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Plaintiffs,

v.

EXXON MOBIL CORP., EXXONMOBIL OIL CORP., BP P.L.C., BP AMERICA INC., CHEVRON CORP., CHEVRON U.S.A. INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, SHELL PLC; SHELL OIL COMPANY. and AMERICAN PETROLEUM INSTITUTE,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MERCER COUNTY

Docket No. MER-L-001797-22

Civil Action
CBLP Action

ORAL ARGUMENT IS REQUESTED

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., ExxonMobil Oil Corporation, Shell plc. Shell USA, Inc. (f/k/a Shell Oil Company), ConocoPhillips, ConocoPhillips Company, Phillips 66, Phillips 66 Company, and American Petroleum Institute ("API"), by their undersigned attorneys and pursuant to R. 4:6-2(b), respectfully submit this Joint Opening Brief in Support of their Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction. For ease of reference, this Brief uses the term "Defendants" to refer to the 12 out-of-state Defendants challenging personal jurisdiction.[1]

Plaintiffs—the Attorney General of New Jersey, the New Jersey Department of Environmental Protection, and the New Jersey Division of Consumer Affairs—claim that New Jersey law permits them 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 for the claims asserted.

Plaintiffs do not allege "general" personal jurisdiction over any of these Defendants because none of them is incorporated or headquartered in New Jersey; thus, none is "at home" in this forum. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). The Court also lacks "specific" personal jurisdiction over these Defendants for two separate reasons, each of which independently requires dismissal.

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[1] Exxon Mobil Corp. is incorporated in New Jersey and does not challenge personal jurisdiction.

First, based on Plaintiffs' own allegations—which Defendants accept as true for purposes of this Motion only—Plaintiffs' claims do not "arise out of or relate to" Defendants' alleged contacts with New Jersey, 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. Plaintiffs fall far short. Plaintiffs have not alleged that the use or malfunction of any Defendant's products in New Jersey (or any acts in New Jersey) injured Plaintiffs in New Jersey. Plaintiffs instead seek to impose liability on Defendants 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 New Jersey. *Id.* at 1025.

Plaintiffs allege that their injuries are "all due to anthropogenic global warming," Compl. ¶ 9, allegedly caused by the increase in atmospheric CO_2 and other greenhouse gases from the *worldwide* combustion of oil and gas and other sources of emissions over the past century, *id.* ¶ 40–43. 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 Plaintiffs themselves. *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 Plaintiffs' claims ultimately

have nothing to do with the amount of fossil fuels (if any) Defendants allegedly produced or sold in New Jersey, or how much marketing or advertising (if any) purportedly occurred in New Jersey. The claims therefore neither arise out of nor relate to Defendants' alleged activities in New Jersey.

Plaintiffs' allegations of marketing activities in New Jersey cannot save their claims from dismissal because use of the marketed products in New Jersey is not alleged to have injured Plaintiffs in New Jersey. Indeed, Plaintiffs' theory, if accepted, would dramatically expand the bounds of specific personal jurisdiction by subjecting a defendant to jurisdiction in any State in which its 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 and by state and federal courts in New Jersey. *See Bristol-Myers Squibb Co. v. Superior Court*, 582 U.S. 255, 264 (2017); *Baskin v. P.C. Richard & Son, LLC*, 462 N.J. Super. 594, 618 (App. Div. 2020) (applying *Bristol-Myers* and finding no personal jurisdiction absent any meaningful link between forum contacts and the underlying claims), *rev'd on other grounds*, 246 N.J. 157 (2021); *Huzinec v. Six Flags Great Adventure, LLC*, 2018 WL 1919956 (D.N.J. Apr. 24, 2018) (finding no personal jurisdiction without "any 'meaningful link' between the [forum contacts] and the underlying claims at issue in th[e] case").[2]

Second, the exercise of specific personal jurisdiction over Defendants would be unreasonable under the Due Process Clause. Litigating this case in New Jersey would contravene "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" because Plaintiffs' claims implicate *global* conduct and are not localized to New Jersey. *World-*

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[2] Pursuant to Rule 1:36-3, all unpublished opinions relied on herein are included as exhibits to the Certification of Joshua D. Dick, Esquire (hereinafter "Dick Cert.").

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 Plaintiffs seek 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. 255, 263 (2017).

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 Plaintiffs' jurisdictional theory, the Court should dismiss all claims against Defendants with prejudice.

NATURE AND STAGE OF THE PROCEEDINGS

Plaintiffs initiated this case on October 18, 2022. Defendants filed a timely notice of removal to the United States District Court for the District of New Jersey. The District Court remanded to this Court on June 20, 2023.

ALLEGATIONS OF THE COMPLAINT

Plaintiffs' claims expressly depend on the cumulative and worldwide use of fossil fuel products over the course of more than a century. Plaintiffs allege an attenuated (and implausible) causal chain between Defendants' allegedly tortious acts and Plaintiffs' purported injuries from global climate change. Among the links in Plaintiffs' causal chain are the decisions of countless third parties around the world—including Plaintiffs themselves—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. Plaintiffs allege that those worldwide emissions—in addition to emissions originating from other sources, virtually all of which are also outside of New Jersey—increase the total amount of greenhouse gases in the global atmosphere. Compl. ¶ 41. Plaintiffs allege that change in atmospheric composition causes the atmosphere to trap heat, which increases global temperature, which, in turn, raises global sea levels, among other effects. *Id.* ¶ 39. Plaintiffs contend that their injuries flow from rising sea levels and other alleged effects of climate change. *Id.* ¶¶ 233–34.

Put simply, Plaintiffs repeatedly allege that their injuries are caused by "anthropogenic climate change," Compl. ¶¶ 288(a), 288(d), and that "fossil fuel emissions—especially CO2—are far and away the dominant driver of global warming," *id*. ¶ 4. These emissions result from billions of daily choices, over more than a century, by governments, companies, and individuals around the world, about what activities to engage in, whether to use fossil fuels, what types of fuels to use, and how to use them. Although Plaintiffs allege that Defendants conducted business or promoted products in New Jersey (which Defendants accept as true for purposes of this motion), Plaintiffs do not, and cannot, allege that emissions from any Defendant's *in-state* activities or any *in-state* use of fossil fuels had any appreciable effect on Plaintiffs' alleged in-state injuries. Rather, Plaintiffs allege that they 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

Plaintiffs do 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 New Jersey, and none has consented to general jurisdiction in New Jersey. Nor is there specific jurisdiction because (1) the Complaint avers that Plaintiffs' alleged injuries arise out of and relate to *worldwide* conduct by countless actors, as opposed to Defendants' alleged contacts with New Jersey, and not out of use of Defendants' fossil fuels in New Jersey; and (2) exercising jurisdiction would be constitutionally unreasonable.

I. LEGAL STANDARD

Plaintiffs bear the burden of establishing this Court's personal jurisdiction over Defendants. *Baanyan Software Services, Inc., v. Kuncha*, 433 N.J. Super. 466, 476 (App. Div. 2013). To carry that burden, Plaintiffs must "allege or plead specific facts" sufficient to make a *prima facie* case for personal jurisdiction over each Defendant. *Id.* at 476. In evaluating whether Plaintiffs have met this burden, the Court may not take as true mere conclusory assertions of minimum forum contacts unsupported by specific factual allegations. *See Giangola v. Walt Disney World Co.*, 753 F.Supp. 148 (D.N.J. 1990) (noting that plaintiff must show with "reasonable particularity" that New Jersey had personal jurisdiction).[3] Further, Plaintiffs 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. *Baanyan*, 433 N.J. Super. at 473 (citation omitted). New Jersey's long-arm statute is coextensive with the limits of personal jurisdiction delineated under the Due Process Clause of

[3] New Jersey courts regularly look to federal court decisions on personal jurisdiction as persuasive authority. *See, e.g.*, *Jacobs v. Walt Disney World, Co.*, 309 N.J. Super. 443, 454 (1998).

the Federal Constitution. *Reliance Nat'l Ins. Co. in Liquidation v. Dana Transp., Inc.*, 376 N.J. Super. 537, 543 (App. Div. 2005). Accordingly, the statutory inquiry merges with 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 that is "at home" in the forum, regardless of the connection between the claim and the forum. *Id.* 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). Put differently, "[s]pecific jurisdiction is available when the 'cause of action arises directly out of a defendant's contacts with the forum state.'" *Baanyan*, 433 N.J. Super. at 474 (quoting *Waste Mgmt., Inc. v. The Admiral Ins. Co.*, 138 N.J. 106, 119 (1994)).

II. DEFENDANTS ARE NOT SUBJECT TO GENERAL JURISDICTION IN NEW JERSEY.

Plaintiffs do not allege that Defendants are subject to general jurisdiction in New Jersey and concede that none of the Defendants is incorporated or headquartered in New Jersey. Compl. ¶¶ 24(b); 25(a); 25(d); 26(a); 26(e); 27(a); 27(d); 27(e); 27(f); 28(a); 28(d); 30(a). Because no Defendant is "at home" in this State, the Court lacks general jurisdiction over Defendants. *Daimler*, 571 U.S. at 139 (citation omitted).[4]

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[4] The U.S. Supreme Court's recent decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (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). And federal and state courts in New Jersey have repeatedly found that New Jersey's statutory scheme governing business registration, unlike Pennsylvania's, does not contain any such provision. As the Appellate Division recently held, "maintain[ing] a current

III. DEFENDANTS ARE NOT SUBJECT TO SPECIFIC JURISDICTION IN NEW JERSEY.

Because no Defendant is subject to general jurisdiction in New Jersey, Plaintiffs must establish specific jurisdiction over *each* Defendant independently, which they 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 to those activities; *and* (3) the exercise of personal jurisdiction would be constitutionally reasonable. *Baanyan*, 465 N.J. Super. at 473–74. 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 "implie[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). 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).

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business registration and registered agent" under the New Jersey statutes does *not* "amount[] to consent to general jurisdiction to sue and be sued," because the "texts of these statutes does not expressly direct consent to general jurisdiction." *Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 450 N.J. Super. 590, 605–06 (App. Div. 2017). Likewise, the most recent District of New Jersey decision addressing this issue concluded that the New Jersey statutes do *not* "explicitly provide that registering to conduct business in New Jersey constitutes express consent to general or specific jurisdiction." *Basse v. Bank of America, N.A.*, No. 22-cv-3674, 2023 WL 2696627, at *7 (D.N.J. Mar. 29, 2023); *see also, e.g.*, *Display Works, LLC v. Bentley*, 182 F. Supp. 3d 166, 174–76 (D.N.J. 2016) (same).

Plaintiffs do 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 New Jersey, and exercising personal jurisdiction in this case would be constitutionally unreasonable.

A. Plaintiffs' Claims Do Not "Arise Out Of Or Relate To" Defendants' Alleged Contacts With New Jersey.

Plaintiffs cannot establish specific jurisdiction over each Defendant because the Complaint does not, and cannot, allege that Plaintiffs' 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). 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." 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." 141 S. Ct. at 1022, 1026–27 (emphases added).

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 resulted from use and malfunction of the defendant's product within the State. As a result, *Ford Motor* provides no support for Plaintiffs' 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 New Hampshire 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 allegedly 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*). By contrast, personal jurisdiction was lacking 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*, the use of Defendants' products *in the forum* is not alleged to have injured Plaintiffs or given rise to their claims. *See Ford Motor*, 141 S. Ct. at 1022.

Plaintiffs' 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 v. Chevron Corp.*, 993 F.3d 81, 91, 93 (2d Cir. 2021); *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.").[5] Plaintiffs allege that their 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 Plaintiffs are incapable of pleading a causal relationship between their alleged injuries and the in-state use and malfunction of Defendants' products. It is that Plaintiffs 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' Plaintiffs' alleged global warming related injuries." *Id.* at 881. At bottom, then, Plaintiffs do not and cannot plausibly allege that Defendants' in-forum activity has any relation to their claims, much less injured them.

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[5] 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 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.

And even if Plaintiffs could allege that Defendants' products were used in and malfunctioned in New Jersey (which Plaintiffs cannot),[6] their claims would be limited to injuries allegedly resulting from *that in-state use and malfunction*. *See, e.g.*, *Ford Motor*, 141 S. Ct. 1026. But Plaintiffs' claims are expressly *not* so limited. Instead, Plaintiffs' expansive claims seek damages for alleged injuries purportedly resulting from the combined effects of the combustion and accumulation of greenhouse gas emissions *worldwide*, by Defendants, Plaintiffs themselves, and countless others. Plaintiffs do not, and cannot, allege that the use of any of Defendants' products in New Jersey caused global climate change and the injuries Plaintiffs allegedly suffered as a result. Indeed, it is indisputable that *total* energy consumption in New Jersey, with a population of less than ten 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 New Jersey (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 Plaintiffs' alleged injuries.[7]

Plaintiffs' attempts to base their claims on a so-called "campaign of misleading marketing and deceptive promotion," Compl. ¶ 2, rather than production, do not change this court's lack of jurisdiction. Regardless of how Plaintiffs characterize their claims, Plaintiffs allege their injuries are "all due to anthropogenic global warming" from an increase in global greenhouse gas

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[6] Indeed, Defendants' products did not malfunction at all. The release of carbon emissions is an inherent feature of these products when combusted by end-users.

[7] Plaintiffs' decision to sue a trade association like API—which does not sell, transport, or refine fossil fuels at all, let alone in New Jersey—illustrates the chasm between Plaintiffs' theory and the requirements of *Ford Motor*.

emissions from the extraction and consumption of fossil fuels around the world. *Id.* ¶¶ 9, 39–42. But Plaintiffs also do not limit their misrepresentation claims to in-forum conduct, instead alleging conduct "in and outside of New Jersey." *Id.* ¶ 3; *see also, e.g., id.* ¶ 141 (alleging deception "in New Jersey as elsewhere"); *id.* ¶¶ 143, 153, 197. Thus, Plaintiffs' claims do not arise from or relate to Defendants' alleged conduct in New Jersey.

Because Plaintiffs do not and cannot allege that their injuries resulted from the use and malfunction of Defendants' fossil fuel products in New Jersey, Plaintiffs' allegations that Defendants tortiously marketed or sold those products in New Jersey (even accepting those allegations as true for purposes of this Motion) fail to satisfy due process's "arises out of or relates to" requirement. Under settled Supreme Court case law, if the plaintiff does not allege it was injured in the State by either the defendant's in-state tortious conduct or the in-state use and malfunction of the defendant's product, 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.[8]

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

Because Plaintiffs have not alleged, and cannot allege, facts that, if true, would show that their claims arise from or relate to each Defendant's alleged contacts with New Jersey, the Court

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[8] 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 Plaintiffs' alleged in-state injuries. Although but-for causation may be sufficient for specific jurisdiction, *Ford Motor* held that it is not always necessary. *Ford Motor*, 141 S. Ct. at 1026. But *Ford Motor* only recognized that personal jurisdiction existed where the *in-state use of defendants' products* injured the plaintiff. And because Plaintiffs do not, and cannot, allege that they were injured by the in-state use of Defendants' products—Plaintiffs' alleged injuries instead are based on the cumulative effect of global emissions—personal jurisdiction is lacking.

need not reach the reasonableness inquiry. Nonetheless, the *un*reasonableness 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. 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 California, Solano Cty.*, 480 U.S. 102, 115 (1987) (internal quotation marks omitted). These fundamental constitutional principles weigh decisively against the exercise of personal jurisdiction.

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. *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.

Plaintiffs' 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.[9] 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 Plaintiffs' 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 foreclose such a result.

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[9] As Plaintiffs acknowledge, Defendants BP p.l.c. and Shell plc are registered in England and Wales. Compl. ¶¶ 25(a), 28(a).

Second, the assertion of jurisdiction here would offend the principles underlying the interstate judicial system because Plaintiffs seek to use New Jersey 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 to litigate identical climate-change actions simultaneously under different legal rules, especially given the substantial risk of inconsistent decisions.

Third, the "substantive social policies" Plaintiffs seek to advance—chilling speech by Defendants on matters of public concern that Plaintiffs deem 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, six months *after* Plaintiffs filed their 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.[10] 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."[11] Plaintiffs' claims implicate the interests of numerous 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, Plaintiffs' claims against the out-of-state Defendants should be dismissed in their entirety, with prejudice, for lack of personal jurisdiction.

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Respectfully submitted,

By: */s/ DRAFT*

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[10] 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.

[11] Brian Dabbs, *Biden Admin Paradox: Boost Oil – and Cut CO2?*, EnergyWire, March 9, 2023, https://www.eenews.net/articles/biden-admin-paradox-boost-oil-and-cut-co2/.

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