

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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GENERAL MOTORS LLC; GENERAL	:	
MOTORS Co.,	:	
	:	
Plaintiffs,	:	No. 2:19-cv-13429
	:	
v.	:	Honorable Paul D. Borman
	:	District Court Judge
	:	
FCA US LLC; FIAT CHRYSLER	:	
AUTOMOBILES N.V.; ALPHONS	:	Honorable David R. Grand
IACOBELLI; JEROME DURDEN; MICHAEL	:	Magistrate Judge
BROWN,	:	
	:	
Defendants.	:	
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**FIAT CHRYSLER AUTOMOBILES N.V.’S MOTION
TO DISMISS THE COMPLAINT**

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January 24, 2020

Pursuant to Rules 8(a), 12(b)(2), and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Fiat Chrysler Automobiles N.V. (“FCA NV”), by and through its attorneys, Sullivan & Cromwell LLP and Miller, Canfield, Paddock and Stone, PLC, moves this Court to dismiss with prejudice the Complaint filed by Plaintiffs General Motors LLC and General Motors Co. (collectively, “GM”) on the grounds that the exercise of personal jurisdiction over FCA NV would violate constitutional due process and that GM has failed to state a claim against FCA NV upon which relief may be granted. In support of this motion, FCA NV states as follows:

1. On November 20, 2019, GM filed a Complaint in this action seeking to piggyback off indictments and plea agreements stemming from allegations that former UAW employees received prohibited payments facilitated by certain former employees of FCA US LLC (“FCA US”)—a separate legal entity that is a subsidiary of FCA NV—which GM contends resulted in “benefits, concessions, and advantages for FCA in the negotiation, implementation, and administration of the collective bargaining agreements between FCA and the UAW.” (Compl. ¶ 3.)

2. GM alleges that concessions FCA US purportedly obtained from the UAW not only caused harm to rank-and-file employees of FCA US, but also—as a result of a complex and speculative sequence of events—caused GM to incur “higher costs” and allowed FCA to “more effectively compete and thrive against GM.” (Compl. ¶¶ 4-5.) On that basis, GM asserts five causes of action: (1) violation of

Section 1962(b) of the Racketeer Influenced and Corrupt Organizations Act (“RICO”); (2) violation of RICO Section 1962(c); (3) violation of RICO Section 1962(d); (4) unfair competition; and (5) civil conspiracy.

3. As explained more fully in the accompanying Memorandum of Law, GM’s claims against FCA NV should be dismissed with prejudice for the following reasons (in addition to the reasons set forth in FCA US’s Motion to Dismiss and accompanying Memorandum of Law):

a. *First*, the Court lacks personal jurisdiction over FCA NV, as the exercise of personal jurisdiction would violate constitutional due process. GM does not contend that FCA NV is “at home” in Michigan as required to support general jurisdiction; nor could GM do so given that FCA NV is organized under the laws of the Netherlands and has its principal executive offices in London, England. With respect to specific jurisdiction, GM’s allegations as to FCA NV are a smattering of (i) conclusory allegations with no supporting facts, (ii) alleged passive acts that do not amount to purposeful availment, and (iii) alleged conduct that has nothing to do with the claims at issue. GM’s attempt to attribute to FCA NV the acts of Sergio Marchionne—the now deceased former CEO of both FCA NV and FCA US—ignores the well-established presumption that an officer of both a parent company and its subsidiary acts on behalf of the subsidiary.

b. *Second*, GM fails to state a claim against FCA NV because the Complaint does not plausibly allege that FCA NV participated in any alleged RICO conspiracy or was engaged in unfair competition. GM’s allegations as to FCA NV are wholly conclusory, and GM’s allegations as to “FCA Group”—a name GM uses to conflate the conduct of FCA NV with that of FCA US—amount to improper group pleading that is insufficient to state a RICO claim against FCA NV.

4. As Local Rule 7.1(a) requires, FCA NV’s counsel conferred with GM’s counsel on January 9, 2020 to seek concurrence in the relief sought by this motion, but GM declined to agree to dismiss its Complaint voluntarily.

WHEREFORE, FCA NV respectfully requests that this Court grant its motion and enter an order dismissing the Complaint with prejudice.

Respectfully submitted,

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**FIAT CHRYSLER AUTOMOBILES N.V.’S MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO DISMISS THE COMPLAINT**

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STATEMENT OF ISSUES PRESENTED

1. Should the Court dismiss GM's claims with respect to Fiat Chrysler Automobiles N.V. ("FCA NV") because GM has failed to make a *prima facie* showing of general or specific jurisdiction as to FCA NV?¹
2. Should the Court dismiss GM's claims with respect to FCA NV because GM has not adequately pled that FCA NV participated in a RICO conspiracy or engaged in unfair competition?

¹ Plaintiffs General Motors LLC and General Motors Co. are referred to collectively as "GM."

**STATEMENT OF CONTROLLING
OR MOST APPROPRIATE AUTHORITIES**

The controlling or most appropriate authorities for the relief that FCA NV seeks include:

1. Fed. R. Civ. P. 12(b)(2)
2. Fed. R. Civ. P. 12(b)(6)

The Court lacks personal jurisdiction over FCA NV:

3. 18 U.S.C. § 1965(a)
4. 18 U.S.C. § 1965(b)
5. Mich. Comp. Laws 600.715
6. *Bridgeport Music, Inc. v. Still N The Water Publ'g.*, 327 F.3d 472 (6th Cir. 2003)
7. *Conn v. Zakharov*, 667 F.3d 705 (6th Cir. 2012)
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13. *United States v. Bestfoods*, 524 U.S. 51 (1998)

GM fails to adequately allege FCA NV participated in a RICO conspiracy or engaged in unfair competition:

14. *Hall Am. Ctr. Assocs. Ltd. P'ship v. Dick*, 726 F. Supp. 1083 (E.D. Mich. 1989)

15. *Johnson v. U.S. Nat'l Bank Ass'n*, 508 F. App'x 451 (6th Cir. 2012)
16. *Kerrigan v. ViSalus, Inc.*, 112 F. Supp. 3d 580 (E.D. Mich. 2015)
17. *Kuttkuhn v. Quicken Loans, Inc.*, 2011 WL 1575371 (E.D. Mich. Apr. 26, 2011)
18. *United States v. Bestfoods*, 524 U.S. 51 (1998)

PRELIMINARY STATEMENT

FCA NV incorporates by reference the grounds for dismissal set forth in the separate motion to dismiss filed by FCA US LLC (“FCA US”), including footnote 2. The Court should dismiss all claims against FCA NV for the additional reasons that GM’s Complaint does not (i) support the exercise of personal jurisdiction over FCA NV, or (ii) plausibly state a claim against FCA NV.

First, GM has failed to demonstrate that FCA NV has sufficient minimum contacts with Michigan to support the exercise of either general or specific jurisdiction. FCA NV is not subject to general jurisdiction: it is a foreign company organized under the laws of the Netherlands with its principal executive offices in London, England. Nor does GM allege facts showing that FCA NV—as opposed to “FCA Group,” a name GM uses to conflate the alleged conduct of FCA NV with that of FCA US—deliberately engaged in overt acts in Michigan, or that any such acts gave rise to GM’s claims. Instead, GM alleges that FCA NV “act[ed] through its agent [Sergio] Marchionne” (Compl. ¶ 174)—the now deceased former CEO of both FCA NV and its subsidiary FCA US—and, therefore, that Mr. Marchionne’s contacts with Michigan should be imputed to FCA NV. Such conclusory allegations cannot overcome the well-established presumption that an officer holding positions with both a parent company and its subsidiary acts on behalf of the subsidiary, *United States v. Bestfoods*, 524 U.S. 51, 69 (1998), particularly where

Mr. Marchionne's alleged acts (none of which is well-pled) concern FCA US's collective bargaining agreements ("CBAs") with the UAW, a U.S. labor union.

Second, GM fails to state a claim against FCA NV because the Complaint does not plausibly allege that FCA NV participated in any alleged RICO conspiracy or engaged in unfair competition. Conclusory allegations that FCA NV had "knowledge and approval of" the alleged prohibited payments are "not sufficient to withstand a motion to dismiss." *Kuttkuhn v. Quicken Loans, Inc.*, 2011 WL 1575371, at *5 (E.D. Mich. Apr. 26, 2011) (Borman, J.).

RELEVANT ALLEGATIONS OF THE COMPLAINT

FCA NV (formerly Fiat S.p.A. ("Fiat")) is a holding company organized under the laws of the Netherlands, with its principal executive offices in London, England. (Compl. ¶¶ 16-17.) The Complaint alleges that FCA NV "both directly and through its subsidiaries, designs, engineers, manufactures, distributes, and sells vehicles and components, . . . in Michigan." (Compl. ¶ 17.) FCA NV is the ultimate parent company of FCA US (formerly Chrysler Group LLC ("Chrysler")), an automobile manufacturer based in Auburn Hills, Michigan. (Compl. ¶¶ 16-17.) The Complaint refers to FCA NV and FCA US (together with their predecessors) as "FCA Group" (Compl. ¶ 2 n.1), but there is no such corporate entity.

Sergio Marchionne served as the CEO of Fiat, and later FCA NV, from 2004 until his death in 2018. Mr. Marchionne also served as (i) CEO of Chrysler, and

later FCA US, from 2009 until his death in 2018, and (ii) Chairman of Chrysler, and later FCA US, from 2011 until his death in 2018. (Compl. ¶ 21.) The Complaint alleges that, “[a]t all times relevant to this Complaint, and until his death, Marchionne was an agent of FCA Group.” (Compl. ¶ 21.)

GM claims that the alleged prohibited payments to certain former UAW employees that were facilitated by certain former FCA US employees were part of a “scheme” by FCA US and FCA NV to “more effectively compete and thrive against GM and . . . ultimately attempt to force a merger with GM.” (Compl. ¶ 5.) GM asserts—with no factual basis—that FCA NV, “acting through its agent Marchionne,” approved the alleged prohibited payments, purportedly “to achieve the ultimate goal of a combination between GM and FCA NV.” (Compl. ¶ 174.) On that basis, GM asserts RICO, unfair competition, and civil conspiracy claims against FCA NV.

ARGUMENT

I. The Court lacks personal jurisdiction over FCA NV.

“[T]he Due Process Clause requires that the defendant have sufficient ‘minimum contact[s]’ with the forum state so that finding personal jurisdiction does not offend traditional notions of fair play and substantial justice.” *Conn v. Zakharov*, 667 F.3d 705, 712 (6th Cir. 2012). As plaintiff, GM bears the burden of making a *prima facie* showing that the Court can exercise either general (“all-purpose”) or

specific (“case-linked”) personal jurisdiction over FCA NV consistent with the due process requirements of the U.S. Constitution. *See Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991). GM must plead “specific facts” supporting personal jurisdiction; vague generalizations will not suffice. *Conn*, 667 F.3d at 711; *see Chencinski v. Murga*, 2013 WL 3810344, at *5 (E.D. Mich. July 23, 2013) (noting that *Twombly* and *Iqbal* “standard also applies to findings of personal jurisdiction”). “[I]n the face of a properly supported motion for dismissal, the plaintiff may not stand on his pleadings but must, by affidavit or otherwise, set forth specific facts showing that the court has jurisdiction.” *Theunissen*, 935 F.2d at 1458.

GM asserts that the Court may exercise personal jurisdiction over FCA NV pursuant to (i) RICO’s provision allowing a suit to be brought “in the district court of the United States for any district in which such person resides, is found, has an agent, or transacts his affairs” (18 U.S.C. § 1965(a)), (ii) RICO’s provision authorizing jurisdiction where “the ends of justice require that [the] conspiracy be tried in a single court” (18 U.S.C. § 1965(b)), and (iii) Michigan’s long-arm statute (MCL 600.715). (*See Compl.* ¶¶ 41-42.) Under any of these statutes, the exercise of jurisdiction over FCA NV is proper only if GM can show sufficient contacts with its chosen forum.² *See Sports Auth. Mich., Inc. v. Justballs, Inc.*, 97 F. Supp. 2d 806,

² The Court need not reach the unresolved question of whether RICO § 1965(b) authorizes nationwide service of process, such that minimum contacts with the

810 (E.D. Mich. 2000) (“Under Michigan’s long-arm statute, the state’s jurisdiction extends to the limits imposed by federal constitutional Due Process requirements, and thus, the two questions become one.”).³ GM has failed to meet its burden of pleading that this Court has either general or specific jurisdiction over FCA NV.

A. FCA NV is not subject to general jurisdiction.

GM does not contend that the Court has general jurisdiction over FCA NV. (See Compl. ¶ 42 (alleging FCA US, but not FCA NV, is “at home” in Michigan).) That is unsurprising because GM could never make the showing required under *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014), that FCA NV is “at home” in Michigan. GM concedes that FCA NV is “organized under the laws of the Netherlands” and that its “principal executive offices are in London, England.” (Compl. ¶ 17.) Although GM alleges that FCA NV, “directly and through its

United States rather than Michigan are sufficient, because GM alleges that “the overwhelming majority of actions and effects occurred in this district” (Compl. ¶ 41), and does not plead contacts with the United States as a whole separate from Michigan. While this brief refers to contacts with Michigan, the arguments apply equally to any allegation that FCA NV has sufficient contacts with the United States.

³ The statutory bases for personal jurisdiction under RICO are also not met here. *First*, GM has not adequately alleged that FCA NV “regularly transacts business of a substantial and continuous character within th[is] district,” as is required under Section 1965(a). *Obee v. Teleshare, Inc.*, 725 F. Supp. 913, 916 (E.D. Mich. 1989). *Second*, GM “cannot establish that ‘the ends of justice’ require this Court to assert personal jurisdiction over” FCA NV, as is required under 18 U.S.C. § 1965(b). *E & M Props. v. Razorgator, Inc.*, 2008 WL 1837261, at *7 (E.D. Mich. Apr. 23, 2008). Because FCA NV has not purposefully availed itself of Michigan (*see infra* 6-9), it “could not have expected a[] lawsuit . . . to be brought against it in Michigan.” *Id.*

subsidiaries,” engages in business in Michigan (Compl. ¶ 17), that is not enough to establish that FCA NV is “essentially at home” in Michigan. *Smith v. Amada Mach. Tools Am. Inc.*, 2017 WL 4339328, at *5-6 (E.D. Mich. June 12, 2017) (foreign parent that manufactures product for its U.S. subsidiary not “at home in Michigan”).

B. FCA NV is not subject to specific jurisdiction.

Courts apply a three-factor test “to determine whether the exercise of specific personal jurisdiction over an out-of-state defendant comports with due process”:

1. “whether the defendant ‘purposely availed’ himself of the privilege of ‘acting or causing a consequence’ in the forum state”;
2. “whether the cause of action ‘arose from’ defendant’s activities in the forum state”; and
3. “whether defendant’s acts or the consequences he caused have ‘a sufficiently substantial connection’ with the forum state ‘so as to make the exercise of jurisdiction reasonable.’”

Devnani v. DKM Sols., Inc., 2017 WL 4682273, at *5 (E.D. Mich. Oct. 18, 2017) (Borman, J.). Each factor is “an independent requirement, and failure to meet any one of the three means that personal jurisdiction may not be invoked.” *Id.*

1. GM fails to adequately allege that FCA NV had purposeful contacts with Michigan that gave rise to GM’s claims.

“The emphasis in the purposeful availment inquiry is whether the defendant has engaged in ‘some overt actions connecting the defendant with the forum state.’” *Bridgeport Music, Inc. v. Still N The Water Publ’g*, 327 F.3d 472, 478-79 (6th Cir. 2003). Purposeful availment is “more than a passive availment of [the forum state’s]

opportunities”; instead, it is “something akin to a deliberate undertaking.” *Id.*

GM “allege[s] virtually no facts from which the Court could even infer that” FCA NV had “any individual or personal contacts with the State of Michigan that would render jurisdiction over [it] appropriate.” *Flagstar Bank, FSB v. Centerpointe Fin., Inc.*, 2011 WL 2111984, at *4 (E.D. Mich. May 26, 2011) (Borman, J.). GM alleges in conclusory fashion that (i) “FCA NV engaged in and authorized a decade-long racketeering scheme occurring principally in Michigan, directed to harm GM, which is headquartered in Michigan,” and (ii) FCA NV had “knowledge and approval of” the alleged prohibited payments. (Compl. ¶¶ 42, 64.)

The first allegation lacks “specific facts” supporting FCA NV’s deliberate involvement in the alleged scheme that would be necessary to establish personal jurisdiction. *See Flagstar*, 2011 WL 2111984, at *4 (no personal jurisdiction where plaintiff merely pled defendants “directed” fraud). That conclusion does not change because GM alleges that it felt some injury in Michigan. *Walden v. Fiore*, 571 U.S. 277, 291 (2014) (“[T]he mere fact that [defendant’s] conduct affected plaintiffs with connections to the forum State does not suffice to authorize jurisdiction.”).

The second allegation—that FCA NV had “knowledge and approval of” payments facilitated by former FCA US employees—likewise lacks specificity and concerns a *passive* act, not an overt act directed at Michigan. *See Chirila v. Conforte*, 47 F. App’x 838, 842 (9th Cir. 2002) (“knowledge and consent—passive

states of mind—do not constitute intentional acts directed at the forum state”); *Smith v. Home Depot USA, Inc.*, 294 F. App’x 186, 190 (6th Cir. 2008) (parent corporation “never purposefully availed itself to personal jurisdiction” by permitting its subsidiary to act in forum state, as “*permission* . . . is a far cry from a *requirement*”).

GM’s allegation that FCA NV designs, engineers, manufactures, distributes, and sells vehicles in Michigan (Compl. ¶ 42) is both wrong—FCA NV is a holding company—and beside the point. Even if FCA NV conducted such activities in Michigan, GM’s causes of action do not “arise from” those activities. *See Third Nat’l Bank in Nashville v. WEDGE Grp. Inc.*, 882 F.2d 1087, 1091 (6th Cir. 1989). GM’s case is about alleged improper payments made to former UAW employees that were facilitated by former FCA US employees. “What is needed—and what is missing here—is a connection between the forum and the specific claims at issue.” *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017).

2. GM fails to adequately allege that Mr. Marchionne’s contacts with Michigan are imputable to FCA NV.

GM next attempts to establish that FCA NV, “acting through its agent Marchionne,” allegedly “engaged in a pattern of making and approving payments and the provision of things of value to UAW leaders.” (Compl. ¶ 174(a).) But GM cannot rely on alleged conduct by Mr. Marchionne to establish personal jurisdiction over FCA NV. There is a well-established presumption that an officer holding positions with a parent and its subsidiary is acting on behalf of the subsidiary. *See*

Bestfoods, 524 U.S. at 69. Accordingly, to establish personal jurisdiction over a foreign parent company, “[t]he *Bestfoods* presumption places the burden on Plaintiffs to show that [executives of the parent and subsidiary] were acting in their capacity as [parent] officers rather than officers of [the subsidiary] when they took actions related to Plaintiffs’ claims.” *Am. Med. Sys., Inc. v. Biolitec, Inc.*, 604 F. Supp. 2d 325, 330 (D. Mass. 2009); *cf. Anwar v. Dow Chem. Co.*, 876 F.3d 841, 853 (6th Cir. 2017) (applying *Bestfoods* presumption). There is every reason to apply that presumption here given that GM is alleging that Mr. Marchionne took action in Michigan to influence negotiation of CBAs between FCA NV’s U.S. subsidiary (FCA US) and a U.S. labor union (the UAW) relating to U.S. workers.

3. Exercising specific jurisdiction over FCA NV for these claims would be unreasonable.

Where, as here, “[P]laintiffs have failed to satisfy the ‘purposeful availment’ and ‘arising from’ requirements” of the due process inquiry, “an inference of reasonableness is not warranted.” *IDFA, LLC v. Wilson*, 2009 WL 4646283, at *14 (E.D. Mich. Dec. 8, 2009); *see Dean v. Motel 6 Operating L.P.*, 134 F.3d 1269 (6th Cir. 1998) (expressing “unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum”).

II. GM fails to adequately allege that FCA NV participated in a RICO conspiracy or engaged in unfair competition.

Even if the Court were to conclude that it can exercise personal jurisdiction

over FCA NV—and not dismiss the Complaint based on the fatal deficiencies explained in FCA US’s motion to dismiss—the Court should dismiss all claims against FCA NV for the independent reason that the Complaint does not plausibly state a claim against FCA NV. “In order to sustain a RICO claim, a plaintiff must present proof that each defendant was in some manner involved in the performance of the requisite predicate acts.” *Hall Am. Ctr. Assocs. Ltd. P’ship v. Dick*, 726 F. Supp. 1083, 1089-91 (E.D. Mich. 1989) (“indiscriminate[ly] lump[ing] . . . all three RICO defendants in one count” requires dismissal). GM’s attempt to drag FCA NV into the action by including it as part of general allegations against “FCA Group” is insufficient to state a claim against FCA NV. *See, e.g., Kerrigan v. ViSalus, Inc.*, 112 F. Supp. 3d 580, 601-02 (E.D. Mich. 2015) (“[S]hotgun’ allegations of general misconduct by a group of . . . Defendants are not sufficient to state RICO claims against each of them.”); *Hoover v. Langston Equip. Assocs., Inc.*, 958 F.2d 742, 745 (6th Cir. 1992) (affirming dismissal of group pled allegations).

The only references in the Complaint to FCA NV merely (i) describe FCA NV (Compl. ¶ 17), (ii) purport to set forth a basis for exercising personal jurisdiction over FCA NV (Compl. ¶ 42), and (iii) allege in conclusory terms that FCA NV had “knowledge and approval of” payments facilitated by former FCA US employees to former UAW employees (Compl. ¶ 64). Such threadbare allegations are not sufficient. *See Johnson v. U.S. Nat. Bank Ass’n*, 508 F. App’x 451, 452 (6th Cir.

2012) (allegations that defendants “knew about the operation of th[e] criminal enterprise” “did not constitute a plausible RICO claim because it did not give rise to an inference that the defendants actually knew of the fraudulent activities *and* agreed to conspire with those engaged in unlawful conduct through a RICO enterprise”).

Nor can GM plausibly allege that FCA NV was itself involved in a RICO conspiracy by asserting that “its agent Marchionne” “approved” the alleged prohibited payments (Compl. ¶ 174(a)-(b)). GM does not allege that Mr. Marchionne authorized any particular payment. (*See* Compl. ¶¶ 66-70.) Indeed, the indictments, plea agreements, and sentencing memoranda that GM cites in its Complaint do not contend that FCA NV or Mr. Marchionne “authorized” or even had “knowledge or approval of” (Compl. ¶¶ 5, 63) the alleged prohibited payments. Moreover, GM has not rebutted the presumption that any actions Mr. Marchionne allegedly took in connection with negotiation of CBAs with the UAW were taken on behalf of FCA US, not FCA NV. (*See supra* at 8-9.)

CONCLUSION

The Court should dismiss all claims against FCA NV.

January 24, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 24, 2020, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all parties of record, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: None.

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