

IN THE CIRCUIT COURT  
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL  
OF BALTIMORE,

*Plaintiff,*

vs.

BP P.L.C., *et al.*,

*Defendants.*

Case No. 24-C-18-004219

(HEARING REQUESTED)

**CERTAIN DEFENDANTS' MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT FOR LACK OF PERSONAL JURISDICTION,  
AND REQUEST FOR HEARING**

Defendants BP p.l.c. (#1), BP America Inc. (#2), Chevron Corporation (#7), Chevron U.S.A. Inc. (#8), Exxon Mobil Corp. (#9), ExxonMobil Oil Corporation (#10), Shell plc (#11), Shell USA, Inc. (#12), CITGO Petroleum Corp. (#13), ConocoPhillips (#14), ConocoPhillips Company (#15), Phillips 66 (#17), Phillips 66 Company (#18), Marathon Oil Company (#19), Marathon Oil Corporation (#20), Marathon Petroleum Corporation (#21), Speedway LLC (#22), Hess Corp. (#23), CNX Resources Corporation (#24), CONSOL Energy Inc. (#25), and CONSOL Marine Terminals LLC (#26), by their undersigned attorneys and pursuant to Maryland Rules 2-311 and 2-322(a)(1), respectfully move to dismiss the Complaint filed by Plaintiff, Mayor and City Council of Baltimore, for lack of personal jurisdiction.


For the reasons set forth in the accompanying Memorandum of Law, this Court should grant this Motion and dismiss all claims against these Defendants with prejudice.

## REQUEST FOR HEARING

Pursuant to Maryland Rule 2-311(f), Defendants respectfully request a hearing on all issues raised in this Motion and the accompanying Memorandum of Law.

Dated: October 16, 2023

Respectfully submitted,



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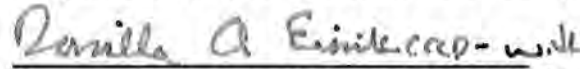
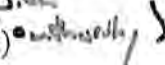
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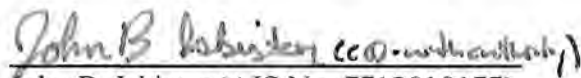


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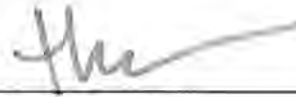
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I HEREBY CERTIFY that on the 16th day of October, 2023, a copy of the foregoing was served on all counsel of record via e-mail.

A handwritten signature in dark ink, appearing to read 'Ty Kelly Cronin', is written over a horizontal line.

Ty Kelly Cronin



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JOINT OPENING BRIEF IN SUPPORT OF CERTAIN DEFENDANTS' MOTION TO  
DISMISS FOR LACK OF PERSONAL JURISDICTION

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## INTRODUCTION

Defendants BP p.l.c., BP America Inc., Chevron Corporation, Chevron U.S.A. Inc., Exxon Mobil Corp., ExxonMobil Oil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), Shell USA, Inc. (f/k/a Shell Oil Company), CITGO Petroleum Corp., ConocoPhillips, ConocoPhillips Company, Phillips 66, Phillips 66 Company, Marathon Oil Company, Marathon Oil Corporation, Marathon Petroleum Corporation, Speedway LLC, Hess Corp., CNX Resources Corporation, CONSOL Energy Inc., and CONSOL Marine Terminals LLC, by their undersigned attorneys and pursuant to Maryland Rule 2-322(a), respectfully submit this Joint Opening Brief in Support of their Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction. For ease of reference, this Brief uses the term "Defendants" to refer to the 21 out-of-state Defendants challenging personal jurisdiction.<sup>1</sup>

Plaintiff, the Mayor and City Council of Baltimore, claims that Maryland law permits it to seek damages from this group of Defendants for harms allegedly resulting from more than a century of energy consumption and climatic events around the world. The Complaint suffers from numerous fatal defects, including those addressed in Defendants' Memorandum of Law in Support of their Motion to Dismiss for Failure to State a Claim and the various briefs filed by individual Defendants. This Brief focuses on one defect in particular: the Complaint's allegations do not establish personal jurisdiction over these out-of-state Defendants.

Plaintiff does not allege "general" personal jurisdiction over any of these Defendants because none of them is incorporated or headquartered in Maryland; thus, none is "at home" in this forum. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). The Court also lacks "specific"

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<sup>1</sup> BP Products North America Inc. is incorporated in Maryland, and Crown Central LLC has its principal place of business in Maryland; neither challenge personal jurisdiction.



personal jurisdiction over these Defendants for two separate reasons, each of which independently requires dismissal.

*First*, based on Plaintiff's own allegations—which Defendants accept as true for purposes of this Motion only—Plaintiff's claims do not “arise out of or relate to” Defendants' alleged contacts with Maryland, as the exercise of specific personal jurisdiction demands. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021). Under the Supreme Court's decision in *Ford Motor*, to satisfy the “arising out of or related to” prong, a plaintiff must allege facts that, taken as true, would show that *use or malfunction of a defendant's product in the State injured the plaintiff in the State*. *See* 141 S. Ct. at 1027. Plaintiff falls far short. Plaintiff has not alleged that the use or malfunction of any Defendant's products in Maryland (or any acts in Maryland) injured Plaintiff in Maryland. Plaintiff instead seeks to hold Defendants liable for injuries allegedly resulting from the cumulative worldwide use of all oil, natural gas, coal, and other sources of emissions—the vast majority of which have no connection to Defendants, much less to Maryland. *Id.* at 1025.

Plaintiff alleges that its injuries are “all due to anthropogenic global warming,” Compl. ¶ 8, allegedly caused by the “increase in atmospheric CO<sub>2</sub> and other greenhouse gases” from the *worldwide* combustion of oil and gas and other sources of emissions over the past century, *id.* ¶ 2. Put simply, “[e]veryone has contributed to the problem of global warming”—there are billions of contributors to greenhouse gas emissions across the world, including Plaintiff itself. *See City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1026 (N.D. Cal. 2018) (“*Oakland I*”), *vacated on other grounds*, 960 F.3d 570 (9th Cir. 2020). And because “greenhouse gases once emitted become well mixed in the atmosphere,” emissions from a particular State contribute no more to the effects of climate change in that State than emissions from elsewhere. *See City of New York v. Chevron*

*Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (quoting *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 422 (2011)) (cleaned up). So Plaintiff's claims ultimately have nothing to do with the amount of fossil fuels (if any) Defendants allegedly produced or sold in Maryland, or how much marketing or advertising (if any) purportedly occurred in Maryland. The claims therefore neither arise out of nor relate to Defendants' alleged activities in Maryland.

Plaintiff's allegations of in-state marketing activities cannot save its claims from dismissal because the use of the marketed products in Maryland is not alleged to have injured Plaintiff in Maryland. Plaintiff's theory, if accepted, would dramatically expand the bounds of specific personal jurisdiction by subjecting defendants to jurisdiction in any State in which their products were marketed or used, no matter how insignificant and attenuated the connection with the alleged claims. Such an unprecedented and unprincipled expansion of personal jurisdiction would violate Defendants' due process rights and therefore has been squarely rejected by the U.S. Supreme Court. *See Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017).

*Second*, the exercise of specific personal jurisdiction over Defendants would be unreasonable under the Due Process Clause. Litigating this case in Maryland would contravene "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" because Plaintiff's claims implicate *global* conduct and are not localized to Maryland. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). And it would threaten the "interest of the several States in furthering fundamental substantive social policies" because, among other reasons, many States and the federal government promote the very energy production, policies, and advocacy that Plaintiff seeks to penalize through this lawsuit. *Id.* Moreover, it would impermissibly require nonresident Defendants to submit to the "coercive power" of an out-of-state tribunal with respect to conduct unconnected with the forum, leaving their conduct in other States,

as well as national and even worldwide conduct, subject to conflicting state rules. *See Bristol-Myers Squibb*, 582 U.S. at 263.

Because the factual allegations in the Complaint provide no basis for exercising personal jurisdiction that would comport with the Due Process Clause, and because no amendment can remedy the inherent flaws in Plaintiff's jurisdictional theory, the Court should dismiss all claims against Defendants with prejudice.

### **NATURE AND STAGE OF THE PROCEEDINGS**

Plaintiff initiated this case on July 20, 2018. Defendants filed a timely notice of removal to the United States District Court for the District of Maryland. The District Court remanded to this Court, which stayed the case pending proceedings before the U.S. Court of Appeals for the Fourth Circuit and the U.S. Supreme Court. This Court lifted the stay on May 12, 2023.

### **STATEMENT OF FACTS**

Plaintiff's claims expressly depend on the cumulative and worldwide use of fossil fuel products over the course of more than a century. Plaintiff alleges an attenuated (and implausible) causal chain between Defendants' allegedly tortious acts and Plaintiff's purported injuries from global climate change. Among the links in Plaintiff's causal chain are the decisions of countless third parties around the world—including Plaintiff itself—to extract, refine, transport, promote, offer for sale, purchase, and ultimately combust (*i.e.*, use) fossil fuel products.

Combusting fossil fuel products, among numerous other natural and manmade actions, releases greenhouse gas emissions. Plaintiff alleges that those worldwide emissions—in addition to emissions originating from other sources, virtually all of which are also outside of Maryland—increase the total amount of greenhouse gases in the global atmosphere. Compl. ¶ 44. Plaintiff alleges that change in atmospheric composition causes the atmosphere to trap heat, which increases

global temperature and thereby raises global sea levels, among other effects. *Id.* ¶ 178. Plaintiff contends that its injuries flow from rising sea levels and other alleged effects of climate change. *Id.* ¶¶ 193-217.

Put simply, Plaintiff repeatedly alleges that its injuries are caused by “anthropogenic climate change,” Compl. ¶¶ 8, 224, and that “the main driver of the gravely dangerous changes occurring to the global climate” is the “dramatic increase in the atmospheric CO<sub>2</sub> and other greenhouse gases,” *id.* ¶ 2. These emissions result from billions of daily choices, made over more than a century, by governments, companies, and individuals, about what activities to engage in, whether to use fossil fuels, what types of fuels to use, and how to use them. Although Plaintiff alleges that Defendants conducted business or promoted products in Maryland (which Defendants accept as true solely for purposes of this Motion only), Plaintiff does not, and cannot, allege that emissions from any Defendant’s *in-state* activities or any *in-state* use of fossil fuels caused global warming or Plaintiff’s alleged in-state injuries. Rather, Plaintiff alleges that it suffered injuries from the cumulative production, marketing, promotion, sale, and use of fossil fuel products occurring in every State in this Nation and every country in the world—among *many* other sources of greenhouse gases.

### **ARGUMENT**

Plaintiff does not, and cannot, allege facts that support this Court’s exercise of personal jurisdiction over Defendants for the claims asserted in the Complaint. There is no general jurisdiction over Defendants because none of them is “at home” in Maryland, and none has consented to general jurisdiction in Maryland. Nor is there specific jurisdiction because (1) the Complaint avers that Plaintiff’s alleged injuries arise out of and relate to *worldwide* conduct by

countless actors, not Defendants' alleged contacts with Maryland, and not from using Defendants' fossil fuels in Maryland; and (2) exercising jurisdiction would be constitutionally unreasonable.

## **I. LEGAL STANDARD**

Plaintiff bears the burden of establishing this Court's personal jurisdiction over Defendants. *Pinner v. Pinner*, 240 Md. App. 90, 103 (2019) *aff'd*, 467 Md. 463 (2020). To carry that burden, Plaintiff must allege facts sufficient to make a *prima facie* case for personal jurisdiction over each Defendant. *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 5 (2005). In evaluating whether Plaintiff has met this burden, the Court may not take as true mere conclusory assertions of minimum forum contacts unsupported by specific factual allegations. *See, e.g., Beyond Sys.*, 388 Md. at 571 (finding that plaintiff failed to "demonstrate a *prima facie* case of specific personal jurisdiction," where he alleged only "conclusory allegations"). Further, Plaintiff must establish personal jurisdiction over *each* Defendant with respect to *each* claim. *Rush v. Savchuk*, 444 U.S. 320, 332 (1980).

A court may exercise personal jurisdiction only when doing so: (1) is authorized by the State's long-arm statute; and (2) comports with the due process requirements of the Fourteenth Amendment. *Beyond Sys.*, 388 Md. at 14–15. Maryland courts have "consistently held that the reach of the long-arm statute is coextensive with the limits of personal jurisdiction delineated under the due process clause of the Federal Constitution." *Id.* at 22. Accordingly, the "statutory inquiry merges with [the] constitutional examination." *Id.*

In applying the Due Process Clause, courts have recognized two types of personal jurisdiction: general and specific. *Bristol-Myers Squibb*, 582 U.S. at 262. General jurisdiction allows a court to adjudicate any claim against a defendant, regardless of the connection between the claim and the forum, so long as the defendant is "at home" in that forum. *Id.* (internal quotation



marks omitted). Specific jurisdiction applies “only as to a narrower class of claims”—these claims “must arise out of or relate to the defendant’s contacts with the forum.” *Ford Motor*, 141 S. Ct. at 1024–1025 (internal quotation marks omitted). To demonstrate specific jurisdiction, Plaintiff must establish that “the cause of action arises from, or is directly related to, the defendant’s contacts with the forum state.” *CSR Ltd. v. Taylor*, 411 Md. 457, 477 (2009).

## **II. DEFENDANTS ARE NOT SUBJECT TO GENERAL JURISDICTION IN MARYLAND.**

Plaintiff does not allege that Defendants are subject to general jurisdiction in Maryland and concedes that no Defendant is incorporated or headquartered in Maryland. Compl. ¶¶ 20(a); 20(d); 22(a); 22(e); 23(a); 23(d); 24(a); 24(d); 25(a); 26(a); 26(d); 26(e); 26(f); 26(g); 27(a); 27(d); 27(e); 27(f); 28(a); 29(a); 29(d); 29(e). Because no Defendant is “at home” in this State, the Court lacks general jurisdiction over Defendants. *Daimler*, 571 U.S. at 139 (citation omitted).<sup>2</sup>

## **III. DEFENDANTS ARE NOT SUBJECT TO SPECIFIC JURISDICTION IN MARYLAND.**

Because no Defendant is subject to general jurisdiction in Maryland, Plaintiff must establish specific jurisdiction over *each* Defendant independently, which it cannot do. *See Rush*, 444 U.S. at 332. Specific jurisdiction exists only if: (1) the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) the plaintiff’s claims arise out of or relate

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<sup>2</sup> The U.S. Supreme Court’s recent decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) on June 27, 2023, has no bearing on this case. In *Mallory*, the Court held that a Pennsylvania statute explicitly subjecting foreign corporations registered to do business in Pennsylvania to “general personal jurisdiction,” 42 Pa. Conn. Stat. § 5301(a), comports with the Due Process Clause of the Constitution. But “Pennsylvania is the only State with a statute treating registration as sufficient for general jurisdiction.” *Mallory*, 600 U.S. at 172 (Barrett, J., dissenting). Maryland courts have repeatedly held that Maryland’s statutory scheme governing business registration, which unlike Pennsylvania’s, contains no such provision, does not confer general jurisdiction over registered businesses. *See Goodyear Tire & Rubber Co. v. Ruby*, 312 Md. 413, 423 (1988) (“The fact that [defendant] has appointed a registered agent in this State would not alone be sufficient to subject it to suit here.”). In fact, Maryland’s statute explicitly disclaims such an effect. Md. Code, Corp. & Ass’ns § 7–210.



to those activities; *and* (3) the exercise of personal jurisdiction would be constitutionally reasonable. *Beyond Sys.*, 388 Md. at 26. These jurisdictional restrictions “are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States,” because a State’s exercise of sovereign power “imply[s] a limitation on the sovereignty” of other States and even foreign nations. *Bristol-Myers Squibb*, 582 U.S. at 263 (alteration in original) (internal citation and quotation marks omitted). *See also Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 106 (2000) (“The Due Process Clause of the Fourteenth Amendment limits the power of a state court to exert personal jurisdiction over a nonresident defendant.”). Accordingly,

[e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

*Bristol-Myers Squibb*, 582 U.S. at 263 (alteration in original) (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

Plaintiff does not allege a *prima facie* case of specific jurisdiction because, with respect to each Defendant, the Complaint fails to satisfy at least the second and third requirements for specific jurisdiction: the claims asserted in the Complaint do not arise out of or relate to Defendants’ alleged contacts with Maryland, and exercising personal jurisdiction in this case would be constitutionally unreasonable.

**A. Plaintiff’s Claims Do Not “Arise Out Of Or Relate To” Defendants’ Alleged Contacts With Maryland.**

Plaintiff cannot establish specific jurisdiction over each Defendant because the Complaint does not, and cannot, allege that Plaintiff’s claims “arise out of or relate to” each Defendant’s purported forum contacts. *Ford Motor*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 582

U.S. at 275); see *CSR, Ltd.*, 411 Md. at 477; *Small Bus. Fin. Sols., LLC v. Corp. Client Servs., LLC*, 2023 WL 1995414, at \*6 (D. Md. Feb. 23, 2023).<sup>3</sup> As the Supreme Court recently explained in *Ford Motor*, “the first half of th[e] standard asks about causation,” whereas the second half “contemplates that *some* relationships will support jurisdiction without a causal showing.” 141 S. Ct. at 1026 (emphasis added). The Court cautioned that this “does not mean anything goes,” and in “the sphere of specific jurisdiction, the phrase ‘relate to’ incorporates real limits.” *Id.*

*Ford Motor* illustrates those “real limits.” *Id.* There, two individual consumers sued Ford in Montana and Minnesota state courts, asserting product-liability claims stemming from allegedly defective automobiles that Ford initially manufactured and sold out of State but that were later used *and* caused injuries in the forum States. The Supreme Court held that Ford’s in-state sales and marketing activities were sufficiently related to the plaintiffs’ claims for injuries caused by the in-state use and malfunction of the vehicles to satisfy the arising from or relating to prong. In reaching its conclusions, the Court relied heavily on its prior decision in *World-Wide Volkswagen*, where the Court reasoned that, if a “manufacturer or distributor” makes “efforts . . . to serve, directly or indirectly, the market for its product” in certain States, “it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise *has there been the source of injury* to its owner or to others.” *Id.* at 1027 (quoting 444 U.S. at 297) (emphasis added). Thus, under *Ford Motor*, personal jurisdiction may exist where “[1] a company . . . serves a market for a product in the forum State and [2] the product *malfunctions there*” “[3] *caus[ing] injury in the State* to one of its residents.” *Id.* at 1022, 1026–27 (emphases added).

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<sup>3</sup> Maryland courts regularly look to federal court decisions on personal jurisdiction as persuasive authority. See, e.g., *CSR, Ltd. v. Taylor*, 411 Md. 457, 483–84 (2009); *Beyond Sys.*, 388 Md. at 14–15.

In other words, although *Ford Motor* permitted the exercise of personal jurisdiction without requiring a strict but-for causal relationship between the defendant's in-state activities and the injury, it did so only where the alleged injury within the forum State results from use and malfunction of the defendant's product within the State. As a result, *Ford Motor* provides no support for Plaintiff's assertion of personal jurisdiction here.

Applying *Ford Motor*, the U.S. Court of Appeals for the First Circuit recently held that a New Hampshire plaintiff failed to establish specific jurisdiction in New Hampshire for its tort claim against a former employee based in Georgia, who had solicited other employees away from the plaintiff. The plaintiff there had demonstrated only in-state *effects* (i.e., harm to its business), but not that the *conduct giving rise to those injuries* occurred in the forum State. *Vapotherm, Inc. v. Santiago*, 38 F.4th 252, 260–61 (1st Cir. 2022). The First Circuit explained that, under *Ford Motor*, “in-state injury alone is not sufficient under the Due Process Clause to prove relatedness for tort claims.” *Id.* at 261. To the contrary, there must be a connection between the State and the underlying tortious conduct. *Id.* The defendant-employee's tortious solicitation of the New Hampshire plaintiff's other employees was not a sufficient affiliation with New Hampshire to establish specific jurisdiction because the solicitation did not arise from or relate to the defendant's *New Hampshire contacts*. “[T]he three employees are connected to [the defendant] through their contacts in Florida and Georgia where they all worked throughout the duration of their employment with [the plaintiff].” *Id.*

Indeed, courts across the country have consistently recognized that *Ford Motor* conditions the exercise of specific personal jurisdiction on a plaintiff suffering an *in-state* injury from the *in-state* use and malfunction of a defendant's product. *See, e.g., Vapotherm*, 38 F.4th at 261; *LNS Enters, LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 863 (9th Cir. 2022); *Hepp v. Facebook*, 14 F.4th

204, 208 (3d Cir. 2021); *Cappello v. Rest. Depot, LLC*, 2023 WL 2588110, at \*4 (D.N.H. Mar. 21, 2023); *Martins v. Bridgestone Am. Tire Ops., LLC*, 266 A.3d 753, 761 (R.I. 2022). In *Martins*, for example, the Rhode Island Supreme Court held that “it was key in *Ford* that the injury . . . occurred in the forum state” where a “car accident occurred in the state where the suit was brought.” *Martins*, 266 A.3d at 759–761. The *Martins* court emphasized that *Ford Motor* held specific personal jurisdiction was appropriate “[w]hen a company like Ford serves a market for a product in a [s]tate and that product causes injury in the [s]tate to one of its residents[.]” *Id.* (quoting 141 S. Ct. at 1022) (emphasis in *Martins*). Ultimately, personal jurisdiction did not exist in *Martins* because the plaintiff’s claims did not arise from the use and malfunction of the product in Rhode Island, even though the plaintiff alleged that the defendant-manufacturers had “extensive contacts with Rhode Island and their intent [was] to conduct business in Rhode Island.” *Id.* at 759.

Applying these principles, specific personal jurisdiction cannot be exercised over Defendants consistent with due process. Unlike in *Ford Motor*, neither the events giving rise to Plaintiff’s claims, nor Plaintiff’s alleged injuries, resulted from—or relate to—the use of Defendants’ products *in the forum*. See *Ford Motor*, 141 S. Ct. at 1022.

Plaintiff’s lawsuit is, at its core, “a suit over *global* greenhouse gas emissions” that seeks “damages caused by fossil fuel emissions no matter where in the world those emissions were released (or who released them).” *City of New York*, 993 F.3d at 91, 93; see also *City of Oakland v. BP p.l.c.*, 2018 WL 3609055, at \*3 (N.D. Cal. July 27, 2018) (dismissing similar claims for lack of personal jurisdiction, and observing that climate-change claims necessarily depend on a global complex of geophysical cause and effect involving all nations of the planet”).<sup>4</sup> Plaintiff alleges

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<sup>4</sup> The Court’s decision in *City of Oakland* was later vacated on other grounds (removal), but the court was clear following remand that “in no way” should “vacatur be considered as changing

that its injuries are the product of all historical, *global* greenhouse gas emissions from the normal use—*i.e.*, *global* combustion—of fossil fuels produced and sold by Defendants, as well as countless other sources.

It is not simply that Plaintiff is incapable of pleading a causal relationship between its alleged injuries and the in-state use and malfunction of Defendants' products; it is that Plaintiff cannot plausibly plead *any* nexus. "[T]he undifferentiated nature of greenhouse gas emissions from all global sources and their worldwide accumulation over long periods of time" means "there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). So "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and at what place in the world—'caused' Plaintiff[s] alleged global warming related injuries." *Id.* at 881. At bottom, then, Plaintiff does not and cannot plausibly allege that its claims have any relation to, much less are caused by, Defendants' alleged in-forum activity.

And even if Plaintiff could allege that Defendants' products were used in and malfunctioned in Maryland (which it cannot),<sup>5</sup> jurisdiction could exist only if its claims were limited to injuries allegedly resulting from *that use and malfunction* of Defendants' products *in Maryland*. See, e.g., *Ford Motor*, 141 S. Ct. 1026. But Plaintiff's claims are not so limited. Instead, Plaintiff's expansive claims seek damages for alleged injuries purportedly resulting from

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this Court's view on the personal jurisdiction issue." *City of Oakland v. BP p.l.c.*, No. 3:17-cv-06011-WHA (N.D. Cal. Oct. 24, 2022), ECF No. 354.

<sup>5</sup> Indeed, Defendants' products did not malfunction at all. The release of carbon emissions is inherent in the combustion of fossil fuels by end-users.



the combined effects of the combustion and accumulation of greenhouse gas emissions *worldwide*, by Defendants, Plaintiff itself, and countless others. Plaintiff does not, and cannot, allege that the use of any of Defendants' products in Maryland caused global climate change and the injuries Plaintiff allegedly suffered as a result. Indeed, it is indisputable that *total* energy consumption in Maryland, with a population of less than seven million people, accounts for a *de minimis* percentage of energy consumption in the United States and around the world. Greenhouse gas emissions resulting from the use of fossil fuel products Defendants may produce, promote, or sell in Maryland (even assuming *arguendo* that such use was induced by Defendants' allegedly tortious marketing) thus make up, at most, a minuscule amount of the global greenhouse gas emissions that contribute to climate change and, ultimately, to Plaintiff's alleged injury.

Plaintiff's attempts to base its claims on a so-called campaign of deception, Compl. ¶ 1, rather than production, do not change this court's lack of jurisdiction. Regardless of how Plaintiff characterizes its claims, Plaintiff alleges its injuries are "all due to anthropogenic global warming" from an increase in "global greenhouse gas" emissions from the extraction and consumption of fossil fuels around the world. *Id.* ¶¶ 1, 8 (emphases added). But Plaintiff also does not limit its misrepresentation claims to in-forum conduct, instead alleging "changes occurring to the global climate" and "including Baltimore." *Id.* ¶ 2, 7; *see also, e.g., id.* ¶ 170 (alleging deception regarding "severe environmental threats and significant economic costs for coastal communities, including Baltimore"); *id.* ¶¶ 182, 295, 296. Thus, Plaintiff's claims do not arise from or relate to Defendants' alleged conduct in Maryland.

Because Plaintiff does not and cannot allege that its injuries resulted from the use and malfunction of Defendants' fossil fuel products in Maryland, Plaintiff's allegations that Defendants tortiously marketed or sold those products in Maryland (even accepting those



allegations as true for purposes of this Motion only) fail to satisfy the “arises out of or relates to” requirement of the Due Process Clause. Under settled Supreme Court case law, if neither the defendant’s in-state conduct nor the in-state use and malfunction of the defendant’s product caused the alleged injury in the State, then personal jurisdiction is lacking irrespective of whether a defendant produces, markets, advertises, and sells those products in the State. Those are the fundamental lessons from *World-Wide Volkswagen* and *Ford Motor*, and they compel dismissal here.<sup>6</sup>

**B. Exercising Personal Jurisdiction Over Defendants Would Be Unreasonable And Conflict With Principles Of Federalism.**

Because Plaintiff has not alleged, and cannot allege, facts that, if true, would show that its claims arise from or relate to each Defendant’s alleged contacts with Maryland, the Court need not reach the reasonableness inquiry. Nonetheless, the unreasonableness of exercising jurisdiction here provides an additional, independent reason to dismiss the Complaint against Defendants. *See, e.g., Ford Motor*, 141 S. Ct. at 1024.

In determining whether jurisdiction is reasonable under the Due Process Clause, courts consider “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective 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.” *Burger King Corp. v.*

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<sup>6</sup> To be clear, Defendants do not argue that personal jurisdiction is lacking because their alleged in-state activities were not the but-for *cause* of Plaintiff’s alleged in-state injuries. Although but-for causation may be sufficient for specific jurisdiction, *Ford Motor* held that it is not necessary. *Ford Motor*, 141 S. Ct. at 1026. But *Ford Motor* recognized that personal jurisdiction existed only where the *in-state use of defendants’ products* injured plaintiff. And because Plaintiff does not, and cannot, allege that its injuries were caused by the in-state use of Defendants’ products—Plaintiff’s alleged injuries instead are based on the cumulative effect of global emissions—personal jurisdiction is lacking.

*Rudzewicz*, 471 U.S. 462, 477 (1985) (quoting *World-Wide Volkswagen*, 444 U.S. at 292) (internal quotations omitted). The primary concern in assessing the reasonableness of personal jurisdiction is the burden of “submitting to the coercive power” of a court in light of the limits of interstate federalism on a court’s ability to exercise jurisdiction. *Bristol-Myers Squibb*, 582 U.S. at 263. “[R]estrictions on personal jurisdiction ‘are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.’” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Indeed, the Supreme Court has admonished courts to take into consideration the interests of the “several States,” and emphasized that “[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field.” *Asahi Metal Indus. Co. v. Superior Ct. of Calif., Solano Cty.*, 480 U.S. 102, 115 (1987) (internal quotation marks omitted). These fundamental constitutional principles weigh decisively against the exercise of personal jurisdiction here.

*First*, exercising specific jurisdiction over these out-of-state Defendants for global climate-change-related claims would expand the jurisdiction of this Court well beyond the limits of due process, burdening Defendants by interfering with the power of each Defendant’s home jurisdiction over its corporate citizens. It would also enable States to interfere with commercial conduct that occurred outside their own borders in violation of the limits of interstate federalism. *See Bristol-Myers Squibb*, 582 U.S. at 263. This is not a case where one State has a more “significant interest[]” in addressing climate change. *See Ford Motor*, 141 S. Ct. at 1030.

Plaintiff’s position would resurrect the loose approaches to personal jurisdiction that the Supreme Court rejected in *Daimler* and *Bristol-Myers Squibb*, and would make companies subject to climate-change suits in every forum in the country based on the barest of activity within the forum, or perhaps even without any activity in the forum at all. This problem is particularly

pronounced with respect to non-U.S. Defendants.<sup>7</sup> As the Supreme Court explained in *Asahi*, a products-liability case involving the sale and distribution of tires to California by foreign defendants:

The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State.

480 U.S. at 115. Under Plaintiff's theory, *any* non-U.S. company could be forced to appear before *any* court in the United States based on its alleged contribution to global climate change, so long as that company operates within that jurisdiction. Well-settled principles of due process do not permit such a result.

*Second*, the assertion of jurisdiction here would offend the principles underlying the interstate judicial system because Plaintiff seeks to use Maryland tort law to penalize and regulate Defendants' nationwide (indeed, worldwide) activities, including fossil fuel production, promotion, and sale—activities heavily regulated, and in many instances encouraged, by the federal government, all 50 States, and every other country in the world in which these companies operate. As the Second Circuit observed in a similar lawsuit brought by the City of New York, “a substantial damages award like the one requested by the City would effectively regulate the [energy companies'] behavior far beyond [the State]'s borders.” *City of New York*, 993 F.3d at 92. The interests of the “interstate judicial system” are not served by requiring witnesses and counsel

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<sup>7</sup> As Plaintiff acknowledges, Defendants BP p.l.c. and Shell plc are registered in England and Wales. Compl. ¶¶ 20(a), 24(a).

to litigate identical climate-change actions simultaneously under different legal rules, especially given the substantial risk of inconsistent decisions.

*Third*, the “substantive social policies” that Plaintiff seeks to advance—chilling speech by Defendants on matters of public concern that Plaintiff deems misleading, curbing energy production and the use of fossil fuels, or allocating the downstream costs of global climate change to the energy companies to bear directly—are not shared uniformly across all the various States and nations. “[A]s states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the [energy companies’] global operations to a welter of different states’ laws could undermine important federal policy choices.” *Id.* at 93; *see also Oakland I*, 325 F. Supp. 3d at 1026. In fact, in 2021, three years *after* Plaintiff filed its Complaint, the Biden Administration announced that it was “engaging with relevant OPEC+ members” to encourage “*production increases*” of crude oil in hopes of lowering “high[] gasoline costs,” because “reliable and stable energy supplies” were (and still are) essential to the “ongoing global recovery” from the pandemic.<sup>8</sup> And as recently as March of this year, the Biden Administration praised the recent increase in U.S. oil and gas exports, acknowledging that “oil and gas is going to remain a part of our energy mix for years to come. Even the boldest projections for clean energy deployment suggest that in the middle of the century we are going to be using abated fossil fuels.”<sup>9</sup> Plaintiff’s claims implicate the interests of numerous

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<sup>8</sup> The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global Energy Markets*, Aug. 11, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/08/11/statement-by-national-security-advisor-jake-sullivan-on-the-need-for-reliable-and-stable-global-energy-markets>.

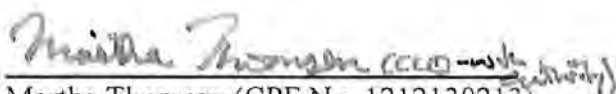
<sup>9</sup> Brian Dabbs, *Biden Admin Paradox: Boost Oil – and Cut CO2?*, EnergyWire, March 9, 2023, <https://subscriber.politicopro.com/article/eenews/2023/03/09/biden-admin-paradox-boost-oil-but-cut-co2-00086186>.

other States and nations, and thus this Court cannot reasonably exercise jurisdiction over Defendants. *See Asahi*, 480 U.S. at 115–16.

### CONCLUSION

For the foregoing reasons, Plaintiff's claims against the out-of-state Defendants should be dismissed in their entirety, with prejudice, for lack of personal jurisdiction.

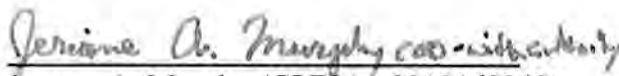
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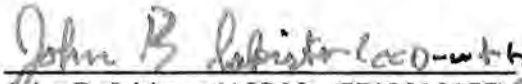
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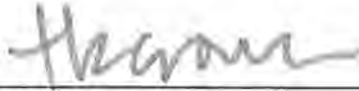
  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 16th day of October, 2023, a copy of the foregoing was served on all counsel of record via e-mail.

A handwritten signature in dark ink, appearing to read "Ty Kelly Cronin", written over a horizontal line.

Ty Kelly Cronin

**IN THE CIRCUIT COURT  
FOR BALTIMORE CITY**

MAYOR AND CITY COUNCIL  
OF BALTIMORE,

*Plaintiff,*

vs.

BP P.L.C., *et al.*,

*Defendants.*

Case No. 24-C-18-004219

**[PROPOSED] ORDER**

Upon consideration of the Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction filed by Defendants BP p.l.c. (#1), BP America Inc. (#2), Chevron Corporation (#7), Chevron U.S.A. Inc. (#8), Exxon Mobil Corp. (#9), ExxonMobil Oil Corporation (#10), Shell plc (#11), Shell USA, Inc. (#12), CITGO Petroleum Corp. (#13), ConocoPhillips (#14), ConocoPhillips Company (#15), Phillips 66 (#17), Phillips 66 Company (#18), Marathon Oil Company (#19), Marathon Oil Corporation (#20), Marathon Petroleum Corporation (#21), Speedway LLC (#22), Hess Corp. (#23), CNX Resources Corporation (#24), CONSOL Energy Inc. (#25), and CONSOL Marine Terminals LLC (#26), Plaintiff's opposition thereto, and Defendants' reply, it is this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, hereby

**ORDERED** that the Motion to Dismiss Plaintiff's Complaint for Lack of Personal Jurisdiction is **GRANTED**; it is further

**ORDERED** that all claims against Defendants BP p.l.c. (#1), BP America Inc. (#2), Chevron Corporation (#7), Chevron U.S.A. Inc. (#8), Exxon Mobil Corp. (#9), ExxonMobil Oil Corporation (#10), Shell plc (#11), Shell USA, Inc. (#12), CITGO Petroleum Corp. (#13), ConocoPhillips (#14), ConocoPhillips Company (#15), Phillips 66 (#17), Phillips 66 Company

(#18), Marathon Oil Company (#19), Marathon Oil Corporation (#20), Marathon Petroleum Corporation (#21), Speedway LLC (#22), Hess Corp. (#23), CNX Resources Corporation (#24), CONSOL Energy Inc. (#25), and CONSOL Marine Terminals LLC (#26) are **DISMISSED WITH PREJUDICE**; and it is further

**ORDERED** that the Clerk of the Court shall deliver copies of this Order to all parties of record.

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Judge Videtta A. Brown  
Circuit Court for Baltimore City