STATE OF RHODE ISLAND **SUPERIOR COURT**

PROVIDENCE, SC.

STATE OF RHODE ISLAND, *Plaintiff,* v. BP P.L.C., *et al*. *Defendants*.	C.A. No. PC-2018-4716

MARATHON OIL CORPORATION'S AND MARATHON OIL COMPANY'S MEMORANDUM IN SUPPORT OF THEIR SUPPLEMENTAL MOTION TO DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION

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Pursuant to Rhode Island Superior Court Rule 12(b)(2) and the Stipulation entered on November 12, 2019, Defendants Marathon Oil Corporation ("MRO") and Marathon Oil Company ("MOC") (collectively, "Marathon Oil") move to dismiss for lack of personal jurisdiction. To that end, MRO and MOC have joined Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction ("Joint Mem."). The Joint Memorandum describes why the Complaint fails to satisfy the requirements of Rhode Island's long-arm statute and the Due Process Clause of the U.S. Constitution as to the conduct alleged against all Defendants collectively. This motion explains how the legal requirements addressed in the Joint Memorandum apply to the more limited allegations made against Marathon Oil, and also addresses a Due Process requirement that did not need to be addressed in the Joint Memorandum.[1]

BACKGROUND

Marathon Oil Corporation (ticker symbol MRO) is a publicly traded holding company organized under Delaware law and headquartered in Houston, Texas. Complaint ("Compl."). ¶ 27(b). Marathon Oil Company (MOC), incorrectly described in the Complaint as a "corporate ancestor" of MRO, is a wholly owned subsidiary of MRO that (itself and with subsidiaries not

[1] The Court is respectfully referred to pages 1-5 of the Joint Memorandum for a discussion of the background facts and travel of this case. Facts and allegations specific to Marathon Oil are discussed below. Marathon Oil has also joined the Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, which addresses the substantive deficiencies of Plaintiff's Complaint.

sued in this case) is engaged exclusively in the exploration for and production of crude oil and natural gas products.[2]

Like many other Defendants, MRO is the subject of a boilerplate allegation that it "control[s] and ha[s] controlled [its] company-wide decisions about the quantity and extent of fossil fuel production and sales, including those of [its] subsidiaries."[3] MRO and MOC are not affiliated with Defendant Marathon Petroleum Company, LP, or Defendant Marathon Petroleum Corporation, an independent publicly traded corporation (ticker symbol MPC) engaged in the business of "refining, marketing, retail, and transport" of petroleum and natural gas products, or MPC's subsidiary, Defendant Speedway, LLC ("Speedway").[4]

The Complaint alleges no facts linking Marathon Oil with the forum. MRO and MOC are mentioned in just three paragraphs of the Complaint, and Plaintiff identifies only one—Paragraph 27 in the introductory "Defendants" section—as containing allegations it relies upon in alleging that the Court may exercise specific personal jurisdiction over the companies. *See id.* ¶ 34 (alleging personal jurisdiction based on

[2] *See* Marathon Oil's Request for Judicial Notice in Support of its Supplemental Motion to Dismiss the Complaint for Lack of Personal Jurisdiction ("RJN"), filed concurrently herewith, Ex. A at Item 1 (describing MRO as independent exploration and production company).
[3] Compl. ¶ 27(d). Nearly identically worded allegations of "control" are made as to other Defendants. *See id.* ¶¶ 21(c) and (d) (Chevron Corp.), 22(b) and (c) (ExxonMobil); 23(b) and (c) (BP P.L.C.), 24(b) and (c) (Royal Dutch Shell PLC), 25(b) and (c) (ConocoPhillips), 26(b) and (c) (Citgo Petroleum Corp.), 28(c) and (d) (Hess Corp.), and 29(c) and (d) (Lukoil Pan Americas, LLC). MRO disagrees that it has legal responsibility for its subsidiaries and affiliates but does not dispute Plaintiff's assertion for purposes of this motion. *See* Joint Mem. at 5 n. 2. Notably, the Complaint does not make this or any other allegation that *MOC* is responsible for the actions of its subsidiaries.
[4] *See* Compl. ¶¶ 27(c), 27(g).

"minimum contacts . . . as described above"). To the extent Paragraph 27 contains any allegations of fact, they do not relate to MRO and MOC.[5] Paragraph 27(i) states:

> Marathon directs and has directed substantial fossil fuel-related business to Rhode Island. A substantial portion of Marathon's fossil fuel products are or have been extracted, refined, transported, traded, distributed, marketed, promoted, manufactured, sold, and/or consumed in Rhode Island, from which Marathon derives and has derived substantial revenue. For example, Marathon markets and/or has marketed gasoline and other fossil fuel products to consumers, including through Speedway-branded petroleum service stations in Rhode Island. Marathon owns and operates an interactive webpage that allow [sic] consumers to locate Speedway-branded gas stations in the state.

Except for the last two sentences, these allegations are boilerplate, virtually word-for-word the same as made against other Defendants, *see* Joint Mem. at 5, and indeed virtually word-for-word the same as allegations of contacts by MRO and MOC with *Maryland* made in the Baltimore climate change case filed by the same plaintiff's counsel.[6] The allegations in fact allege nothing,

[5] Plaintiff's confusing use of the term "Marathon" to describe allegations that do and do not relate to Marathon Oil is improper "group pleading," as discussed below at page 9.

[6] *See* Compl. ¶¶ 21(g) (Chevron); 22(g) (ExxonMobil); 23(g) (BP); 24(g) (Shell); 25(h) (ConocoPhillips); 26(e) (CITGO); 28(e) (Hess); 29(f) (Getty). The City of Baltimore alleged the following:

> Marathon transacts and has transacted substantial fossil fuel-related business in Maryland. A substantial portion of Marathon's fossil fuel products are or have been extracted, refined, transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Maryland, from which Marathon derives and has derived substantial revenue. For example, Marathon marketed or markets gasoline and other fossil fuel products to consumers in Maryland, including through over 25 Marathon- and Speedway-branded petroleum service stations in Maryland.

Complaint, *Mayor and City Council of Baltimore v. BP P.L.C. et al.*, No. 1:18-cv-02357-ELH, 2018 WL 4236520, at ¶ 27(h) (D. Md. Aug. 16, 2018).

as the "and/or" leaves Marathon Oil guessing as to which (if any) of the types of listed conduct Plaintiff (wrongly) thinks MRO and MOC conducted "in" Rhode Island.[7]

The last two sentences of Paragraph 27(i) appear to allege facts, but they are not facts about Marathon Oil. The apparent source of Plaintiff's confusion is its definition of "Marathon" in Paragraph 27(h) of the Complaint, which includes not only MRO and MOC but three entities (Marathon Petroleum, LP, MPC, and Speedway) associated with a different independent publicly traded defendant. Paragraph 27(g) of the Complaint, for example, observes that Defendant Speedway LLC (the subject of the last two sentences of Paragraph 27(i)) is a subsidiary of *Marathon Petroleum Corporation*. The allegation in Paragraph 27(i) that "Marathon" operates an interactive website where "Speedway-branded stations" in Rhode Island may be found does not, and cannot, relate to MRO or MOC. "Marathon" is only mentioned in two other paragraphs of the Complaint, Paragraphs 32 and 115, and neither of them suggests any connection with Rhode Island whatsoever.

LEGAL STANDARD

The Court is respectfully referred to pages 6-7 of the Joint Memorandum for a discussion of the applicable legal standard.

[7] Surely those contacts cannot include, as alleged, the production of crude oil, natural gas, and coal, as none of those activities was performed in Rhode Island during the relevant period. *See* Joint Mem. at 14. The State's inexplicable allegation to the contrary suggests a good-faith investigation did not precede the filing of its Complaint against MRO and MOC and is addressed further at pages 7-9 below.

ARGUMENT

THE DUE PROCESS CLAUSE PRECLUDES THE ASSERTION OF PERSONAL JURISDICTION OVER MRO AND MOC

Plaintiff purports to exercise specific, or "case-linked," personal jurisdiction over Marathon Oil.[8] *See* Joint Mem. at 9-20. To determine whether it comports with the Due Process Clause, the Court must undertake a two-step inquiry: "(1) determining whether there are sufficient minimum contacts with the forum state; and (2) determining that litigation in the forum state does not 'offend traditional notions of fair play and substantial justice.'" *St. Onge v. USAA Fed. Sav. Bank*, No. 2018-316-Appeal, 2019 WL 6205044, at *4 (R.I. Nov. 21, 2019). Case law in turn divides the first inquiry into two, focusing on the relationship among the claims, the defendant, and the forum:

> First, the claim underlying the litigation must directly arise out of, or relate to, the defendant's forum-state activities. Second, the defendant's in-state contacts must represent a purposeful availment of the privilege of conducting activities in the forum state, thereby invoking the benefits and protections of that state's laws and making the defendant's involuntary presence before the state's courts foreseeable. Third, the exercise of jurisdiction must . . . be reasonable.

PREP Tours, Inc. v. Am. Youth Soccer Org., 913 F.3d 11, 17 (1st Cir. 2019) (quoting *United Elec., Radio & Mach. Workers of Am. v. 163 Pleasant St. Corp.*, 960 F.2d 1080, 1089 (1st Cir. 1992)); *see also Cerberus Partners L.P. v. Gadsby & Hannah*, 836 A.2d 1113, 1119, 1121 (R.I. 2003) (separately applying Relatedness and Purposeful Availment Tests). The Joint Memorandum explains why the Complaint fails to satisfy the first and third requirements as to

[8] Plaintiff asserts only personal jurisdiction over Marathon Oil based on "minimum contacts." Compl. ¶ 34. The broader "general" personal jurisdiction is not alleged and would not be available because neither MRO nor MOC is organized under the laws of or based in Rhode Island. *See* Compl. ¶¶ 27(a) and (b); *St. Onge v. USAA Fed. Sav. Bank*, No. 2018-316-Appeal, 2019 WL 6205044, at *3-*4 (R.I. Nov. 21, 2019).

Defendants, even collectively. We address below the Complaint's failure to satisfy those two requirements, as well as the "purposeful availment" requirement as to Marathon Oil.

I. PLAINTIFF HAS FAILED TO ALLEGE THAT MRO OR MOC HAD "SUFFICIENT MINIMUM CONTACTS" WITH RHODE ISLAND

A. Plaintiff Cannot Satisfy the "Relatedness" Test for Specific Personal Jurisdiction

The Due Process requirement that a plaintiff's claim must "directly arise out of, or relate to, the defendant's forum-state activities"—the so-called "Relatedness" Test—has two parts, one factual and one legal: "[T]o assess relatedness we look to whether the plaintiff has established cause in fact (i.e., the injury would not have occurred 'but for' the defendant's forum-state activity) and legal cause (i.e., the defendant's in-state conduct gave birth to the cause of action)." *Scottsdale Capital Advisors Corp. v. Deal, LLC*, 887 F.3d 17, 20-21 (1st Cir. 2018) (internal quotation marks and citations omitted). *See* Joint Mem. at 10.

1. Plaintiff Has Failed to Allege "Cause in Fact"

Plaintiff does not allege that climate change would not have occurred but for the unspecified Rhode Island activities of MRO and MOC. *See* Joint Mem. at 11-12. That failure requires that the Complaint be dismissed as to MRO and MOC. Courts deciding motions to dismiss must apply their "judicial experience and common sense," *Chhun v. Mortg. Elec. Registration Sys., Inc.*, 84 A.3d 419, 422 (R.I. 2014), and even in deciding jurisdictional motions may not make "farfetched inferences." *Ticketmaster-N.Y., Inc. v. Alioto*, 26 F.3d 201, 203 (1st Cir. 1994). Nothing more than such common sense is necessary to conclude that global warming cannot be attributed to any Rhode Island conduct by MRO and MOC alleged in the Complaint—a conclusion that would be in accord with the California federal court's recent decision that personal jurisdiction did not exist because it was "manifest" that Defendants' actions in California could not have caused climate change. *See City of Oakland v. BP p.l.c.*, No. C 17-06011 WHA,

2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018) (discussed at pages 2-3 and 11-13 of the Joint Memorandum).

Plaintiff also fails to allege against MRO and MOC the basics of even its own unprecedented theory of responsibility for climate change—a theory that writes out of the Due Process Clause the requirement that the claim arise specifically from a defendant's forum-related conduct. Thus, Plaintiff alleges that its claims are plausible because all Defendants' conduct, *collectively and globally*, was a "substantial" cause of climate change: "Defendants are directly responsible for . . . 14.81% of total [CO_2 emissions between 1965 and 2015]. *Accordingly*, Defendants are directly responsible for a substantial portion of past and committed sea level rise . . ."; "Defendants' conduct as described herein is therefore an actual, substantial, and proximate cause of Rhode Island's climate change-related activities."[9] Plaintiff makes no allegations of fact relating specifically to MRO and MOC, but even if it had, the requirements for personal jurisdiction would not be satisfied as a matter of law because U.S. Government data establish that no oil and gas production occurred *in Rhode Island*.[10] *See* Joint Mem. at 14. Plaintiff

[9] Compl. ¶¶ 7 (emphasis added) and 224; *see also id.* ¶¶ 229 (Defendants collectively responsible for being "a substantial contributing factor in the creation of the public nuisance"); *cf. id.* ¶ 268 (Defendants' "individual and collective" acts were "actual, substantial causes of sea level rise"). To be clear, stripped of its provocative language of Defendants being "responsible" for "emissions," the Complaint actually alleges that 14.81% of CO_2 emissions during the relevant period can be traced back to raw materials produced by Defendants and ultimately combusted by billions of third parties over more than a century to generate heat and energy. Compl. ¶ 97. Both Plaintiff and the report seek through their respective approaches to eliminate from the picture the independent decisions by these countless third parties.

[10] Plaintiff's failure to make any allegations regarding the materiality of Marathon Oil's operations may arise from the fact that the very source Plaintiff relies upon attributes so small a share to "Marathon" that *it is not even mentioned.* *See* Compl. ¶¶ 94 & n.100 (relying upon Heede, Richard, *Tracing anthropogenic carbon dioxide and methane emissions to fossil fuel and cement producers*, 1854-2010, Climatic Change, 122, 229-241 (2014)) ("Heede Report"), *available at* https://link.springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf (last accessed January 13, 2020); *see* Heede Report at 237, Table 3 (identifying top 20 investor and

cannot be deemed to have satisfied the burden imposed on it to provide a *prima facie* basis for jurisdiction over Marathon Oil.

The few allegations Plaintiff does make against MRO and MOC specifically also fail to satisfy the Relatedness Test. As discussed above at pages 1-4, most of those allegations are boilerplate legal conclusions, made indiscriminately about all Defendants. Conclusory allegations reflecting no good-faith investigation and factual pleading cannot support the assertion of personal jurisdiction. *See* Joint Mem. at 14. This rule is especially pertinent where, as here, Plaintiff's boilerplate allegations are so carelessly made and obviously wrong that they cannot raise a genuine issue of fact to be resolved. Plaintiff seeks, for example, to rely on the allegation in Paragraph 27(i) that MRO and MOC may (or may not) have "extracted" and "refined" "fossil fuel products" "in Rhode Island." Does the State of Rhode Island seriously contend that MRO and MOC (or any other Defendant for that matter) engaged in oil and gas exploration and production in the State since 1965? Clearly, it has not, as noted above. It is hard to conceive that the Complaint's boilerplate and conclusory allegations against MRO and MOC were the product of a "good-faith investigation" entitled to the respect accorded factual allegations under Rhode Island law. *Cf. Martin v. Howard*, 784 A.2d 291, 297 (R.I. 2001) (discussing obligation "to conduct a good-faith investigation before filing a complaint that is sufficient to support allegations showing . . . the jurisdiction of the court"); *see also Mass. Sch. of Law at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998); *Ticketmaster-N.Y., Inc.*, 26 F.3d at 203. No basis exists to credit boilerplate allegations generally or these allegations against Marathon Oil specifically. Plaintiff also fails competently to allege jurisdiction over

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state-owned entities and attributed CO_2 and CH_4 emissions, which does not include Marathon Oil).

MRO and MOC because of its unjustifiable grouping together of unrelated companies in Paragraph 27 under the banner of the so-called "Marathon" Defendants—the unacceptable result of which is an inability to determine which allegations have actually been made against MRO and MOC and which have not.[11]

2. Plaintiff Cannot Establish "Legal" Cause

The second step in applying the Relatedness Test requires Plaintiff to plead and ultimately prove that MRO's and MOC's alleged Rhode Island-related activities were the "legal cause" of Plaintiff's claim. *See* Joint Mem. at 10. The Complaint also fails to satisfy this requirement as to Marathon Oil. Plaintiff can no more contend that its claims arose from MRO and MOC's contacts with Rhode Island (2019 population of about 1.1 million) than it could with their contacts with Montana (near same), or Latvia (population of about 1.9 million).[12] A causation requirement that claims "directly arise" from a defendant's "specific contacts" with Rhode Island but is allowed to be satisfied equally by contacts with jurisdictions all over the

[11] *See* Compl. ¶ 27(h). Marathon Oil does not challenge the propriety of "group pleading" in general, which can be appropriate where allegations can be made in good faith against all members of the defined group. Here, however, certain allegations against "Marathon" (including that its website provides the locations of another company's gas stations) cannot conceivably be applicable to Marathon Oil, and so it is impossible to know which of the already-threadbare jurisdictional allegations against "Marathon" are intended actually to be made against Marathon Oil. *See Alaska Elec. Pension Fund v. Flotek Indus., Inc.*, 915 F.3d 975, 986 (5th Cir. 2019) (affirming dismissal in light of plaintiffs' "pervasive use of group pleading—referring generally to 'Defendants' rather than specific individuals"); *Quality Auto Painting Ctr. of Roselle v. State Farm Indem. Co.*, 917 F.3d 1249, 1274 (11th Cir. 2019) ("The gist of the problem with group pleading . . . is the failure to give fair notice to each named defendant of the claims against it."); *Am. Sales Co. v. AstraZeneca AB*, No. 10 CIV 6062 PKC, 2011 WL 1465786, at *4 (S.D.N.Y. Apr. 14, 2011) (complaint that "lumps the KBI entities in with all other non-Procter & Gamble defendants by broadly using the abbreviation 'AZ'" is "not coherent" and demonstrates a "lack of clarity in attributing conduct traceable to KBI entities [that] is a basis for dismissal of claims against them").

[12] *See* RJN, Exs. B through D.

world is no requirement at all. Plaintiff's argument should be rejected as contrary to settled Rhode Island and federal precedent.

The Complaint also fails to satisfy the Legal Cause test because Plaintiff's alleged injuries are too remote from conduct alleged against MRO and MOC. The First Circuit has enforced this requirement strictly. "This court 'steadfastly reject[s] the exercise of personal jurisdiction whenever the connection between the cause of action and the defendant's forum-state contacts seems attenuated and indirect.'" *Harlow v. Children's Hospital*, 432 F.3d 50, 61 (1st Cir. 2005) (quoting *United Elec.*, 960 F.2d at 1089). Here, the Complaint alleges a complex chain of causation by which Plaintiff has been injured *derivatively* and *indirectly*, and neither description can support the exercise of personal jurisdiction. Plaintiff's claim is *derivative* because Rhode Island's injury is not alleged to be the result of targeted misdeeds but Rhode Island's status as a state in a warming world. The Due Process Clause requires more. In *A Corp. v. All Am. Plumbing, Inc*. 812 F.3d 54, 60 (1st Cir. 2016), for example, the First Circuit held that personal jurisdiction over a Massachusetts franchisor could not be based on claims that it lost revenue from an injury inflicted on an Arizona franchisee. "This type of indirect effect of out-of-state injury caused by out-of-state conduct is insufficient to fulfill the relatedness prong." *Id.* at 60. As in *A Corp.*, Plaintiff's claims of injury here are the product of actions and consequences it alleges to have occurred almost entirely elsewhere.

Plaintiff's claim also does not arise *directly* from MRO's or MOC's alleged conduct and therefore could not have been proximately caused by it. *See Ticketmaster-N.Y.*, 26 F.3d at 207 (no personal jurisdiction over defendant, who was the source for an allegedly defamatory article, because "the link between the defendant's conduct and the cause of action is attenuated by the intervening activities of third parties, *e.g.*, the reporter, the editor, the media outlet, and that those

intermediaries shape, amplify, and occasionally distort the original utterance"). If this four-step chain of causation in *Ticketmaster* populated by a small number of identifiable persons is too indirect to satisfy the Due Process Clause, then the uncountable number of decisions to combust fossil fuels by billions of parties worldwide over generations that the Complaint alleges resulted in climate change surely cannot be otherwise. *See* Joint Mem. at 13-16.

B. Plaintiff Cannot Satisfy the "Purposeful Availment" Test

Rhode Island-connected actions that satisfy the Relatedness Test (so-called "suit-related conduct," *Walden v. Fiore*, 571 U.S. 277, 284 (2014)), must also reflect "purposeful contacts with the forum." *St. Onge*, 2019 WL 6205044, at *4 (quotation marks and citation omitted). To satisfy this Due Process requirement, the defendant must have performed "some act by which it purposefully avails itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws." *Rose v. Firstar Bank*, 819 A.2d 1251 (R.I. 2003) (quotation marks and citation omitted); *see also id.* at 1253-55; *accord Bristol–Myers Squibb Company v. Superior Court*, 137 S. Ct. 1773, 1780 (2017) (for exercise of specific personal jurisdiction to be constitutional, "the defendant must have . . . purposefully directed its conduct into the forum State"). "Purposeful availment" thus is a "rough quid pro quo": a defendant that "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." *Bluetarp Fin., Inc. v. Matrix Constr. Co.*, 709 F.3d 72, 82 (1st Cir. 2013).

The *sine qua non* of purposeful availment is conduct focusing on the forum state. Thus, specific personal jurisdiction may not be asserted absent evidence of "'an intent or purpose' on the part of [the defendant] to serve the Rhode Island market." *State of Rhode Island v. Atlantic Richfield Co.*, 357 F. Supp. 3d 129, 147 (D.R.I. 2018) (quoting *J. McIntyre Mach., Ltd. v.*

Nicastro, 564 U.S. 873, 889 (2011)). No such conduct is alleged against MRO and MOC here. *Cf. St. Onge*, 2019 WL 6205044, at *5 (rescission of payments by defendant to "credit card issuers from several other states . . . indicates to us that . . . [rescission] also was not targeted at Rhode Island") (emphasis in original) (internal quotation marks omitted); *see Rose*, 819 A.2d at 1255 ("Without evidence that the defendant actually reached out to the plaintiff's state of residence to create a relationship—say, by solicitation * * * —the mere fact that the defendant willingly entered into a tendered relationship does not carry the day.") (quotation marks and citation omitted). Plaintiff's claims would also fail under the "stream of commerce" test often employed in product liability cases where a distant manufacturer is sued for injuries arising from the product's use in the forum. In such cases, it is not sufficient that an alleged injury in the forum have been "foreseeable," but rather that "something more" be found linking the defendant's conduct specifically with the forum. *Knox v. MetalForming, Inc.*, 914 F.3d 685, 691 & n.2 (1st Cir. 2019) (relying on Justice Breyer's concurring opinion in *J. McIntyre Machinery*, 564 U.S. at 889 (Breyer, J., concurring) (personal jurisdiction requires in addition to foreseeability "'something more,' such as special state-related design, advertising, advice, [and] marketing")). Yet, Plaintiff's Complaint, bereft of allegations of conduct by MRO and MOC focused on Rhode Island, alleges nothing more than the "foreseeab[ility]" of potential injury in the State.[13]

Plaintiff does allege that it suffered injury in Rhode Island, but that is irrelevant to whether *personal jurisdiction* may be imposed on the Defendants allegedly responsible for it. The Due Process requirements in general, and the Purposeful Availment Test in particular,

[13] *See* Compl. ¶¶ 229(d) and 236 (First Cause of Action); 239, 246, and 249 (Second Cause of Action); 252, 255, and 262 (Third Cause of Action); 266 and 271 (Fourth Cause of Action); 274 and 283 (Fifth Cause of Action); and 292 (Sixth Cause of Action).

require that the Court focus exclusively on the geographic aim of the defendant's conduct; where the plaintiff may have suffered its injury, even foreseeably, is not relevant.[14] *See* Joint Mem. at 14-15.

II. THE EXERCISE OF PERSONAL JURISDICTION FAILS THE "REASONABLENESS" TEST

The question whether the exercise of jurisdiction over a defendant is "reasonable" is only reached if "minimum contacts" between a defendant and the forum exist, which we argue in Section I above is not the case. *See St. Onge*, 2019 WL 6205044, at *6. Personal jurisdiction is reasonable if it comports with "fundamental principles of fair play and substantial justice," *id.* at *5, and incorporates important principles reconciling the exercise of State powers in connection with multistate (and international) conduct. *See* Joint Mem. at 17-20. Such institutional and policy concerns would assume overwhelming importance if the Court were to adopt the rule urged by Plaintiff: that personal jurisdiction over MRO and MOC could be based on injuries not alleged to have been the result of conduct those companies are alleged to have committed in or focused on Rhode Island. As the Joint Memorandum notes (at 18-19), a plaintiff living anywhere in the United States could in such case seek to impose the laws of his, her, or its forum on the national and global conduct of foreign corporations like MRO and MOC, potentially subjecting their out-of-forum conduct to however many versions of State tort and statutory liability as there are plaintiffs to bring suit.[15] Such a regime of universal personal jurisdiction is

[14] Plaintiff's allegations also fail the Purposeful Availment Test because they are in turn (i) boilerplate legal conclusions made as to all Defendants, (ii) phrased in any event in the alternative ("and/or"), (iii) demonstrably not based on a good-faith effort to determine whether any genuine jurisdictional facts apply to MRO and MOC, or (iv) as alleging an oil and gas exploration and production industry in Rhode Island, simply not creditable. *See* pages 1-4, 8-9 above.

[15] At least one climate change suit has been filed by non-coastal political entities and is currently on appeal of a remand order. *See* Brief of Appellants, *Bd. of Cty. Comm'rs of Boulder Cty. v.*

flatly inconsistent with settled Due Process case law and rejected in the rare instances in which it has been proposed. *See Rose*, 819 A.2d at 1254 (It "would offend 'traditional notions of fair play and substantial justice'" to "allow[] trust beneficiaries to hale the trustee into a vast and geographically limitless diaspora spanning any and all jurisdictions into which one or more of their beneficiaries later chose to move or relocate—simply based on their unilateral act of changing their residence to that jurisdiction"). Plaintiff likewise would allow MRO and MOC (and any other producer of crude oil and fossil fuels) to be sued in "a vast and geographically limitless diaspora spanning any and all jurisdictions" without regard to the absence of causation in fact, legal cause, and purposeful availment.

CONCLUSION

For the foregoing reasons, Marathon Oil's motion to dismiss should be granted and MRO and MOC should be dismissed from the case with prejudice.

Dated: January 13, 2020

Suncor Energy (U.S.A.) Inc., No. 19-1330, 2019 WL 6243318 (10th Cir. Nov. 20, 2019). Plaintiff itself here alleges injuries from changed weather conditions, for example. *See* Compl. ¶¶ 212(a), (alleging injury to the State from "more frequent extreme weather events [that] also contribute to degradation of roads and bridges increasing maintenance and repair costs"), (b) (same, power outages), (i) (same, stormwater infrastructure), and 215 (same, care for "urban forests").

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed and served a copy of the within Marathon Oil Corporation's and Marathon Oil Company's Memorandum In Support of Their Supplemental Motion To Dismiss The Complaint For Lack Of Personal Jurisdiction via the Court's Electronic Filing System to all counsel of record registered and able to receive Electronic Filings in this case on this 13th day of January 2020.

/s/ Stephen M. Prignano