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CASE #: 25-2-15986-8 SEA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MISTI LEON, as personal representative of the ESTATE OF JULIANA LEON, a deceased individual,

Plaintiff,

v.

EXXON MOBIL CORPORATION, EXXONMOBIL OIL CORPORATION, BP P.L.C., BP AMERICA INC., OLYMPIC PIPE LINE COMPANY LLC; CHEVRON CORPORATION, CHEVRON USA, INC., SHELL PLC, SHELL USA, INC., CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66, PHILLIPS 66 COMPANY, and TRANSMONTAIGNE PARTNERS LLC,

Defendants.

Case No. 25-2-15986-8-SEA

REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM

Honorable Judge Matt Lapin

Noted for May 6, 2026

ORAL ARGUMENT: JUNE 4, 2026

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I. INTRODUCTION

Plaintiff insists that her suit is *only* about "deceptive conduct" and has nothing to do with "emissions." Opp. 1. This assertion—which has been rejected by numerous federal and state courts across the United States in similar climate-change cases—is not only wrong, but contradicts Plaintiff's own First Amended Complaint (the "Complaint" or "FAC") and her Opposition. Indeed, Plaintiff's Complaint seeks relief for a particular injury—the death of Juliana Leon—allegedly caused by the "increase[]" in "anthropogenic CO_2 emissions," FAC ¶ 4.20, and the "atmospheric changes," "accelerated alteration of our climate," and "extreme weather events," that allegedly resulted from those emissions, *id.* ¶¶ 1.2, 1.13. Plaintiff alleges that "elevated greenhouse gas emissions and, in turn, the Heat Dome" are responsible for the "extreme and unprecedented temperatures that killed Juliana Leon." *Id.* ¶ 5.22. And elsewhere in her Opposition, Plaintiff confirms that, under her theory of the case, Defendants' alleged conduct increased "the atmospheric build-up of greenhouse gases and resulting climate impacts, including the extreme conditions experienced during the 2021 Heat Dome," which "tragically cut short Ms. Leon's life." Opp. 5. Plaintiff *admits* that "emissions" are the alleged "agent of injury" and "relate to the element of causation," *id.* 2, 7, which is a necessary part of each of Plaintiff's claims. Plaintiff thus concedes that every one of her claims is premised on the cumulative impact of increased greenhouse-gas emissions that were released in every state in the country and every nation in the world.

Numerous courts have rejected what Plaintiff attempts here. In a recent decision, the Maryland Supreme Court held that climate claims similar to Plaintiff's are precluded and preempted by federal law, notwithstanding the plaintiffs' "myopic view" of their claims as supposedly involving only alleged deception. *Mayor & City Council of Baltimore v. B.P. P.L.C.*, --- A.3d ----, 2026 WL 809501, at *21 (Md. Mar. 24, 2026) ("*Baltimore II*"). As that court explained, "[n]o amount of creative pleading can masquerade the fact that the [plaintiffs] are attempting to utilize state law to regulate global conduct that is purportedly causing global harm. . . . The [plaintiffs] cannot, in one breath, disavow any intent to address interstate and global

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emissions, and in another, identify such emissions as the single source of their harms." *Id.* at *20–21. Or, as the U.S. Court of Appeals for the Second Circuit put it, "[i]t is precisely *because* fossil fuels emit greenhouse gases—which collectively 'exacerbate global warming'—that the [plaintiff] is seeking damages." *City of New York v. Chevron Corp.*, 993 F.3d 81, 91 (2d Cir. 2021). Other courts have also squarely rejected the exact same gambit Plaintiff attempts here. *See, e.g.*, *Platkin v. Exxon Mobil Corp.*, 2025 WL 604846, at *4 (N.J. Super. Ct. Feb. 5, 2025) ("*New Jersey*") ("[E]ven under the most indulgent reading," Plaintiff's Complaint "is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries."); *Mayor & City Council of Baltimore v. BP P.L.C.*, 2024 WL 3678699, at *5 (Md. Cir. Ct. July 10, 2024) ("*Baltimore I*") (Plaintiff's strategy is "simply a way to get in the back door what [she] cannot get in the front door").

Plaintiff's claims seek relief for an alleged injury that occurred as a result of the cumulative impact of emissions released in every State in this country and every Nation in the world. This means—under clear U.S. Supreme Court precedent and precedent from a large number of courts across the country in materially identical climate lawsuits—that Plaintiff's claims are precluded and preempted by federal law. That is the end of the story, and the Court need not go further. For the sake of preserving a complete record, however, Defendants set forth below the litany of reasons why Plaintiff's claims should be dismissed with prejudice on the merits. Indeed, there are at least five independent reasons that merit dismissal of Plaintiff's Complaint.

First, the federal structure of the U.S. Constitution precludes and preempts the application of state law to Plaintiff's claims. State law cannot operate in areas of "uniquely federal interests." *Tex. Indus., Inc. v. Radcliffe Materials, Inc.*, 451 U.S. 630, 640–42 (1981). And the Supreme Court has repeatedly held that interstate pollution is such an area. *E.g.*, *Am. Elec. Power Co. v. Connecticut* ("*AEP*"), 564 U.S. 410, 421 (2011). In affirming dismissal of nearly identical claims on the merits, the Second Circuit held that a "suit seeking to recover damages for the harms caused by global greenhouse gas emissions may [not] proceed under [state] law," because federal law must apply "to disputes involving interstate air or water pollution." *City of New York*, 993 F.3d at

91. As the Maryland Supreme Court recently explained, "for more than a century, the Supreme Court and lower federal courts have held that interstate pollution is an inherently federal area necessarily governed by federal law," and because Plaintiff seeks to "impose damages on the Defendants for injuries allegedly caused by the effect of interstate and international greenhouse gas emissions on global climate change," her claims fall "squarely within the inherently federal areas of interstate pollution and foreign affairs." *Baltimore II*, 2026 WL 809501, at *18, *21.

Plaintiff insists that the federal constitutional structure cannot preempt her claims, and that Defendants are actually making an argument under "federal *common* law." Opp. 23 (emphasis added). But a long line of Supreme Court cases confirms that the "structure" of the federal Constitution has preclusive effect. *Franchise Tax Bd. of Cal. v. Hyatt*, 587 U.S. 230, 246–48 (2019) (collecting cases). The critical question is not whether a displaced body of federal common law preempts Plaintiff's claims, but whether the Constitution's allocation of authority between federal and state governments has *ever* permitted state law to apply to claims seeking damages for *global* emissions. The "answer is simple: no." *City of New York*, 993 F.3d at 91; *see also Baltimore II*, 2026 WL 809501, at *23.

Numerous courts, relying on *City of New York*, have dismissed claims that are materially identical to those Plaintiff asserts here, forming a "growing chorus of state and federal courts across the United States." *City of Charleston v. Brabham Oil Co., Inc.*, 2025 WL 2269770, at *2 (S.C. Ct. Com. Pl. Aug. 6, 2025); *see Baltimore II*, 2026 WL 809501, at *1; *State ex rel. Jennings v. BP Am., Inc.*, 2024 WL 98888, at *9 (Del. Super. Ct. Jan. 9, 2024) ("*Delaware*"); *Baltimore I*, 2024 WL 3678699, at *5–6, *aff'd*, *Baltimore II*, 2026 WL 809501; *City of Annapolis v. BP PLC*, 2025 WL 588595, at *6 (Md. Cir. Ct. Jan. 23, 2025), *aff'd*, *Baltimore II*, 2026 WL 809501; *New Jersey*, 2025 WL 604846, at *5; *Bucks Cnty. v. BP P.L.C.*, 2025 WL 1484203, at *6–8 (Pa. Ct. Com. Pl. May 16, 2025). This Court should join that chorus.

Second, the Clean Air Act ("CAA") preempts Plaintiff's claims. In *International Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987), the Supreme Court held that the analogous Clean Water Act ("CWA") prohibits States from regulating out-of-state sources of water pollution. Numerous

courts, including the Maryland Supreme Court, have applied *Ouellette* to hold that "the Clean Air Act does not authorize" state-law climate claims like Plaintiff's and to "conclude that such claims concerning domestic emissions are barred by federal law." *Baltimore II*, 2026 WL 809501, at *25. Plaintiff contends (again) that her claims fall outside the CAA because they turn on purported misrepresentations and deception, not on regulating interstate emissions. Opp. 14. But Plaintiff undeniably seeks to impose liability on Defendants under Washington law for the effects of emissions generated outside Washington. Such claims fall squarely within the holding of *Ouellette*, which held that common-law damages claims based on out-of-state pollution were preempted. 479 U.S. at 494. And it is well settled that compensatory damages—sought here for the purported climate impacts of interstate and global emissions—are a form of regulation. *See Kurns v. R.R. Friction Prods. Corp.*, 565 U.S. 625, 637 (2012). Plaintiff's claims arising from interstate "pollution" are therefore preempted by the CAA's comprehensive federal regime.

Third, Plaintiff's lawsuit is barred by the separation-of-powers doctrine because there are no judicially manageable standards for regulating greenhouse gas emissions. Plaintiff *concedes* that the Court would need to "balanc[e] . . . the social utility" of Defendants' alleged conduct. Opp. 29. But Plaintiff does not offer any judicially manageable standards for doing so. Plaintiff seeks compensation for alleged harms from worldwide emissions resulting from fossil-fuel use by countless actors, including Plaintiff herself, that was lawful and economically useful. The "issues" raised by Plaintiff's Complaint "are political questions that have been considered and addressed by the executive and legislative branches for decades." *Charleston*, 2025 WL 2269770, at *12. "Such tasks are beyond the judicial function." *Id.* As a North Carolina court found recently in dismissing similar climate claims, climate change "is the result of the collective impact of acts by literally billions of unrelated emitters dispersed throughout the globe," and would "require a factfinder to make decisions based on *pure conjecture* divorced from any clearly articulable or objective standards, necessarily requiring *rank speculation* as to the internal motivations of hundreds of millions of individuals in the United States and the cumulative effect of their actions on a global phenomenon." *Town of Carrboro v. Duke Energy Corp.*, 2026 WL 411466, at *9

(N.C. Super. Ct. Feb. 12, 2026) (emphases added).

Fourth, Plaintiff's claims are time-barred. Plaintiff's own allegations in her Complaint, as well as material in the public record that the Court may consider, make clear that Plaintiff was on notice of the facts essential to her claims prior to the limitations period. Plaintiff's cursory allegations as to diligence, and her various other arguments, are not sufficient to overcome the basic principle that the discovery rule "is not invoked when the plaintiff had ready access to information that a wrong occurred," *Batten v. Providence St. Joseph's Health*, 2025 WL 1819236, at *3 (E.D. Wash. June 30, 2025) (cleaned up), as Plaintiff assuredly did here. Multiple other courts have found similar climate claims to be time-barred on the same grounds. *See Delaware*, 2024 WL 98888, at *19; *Baltimore I*, 2024 WL 3678699, at *15; *Charleston*, 2025 WL 2269770, at *13–14; *Municipality of Bayamón v. Exxon Mobil Corp.*, 2025 WL 2630671, at *23–34 (D.P.R. Sept. 11, 2025); *Municipality of San Juan v. Exxon Mobil Corp.*, 2025 WL 2848565, at *3–5 (D.P.R. Sept. 30, 2025).

Fifth, even if Washington law could apply to Plaintiff's claims, each of those claims fails on its own terms—as the *Baltimore II* and *Charleston* courts held in rejecting similar state-law claims. Plaintiff's public nuisance claim is barred by the Washington Product Liability Act ("WPLA") and does not allege the required interference with Plaintiff's use and enjoyment of real property, while Plaintiff's failure-to-warn claim rests upon a non-existent duty to warn the world of widely publicized risks relating to climate change. And since her public nuisance and WPLA claims fail, her derivative wrongful death claim must also because of the lack of precipitating wrongful conduct.

II. ARGUMENT

A. The Federal Constitution's Structure Precludes and Preempts Plaintiff's Purported Washington Law Claims.

The U.S. Supreme Court and federal and state courts across the country in similar climate-change-related actions have repeatedly held that the structure of the federal Constitution precludes and preempts state-law claims, like Plaintiff's, from seeking redress for injuries allegedly caused by the effects of interstate and international emissions. Rather than confront this argument,

Plaintiff attempts to avoid it with a series of tangential objections. All miss the mark. And all have been rejected—repeatedly—by other courts dismissing virtually identical suits. This Court should do so too.

Plaintiff's claims seek remedies for harms allegedly caused by interstate and international emissions and are therefore preempted by the Constitution's federal structure. Under our constitutional system, state law cannot be used to resolve claims based on interstate and international emissions. *See* Mot. 13–21. This constitutional rule derives from the federal structure of our government. As the Supreme Court has explained, "[t]he States would have had the raw power to apply their own law to such matters before they entered the Union, but the Constitution *implicitly forbids* that exercise of power because the 'interstate . . . nature of the controversy makes it inappropriate for state law to control.'" *Hyatt*, 587 U.S. at 246 (quoting *Tex. Indus.*, 451 U.S. at 641) (emphasis added). Numerous state and federal courts have applied these fundamental principles to dismiss climate change cases like this one. *See City of New York*, 993 F.3d at 91–92; *Delaware*, 2024 WL 98888, at *9; *Baltimore I*, 2024 WL 3678699, at *6; *Annapolis*, 2025 WL 588595, at *6; *New Jersey*, 2025 WL 604846, at *5; *Bucks County*, 2025 WL 1484203, at *8; *Charleston*, 2025 WL 2269770, at *2; *Baltimore II*, 2026 WL 809501, at *1. This Court should join them in concluding that "our federal structure does not allow any State's law to address these types of climate-change claims." *Charleston*, 2025 WL 2269770, at *2 (cleaned up).

1. Like the plaintiffs in every other similar suit, Plaintiff here insists that her claims are not precluded and preempted because she purportedly challenges only Defendants' "deceptive promotion and failure to warn," not interstate and international greenhouse gas emissions. Opp. 1–3, 7–8; *see Charleston*, 2025 WL 2269770, at *7 ("Plaintiff's principal argument—just as plaintiffs in the other cases have argued—is that its claims focus solely on supposed deception and misrepresentation, not on emissions."). Courts have consistently rejected that framing, and it fares no better here. Every theory of liability presented by Plaintiff depends on increased global greenhouse gas emissions and climate change. *See, e.g.*, FAC ¶¶ 5.22 ("Defendants' intentional failures to warn, negligent failures to warn, misrepresentations, and/or intentional concealments

are a proximate cause of heightened fossil fuel consumption, which has directly caused elevated greenhouse gas emissions and, in turn, the Heat Dome and the extreme and unprecedented temperatures that killed Juliana Leon."), 5.29 ("Deception-induced increased demand for fossil fuels and decreased demand for clean energy directly led to increased greenhouse gas emissions, rendering deception a cause of Julie's death and the resulting injuries to the Estate."). Indeed, Plaintiff alleges that Defendants' conduct "created and exacerbated hazardous climate conditions," which allegedly caused Plaintiff's injuries. Opp. 40; *see also* Mot. 9–11; FAC ¶¶ 1.3, 1.8, 1.11–1.13, 4.16, 4.24–4.28, 4.110–4.113, 5.22, 5.28. It is unmistakably clear that Plaintiff's theory of injury is that Defendants' conduct caused an increase in *interstate and international* greenhouse gas *emissions*, thereby contributing to *global* climate change and attendant impacts everywhere on Earth, including in Washington state. *See, e.g.*, *id.* ¶¶ 1.2, 4.16–4.28 & fig. 2, 5.28.

As the Second Circuit explained, the plaintiffs in these climate change cases identify no harms "other than those caused by emissions." *City of New York*, 993 F.3d at 97 n.8. Plaintiff concedes that each of her claims depends—as an essential element—on the allegation that Defendants' conduct increased *interstate and international* emissions of greenhouse gases, which contributed to *global* climate change. Opp. 7–8; *see also id.* 32 (listing "causation and damages" as "essential elements of [a] cause of action" (quotation marks omitted)). Plaintiff does not allege that the so-called "deception campaign" injured, or could have injured, Plaintiff in any other way. *See* FAC ¶¶ 1.2, 1.8 (alleging that Plaintiff's mother "died from hyperthermia" during the Heat Dome caused by "fossil fuel-driven alteration[s] of the climate"). Plaintiff suggests that she "seek[s] to impose liability only to the extent that Ms. Leon's death was caused by Defendants' *deceptive conduct and failure to warn*." Opp. 6. But Plaintiff's attempts to characterize her claims as limited to an allegedly deceptive marketing campaign cannot alter the reality that she seeks damages for harms caused by emissions from across the country and around the globe.

As explained above, this is not the first case in which a plaintiff has sought to avoid federal preclusion and preemption by characterizing its claims as run-of-the mill consumer-deception claims. And in response, "[m]ost state courts that have addressed the question have come to the

same conclusion, holding that these cases seek damages for interstate and international emissions." *Charleston*, 2025 WL 2269770, at *5; *see also Baltimore I*, 2024 WL 3678699, at *6 (the "characterization of the complaint does not matter . . . because [Plaintiff] admits that its alleged injuries all stem from interstate and international emissions"). Plaintiff's strategy of purporting to rely solely on a supposed campaign of deception is "artful but not sustainable" because it is "simply a way to get in the back door what [she] cannot get in the front door." *Baltimore I*, 2024 WL 3678699, at *5.

Most recently, the Maryland Supreme Court affirmed two trial-court dismissals, echoing the Second Circuit in noting that, "for more than a century, the Supreme Court and lower federal courts have held that interstate pollution is an inherently federal area necessarily governed by federal law." *Baltimore II*, 2026 WL 809501, at *18. Although the Maryland plaintiffs—as here—adopted a "myopic view of their claims" in an "attempt to ignore or minimize the effect that a significant damages award would have on both domestic and international attempts to regulate pollution," the Court observed that they could not avoid the "inescapable conclusion" that they were "seeking to apply Maryland law to regulate conduct that occurs outside their jurisdictional borders." *Id.* at *20–21. The court concluded that, because the Maryland plaintiffs sought to "impose damages on the Defendants for injuries allegedly caused by the effect of interstate and international greenhouse gas emissions on global climate change," their state-law claims fell "squarely within the inherently federal areas of interstate pollution and foreign affairs" and were therefore barred. *Id.* at *21.

The New Jersey Superior Court similarly concluded that, "[d]espite the artful pleading by the Plaintiffs in this case, this court finds that Plaintiffs' complaint, *even under the most indulgent reading*, is entirely about addressing the injuries of global climate change and seeking damages for such alleged injuries." *New Jersey*, 2025 WL 604846, at *4 (emphasis added). And the Court of Common Pleas for Bucks County, Pennsylvania, held that "[a] simple reading of the Complaint proves that Bucks County is truly seeking redress for harm caused by climate change, a global phenomenon caused by the emission of greenhouse gases in every nation in the world." *Bucks*

Cnty., 2025 WL 1484203, at *7. Noting that the plaintiff did "everything it can to avoid the issue of emissions," the *Bucks County* court nevertheless concluded that "it cannot avoid the fact that if there were no emissions there would be no damages." *Id.* Likewise, although the City of Charleston insisted that "its claims focus[ed] solely on supposed deception and misrepresentation," it did not "and could not dispute that it s[ought] damages for the alleged consequences of global greenhouse gas emissions and global climate change." *Charleston*, 2025 WL 2269770, at *7.

"That fact precludes and preempts Plaintiff's state-law claims." *Charleston*, 2025 WL 2269770, at *7. Put simply, state law cannot be used in cases "*involving* interstate air or water pollution," *City of New York*, 993 F.3d at 91 (emphasis added), or that "*deal with* air and water in their ambient or interstate aspects," *AEP*, 564 U.S. at 421 (emphasis added) (cleaned up). Plaintiff's claims should be dismissed on this basis alone.

2. Plaintiff attempts to avoid this straightforward conclusion by contending that her lawsuit will not directly regulate emissions any "more than a claim for property damage against a negligent driver seeks to set motor vehicle safety standards." Opp. 9–10. But vehicle safety standards—apparently the hypothetical analogue to global greenhouse-gas emissions in this case—are not the cause of that plaintiff's hypothetical injury, which is attributable entirely to the driver's negligence. Thus, imposing liability on the *driver* for his or her own negligence would not require car manufacturers to change their out-of-state design and manufacturing. The legal theory offered by Plaintiff here is plainly distinct. Plaintiff does not and could not allege that her injuries stem exclusively from deception and resulting emissions in Washington. Instead, the harm alleged necessarily involves interstate and international emissions. *See, e.g.*, FAC ¶¶ 1.3, 1.8, 1.11–1.13, 4.16, 4.110–4.113, 4.24–4.28, 5.22, 5.28. Allowing state law to impose liability for such emissions clashes with the Constitution because it would permit one State to "impose its own legislation on . . . the others," violating the "cardinal" principle that "[e]ach state stands on the same level with all the rest." *Kansas v. Colorado*, 206 U.S. 46, 97 (1907). And it would allow the potentially conflicting liability regimes in 50 states—and countless localities—to govern the same out-of-state emissions, "lead[ing] to 'chaotic confrontation between sovereign states'" and

intruding on matters of interstate and foreign relations that the Constitution commits to uniform federal governance. *Baltimore II*, 2026 WL 809501, at *22 (quotation marks omitted). Thus, the Supreme Court has held repeatedly that lawsuits involving "air and water in their ambient or interstate aspects" are subject to national—not state—legislative power because "the basic scheme of the Constitution so demands." *AEP*, 564 U.S. at 421 (cleaned up).

Again, *City of New York* considered and rejected Plaintiff's arguments. There, the City argued that because the City sought only "damages," and "not abatement or the imposition of pollution standards," its claims did not "threaten to regulate emissions at all." *City of New York*, 993 F.3d at 92. The Second Circuit disagreed, concluding that "'regulation can be effectively exerted through an award of damages, and the obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and policy.'" *Id.* (quoting *Kurns*, 565 U.S. at 637 (quotation marks omitted)); *see also BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 n.17 (1996) ("State power may be exercised as much by a jury's application of a state rule of law in a civil lawsuit as by a statute."). The same is true here.

Unable to counter *City of New York*'s clear holding, Plaintiff tries to distinguish the case as involving distinct theories of liability compared to those Plaintiff alleges here. Opp. 11. But as numerous courts have recognized, any purported distinction is illusory. New York City alleged that the defendants "downplayed the risks" of their products contributing to climate change and described the case as involving, *inter alia*, the "promotion" of fossil fuels. *City of New York*, 993 F.3d at 86–87, 91. Moreover, New York City argued that the defendants were liable for "nuisance and trespass" damages because, "for decades, Defendants promoted their fossil-fuel products by concealing and downplaying the harms of climate change [and] profited from the misconceptions they promoted." Appellant Br., *City of New York v. BP P.L.C.*, 2018 WL 5905772, at *27 (2d Cir. Nov. 8, 2018); *compare id. with* Opp. 4 (alleging Defendants "promote and sell vast quantities of fossil fuels while ignoring and downplaying the severity of climate change"). New York City likewise advanced "extensive allegations regarding Defendants' past attempts to deny or downplay the effects of fossil fuel use on climate change." *City of New York v. BP P.L.C.*, 325 F. Supp. 3d

466, 469 (S.D.N.Y. 2018); *compare id. with* Opp. 4 (alleging Defendants "concealed," "misrepresented," and "downplay[ed]" the risk of climate change harms). Hence, there is no material difference between the theory of liability underlying New York City's claims and Plaintiff's claims here.

3. Plaintiff also suggests that the U.S. Constitution cannot preclude state law absent a specific constitutional provision on point. *See* Opp. 21–23. But the Supreme Court has "long consulted original and historical understandings of the *Constitution's structure* and the principles of 'sovereignty and comity' it embraces" "[t]o resolve disputes about the reach of one State's power." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 376 (2023) (citation omitted) (emphasis added).

Plaintiff's argument thus ignores a long line of Supreme Court cases explaining that the "Constitution . . . reflects implicit alterations to the States' relationships with each other, confirming that they are no longer fully independent nations" and thus "may not supply rules of decision governing 'disputes implicating their conflicting rights.'" *Hyatt*, 587 U.S. at 246 (cleaned up). Indeed, *Hyatt* expressly rejected the contention that the structure of the Constitution cannot preempt state law, explaining that "[t]here are many . . . constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice." *Id.* at 247–48 (collecting examples). The Court reaffirmed that the Constitution's federal structure "implicitly" forbids States from applying their own law to certain matters when "the interstate nature of the controversy makes it inappropriate for state law to control." *Id.* at 246 (cleaned up). Accordingly, even where "[t]here is no express provision in the constitution" preventing state law from applying, the Constitution may "by implication" preclude the application of state law. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 390–91 (1819).

4. Plaintiff next contends that Defendants' constitutional structure argument amounts to no more than an argument for federal common law preemption, which, Plaintiff argues, is unavailable because such common law never concerned misrepresentations and, in any event, has been displaced by the CAA. *See* Opp. 23–25. But this response reflects a misunderstanding of

Defendants' argument. Defendants contend that "[i]t is *the U.S. Constitution and its federal structure*"—not federal common law—that precludes and preempts state-law claims seeking redress for injuries allegedly caused by the effects of interstate and international pollution—and whether Congress has displaced federal common law does "'nothing to undermine that result.'" *Charleston*, 2025 WL 2269770, at *8 (quoting *Illinois v. City of Milwaukee*, 731 F.2d 403, 410 (7th Cir. 1984) ("*Milwaukee III*")).

The Supreme Court has made clear that state law cannot govern cases "in which a federal rule of decision is necessary to protect uniquely federal interests." *Tex. Indus.*, 451 U.S. at 640 (cleaned up). Certain "matters [are] exclusively federal, because [they are] made so by constitutional or valid congressional command, or . . . so vitally affect[] interests, powers and relations of the Federal Government as to require uniform national disposition rather than diversified state rulings." *United States v. Standard Oil Co.*, 332 U.S. 301, 307 (1947). "Whether a remedy is available under federal common law—and, if so, whether such a remedy has been displaced by federal statute (here, the CAA)—are completely separate issues from the question presented here: whether state law can apply in the first place. It cannot." *Charleston*, 2025 WL 2269770, at *8. The CAA's displacement of certain federal common law is beside the point—it does not (and cannot) authorize Plaintiff's claims.

Again, *City of New York* is squarely on point. Like Plaintiff here, the City argued that the federal CAA's displacement of federal common law could "give birth to new state-law claims." *City of New York*, 993 F.3d at 98. The court rejected "[s]uch an outcome" as "too strange to seriously contemplate." *Id.* at 98–99. As the court explained, "where a federal statute displaces federal common law, it does so not in a field in which the states have traditionally occupied, but one in which the states have traditionally not occupied." *Id.* at 98 (cleaned up). "Consequently, state law does not suddenly become presumptively competent to address issues that demand a unified federal standard simply because Congress saw fit to displace a federal court-made standard with a legislative one." *Id.*

Finally, federal common law *does* preempt Plaintiff's claims insofar as they rest on *foreign* emissions. The Second Circuit held federal common law is "still require[d]" to govern the international aspects of claims challenging global emissions because the CAA "does not regulate foreign emissions." *City of New York*, 993 F.3d at 95 n.7. Viewed through that lens, "federal common law preempts [the] state law" claims Plaintiff attempts to plead. *Id.* at 95, 101. That makes sense: "[p]ower over external affairs is not shared by the States; it is vested in the national government exclusively." *United States v. Pink*, 315 U.S. 203, 233 (1942). States lack the power to regulate international activities or foreign policy; such matters "must be treated exclusively as an aspect of federal law." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 425 (1964). Accordingly, state "regulations must give way if they impair the effective exercise of the Nation's foreign policy," *Zschernig v. Miller*, 389 U.S. 429, 440 (1968), which calls for a unified federal law rather than a set of "divergent and perhaps parochial state interpretations," *Sabbatino*, 376 U.S. at 425.

5. The few climate-change decisions that have allowed a plaintiff's claims to proceed past the pleadings all suffer from the same error Plaintiff invites here: They "rely on the notion that the CAA has displaced federal common law, while failing to account for the fact that the plaintiffs' theory of causation and damages hinges on transboundary emissions, to which only federal law can apply." *Charleston*, 2025 WL 2269770, at *8. As the *New Jersey* court explained, "federal common law applied in the first place only because state law was not fit to govern," and "Congress's decision to displace and replace federal common law with a statutory scheme (the [CAA]) did not somehow render state law competent to apply to this exclusively federal subject matter." *New Jersey*, 2025 WL 604846, at *4. In other words, with the passage of the CAA, state law did not "suddenly become . . . competent to address issues that demand a unified federal standard." *City of New York*, 993 F.3d at 98. The only reason federal common law ***ever*** arose is "because state law cannot be used." *Id.* (citation omitted). Similarly, cases like *Boulder* and *Honolulu*—upon which Plaintiff heavily relies—are "not persuasive . . . because [they] d[o] not address this critical point." *New Jersey*, 2025 WL 604846, at *4; *see Cnty. Comm'rs of Boulder*

Cnty. v. Suncor Energy USA, Inc., 2025 CO 21, ¶¶ 29–32 (Colo. 2025); *City & Cnty. of Honolulu v. Sunoco LP*, 537 P.3d 1173, 1196–98 (Haw. 2023); *see also* Order Denying Defendants' Joint Motion to Dismiss for Failure to State a Claim at 1, *Shoalwater Bay Indian Tribe v. Exxon Mobil Corp.*, No. 23-2-25215-2 SEA (Wash. Super. Ct. Apr. 29, 2026).[1] Moreover, these cases—like this one—are in serious question now that the *Boulder* decision is under review by the U.S. Supreme Court. *See* 2026 WL 490537, at *1 (U.S. Feb. 23, 2026) (granting certiorari).

B. Plaintiff's Washington Law Claims Are Preempted by the Clean Air Act.

Plaintiff's claims are also preempted by the CAA, which "preempts state law to the extent a state attempts to regulate air pollution originating in other states." *Delaware*, 2024 WL 98888, at *10. As *Baltimore I* explained, "[t]he CAA speaks directly to the domestic emissions issues in this case" and bars state-law claims "regardless of whether [the plaintiff] seeks injunctive relief or damages." 2024 WL 3678699, at *8; *see also Bucks County*, 2025 WL 1484203, at *7 ("the Clean Air Act and the EPA actions it authorizes preempt[] Pennsylvania State law in this case").

Through the CAA, Congress empowered the EPA to set national policy regarding interstate emissions. Because "[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector cannot be prescribed in a vacuum" and an "informed assessment of competing interests is required," Congress in the CAA tasked the EPA with the "complex balancing" of (1) the "environmental benefit potentially achievable" from emissions standards and (2) "our Nation's energy needs and the possibility of economic disruption." *AEP*, 564 U.S. at 427. Because Plaintiff's claims seek remedies for harms allegedly caused by Defendants' conduct in purportedly increasing global greenhouse gas emissions, those remedies would necessarily address out-of-state emissions. *See* Mot. 26. Multiple courts across the country have recognized, however, that "granting such remedies would upset the careful balance Congress struck through the comprehensive CAA regime overseen by EPA." *Charleston*, 2025 WL 2269770, at *10; *accord Baltimore II*, 2026 WL 809501, at *25; *Delaware*, 2024 WL 98888, at *10; *Bucks Cnty.*, 2025 WL

[1] The *Connecticut* decision does not support Plaintiff for an even more fundamental reason: the State there did not seek "damages for the negative impacts of climate change." *State v. Exxon Mobil Corp.*, 2025 WL 3459468, at *11 (Conn. Super. Ct. Nov. 26, 2025).

1484203, at *7.

Plaintiff cannot avoid the CAA's preemptive force by characterizing her claims as mere challenges to allegedly deceptive marketing practices. Opp. 14. The essence of Plaintiff's causation theory is that these statements induced greater consumption of Defendants' products, which increased emissions, and that the resultant *increased emissions, combined with similar emissions in all other States* (and Nations), exacerbated climate change, thereby allegedly "creating and exacerbating the Heat Dome that caused Ms. Leon's death." *Id.* at 33. Indeed, Plaintiff intentionally and explicitly targets global emissions. *See, e.g.*, FAC ¶¶ 4.20–4.28 & fig. 2 (alleging that "[t]he modern spike in atmospheric CO2 levels is directly correlated to the increased use of fossil fuels" and "CO2 emissions"). It is thus beyond dispute that the necessary and "*singular* source of [Plaintiff's] harm" is worldwide greenhouse gas emissions. *City of New York*, 993 F.3d at 91 (emphasis added). Yet Plaintiff seeks remedies for such alleged harm under Washington law, which federal law prohibits. *Ouellette*, 479 U.S. at 494–95; *City of New York*, 993 F.3d at 92. Allowing a single State's tort law to provide remedies for the effects of allegedly excessive out-of-state emissions is incompatible with the CAA's "delegation of authority and its comprehensive regulation" of emissions and would pose an "'obstacle' to the full implementation" of the CAA. *Ouellette*, 479 U.S. at 494, 500.

Although the CAA allows states to regulate *in-state* sources of pollution, suits under state law that seek to regulate, and to recover alleged damages from, *out-of-state* emissions—as here—are incompatible with the framework set out by Congress. *See, e.g.*, *EPA v. EME Homer City Generation, L.P.*, 572 U.S. 489, 495 (2014) (explaining that states "lack authority to control" "out-of-state pollution" under state law). As the United States recently explained, "Plaintiffs' theories will necessarily bring state law into conflict with the CAA" because they "would necessarily entail a judgment that [fossil-fuel] products were the source of too much out-of-state air pollution" as well as a determination of "how much greenhouse gases from their consumption would make them 'not reasonably safe'"—judgments that the CAA "vests . . . with EPA." U.S. Amicus Br. at 15–16, *Mayor & City Council of Baltimore v. B.P. P.L.C.*, No. 11 (Md. July 15, 2025).

Plaintiff tries to distinguish *Ouellette* on the ground that the *Ouellette* defendants' effluents were regulated under the Clean Water Act's permitting system, but that Defendants here point to no "Title V permits that govern the emissions they claim are at issue in this case." Opp. 20. This argument misses the point. *Ouellette* turned on the limited nature of the CWA's savings clause within the statute's overall "regulatory structure," 479 U.S. at 497—not the intricacies of the permitting process within that regulatory scheme. The Court observed that a broad interpretation of the savings clause, under which "an affected State's law" could be applied "to an out-of-state source," would "undermine this carefully drawn statute" by subjecting regulated entities "to a variety of common-law rules established by the different States," rather than the CWA's comprehensive framework. *Id.* at 494, 496. The same reasoning applies with greater force to the CAA's savings clause. As the Maryland Supreme Court recently explained, a broad interpretation of the CAA's savings clause would subject "any one emitter . . . [to] an ill-defined patchwork of liability across all 50 states" because "any alleged greenhouse gas effects are not traceable to any particular domestic or global source." *Baltimore II*, 2026 WL 809501, at *25. Because this patchwork of regulations would undermine the CAA's "detailed source- and pollution-specific control programs for nationwide air regulation," such state-law claims are generally preempted, with the limited exception of source-state regulation recognized in *Ouellette*. *Baltimore II*, 2026 WL 809501, at *24.

Plaintiff also erroneously relies on the presumption against preemption, which arises when a court considers whether the traditional police powers of the States have been preempted by a federal statute. Opp. 12. But despite Plaintiff's "[a]rtful pleading," her suit unambiguously concerns "global greenhouse gas emissions," *City of New York*, 993 F.3d at 91, an "area[] of special federal interest," *AEP*, 564 U.S. at 424, that "the states have traditionally not occupied," *City of New York*, 993 F.3d at 98 (emphasis omitted). Put differently, the regulation of interstate and international air and water pollution is not within the traditional police powers of the States. Consequently, "there is no beginning assumption that concurrent regulation by the State [in this area] is a valid exercise of its police powers." *United States v. Locke*, 529 U.S. 89, 108 (2000).

Finally, Plaintiff suggests that EPA's recent decision to repeal its 2009 endangerment finding concerning greenhouse gas emissions proves that there is no overriding federal interest. Opp. 24; *see also Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act*, 91 Fed. Reg. 7686, 7739 (Feb. 18, 2026). Not so. When it repealed the finding, EPA expressly confirmed that the CAA "continues to preempt state common-law claims and statutes that seek to regulate out-of-state emissions." 91 Fed. Reg. at 7739. EPA did not and could not disturb the U.S. Supreme Court's holding in *Massachusetts v. EPA* that "[b]ecause greenhouse gases fit well within the [Clean Air] Act's capacious definition of 'air pollutant,'" "EPA has the statutory authority to regulate the emission of such gases." 549 U.S. 497, 532 (2007). The "critical point is that Congress delegated to EPA the decision *whether and how* to regulate carbon-dioxide emissions," so even if EPA "decline[s] to regulate carbon-dioxide emissions altogether," courts "would have no warrant" to "upset the Agency's expert determination." *AEP*, 564 U.S. at 426 (emphasis added). "The Clean Air Act is no less an exercise of the Legislature's 'considered judgment' concerning the regulation of air pollution because it permits emissions *until* EPA acts." *Id.*

C. Plaintiff's Claims Raise Non-Justiciable Political Questions Under the Separation-Of-Powers Doctrine.

Plaintiff's claims also fail because they would require the Court to interfere with the political branches' power to set energy and climate policy, in violation of the separation-of-powers doctrine. Plaintiff does not dispute that the separation-of-powers doctrine precludes judicial resolution of cases where the factors identified in *Baker v. Carr*, 369 U.S. 186, 217 (1962), apply. *See* Opp. 26–27. These factors include (1) "a lack of judicially discoverable and manageable standards for resolving [the dispute]," and (2) "the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion[.]" *Baker*, 369 U.S. at 217.

Both factors are present here, as the *Charleston* court explained in dismissing similar claims as "barred by the political-question doctrine[.]" 2025 WL 2269770, at *12. There, as here, the plaintiff alleged that the defendants "failed to warn the public about the climate impacts of oil-and-gas products and engaged in a disinformation campaign to cast doubt on the science of climate

change." *Id*. at *1. There, as here, the plaintiff claimed that the defendants' conduct "inflated and sustained consumers' demand for fossil fuels," which allegedly led to "increased greenhouse gas emissions" and "accelerat[ed] climate change," causing harm. *Id*. at *1. And there, as here, the plaintiff sought relief under state tort law. *Id*. The court refused to permit the plaintiff to do so. It explained that "'[t]he appropriate amount of regulation in any particular greenhouse gas-producing sector' raises 'questions of national or international policy' that require an 'informed assessment of competing interests,'" which "[c]ourts lack 'the scientific, economic, and technical resources' to address[.]" *Id*. at *12 (quoting *AEP*, 564 U.S. at 427–28). Moreover, "the balancing of various public interests required by [p]laintiff's claims would require this Court to make sensitive policy determinations meant for nonjudicial discretion." *Id*. at *12.

Plaintiff tries to distinguish *Charleston* as an outlier, where the court thought that awarding abatement for climate change-related harm would require it to engage in tasks beyond the judicial function. Opp. 30. But Plaintiff cannot seriously dispute that the core theory of liability here and in *Charleston* is the same—that Defendants' purportedly deceptive conduct led to greater use of fossil fuels, greater greenhouse gas emissions, and in turn to more severe weather due to global climate change. *See* 2025 WL 2269770, at *1, *4. Nor can she deny that the same concerns that motivated the *Charleston* court are at play here.[2]

Relatedly, Plaintiff also does not dispute that, just as the *Charleston* court identified, here too Plaintiff's theory of liability "appears almost limitless" and would allow "virtually anyone" to be a plaintiff or a defendant in "what would effectively amount to a perpetual series of lawsuits" arising after every weather event. 2025 WL 2269770, at *2; Mot. 2. Indeed, as the U.S. government explained under the Obama Administration, "[t]he numbers of persons who contribute

[2] Plaintiff also attempts to downplay the justiciability concerns raised by her requested relief, arguing that the relief "seek[s] merely to remedy the disinformation and consumer confusion now rampant in Washington," and describing it as "adequate warnings and cessation and correction of the deceptive conduct." Opp. 27, 30. But the Complaint seeks equitable relief that is classically regulatory, namely a "public education campaign" and a mandate for "adequate" product warnings "at all links in the chain of distribution." FAC ¶ 7.4. Determining whether and how to grant this relief would "inevitably involve resolution of questions reserved for the legislative and executive branches of government." *Aji P. ex rel. Piper v. State*, 16 Wn. App. 2d 177, 183, 187, 480 P.3d 438 (2021).

to and are affected by global warming are virtually limitless, and the effects of any one party's conduct on another are far from direct." Reply Br. of the Tennessee Valley Authority, *American Electric Power Company Inc. v. State of Connecticut*, 2011 WL 1393805, at *13–14 (U.S. Apr. 11, 2011). Accordingly, Plaintiff's theory of liability would permit "almost unimaginably broad categories of both potential plaintiffs and potential defendants" to "litigate about widespread effects felt by individuals, corporations and governmental entities throughout the Nation and around the world, without even any need to establish that any individual defendant directly affected any individual plaintiff." *Id.*

Despite her best efforts, Plaintiff also cannot distinguish a North Carolina court's recent dismissal of a similar lawsuit brought against a utility company as barred by the political question doctrine. *See Duke*, 2026 WL 411466. Like Plaintiff here, the municipality alleged that the company knew about the "dangers of greenhouse gases" "emitted" by "burning of fossil fuels," and that "rather than informing the public," the company launched "public relations campaigns" that "misled the public" about "the causes and consequences of climate change." *Id.* at *2. The court dismissed the case under the political question doctrine because it "lack[ed] the capacity to resolve these issues" through "judicial adjudication." *Id.* at *9.

The *Duke* court recognized that climate change "is the result of the collective impact of acts by literally billions of unrelated emitters dispersed throughout the globe" and that the plaintiff's claims thus required "decisions based on pure conjecture" and "rank speculation as to the internal motivations of hundreds of millions of individuals in the United States and the cumulative effect of their actions on a global phenomenon." 2026 WL 411466, at *9. It reasoned that "issues regarding climate change" "implicate political, economic, and moral choices made by governments and members of the public literally across the globe." *Id.* And it was "impossible to quantify" the information from "global actors concerning the potential dangers or benefits of fossil fuels." *Id.* Put another way, the plaintiff's "claims and theory of recovery" raised a "multitude of unanswerable questions" that "no one—including twelve persons sitting in a[] jury box in 2026—could even begin to answer." *Id.* at *10, *11. As such, the "common law doctrines" the

municipality sued under "fail[ed] to provide the [c]ourt with a manageable framework within which to decide" the case. *Id.* at *9.

Plaintiff suggests that *Duke* is distinguishable because it involved a public utilities company whose "conduct" was "rooted in decisions approved by the state's utilities commission[.]" *See* Opp. 31; *see also Duke*, 2026 WL 411466, at *1. But the *Duke* court specifically concluded that the "common law doctrines" the municipality sued under "fail[ed] to provide the [c]ourt with a manageable framework within which to decide" the case. *Duke*, 2026 WL 411466, at *9. Based in part on that conclusion, the court dismissed the municipality's claim under the political question doctrine. *Id.* at *9, *15. No part of that analysis turned on the notion that the defendant's alleged conduct—there, as here, purportedly misleading the public "about the effects of fossil fuel consumption on the environment" and thereby increasing greenhouse gas emissions, *id.* at *1—was rooted in decisions approved by the state's utility regulator.

Plaintiff insists that "emissions" must be "decoupled" from the tortious conduct alleged in her Complaint. *See* Opp. 26. But Plaintiff's alleged injuries flow entirely from Defendants' alleged "deceptive promotion and sale of fossil fuels" that supposedly led to "increased use of fossil fuels that would be harmful," *id.* 1, 5—*i.e.*, higher than "acceptable." Plaintiff asserts that her damages are ultimately a by-product of "increased frequency and intensity of heat waves" caused by "[t]he modern spike in atmospheric CO_2 levels" and "the resulting disruption of the Earth's energy balance." FAC ¶¶ 4.20–4.21. And assessing whether Defendants' conduct was "wrongful" or "unreasonable" in marketing fossil fuel products, *e.g.*, *id.*, ¶¶ 5.4–5.5, 5.17, 5.28, 5.32–5.33, would necessarily turn on what level of emissions or emissions-generating activity is reasonable or acceptable. Plaintiff's invocation of emissions as the mechanism of her alleged harm triggers the application of the political question doctrine regardless of how liability is styled. That doctrine bars this lawsuit.[3]

[3] It is for this reason that Plaintiff's efforts to distinguish *California v. General Motors*, 2007 WL 2726871(N.D. Cal. Sept. 17, 2007), *Native Vill. of Kivalina v. ExxonMobil*, 663 F. Supp. 2d 863 (N.D. Cal. 2009), and *Comer v. Murphy Oil USA, Inc.*, 839 F. Supp. 2d 849 (S.D. Miss. 2012) also fail. *See* Opp. 29–30. Plaintiff argues that the complaints in those cases did not allege failure to warn or deception-related conduct, but rather sought to impose liability on defendants for engaging

D. Plaintiff's Claims Are Barred by the Statute of Limitations.

As multiple other courts in similar climate suits have found, Plaintiff's claims are barred by the statute of limitations, and Plaintiff's arguments to the contrary are unpersuasive. The parties agree that the statute of limitations for Plaintiff's claims is, at most, three years from accrual of the cause of action. The parties also agree that Plaintiff's suit was filed *more* than three years from Ms. Leon's death. And the parties further agree that the appropriate standard to assess the timeliness of Plaintiff's suit is "when the plaintiff knew *or should have known*" of the basis for her claims. Opp. 32 (quoting *Allen v. State*, 118 Wn.2d 753, 758, 826 P.2d 200 (1992)) (emphasis added). Here, Plaintiff's *own allegations in her Complaint*—as well as material in the public record that the Court may consider—make clear that Plaintiff should have known of the facts essential to her claims earlier than three years before she filed suit. Accordingly, Plaintiff's claims are time-barred.

A complaint is subject to dismissal under CR 12(b)(6) when the "plaintiff includes allegations that show on the face of the complaint" that the plaintiff's claim fails. *Kinney v. Cook*, 159 Wn.2d 837, 842, 154 P.3d 206 (2007) (quotation marks omitted). Here, Plaintiff's allegations demonstrate, on the face of the Complaint, that she brought her claims after the limitations period expired. Mot. 33–35. Plaintiff's allegations unequivocally demonstrate that the connection between greenhouse gas emissions and global climate change, and claims that climate change could cause or exacerbate weather events, have been publicly known for decades. Indeed, the Complaint alleges "widespread public awareness of climate change" by "the late 1980s and early 1990s." FAC ¶ 4.51. Crucially, Plaintiff's own allegations likewise confirm that claims regarding Defendants' purported deception and conduct were widely known years before Ms. Leon's death.

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in their respective spheres of commerce. *Id.* But the plaintiffs in those cases ultimately sought to impose tort liability for alleged harms caused by emissions. *See General Motors*, 2007 WL 2726871, at *1–2; *Kivalina*, 663 F. Supp. 2d at 868–69; *Comer*, 839 F. Supp. 2d at 852, 854. The same is true of Plaintiff's claims here. The political question doctrine bars these claims. Plaintiff's insistence that she seeks only to "hold Defendants accountable for a deceptive misinformation campaign is simply a way to get in the back door what [she] cannot get in the front door." *Baltimore I*, 2024 WL 3678699, at *6.

For example, the Complaint alleges that, as early as 2007, there was Congressional testimony regarding industry funding of supposedly deceptive groups, and that one Defendant "receive[d] backlash" for purportedly funding groups that "misrepresented the science of climate change." *Id.* ¶¶ 4.74, 4.76. Moreover, the Complaint *repeatedly* cites news articles and other public sources published prior to, or at the time of, Ms. Leon's death that explicitly advance the same set of deception allegations asserted by Plaintiff. *See, e.g.*, *id.* ¶¶ 4.67(d) n.86, 4.69 n.88, 4.72 n.107, 4.74 n.108, 4.82 n.113, 4.83 n.115, 4.87(a) n.124, 4.98(a) n.138, 4.99(e) n.146. These allegations in the Complaint establish that Plaintiff was on notice of all the facts essential to her claims long before she filed suit.

Plaintiff makes virtually no effort to address these allegations in her own Complaint. Instead, she asserts that Defendants are attempting to "set forth" a "hypothetical set of facts" supporting their limitations argument. Opp. 33. That is incorrect. Defendants are not speculating about some hypothetical set of facts; they are identifying the allegations *in Plaintiff's Complaint itself* that make clear that her claims are time-barred. And Washington courts dismiss claims on the pleadings as time-barred when "the complaint itself belies" the plaintiff's arguments as to the discovery rule. *Larson v. Jarritos, Inc.*, 17 Wn. App. 2d 1072, 2021 WL 2346154, at *3 (June 8, 2021) (unpublished) (affirming CR 12(b)(6) dismissal of product liability claims); *see also, e.g.*, *Atchison v. Great Western Malting Co.*, 161 Wn.2d 372, 382, 166 P.3d 662 (2007) (affirming CR 12(b)(6) dismissal on statute of limitations grounds).

Although the allegations in the Complaint are sufficient to find that Plaintiff's claims are time-barred, other materials in the public record demonstrate the same thing. Government reports, including from the federal government, the Washington state government, and the City of Seattle, promptly and explicitly connected the 2021 Heat Dome to climate change. Mot. 35–36. And dozens of local and state governments, *including King County*, have filed lawsuits going back decades alleging the same sort of deception and misinformation that Plaintiff alleges here. Mot. 36–37. Again, this material establishes beyond doubt that Plaintiff had, or should have had, all the information needed to file suit at the time of Ms. Leon's death.

Whether considering solely Plaintiff's allegations or also the public record, it is clear that the discovery rule cannot salvage Plaintiff's claims. "The discovery rule requires a plaintiff to use due diligence in discovering the basis for the cause of action," *Allen*, 118 Wn.2d at 758, and it "is not invoked when the plaintiff had ready access to information that a wrong occurred," *Batten*, 2025 WL 1819236, at *3 (cleaned up). "In other words, the discovery rule will postpone the running of a statute of limitations only until the time when a plaintiff, through the exercise of due diligence, should have discovered the basis for the cause of action. A cause of action will accrue on that date even if *actual* discovery did not occur until later." *Allen*, 118 Wn.2d at 758. Here, the allegations in Plaintiff's Complaint, supported by material in the public record, reflect that Plaintiff, exercising due diligence, should have discovered the basis for her claims prior to May 2022—three years before she filed suit.

Tellingly, Plaintiff does not identify any facts she could not have discovered during the limitations period. The best she can do is cite to a handful of cursory allegations that she exercised due diligence and filed suit upon discovering the facts essential to her claims. Opp. 33–34 (quoting FAC ¶¶ 3.11–3.13). But these "conclusory allegations," *Arreola-Martinez v. State*, 36 Wn. App. 2d 1025, 2026 WL 84585, at *5 (Jan. 12, 2026) (unpublished), are insufficient to defeat a CR 12(b)(6) motion to dismiss or overcome the explicit allegations in the Complaint reflecting that Plaintiff was on notice of her claims. *See also, e.g.*, *Grimes v. Grimes*, 27 Wn. App. 2d 1015, 2023 WL 4174352, at *3 n.6 (June 26, 2023) (unpublished) (plaintiff did not "allege[] facts that support a claim of conspiracy" when his assertions "rested on conclusory allegations not supported by facts" (citing *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 120, 744 P.2d 1032 (1987))). Plaintiff cannot allege specific facts in her Complaint that establish all the information that was reasonably available to her, and then ask the Court to disregard those specific allegations with a vague claim that she should not have been expected to discover any of this information.

Nor do any of Plaintiff's remaining reasons why a "reasonable person" should not have been aware of this "public information," Opp. 34, pass muster. Plaintiff asserts that Defendants' argument "omits any consideration" of their alleged deception campaign. *Id.* To the contrary,

Defendants explicitly noted that allegations regarding Defendants' purported deception were widely known as of Ms. Leon's death, as reflected in the numerous news articles and other public sources on this exact topic available prior to the limitations period and *cited in Plaintiff's Complaint*. Mot. 34–35. Because public reporting on deception allegations was prolific and widely available to Plaintiff, this alleged deception was not a basis to delay accrual of Plaintiff's causes of action.

Next, Plaintiff contends that she should not have been on notice from news articles or other lawsuits. The sources cited by Defendants are not "cherry-picked," Opp. 35, but rather reflect widespread reporting on the issues raised by Plaintiff's Complaint by government entities, litigants, and the news media, including King County and the City of Seattle. And, again, Defendants' sources are largely those cited by Plaintiff in her Complaint. Plaintiff cites several non-Washington cases, but ignores the on-point Washington authority, *Allen v. State*, which affirmed that when an event "received considerable attention in local newspapers," "[t]he facts were all available for [the plaintiff] to discover through the exercise of due diligence." 118 Wn.2d at 759. There can be no dispute that climate change, its effects, and Defendants' alleged deception have received decidedly more coverage than mere "attention in local newspapers."

Finally, Plaintiff argues that Defendants' "introduction of extrinsic evidence is inappropriate." Opp. 35. But it is well-established that "[o]n a ruling on a motion to dismiss, the trial court may take judicial notice of public documents if their authenticity cannot be reasonably disputed." *Est. of McCartney v. Pierce Cnty.*, 22 Wn. App. 2d 665, 677, 513 P.3d 119 (2022). Defendants noted this principle in their motion, Mot. 35 n.9, but Plaintiff ignores it. And here Defendants cite a panoply of public documents, from all levels and multiple branches of government, alerting Plaintiff to the issues raised by her suit.

Multiple courts have found similar climate claims untimely based on the same publicly available information. Those courts have also rejected the plaintiffs' nearly identical discovery rule arguments. The *Delaware* court cited documents "showing that the general public had knowledge of or had access to information about the disputes . . . decades prior to the expiration

of the five-year limitations period," including from news articles and prior litigation. 2024 WL 98888, at *19. The *Baltimore I* court held that "[t]he statements and allegations made in the complaint make it clear that Baltimore was well aware of Defendants' alleged conduct" before the limitations period. 2024 WL 3678699, at *15. The *Charleston* court emphasized that "[a]ny assertion that Plaintiff was not on reasonable notice of the facts giving rise to its claims by [the limitations period] is belied by its own allegations." 2025 WL 2269770, at *14. And the *Bayamón* and *San Juan* courts concluded that "Plaintiffs' claims are barred by the applicable statutes of limitations, and no equitable doctrine salvages them" because the relevant information was "readily apparent from the coverage in the popular press, the court cases, and the reports, and Plaintiffs were not diligent." *Bayamón*, 2025 WL 2630671, at *24, *27; *see also San Juan*, 2025 WL 2848565, at *3–5. Plaintiff contends that these decisions were either "erroneous[]" or "involved different . . . standards," Opp. 32 n.6, but in reality those courts had the same task as this Court: to evaluate whether the plaintiffs' claims were viable based on their allegations, the appropriate record, and the law. These courts all concluded that the climate plaintiffs' claims were time-barred, and this Court should reach the same result.

E. Washington Law Requires Dismissal of Plaintiff's Claims.

Plaintiff also fails to plead facts sufficient to state a claim under Washington law, and Plaintiff's arguments to the contrary are unavailing.[4]

1. Plaintiff Fails to Allege a Public Nuisance.

Plaintiff fails to state a claim for public nuisance for two reasons: (1) Plaintiff's nuisance claim is a product-liability claim that is preempted by the WPLA; and (2) Plaintiff fails to allege the required unreasonable interference with her use and enjoyment of property.

a. Plaintiff contends that her nuisance claim is not preempted by the WPLA because the WPLA preempts only common-law claims and remedies but not statutory claims. Opp. 37. That is incorrect. The WPLA defines a "[p]roduct liability claim" that must be brought under the WPLA as "*any* claim or action brought for harm caused by the manufacture, production, making,

[4] Plaintiff does not dispute that, if her public nuisance and WPLA claims fail as a matter of law, her derivative "Wrongful Death and Survival" claim must also be dismissed. *See* FAC ¶ 5.4.

construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings, instructions, marketing, packaging, storage or labeling of the relevant product." RCW 7.72.010(4) (emphasis added). Such preempted claims "include[], *but [are] not limited to*, any claim or action previously based on: Strict liability in tort; negligence; breach of express or implied warranty" and other theories. *Id.* (emphasis added).

"The scope of the statute could not have been stated more broadly," and there is nothing whatsoever in its text to indicate that the WPLA's reference to "any claim or action" sub silentio excludes from its scope statutory actions that sound in products liability. *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 853–54, 774 P.2d 1199 (1989) (quoting RCW 7.72.010(4)). To the contrary, "Washington courts have repeatedly construed the word 'any' to mean 'every' and 'all.'" *State v. Smith*, 117 Wn.2d 263, 271, 814 P.2d 652 (1991). Indeed, Plaintiff's contention—that the WPLA preempts only common-law claims—cannot be squared with the statutory text; the WPLA specifically exempts *statutory* Consumer Protection Act claims from its preemptive scope. RCW 7.72.010(4). If, as Plaintiff insists, the WPLA preempted only common-law claims, then this enumerated exemption for statutory Consumer Protection Act claims would be meaningless. *See Atkerson v. State*, 4 Wn.3d 307, 315, 562 P.3d 1256 (2025) ("'Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.'" (quoting *City of Seattle v. State*, 136 Wn.2d 693, 698, 965 P.2d 619 (1998))). Thus, properly interpreted, the WPLA preempts any claims or actions brought for harm caused by a product—regardless of whether they are common-law or statutory—except for those explicitly exempted by the WPLA.

Plaintiff relies (Opp. 37) on a single federal district court's conclusion that claims for public nuisance are not preempted by the WPLA because they are statutory causes of action. *See City of Seattle v. Monsanto Co.*, 237 F. Supp. 3d 1096, 1102 (W.D. Wash. 2017). That conclusion is wrong. The *City of Seattle* court rested this invented distinction between common-law and statutory claims on the Washington Supreme Court's decision in *Graybar*, which held that "the WPLA means nothing if it does not preempt common law product liability remedies." 112 Wn.2d

at 853. But nothing in *Graybar* suggests that the WPLA preempts *only* common-law claims. To the contrary, *Graybar* emphasized that "[t]he scope of the statute could not have been stated more broadly." *Id.* at 854. It noted that the Senate Select Committee on Tort and Product Liability Reform had explained that the WPLA was adopted because "one of the most confusing areas of product liability tort law involves the variety of causes of actions" and that "the creation of a single cause of action, termed a 'product liability claim' . . . , eliminates this confusion and should be adopted." *Id.* (quoting Senate Select Comm. on Tort and Product Liability Reform, *Final Report* 16 (Jan. 1981)). *Graybar* accordingly held that "[w]e cannot dilute" the WPLA's definition of "product liability claim" "without frustrating the entire scheme of the statute." *Id.*

Plaintiff also attempts to avoid the WPLA's preemptive scope by claiming that her public-nuisance claim purportedly does not target harms caused by Defendants' "fossil fuel *products*." Opp. 37. But Plaintiff cannot reasonably deny that her nuisance claim is one "brought for harm caused by the . . . warnings, instructions, [and] marketing" of Defendants' fossil-fuel products, and thus falls within the WPLA's broad definition of a "[p]roduct liability claim." RCW 7.72.010(4). Plaintiff's nuisance claim is based on allegations that Defendants "promot[ed] and creat[ed] the sale and use of fossil fuels without warning consumers that using fossil fuels would cause dangerous climate change," that Defendants "misleadingly promot[ed] fossil fuel products as sustainable, clean energy products," and that Defendants' alleged deception "increased demand for fossil fuels and decreased demand for clean energy," which "directly lead to increased greenhouse gas emissions, rendering deception a cause of [Ms. Leon's] death." FAC ¶¶ 5.28–5.29. Indeed, in the very next sentence after Plaintiff contends her nuisance claim does *not* target the effects of Defendants' fossil-fuel products, Plaintiff argues that her nuisance claim rests on allegations that Defendants promoted the sale and use of fossil-fuel *products* while knowing that "expanding the use of those *products* would exacerbate climate change and cause harm." Opp. 37 (emphasis added). The fact that Plaintiff cannot even describe her nuisance claim without focusing on harms allegedly caused by Defendants' products proves that her nuisance claim

sounds in product liability and is preempted by the WPLA.[5]

Plaintiff pivots to arguing that, even if the WPLA would otherwise preempt her nuisance claim, the claim falls within the WPLA's exemption for claims based on a "substantive legal theory" of "intentionally caused harm" under RCW 7.72.010(4), because Plaintiff alleged in her complaint that Defendants "actively engaged in fraudulent campaigns to conceal the risk of harm to the public." Opp. 38. Plaintiff is mistaken. The WPLA's exemption for claims of "intentionally caused harm" applies *only to claims where intent is an element of the cause of action—i.e.*, intentional torts. *McCarthy v. Amazon.com, Inc.*, 679 F. Supp. 3d 1058, 1077 n.16 (W.D. Wash. 2023) (noting that "the WPLA 'intentionally caused harm' exception applies only to 'intentional tort[s]'"). If a tort "does not include intent as an essential element," it "is not an intentional tort." *Emeson v. Dep't of Corr.*, 194 Wn. App. 617, 638–39, 376 P.3d 430 (2016). Because intent is not an element of a public-nuisance claim under RCW 7.48, Plaintiff cannot evade preemption.

Neither of the cases that Plaintiff cites elaborating the meaning of "intent" involved WPLA's "intentionally caused harm" exemption, and they shed no light on its scope. *See Bradley v. Am. Smelting & Refin. Co.*, 104 Wn.2d 677, 683–84, 709 P.2d 782 (1985) (discussing "intent necessary to find a trespass"); *Birklid v. Boeing Co.*, 127 Wn.2d 853, 855, 904 P.2d 278 (1995) (interpreting "deliberate intention" in Washington's Industrial Insurance Act). And *City of Seattle* actually cuts *against* Plaintiff on this point. Even though that case's "defective design" and "failure to warn" claims included "allegations of intentional conduct," the court nonetheless held that they "fall within the WPLA's preemptive scope" because they were "common-law claims which sound in either strict liability or negligence" and "are now clearly contemplated by

[5] Plaintiff relies (Opp. 37) on an out-of-state decision allowing a public-nuisance claim to proceed under California law because the court viewed the challenged conduct as "quite similar to instructing the purchaser to use the product in a hazardous manner," which the court viewed as distinct from product-liability claims. *See County of Santa Clara v. Atl. Richfield Co.*, 137 Cal. App. 4th 292, 309 (Cal. Ct. App. 2006). But this decision does not help Plaintiff because the WPLA preempts "any claim or action brought for harm caused by the . . . instructions . . . [for a] relevant product," so the claim in *Atlantic Richfield* would have been preempted by the WPLA if it had been brought in Washington. RCW 7.72.010(4).

the WPLA's 'liability of manufacturer' cause of action." *City of Seattle*, 237 F. Supp. 3d at 1102–03. Because Plaintiff's public-nuisance claim is a product-liability claim that is not an intentional tort, it is preempted by the WPLA.

b. Plaintiff contends (Opp. 38–40) that she need not allege an unreasonable interference with her use and enjoyment of property to state a public nuisance claim, because the statute broadly defines nuisance to include acts or omissions that "annoy[], injure[], or endanger[] the comfort, repose, health or safety of others," or "in any way "render[] other persons insecure in life, or in the use of property." RCW 7.48.120. But the Washington Supreme Court has held that, "[d]espite this expansive definition, generally, an activity is a nuisance only when it 'interferes unreasonably with other persons' use and enjoyment of their property.'" *Moore v. Steve's Outboard Serv.*, 182 Wn.2d 151, 155, 339 P.3d 169 (2014) (quoting *Tiegs v. Watts*, 135 Wn.2d 1, 13, 954 P.2d 877 (1998)). Several other cases—which Defendants cited in their opening brief, Mot. 39–40—have similarly held that a nuisance claim must allege an unreasonable interference with the plaintiff's use and enjoyment of property. *Grundy v. Thurston Cnty.*, 155 Wn.2d 1, 6, 117 P.3d 1089 (2005) ("Nuisance is 'a substantial and unreasonable interference with the use and enjoyment of land.'") (citation omitted); *MJD Props., LLC v. Haley*, 189 Wn. App. 963, 970, 358 P.3d 476 (2015) ("An activity constitutes a nuisance when it interferes unreasonably with a neighbor's use and enjoyment of his or her property."); *Donner v. Blue*, 187 Wn. App. 51, 65, 347 P.3d 881 (2015) ("Nuisance and trespass are related claims focusing on the invasion of a property interest.").

Plaintiff has no response to most of these cases, and the responses she does provide are unpersuasive. Plaintiff asserts that *Moore* involved a nuisance *per se* and did not establish that a plaintiff must allege an unreasonable interference with property outside that context. Opp. 40. But *Moore* actually held *the opposite*: According to the Washington Supreme Court, to be a nuisance in general, an act must "interfere[] unreasonably with other persons' use and enjoyment of their property," whereas, "[i]n contrast, '[a] nuisance per se is an act, thing, omission, or use of property which of itself is a nuisance' … regardless of the reasonableness of the defendant's

conduct." 182 Wn.2d at 155. And in any event, the relevant distinction between nuisance and nuisance *per se* is not whether the nuisance interferes with another's property rights but whether the defendant's conduct was unreasonable. As the Western District of Washington has explained, even when a plaintiff establishes that conduct "constitutes a nuisance *per se*, it still must show that this nuisance caused some level of interference with its property interest" because that is an essential "aspect of a nuisance claim." *S. Lake Union Hotel LLC v. F&F Rogers Family Ltd. P'ship*, 2025 WL 1744784, at *4 (W.D. Wash. June 24, 2025). Thus, contrary to Plaintiff's assertion, the cases Defendants cited *do* recognize "a general rule that all nuisance claims must involve interference with the use of land or harms to property." Opp. 40.

Plaintiff faults Defendants for not citing cases allowing nuisance claims to proceed that did *not* involve "alleged interferences with use of property," Opp. 39, but that is precisely the point: such cases do not exist because nuisances in Washington require an alleged interference with the use or enjoyment of property. That is why, when plaintiffs have brought nuisance claims for injuries that do not involve an interference with property—such as the burning of a plaintiff's cat—courts have refused to allow such claims to proceed because they do not involve "a loss related to land or property fixed to the land." *Womack v. Von Rardon*, 133 Wn. App. 254, 257, 260, 135 P.3d 542 (2006). Plaintiff's claim that *Womack* did not involve an "interference with public health and safety," Opp. 39, is puzzling given that "using gasoline" to set a cat on fire at "a nearby school" would appear to interfere with public health and safety. *Womack*, 133 Wn. App. at 257.

The only authority Plaintiff musters for her argument that a public nuisance claim does not require an alleged interference with use and enjoyment of property is a non-binding trial court decision holding that "in[ter]ference with real property is not required." *State v. Purdue Pharma L.P.*, 2018 WL 7892618, at *2 (Wash. Super. Ct. May 14, 2018). But a trial court cannot overrule the repeated holdings of Washington appellate courts that "[d]espite [the statute's] expansive definition," "an activity is a nuisance only when it 'interferes unreasonably with other persons' use and enjoyment of their property.'" *Moore*, 182 Wn.2d at 155. And in any event, *Purdue*

Pharma is distinguishable because it held in the alternative that, even if an interference with real property is required to state a public-nuisance claim (and it is), "the State has made threshold allegations that would connect Purdue's conduct to real property in the State." *Purdue Pharma*, 2018 WL 7892618, at *2.

Because Plaintiff's nuisance claim is barred by the WPLA and Plaintiff fails to allege the required interference with her use and enjoyment of real property, the Court should dismiss her nuisance claim.

2. Plaintiff's Failure-To-Warn Claim Fails Because Defendants Had No Duty to Warn the World of Widely Publicized Risks Relating to Climate Change.

This Court should dismiss Plaintiff's claim under the WPLA, RCW 7.72.030 and 7.72.040, because it exceeds the bounds of product liability law. The claim fails for two reasons.

First, there is no duty to warn about known or obvious dangers. *See, e.g.*, *Baughn v. Honda Motor Co.*, 107 Wn.2d 127, 139, 727 P.2d 655 (1986) ("It is established law that a warning need not be given at all in instances where a danger is obvious or known."). The Complaint itself acknowledges widespread discussion of climate risks spanning several decades. *See, e.g.*, FAC ¶¶ 4.35, 4.51, 4.51(a)–(b), 4.64, 4.65. Those allegations foreclose Plaintiff's WPLA claim. Plaintiff's primary response is that this argument is a question for the trier of fact. *See* Opp. 42. Plaintiff asserts that dissemination of information among "technical and scientific forums" does not establish knowledge among consumers, and states that "where climate change was part of public debate[,]" Defendants "tempered conclusions of harm and downplayed any relationship [to fossil fuels]." *Id.* But Defendants' argument is based on Plaintiff's own allegations—including allegations of ***public knowledge***—and they are buttressed by the undisputed public record. *See* Mot. 41–42.

For example, the Complaint concedes that (i) as far back as 1965, interest in understanding climate change "***permeated the public-private divide***"; (ii) events as far back as the 1980s led to "widespread ***public*** awareness" of climate change; (iii) in the 1980s, congressional testimony regarding the fact that human activities were causing global warming was "***widely publicized***," including on the front page of the New York Times; (iv) in the 1990s, the New York Times

reported that experts warned climate change could cause "thousands of additional deaths each year during heat waves[;]" and (v) in the 1990s, mainstream media outlets reported that 1995 was the "hottest year on record" ***due to "fossil fuel-induced climate change."*** FAC ¶¶ 4.35, 4.51, 4.51(a), 4.64, 4.65 (emphases added). Plaintiff cannot seriously dispute that a reasonable consumer would have been aware of the alleged climate impacts of fossil fuel combustion which are the focus of the Complaint. *See Charleston*, 2025 WL 2269770, at *16 (dismissing similar climate change failure to warn claim because "Defendants had no duty to warn customers, let alone the public at large, of such well-understood dangers.").

Second, Plaintiff's claim seeks to impose liability based on a limitless "duty to warn the entire human race of the effects of climate change." *Baltimore II*, 2026 WL 809501, at *32. No such duty exists. *See* Restatement (Second) of Torts §§ 388, 402 A, 402 B (containing no such duty); Opp. 43 (conceding that Washington follows the Second Restatement of Torts). As the Maryland Supreme Court explained, "[f]inding such a duty would stretch tort law beyond any manageable bounds." *Baltimore II*, 2026 WL 809501, at *32. Plaintiff now attempts to minimize the apparent scope of intended liability by asserting that her claims do not turn on a duty to warn the world or society at large, but merely on a "duty to warn fossil fuel consumers *in Washington* about their products' risks." Opp. 43. But Plaintiff's own Complaint seeks damages for Defendants' purported failure to warn ***all of society*** (not just Ms. Leon) about the risks of fossil-fuel combustion, which allegedly contributed to individual purchasing decisions and public-policy choices by countless third parties globally, and had the aggregate effect, over decades, of incrementally increasing emissions across the planet. *See, e.g.*, FAC ¶ 4.110 (alleging that Defendants' "failure to warn" "deprived *the public*" of "the information necessary to mitigate climate change" (emphasis added)); *see also* Mot. 43; FAC ¶¶ 1.3, 1.9, 1.11, 1.13, 4.56, 4.67, 4.80, 4.104, 4.108–09, 4.112, 5.15, 5.22.

Plaintiff does not contend that Ms. Leon's death stemmed from Ms. Leon's use of or direct contact with any of Defendants' fossil-fuel products. And she does not assert that Ms. Leon's death could have been avoided by any warning provided to Ms. Leon. Nor does she even contend

that Ms. Leon's death could have been avoided by warning all Washington residents, as she does not and could not allege that Ms. Leon's death was caused exclusively by emissions in Washington. Instead, her claim necessarily depends on the theory that Defendants purportedly failed to warn every individual in societies worldwide about the risk of fossil-fuel consumption, which allegedly contributed to individual purchasing choices and public-policy decisions by countless third parties, exacerbating global climate risks. This is why, despite Plaintiff's contentions otherwise, "[i]mposing a duty on Defendants would be establishing a duty to warn the world," which "would be extended to every single human being on the planet whose use of fossil fuel products may have contributed to global climate change[.]" *Baltimore I*, 2024 WL 3678699, at *11–12.

Plaintiff does not identify any case from a Washington court recognizing the duty she urges this Court to adopt. Plaintiff cites *Washburn v. Federal Way*, 178 Wn.2d 732, 310 P.3d 1275 (2013) and *Scott v. Amazon.com, Inc.*, 583 P.3d 1155 (2026), for the general proposition that duties can run to "third parties" and require a defendant "to avoid exposing another to harm through the foreseeable conduct of a third party," *Scott*, 583 P.3d at 1162; *see* Opp. 43–44. But here, however, no such purchase, use, or contact is alleged. Instead, Plaintiff seeks to hold Defendants liable for risks that flow from a myriad of factors, over decades, and around the globe. *See* Opp. 43–44. As explained, asserting this sweeping duty to warn—with such an attenuated connection to the harm alleged—would represent a gross distortion of product liability principles. *See* Mot. 43–45.

Washburn and *Scott* do not come close to endorsing Plaintiff's theory here. In *Washburn*, the plaintiffs' mother was killed by her abusive partner after the partner received an anti-harassment order from police. *Washburn*, 178 Wn.2d at 738–40. The case discussed the public duty doctrine and the duty of care owed by a municipality when police serve anti-harassment orders, addressing the foreseeability of third-party criminal conduct within that context. *See id.* at 739–40, 752, 757, 761–62. *Washburn* is not about product liability law or the duty to warn. *Scott* involved the deaths by suicide of individuals who purchased sodium nitrate from the defendant's website and then ingested it. *See* 583 P.3d at 1157. The harm in *Scott* was caused by direct contact

with the defendant's products, namely sodium nitrate poisoning. *See id.* It was in the context of that direct harm that the court was addressing the duty to avoid foreseeable harm. *See id*. at 1157, 1161–63. In contrast here, Plaintiff does not claim that Ms. Leon's death stemmed from direct contact with any of Defendants' products, or that Ms. Leon's death could have been avoided had she been warned about global climate change.

Thus, while Plaintiff attempts to argue otherwise, Opp. 43–44, Plaintiff's WPLA claim far exceeds the scope of long-established product liability principles. Multiple courts have concluded that substantially similar failure-to-warn claims in other climate cases should be dismissed under state law. *See, e.g*., *Baltimore II*, 2026 WL 809501, at *32; *Charleston*, 2025 WL 2269770, at *16 (holding that "Defendants had no duty to warn customers, let alone the public at large," of the "well-understood" dangers of fossil fuel emissions); *Baltimore I*, 2024 WL 3678699, at *12 (holding that Baltimore's proposed "duty . . . to the world" is "what Maryland law warns against"). As in *Charleston*, the Complaint here is "concerned exclusively with alleged adverse impacts of worldwide collective use of products like those produced by Defendants—whatever their source. That is not the sort of thing that the law requires producers of lawful products to disclose." 2025 WL 2269770, at *17.[6]

III. CONCLUSION

Allowing Plaintiff's claims to proceed here would inevitably open the floodgates to baseless and unfounded litigation—a "perpetual series of lawsuits that reset after every storm," marked by "unbounded" lists of potential plaintiffs and defendants and "limitless" theories of liability. *Charleston*, 2025 WL 2269770, at *2. The result would be a "plainly 'irrational system of regulation' that would lead to 'chaotic confrontation between sovereign states,'" as "each of the 50 states" sought "to impose their own preferred policy solutions for climate change." *Baltimore*

[6] Separately, Plaintiff claims that, apart from Olympic Pipe Line Co., Defendants make no argument regarding the allegations arising under RCW 7.72.040(1)(c). Opp. 41. Not true. Defendants made clear in their Motion to Dismiss that Plaintiff's allegations under RCW 7.72.040(1)(c) fail for the same reasons that the other allegations arising under RCW 7.72 do. *See* Mot. 41–42 (stating that "Plaintiff brings a failure-to-warn claim under sections 7.72.030 and 7.72.040 of the WPLA" and that "Plaintiff fails to plead such a claim for two reasons").

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II, 2026 WL 809501, at *22 (quoting *Ouellette*, 479 U.S. at 496). This is precisely why numerous courts across the country have dismissed these types of novel, climate change-related cases on the pleadings. These courts have correctly held that such claims are both precluded and preempted by federal law, and a gross distortion of state law. This Court should join these courts and dismiss Plaintiff's Complaint, in full, with prejudice.

Respectfully submitted this 6th day of May, 2026.

I certify that this memorandum does not exceed 35 pages, in compliance with the Court's Order of January 13, 2026.

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