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April 10, 2025

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 Market Street
P.O. Box 037
Trenton, New Jersey 08611

Attention: MCL Application – Roundup Products

Re: Response of Defendants Bayer Corporation, Bayer U.S. LLC, Bayer CropScience LP, Bayer CropScience LLC, and Monsanto Company to Plaintiffs' Application to Designate the Roundup Cases as a Multicounty Litigation for Centralized Management

Dear Judge Grant:

Defendants Monsanto Company ("Monsanto"), Bayer Corporation, Bayer U.S. LLC, Bayer CropScience LP, and Bayer CropScience LLC[1] submit this response in opposition to Plaintiffs' application dated February 27, 2025 (the "Application"), requesting that the New Jersey Supreme Court designate all cases alleging injuries, including Non-Hodgkin's Lymphoma, caused by glyphosate-based Roundup®-branded herbicide products ("Roundup") currently pending in eight different New Jersey counties as a Multicounty Litigation ("MCL") for centralized case management.

[1] Bayer AG is a foreign corporation organized under the laws of Germany and has been named in several of the Plaintiffs' complaints. Bayer AG, however, has not been served with process and has not agreed to accept service of process in these litigations, and, consequently, does not join in this response or appear in this matter.

This is Plaintiffs' second application for MCL designation; its previous application was denied by the Supreme Court on May 28, 2024. *See* Exh. A. Plaintiffs' present Application should be no different. Defendants respectfully submit that coordination of Plaintiffs' cases is unnecessary at this time due to the small number of New Jersey plaintiffs and claims involved, despite the fact that litigation over Roundup – including 25 trials to verdict – has been proceeding nationwide for nearly ten years and has involved an immense amount of completed discovery. However, if the Supreme Court is inclined to coordinate these matters, the MCL should be held in Middlesex County, and not – as Plaintiffs propose – Atlantic County.

I. Background

Plaintiffs in these cases have filed civil actions against Defendants for alleged cancer injuries, including Non-Hodgkin's Lymphoma, caused by Roundup. *See* Exh. B (list of cases). Specifically, Plaintiffs assert that Defendants failed to adequately warn of the alleged carcinogenicity and adverse side effects of Roundup's active ingredient, glyphosate, in violation of the New Jersey Product Liability Act, N.J.S.A. 2A:58C-1, *et seq.*, the New Jersey Punitive Damages Act, N.J.S.A. 2A:15-5.10, *et seq.*, New Jersey common law, and, for some Plaintiffs, the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1, *et seq.*

Monsanto is responsible for the design, manufacturing, marketing, and sale of Roundup-branded herbicide products. As such, Monsanto is the proper defendant in cases alleging injuries

based on exposure to Roundup.[2] Monsanto introduced its Roundup products in 1974, after years of testing.

Worldwide scientific and regulatory bodies, including the Environmental Protection Agency ("EPA"), the European Food Safety Authority, the European Chemicals Agency, the Health Canada Pest Management Regulatory Agency, the German Federal Institute for Risk Assessment, the Australian Pesticides and Veterinary Medicines Authority, and the New Zealand Environmental Protection Agency, have performed extensive human risk assessments concerning glyphosate and concluded that it is not likely to pose a carcinogenic hazard to humans. Indeed, EPA determined decades ago that glyphosate is "a chemical for which there exists 'evidence of non-carcinogenicity for humans,'" and "[i]t has not altered that conclusion since." *Schaffner v. Monsanto Corp.*, 113 F.4th 364, 373 (3d Cir. 2024). In December 2017, for example, EPA issued a comprehensive glyphosate review, concluding that "[t]he strongest support is for 'not likely to

[2] Monsanto became an indirect, wholly owned subsidiary of Bayer AG long after Roundup-related litigation began. None of the other Defendants have ever been a defendant in a Roundup-related case that actually went to trial. Rather, they have been named (here, and in a few other cases) by Plaintiffs seeking to manipulate jurisdiction and venue. For example, as discussed below, 18 of the 43 cases at issue were filed by out-of-state plaintiffs and do not even belong in New Jersey at all because New Jersey courts lack personal jurisdiction over Monsanto and Bayer CropScience LP.

be carcinogenic to humans.'"[3] And currently, EPA's website sets forth this same conclusion: "No evidence that glyphosate causes cancer in humans."[4]

Unsurprisingly, Plaintiffs do not consider these bodies' findings in asserting their claims, but rather rely upon the International Agency for Research on Cancer's ("IARC") 2015 classification of glyphosate as a "possible carcinogen." IARC's, an international organization with no regulatory authority, determination was widely controversial and spawned a nationwide campaign of Roundup litigation driven by mass advertising campaigns by plaintiffs' lawyers. Reliance on IARC is flawed for a multitude of reasons. First, "[w]hile IARC is of the view that glyphosate is probably carcinogenic to humans, that conclusion is not shared by a consensus of the scientific community." *Nat'l Ass'n of Wheat Growers v. Bonta*, 85 F.4th 1263, 1266 (9th Cir. 2023). "[L]ike EPA . . . a significant number of international regulatory authorities and organizations disagree with IARC's conclusion that glyphosate is a probable carcinogen," indeed "[g]lobal studies from the European Union, Canada, Australia, New Zealand, Japan, and South Korea have all concluded that glyphosate is unlikely to be carcinogenic to humans." *Id.* at 1270.

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[3] *See* EPA's Office of Pesticide Programs, *Revised Glyphosate Issue Paper: Evaluation of Carcinogenic Potential*, at 144 (Dec. 12, 2017), https://downloads.regulations.gov/EPA-HQ-OPP-2009-0361-0073/content.pdf.

[4] *See* EPA, Ingredients Used in Pesticide Products, *Glyphosate*, https://www.epa.gov/ingredients-used-pesticide-products/glyphosate (last accessed April 10, 2025).

Importantly, IARC's analysis of glyphosate significantly differs from that of the above-mentioned scientific regulatory bodies. First, unlike the scientific regulatory bodies, IARC is not a regulatory agency. Second, in reaching its determination IARC considered only whether glyphosate was a "probable" or "known" hazard (*i.e.*, whether an agent is capable of causing cancer under any theoretical circumstance), and did not consider factors relevant to the probability that cancer will actually occur, such as exposure levels or method of exposure. Accordingly, IARC has stated that its analyses "may identify cancer hazards even when risks are very low with known patterns of use or exposure."[5] "While IARC has concluded that glyphosate poses some carcinogenic hazard, federal regulators . . . and several international regulators have all concluded that glyphosate *does not pose* a carcinogenic hazard. No agency or regulatory body (including IARC) has concluded that glyphosate poses a carcinogenic risk, which is distinct from a carcinogenic hazard." *Nat'l Ass'n of Wheat Growers*, 85 F.4th at 1269 (emphasis in original). Third, unlike a scientific regulatory body's scientific research, which often takes years of review and careful consideration of copious amounts of data, IARC's analysis was limited to less than seven days and only considered published literature, much of which was not performed to internationally recognized standards. As such, IARC's glyphosate classification has met

[5] *See* IARC, *IARC Monographs on the Identification of Carcinogenic Hazards to Humans*, at 3 (Dec. 10, 2019), https://monographs.iarc.who.int/wp-content/uploads/2018/07/IARCMonographs-QA.pdf.

considerable scrutiny in the scientific community. Notably, following IARC's classification, EPA and other worldwide scientific regulatory agencies have reaffirmed their conclusions that glyphosate is not a human carcinogen on several occasions. Similarly, in 2016, the World Health Organization (the Parent Organization of IARC) and the United Nations Food and Agriculture Organization held that glyphosate is not likely to pose a carcinogenic hazard to humans.

Despite these scientific findings here in the U.S. and worldwide, individuals throughout the country have filed actions similar to the complaints now before the Court based on IARC's classification. Most juries, however, have considered and rejected the same evidence that Plaintiffs are likely to present in New Jersey.

Indeed, the litigation over Roundup has been proceeding for nearly ten years. The first lawsuit was filed in September 2015, and the *In re: Roundup Products Liability Litigation* federal multi-district litigation proceeding (the "Roundup MDL") was created in October 2016. Monsanto has produced more than 2.8 million documents (exceeding twenty million pages) in this litigation across the Roundup MDL and other federal and state court litigations where the plaintiffs claimed that exposure to Monsanto's glyphosate-containing herbicides caused them to develop cancer ("Roundup cancer lawsuits"). To date in the Roundup cancer lawsuits, there have been 66 depositions of 44 current and former Monsanto employees over 92 days of testimony. Twenty-four of those current and former employee depositions were as corporate representatives and two more were as corporate representatives for certain issues. Finally, there

have been 25 Roundup cancer lawsuits tried to verdict, including by proposed co-leads of this MCL.

II. Plaintiffs' MCL Application is Unnecessary at the Present Time

Rule 4:38A provides that the Supreme Court may designate a case or category of cases as an MCL upon the consideration of several relevant factors. The first relevant factor considered is whether the cases involve a large number of parties and claims. *See* Admin. Office of the Courts, Directive No. 02-19 at 1-2; *see also In re Accutane Litig.*, 235 N.J. 229, 263 (2018) ("MCL is a grouping of 'mass tort' cases that typically involve ***substantial numbers of claims*** associated with a single product, a mass disaster, or a complex environmental event.") (emphasis added). For example, in *In re Accutane*, MCL designation was deemed appropriate for product liability claims from 532 distinct plaintiffs. *See* 235 N.J. at 234. Plaintiffs' Application, however, does not involve a "large number of parties" or a "substantial number of claims," but rather seeks the MCL designation of 43 cases,[6] 18 of which have been brought by out-of-state plaintiffs with no connections whatsoever to New Jersey or basis to invoke its courts' personal jurisdiction.[7] *See* Exh. B.

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[6] Since the filing of Plaintiffs' Application, two additional cases have been filed against Defendants, both by out-of-state plaintiffs: *Graffigna v. Monsanto, et al.*, Case No. ATL-L-000494-25 and *Wodill v. Monsanto, et al.*, Case No. ATL-L-000495-25. *See* Exh. B.

[7] Defendants have moved to dismiss the claims set forth by out-of-state plaintiffs for, *inter alia*, lack of personal jurisdiction.

Indeed, the Supreme Court denied Plaintiffs' previous application—then concerning 22 plaintiffs and cases—"based . . . on the limited number of cases at present." *See* Exh. A. But despite Plaintiffs' then-assertion that "the total number of cases will continue to grow and likely exceed 100[,]" *see* Exh. C at 1, the fact remains that, over a year after Plaintiffs' initial MCL application, Plaintiffs' renewed Application simply does not contain the breadth of parties and claims necessary for an MCL designation.

In fact, following the Supreme Court's May 2024 denial of Plaintiffs' previous application, no additional plaintiffs came forward with Roundup based claims until October and November 2024, when two out-of-state plaintiffs filed suit in Atlantic County. And from there, there have only been 19 new Roundup actions, 16 of which were initiated by out-of-state plaintiffs with no connection to or alleged harm in New Jersey. If anything, those 16 cases demonstrate that an MCL should not be formed because it would lead – and its mere potential already has led – to the filings of cases in this State that simply do not belong here.

When the Roundup MDL was formed in the Northern District of California, some confused plaintiffs filed their cases directly in that court, without regard to constitutional due process limitations. Judge Vincent Chhabria quickly put a stop to it, recognizing that such "complaints appeared to blatantly contradict the rules of personal jurisdiction and venue." *See* Exh. D at 1. Even though Monsanto is an out-of-state corporation (headquartered in Missouri and incorporated

under Delaware law), certain plaintiffs' counsel are already improperly treating New Jersey as a forum for all Roundup cases – without regard to the various plaintiffs' links to New Jersey.

According to these Plaintiffs, Monsanto is subject to general jurisdiction in New Jersey because (1) Monsanto is registered to do business in this State and thus purportedly consented to the general jurisdiction of its courts, or because (2) Bayer Corporation is headquartered in New Jersey and should be deemed an alter ego of Monsanto. Both of these contentions fail. As numerous courts have held, Plaintiffs' consent-by-registration theory is wrong as a matter of law because "New Jersey's registration statute does not include [any] express consent requirement." *Cryopak Inc. v. Freshly LLC*, No. 23-18896, 2024 WL 4986818, at *4 (D.N.J. Dec. 5, 2024) (quoting *Simplot India LLC v. Himalaya Food Int'l Ltd.*, No. 23-1612, 2024 WL 1136791, at *10 (D.N.J. Mar. 15, 2024)).[8] Meanwhile, these Plaintiffs' alter-ego contentions are woefully misguided, premised entirely on publicly available corporate filings that demonstrate adherence to law and corporate formalities rather than any sort of misconduct. The documents establish nothing more than that Bayer Corporation is an intermediate parent of Monsanto, and that is plainly no basis to pierce the corporate veil. *See, e.g.*, *Pfundstein v. Omnicom Grp. Inc.*, 285 N.J. Super. 245, 252 (App. Div. 1995) ("It is well-established that the forum contacts of a subsidiary corporation

[8] These unpublished cases are attached hereto as Exhibits E and F, respectively.

will not be imputed to a parent corporation for jurisdictional purposes without a showing of something more than mere ownership.").

Ultimately, Plaintiffs' renewed Application of 43 total cases concerning Roundup exposure still falls short of the "large number of parties" and "substantial number of claims" typically necessary for MCL designation. *See, e.g.*, *In re Accutane*, 235 N.J. at 234. And critically, Plaintiffs' renewed Application contains just a mere 21 more cases than the number of plaintiffs previously deemed insufficient for MCL designation by the Supreme Court, and well short of Plaintiffs' previous estimation that these matters would soon include over 100 plaintiffs. *See* Exhs. B, C.

Accordingly, Plaintiffs' Application is unnecessary at this time in light of the small number of New Jersey-based cases and claims involved and should therefore be denied.

III. In the Alternative, Middlesex County is the Proper Venue for a Roundup MCL

If the Supreme Court determines that an MCL designation is appropriate for Plaintiffs' cases, Defendants respectfully submit that Middlesex County Superior Court is the proper venue for the coordinated matters. New Jersey's MCL Guidelines provide that, "[i]ssues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage will be considered in determining to which vicinage a particular multicounty litigation will be assigned for centralized management." *See* Directive No. 02-19 at 3.

Middlesex County presently oversees only four MCL cases, whereas Atlantic County presently oversees eight.[9] This disproportion alone suggests that the Middlesex County vicinage has the time and resources necessary to oversee an additional multicounty litigation.

Geographic considerations also weigh heavily in favor of Middlesex County for any Roundup MCL. Middlesex County's central location in the State would be most convenient given the location of the parties. First, not a single Plaintiff resides in or alleges Roundup exposure in Atlantic County. *See* Exh. B. Rather, apart from the 18 out of state Plaintiffs, the New Jersey Plaintiffs' current residencies are Bergen County (2), Burlington County (3), Essex County (1), Gloucester County (2), Hunterdon County (2), Mercer County (1), Middlesex County (2), Monmouth County (5), Morris County (2), Ocean County (1), Passaic County (1), Salem County (1), Somerset County (1), and Sussex County (1). Similarly, to the extent that the Bayer Defendants remain in this litigation, some have New Jersey operations located in Morris County. Geographic considerations of the relevant parties thus demonstrate that Middlesex County would be the appropriate venue for this MCL.

[9] *See* https://www.njcourts.gov/attorneys/multicounty-litigation#toc-mcls-by-county (setting forth the present MCLs in New Jersey).

IV. Conclusion

In light of the factors set forth above, Defendants respectfully request that the New Jersey Supreme Court deny Plaintiffs' Application to designate the Roundup cases for MCL management. In the alternative, if the Supreme Court determines that MCL management is appropriate, Defendants respectfully request that all current and future Roundup matters be coordinated in Middlesex County.

Respectfully submitted,

Stephen C. Matthews

Attachments

cc: Hon. Eric G. Fikry, J.S.C. (Via Overnight Mail)
Hon. William E. Marsala, J.S.C. (Via Overnight Mail)
Hon. Owen C. McCarthy, J.S.C. (Via Overnight Mail)
Hon. Benjamin D. Morgan, J.S.C. (Via Overnight Mail)
Hon. John C. Porto, Acting Assignment Judge (Via Overnight Mail)
Hon. Vijayant Pawar, J.S.C. (Via Overnight Mail)
Hon. Joseph Rea, J.S.C. (Via Overnight Mail)
Hon. Alberto Rivas, J.S.C. (Via Overnight Mail)
Hon. William C. Soukas, J.S.C. (Via Overnight Mail)
Hon. Danielle J. Walcoff, J.S.C. (Via Overnight Mail)
All Known Plaintiffs (Via Electronic Mail to Counsel)

Exhibit A

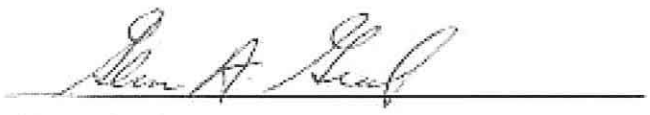
NOTICE TO THE BAR

DENIAL OF APPLICATION FOR MULTICOUNTY LITIGATION DESIGNATION OF NEW JERSEY STATE COURT CASES INVOLVING ROUNDUP® PRODUCTS

A previous Notice to the Bar sought comments on an application for designation as Multicounty Litigation (MCL) of New Jersey state cases against Monsanto Company, Bayer AG, Bayer Cropscience LP, Bayer Cropscience LLC, Bayer Corporation, and Bayer U.S. LLC, alleging injuries as a result of exposure to Roundup® Products. That application was submitted pursuant to Rule 4:38A and the Multicounty Litigation Guidelines and Criteria for Designation (Revised) as promulgated by Directive #02-19. This Notice is to advise that the Supreme Court, after considering the application and all comments received, has determined not to grant the application. The Court based its denial on the limited number of cases at present. Accordingly, all cases involving Roundup® Products should continue to be filed in the appropriate counties of venue.

This Notice will also be posted in the Multicounty Information Center (https://www.njcourts.gov/attorneys/multicounty-litigation) on the Judiciary's website (njcourts.gov).

Questions concerning this matter may be directed to Melissa Czartoryski, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 815-2900 ext. 54901; e-mail address: Melissa.Czartoryski@njcourts.gov.



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 28, 2024

Exhibit B

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
1	Bailey v. Monsanto, et al.	ATL-000040-25	Atlantic	California	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
2	Brown v. Monsanto, et al.	ATL-L-000027-24	Atlantic	New Jersey/ Monmouth County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
3	Burch v. Monsanto, et al.	ATL-L-000051-25	Atlantic	Wisconsin	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
4	Butler v. Monsanto, et al.	ATL-L-002192-24	Atlantic	Virginia	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
5	Capobianco v. Monsanto, et al.	ATL-L-000114-24	Atlantic	New Jersey/ Gloucester County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
6	Caruso v. Monsanto, et al.	ATL-L-000699-24	Atlantic	New Jersey/ Salem County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
7	Chapman v. Monsanto, et al.	ATL-L-000331-24	Atlantic	New Jersey/ Monmouth County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
8	Connelly v. Monsanto, et al.	GLO-L-001393-23	Gloucester	New Jersey/ Gloucester County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
9	Daniele v. Monsanto	ATL-L-00702-24	Atlantic	New Jersey/ Bergen County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
10	Detamble v. Monsanto, et al.	ATL-L-002294-24	Atlantic	Illinois	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
11	Dunn v. Monsanto, et al.	ATL-L-000055-25	Atlantic	Ohio	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
12	Engelbrecht v. Monsanto, et al.	ATL-L-000115-24	Atlantic	New Jersey/ Monmouth County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
13	Freed v. Monsanto, et al.	ATL-L-000372-24	Atlantic	New Jersey/ Morris County	Hunter Shkolnik, Esq. Napoli Shkolnik NS PR Law Services LLC 1302 Avenida Pone de Leon Santurce, Puerto Rico 00907 hunter@nsprLaw.com
14	Gerdes v. Monsanto, et al.	ATL-L-000052-25	Atlantic	Nebraska	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
15	Graffigna v. Monsanto, et al.	ATL-L-000494-25	Atlantic	Utah	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
16	Holland v. Monsanto, et al.	ATL-L-000371-24	Atlantic	New Jersey/ Essex County	Hunter Shkolnik, Esq. Napoli Shkolnik NS PR Law Services LLC 1302 Avenida Pone de Leon Santurce, Puerto Rico 00907 hunter@nsprLaw.com
17	Hosea v. Monsanto, et al.	ATL-L-002511-24	Atlantic	Georgia	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
18	Jackson v. Monsanto, et al.	ATL-L-002547-24	Atlantic	Georgia	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
19	Jordan v. Monsanto, et al.	ATL-L-002525-24	Atlantic	Virginia	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
20	Keltner v. Monsanto, et al.	ATL-L-002548-24	Atlantic	Mississippi	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
21	Kenefsky v. Monsanto, et al.	ATL-L-002534-24	Atlantic	Colorado	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
22	Kowal v. Monstanto, et al.	ATL-L-000547-24	Atlantic	New Jersey/ Middlesex County	Lynne M. Kizis, Esq. Wilentz, Goldman & Spitzer, PA 90 Woodbridge Center Dr., Suite 900 Woodbridge, New Jersey 07095 Lkizis@wilentz.com
23	Lewis v. Monsanto, et al.	BUR-L-002380-23	Burlington	New Jersey/ Burlington County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
24	Lied v. Monsanto, et al.	MON-L004321-24	Monmouth	New Jersey/ Ocean County	Jennifer L. Emmons, Esq. Cohen, Placitella & Roth, PC 127 Maple Avenue Red Bank, New Jersey 07701
25	Lordi v. Monsanto, et al.	MID-L-000039-25	Middlesex	New Jersey/ Middlesex County	Jennifer L. Emmons, Esq. Cohen, Placitella & Roth, PC 127 Maple Avenue Red Bank, New Jersey 07701
26	Longo v. Monsanto, et al.	SSX-L-000526-23	Sussex	New Jersey/ Sussex County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
27	Marra v. Monsanto, et al.	ATL-L-003229-23	Atlantic	New Jersey/ Monmouth County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
28	Marvel v. Monsanto, et al.	ATL-L-000028-24	Atlantic	New Jersey/ Burlington County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
29	McLaughlin v. Monsanto, et al.	PAS-L-003477-23	Passaic	New Jersey/ Passaic County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
30	Mirra v. Monsanto, et al.	ATL-L-000029-24	Atlantic	New Jersey/ Somerset County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
31	Moreland v. Monsanto, et al.	ATL-L-000700-24	Atlantic	New Jersey/ Burlington County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
32	Myaskovskaya v. Monsanto, et al.	ATL-L-000284-24	Atlantic	New Jersey/ Morris County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
33	O'Rourke v. Monsanto, et al.	ATL-L-002535-24	Atlantic	Vermont	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
34	Palmer v. Monsanto, et al.	ATL-L-000373-24	Atlantic	New Jersey/ Monmouth County	Hunter Shkolnik, Esq. Napoli Shkolnik NS PR Law Services LLC 1302 Avenida Pone de Leon Santurce, Puerto Rico 00907 hunter@nsprLaw.com
35	Rapp v. Monsanto, et al.	ATL-L-000288-25	Atlantic	Illinois	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
36	Reilly v. Monsanto, et al.	MID-L-000045-25	Middlesex	New Jersey/ Hunterdon County	Jennifer L. Emmons, Esq. Cohen, Placitella & Roth, PC 127 Maple Avenue Red Bank, New Jersey 07701
37	Riehl v. Monsanto, et al.	ATL-L-000701-24	Atlantic	New Jersey/ Mercer County	James Bilsborrow, Esq. Weitz & Luxenberg, PC 700 Broadway New York, New York 10003 Tel: (212) 558-5500 jbilsborrow@weitzlux.com
38	Sanderson v. Monsanto, et al.	ATL-L-000549-24	Atlantic	New Jersey/ Hunterdon County	Daniel Lapinski, Esq. Motley Rice New Jersey LLC 210 Lake Drive East, Suite 101 Cherry Hill, New Jersey 08002 dlapinski@motleyrice.com
39	Scott v. Monsanto, et al.	ATL-L-000054-25	Atlantic	California	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
40	Sorlie v. Monsanto, et al.	ATL-L-002551-24	Atlantic	North Dakota	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
41	Torres v. Monsanto, et al.	ATL-L-002546-24	Atlantic	Minnesota	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com
42	Westenhiser v. Monsanto, et al.	BER-L-001264-24	Bergen	New Jersey/ Bergen County	Hunter Shkolnik, Esq. Napoli Shkolnik NS PR Law Services LLC 1302 Avenida Pone de Leon Santurce, Puerto Rico 00907 hunter@nsprLaw.com

No.	Case Name	Docket No.	County of Filing	State/County of Residence	Plaintiff Counsel
43	Wodill v. Monsanto, et al.	ATL-L-000495-25	Atlantic	Wisconsin	Asim M. Badaruzzaman, Esq. Sbaiti & Company 100 Mulberry Street, Suite 1102 Newark, New Jersey 07102 Tel. (973) 954-2000 asim.badaruzzuman@sbaitilaw.com

Exhibit C

MotleyRice
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"I will stand for my client's rights.
I am a trial lawyer."
–Ron Motley (1944–2013)

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VIA HAND-DELIVERY

April 4, 2024

Hon. Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Administrative Office of the Courts
of the State of New Jersey
Richard J. Hughes Justice Complex
25 W. Market St.
Trenton, New Jersey 08625

Re: Reply in Further Support of Request for Multi-County Litigation Designation of Roundup Cases

Dear Judge Grant:

Please accept this reply letter in further support of Plaintiffs' request that Roundup cases, currently filed in courts in six different New Jersey counties, be centralized for management in The Superior Court of New Jersey, Atlantic County vicinage. As of today, there are 22 cases pending in the various counties and the parties anticipate the total number of cases will continue to grow and likely exceed 100.[1] Of the 22 currently pending, 17 are already venued in Atlantic County.

As set forth in Plaintiffs' original request, submitted to the Court on January 22, 2024, centralized management is consistent with the Guidelines for several reasons. To start, centralization will conserve judicial resources and will curtail, if not eliminate, duplicative and inconsistent rulings that are inevitable if Plaintiffs' cases remain before various courts throughout the State. Roundup cases involving common issues of law and fact are currently pending in six different counties. The number of filed cases has more than doubled in the 30-days since Defendants submitted their response in opposition. There is no reason that the common issues related to a single product, Roundup, should be litigated across the State.

Centralization will also allow for coordinated discovery across Plaintiffs' cases involving claims with common issues of law and fact and a high degree of commonality of injury or damages. Although Defendants argue that coordination is unnecessary at this time because cases have been proceeding nationwide for over eight years and involve a lot of completed discovery, Defendants ignore the fact that only a few of the litigations have named the Bayer entities as Defendants and there has been no discovery directed at the Bayer Defendants to date.

[1] A list of currently pending cases is attached hereto as Exhibit A.

In 2015, Defendant Bayer AG initiated the restructuring of its corporate divisions into three separate divisions, one being a crop sciences division. Bayer AG began the process of acquiring Defendant Monsanto with a definitive agreement for the acquisition reached on September 14, 2016. The Bayer Defendants completed the acquisition of Monsanto on June 7, 2018, for approximately $63 billion, assuming Monsanto's liabilities as a successor in interest. Since the time of acquisition, the Bayer Defendants have collectively and individually continued the operations and/or retained the profits and losses of Defendant Monsanto under the Bayer name.

Defendant Monsanto (and the Roundup product line) is now fully owned by the Bayer Defendants. The Bayer Defendants continue to market and sell Monsanto's Roundup product line for both residential and commercial use, and only recently announced that they would stop using glyphosate only in their residential Roundup products. Since the 2018 acquisition, and despite public and independent scientific pressure, none of the Bayer Defendants have published a long-term animal study on formulated Roundup. Further, none of the Bayer Defendants have added a warning of Roundup's carcinogenicity to its commercial glyphosate-containing Roundup products. And to this day the Bayer Defendants state publicly that Roundup is safe to use.

The Bayer Defendants could have removed glyphosate-containing Roundup from the market in 2018 but chose not to do so. And it continues to sell glyphosate containing Roundup today to farmers and other commercial users. Since the time of acquisition, the Bayer Defendants have continued to represent and market Roundup as a safe product. Further, the Bayer Defendants have lobbied strongly for changes in state and federal law to avoid liability for their continued sale of a dangerous product. The conduct of the Bayer Defendants leading up to and after the acquisition of Monsanto is relevant to the New Jersey litigation, especially since most of the non-Hodgkin's lymphoma diagnoses of Plaintiffs have occurred after the Bayer Defendants acquired Monsanto. There will be significant discovery directed at the Bayer Defendants that has not been done in other litigations, and the parties will significantly benefit from coordination of that discovery.

Roundup cases have been coordinated in multiple jurisdictions across the country, including a federal multidistrict litigation (*In Re: Roundup Products Liability Litigation*, MDL No. 2741) and coordinated state court proceedings in California (*Roundup Product Cases*, Judicial Council Coordination Proceedings No. 4953), and Pennsylvania (*In Re: Roundup Products Liability Litigation*, No. 550, Philadelphia Court of Common Pleas' Complex Litigation Center). The common issues here, though with legal underpinnings distinct from other centralized Roundup proceedings, should likewise prompt centralization with an MCL designation.

It is within the Supreme Court's discretion to choose the proper vicinage for centralized management of this MCL. Plaintiffs respectfully submit that the Superior Court of Atlantic County is the proper venue. The majority of Plaintiffs' cases are pending in Atlantic County and, amongst the three Courts to be considered for MCL centralization, there are no cases pending in Middlesex County and only one case pending in Bergen County. In addition, coordination in Atlantic County will

position this litigation in a geographic location closest to the Southern New Jersey farming and agricultural areas that earned New Jersey the nickname of the "Garden State." Commercial use of Roundup is centered around these farming and agricultural areas – and is particularly relevant to future cases as the Bayer Defendants have not removed, and do not presently intend to remove, glyphosate from their commercial Roundup products. Thus, it is likely that many future plaintiffs will have resided in and been exposed to Roundup in the Southern New Jersey areas. Thus, Atlantic County is the most appropriate and practicable venue for establishing an MCL.

For the foregoing reasons, Plaintiffs respectfully request that their litigation against Monsanto and the Bayer Defendants be designated as a MCL in the Superior Court of New Jersey, Atlantic County vicinage, pursuant to New Jersey Rule 4:38 A and in compliance with the Guidelines promulgated thereunder. Once coordinated, the presiding Judge will be able to determine an appropriate leadership structure for the MCL.

Respectfully submitted,

Daniel Lapinski

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**pro hac vice* application forthcoming
Counsel for Plaintiffs

cc: Hon. Michael J. Blee, Assignment Judge (Via Overnight Mail)
Hon. John C. Porto, Civil Presiding Judge (Via Overnight Mail)
Hon. Ralph A. Paolone, J.S.C. (Via Overnight Mail)
Hon. Danielle J. Walcoff, J.S.C. (Via Overnight Mail)
Hon. Timothy W. Chell, Civil Presiding Judge (Via Overnight Mail)
Hon. Eric G. Fikry, J.S.C. (Via Overnight Mail)
Hon. Louis S. Sceusi, J.S.C. (Via Overnight Mail)
Hon. Bruno Mongiardo, J.S.C. (Via Overnight Mail)
Hon. Sarah B. Johnson, J.S.C. (Via Overnight Mail)
Hon. Peter G. Geiger, J.S.C. (Via Overnight Mail)
Hon. Bruce J. Kaplan, J.S.C. (Via Overnight Mail)
Hon. Stanley L. Bergman, J.S.C. (Via Overnight Mail)
Hon. William J. McGovern III, J.S.C. (Via Overnight Mail)
All Known Defense Counsel (Via Electronic Mail)
All Known Plaintiffs Counsel (Via Electronic Mail)

EXHIBIT A

	Case Name	Docket No.	County of Filing	Plaintiff Counsel
1	*Joseph J. Brown v. Monsanto Company, et al.*	ATL-L-000027-24	Atlantic	Weitz & Luxenberg, PC
2	*William Capobianco v. Monsanto Company, et al.*	ATL-L-000114-24	Atlantic	Weitz & Luxenberg, PC
3	*Joseph Caruso v. Monsanto Company, et al.*	ATL-L-000699-24	Atlantic	Weitz & Luxenberg, PC
4	*John Chapman v. Monsanto Company, et al.*	ATL-L-000331-24	Atlantic	Weitz & Luxenberg, PC
5	*Joseph Connelly, Jr. v. Monsanto Company, et al.*	GLO-L-001393-23	Gloucester	Motley Rice New Jersey LLC
6	*Pasquale Daniele v. Monsanto Company, et al.*	ATL-L-000702-24	Atlantic	Motley Rice New Jersey LLC
7	*Judith Engelbrecht v. Monsanto Company, et al.*	ATL-L-000115-24	Atlantic	Weitz & Luxenberg, PC
8	*Leonard Freed v. Monsanto Company, et al.*	ATL-L-000372-24	Atlantic	Napoli Shkolnik NS PR Law Services LLC
9	*Donna Holland v. Monsanto Company, et al.*	ATL-L-000371-24	Atlantic	Napoli Shkolnik NS PR Law Services LLC
10	*Dawn Kowal, Individually and as Administrator and Administrator ad prosequendum of the Estate of Peter Kowal v. Monsanto Company, et al.*	ATL-L-000547-24	Atlantic	Wilentz, Goldman & Spitzer, P.A.
11	*Eugeneia Lewis v. Monsanto Company, et al.*	BUR-L- 002380-23	Burlington	Motley Rice New Jersey LLC
12	*Richard Longo v. Monsanto Company, et al.*	SSX-L-000526-23	Sussex	Motley Rice New Jersey LLC
13	*Salvatore Marra v. Monsanto Company, et al.*	ATL-L-003229-23	Atlantic	Weitz & Luxenberg, PC
14	*Donald Marvel v. Monsanto Company, et al.*	ATL-L-000028-24	Atlantic	Weitz & Luxenberg, PC
15	*Michael McLaughlin v. Monsanto Company, et al.*	PAS-L-003477-23	Passaic	Motley Rice New Jersey LLC
16	*Pasquale Mirra v. Monsanto Company, et al.*	ATL-L-000029-24	Atlantic	Weitz & Luxenberg, PC
17	*Nicole Moreland v. Monsanto Company, et al.*	ATL-L-000700-24	Atlantic	Weitz & Luxenberg, PC
18	*Marina Myaskovskaya v. Monsanto Company, et al.*	ATL-L-000284-24	Atlantic	Motley Rice New Jersey LLC
19	*Dana Palmer v. Monsanto Company, et al.*	ATL-L-000373-24	Atlantic	Napoli Shkolnik NS PR Law Services LLC
20	*Michael Riehl v. Monsanto Company, et al.*	ATL-L-000701-24	Atlantic	Weitz & Luxenberg, PC
21	*Bruce Sanderson v. Monsanto Company, et al.*	ATL-L-000549-24	Atlantic	Wilentz, Goldman & Spitzer, P.A.
22	*Janet Westenhiser v. Monsanto Company, et al.*	BER-L-001264-24	Bergen	Napoli Shkolnik NS PR Law Services LLC

Exhibit D

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ROUNDUP PRODUCTS LIABILITY LITIGATION	MDL No. 2741 Case No. 16-md-02741-VC
This document relates to: *Dalby v. Monsanto Co.*, 19-cv-5925 *Lockwood Fleischer v. Monsanto Co.*, 19-cv-5931 *Franco v. Monsanto Co.*, 19-cv-5940 *Wise v. Monsanto Co.*, 19-cv-5942	**PRETRIAL ORDER NO. 183: LIFTING ORDER TO SHOW CAUSE; DISMISSING MULTI-PLAINTIFF COMPLAINTS** Re: Dkt. No. 6238

In Pretrial Order No. 179, Dkt. No. 6238, the Court ordered the plaintiffs in these related cases to show cause why they should not be sanctioned for filing multi-plaintiff complaints directly in the Northern District of California. The complaints appeared to blatantly contradict the rules of personal jurisdiction and venue.

The plaintiffs explain that their statements of venue and personal jurisdiction were "contemplated to apply to the lead plaintiff in the Complaint." Response at ¶ 8 n.1, Dkt. No. 6446. But the plaintiffs still anticipated the filing of short-form complaints in the Northern District of California on behalf of the other plaintiffs. That is unacceptable. To file directly in this district, there must be jurisdiction over each plaintiff and each claim. *See Bristol-Myers Squibb v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773, 1781–83 (2017).

The plaintiffs also point to two prior multi-plaintiff complaints filed by the same law firm. Response ¶¶ 5–6. The prior use of an ethically dubious tactic in two cases (out of the thousands of cases in this MDL) is no reason to assume "the Court's tacit approval." *Id.* ¶ 10. Every party is bound to refrain from sanctionable conduct, even if their lawyers had previously

engaged in the same conduct that has thus far gone undiscovered.

At this time, however, the Court will refrain from sanctioning counsel. The multi-plaintiff complaints in these related cases are instead dismissed without prejudice in light of the plainly insufficient allegations of personal jurisdiction or venue. Fed. R. Civ. P. 12(b)(2)–(3). A short-form single-plaintiff complaint may be filed in this district only if there is personal jurisdiction and proper venue. Any other course of action would circumvent the restrictions on this Court's power and Congress' decision to delegate the transfer process to the Judicial Panel on Multidistrict Litigation. *See* 28 U.S.C. § 1407(c).

Going forward, Monsanto is directed to review complaints filed directly in this district for compliance with the requirements of personal jurisdiction and venue. A report of the non-compliant cases filed in the preceding month is due at the beginning of the next month—*e.g.*, a December 1 report on November cases.

IT IS SO ORDERED.

Dated: October 28, 2019

VINCE CHHABRIA
United States District Judge

Exhibit E

2024 WL 4986818
Only the Westlaw citation is currently available.
NOT FOR PUBLICATION
United States District Court, D. New Jersey.

CRYOPAK INC., Plaintiff,
v.
FRESHLY LLC, successor to Freshly Inc., and Nestlé USA, Inc., Defendants.

Civil Action No. 23-18896
|
Signed December 5, 2024

Attorneys and Law Firms

A. Ross Pearlson, Patricia B. Bergamasco, Chiesa Shahinian & Giantomasi PC, Roseland, NJ, for Plaintiff.

Martin Benjamin Gandelman, Calcagni & Kanefsky LLP, Newark, NJ, for Defendant Freshly LLC.

Geoffrey W. Castello, III, Matthew Fitzgerald Chakmakian, Kelley Drye & Warren LLP, Parsippany, NJ, for Defendant Nestlé USA, Inc.

Geoffrey W. Castello, III, Kelley Drye & Warren LLP, Parsippany, NJ, for Defendant Honey Buyer, LLC.

OPINION

SEMPER, District Judge.

***1** The current matter comes before the Court on two separate motions: (1) Defendant Freshly LLC's ("Freshly") Motion to Dismiss Plaintiff Cryopak Inc.'s ("Cryopak" or "Plaintiff") First Amended Complaint ("FAC") pursuant to Rule 12(b)(6) (ECF 44); and (2) Defendants Nestlé USA, Inc. ("Nestlé") and Honey Buyer, LLC's ("Honey Buyer" and together with Nestlé, "HBN") Motion to Dismiss Plaintiff's FAC pursuant to Rule 12(b)(2) and 12(b)(6). (ECF 45.) Plaintiff opposed the respective motions. (ECF 49; ECF 48.) Freshly and HBN filed briefs in further support of their respective Motions to Dismiss.[1] (ECF 51; ECF 52.) The Court reviewed all submissions made in support of and in opposition to the motions and considered the motions without oral argument pursuant to Federal Rule of Civil Procedure 78 and Local Civil Rule 78.1. For the reasons stated below, Freshly's Motion is **GRANTED in part and DENIED in part** and HBN's Motion is **DENIED without prejudice.**

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

Plaintiff Cryopak is a manufacturer of gel packs meant to be frozen and used to ship fresh food. (ECF 38, FAC ¶¶ 1, 12.) Until November 2022, Defendant Freshly was a meal-delivery service company engaged in the business of delivering meal kits directly to consumers. (*Id.* ¶ 13.) Defendant Nestlé is a Delaware corporation with its principal place of business in Virginia. (*Id.* ¶ 14.) Defendant Honey Buyer is a subsidiary and special-purpose entity of Nestlé created at time Freshly was purchased. (*Id.* ¶ 15.) Specifically, in 2017 Nestlé acquired 16% of Freshly and in 2020, Nestlé acquired the remaining equity in Freshly through its subsidiary, Honey Buyer. (*Id.* ¶ 30.)

On or about January 1, 2018, Cryopak entered into a Master Service and Supply Agreement (the "Master Agreement") wherein Cryopak agreed to provide 100% of Defendant Freshly's gel pack requirements for its Arizona and Maryland facilities for a period of two years. (*Id.* ¶¶ 1, 20, 24, Ex. A.) The Master Agreement was subsequently amended, and extended, three times in 2018, 2019, and 2020. (*Id.* ¶¶ 24-33, Exs. B, C, D.) The third amendment extended the Master Agreement through 2023, required Freshly to purchase 75% of its gel pack requirements for its Commerce, California and Atlanta, Georgia facilities from Cryopak, and promised the construction of new Cryopak manufacturing facilities and warehouses in or around both Commerce and Atlanta. (*Id.* Ex. D.) Plaintiff alleges that Freshly represented to Plaintiff that the Commerce facility would purchase no less gel packs than its Arizona facility, and the Atlanta facility would purchase no less gel packs than its Maryland facility. (*Id.* ¶¶ 35, 40.)

***2** Plaintiff further alleges that on or about July 15, 2022, "[w]ithout any advance notice," Freshly notified Cryopak that its Georgia and California facilities would be closing. (*Id.* ¶ 44.) In or around November 2022, Nestlé sold Freshly, causing a merger with Kettle Cuisine. (*Id.* ¶ 57, 67.) This transaction allegedly caused Freshly to completely shutter its business on or about December 5, 2022, notifying Plaintiff that same day. (*Id.* ¶ 57.) Thus, Freshly could no longer fulfill its contractual obligation to purchase a quantity of gel packs from Plaintiff, which Plaintiff alleges is a breach of the Master Agreement. (*Id.* ¶¶ 58-60.) Additionally, Plaintiff's manufacturing facilities, which it was building in consideration of its obligations under the Master Agreement,

are still incurring lease costs, and the Maryland facility was shut down. (*Id.* ¶¶ 61-66.) Plaintiff alleges that discussions of the Kettle Cuisine transaction were occurring simultaneously as Freshly made assertions that their business relationship with Plaintiff would continue "for years to come." (*Id.* ¶ 70.)

As a result, Plaintiff asserts claims of (a) breach of contract (Count I), (b) breach of the covenant of good faith and fair dealing (Count II), and (c) promissory estoppel (Count III) against Defendant Freshly. (ECF 38, FAC ¶¶ 90, 101, 107-08.) As to Defendants HBN, Plaintiff asserts a claim of (a) tortious interference with an existing contract (Count I). (*Id.* ¶¶ 114-15.)

II. STANDARD OF REVIEW

A. Rule 12(b)(2)

Rule 12(b)(2) permits a party to move to dismiss a case for "lack of personal jurisdiction." Fed. R. Civ. P. 12(b)(2). In such a motion to dismiss, the plaintiff "bears the burden of demonstrating the facts that establish personal jurisdiction." *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 368 (3d Cir. 2002). To withstand a motion to dismiss under Rule 12(b)(2), a plaintiff bears the burden of establishing the court's personal jurisdiction over the defendant by a preponderance of the evidence. *D'Jamoos ex rel. Estate of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 102 (3d Cir. 2009). When a court "resolves the jurisdictional issue in the absence of an evidentiary hearing and without the benefit of discovery, the plaintiff need only establish a prima facie case of personal jurisdiction." *Otsuka Pharm. Co. v. Mylan Inc.*, 106 F. Supp. 3d 456, 461 (D.N.J. 2015). In such cases, a court "take[s] the allegations of the complaint as true." *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996).

Once a defendant raises a jurisdictional defense, "a plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." *Id.* In other words, the court looks beyond the pleadings to all relevant evidence and construes all disputed facts in favor of the plaintiff. *See Carteret Sav. Bank v. Shushan*, 954 F.2d 141, 142 n.1 (3d Cir. 1992). Plaintiff must establish "with reasonable particularity sufficient contacts between the defendant and the forum state." *Otsuka*, 106 F. Supp. 3d at 462 (citing *Mellon Bank (E) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992)). If the plaintiff meets its burden, the burden shifts to the defendant, who must make a compelling case that the exercise of jurisdiction would be unreasonable.[3] *Mellon Bank*, 960 F.2d at 1226 (internal citations omitted).

B. Rule 12(b)(6)

Rule 12(b)(6) of the Federal Rules of Civil Procedure permits a defendant to move to dismiss a count for "failure to state a claim upon which relief can be granted[.]" To withstand a motion to dismiss under Rule 12(b)(6), a plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint is plausible on its face when there is enough factual content "that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although the plausibility standard "does not impose a probability requirement, it does require a pleading to show more than a sheer possibility that a defendant has acted unlawfully." *Connelly v. Lane Const. Corp.*, 809 F.3d 780, 786 (3d Cir. 2016) (internal quotation marks and citations omitted). As a result, a plaintiff must "allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of [his] claims." *Id.* at 789.

***3** In evaluating the sufficiency of a complaint, a district court must accept all factual allegations in the complaint as true and draw all reasonable inferences in favor of the plaintiff. *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 231 (3d Cir. 2008). A court, however, is "not compelled to accept unwarranted inferences, unsupported conclusions or legal conclusions disguised as factual allegations." *Baraka v. McGreevey*, 481 F.3d 187, 211 (3d Cir. 2007). If, after viewing the allegations in the complaint most favorable to the plaintiff, it appears that no relief could be granted under any set of facts consistent with the allegations, a court may dismiss the complaint for failure to state a claim. *DeFazio v. Leading Edge Recovery Sols.*, 2010 WL 5146765, at *1 (D.N.J. Dec. 13, 2010).

III. ANALYSIS

A. Motions to Dismiss

1. 12(b)(2) - Personal Jurisdiction – Nestlé and Honey Buyer (HBN)

HBN first argues for dismissal of Cryopak's FAC because they contend this Court cannot exercise personal jurisdiction over Nestlé or Honey Buyer.

A federal court "engages in a two-step inquiry to determine whether it may exercise personal jurisdiction": (1) "whether the relevant state long-arm statute permits the exercise of jurisdiction," and (2) "if so, [whether] the exercise of jurisdiction comports with due process" under the Fourteenth Amendment.[4] "New Jersey's long-arm statute extends the state's jurisdictional reach as far as the United States Constitution permits, so the analysis turns on the federal constitutional standard for personal jurisdiction." *Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 172 (D.N.J. 2016) (citing *IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254, 259 (3d Cir. 1998)). Accordingly, the two steps are collapsed into one and "we ask whether, under the Due Process Clause, the defendant has certain minimum contacts with [New Jersey] such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 316 (3d Cir. 2007) (internal quotation marks omitted). In other words, to establish personal jurisdiction, the Due Process Clause requires (1) minimum contacts between the defendant and the forum; and (2) that jurisdiction over the defendant comports with " 'fair play and substantial justice.' " *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 320 (1945)).

A district court can assert either general jurisdiction (*i.e.*, "all-purpose" jurisdiction) or specific jurisdiction (*i.e.*, "case-linked" jurisdiction) over a defendant that has minimum contacts with the forum. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 582 U.S. 255, 262 (2017). For foreign corporations, a "court may assert general jurisdiction ... to hear any and all claims against them when their affiliations with the [forum] State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Fischer v. Fed. Express Corp.*, 42 F.4th 366, 384 (3d Cir. 2022) (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). To assert specific jurisdiction over a foreign corporation, two primary elements must be met: "[f]irst, there must be purposeful availment: minimum contacts with the forum state that show the defendant took a deliberate act reaching out to do business in that state. Second, the contacts must give rise to—or relate to—plaintiff's claims." *Hepp v. Facebook*, 14 F.4th 204, 207 (3d Cir. 2021) (citing *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024-25 (2021)). If these elements are met, the exercise of jurisdiction must "otherwise comport[ ] with fair play and substantial justice." *D'Jamoos*, 566 F.3d at 102 (quoting *Burger King Corp.*, 471 U.S. at 476).

a) General Jurisdiction - Nestlé

***4** The Court will first examine whether there is general jurisdiction over Nestlé[5] in New Jersey and then, if there is no general jurisdiction, whether there is specific jurisdiction.

"For a corporate defendant, the main bases for general jurisdiction are (1) the place of incorporation [or formation]; and (2) the principal place of business." *Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 173 (D.N.J. 2016) (citing *Daimler AG v. Bauman*, 571 U.S. 117, 136 (2014)); *see also Fischer*, 42 F.4th at 383 ("For a corporation, general jurisdiction is only proper in states where the corporation is fairly regarded as 'at home,' which generally is restricted to the corporation's state of incorporation or the state of its principal place of business.").

"[G]eneral jurisdiction may [also] arise in the 'exceptional case' where 'a corporation's operations in a forum other than its formal place of incorporation or principal place of business may be so substantial and of such a nature as to render the corporation at home in that State.' " *Display Works*, 182 F. Supp. 3d at 173 (citation omitted); *see also Daimler AG*, 571 U.S. at 139 n.19. Such an exceptional case requires a plaintiff to furnish at least some evidence that reasonably suggests that a corporate entity's contacts with the forum state are so substantial that they surpass the entity's contacts with other states. *See, e.g., Ontel Prod. Corp. v. Mindscope Prod.*, 220 F. Supp. 3d 555, 560 (D.N.J. 2016) ("[Plaintiff] does not provide any evidence that reasonably suggests that indirect sales in New Jersey occur at all or that those sales surpass [the defendant's] third party sales made elsewhere.").

Here, Plaintiff confirms that Nestlé is not incorporated in New Jersey, but rather in the state of Delaware. Further, Plaintiff alleges Nestlé's principal place of business is in the state of Virginia. (ECF 38, FAC ¶¶ 13-14.) Plaintiff does not allege that Nestlé's connection to New Jersey is so systematic such that it is essentially "at home" in New Jersey[6] (and Plaintiff does not allege that Honey Buyer is subject to general jurisdiction at all). Plaintiff alleges only that Nestlé is registered to conduct business in New Jersey, conducts business in New Jersey, and maintains a registered agent in the state. (*Id.* ¶ 18.)

It is well established that parties can consent to personal jurisdiction. *See Burger King Corp.*, 471 U.S. at 472 n.14;

see also *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023) ("[E]xpress or implied consent can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed." (citations omitted)). Under certain circumstances, a corporation's registration to do business in a state may evidence its consent to personal jurisdiction in that forum. *See* *Mallory*, 600 U.S. at 138-40; *Bane v. Netlink, Inc.*, 925 F.2d 637, 641 (3d Cir. 1991) (holding that a statute explicitly listing "consent" as a basis for personal jurisdiction over corporate defendants established personal jurisdiction). However, here, Plaintiff's reliance on *Mallory* is inapposite because the registration statutes at issue are distinguishable, and "[u]nlike the express consent statute at issue in *Mallory*, New Jersey's registration statute does not include such an express consent requirement." *Simplot India LLC v. Himalaya Food Intl. Ltd.*, No. 23-1612, 2024 WL 1136791, at *10 (D.N.J. Mar. 15, 2024). Indeed, "[t]he question the plurality in *Mallory* addressed was narrow: whether a state could compel registering corporations to consent to general personal jurisdiction, which the Court held it could. The fact that a state *may* write its corporation registration laws in a way that explicitly constitutes consent does not mean that every state corporation registration law necessarily does so." *Simplot India LLC*, 2024 WL 1136791, at *10 (internal citations omitted).

***5** Without any allegations in the FAC evincing Nestlé being "essentially at home" in New Jersey, there are no grounds for general jurisdiction here. *See* *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 414 (2017) (holding that a corporation is not "at home" in a state under the "exceptional case" doctrine even when it maintains 2,000 miles of railroad track in a particular state and employs 2,000 people in the state).

b) Specific Jurisdiction – Nestlé and Honey Buyer

Specific jurisdiction allows the court to adjudicate claims levied against defendants with "certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *Int'l Shoe Co.*, 326 U.S. at 316 (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). The Third Circuit has laid out a three-part test to determine whether specific jurisdiction exists as to a particular defendant. *O'Connor*, 496 F.3d at 317. First, the defendant must have "purposefully directed [its] activities at the forum."[7] *Id.* (internal quotation marks omitted). "Second, the plaintiff's claims 'must also arise out of or relate to' the defendant's activities."[8] *Danziger & De Llano, LLP v. Morgan Verkamp LLC*, 948 F.3d 124, 129-30 (3d Cir. 2020) (quoting *O'Connor*, 496 F.3d at 317); *see also* *Helicopteros*, 466 U.S. at 414. "And third, exercising personal jurisdiction must not 'offend traditional notions of fair play and substantial justice.' "[9] *Danziger*, 948 F.3d at 130 (quoting *O'Connor*, 496 F.3d at 317); *see also* *International Shoe*, 326 U.S. at 316.

***6** Specific jurisdiction determinations are "claim specific." *Remick v. Manfredy*, 238 F.3d 248, 255 (3d Cir. 2001). "[A] conclusion that the District Court has personal jurisdiction over one of the defendants as to a particular claim asserted by [the plaintiff] does not necessarily mean that it has personal jurisdiction over that same defendant as to [the plaintiff]'s other claims." *Id.* The Third Circuit has recognized that although it "may not be necessary" to "conduct a claim-specific analysis" in "every multiple claim case ... because there are different considerations in analyzing jurisdiction over contract claims and over certain tort claims," such differentiation is required in certain circumstances. *Id.*

Here, Plaintiff brings one cause of action for tortious interference with contract against both Nestlé and Honey Buyer. When an intentional tort is alleged, a slight variation from the *O'Connor* three-part test applies, known as the *Calder* effects test, stemming from the Supreme Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984). The *Calder* effects test "can demonstrate a court's jurisdiction over a defendant even when the defendant's contacts with the forum alone [ ] are far too small to comport with the requirements of due process under our traditional analysis." *Marten v. Godwin*, 499 F.3d 290, 297 (3d Cir. 2007). Under this test, "an intentional tort directed at the plaintiff and having sufficient impact upon [the plaintiff] in the forum may suffice to enhance otherwise insufficient contacts with the forum such that the 'minimum contacts' prong of the Due Process test is satisfied." *Marten*, 499 F.3d at 297 (quoting *IMO Industries.*, 155 F.3d at 260). The *Calder* effects test requires a plaintiff to show that:

> (1) The defendant committed an intentional tort; (2) The plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; (3) The defendant expressly aimed his tortious conduct at the forum such that

> the forum can be said to be the focal point of the tortious activity[.]

Marten, 499 F.3d at 297 (quoting *IMO Industries*, 155 F.3d at 265-66). The *Calder* effects test, as interpreted by the Third Circuit, still requires that a "defendant's conduct and connection with the forum State [be] such that he should reasonably anticipate being haled into court there." *Marten*, 499 F.3d at 297 (quoting *World-Wide Volkswagen*, 444 U.S. at 297.).

Prior to discussing the first two prongs of the *Calder* effects test, the Court notes that the third prong of the effects test—whether the defendant "expressly aimed" its tortious conduct at New Jersey—is a threshold inquiry. *See Marten*, 499 F.3d at 297. The plaintiff carries an "onerous burden" in making that showing. *Torre v. Kardooni*, No. 22-4693, 2022 WL 17813069, at *4 (D.N.J. Nov. 29, 2022).[10] To satisfy the "expressly aimed" element of the effects test, the plaintiff must "(1) show that the defendant knew that the plaintiff would feel the thrust of the tortious conduct in the forum; and (2) specifically point to activity that indicates the defendant expressly and intentionally targeted the tortious conduct at the forum." *Torre*, 2022 WL 17813069, at *4 (citing *Marten*, 499 F.3d at 298). "If a plaintiff fails to show that the defendant 'manifest[ed] behavior intentionally targeted at and focused on' the forum, the plaintiff fails to establish jurisdiction under the effects test." *Marten*, 499 F.3d at 298 (citing *IMO Indus.*, 155 F.3d at 265) (internal citations omitted).

***7** As pled, Plaintiff does not point to any specific activity that Nestlé or Honey Buyer aimed at New Jersey, nor does Plaintiff explain how either Nestlé or Honey Buyer intentionally directed their allegedly tortious conduct at New Jersey. Although Plaintiff vaguely alleges that this Court has specific jurisdiction over Defendants Nestlé and Honey Buyer because the Defendants allegedly committed tortious acts that impacted and injured Plaintiff in the State of New Jersey (ECF 38, Compl. ¶ 17), this is insufficient. *See Sciore v. Phung*, No. 19-13775, 2022 WL 950261 (D.N.J. Mar. 30, 2022) (citing *IMO Indus.*, 155 F.3d at 261-63).

However, despite Plaintiff's pleading deficiencies, on a motion to dismiss for lack of personal jurisdiction, discovery may be "available to ascertain the facts bearing on [the issue]." *Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 336 (3d Cir. 2009) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 n.13 (1978)). Indeed, "jurisdictional discovery should be allowed unless the plaintiff's [jurisdictional] claim is clearly frivolous." *Massachusetts Sch. of L. at Andover, Inc. v. Am. Bar Ass'n*, 107 F.3d 1026, 1042 (3d Cir. 1997) (cleaned up). Furthermore, there is a "presumption" of jurisdictional discovery as to defendants that are corporations. *See Andover*, 107 F.3d at 1042; *cf. Metcalfe*, 566 F.3d at 336 ("jurisdictional discovery [is] particularly appropriate where the defendant is a corporation").

Here, Defendant Nestlé is a corporation and Defendant Honey Buyer is a limited liability company. (*See* FAC ¶¶ 14-15.) Plaintiff has also presented a basis for jurisdiction that is not clearly frivolous as Plaintiff has pled that Nestlé is a corporation which "regularly conducts business in New Jersey." (FAC ¶ 18.) *See Marchionda v. Embassy Suites, Inc.*, 122 F. Supp. 3d 208, 211 (D.N.J. 2015) (permitting jurisdictional discovery where the plaintiff only alleged the defendants "engage[d] in substantial business in the State of New Jersey and [otherwise] ha[d] significant contacts with New Jersey" because defendants were large, well-known corporate entities with numerous corporate forms and operations that were wide in scope). Furthermore, it is clear that without jurisdictional discovery, Plaintiff is limited to proffering evidence regarding Nestlé and Honey Buyer's participation in Freshly's business in New Jersey based on publicly available records. (ECF 48, Pl. Opp. at 19.) Certainly, agreements and other information bearing on Nestlé and Honey Buyer's acquisition of Freshly and the Kettle Cuisine Transaction remain in the possession of Nestlé and Honey Buyer. (*Id.*)

Therefore, to fully develop the jurisdictional record, Plaintiff's request for leave to conduct limited jurisdictional discovery is **GRANTED**. HBN's motions to dismiss are **DENIED without prejudice** to allow for jurisdictional discovery. The Court grants leave to HBN to file renewed motions to dismiss under Rule 12(b)(2) and/or Rule 12(b)(6), following the completion of jurisdictional discovery.

2. 12(b)(6) – Freshly

In an action based on diversity of citizenship, a federal court generally applies the choice-of-law rules of the jurisdiction in which it sits. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). Here, the parties agree that New York law applies to this action because the Master Agreement from which this matter derives contains a choice of law clause

providing that it is to be construed in accordance with New York law. (ECF 38-1, "Master Agreement", Ex. A § 24.)

a) Breach of Contract

***8** Cryopak alleges that the Master Agreement and the Amendments constitute a valid and enforceable agreement. (ECF 38, FAC ¶ 77.) Further, Cryopak alleges numerous breaches by Freshly causing damages in various forms to Cryopak. (*Id.* ¶¶ 76-91.)

Under New York law, "[t]o plead a cause of action for breach of contract, a plaintiff must allege that (1) a contract exists, (2) plaintiff performed in accordance with that contract, (3) defendant breached its contractual obligations, and (4) defendant's breach resulted in damages." *See 34-06 73, LLC v. Seneca Ins. Co.*, 198 N.E.3d 1282, 1287 (N.Y. 2022) (internal citations and quotation marks omitted). If the unambiguous terms of the contract itself do not support the plaintiff's claim, then the claim must be dismissed. *Spinelli v. Nat'l Football League*, 96 F. Supp. 3d 81, 131 (S.D.N.Y. 2015). Further, under "New York law and the *Twombly-Iqbal* standards of federal pleading require a complaint to identify, in non-conclusory fashion, the specific terms of the contract that a defendant has breached. Otherwise, the complaint must be dismissed." *Id.*

Here, Freshly acknowledges that a binding and enforceable contract exists between the parties, and Freshly does not dispute that Cryopak has alleged that it has fulfilled its obligations under the terms of the Master agreement and that Cryopak has been damaged as a result of the alleged breach. (ECF 44-1, Freshly MTD. at 13.) Instead, Freshly's opposition focuses on the fact that Cryopak has failed to adequately allege a breach of the Master Agreement. (*Id.* at 13-27.) Indeed, at a high level, Freshly argues that Cryopak (1) cannot premise a breach of contract on the closure of Freshly's Atlanta and California facilities; (2) cannot premise a breach of contract on Freshly's alleged failure to submit purchase orders for gels; and (3) does not plausibly allege a breach of section 13.2. (*Id.* at 14-22.)

Despite Freshly's assertions, the FAC alleges that Freshly failed to perform its obligations under the Master Agreement and its Amendments in several ways. First, the FAC alleges that without any notice, Freshly told Cryopak that it had no need for any gel from its Georgia and California facilities just months after Cryopak expended considerable sums in preparation for performance under the Third Amendment. (FAC ¶¶ 83-85). Second, the term of the Master Agreement, as amended, was set to expire at the end of 2023, and Freshly prematurely cut it short when it ceased its business operations in December 2022 and terminated the Parties' contractual relationship. (*Id.* ¶¶ 36, 41, 89). Third, the FAC alleges Freshly breached the Master Agreement when it entered into the Kettle Cuisine Transaction, in direct violation of the express terms of Section 13.2, which prohibited Freshly from entering into any agreement that would prevent from performing its obligations under the contract. (*Id.* at ¶¶ 79-82).

Accepting all factual allegations in the FAC as true and drawing all reasonable inferences in favor of the plaintiff, the Court finds Plaintiff's allegations sufficient to survive a motion to dismiss. Accordingly, Defendant's motion to dismiss Count I of the FAC is **DENIED**.

b) Implied Covenant of Good Faith and Fair Dealing

Cryopak alleges that Freshly violated the implied covenant of good faith and fair dealing implied in all contracts in New York as Freshly had been planning to shut down its entire business operations for months while simultaneously making misleading representations to Cryopak. (ECF 49, Pl. Freshly Opp. at 33.) Freshly argues that Cryopak's claim for breach of the covenant of good faith and fair dealing "is based on the same allegations as Cryopak's breach of contract claim," is not consistent with the terms of the Master Agreement, and "is premised on extra-contractual representations that are barred by the NOM and Merger Clauses." (ECF 44-1, Freshly MTD at 29-32.) Freshly thus moves to dismiss Count II for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

***9** Under New York law, "all contracts imply a covenant of good faith and fair dealing in the course of performance." *511 W. 232nd Owners Corp. v. Jennifer Realty Co.*, 773 N.E.2d 496, 500 (N.Y. 2002). This implied covenant requires that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract." *Id.* "While the duties of good faith and fair dealing do not imply obligations inconsistent with other terms of the contractual relationship, they do encompass any promises which a reasonable person in the position of the promisee would be justified in understanding were included." *Id.* (internal quotations and citations omitted).

Critically, "New York law ... does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts, is also pled." *Marans v. Intrinsiq Specialty Sols., Inc.*, No. 18-256, 2018 WL 4759772, at *5 (S.D.N.Y. Sept. 30, 2018). "[W]hen a complaint alleges both a breach of contract and a breach of the implied covenant of good faith and fair dealing based on the same facts, the latter claim should be dismissed as redundant." *Cruz v. FXDirectDealer, LLC*, 720 F.3d 115, 125 (2d Cir. 2013).

Here, Cryopak alleges that Freshly "continued to represent to [Cryopak] that the Parties would have a healthy, long-term commercial relationship, one that would continue unabated for years to come." (FAC ¶ 95). These representations, Cryopak argues, led Cryopak to invest in the California and Georgia Facilities, for which Freshly "almost immediately" claimed there was a lack of demand. (Pl. Freshly. Opp at 33.) Furthermore, Cryopak argues that Freshly made misleading representations about the quantity of gel packs its California and Georgia facilities would require. (*Id.*) As a result and based on Freshly's alleged representations in meetings and forecasts it provided, as well as the binding purchase orders issued by Freshly to Cryopak for delivery of gels into 2023, Cryopak continued operating its facilities and procured sufficient raw materials to meet Freshly's anticipated demands. (*Id.* at 35.)

Cryopak acknowledges the "factual overlap" between its breach of contract claim and its implied covenant claim but maintains that the implied covenant claim "seeks to hold Freshly accountable" for "the exercise of its discretion under Section 4.4...." (Pl. Freshly Opp. at 31-32.) In layman's terms, Cryopak attempts to argue that to the extent the closure of Freshly's California and Georgia facilities and subsequent shutdown were permissible under the express terms of the Agreement, Cryopak argues that the very same alleged conduct was an abuse of the contractual discretion afforded Freshly under paragraph 4.4. And like its breach of contract claim, Cryopak's claim for breach of the implied covenant seeks damages arising out of the Shutdown. (*See* FAC ¶¶ 76-101.)

Freshly maintains that Cryopak's implied covenant claim is impermissibly duplicative of the breach of contract claim. The Court agrees. Like its breach of contract claim, Cryopak's implied covenant claim seeks to recover the sums it expended to perform its own obligations under the Agreement. And like its breach of contract claim, Cryopak's implied covenant claim alleges a breach arising out of the Shutdown. (*Id.*) Cryopak's argument that its implied covenant claim is independent of its breach of contract claim is unpersuasive.

Accordingly, Cryopak's contractual implied covenant claims are duplicative of the breach of contract claims and must be **DISMISSED with prejudice**. Freshly's motion to dismiss Count II of the FAC is **GRANTED**.

c) Promissory Estoppel

***10** Finally, Cryopak brings a claim against Freshly for promissory estoppel asserting in chief that Cryopak relied to its detriment on promises made by Freshly concerning the parties business relationship. (FAC ¶¶ 102-08.) Freshly contends that "at bottom" Cryopak's claim for promissory estoppel is an attempt to enforce the unsigned Fourth Amendment, and Cryopak is unable to establish reasonable reliance. (ECF 44-1, Freshly MTD at 33; ECF 51, Freshly Rep. at 14.)

"[P]romissory estoppel has three elements: [1] a clear and unambiguous promise; [2] a reasonable and foreseeable reliance by the party to whom the promise is made[;] and [3] an injury sustained by the party asserting the estoppel by reason of the reliance." *Wolet Cap. Corp. v. Walmart Inc.*, No. 18-12380, 2021 WL 242297, at *13 (S.D.N.Y. Jan. 25, 2021) (citing *Cyberchron Corp. v. Calldata Sys. Dev., Inc.*, 47 F.3d 39, 44 (2d Cir. 1995)). A claim for promissory estoppel requires that there be "a clear and unambiguous promise," which shows a defendant's "unambiguous intent to be bound." *Paramax Corp. v. VoIP Supply, LLC*, 175 A.D.3d 939, 941 (2019) (4th Dep't 2019); *Broughel v. Battery Conservancy*, No. 07-7755, 2009 WL 928280, at *8-9 (S.D.N.Y. Mar. 30, 2009).

Here, Cryopak alleges that Freshly promised on several occasions that it would continue its business relationship for the next five years and its volume of purchase orders would be the same. (ECF 38, FAC ¶¶ 103-04). In reliance on Defendant's representations that the parties would continue conducting business for the next five years, Plaintiff alleges that it renewed leases and incurred costs for equipment, inventory, leases, and other expenses at its Arizona, Georgia, Maryland, and California Facilities. (*Id.* ¶ 105). Further, Cryopak alleges that it also continued to incur additional expenses associated with all of its facilities for equipment and inventory based on Defendant Freshly's representations

concerning the gel requirements and the Parties' business relationship anticipated for the next "several years." (*Id.* ¶ 106.) On December 5, 2022, Defendant Freshly informed Plaintiff that it ceased operations and reneged on the promises and representations reflected above, all of which Plaintiff reasonably relied on to its detriment. (*Id.* ¶ 107.)

Despite the allegations in the FAC, Freshly correctly argues that Cryopak as a matter of law is unable to establish reasonable reliance. Indeed, Cryopak's main contention in opposition is that the no-oral-modification ("NOM") and Merger clauses do not apply to Freshly's alleged oral representations because the Master Agreement "do[es] not arise out of the same subject matter." (ECF 49, Pl. Freshly Opp. at 38.) However, the Master Agreement covers the exact same subject matter as Freshly's alleged "representations." Critically, it provides for a term ending December 31, 2023 and makes Cryopak Freshly's exclusive supplier of gels for the Maryland and Arizona facilities: the very subject of Freshly's alleged representations. (FAC ¶¶ 23-24.) Therefore, based upon the NOM and Merger clauses, any claim founded on representations purporting to modify or extend these terms were barred and any alleged reliance on such representations was unreasonable as a matter of law. *Ixe Banco, S.A. v. MBNA Am. Bank, N.A.*, No. 07-0432, 2008 WL 650403, at *12 (S.D.N.Y. Mar. 7, 2008).

Additionally, "in the absence of 'egregious' circumstances, courts have consistently rejected promissory estoppel claims when the alleged injuries consisted of lost profits, lost fees, [or] forgone business opportunities." *Wolet Cap. Corp.*, 2021 WL 242297 at *42. Here, Cryopak alleges only ordinary economic harms as the FAC alleges lease and equipment costs and other costs and expenses (such as costs of inventory) at its Arizona facility and other facilities. (FAC ¶¶ 92-93.) Such ordinary expectation damages do not constitute unconscionable injuries as a matter of law. *See Darby Trading Inc. v. Shell Int'l Trading & Shipping Co.*, 568 F. Supp. 2d 329, 341 (S.D.N.Y. 2008) ("[I]n the absence of 'egregious' circumstances, courts have consistently rejected promissory estoppel claims when the alleged injuries consisted of lost profits, lost fees, foregone business opportunities or damage to business reputation.").

***11** Based upon the foregoing, Freshly's motion to dismiss Count III of the FAC is **GRANTED** and Cryopak's claim for promissory estoppel is **DISMISSED with prejudice**.

IV. CONCLUSION

For the reasons set forth above, Freshly's Motion is **GRANTED in part and DENIED in part** and HBN's Motions are **DENIED without prejudice**. An appropriate order follows.

All Citations

Slip Copy, 2024 WL 4986818

Footnotes

1 Freshly's brief in support of its motion to dismiss (ECF 44-1) will be referred to as "Freshly MTD." Cryopak's brief in opposition to the Freshly motion (ECF 49) will be referred to as "Pl. Freshly Opp.," and Freshly's reply brief (ECF 51) will be referred to as "Freshly Rep." HBN's brief in support of their motion to dismiss (ECF 45-1) will be referred to as "HBN MTD." Cryopak's brief in opposition to HBN's motion (ECF 48) will be referred to as "Pl. HBN. Opp.," and HBN's reply brief (ECF 52) will be referred to as "HBN Rep."

2 The factual and procedural background is taken from the FAC. (ECF 38.) The Court also relies on documents integral to or relied upon by the FAC and the public record. *See In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997).

3 In addition, a court "may always revisit the issue of personal jurisdiction if later revelations reveal that the facts alleged in support of jurisdiction remain in dispute." *Otsuka*, 106 F. Supp. 3d at 462 n.5 (citing *Metcalfe v. Renaissance Marine, Inc.*, 566 F.3d 324, 331 (3d Cir. 2009)).

4 *Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 172 (D.N.J. 2016) (citing *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 258-59 (3d Cir. 1998)). *See also* Fed. R. Civ. P. 4(k)(1)(A) (indicating that service "establishes personal jurisdiction over a defendant ... who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.").

5 In the FAC, Plaintiff does not allege this Court has general jurisdiction over Honey Buyer. (ECF 38, FAC ¶¶ 16-19.)

6 For example, Plaintiff does not allege that Nestlé has offices in New Jersey, that a large percentage of Nestlé's employees work in New Jersey, or that Nestlé owns or uses any property in New Jersey.

7 This factor has also been characterized as "purposeful availment," and focuses on contact that the defendant itself created within the forum state. *Burger King Corp.*, 471 U.S. at 475. The "purposefully directed" or "purposeful availment" requirement is designed to prevent a person from being haled into a jurisdiction "solely as the result of random, fortuitous, or attenuated contacts" or due to the "unilateral activity of another party or third person[.]" *Id.* (internal quotation marks omitted) (citing *Keeton v. Hustler Mag., Inc.*, 465 U.S. 770, 774 (1984)); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 299 (1980); *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417 (1984).

8 This has been described as the "relatedness" element. *See MaxLite, Inc. v. ATG Elecs., Inc.*, 193 F. Supp. 3d 371, 384 (D.N.J. 2016) (citing *O'Connor*, 496 F.3d at 317). To meet this element, "causal connection can be somewhat looser than the tort concept of proximate causation, but it must nonetheless be intimate enough to keep the quid pro quo proportional and personal jurisdiction reasonably foreseeable." *O'Connor*, 496 F.3d at 323 (citation omitted). This is a "necessarily fact-sensitive" inquiry. *Id.* The "animating principle" behind it "is the notion of a tacit quid pro quo that makes litigation in the forum reasonably foreseeable." *Id.* at 322.

9 Notably, "[t]he existence of minimum contacts makes jurisdiction presumptively constitutional, and the defendant 'must present a compelling case that the presence of some other considerations would render jurisdiction unreasonable.' " *O'Connor*, 496 F.3d at 324 (quoting *Burger King Corp.*, 471 U.S. at 477). Factors to consider are "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies." *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 97 (3d Cir. 2004). Yet, jurisdiction will only be unreasonable in "rare" cases and a plaintiff's burden to show an absence of fairness or lack of substantial justice is "heavy." *O'Connor*, 496 F.3d at 324.

10 Report and recommendation adopted, No. 22-4693, 2022 WL 17812193 (D.N.J. Dec. 19, 2022); *Doe v. Hesketh*, 15 F. Supp. 3d 586, 593 (E.D. Pa. 2014) ("[The 'expressly aimed'] standard is exacting.").

End of Document

Exhibit F

2024 WL 1136791
Only the Westlaw citation is currently available.
United States District Court, D. New Jersey.

SIMPLOT INDIA LLC and Simplot India Foods Pvt. Ltd., Petitioners,
v.
HIMALAYA FOOD INTERNATIONAL LTD., Respondent.

Civil Action No. 23-1612 (RK) (TJB)
|
Signed March 15, 2024

Attorneys and Law Firms

Michael Scott Carucci, Sills Cummis & Gross P.C., Newark, NJ, for Petitioner.

Peter A. Sullivan, Foley Hoag, New York, NY, for Respondent.

OPINION

Robert Kirsch, United States District Judge

***1 THIS MATTER** comes before the Court on a Petition to Confirm, Recognize, and Enforce Foreign Arbitral Award the ("Petition") filed by Petitioners Simplot India LLC and Simplot India Foods Pvt. Ltd., (ECF No. 1), as well as the Motion filed by Petitioners seeking the same relief, (ECF No. 2). Also pending is the Cross-Motion to Stay or Dismiss filed by Respondent Himalaya Food International Ltd. (ECF No. 23.) The Singapore International Arbitration Center ("SIAC") issued the award on May 8, 2020, and Petitioners now seek enforcement of the award in this District pursuant to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[1] The Court has carefully considered the parties' submissions and decides the motions without oral argument pursuant to Federal Rule of Civil Procedure 78(b) and Local Civil Rule 78.1(b). For the reasons that follow, Petitioners' Motion to Confirm (ECF No. 2) is **DENIED**, Respondent's Cross-Motion to Stay or Dismiss (ECF No. 23) is **DENIED** in part and **GRANTED** in part, and the Petition to Enforce (ECF No. 1) is **DISMISSED**.

I. BACKGROUND[2]

A. THE PARTIES AND THEIR UNDERLYING DISPUTE

Petitioners—Simplot India LLC and Simplot India Foods—are affiliates of J.R. Simplot Company, an Idaho-based agribusiness that produces and sells (mostly potato-based) food products domestically and internationally. (Award ¶¶ 1–3, 13.) Simplot India LLC is an Idaho limited liability company, and Simplot India Foods is an Indian company. (*Id.*) Respondent is an Indian company, listed on the Bombay Stock Exchange, that produces a variety of food products, including frozen potato products. (*Id.* ¶ 4.)

This matter arises out of the parties' joint venture in India. Simplot India LLC and Respondent entered into the Shareholders Agreement ("SA") in 2011. (Award ¶ 6, 13–14.) Under the SA, the parties agreed to establish Himalaya Simplot Pvt Ltd ("HSPL"), a joint venture company incorporated in India. (*Id.* ¶ 14.) The SA provided that Respondent would produce the food products and subsequently sell them to HSPL at the parties' facility in India. (*Id.* ¶ 103.) HSPL would then act as the "exclusive sales agent" for the products, in which Simplot India LLC would provide "expertise and brand reputation" assistance. (*Id.*) Products to be sold by the joint venture included "frozen potato products, breaded and battered appetizers, and certain shelf stable products." (*Id.* ¶ 105.)

The parties agree that issues quickly arose in the administration of the joint venture. (*Id.* ¶ 14.) In hopes of resolving these issues, the parties entered a second agreement in 2012—the Master Agreement ("MA")—under which Petitioners bought some of Respondent's equipment and took over use of the facility in India to produce the potato products, in exchange for $12.75 million. (*Id.* ¶¶ 117–20.) The parties' relationship broke down again as disputes arose concerning the parties' obligations and performance under the MA, and Petitioners vacated the facility in March 2023. (*Id.* ¶¶ 144–49.)

B. ARBITRATION PROCEEDINGS

***2** From 2013 to 2020, the parties vigorously litigated their disputes via arbitrations and court proceedings in Singapore and India. (*See* Award ¶¶ 19–83.) As relevant to the present

dispute, Petitioners initiated an arbitration proceeding before a SIAC Tribunal in July 2017, based on a provision in the MA requiring binding arbitration before SIAC. (*Id.* ¶¶ 9, 17.) Petitioners alleged breaches of the MA related to, among other complaints, inadequacies of the production equipment Respondent provided and issues with Petitioners' use of the facility. (*Id.* ¶ 14.) The SIAC Tribunal conducted a final evidentiary hearing in this matter, which took place over eight days and included extensive submissions from experts and witness testimony. (*Id.* ¶¶ 64–68.)

The SIAC Tribunal issued its 209-page final award on March 24, 2020. (*See generally* Award.)[3] The SIAC Tribunal found, in summary, that Respondent was in material breach of its obligations under the MA, as well as in breach of other clauses for which the Petitioners were awarded nominal damages. (*Id.* at *188–89.) SIAC awarded Petitioners $1,670,998 in damages and $674,814 in interest up to the date of the Award, (*id.*), as well as continuing interest on the Award at a rate of 5.33% per annum until paid, (Corrected Award ¶ 10). The SIAC Tribunal made explicit findings as to the conduct of each party throughout both SIAC arbitration proceedings and found the Petitioners were also entitled to "party costs" (including attorney's fees) and directed Respondent to bear 90% of the total arbitration costs. (Award ¶¶ 49, 307, 942–53, 955.)

Several months after the issuance of the Award, Petitioners filed a petition to enforce it before the High Court of Delhi. (Decl. of Ravinder Singhania ("Singhania Decl.") ¶ 0, ECF No. 34-24.) Respondent objected to enforcement of the award on several grounds, (*id.* ¶ 1), and the parties continue to litigate those objections and other matters before the court in Delhi, (*id.* ¶¶ 2–3, 8–21.) Since the filing of the initial Petition and Cross-Motion to Stay or Dismiss, (ECF Nos. 1, 23), both parties have made clear that ongoing litigation relating to this matter is pending before the court in Delhi, (*see* ECF Nos. 38–42).

C. RESPONDENT'S NEW JERSEY TIES

Petitioners filed their Petition in this District based on their belief that Respondent is subject to personal jurisdiction here and that this Court can confirm and enforce the Award. (Petition ¶¶ 6–9.) Petitioners' jurisdictional claims appear to be based in small part on Respondent's direct contacts with New Jersey but are grounded more fully in Respondent's relationship to a related but separate New Jersey corporate entity.

Respondent's website identifies its officers as ManMohan Malik ("Malik"), its founder, chairman, and CEO, and Sanjiv Kakkar ("Kakkar"), its co-founder and president. (Ex. 2 to Decl. of Edward T. Decker ("Decker Decl."), ECF No. 34-3.) Malik and Kakkar also sit on Respondent's board of directors. (*Id.*) Respondent is registered to do business in New Jersey as a foreign profit corporation and designated Kakkar as its in-state agent for service of process. (Ex. 3 to Decker Decl., ECF No. 34-4.) Kakkar accepted service of process in this action on Respondent's behalf. (ECF No. 6.) Respondent lists "Himalaya International" and "Global Reliance" as associated names on its New Jersey registration. (Ex. 3 to Decker Decl.) As of March 23, 2023, its Business Report shows that Respondent has "dissolution/withdrawal" proceedings pending from New Jersey. (*Id.*) Respondent's website listed its United States sales office at an address in Hamilton, New Jersey, (Ex. 1 to Decker Decl., ECF No. 34-2), which is the same address listed on Respondent's New Jersey foreign profit corporate registration, (Ex. 3 to Decker Decl.).

***3** Himalaya International Inc. ("Himalaya International") is a New Jersey domestic profit corporation distinct from Respondent. (Ex. 4 to Decker Decl., ECF No. 34-5.) Like Respondent, Himalaya International registered to use the alternative names "Global Reliance" and "Himalaya Food International," designated Kakkar as its agent for service of process, and listed the same Hamilton, New Jersey address as its business registration. (*Id.*) Himalaya International began the process to dissolve as a New Jersey corporation and re-establish itself in Wyoming, but the dissolution process remains pending. (*Id.*; Ex. 5 to Decker Decl. at *2–5.) It now maintains an office at an address in Princeton, New Jersey. (Decl. of Sanjiv Kakkar ("Kakkar Decl.") ¶ 2, ECF No. 23-11.) Himalaya International maintains a bank account at PNC bank. (*Id.* ¶ 5.) In his declaration, Kakkar states that he is the CEO and sole shareholder of Himalaya International. (*Id.* ¶¶ 1, 3.)[4] Kakkar further states that Respondent has no ownership over Himalaya International and no control over or rights to Himalaya International's account at PNC bank. (*Id.* ¶¶ 3, 5.)

Regarding Respondent's business ties to Himalaya International, Kakkar characterizes it as a "buyer and seller" relationship. (Kakkar Decl. ¶ 4.) Kakkar declares that he is not aware of any "formal agreement" between the companies requiring Himalaya International to purchase food for distribution from Respondent alone. (*Id.*)

Petitioners performed a review of publicly available shipping records using variations of the name "Himalaya" for the periods August 1, 2021 to December 12, 2022 and June 1, 2022 to June 26, 2023. (*See* Decl. of Lawrence R. Pilon ("Pilon Decl."), ECF No. 34-21.) Petitioners identify 175 ocean import shipments sent by Respondent during the first period to the consignee Global Reliance at either the Hamilton or Princeton addresses associated with Himalaya International. (*Id.* ¶¶ 8–9.) In the second period, the records show 58 ocean import shipments from Respondent, of which 56 list Global Reliance as the consignee at the Princeton address. (*Id.* ¶¶ 10–11.)

D. FEDERAL PROCEDURAL HISTORY

Petitioners filed their Petition and Motion to Enforce on March 21, 2023. (ECF Nos. 1, 2.) On June 16, 2023, Respondent filed an Answer to the Petition, (ECF No. 22), as well as a Cross-Motion seeking relief on several grounds, (ECF No. 23). Respondent's Cross-Motion (1) opposed confirmation and enforcement of the Award and sought dismissal of the Petition on the grounds that the Court lacked personal jurisdiction over Respondent and that the Award was invalid under Indian Law, and (2) alternatively sought to stay the federal proceedings pending resolution of the matter before the High Court of Delhi. (*Id.*) Petitioners filed a brief opposing the requested stay and replying to Respondent's arguments against confirmation and enforcement of the award, (ECF No. 34), and Respondent filed a reply, (ECF No. 37). The parties have filed several more letters regarding the status of the Indian Court proceedings in the interim. (ECF Nos. 38–42.)

II. LEGAL STANDARDS

A. ENFORCEMENT OF ARBITRATION AWARDS

Federal district courts have jurisdiction over motions to confirm arbitration awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), June 10, 1958, 21 U.S.T. 2517. The New York Convention, as implemented by Chapter 2 of the Federal Arbitration Act, 9U.S.C. §§ 201–208, permits the recipient of a foreign arbitration award to seek enforcement of the award by a federal district court. *See Jiangsu Beier Decoration Materials Co., Ltd. v. Angle World LLC*, 52 F.4th 554, 559 (3d Cir. 2022). In reviewing a foreign arbitration award "a district court's role is limited—it must confirm the award unless one of the grounds for refusal specified in the [New York] Convention applies to the underlying award." *Admart AG v. Stephen & Mary Birch Found., Inc.*, 457 F.3d 302, 307 (3d Cir. 2006) (citing *Compagnie Noga D'Importation et D'Exportation S.A. v. The Russian Federation*, 361 F.3d 676, 683 (2d Cir. 2004)). The affirmative defenses are "strictly applied" and viewed "narrowly." *Id.* at 308 (citing *China Minmetals Materials Imp. & Exp. Co. v. Chi Mei Corp.*, 334 F.3d 274, 283 (3d Cir. 2003)). The party seeking enforcement of the award bears the initial burden to provide the award and the underlying agreement, at which point the burden shifts to the party opposing confirmation to prove one of the five applicable defenses. *Jiangsu Beier*, 52 F.4th at 560 (discussing the New York Convention's "burden-shifting framework").

***4** Because a party seeking enforcement of award does so through motion practice, 9 U.S.C. § 6, "[m]any of the ordinary procedural rules governing civil litigation are inapplicable to petitions under the New York Convention." *Jiangsu Beier*, 52 F.4th at 560. Decisions on such petitions result from "summary proceedings," *id.* (quoting *CPR Mgmt., S.A. v. Devon Park Bioventures, L.P.*, 19 F.4th 236, 243 (3d Cir. 2021)), in which the court "may review the documents presented by the parties" but "is not necessarily limited to factual allegations in the petition itself," *id.* (citing *PG Publ'g, Inc. v. Newspaper Guild of Pittsburgh*, 19 F.4th 308, 314 (3d Cir. 2021)). While "further proceedings" may be appropriate to resolve a factual dispute, *id.*, the court must be "mindful that a confirmation petition presents a limited inquiry that typically should not 'develop into full scale litigation,' " *id.* at 563 (quoting *PG Pub'g, Inc.*, 19 F.4th at 314).

B. PERSONAL JURISDICTION IN ARBITRATION ENFORCEMENT

To enforce a foreign arbitration award, the district court must have personal jurisdiction over the parties, as the New York Convention "does not diminish the Due Process constraints in asserting jurisdiction over a nonresident alien." *Telcordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 178–79 (3d Cir. 2006); *see also First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 749–52 (5th Cir. 2012) ("Even though the New York Convention does not list personal jurisdiction as a ground for denying enforcement, the Due Process Clause requires that a court dismiss an action, on motion, over which it has no personal jurisdiction."); *cf. marks Control Screening LLC v. Tech. Application & Prod. Co. (Tecapro), HCMC-Vietnam*, 687 F.3d 163, 169 n.4 (3d Cir. 2012) (noting that in a proceeding brought under the New York Convention, the plaintiff "must prove, by a preponderance of the evidence, that the district

court has the authority to exercise personal jurisdiction over the defendant" (citing *Carteret Sav. Bank, FA v. Shushan*, 954 F.2d 141, 146 (3d Cir. 1992)).

Once a defendant raises a personal jurisdictional defense, the "plaintiff bears the burden of proving by affidavits or other competent evidence that jurisdiction is proper." *Dayhoff Inc. v. H.J. Heinz Co.*, 86 F.3d 1287, 1302 (3d Cir. 1996) (citations omitted). Permissible evidence to meet this burden must be more than an "unverified complaint," *Markferding v. Westmoreland Cnty. (Pa.) Domestic Rels. Off.*, No. 05-755, 2005 WL 1683744, at *3 (D.N.J. June 17, 2005), or bare allegations made "upon information and belief," *Victory Int'l (USA) Inc. v. Perry Ellis Int'l, Inc.*, No. 07-375, 2008 WL 65177, at *6 (D.N.J. Jan. 2, 2008) (citing *Mass. Sch. of Law at Andover, Inc. v. American Bar Ass'n*, 107 F.3d 1026, 1042 (3d Cir. 1997)).

III. DISCUSSION

Because it is dispositive in this matter, the Court begins its analysis with personal jurisdiction. Because Respondent has objected to the Court's exercise of personal jurisdiction over it, (ECF No. 23-1 at 15), Petitioners must establish personal jurisdiction before the Court may enforce the Award in this District.

Petitioners argue several avenues for the Court to exercise personal jurisdiction over Respondent. *First*, Himalaya International—a domestic New Jersey corporation—is an alter ego of Respondent, such that the former's undisputed ties to New Jersey should be attributed to Respondent for personal jurisdiction purposes. (ECF No. 34 at 13–17.) *Second*, Respondent consented to personal jurisdiction in New Jersey by registering to do business in the state and accepting service of process in the state. (*Id.* at 17–18.) *Third*, Petitioners contend that even if Respondent and Himalaya International are unrelated for jurisdictional purposes, the Court may nonetheless exercise *quasi in rem* jurisdiction over debts owed by Himalaya International to Respondent. (*Id.* at 18–20.) *Finally*, Petitioners argue that if the Court finds personal jurisdiction lacking, it should permit jurisdictional discovery. (*Id.* at 20–21.) The Court is unpersuaded and finds none of the bases applicable here.

***5** A federal court sitting in New Jersey "has jurisdiction over parties to the extent provided under New Jersey state law." *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 96 (3d Cir. 2004) (citing Fed. R. Civ. P. 4(e) and *Carteret Sav. Bank, FA*, 954 F.2d at 144). "New Jersey's long-arm statute provides for jurisdiction coextensive with the due process requirements of the United States Constitution." *Id.* (citing N.J. Court R. 4:4–4(c)). This Court therefore has personal jurisdiction over a party that has "constitutionally sufficient 'minimum contacts' " with New Jersey. *Id.* (quoting *Carteret*, 954 F.2d at 149).

A non-resident defendant may be subject to personal jurisdiction in a forum based on one of two types of personal jurisdiction: "general (sometimes called all-purpose) jurisdiction and specific (sometimes called case-linked) jurisdiction." *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358 (2021). General jurisdiction exists when a defendant's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014) (quoting *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Only a "limited set of affiliations" with a forum can give rise to general jurisdiction, such that, as stated, the defendant is essentially at home in the forum. *Id.* at 137. Specific jurisdiction arises when a defendant "purposefully avail[s]" itself of a forum and the plaintiff's claims arise from a defendant's contacts with the forum. *Ford Motor Co.*, 592 U.S. 351 (2021) (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985)).

Petitioners do not argue that any of Respondent's alleged contacts with New Jersey are related to the parties' dispute. Therefore, specific personal jurisdiction is inapplicable here, and the Court will only consider whether Respondent is subject to general jurisdiction in the state.

A. GENERAL JURISDICTION VIA ALTER EGO THEORY

Petitioners do not assert that Respondent's contacts with New Jersey are, standing alone, sufficient to create all-purpose jurisdiction. Rather, Petitioners argue that Himalaya International, a New Jersey domestic corporation, is Respondent's alter ego and that Himalaya International's New Jersey contacts can be attributed to Respondent for personal jurisdiction purposes. (ECF No. 34 at 13–17.) In opposition, Respondent avers that any connections between it and Himalaya International are insufficient to render the latter Respondent's alter ego. (ECF No. 37 at 10–13.) After careful consideration, the Court finds that Petitioners have not established that Himalaya International is Respondent's alter ego.

The contacts of a defendant company's alter ego may, under some circumstances, be treated as the defendant's contacts

for the purposes of personal jurisdiction. Petitioners do not specify whether they seek the Court to pierce the corporate veil through an alter ego theory under federal common law or New Jersey state law. [5] However, the analysis is similar under either approach. *See Craig v. Lake Asbestos of Quebec, Ltd.*, 843 F.2d 145, 150 (3d Cir. 1988) (relying on federal common law veil piercing factors in case involving veil piercing under New Jersey law).

***6** The Third Circuit has explained that "if a subsidiary is merely the agent of a parent corporation, or if the parent corporation otherwise 'controls' the subsidiary, then personal jurisdiction exists over the parent whenever personal jurisdiction (whether general or specific) exists over the subsidiary." *Shuker v. Smith & Nephew, PLC*, 885 F.3d 760, 781 (3d Cir. 2018) (citing *D'Jamoos ex rel. Est. of Weingeroff v. Pilatus Aircraft Ltd.*, 566 F.3d 94, 108–09 (3d Cir. 2009) and *Kehm Oil Co. v. Texaco, Inc.*, 537 F.3d 290, 300 (3d Cir. 2008)). Proving that one company is the alter ego of another is a "notoriously difficult" burden to meet. *Trinity Indus., Inc. v. Greenlease Holding Co.*, 903 F.3d 333, 365 (3d Cir. 2018) (quoting *Pearson v. Component Tech. Corp.*, 247 F.3d 471, 485 (3d Cir. 2001)). Several non-exhaustive factors relevant to the analysis include "gross undercapitalization, failure to observe corporate formalities, nonpayment of dividends, insolvency of [subsidiary] corporation, siphoning of funds from the [subsidiary] corporation by the dominant stockholder, nonfunctioning of officers and directors, absence of corporate records, and whether the corporation is merely a façade for the operations of the dominant stockholder." *Id.* (quoting *Pearson*, 247 F.3d at 484–85). "[I]n order to succeed on an alter ego theory of liability, plaintiffs must essentially demonstrate that in all aspects of the business, the two corporations actually functioned as a single entity and should be treated as such." *Id.* at 365–66 (citation omitted).

New Jersey's view of corporate veil-piercing is similar. Like federal common law, the law in New Jersey "begin[s] with the fundamental propositions that a corporation is a separate entity from its shareholder." *New Jersey Dep't of Env't Prot. v. Ventron Corp.*, 468 A.2d 150, 164 (N.J. 1983) (citing *Lyon v. Barrett*, 445 A.2d 1153 (N.J. 1982)). As the New Jersey Supreme Court instructed:

> Under certain circumstances, courts may pierce the corporate veil by finding that a subsidiary was "a mere instrumentality of the parent corporation." Application of this principle depends on a finding that the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent. Even in the presence of corporate dominance, liability generally is imposed only when the parent has abused the privilege of incorporation by using the subsidiary to perpetrate a fraud or injustice, or otherwise to circumvent the law.

Id. at 164–65 (quoting *Mueller v. Seaboard Com. Corp.*, 73 A.2d 905, 908 (N.J. 1950)). This language is distilled into a two-prong test, requiring a plaintiff seeking to pierce the corporate veil to show both "such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist" as well as that "adherence to the fiction of separate corporate existence would sanction a fraud or promote injustice." *N. Am. Steel Connection, Inc. v. Watson Metal Prod. Corp.*, 515 F. App'x 176, 179 (3d Cir. 2013) (quoting *State Cap. Title & Abstract Co. v. Pappas Bus. Servs.*, 646 F. Supp. 2d 668, 679 (D.N.J. 2009)). Relevant, non-exclusive factors New Jersey courts consider to show the level of dominance necessary for the first prong are the same as those listed above under federal common law. *See id.* at 180 (citing *Craig*, 843 F.2d at 150).

Petitioners have not established that Respondent exercises such "complete domination" of finances, policy, and business practice over Himalaya International to establish Himalaya International as Respondent's alter ego. *Id.* Petitioners have adduced evidence that:

- Respondent's website listed "Himalaya International Inc." as its "USA Office & Sales" location with an address in Hamilton, New Jersey. (Ex. 1 to Decker Decl. at 11.)
- Respondent is registered as a foreign corporation in New Jersey, and Himalaya International is registered as a domestic profit corporation in New Jersey, both at the same Hamilton, New Jersey address. (Ex. 3 to Decker Decl.; Ex. 4 to Decker Decl.)
- Kakkar is the co-founder, executive director, and president of Respondent, as well as a shareholder in and registered agent for Himalaya International, (Ex. 4 to Decker Decl. ¶ 6).

***7** • Malik is the founder, chairman, CEO, and foreign registered agent of Respondent, as well as a director of (and a shareholder in) Himalaya International. (Ex. 2 to Decker Decl.)

- Each month, Respondent ships tens of thousands of pounds of frozen food to the United States with a listed

consignee as Global Reliance, an alternate name of Himalaya International. (Pilon Decl. ¶¶ 8–12.)

Although these facts undoubtedly show a close relationship between Respondent and Himalaya, the Court finds them insufficient to establish the domination necessary to establish alter ego liability.

As an initial matter, as Respondent points out, (ECF No. 37 at 10–11), the authorities Petitioners rely on all involve parent and subsidiary corporations. The seminal New Jersey case Petitioners cite recognizes veil-piercing when "the parent *so dominated* the subsidiary that it had no separate existence but was merely a conduit for the parent." *Ventron Corp.*, 468 A.2d at 164 (citation omitted) (emphasis added). Here, Petitioners do not allege, let alone prove, a parent-subsidiary relationship between Respondent and Himalaya International. While not dispositive, this by itself counsels against stretching the alter ego doctrine to allow veil-piercing when one company does not own the other. *See Reynolds v. Turning Point Holding Co., LLC*, No. 19-1935, 2020 WL 953279, at *4 (E.D. Pa. Feb. 26, 2020) (finding that entities "operate as a single brand with common corporate control" was insufficient to "overcome the presumption that wholly-owned subsidiaries are separate and distinct from their parent companies"); *Visual Sec. Concepts, Inc. v. KTV, Inc.*, 102 F. Supp. 2d 601, 605–06 (E.D. Pa. 2000) (declining to find alter ego based on "preliminary" consideration that the alleged alter ego was "not a wholly-owned subsidiary" but rather "an independent distributor"). Even if Himalaya International were Respondent's subsidiary, this by itself would not be enough to meet Respondent's heavy burden. *See Portfolio Fin. Servicing Co. ex rel. Jacom Comput. Servs., Inc. v. Sharemax.com, Inc.*, 334 F. Supp. 2d 620, 626 (D.N.J. 2004) ("Liability will not be imposed on the parent corporation merely because of its ownership of the subsidiary ....").

Petitioners provide no information regarding many of the relevant factors under New Jersey or federal common law required for veil-piercing. Several of the factors—such as payment of dividends or capitalization—do not apply outside the parent-subsidiary context. The Court has no information from Petitioners to evaluate the remaining considerations, including whether Respondent fails to observe corporate formalities in interacting with Himalaya International, whether Respondent has transferred funds to Himalaya International in order to protect them from creditors, and whether Himalaya International maintains corporate records separate from those of Respondent. *N. Am. Steel Connection, Inc.*, 515 F. App'x at 179 (citing *Craig*, 843 F.2d at 150). [6]

***8** Petitioners instead focus on two factors. *First*, Petitioners cite the two companies' overlapping executives and owners, (ECF No. 34 at 15–16), because alter ego may be shown by "the day-to-day involvement of the parent's directors, officers and personnel with the subsidiary." *Seltzer v. I.C. Optics, Ltd.*, 339 F. Supp. 2d 601, 610 (D.N.J. 2004). Indeed, Kakkar appears involved in both companies, as an executive director and president of Respondent and an owner of and registered agent for Himalaya International. (Ex. 4 to Decker Decl. ¶ 6.) Although the parties dispute whether Malik, Respondent's chairman and CEO, likewise owns any part of Himalaya International, *see* Section I.C, *supra*, for the purposes of the subject Motion, the Court presumes that he does. However, cross-pollination of executives and owners is not enough, by itself, to show the high threshold which is tantamount to complete domination. *See High 5 Games, LLC v. Marks*, No. 13-7161, 2019 WL 3761114, at *6 (D.N.J. Aug. 9, 2019) (" '[C]ommon ownership and common management alone' are insufficient for veil-piercing purposes." (quoting *Linus Holding Corp. v. Mark Line Indus., LLC*, 376 F. Supp. 3d 417, 426 (D.N.J. 2019))); *see also Seltzer v. I.C. Optics, Ltd.*, 339 F. Supp. 2d 601, 610 (D.N.J. 2004) (overlapping boards of directors); *Laverty v. Cox Enters., Inc.*, No. 18-1323, 2019 WL 351905, at *4 (D.N.J. Jan. 29, 2019) (shared officers and directors). The fact that Respondent and Himalaya International share officers and perhaps even owners, without evidence of use of those positions to exploit and *de facto* merge the companies' relationship, is insufficient to justify veil piercing.

Second, Petitioners focus on the shipping records that show a close business relationship between the companies, (ECF No. 34 at 15), because another relevant consideration is "who the subsidiary does business with other than the parent," *Seltzer*, 339 F. Supp. 2d at 610. In fact, the records show that Himalaya International is the principal, perhaps the sole, recipient of Respondent's shipments to the United States. (*See* Pilon Decl. ¶¶ 8–11.) While this factor surely militates in Petitioners' favor, it is insufficient to establish an alter ego relationship because the two companies can still operate separately even if the majority of their business is conducted with each other. *See Kearney v. Bayerische Motoren Werke Aktiengesellschaft*, No. 17-13544, 2021 WL 1207476, at *4 (D.N.J. Mar. 31, 2021) ("[N]nothing in the record indicates that [the foreign parent] exercised influence over [the domestic subsidiary's] marketing, sale, or distribution activities, creating a clear line

of demarcation between parent-manufacturer and subsidiary-distributor.").

Respondent's website's recognition of the relationship between the companies, and the fact that they previously used the same New Jersey address and share similar names and branding, likewise do not demonstrate the required level of corporate dominance. *See Laverty*, 2019 WL 351905, at *4 (finding alter ego theory not established despite website stating that the parent "funnels" its business through the subsidiary and "general corporate and marketing statements that vaguely touch on the relationship" between the companies); *Mills v. Ethicon, Inc.*, 406 F. Supp. 3d 363, 395 (D.N.J. 2019) (finding alter ego theory not established despite the parent and subsidiary sharing the same "brand"). As one Court in this District explained when rejecting a similar argument, the Court may not "extend the alter ego doctrine, such that entities utilizing the same brand, website, and policies would be imputed as alter egos," without also showing that the subsidiaries "ignored corporate formalities in day-to-day activities" or any of the other relevant factors. *See Horowitz v. AT&T Inc.*, No. 17-4827, 2018 WL 1942525, at *9 (D.N.J. Apr. 25, 2018). [7]

***9** Finally, the Court notes that under New Jersey's test for veil piercing, some showing of fraud or injustice that would result in the absence of veil-piercing is also required in addition to establishing corporate dominance. "Except in cases of fraud, injustice, or the like, courts will not pierce a corporate veil." *Ventron Corp.*, 468 A.2d at 164 (citing *Lyon*, 445 A.2d at 1156). While the Court can surmise from Petitioners' briefing that they would find it inequitable for the alter ego doctrine to not apply, Petitioners have not leveled that argument or proffered evidence that Respondent abused Himalaya International's corporate form for the purpose of transacting business in New Jersey without exposing itself to general jurisdiction here. Petitioners' alter ego theory fails for this additional reason.

B. CONSENT TO GENERAL JURISDICTION VIA REGISTRATION

Petitioners next argue that Respondent consented to jurisdiction in New Jersey by registering to do business here and accepting service by its designated agent. (ECF No. 34 at 17–18.) Respondent counters that the weight of authority in this District cuts against reading New Jersey's corporate registration statutes as constituting consent to personal jurisdiction. (ECF No. 37 at 14–15.) The Court agrees.

It is well established that parties can consent to personal jurisdiction. *See Burger King Corp.*, 471 U.S. at 472 n.14; *see also Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122, 138 (2023) ("[E]xpress or implied consent can continue to ground personal jurisdiction—and consent may be manifested in various ways by word or deed." (citations omitted)). Under certain circumstances, a corporation's registration to do business in a state may evidence its consent to personal jurisdiction in that forum. *See Mallory*, 600 U.S. at 138–40 (plurality opinion); *Bane v. Netlink, Inc.*, 925 F.2d 637, 641 (3d Cir. 1991) (holding that a statute explicitly listing "consent" as a basis for personal jurisdiction over corporate defendants established personal jurisdiction).

Whether corporate registration constitutes consent turns on the text of the state's registration statute. *See Display Works, LLC v. Bartley*, 182 F. Supp. 3d 166, 174 (D.N.J. 2016). In *Bane*, the Third Circuit noted that "[c]onsent is a traditional basis for assertion of jurisdiction long upheld as constitutional." 925 F.2d at 641. The relevant Pennsylvania statute in *Bane* stated that Pennsylvania courts could exercise general personal jurisdiction over a corporation based on either "[i]ncorporation under or qualification as a foreign corporation under the laws of this Commonwealth" or "consent." *Id.* at 640 (quoting 42 Pa. Cons. Stat. Ann. § 5301 (Purdon 1990)). The Third Circuit held that either the statutory provision explicitly stating that qualification as a foreign corporation subjected the corporation to personal jurisdiction in the state or the provision explicitly listing "consent" as a basis for jurisdiction supported a finding of personal jurisdiction over the corporate defendant. *Id.* at 641.

New Jersey's business registration statutes do not evidence that Respondent consented to jurisdiction by registering as a foreign profit corporation in New Jersey and appointing an in-state registered agent. In New Jersey, the relevant statutes are the foreign corporation registration statutes, (N.J. Stat. Ann. §§ 14A:13–3, 14A:4-1), and registered agent requirement statute, (N.J. Stat. Ann. § 14A:4–2), as well as New Jersey Court Rule 4:4–4. The first statute requires a foreign corporation doing business in New Jersey to "procure[ ] a certificate of authority ... from the Secretary of State." N.J. Stat. Ann. § 14A:13-3(1). Every registered foreign corporation must "continuously maintain a registered office in this State, and a registered agent having a business office identical with such registered office." *Id.* at § 14A:4-1(1).

Section 14A:4-2 adds that a corporation can be served through its registered agent. *Id.* at § 14A:4-2(1). No language in any of these statutes references personal jurisdiction or consent or otherwise puts a foreign corporation on notice that compliance with them will subject the corporation to general personal jurisdiction in New Jersey.

***10** New Jersey Court Rule 4:4–4 provides that a plaintiff may obtain "*in personam* jurisdiction" over a defendant by serving in the state "any person authorized by appointment or by law to receive service of process on behalf of the corporation ...." N.J. Ct. R. § 4:4-4(a)(6). While this does explicitly reference personal jurisdiction, it does not mention consent or otherwise "contain any language intimating that the foreign corporation will be subject to suit in this state for conduct that occurred elsewhere." *Display Works, LLC*, 182 F. Supp. 3d at 176 (finding the above-cited New Jersey statutes and court rule do not evidence a corporation's consent to general personal jurisdiction in New Jersey). Unlike the Pennsylvania registration statute at issue in *Bane*, the New Jersey statutes do not explicitly provide that registration constitutes consent to general personal jurisdiction.

This reading is in line with the weight of other courts in this District, many of which have adopted the Honorable Madeline Cox Arleo's analysis in *Display Works*. *See Castillero v. Xtend Healthcare, LLC*, No. 22-2099, 2023 WL 8253049, at *5 n.8 (D.N.J. Nov. 29, 2023) (Castner, J.) (same); *Kim v. Korean Air Lines Co.*, 513 F. Supp. 3d 462, 469 (D.N.J. 2021) (McNulty, J.) (same); *Ferguson v. Aon Risk Servs. Co.*, No. 19-9303, 2020 WL 914702, at *5 (D.N.J. Feb. 26, 2020) (Wolfson, J.) (same); *Frazier Indus. Co. v. Logrecco*, No. CV 18-12426, 2019 WL 13401926, at *6 (D.N.J. July 2, 2019) (Vazquez, J.) (same); *Horowitz*, 2018 WL 1942525, at *12 (Martinotti, J.) (same); *see also Dutch Run-Mays Draft, LLC v. Wolf Block, LLP*, 164 A.3d 435, 444 (N.J. Super. Ct. App. Div. 2017) ("New Jersey's foreign corporate registration and registered agent statutes do not contain jurisdictional repercussions of registration.). [8]

Finally, the Court addresses two additional cases that could affect this conclusion. *First*, Petitioners' argument that the Supreme Court's recent decision in *Mallory* overrules the holding of the *Display Works* line of cases, (ECF No. 34 at 18 n.9), is unavailing. The question the plurality in *Mallory* addressed was narrow: whether a state could compel registering corporations to consent to general personal jurisdiction, which the Court held it could. 600 U.S. at 127. The fact that a state *may* write its corporation registration laws in a way that explicitly constitutes consent does not mean that every state corporation registration law necessarily does so. As explained above, the question of consent by registration turns on the language of the state statute. Unlike the express consent statute at issue in *Mallory*, New Jersey's registration statute does not include such an express consent requirement. This Court, absent a legislative imprimatur, will not fill the void and write one in.

Second, although not raised by the parties, the Court briefly considers whether the fact that the present matter involves a party seeking to confirm an arbitration award should change this conclusion. In *Telcordia Tech Inc.*, the Third Circuit's personal jurisdiction analysis was "color[ed]" by the fact that the proceeding was for enforcement of an arbitral award under the New York Convention. 458 F.3d at 178. However, the Court did not elaborate on what it meant for its analysis to be "color[ed]" except to state that the New York Convention's "desire to have portability of arbitral awards" affected "whether [the defendant] 'reasonably anticipate[d] being haled into' a New Jersey court." *Id.* at 179 (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980)). In the consent-by-registration analysis, however, the jurisdictional determination turns not on the defendant's contacts with the forum or reasonable anticipation of facing suit here but rather on the text of the statute. *See Display Works, LLC*, 182 F. Supp. 3d at 178–79 (disregarding defendant's contacts with New Jersey in analyzing whether New Jersey's registration statutes constituted jurisdictional consent). In any event, the Third Circuit maintained that the New York Convention does not "diminish the Due Process constraints in asserting jurisdiction over a nonresident alien." *Telcordia Tech Inc.*, 458 F.3d at 178–79. Therefore, *Telcordia* does not alter the Court's conclusion.

C. *QUASI IN REM* JURISDICTION

***11** Petitioners also argue that the Court may exercise *quasi in rem* jurisdiction over Himalaya International's debts owed to Respondent, allegedly held in New Jersey bank accounts. (ECF No. 1 ¶ 8; ECF No. 34 at 18–20.) Respondent objects on the grounds that it lacks sufficient interest or control in any New Jersey-based property for *quasi in rem* jurisdiction to extend here. (ECF No. 23-1 at 18–19.)

Under limited circumstances, a court may exercise *in rem* jurisdiction over property located within its district. The Supreme Court laid out the basics of the doctrine in *Shaffer v. Heitner*, 433 U.S. 186 (1977). A *quasi in rem* judgment "affects the interests of particular persons in designated

property," including when a "plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him." *Id.* at 199 n.17 (quoting *Hanson v. Denckla*, 357 U.S. 235, 246 n.12 (1958)). The rationale for permitting the exercise of personal jurisdiction over property is that "a wrongdoer 'should not be able to avoid payment of his obligations by the expedient of removing his assets to a place where he is not subject to an in personam suit.' " *Id.* at 210 (quoting Restatement (Second) of Conflict of Laws § 56 (Am. L. Inst. 1971)). Furthermore, once "a court of competent jurisdiction" determines that a defendant owes the plaintiff, the court in a state where the defendant has property may exercise jurisdiction "whether or not that State would have jurisdiction to determine the existence of the debt as an original matter." *Id.* at 210 n.36. "The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court." *Id.* at 199.

The cases applying this doctrine to find personal jurisdiction in order to enforce a judgment are few. This does not foreclose the relief Petitioners request, but it does urge a cautious approach to the doctrine's application. Petitioners rely on *CME Media Enters. B.V. v. Zelezny*, No. 01-1733, 2001 WL 1035138 (S.D.N.Y. Sept. 10, 2001) as an example of a matter in which a court found *quasi in rem* jurisdiction over property. There, the petitioner secured a $23.35 million arbitration award from a panel in Amsterdam against the respondent and sought a federal court to exercise jurisdiction over $0.05 held in the respondent's Citibank account in the district. *Id.* at *1–2. The court found that it could exercise *quasi in rem* jurisdiction over the $0.05 held in the respondent's bank account. *Id.* at *3–4. The court held that this exercise of jurisdiction was permissible even absent a showing of minimum contacts because an "arbitration panel with personal jurisdiction over [the respondent] has already adjudicated [the respondent's] claims ...." *Id.* at *3 (citing *Shaffer*, 433 U.S. at 199 n.17).

As in *CME Media*, in the few available cases in which courts have exercised *quasi in rem* jurisdiction, the respondent's interest in the property that serves as the jurisdictional hook is clear. *See, e.g.*, *Equipav S.A. Pavimentacao, Engenharia e Comercio Ltda. v. Bertin*, No. 22-4594, 2024 WL 196670, at *7 (S.D.N.Y. Jan. 18, 2024) (finding *quasi in rem* jurisdiction over an in-district bank account belonging to respondent); *La Dolce Vita Fine Dining Co. v. Zhang*, No. 21-3071, 2023 WL 1927827, at *3–4 (S.D.N.Y. Feb. 10, 2023), *vacated by consent*, No. 23-480, 2023 WL 5686197 (2d Cir. Aug. 30, 2023) (finding *quasi in rem* jurisdiction over in-district apartment based on "email exchanges and other documents that unambiguously demonstrate [respondent's] interest in the apartment"); *Crescendo Mar. Co. v. Bank of Commc'ns Co.*, No. 15-4481, 2016 WL 750351, at *5 (S.D.N.Y. Feb. 22, 2016) (finding *quasi in rem* jurisdiction over an respondent bank's assets of $4.8 billion maintained in Manhattan). In contrast, where the debtor's interest in property is less clear, courts decline to exercise *quasi in rem* jurisdiction over the property. *See, e.g.*, *Glencore Grain Rotterdam B. V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1128 (9th Cir. 2002) (declining to exercise *quasi in rem* jurisdiction where "the best [petitioner] can say is that it believes in good faith that [respondent] has or will have assets located in the forum"); *Lerman v. Lerman*, No. A-1953-07T3, 2009 WL 2365973, at *4–5 (N.J. Super. Ct. App. Div. Aug. 4, 2009) (declining to exercise *quasi in rem* jurisdiction over funds in bank account that did not belong to defendant but rather to a trust of which he was the beneficiary); *Cargnani v. Pewag Austria G.m.b.H.*, No. 05-133, 2007 WL 415992, at *11 (E.D. Cal. Feb. 5, 2007) (finding no *quasi in rem* jurisdiction because the only identified assets "belong[ed] to [the respondent's] subsidiary, not to respondents, and petitioner does not cite any other specific asset which could be attached").

***12** Petitioners' *quasi in rem* claim, based on food shipments from India Respondent makes to Himalaya International in New Jersey, does not support finding *quasi in rem* jurisdiction. Each month, Respondent ships many tons of frozen food to the United States to Global Reliance, which Respondent does not contest is merely an alternate name of Himalaya International. (Pilon Decl., ECF No. 34-21 ¶¶ 8–11.) Petitioners write that "[u]nless Himalaya International is buying container loads of frozen foods in cash, it owes debts to [Respondent] for the shipments that it bought on credit. [Respondent] has a property interest in that debt." (ECF No. 34 at 19.) Respondent acknowledges that Himalaya International maintains a bank account at PNC bank in New Jersey, but asserts that Respondent has no authority or control over the account and has no rights over any potential funds held in the account in the event Himalaya International failed to pay Respondent. (Kakkar Decl. ¶ 5.)

Here, the Court finds that Petitioners' surmise that Himalaya International's New Jersey bank account holds assets to which Respondent may have a claim is insufficient to establish property interest sufficient to support *quasi in rem* jurisdiction over the account. As explained above, the handful of cases in which courts have exercised *quasi in rem* jurisdiction have

involved in-jurisdiction assets to which the respondent or defendant had the only claim and to which the claim was ironclad. Petitioners cite no cases in which courts exercised *quasi in rem* jurisdiction where the rights to the assets at issue was uncertain or speculative. [9] The possibility that Respondent *may* have interest in a third party's assets held in an in-jurisdiction bank is an insufficient basis to exert *quasi in rem* jurisdiction over the third party's bank account. *See CME Media Enterprises B.V.*, 2001 WL 1035138, at *5 ("*[Q]uasi in rem* jurisdiction cannot be based on speculation about the possible existence of other property."). To permit a Court to exercise jurisdiction over the assets of defendant in any forum in which the defendant's contractual counterparty maintains a bank account from which the defendant may be owed money would stretch the *quasi in rem* doctrine beyond the relatively narrow limits courts have so far recognized.

D. JURISDICTIONAL DISCOVERY

Having determined that Petitioners have failed to establish personal jurisdiction over Respondent, the Court turns to Petitioners' request for jurisdictional discovery. (ECF No. 34 at 20–21.) Respondent opposes the request, arguing that any discovery could not change the Court's analysis of Petitioners' alter ego or *quasi in rem* theories. (ECF No. 37 at 12 n.6.)

When jurisdiction is lacking, the Court may permit jurisdictional discovery "[i]f a plaintiff presents factual allegations that suggest 'with reasonable particularity' the possible existence of the requisite contacts between the party and the forum state ...." *Toys 'R' Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 456 (3d Cir. 2003) (quoting *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217, 1223 (3d Cir. 1992)). A party seeking to establish personal jurisdiction will ordinarily be permitted to conduct jurisdictional discovery unless the basis for jurisdiction is "clearly frivolous." *See Shuker*, 885 F.3d at 781 (citation omitted). However, a plaintiff's allegations alone may not be the basis to "force defendants to start handing over evidence." *See Aldossari ex rel. Aldossari v. Ripp*, 49 F. 4th 236, 259 (3d Cir. 2022) (citation omitted); *see also LaSala v. Marfin Popular Bank Pub. Co.*, 410 F. App'x 474, 478 (3d Cir. 2011) (explaining that the Third Circuit has "cautioned against allowing jurisdictional discovery to serve as 'a fishing expedition based only upon bare allegations, under the guise of jurisdictional discovery' " (quoting *Eurofins Pharma U.S. Holdings v. BioAlliance Pharma SA*, 623 F.3d 147, 157 (3d Cir. 2010))).

***13** Here, the Court finds no basis to permit discovery into Petitioners' personal jurisdiction theories. Regarding Petitioners' alter ego theory, the bases for Petitioners' arguments are largely uncontested. Respondent and Himalaya International share an employee and possibly owners, Himalaya International functions as Respondent's exclusive distributor in the United States, and the companies operate under the same brand. Absent any evidence suggesting with reasonable particularity Respondent's "complete domination" of Himalaya International's finances, policies, and business practices, *N. Am. Steel Connection, Inc.*, 515 F. App'x at 180, there is no basis to permit discovery into Respondent's operations. Regarding *quasi in rem* jurisdiction, Petitioners' speculation that because Respondent and Himalaya International do business and the latter has a bank account in New Jersey, Respondent has a claim to the account's assets as could support *quasi in rem* jurisdiction is too tenuous to permit further discovery. As explained above, even if Petitioners' speculation was borne out, Petitioners offer no authority for the Court to exercise *quasi in rem* jurisdiction over assets in the bank account of Respondent's contractual counterparty.

* * *

Therefore, Petitioners have not met their burden to establish the Court's personal jurisdiction over Respondent such that it may enforce the A ward against Respondent in this District. Because any evidence Petitioners would seek in discovery would not alter the Court's conclusions, permitting Petitioners to proceed to jurisdictional discovery is inappropriate. [10]

IV. CONCLUSION

For the foregoing reasons, Petitioners' Motion to Confirm (ECF No. 2) is **DENIED**, Respondent's Cross-Motion to Stay or Dismiss (ECF No. 23) is **DENIED** in part and **GRANTED** in part, and the Petition to Enforce (ECF No. 1) is **DISMISSED**. An appropriate Order accompanies this Opinion.

All Citations

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Footnotes

1 The matter was transferred to the Undersigned on May 15, 2023. (ECF No. 15.)

2 Except for the jurisdictional facts germane to the parties' dispute here—which the Court draws from the parties submissions in this matter—the Court relies on the discussion of background facts and procedural history contained in the March 24, 2020 arbitration award (the "Award"). (*See* Ex. 3 to Decl. of Scott R. Simplot ("Simplot Decl."), ECF No. 2-4.)

3 SIAC published a modified and corrected award shortly after the original Award on May 8, 2020 (the "Corrected Award"). (Petition ¶¶ 18–19, ECF No. 1; Ex. 4 to Simplot Decl., ECF No. 2-5.) The Corrected Award's only change was to alter the pre-award interest calculation. (*See id.* ¶ 10.)

4 The parties dispute whether Kakkar remains Himalaya International's sole shareholder. Petitioners submitted documents showing that Himalaya International intended to acquire an Indian company, Doon Valley Foods Pvt. Ltd., in exchange for Malik acquiring a 50% stake in Himalaya International, and amended their state registration to add Malik as a director. (Ex. 5 to Decker Decl. at *18–20.) Respondent does not challenge the evidence that Malik was a director of Himalaya International but argues in its brief that the "transaction contemplated by the registration statement was never consummated" and that Kakkar remains Himalaya International's sole shareholder. (ECF No. 37 at 11 n.4.)

5 By explicitly discussing the standard for an alter ego finding under New Jersey law, the parties hint at agreement that New Jersey law provides the relevant standard. (ECF No. 34 at 14; ECF No. 37 at 10.) However, the parties also cite cases that do not apply New Jersey law. (ECF No. 34 at 14; ECF No. 37 at 11 n.5.) Out of an abundance of caution, the Court considers authorities drawing on both New Jersey and federal common law doctrines.

6 Although not raised by the parties, the Court notes that some flexibility in consideration of these traditional factors is sensible where the entities at issue are closely-held corporations. *See Trustees of Nat. Elevator Indus. Pension v. Lutyk*, 140 F. Supp. 2d 447, 460 (E.D. Pa. 2001) ("Although courts often do not hold closely-held corporations to strict standards with respect to corporate formalities, disregard of corporate formalities remains a factor of some significance even where the corporation is closely held."), *aff'd sub nom. Trustees of Nat. Elevator Indus. Pension, Health Benefit & Educ. Funds v. Lutyk*, 332 F.3d 188 (3d Cir. 2003). However, even allowing for this flexibility here, the Court finds that Petitioners have not shown corporate dominance suggesting extinguishment of the alter ego's separate identity *See N. Am. Steel Connection, Inc.*, 515 F. App'x at 179.

7 Respondent also argues that exercising general personal jurisdiction over it based on the facts alleged would run afoul of *Daimler AG v. Bauman*, 571 U.S. 117 (2014). (ECF No. 37 at 12.) The Supreme Court in *Daimler* rejected the Ninth Circuit's agency theory that "appear[ed] to subject foreign corporations to general jurisdiction whenever they have an in-state subsidiary or affiliate, an outcome that would sweep beyond even the 'sprawling view of general jurisdiction' [the Supreme Court] rejected in *Goodyear*." *Daimler AG*, 571 U.S. at 136. Indeed, other Courts in this district have recognized a tension between *Daimler* and the Third Circuit's alter ego personal jurisdiction theory. *See Rickman v. BMW of N. Am. LLC*, 538 F. Supp. 3d 429, 436–37 (D.N.J. 2021) (noting that the Third Circuit's language in *Shuker*, 885 F.3d at 781, was "hard to square with *Daimler*, which disfavored an agency approach to general jurisdiction"); *see also Mikhail v. Amarin Corp. plc*, No. 23-1856, 2024 WL 863427, at *5 n.10 (D.N.J. Feb. 29, 2024) (recognizing that "an agency theory, as opposed to the alter-ego theory" may not have survived *Daimler)*. However, because Petitioners argue an alter ego theory rather than an agency theory to assert personal jurisdiction, the Court will not reach Respondent's agency arguments.

8 Cases from this District have not uniformly answered whether New Jersey's registration and service statutes create consent to jurisdiction here. *See* *Basse v. Bank of Am., N.A.*, No. 22-3674, 2023 WL 2696627, at *7 (D.N.J. Mar. 29, 2023) (discussing the "two varying interpretations" of New Jersey's registration statutes). However, for the reason articulated above, the Court does not find their reasoning persuasive. *Contra* *Senju Pharm. Co., Ltd. v. Metrics, Inc.*, 96 F. Supp. 3d 428, 436 (D.N.J. 2015).

9 Petitioners' reliance on *HBC Hamburg Bulk Carriers GMBH & Co. KG v. Proteinas y Oleicos S.a. de C.V.*, No. 04-6884, 2005 WL 1036127 (S.D.N.Y. May 4, 2005) is unavailing. (ECF No. 34 at 18–19.) Although the case did involve property interest in a debt owed, the decision arose in the unique context of maritime law and whether property could be attached pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims. *HBC Hamburg Bulk Carriers*, 2005 WL 1036127, at *3.

10 Because the Court finds it lacks personal jurisdiction, it need not reach Respondent's alternative challenge to enforcement of the award based on argument that the MA is invalid under Indian Law. (ECF No. 23-1 at 19.) Likewise, the portion of Respondent's Motion seeking to stay a decision on the Petition, (*id.* at 22), will be denied as moot.

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