IN THE CIRCUIT COURT
FOR BALTIMORE CITY

MAYOR AND CITY COUNCIL OF BALTIMORE, Plaintiff, v. BP P.L.C., *et al.*, Defendants.	Case No. 24-C-18-004219

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

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INTRODUCTION

Plaintiff's Opposition demonstrates that extending personal jurisdiction to Defendants, none of which are incorporated or formed under Maryland law or headquartered in Maryland, would be improper.[1] Plaintiff seeks to dramatically expand the bounds of specific jurisdiction, with a theory that would apply to Defendants in any State in which they may have marketed and sold any amount of fossil fuels, at any time, no matter how small. In fact, under Plaintiff's novel and expansive theory, there would be jurisdiction in this Court over *any* corporate defendant alleged to have conducted *any* business in the State, at any time, for *all* claims affiliated with that business, no matter how attenuated the relationship among the business, the State, and the claims—effectively erasing the distinction between general and specific jurisdiction. Such an unprecedented expansion would violate Defendants' due process rights and has been soundly rejected by both the U.S. Supreme Court and courts in Maryland. *See Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 137 S. Ct. 1773, 1781 (2017); *Small Bus. Fin. Sols., LLC v. Corp. Client Servs., LLC*, 2023 WL 1995414, at *6 (D. Md. Feb. 23, 2023).

As Defendants' Joint Motion ("J. Mot.") demonstrates, personal jurisdiction is improper here for two primary reasons: (1) Plaintiff's claims do not "arise out of or relate to" Defendants' alleged activities in Maryland, *see Ford Motor Co. v. Mont. Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021); and (2) exercising personal jurisdiction over Defendants would be unreasonable under the Due Process Clause, *see id.* at 1024.

[1] The term "Defendants" is used throughout this Reply to refer to the 21 out-of-state Defendants challenging personal jurisdiction: BP p.l.c., BP America Inc., Chevron Corporation, Chevron U.S.A. Inc., Exxon Mobil Corp., ExxonMobil Oil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), Shell USA, Inc. (f/k/a Shell Oil Company), CITGO Petroleum Corp., ConocoPhillips, ConocoPhillips Company, Phillips 66, Phillips 66 Company, Marathon Oil Company, Marathon Oil Corporation, Marathon Petroleum Corporation, Speedway LLC, Hess Corp., CNX Resources Corporation, CONSOL Energy Inc., and CONSOL Marine Terminals LLC.

Plaintiff alleges that its injuries result from the accumulation in the Earth's atmosphere of greenhouse gas emissions released in every State in the Nation and every country in the world. Plaintiff's Opposition does not deny that Plaintiff's legal theory depends on worldwide emissions. Nor does Plaintiff deny that its alleged injuries would be the same even if fossil fuels were never sold, marketed or used in Maryland, and even if no emissions were ever released in Maryland. These concessions are dispositive because, under the Supreme Court's decision in *Ford Motor*, for personal jurisdiction to attach, the use of a defendant's product in the state must have injured the plaintiff. 141 S. Ct. at 1022. To be sure, *Ford Motor* rejected a strict causal test under which a defendant's tortious in-state activities must themselves have directly caused the plaintiff's injury. Defendants do not argue otherwise. But under *Ford Motor* the in-state use and malfunction of a defendant's *product* must have caused the alleged in-state injury. *Id.* Plaintiff has made no allegation that the use of Defendants' products in Maryland (or indeed any acts in Maryland) injured Plaintiff in Maryland, because it is undisputed that total energy consumption in Maryland accounts for but a negligible fraction of the total worldwide greenhouse gas emissions that Plaintiff contends caused climate change and its injuries. Because Plaintiff does not and cannot make this essential allegation of in-state use and malfunction of Defendants' products resulting in injury, specific jurisdiction is lacking over Defendants, and the Complaint should be dismissed with prejudice.

ARGUMENT

I. DEFENDANTS ARE NOT SUBJECT TO SPECIFIC JURISDICTION IN MARYLAND.

A. Plaintiff's Claims Do Not "Relate to" Defendants' Contacts with Maryland.

Plaintiff agrees that this Court lacks specific personal jurisdiction over Defendants unless Plaintiff's claims "arise out of or relate to" Defendants' in-state activities. Opp. at 7-9. Unable to

satisfy this burden, Plaintiff wrongly accuses Defendants of "attempt[ing] to resurrect the very causal-relationship argument the *Ford* Court expressly rejected," and then devotes several pages of its Opposition to attacking this strawman. *Id.* at 11-16. But Defendants do not argue that a causal nexus between a defendant's in-state acts and the plaintiff's in-state injury is necessarily required to establish personal jurisdiction. Indeed, Defendants acknowledge that while "but-for causation may be sufficient for specific jurisdiction, *Ford Motor* held that it is not necessary." J. Br. at 14, n. 6. Rather, Defendants argue that "*Ford Motor* only recognized that personal jurisdiction existed where the *in-state use of defendants' products* injured plaintiff." *Id.* Because it is undisputed that the use of Defendants' fossil fuel products in Maryland did not cause Plaintiff's alleged injuries, Plaintiff's only response is to claim that *Ford Motor* means something different. But the clear language of *Ford Motor* and a nearly unbroken line of follow-on precedent say otherwise: The key to jurisdiction in *Ford Motor* was that the plaintiffs were injured by the *in-state use* of Ford's products. Under well-settled law, Defendants' "business contacts with Maryland," Opp. at 16-17, are not enough to establish specific jurisdiction.

At bottom, Plaintiff's claim to specific jurisdiction here would erase the distinction between general and specific jurisdiction. Maryland law and due process require a stronger connection between the claims and the defendant's contacts with the forum State than Plaintiff alleges here. Accordingly, this Court lacks personal jurisdiction over Defendants on these claims and dismissal is required.

1. *Ford Motor* Requires Plaintiff's Injuries to Result From In-State Use and Malfunction of Defendants' Fossil Fuel Products.

Unable to show that its claims "relate to" Defendants' in-state activities, Plaintiff spends much of its Opposition attacking a strawman. It accuses Defendants of arguing that personal jurisdiction always requires the defendant's in-state "sales and business activities" to be "a but-for

cause" of the plaintiff's injuries. *See, e.g.*, Opp. at 12. But Defendants explicitly acknowledged in their Joint Brief that but-for causation by a defendant's in-state contacts is not required under *Ford Motor*. *See* J. Br. at 9. Defendants explained that the Supreme Court held in *Ford Motor* that "some relationships [between a plaintiff's claims and a defendant's contacts with the forum] will support jurisdiction without a causal showing." *Id.* (quoting *Ford Motor*, 141 S. Ct. at 1026). Critically, however, the Supreme Court explicitly stated that this "*does not mean anything goes*" and that, in "the sphere of specific jurisdiction, the phrase 'relate to' incorporates *real limits*." *Id.* (same) (emphases added). The plaintiffs in *Ford Motor* came within these "real limits" by showing, even absent a causal nexus to the defendant's in-state acts, that the defendant's products were used and malfunctioned within the forum States, injuring the plaintiffs in those States. Plaintiff cannot make, and has not made, that showing here.

Despite these clear facts of *Ford Motor*, Plaintiff incorrectly insists that *Ford Motor* does not require in-state use and malfunction of Defendants' products here because the Supreme Court held that a causal connection is not always required for plaintiffs to sufficiently allege personal jurisdiction. *See* Opp. at 9–11 (citing *Ford Motor*, 141 S. Ct. at 1026). This circular argument misses the point. Even though a defendant's tortious in-state conduct need not be a but-for cause of a plaintiff's injury, *Ford Motor* found that the related-to requirement is satisfied if the injury was due to the in-state use and malfunction of the defendant's product.

The Court could not have been clearer on this point, explaining in the very first paragraph of its decision: "When a company like Ford serves a market for a product in a State *and that product causes injury in the State* to one of its residents, the State's courts may entertain the resulting suit." *Ford Motor*, 141 S. Ct. at 1022 (emphasis added). Put differently, personal jurisdiction may exist where a company "[1] serves a market for a product in the forum State and

[2] the product malfunctions there" "[3] caus[ing] injury in the State to one of its residents." *Id.* at 1022, 1026–27. The Court reiterated this point throughout the opinion. *See id.* at 1031 (explaining that exercising personal jurisdiction was appropriate because plaintiffs "used the allegedly defective products in the forum States" and "*suffered injuries when those products malfunctioned there*") (emphasis added). Plaintiff does not even try to grapple with these central elements of the Court's reasoning and holding in *Ford Motor*.

Similarly, Plaintiff erroneously asserts that the Supreme Court in *Ford Motor* rejected "the same causal argument" that Defendants make here. Opp. at 11. But the Court hardly could have *rejected* the requirement that the defendant's product must have been used and thereby injured the plaintiff in-state: those were the very facts that the Court repeatedly cited as the basis for it finding jurisdiction. What the Supreme Court rejected was Ford's argument that "jurisdiction is improper because the particular car involved in the crash was not first sold in the forum State, nor was it designed or manufactured there." *Ford Motor*, 141 S. Ct. at 1022. But that is not Defendants' argument. Defendants do not argue that personal jurisdiction is lacking because a particular product that allegedly malfunctioned in Maryland, and thereby caused the alleged injury in Maryland, was sold or manufactured outside of Maryland. Rather, Defendants argue that personal jurisdiction is lacking because Plaintiff's alleged injuries were *not* caused by, and their claims do not arise from or relate to, the use and malfunction of Defendants' products in Maryland. That is the key holding from *Ford Motor*: to base personal jurisdiction on in-state "advertising, selling, and servicing" of a defendant's products, a plaintiff's alleged injuries must result from *the use and malfunction* of those products within the forum State. 141 S. Ct. at 1022.

Defendants' reading of *Ford Motor* is consistent with decisions by courts across the country. J. Br. at 10–11. Plaintiff attempts to distinguish these decisions by pointing to inapposite

facts but ignores that all these cases echo *Ford Motor*'s central holding: in-state use and malfunction of a product must cause in-state injury. *Id.* For example, in *Martins v. Bridgestone Am. Tire Ops., LLC*, 266 A.3d 753 (R.I. 2022), the Rhode Island Supreme Court explained that "it was key in *Ford* that" the "car accident occurred in the state where the suit was brought." *Id.* at 761.

In *Cappello v. Restaurant Depot, LLC*, 2023 WL 2588110 (D.N.H. Mar. 21, 2023), the court explained that "a central limitation to the Supreme Court's holding in *Ford*" is "the fact that the plaintiffs' claims brought in Montana and Minnesota courts arose because the defendant's vehicles '*malfunctioned and* injured them in those States.'" *Id.* at *4 (emphasis added). The *Cappello* Court emphasized that "the *Ford* opinion is riddled with that qualification throughout," and it distinguished *Bristol-Myers* "on the basis that the plaintiffs in *Ford* used the allegedly defective products in the forum state and were injured there." *Id.* Plaintiff's attempt to distinguish *Cappello* asks this Court to ignore this plain language from the decision.

In *Hepp v. Facebook*, 14 F.4th 204 (3d Cir. 2021), the Third Circuit held that "there must be 'a strong' relationship among the defendant, the forum and the litigation" for contacts to satisfy the "related to" prong. *Id.* at 208 (quoting *Ford Motor*, 141 S. Ct. at 2028). That requirement is not satisfied absent "a strong connection" between the plaintiff's alleged injuries and the defendant's forum contacts. The Third Circuit explained that the Supreme Court found personal jurisdiction in *Ford Motor* because Ford had "'systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege *malfunctioned and injured them in those States*.'" *Id.* (quoting *Ford Motor*, 141 S. Ct. at 1028) (emphasis added); *see also LNS Enters, LLC v. Cont'l Motors, Inc.*, 22 F.4th 852, 863 (9th Cir. 2022) (same).

And, as the Ninth Circuit recently highlighted, a claim relates to a defendant's in-forum contacts "absent causation" when "'a company . . . serves a market for a product in the forum State *and the product malfunctions there*.'" *Yamashita v. LG Chem., Ltd.*, 62 F.4th 496, 505 (9th Cir. 2023) (emphasis added) (quoting *Ford Motor*, 141 S. Ct. at 1026–27).[2]

Plaintiff concedes that, under *Ford Motor*, there must be a "strong relationship among the defendant, the forum, and litigation." Opp. at 11 (quoting *Ford Motor*, 141 S. Ct. at 1028 (quotation omitted in original)). In fact, the Supreme Court held that is "the '*essential foundation*' of specific jurisdiction." *Ford Motor*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)) (emphasis added). But Plaintiff sidesteps *Ford Motor*'s central holding that this "strong relationship" existed there only because the "plaintiffs allege[d] the [vehicles at issue] malfunctioned and injured them in" the forum States. *Id.* at 1029. Plaintiff does not, and cannot, make that essential showing here.

2. Plaintiff's Claims Do Not Have a Strong Relationship to Defendants' In-State Activities.

As explained in Defendants' Joint Motion, neither the alleged events giving rise to Plaintiff's claims nor Plaintiff's alleged injuries resulted from the use of any of Defendants' products *in Maryland*. J. Mot. at 13. In fact, Plaintiff fails to allege that Defendants' alleged contacts with Maryland have *any* meaningful connection to its claims based on global greenhouse gas emissions and global climate change. Plaintiff thus cannot establish that its claims "arise out

[2] Plaintiff's reliance on *City and County of Honolulu v. Sunoco LP*, 2023 WL 7151875 (Haw. Oct. 31, 2023), is misplaced. In that case, the court made the exact same mistake as Plaintiff does here—focusing on the fact that under *Ford Motor* specific jurisdiction does not require "proof that the plaintiff's claims came about because of the defendant's in-state conduct," *id.* at *7 (citation omitted), but ignoring that *Ford Motor* does require a plaintiff's alleged in-state injury to have been caused by the in-state use and malfunction of the defendant's product.

of or relate to" Defendants' alleged forum contacts. *Ford Motor*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).

In an effort to make its claims seem connected to Defendants' forum contacts, Plaintiff argues that it "suffered in-state injury" and seeks to "vindicate local injuries." Opp. at 1. But Defendants do not contest that the alleged injuries are in-state and, in any event, Plaintiff's argument misses the point. As explained above, under *Ford Motor*, (1) a plaintiff must have suffered an injury in-state *and* (2) that injury must have resulted from the in-state use and malfunction of the defendant's product. Plaintiff cannot meet the second prong of this inquiry because Plaintiff seeks to hold Defendants liable for injuries it allegedly suffered in Maryland flowing from all greenhouse gas emissions anywhere, ever. *See* Compl. ¶¶ 2, 8. All but a *de minimis* fraction of those emissions were released outside of Maryland, and the bulk were released outside the United States.

Plaintiff does not and cannot assert that its claims are limited to injuries flowing from the use of Defendants' products in Maryland. Plaintiff effectively acknowledges this, explaining that "[t]he theory actually animating [Plaintiff's] causes of action is that Defendants are liable for injuries in Maryland attributable to their unlawful and deceptive conduct . . . in Maryland *as elsewhere.*" Opp. at 8 (emphasis added). The Complaint makes that abundantly clear by alleging that Plaintiff's injuries are "***all due*** to anthropogenic ***global*** warming," Compl. ¶ 8 (emphases added), caused by the "increase in atmospheric CO_2 and other greenhouse gases" from *worldwide* combustion of oil and gas over the past century, *id.* ¶ 2. In its Opposition to Defendants' Joint Motion to Dismiss For Failure to State a Claim, Plaintiff candidly admits that its theory of liability is that Defendants' *worldwide* conduct "substantially increased greenhouse gas emissions" across the world and "[t]hose emissions have engendered significant climate impacts in Baltimore." Opp.

to Mot. to Dismiss for Failure to State a Claim at 28. Plaintiff's theory of liability depends on emissions in States across the Country like Michigan and Texas, and countries around the world such as China and Russia. Plaintiff has no alleged injury for Maryland emissions alone on which to sue. *See City of Oakland v. BP p.l.c.*, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018) (dismissing complaint for lack of personal jurisdiction because "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming" and emphasizing that plaintiffs' claims "depend on a global complex of geophysical cause and effect involving all nations of the planet" such that plaintiffs' alleged injuries "would have occurred even without regard to each defendant's [forum-state] contacts").[3]

Moreover, Plaintiff does not, and cannot, tie its alleged injuries to use of fossil fuels in any specific location—most importantly, not in Maryland. Compl. ¶ 44. For good reason: "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and at what place in the world—'caused' Plaintiff['s] alleged global warming related injuries." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 881 (N.D. Cal. 2009) (dismissing complaint because "the pleadings make[] clear that there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, group at any particular point in time"), *aff'd*, 696 F.3d 849 (9th Cir. 2012); *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) (affirming dismissal: "Since greenhouse gases once emitted become well mixed in the atmosphere, emissions in New York or

[3] The court's decision in *City of Oakland* was later vacated on other grounds (removal), but the court was clear following remand that "in no way" should "vacatur be considered as changing this Court's view on the personal jurisdiction issue." *City of Oakland v. BP p.l.c.*, No. 3:17-cv-06011-WHA (N.D. Cal. Oct. 24, 2022), ECF No. 354.

New Jersey may contribute no more to flooding in New York than emissions in China.") (quoting *Am. Elec. Power Co., Inc. v. Connecticut,* 564 U.S. 410, 422 (2011)) (cleaned up).

Given its theory of injury, Plaintiff's claims cannot be said to "relate to" Defendants' contacts with Maryland because the use and malfunction of Defendants' products in Maryland did not result in the complained of injuries. Instead, Plaintiff alleges its injuries arise from the cumulative effect of greenhouse gas emissions around the world. It does not dispute, and therefore concedes, that greenhouse gas emissions in Maryland are a *de minimis* percentage of total emissions in the United States and around the world. Because Plaintiff's claims are based on cumulative, worldwide emissions, of which a minuscule portion resulted from use of Defendants' products in Maryland, Plaintiff fails to show the "strong relationship" required for personal jurisdiction. *Ford Motor*, 141 S. Ct. at 1028; Opp. at 10-11, 15.[4]

3. Plaintiff Seeks to Impermissibly Expand the Bounds of Personal Jurisdiction.

Plaintiff premises its theory of jurisdiction on the unsupportable proposition that its purported injuries from decades of worldwide greenhouse gas emissions are sufficiently related to

[4] Plaintiff relies on several inapposite cases. There was no serious dispute that the claim in *dmarcian, Inc. v. dmarcian Eur. BV*, 60 F.4th 119 (4th Cir. 2023), arose out of the defendant's in-state activities. The intellectual property claims there arose directly out of a collaboration between the two companies, which had a "broken business relationship" in the North Carolina forum. *Id.* at 128, 134-35. *MaryCLE, LLC v. First Choice Internet, Inc.*, 166 Md. App. 481 (2016), involved a statutory claim against an e-mail sender who sent spam emails to, among others, recipients at the domain "maryland-state-resident.com." *Id.* at 500. The statute also deemed that any sender of commercial emails was presumed to know that recipients were Maryland residents if information about the email accounts were available from the domain name registrant. *Id.* There, unlike here, "the 'connection to [Maryland] is the claim itself – the transmission of [email] to Maryland residents,'" *i.e.*, "MaryCLE's claims are based upon First Choice's action in sending emails to MaryCLE in Maryland." *Id.* at 504-05 (alterations in original). And in *Stisser v. SP Bancorp, Inc.*, 234 Md. App. 593 (2017), the court *rejected* personal jurisdiction where "Maryland was merely a conduit through which [the nonresident defendant] completed a transaction that was directed at and principally impacted another forum." *Id.* at 642.

Defendants' general promotion and any sales activity in Maryland. But the Supreme Court has rejected this argument, holding that, "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

Plaintiff's theory would expand the bounds of specific jurisdiction to the point where it would impermissibly "resemble[] a loose and spurious form of general jurisdiction." *Id.* Such a result would fly in the face of the Supreme Court's decision in *Ford Motor*, which states that the "arise out of or relate to" requirement has "real limits" and "does not mean anything goes." 141 S. Ct. at 1026 (internal quotation marks omitted). As the Supreme Court has explained, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1781 (rejecting "sliding scale approach" similar to the one Plaintiff appears to assert here, in which "the strength of the requisite connection . . . is relaxed if the defendant has extensive forum contacts that are unrelated to those claims"). "A corporation's continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (quoting *Goodyear Dunlop Tires Ops.*, 564 U.S. 927) (alteration omitted). Plaintiff's expansive approach conflicts with settled precedent, and accepting it would impermissibly subject any corporation doing business in Maryland to personal jurisdiction in Maryland for virtually any claims relating generally to its business.

The Supreme Court has emphasized the important distinction between general and specific jurisdiction. While claims based on general jurisdiction "may concern events and conduct anywhere in the world," "[s]pecific jurisdiction is different" and "covers defendants less intimately

connected with a State, but only as to a *narrower class of claims*." *Ford Motor*, 141 S. Ct. at 1024 (emphasis added).

Plaintiff's theory would erode this distinction by subjecting defendants to litigation on virtually any claim in any State in which they operate, no matter how tenuously the claim relates to the defendant's operations in the State. The law requires a stronger connection between the claims and the defendant's contacts with the forum State. *See Ford Motor*, 141 S. Ct. at 1028 (reiterating that there must be a "strong relationship among the defendant, the forum, and litigation" (quoting *Helicopteros Nacionales*, 466 U.S. at 414)). Plaintiff bears the burden to show that connection, *see Pinner v. Pinner*, 240 Md. App. 90, 103 (2019) *aff'd*, 467 Md. 463 (2020), and it has failed to meet the burden here.[5]

B. Exercising Specific Jurisdiction over Defendants Would Be Unreasonable and Conflict with Federalism Principles.

Exercising specific jurisdiction here would also be unreasonable for four fundamental reasons that Plaintiff fails to rebut: (1) Plaintiff seeks to expand the bounds of personal jurisdiction to allow jurisdiction over Defendants for claims related to *global* climate change in any State where Defendants conduct even the smallest amount of fossil fuel-related business; (2) Plaintiff seeks to

[5] The Court should also deny Plaintiff's alternative request for jurisdictional discovery. *See* Opp. at 25. Plaintiff relies on two inapposite cases holding that jurisdictional discovery should be granted where "the court's determination would otherwise rest upon a meager record." Opp. at 25 (citing *Androutsos v. Fairfax Hosp.*, 323 Md. 634, 639-40 (1991), and *Swarey v. Stephenson*, 222 Md. App. 65, 104 (2015)). Here, jurisdictional discovery is inappropriate because Defendants have accepted all jurisdictional facts alleged in the Complaint as true for purposes of this Motion. Plaintiff's reliance on cases allowing discovery "on the *factual issues raised* by [a] motion" to dismiss for lack of personal jurisdiction is thus misplaced. *Androutsos v. Fairfax Hospital*, 323 Md. 634, 639-40 (1991) (emphasis added); *see also Swarey v. Stephenson*, 222 Md. App. 65, 104-05 (2015) (similar). And, more important, it is undisputed that Plaintiff's alleged injuries result from global greenhouse gas emissions and not the use of fossil fuel products in Maryland. There are no additional jurisdictional "facts" that can change that outcome.

regulate national (indeed, global) activities; (3) Plaintiff seeks to regulate non-US companies without regard to the unique burdens of litigating before a foreign tribunal; and (4) Plaintiff seeks to enforce local "substantive social policies" against Defendants' nationwide activities that are not shared across all States and nations. *See* J. Mot. at 14–18.

First, Plaintiff does not dispute that it seeks to hold Defendants liable for the alleged consequences of global emissions. It nevertheless insists, however, that it is reasonable to subject Defendants to personal jurisdiction in Maryland because the Complaint alleges some "local harms in Maryland." *See* Opp. at 21. This, once again, misses the point. Personal jurisdiction is unreasonable in Maryland because Plaintiff alleges "local harms" result not from the use of fossil fuels in Maryland, but from cumulative use that occurred elsewhere—in every State in the country and around the world.

Second, despite its protests to the contrary, Plaintiff seeks to regulate national and even global activities. Opp. at 20. Plaintiff points to nothing in the Complaint that would limit its claims to torts committed in or aimed at Maryland. *Id.* In fact, Plaintiff acknowledges that its claims involve conduct taking place "in Maryland *as elsewhere*." *Id*. at 8 (emphasis added). Plaintiff seeks to base liability not on Defendants' fossil fuel activities in Maryland, but on Defendants', and others', out-of-state conduct.

Plaintiff's assertion that "accepting Defendants' theory would conveniently ensure no jurisdiction could redress the harms caused by Defendants' conduct," Opp. at 23, is a red herring. Defendants are, of course, subject to general jurisdiction in their respective home jurisdictions, and Plaintiff could bring its claims (if they are otherwise cognizable) against Defendants in the

appropriate courts.[6] Plaintiff's desire for the convenience of a single action in Maryland is not reason for this Court to set aside well-settled and fundamental constitutional principles.

Third, Plaintiff's argument that it is reasonable to exercise personal jurisdiction over Defendants BP p.l.c and Shell plc, Opp. at 24, ignores the special reasonableness considerations for non-U.S. defendants set forth in *Asahi Metal Industry Co. v. Superior Court*. *See Asahi*, 480 U.S. 102, 114 (1987) ("The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders."); J. Mot. at 15-16. According to Plaintiff, that inquiry is not required for defendants that purposefully availed themselves of a forum, Opp. at 24, but *Asahi* says just the opposite: that "[i]n every case" involving personal jurisdiction over a foreign defendant, courts should make "a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case." 480 U.S. at 115. It would be unreasonable to require a foreign defendant to "submit its dispute" over this quintessentially international matter "to a foreign nation's judicial system." *Id.* at 114; *see also Ellicott Mach. Corp. v. John Holland Party Ltd.*, 995 F.2d 474, 480 (4th Cir. 1993) (finding exercise of personal jurisdiction over foreign defendant unreasonable where case "implicate[d] fundamental substantive social policies affecting international trade, business, and sovereignty concerns").

Finally, Plaintiff fails to address Defendants' argument that "the 'substantive social policies' Plaintiff seeks to advance . . . are not shared uniformly across all the various States and nations." J. Mot. at 17. As the Second Circuit recognized, "this is an interstate matter raising

[6] Indeed, Defendants BP Products North America Inc., Crown Central LLC, Crown Central New Holdings LLC, and Louisiana Land & Exploration Co., LLC are "at home" in Maryland and do not challenge the exercise of general personal jurisdiction over them here.

significant federalism concerns." *City of New York*, 993 F.3d at 93.[7] "Any actions the [Defendants] take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." *Id.* at 92. Here, the "substantive interests of other nations" and States compared with the relatively "slight interests of the plaintiff[s] and the forum State," render the exercise of personal jurisdiction "unreasonable and unfair." *Asahi*, 480 U.S. at 115–16.

CONCLUSION

For all these reasons, in addition to those set forth in Defendants' Joint Motion, this Court lacks personal jurisdiction over Defendants, and Plaintiff's Complaint should be dismissed with prejudice.

Dated: January 26, 2024

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[7] For instance, at the same time Maryland is seeking to regulate and limit oil and gas production and emissions through this (and other) litigation, the federal government is doing the exact opposite. For example, the Biden Administration has "engag[ed] with relevant OPEC+ members" to encourage "*production increases*" of crude oil in hopes of lowering "high[] gasoline costs," because "reliable and stable energy supplies" are essential to the "ongoing global recovery" from the pandemic. The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global Energy Markets*, Aug. 11, 2021, https://bit.ly/3yXWVFO (emphasis added).

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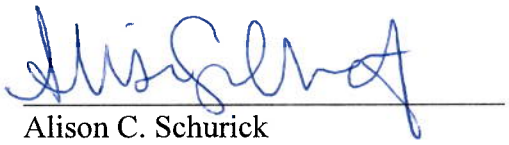
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of January 2024, a copy of the foregoing was served on all counsel of record via email (by agreement of the parties).



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