, 447-48 (1952)).<sup>5</sup>

To find some argument for general jurisdiction, Plaintiffs offhandedly allege in a footnote that a website using a copyright belonging to KPNV can be accessed by any user “from the United States.” (TAC ¶ 3 n.2.) But courts refuse to allow Plaintiffs to utilize this casual reference to a Philips U.S. website to bootstrap an assertion of general personal jurisdiction in any of the relevant fora. *See Toys “R” Us v. Step Two*, 318 F.3d 446, 454 (3d Cir. 2003) (“[T]he mere operation of a commercially interactive web site should not subject the operator to jurisdiction anywhere in the world.”); *Chavez v. Dole Food Co.*, 796 F.3d 261, 270 n.5 (3d Cir. 2015) (vacated

---

<sup>5</sup> As *Perkins* is the “textbook case” for exercising general jurisdiction over a foreign corporation, other fora follow similar considerations. *Daimler*, 571 U.S. at 129; *see Adams v. N.E. Scaffolding*, 2016 WL 6514090, at \*3 (D. Mass. Oct. 28, 2016) (no general jurisdiction where plaintiffs have not pled elements of contact like “maintaining an office in-state, keeping corporate files there, having active bank accounts, [or] holding meetings”); *Beneplace v. DaVita*, 2021 WL 2905417, at \*3 (W.D. Tex. July 9, 2021) (“Based on *Perkins*, an exceptional case appears to be where the forum state is the center of the corporation’s activities, even if the corporation’s place of incorporation and principal place of business are elsewhere.”); *Roman v. Affinity Worldwide*, 2020 WL 8339208, at \*3 (W.D. Mo. Apr. 23, 2020) (“*Perkins* was an exceptional case because Ohio had become a surrogate for the company’s principal place of business or place of incorporation.”); *Mavrix Photo v. Brand Techs.*, 647 F.3d 1218, 1224 (9th Cir. 2011) (“The facts of *Perkins* illustrate the nature and extent of the contacts required for general jurisdiction.”); *Carmouche v. Tamborlee Mgmt.*, 789 F.3d 1201, 1204 (11th Cir. 2015) (“The only ‘exceptional’ case the Supreme Court has identified . . . is *Perkins*.”).

on other grounds) (“Nor . . . does maintaining an interactive website subject a national corporation to general jurisdiction in a particular state.”).

### **III. KPNV IS NOT SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN ANY RELEVANT FORUM FOR THE ORIGINAL PURCHASE OR ACQUISITION CLAIMS.**

Specific jurisdiction requires KPNV to have purposefully availed itself of the pertinent states’ laws, that Plaintiffs’ claims arise out of or are related to that in-state conduct, *and* that fairness favors the exercise of jurisdiction. *Danziger & De Llano v. Morgan Verkamp*, 948 F.3d 124, 129-30 (3d Cir. 2020). Here, Plaintiffs fail in all three respects with respect to their claims based on their original purchase or acquisition of the recalled devices.

#### **A. Plaintiffs’ Non-Recall Claims Do Not Arise Out of KPNV’s Alleged Conduct in Any Relevant Forum.**

Specific personal jurisdiction over KPNV requires that Plaintiffs’ claims “must ‘arise out of or relate to’ at least one of [KPNV’s] activities” in the forum at issue. *Rocke v. Pebble Beach*, 541 F. App’x 208, 211 (3d Cir. 2013) (quoting *Helicopteros*, 466 U.S. at 414). On this front, Plaintiffs’ pleading suffers from a central, fatal defect: they identify no contacts with KPNV related to their original purchase or acquisition claims. While the TAC mentions “Royal Philips” nearly 300 times, there is not a single sentence that alleges a specific connection between KPNV and any of the relevant fora prior to the 2021 recall. *See Otsuka Pharm. v. Mylan Inc.*, 106 F. Supp. 3d 456, 471 (D.N.J. 2015) (no specific jurisdiction where plaintiff “identifie[d] no *specific* activities directed at this forum that, in any way, relate to [their] claims”).<sup>6</sup>

---

<sup>6</sup> Plaintiffs’ slim jurisdictional pleadings also fail to satisfy the long-arm statutes of Georgia, Massachusetts, West Virginia, or any other state that applies additional limits on personal jurisdiction, *see* Ga. Code Ann. § 9-10-91; Mass. Gen. Laws ch. 223A, § 3; W. Va. Code § 56-3-33, as the conclusory allegation that KPNV “regularly conduct[s] and solicit[s] business” in “Pennsylvania” (TAC ¶ 193) provides no basis for this Court to conclude that KPNV “transact[ed] business” in any other state, as is required by these long-arm statutes.

Nor do Plaintiffs make a factual allegation that connects KPNV to any U.S. forum before the 2021 recall. Plaintiffs make the predictable and misleading group-pled assertion that “Philips has sold millions of CPAP, BiPAP, and ventilator devices in the United States” (TAC ¶ 212), without clarifying that KPNV is not alleged to have played *any part* in the design, manufacture, marketing, or distribution of any of these devices. Not one Plaintiff claims to have bought a product from KPNV, and as to the rest of the allegations, this Court does not need to “rely upon conclusory allegations, conjecture, and speculation . . . to establish jurisdiction.” *Componentone v. Componentart*, 2007 WL 2359827, at \*3 (W.D. Pa. Aug. 16, 2007).

Plaintiffs also cannot just rely on an allegation that some plaintiffs purchased or acquired their devices in a particular forum to establish jurisdiction over KPNV there. The “placement of a product into the stream of commerce, without more, is not an act of the defendant purposefully directed toward [a] forum State.” *Asahi Metal Indus. v. Super. Ct.*, 480 U.S. 102, 112 (1987) (plurality opinion).<sup>7</sup> Even setting aside Plaintiffs’ failure to plead facts showing that KPNV placed any of the products into the stream of commerce, Plaintiffs have also failed to plead any “[a]dditional conduct” on KPNV’s part that would “indicate an intent or purpose to serve the market in [a] forum State.” *Id.*; *D’Jamoos v. Pilatus Aircraft*, 566 F.3d 94, 104 (3d Cir. 2009) (“[E]fforts to exploit a national market [that] necessarily included Pennsylvania as a target . . . simply do not constitute the type of deliberate contacts within Pennsylvania that could amount to purposeful availment.”); *Baker v. LivaNova*, 210 F. Supp. 3d 642, 649 (M.D. Pa. 2016) (“A general

---

<sup>7</sup> Some Circuits apply a different standard on the stream-of-commerce analysis. *See Zoch v. Magna Seating*, 810 F. App’x 285, 290 (5th Cir. 2020) (plaintiff must offer “some proof that [defendant] placed its product into the stream of commerce with the expectation that it would be purchased by or used by consumers in the forum state”). As KPNV did not put any goods into the stream of commerce (in Texas or any other state), KPNV is not subject to jurisdiction in that forum on any statement of the stream-of-commerce analysis.

marketing strategy towards the United States does not show that [defendant] committed any affirmative act to submit itself to the laws of Pennsylvania.”).

Plaintiffs cannot cure their defective pleading by alleging that KPNV had direct contacts with any forum *through* Respironics, as KPNV is not the alter ego of its subsidiary. (*See* Section V, *infra*.) Alleging without detail that “Royal Philips was involved with and controlled . . . the sales and marketing of the Recalled Devices” (TAC ¶ 190) is manifestly inadequate to show that any of Plaintiffs’ claims “arise out of or relate to [KPNV’s] contacts with the forum state” under the claim-specific analysis courts utilize to determine whether specific jurisdiction exists. *Danziger & De Llano*, 948 F.3d at 129-30.

Nor, again, can Plaintiffs point to a nationally available website using the Philips marks to satisfy the constitutional requirement of contacts in the pertinent fora arising out of activities *related to the underlying causes of action*. None of the Plaintiffs claim to have seen the website, and in any event, the TAC does nothing to establish why this contact would be related to the underlying causes of action, leaving an insufficient nexus between Plaintiffs’ claims and KPNV’s contact.<sup>8</sup> The “mere operation of a commercially interactive web site” does not suffice to subject the operator to jurisdiction anywhere the site can be accessed; “[r]ather, there must be evidence that the defendant purposefully availed itself of conducting activity in the forum state, by directly targeting its web site to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts.” *Toys “R” Us*, 318 F.3d at 454; *see Zippo Mfg. v. Zippo Dot Com*, 952 F. Supp. 1119, 1124 (W.D. Pa. 1997) (“A passive Web site

---

<sup>8</sup> Plaintiffs do not even allege that the recalled devices could have been acquired through the website. Nor could they, as these are prescription medical devices.



that does little more than make information available to those who are interested in it is not grounds for the exercise personal jurisdiction.”).

**B. KPNV Did Not Purposefully Avail Itself of Any Forum.**

The TAC does not contain any allegations concerning KPNV that would show “some act by which the defendant purposefully avail[ed] itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.” *Goodyear*, 564 U.S. at 924; *see D’Jamoos*, 566 F.3d at 105 (foreseeability that is critical to personal jurisdiction analysis is “that the defendant’s conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there”). Purposeful availment is focused on whether a defendant deliberately targets its behavior toward the society or economy of a particular forum, but Plaintiffs fail to state any specific interactions that KPNV had with the pertinent fora. *See D’Jamoos*, 566 F.3d at 103 (affirming dismissal for lack of specific jurisdiction where defendant’s contacts did not amount to “a deliberate targeting of the forum”).<sup>9</sup>

The few connections that Plaintiffs imply—mostly related to press releases—entirely fail to connect KPNV to any forum or to Plaintiffs’ claims. Plaintiffs allege that “Royal Philips was involved with and controlled . . . the sales and marketing of the Recalled Devices” in part by issuing press releases relating to Respironics’s business that were available online on Philips-branded websites. (*E.g.*, TAC ¶¶ 190, 231-37.) But just as putting a product into the stream of commerce, without more, does not show that a defendant targeted a particular forum,

---

<sup>9</sup> Plaintiffs also do not point to any lawsuit filed by KPNV *in any relevant forum*, so they cannot claim that the filing of lawsuits in other fora is relevant here. (*See* TAC ¶¶ 160 n.38, 180 (alleging that KPNV filed lawsuits in S.D. Fla., D. Del. and the U.S. International Trade Commission).) In any event, even if KPNV has previously filed lawsuits in any relevant forum, courts categorically reject personal jurisdiction claims reliant on the filing of prior lawsuits. *See, e.g., Fesniak v. Equifax Mortg.*, 2015 WL 2412119, at \*6 (D.N.J. May 21, 2015) (party’s participation in a prior lawsuit filed in the forum at issue did not give rise to personal jurisdiction).

*see Asahi*, 480 U.S. at 112, a corporation’s passive online statement that “merely make[s] information available on the Internet” does not suffice for personal jurisdiction. *Spuglio v. Cabaret Lounge*, 344 F. App’x 724, 726 (3d Cir. 2009).

KPNV’s press releases, which not a single Plaintiff claims to have ever seen or read, cannot have foreseeably exposed KPNV to the jurisdiction in any far-flung forum. Other than two announcements issued from trade shows in *Nevada* that KPNV attended (*see* TAC ¶¶ 228, 237), every single one of the nearly 50 press releases and announcements that Plaintiffs attribute to KPNV was issued *outside of the United States*. (TAC ¶¶ 14-18, 151-52, 171, 179, 222-37, 380-407.) Just as courts reject the exercise of jurisdiction from the existence of a webpage, *see Murphy v. Humboldt Clothing Co.*, 2021 WL 307541, at \*5 (W.D. Pa. Jan. 29, 2021), so too do courts reject basing jurisdiction on the issuance of press releases. *See Baker*, 210 F. Supp. 3d at 649 (press release on company website did not show any link between the company and Pennsylvania and fell “extremely short of the minimum contacts required for due process”).

### **C. Each Circuit’s Fairness Factors Favor KPNV.**

Plaintiffs must also show that the exercise of specific personal jurisdiction over KPNV would not “offend traditional notions of fair play and substantial justice” through an “evaluation of several factors” determining the reasonableness of jurisdiction. *Asahi*, 480 U.S. at 113. The plainly inadequate nature of Plaintiffs’ KPNV-related jurisdictional allegations for these fora reduces the significance of the fairness factors analysis, as “the weaker the plaintiff’s showing [on minimum contacts], the less a defendant need show in terms of unreasonableness to defeat jurisdiction.” *Ryan v. Union Mut. Fire Ins. Co.*, 2011 WL 3666492, at \*5 (E.D. Pa. Aug. 15, 2011). Regardless, these fairness factors also favor dismissal.

While the precise articulation of the fairness factors varies slightly between the pertinent Circuits, the substantive values of each Circuit’s inquiry are reflected in the factors

identified in *Asahi*: “the burden on the defendant, the interests of the forum State, and the plaintiff’s interest in obtaining relief[;] the interstate judicial system’s interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.” *Asahi*, 480 U.S. at 113. The burden on the defendant “is a primary concern in any case.” *O’Connor v. Sandy Lane Hotel*, 496 F.3d 312, 324 (3d Cir. 2020). As Plaintiffs’ allegations underscore, KPNV is a Dutch company headquartered in Amsterdam with no U.S. presence, so forcing it to be subject to personal jurisdiction in Oregon or West Virginia, for example, is an imposition of “unique burdens” that has “significant weight” in the fairness determination. *Asahi*, 480 U.S. at 114; *see O’Connor*, 496 F.3d at 324 (“[T]he burden on the defendant is . . . all the more significant here due to [t]he unique burdens placed upon one who must defend oneself in a foreign legal system.”).

#### **IV. FOR THE NEGLIGENT RECALL CLAIM, KPNV IS NOT SUBJECT TO SPECIFIC PERSONAL JURISDICTION IN ANY RELEVANT FORUM OTHER THAN PENNSYLVANIA.**

As noted, KPNV consents to the exercise of personal jurisdiction in Pennsylvania as to Plaintiffs’ negligent recall claim (Count 3) for Plaintiffs who initially filed their lawsuits in Pennsylvania. The recall was conducted out of Respironics’s headquarters in Pennsylvania, and KPNV has been supporting Respironics with its recall. But Plaintiffs provide absolutely no basis for specific jurisdiction on the negligent recall claim in California, Georgia, Massachusetts, Oregon, Texas or West Virginia.<sup>10</sup> In fact, Plaintiffs do not even *attempt* to allege any connection

---

<sup>10</sup> KPNV’s concession to personal jurisdiction on the negligent recall claim in Pennsylvania has no impact on the separate and distinct claims emanating from Plaintiffs’ original purchase or acquisition of the devices, as the Third Circuit uses a claim-specific analysis. *See, e.g., Gehling v. St. George’s Sch. of Med.*, 773 F.2d 539, 543-44 (3d Cir. 1985) (finding personal jurisdiction as to fraudulent misrepresentation and emotional distress claims, but not as to negligence and breach of contract claims). Indeed, Plaintiffs’ counsel has already made the point to the Court that their negligent recall claim is different from Plaintiffs’ other claims. (Oct. 19, 2022 Status Conference Tr. at 15:1-9.)

between KPNV and any of these other states, instead alleging that “each Philips Defendant” has “significant contacts with the Western District of Pennsylvania such that they are subject to personal jurisdiction of the Court.” (TAC ¶ 192.)

**V. KPNV WAS NOT RESPIRONICS’S “ALTER EGO” AT THE TIME PLAINTIFFS PURCHASED OR ACQUIRED THEIR DEVICES OR AT THE LATER TIME OF THE RECALL.**

Plaintiffs make zero jurisdictional allegations through an alter ego theory. (*See* TAC ¶¶ 192-94.) Nevertheless, Plaintiffs have told the Court that they believe KPNV is subject to personal jurisdiction in every forum on either an alter ego or an agency basis, through the relationships Respironics has with those fora. (*See* Oct. 19, 2022 Status Conference Tr. at 14:20-15:9.) To the extent this theory is adequately pled, Plaintiffs would have to show that KPNV “control[led] the day-to-day operations of [Respironics] such that [Respironics] can be said to be a mere department of [KPNV].” *In re Enterprise Rent-A-Car Wage & Hour Emp. Pracs. Litig.*, 735 F. Supp. 2d 277, 318 (2010) (Conti, J.); *see UHS of Del. v. United Health Servs.*, 2013 WL 12086321, at \*5 n.3 (M.D. Pa. Mar. 26, 2013). “[T]he degree of control exercised by the parent company [must be] greater than normally associated with common ownership and directorship.” *Enterprise*, 735 F. Supp. 2d at 318. As discussed in the concurrently filed Rule 12(b)(6) motion to dismiss, Plaintiffs’ factual allegations describe only an ordinary parent-subsidiary relationship and provide no basis for an “alter ego” theory sufficient to exercise jurisdiction over KPNV.

Even more, alter ego liability is evaluated *over time*. This Court must consider the separateness of KPNV and Respironics “in respect to the transaction attacked” to determine if Respironics, “*as to this transaction had at the time no separate mind, will or existence of its own.*” *Craig v. Lake Asbestos of Quebec*, 843 F.2d 145, 150 (3d Cir. 1988) (emphasis added); *see Greene v. New Dana Perfumes Corp.*, 287 B.R. 328, 342-43 (D. Del. 2002) (granting motion to dismiss for lack of personal jurisdiction and rejecting alter ego claim where subsidiary had separate

corporate existence at time in question). Even if Plaintiffs could prove that Respiroics became KPNV's alter ego or agent in connection with the recall (they cannot), that fact would *still* not provide this Court with personal jurisdiction over KPNV for Plaintiffs' claims arising from their original device purchases or acquisitions.

**VI. PLAINTIFFS HAVE NOT PLED ALLEGATIONS SUFFICIENT TO ESTABLISH PERSONAL JURISDICTION UNDER 18 U.S.C. § 1965.**

Plaintiffs do not plead a basis for personal jurisdiction as to their civil RICO claim, which relates to the *original* sale or acquisition of the Recalled Devices (Count 1), as they have not pled facts sufficient to show that RICO's nationwide service of process provision grants this Court personal jurisdiction over that claim. *See* 18 U.S.C. § 1965(b). While Circuits are split as to "which specific subsection of the RICO provision governs the exercise of personal jurisdiction [over out-of-state defendants]," *Laurel Gardens v. Mckenna*, 948 F.3d 105, 116 (3d Cir. 2020), even under the most permissive approaches that Circuits have adopted, which consider a defendant's "contacts with the nation as a whole," *id.* at 122, Plaintiffs have failed to plead that KPNV has minimum contacts with the United States. Plaintiffs' conclusory allegations about KPNV's contacts with Pennsylvania (TAC ¶ 192) or its untargeted sales and advertising (*id.* ¶¶ 231-37) fall well short.

**CONCLUSION**

With the exception of the claim for negligent recall (Count 3) filed originally in Pennsylvania only, the Court should dismiss all claims for lack of personal jurisdiction.

Dated: December 6, 2022

Respectfully submitted,

/s/ Michael H. Steinberg

Michael H. Steinberg  
steinbergm@sullcrom.com

**SULLIVAN & CROMWELL LLP**

1888 Century Park East  
Los Angeles, CA 90067  
Tel: 310.712.6670

Tracy Richelle High

hight@sullcrom.com

William B. Monahan

monahanw@sullcrom.com

**SULLIVAN & CROMWELL LLP**

125 Broad Street  
New York, NY 10004  
Tel: 212.558.4000