

MAYOR AND CITY COUNCIL
OF BALTIMORE

Plaintiff,

v.

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

Defendants.

* IN THE
* CIRCUIT COURT
* FOR BALTIMORE CITY
* Case No. 24-C-18-004219
* Specially Assigned to the
* Hon. Videtta A. Brown
*

* * * * *

**PLAINTIFF MAYOR AND CITY COUNCIL OF BALTIMORE'S
MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT
CNX RESOURCES CORPORATION'S
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

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I. Introduction

The Mayor and City Council of Baltimore (“the City”) sues to vindicate local injuries caused by Defendants’ decades-long campaign to discredit climate change science; to fail to warn about and conceal the catastrophic dangers posed by their fossil fuel products; and to misrepresent their role in exacerbating the climate crisis. CNX Resources Corporation’s (“CNX”) ample contacts with Maryland justify exercising specific personal jurisdiction over it. CNX has distributed, marketed, promoted, sold, and supplied fossil fuel products in Maryland, Compl. ¶ 29(f); owned and operated a coal terminal in Maryland, *id.*; and participated in a coordinated campaign with other Defendants and various front groups to mislead Maryland consumers, *id.* ¶¶ 30–31, 145–47, 160–67, 170.

As explained in the City’s opposition to Certain Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction (“Joint Motion”), the City’s uncontested allegations show that CNX availed itself of the privilege of conducting activities in Maryland, that the City’s claims arise out of or relate to these in-state contacts, and that the exercise of specific personal jurisdiction is constitutionally reasonable. CNX’s supplemental motion (“Mot.”) adds two meritless arguments to the Joint Motion. *First*, CNX invents what amounts to an elevated pleading standard for personal jurisdiction in cases involving misrepresentations or omissions. CNX asserts Plaintiff must identify a particular misrepresentation or omission by CNX to justify the exercise of personal jurisdiction but identifies no authority supporting that departure from Maryland’s *prima facie* standard for personal jurisdiction. Mot. at 4–5. *Second*, CNX asks the Court to ignore allegations that refer to CNX and other Defendants in the collective and allege they acted in the same way. Mot. at 5–6. Collective allegations, or “group pleading,” comport with Maryland pleading

principles and have never been proscribed here. The Court should adhere to the familiar practice of accepting the City's allegations and drawing reasonable inferences in the City's favor.

Even if the Court were to accept CNX's argument that CNX's own Maryland contacts are insufficient, it nonetheless would be subject to suit in Maryland under the conspiracy and agency theories of specific personal jurisdiction. The Complaint amply alleges that CNX conspired with others and acted through agents to take actions in Maryland that relate to the City's claims.

CNX's motion to dismiss for lack of personal jurisdiction should be denied.

II. The City Has Made a *Prima Facie* Showing of Specific Personal Jurisdiction.¹

CNX purposefully availed itself of the privilege of doing business in Maryland. Purposeful availment is satisfied by a wide range of acts including, without limitation, “[d]esigning [a] product for the market . . . advertising . . . establishing channels for providing regular advice to customers . . . or marketing the product through a distributor who has agreed to serve as the sales agent in the forum State.” *CSR, Ltd. v. Taylor*, 411 Md. 457, 485 (2009) (quotations omitted).

The City alleges CNX purposefully directed its tortious conduct in Maryland by marketing, promoting, and supplying its fossil fuel products here, Compl. ¶ 29(f), knowing that those products were hazardous, and have caused and will continue to cause catastrophic climate change-related injuries in Maryland and Baltimore, *id.* ¶¶ 10, 30, 141. CNX derives substantial revenue from its fossil fuel products in Maryland, *id.* ¶ 29(f); and it coordinated with other Defendants and front groups like the Global Climate Coalition (“GCC”) to conceal and misrepresent the known dangers of fossil fuels from the City and the public, *id.* ¶¶ 30–31, 103–58, 161, 166–67, 170. These un rebutted allegations and reasonable inferences drawn from them easily exceed the City's burden

¹ As detailed in the City's Opposition to the Joint Motion (“Opp.”), which the City incorporates by reference herein, only specific personal jurisdiction is at issue in this case. *See* Opp. at Part III (discussing specific personal jurisdiction analysis and pleadings standards).

to plead a *prima facie* case that CNX purposefully availed itself of Maryland.

CNX's Maryland contacts—which included the same tortious conduct at the heart of the City's suit—obviously relate to the City's claims. As the U.S. Supreme Court held in *Ford Motor Co. v. Montana Eighth Judicial District Court*, relatedness requires only a sufficiently “strong relationship among the defendant, the forum, and the litigation.” 141 S. Ct. 1017, 1028 (2021) (quotations omitted). Such a relationship is present here because the City “allege[s] that [it] suffered in-state injury because of [harmful] products that [CNX] extensively promoted [and] sold” in Maryland. *See id.* at 1032.

Ignoring allegations throughout the Complaint, CNX argues the City has not alleged CNX engaged in any “marketing, promotion, or speech . . . in or directed at Maryland” or that it “published advertorials, produced films, funded advertising, spoke at conferences, or maintained retail service locations, in Maryland or elsewhere.” Mot. at 4. But the Complaint repeatedly identifies activities that CNX engaged in and that relate to the City's injuries, including activities taken through CNX's agents and co-conspirators. *E.g.*, Compl. ¶ 32 (agency relationships); *id.* ¶ 29(c) (CNX's control of its subsidiaries' activities); *id.* ¶¶ 30–31, 145–47, 160–62, 166–67, 170 (knowledge of climate-change related hazards of fossil fuel products and participation in coordinated campaign to mislead consumers); *id.* ¶ 29(f) (CNX's Maryland activities); *id.* ¶¶ 161–62, 166 (efforts to discredit climate science); *id.* ¶ 145 (promotion of continued use of fossil fuel products despite known dangers); *id.* ¶¶ 102, 140–42, 170 (failure to warn consumers and the City).

As in the Joint Motion, CNX misrepresents that the City's alleged injuries result from the cumulative effect of global greenhouse gas emissions. Mot. at 6. But the City alleges only that Defendants are liable for injuries in Maryland attributable to *their* unlawful and deceptive conduct aimed at consumers and the public concerning climate change. *Id.* ¶¶ 29(f), 30–31, 102, 140–47,

182, 190–95. As the Hawai‘i Supreme Court held in a very similar case, allegations like the City’s “clearly seek[] to challenge the promotion and sale of fossil-fuel products without warning and abetted by a sophisticated disinformation campaign” and are not about the effects of all global greenhouse gas emissions. *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1181 (Haw. 2023). Here, CNX’s contacts with Maryland, including its marketing, promotion, and failure to warn, Compl. ¶¶ 29(f), 140, relate to the City’s claims as *Ford* requires.

III. There Is No Special Pleading Requirement for Personal Jurisdiction in Cases Involving Misrepresentations or Omissions.

CNX departs from the longstanding *prima facie* pleading standard for personal jurisdiction² by insisting the City must identify a particular misrepresentation or omission by CNX to justify the exercise of personal jurisdiction. Mot. at 5–6. CNX tries to locate its novel, elevated pleading requirement in three faraway federal district court decisions, but none supports CNX’s invention. *Id.* at 5.³ Instead, these decisions reinforce that the City’s ample allegations of CNX’s

² The City “need only make a *prima facie* showing” of personal jurisdiction. *Bradley v. DentalPlans.com*, 617 F. Supp. 3d 326, 332–33 (D. Md. 2022); *Pinner v. Pinner*, 467 Md. 463, 477 (2020). That means “the court must construe all disputed facts and reasonable inferences in the plaintiff’s favor,” *Bradley*, 617 F. Supp. 3d at 332–33. CNX cites *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 644 (App. 2010), for the pleading standard. Mot. at 2. That case is inapposite because it addressed motions to dismiss for failure to state a claim.

³ See *Antonini v. Blue Gate Farm, LLC*, 2012 WL 6632111, at *2–3 (E.D. La. Dec. 19, 2012) (where Louisiana plaintiffs purchased horses in Florida from a Wisconsin defendant that maintained stables in Florida, rejecting specific personal jurisdiction because the defendant’s only Louisiana contacts were pre-purchase e-mails and phone calls that were not tortious); *Driscoll v. Matt Blatt Auto Sales*, 1996 WL 156366, at *1–3 (E.D. Pa. Apr. 3, 1996) (where New Jersey residents bought a car from a New Jersey dealer, moved to Pennsylvania, and then tried to sue the dealer in Pennsylvania for fraudulent misrepresentation, declining specific personal jurisdiction over the dealer because the dealer had no relevant connections to Pennsylvania and did not make any misrepresentations there); *Gullion v. JLG Serviceplus, Inc.*, 2007 WL 294174, at *11 (S.D. Tex. Jan. 29, 2007) (declining personal jurisdiction over individual defendants in Texas where the plaintiff “d[id] not allege that any tortious conduct occurred in Texas, was purposefully directed toward Texas, or had a foreseeable effect in Texas”).

Nor do CNX’s other cited cases support departing from the familiar *prima facie* standard for personal jurisdiction allegations. Those cases reinforce that even very limited, one-time misrepresentations in a state that are much less limited than CNX’s alleged misrepresentations will support specific personal jurisdiction over a defendant. *MG Design Assocs. Corp. v. CoStar Realty Info., Inc.*, 267 F. Supp. 3d 1000, 1018 (N.D. Ill. 2017) (specific personal jurisdiction in Illinois proper over an out-of-state defendant whose D.C.-based employee allegedly reached out to the plaintiff company’s Illinois-based employee to fraudulently induce the plaintiff company to design an exhibit for a trade show in Nevada); *Elbeco Inc. v. Estrella de Plato, Corp.*, 989 F. Supp. 669, 677 (E.D. Pa. 1997) (finding personal jurisdiction where Pennsylvania plaintiff alleged that individual defendants from Texas and Mexican companies directed misrepresentations at plaintiff in Pennsylvania, mostly over phone and mail, for about a year); *Leone v. Cataldo*, 574 F. Supp. 2d 471, 479–80 (E.D. Pa. 2008) (in undertaking a fact-intensive jurisdictional analysis, finding

misrepresentations, concealment, and failure to warn in Maryland easily exceed the *prima facie* pleading requirement.

Moreover, CNX's suggestion that the City must identify a specific instance of CNX's *concealment or failure to warn* makes little sense. *E.g.*, Mot. at 2 ("[T]he Complaint does not identify a single . . . omission by CNX."). The City alleges CNX had a duty to warn about the dangers of its fossil fuel products whenever CNX sold them in Maryland, but CNX altogether failed to do so. *See, e.g.*, Compl. ¶¶ 271–80. Because CNX's failure to warn was continuous and pervasive, those omissions are inherently ill-suited to CNX's demand for specific identification. CNX's deceptive activities are similar in nature: CNX and other Defendants engaged in climate-related disinformation over an extended period of time and through a range of front groups. Even though the Complaint *does* identify specific misrepresentations and campaigns that were part of CNX's and others' joint efforts, CNX's misconduct is less about a single, isolated misrepresentation, and more about an extended course of wrongful conduct. Put simply, the Court should consider the sufficiency of the City's personal jurisdiction in the context of the City's theory of the case. *See Pinner*, 467 Md. at 481 (purposeful availment and relatedness are "fact-intensive inquir[ies] and there is no 'one-size fits all' answer to these jurisdictional issues."). The Court should reject CNX's attempt to invent an elevated pleading requirement.

IV. CNX Cannot Excise the City's Collective Allegations from the Complaint.

Instead of explaining why the City's allegations—taken as true and with reasonable inferences drawn in the City's favor—do not satisfy the *prima facie* pleading standard,⁴ CNX

that a single alleged misrepresentation made during a single visit by a foreign resident to Pennsylvania sufficed to establish specific personal jurisdiction on misrepresentation and fraud claims); *Fieldwood Energy LLC v. Ocean Marine Contractors, LLC*, 2015 WL 13119408, at *11–12 (S.D. Tex. July 22, 2015) (emphasizing that "a single act can suffice to establish specific jurisdiction," rejecting the defendants' attempts to require more specific pleading because the allegations had to be viewed "in Plaintiffs' favor," and rejecting the application of "heightened pleading standards" for specific personal jurisdiction).

⁴ *See CSR, Ltd.*, 411 Md. at 472 (for a motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a

attempts yet again to elevate the City's pleading burden. This time, CNX argues Maryland law does not allow the City to use collective allegations that refer to CNX and other Defendants together and state that they acted in the wrong way.

CNX is wrong because there is no Maryland case law creating such a proscription. CNX's sole citation does not support CNX's view. Mot. at 5. In *Heritage Harbour, LLC v. John J. Reynolds, Inc.*, 143 Md. App. 698, 711 (2002), the Appellate Court affirmed the trial court's dismissal of claims for failure to state a claim where the complaint lacked "any mention of" eight of twenty defendants, and the only allegation that *might* have pertained to those eight defendants was that all defendants "we[re] developers, architects and/or contractors who participated in the design, construction, evaluation and/or repair of" defective buildings. Nothing in *Heritage Harbour* can reasonably be interpreted as announcing a proscription of collective allegations.

Moreover, the City's use of group pleading is much more benign than CNX's extravagant objections suggest. To the extent CNX protests that the Complaint groups CNX and co-Defendants CONSOL Energy, Inc. and CONSOL Marine Terminals, LLC as "CONSOL," grouping these three entities together is natural because CONSOL Energy and CONSOL Marine were part of CNX until 2017, when CNX spun off "its coal mining and related downstream operations" as CONSOL Energy and its subsidiary CONSOL Marine. *See* Compl. ¶ 29(a). For most of the relevant time period, CNX, CONSOL Energy, and CONSOL Marine were one and the same.

Nor should this Court create a proscription on collective allegations. The Maryland Supreme Court has long eschewed technical pleading requirements by commanding that "a pleading shall be simple, concise, and direct" and "shall contain only such statements of fact as may be necessary." Md. Rule 2-303(b); *see also LaSalle Bank, N.A. v. Reeves*, 173 Md. App. 392,

prima facie showing); *Bradley*, 617 F. Supp. 3d at 332–33 ("Under a *prima facie* standard, the court must construe all disputed facts and reasonable inferences in the plaintiff's favor.").

410 (2007) (no technical pleading). A pleading serves four purposes, the first of which is most important: “(1) it provides notice to the parties as to the nature of the claim or defense; (2) it states the facts upon which the claim or defense allegedly exists; (3) it defines the boundaries of litigation; and (4) it provides for the speedy resolution of frivolous claims and defenses.” *Ledvinka v. Ledvinka*, 154 Md. App. 420, 429 (2003). Here, the City’s collective allegations satisfy each of these four purposes. CNX has ample notice about the claims, underlying facts, and the bounds of the litigation; the Court has assurance that the City’s claims are not frivolous; and the City’s collective allegations improve the Complaint’s brevity without undermining any of the well-established purposes of pleading. *See Frazier v. U.S. Bank, N.A.*, 2013 WL 1337263, at *3 (N.D. Ill. Mar. 29, 2013) (collective allegations provided fair notice). To require more would erect an unduly technical pleading requirement, *see Crowe v. Coleman*, 113 F.3d 1536, 1539 (11th Cir. 1997), that clashes with Maryland courts’ commitment to straightforward pleading, *see LaSalle Bank, N.A.*, 173 Md. App. at 410.

Indeed, federal courts throughout the country often have embraced collective allegations.⁵ Maryland federal courts have been especially open to collective allegations where the plaintiff has only limited available information without discovery given the nature of the wrongful conduct, as is the case here given Defendants’ concealment of their deception activities. *CASA de Md., Inc. v. Arbor Realty Tr., Inc.*, 2022 WL 4080320, at *4 (D. Md. Sept. 6, 2022).⁶ Indeed, federal courts have recognized that group pleading can satisfy even heightened pleading requirements like

⁵ *E.g.*, *Maryland v. Exxon Mobil Corp.*, 406 F. Supp. 3d 420, 476 (D. Md. 2019) (rejecting defendants’ argument that “group pleading” was “improper”); *Chevron U.S.A. Inc. v. Apex Oil Co.*, 113 F. Supp. 3d 807, 815 n.1 (D. Md. 2015) (collecting cases showing “[n]othing in [Fed. R. Civ. P.] 8,” the federal rule governing pleading, “prohibits collectively referring to multiple defendants where the complaint alerts defendants that identical claims are asserted against each defendant” (quoting *Vantone Grp. Ltd. Liab. Co. v. Yangpu NGT Indus. Co.*, 2015 WL 4040882, at *3 (S.D.N.Y. July 2, 2015)); *see also Lackey v. MWR Investigations, Inc.*, 2015 WL 132613, at *2 (D. Md. Jan. 8, 2015).

⁶ *Robertson v. Sea Pines Real Estate Cos.*, 679 F.3d 278, 291 (4th Cir. 2012) (requiring “nonconclusory factual detail at the pleading stage is tempered by the recognition that a plaintiff may only have so much information at his disposal at the outset.”); *see also* Compl. ¶¶ 30–31, 146–47, 150–52, 154, 158–67, 190 (allegations about concealment).

Federal Rule of Civil Procedure 9(b). *See United States v. United Healthcare Ins. Co.*, 848 F.3d 1161, 1184 (9th Cir. 2016). Collective allegations are proper if a plaintiff meets the otherwise applicable pleading standard. The Court should reject CNX's invitation to simply ignore the collective allegations in the City's robustly pleaded Complaint.

V. CNX Is Also Subject to Specific Personal Jurisdiction in Maryland Under Conspiracy and Agency Doctrines.

Even if CNX's own Maryland contacts were insufficient to support personal jurisdiction, the Court would still have personal jurisdiction over CNX because the Maryland contacts of its co-conspirators and agents may be imputed to it.

A. CNX Is Subject to Personal Jurisdiction in Maryland Because of Its Co-Conspirators' Contacts.

This Court has personal jurisdiction over CNX through the conspiracy theory of jurisdiction. *See Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 129–33 (2006). The conspiracy theory “allows a court to exercise jurisdiction over an out-of-state defendant whose co-conspirators have committed jurisdictionally sufficient acts within the forum state.” *Coastal Labs., Inc. v. Jolly*, 502 F. Supp. 3d 1003, 1020 (D. Md. 2020) (citations omitted). The doctrine requires a plaintiff to plead that: (1) two or more individuals conspired to do something, (2) that “something” could reasonably be expected to lead to consequences in the forum, (3) at least one co-conspirator committed an overt act in furtherance of the conspiracy, and (4) the overt act would subject a non-resident to personal jurisdiction under Maryland's long-arm statute. *Mackey*, 391 Md. at 129. Where these elements are satisfied, the overt acts are attributable to all other co-conspirators “even if they have no direct contacts with the forum.” *Id.* Plaintiff need only make a “threshold” or *prima facie* showing under the conspiracy theory. *McLaughlin v. Copeland*, 435 F. Supp. 513, 529–30 (D. Md. 1977) (applying Maryland's conspiracy theory to state-law claims). Such a showing suffices “in view of the difficulties of pleading and proving a conspiracy.” *Id.*

The City easily makes a threshold showing of these elements. *First*, CNX conspired with other Defendants and industry trade associations to engage in a coordinated campaign intended to conceal and misrepresent the known dangers of fossil fuels, Compl. ¶¶ 30–31, 145–47, to discredit climate change science, *id.* ¶ 161–62, 166, and to promote the continued and heavy use of its fossil fuel products, *id.* ¶¶ 145, 182, which it knew would result in injuries to Maryland and the City, *id.* ¶ 141. *Second*, CNX not only knew that unabated consumption of its products would exacerbate climate change hazards in Baltimore and elsewhere in Maryland, *id.* ¶¶ 103–41, 170, but also engaged in coordinated “tortious, false and misleading conduct” meant to deliberately deceive consumers, *id.* ¶ 170, *see also* ¶¶ 141–69, and “to maximize continued dependence on their [fossil fuel] products,” *id.* ¶ 145. *Third*, CNX, together with its co-conspirators, “took affirmative steps to conceal, from [City] and the general public, the foreseeable impacts of the use of [its] fossil fuel products,” *id.* ¶ 147, *see also id.* ¶ 190; it “embarked on a decades-long campaign designed to maximize continued dependence on” their fossil fuel products, *id.* ¶ 145; it “funded dozens of think tanks, front groups, and dark money foundations pushing climate change denial,” *id.* ¶ 167; GCC “funded advertising campaigns and distributed material to generate public uncertainty around the climate debate,” on its behalf, *id.* ¶ 161; and despite its knowledge, it failed to warn Maryland consumers about the disastrous effects of fossil fuel use, *id.* ¶¶ 140–45. *Finally*, because any of the overt acts in furtherance of the coordinated campaign of climate deception by Defendants suffices to subject each of them to personal jurisdiction in Maryland, this Court has personal jurisdiction over all of them, including CNX.

B. CNX Is Subject to Personal Jurisdiction in Maryland Because of Its Agents’ Contacts.

Maryland’s agency theory of personal jurisdiction is “not fundamentally different from the conspiracy theory.” *McLaughlin*, 435 F. Supp. at 533. It allows personal jurisdiction “over a non-

resident corporation based on the acts of its agents in Maryland.” *Jones v. Mut. of Omaha Ins. Co.*, 639 F.Supp.3d 537, 550 (D. Md. 2022) (citations omitted). Agency, like conspiracy, requires only a “threshold” or *prima facie* showing. *Id.*; *Hare v. Fam. Publ’ns Serv., Inc.*, 342 F. Supp. 678, 682 (D. Md. 1972). Courts assess three non-essential and non-determinative factors: “(1) the agent’s power to alter the legal relations of the principal; (2) the agent’s duty to act primarily for the benefit of the principal; and (3) the principal’s right to control the agent.” *Green v. H & R Block, Inc.*, 355 Md. 488, 503–04 (1999).

The Complaint describes multiple agency relationships involving CNX that support personal jurisdiction. CNX was the “agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer” of all other Defendants and was at all times “operating and acting within the purpose and scope of” those relationships. Compl. ¶ 32. And, CNX controls its subsidiaries including the extent of their fossil fuel production and sales. *Id.* ¶ 29(c). Together, Defendants including CNX used each other and their front groups to engage “in a long-term course of conduct to misrepresent, omit, and conceal the dangers of Defendants’ fossil fuel products.” *Id.* ¶ 31.

VI. Alternatively, the Court Should Permit Jurisdictional Discovery.

In the unlikely event the Court concludes more facts are needed for personal jurisdiction, the City requests leave to conduct jurisdictional discovery. *E.g.*, *Androutsos v. Fairfax Hosp.*, 323 Md. 634, 639–40 (1991) (abuse of discretion to refuse discovery); *Swarey v. Stephenson*, 222 Md. App. 65, 104–05 (2015) (similar).

VII. Conclusion

This Court has specific personal jurisdiction over CNX.

Dated: December 12, 2023

Respectfully submitted,

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*Attorneys for Plaintiff the Mayor and City Council
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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December 2023, a copy of the *Mayor and City Council of Baltimore's Memorandum of Law in Opposition to Defendant CNX Resources Corporation's Motion to Dismiss for Lack of Personal Jurisdiction* was served upon all counsel of record via email (by agreement of the parties).

/s/ Matthew K. Edling

Matthew K. Edling

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