UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MUNICIPALITY OF BAYAMÓN, et al.

Plaintiffs,

v.

EXXON MOBIL CORP., et al.

Defendants.

Case No. 3:22-cv-01550-SCC

DEFENDANT RIO TINTO PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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TO THE HONORABLE COURT:

Defendant Rio Tinto plc ("Rio Tinto"), through the undersigned counsel, and pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure, hereby moves to dismiss the Complaint as to Rio Tinto for lack of personal jurisdiction. Rio Tinto adopts and incorporates by reference Defendants' Joint Motion to Dismiss, Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction ("Joint 12(b)(2) Motion"), and Rio Tinto's Motion to Dismiss for Failure to State a Claim, *see* L. Civ. R. 7(f); Joint Motion for Extension of Time to Answer or Otherwise Respond to the Complaint, ECF No. 58, ¶ 3, but submits this individual motion and memorandum of law to highlight the particular jurisdictional deficiencies in this case against Rio Tinto.

PRELIMINARY STATEMENT

The Municipalities of Puerto Rico ("Plaintiffs") bear the burden of establishing personal jurisdiction over each claim and each Defendant. Plaintiffs cannot meet this burden through unsupported allegations, but rather, must allege well-pleaded facts demonstrating that the exercise of personal jurisdiction over each Defendant, including Rio Tinto, is both constitutionally proper and reasonable. Plaintiffs fail in their attempt to meet this burden with respect to Rio Tinto. The Complaint is devoid of any allegation warranting the exercise of jurisdiction over Rio Tinto, nor does any fact exist that would make jurisdiction over Rio Tinto proper. Rio Tinto is a foreign defendant incorporated in England and Wales, and thus, not "at home" in the territory of Puerto Rico. Rio Tinto is not registered to do business in Puerto Rico. Nor does it conduct any operations, production, marketing, or sales there. Therefore, Rio Tinto does not have any claim-related "minimum contacts" with the territory of Puerto Rico that would comport with constitutional due process and subject it to specific personal jurisdiction. Nor can Plaintiffs satisfy their jurisdictional burden by citing the Racketeer Influenced & Corrupt Organizations Act ("RICO") or the venue

and service provisions of the Sherman Act as, among other things, Rio Tinto does not have the requisite "minimum contacts" with the United States to support personal jurisdiction under either statute. As such, all of Plaintiffs' claims against Rio Tinto must be dismissed with prejudice for lack of personal jurisdiction.

BACKGROUND

In the Complaint, Plaintiffs assert multiple claims for harm "resulting from the catastrophic storms of September 2017 and their aftermath." Compl. ¶ 1. Plaintiffs allege that Defendants "misrepresented the dangers of carbon-based products . . . despite their early awareness of the devastation they would cause Puerto Rico." *Id*. ¶ 2. Plaintiffs name myriad Defendants who they claim "funded a marketing campaign of deception that continues to this day, in violation of federal and Puerto Rico consumer protection rules, anticompetitive practices, racketeering statutes, and common law." *Id*. ¶ 6.

The Complaint's allegations specific to Rio Tinto are virtually nonexistent; Rio Tinto is only mentioned in 12 of the Complaint's 837 paragraphs. *See* Compl. ¶¶ 52, 158-63, 184, 374, 445, and 474-75.[1] Plaintiffs correctly identify Rio Tinto plc as an entity "incorporated in England and Wales, with its principal place of business in London, England." Compl. ¶ 158.[2] Beyond that, Plaintiffs' only allegations about Rio Tinto are conclusory, limited, irrelevant, or in some cases, patently wrong.

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[1] These allegations have also been reproduced in Exhibit A hereto to ease this Court's reference.

[2] Plaintiffs also mention in passing Rio Tinto Limited, an entity that they correctly allege is incorporated in Australia with its principal place of business in Melbourne, Australia, Compl. ¶ 158, and Rio Tinto Energy America Inc., which they correctly allege is incorporated in Delaware, with its principal place of business in Gillette, Wyoming. Compl. ¶ 160. Neither Rio Tinto Limited nor Rio Tinto Energy America Inc. is named as a defendant or was served with the Complaint, however. Confusingly, Plaintiffs state that the defined term "Rio Tinto" as used in the Complaint includes the Australian entity—Rio Tinto Limited. Compl. ¶ 158. It is impossible to discern which allegations are about Rio Tinto plc and which are about Rio Tinto Limited. However, even if all allegations were credited to the activities or alleged contacts of Rio Tinto plc, they are insufficient, for the reasons explained in this memorandum, to confer personal jurisdiction over Rio Tinto plc.

Absent from these few paragraphs is any well-pleaded allegation that Rio Tinto has any contacts with Puerto Rico or even the United States as a whole. This absence—which is fatal to Plaintiffs' Complaint against Rio Tinto—is understandable, and consistent with the facts. As demonstrated by the Declaration of Michael Pasmore submitted in support of this Motion, Rio Tinto does not have any US-based operations or contacts with the US generally, or Puerto Rico specifically.[3] Rio Tinto does not sell or market its products in Puerto Rico; is not registered to do business in Puerto Rico; is not subject to income tax in Puerto Rico; does not have bank accounts or a registered agent for service of process in Puerto Rico; does not have offices, telephone listings, mailing addresses, or employees in Puerto Rico; does not maintain corporate books or records in Puerto Rico; and does not own or operate personal or real property in Puerto Rico. Pasmore Decl. ¶ 5. The same is true for Rio Tinto's contacts with the United States as a whole. *Id.* ¶ 7.

STANDARD OF REVIEW

"[P]ersonal jurisdiction implicates the power of a court over a defendant," *Foster-Miller, Inc. v. Babcock & Wilcox Can.*, 46 F.3d 138, 143 (1st Cir. 1995), and Plaintiffs bear the burden of demonstrating that this Court has personal jurisdiction over Rio Tinto. *Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 25 n.1 (1st Cir. 2008). Moreover, Plaintiffs must demonstrate "an independent basis for the assertion of personal jurisdiction for each claim[,] [and] [j]urisdiction over one claim does not imply jurisdiction over another." *Macri v. Macri*, No. CIV 01-464-JD, 2002 WL 826823, at *11 (D.N.H. May 1, 2002) (*quoting Debrenci v. Bru-Jell Leasing Corp.*, 710 F. Supp. 15, 19 (D. Mass. 1989)). Under the "prima-facie" standard for determining whether this burden has been met, Plaintiffs may not rely on "unsupported allegations in [their] pleadings," and instead, must put forward "evidence of specific facts" that establish personal jurisdiction. *A Corp. v. All Am.*

[3] Solely for purposes of this motion, those allegations not expressly rebutted by the declaration submitted with this memorandum are accepted as true.

Plumbing, Inc., 812 F.3d 54, 58 (1st Cir. 2016) (citations omitted). The Court must consider "facts put forward by the defendants, to the extent that they are uncontradicted." *Mass. Sch. Of L. at Andover, Inc. v. Am. Bar Ass'n*, 142 F.3d 26, 34 (1st Cir. 1998).

ARGUMENT

I. THIS COURT DOES NOT HAVE GENERAL OR SPECIFIC JURISDICTION OVER RIO TINTO

A federal court can exercise personal jurisdiction over out-of-state defendants when doing so is both authorized by a statute and comports with the constitutional protections of due process. *Carreras v. PMG Collins, LLC*, 660 F.3d 549, 552 (1st Cir. 2011). Personal jurisdiction under Puerto Rico's long-arm statute is co-extensive with the reach of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States, *id.*, and as recognized by the U.S. Supreme Court, must be either "general" or "specific." *Bristol-Myers Squibb Co. v. Super. Ct. Cal.*, 582 U.S. 255, 262 (2017). But in this case, Plaintiffs are unable to establish either general or specific jurisdiction over Rio Tinto. Accordingly, the Complaint must be dismissed with prejudice as against Rio Tinto in its entirety for lack of personal jurisdiction.

A. Plaintiffs Cannot Establish General Jurisdiction Over Rio Tinto.

General jurisdiction permits a U.S. court to adjudicate any claim against a corporate defendant if "the corporation is fairly regarded as at home" in that forum. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011); *see also Kuan Chen v. U.S. Sports Acad., Inc.*, 956 F.3d 45, 57 (1st Cir. 2020). Plaintiffs themselves admit that Rio Tinto is neither incorporated nor headquartered in Puerto Rico. Compl. ¶ 158; *see also* Pasmore Decl. ¶ 4. Nor has Rio Tinto consented to jurisdiction in the forum. *See Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023). As a result, this Court cannot exercise general jurisdiction over Rio Tinto. *See Daimler AG v. Bauman*, 571 U.S. 117, 118-19 (2014).

B. Plaintiffs Likewise Cannot Establish Specific Jurisdiction Over Rio Tinto.

To establish specific jurisdiction, a plaintiff must show that its claim "directly arise[s] out of, or relate[s] to, the defendant's forum state activities" and that those activities are sufficient to satisfy the minimum contact requirement that "the defendant's in-state contacts 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." *Hernandez-Denizac v. Kia Motors Corp.*, 257 F. Supp. 3d 216, 221 (D.P.R. 2017) (internal quotations omitted) (*citing C.W. Downer & Co. v. Bioriginal Food & Sci. Corp*., 771 F.3d 59, 65 (1st Cir. 2014)). Even if a plaintiff can satisfy these hurdles, it must then also show that the exercise of jurisdiction over the foreign defendant is reasonable. *Id.*

For the reasons set forth below, and in the related briefs adopted and incorporated here by reference and joined by Rio Tinto, Plaintiffs do not (and cannot) establish that this Court can exercise specific jurisdiction over Rio Tinto.

1. Rio Tinto Lacks Even Minimum Contacts with Puerto Rico.

Plaintiffs do not meet their burden—nor could they—of alleging that Rio Tinto has the necessary contacts with Puerto Rico to justify an exercise of specific jurisdiction by this Court. The Complaint is devoid of any allegation—well pleaded or otherwise—of any conduct by Rio Tinto in Puerto Rico. Indeed, the Complaint contains only one allegation attempting to connect Rio Tinto to Puerto Rico, where Plaintiffs allege that "[t]he Municipalities of Puerto Rico and/or their citizens have invested in Rio Tinto as a publicly traded company." Compl. ¶ 163. Even if this allegation were true, it would be insufficient to establish the minimum contacts required for personal jurisdiction. *Funk v. Limelight Media Grp., Inc.*, Civ. A. 1:06CV-72-M, 2006 WL 2983058, at *15 n.4 (W.D. Ky. Oct. 16, 2006) ("The Plaintiff has not cited any case law that

establishes where a defendant intends to acquire a majority interest in a corporation it subjects itself to personal jurisdiction in every state in which the corporation's shareholders reside."); *Debt Relief Network, Inc. v. Fewster*, 367 F. Supp. 2d 827, 830 (D. Md. 2005) ("Plaintiff contends that this court might exercise personal jurisdiction over an *out-of-state corporation* solely because *a shareholder or officer* resides in the forum. Plaintiff has cited no case, applying Maryland law or otherwise, that has so held.") (emphasis in original). If this were a suitable basis for personal jurisdiction, the entire concept of *purposeful* availment would mean nothing because any plaintiff could establish jurisdiction over any publicly-traded defendant merely by buying a single share of that entity on the open market. This cannot be. The voluntariness of a defendant's actions is a fundamental element of the limitations imposed by the Due Process Clause. *PREP Tours, Inc. v. Am. Youth Soccer Org.*, 913 F.3d 11, 19-20 (1st Cir. 2019). As the Supreme Court has made clear, it is the *defendant's* in forum contacts that provide the basis for jurisdiction, not the plaintiff's or a non-party's. *Walden v. Fiore*, 571 U.S. 277, 284 (2014).

The limited number of other Puerto Rico-related jurisdictional allegations are not specific to Rio Tinto and are entirely conclusory. For example, Plaintiffs allege that

> this Court has personal jurisdiction over Defendants because they conduct business in Puerto Rico, purposefully direct or directed their actions toward Puerto Rico, marketed their campaign of deception in Puerto Rico, sold their consumer products in Puerto Rico, and some or all consented to be sued in Puerto Rico by registering an agent for service of process, and because they have the requisite minimum contacts with Puerto Rico to permit the Court to exercise jurisdiction.

Compl. ¶ 13. Plaintiffs fail to allege the necessary details and provide the specific evidentiary basis for these assertions against Rio Tinto, such as identifying what business Rio Tinto "conducts" in Puerto Rico, or what products Rio Tinto has allegedly sold in Puerto Rico.[4] In fact, Rio Tinto does

[4] Indeed, even Puerto Rico's database of government contracts does not indicate that any Puerto Rican governmental entity has entered into any contracts with Rio Tinto. Financial Oversight & Management Board for Puerto Rico, *Contract Review*, https://oversightboard.pr.gov/contract-review (last visited Oct. 12, 2023).

not sell or market its products in Puerto Rico and never has, Pasmore Decl. ¶ 5, nor does it have any other contacts with Puerto Rico. *Id.* ¶ 6. Rio Tinto thus lacks the requisite minimum contacts with Puerto Rico, *see Nicholas v. Buchanan*, 806 F.2d 305, 307 (1st Cir. 1986), *and U.S.S. Yachts, Inc. v. Ocean Yachts, Inc.*, 894 F.2d 9, 11 (1st Cir. 1990), and the claims against it must be dismissed for lack of personal jurisdiction. *Rodriguez-Rivera v. Allscripts Healthcare Sols., Inc.*, 43 F.4th 150, 160 (1st Cir. 2022).

2. Plaintiffs' Claims Do Not Arise Out of Defendants' Alleged Contacts with Puerto Rico.

Not only are Plaintiffs required to demonstrate, with specific allegations, that Rio Tinto has sufficient minimum contacts with Puerto Rico to warrant the exercise of jurisdiction—which they have failed to do—but they also are required to include sufficient allegations demonstrating that Rio Tinto's "suit-related conduct . . . create[s] a substantial connection with the forum State." *Walden v. Fiore*, 571 U.S. at 284. In particular, to establish specific jurisdiction, Plaintiffs' claims must "aris[e] out of or relate[e] to" Rio Tinto's alleged conduct with Puerto Rico. *Bristol-Myers Squibb Co.*, 582 U.S. at 262 (brackets in original) (citations omitted). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 264.

Nowhere in the Complaint do the Plaintiffs sufficiently identify any activities allegedly undertaken by Rio Tinto in Puerto Rico, much less any which contributed to Plaintiffs' alleged injuries. The heart of Plaintiffs' Complaint appears to be that Defendants marketed and sold coal (in Rio Tinto's case) to consumers in Puerto Rico. Compl. ¶ 50. *First*, any such conduct cannot be attributed to the injuries Plaintiffs allegedly suffered as a result of global climate change. *See* Defendants' Joint 12(b)(2) Motion, pp. 2-3, 11-14. *Second*, the Complaint does not allege any actual sales by Rio Tinto to Puerto Rico. This is no mere oversight, as, in fact, Rio Tinto has never

sold or marketed coal, or any other fossil fuel, in or to Puerto Rico, its municipalities, or its citizens, as Rio Tinto is not an energy company. *See* Financial Oversight & Management Board for Puerto Rico, *Contract Review*, https://oversightboard.pr.gov/contract-review (last visited Oct. 12, 2023); Pasmore Decl. ¶ 6. In fact, neither Rio Tinto, nor any of its affiliates, has produced or sold coal anywhere in the United States since 2013, *id*. ¶ 9, and Rio Tinto divested itself of all coal production operations globally years ago. *Id*. ¶ 10. Furthermore, because global greenhouse emissions are cumulative and cannot be attributed to specific actors, the fact that Rio Tinto historically produced coal is not enough to establish jurisdiction. *See* Defendants' Joint 12(b)(2) Motion, pp. 2-3, 11-14. As such, Plaintiffs have articulated no theory—nor can they—under which Rio Tinto's in-forum activities contributed to or were related to Plaintiffs' alleged injuries.

3. Exercise of Jurisdiction Over Rio Tinto is Unreasonable.

Having failed the first and second prongs of the test, there should be no need to delve into the arguments concerning reasonableness. *Canatello, LLC v. NUVICO, Inc.*, Civ. No. 12-1430 (JAG), 2013 WL 4546017, at *4 (D.P.R. Aug. 27, 2013) (citing *United States v. Swiss Am. Bank, Ltd.*, 274 F.3d 610, 626 (1st Cir. 2001) ("If the plaintiff fails to make a strong showing with respect to the first two prongs, then the exercise of personal jurisdiction is more likely to be found unreasonable under the third prong.")). Even so, forcing Rio Tinto to defend this suit in Puerto Rico (where it has no contacts) would be unreasonable. This consideration also counsels in favor of the Court refusing to exercise specific jurisdiction over Rio Tinto.

II. THERE IS NO STATUTORY BASIS TO CLAIM PERSONAL JURISDICTION OVER RIO TINTO

Recognizing that this Court lacks general and specific personal jurisdiction over Rio Tinto, Plaintiffs attempt to manufacture personal jurisdiction over Rio Tinto (and other Defendants), and supplemental jurisdiction over the Puerto Rico law claims, by asserting federal antitrust and RICO claims. The allegations underlying these claims are not only spurious and fail as a matter of law,

see Defendants' Joint Motion to Dismiss, pp. 15-41, but they also fail to provide any basis for this Court to exercise personal jurisdiction over Rio Tinto.

A. Plaintiffs' RICO Claims Against Rio Tinto Do Not Confer Personal Jurisdiction Over Rio Tinto and Must Be Dismissed.

RICO's venue and process provisions permit a court to exercise personal jurisdiction over a defendant, but only in certain limited circumstances, *see Butcher's Union Local No. 498 v. SDC Inv., Inc.*, 788 F.2d 535, 539 (9th Cir. 1986), none of which apply here. In particular, 18 U.S.C. § 1965 "provides for nationwide service of process in civil cases under certain circumstances, in order "to enable plaintiffs to bring all members of a nationwide RICO conspiracy before a single court in a trial.'" *World Depot Corp. v. Onofri*, 16-cv-12439-FDS, 2017 WL 6003052, at *4 (D. Mass. Dec. 4, 2017) (*quoting Butcher's*, 788 F.2d at 539). For the reasons set forth in Defendants' Joint 12(b)(2) Motion, pp. 18-20, RICO's nationwide jurisdiction provision is inapplicable due to Plaintiffs' failure to adequately plead a RICO claim, and as such, the relevant contacts here are Puerto Rico-specific. Plaintiffs have not met and cannot meet their burden. This is because even if Plaintiffs could establish specific jurisdiction over some defendant in Puerto Rico for RICO purposes, they still would not be able to establish personal jurisdiction over Rio Tinto. To do so, Plaintiffs would have to be able to serve Rio Tinto somewhere within the United States,[5] which they cannot do, and would have to sufficiently allege: (1) that Rio Tinto has minimum contacts

[5] Even when courts determine that RICO allows for nationwide service of process, they have held that "to activate [that] provision, . . . a plaintiff must actually serve the defendant pursuant to that provision." *Gen. Cigar Holdings, Inc. v. Altadis, S.A.*, 205 F. Supp. 2d 1335, 1340 (S.D. Fla. 2002); *see also Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1183 (C.D. Cal. 1998); *Laborers Local 17 Health & Benefit Fund v. Philip Morris, Inc.*, 26 F. Supp. 2d 593, 601 (S.D.N.Y. 1998); *Nuevos Destinos, LLC v. Peck*, No. 3:19-cv-00045, 2019 WL 6481441, at *13 (D.N.D. Dec. 2, 2019). Rio Tinto does not operate in the United States and has no offices or employees or agents for service within the United States. Pasmore Decl. ¶ 7. Thus, Rio Tinto could not be served within the United States, as Plaintiffs are well-aware. Indeed, Plaintiffs initially sought to effect service on Rio Tinto pursuant to the Hague Convention, which is applicable only to foreign defendants. ECF No. 9 ¶ 6. Rio Tinto ultimately agreed to accept service of the summons by mail in London as part of an overall agreement regarding a briefing schedule, while explicitly preserving its rights to raise any and all defenses, including lack of jurisdiction. ECF No. 25 ¶ 3, n.1.

with the United States; and (2) a RICO conspiracy to which Rio Tinto is connected. They have wholly failed to do so, nor can they in any amended complaint.

1. Plaintiffs Cannot Demonstrate That Rio Tinto Has Sufficient Minimum Contacts with the United States as a Whole.

As set forth in the Declaration of Pasmore, Rio Tinto does not have any minimum contacts with the US broadly, or Puerto Rico specifically. Pasmore Decl. ¶¶ 5, 7. Plaintiffs alledge that Rio Tinto currently produces and holds coal reserves in the United States through a wholly owned subsidiary, Rio Tinto Energy America, Inc. Compl. ¶¶ 160-161. However, Rio Tinto has not held any US coal reserves since 2013. Pasmore Decl. ¶ 9.

2. Plaintiffs Fail to Adequately Allege Facts Connecting Rio Tinto to a RICO Conspiracy so the Court Therefore Cannot Use RICO as a Basis for Obtaining Personal Jurisdiction Over Rio Tinto.

To the extent Plaintiffs claim jurisdiction through a conspiracy, courts in this circuit have questioned and declined to adopt this theory. *See, e.g.*, *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 307 F. Supp. 2d 145, 158 (D. Me. 2004). But even if the theory were valid, it could not provide Plaintiffs with jurisdiction over Rio Tinto because Plaintiffs fail to allege a conspiracy. *See* Defendants' Joint Motion to Dismiss, p. 33.

Courts have warned that "[b]ecause of the broad jurisdictional reach of the RICO statute, [judges] should be particularly vigilant not to permit a plaintiff to assert a spurious RICO claim in order to try to obtain personal jurisdiction over other defendants (or supplemental subject-matter jurisdiction over state-law claims)." *World Depot Corp.*, 2017 WL 6003052, at *5; *see also In re Takata Airbag Prod. Liab. Litig.*, 396 F. Supp. 3d 1101, 1144 (S.D. Fla. 2019) ("[W]hether a basis exists for exercising specific jurisdiction under Section 1965(d) depends on whether the [plaintiffs' allegations] state 'colorable' RICO claims. . . . It necessarily follows, then, that determining whether the [plaintiffs'] RICO claims are 'colorable'—or 'not wholly immaterial or

insubstantial'—is a separate and distinct question from whether the RICO claims are plausibly alleged."). That is particularly true here, where Plaintiffs' RICO allegations are boilerplate and conclusory as to all Defendants, and essentially non-existent as to Rio Tinto.

As set forth in Defendants' Joint Motion to Dismiss, pp. 15-35, Plaintiffs have failed to plead viable RICO claims against any of the Defendants. Plaintiffs' attempt to ensnare Rio Tinto in this litigation fails for this reason alone. But, even if Plaintiffs could (and, they cannot) allege a cognizable RICO claim, they still have not established that this Court could exercise personal jurisdiction over Rio Tinto. To do so, Plaintiffs must plead, with particularity, that Rio Tinto was part of the RICO conspiracy. *See In re Lupron Mktg. and Sales Practices Litig.*, 245 F. Supp. 2d 280, 294 (D. Mass. 2003) (*citing Kohler Co. v. Kohler International, Ltd.*, 196 F.Supp.2d 690, 697 (N.D. Ill. 2002)) ("[A] plaintiff must allege specific facts warranting the inference that a defendant was a member of a conspiracy; naked allegations do not meet a plaintiff's jurisdictional burden."). This they cannot do. *See* Rio Tinto's Motion to Dismiss for Failure to State a Claim ("Rio Tinto 12(b)(6) Motion"), pp. 11-15. With respect to Rio Tinto, Plaintiffs have alleged nothing about Rio Tinto that is relevant to their alleged RICO conspiracy. Instead, Plaintiffs' RICO claims are premised solely on Defendants' alleged association with the Global Climate Coalition ("GCC"). Compl. ¶¶ 732-34. But Plaintiffs do not allege, nor could they, that Rio Tinto was ever a member of the GCC. To the contrary, the Complaint identifies the members of the GCC and—notably, and accurately—Rio Tinto is not identified as one of the GCC's members. *See* Compl. ¶¶ 184, 364, 367.

Unable to allege that Rio Tinto itself was a member of the GCC, Plaintiffs are left to allege that Rio Tinto was part of some alleged GCC enterprise because Rio Tinto was a member of the National Mining Association ("NMA"), an industry organization with 250 members; the NMA, in

turn, was a member of the GCC; and Rio Tinto supposedly participated in committees, boards, and groups of the NMA, and actively funded the NMA. Compl. ¶¶ 184, 475.

Plaintiffs conclusory and unsupported allegations, even if accepted, are insufficient as a matter of law to establish that Rio Tinto was part of any RICO conspiracy involving the GCC, or even the NMA. *See* Rio Tinto 12(b)(6) Motion, pp. 11-15. Vague allegations that Rio Tinto "associated" with other co-defendants or industry associations is insufficient to show that Rio Tinto "knowingly joined" a conspiracy. *Douglas v. Hirshon*, 63 F.4th 49, 56 (1st Cir. 2023) (affirming dismissal under 12(b)(6) of civil RICO claims due to complaint's "scant details" and "conclusory assertion" regarding the defendants' participation in the alleged conspiracy (*citing United States v. Velazquez-Fontanez*, 6 F.4th 205, 212 (1st Cir. 2021))). Membership in an industry organization by itself is not, as a matter of law, sufficient to establish a conspiracy on behalf of the industry association's members because "[a] member of a trade group or other similar organization does not necessarily endorse everything done by that organization or its members." *In re Asbestos Sch. Litig.*, 46 F.3d 1284, 1290 (3d Cir. 1994). Rather, as required by the Supreme Court, "[f]or liability to be imposed by reason of association," it is "necessary" that "the group itself possessed unlawful goals *and that the individual held a specific intent to further those illegal aims*." *Id.* at 1289 (emphasis in original) (*quoting NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 920 (1982)); *accord Taylor v. Airco, Inc.*, 503 F. Supp. 2d 432, 446 (D. Mass. 2007) (membership and participation in a trade group is insufficient to make defendant responsible for trade group's statements understating risks of chemical), *aff'd sub nom*, 576 F.3d 16 (1st Cir. 2009). Because membership in the NMA cannot establish that Rio Tinto was part of any alleged conspiracy, any attempt to obtain jurisdiction through conspiracy-like theories also fails.

Moreover, to satisfy the conduct element of Section 1962(c) and thus use RICO to obtain

jurisdiction over Rio Tinto, Plaintiffs must show that each Defendant, including Rio Tinto, played "*some* part in directing the enterprise's affairs," rather than simply having had some involvement in the affairs of the enterprise generally. *Reves v. Ernst & Young*, 507 U.S. 170, 177-79 (1993) (emphasis in original). Plaintiffs do not allege that Rio Tinto had any role in leading, running, managing, or directing the GCC's affairs. Also insufficient are allegations that Rio Tinto merely associated with other conspirators. *Chaney v. Dreyfus Serv. Corp.*, 595 F.3d 219, 239 (5th Cir. 2010) ("A person cannot be held liable for a RICO conspiracy 'merely by evidence that he associated with other . . . conspirators.'"); *see also* Rio Tinto 12(b)(6) Motion, pp. 11-13.

In sum, Plaintiffs' RICO allegations are exactly the kind of spurious, unsupported allegations that Courts should scrutinize carefully, particularly when they are the basis for asserting personal jurisdiction that otherwise would not exist. Plaintiffs have failed to meet their burden of showing that this Court has jurisdiction over Rio Tinto based on RICO allegations, or otherwise.

B. Plaintiffs' Antitrust Claims Against Rio Tinto do not Provide This Court with Personal Jurisdiction Over Rio Tinto and Must Be Dismissed.

For Sherman Act antitrust claims, "the private right of action to pursue antitrust claims is provided by the Clayton Act." *Shat Acres Highland Cattle, LLC v. Am. Highland Cattle Ass'n*, No. 2:20-cv-62, 2021 WL 2125357, at *3 (D. Vt. Jan. 13, 2021) (quotation marks omitted). Even where, as with the Clayton Act,[6] courts have held that global service of process confers personal

[6] *See* 15 U.S.C. § 22. Courts disagree on how Section 12 of the Clayton Act should be read for the purpose of conferring personal jurisdiction. The Second, Seventh and D.C. Circuits have held that the Clayton Act's "service of process provision can properly confer personal jurisdiction over a defendant only when the action is brought in the district where the defendant resides, is found, or transacts business, that is, the district where Section 12 venue lies." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 427 (2d Cir. 2005) (quotation marks omitted); *see also GTE New Media Servs. Inc. v. BellSouth Corp.*, 199 F.3d 1343, 1351 (D.C. Cir. 2000); *KM Enters., Inc. v. Global Traffic Techs., Inc.*, 725 F.3d 718, 728 (7th Cir. 2013). The Third and Ninth Circuits have held that Section 12's service of process provision is independent of the section's venue provision. *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d at 422. The First Circuit has yet to choose an approach. However, regardless of which approach this Court takes, there can be no personal jurisdiction over Rio Tinto because, as set forth herein, Rio Tinto does not have the necessary minimum contacts with Puerto Rico or the United States more broadly.

jurisdiction, minimum contacts with the United States are still necessary "such that 'maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Amtrol, Inc. v. Vent-Rite Valve Corp*., 646 F. Supp. 1168, 1172 (D. Mass. 1986) (quoting *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1946)). In matters involving federal questions, the minimum contacts analysis is substantially the same as that performed under a specific jurisdiction analysis, but for the entire United States. *Amtrol*, 646 F. Supp. 1168 at 1172. Defendants must also purposefully avail themselves of the privilege of conducting activities within the forum State. *In re Auto. Refinishing Paint Antitrust Litig*, No. 1426, 2002 WL 31261330, at *5 (E.D. Pa. July 31, 2002), *aff'd*, 358 F.3d 288 (3d Cir. 2004). Rio Tinto's contacts with the United States as a whole are insufficient to meet this standard. Pasmore Decl. ¶ 7.

Moreover, Plaintiffs' Sherman Act claims are predicated on Defendants' alleged sale of fossil fuel products to Puerto Rico at below-market prices to "maintain their energy monopoly, fix prices, and increase obstacles for competitive entry into the market by alternative energy companies." Compl. ¶ 770. However, as set forth in the Pasmore Declaration and discussed above, Rio Tinto does not sell or market its products in the United States; it is not registered to do business, is not subject to income tax in the United States; does not have bank accounts or a registered agent for service of process in the United States; does not have employees based in the United States; does not have offices, telephone listings, or mailing addresses in the United States; does not maintain corporate books or records in the United States; and does not own or operate personal or real property in the United States. Pasmore Decl. ¶ 7.[7]

Furthermore, Rio Tinto has never sold oil or gas in the United States, *id.* ¶ 8—the primary

[7] Again, to the extent Plaintiffs are asserting a conspiracy theory of jurisdiction, despite the First Circuit's skepticism of this doctrine, this argument must fail because Plaintiffs fail to adequately allege a conspiracy. *See, e.g., In re New Motor Vehicles Canadian Exp. Antitrust Litig*., 307 F. Supp. 2d 145, 158 (D. Me. 2004); *Conwill v. Greenberg Traurig, L.L.P*., Civil Action No. 09-4365, 2009 WL 5178310, *4 (E.D. La. Dec. 22, 2009).

focus of the Complaint—and contrary to Plaintiffs' allegations, Rio Tinto also has no jurisdictionally-relevant coal-related contacts with the United States. No Rio Tinto affiliate has engaged in coal production, held U.S. coal reserves, marketed, or sold coal in the U.S. since 2013.[8] *Id*. ¶ 9. This Circuit has determined that "for purposes of specific jurisdiction[], contacts should be judged when the cause of action arose." *Cambridge Literary Props. v. W. Goebel Porzellanfabrik G.m.b.H & Co. Kg.*, 295 F.3d 59, 66 (1st Cir. 2002). Plaintiffs' allegations center around a 2017 hurricane, four years after any affiliate of Rio Tinto made any coal sales anywhere in the United States. As such, even if alleged, historical coal production by Rio Tinto affiliates would be inadequate to provide minimum contacts sufficient to confer personal jurisdiction over Rio Tinto.

It also cannot be said that Rio Tinto purposefully availed itself of the United States as a forum. In *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 307 F. Supp. 2d 145 (D. Me. 2004), the district court assessed whether Canadian subsidiaries of global auto manufacturers had purposely availed themselves of the forum using a Fifth Amendment due process analysis. The court concluded that plaintiffs "provide[d] no competent evidence to support th[e] assertion" that the manufacturer exported Canadian-built products to the United States. *Id*. at 156. Going further, the court determined that while other entities affiliated with the defendant had manufactured vehicles in Canada for sale into the United States, the defendant itself had not done so. *Id.* The court thus dismissed the complaint for lack of personal jurisdiction. *Id.* The same result is warranted here. Because Plaintiffs cannot establish that Rio Tinto ever sold any coal in Puerto Rico, their antitrust claim must fail for lack of personal jurisdiction.

CONCLUSION

Rio Tinto respectfully requests that all claims against it be dismissed with prejudice for

[8] Furthermore, Rio Tinto never sold coal to the United States. *Id*. ¶ 7.

lack of personal jurisdiction.

WHEREFORE, defendant Rio Tinto respectfully requests this Honorable Court to ***grant*** the instant motion and, consequently, dismiss the Complaint with prejudice pursuant to Fed. R. Civ. P. 12(b)(2).

CERTIFICATE OF SERVICE: We hereby certify that on this same date the foregoing motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys and participants of record.

Respectfully submitted on October 13, 2023.

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