MAYOR AND CITY COUNCIL OF BALTIMORE	*	IN THE
	*	CIRCUIT COURT
Plaintiff,		
v.	*	FOR BALTIMORE CITY
BP P.L.C., *et al.*	*	Case No. 24-C-18-004219
Defendants.	*	Specially Assigned to the Hon. Videtta A. Brown
	*	

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PLAINTIFF MAYOR AND CITY COUNCIL OF BALTIMORE'S MEMORANDUM OF LAW IN OPPOSITION TO CERTAIN DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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I. INTRODUCTION

The Mayor and City Council of Baltimore ("the City") brings this action to vindicate local injuries caused by Defendants'[1] decades-long campaign to discredit the science of global warming, to conceal the catastrophic dangers posed by their fossil fuel products, and to misrepresent their role in combatting the climate crisis. Each Defendant has ample contacts with Maryland to justify the exercise of specific personal jurisdiction: they have distributed, marketed, advertised, promoted, sold, and supplied fossil fuel products in Maryland, *see, e.g.*, Compl. ¶¶ 20(g), 22(g), 23(g), 24(e), 24(g), 25(e), 26(i), 27(h), 28(e), 29(f); they have operated refineries and other fossil fuel infrastructure in Maryland, *see, e.g.*, *id.* ¶¶ 20(g), 22(g), 23(g), 25(e), 29(f); they have owned or franchised gas stations in Maryland, *see, e.g.*, *id.* ¶¶ 20(g), 22(g), 23(g), 25(e), 26(i); and they have made material misstatements about their products and about climate change to consumers, *see, e.g.*, *id.* ¶¶ 141–42, 145–57, 161, 167, 170.

Because the City "allege[s] that [it] suffered in-state injury because of [harmful] products that [Defendants] extensively promoted [and] sold" in Maryland, "the connection between [the City's] claims and [Defendants'] activities in [Maryland]—or otherwise said, the 'relationship among the defendant, the forum[], and the litigation'—is close enough to support specific jurisdiction." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1032 (2021) (quoting *Walden v. Fiore*, 571 U.S. 277, 284 (2014)).

Defendants' personal jurisdiction arguments, which distort the City's claims and misconstrue the U.S. Supreme Court's personal jurisdiction analysis in *Ford*, are nearly identical to arguments the Hawai'i Supreme Court recently rejected in *City and County of Honolulu v.*

[1] The joint Motion to Dismiss Plaintiffs' Complaint for Lack of Personal Jurisdiction and the Joint Opening Brief filed in support thereof ("Motion" or "Mot.") was brought by all Defendants except BP Products North America Inc. and Crown Central LLC, which are citizens of Maryland. *See* Mot. at 1 n.1. For brevity's sake, the City refers to the moving Defendants as "Defendants."

Sunoco LP, 537 P.3d 1173 (2023). That case involved claims by Honolulu[2] for injuries caused by climate deception and failure to warn against a group of major fossil fuel defendants, including many of the same Defendants named here. *Honolulu*, 537 P.3d, at 1180 n.1.[3] The Hawai'i Supreme Court affirmed the trial court's order denying the defendants' motion to dismiss for lack of personal jurisdiction because the defendants had purposefully availed themselves of Hawai'i to conduct their business, Honolulu's "claims 'ar[o]se out of or relate[d] to' Defendants' Hawai'i contacts" as *Ford* requires, and the defendants did not show that exercising personal jurisdiction over them would be unreasonable. *See id.* at 1195; *see also id.* at 1193–94 (burden rests on defendants to prove unreasonableness).

So too here, Defendants availed themselves of Maryland in conducting their business, the State's claims arose out of or relate to Defendants' contacts in Maryland, and Defendants have not shown that exercising personal jurisdiction would be unreasonable. The Motion should be denied.

II. FACTUAL ALLEGATIONS

For more than half a century, Defendants have known that their coal, oil, and gas products create greenhouse gas pollution that changes Earth's climate. Compl. ¶¶ 1, 5. Starting as early as the 1950s, Defendants researched the link between fossil fuel consumption and global warming, amassing a remarkably comprehensive understanding of the adverse climate impacts caused by their fossil fuel products. *Id.* ¶¶ 103–40. Their own scientists predicted that the unabated consumption of fossil fuels would cause "dramatic environmental effects," warning that the world had only a narrow window of time to curb emissions and stave off "catastrophic" climate change. *E.g.*, *id.* ¶¶ 118, 120, 124.

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[2] The plaintiffs were the City and County of Honolulu and the Honolulu Board of Water Supply.

[3] Specifically, BP, ConocoPhillips, Chevron, Exxon, and Shell.

Defendants took these warnings seriously: they began evaluating the impacts of climate change on their fossil fuel infrastructure, investing to protect assets from rising seas and deadlier storms, and patenting technologies that would allow them to profit in a warmer world. *See id.* ¶¶ 5, 171–76. Despite this knowledge, Defendants never warned consumers, the public, or decisionmakers in a manner commensurate with the risks they knew their products posed to Maryland (and elsewhere). *Id.* ¶¶ 141–42, 170, 177–94. Instead, Defendants embarked on a decades-long campaign of denial and disinformation about the science and consequences of global warming, which has grievously harmed the people of Maryland including Baltimoreans. *See id.* ¶¶ 6, 10, 141–70. The resulting global warming has resulted in a variety of injuries to the City including sea-level rise, extreme weather, and other climate change impacts, which especially have affected the most vulnerable Baltimoreans. *See id.* ¶¶ 8–9, 14–17, 191–217.

Defendants each have extensive ties to Maryland related to their fossil fuel businesses. All Defendants have marketed, advertised, and promoted their fossil fuel products in Maryland. *Id.* ¶¶ 20(g), 21(c), 22(g), 23(g), 24(e), 25(e), 26(i), 27(h), 28(e), 29(f). Specifically, BP, Citgo, Crown Central, Chevron, ConocoPhillips, Exxon, Hess, Marathon, and Shell operate or license branded service stations in Maryland to sell retail fossil fuel to consumers. *Id.* ¶¶ 20(g), 21(c), 22(g), 23(g), 24(e), 25(e), 26(i), 27(h), 28(e).

Many Defendants have owned or operated major fossil fuel infrastructure in Maryland. BP owns a substantial interest in a fossil fuel terminal in Curtis Bay, Maryland. *Id.* ¶ 20(g). Chevron directly or indirectly owned and operated a petroleum and asphalt refinery and fossil fuel-product terminal in Baltimore from at least 1948 to 2003. *Id.* ¶ 22(g). Similarly, Citgo and CONSOL own and operate large fossil fuel terminals in Baltimore. *Id.* ¶¶ 25(e), 29(f). Exxon directly or indirectly

owned and operated an oil refinery in Baltimore from 1893 to the mid-1950s; the refinery was then converted to a petroleum storage and marketing facility that Exxon operated until 1998. *Id.* ¶ 23(g).

III. LEGAL STANDARDS

When evaluating a motion to dismiss for lack of personal jurisdiction under Maryland Rule 2-322(a), a court considers whether the requirements of Maryland's long-arm statute are satisfied and whether the exercise of personal jurisdiction would be consistent with the Due Process Clause. *CSR, Ltd. v. Taylor*, 411 Md. 457, 472–73 (2009); *Lamprecht v. Piper Aircraft Corp.*, 262 Md. 126, 130 (1971). Because the State's long-arm statute is "coterminous with the limits of the Due Process Clause," the statutory and constitutional components of the jurisdictional inquiry merge. *Stover v. O'Connell Assocs., Inc.*, 84 F.3d 132, 135–36 (4th Cir. 1996)[4]; *see also CSR, Ltd.*, 411 Md. at 475; *Mohamed v. Michael*, 279 Md. 653, 657 (1977) ("[I]t was the intent of the Legislature in enacting the long-arm statute to expand the personal jurisdiction of the courts to the extent permitted by the Fourteenth Amendment."); *Jones v. Mut. of Omaha Ins. Co.*, 639 F. Supp. 3d 537, 547–48 (D. Md. 2022).

The U.S. Supreme Court has "recogniz[ed] two kinds of personal jurisdiction: general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Ford*, 141 S. Ct. at 1024. "A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the State." *Id.* Specific personal jurisdiction, by contrast, "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Id.* To evaluate specific personal jurisdiction, a court considers (1) whether the defendant has purposefully availed itself of the privilege of conducting activities in the State; (2) whether the

[4] Maryland courts frequently cite to Fourth Circuit cases when discussing personal jurisdiction issues. *E.g.*, *Bond v. Messerman*, 391 Md. 706, 721 (2006); *CSR, Ltd.*, 411 Md. at 483.

plaintiff's claims arise out of or relate to the defendant's activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable. *Id.* at 1025; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472–73 (1985); *Bond*, 391 Md. at 723; *Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 628–29 (2017).

At the pre-discovery pleadings stage, a plaintiff "need only make a *prima facie* showing of a sufficient jurisdictional basis to survive a challenge under Rule 12(b)(2)." *Bradley v. DentalPlans.com*, 617 F. Supp. 3d 326, 332 (D. Md. 2022); *Pinner v. Pinner*, 467 Md. 463, 477 (2020). "Under a *prima facie* standard, the court must construe all disputed facts and reasonable inferences in the plaintiff's favor." *Bradley*, 617 F. Supp. 3d at 332. Once the plaintiff has satisfied the burden for the first two prongs of the Due Process Clause analysis—purposeful availment and relatedness—the burden shifts to the defendant to show that personal jurisdiction would be constitutionally unreasonable. *Pinner*, 467 Md. at 495; *Tech. Pats., LLC v. Deutsche Telekom AG*, 573 F. Supp. 2d 903, 913 (D. Md. 2008).

IV. ARGUMENT

Each Defendant is subject to personal jurisdiction in Maryland. Defendants concede, as they must, that "the reach of [Maryland's] long-arm statute is coextensive with the limits of personal jurisdiction under the Due Process Clause."[5] *See* Mot. at 6 (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co.*, 388 Md. 1, 5 (2005)). The only question before the Court is thus

[5] As further discussed in the City's opposition to the CONSOL Defendants' individual motion to dismiss, the Complaint satisfies the long-arm statute in any event. The City alleges each Defendant has "[t]ransact[ed] any business or perform[ed] any character of work or service in the State," *see* Md. Code Ann., Cts. & Jud. Proc. § 6-103(b)(1), "[c]ause[d] tortious injury in the State by an act or omission in the State," *id.* § 6-103(b)(3), and/or "[c]ause[d] tortious injury in the State or outside of the State by an act or omission outside the State if he regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from goods, food, services, or manufactured products used or consumed in the State," *id.* § 6-103(b)(4). *See* Compl. ¶¶ 20(g) (BP); 22(g) (Chevron); 23(g) (Exxon); 24(e), 24(g) (Shell); 25(e) (Citgo); 26(i) (ConocoPhillips); 27(h) (Marathon and Speedway); 285(e) (Hess); 29(f) (CNX and CONSOL).

whether it may exercise jurisdiction in accord with federal constitutional due process. The answer to that question is yes, because all three of the requirements for specific jurisdiction elucidated by the U.S. Supreme Court are satisfied. *First*, Defendants do not contest that they purposefully availed themselves of the privilege of conducting business in Maryland and assumed the attendant obligations of the State's sovereign authority.[6] *Second*, the City's claims here relate to Defendants' business contacts with Maryland because they marketed, promoted, and sold substantial amounts of their coal, oil, and gas products within the state, which conduct forms the alleged basis of liability. *Third*, exercising jurisdiction comes within the broad scope of constitutional reasonableness because Defendants' business activities in the state are extensive, the City's interest in the litigation is substantial, and Defendants will suffer no undue burden litigating here.

A. Defendants Purposefully Availed Themselves of Maryland with Extensive In-State Activities.

For the exercise of personal jurisdiction to comport with constitutional due process, "[t]he defendant . . . must [have] take[n] 'some act by which [it] purposefully avail[ed] itself of the privilege of conducting activities within the forum State.'" *Ford*, 141 S. Ct. at 1024 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253 (1958)).[7] Such activities include, without limitation, "[d]esigning [a] product for the market in the forum State, advertising in the forum State, establishing channels for providing regular advice to customers in the forum State, or marketing

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[6] CONSOL Energy and CNX Resources contest purposeful availment in their individual motions to dismiss. The City addresses these unmeritorious arguments in separate opposition briefs specific to those motions. If the other Defendants challenge purposeful availment for the first time in their reply brief, the Court should reject that argument as considering it would be unfair to Baltimore. *See Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994) ("A reply brief cannot be used as a tool to inject new arguments.").

[7] A defendant's decision to purposefully direct its activities at the forum gives it clear notice that it may be haled into court in that forum state. *Burger King*, 471 U.S. at 472; *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) ("When a corporation purposefully avails itself of the privilege of conducting activities within the forum State, it has clear notice that it is subject to suit there. . . .") (cleaned up)); *Honolulu*, 537 P.3d at 1194 (rejecting defendants' argument that "clear notice" is a separate requirement and holding that "[i]f the minimum contacts test is met, a defendant has fair warning; and if it has fair warning, then due process is satisfied.").

the product through a distributor who has agreed to serve as the sales agent in the forum State." *CSR, Ltd.*, 411 Md. at 485 (citing *Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano Cnty.*, 480 U.S. 102, 112 (1987) (plurality opinion)). "The quality and quantity of contacts required to support the exercise of personal jurisdiction depend upon the facts of each particular case." *Miserandino v. Resort Props., Inc.*, 345 Md. 43, 50 (1997) (cleaned up).

Defendants do not challenge purposeful availment. Nor could they, because they have had extensive contacts with Maryland for decades. Defendants have each marketed, advertised, promoted, sold, and supplied their fossil fuel products in Maryland. *E.g.*, Compl. ¶¶ 20(g), 21(c), 22(g), 23(g), 24(e), 24(g), 25(e), 26(i), 27(h), 28(e), 29(f). Many Defendants have directly or indirectly owned or operated major fossil fuel infrastructure in Maryland. *Id.* ¶¶ 20(g), 22(g), 23(g), 25(e), 29(f). In addition to marketing and promoting their fossil fuel products, Defendants also engaged in a coordinated campaign to disseminate disinformation about the climate change-related hazards of fossil fuel products and failed to warn Maryland consumers about those hazards. *Id.* ¶¶ 141–42, 145–67, 170. Many of the Defendants have qualified with the Department of Assessments and Taxation to "do[] . . . intrastate business" by designating and maintaining a registered agent for the service of process in Maryland. Md. Code Corps. & Ass'ns § 7-203(a)–(b) (foreign corporation qualifications); *e.g.*, *id.* ¶¶ 20(d), 22(e), 23(d), 24(d), 25(a), 26(d), 26(g), 27(f), 28(a), 29(e) (relevant allegations). Given Defendants' wide-ranging contacts with Maryland that they do not contest, the purposeful availment requirement is well-satisfied.

B. The City's Claims Relate to Defendants' Contacts with Maryland.

Defendants' primary argument that the City's claims do not "arise out of or relate to" Defendants' contacts with Maryland misrepresents both controlling law and the substance of the Complaint. Mot. at 2. Legally, there is no requirement that a plaintiff allege "that *use or*

malfunction of a defendant's product in the State injured the plaintiff in the State." *Id.* (emphasis in original). Indeed, *Ford* directly contradicts Defendants' position: "[W]e have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct." 141 S. Ct. at 1026. It instead suffices that there is "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 1025 (cleaned up). The Complaint clears that bar.

To buttress their misreading of *Ford*, Defendants assert that the City's injuries are based on the cumulative effect of global emissions, Mot. at 2, 4, 11–12, 14 n.6, and therefore "personal jurisdiction is lacking irrespective of whether a defendant markets, advertises, and sells those products" in Maryland, *id.* at 14. Defendants' reasoning contorts the Complaint to manufacture theories of liability and damages the City does not allege, namely that Defendants should be held strictly liable for all harms flowing from all greenhouse gas emissions anywhere, ever.[8] The theory actually animating the City's causes of action is that Defendants are liable for injuries in Maryland attributable to their unlawful and deceptive conduct, aimed at consumers and the public concerning climate change, in Maryland as elsewhere, with the intent to expand and perpetuate the market for

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[8] Defendants' citations to *City of New York v. Chevron Corp.*, 993 F.3d 81, 91, 93 (2d Cir. 2021), *City of Oakland v. BP p.l.c.*, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018), *vacated*, 2022 WL 14151421, at *9 (N.D. Cal. Oct. 24, 2022), and *Native Village of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), do not justify Defendants' contorted reading of the City's complaint or finding a lack of specific personal jurisdiction. *See* Mot. 11–12. *City of New York* involved questions of federal preemption, not personal jurisdiction, for claims related to legal commercial conduct, not tortious marketing. 993 F.3d at 86, 94. The California district court's vacated dicta from *City of Oakland* is equally unpersuasive. There the district court not only failed to recognize that it lacked subject-matter jurisdiction (and was reversed by the Ninth Circuit on that issue), but also applied a causation requirement for personal jurisdiction that the U.S. Supreme Court in *Ford* has since rejected. *See City of Oakland*, 2018 WL 3609055, at *3 (finding against personal jurisdiction "[b]ecause plaintiffs ha[d] failed to show that defendants' conduct is a 'but for' cause of their harm"); *contra Ford*, 141 S. Ct. at 1026 (the "causation-only approach finds no support in this Court's requirement of a 'connection' between a plaintiff's suit and a defendant's activities"). Finally, Defendants reliance on the district court's Article III standing analysis in *Kivalina*, which involved different claims from those at issue here, is irrelevant to the personal jurisdiction issues here. *See* 663 F. Supp. 2d at 880–82; *see also Honolulu*, 537 P.3d at 1189 n.5 (similarly distinguishing *Kivalina*).

their fossil fuel products. *See, e.g.*, Compl. ¶¶ 20(g), 21(c), 22(g), 23(g), 24(e), 25(e), 26(i), 27(h), 28(e), 29(f), 141–76. The City's allegations with respect to that theory clearly "relate to" Defendants' business and marketing conduct in Maryland, and the consequences thereof in Maryland. *See, e.g.*, *id.* ¶¶ 6, 10, 141–70, 177–94.

1. *Ford* Explicitly Rejected a Causation Requirement for Personal Jurisdiction, and the City's Allegations Sufficiently Relate to Defendants' Conduct in Maryland to Establish Jurisdiction.

Defendants' arguments against jurisdiction unite around a "single, fatally flawed premise": they say, in various formulations, that they can be subject to personal jurisdiction only if the climate change injuries Baltimore alleges were caused by Defendants' fossil fuels being burned in Maryland.[9] *Honolulu*, 537 P.3d at 1190. That is incorrect, as a straightforward reading of *Ford* confirms. *See also id.* (rejecting same argument by defendants in Hawai'i).

In *Ford*, residents of Montana and Minnesota sued Ford in their respective home states for car accidents that occurred there. 141 S. Ct. at 1022. The plaintiffs' vehicles were not designed, manufactured, or originally sold in Montana or Minnesota, *id.*, and Ford argued that specific personal jurisdiction could not attach because its contacts with each state did not have a "causal" relationship to each plaintiff's claims, *id.* at 1026. The Court explicitly rejected "Ford's causation-only approach," holding that the Fourteenth Amendment's requirement is met if the claims either "arise out of *or* relate to" the defendant's forum contacts. *Id.* (emphasis altered).

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[9] *See, e.g.*, Mot. at 10 ("*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"); *id.* at 11 ("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*") (emphasis in original); *id.* at 12 ("And even if Plaintiff could allege that Defendants' products were used in and malfunctioned in Maryland (which it cannot), its claims would be limited to injuries allegedly resulting from *that use and malfunction* of Defendants' products *in Maryland*") (emphasis in original).

"The first half of that standard asks about causation," the Court explained, "but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing." *Id.* A plaintiff's claims thus "relate to" a defendant's forum contacts when there is "an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Id.* at 1025 (quoting *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 582 U.S. 255, 262 (2017)). Even where a plaintiff's claims are not causally related to the defendant's in-state conduct, the forum "may yet have jurisdiction, because of another 'activity [or] occurrence' involving the defendant that takes place in the State" related to the plaintiff's claims. *Id.* at 1026. (quoting *Bristol-Myers Squibb Co.*, 582 U.S. at 262). Because Ford "systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States," there was a "strong relationship among the defendant, the forum, and the litigation," and jurisdiction was present. *Id.* at 1028 (quotation omitted).

The City's unrebutted allegations here easily satisfy *Ford*. Defendants extensively promote and/or sell fossil fuel products throughout the State, have done so for many years, and have worked in concert to do so through their chief trade organization, the American Petroleum Institute ("API"). All Defendants other than CONSOL own or license service stations in Maryland where their fossil fuel products are sold. Compl. ¶¶ 20(g), 22(g), 23(g), 24(e), 25(e), 26(i), 27(h), 28(e). BP, Chevron, Citgo, CONSOL, and Exxon have owned or operated major fossil fuel infrastructure in Maryland, such as refineries and terminals. *Id.* ¶¶ 20(g), 22(g), 23(g), 25(e), 29(f). And Defendants have individually and together failed to warn anyone about the risks posed by the intended use of their products and engaged in a disinformation campaign around fossil fuels and climate change. *Id.* ¶¶ 6, 10, 141–70, 177–94. Just as in *Ford*, Defendants have "continuously and

deliberately exploited [Maryland's] market" for fossil fuel products, and as such "must reasonably anticipate being haled into [Maryland's] courts to defend actions based on products causing injury there." *See* 141 S. Ct. at 1027 (cleaned up); *see also Honolulu*, 537 P.3d at 1191 (finding that "the connection between Defendants, Hawai'i, and this litigation is *more closely intertwined* than that of *Ford*" (emphasis added)).

a. Defendants' Alternative Analysis Focused on the Location of Product Malfunction Seeks to Reestablish the Same Causal Requirement *Ford* Rejected.

Defendants misconstrue *Ford* as holding that specific personal jurisdiction is conditioned on "a plaintiff suffering an *in-state* injury from the *in-state* use and malfunction of a defendant's product." Mot. at 10 (emphasis in original). Instead, *Ford*'s reference to an in-state "malfunction[]" and "injur[y]" was only one example of a circumstance where there was a sufficiently "strong relationship among the defendant, the forum, and the litigation." *See* 141 S. Ct. at 1028; *see also id.* at 1032 (looking for a relationship that was "close enough"); *Honolulu*, 537 P.3d at 1191 (interpreting *Ford* as requiring a sufficiently "strong relationship"). The *Ford* Court did not purport or attempt to predict all the circumstances where such a relationship would exist.

Defendants also invoke the in-state use and malfunction concept in an attempt to resurrect the very causal-relationship argument the *Ford* Court expressly rejected. Defendants posit they cannot be subject to jurisdiction here because "[g]reenhouse gas emissions resulting from the use of fossil fuel products Defendants may produce, sell, or promote 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 therefore the City cannot allege "that the use of any of Defendants' products in Maryland caused global climate change and the injuries [City] allegedly suffered as a result." Mot.

at 13; *see Honolulu*, 537 P.3d at 1189–90 (finding defendants' in-state use and malfunction argument was an inapposite "causation argument").

As the Hawai'i Supreme Court recognized in nearly identical circumstances, Defendants' in-state use and malfunction argument is just another "formulation[]" of their "causation argument" that clashes with *Ford*. *Id.* Ford argued to the U.S. Supreme Court that "the plaintiffs' claims would be precisely the same if Ford had never done anything in Montana and Minnesota," because "the company sold the specific cars involved in these crashes outside th[os]e forum States." *Ford*, 141 S. Ct. at 1029 (quotation omitted). Ford thus argued, as Defendants do here in slightly different words, that there was no jurisdiction because its sales and business activities in the forum states could not have been a but-for cause of the plaintiffs' injuries. The U.S. Supreme Court held that argument "merely restate[d] Ford's demand for an exclusively causal test of connection," which the Court had "already shown is inconsistent with our caselaw." *Id.*

Similarly, here, Defendants' insistence that jurisdiction can attach only if the "injury within the forum State results from use and malfunction of the defendant's product within the State," Mot. at 10, describes a causation requirement the Supreme Court rejected in *Ford*, *see Honolulu*, 537 P.3d at 1189–90. The Court should not tolerate Defendants' attempts to minimize their considerable contacts with Maryland—one of their major fossil fuel markets—that plainly relate to the City's injuries.

b. None of Defendants' Cases Recognize the Place-of-Malfunction Test They Invent.

Defendants suggest that subsequent courts have understood *Ford* as adopting a causation-driven, place-of-malfunction requirement. *See* Mot. at 10–11. But none of these cases stands for that proposition.

Defendants first cite *Vapotherm, Inc. v. Santiago*, 38 F.4th 252 (1st Cir. 2022), which involved claims for breach of contract and tortious interference with contract, not products liability. Vapotherm, a New Hampshire company, brought a lawsuit in New Hampshire district court against a former employee based in Georgia because he had successfully solicited three other Vapotherm employees to join his new employer. *Id.* at 261. The court found specific personal jurisdiction lacking because the defendant had virtually no contacts with New Hampshire, much less contacts relating to Vapotherm's claims. *Id.* The defendant had worked for Vapotherm in Florida and Georgia, and his conversations with the Vapotherm employees he poached took place outside of New Hampshire. *Id.* at 260–61. His only in-state activities consisted of a handful of trips to Vapotherm's New Hampshire headquarters for corporate events and limited monthly communications with Vapotherm technical support and customer service representatives who were located in New Hampshire. *Id.* at 256. Under these circumstances, the court found that the defendant had not purposefully availed himself of New Hampshire, and that Vapotherm's claims did not relate to any of the defendant's virtually nonexistent New Hampshire contacts. At most, then, *Vapotherm* stands for the uncontroversial proposition that an in-state injury, alone, is insufficient to prove relatedness.

Defendants also misrepresent the Rhode Island Supreme Court's decision in *Martins v. Bridgestone Americas Tire Operations, LLC*, 266 A.3d 753 (R.I. 2022), which they say found jurisdiction lacking because "the plaintiff's claims did not arise from the use and malfunction of the [defendant's] product in Rhode Island." Mot. at 11. However, "*Martins* is inapposite," *Honolulu*, 537 P.3d at 1191, because that is not what the Court held. In *Martins*, an allegedly defective tire failed on a tow truck driven by the decedent, causing a crash that led to the driver's death. 266 A.3d at 756. The tires were manufactured and installed in Tennessee, and the assembled

truck was delivered directly to the decedent's towing business in Massachusetts. *Id.* at 755–56. The decedent later drove the truck from Massachusetts to Connecticut, struck a tree in Connecticut, and was transported across state lines to a hospital in Rhode Island where he later died. *Id.* at 756. The only relevant connections between Rhode Island and the litigation were that "the decedent was a resident of Rhode Island whose death ultimately occurred in Rhode Island." *Id.* at 761. Noting that "it was key in *Ford* that the injury also occurred in the forum state," *id.*, the Court found jurisdiction lacking because "the injury allegedly caused by the tire occurred in *Connecticut*," *id.* at 760. The Rhode Island Supreme Court "*did not* endorse the causation test put forth by Defendants," rather, the Court simply held that the "plaintiffs' claims did not arise out of or relate to the [defendants'] contacts." *Honolulu*, 537 P.3d at 1192; *see also Martins*, 266 A.3d at 761.

Taken together, *Vapotherm* and *Martins* stand merely for the unremarkable proposition that the place of injury is a highly relevant consideration in determining whether a claim relates to a defendant's forum contacts, which was true even before *Ford*. *See, e.g.*, *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 929 n.5 (2011) ("When a defendant's act outside the forum causes injury in the forum, . . . a plaintiff's residence in the forum may strengthen the case for the exercise of specific jurisdiction." (emphasis omitted)). The cases do not stand for a place-of-malfunction element, because requiring one "merely restates [a] demand for an exclusively causal test of connection—which [the Supreme Court] ha[s] already shown is inconsistent with [its] caselaw." *Ford*, 141 S. Ct. at 1029. So too for the other cases that Defendants string-cite without explanation. Mot. at 10–11 (citing *Cappello v. Rest. Depot, LLC*, 2023 WL 2588110, at *5 (D.N.H. Mar. 21, 2023), *appeal filed*, No. 23-1368 (1st Cir. Apr. 24, 2023) (personal jurisdiction was absent where plaintiff's injury—the ingestion of a tainted salad—occurred outside

the forum); *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 863 (9th Cir. 2022) (no specific personal jurisdiction over an engine manufacturer for claims arising out of an aviation accident in Arizona where the manufacturer's only Arizona contacts occurred through authorized third-party engine repair shops that did not work on the accident aircraft)[10]; *Hepp v. Facebook*, 14 F.4th 204, 208 (3d Cir. 2021) (construing *Ford* as requiring only "a strong relationship among the defendant, the forum, and the litigation," and recognizing that *Ford*'s references to in-state use and malfunction were describing only one *example* of that relationship and *not* a requirement (cleaned up)).

In addition to not supporting Defendants' interpretation of *Ford*, the cases Defendants cite are also factually dissimilar. In *Vapotherm* and *LNS Enterprises*, the defendants had virtually no connections to the forum state, and no allegedly tortious conduct occurred in or was directed at the forum. In *Martins*, *Cappello*, and *Hepp*, there were few or no facts demonstrating any relatedness between each defendant's intra-forum activities and the litigation, and there were no in-state injuries in either *Cappello* or *Martins*. *Cappello*, 2023 WL 2588110, at *2, *5 (no personal jurisdiction in New Hampshire where plaintiff's E. coli poisoning injury occurred in New Jersey); *Hepp*, 14 F.4th at 208 (3d Cir. 2021) (no relationship between the right-of-publicity violations alleged by plaintiff and defendants' business in the forum where defendants did not generate or use plaintiff's image). Here, Defendants have not only conducted extensive business activities in Maryland that are directly related to the causes of action in the Complaint (*e.g.*, operating branded gasoline stations, fossil fuel terminals, and a petroleum storage facility and engaging in advertising

[10] The Ninth Circuit in *LNS Enterprises* also rejected specific personal jurisdiction over an aircraft manufacturer that was "unrelated to . . . the company that designed, manufactured, and sold Plaintiffs' aircraft," whose only Arizona contact was a single service center that had nothing to do with the accident. *See* 22 F.4th at 864. Defendants do not cite this portion of the Ninth Circuit's decision, which—in any event—does not support a place-of-malfunction requirement.

campaigns), but also engaged in tortious activity by disseminating disinformation and failing to warn Maryland consumers.[11]

2. Defendants Have Not Contested Any Facts Alleged in the Complaint, and the City's Unrebutted Allegations Plainly Relate to Defendants' Business Contacts with Maryland.

Properly construed, the allegations in the Complaint readily satisfy the relatedness requirement described in *Ford*. *See Honolulu*, 537 P.3d at 1189–92 (finding the relatedness requirement satisfied under very similar circumstances). Defendants expressly "accept as true for purposes of this Motion" all allegations in the complaint, Mot. at 2, and argue that even "assuming *arguendo* that [Maryland consumers' use of Defendants' products] was induced by Defendants' allegedly tortious marketing," *id.* at 13, the Complaint still does not relate to anything they said or did here. That argument fails.

The connection between the City's claims and Defendants' undisputed contacts with Maryland is clear and direct. The City asserts claims for nuisance, trespass, failure to warn, design defect, and violations of the Consumer Protection Act. Compl. ¶¶ 218–98. All these claims arise from Defendants' efforts to conceal the dangers associated with their fossil fuel products and their failures to warn about those known hazards. *See id.*[12] Defendants' contacts with Maryland and the

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[11] *Briskin v. Shopify, Inc.*, __ F.4th __ 2023 WL 8225346 (9th Cir. Nov. 28, 2023), changes nothing. There, a California consumer sued Shopify, a nationwide online payment platform, for claims arising out of its "extraction and retention of consumer data." *Id.* at *1. The court's specific personal jurisdiction analysis focused on the "express aiming" element of purposeful availment, which Defendants do not contest here. *Id.* at *4 (the "crux of th[e] case" was express aiming). Moreover, the court's express-aiming analysis rested on a line of Ninth Circuit case law that addresses what is required to "demonstrate express aiming" specifically for "an out-of-state internet platform." *Id.* at *8. The court took pains to emphasize that this body of case law is inapplicable to cases involving "the sale of physical goods" in a forum state through the Internet. *Id.* at *12. Shopify's intangible contacts with California were "simply different" from "the sale of physical goods through an interactive website," which implicate "long-held understandings about the jurisdictional significance of physical shipments into a forum." *Id.* The City's claims are nothing like those in *Shopify* because the City alleges Defendants sold, promoted, marketed, and failed to warn about physical goods—fossil fuel products—in Maryland. Compl. ¶¶ 20(g), 22(g), 23(g), 24(e), 24(g), 25(e), 26(i), 27(h), 28(e), 29(f).

[12] *See also Honolulu*, 537 P.3d at 1189 ("Plaintiffs' claims also all arise from the same alleged acts—here, Defendants' deceptive promotion of and failure to warn about the dangers of using oil and gas. Accordingly, we examine all claims against all Defendants together.").

City's claims have a direct connection to Defendants' fossil fuel products and to Defendants' sale, marketing, and promotion of those products. Moreover, Defendants' failure to warn had a direct impact on the consumption and use of their products, including in Maryland, as well as on Defendants' operations in the state. The City does not need to prove causation in order for this court to have specific jurisdiction, and these connections satisfy *Ford*'s requirements. *See Honolulu*, 537 P.3d at 1189–92 (holding that similar allegations by Honolulu sufficed).

C. The City Has a Clear and Substantial Interest in Prosecuting This Case in Maryland Court, and Exercising Jurisdiction Here Is Constitutionally Reasonable.

Because Defendants have purposefully directed tortious activities at Maryland, they must justify dismissal by "present[ing] a compelling case" that exercising personal jurisdiction here would violate constitutional minimum reasonableness. *See Burger King*, 471 U.S. at 477. Such a case is "rare," *see Camelback Ski Corp. v. Behning*, 312 Md. 330, 336 (1988) (quotation omitted), and requires a showing of "grave[] difficult[y] or inconvenien[ce]," *see Burger King*, 471 U.S. at 478 (quotation omitted); *see also ESAB Group, Inc. v. Zurich Insurance PLC*, 685 F.3d 376, 392 (4th Cir. 2012) (quotation omitted). Defendants fall far short of this burden. Maryland has a strong sovereign interest in providing a forum for suits by its political subdivisions against Defendants because they have: (1) reached into Maryland with their tortious conduct and unlawful business practices, (2) otherwise purposefully availed themselves of Maryland's legal benefits and protections, and (3) caused dire in-state injuries to the City. *See dmarcian, Inc. v. dmarcian Eur. BV*, 60 F.4th 119, 135 (4th Cir. 2023) (a state had a "manifest interest in offering remedies to its wronged businesses" and "protecting its companies' rights from foreign [misconduct]" (quotation omitted)); *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481, 513 (2016) ("The Supreme Court has reasoned that jurisdiction is proper in the state in which 'the brunt of the injury would be felt.'" (quoting *Calder v. Jones*, 465 U.S. 783, 789–90 (1984))).

1. Defendants Do Not Demonstrate that the Exercise of Personal Jurisdiction Would Violate the Reasonableness Factors.

Maryland courts follow the reasonableness factors the U.S. Supreme Court set forth in *Burger King*, *World-Wide Volkswagen*, and subsequent cases. Relevant factors include "[1] the burden on the defendant, [2] the forum state's interest in adjudicating the dispute, [3] the plaintiff's interest in convenient and effective relief, [4] the interstate judicial system's interest in obtaining the most efficient resolution of controversies, [5] and the shared interest of the several States in furthering fundamental substantive social policies." *Stisser*, 234 Md. App. at 617 (quoting *Burger King*, 471 U.S. at 477). "The primary concern is for the burden on a defendant." *See CSR, Ltd.*, 411 Md. at 493 (quotation omitted).

When considering the burden on a defendant, a court examines two issues: whether a defendant would bear a "practical" burden if required to litigate a case in a forum, and "the more abstract matter" of whether a defendant would be required to "submit[] to the coercive power of a State that may have little legitimate interest in the claims in question." *See Bristol-Myers Squibb Co.*, 582 U.S. at 263. Proceeding in Maryland would not impose an undue practical burden on Defendants, and Defendants do not argue otherwise. Defendants, which have retained local counsel, do not dispute that they have ample resources to litigate here. *See CSS Antenna, Inc. v. Amphenol-Tuchel Elecs., GmbH*, 764 F. Supp. 2d 745, 751 (D. Md. 2011) (retention of local counsel weighs against finding an undue practical burden). And Defendants do not identify any other practical obstacle to proceeding in this Court that would make exercising jurisdiction constitutionally unreasonable. *See Core-Vent Corp. v. Nobel Indus. AB*, 11 F.3d 1482, 1489 (9th Cir. 1993) (finding "a large international corporation with worldwide distribution of its products" would not face an unreasonable burden defending in the forum); *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988) (holding 35 years ago that "modern advances in

communications and transportation have significantly reduced the burden of litigating in another country"); *Honolulu*, 537 P.3d at 1193 ("Defendants are multi-national oil and gas corporations with billions in annual revenues. The burden on Defendants in defending a suit in a state where Defendants conduct extensive oil and gas business is slight.").

Meanwhile, Maryland has a strong interest in adjudicating the City's claims, and the City has a strong interest in securing convenient and effective relief in Maryland. Maryland "generally has a manifest interest in providing its residents with a convenient forum for redressing injuries inflicted by out-of-state actors." *See Burger King*, 471 U.S. at 473 (quotation omitted). That interest is only strengthened where, as here, a political subdivision of Maryland experiences local harms caused by Defendants' deceptive commercial activities that were conducted in Maryland and elsewhere. *See dmarcian, Inc.*, 60 F.4th at 135 (a state had a "manifest interest in offering remedies to its wronged businesses" and "protecting its companies' rights from foreign [misconduct]" (quotation omitted)). No other state's interest even approaches Maryland's strong and manifest interest in adjudicating the City's claims. *See Honolulu*, 537 P.3d at 1193 ("Holding Defendants accountable for their Hawai'i torts implicates the sovereignty of no state other than Hawai'i."). And the City, of course, has a strong interest in securing relief in this forum for its claims involving in-state injuries that relate to Defendants' in-state misconduct.

"[T]he interstate judicial system's interest *in obtaining the most efficient resolution of controversies*," *see Stisser*, 234 Md. App. at 617 (quoting *Burger King*, 471 U.S. at 477) (emphasis added), weighs in favor of a Maryland forum. In arguing otherwise, Defendants misquote this factor as addressing unidentified "principles underlying the interstate judicial system" and fail to develop any argument about efficiency. *See* Mot. at 16. This Court can efficiently resolve this local controversy without risking any inefficiencies that threaten Defendants' due process rights.

Finally, "the shared interest of the several States in furthering fundamental substantive social policies" is irrelevant here because the City's suit neither implicates nor seeks to advance any fundamental substantive social policies. *See Stisser*, 234 Md. App. at 617 (quoting *Burger King*, 471 U.S. at 477). Defendants are wrong to assert without record support that the City seeks to advance the "substantive social policies" of "curbing energy production and the use of fossil fuels[,] allocating the downstream costs of global climate change to the energy companies to bear directly," or "chilling" Defendants' speech "on matters of public concern." Mot. at 17. The City's claims do not seek to regulate energy production or shape the otherwise lawful production and sale of fossil fuel products. *See Honolulu*, 537 P.3d at 1193 (rejecting a similar argument that the local governments' suit sought to advance "substantive social policies"). Instead, the City seeks only redress for the vast local harms caused by Defendants' tortious conduct of disseminating disinformation and failing to warn. And Defendants do not show that this Court is incapable of properly considering their anticipated "protected speech" defenses under the First Amendment, such that exercising specific personal jurisdiction over them would violate their due process rights and be constitutionally unreasonable.

Further, even if the City's suit implicated or advanced "fundamental substantive social policies," Defendants have not identified "any real or purported conflict" between different states' policies, *see Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1177 (9th Cir. 2006) (quotation omitted), and any "potential clash of [Maryland] law with the 'fundamental substantive social policies' of another State may be accommodated through application of [Maryland]'s choice-of-law rules" or other "means short of finding jurisdiction unconstitutional," *see Burger King*, 471 U.S. at 477. After all, Defendants' undeveloped protected-speech arguments and their passing references to the Biden Administration's public statements appear to implicate questions of

federal, not state, substantive law. *See* Mot. at 17–18. Since the same body of federal substantive law likely would govern those arguments regardless of where Defendants are sued, they provide no basis to decline exercising specific personal jurisdiction. *See Trimble Inc. v. PerDiemCo LLC*, 997 F.3d 1147, 1159 (Fed. Cir. 2021) (rejecting arguments about fundamental substantive social policies because "the same body of federal patent law" would govern regardless of where the defendants were sued (quotation omitted)).

Defendants fall short of their burden to "present a compelling case" that exercising personal jurisdiction here would violate constitutional minimum reasonableness. *See Burger King*, 471 U.S. at 477.

2. Defendants' Remaining, Impertinent Arguments Change Nothing.

Defendants' remaining arguments change nothing because they misconstrue the City's Complaint or depart from the minimum reasonableness factors.

First, instead of accepting the City's claims as pleaded, Defendants mischaracterize the claims as "addressing climate change" at large, then assert without citation or support that the exercise of personal jurisdiction over such claims would "interfer[e] with the power of each Defendant's home jurisdiction over its corporate citizens." Mot. at 15. To reiterate, the City seeks only limited relief for local harms *in Maryland* caused by Defendants' *deception* and failure to warn. *See Honolulu*, 537 P.3d at 1187 (examining Honolulu's similar allegations and finding that its case centered on deceptive activities and failure to warn, even though "Plaintiffs' Complaint does reference global emissions repeatedly"). And Defendants cite no case law to support their suggestion that Defendants' home-state courts should be exclusively empowered to adjudicate the City's claims against Defendants. Indeed, corporate defendants routinely face suit outside of their home jurisdiction when the requirements for specific personal jurisdiction are satisfied.

Second, Defendants make vague references to federalism and the proper structure of government. *E.g.*, Mot. at 14–17. The Court should disregard these references because personal jurisdiction restrictions including the reasonableness doctrine flow "only" from the Fourteenth Amendment Due Process Clause. *See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 & n.10 (1982). Personal jurisdiction thus protects "*individual* liberty interest[s]" that belong solely to a party haled into court; that is precisely why a party may freely waive their objections to personal jurisdiction. *Id.* at 702 n.10 (emphasis added). Although it is true that courts have referred to federalism concerns when resolving personal jurisdiction disputes, any such concerns are only "a function of the individual liberty interest preserved by the Due Process Clause." *Id.* Thus, "the federalism concept [does not] operate[] as an independent restriction on the sovereign power of [a] court." *Id.* "In short, 'federalism' is not the quintessence of the personal jurisdiction analysis under the Fourteenth Amendment Due Process Clause, it is a derivative concern." *Douglass v. Nippon Yusen Kabushiki Kaisha*, 46 F.4th 226, 237 (5th Cir. 2022). Simply put, the personal jurisdiction inquiry centers at all times on whether a defendant has asserted a legitimate personal right to be free from a court's authority; courts examine federalism concerns only to ensure that this right is not violated. *See Ins. Corp. of Ireland*, 456 U.S. at 702 n.10.[13] For that reason, Defendants' citation to *City of New York v. Chevron Corp.*, 993 F.3d 81 (2d Cir. 2021), a case that resolved a *federal preemption defense on the merits* in the context of claims about "*legal commercial conduct*," *id.* at 86, 94 (emphasis added), says nothing about

[13] *Accord Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 144 (2023) (opinion of Gorsuch, J., joined by three other justices) ("After all, personal jurisdiction is a *personal* defense that may be waived or forfeited." (citing, among other authorities, *Ins. Corp. of Ireland*, 456 U.S. at 704–05, and Justice Jackson's concurrence in *Mallory*)).

whether this Court has *personal jurisdiction* over the City's claims involving Defendants' *wrongful conduct* in Maryland and elsewhere.[14]

Third, Defendants are wrong to suggest without citation that this Court should decline personal jurisdiction because states other than Maryland also have some interest in Defendants' wrongdoing. *See* Mot. at 17–18. In this interconnected age, virtually any large-scale corporate misconduct may injure potential plaintiffs in multiple jurisdictions, and the propriety of personal jurisdiction over Defendants in Maryland is not diminished merely because Defendants may be sued in other jurisdictions by other injured persons. Indeed, accepting Defendants' theory would conveniently ensure that no jurisdiction could redress the harms caused by Defendants' conduct. *See HollyAnne Corp. v. TFT, Inc.*, 199 F.3d 1304, 1308 n.4 (Fed. Cir. 1998) (rejecting a similar argument in a case where a patent was infringed in many states because its "reasoning would allow defendants with allegedly infringing activities in multiple states to argue that personal jurisdiction did not lie in any state"); *State v. Volkswagen Aktiengesellschaft*, 669 S.W. 3d 399, 420 (Tex. 2023) (rejecting an analogous argument by defendant automobile manufacturers that they did not purposefully avail themselves of Texas because they had targeted the same tortious conduct at other states, since that theory "would unduly constrain the authority of state courts" and would perversely allow defendants to evade personal jurisdiction "*because of*" the "pervasive[ness]" of their misconduct). To the extent Defendants imply that the application of *Maryland law* to their misconduct might be improper, *see* Mot. at 16–17, that is a merits or choice-of-law issue, not a personal jurisdiction issue that pertains to whether this *Maryland Court* may exercise personal jurisdiction over Defendants.

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[14] Defendants' citation to the district court's vacated decision in *City of Oakland*, 2018 WL 3609055, at *3, is unpersuasive for reasons the City has already discussed. *See supra* n.8.

Fourth, and finally, BP p.l.c. and Shell plc—likening themselves to the third-party defendant in *Asahi*[15]—argue that exercising personal jurisdiction over them would be unreasonable because they are domiciled overseas. *See* Mot. at 15–16. *Asahi* is worlds apart. There, Cheng Shin, a Taiwanese manufacturer sued in California for local injuries caused by its allegedly defective products, brought a third-party indemnity action against Asahi, a Japanese component manufacturer that supplied parts to Cheng Shin. *See Asahi*, 480 U.S. at 105–07. The plaintiff's products liability action against Cheng Shin settled, leaving only Cheng Shin's indemnity action against Asahi. *See id.* at 106. Asahi, which contracted with and sold components to Cheng Shin in Taiwan, lacked any contacts with California other than a mere "awareness that the stream of commerce may or will sweep" Cheng Shin products containing Asahi components into California. *Id.* at 112–14. So, purposeful availment was not satisfied as to Asahi. *Id.* at 113. By contrast, BP p.l.c. and Shell plc—some of the largest multinational corporations in the world—concede that they purposefully availed themselves of Maryland and have not argued that they will face a particular burden associated with defending suit in Maryland. *See dmarcian, Inc.*, 60 F.4th at 135 ("Importantly, a corporate defendant's domicile abroad, standing alone, does not render domestic exercise of jurisdiction unduly burdensome." (quotation omitted)). Even if there were such a burden, BP p.l.c.'s and Shell plc's decision to purposefully avail themselves of Maryland "will justify even [ ] serious burdens placed on the alien defendant[s]," *Asahi*, 480 U.S. at 114, especially given their tortious conduct that reached into Maryland and the local injuries that the City has suffered.

[15] "In *Asahi*, the Supreme Court produced two dissonant plurality opinions, with each opinion shared by four Justices." *Hollingsworth & Vose Co. v. Connor*, 136 Md. App. 91, 110 (2000).

Defendants do not meet their steep burden to show that exercising personal jurisdiction over them in Maryland would be unreasonable under principles of due process.

D. In the Alternative, the Court Should Permit Jurisdictional Discovery.

In the unlikely event the Court concludes more evidence is needed to sustain the exercise of personal jurisdiction over any of the Defendants, the City respectfully requests leave to conduct jurisdictional discovery, and if necessary, leave to amend based on the results of that discovery. *Androutsos v. Fairfax Hosp.*, 323 Md. 634, 639–40 (1991) (finding that the trial court abused its discretion by granting a protective order, refusing jurisdictional discovery, and concluding it lacked personal jurisdiction based on a "meager record"); *Swarey v. Stephenson*, 222 Md. App. 65, 104 (2015) (personal jurisdiction is fact-specific and jurisdictional "discovery should be permitted where the court's determination would otherwise rest upon a meager record").

V. CONCLUSION

Just like the Hawai'i court in *Honolulu*, this Court has specific personal jurisdiction over each of the Defendants, and the Court should deny Defendants' motion.

Dated: December 12, 2023

Respectfully submitted,

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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 Defendants' 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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