

**IN THE CIRCUIT COURT FOR
BALTIMORE CITY**

MAYOR AND CITY COUNCIL OF BALTIMORE,

Plaintiff

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

Civil Action NO. 24-C-18-004219

Defendants.

**CNX RESOURCES CORPORATION'S
REPLY IN SUPPORT OF ITS INDIVIDUAL
MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	1
I. The Court Lacks Personal Jurisdiction Over CNX.....	1
A. Collective allegations do not establish personal jurisdiction.....	2
B. Plaintiff's conspiracy and agency theories do not establish personal jurisdiction	4
II. The Court Should Not Authorize Discovery	6
CONCLUSION.....	7

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Androustos v. Fairfax Hosp.</i> , 323 Md. 634 (1991)	6
<i>Aziyz v. Cameca</i> , 2023 WL 6065850 (N.D.N.Y. Sep. 18, 2023)	3
<i>Baumgarten v. Belsky</i> , 2020 WL 3447753 (D. Md. June 24, 2020)	6
<i>Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC</i> , 388 Md. 1 (2005)	6
<i>Bristol-Myers Squibb Co. v. Superior Ct. of Cal.</i> , 582 U.S. 255 (2017)	2
<i>Broidy Capital Mgmt., LLC v. Qatar</i> , 2018 WL 9943551 (C.D. Cal. Aug. 22, 2018)	3
<i>Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.</i> , 143 Md. App. 698 (2002)	2
<i>In re Aegean Marine Petroleum Network, Inc. Secs. Litig.</i> , 529 F. Supp. 3d 111 (S.D.N.Y. 2021)	3
<i>In re Royal Ahold N.V. Sec. & ERISA Litig.</i> , 351 F. Supp. 2d 334 (D. Md. 2004)	3
<i>Jien v. Perdue Farms, Inc.</i> , 2020 WL 5544183 (D. Md. Sept. 16, 2020)	3
<i>Jovanovic v. U.S. Olympic & Paralympic Comm.</i> , 2023 WL 7179298 (D.N.J. Mar. 31, 2023)	3
<i>Lau v. ZTE Corp.</i> , 2023 WL 9066883 (E.D.N.Y. Sept. 28, 2023)	3
<i>Mackey v. Compass Mktg., Inc.</i> , 391 Md. 117 (2006)	6

<i>Margolis v. Sandy Spring Bank</i> , 221 Md. App. 703 (2015)	5
<i>NAACP v. Claiborne Hardware Co.</i> , 458 U.S. 886 (1982).....	5
<i>Newcomb v. Babu</i> , 2020 WL 5106714 (D. Md. Aug. 30, 2020)	5
<i>Peeples v. Caroline Container, LLC</i> , 2019 WL 12338070 (N.D. Ga. Apr. 3, 2019).....	3
<i>Proctor v. Metro. Money Store Corp.</i> , 579 F. Supp. 2d 724 (D. Md. 2008).....	5
<i>Saudi v. Northrop Grumman Corp.</i> , 427 F.3d 271 (4th Cir. 2005)	3
<i>Sigler v. LeVan</i> , 485 F. Supp. 185 (D. Md. 1980).....	5
<i>Stisser v. SP Bancorp, Inc.</i> , 234 Md. App. 593 (2017)	3
<i>Stratton v. iM3NY LLC</i> , 2023 WL 4456910 (D. Del. July 11, 2023)	3
<i>Swarey v. Stephenson</i> , 222 Md. App. 65 (2015)	6
STATUTES	
Md. Code Ann., Cts. & Jud. Proc. § 6-103.....	7

INTRODUCTION

Plaintiff's Opposition ("PJ Opp.") doubles down on the theory that Defendants, including CNX, engaged in a "coordinated campaign of climate deception" and failed to warn consumers about the risks of fossil fuels. PJ Opp.9. As a result, Plaintiff cannot establish personal jurisdiction over CNX unless it identifies an "alleged misstatement or omission by CNX ... that occurred in, or was directed at, Maryland." CNX PJ MTD 2. As CNX has explained (and Plaintiff does not dispute), however, the Complaint never alleges that CNX ever made *any* specific misstatement or omission, let alone one that occurred in, or was directed at, Maryland. That alone requires dismissal as to CNX.

Plaintiff tries to avoid dismissal on personal-jurisdiction grounds by invoking the Complaint's "collective allegations" against all Defendants. But black-letter law requires an assessment of each Defendant's contacts on an *individual* basis, and that is why courts across the country have rejected group-pleading in the personal-jurisdiction context. Plaintiff also tries to avoid dismissal based on conspiracy and agency principles, but Plaintiff's allegations of such relationships are entirely conclusory. And because these issues are pleading deficiencies, there is no basis for jurisdictional discovery. For these reasons—and the reasons expressed in the Joint Personal Jurisdiction Reply, which is hereby incorporated by reference—the Court should dismiss the Complaint against CNX for lack of personal jurisdiction.

ARGUMENT

I. The Court Lacks Personal Jurisdiction Over CNX.

Plaintiff tries to minimize, PJ Opp.4–5 & n.3, but does not actually dispute, the fact that this Court may not assert personal jurisdiction over CNX unless an alleged misrepresentation or omission by CNX occurred in, or was directed at, Maryland. CNX PJ MTD 2–4. Yet the Complaint does not identify any statements or omissions by CNX, much less any in or directed at

Maryland. CNX PJ MTD 4–5. In fact, the Complaint does not show that CNX has *any* presence in Maryland at all. CNX PJ MTD 5–6. Plaintiff attempts to mask these glaring deficiencies by lumping CNX together with other Defendants through collective allegations and entirely conclusory conspiracy and agency theories of liability. But both attempts fail.

A. Collective allegations do not establish personal jurisdiction.

As Plaintiff ultimately admits, its personal-jurisdiction argument against CNX rests on “collective allegations that refer to CNX and other Defendants together and state that they acted in the wrong way.” PJ Opp.6. That admission is dispositive, as such allegations are insufficient to get past the pleadings.

Plaintiff tries to excuse its “collective allegations” on the ground that “there is no Maryland case law” that prohibits this gambit. *Id.* But that assertion is irreconcilable with *Heritage Harbour, L.L.C. v. John J. Reynolds, Inc.*, 143 Md. App. 698 (2002). There, the plaintiffs had asserted various common-law causes of action (as here) against approximately two dozen defendants (as here) and lumped them all together (as here). *Id.* at 703, 710–11. The court rejected that approach because the plaintiffs “never set forth any acts or omissions committed by [eight defendants as to which the complaint simply alleged their status as defendants] that would serve as a basis for an imposition of liability; rather, they ‘dump[ed] ... all [appellees] into the same pot.’” *Id.* at 711. That is the Complaint’s deficiency as to CNX, both on the merits of Plaintiff’s claims and with respect to personal jurisdiction over CNX. *See* CNX Merits Reply 7–8.

Plaintiff also invokes federal case law to justify its collective allegations. PJ Opp.7. But none of those cases involved personal jurisdiction and thus did not implicate the due-process rule requiring an individual assessment of each defendant’s forum contacts. *See Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 268 (2017) (minimum contacts required by the Due Process Clause “must be met as to each defendant over whom a state court exercises jurisdiction”

(cleaned up)). In contrast, where personal jurisdiction *is* at issue, federal courts across the country have *repeatedly* held that group pleading is insufficient. *See, e.g., Jovanovic v. U.S. Olympic & Paralympic Comm.*, 2023 WL 7179298, at *8 (D.N.J. Mar. 31, 2023) (using “group pleading to establish personal jurisdiction ... is improper, because ‘[e]ach defendant’s contacts with the forum state must be assessed individually’”); *In re Aegean Marine Petroleum Network, Inc. Secs. Litig.*, 529 F. Supp. 3d 111, 135 (S.D.N.Y. 2021) (“To allege personal jurisdiction over a defendant, group pleading is not permitted.”); *Broidy Capital Mgmt., LLC v. Qatar*, 2018 WL 9943551, at *9 (C.D. Cal. Aug. 22, 2018) (same).¹ And since the Complaint, stripped of its group allegations, lacks any other basis to establish personal jurisdiction over CNX, the claims against it must be dismissed.²

¹ *See also In re Royal Ahold N.V. Sec. & ERISA Litig.*, 351 F. Supp. 2d 334, 354 (D. Md. 2004) (requiring “specific factual allegations” to establish personal jurisdiction); *Peebles v. Caroline Container, LLC*, 2019 WL 12338070, at *6 n.3 (N.D. Ga. Apr. 3, 2019) (“Plaintiff’s ‘group pleading’ methods are not an acceptable way to establish personal jurisdiction over multiple defendants at once.”); *Stratton v. iM3NY LLC*, 2023 WL 4456910, at *1 (D. Del. July 11, 2023) (“This sort of group pleading is particularly problematic where, as here, some of the Defendants contest that they are subject to personal jurisdiction in Delaware”); *Lau v. ZTE Corp.*, 2023 WL 9066883, at *3 (E.D.N.Y. Sept. 28, 2023) (“A plaintiff is required to establish personal jurisdiction separately over each defendant. Allegations in the form of a group pleading are insufficient, even for affiliated corporate entities.” (cleaned up)); *Aziyz v. Cameca*, 2023 WL 6065850, at *6 (N.D.N.Y. Sep. 18, 2023) (“To allege personal jurisdiction over a defendant, group pleading is not permitted.”).

² The Complaint tries to group CNX with two former subsidiaries—CONSOL Energy, Inc. and CONSOL Marine Terminals LLC—which the Complaint collectively refers to as “CONSOL.” Compl. ¶29. But affiliation cannot justify group pleading. *See Jien v. Perdue Farms, Inc.*, 2020 WL 5544183, at *4 (D. Md. Sept. 16, 2020) (a complaint cannot rely on “‘indeterminate assertions against all defendants,’” even when they are subsidiaries or affiliates). And, in any event, Plaintiff has not established any basis for asserting personal jurisdiction over either CONSOL entity, CONSOL PJ MTD 5–10; CONSOL PJ Reply 1–7, much less for attributing any conduct by the two CONSOL entities to CNX, *see Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593, 637–42 (2017) (parent’s ownership interest in subsidiary corporation in Maryland is insufficient to subject parent to specific jurisdiction); *Saudi v. Northrop Grumman Corp.*, 427 F.3d 271, 276 (4th Cir. 2005) (absent evidence that an exception applies, “the contacts of a corporate subsidiary cannot impute jurisdiction to its parent entity”); CONSOL PJ MTD 7–8 (explaining how Plaintiff’s allegations do not meet Maryland’s high bar for piercing the corporate veil). This includes any conduct relating to the coal terminal in Maryland, PJ Opp.1, as CONSOL Marine Terminals LLC has acknowledged ownership and operation of that facility (CONSOL PJ MTD 1).

B. Plaintiff's conspiracy and agency theories do not establish personal jurisdiction.

To compensate for its group-pleading problem, Plaintiff alternatively argues that this Court has specific personal jurisdiction over CNX under “conspiracy” and “agency” principles. PJ Opp.8–10. But these arguments fare no better.

Quite literally the only mention of a conspiracy or principal-agent relationship is Paragraph 32 of the Complaint. It contains a conclusory paragraph alleging that “each of the Defendants was the agent, servant, partner, aider and abettor, co-conspirator, and/or joint venturer of each of the remaining Defendants herein and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy, and joint venture and rendered substantial assistance and encouragement to the other Defendants, knowing that their conduct was wrongful and/or constituted a breach of duty.” Compl. ¶32. That is it. This allegation, which simply dumps all Defendants into the same pot, says *nothing* about any particular Defendant, including CNX.

Plaintiff tries to obscure this fact with extensive string-cites to the Complaint and the suggestion that the cited paragraphs concern CNX. See PJ Opp.2–3, 5, 9. In reality, only one paragraph of Plaintiff's 298-paragraph complaint refers to CNX. See Compl. ¶29. And that paragraph merely identifies CNX as a defendant and generally describes it is a fossil fuel producer, but does not include a single allegation that would support personal jurisdiction through an agency or conspiracy theory. These theories thus run into the same group-pleading problem addressed above.

But even apart from that, the allegations of conspiracy and agency do not remotely satisfy Maryland pleading requirements. Again, the sole reference to conspiracy or agency liability comes in Paragraph 32, which claims that “each of the Defendants” was the “agent” and/or “co-

conspirator” of “each of the remaining Defendants.” Compl. ¶32. But Plaintiff is required to allege facts establishing each element of these theories, which it plainly has not done. *See, e.g., Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 713 (2015) (“A court ... need not accept the truth of pure legal conclusions” in a complaint.); *Sigler v. LeVan*, 485 F. Supp. 185, 196 (D. Md. 1980) (“A complaint alleging a conspiracy must do more than state mere legal conclusions regarding the existence of the conspiracy.”); *Proctor v. Metro. Money Store Corp.*, 579 F. Supp. 2d 724, 735 (D. Md. 2008) (“Because the existence of an agency relationship is a factual matter under Maryland law, this Court evaluates ... whether the factual allegations, if construed in the light most favorable to Plaintiffs, are legally sufficient to establish an agency relationship.”); *Newcomb v. Babu*, 2020 WL 5106714, at *8 (D. Md. Aug. 30, 2020) (“When an agency relationship is allegedly part of the fraud,” the Complaint must plead “the facts constituting the underlying fraud and the *facts* establishing the agency relationship” (cleaned up)). Thus, the threadbare, conclusory assertions that every Defendant conspired with, or was the agent of, every other Defendant are insufficient. And that is especially so for purposes of establishing personal jurisdiction, which, as discussed above, is governed by due-process principles that demand an individual assessment of each defendant’s forum contacts, *supra*, at 2–3.

Nor can Plaintiff cure this deficiency *in its Complaint* through reference to the Global Climate Coalition (“GCC”) *in its brief*. Plaintiff suggests that GCC, a trade association, worked on CNX’s behalf to effectuate the conspiracy. PJ Opp.2, 9. This theory is puzzling, as the Complaint never alleges that CNX was a member of GCC. *See* Compl. ¶31(g) (list of alleged GCC members that does not include CNX); *see also* CNX Merits Reply 3–4. And, even if it had, that too would be insufficient, as mere membership in a trade association is not sufficient for joint liability. *See, e.g., NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 918–19 (1982) (“The First

Amendment ... restricts the ability of the State to impose liability on an individual solely because of his association with another.”). Instead, Plaintiff must allege “jurisdictionally sufficient acts in furtherance of the conspiracy” that create a “substantial connection between the forum and [the] conspiracy.” *Mackey v. Compass Mktg., Inc.*, 391 Md. 117, 129–31 (2006). Yet here, the Complaint does not include any specific allegation that CNX undertook any acts in furtherance of a conspiracy with GCC, or that either CNX’s or GCC’s conduct had any relationship to Maryland at all. There is accordingly no basis for exercising jurisdiction over CNX through GCC or, for that matter, any other entity identified in the Complaint.

II. The Court Should Not Authorize Discovery.

As a briefing-stage hedge, Plaintiff asks the Court to authorize discovery for personal jurisdiction rather than dismiss its claims against CNX. PJ Opp.10. But Plaintiff’s request for a fishing expedition should be denied because it has failed to identify any connection between CNX and Maryland and the supposed campaign of deception alleged in the Complaint. *See, e.g., Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 29 (2005) (affirming denial of jurisdictional discovery request “in light of the fact that [plaintiff] was unable to produce *any* evidence of a connection” between defendant and Maryland); *Baumgarten v. Belsky*, 2020 WL 3447753, at *3 (D. Md. June 24, 2020) (denying jurisdictional discovery where plaintiff offered “nothing beyond mere speculation that . . . Defendant engages in a regular, persistent, or substantial course of conduct in Maryland”).

Tellingly, neither case Plaintiff cites in support of its discovery request authorized discovery to cure legally deficient pleadings. *See Androustos v. Fairfax Hosp.*, 323 Md. 634, 639 (1991) (ordering discovery after concluding that evidence in the record “provided some indicia that defendant was subject to the personal jurisdiction of a Maryland court”); *Swarey v. Stephenson*, 222 Md. App. 65, 105 (2015) (finding plaintiffs made a “*prima facie* showing” of

personal jurisdiction and thus holding that the trial court “should have allowed discovery” on outstanding “factual issues”). As Plaintiff has not pled any connection between CNX and Maryland, much less a connection that would establish personal jurisdiction over CNX, discovery is unnecessary and improper.

* * *

At bottom, Plaintiff has failed to establish that either Maryland’s long-arm statute or the Due Process Clause authorizes an assertion of personal jurisdiction over CNX. The Complaint does not allege a single misrepresentation or omission, or even marketing, sales, or promotional activity, by CNX in or directed at Maryland. This alone means Plaintiff cannot establish personal jurisdiction over CNX for the deception and omission claims it has alleged. And regardless of how Plaintiff’s claims are ultimately characterized, the personal jurisdiction analysis would not change, given the absence of *any* specific allegation that CNX sold products or otherwise conducted *any* business in Maryland. In more doctrinal terms, the Complaint lacks any allegation showing any minimum contacts between CNX and Maryland, or that Plaintiff’s alleged “cause[s] of action aris[e] from” (Md. Code Ann., Cts. & Jud. Proc. § 6-103(a)) any conduct in Maryland. *See* CNX PJ MTD 2–6. The Court should not allow Plaintiff to cure this deficiency through costly and unwarranted discovery.

CONCLUSION

For these reasons, Plaintiff’s claims against CNX should be dismissed for lack of personal jurisdiction, without leave to conduct discovery.

January 26, 2024

Respectfully submitted,



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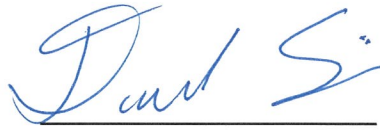
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of January, 2024, a copy of the foregoing was served by email on all parties.



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