No. __-____

In the
Supreme Court of the United States

SYNGENTA CROP PROTECTION, LLC and SYNGENTA AG
Petitioners,

v.

DOUGLAS NEMETH, *et al.*, CHEVRON U.S.A. INC., and FMC CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

John C. O'Quinn
Counsel of Record
Ragan Naresh
William H. Burgess
Richard Simpson
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., NW
Washington, D.C. 20004
(202) 389-5000
john.oquinn@kirkland.com

Counsel for Petitioners

May 19, 2025

QUESTIONS PRESENTED

In *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023), "[t]he sole question before [the Court]" was "whether *the Due Process Clause* of the Fourteenth Amendment is violated when a large out-of-state corporation *with substantial operations in a State* complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." *Id.* at 150 (Alito, J., concurring) (emphasis added). A 5-4 majority concluded "the answer to this question is no." *Id.*

This case presents the following two questions, which *Mallory* explicitly left open:

1. Whether the Commerce Clause permits a State to condition an out-of-state company's right to do business in that State on the company's submission to personal jurisdiction in any suits that are brought there.

2. Whether the Due Process Clause is violated where, as here, an out-of-state defendant *without substantial operations in a State* complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there.

PARTIES TO THE PROCEEDING

Petitioners Syngenta Crop Protection, LLC and Syngenta AG were defendants in the trial court, petitioners-appellants in the Superior Court of Pennsylvania, and petitioners in the Supreme Court of Pennsylvania.

Respondents Chevron U.S.A. Inc. and FMC Corporation were defendants in the trial court, respondents-appellees in the Superior Court of Pennsylvania, and respondents in the Supreme Court of Pennsylvania.

As of Petitioners' November 21, 2023 petition to the Superior Court of Pennsylvania, the following individuals were plaintiffs in the trial court and real parties-in-interest below. They were thus respondents-appellees in the Superior Court of Pennsylvania and respondents in the Supreme Court of Pennsylvania, and are thus Respondents in this Court (listed last name, first name):

Abbott, Richard; Adams, Jimmie; Agee, Kim; Aguiar, Daniel; Aho, Mary; Alligood, Jimmy; Alligood, Carolyn; Allison, Bob; Anderson, Billy; Anderson, Debra; Anderson, Jim; Ankerbauer, Bob; Atkins, Steven; Aufdengarten, John; Bang, Kathy; Barajas, Lauriano; Basford, Carl; Baxter, Frank; Bayliss, Charles; Beattie, Richard; Bellow, Alvin; Bender, Karen; Bender, Henry; Berger, John; Bertwell, Katherine; Bewely, Dallie; Billington, Mark Christopher; Billington, Martha; Bishop, Terry; Bittle, Paula M.; Black, Eugene; Blakesee, Ivan; Blakesee, Rita; Blanchard, Dan; Blassingame, Harvey A.; Blickensderfer, Terry; Blose, Rodger; Blount, Theresa; Bordelon, Don; Borges, Christopher; Bowen, Larry; Bowen, Elizabeth;

Boyd, Grace; Boyd, Gary; Boyd, Jack; Boyd, Kathy; Brady, Dwayne; Brewer, Paul; Brewer, Cletta; Brown, Kevin; Bryant, Kathleen; Bullock, Eleanore; Burchett-Duke, Sandra Sue; Burns, Barbara; Burns, Brenda G.; Burns, Linda; Burt, Dale; Burt, Glenda; Butler, Gary; Butler, Sherri; Butler, Gary; Byers, Brian; Cader, James; Calcote, Louise; Cammack, Jodie Lamar; Carion, John; Carion, Perri; Carney, Joseph; Case, David Alfred; Case, Patricia; Certain, David; Charles, Tiffany; Cherney, Lou; Church, Mary Jo; Church, Melvin; Claiborne, Deborah Lynn; Clark, David; Clark, John; Coberly, Ann; Coffman, Richard; Combs, Richard; Conerly, Thomas; Cook, Donald; Cooper, Michael E.; Courson, Danny; Courson, Pamela; Courtney, Jimmy; Cox, William; Craven, Angela Darlene; Creel, Donald; Creel, Wanda; Crigler, Robert; Criss, Steven; Cruthird, Stacey T.; Damerau, Joyce; Daniel, Dorsey; Daniel, Kathy; Danielson, Jack M.; Davis, Jason; Davis, Kim; Dean, Joann; Dekoter, Randy; Dickman, Gary; Didlot, Marla Jody; Dinnel, Don; Dixon, Mollie; Dodson, Freda Jo; Dolman, Katherine; Donald, Rory; Dotson, Iris; Doyle, Boyd; Dunn Sr., Robert; Dupuy, Wayne; Duran, Tom; Durden, Patricia; Durham, Mark W.; Durham, Sheila; Eaton, Linda; Eaton, Russell; Eaton, Paulann; Eby, Rex A.; Edwards, Robert; Edwards, Sterling; Ellestad, Dennis; Elliott, Deborah; Ellis, James; Elrod, Charmain; Endrizzi, Noah; Engel, Robert; Engel, Beverly; Erickson, Michelle; Estes, Ronald D.; Feitner, Virginia; Felton, Dan; Fisher, Tracy; Fitch, Bobbie; Fleeman, Archie; Fleeman, Becky; Follman, Richard; Foster, Cynthia; Franklin, Elizabeth; Frederickson, Ralph A.; Freeman, Dan; Fretwell, James; Fristed, Eric; Fulcher, F. Scott; Fulton, David; Gahagen, Scott; Gaither, Paul; Gamble,

John Williams; Garafolo, Gennaro; Garcia, John; Gary, James; Gee, Gary; Gee, Kay; Gilbert, Lloyd; Girton, Deanne; Godbey, Nancy; Goddard, John; Goldschmidt, Herbert; Gothard, Wayne; Gothard, Darlene; Grant, Clint; Greenlee, Gregory; Greer, John; Griffiths, Richard; Griffiths, Carrie; Griggs, Christopher; Grohs, Joseph; Grohs, Carol; Grycuk, Wanda; Gryp, Anthony; Haddock, Todd; Hadley, Steve; Hadley, Linda; Hales, Timothy; Hallgren, Robin K.; Hamberlin, Emiel; Hamilton, Lucille; Hampton, Shelia; Harding, Barry; Harker, Scott; Harkreader, Diane Marie; Harper, Donal; Harrison, Theodore; Hartman, Richard; Hartman, Miriam; Hassen, Abdullah; Hassen, Melissa; Hayden, James; Hayes, Jonathan; Haynes, James; Hazelbaker, Timothy; Hebert, Jacqueline; Hembree, John; Henry, Jeff; Herndon, Linda; Herpich, Frederick W.; Herrick, Paul; Herrington, Gary Len; Hester, Thomas; Hester, Rebecca; Hill, Dennis; Hinton, David; Hodges, Donald; Hodges, Verla; Hoffman, Robert; Hoffman, Ronald; Hollowell, Kevin; Hoots Jr., Harry; Hoover, Harold; Horstman, Martin; Houseknecht, Timothy; Howlett, Martha; Hudgens, Doyle; Huff, Michael; Huff, Michael A.; Hulick, Kirk; Hurt, Zenobia; Hutto, Jerry Michael; Hutto, Roxanne; Hyslope, Evelyn; Ishmael, Shirly; Jack, Gary Wayne; Jackson, Allen; Jackson, Robert; Jackson, Cindy; Jackson, Wayne; Jacobson, Bruce; James, Kenneth; James, Susan; Jennings, Randy; Johns, Larry; Johns, Debra; Johnson, Carol; Jones, Michael; Jones, Ronald; Jordan, Randy; Kee, David; Kee, Rosemarie; Keen, Mike; Kellogg, Laura; Kennedy, Eamon; Kennedy, Marie; Kennedy, Martin; Kickhaufer, Tom; King, Jeff; Kitten, Todd; Kitten, Liddey; Koehler, Mark; Koontz, Shawn Edgar; Kowalik, John; Kowalik, Norene;

Kroger, Janice; Lackey, Richard; Lacour, Mark; Lagaly, Thomas; Laminack, Dale; Landry, Cecile; Landry, Scott; Lane, Janice; Lane, John; Larsen, Daniel; Lasley, Curtis; Lavery, Thomas; Law, Susan; Layne, Brian; Lee, Cody; Lee, Carlene; Lee, Stella; Legakis, Constantinos; Leggett, Michael C.; Lehman, Esther; Lemon, Rebecca; Leonberger, James; Lewis, Monica; Lewis, Wesley; Lindesmith, Loretta; Lockridge, Robert; Lockridge, Brenda; Loeffler, Diane; Lowry, Rose; Lucas, Darrell; Lutz, Keith; Mabry, John; Mabs, Donald; Mackie, Mark; Mackie, Caryn; Mackintosh, Daniel; Mahr, Tracy; Maitlen, Larry; Maloney, Arthur; Martin, Doris; Martin, Arlan; Mason, Jean; Maurer, John; Maurer, Cheryl; Maxfield, Evan; McClenaghan, Kevin; McClure, Thomas; McClure, Thomas E.; McCown, Glady; McCown, Mike; McGlynn, Brian; McGrath, Stacey; McGrew, Chameron Joseph; McKale, William; Megahan, Carol; Mehaffey, John; Melendez Schoweler, Suzan; Mendoza, Elizabeth; Merritt, Timothy; Mertens, Bill; Mertz, Boyd; Miller, Jay; Miller, Jerry; Miller, Paul; Miller, Pete; Miller, Thomas; Miller, Diana; Missimer, Steven; Mitterling, Vernon; Mitzel, Kirk; Mitzel, Janet; Monroe, Wanda; Moore, Jeffrey; Moran, Garry; Moreno, Ruben; Morgan, Mark; Morgan, Robert; Morgan, Jordana; Morris, Carol; Mosley, Edward; Mullins, Bobby; Muskatevc, Marsha; Myers, Michele; Myers, Scott; Neal, Jessie; Neal, Karen; Nei, Mark; Nelson, Dallas; Nemeth, Douglas; Nemeth, Dawn; Newburn, Randall; Newell, Richard; Newman, Joel; Nickel, Gerald; Nilsson, Ray; Noblin, Pamela; Nyreen, Charles; Owen, Jason; Owens, Howard; Owens, Stephen; Owens, Theresa; Oxendine, Peggy; Oxmann, Dennis; Paisley, Betty; Parker, Brian; Parker, Diane;

Parkhurst, William; Parrett, James; Parsley, Randy; Pate, Joel; Patrick, Clayton; Patton, Eugene; Pearman, Deborah; Perry, Jerry; Perry, John; Perry, Steve; Petri, Richard; Pettit, Jerald; Petzold, David; Petzoldt, Kevin; Phillips, Steve; Pierce, John; Pierce, Spencer; Polston, Walter; Ponton, Eldon; Ponton, Nancy; Pope, Willard; Porter, Linda Carol; Porter, Lummie Earl; Porter, Roger; Posch, Craig; Posch, Veronica; Posey, Kenneth A.; Powers, Gregory B.; Preston, Ethan; Pritchard, Andrew; Prouty, Douglas; Provo, Eddie; Ptacek, Elaine; Purnell, Johnnie; Rabina, Modesto; Raiford Himmaugh, Darla; Rank, Brian; Rathbun, Robert; Rathbun, Shirley; Reed, Ernest; Regester, Robert; Rice, Aaron Bradshaw; Rice, Wesley; Richard, Eric; Richardson, Louis; Richburg, Bobby; Richburg, Mary; Rieger, Mark; Rieger, Kathleen; Riestenberg, Richard; Roach, James; Robinson, Debra; Robinson, Randall; Rochowiak, Frank; Rochowiak, Walter; Rock, Shawn; Rodgers, Stephen; Rosa, Daisy; Rosbaugh, Timothy; Rothermel, Edwin; Rothermel, Melva; Rouse Jr., Joseph William; Rouse, Sylvia; Rowe, William; Rozett, John; Rozett, Donna; Rugg, Jerry; Runnels, Jim; Rusnak, Denise; Russell, Brian Wade; Russell, Julie; Sales, Douglas; Sandknop, William; Sandknop, Deborah; Sargent, John; Sargent, Pam; Schamahorn, Jerry Wayne; Schamahorn, Sherry; Schmidt, Cynthia; Schuckman, Curtis; Schumacher, Robert Lee; Schumacher, Rhonda; Schwien, Karen; Sexton, Gloria; Shelton, Tabathia; Sherman, Todd; Short, Robert; Shoup, Evelyn; Sides, Phillip; Skelton, Stephen; Slatton, Aaron; Smith, Arthur D.; Smither, Gary; Snively, Wade; Sommers, William E.; Spencer, Sally; Spicer, Glenda; Sproles, Ronnie; Stacy, David; Steele, David;

Steward, Evelyn; Stewart, James Arthur; Still, Russell; Stinson, John; Stoll, Edward; Stoner, Barry; Stoner, James; Stoner, Lydia; Strausbaugh, Mark; Strawser, Chester; Sturgell, Terrell; Sullivan, Donald; Suschil, Jim; Sutphin, Patricia; Tanner, Ricky; Thomas, Lillie; Thomas-Duck, Patricia; Duck, Theodore; Thompson, Homer; Thompson, Paul; Thompson, Patricia; Thornhill, Linda; Thrash, George; Tidwell, Ann; Toachlog, Clement Eugene; Todnem, Alan; Tompkins, Michael; Traver, Raymond; Trendle, Chad; Trosclair, Sean; Truitt, Judi; Truitt, Robert; Turner, Imogene; Turner, Sam; Updike, Linda; Vail, Dennis; Vail, Tamara; Vaughan, Richard; Vidrine, Suzanne; Vittitoe, Steve; Wade (Estate Of), Kenneth; Walthall, Dale; Walthour, Johnny; Washington, Bobby; Watterson, Mary; Watts, Davita; Webster, Jack; Weller, Leonard; Wells, Gail; Welmer, Colleen; Welsh, Phyllis; Wesley, Dennis; West, Commodore; West, David Dewayne; Weston, James; Wheeler, Dallas A.; Whitacre, Gregory; Wicklein, Brian; Williams, Eddie; Williams, Jackie; Williams, Mary Jane; Williams, Marshall H.; Williams, Nicole; Willis, William; Willoughby, Jimmie; Wilson, Michael; Wilson, Paul; Witter, James; Wochner, Joseph; Wogahn, Margaret; Wolff, Vern H.; Wood, Homer; Wood, Elaine; Woodward, Delvin; Wyatt, Curtis; Yusten, Patsy J.; Zimmerman, Joseph.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner Syngenta Crop Protection, LLC is a wholly-owned subsidiary of Syngenta Seeds, LLC, which is a wholly-owned subsidiary of Syngenta Corporation, which is a wholly-owned subsidiary of Syngenta Crop Protection AG, which is a wholly-owned

subsidiary of Petitioner Syngenta AG. Petitioner Syngenta AG is a wholly owned subsidiary of Syngenta Group (HK) Investment Company Limited, which is a wholly-owned subsidiary of Syngenta Group (HK) Holdings Company Limited, which is a wholly-owned subsidiary of Syngenta Group Co., Ltd.

STATEMENT OF RELATED PROCEEDINGS

This case directly relates to the following proceedings:

Pennsylvania Supreme Court, No. 289 EAL 2024, *Syngenta Crop Protection, LLC and Syngenta AG v. Douglas Nemeth, et al., Chevron U.S.A., Inc., and FMC Corporation* (petition denied February 19, 2025).

Superior Court of Pennsylvania, No. 160 EDM 2023, *Syngenta Crop Protection, LLC and Syngenta AG v. Douglas Nemeth, Chevron U.S.A., Inc., and FMC Corporation* (petition denied August 8, 2024).

Court of Common Pleas of Philadelphia County, No. 220500559, *In re: Paraquat Products Liability Litigation* (motion for appeal denied by operation of Pa. Rule of Appellate Procedure 1311(b) on Sept. 22, 2023, and by order of Nov. 2, 2023).

Additional Cases in the Court of Common Pleas of Philadelphia County. As explained in the body of the petition, *see infra* pp.8-9; App.121-127, these proceedings arise from an order entered in case no. 220500559, which is the "Master Docket" for a "Mass Tort Program" established by the trial court. Orders on the Master Docket apply to all underlying coordinated cases in the Mass Tort Program. New

cases are added to the Mass Tort program as they are filed and continue to be added here. The following cases were part of the *In re Paraquat* Mass Tort Program—and thus subject to orders in the Master Docket—as of Petitioners' November 21, 2023 petition to the Superior Court of Pennsylvania, and may therefore be "directly related" under this Court's Rule 14.1(b)(iii):

Nemeth, et al. v. Syngenta, et al., No. 210800644; *Lutz v. FMC Corp., et al.*, No. 210801388; *Strawser v. Syngenta, et al.*, No. 210802512; *Rothermel, et al. v. Syngenta, et al.*, No. 210900007; *Greenlee v. Syngenta, et al.*, No. 210900009; *Bowen, et al. v. Syngenta, et al.*, No. 210900010; *Koontz v. Syngenta, et al.*, No. 220102344; *Mertens v. Syngenta, et al.*, No. 220200931; *Grycuk v. Syngenta, et al.*, No. 220202594; *Sutphin v. Syngenta, et al.*, No. 220202598; *Parker v. Syngenta, et al.*, No. 220300429; *Henry v. Syngenta, et al.*, No. 220300430; *Atkins v. Syngenta, et al.*, No. 220301614; *Daniel, Dorsey v. Syngenta, et al.*, No. 220501752; *Agee, et al. v. Syngenta, et al.*, No. 220501753; *Doyle v. Syngenta, et al.*, No. 220602766; *Purnell v. Syngenta, et al.*, No. 220700208; *Adams v. Syngenta, et al.*, No. 220701201; *Felton v. Syngenta, et al.*, No. 220701477; *Damerau v. Syngenta, et al.*, No. 220702050; *Trosclair v. Syngenta, et al.*, No. 220800496; *Schmidt v. Syngenta, et al.*, No. 220800498; *Bullock v. Syngenta, et al.*, No. 220800500; *Daniel, Kathy v. Syngenta, et al.*, No. 220800520; *Willoughby v. Syngenta, et al.*, No. 220800589; *Webster v. Syngenta, et al.*, No. 220800737; *Rodgers v. Syngenta, et al.*, No. 220801228; *Haddock v. Syngenta, et al.*, No. 220801231; *Pate v. Syngenta, et al.*, No. 220801232; *Bang v. Syngenta, et al.*, No. 220801233;

Beattie v. Syngenta, et al., No. 220801236; *Conerly v. Syngenta, et al.*, No. 220801550; *Shelton v. Syngenta, et al.*, No. 220801940; *Raiford v. Syngenta, et al.*, No. 220802714; *McClure v. Syngenta, et al.*, No. 220802715; *Moreno v. Syngenta, et al.*, No. 220802717; *Nyreen v. Syngenta, et al.*, No. 220802722; *Goldschmidt v. Syngenta, et al.*, No. 220802725; *Provo v. Syngenta, et al.*, No. 220802731; *Griggs v. Syngenta, et al.*, No. 220803222; *Dinnel v. Syngenta, et al.*, No. 220803226; *Hudgens v. Syngenta, et al.*, No. 220803229; *Preston v. Syngenta, et al.*, No. 220803231; *Garafolo v. Syngenta, et al.*, No. 220803233; *Haynes v. Syngenta, et al.*, No. 220803237; *Roach v. Syngenta, et al.*, No. 220803240; *Stinson v. Syngenta, et al.*, No. 220803242; *Morgan v. Syngenta, et al.*, No. 220803245; *Godbey v. Syngenta, et al.*, No. 220803246; *Perry v. Syngenta, et al.*, No. 220803250; *Todnem v. Syngenta, et al.*, No. 220901130; *Allison v. Syngenta, et al.*, No. 220901131; *Morris v. Syngenta, et al.*, No. 220901133; *Ellis v. Syngenta, et al.*, No. 220901134; *Leonberger v. Syngenta, et al.*, No. 220901135; *Lewis v. Syngenta, et al.*, No. 220901136; *Petzoldt v. Syngenta, et al.*, No. 220901138; *Jones v. Syngenta, et al.*, No. 220901139; *Stoner v. Syngenta, et al.*, No. 220901376; *Thrash v. Syngenta, et al.*, No. 220901380; *Thompson v. Syngenta, et al.*, No. 220901384; *Blose v. Syngenta, et al.*, No. 220901400; *Hoffman v. Syngenta, et al.*, No. 220901401; *Donald v. Syngenta, et al.*, No. 220901402; *Herndon v. Syngenta, et al.*, No. 220901690; *Howlett v. Syngenta, et al.*, No. 220901692; *Jackson v. Syngenta, et al.*, No. 220901693; *Lagaly v. Syngenta, et al.*, No. 220901694; *Ptacek v. Syngenta, et al.*, No. 220901695; *Sherman v. Syngenta, et al.*, No. 220901696; *Sturgell v. Syngenta, et al.*, No.

220901697; *Wells v. Syngenta, et al.*, No. 220901698; *Wilson v. Syngenta, et al.*, No. 220901699; *Wogahn v. Syngenta, et al.*, No. 220901700; *Lewis v. Syngenta, et al.*, No. 220901836; *Phillips v. Syngenta, et al.*, No. 220901838; *Parkhurst v. Syngenta, et al.*, No. 220901841; *Vittitoe v. Syngenta, et al.*, No. 220901841; *Stoll v. Syngenta, et al.*, No. 220902302; *Davis v. Syngenta, et al.*, No. 220902306; *Baxter v. Syngenta, et al.*, No. 220902323; *Barajas v. Syngenta, et al.*, No. 220902340; *Burns v. Syngenta, et al.*, No. 220902341; *Wochner v. Syngenta, et al.*, No. 220902342; *Black v. Syngenta, et al.*, No. 220902343; *Clark v. Syngenta, et al.*, No. 220902344; *Cruthird v. Syngenta, et al.*, No. 220902345; *Jackson v. Syngenta, et al.*, No. 220902346; *Mendoza v. Syngenta, et al.*, No. 220902347; *Steele v. Syngenta, et al.*, No. 220902348; *Aho v. Syngenta, et al.*, No. 220902375; *Walthall v. Syngenta, et al.*, No. 220902396; *Blanchard v. Syngenta, et al.*, No. 220902398; *Jones v. Syngenta, et al.*, No. 220902400; *Miller v. Syngenta, et al.*, No. 220902401; *Hoffman v. Syngenta, et al.*, No. 220902459; *Hoots v. Syngenta, et al.*, No. 220902476; *Pierce v. Syngenta, et al.*, No. 220902484; *Welsh v. Syngenta, et al.*, No. 220902486; *Wade (Estate) v. Syngenta, et al.*, No. 220902490; *Larsen v. Syngenta, et al.*, No. 220902492; *Hinton v. Syngenta, et al.*, No. 220902505; *Mabs v. Syngenta, et al.*, No. 220902511; *Oxendine v. Syngenta, et al.*, No. 220902514; *Patton v. Syngenta, et al.*, No. 220902519; *Pettit v. Syngenta, et al.*, No. 220902520; *Skelton v. Syngenta, et al.*, No. 220902523; *Washington v. Syngenta, et al.*, No. 220902524; *Hoover v. Syngenta, et al.*, No. 220902526; *Mabry v. Syngenta, et al.*, No. 220902528; *Maloney v. Syngenta, et al.*, No. 220902531; *McGrath v. Syngenta,*

et al., No. 220902534; F. *Rochowiak v. Syngenta, et al.*, No. 220902535; *W. Rochowiak v. Syngenta, et al.*, No. 220902536; *Trendle v. Syngenta, et al.*, No. 220902539; *Gilbert v. Syngenta, et al.*, No. 220902542; *Greer v. Syngenta, et al.*, No. 220902543; *Hayes v. Syngenta, et al.*, No. 220902545; *Bordelon v. Syngenta, et al.*, No. 220902549; *Eaton v. Syngenta, et al.*, No. 221000717; *Grant v. Syngenta, et al.*, No. 221000718; *Watts v. Syngenta, et al.*, No. 221000719; *Petzold v. Syngenta, et al.*, No. 221000720; *Pearman v. Syngenta, et al.*, No. 221000721; *Newell v. Syngenta, et al.*, No. 221000722; *Mehaffey v. Syngenta, et al.*, No. 221000723; *Burns v. Syngenta, et al.*, No. 221000724; *Petri v. Syngenta, et al.*, No. 221002039; *Anderson v. Syngenta, et al.*, No. 221002040; *Cherney v. Syngenta, et al.*, No. 221002041; *Courtney v. Syngenta, et al.*, No. 221002043; *Fulcher v. Syngenta, et al.*, No. 221002044; *Garcia v. Syngenta, et al.*, No. 221002045; *Gary v. Syngenta, et al.*, No. 221002045; *Layne v. Syngenta, et al.*, No. 221002047; *Paisley v. Syngenta, et al.*, No. 221002048; *Tompkins v. Syngenta, et al.*, No. 221002049; *Wyatt v. Syngenta, et al.*, No. 221002050; *Parsley v. Syngenta, et al.*, No. 221100169; *Hales v. Syngenta, et al.*, No. 221101015; *Whitacre v. Syngenta, et al.*, No. 221101016; *Snively v. Syngenta, et al.*, No. 221101017; *Porter v. Syngenta, et al.*, No. 221101019; *Myers v. Syngenta, et al.*, No. 221101020; *Maitlen v. Syngenta, et al.*, No. 221101021; *Fulton v. Syngenta, et al.*, No. 221101022; *Shoup v. Syngenta, et al.*, No. 221101023; *Borges v. Syngenta, et al.*, No. 221101024; *Criss v. Syngenta, et al.*, No. 221101025; *Law v. Syngenta, et al.*, No. 221200800; *Feitner v. Syngenta, et al.*, No. 221200831; *Lehman v. Syngenta, et al.*, No. 221200957; *Vaughan v. Syngenta, et al.*, No.

221201295; *Toachlog v. Syngenta, et al.*, No. 221201297; *Robinson v. Syngenta, et al.*, No. 221201298; *Newman v. Syngenta, et al.*, No. 221201307; *Melendez v. Syngenta, et al.*, No. 221201308; *Calcote v. Syngenta, et al.*, No. 221201309; *Herrick v. Syngenta, et al.*, No. 221201310; *Dickman v. Syngenta, et al.*, No. 221201311; *Combs v. Syngenta, et al.*, No. 221201312; *Brady v. Syngenta, et al.*, No. 221201313; *Coberly v. Syngenta, et al.*, No. 221201314; *Nilsson v. Syngenta, et al.*, No. 221201318; *Zimmerman v. Syngenta, et al.*, No. 221201584; *Witter v. Syngenta, et al.*, No. 221202060; *Rice v. Syngenta, et al.*, No. 221202236; *Byers v. Syngenta, et al.*, No. 221202644; *Bryant v. Syngenta, et al.*, No. 221202645; *Clark v. Syngenta, et al.*, No. 221202646; *Reed v. Syngenta, et al.*, No. 221202647; *Lucas v. Syngenta, et al.*, No. 221202648; *Huff v. Syngenta, et al.*, No. 221202649; *Weston v. Syngenta, et al.*, No. 221202653; *Patrick v. Syngenta, et al.*, No. 221202690; *Harding v. Syngenta, et al.*, No. 230101310; *Rugg v. Syngenta, et al.*, No. 230101649; *Mackintosh v. Syngenta, et al.*, No. 230101650; *Keen v. Syngenta, et al.*, No. 230101651; *Fretwell v. Syngenta, et al.*, No. 230101652; *Duran v. Syngenta, et al.*, No. 230101653; *Cox v. Syngenta, et al.*, No. 230101654; *Didlot v. Syngenta, et al.*, No. 230102580; *Williams v. Syngenta, et al.*, No. 230102611; *Hurt v. Syngenta, et al.*, No. 230102772; *McGrew v. Syngenta, et al.*, No. 230102788; *Basford v. Syngenta, et al.*, No. 230103012; *Rice v. Syngenta, et al.*, No. 230103026; *Posey v. Syngenta, et al.*, No. 230103033; *Estes v. Syngenta, et al.*, No. 230103038; *Herpich v. Syngenta, et al.*, No. 230103045; *Sommers v. Syngenta, et al.*, No. 230103108; *Danielson v. Syngenta, et al.*, No. 230103191; *Franklin v. Syngenta, et*

al., No. 230200011; *Eby v. Syngenta, et al.*, No. 230200022; *Burns v. Syngenta, et al.*, No. 230200024; *Smith v. Syngenta, et al.*, No. 230200032; *Edwards v. Syngenta, et al.*, No. 230200036; *Lemon v. Syngenta, et al.*, No. 230200049; *Hamilton v. Syngenta, et al.*, No. 230200052; *Bewley v. Syngenta, et al.*, No. 230200053; *Smither v. Syngenta, et al.*, No. 230200055; *Bittle v. Syngenta, et al.*, No. 230200056; *Foster v. Syngenta, et al.*, No. 230201052; *Dolman v. Syngenta, et al.*, No. 230201053; *Hampton v. Syngenta, et al.*, No. 230201054; *Hebert v. Syngenta, et al.*, No. 230201055; *Hill v. Syngenta, et al.*, No. 230201056; *Kellogg v. Syngenta, et al.*, No. 230201057; *Mason v. Syngenta, et al.*, No. 230201058; *Mosley v. Syngenta, et al.*, No. 230201059; *Newburn v. Syngenta, et al.*, No. 230201060; *Perry v. Syngenta, et al.*, No. 230201061; *Rabina v. Syngenta, et al.*, No. 230201062; *Runnels v. Syngenta, et al.*, No. 230201063; *Missimer v. Syngenta, et al.*, No. 230201872; *West v. Syngenta, et al.*, No. 230202691; *Tanner v. Syngenta, et al.*, No. 230202693; *Rosbaugh v. Syngenta, et al.*, No. 230202694; *Regester v. Syngenta, et al.*, No. 230202695; *Lasley v. Syngenta, et al.*, No. 230202696; *Gahagen v. Syngenta, et al.*, No. 230202697; *Carney v. Syngenta, et al.*, No. 230202698; *Hulick v. Syngenta, et al.*, No. 230202751; *McClenaghan v. Syngenta, et al.*, No. 230202758; *Pritchard v. Syngenta, et al.*, No. 230202763; *Hazelbaker v. Syngenta, et al.*, No. 230300200; A*nkenbauer v. Syngenta, et al.*, No. 230300366; *Maxfield v. Syngenta, et al.*, No. 230300367; *Muskatevc v. Syngenta, et al.*, No. 230300368; *Abbott v. Syngenta, et al.*, No. 230300369; *Prouty v. Syngenta, et al.*, No. 230300370; *Elliot v. Syngenta, et al.*, No. 230300371; *Gaither v. Syngenta, et al.*, No. 230300372; *Welmer v. Syngenta, et al.*, No.

230302190; *Sproles v. Syngenta, et al.*, No. 230302191; *Rock v. Syngenta, et al.*, No. 230302192; *Oxmann v. Syngenta, et al.*, No. 230302193; *Myers v. Syngenta, et al.*, No. 230302194; *Harper v. Syngenta, et al.*, No. 230302195; *Follmann v. Syngenta, et al.*, No. 230302196; *Elrod v. Syngenta, et al.*, No. 230302197; *Dekoter v. Syngenta, et al.*, No. 230302198; *Certain v. Syngenta, et al.,* No. 230303013; *Sexton v. Syngenta, et al.*, No. 230303014; *King v. Syngenta, et al.*, No. 230303015; *Lowry v. Syngenta, et al.*, No. 230303016; *Erickson v. Syngenta, et al.*, No. 230303017; *Mitterling v. Syngenta, et al.*, No. 230303018; *Owen v. Syngenta, et al.*, No. 230303019; *Rank v. Syngenta, et al.*, No. 230303020; *Walthour v. Syngenta, et al.*, No. 230303021; *Blakesee, et al. v. Syngenta, et al.*, No. 230303177; *Bender v. Syngenta, et al.*, No. 230303182; *Miller v. Syngenta, et al.*, No. 230303198; *Rathbun, et al. v. Syngenta, et al.*, No. 230303202; *Miller, et al. v. Syngenta, et al.*, No. 230303204; *Cooper v. Syngenta, et al.*, No. 230303323; *Horstman v. Syngenta, et al.*, No. 230303324; *Still v. Syngenta, et al.*, No. 230303325; *Willis v. Syngenta, et al.*, No. 230402076; *Brown v. Syngenta, et al.*, No. 230402077; *Ishmael v. Syngenta, et al.*, No. 230402078; *Straughsbaugh v. Syngenta, et al.*, No. 230402079; *Johnson v. Syngenta, et al.*, No. 230402080; *Hartman, et al. v. Syngenta, et al.*, No. 230403044; *Hollowell v. Syngenta, et al.*, No. 230403050; *Jennings v. Syngenta, et al.*, No. 230403053; *Morgan, et al. v. Syngenta, et al.*, No. 230403056; *Thomas-Duck, et al. v. Syngenta, et al.*, No. 230403056; *Rozett, et al. v. Syngenta, et al.*, No. 230403103; *Hayden v. Syngenta, et al.*, No. 230500016; *Thomas v. Syngenta, et al.*, No. 230500017; *Boyd, et al. v. Syngenta, et al.*, No. 230500019; *Sargent, et al. v.*

Syngenta, et al., No. 230500020; *James, et al. v. Syngenta, et al.*, No. 230500127; *Goddard v. Syngenta, et al.*, No. 230500176; *Lee v. Syngenta, et al.*, No. 230500177; *Bertwell v. Syngenta, et al.*, No. 230500178; *Harker v. Syngenta, et al.*, No. 230500179; *Miller, P. v. Syngenta, et al.*, No. 230500180; *Blickensderfer v. Syngenta, et al.*, No. 230500181; *Parrett v. Syngenta, et al.*, No. 230500182; *Herrington v. Syngenta, et al.*, No. 230500183; *Merritt v. Syngenta, et al.*, No. 230500184; *Berger v. Syngenta, et al.*, No. 230500185; *Laminack v. Syngenta, et al.*, No. 230500186; *Huff v. Syngenta, et al.*, No. 230500221; *Lindesmith v. Syngenta, et al.*, No. 230500229; *Wheeler v. Syngenta, et al.*, No. 230500373; *Girton v. Syngenta, et al.*, No. 2305010420; *Hutto, et al. v. Syngenta, et al.*, No. 230501098; *Jackson, et al. v. Syngenta, et al.*, No. 230501099; *Mullins v. Syngenta, et al.*, No. 230501455; *Durden v. Syngenta, et al.*, No. 230501785; *Nickel v. Syngenta, et al.*, No. 230501786; *West v. Syngenta, et al.*, No. 230501787; *Cook v. Syngenta, et al.*, No. 230501788; *Anderson v. Syngenta, et al.*, No. 230501790; *Spencer v. Syngenta, et al.*, No. 230501791; *McGlynn v. Syngenta, et al.*, No. 230501792; *Freeman v. Syngenta, et al.*, No. 230501793; *Stewart v. Syngenta, et al.*, No. 230501794; *Aguiar v. Syngenta, et al.*, No. 230501795; *Steward v. Syngenta, et al.*, No. 230501796; *Mertz v. Syngenta, et al.*, No. 230501797; *Church, et al. v. Syngenta, et al.*, No. 230502030; *Noblin v. Syngenta, et al.*, No. 230502368; *Wolff v. Syngenta, et al.*, No. 230502535; *Frederickson v. Syngenta, et al.*, No. 230502542; *Craven v. Syngenta, et al.*, No. 230502783; *Schamahorn, et al. v. Syngenta, et al.*, No. 230502785; *Porter, et al. v. Syngenta, et al.*, No. 230502787; *Powers*

v. Syngenta, et al., No. 230502863; *Robinson v. Syngenta, et al.*, No. 230502907; *Houseknecht v. Syngenta, et al.*, No. 230502913; *Yusten v. Syngenta, et al.*, No. 230503234; *Harkreader v. Syngenta, et al.*, No. 230600465; *McClure v. Syngenta, et al.*, No. 230600726; *Leggett v. Syngenta, et al.*, No. 230600727; *Stacy v. Syngenta, et al.*, No. 230602535; *Dean v. Syngenta, et al.*, No. 230602536; *Sides v. Syngenta, et al.*, No. 230602537; *Wesley v. Syngenta, et al.*, No. 230602539; *Landry v. Syngenta, et al.*, No. 230602540; *Dunn v. Syngenta, et al.*, No. 230602541; *Short v. Syngenta, et al.*, No. 230602542; *Lane v. Syngenta, et al.*, No. 230602543; *Jordan v. Syngenta, et al.*, No. 230602544; *Pope v. Syngenta, et al.*, No. 230602545; *Turner v. Syngenta, et al.*, No. 230602546; *Schwien v. Syngenta, et al.*, No. 230602547; *Rouse v. Syngenta, et al.*, No. 230602533; *Cammack v. Syngenta, et al.*, No. 230602820; *Blassingame v. Syngenta, et al.*, No. 230700075; *Cader v. Syngenta, et al.*, No. 230700157; *Perry v. Syngenta, et al.*, No. 230702192; *Koehler v. Syngenta, et al.*, No. 230702193; *Ponton, et al. v. Syngenta, et al.*, No. 230702884; *Stoner, et al. v. Syngenta, et al.*, No. 230702887; *Bellow v. Syngenta, et al.*, No. 230702938; *Blount v. Syngenta, et al.*, No. 230702940; *Endrizzi v. Syngenta, et al.*, No. 230702944; *Watterson v. Syngenta, et al.*, No. 230702946; *Fisher v. Syngenta, et al.*, No. 230702949; *Weller v. Syngenta, et al.*, No. 230702951; *Charles v. Syngenta, et al.*, No. 230702952; *Kowalik, et al. v. Syngenta, et al.*, No. 230703032; *Claiborne v. Syngenta, et al.*, No. 230700547; *Burchett-Duke v. Syngenta, et al.*, No. 230800548; *Hallgren v. Syngenta, et al.*, No. 230800572; *Jack v. Syngenta, et al.*, No. 230800590; *Lockridge v. Syngenta, et al.*, No. 230800644; *Ellestad, et al. v. Syngenta, et al.*, No.

230802659; *McCown, et al. v. Syngenta, et al.*, No. 230802665; *Mitzel, et al. v. Syngenta, et al.*, No. 230802667; *Neal, et al. v. Syngenta, et al.*, No. 230802677; *Richardson v. Syngenta, et al.*, No. 230802694; *Rieger, et al. v. Syngenta, et al.*, No. 230802734; *Woodward v. Syngenta, et al.*, No. 230802737; *Bayliss v. Syngenta, et al.*, No. 230802825; *Dotson v. Syngenta, et al.*, No. 230802826; *Fristed v. Syngenta, et al.*, No. 230802828; *Rusnak v. Syngenta, et al.*, No. 230802829; *Gamble v. Syngenta, et al.*, No. 230803078; *Hembree v. Syngenta, et al.*, No. 230803080; *Mackie, et al. v. Syngenta, et al.*, No. 230803081; *Pierce v. Syngenta, et al.*, No. 230803083; *Aufdengarten v. Syngenta, et al.*, No. 230803160; *Boyd, et al. v. Syngenta, et al.*, No. 230900524; *Creel, et al. v. Syngenta, et al.*, No. 230900538; *Fleeman, et al. v. Syngenta, et al.*, No. 230900539; *Gee, et al. v. Syngenta, et al.*, No. 230900540; *Gryp v. Syngenta, et al.*, No. 230900543; *Hodges, et al. v. Syngenta, et al.*, No. 230900544; *Lee, et al. v. Syngenta, et al.*, No. 230900545; *Richburg, et al. v. Syngenta, et al.*, No. 23090047; *Sales v. Syngenta, et al.*, No. 230900548; *Vail, et al. v. Syngenta, et al.*, No. 230900549; *Bishop v. Syngenta, et al.*, No. 230900678; *Brewer, et al. v. Syngenta, et al.*, No. 230900681; *Carion, et al. v. Syngenta, et al.*, No. 230900690; *Gothard, et al. v. Syngenta, et al.*, No. 230900692; *Harrison v. Syngenta, et al.*, No. 230900699; *Johns, et al. v. Syngenta, et al.*, No. 230900704; *Lavery v. Syngenta, et al.*, No. 230900705; *Miller v. Syngenta, et al.*, No. 230900706; *Sandknop, et al. v. Syngenta, et al.*, No. 230900710; *Turner v. Syngenta, et al.*, No. 230900713; *Loeffler v. Syngenta, et al.*, No. 230900765; *Dodson v. Syngenta, et al.*, No. 230900766; *Russell, et al. v. Syngenta, et al.*, No.

230900776; *Durham, et al. v. Syngenta, et al.*, No. 230900940; *Hyslope v. Syngenta, et al.*, No. 230901472; *Fitch v. Syngenta, et al.*, No. 230902794; *Alligood, et al. v. Syngenta, et al.*, No. 230903179; *Butler, et al. v. Syngenta, et al.*, No. 230903180; *Eaton, et al. v. Syngenta, et al.*, No. 230903183; *Hassen, et al. v. Syngenta, et al.*, No. 230903185; *Hester, et al. v. Syngenta, et al.*, No. 230903187; *Kennedy v. Syngenta, et al.*, No. 230903188; *Kitten, et al. v. Syngenta, et al.*, No. 230903190; *Owens, et al. v. Syngenta, et al.*, No. 230903191; *Rosa v. Syngenta, et al.*, No. 230903192; *Wood, et al. v. Syngenta, et al.*, No. 230903215; *Dupuy v. Syngenta, et al.*, No. 231000009; *Thornhill v. Syngenta, et al.*, No. 231000010; *Lacour v. Syngenta, et al.*, No. 231000012; *Dixon v. Syngenta, et al.,* No. 231000014; *Hamberlin v. Syngenta, et al.*, No. 231000015; *Richard v. Syngenta, et al.*, No. 231000016; *Vidrine v. Syngenta, et al.*, No. 231000017; *Parker v. Syngenta, et al.*, No. 231000018; *Owens v. Syngenta, et al.*, No. 231000019; *Riestenberg v. Syngenta, et al.*, No. 231000020; *Wicklein v. Syngenta, et al.*, No. 231000022; *Jacobson v. Syngenta, et al.*, No. 231000024; *Williams v. Syngenta, et al.*, No. 231000026; *Schumacher, et al. v. Syngenta, et al.*, No. 231000393; *Legakis. v. Syngenta, et al.*, No. 231000396; *Mahr v. Syngenta, et al.*, No. 231000693; *Schuckman v. Syngenta, et al.*, No. 231001526; *Moran v. Syngenta, et al.*, No. 231001527; *Landry v. Syngenta, et al.*, No. 231001528; *Kroger v. Syngenta, et al.*, No. 231001529; *Polston v. Syngenta, et al.*, No. 231001530; *Nelson v. Syngenta, et al.*, No. 231001531; *Traver v. Syngenta, et al.*, No. 231001532; *Wilson v. Syngenta, et al.*, No. 231001533; *Tidwell v. Syngenta, et al.*, No. 231001534; *Nei v. Syngenta, et al.*, No.

231001535; *Megahan v. Syngenta, et al.*, No. 231001935; *Williams, et al. v. Syngenta, et al.*, No. 231002227; *Burt, et al. v. Syngenta, et al.*, No. 231002973; *Butler v. Syngenta, et al.*, No. 231002975; *Courson, et al. v. Syngenta, et al.*, No. 231002977; *Crigler v. Syngenta, et al.*, No. 231002980; *Engel, et al. v. Syngenta, et al.*, No. 231002981; *Griffiths, et al. v. Syngenta, et al.*, No. 231002983; *Grohs, et al. v. Syngenta, et al.*, No. 231002984; *Hadley, et al. v. Syngenta, et al.*, No. 231002986; *Kee, et al. v. Syngenta, et al.*, No. 231002987; *Kennedy, et al. v. Syngenta, et al.*, No. 231002988; *Kickhafer v. Syngenta, et al.*, No. 231002989; *Lackey v. Syngenta, et al.*, No. 231002990; *Monroe v. Syngenta, et al.*, No. 231003084; *Posch, et al. v. Syngenta, et al.*, No. 231003089; *Coffman v. Syngenta, et al.*, No. 231100070; *Rowe v. Syngenta, et al.*, No. 231100071; *Updike v. Syngenta, et al.*, No. 231100072; *Anderson v. Syngenta, et al.*, No. 231100264; *Edwards v. Syngenta, et al.*, No. 231100976; *Williams v. Syngenta, et al.*, No. 231100977; *McKale v. Syngenta, et al.*, No. 231100978; *Spicer v. Syngenta, et al.*, No. 231100979; *Davis v. Syngenta, et al.*, No. 231100980; *Sullivan v. Syngenta, et al.*, No. 231100981

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

APPENDIX CONTENTS

PETITION FOR WRIT OF CERTIORARI

This case squarely presents two important interrelated questions this Court explicitly left open two Terms ago in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023).

All 50 states require out-of-state companies to register to do in-state business. A few states, including Pennsylvania, follow a practice sometimes called "consent-by-registration": they treat registration as either explicit or implicit consent to *general* personal jurisdiction in that state, regardless of whether personal jurisdiction would otherwise be appropriate. In those states, compliance with a *mandatory* registration requirement (as a condition of doing business in the state) broadly subjects the registrant to general personal jurisdiction in *any* lawsuit in *any* of the state's courts, even suits with no connection to the state whatsoever. In *Mallory*, the Court granted certiorari to "decide whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business there." *Id.* at 127.

But *Mallory* ultimately answered only a much narrower question. In a fractured series of opinions, the Court divided 5-4 on the result, and 4-1-4 on the reasoning. Justice Alito provided the decisive fifth vote for the result on narrow, case-specific grounds, joining only two sections of Justice Gorsuch's lead opinion. The majority collectively held only that consent-by-registration was consistent with the Due Process Clause *in that case* because the respondent had "*substantial operations*" in Pennsylvania. *Id.* at 150

(Alito, J., concurring) (emphasis added). In *those* circumstances, the exercise of personal jurisdiction did not offend traditional notions of due process. The majority declined to "speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit." *Id.* at 135 (Gorsuch opinion, majority). *Mallory*'s narrow holding was sufficient to decide *that* case but left the constitutional status of consent-by-registration uncertain. In particular, *Mallory* explicitly left open two questions that continue to sow confusion in lower courts, and that are both squarely presented here.

First, *Mallory* reserved the question whether consent-by-registration is unconstitutional under the Commerce Clause. *Id.* at 127 n.3. In reasoning no other Justice criticized, Justice Alito's concurrence explained "there is a good prospect" Pennsylvania's consent-by-registration statute violates the Commerce Clause. *Id.* at 154-63 (Alito, J., concurring). But because that question was not before this Court on certiorari, it was explicitly left for remand. *Id.* at 127 n.3 (Gorsuch opinion, majority). (On remand, the Pennsylvania Supreme Court declined to decide that question, summarily remanding the whole case to the trial court.)

Second, *Mallory* did not decide whether a defendant *without* substantial operations in the state may be subject to consent-by-registration consistent with the Due Process Clause. *Mallory*'s holding was explicitly limited to large defendants with *substantial operations* in the state, like Norfolk Southern Railway's thousands of miles of track, thousands of employees, and multiple locomotive repair shops in Pennsylvania.

The majority did not resolve the serious due process concerns arising from subjecting out-of-state entities to broad general jurisdiction based on minimum contacts and the mere act of (mandatory) registration. *See id.* at 135; *id.* at 150 (Alito, J., concurring) ("The sole question before us" concerned "a large out-of-state corporation with substantial operations in a State.").

As a result, five Justices in *Mallory* seemingly agreed consent-by-registration is unconstitutional (under the Commerce Clause according to Justice Alito; under the Due Process Clause according to the four dissenting Justices). But a confluence of factors—the limited Question Presented in *Mallory*, *Mallory*'s fractured reasoning, and the respondent's substantial operations in Pennsylvania—led, ironically, to a *victory* for consent-by-registration.

The two questions *Mallory* left unanswered have only become more important in *Mallory*'s wake. Until this Court provides answers, *Mallory* stands as a nationwide "invitation" to states "to manipulate registration." *Id.* at 180 (Barrett, J., dissenting). *Mallory* permits Pennsylvania to assert general jurisdiction over all of the 100,000+ companies that lawfully do business within its borders and invites other states to do the same (which some have already done). That invites rampant nationwide forum-shopping, and circumvention of 75 years of this Court's personal jurisdiction decisions. *See id.* ("*Daimler* and *Goodyear* will be obsolete, and, at least for corporations, specific jurisdiction will be 'superfluous.'").

This case squarely presents both questions, underscores *Mallory*'s consequences, and is an excellent vehicle for this Court to provide guidance. Petitioner

Syngenta Crop Protection, LLC ("Syngenta Crop") is a Delaware company, headquartered in North Carolina. Hundreds of out-of-state plaintiffs sued Syngenta Crop in Pennsylvania, bringing causes of action with no connection to Pennsylvania—based entirely on an out-of-state product purchased and used out-of-state. Like the respondent in *Mallory*, Syngenta Crop complied with Pennsylvania's mandatory registration requirement for out-of-state companies. And on that basis alone, Syngenta Crop is subject to general personal jurisdiction in Pennsylvania. Unlike the respondent in *Mallory*, however, Syngenta has *no* substantial operations in Pennsylvania. And unlike the petition in *Mallory*, this case presents *both* Commerce Clause *and* Due Process challenges to Pennsylvania's consent-by-registration statute. Those considerations, plus the unique clarity of Pennsylvania's statute, make this an ideal vehicle to answer the questions *Mallory* expressly left open. Justice Alito observed that the narrow reasoning in *Mallory* was "the end of the case before us, [but] not the end of the story for registration-based jurisdiction." *Id.* at 154 (Alito, J., concurring). This case cleanly presents the next chapter. The Court should grant certiorari.

OPINIONS BELOW

The Supreme Court of Pennsylvania's order denying Petitioners' petition for allowance of appeal (App.1) is unreported and available at 2025 WL 545319. The Superior Court of Pennsylvania's order denying Petitioners' petition for permission to appeal (App.3), and the Court of Common Pleas of Philadelphia County's orders addressing objections to personal

jurisdiction (App.6), and declining to certify that order for appeal (App.5) are unreported.

JURISDICTION

On February 19, 2025, the Pennsylvania Supreme Court issued an order denying Petitioners' petition for allowance of appeal. App.1. This Court has jurisdiction under 28 U.S.C. §1257(a). *See Clark v. Jeter*, 486 U.S. 456, 459 (1988) (granting certiorari following the Pennsylvania Supreme Court's denial of petition for allowance of appeal); *Calder v. Jones*, 465 U.S. 783, 788 n.8 (1984) (reviewing state court's personal-jurisdiction holding under 28 U.S.C. §1257 following state supreme court's denial of petition for hearing for interlocutory appeal).

Because Petitioners challenge the constitutionality of a Pennsylvania statute, this petition has been served on the Attorney General of Pennsylvania, per 28 U.S.C. §2403(b).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Commerce Clause of the U.S. Constitution, Article I, Section 8, provides: "The Congress shall have Power … [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, Section 1, provides: "[N]or shall any state deprive any person of life, liberty, or property, without due process of law."

15 Pa.C.S. §411(a) provides in relevant part: "Except as provided in section 401 (relating to application

of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter."

42 Pa.C.S. §5301(a)(2)(i), (3)(i), (b), provides in relevant part:

> **(a) General rule.**--The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person ….
>
> * * *
>
> (2) Corporations.--
>
> (i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.
>
> * * *
>
> (3) Partnerships, limited partnerships, partnership associations, professional associations, unincorporated associations and similar entities.--
>
> (i) Formation under or qualification as a foreign entity under the laws of this Commonwealth.
>
> * * *
>
> **(b) Scope of jurisdiction.**--When jurisdiction over a person is based upon this section any cause of action may be asserted against

> him, whether or not arising from acts enumerated in this section….

The full text of 15 Pa.C.S. §411 and 42 Pa.C.S. §5301 is reproduced at App.8-10.

STATEMENT OF THE CASE

A. Syngenta Crop is an Out-of-State Company, With No Substantial Operations in Pennsylvania, and Required to Register to Do Any Business in Pennsylvania.

This is a product liability dispute between hundreds of plaintiffs with no connection whatsoever to Pennsylvania, and an out-of-state defendant with no substantial operations in Pennsylvania. In a "Mass Tort Program" action in the Court of Common Pleas of Philadelphia, hundreds of plaintiffs sued Petitioners, as well as Chevron U.S.A. Inc. and FMC Corporation.

Only Petitioner Syngenta Crop's amenability to personal jurisdiction is at issue here. The trial court separated the issue of personal jurisdiction over Syngenta Crop and Syngenta AG from other defendants. App.90-91. Petitioner Syngenta AG is incorporated and headquartered in Switzerland, does no business in Pennsylvania, is not registered in Pennsylvania, and was found *not* subject to general personal jurisdiction. App.7(¶1).

Syngenta Crop is a Delaware limited liability company, headquartered in North Carolina. None of Syngenta Crop's members are incorporated in, organized in, or headquartered in Pennsylvania. Syngenta Crop does not own property in Pennsylvania, run stores in Pennsylvania, or direct operations from

Pennsylvania. Syngenta Crop employs fewer than 15 people in Pennsylvania, all in mid- or low-level sales roles. In compliance with Pennsylvania statutes mandating registration, Syngenta Crop is registered to do business in Pennsylvania. *See* App.84, 119-20; *Syngenta Defs' Br. Regarding the Effect of* Mallory, Exhibits H-J, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 1, 2023).

B. Hundreds of Out-of-State Plaintiffs Bring Out-of-State Claims Against Syngenta Crop in Pennsylvania State Court.

In this case the plaintiffs contend that exposure to paraquat, a pesticide/herbicide, leads to Parkinson's disease. Paraquat is a chemical compound used in agricultural products that has been registered and sold in the United States since the mid-1960s. Paraquat is highly regulated and not available to the general public. Parkinson's disease has existed for thousands of years, and no factor other than genetics has been definitively identified as a cause.

The initial complaint was filed in August 2021. Over the next several months, 13 additional cases, by approximately 50 additional plaintiffs, were filed in the same court, making similar allegations.

In May 2022, after approximately 50 plaintiffs filed cases in the same court making similar allegations, the trial court created a Paraquat Mass Tort Program to aggregate all of its pending paraquat lawsuits. App.121-127. A "Mass Tort Program" is an aggregation procedure, roughly analogous to federal multidistrict litigation. Under the program's proce-

dures, plaintiffs filed a "Master Long-Form Complaint," which is a general pleading serving as the basis for individual plaintiffs' short-form complaints. *See Pls' Master Long-Form Complaint & Demand for Jury Trial*, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Ct. Nov. 16, 2022). Thereafter, hundreds of individual plaintiffs joined the litigation by filing short-form complaints.

Of the more than one thousand cases now pending in Pennsylvania, over *90% of the plaintiffs* are out-of-state residents whose claims have no connection to Pennsylvania. Most plaintiffs admitted that they never "used," "purchased," or "were exposed to" paraquat in Pennsylvania, were never treated "for an illness or condition related to their exposure to Paraquat," and if they were ever in Pennsylvania, "their presence in Pennsylvania is unrelated to the claims at issue." *Syngenta Defs' Br. Regarding the Effect of* Mallory, Exhibit B, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 1, 2023). All defendants, including petitioners, filed timely preliminary objections, including objecting to the use of Pennsylvania's consent-by-registration statute to exercise general personal jurisdiction over Syngenta Crop.

C. *Mallory* is Decided While This Case is Pending.

1. The timeline in this case overlaps with the *Mallory* litigation. On December 22, 2021 (before the Long-Form Complaint in this case was filed), the Pennsylvania Supreme Court ruled in *Mallory* that Pennsylvania's consent-by-registration statute was unconstitutional under the Due Process Clause as a

standalone basis for general personal jurisdiction over out-of-state defendants:

> Based on the United States Supreme Court's decision in *Daimler AG v. Bauman*, 571 U.S. 117, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014), and its predecessor *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011), we agree with the trial court that our statutory scheme violates due process to the extent that it allows for general jurisdiction over foreign corporations, absent affiliations within the state that are so continuous and systematic as to render the foreign corporation essentially at home in Pennsylvania. We further agree that compliance with Pennsylvania's mandatory registration requirement does not constitute voluntary consent to general personal jurisdiction.

Mallory v. Norfolk S. Ry. Co., 266 A.3d 542, 547 (Pa. 2021). That court acknowledged but did not reach Norfolk's alternative Commerce Clause argument. *Id.* at 559 n.9.

2. This Court granted certiorari. At the merits stage, the Solicitor General of the United States urged the Court to affirm. *See* Br. for the United States as Amicus Curiae Supporting Respondent, *Mallory*, 600 U.S. 122 (No. 21-1168). No state, not even Pennsylvania, argued in defense of consent-by-registration. The Court granted certiorari to "decide whether the Due Process Clause of the Fourteenth Amendment prohibits a State from requiring an out-of-state corporation to consent to personal jurisdiction to do business

there." 600 U.S. at 127; *see* Petition for a Writ of Certiorari at i, *Mallory*, 600 U.S. 122 (No. 21-1168). But it ended up deciding only a much narrower, almost case-specific question, dividing 5-4 on the result and 4-1-4 on the reasoning.

Five Justices agreed to vacate and remand, reasoning that the Due Process Clause did not prohibit the exercise of personal jurisdiction *over Respondent Norfolk*, in light of *Pennsylvania Fire Insurance Co. of Philadelphia v. Gold Issue Mining & Milling Co.*, 243 U.S. 93 (1917), and Norfolk's substantial operations in Pennsylvania. *See* 600 U.S. at 146. Justice Gorsuch's lead opinion was on behalf of four Justices, except for the two subsections Justice Alito joined on narrow grounds. *See* 600 U.S. at 124 (alignment of opinions); *id.* at 150-63 (Alito, J., concurring).

In providing the decisive fifth vote, Justice Alito explained "[t]he sole question before us is whether the *Due Process Clause of the Fourteenth Amendment* is violated when a large out-of-state corporation *with substantial operations in a State* complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." *Id.* at 150 (Alito, J., concurring). So stated, Justice Alito agreed with the majority that *Pennsylvania Fire* dictated the answer to that specific question. *Id.* at 151-52. Justice Alito's concurrence and Justice Gorsuch's lead opinion both emphasized Norfolk's substantial operations in Pennsylvania, such as its thousands of miles of track, thousands of employees, and multiple locomotive repair shops. *Id.* at 141-43 (Gor-

such opinion, plurality); *id.* at 153-54 (Alito, J., concurring). Indeed, the lead opinion reproduced Norfolk marketing literature, "boasting of its presence" in Pennsylvania to rebut Norfolk's "fairness" arguments. *Id.* at 141-42 (Gorsuch opinion, plurality).

In the majority's collective view, the specific facts meant "*Pennsylvania Fire* controls this case." *Id.* at 134 (Gorsuch opinion, majority); *see id.* at 152 (Alito, J., concurring) ("The parallels between *Pennsylvania Fire* and the case before us are undeniable."). The majority declined to "speculate whether any other statutory scheme and set of facts would suffice to establish consent to suit. It is enough to acknowledge that the state law and facts before us fall squarely within *Pennsylvania Fire*'s rule." *Id.* at 135-36 (Gorsuch opinion, majority); *see also id.* at 146 n.11 (Gorsuch opinion, plurality). The majority further agreed that *Pennsylvania Fire* had not been implicitly overruled by *International Shoe Co. v. Washington*, 326 U.S. 310 (1945), or later progeny like *Daimler AG v. Bauman*, 571 U.S. 117 (2014), and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011). *Id.* at 152-53 (Alito, J., concurring). Justice Alito stated he would not "overrule *Pennsylvania Fire in this case*," in light of Norfolk's "extensive operations in Pennsylvania" and other history. *Id.* at 153 (emphasis added).

The lead opinion and Justice Alito's concurrence also observed that Norfolk's dormant Commerce Clause challenge was not before the Court but should remain available on remand. *Id.* at 127 n.3 (Gorsuch opinion, majority); *id.* at 163 (Alito, J., concurring).

In reasoning no Justice criticized, Justice Alito explained that Pennsylvania's consent-by-registration

regime likely "violates the Commerce Clause." *Id.* at 160 (Alito, J., concurring). "A State's assertion of jurisdiction over lawsuits with no real connection to the State may violate fundamental principles that are protected by one or more constitutional provisions or by the very structure of the federal system that the Constitution created." *Id.* at 150. But Justice Alito believed the "most appropriate home" for those federalism principles "is the so-called dormant Commerce Clause," not the Due Process Clause. *Id.; see id.* at 156-57. Consent-by-registration laws like Pennsylvania's discriminate against interstate commerce and impose an undue burden on interstate commerce, without advancing any identifiable legitimate local interest. *See id.* at 163.

Justice Barrett dissented, on behalf of four Justices. *Id.* at 163-80 (Barrett, J., dissenting). The dissent explained that *International Shoe* and its progeny held, for 75 years, "that the Due Process Clause does not allow state courts to assert general jurisdiction over foreign defendants merely because they do business in the state." *Id.* at 163. More recently, cases like *Goodyear*, *Daimler*, 571 U.S. at 139-40, and *BNSF Railway Co. v. Tyrrell*, 581 U.S. 402 (2017), made clear that "in-state business" is insufficient to support general jurisdiction over a company. 600 U.S. at 164-67 (Barrett, J., dissenting) (quoting *BNSF*, 581 U.S at 414). General jurisdiction is "sweeping authority" that "exists only when the defendant's connection to the State is tight—so tight, in fact that the defendant is 'at home' there." *Id.* at 165 (citation omitted). For companies, that is usually the "place of incorporation and principal place of business." *Id.* Permitting states to extract "consent" to general jurisdiction as a condition

of doing business permits them to "defeat the Due Process Clause by adopting a law at odds with the Due Process Clause." *Id.* at 168.

In the dissent's view, *Pennsylvania Fire* was inconsistent with *International Shoe*, and thus had been overruled. *Id.* at 177-78 ("[W]e have already stated that 'prior decisions that are inconsistent with [*International Shoe*] are overruled.' *Pennsylvania Fire* fits that bill." (brackets and citation omitted)). And "[i]f States take up the Court's invitation to manipulate registration, *Daimler* and *Goodyear* will be obsolete, and, at least for corporations, specific jurisdiction will be 'superfluous.'" *Id.* at 180.

3. On remand, the Pennsylvania Supreme Court declined to address Norfolk's Commerce Clause arguments, instead summarily remanding to the trial court where that case remains pending. *Mallory v. Norfolk S. Ry. Co.*, 300 A.3d 1013 (Pa. 2023).

D. The Pennsylvania Courts Reject Syngenta Crop's Constitutional Objections to Pennsylvania's Consent-by-Registration Statute.

In this case, in December 2022, all defendants filed preliminary objections to the plaintiffs' Master Long-Form Complaint. At that time, *Mallory* was pending before this Court. Based on the then-binding Pennsylvania Supreme Court *Mallory* decision, Syngenta Crop objected to the exercise of general personal jurisdiction. *See* App.92-118.

In March 2023, the trial court ordered separate briefing on the issue of personal jurisdiction over Petitioners. App.90-91.

In July 2023, shortly after this Court decided *Mallory*, the trial court in this case ordered additional briefing on *Mallory*'s applicability. App.87-89. Syngenta Crop maintained its objection to general jurisdiction, explaining that Pennsylvania's registration statute was unconstitutional under the Commerce Clause and, as applied here based on Syngenta Crop's minimal operations in Pennsylvania, the Due Process Clause. *See* App.72-86.

The trial court overruled Syngenta Crop's objection, concluding "Syngenta Crop Protection LLC's preliminary objection is OVERRULED pursuant to Syngenta Crop Protection LLC's registration in Pennsylvania as a foreign limited liability company and the United States Supreme Court's holding in *Mallory v. Norfolk Southern Railway Co.*, 143 S. Ct. 2028 (June 27, 2023) (*plurality*)." App.7(¶2).

Syngenta Crop timely pursued its appellate rights and was denied relief in summary orders. At each step, Syngenta Crop contended that the Pennsylvania consent-by-registration statute violates both the Commerce Clause and the Due Process Clause as applied. Given the dispositive nature of the issue for the out-of-state plaintiff cases pending against it, the coercive nature of mass-tort actions, and the serious constitutional issues presented, Syngenta Crop moved to certify the trial court's order for appeal, App.57-71, which the trial court denied, App.5. Syngenta Crop petitioned the Pennsylvania Superior Court for permission to appeal, App.33-56, which was denied. App.3-4. With support from three sets of amici, Syngenta Crop petitioned the Pennsylvania Supreme Court for allowance of appeal, App.11-32, which was denied, App.1-2. This petition follows.

REASONS FOR GRANTING THE PETITION

I. This Case Squarely Presents the Important Questions that *Mallory* Left Unanswered.

State laws imposing consent-by-mandatory-registration raise constitutional federalism and fundamental fairness concerns. "[T]he Constitution restricts a State's power to reach out and regulate conduct that has little if any connection with the State's legitimate interests." *Mallory*, 600 U.S. at 154 (Alito, J., concurring); *see Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 582 U.S. 255, 263 (2017). And it "protects the defendant against the burdens of litigating in a distant or inconvenient forum." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980).

Those related but distinct concerns were not fully aired in *Mallory* because no Commerce Clause challenge was before the Court, and because Respondent Norfolk had substantial operations in Pennsylvania. Because there was no Commerce Clause challenge, the Court could not fully consider the federalism implications of consent-by-registration. In Justice Alito's view, federalism fit more naturally under the Commerce Clause than the Due Process Clause. In the view of a majority of Justices, the federalism concerns expressed in the Due Process cases are attenuated or absent when the defendant validly consents to jurisdiction. And a majority of Justices explained that Norfolk's substantial connections to Pennsylvania (including a history of filing lawsuits there) weakened its arguments appealing to fairness or questioning the validity of its consent.

The result was a limited holding that the Fourteenth Amendment's Due Process Clause is not violated "when a large out-of-state corporation *with substantial operations in a State* complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." 600 U.S. at 150 (Alito, J., concurring). *Mallory* did not decide whether consent-by-registration violates the Commerce Clause, or whether it violates the Due Process Clause for defendant companies *without* substantial operations in the State, leaving those important questions for another day. That day is now.

All 50 states require out-of-state companies doing in-state business to register and appoint an agent for service of process. *Mallory*, 600 U.S. 122, 164 (Barrett, J., dissenting); Tanya J. Monestier, *Registration Statutes, General Jurisdiction, and the Fallacy of Consent*, 36 CARDOZO L. REV. 1343, 1364 n.109 (2015). Pennsylvania is unique in that its statutes unambiguously provide that registration constitutes consent to general personal jurisdiction. 42 Pa.C.S. §5301(a)(2)(i), (3)(i), (b). "No other state directly spells out the jurisdictional consequences associated with registering to do business." Monestier, 36 Cardozo L. Rev. at 1368. "Consequently, the interpretation placed on the act of registering is left entirely to the courts, constrained only by the dictates of the Constitution." *Id.* Other states that treat registration as implicit consent to general personal jurisdiction do so through court decisions. *Id.*

As the *Mallory* certiorari briefing documented and this Court acknowledged, state and federal courts

were divided over whether consent-by-registration was constitutionally permissible—and thus whether otherwise ambiguous statutes can or should be construed to equate registration with consent to general personal jurisdiction. 600 U.S. at 127; *Mallory* Pet. at 9-19 (Case No. 21-1168); *Mallory* BIO at 7-13 (Case No. 21-1168). Most courts focused on the Due Process Clause. And most courts to consider the issue recently agreed that consent-by-registration was inconsistent with *Daimler* and *Goodyear*. *Mallory* BIO at 7-13 (Case No. 21-1168). The Delaware Supreme Court, for example, once held that an out-of-state company's registration constituted valid consent to general personal jurisdiction. *Sternberg v. O'Neil*, 550 A.3d 1105 (Del. 1988). More recently, Delaware overruled *Sternberg*, holding "after *Daimler*, it is not tenable to read Delaware's registration statutes as *Sternberg* did, and adding that consent-by-registration was also dubious under the Commerce Clause. *Genuine Parts Co. v. Cepec*, 137 A.3d 123, 126, 142-43 & n.109 (Del. 2016).

Mallory, however, opens the door to subjecting *every company* that does even a modicum of business across the 50 States to *general* personal jurisdiction *in all 50 States*, for claims having nothing whatsoever to do with at least 49 (if not all 50) of the States. In so doing, *Mallory* sows at least as much confusion as it removes by leaving open questions of consent-by-registration's constitutionality under the Commerce Clause, and under the Due Process Clause for defendants with a de minimis presence in a state coercing consent to general personal jurisdiction as a precondition to do any business in that state. This case pre-

sents both questions squarely, while avoiding the procedural faults that limited the Court's holding in *Mallory*.

Like *Mallory*, this case concerns Pennsylvania's statute, which is uniquely clear in spelling out that consent to jurisdiction follows automatically from registration. That makes this case an excellent vehicle because there is no dispute over how Pennsylvania's regime operates, only whether it is unconstitutional.

Unlike *Mallory*, however, this petition presents questions under both the Commerce Clause and the Due Process Clause, by Petitioners who do *not* have substantial operations in Pennsylvania. Those issues have been presented to the Pennsylvania courts at every level—trial court, intermediate appellate court, and supreme court, and all with the benefit of this Court's decision. They are ripe for this Court to resolve. Given the fallout from the uncertainty created by *Mallory* and the *in terrorem* effect for out-of-state defendants facing mass-actions and class actions in foreign forums, this case is an ideal vehicle for the Court to resolve them now.

II. The Court Should Resolve Whether Asserting Personal Jurisdiction Based on Consent-by-Registration Violates the Commerce Clause.

Mallory reserved the question whether consent-by-registration violates the Commerce Clause, observing that the question was not before the Court, but should remain available on remand. 600 U.S. at 127 n.3 (Gorsuch opinion, majority); *id.* at 163 (Alito, J., concurring). The Pennsylvania Supreme Court declined to consider the issue, instead remanding the

whole case to the trial court. *Mallory*, 300 A.3d at 1013.

The Court should grant certiorari here, and hold that consent-by-registration violates the Commerce Clause, at least where out-of-state plaintiffs bring causes of action with no connection to the state.

The "dormant Commerce Clause" is a corollary to the Clause's express grant to Congress of power to "regulate Commerce … among the several States." *Mallory*, 600 U.S. at 157 (Alito, J., concurring). The doctrine is "deeply rooted in [this Court's] caselaw," and recognizes that each state's power to impose burdens on interstate market "is not only subordinate to the federal power over interstate commerce, but is also constrained by the need to respect the interests of other States." *Id.* at 158 (citations and quotation marks omitted). A state law offends the dormant Commerce Clause if it either **(1)** discriminates against interstate commerce, or **(2)** imposes undue burdens on interstate commerce. *Id.* at 160 (Alito, J., concurring); *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 173-74 (2018). Discriminatory laws face "a virtually *per se* rule of invalidity." *Mallory*, 600 U.S. at 160 (Alito, J., concurring) (citations and quotation marks omitted). "Even-handed" laws "must advance a legitimate public interest and the burdens must not be clearly excessive in relation to the putative local benefits." *Id.* at 162 (citations and quotation marks omitted).

For reasons Justice Alito's concurrence suggested in *Mallory*, Pennsylvania's law is discriminatory because it forces out-of-state companies "to increase their exposure to suits on *all claims* in order to access Pennsylvania's market while Pennsylvania companies

generally face no reciprocal burden for expanding operations into another state." *Id.* at 161 n.7.

"But at the very least, the law imposes a 'significant burden' on interstate commerce." *Id.* at 161-62. Pennsylvania's scheme saddles out-of-state companies with additional operational burdens, and "injects intolerable unpredictability into doing business across state borders." *Id.* at 161. Companies desiring to limit their exposure will have incentives to engage in "creative corporate restructuring," to avoid out-of-state markets entirely, or to disregard registration altogether. *Id.* at 162.

The disregard-registration-laws option is not hypothetical. In *Simon v. First Savings Bank of Indiana*, 692 F.Supp.3d 479 (E.D. Pa. 2023), the defendants did business in Pennsylvania without registering. The district court held that it lacked general personal jurisdiction over the defendant: Pennsylvania's consent-by-registration statute did not apply to non-registering defendants, and defendants were not "at home" in Pennsylvania under *Daimler*. *Id.* at 483. "No one benefits from this 'efficient breach' of corporate-registration laws." *Mallory*, 600 U.S. at 162 (Alito, J., concurring).

There is no "legitimate local interest" on the other side of the balance. *Id.* at 162. To be sure, states have legitimate interests in adjudicating conduct within their borders or conduct that injures their residents—conduct that would of course give rise to *specific* personal jurisdiction. But states have no legitimate interest "in vindicating the rights of non-residents harmed by out-of-state actors through conduct outside the

State," *id.* at 163, by granting sweeping general personal jurisdiction over Syngenta Crop for conduct that occurs anywhere, as Pennsylvania purports to do here. *See also Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 891, 894 (1988) (Ohio law violated the Commerce Clause where it required an out-of-state company to choose between subjecting itself to the general jurisdiction or forfeiting statute-of-limitations defenses, thus "remain[ing] liable in perpetuity for all lawsuits containing state causes of action filed against it" in Ohio).

On the merits, the question is not close. Nor is it even new. The applicability of the dormant Commerce Clause to consent-by-registration statutes was largely resolved in *Davis v. Farmers' Co-op Equity Co.*, 262 U.S. 312 (1923), a century-old unanimous decision that remains good law. There, a Kansas-based company sued a Kansas railroad in Minnesota on a claim "in no way connected with Minnesota[.]" *Id.* at 314. The company contended that personal jurisdiction over the railroad was proper in Minnesota because railroad complied with a statute requiring it to "submit to suit" in Minnesota on any "cause of action, wherever it may have arisen," as a condition of maintaining a soliciting agent in Minnesota. *Id.* at 315. The Minnesota Supreme Court upheld the exercise of personal jurisdiction. This Court reversed, in a unanimous decision by Justice Brandeis. *Id.* As *Davis* explained, "litigation in states and jurisdictions remote from that in which the cause of action arose … causes, directly and indirectly, heavy expense to the carriers" and "imposes upon interstate commerce a serious and unreasonable burden, which renders the statute obnoxious to the commerce clause." *Id.*

Davis is not an outlier. Later decisions applied *Davis*'s rule to reject similar assertions of personal jurisdiction against out-of-state companies who registered to do business in the state, where out-of-state residents brought claims with no connection to the state. *E.g.*, *Atchison, Topeka & Santa Fe R. Co. v. Wells*, 265 U.S. 101 (1924); *Mich. Cent. R. Co. v. Mix*, 278 U.S. 492 (1929). Subsequent decisions reaffirmed *Davis* as precedent, while recognizing that a different result may be appropriate in cases where in-state plaintiffs sue defendants who have sufficient connections to the state. *Int'l Mill Co. v. Columbia Transp. Co.*, 292 U.S. 511, 518-19 (1934).

This case, however, is as indistinguishable from *Davis* as *Mallory* was indistinguishable from *Pennsylvania Fire*, presenting an ideal vehicle for this Court to reaffirm that *Davis* prohibits consent-by-registration regimes from imposing *general* personal jurisdiction where the registering party otherwise lacks substantial in-state connections. The Minnesota statute in *Davis* is indistinguishable from the Pennsylvania statute here. There, as here, out-of-state plaintiffs brought claims with no connection to Pennsylvania whatsoever, and assert that *general* personal jurisdiction over an out-of-state defendant flows automatically from its compliance with a mandatory registration statute. *Davis* remains good law, and fits comfortably with this Court's modern Commerce Clause precedents. *Mallory*, 600 U.S. at 160 (Alito, J., concurring); *see also Genuine Parts*, 137 A.3d at 142-43 n.108 (Delaware Supreme Court observing consent-by-registration is "constitutionally problematic" under the Commerce Clause); *In re: Syngenta AG MIR 162 Corn*

Litig., 2016 WL 2866166, at *4-6 (D. Kan. 2016) (concluding consent-by-registration is unconstitutional under *Davis*). But given *Mallory*, lower courts have failed to apply *Davis*—as illustrated by the multitude of cases at issue in this Petition. This Court should not further delay clarifying that the Commerce Clause prohibits such regimes, notwithstanding *Mallory*.

III. The Court Should Decide Whether Asserting Personal Jurisdiction Based on Consent-by-Registration, Against a Defendant With No Substantial Operations in the State, Violates the Due Process Clause.

A. *Mallory*'s holding is "that position taken by those Members who concurred in the judgments on the narrowest grounds." *United States v. Marks*, 430 U.S. 188, 193 (1977). Here, those are the grounds on which Justice Alito concurred. Justice Alito's concurrence, and the majority sections of Justice Gorsuch's opinion emphasized that *Mallory* was controlled by *Pennsylvania Fire* and the specific facts of the case. 600 U.S. at 134-35 (Gorsuch opinion, majority). Key to both opinions was the conclusion that Norfolk's *de jure* "consent" to general personal jurisdiction was valid under the circumstances, where Norfolk had a substantial presence in Pennsylvania. A majority agreed that "[c]onsent is a separate basis for personal jurisdiction" from the *International Shoe* line of cases, *id.* at 153 (Alito, J., concurring), and that Norfolk's "consent" was valid on the facts of the case. But the majority did not hold that "consent" flowing automatically from a mandatory registration requirement is always sufficient. Rather, the concurrence ties the validity of Norfolk's consent to Norfolk's substantial operations

in Pennsylvania, and other considerations such as Norfolk's history of affirmatively filing lawsuits in Pennsylvania courts. *E.g.*, *id.* at 150 (Alito, J., concurring) ("sole question" concerns "a large out-of-state corporation with substantial operations in a state"). Indeed, the concurrence ties the advisability of overruling *Pennsylvania Fire* to those same considerations:

> Nor would I overrule *Pennsylvania Fire in this case*, as Norfolk Southern requests. At the least, *Pennsylvania Fire*'s holding does not strike me as "egregiously wrong" *in its application here*. Requiring Norfolk Southern to defend against Mallory's suit in Pennsylvania… is not so deeply unfair that it violates the railroad's constitutional right to due process. *The company has extensive operations in Pennsylvania, has availed itself of the Pennsylvania courts on countless occasions*, and had clear notice that Pennsylvania considered its registration as consent to general jurisdiction[.]Norfolk Southern's c*onduct and connection with Pennsylvania are such that it should reasonably anticipate being haled into court there*.

Id. at 153 (citations omitted).

All of this leaves open the question of what happens where, as here, the defendant does *not* have substantial operations in the state, as here and in countless other cases. When, if ever, may general jurisdiction be premised on "consent" based *solely* from the out-of-state defendant's compliance with a mandatory

registration requirement. Nothing in *Mallory* provides an answer that has the support of five Justices.

B. This case squarely presents the question on which the Court granted certiorari in *Mallory*, without any of the factors that prevented the Court from answering it fully. The Court should grant certiorari and hold that defendants who do not have substantial operations in the state cannot, consistent with the Due Process Clause, be deemed to consent to general jurisdiction based solely on their compliance with a mandatory registration requirement.

The Due Process Clause's "restrictions on personal jurisdiction" are based on federalism and fairness. *See Bristol-Myers*, 582 U.S. at 263 (citing *Hanson v. Denckla*, 357 U.S. 235, 251 (1958) and *World-Wide Volkswagen*, 444 U.S. at 293. At least for *non-consent* jurisdictions, *Mallory*, 600 U.S. at 152 (Alito, J., concurring), those considerations limit the sweeping power of *general* jurisdiction to states where the defendant is "essentially at home." *Goodyear*, 564 U.S. at 919. For companies, that is usually only the principal place of business and the state of incorporation. Doing business in a forum—even a "substantial, continuous, and systematic course of business"—is not enough. *Daimler*, 571 U.S. at 138; *see Goodyear*, 564 U.S. at 927.

The case-specific facts that the *Mallory* majority found dispositive are reasonably relevant to federalism, fairness, and the validity of Norfolk's "consent" to jurisdiction. In particular, Norfolk's substantial operations in Pennsylvania and history of filing lawsuits in the Pennsylvania courts helped to establish the validity of its consent to general jurisdiction, meaning

that *Pennsylvania Fire* controlled the case rather than *International Shoe* and its progeny.

The Court should clarify that the same result does not follow when those case-specific factors are absent. *Every state requires out-of-state companies to register to do in-state business*. Pennsylvania has declared that general personal jurisdiction follows automatically from registration *alone*. If that is broadly permissible, then every state can circumvent 75 years of this Court's personal jurisdiction precedent simply by passing a statute announcing its intentions. *Mallory*, 600 U.S. at 169 (Barrett, J., dissenting). The upshot would be that *every* company that does *any* amount of business across the country will be subject to general personal jurisdiction in *every state*, and thus could be sued on anything in any state, no matter how unrelated to the business's conduct in that state.

Such broad overreach at the expense of other States harms interstate federalism and runs counter to everything this Court has said about what due process requires to establish personal jurisdiction. Pennsylvania "has no legitimate interest in a controversy with no connection to the Commonwealth that was filed by a non-resident against a foreign corporation." *Id.* at 169 n.1 (Barrett, J., dissenting (quoting *Mallory*, 266 A.3d at 567)). Pennsylvania's scheme is unfair to defendants like Syngenta Crop that lack the "conduct and connection with Pennsylvania … such that [they] should reasonably anticipate being hailed into court there," *Id.* at 153 (Alito, J., concurring), merely as a condition of doing *any* business there.

Nor can federalism and fairness be brushed aside on "consent" grounds. Pennsylvania registrants do not

give express consent to general personal jurisdiction. In *Mallory*, as here, "consent" is declared by statute and extracted from registrants as a condition of doing business in the state. 600 U.S. at 178-79 (Barrett, J., dissenting) (observing that *Pennsylvania Fire* distinguished between express and deemed consent). And at least where the case-specific facts of *Mallory* are absent, Pennsylvania's regime imposes an unconstitutional condition. Governments generally may not deny benefits "to a person because he exercises a constitutional right." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013). Defendants like Syngenta Crop ordinarily have a due-process right not to be sued for anything that happens anywhere in states where they lack minimum contacts, on claims with no connection to the state. They cannot validly "consent" to a blanket waiver of that right as a condition of merely accessing a state's markets.

Finally, if necessary, the Court should consider overruling *Pennsylvania Fire*. Four dissenting Justices in *Mallory* believed *Pennsylvania Fire* had been implicitly overruled as inconsistent with *International Shoe*. 600 U.S. at 177-78 (Barrett, J., dissenting) (citing *Shaffer v. Heitner*, 433 U.S. 186, 212 n.39 (1977)). Justice Alito agreed with the plurality that *International Shoe* concerned non-consenting defendants. *Id.* at 152 (Alito, J., concurring). Justice Alito acknowledged that "we have infrequently invoked [*Pennsylvania Fire*'s] due process holding," and reasoned that Norfolk's extensive contacts with Pennsylvania made it inadvisable to overrule *Pennsylvania Fire* in that case. *Id.* at 152. Those case-specific facts are absent here; by contrast this case illustrates the pernicious-

ness of broadly applying *Pennsylvania Fire*'s reasoning. If the Court finds that it must choose between expanding *Mallory*'s holding to defendants with no substantial operations in the state, or overruling *Pennsylvania Fire*, then *Pennsylvania Fire* should yield.

IV. Leaving These Questions Undecided Invites Further Confusion, Forum-Shopping, and Manipulation.

This case is an ideal vehicle to address the questions *Mallory* left open. §I, *supra*. Given the stakes, the Court should not delay.

A. *Mallory* currently permits Pennsylvania to claim general jurisdiction over all companies that lawfully do business within its borders. 600 U.S. at 163 (Barrett, J., dissenting). Any other state may possibly do the same, either by enacting a law like Pennsylvania's, or by interpreting its law to have the same effect, *id.*, as courts in at least three other states (Georgia, Iowa, and Minnesota) have done. *See Cooper Tire & Rubber Co. v. McCall*, 863 S.E.2d 81, 92 (Ga. 2021), *cert. denied* 143 S. Ct. 2689 (2023); *Sloan v. Burist*, 2023 WL 7309476, at *4 (S.D. Ga. Nov. 6, 2023); *Spanier v. Am. Pop Corn Co.*, 2016 WL 1465400, at *4 (N.D. Iowa Apr. 14, 2016); *Kelchner v. CRST Expedited, Inc.*, 2025 WL 991095, at *7 (N.D. Iowa Apr. 2, 2025) (certifying question to Iowa Supreme Court); *ResCap Liquidating Tr. v. LendingTree, LLC*, 2020 WL 1317719, at *5 (D. Minn. Mar. 20, 2020). In so doing, a state can manufacture "consent" by operation of law, and circumvent 75 years of this Court's due process decisions. *Mallory*, 600 U.S. at 168-71 (Barrett, J., dissenting).

The result is an "invitation to manipulate registration," *id.* at 180 (Barrett, J., dissenting), that remains open until the Court provides further guidance. That is not speculative. States often look to this Court for guidance in construing their jurisdictional statutes—either out of constitutional avoidance, or a desire to construe their statutes as broadly as constitutionally possible. That is what Delaware did—first, in *Sternberg* by adopting consent-by-registration, and then in *Genuine Parts* by overruling *Sternberg* in light of *Daimler*. *See* §I, *supra*. Any state court decision relying on *Daimler* to limit the consequences of its registration statute is potentially ripe for reconsideration. If national businesses are subject to general jurisdiction everywhere, then this Court's Due Process cases become practically obsolete through circumvention. *Mallory*, 600 U.S. at 180.

B. Regardless of whether additional states interpret *Mallory* to permit them to adopt consent-by-registration, even one state is enough to upend litigation across the country. "If there is general jurisdiction effectively everywhere, then the plaintiffs' bar need only capture a single state legislature and push for plaintiff-friendly law and choice-of-law rules that would apply to claims that arise anywhere." Maggie Gardner et al., *The False Promise of General Jurisdiction*, 73 ALA. L. REV. 455, 473-74 (2022).

More than 100,000 out-of-state businesses are registered in Pennsylvania. *See* Pa. Dep't of State, *Registered Businesses in PA Current by County* (updated Apr. 7, 2025), https://tinyurl.com/3w75j3x4. Those businesses are based all over the country and internationally. *Mallory* affects all of them. *See, e.g.*,

Alison Frankel, *US Supreme Court Clears Path for Plaintiffs to Pick where to Sue Corporations*, REUTERS (June 28, 2023) (observing *Mallory* "allow[s] plaintiffs to pick friendly out-of-state venues and gain valuable leverage from filing masses of cases in a single court," and it is "a good bet" that "plaintiffs' lawyers will capitalize on the Mallory ruling by filing cases for out-of-state claimants in plaintiff[]-friendly Philadelphia courts."), https://tinyurl.com/3pxfnnv9. And at this moment Petitioner alone is being subjected to general personal jurisdiction in over a thousand cases, just in Pennsylvania—the overwhelming majority of which have no connection to Pennsylvania at all.

C. Only this Court can alleviate the uncertainty following *Mallory*. The court's fractured set of opinions collectively indicated that at least five Justices believe consent-by-registration is unconstitutional. But because only four Justices agreed that consent-by-registration is unconstitutional *under the Due Process Clause* as applied *to Norfolk*, consent-by-registration lives on with its constitutionality uncertain. Courts and litigants are left to parse the various *Mallory* opinions, and guess at how a majority might have ruled in a different case with a different defendant and a Commerce Clause challenge before the Court. The Court should grant certiorari here rather than leaving litigants across the country to protracted, ongoing, costly litigation, subjecting businesses nationwide to litigation in foreign courts where they should not be in the first place.

Pennsylvania courts confronted with these questions post-*Mallory* have been dismissive, which fur-

ther suggests there are no benefits from delaying review. In *Hunt Refining Co. v. Gray*, No. 59 EDM 2024 (Pa. Super. Mar. 26, 2025), for example, the Pennsylvania Superior Court denied two petitions to appeal raising Commerce Clause challenges. The court rejected the argument that "Justice Alito's concurrence in *Mallory* discussing the potential Dormant Commerce Clause issue [is] a basis for claiming the orders involve a controlling question of law as to which there is a substantial ground for difference of opinion." Slip op. at 4. The court dismissed Justice Alito's concurring opinion as "a window into the workings of that jurist's mind," concluding "[t]he musings of one Justice in a concurring opinion, which has not been joined by another Justice, does not give rise to the overarching difference of opinion on which we rely in granting interlocutory review." *Id.* at 6. *Hunt Refining* was similarly dismissive of the narrow grounds on which the *Mallory* majority ruled. *Hunt Refining* declared that *Mallory* broadly "closes the door on due process challenges to Pennsylvania's consent-by-registration jurisdiction statute," *Hunt Refining*, slip op. at 7, without considering the fundamental due-process differences presented in *Mallory* (where the defendant had an active, substantial in-state presence) and circumstances such as this (where the defendant has no in-state operations to speak of). The courts in this case were even more dismissive, rejecting Petitioner's arguments in summary orders. The Pennsylvania Supreme Court in *Mallory* likewise declined the opportunity to address the Commerce Clause on remand. *Mallory*, 300 A.3d at 1013.

Only this Court can answer the questions it left open in *Mallory*. It should do so here and, most importantly, it should do so now—before out-of-state defendants facing numerous mass-actions, class actions, and other costly litigation in foreign forums where they have no meaningful presence, serves to coerce trials or settlements in cases that should never have been brought there in the first place. *Cf.* HENRY J. FRIENDLY, FEDERAL JURISDICTION: A GENERAL VIEW 120 (1973) (discussing "blackmail settlements"); *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1298-99 (7th Cir. 1995) (Posner, J.) (citing *id.*).

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

John C. O'Quinn
Counsel of Record
Ragan Naresh
William H. Burgess
Richard Simpson
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., NW
Washington, D.C. 20004
(202) 389-5000
john.oquinn@kirkland.com

Counsel for Petitioners

May 19, 2025

APPENDIX

APPENDIX CONTENTS

Appendix A

IN THE SUPREME COURT OF PENNSYLVANIA EASTERN DISTRICT

No. 289 EAL 2024

Petition for Allowance of Appeal from the Order of the Superior Court

---

SYNGENTA CROP PROTECTIONS, LLC and SYNGENTA AG,

Petitioners,

v.

DOUGLAS NEMETH, CHEVRON U.S.A., INC. and FMC CORPORATION,

Respondents.

Filed: Feb. 19, 2025

ORDER

PER CURIAM

AND NOW, this 19th day of February, 2025, the Petition for Allowance of Appeal is **DENIED**. Petitioners' Application for Stay Pending Disposition of Petition for Allowance of Appeal is **DENIED**. Petitioners' Application for Leave to File a Reply in Support of Petition for Allowance of Appeal is

GRANTED. Philadelphia Defense Institute and Philadelphia Association of Defense Counsel's Application to File *Amici Curiae* Brief *Nunc Pro Tunc* is **GRANTED**.

Appendix B

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 160 EDM 2023

Philadelphia County Civil Division

220500559

SYNGENTA CROP PROTECTIONS, LLC and SYNGENTA AG,

Petitioners,

v.

DOUGLAS NEMETH, CHEVRON U.S.A., INC. and FMC CORPORATION,

Filed: Aug. 8, 2024

ORDER

Upon consideration of the November 21, 2023 petition for permission to appeal, wherein Petitioner relies upon Justice Alito's concurrence in ***Mallory v. Norfolk Southern Railroad Co.***, 600 U.S. 122 (2023), to argue that it presents a controlling question of law as to which there is substantial ground for difference of opinion, and the answer thereto, the petition is **DENIED**.

The three applications for leave to file *amicus* briefs are **GRANTED**.

The application for leave to file a reply in support of the petition for permission to appeal is **GRANTED**.

The application for stay pending consideration of the petition for permission to appeal is **DENIED**.

The application for leave to file a reply in support of the application for stay pending consideration of the petition for permission to appeal is **GRANTED**.

The application for leave to supplement the petition for permission to appeal is **GRANTED**.

PER CURIAM

Appendix C

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION - CIVIL

MAY TERM, 2022

No. 559

Control No. 23094882

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: Nov. 2, 2023

ORDER

AND NOW, this 2nd day of November 2023, upon consideration of defendant Syngenta Crop Protection LLC's motion to certify the order docketed on August 24, 2023, for interlocutory appeal pursuant to 42 Pa.C.S. § 702(b) and Pa.R.A.P. 1311(a)(1), and any responses, it is **ORDERED** that the motion is **DENIED**.

BY THE COURT:

s/Abbe F. Fletman

J.

Appendix D

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION - CIVIL

MAY TERM 2022

No. 559

Control No. 22124218

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: Aug. 24, 2023

ORDER

AND NOW, this 22nd day of August 2023, upon consideration of the preliminary objection to this Court's exercise of general personal jurisdiction filed by defendants Syngenta AG and Syngenta Crop Protection LLC, and any responses, it is **ORDERED** that the preliminary objection is **SUSTAINED IN PART** and **OVERRULED IN PART** as follows:

1) Syngenta AG's preliminary objection is **SUSTAINED** as this Court lacks general personal jurisdiction over Syngenta AG[1];
2) Syngenta Crop Protection LLC's preliminary objection is **OVERRULED** pursuant to Syngenta Crop Protection LLC's registration in Pennsylvania as a foreign limited liability company and the United States Supreme Court's holding in *Mallory v. Norfolk Southern Railway Co.*, 143 S.Ct. 2028 (June 27, 2023) (*plurality*); and
3) The Office of Judicial Records shall not close this Control Number (22124218) because other preliminary objections filed by Syngenta AG and Syngenta Crop Protection LLC remain pending.

BY THE COURT:

s/Abbe F. Fletman

J.

[1] Syngenta AG's preliminary objection to the exercise of specific jurisdiction has not been ruled on at this time and is the subject of further briefing under the terms of this Court's order docketed July 18, 2023.

Appendix E

RELEVANT STATUTORY PROVISIONS

15 Pa.C.S. § 411. Registration to do business in this Commonwealth.

(a) Registration required.--Except as provided in section 401 (relating to application of chapter) or subsection (g), a foreign filing association or foreign limited liability partnership may not do business in this Commonwealth until it registers with the department under this chapter.

(b) Penalty for failure to register.--A foreign filing association or foreign limited liability partnership doing business in this Commonwealth may not maintain an action or proceeding in this Commonwealth unless it is registered to do business under this chapter.

(c) Contracts and acts not impaired by failure to register.--The failure of a foreign filing association or foreign limited liability partnership to register to do business in this Commonwealth does not impair the validity of a contract or act of the foreign filing association or foreign limited liability partnership or preclude it from defending an action or proceeding in this Commonwealth.

(d) Limitations on liability preserved.--A limitation on the liability of an interest holder or governor of a foreign filing association or of a partner of a foreign limited liability partnership is not waived solely because the foreign filing association or foreign limited liability partnership does business in this Commonwealth without registering.

(e) Governing law not affected.--Section 402 (relating to governing law) applies even if a foreign association fails to register under this chapter.

(f) Registered office.--Subject to section 109 (relating to name of commercial registered office provider in lieu of registered address), every registered foreign association shall have, and continuously maintain, in this Commonwealth a registered office, which may but need not be the same as its place of business in this Commonwealth.

(g) Foreign insurance corporations.--A foreign insurance corporation is not required to register under this chapter.

42 Pa.C.S. § 5301. Persons.

(a) General rule.--The existence of any of the following relationships between a person and this Commonwealth shall constitute a sufficient basis of jurisdiction to enable the tribunals of this Commonwealth to exercise general personal jurisdiction over such person, or his personal representative in the case of an individual, and to enable such tribunals to render personal orders against such person or representative:

(1) Individuals.--

(i) Presence in this Commonwealth at the time when process is served.

(ii) Domicile in this Commonwealth at the time when process is served.

(iii) Consent, to the extent authorized by the consent.

(2) Corporations.--

(i) Incorporation under or qualification as a foreign corporation under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(3) Partnerships, limited partnerships, partnership associations, professional associations, unincorporated associations and similar entities.--

(i) Formation under or qualification as a foreign entity under the laws of this Commonwealth.

(ii) Consent, to the extent authorized by the consent.

(iii) The carrying on of a continuous and systematic part of its general business within this Commonwealth.

(b) Scope of jurisdiction.--When jurisdiction over a person is based upon this section any cause of action may be asserted against him, whether or not arising from acts enumerated in this section. Discontinuance of the acts enumerated in subsection (a)(2)(i) and (iii) and (3)(i) and (iii) shall not affect jurisdiction with respect to any act, transaction or omission occurring during the period such status existed.

Appendix F

RULE 14.1(g)(i) RECORD EXCERPTS

IN THE SUPREME COURT OF PENNSYLVANIA

No. 289 EAL 2024

SYNGENTA CROP PROTECTION, LLC and SYNGENTA AG,

Petitioners,

v.

DOUGLAS NEMETH, et al., CHEVRON U.S.A. INC., and FMC CORPORATION,

Respondents.

(IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION)

Filed: Sept. 9, 2024

SYNGENTA CROP PROTECTION, LLC'S PETITION FOR ALLOWANCE OF APPEAL

Petition from the August 8, 2024 Order of the Superior Court, at No. 160 EDM 2023, denying Syngenta Crop Protection, LLC's Petition for Permission to Appeal the August 24, 2023 Order of the Court of Common Pleas of Philadelphia County, at No. 220500559

---

* * *

OPINIONS OF THE COURTS BELOW

The August 8, 2024 order of the Superior Court (per curiam) is attached as Exhibit A. The August 24, 2023 order of the Court of Common Pleas of Philadelphia County (Fletman, J.) is attached as Exhibit B.

TEXT OF THE ORDERS IN QUESTION

On August 24, 2023, the Honorable Judge Abbe F. Fletman of the Court of Common Pleas of Philadelphia County issued an order sustaining in part and overruling in part the preliminary objections to the exercise of general personal jurisdiction filed by Syngenta Crop Protection, LLC ("Syngenta Crop") and Syngenta AG (collectively, the "Syngenta Defendants"). That order stated in relevant part:

> Syngenta Crop Protection LLC's preliminary objection is **OVERRULED** pursuant to Syngenta Crop Protection LLC's registration in Pennsylvania as a foreign limited liability company and the United States Supreme Court's holding in *Mallory v. Norfolk Southern Railway Co.*, 143 S.Ct. 2028 (June 27, 2023) (*plurality*).

Order Overruling Preliminary Objection to Personal Jurisdiction, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22124218 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 24, 2023), attached hereto as Exhibit B.[1]

---

[1] In that same order, the court sustained Syngenta AG's preliminary objection and held that it "lacks general personal jurisdiction over Syngenta AG[.]" *Id.*

On September 25, 2023, Syngenta Crop moved to certify that order for interlocutory appeal. Given that the trial court did not act within the allotted 30 days on that motion for certification, the motion was deemed denied under Pennsylvania Rule of Appellate Procedure 1311(b). The court did, however, issue an order on November 2, 2023, stating it denied that motion. Order Denying Interlocutory Appeal Motion, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 23094882 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 2, 2023), attached hereto as Exhibit C. Because that order was not timely, however, it was inoperative.

Syngenta Crop then filed a petition for permission to appeal with the Superior Court, seeking review of the trial court's August 24, 2023 order overruling Syngenta Crop's preliminary objection to general personal jurisdiction. On August 8, 2024, the Superior Court issued a per curiam order denying Syngenta Crop's petition for permission to appeal, stating:

> Upon consideration of the November 21, 2023 petition for permission to appeal, wherein Petitioner relies upon Justice Alito's concurrence in ***Mallory v. Norfolk Southern Railroad Co.***, 600 U.S. 122 (2023), to argue that it presents a controlling question of law as to which there is substantial ground for difference of opinion, and the answer thereto, the petition is **DENIED**.

Order Denying Petition for Permission to Appeal, No. 160 EDM 2023 (Pa. Super., Aug. 8, 2024), attached hereto as Exhibit A.

QUESTIONS PRESENTED

1. Does Pennsylvania's Registration Statute violate the Dormant Commerce Clause of the United States Constitution?
2. Does Pennsylvania's Registration Statute violate the Due Process Clause of the United States Constitution where, as here, an out-of-state defendant does not conduct "substantial operations" in Pennsylvania?

STATEMENT OF PLACE OF RAISING OR PRESERVING ISSUES

Syngenta Crop preserved the issues here by raising its jurisdictional objections in its Preliminary Objections to Plaintiffs' Long-Form Complaint, *see* Syngenta Defendants' Preliminary Objections, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 22124218 (Pa. Ct. Com. Pl. Phila. Cty., Dec. 20, 2022), attached hereto as Exhibit D, and in briefing on the matter upon the trial court's request for additional briefing, Syngenta Defendants' Brief Regarding the Effect of *Mallory, In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 22124218 (Pa. Ct. Com. Pl. Phila. Cty., Aug. 1, 2023), attached hereto as Exhibit E. Following Judge Fletman's August 24, 2023 order overruling Syngenta Crop's preliminary objection to general personal jurisdiction, on September 25, 2023, Syngenta Crop filed a motion to certify the jurisdictional questions currently before this Court. *See* Syngenta Crop's Motion to Certify, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control. No. 23094882 (Pa. Ct. Com. Pl. Phila. Cty., Sept. 25, 2023), attached hereto as Exhibit F. On October 25, 2023, Syngenta Crop's motion to certify was deemed denied, and on

November 21, 2023, Syngenta Crop filed its petition for permission to appeal with the Superior Court. *See* Syngenta Crop's Petition for Permission to Appeal, No. 160 EDM 2023 (Pa. Super, Nov. 21, 2023), attached hereto as Exhibit G. The Superior Court denied Syngenta Crop's petition for permission to appeal on August 8, 2024. *See* Exhibit A.

STATEMENT OF THE CASE

This product liability dispute between hundreds of out-of-state plaintiffs with no connections whatsoever to the Commonwealth and an out-of-state defendant without substantial business operations in Pennsylvania raises two important—and unanswered—questions about the constitutionality of Pennsylvania's Consent-by-Registration statute and its jurisdictional implications. Those questions are: (1) whether the Registration Statute violates the Dormant Commerce Clause or (2) for foreign corporations without substantial operations in Pennsylvania, the Due Process Clause.

A. Factual Background

This Mass Tort Program action against Syngenta Crop, Syngenta AG, Chevron U.S.A. Inc. ("Chevron"), and FMC Corporation ("FMC; collectively, "Defendants") involves claims that exposure to paraquat, a highly regulated pesticide/herbicide, leads to the development of Parkinson's disease. Paraquat is a chemical compound used in agricultural products that has been registered and sold in the United States since the mid-1960s. Like all pesticides in the United States, the sale, purchase, and use of paraquat products are subject to U.S. Environmental Protection Agency ("EPA") regulation under the Federal

Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.* And like all pesticides classified as "restricted use" by the EPA, paraquat products are "not available for purchase or use by the general public."[2] Parkinson's disease, for its part, has existed for thousands of years—since humans began living long enough to develop it. As one of the most common age-related neurological diseases in the world, it has been exhaustively studied since it was first given a name 200 years ago. But beyond genetics, not a single environmental factor has been concluded to definitively cause Parkinson's disease to date—including paraquat.

B. Procedural Background

On August 6, 2021, the first individual plaintiffs filed suit against Defendants in the Philadelphia County Court of Common Pleas, alleging that unspecified paraquat products caused their Parkinson's disease, or related symptoms. *See* Complaint, *Nemeth, et al. v. Syngenta Crop Protection, LLC, et al.*, Case No. 210800644, Control No. 2108013341 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 6, 2021). Over the next several months, approximately 50 additional plaintiffs, in 13 cases, filed suit against Defendants in the Philadelphia County Court of Common Pleas based on similar allegations.

On May 12, 2022, following a petition to consolidate the 14 actions and create a mass tort program, the trial court severed and dismissed the

---

[2] EPA, *Restricted Use Products (RUP) Report* (updated Oct. 14, 2021), https://www.epa.gov/pesticide-worker-safety/restricted-use-products-rup-report.

claims of approximately 45 plaintiffs in pending actions and transferred the remaining cases into a newly created Paraquat Mass Tort Program run by the Court's Complex Litigation Center. *See, e.g.*, Order, *Atkins v. Syngenta, et al.*, Case No. 220301614, Order No. 22030161400016 (Pa. Ct. Com. Pl. Phila. Cty. May 12, 2022); *see also* Order, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22031747 (Pa. Ct. Com. Pl. Phila. Cty. May 11, 2022).[3] The trial court subsequently adopted procedures to guide the program and ordered plaintiffs' counsel to file a Long-Form Complaint to start the proceedings. *See* Case Management Order No. 2, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 22103584, ¶ 1 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 9, 2022).

Plaintiffs filed their Long-Form Complaint on November 16, 2022. *See* Plaintiffs' Long-Form Complaint, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 16, 2022), attached hereto as Exhibit H. That Complaint alleges eight causes of action: strict products liability design defect (Counts I-III, against each Defendant), strict products liability failure to warn (Counts IV-VI, against each Defendant), negligence (Counts VII-IX, against each Defendant), breach of implied warranty of merchantability (Counts X-XII, against each Defendant), fraud (Counts XIII-XV, against each Defendant), concerted action, aiding-and-abetting fraud (Counts XVI-XVII, against Chevron and FMC), loss of consortium (Counts XVIII-XX, against each Defendant), and

[3] After the trial court consolidated the paraquat-related cases, the operative docket number became Case No. 220500559.

wrongful death (Counts XXI-XXIII, against each Defendant).

Each Defendant preliminarily objected to these claims, raising a variety of deficiencies in plaintiffs' pleading and asking the trial court to dismiss the Long-Form Complaint. As relevant here, Syngenta Crop objected to the exercise of general personal jurisdiction under Pennsylvania's Registration Statute based this Court's then-binding decision in *Mallory*, which held that the Registration Statute alone was not sufficient to establish general personal jurisdiction over a foreign corporate defendant. Under the Registration Statute, out-of-state companies must register with the Pennsylvania Department of State and subject themselves to general personal jurisdiction for all future actions in the Commonwealth. *See* 15 Pa.C.S. § 411(a); 42 Pa.C.S. § 5301(a)(2)(i), (b).

On June 27, 2023, while Syngenta Crop's preliminary objection was pending, the United States Supreme Court vacated and remanded this Court's *Mallory* decision. And on July 18, 2023, the trial court ordered briefing on "the issue of general personal jurisdiction in light of *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, 2023 WL 4187748 (June 27, 2023)." Third Amended Order Governing Personal Jurisdiction Discovery, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 220500559, (Pa. Ct. Com. Pl. Phila. Cty. July 28, 2022). Syngenta Crop maintained its preliminary objection over general personal jurisdiction, explaining that the Registration Statute remained unconstitutional under both the Dormant Commerce Clause and, as applied here based

on Syngenta Crop's minimal operations in Pennsylvania, the Due Process Clause. 42 Pa.C.S. § 5301(a)(2)(i), (b), attached hereto at Exhibit I.

On August 24, 2023, the trial court overruled Syngenta Crop's general personal jurisdiction objection. Exhibit B, Order Overruling Preliminary Objection to Personal Jurisdiction, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22124218, (Pa. Ct. Com. Pl. Phila. Cty. Aug. 24, 2023). On September 25, 2023, Syngenta Crop moved to certify that order for interlocutory appeal. And although the trial court issued an order purportedly denying Syngenta Crop's motion on November 2, 2023, that motion was already deemed denied after the trial court failed to rule within 30 days. *See also* Exhibit C, Order Denying Interlocutory Appeal Motion, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 23094882 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 2, 2023).

On November 21, 2023, Syngenta Crop filed a petition for permission to appeal with the Superior Court, arguing that the trial court should have certified its questions regarding the constitutionality of Pennsylvania's consent-by-registration statute because they present unsettled, complex, and important controlling questions of law that would not only materially advance the ultimate termination of this immediate matter, but also provide clarity for *every* out-of-state business registered to do business in the Commonwealth. On August 8, 2024, almost nine months after Syngenta filed its petition for permission to appeal, the Superior Court denied its petition. *See* Exhibit A. This Petition follows.

C. Current Status of the Paraquat Mass Tort Program

Since Syngenta Crop filed its petition in the Superior Court, the parties marched forward in discovery for the 20 plaintiffs selected as potential bellwethers. 14 of those plaintiffs are not Pennsylvania residents *and* do not allege exposure to paraquat in Pennsylvania. Syngenta Crop, as it had to, expended significant resources pursuing discovery in those 14 cases with no connection to the Commonwealth. For example, Syngenta Crop has answered or is in the process of answering more than 700 discovery requests, issued more than 600 discovery requests, and took more than 15 depositions, to say nothing of the resources expended in working up the 6 other bellwether plaintiffs with actual connections to Pennsylvania.[4] And unsurprisingly, there is more work to be done: for many of these plaintiffs with no connection to Pennsylvania, fact discovery is permitted through December 2024. Just last week, Plaintiffs made their first trial pick; that trial is set for April 2025.

REASONS RELIED ON FOR ALLOWANCE OF APPEAL

This Court's immediate review is necessary to address unanswered questions about the constitutionality of Pennsylvania's consent-by-registration statute (the "Registration Statute") following the United States Supreme Court's decision

[4] After discovery began in earnest, Plaintiffs dismissed two of the 14 plaintiffs lacking ties to Pennsylvania, and have represented that a third will be dismissed.

in *Mallory v. Norfolk Southern Railway Co.*, 143 S.Ct. 2028 (2023). Under the Registration Statute, out-of-state companies like Syngenta Crop must register with the Pennsylvania Department of State and subject themselves to general personal jurisdiction for all future actions in the Commonwealth—regardless of whether the litigation at issue or plaintiff bringing suit has any connection whatsoever to Pennsylvania. *See* 15 Pa.C.S. § 411(a); 42 Pa.C.S. § 5301(a)(2)(i), (b).

In *Mallory*, the United States Supreme Court permitted this expansive jurisdictional scheme under the Due Process Clause of the United States Constitution, at least with respect to out-of-state businesses with substantial operations in Pennsylvania. But in doing so, the United States Supreme Court pointed out—and left open—questions about whether the statute presents other constitutional problems. Those questions, squarely presented in this Petition, are: whether the Registration Statute violates the Dormant Commerce Clause or, for foreign corporations without "substantial operations" in Pennsylvania like the *Mallory* defendant, the Due Process Clause.

There are at least three reasons why Syngenta Crop's Petition presents an ideal opportunity for this Court to answer these constitutional and jurisdictional questions of statewide importance. *See* Pa.R.A.P. 1114(a). *First*, this Petition involves the constitutionality of a state statute with far-ranging jurisdictional effects—namely, whether Pennsylvania's Registration Statute violates the Dormant Commerce Clause or the Due Process Clause as applied here, and thus, whether the

Commonwealth has general personal jurisdiction over every out-of-state business registered to do business within it. *See id.* at 1114(b)(5). *Second*, these twin questions are issues of first impression for Pennsylvania courts, calling out for conclusive resolution. *See id.* at 1114(b)(3). And *third*, providing jurisdictional (and constitutional) clarity for every out-of-state business registered to do business in Pennsylvania is a paradigmatic issue of public importance. *See id.* at 1114(b)(4). For these reasons, detailed below, Syngenta Crop asks this Court to grant allowance of appeal.

A. Syngenta Crop's Petition Involves the Constitutionality of Pennsylvania's Registration Statute.

To start, the Pennsylvania rules make clear that determining the constitutionality of state statutes counsels strongly in favor of granting a petition. And that is precisely what Syngenta Crop asks this Court to do here: conclusively resolve the constitutionality of Pennsylvania's Registration Statute in light of the issues unearthed by the Supreme Court's decision in *Mallory*. This Court's "Standards Governing Allowance of Appeal" explicitly state that a petition that "involves the constitutionality of a statute of the Commonwealth" should tip the scale in favor of granting a litigant's petition. *See* Pa.R.A.P. 1114(b)(5). It is them Pennsylvania courts' responsibility—and this Court's in particular, as the final arbiter of Pennsylvania law—to determine the constitutionality of state statutes. *See e.g.*, *Allegheny Reprod. Health Ctr. v. Pennsylvania Dep't of Hum. Servs.*, 309 A.3d 808 (Pa. 2024) (reviewing an order of the

Commonwealth Court sustaining preliminary objections in case about whether provisions of the Pennsylvania Abortion Control Act violate the Equal Rights Amendment and equal protection provisions of the Pennsylvania Constitution); *Martin v. Donegal Township*, 306 A.3d 259 (Pa. 2023) (Table) (granting petition for allowance of appeal regarding "[w]hether Section 402(e) of the Second Class Township Code, 53 P.S. § 65402(e), is constitutional as applied" to particular circumstances); *Keystone RX LLC v. Bureau of Workers' Comp. Fee Rev. Hearing Off.*, 265 A.3d 322 (Pa. 2021) (deciding whether provisions of the Workers' Compensation Act violate the Due Process Clause of the United States Constitution).

It is plain that "the interpretation of a statute is a question of law for the Court to resolve[,]" *Rump v. Aetna Casualty & Surety Company*, 710 A.2d 1093, 1098 (Pa. 1998), and the constitutionality of a state statute—especially one, as here, with such widespread jurisdictional effects—is no exception.

B. Syngenta Crop's Petition Presents Two Questions of First Impression in the Commonwealth.

Both questions presented by Syngenta Crop's Petition are issues of first impression and constitutional importance. Indeed, no Pennsylvania appellate court has determined whether the Registration Statute violates the Dormant Commerce Clause of the United States Constitution or whether the Registration Statute violates the Due Process Clause of the United States Constitution as applied to businesses without substantial operations in Pennsylvania. Taking up dispositive questions of first

impression is particularly appropriate where, as here, such questions are complex and important. *See McLaughlin v. Nahata*, 298 A.3d 384, 405 (Pa. 2023) (per curiam) (noting that the trial court properly "recognized that there was no controlling appellate authority as to the legal questions before it" and properly certified the issues for appeal); *McMullen v. Kutz*, 985 A.2d 769, 773 (Pa. 2009) (granting "petition for allowance of appeal to consider whether reasonableness is an implicit term in a contractual provision awarding attorneys fees for a breach of contract"); *see also* Darlington, McKeon, Schuckers & Brown, 20 West's Pa. Prac., Appellate Practice § 1312:4.7 ("Notwithstanding the lower tribunal's refusal or failure to certify its interlocutory order . . . appellate courts have permitted interlocutory appeals from orders that address and resolve unsettled and important issue of law."). That a ruling on either constitutional question would result in the dismissal of hundreds of plaintiffs—or *nearly* 90% of the total plaintiffs—in this mass tort program only confirms the complexity and importance of certainty here.

As for the first question, no Pennsylvania appellate court has considered whether the Registration Statute violates the Dormant Commerce Clause, a question the United States Supreme Court in *Mallory* invited Pennsylvania to take up. *See Mallory*, 143 S.Ct. at 2033, n.3. And Justice Alito even went as far as to say that "[t]he federalism concerns that [*Mallory*] present[ed] fall more naturally within" the Dormant Commerce Clause, *id.* at 2051 (Alito, J., concurring), and provided Pennsylvania litigants and courts alike with a roadmap to addressing this important question. *Id.* at 2051–54 (Alito, J.,

concurring). Justice Alito noted that "[t]here is reason to believe that Pennsylvania's registration [statute] . . . discriminates against out-of-state companies," questioning whether Pennsylvania would have "a legitimate local interest in vindicating the rights of non-residents harmed by out-ofstate actors through conduct outside the State," and expressing skepticism "that any local benefits of the State's assertion of jurisdiction in these circumstances could overcome serious burdens on interstate commerce that it imposes." *Id.* at 2053–54 (Alito, J., concurring).

This Court—as the authority on Pennsylvania law and Pennsylvania's interpretation of the Federal Constitution—is in the best position to take up this question, particularly given that Dormant Commerce Clause jurisprudence is "famously complex" and subject to "very considerable judicial oscillation." *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 295 (6th Cir. 2023) (citation omitted) (collecting cases); *see Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023). But this Court would not be without precedent. In fact, caselaw new and old supports the view that Pennsylvania's Registration Statute violates the Dormant Commerce Clause where a non-resident plaintiff with out-of-state injuries sues a non-resident defendant. *See Mallory*, 143 S.Ct. at 2053–55 (collecting cases); *Hegna v. Smitty's Supply, Inc.*, No. 16-3613, 2017 WL 2563231, at *5 (E.D. Pa. June 13, 2017) (finding that the Registration Statute "does not violate the dormant Commerce Clause" where a state resident brought the lawsuit); *Rodriguez v. Ford Motor Co.*, 458 P.3d 569, 579–80 (N.M. Ct. App. 2018), *rev'd and remanded on other grounds*, *Chavez v. Bridgestone Ams. Tire Operations, LLC*, 503 P.3d 332

(N.M. 2021)) (similar under New Mexico law); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2016 WL 2866166, at *5 (D. Kan. May 17, 2016) (finding Kansas's consent-by-registration statute violated the dormant Commerce Clause "as applied in these cases to claims by the non-resident plaintiffs").

This makes sense: it is difficult to conceive of a state's compelling interest in adjudicating claims between a non-resident and a foreign defendant regarding conduct outside its borders. *See Mallory*, 143 S. Ct. at 2054 (Alito, J., concurring) ("I am hard-pressed to identify any legitimate local interest that is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State."). What is more, the burdens placed on out-of-state defendants through litigation make this reality unsurprising. *See Davis v. Farmers' Co-operative Equity Co.*, 262 U.S. 312, 315 (1923) (finding "that litigation in states and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers—these are matters of common knowledge"). That Plaintiffs in this case may have a difference of opinion on this issue only demonstrates that this is an unsettled area of jurisprudence. Syngenta Crop's Petition squarely places this issue before this Court.

As for the second question, the United States Supreme Court in *Mallory* left open whether the Registration Statute violates the Due Process Clause as applied to businesses without substantial

operations in Pennsylvania. In considering the constitutionality of the Registration Statute under the Due Process Clause, the United States Supreme Court did not issue a majority opinion that garnered the support of five Justices and instead issued a plurality opinion. Justice Alito, writing separately, provided the decisive fifth vote on the Due Process question before the court, and made clear that: "[t]he *sole question* before us is whether the *Due Process Clause of the Fourteenth Amendment* is violated when a large out-of-state corporation *with substantial operations in a State* complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." *Mallory*, 143 S.Ct. at 2047 (Alito, J., concurring) (emphases added). In other words, the *Mallory* defendant's substantial operations in Pennsylvania played a significant role in the United States Supreme Court's decision to remand.

So the unanswered Due Process Clause question, post-*Mallory*, is: what if a large out-of-state corporation does *not* have substantial operations in the forum state? No Pennsylvania appellate court has addressed this question after the United States Supreme Court's decision in *Mallory*. And even though Plaintiffs may disagree that the United States Supreme Court's *Mallory* decision left this question open, the fact remains that "there is no clear precedent post-*Mallory* as to how broadly [*Mallory*] is to be construed," *LM Gen. Ins. Co. v. LeBrun*, 2020 WL 7770233, *7 (E.D. Pa. Dec. 30, 2020). This Court should take up this Petition for precisely that reason.

Syngenta Crop's Petition provides an ideal vehicle to consider this question. In contrast to the *Mallory* defendant, Syngenta Crop's operations in Pennsylvania could in no sense be considered substantial. Instead of the 5,000 Norfolk Southern employees that the United States Supreme Court considered "substantial" in *Mallory*, Syngenta Crop currently has less than 15. *See* Exhibit J, Syngenta Defs.' Resp. & Objs. to Pls.' IROGs at 4–7 (May 8, 2023) (disclosing all employees in Pennsylvania); Exhibit K, Syngenta Amended Defs.' Resp. & Objs. to Pls.' RFAs at 23–24 (May 8, 2023). And while Norfolk Southern owned over 2,400 miles of railroad track in Pennsylvania, and a 70-acre shop (the largest of its kind in the country), Syngenta Crop owns no property and runs no stores in the Commonwealth. *See* Exhibit L, Verification of Alan Nadel to Syngenta Defendants' Brief Regarding the Effect of *Mallory v. Norfolk S. Ry. Co.* on the Preliminary Objection to the Court's Exercise of General Personal Jurisdiction.

In sum, both questions presented to this Court are difficult and important questions of first impression concerning constitutional interpretation. Taking up these lingering constitutional questions is even more crucial in a post-*Mallory* world, where *Mallory* upended the status quo for out-of-state businesses in Pennsylvania, and where *Mallory* only addressed one of many potential constitutional infirmities with the Registration Statute.

C. Answering Unresolved Questions About Pennsylvania's Registration Statute is of Substantial Public Importance.

And finally, deciding if the Dormant Commerce Clause or the Due Process Clause (as applied to companies without "substantial operations") permits general personal jurisdiction over Syngenta Crop simultaneously affects *every* out-of-state business also registered to do business in the Commonwealth. Providing jurisdictional—and constitutional—certainty here is thus not just important to Syngenta Crop, but also to the state of Pennsylvania as a whole. That reality alone warrants review by this Court.

Pennsylvania's Registration Statute is not a niche or obscure statute that impacts only a small number of litigants. To the contrary, determining whether Pennsylvania courts have jurisdiction over suits between an out-of-state plaintiff and out-of-state defendant over an out-of-state injury affects *each* and *every* out-of-state company registered to do business in Pennsylvania. Suits against such defendants increase by the day, with no end-in-sight save for appellate intervention. *See, e.g.*, Alison Frankel, *US Supreme Court Clears Path for Plaintiffs to Pick Where to Sue Corporations*, REUTERS (June 28, 2023) (noting that *Mallory* "could upend litigation against corporate defendants, allowing plaintiffs to pick friendly out-of-state venues and gain valuable leverage from filing masses of cases in a single court and that it's a "good bet" that "plaintiffs' lawyers will capitalize on the Mallory ruling by filing cases for out-of-state claimants in plaintiff-friendly courts"), available at https://www.reuters.com/legal/government/column-

us-supreme-court-clears-pathplaintiffs-pick-where-sue-corporations-2023-06-28/.

This Court need not look any further than this case to see the potential attendant effects of failing to take up these important questions. If, as Syngenta Crop contends, the Registration Statute is unconstitutional on either Dormant Commerce Clause or Due Process grounds, there would be no basis for general personal jurisdiction over Syngenta Crop. That outcome, in turn, would result in the dismissal of hundreds of plaintiffs—or nearly *90%* of the total plaintiffs—who cannot establish that this Court has specific personal jurisdiction over their claims.[5] In other words, the overwhelming majority of plaintiffs would be dismissed from this action should Syngenta Crop succeed in its preliminary objection. The dismissal of this large set of plaintiffs on jurisdictional grounds would dramatically simplify this case, which is in the depths of discovery, and unburden a Pennsylvania court system that is spending its valuable time and resources working up cases that do not involve Pennsylvania citizens, businesses, or injuries.

Lacking appellate intervention, Syngenta Crop marched forward in discovery with respect to 14 of out-

---

[5] *See, e.g.*, Exhibit M, Plaintiffs' Counsel's Affidavit in Response to PJ Discovery at 2 (admitting that 100 plaintiffs had never "used Paraquat in the Commonwealth"; never "purchased paraquat in the Commonwealth"; were never "exposed to Paraquat in the Commonwealth"; were never "treated in the Commonwealth"; and that any presence they might have had in the Commonwealth is "unrelated to the claims at issue in this action.")

of-state bellwether plaintiffs whose cases have no connection to the Commonwealth. Syngenta Crop has answered or is in the process of answering more than 700 discovery requests, issued more than 600 discovery requests, and took more than 15 depositions, to say nothing of the resources expended working up other bellwether plaintiffs with actual connections to Pennsylvania. All this work, and any future work related to motions practice, summary judgment briefing, and trial preparation for these bellwether plaintiffs would be rendered a nullity if this Court were to conclude that Syngenta Crop was not subject to personal jurisdiction in the first place. Plaintiffs have previously represented that the trial courts "bellwether order" would "streamline case-specific discovery," and thus, "the presence of out-of-state plaintiffs in this consolidated litigation will have little effect on the discovery procedure." Pls. Ans. to Syngenta's Pet. for Permission to Appeal at 23, No. 160 EDM 2023 (Pa. Super., Dec. 5, 2024). But this year's nationwide discovery efforts demonstrate that the presence of 14 out-of-state bellwethers (from a pool of 20) has done anything but. Immediate appellate review is needed to ensure the trial court's time and the parties' time—to say nothing of Pennsylvania jurors' time—is not wasted on cases with an underlying jurisdictional defect.

Taking up Syngenta Crop's appeal now would also ensure that the trial court's docket does not become overburdened with new out-of-state plaintiffs filing paraquat actions that have no connection to Pennsylvania and who are capitalizing on *Mallory*. Indeed, the burden on Pennsylvania's court system (and on Syngenta Crop), grows by the day: the size of

this lawsuit increased by *50%* in the first six months of this year. An appellate decision on either of the constitutional issues presented would potentially dissuade other out-of-state litigants from taking advantage of Pennsylvania's present lenient jurisdictional scheme and further clogging Pennsylvania's courts.

CONCLUSION

For these reasons, Syngenta Crop respectfully requests that the Court grant this Petition for Allowance of Appeal or, alternatively and at a minimum, grant review and summarily remand to the Superior Court with instructions for it to decide the issues raised by this Petition.

* * *

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 160 EDM 2023

SYNGENTA CROP PROTECTION, LLC and SYNGENTA AG,

Petitioners,

v.

DOUGLAS NEMETH, et al., CHEVRON U.S.A. INC., and FMC CORPORATION,

Respondents.

(IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION)

Filed: Nov. 21, 2023

SYNGENTA CROP PROTECTION, LLC'S PETITION FOR PERMISSION TO APPEAL

Petition for Permission to Appeal as for the August 24, 2023 Order of the Court of Common Pleas of Philadelphia County, at No. 220500559

---

* * *

INTRODUCTION

This Court's immediate review is necessary to address whether Pennsylvania's consent-by-registration statute (the "Registration Statute") remains constitutional after the United States Supreme Court's decision in *Mallory v. Norfolk*

Southern Railway Co., 143 S.Ct. 2028 (2023). Under the Registration Statute, out-of-state companies like Syngenta Crop Protection, LLC ("Syngenta Crop") must register with the Pennsylvania Department of State and subject themselves to general personal jurisdiction for all future actions in the Commonwealth—regardless of whether the litigation at issue or plaintiff bringing suit has any connection to Pennsylvania. *See* 15 Pa.C.S. § 411(a); 42 Pa.C.S. § 5301(a)(2)(i), (b). In *Mallory*, the United States Supreme Court permitted this expansive jurisdictional scheme under the Due Process Clause of the United States Constitution, but pointed out that other constitutional flaws may exist with this scheme. The United States Supreme Court thus vacated and remanded the Pennsylvania Supreme Court's own decision in *Mallory v. Norfolk Southern Railway Co.*, 266 A.3d 542 (Pa. 2021), which had previously held the scheme unconstitutional under the Due Process Clause. In remanding for further consideration, the United States Supreme Court left critically unanswered whether the Registration Statute violated the Dormant Commerce Clause or, for foreign corporations without "substantial operations" in Pennsylvania like the *Mallory* defendant, the Due Process Clause.

Syngenta Crop's Petition for Permission to Appeal presents an ideal opportunity to answer these questions. In this Mass Tort Program, over 450 plaintiffs have brought suit in the Philadelphia County Court of Common Pleas against Syngenta Crop and other defendants, alleging a link between the herbicide paraquat and subsequent diagnosis with Parkinson's disease. But the vast majority of these

plaintiffs have no connection of any kind to Pennsylvania: nearly 400 plaintiffs—or ***almost 90%*** in total—allege no link to the Commonwealth whatsoever other than filing suit here, including 41 of the 57 plaintiffs initially selected as potential trial bellwethers by the trial court here. In so doing, these Plaintiffs invite this Court to adjudicate hundreds of claims that have nothing to do with Pennsylvania at all.

Unsurprisingly, Syngenta Crop timely objected to the trial court's exercise of personal jurisdiction over these suits, relying on the then-binding Pennsylvania Supreme Court decision in *Mallory* to do so. After the United States Supreme Court's decision in *Mallory*, Syngenta Crop reiterated its objection and explained in briefing that the Registration Statute remained unconstitutional under the Dormant Commerce Clause and, given that Syngenta has less than 15 employees and owns no property in Pennsylvania, the Due Process Clause. The trial court, however, disagreed, denying Syngenta Crop's preliminary objection to general personal jurisdiction and later, failing to certify that denial for interlocutory appeal.

As set forth below, this Court should grant Syngenta Crop's Petition for Permission to Appeal and bring much-needed clarity to Pennsylvania courts concerning the Registration Statute's constitutionality under the Dormant Commerce Clause and Due Process Clause after *Mallory*.

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this Petition for Permission to Appeal under 42 Pa. C.S. § 702(b), which provides for interlocutory appeals by

permission, and 42 Pa. C.S. § 742, which provides for exclusive appellate jurisdiction to the Superior Court in all cases where appellate jurisdiction does not lie in the Supreme or Commonwealth Courts.

Under Pennsylvania Rule of Appellate Procedure 1311(a)(1), "[a]n appeal may be taken by permission from an interlocutory order . . . for which certification pursuant to 42 Pa.C.S. § 702(b) was denied." And under Pennsylvania Rule of Appellate Procedure 1311(b), "[u]nless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied." That is what happened here: The trial court failed to rule on Syngenta Crop's motion to certify the personal jurisdiction order for interlocutory appeal within 30 days, and thus, it was deemed denied.

TEXT OF ORDERS IN QUESTION

On August 24, 2023, the trial court, the Honorable Judge Abbe F. Fletman of the Court of Common Pleas of Philadelphia County, issued an order sustaining in part and overruling in part the preliminary objections to the exercise of general personal jurisdiction filed by Syngenta Crop and Syngenta AG (the "Syngenta Defendants"), which stated in relevant part:

> Syngenta Crop Protection LLC's preliminary objection is **OVERRULED** pursuant to Syngenta Crop Protection LLC's registration in Pennsylvania as a foreign limited liability company and the United States Supreme Court's holding in *Mallory v. Norfolk Southern Railway Co.*, 143 S.Ct. 2028 (June 27, 2023) (*plurality*).

Order Overruling Preliminary Objection to Personal Jurisdiction, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22124218, (Pa. Ct. Com. Pl. Phila. Cty. Aug. 24, 2023), attached hereto as Exhibit A.[1]

On September 25, 2023, Syngenta Crop moved to certify that order for interlocutory appeal. Given that the trial court did not act within the allotted 30 days on that motion for certification, the motion was deemed denied under Pennsylvania Rule of Appellate Procedure 1311(b), which expressly provides in pertinent part as follows: "Unless the trial court or other government unit acts on the application within 30 days after it is filed, the trial court or other government unit shall no longer consider the application and it shall be deemed denied."

As explained above, the trial court did not timely rule—and thus, effectively denied—Syngenta Crop's motion to certify the court's order for immediate review. The court did, however, issue an order on November 2, 2023, stating it denied that motion. Order Denying Interlocutory Appeal Motion, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 23094882 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 2, 2023), attached hereto as Exhibit B. But because that order was not timely, it was inoperative.

---

[1] In that same order, the Court sustained Syngenta AG's preliminary objection and held that it "lacks general personal jurisdiction over Syngenta AG[.]" *In re Paraquat Prods. Liab. Litig.*, Case No. 220500559, Control No. 22124218 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 24, 2023).

CONCISE STATEMENT OF THE CASE

I. Factual Background

This Mass Tort Program action against Syngenta Crop, Syngenta AG, Chevron U.S.A. Inc. ("Chevron"), and FMC Corporation ("FMC; collectively, "Defendants") involves claims that exposure to paraquat, a highly regulated pesticide/herbicide, leads to the development of Parkinson's disease. Paraquat is a chemical compound used in agricultural products that has been registered and sold in the United States since the mid-1960s. Like all pesticides in the United States, the sale, purchase, and use of paraquat products are subject to U.S. Environmental Protection Agency ("EPA") regulation under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136 *et seq.* And like all pesticides classified as "restricted use" by the EPA, paraquat products are "not available for purchase or use by the general public."[2] Parkinson's disease, for its part, has existed for thousands of years—since humans began living long enough to develop it. As one of the most common age-related neurological diseases in the world, it has been exhaustively studied since it was first given a name 200 years ago. But beyond genetics, not a single environmental factor has been concluded to definitively cause Parkinson's disease to date—including paraquat.

---

[2] EPA, *Restricted Use Products (RUP) Report* (updated Oct. 14, 2021), https://www.epa.gov/pesticide-worker-safety/restricted-use-products-rup-report.

II. Procedural Background

On August 6, 2021, the first individual plaintiffs filed suit against Defendants in the Philadelphia County Court of Common Pleas for their manufacturing, marketing, distribution, and sale of paraquat. They alleged that unspecified paraquat products caused their Parkinson's disease, or related symptoms. *See* Complaint, *Nemeth, et al. v. Syngenta Crop Protection, LLC, et al.*, Case No. 210800644, Control No. 2108013341 (Pa. Ct. Com. Pl. Phila. Cty. Aug. 6, 2021). Over the next six months, approximately 50 additional plaintiffs, in 13 cases, filed suit against Defendants in the Philadelphia County Court of Common Pleas based on similar allegations.

On March 8, 2022, certain of those individual plaintiffs petitioned the Court to consolidate the 14 actions and create a Mass Tort Program for all pending and subsequently filed Paraquat cases. *See* Petition to Consolidate, *Lutz v. Syngenta Crop Protection, LLC, et al.*, Case No. 210801388, Control No. 22031747 (Pa. Ct. Com. Pl. Phila. Cty. March 8, 2022). Two months later, on May 12, 2022, the trial court severed and dismissed the claims of approximately 45 plaintiffs in pending actions and transferred the remaining cases into a newly created Paraquat Mass Tort Program run by the Court's Complex Litigation Center. *See, e.g.*, Order, *Atkins v. Syngenta, et al.*, Case No. 220301614, Order No. 22030161400016 (Pa. Ct. Com. Pl. Phila. Cty. May 12, 2022); *see also* Order, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No.

22031747 (Pa. Ct. Com. Pl. Phila. Cty. May 11, 2022).[3] The trial court subsequently adopted procedures to guide the program and ordered plaintiffs' counsel to file a Long-Form Complaint to start the proceedings. *See* Case Management Order No. 2, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 22103584, ¶ 1 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 9, 2022).

Plaintiffs filed their Long-Form Complaint on November 16, 2022. *See* Exhibit C, Long-Form Complaint. That Complaint alleges eight causes of action: strict products liability design defect (Counts I-III, against each Defendant), strict products liability failure to warn (Counts IV-VI, against each Defendant), negligence (Counts VII-IX, against each Defendant), breach of implied warranty of merchantability (Counts X-XII, against each Defendant), fraud (Counts XIII-XV, against each Defendant), concerted action, aiding-and-abetting fraud (Counts XVIXVII, against Chevron and FMC), loss of consortium (Counts XVIII-XX, against each Defendant), and wrongful death (Counts XXI-XXIII, against each Defendant). Each Defendant preliminarily objected to these claims, raising a variety of deficiencies in plaintiffs' pleading and asking the trial court to dismiss the Long-Form Complaint. As relevant here, Syngenta Crop objected to the exercise of general personal jurisdiction under the Registration Statute based on the Pennsylvania Supreme Court's then-binding decision in *Mallory*. But on June 27, 2023, while Syngenta Crop's preliminary objection was pending, the United States

[3] After the trial court consolidated the paraquat-related cases, the operative docket number became Case No. 220500559.

Supreme Court vacated and remanded the Pennsylvania Supreme Court's *Mallory* decision.

On July 18, 2023, the trial court ordered briefing on "the issue of general personal jurisdiction in light of *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, 2023 WL 4187748 (June 27, 2023)." Third Amended Order Governing Personal Jurisdiction Discovery, *In re: Paraquat Prod. Liab. Litig.*, No. 559, Control No. 220500559, (Pa. Ct. Com. Pl. Phila. Cty. July 28, 2022). Syngenta Crop then maintained its preliminary objection over general personal jurisdiction even after *Mallory*, explaining that the Registration Statute remained unconstitutional under both the Dormant Commerce Clause and, as applied here based on Syngenta Crop's minimal operations in Pennsylvania, the Due Process Clause. 42 Pa.C.S. § 5301(a)(2)(i), (b), attached hereto at Exhibit D.

On August 24, 2023, the trial court overruled Syngenta Crop's general personal jurisdiction objection. Order Overruling Preliminary Objection to Personal Jurisdiction, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22124218, (Pa. Ct. Com. Pl. Phila. Cty. Aug. 24, 2023); Exhibit A.[4] On September 25, 2023, Syngenta Crop moved to certify that order for interlocutory appeal.

---

[4] On November 15, 2023, the trial court also overruled all but Defendants' preliminary objection for lack of verification to the Long-Form Complaint. Order Regarding Preliminary Objections, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 22124218, (Pa. Ct. Com. Pl. Phila. Cty. No. 20, 2023). Plaintiffs filed a praecipe to add attorney verification on November 20, 2023. Praecipe To Add Verification. *In re: Paraquat Products Liability Litigation*, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 20, 2023)

And although the trial court issued an order purportedly denying Syngenta Crop's motion on November 2, 2023, that motion was already deemed denied after the trial court failed to rule within 30 days. *See also* Order Denying Interlocutory Appeal Motion, *In re: Paraquat Products Liability Litigation*, Case No. 220500559, Control No. 23094882 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 2, 2023). This Petition followed.

PROPOSED QUESTIONS PRESENTED FOR REVIEW

There are two controlling questions of law presented for review by the trial court's August 24, 2023 personal jurisdiction order, both of which concern the constitutionality of the Registration Statute in light of the United States Supreme Court's decision in *Mallory*:

1. Does the Registration Statute violate the Dormant Commerce Clause of the United States Constitution?
2. Does the Registration Statute violate the Due Process Clause of the United States Constitution where, as here, an out-of-state defendant does not conduct "substantial operations" in Pennsylvania?

CONCISE STATEMENT OF THE REASONS FOR IMMEDIATE APPEAL

Syngenta Crop's Petition for Permission to Appeal the trial court's personal jurisdiction order should be granted. Under Pennsylvania Appellate Rule of Procedure 1311(a)(5)(ii), the petitioner seeking immediate review must explain: (1) "why the order

involves a controlling question of law as to which there is substantial ground for difference of opinion;" (2) "that an appeal from the order may materially advance the ultimate termination of the matter;" and (3) "why the refusal of certification was an abuse of the trial court's or other government unit's discretion that is so egregious as to justify prerogative appellate correction." Pa. R.A.P. 1312(a)(5)(ii).

The trial court's personal jurisdiction order satisfies each of those requirements. ***First***, the denial involves at least one "controlling question of law as to which there is a substantial ground for difference of opinion"—namely, whether in light of the splintered United States Supreme Court decision in *Mallory*, the Registration Statue is unconstitutional under the Dormant Commerce Clause, or as applied to this case, under the Due Process Clause. ***Second***, immediate appellate review by this Court would "materially advance the ultimate termination of the matter" by resolving the threshold jurisdictional question of whether hundreds of out-of-state plaintiffs—indeed, nearly 90% of all those who have filed cases in this Mass Tort Program—may pursue their potential claims against Syngenta Crop in this consolidated action, despite no connection whatsoever to the Commonwealth. And ***third***, the trial court egregiously abused its discretion by failing to certify the personal jurisdiction order given the far-reaching impact of complex questions left in *Mallory*'s wake concerning the Registration Statute's constitutionality.

I. The Personal Jurisdiction Order Presents A Controlling Question Of Law With Substantial Ground For Difference of Opinion.

A. Controlling Question of Law Regarding *Mallory* And The Registration Statute

The trial court's personal jurisdiction order presents a "controlling question of law as to which there is a substantial ground for difference of opinion"—whether the Registration Statute violates the Dormant Commerce Clause or the Due Process Clause under *Mallory* as applied here. As the Pennsylvania Supreme Court has explained, "the interpretation of a statute is a question of law for the Court to resolve[,]" *Rump v. Aetna Cas. & Sur. Co.*, 710 A.2d 1093, 1098 (Pa. 1998), and the "constitutionality of a statute" is no exception, *see, e.g.*, *Keystone RX LLC v. Bureau of Workers' Comp. Fee Rev. Hearing Off.*, 265 A.3d 322, 329 n.4 (Pa. 2021) ("Consideration of the constitutionality of a statute presents a question of law"). In tandem with these pure constitutional questions, the Registration Statute also raises the type of jurisdictional issues that are routinely certified for interlocutory appeal by Pennsylvania courts. *See, e.g.*, *Azzarrelli v. City of Scranton*, 655 A.2d 648, 650 (Pa. Commw. 1995) (certifying denial of personal jurisdiction challenge); *Rennie v. Rosenthol*, 995 A.2d 1217, 1219 (Pa. Super. 2010) (describing interlocutory certification concerning personal jurisdiction question); *Ass'n of Cath. Tchrs. Loc. 1776 v. Pennsylvania Lab. Rels. Bd.*, 671 A.2d 1207, 1209 (Pa. Commw. 1996), *aff'd*, 692 A.2d 1039 (Pa. 1997) (certifying challenge to subject

matter jurisdiction); *see also* Darlington, McKeon, Schuckers & Brown, 20 West's Pa. Prac., Appellate Practice § 1312:3.6 (2022) (stating that "[t]he courts have granted petitions for permission to appeal in cases in which the trial court or other government unit has found personal jurisdiction notwithstanding the objection of the defendant" and collecting cases); *id.* at § 1312:3.5 (collecting cases certified for interlocutory review concerning subject matter jurisdiction and stating that courts have also granted interlocutory review in cases "where the lower tribunal has refused to certify its order"); *id.* at § 1312:4.6 (collecting cases).

The personal jurisdiction order thus presents a classic "controlling question of law" (if not two) meriting interlocutory appeal.

B. Substantial Grounds For Difference Of Opinion Regarding *Mallory* And The Registration Statute

There are also substantial grounds for difference of opinion over these questions raised by *Mallory*. Under Pennsylvania law, certification of a controlling question of law is appropriate where, as here, such questions are unsettled, complex, and important. *See McLaughlin v. Nahata*, 298 A.3d 384, 405 (Pa. 2023) (per curiam) (noting that the trial court properly "recognized that there was no controlling appellate authority as to the legal questions before it" and properly certified the issues for appeal); *Chestnut Hill Coll. v. Pa. Hum. Rel. Comm'n*, 158 A.3d 251, 254, 256 (Pa. Commw. 2017) (permitting interlocutory appeal on "an issue of first impression" with constitutional implications); *Jones v. City of Phila.*, 890 A.2d 1188, 1192–93 (Pa. Commw. 2006) (permitting interlocutory

appeal where there was a constitutional issue of first impression); *Knipe v. SmithKline Beecham*, 583 F. Supp. 2d 553, 599 (E.D. Pa. 2008) ("[S]ubstantial ground for difference of opinion" exists when the matter involves "one or more difficult and pivotal questions of law not settled by controlling authority." (citation omitted)).[5] Whether the Registration Statute is unconstitutional after *Mallory*—something ***no*** Pennsylvania appellate court has determined after the United States Supreme Court's remand—presents precisely the sort of intricate and significant legal question over which there is substantial disagreement meriting interlocutory review.

The fractured nature of *Mallory* itself highlights the basis for disagreement. In considering the constitutionality of the Registration Statute under the Due Process Clause, the United States Supreme Court did not issue a majority opinion that garnered the support of five Justices and instead resulted in only a plurality opinion. Justices Kagan, Roberts, Kavanaugh, and Barrett concluded that the Registration Statute violated the Due Process Clause, and four other Justices held that it did not. Justice Alito, who wrote separately, provided the decisive fifth vote to remand on narrow grounds—that is, under the particular facts of the case. *See Mallory*, 143 S.Ct. at 2048 (Alito, J., concurring). Yet the Due Process Clause, according to Justice Alito, was not even the

---

[5] The federal standard for interlocutory appellate review mirrors Pennsylvania's standard. *Compare* 28 U.S.C. § 1292(b), *with* 42 Pa.C.S. § 702(b). Accordingly, federal cases provide helpful guidance in resolving the important state law at issue here.

proper vehicle through which courts should address consent-by-registration statutes like Pennsylvania's. *See id.* at 2051–2054 (Alito, J., concurring). Instead, "[t]he federalism concerns that this case presents fall more naturally within" the Dormant Commerce Clause. *Id.* at 2051 (Alito, J., concurring). The plurality, importantly, did not voice disagreement with this point. And while the plurality declined to address whether the Registration Statute poses a Dormant Commerce Clause problem, it nevertheless invited Pennsylvania courts to consider this question. *See id.* at 2033, n.3.

The application of the Dormant Commerce Clause to the Registration Statute—and the proper interpretation of *Mallory*'s splintered decision—is therefore particularly suitable for certification here. To begin, there is a "lack of Pennsylvania case law" regarding whether the Registration Statute violates the Dormant Commerce Clause, which warrants a finding that there is a substantial ground for a difference of opinion regarding this issue. *Commonwealth v. Tilley*, 780 A.2d 649, 651 (Pa. 2001). Moreover, courts have long recognized that "Dormant Commerce Clause jurisprudence is famously complex" and subject to "very considerable judicial oscillation." *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 295 (6th Cir. 2023) (citation omitted) (collecting cases). Indeed, no Pennsylvania appellate court has had the opportunity to grapple with the complex Dormant Commerce Clause issues presented by Justice Alito's concurrence in *Mallory*, which provided detailed grounds for the Pennsylvania courts to consider in applying the Dormant Commerce Clause on remand. 143 S. Ct. at 2051–54 (Alito, J., concurring) (finding

that "[t]here is reason to believe that Pennsylvania's registration [statute] . . . discriminates against out-of-state companies," questioning whether Pennsylvania would have "a legitimate local interest in vindicating the rights of non-residents harmed by out-of-state actors through conduct outside the State," and expressing skepticism "that any local benefits of the State's assertion of jurisdiction in these circumstances could overcome serious burdens on interstate commerce that it imposes").

Caselaw new and old supports the view that the Registration Statute violates the dormant Commerce Clause where a non-resident plaintiff with out-of-state injuries sues a non-resident defendant. *See id.* at 2053–55 (collecting cases); *Hegna v. Smitty's Supply, Inc.*, No. 16-3613, 2017 WL 2563231, at *5 (E.D. Pa. June 13, 2017) (finding that the Registration Statute "does not violate the dormant Commerce Clause" where a state resident brought the lawsuit); *Rodriguez v. Ford Motor Co.*, 458 P.3d 569, 579–80 (N.M. Ct. App. 2018), *rev'd and remanded on other grounds*, *Chavez v. Bridgestone Ams. Tire Operations, LLC*, 503 P.3d 332 (N.M. 2021)) (similar under New Mexico law); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2016 WL 2866166, at *5 (D. Kan. May 17, 2016) (finding Kansas's consent-by-registration statute violated the dormant Commerce Clause "as applied in these cases to claims by the non-resident plaintiffs").

This makes sense: it is difficult to conceive of a state's compelling interest in adjudicating claims between a non-resident and a foreign defendant regarding conduct outside its borders. *See Mallory*, 143 S. Ct. at 2054 (Alito, J., concurring) ("I am hard-

pressed to identify any legitimate local interest that is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State."). This is especially true given the burdens placed on out-of-state defendants through litigation. *See Davis v. Farmers' Co-operative Equity Co.*, 262 U.S. 312, 315 (1923) (finding "that litigation in states and jurisdictions remote from that in which the cause of action arose entails absence of employees from their customary occupations; and that this impairs efficiency in operation, and causes, directly and indirectly, heavy expense to the carriers—these are matters of common knowledge."). And if plaintiffs voice a different view on the merits of this question, then that only confirms the substantial disagreement flowing from *Mallory*, as well as the corresponding need for urgent resolution of such disagreement by this Court. Because the Pennsylvania Supreme Court remanded *Mallory* to the trial court for further consideration, this case presents the best opportunity for Pennsylvania appellate courts to provide much-needed clarity on the Dormant Commerce Clause.[6]

Separate from the Dormant Commerce Clause issue, the Due Process question that remains after *Mallory* also presents a parallel basis for certification of the trial court's personal jurisdiction order. The

---

[6] While the Pennsylvania Supreme Court's remand order did not provide a basis for the decision to remand the case to the trial court, the out-of-state defendant in *Mallory* did not raise a Dormant Commerce Clause challenge below, making it likely that the Court did not believe the case was the proper vehicle to decide the issue at that stage of the proceedings.

United States Supreme Court was clear in its plurality opinion that it "need not speculate whether any other statutory scheme ***and set of facts*** would suffice to establish consent to suit" and thus not violate the Due Process Clause. *Mallory*, 143 S.Ct. at 2038 (emphasis added). That cabining of *Mallory* to its facts was underscored by Justice Alito—the decisive fifth vote for the Court's Due Process holding—who noted that "[t]he ***sole question*** before us is whether the ***Due Process Clause of the Fourteenth Amendment*** is violated when a large out-of-state corporation ***with substantial operations in a State*** complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." *Id.* at 2047 (Alito, J., concurring) (emphases added). In other words, the *Mallory* defendant's substantial operations in Pennsylvania played a significant role in the United States Supreme Court's decision to remand.

The parties, however, disagree as to whether *Mallory* "is limited to the facts of that case" and whether Syngenta Crop has "substantial operations" in the Commonwealth. *See LM Gen. Ins. Co.*, 2020 WL 7770233, at *7 (noting that a dispute like this can create substantial grounds for difference of opinion). But in any event, Syngenta Crop's operations in Pennsylvania are materially different from those of Norfolk Southern, the defendant in *Mallory*. Instead of the 5,000 Norfolk Southern employees that the Supreme Court considered "substantial" in *Mallory*, Syngenta Crop currently has less than 15. *See* Exhibit E, Syngenta Defs.' Resp. & Objs. to Pls.' IROGs at 4–7 (May 8, 2023) (disclosing all employees in

Pennsylvania); Exhibit F, Syngenta Amended Defs.' Resp. & Objs. to Pls.' RFAs at 23–24 (May 8, 2023). And while Norfolk Southern owned over 2,400 miles of railroad track in Pennsylvania, and a 70-acre shop (the largest of its kind in the country), Syngenta Crop owns no property and runs no stores in the Commonwealth. *See* Exhibit G, Verification of Alan Nadel to Syngenta Defendants' Brief Regarding the Effect of *Mallory v. Norfolk S. Ry. Co.* on the Preliminary Objection to the Court's Exercise of General Personal Jurisdiction.

In sum, as demonstrated by the parties' briefs in the trial court, the import of *Mallory*'s Due Process Clause holding to this case is itself a difficult and important question. Situations like this, then, are ideal for interlocutory appeal, as there is "no clear precedent post-[*Mallory*] as to how broadly [*Mallory*] is to be construed." *Id.*; *see Durst v. Milroy Contracting Inc.*, 52 A.3d 357, 359 (Pa. Super. 2012) (noting that trial court permitted interlocutory appeal where there was a "new statute" with "no interpretive precedent" (quotations omitted)). Taken together, the disputes over Pennsylvania's Registration Statute (and other similar state statutes), confirm that there are substantial grounds for difference of opinion regarding its constitutionality after *Mallory*.

II. An Immediate Appeal on *Mallory* And The Registration Statute Materially Advances The Ultimate Termination Of The Matter.

Immediate appellate review of these constitutional and jurisdictional issues raised by *Mallory* "may materially advance the ultimate termination" of the litigation by leading to the

dismissal of plaintiffs who lack any connection to the Commonwealth—indeed, the overwhelming majority of the plaintiffs in this mass tort action. 42 Pa.C.S. § 702(b). In evaluating this prong, courts often focus on whether an appeal would promote "judicial economy." Darlington, 20 West's Pa. Prac., Appellate Practice § 1312:3. And in similar circumstances, other courts have found that the resolution of jurisdictional issues that would eliminate a substantial number of plaintiffs favored interlocutory appeal. *See Waters v. Day & Zimmerman NPS, Inc.*, No. 19-11585-NMG, 2020 WL 4754984, at *2 (D. Mass. Aug. 14, 2020) (granting motion to certify question regarding personal jurisdiction where reversal of decision "would resolve the case as to 109 current plaintiffs [*i.e.*, roughly 97% of plaintiffs] and drastically curtail and simplify pretrial and trial proceedings"), *aff'd*, 23 F. 4th 84 (1st Cir. 2022); *see also supra* (noting the frequency with which jurisdictional questions are certified in Pennsylvania); *Max Daetwyler Corp. v. Meyer*, 575 F. Supp. 280, 282 (E.D. Pa. 1983) (finding that "an immediate appeal from [the court's] ruling on *in personam* jurisdiction could materially advance the ultimate termination of the litigation").

If, as Syngenta Crop contends, the Registration Statute is unconstitutional on either Dormant Commerce Clause or Due Process grounds, there would be no basis for general personal jurisdiction over Syngenta Crop. That outcome, in turn, would result in the dismissal of ***hundreds*** of plaintiffs—or nearly 90% of the total plaintiffs—who cannot establish that this Court has specific personal

jurisdiction over their claims.[7] In other words, the overwhelming majority of plaintiffs would be dismissed from this action should Syngenta Crop succeed in its preliminary objection. The dismissal of this large set of plaintiffs on jurisdictional grounds would dramatically simplify discovery, which is in its earliest stages outside of limited jurisdictional requests. *See United States v. Pfizer, Inc.*, No. 05-679, 2017 WL 2691927 at *4 (E.D. Pa. June 22, 2017) ("Here, discovery has not yet commenced, and a trial date has not been set. Given the complexity of this case, we anticipate that discovery will be extensive. Appellate review . . . could eliminate the need for this period of prolonged and costly discovery, or alternatively, it could validate these significant expenditures." (cleaned up)). And in doing so, any such discovery would necessarily proceed more efficiently and more quickly with fewer plaintiffs involved.

Moreover, without interlocutory appellate review, there is a serious risk of litigating multiple cases in a forum with no personal jurisdiction over Syngenta Crop. Those efforts would necessarily entail months of fact discovery, expert work and related motions practice, summary judgment briefing, and trials—which would all be rendered a nullity if the appellate courts conclude that Syngenta Crop was not subject to

---

[7] *See* Exhibit H, Plaintiffs' Counsel's Affidavit in Response to PJ Discovery at 2 (admitting that 100 plaintiffs had never "used Paraquat in the Commonwealth"; never "purchased paraquat in the Commonwealth"; were never "exposed to Paraquat in the Commonwealth"; were never "treated in the Commonwealth"; and that any presence they might have had in the Commonwealth is "unrelated to the claims at issue in this action.")

personal jurisdiction in Pennsylvania in the first place. Immediate appellate review will resolve the jurisdictional question early in the lifecycle of these cases and ensure the trial court's time and the parties' time—to say nothing of Pennsylvania jurors' time—is not wasted on cases with an underlying jurisdictional defect.

Resolving the personal jurisdiction appeal now would also ensure that the trial court's docket does not become overburdened with ***new*** out-of-state plaintiffs filing paraquat actions that have no connection to Pennsylvania and who are capitalizing on the confusion brought about by *Mallory*'s fractured nature. Indeed, this problem will only become more acute before it abates: Since the United States Supreme Court's *Mallory* decision, over 100 additional plaintiffs with no connection to the Commonwealth on the face of their complaints have filed suit in Pennsylvania. An appellate decision on either of the constitutional issues presented would address whether such cases can continue to be filed going forward.

III. The Trial Court's Failure To Certify Its Personal Jurisdiction Order Regarding *Mallory* And The Registration Statute Was An Egregious Abuse Of Discretion.

Finally, the trial court egregiously abused its discretion by failing to certify its personal jurisdiction order because of the important and far-reaching constitutional issues raised regarding *Mallory* and the Registration Statute. "Under Pennsylvania state law, an abuse of discretion occurs when the court has overridden or misapplied the law, when its judgment

is manifestly unreasonable, or when there is insufficient evidence of record to support the court's findings." *Bouzos-Reilly v. Reilly*, 980 A. 2d 643, 644 n.1 (Pa. Super. 2009). The trial court's failure to certify its personal jurisdiction order was manifestly unreasonable here.

That failure has significant practical (and prejudicial) effects in this litigation. As explained above, the overwhelming majority of cases in this litigation suffer from the jurisdictional defects that the *Mallory* court identified for remand. Continuing on in the face of such uncertainty imposes procedural and monetary prejudice should a Pennsylvania appellate court later hold the Registration Statute unconstitutional. This concern is not merely hypothetical: in Case Management Order No. 5, the trial court ordered the first 57 cases filed—41 of which involve out-of-state plaintiffs—to serve as the initial "bellwether trial pool," and after the filing of short-form complaints and fact-sheet exchanges, the parties are to pick 10 plaintiffs each for further discovery and trial work-up. Case Management Order No. 5, *In re: Paraquat Products Liability Litigation*, Case No. 220500559 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 9, 2023). Plaintiffs have previously suggested that a bellwether process would mitigate the effect of out-of-state plaintiffs on the litigation. Yet as Case Management Order No. 5 demonstrates, it is doing anything but. The outsized effect that out-of-state plaintiffs are already having on this litigation shows precisely why jurisdictional clarity is urgently needed.

The trial court's failure to certify also has significant implications even beyond this action.

Deciding if the Dormant Commerce Clause or the Due Process Clause (as applied to companies without "substantial operations") permits general personal jurisdiction over Syngenta Crop simultaneously affects ***every*** out-of-state business also registered to do business in the Commonwealth. Suits against such defendants increase by the day, with no end-in-sight save for appellate intervention. *See, e.g.*, Alison Frankel, *US Supreme Court Clears Path for Plaintiffs to Pick Where to Sue Corporations*, REUTERS (June 28, 2023) (noting that *Mallory* "could upend litigation against corporate defendants, allowing plaintiffs to pick friendly out-of-state venues and gain valuable leverage from filing masses of cases in a single court and that it's a "good-bet" that "plaintiffs' lawyers will capitalize on the *Mallory* ruling by filing cases for out-of-state claimants in plaintiff-friendly courts"), available at https://www.reuters.com/legal/government/column-us-supreme-courtclears-path-plaintiffs-pick-where-sue-corporations-2023-06-28/. In the end, and in light of these practical realities, the trial court committed an egregious abuse of discretion by failing to certify its personal jurisdiction order.

CONCLUSION

For these reasons, Syngenta Crop Protection, LLC respectfully requests that this Court grant permission to appeal the Philadelphia County Court of Common Pleas August 24, 2023 order overruling Syngenta Crop Protection LLC's preliminary objection to the exercise of general jurisdiction under Section 702(b) of the Judicial Code.

* * *

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

May Term 2022

No. 220500559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

This Document Relates to All Actions

Filed: Sept. 25, 2023

SYNGENTA CROP PROTECTION, LLC'S MOTION TO CERTIFY ORDER FOR INTERLOCUTORY APPEAL

Pursuant to 42 Pa.C.S. § 702(b), Syngenta Crop Protection, LLC ("Syngenta Crop") submits this motion to certify the Court's August 24, 2023 Order for interlocutory appeal. Syngenta Crop recognizes that the Court has set a hearing on October 3, 2023 with respect to the remaining preliminary objections, and Syngenta Crop does not intend to or anticipate that the instant motion will impact that hearing, given that this motion will not be fully briefed until well after that hearing. However, under Pennsylvania law, Syngenta Crop is required to file this motion now

under Pennsylvania Rule of Appellate Procedure 1311(b), which provides that any such motion must be filed within 30 days of the August 24th Order overruling Syngenta Crop's preliminary objection as to personal jurisdiction.

INTRODUCTION

1. The Court's Order overruling Syngenta Crop's preliminary objection to the Court's exercise of general jurisdiction warrants interlocutory appellate review given the importance of *Mallory v. Norfolk Southern Railway Co.*, 143 S.Ct. 2028 (2023), to the constitutionality of Pennsylvania's consent-by-registration statute (the "Registration Statute").

2. Under the Registration Statute, foreign corporations like Syngenta Crop must register with the Pennsylvania Department of State and subject themselves to general personal jurisdiction for all future actions in the Commonwealth, regardless of whether the litigation at issue has any connection to Pennsylvania. *See* 15 Pa.C.S. § 411(a); 42 Pa.C.S. § 5301(a)(2)(i), (b).

3. Syngenta Crop timely objected to this exercise of general personal jurisdiction under the Registration Statute and relied on the Pennsylvania Supreme Court's decision in *Mallory v. Norfolk Southern Railway Co.*, 266 A.3d 542 (Pa. 2021).

4. In *Mallory*, the Pennsylvania Supreme Court held that it could not exercise general personal jurisdiction over an out-of-state corporate defendant simply because it complied with the Registration Statute, explaining that doing so would violate the Due Process Clause.

5. At the time of Syngenta Crop's preliminary objection, that decision was pending review by the United States Supreme Court. But on June 27, 2023, while Syngenta Crop's preliminary objection was still pending, the United States Supreme Court held in a fractured opinion that the Registration Statute does not run afoul of the Due Process Clause as applied to the out-of-state corporate defendant in *Mallory*.

6. Despite vacating and remanding, a majority of the Justices expressed concern that the Registration Statute was unconstitutional, including under the Dormant Commerce Clause and the Due Process Clause.

7. Accordingly, after the United States Supreme Court's *Mallory* decision, Syngenta Crop maintained its objection in this Court that the Registration Statute still could not support general personal jurisdiction in this case.

8. The Court disagreed, however, and denied Syngenta Crop's preliminary objection to general personal jurisdiction.[1]

9. As set forth below, the Court should certify its Order for interlocutory review to allow the Superior Court to consider the Dormant Commerce Clause and Due Process Clause arguments reserved after the United States Supreme Court's decision in *Mallory*.

---

[1] In that same Order, the Court sustained Syngenta AG's preliminary objection and held that it "lacks general personal jurisdiction over Syngenta AG[.]" *In re Paraquat Prods. Liab. Litig.*, Control No. 22124218 (Pa. Ct. of Common Pleas Aug. 24, 2023).

10. Under Pennsylvania Rule of Appellate Procedure 1311 and 42 Pa.C.S. § 702(b), this Court may certify to the Superior Court an otherwise non-appealable order if (1) "such order involves a controlling question of law, as to which there is [(2)] substantial ground for difference of opinion," and where (3) "an immediate appeal from the order may materially advance the ultimate termination of the matter." 42 Pa.C.S. §702(b).

11. In light of the recent decisions by the United States Supreme Court and the Pennsylvania Supreme Court on the Registration Statute's constitutionality, the denial of Syngenta Crop's preliminary objection as to general jurisdiction satisfies all three requirements.

12. First, the denial involves "a controlling question of law"—namely, whether the Registration Statue is unconstitutional, even after Mallory, under the Dormant Commerce Clause, or as applied to this case, under the Due Process Clause.

13. Second, there exists a "substantial ground for difference of opinion" as to the novel and significant constitutional and jurisdictional questions raised, as reflected by the splintered nature of the United States Supreme Court's decision.

14. Third, immediate appellate review by the Superior Court would "materially advance the ultimate termination" of this litigation by resolving the jurisdictional question of whether ***hundreds*** of out-of-state plaintiffs—indeed, the vast majority of the plaintiffs who have filed cases in Pennsylvania—may pursue their potential claims against Syngenta Crop in this consolidated litigation, despite no connection whatsoever to the Commonwealth. For these reasons,

detailed below, the Court should certify its Order for interlocutory appeal to the Superior Court.

ARGUMENT

I. THE COURT SHOULD CERTIFY ITS ORDER DENYING SYNGENTA CROP'S PRELIMINARY OBJECTION REGARDING GENERAL PERSONAL JURISDICTION

A. The Order Presents A Controlling Question of Law Regarding *Mallory* And The Registration Statute.

15. The Court's Order denying Syngenta Crop's preliminary objection on general personal jurisdiction turns on a "controlling question of law"—whether the Registration Statute violates the Dormant Commerce Clause and the Due Process Clause under *Mallory*.

16. As the Pennsylvania Supreme Court has explained, "the interpretation of a statute is a question of law for the Court to resolve[,]" *Rump v. Aetna Cas. & Sur. Co.*, 710 A.2d 1093, 1098 (Pa. 1998), and the "constitutionality of a statute" is no exception, *see, e.g.*, *Keystone RX LLC v. Bureau of Workers' Comp. Fee Rev. Hearing Off.*, 265 A.3d 322, 329 n.4 (Pa. 2021) ("Consideration of the constitutionality of a statute presents a question of law").

17. In tandem with these pure constitutional questions, the Registration Statute also raises the type of jurisdictional issues that are routinely certified for interlocutory appeal by Pennsylvania courts. *See, e.g.*, *Azzarrelli v. City of Scranton*, 655 A.2d 648, 650 (Pa. Commw. 1995) (certifying denial of personal jurisdiction challenge); *Rennie v. Rosenthol*, 995 A.2d 1217, 1219 (Pa. Super. 2010) (describing interlocutory

certification concerning personal jurisdiction question); *Ass'n of Cath. Tchrs. Loc. 1776 v. Pennsylvania Lab. Rels. Bd.*, 671 A.2d 1207, 1209 (Pa. Commw. 1996), *aff'd*, 692 A.2d 1039 (Pa. 1997) (certifying challenge to subject matter jurisdiction); *see also* Darlington, McKeon, Schuckers & Brown, 20 West's Pa. Prac., Appellate Practice § 1312:3.6 (2022) (stating that "[t]he courts have granted petitions for permission to appeal in cases in which the trial court or other government unit has found personal jurisdiction notwithstanding the objection of the defendant" and collecting cases); *id.* at § 1312:3.5 (collecting cases certified for interlocutory review concerning subject matter jurisdiction and stating that courts have also granted interlocutory review in cases "where the lower tribunal has refused to certify its order"); *id.* at § 1312:4.6 (collecting cases).

18. The Court's Order presents a classic "controlling question of law" meriting interlocutory appeal.

B. Substantial Grounds For Difference Of Opinion Exist Regarding *Mallory*'s Effect On The Constitutionality of the Registration Statute.

19. There are substantial grounds for difference of opinion on the controlling question of law here: whether the Registration Statute violates the Dormant Commerce Clause and the Due Process Clause in light of *Mallory*.

20. Under Pennsylvania law, certification of a controlling question of law is appropriate where, as here, such questions are unsettled, complex, and important. *See McLaughlin v. Nahata*, 298 A.3d 384,

405 (Pa. 2023) (noting that the trial court properly "recognized that there was no controlling appellate authority as to the legal questions before it" and properly certified the issues for appeal); *Chestnut Hill Coll. v. Pa. Hum. Rel. Comm'n*, 158 A.3d 251, 254, 256 (Pa. Commw. 2017) (permitting interlocutory appeal on "an issue of first impression" with constitutional implications); *Jones v. City of Phila.*, 890 A.2d 1188, 1192–93 (Pa. Commw. 2006) (permitting interlocutory appeal where there was a constitutional issue of first impression); *LM. Gen. Ins. Co. v. LeBrun*, No. 19-2144-KSM, 2020 WL 7770233, at *7 (E.D. Pa. Dec. 30, 2020) (finding substantial grounds for difference of opinion where there was "a lack of clear precedent, since the Pennsylvania Supreme Court has not yet directly ruled on the precise issue before us"); *Knipe v. SmithKline Beecham*, 583 F. Supp. 2d 553, 599 (E.D. Pa. 2008) ("[S]ubstantial ground for difference of opinion" exists when the matter involves "one or more difficult and pivotal questions of law not settled by controlling authority." (citation omitted)).[2]

21. Whether the Registration Statute is unconstitutional after *Mallory*—something no Pennsylvania appellate court has considered after the United States Supreme Court's remand—presents precisely the sort of intricate and significant legal question over which there is substantial disagreement meriting interlocutory review.

---

[2] The federal standard for interlocutory appellate review mirrors Pennsylvania's standard. *Compare* 28 U.S.C. § 1292(b), *with* 42 Pa.C.S. § 702(b). Accordingly, federal cases can provide helpful guidance in resolving the important state law at issue here.

22. The fractured nature of *Mallory* itself highlights the basis for disagreement. In considering the constitutionality of the Registration Statute under the Due Process Clause, the United States Supreme Court did not issue a majority opinion that garnered the support of five Justices and instead resulted in only a plurality opinion. Justices Kagan, Roberts, Kavanaugh, and Barrett concluded that the Registration Statute violated the Due Process Clause, and four other Justices held that it did not. Justice Alito, who wrote separately, provided the decisive fifth vote to remand on narrow grounds—that is, under the particular facts of the case. *See Mallory*, 143 S.Ct. at 2048 (Alito, J., concurring). Yet the Due Process Clause, according to Justice Alito, was not even the proper vehicle through which courts should address consent-by-registration statutes like Pennsylvania's. *See id.* at 2051–2054 (Alito, J., concurring). Instead, "[t]he federalism concerns that this case presents fall more naturally within" the Dormant Commerce Clause. *Id.* at 2051 (Alito, J., concurring).[3]

23. The application of the Dormant Commerce Clause to the Registration Statute—and the proper interpretation of *Mallory*'s splintered decision—is particularly suitable for certification here.

24. To begin, there is a "lack of Pennsylvania case law" regarding whether the Registration Statute violates the Dormant Commerce Clause, which

[3] The plurality did not voice disagreement with this point. And while the plurality declined to address whether the Registration Statute poses a Dormant Commerce Clause problem, it invited Pennsylvania courts to consider this question. *See id.* at 2033, n.3.

warrants a finding that there is a substantial ground for a difference of opinion regarding this issue. *Commonwealth v. Tilley*, 780 A.2d 649, 651 (Pa. 2001).

25. Moreover, courts have long recognized that "Dormant Commerce Clause jurisprudence is famously complex" and subject to "very considerable judicial oscillation." *Foresight Coal Sales, LLC v. Chandler*, 60 F.4th 288, 295 (6th Cir. 2023) (citation omitted) (collecting cases), *cert. pet. Docketed* May 8, 2023.

26. Indeed, no Pennsylvania appellate court has had the opportunity to grapple with the complex Dormant Commerce Clause issues presented by Justice Alito's concurrence in *Mallory*, which provided detailed grounds for the Pennsylvania courts to consider in applying the Dormant Commerce Clause on remand. 143 S.Ct. at 2051–2054 (Alito, J., concurring) (questioning whether Pennsylvania would have "a legitimate local interest in vindicating the rights of non-residents harmed by out-of-state actors through conduct outside the State" and expressing skepticism "that any local benefits of the State's assertion of jurisdiction in these circumstances could overcome serious burdens on interstate commerce that it imposes").

27. Courts that have addressed these complex Dormant Commerce Clause issues overwhelmingly agree that the constitutionality of consent-by-registration statutes hinges on whether a non-resident—rather than a resident of the forum state—brings suit. *See, e.g., Hegna v. Smitty's Supply, Inc.*, No. 16-3613, 2017 WL 2563231, at *5 (E.D. Pa. June 13, 2017) (finding that the Registration Statute "does

not violate the dormant Commerce Clause" where a state resident brought the lawsuit); *Rodriguez v. Ford Motor Co.*, 458 P.3d 569, 579–80 (N.M. Ct. App. Dec. 20, 2018), *rev'd and remanded on other grounds*, *Chavez v. Bridgestone Ams. Tire Operations, LLC*, 503 P.3d 332 (N.M. 2021)) (similar under New Mexico law); *In re Syngenta AG MIR 162 Corn Litig.*, No. 14-md-2591-JWL, 2016 WL 2866166, at *5 (D. Kan. May 17, 2016) (finding Kansas's consent-by-registration statute violated the dormant Commerce Clause "as applied in these cases to claims by the non-resident plaintiffs").

28. This makes sense: it is difficult to conceive of a state's compelling interest in adjudicating claims between a non-resident and a foreign defendant regarding conduct outside its borders.

29. Because the Pennsylvania Supreme Court remanded *Mallory* to the trial court for further consideration, this case presents the first opportunity for Pennsylvania appellate courts to provide much-needed clarity on the issue.[4]

30. Separate from the Dormant Commerce Clause issue, the Due Process question that still remains after *Mallory* also presents a parallel basis for certification of the Court's order.

31. The United States Supreme Court was clear in its plurality opinion that it "need not speculate

[4] While the Pennsylvania Supreme Court's remand order did not provide a basis for the decision to remand the case to the trial court, the out-of-state defendant did not raise a Dormant Commerce Clause challenge below, making it likely that the Court did not believe the case was the proper vehicle to decide the issue at that stage of the proceedings.

whether any other statutory scheme ***and set of facts*** would suffice to establish consent to suit" and thus not violate the Due Process Clause. *Mallory*, 143 S.Ct. at 2038 (emphasis added).

32. That cabining of *Mallory* to its facts was underscored by Justice Alito—the decisive fifth vote for the Court's Due Process holding—who noted that "[t]he ***sole question*** before us is whether the ***Due Process Clause of the Fourteenth Amendment*** is violated when a large out-of-state corporation ***with substantial operations in a State*** complies with a registration requirement that conditions the right to do business in that State on the registrant's submission to personal jurisdiction in any suits that are brought there." *Id.* at 2047 (Alito, J., concurring) (emphases added).

33. In other words, the *Mallory* defendant's substantial operations in Pennsylvania played a significant role in the Supreme Court's decision to remand.

34. The parties, however, disagree as to whether *Mallory* "is limited to the facts of that case" and whether Syngenta Crop has "substantial operations" in the Commonwealth. *See LM Gen. Ins. Co.*, 2020 WL 7770233, at *7 (noting that a dispute like this can create substantial grounds for difference of opinion).

35. As demonstrated by the parties' briefs, the import of *Mallory*'s Due Process Clause holding to this case is itself a difficult and important question. Situations like this, then, are ideal for interlocutory appeal, as there is "no clear precedent post-[*Mallory*] as to how broadly [*Mallory*] is to be construed." *Id.*; *see Durst v. Milroy Contracting Inc.*, 52 A.3d 357, 359 (Pa.

Super. 2012) (noting that trial court permitted interlocutory appeal where there was a "new statute" with "no interpretive precedent" (quotations omitted)); *see also Simon v. First Savings Bank of Indiana and First Savings Fin. Grp.*, No. 23-721, 2023 WL 5985282, at *2–3 (E.D. Pa. Sept. 14, 2023) (noting that the court in *Mallory* "refused to speculate as to [the Registration Statute's] application in different circumstances" and that violation of Pennsylvania registration law "does not trigger 'consent' to general jurisdiction over all claims against defendants, whatever other penalties may exist").

36. Taken together, the disputes over Pennsylvania's Registration Statute (and other similar state statutes), confirm that there are substantial grounds for difference of opinion regarding its constitutionality.

C. An Immediate Appeal On *Mallory* And The Registration Statute Materially Advances The Ultimate Termination of the Matter.

37. Finally, appellate review of these constitutional and jurisdictional issues "may materially advance the ultimate termination" of the litigation by leading to the dismissal of plaintiffs who lack any connection to the Commonwealth—indeed, the overwhelming majority of the plaintiffs in this mass tort action. 42 Pa.C.S. § 702(b).

38. In evaluating this prong, courts often focus on whether an appeal would promote "judicial economy." Darlington, 20 West's Pa. Prac., Appellate Practice § 1312:3. And in similar circumstances, other courts have found that the resolution of jurisdictional issues

that would eliminate a substantial number of plaintiffs favored interlocutory appeal. *See Waters v. Day & Zimmerman NPS, Inc.*, No. 19-11585-NMG, 2020 WL 4754984, at *2 (D. Mass. 2020) (granting motion to certify question regarding personal jurisdiction where reversal of decision "would resolve the case as to 109 current plaintiffs and drastically curtail and simplify pretrial and trial proceedings"); *see also supra* Part IA (noting the frequency with which jurisdictional questions are certified in Pennsylvania); *Max Daetwyler Corp. v. Meyer*, 575 F. Supp. 280, 282 (E.D. Pa. Dec. 8, 1983) (finding that "an immediate appeal from [the court's] ruling on *in personam* jurisdiction could materially advance the ultimate termination of the litigation").

39. If, as Syngenta Crop contends, the Registration Statute is unconstitutional on either Dormant Commerce Clause ***or*** Due Process grounds, there would be no basis for general personal jurisdiction over Syngenta Crop.

40. That outcome, in turn, would result in the dismissal of ***hundreds*** of plaintiffs—the overwhelming majority of plaintiffs—who cannot establish that this Court has specific personal jurisdiction over their claims.[5]

---

[5] *See* Ex. A, Counsel's Affidavit in Response to PJ Discovery at 2 (admitting that 100 plaintiffs had never "used Paraquat in the Commonwealth"; never "purchased paraquat in the Commonwealth"; were never "exposed to Paraquat in the Commonwealth"; were never "treated in the Commonwealth"; and that any presence they might have had in the Commonwealth is "unrelated to the claims at issue in this action.")

41. The dismissal of this large set of plaintiffs on jurisdictional grounds would dramatically simplify discovery, which has not commenced outside of limited jurisdictional requests. *See United States v. Pfizer, Inc.*, No. 05-679, 2017 WL 2691927 at *4 (E.D. Pa. June 22, 2017) ("[H]ere, discovery has not yet commenced, and a trial date has not been set. Given the complexity of this case, we anticipate that discovery will be extensive. Appellate review . . . could eliminate the need for this period of prolonged and costly discovery, or alternatively, it could validate these significant expenditures." (cleaned up)). And in doing so, any such discovery would necessarily proceed more efficiently and more quickly with fewer plaintiffs involved.

42. Moreover, without interlocutory appellate review, there is a serious risk of litigating multiple cases in a forum with no personal jurisdiction over Syngenta Crop.

43. Those efforts would necessarily entail months of fact discovery, expert work and related motions practice, summary judgment briefing, and trials—which would all be rendered a nullity if the appellate courts conclude that Syngenta Crop was not subject to personal jurisdiction in Pennsylvania in the first place.

44. Interlocutory review will resolve the jurisdictional question early in the lifecycle of these cases and ensure the Court's time and the parties' time—to say nothing of Pennsylvania jurors' time—is not wasted on cases with an underlying jurisdictional defect.

45. Moreover, resolving the personal jurisdiction appeal now would also ensure that the Court's docket does not become overburdened with ***new*** out-of-state plaintiffs filing paraquat actions that have no connection to Pennsylvania and who are capitalizing on the confusion brought about by *Mallory*'s fractured nature.

46. Indeed, since the *Mallory* decision, ***over fifty*** additional plaintiffs who appear to have no connection to the Commonwealth on the face of their complaints have filed suit in Pennsylvania.

47. An appellate decision on either of the constitutional issues presented would address whether such cases can continue to be filed in this Court going forward.

WHEREFORE, Syngenta Crop Protection, LLC respectfully requests that the Court certify its August 24, 2023 Order for interlocutory appeal pursuant to Section 702(b) of the Judicial Code.

* * *

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

May Term 2022

No. 220500559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

This Document Relates to All Actions

Filed: Aug. 1, 2023

SYNGENTA DEFENDANTS' BRIEF REGARDING THE EFFECT OF *MALLORY V. NORFOLK S. RY. CO.* ON THE PRELIMINARY OBJECTION TO THE COURT'S EXERCISE OF GENERAL PERSONAL JURISDICTION

Syngenta Crop Protection, LLC and Syngenta AG (together, the "Syngenta Defendants") submit this memorandum pursuant to the Court's July 18, 2023, Order granting leave to brief the Syngenta Defendants' position regarding the effect of *Mallory v. Norfolk S. Ry. Co.*, 143 S.Ct. 2028 (2023), on the outstanding Preliminary Objections to Plaintiffs' Long-Form Complaint, Control No. 22124218 ("POs"), regarding general personal jurisdiction.

INTRODUCTION

Plaintiffs misread the United States Supreme Court's decision in *Mallory v. Norfolk S. Ry. Co.*, 143 S.Ct. 2028 (2023), in arguing that it establishes personal jurisdiction in this case. The opposite is true. To be sure, on a superficial level, the U.S. Supreme Court vacated the Pennsylvania Supreme Court's decision invalidating part of the Pennsylvania long-arm statute. But reading the ***entire*** case shows that ***five Justices*** reasoned that the statute is invalid, with the deciding fifth vote (Justice Alito) explaining why it should fall (again) on remand. Thus, a complete reading of *Mallory* shows that the statutory scheme upon which Plaintiffs stake their claims—15 Pa. Cons. Stat. § 411 and 42 Pa. Cons. Stat. §5301(a)(2)(i), (b)—is unconstitutional. The Pennsylvania Supreme Court reached the correct outcome the first time, and, applying the opinions from the U.S. Supreme Court in *Mallory*, it will reach that same result (under different reasoning) the second time. Separately, *Mallory* addressed a Due Process challenge under very different facts, none of which are present here. For two reasons, *Mallory* shows why Defendants' preliminary objections should be sustained.

First, the U.S. Supreme Court's decision in *Mallory* contains five clear votes in favor of finding Pennsylvania's consent-by-registration scheme unconstitutional—and paves the way for the Pennsylvania Supreme Court to invalidate it (again) on remand. In *Mallory*, the Pennsylvania Supreme Court invalidated the statutory scheme on Due Process grounds, but also noted that requiring out-of-state corporations to register in Pennsylvania "is

contrary to the concept of federalism[.]" *Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 567 (Pa. 2021). At the United States Supreme Court, the nine Justices fractured into unusual camps, with Justices Kagan, Roberts, Kavanaugh, and Barrett all asserting that the statute was unconstitutional under the Due Process clause, four other Justices disagreeing, and Justice Alito, the decisive fifth vote, in the middle. It is thus critical for this Court to review Justice Alito's concurrence (attached here as Exhibit A for reference), which explained that Sections 411 and 5301(a)(2) do not *always* violate the Due Process Clause—and so the decision had to be remanded based on the facts presented in that case. *See Mallory*, 143 S.Ct. at 2051–52. But Justice Alito explained that Due Process was not the most appropriate legal structure for assessing the interstate impacts of the Pennsylvania scheme; rather, "[t]he federalism concerns that this case presents fall more naturally within … the Commerce Clause." *Id.* at 2051 (Alito, J., concurring). Indeed, the U.S. Supreme Court long ago held that the Commerce Clause prohibited Minnesota from enforcing a statutory scheme much like Pennsylvania's, wherein Minnesota had required railroads to submit to general jurisdiction as a condition of doing business in the state. *See Davis v. Farmers Co-op. Equity Co.*, 262 U.S. 312, 314–15(1923). *Davis* is still good law, and its binding effect means that the Pennsylvania Supreme Court will hold again on remand that Pennsylvania's statutory scheme is unconstitutional.

Second, *Mallory* also cannot save Plaintiffs' claims even on Due Process grounds, as *Mallory* emphasized that case's different facts. *See Mallory*, 143 S. Ct. at 2038–43 ("To decide this case, we need

not speculate whether any other statutory scheme *and set of facts* would suffice to establish consent to suit." (emphasis added)). In *Mallory*, the plaintiff verified his complaint, the defendant was registered in Pennsylvania, and the defendant had substantial operations in the Commonwealth, including over 15,000 employees. None of those facts are present here. Plaintiffs have not verified their complaint, which contains all of their jurisdictional allegations, Syngenta AG is ***not*** registered to do business in Pennsylvania, and the record does not reflect that either Syngenta Defendant has substantial operations in the Commonwealth.

ARGUMENT

I. The Registration Statute Violates the Commerce Clause.

The Constitution vests Congress with the power to "regulate Commerce … among the several States[.]" Art. I, § 8, cl. 3. The Commerce Clause "avoid[s] the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979). While not explicit in the text of the Constitution, the U.S. Supreme Court has interpreted the Commerce Clause as containing a "negative command" that prohibits states from interfering in interstate commerce. *See Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179–80 (1995) ("We have understood this construction to serve the Commerce Clause's purpose of preventing a State from retreating into economic isolation or jeopardizing the welfare of the Nation as a whole, as it would do if it were free to place burdens

on the flow of commerce across its borders that commerce wholly within those borders would not bear."). The Pennsylvania Supreme Court has applied this "dormant" aspect of the Commerce Clause several times, noting that it "prevent[s] a state from regulating business in such a way as to provide unfair advantage to its own residents[,]" *Empire Sanitary Landfill, Inc. v. Com., Dept. of Env't. Resources*, 684 A.2d 1047, 1055 (Pa. 1996), and "serves to protect out-of-state corporations," *Johnson v. Am. Standard*, 8 A.3d 318, 326 (Pa. 2010).

The registration statute violates the Commerce Clause here. It requires foreign corporations to register with the Department of State, 15 Pa. Cons. Stat. § 411(a), and then be subject to general personal jurisdiction in the Commonwealth, 42 Pa. Cons. Stat. § 5301(a)(2)(i), (b)—even if the Plaintiff is not from Pennsylvania, and even if the case has nothing to do with Pennsylvania. As the Pennsylvania Supreme Court noted in its first opinion in *Mallory*, the scheme "infringes upon the doctrine of federalism[.]" *Mallory*, 266 A.3d at 558–59. Indeed, and although the Pennsylvania Supreme Court based its first opinion on Due Process, "this federalism [problem] may be determinative[.]" *Id.* at 567. The United States Supreme Court, in fractured opinions, vacated and remanded. But even though the four-Justice plurality in *Mallory* disagreed with the Pennsylvania Supreme Court's Due Process holding, it still noted that "any argument along those [federalism] lines remains for consideration on remand." *Mallory*, 143 S. Ct. at 2033 n.3. The decisive fifth vote from Justice Alito explained that the statute was ***likely still unconstitutional***: "federalism concerns fall more

naturally within the scope of the Commerce Clause[,]" and "there is a good prospect that Pennsylvania's assertion of jurisdiction[,]" should be held to "violate[] the Commerce Clause" on remand. *Id.* at 2051, 2053 (Alito J., concurring).

On remand, the Pennsylvania Supreme Court is likely to reach the same result based on century-old binding precedent. In *Davis v. Farmers' Co-op. Equity Co.*, 262 U.S. 312 (1923), a Kansas-based corporation sued a Kansas railroad in Minnesota for a claim that was "in no way connected with Minnesota[.]" *Id.* at 314. The Kansas corporation argued jurisdiction was permitted because the railroad company had complied with a statute requiring it to "submit to suit" in Minnesota on any "cause of action, wherever it may have arisen," as a condition of maintaining a soliciting agent in the state. *Id.* at 315. The United States Supreme Court ***unanimously*** held the statute unconstitutional: "litigation in states and jurisdictions remote from that in which the cause of action arose … causes, directly and indirectly, heavy expense to the carriers[,]" and "imposes upon interstate commerce a serious and unreasonable burden, ***which renders the statute obnoxious to the commerce clause***." *Id.* (emphasis added). As the Court emphasized, the "orderly effective administration of justice clearly does not require that a foreign carrier shall submit to a suit in a state in which the cause of action did not arise, in which the transaction giving rise to it was not entered upon, in which the carrier neither owns nor operates a railroad, and in which the plaintiff does not reside." *Id.* at 317.

Davis remains good law and dictates the outcome here. Just like the Minnesota statute, Pennsylvania's scheme manufactures general personal jurisdiction for ***all*** claims no matter where a corporation is headquartered, where it is incorporated, where the plaintiff resides, or where the claim arose. It thus imposes significant burdens on interstate commerce. *See id.*; *see also Mallory*, 143 S. Ct. at 2054 (Alito, J., concurring) (noting that the statute "injects intolerable unpredictability into doing business across state borders" and advances no "legitimate local interest", especially when plaintiffs bring claims "wholly unconnected to the forum State"). Recent U.S. Supreme Court cases have only reinforced *Davis*'s holding, noting that discriminatory state laws "face 'a virtually per se rule of invalidity[,]'" *Granholm v. Heald*, 544 U.S. 460, 476 (2005) (citation omitted), and striking down statutes imposing burdens on out-of-state actors, e.g., *Oregon Waste Sys., Inc. v. Dep't of Env't Quality of State of Or.*, 511 U.S. 93, 108 (1994). Nor could some plausible local interest save the registration statute: "I am hard-pressed to identify any legitimate local interest that is advanced by requiring an out-of-state company to defend a suit brought by an out-of-state plaintiff on claims wholly unconnected to the forum State." *Mallory*, 143 S. Ct. at 2054 (Alito, J., concurring).

This case proves that point. For instance, once this Court permitted limited personal jurisdiction discovery, the Syngenta Defendants served discovery on over 100 plaintiffs that have filed suit in Pennsylvania to assess whether they had any connection to Pennsylvania. ***Every single one*** of those "PJ Discovery Plaintiffs" admitted that they had

never "used Paraquat in the Commonwealth"; never "purchased Paraquat in the Commonwealth"; were never "exposed to Paraquat in the Commonwealth"; were never "treated in the Commonwealth"; and that any presence they might have had in the Commonwealth is "unrelated to the claims at issue in this action." *See* Ex. B, Counsel's Affidavit in Response to PJ Discovery at 2.[1] This case, in other words, is exactly the type of case where the Pennsylvania Supreme Court's federalism concerns should "be determinative[.]" *Mallory*, 266 A.3d at 567. Because the opinion in *Mallory* shows that the Pennsylvania Supreme Court got it right (albeit under different reasoning), and because it is overwhelmingly likely that the Pennsylvania Supreme Court will reach the same result and apply its federalism concerns to strike

---

[1] Plaintiffs' only factual basis for general jurisdiction up to this point has been its conclusory allegation that "PJ Discovery Plaintiffs' claims arise out of or relate to Syngenta's contacts with the Commonwealth of Pennsylvania." *Id.* But that statement is a conclusory legal statement and so cannot support jurisdiction as a factual matter. *See City of Philadelphia v. Borough of Westville*, 93 A.3d 530, 534 n.4 (Pa. Commw. Ct. 2014) ("When a defendant challenges personal jurisdiction, the [p]laintiff must come forward with sufficient jurisdictional facts by (affidavit, deposition or other) competent evidence to establish the court's jurisdiction over the [d]efendant." (internal marks and citation omitted)). Like Plaintiffs' other responses, it is also unverified and so suffers from a fatal procedural flaw. *See infra* at 10–11 (discussing verification requirements under Pennsylvania law). In any event, it is wrong. *See* Ex. C, Mem. of Law in Supp. Of Syngenta Defs' Prelim. Objs., Control No. 22124218, at 10–15 (Dec. 20, 2022) (detailing general jurisdictional argument and providing verifications for the same); Ex. D, Reply Mem. of Law in Supp. Of Syngenta Defs' Prelim. Objs., Control No. 22124218, at 7–8 (Feb. 22, 2023) (same).

down the registration statute again on remand, the Court should sustain Defendants' Preliminary Objections.

II. The Due Process Clause Also Bars Jurisdiction, As *Mallory* Relied on Facts That Plaintiffs Lack Here.

Separate and apart from reinforcing the Pennsylvania Supreme Court's federalism concerns, the opinions in *Mallory* also show that Plaintiffs still cannot survive a Due Process challenge on the facts presented in ***this*** case. *Mallory* made clear that its holding was based on the specific set of facts before it; indeed, it declined to "speculate" as to whether "any other … set of facts would suffice to establish consent to suit." 143 S. Ct. at 2038–43. *Mallory* thus cannot save Plaintiffs' claims. Unlike in *Mallory*, here (i) no Plaintiff has verified the Long-Form Complaint, (ii) there is no record establishing that the Syngenta Defendants have substantial operations in Pennsylvania, and (iii) Syngenta AG is ***not*** registered in Pennsylvania.

A. Plaintiffs failed to verify their complaint.

First, *Mallory* is distinguishable because, unlike in this case, the Court there dealt with a plaintiff that verified his pleadings. Verifying a complaint has important jurisdictional implications. Specifically, Pennsylvania Rule of Civil Procedure Rule 1024(a) requires that "[e]very pleading containing an averment of fact not appearing of record in the action or containing a denial of fact . . . shall be verified." Such verification must be completed "by one or more of the parties filing the pleading …." Pa. R. Civ. P.

1024(c). Without verification, a complaint, including its jurisdictional allegations, are "patently insufficient." *See Gracey v. Cumru Twp.*, No. 2604 C.D. 2010, 2011 WL 10878246, at *3 (Pa. Commw. Ct. Dec. 27, 2011) (per curiam) (unpublished); *Hatchigian v. Ford Motor Co.*, No. 114, 2012 WL 1948521 (Pa. Ct. Com. Pl. Phila. Cty. May 16, 2012) (sustaining preliminary objection and dismissing unverified complaint).

In *Mallory*, the plaintiff (Mr. Mallory) complied in full with Rule 1024 by attaching to his complaint a personally signed verification that supported his jurisdictional allegations, amongst others. *See* Ex. E, Compl. at 8, *Mallory v. Norfolk Southern Ry. Co.*, No. 1961, 2018 WL 3025283 at *1 (Pa. Com. Pl. May 30, 2018). By contrast, here, Plaintiffs failed to comply with Rule 1024 by refusing to attach any verification to their Long-Form Complaint. Their allegations, including those relating to general jurisdiction, are thus "patently insufficient." *See Gracey*, 2011 WL 10878246, at *3; *Hatchigian*, 2012 WL 1948521, at *1. Moreover, in response, the Syngenta Defendants filed verified Preliminary Objections on jurisdictional issues and noting Plaintiffs' failure to verify. *See* Ex. F, Syngenta Defs.' Prelim. Objs. to Pls.' Compl., Control No. 22124218, ¶¶ 21–69, 231–34 (Dec. 20, 2022); Ex. D, Reply Mem. of Law in Supp. of Syngenta Defs' Prelim. Objs. to Pls.' Compl., Control No. 22124218, at 3–5. Thereafter, Plaintiffs only made matters worse by failing to verify their Answer or assert averments raised therein as "new matter," pursuant to Rule 1030(a). *See* Ex. D, Reply Mem. of Law in Supp. of Syngenta Defs' Prelim. Objs., Control No. 22124218, at 4–5 (explaining Plaintiffs' non-

compliance with the Pennsylvania Rules); Ex. G, Syngenta Defs.' Prelim. Objs. to Pls.' Answer, Control No. 23024792, ¶¶ 7–17 (same).

Plaintiffs' failure to verify "may not be brushed aside as a mere 'legal technicality[.]'" *Rupel v. Bluestein*, 421 A.2d 406, 411 (Pa. Super. Ct. 1980). Moreover, Rule 1024's verification requirement "is not waivable because without it a pleading is [a] mere narration, and amounts to nothing." *Atl. Credit & Fin., Inc. v. Giuliana*, 829 A.2d 340, 344 (Pa. Super. Ct. 2003) (quotation and citation omitted). That is particularly true in cases like this one involving a party's "wholesale failure to take any of the actions [that a rule] requires" as opposed to cases involving a party's "substantial compliance" and a mere "misstep." *Womer v. Hilliker*, 908 A.2d 269, 278 (Pa. 2006). To be sure, Plaintiffs have looked to CMO 2 for refuge, but as detailed in Chevron's papers, CMO 2 does not abrogate Rule 1024's requirements, nor could it. *See* Chevron's Reply In Supp. Of Prelim. Objs., Control No. 22124217, at 11–12 (Feb. 22, 2023) (also rejecting Plaintiffs' mistaken argument that Defendants proposed delaying verification until the short form complaints).

At bottom, Plaintiffs' failure to verify means there are no disputed issues of fact regarding the jurisdictional allegations in this case, which is a material distinction from *Mallory* that prevents that case from controlling the jurisdictional outcome in this one.

B. The Syngenta Defendants do not have substantial operations in Pennsylvania.

Even if the Court were to look past Plaintiffs' lack of verification—which the Court should not, given that it resolves the jurisdictional query in the Syngenta Defendants' favor—the Syngenta Defendants have supplied additional facts demonstrating that *Mallory* is inapposite because they do not have substantial operations in Pennsylvania that would justify extending *Mallory* to this case. Before the U.S. Supreme Court, Norfolk Southern argued that it should not be haled into court in a jurisdiction where it did not have a significant presence. *Mallory*, 143 S. Ct. at 2041. But as the plurality explained, the facts did not support that argument: Norfolk Southern "had taken full advantage of its opportunity to do business in the Commonwealth, boasting of its presence" which included "***5,000 [employees] in Pennsylvania*** … 2,400 miles of track across the Commonwealth [more than in any other State] … [a] 70-acre locomotive shop [that] was the largest in North America" and company proclamations that it was "a proud part of 'the Pennsylvania Community.'" *Mallory*, 143 S. Ct. at 2042–43 (emphasis added). Like the plurality, Justice Alito's decisive fifth-vote concurrence also placed significant emphasis on Norfolk Southern's "substantial operations" in Pennsylvania, suggesting that such "extensive operations" discounted any potential Due Process violation as applied to Norfolk Southern. *Id.* at 2047, 2049.

In contrast, Plaintiffs here have not presented any cognizable record of the Syngenta Defendants' substantial and direct contacts with the

Commonwealth. That alone separates this case from *Mallory*. *See* Ex. C, Mem. of Law in Supp. of Syngenta Defs' Prelim. Objs., Control No. 22124218, at 12–15 (further detailing argument that Plaintiffs fail to allege Syngenta Defendants have substantial operations in Pennsylvania).

What is more, jurisdictional discovery proves that the Syngenta Defendants do ***not*** have substantial operations in Pennsylvania. Instead of the ***5,000 Norfolk employees*** that the Supreme Court considered substantial in *Mallory*, Syngenta Crop Protection, LLC currently has fewer than ***fifteen***. *See* Ex. H, Syngenta Defs.' Resp. & Objs. to Pls.' IROGs at 4–7 (May 8, 2023) (disclosing all employees in Pennsylvania); Ex. I, Syngenta Defs.' Resp. & Objs. to Pls.' RFAs at 22-23 (May 8, 2023). And while Norfolk Southern owned over 2,400 miles of railroad track in Pennsylvania, and a 70-acre shop (the largest of its kind in the country), Syngenta Crop Protection, LLC owns no property and runs no stores in the Commonwealth. *See* Ex. J, Verification of Alan Nadel. The same is true for Syngenta AG, who does not maintain *any* business operations in the Commonwealth. *See* Ex. K, Verification of Stephen Landsman; Ex. L, Verification of Timon Sartorius. *Mallory* is distinguishable on that additional basis.

C. Syngenta AG is not registered to do business in Pennsylvania.

Moreover, Syngenta AG is not even registered to do business in Pennsylvania, which means that *Mallory* cannot apply to Syngenta AG (even if Pennsylvania's statutory scheme is otherwise constitutional). Unlike in *Mallory*, where the

defendant was registered in Pennsylvania for years, *Mallory*, 143 S. Ct. at 2037–38, Syngenta AG has never been registered in the Commonwealth. *See* Ex. F, Syngenta Defs.' Prelim. Objs. to Pls.' Compl., Control No. 22124218, ¶ 45. Stephen Landsman, Syngenta AG's General Counsel, verified that fact, *see id.* (citing verification at "Exhibit B"). Moreover, in light of the public nature of Syngenta AG's registration status, Plaintiffs are deemed to have admitted that averment in their Answer.[2] Because Syngenta AG is not registered to do business in Pennsylvania, *Mallory* cannot control the jurisdictional outcome here.

Of course, at the July 18, 2023, status conference, Plaintiffs asserted that Syngenta AG was registered to do business in Pennsylvania. That was wrong and Plaintiffs' counsel simply erred in so arguing. The mistake appears to arise out of counsel's misreading of their own requests for admission. In Plaintiffs' second request for admission, Plaintiffs asked the Syngenta Defendants to "[a]dmit" only "that ***Syngenta Crop Protection, LLC*** is voluntarily registered and

[2] In their unverified Answer, Plaintiffs stated that "[a]fter reasonable investigation Plaintiffs are without knowledge or information sufficient to form a belief as [sic] the truth of [the] averment" that Syngenta AG is not registered in Pennsylvania. Ex. M, Pls.' Answer to Syngenta Defs.' Prelim. Objs., Control No. 22124218, ¶ 45 (Feb. 2, 2023). That response is deemed an admission where, as here, after a reasonable search of the public record, "the pleader must know whether a particular allegation is true or false." *See* Pa. Code § 1209(c), committee notes; *see also Cercone v. Cercone*, 386 A.2d 1, 4 (Pa. Super. Ct. 1978) ("If Rule 1029(c) is not properly invoked and if the responder fails to make a specific denial of a factual averment, then the responder will be deemed to have admitted that factual averment.").

qualified to conduct business in Pennsylvania as a foreign entity." *See* Ex. I, Syngenta Defs.' Resp. & Objs. to Pls.' RFAs at 3 (emphasis added). After citing to its Preliminary Objections on the matter, the Syngenta Defendants admitted that "Syngenta"—meaning, in context, ***Syngenta Crop Protection, LLC***—is "registered to conduct business in Pennsylvania[.]" *Id.* Nowhere in those responses was there any admission that ***Syngenta AG*** was also registered in the Commonwealth.

In any event, the Syngenta Defendants' verified Preliminary Objections, the public record, and Plaintiffs' Answer all settle the issue. Syngenta AG is not registered to do business in Pennsylvania and so Syngenta AG has not consented to jurisdiction in the Commonwealth.

CONCLUSION

For the reasons set forth above, *Mallory* does not resolve the general personal jurisdictional issues in this case, and, if anything, only suggests that the registration statute will be held unconstitutional again on remand. The Court should grant the Syngenta Defendants' Preliminary Objections regarding general jurisdiction, or at minimum, refrain from exercising jurisdiction over the Syngenta Defendants in light of *Mallory*.[3]

* * *

[3] Should the Court hold otherwise, the Syngenta Defendants respectfully ask that the Court state in its order that a "substantial issue" of jurisdiction has been presented so that the Syngenta Defendants might appeal as of right. *See* Pa. R. App. P. 311(b)(2); *see also J.S. v. R.S.S.*, 231 A.3d 942, 945 n.1 (Pa. Super. Ct. 2020) (same request).

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

May Term 2022

No. 220500559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

This Document Relates to All Actions

Filed: July 28, 2023

THIRD AMENDED ORDER GOVERNING PERSONAL JURISDICTION DISCOVERY

On June 23, 2023, the Court entered an Order requiring the parties to submit an agreed-upon amended proposed scheduling order to the Court within seven (7) days of the issuance of orders on Plaintiffs' Motion for Extension of Time to Complete Third Party Discovery (Control No. 23054355) and Plaintiffs' Motion to Compel (Control No. 23054461). Now that the Court has entered orders on Plaintiffs' two motions, which were both entered on July 14, 2023, the parties jointly submit to this Court a third amended order governing personal jurisdiction discovery. Upon consideration of the parties' joint

request, it is hereby **ORDERED** that the deadlines governing discovery limited to the issue of personal jurisdiction are hereby amended as set forth below:

1. Within twenty-one (21) days of completion of third-party discovery, Plaintiffs will complete depositions of the corporate designees of Syngenta AG and Syngenta Crop Protection, LLC on the limited issue of personal jurisdiction pursuant to Pennsylvania Rule of Civil Procedure §4007.1(e).

2. On July 18, 2023, the Court Ordered briefing on the issue of general personal jurisdiction in light of *Mallory v. Norfolk Southern Railway Co.*, No. 21-1168, 2023 WL 4187749 (June 27, 2023). Should the Court find that general personal jurisdiction exists over both Syngenta Crop Protection, LLC and Syngenta AG, the parties will promptly email the Court to request that the Court schedule oral argument on Defendants' remaining preliminary objections to the Long Form Complaint.

3. Should the Court find that general personal jurisdiction does not exist over either Syngenta Crop Protection, LLC or Syngenta AG, the parties will file supplemental briefs limited solely to the issue of specific personal jurisdiction over Syngenta AG and/or Syngenta Crop Protection, LLC, 21 days after completion of depositions of corporate designee(s) of Syngenta AG and Syngenta Crop Protection, LLC. Upon completion of supplemental briefing, the parties shall promptly email the Court to request that the Court schedule oral argument on all Defendants' preliminary objections to the Long Form Complaint.

BY THE COURT:

s/Abbe F. Fletman

ABBE F. FLETMAN, J.

COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY FIRST JUDICIAL DISTRICT OF PENNSYLVANIA TRIAL DIVISION - CIVIL

MAY TERM, 2022

No. 559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: Mar. 23, 2023

ORDER

AND NOW, this 22nd day of March 2023, upon consideration of the preliminary objections filed by defendants Syngenta AG, and Syngenta Crop Protection, LLC, it is **ORDERED** that the parties are granted 45 days in which to conduct discovery limited to the issue of personal jurisdiction over defendants Syngenta AG and Syngenta Crop Protection, LLC. The parties may file supplemental briefs, limited solely to the issue of personal jurisdiction over defendants Syngenta AG, Syngenta Crop Protection, LLC no later than 60 days from the docketing of this order.

The Court will accept affidavits, deposition testimony, and documentary evidence relevant to the issue of personal jurisdiction. All affidavits must be

submitted to opposing counsel and filed of record no later than ten days from the docketing of this order. If the party receiving an affidavit wishes to depose the affiant on personal jurisdiction-related issues, said deposition must occur between the date the affidavit is produced the close of the 45-day discovery period. Nothing in this order shall prevent the parties from taking jurisdiction-related depositions prior to the production of an affidavit. The parties shall file of record any affidavits, deposition testimony, and documentary evidence; alternatively, the parties may attach such items as exhibits to the supplemental brief.

It is **FURTHER ORDERED** that oral argument on the preliminary objections filed by defendants Syngenta AG, Syngenta Crop Protection, LLC, Chevron U.S.A. Inc., FMC Corporation will be held on **June 16, 2023 at 9:30 A.M. in Courtroom 602, City Hall.**

BY THE COURT:

s/Abbe F. Fletman

J.

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

MAY TERM, 2022

No. 559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: Dec. 20, 2022

SYNGENTA AG AND SYNGENTA CROP PROTECTION, LLC'S PRELIMINARY OBJECTIONS TO THE LONG-FORM COMPLAINT

Pursuant to Pennsylvania Rules of Civil Procedure 237.1, 1006(b), 1018, 1019(a), 1019(b), 1019(f), 1019(h), 1019(i), 1022, 1024, 1028(a)(1), 1028(a)(2), 1028(a)(3), 1028(a)(4), 1028(a)(5), 1032, 1037, 2179(a), 2202, 2204, 2205, and 2228(a), Defendants Syngenta AG and Syngenta Crop Protection, LLC (the "Syngenta Defendants") preliminarily object to the Long-Form Complaint ("Complaint").

INTRODUCTION

The Complaint should be dismissed for several reasons. First, the Court has neither specific nor general personal jurisdiction over the Syngenta

Defendants because the Complaint fails to allege that the claims arise out of or relate to the Syngenta Defendants' contacts in Pennsylvania; that the Syngenta Defendants are incorporated in Pennsylvania; that they have consented to the Commonwealth's jurisdiction; or that they have made a home in the Commonwealth. *See* Pa. R. Civ. P. 1028(a)(1). Second, the Court should dismiss the Complaint because, as pleaded, the case has no connection to Philadelphia County. *See id.* at 1028(a)(1)–(2). Third, the claims for breach of implied warranty, loss of consortium, and wrongful death also require dismissal for the independent reason that they suffer from other legal and procedural deficiencies. *See id.* at 1028(a)(2), (4)–(5). Fourth, the Complaint lacks the specificity required by Pennsylvania rules and law. *See id.* at 1028(a)(2)–(4). Finally, the Complaint flouts Pennsylvania's most basic pleading requirements and, at minimum, requires amendment. *See id.* at 1028(a)(2), (4).

* * *

III. PRELIMINARY OBJECTIONS TO THE LONG-FORM COMPLAINT

A. Preliminary Objection for Lack of Personal Jurisdiction pursuant to Rule 1028(a)(1).

21. Syngenta Defendants incorporate the preceding paragraphs by reference as if fully set forth herein.

22. The Complaint fails to allege that this Court has personal jurisdiction over them. *See* Pa. R. Civ. P. 1028(a)(1).

23. Pennsylvania courts are limited in their authority to exercise jurisdiction over nonresident defendants. *See Mendel v. Williams*, 53 A.3d 810, 817 (Pa. Super. Ct. 2012). To adjudicate the alleged causes of action against the Syngenta Defendants, this Court must confirm that the "activities" of the Syngenta Defendants in Pennsylvania "give rise to either specific jurisdiction or general jurisdiction." *Id.*

24. Based on the allegations in the Complaint, this Court possesses neither specific nor general jurisdiction over the Syngenta Defendants.

i. The Court Lacks Specific Jurisdiction.

25. The Court lacks specific jurisdiction over the Syngenta Defendants because, as pleaded, the various claims do not arise out of or relate to the Syngenta Defendants' contacts in Pennsylvania.

26. "In order for a Pennsylvania court to exercise personal (specific) jurisdiction over a non-resident defendant, the following two requirements must be met: (1) jurisdiction must be authorized by the Pennsylvania Long-Arm Statute; and (2) the exercise of jurisdiction must comport with constitutional principles of due process." *Seeley v. Caesars Ent. Corp.*, 206 A.3d 1129, 1133 (Pa. Super. Ct. 2019).

27. In turn, both the Pennsylvania Long-Arm Statute and the Fourteenth Amendment's Due Process Clause require that a plaintiff's cause of action "arise out of or relate to the out-of-state defendant's forum-related contacts[.]" *See, e.g.*, *Bean Sprouts LLC v. LifeCycle Constr. Servs. LLC*, 270 A.3d 1237, at *1241 (Pa. Super. Ct. 2022); *see also* 42 Pa. C.S. § 5322(a) (Pennsylvania Long-Arm Statute listing

several bases for specific jurisdiction regarding a plaintiff's "cause of action . . . arising from" a defendant's activity "in this Commonwealth" or from harm caused "in this Commonwealth").

28. Put differently, "[i]n order for a state court to exercise specific jurisdiction," there must exist "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, S.F. Cty., 137 S. Ct. 1773, 1780 (2017) (quotation marks and citation omitted).

29. For example, in *Bristol-Myers Squibb*, the U.S. Supreme Court held that a California state court lacked jurisdiction where the plaintiffs — who claimed that a prescription drug, Plavix, caused them injury — "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* at 1781.

30. The Complaint here suffers from the same deficiencies identified in *Bristol-Myers Squibb*: "what is missing . . . is a connection between the forum and the specific claims at issue." *Id.*

31. Simply put, the Complaint provides no allegations relating to whether all the unnamed "Plaintiffs" were specifically given or purchased Paraquat in Pennsylvania, whether they were generally exposed to Paraquat in Pennsylvania, or even whether they were injured by Paraquat in Pennsylvania.

32. Because the claims alleged do not, as pleaded, "aris[e] out of or relat[e] to" the Syngenta Defendants' purported contacts in Pennsylvania, this Court lacks specific jurisdiction over the Syngenta Defendants as to all claims. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780–81 (alterations in original).

33. The Syngenta Defendants' relationship to Chevron, FMC, or any other entity that might be at home in Pennsylvania does not alter that conclusion.

34. The U.S. Supreme Court has made it abundantly clear that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *See, e.g.*, *id.* at 1781 (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

35. The ambiguous allegation that "[s]everal" but not all "Plaintiffs' exposures to Paraquat designed and manufactured by Syngenta occurred wholly or partly in Pennsylvania," Compl. ¶ 18(g), also fails to move the jurisdictional needle.

36. At best that allegation demonstrates that some of the unnamed "Plaintiffs" ***might*** be able to allege the necessary facts for this Court's exercise of specific jurisdiction over the Syngenta Defendants in a short-form complaint.

37. It does not, however, satisfy the requirement for the exercise of specific jurisdiction at this stage as to all unnamed "Plaintiffs." *See Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (noting that specific jurisdiction is not proper over all plaintiffs' claims where it might be proper over some).

ii. The Court Lacks General Jurisdiction.

38. The Court also lacks general jurisdiction over the Syngenta Defendants because neither company has sufficient contacts with the Commonwealth.

39. In Pennsylvania, courts maintain general jurisdiction over non-resident defendant corporations only where the company: (1) "is incorporated under . . . the laws of th[e] Commonwealth;" (2) "consents" to jurisdiction; or (3) "carries on a continuous and systematic part of its general business within th[e] Commonwealth." *Seeley*, 206 A.3d at 1133 (citing 42 Pa. C.S. § 5301(a)(2)(i-iii)).

40. The Complaint fails to establish that the Syngenta Defendants meet any of the foregoing requirements.

41. First, as the Complaint alleges, neither Syngenta AG nor Syngenta Crop Protection, LLC is incorporated under the laws of Pennsylvania.

42. Syngenta AG is incorporated and headquartered in Basel, Switzerland. *See* Exhibit B, Verification of S. Landsman; *see also* Compl. ¶ 17.

43. And Syngenta Crop Protection, LLC is incorporated in Delaware and headquartered in North Carolina. *See* Exhibit C, Verification of M. Smith; *see also* Compl. ¶ 17.[5]

---

[5] The Complaint avers that Syngenta AG accepts service of process via email and cites an order from the MDL court finding email service appropriate there. *See* Compl. ¶ 17. Allegations like this are not relevant to any claim and thus should be stricken as impertinent. *See* Pa. R. Civ. P. 1028(a)(2). Additionally, the allegation is not accurate or complete as written. Syngenta AG

44. Second, the Complaint's assertion that the Syngenta Defendants have consented to general jurisdiction because they are "registered to do business in Pennsylvania" is false and inconsistent with Pennsylvania law. *See* Compl. ¶¶ 19–20.

45. To begin, at least one of the Syngenta Defendants (Syngenta AG) is not even registered to do business in Pennsylvania. *See* Exhibit B.

46. Moreover, the Pennsylvania Supreme Court held just last year that a corporation's registration to do business in the Commonwealth "does ***not*** constitute voluntary consent to general personal jurisdiction." *See Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 547 (Pa. 2021), *cert. granted*, 142 S.Ct. 2646 (Apr. 25, 2022) (emphasis added).

47. In *Mallory*, the plaintiff filed suit against a Virginia Corporation, alleging — just as Plaintiffs do here — that "a foreign corporation's registration to do business in the Commonwealth" provided the Pennsylvania courts with "general personal jurisdiction" over the corporation. *Id.* at 546–47.

48. The plaintiff sought refuge for that position under 42 Pa. C.S. § 5301, which then permitted "tribunals" of the Commonwealth to "exercise general personal jurisdiction" over "foreign corporations" registered to do business in Pennsylvania. *Id.* § 5301(a)(2).

49. But the *Mallory* Court found that the statutory scheme violated the U.S. Constitution. The scheme "violate[d] due process to the extent it

---

accepts service of process via email only where Syngenta Crop Protection, LLC has been properly served. *See* Exhibit B.

allow[ed] for general jurisdiction over foreign corporations, absent affiliations within the state that are so continuous and systematic as to render the foreign corporation essentially at home in Pennsylvania." *Mallory*, 266 A.3d at 547.

50. The Court stated in the clearest terms that the Commonwealth's "registration requirement ***does not*** constitute . . . consent to general personal jurisdiction." *Id.* at 547–556, 564–571 (citing, *inter alia*, *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)) (emphasis added).

51. This Court is bound by that determination.[6]

---

[6] The Complaint's further allegation that "Syngenta consented to this Court's personal jurisdiction in cases consolidated into the Mass Tort Program," Compl. ¶ 22, is plain wrong. The two cases cited — *Lutz*, Civil Action No. 2108-01388, Control No. 21103272 and *Strawser*, Civil Action No. 2108-02512, Control No. 21103256 — involved individual plaintiffs whose causes of action arose in Pennsylvania, and so the Court appeared to have specific personal jurisdiction over their claims. The Court's general jurisdiction was not at issue, nor was Syngenta AG a defendant in those cases. The Syngenta Defendants have not consented to this Court's exercise of general jurisdiction in all cases — particularly those brought by out-of-state plaintiffs — by virtue of Syngenta Crop Protection, LLC's decisions to not object to the Court's exercise of general jurisdiction in two cases (where it appeared to have specific jurisdiction) filed before the Mass Tort Program was created.

Moreover, this Court recently dismissed all of Syngenta's previously filed preliminary objections without prejudice. *See* Case Management Order No. 3, Ex. A, *In re: Paraquat Prod. Liab. Litig.*, No. 559 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 30, 2022). The Syngenta Defendants' current set of preliminary objections is controlling over all cases in the Mass Tort Program. *Id.*

52. Third and finally, the Syngenta Defendants' affiliation with Pennsylvania is not sufficiently "continuous and systematic" to support this Court's exercise of general jurisdiction. *See Seeley*, 206 A.3d at 1133.

53. To meet that standard of jurisdictional conduct, a foreign corporation's in-state operations must be so "constant and pervasive 'as to render [it] essentially at home'" in the Commonwealth. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear*, 564 U.S. at 919).

54. This jurisdictional hook is difficult to satisfy and is reserved for only "exceptional" cases. *Id.* at 139 n.19; *see also Mendel*, 53 A.3d at 817 (noting how few cases satisfy the "continuous and systemic" criteria for general jurisdiction).

55. This case is not exceptional. The "textbook case of general jurisdiction appropriately exercised over a foreign corporation" and one against which all other "exceptional" cases should be measured is *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952). *See Daimler*, 571 U.S. at 129 & n.19; *Mendel*, 53 A.3d at 818.

56. There, a non-resident corporation was considered "at home" in Ohio only because the company's activities were "directed by the company's president from within Ohio." *Daimler*, 571 U.S. at 130 n.8 (recollecting *Perkins*). From his primary office in the state, the president held corporate meetings, kept important company files, paid employee salaries, and supervised all company operations. *Perkins*, 342 U.S. at 447–48; *Mendel*, 53 A.3d at 818–19 (noting the same).

57. What was true in *Perkins* is not true here. To be sure, the Complaint alleges that the Syngenta Defendants have conducted "activities in Pennsylvania . . . entered into contracts with Pennsylvania-domiciled corporations" and marketed and sold "Paraquat to Pennsylvania distributors and end-users[.]" Compl. ¶¶ 18, 59, 67, 70, 76–77.

58. But those allegations, even if true, are insufficient to demonstrate that the Syngenta Defendants are currently "at home" in Pennsylvania.

59. In contrast to *Perkins*, the Complaint here does not allege that either Syngenta AG or Syngenta Crop Protection, LLC's operations are directed from within the Commonwealth. *See Daimler*, 571 U.S. at 130 n.8.

60. Nor does it allege that either company holds important meetings in the Commonwealth, or that any one of their executives have offices here. *See Perkins*, 342 U.S. at 447–48.

61. Without those kinds of specific allegations regarding the extent of the Syngenta Defendants' alleged business in Pennsylvania, the Complaint fails to plead that either Syngenta AG or Syngenta Corp Protection, LLC's operations in Pennsylvania are sufficiently exceptional.

62. Accordingly, unlike the defendant in *Perkins*, the alleged contacts of the Syngenta Defendants (as pleaded) are ***not*** "so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U.S. at 139 n.19.

63. At most, the general allegations in the Complaint suggest that the Syngenta Defendants

might have ***some*** regular contact with the Commonwealth.

64. But a corporation's regular business in a state does not establish general jurisdiction — "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20. To hold otherwise would be to flout binding precedent from the Commonwealth's highest judicial authority.

65. In *Mallory*, the Pennsylvania Supreme Court confirmed that "a state cannot claim, consistent with due process, general jurisdiction over every corporation doing business within its borders." 266 A.3d at 570.

66. Numerous decisions from the U.S. Supreme Court confirm that understanding of the law. *See, e.g.*, *Goodyear*, 564 U.S. at 926–29 (explaining that a non-resident corporation was not at home in North Carolina simply because its products were distributed to the state); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1554, 1559 (2017) (holding that defendant's 24 facilities, 2,100 workers, and earnings, amounting to 10% of total revenue, in Montana, was not enough for general jurisdiction).

67. To the extent the Complaint states that either Syngenta Defendant is "at home" in Pennsylvania because of its connection to a third party who might be at home in the Commonwealth — like Chevron, FMC, or some other corporation, *see* Compl. ¶ 18 — that is incorrect.

68. "[A] defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *See Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (quoting *Walden*, 571 U.S. at 286); *see also*

Mendel, 53 A.3d at 820 (mentioning that business agreements with third parties do not establish general jurisdiction).

69. The final allegation in the Complaint on this front — simply that "Syngenta was essentially at home in Pennsylvania," Compl. ¶ 20 — is conclusory, and otherwise framed in the past tense, so it too cannot serve as a basis for general jurisdiction. *See, e.g., Falsetti v. Loc. Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 892 (1960) (noting that conclusory allegations from "the pleader" are "insufficient to support jurisdiction"); *see also, e.g., Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 459 n.1 (1980) ("Jurisdiction turns on the facts existing ***at the time the suit commenced***") (emphases added).

WHEREFORE, Syngenta Defendants respectfully request that the Court sustain the Syngenta Defendants' preliminary objection for lack of specific and general personal jurisdiction under Rule 1028(a)(1), or, at a minimum, order limited discovery on any disputed issues of fact arising from the pleadings and place the burden on the Plaintiffs to establish jurisdiction.[7]

* * *

WHEREFORE, Syngenta Defendants respectfully request that the Court sustain the Syngenta Defendants' preliminary objections and

---

[7] In the alternative, the Court should state in its order that a "substantial issue" of personal jurisdiction has been presented, so as to allow for an immediate appeal as of right. *See* Pa. R. App. P. 311(b)(2); *see also J.S. v. R.S.S.*, 231 A.3d 942, 945 n.1 (Pa. Super. Ct. 2020) (detailing similar request).

dismiss the Complaint based on the Complaint's failure to comply with Rules 1018, 1019, 1022, and 1024, and the resulting prejudice to Defendants. *See* Pa. R. Civ. P. 1028(a)(2), (4).

* * *

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

MAY TERM, 2022

No. 559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: Dec. 20, 2022

MEMORANDUM OF LAW IN SUPPORT OF SYNGENTA AG AND SYNGENTA CROP PROTECTION, LLC'S PRELIMINARY OBJECTIONS TO THE LONG-FORM COMPLAINT

Defendants Syngenta AG and Syngenta Crop Protection, LLC (the "Syngenta Defendants") submit this Memorandum of Law in Support of their Preliminary Objections filed in response to the Long-Form Complaint (the "Complaint") pursuant to Pennsylvania Rule of Civil Procedure 1028.

MATTER BEFORE THE COURT

The Complaint seeks to hold the Syngenta Defendants, Chevron U.S.A. Inc. ("Chevron") and FMC Corporation ("FMC") (collectively "Defendants") liable for damages related to alleged neurological injuries that include but are purportedly not limited

to Parkinson's disease. Those allegations are made on behalf of an unnamed group of plaintiffs, who were allegedly exposed to the herbicide Paraquat Dichloride ("Paraquat"), manufactured, distributed, marketed, and sold by Defendants. The Syngenta Defendants dispute the Complaint's hypothesis that there is any link between Paraquat and certain neurological injuries, like Parkinson's disease, but, at this stage, preliminarily object to the Complaint based on the pleadings alone for other threshold reasons.

First and foremost, the Court lacks both specific and general personal jurisdiction over the Syngenta Defendants. *See* Pa. R. Civ. P. 1028(a)(1). Specific jurisdiction is lacking because the allegations in the Complaint fail to establish that the claims arise out of or relate to the Syngenta Defendants' purported contacts in Pennsylvania. General jurisdiction is also lacking because the Syngenta Defendants are not residents of the Commonwealth, have not consented to suit in the Commonwealth, and are not at home here.

Second, Philadelphia County is an improper venue. *See* Pa. R. Civ. P. 1028(a)(1), (2). Simply put, none of the material facts bear any relation to Philadelphia County. The Complaint alleges no connection to Philadelphia County, and neither the Syngenta Defendants nor Chevron regularly conduct business in Philadelphia County. Additionally, the claims against FMC suffer from factual and legal deficiencies, such that its Philadelphia headquarters cannot provide a basis for venue.

Third, a number of the claims fail as a matter of Pennsylvania rules and law, and thus require dismissal or repleading. *See* Pa. R. Civ. P. 1028(a)(2),

(4), (5). In particular, the claims for breach of implied warranty fail for lack of pre-suit notice. Additionally, the claims for loss of consortium fail because the group of unnamed plaintiffs mentioned in the Complaint lack the capacity to sue and have not joined, under Rule 2228, the only parties who do (namely, their spouses). Finally, the claims for wrongful death fail because that group also lacks the capacity to sue for wrongful death under Rule 2202, and the Complaint's allegations regarding wrongful death do not conform to the requirements of Rule 2204 and 2205.

Fourth, the Complaint should be dismissed in its entirety because it lacks sufficient specificity, again, in violation of both Pennsylvania rules and law. *See* Pa. R. Civ. P. 1028(a)(2), (3), (4). The Complaint includes various open-ended allegations that fail to put Defendants on the requisite notice; it fails to identify the particular products that have allegedly caused harm; it omits specific allegations of time, place, and special damages; and it fails to both differentiate between Defendants and plead fraud with the particularity demanded by Pennsylvania Rule 1019(b).

Fifth and finally, the Complaint does not conform to the basic writings, paragraphing, verification, and naming requirements of Pennsylvania Rules 1018, 1019, 1022, and 1024. Because those failures serve only to prejudice Defendants, the Complaint must be dismissed for those additional reasons. *See* Pa. R. Civ. P. 1028(a)(2), (4).

In sum, the Complaint cannot stand as pleaded.

STATEMENT OF THE QUESTIONS INVOLVED

1. Should this Court sustain the Syngenta Defendants' first preliminary objection and determine that it does not have either specific or general personal jurisdiction over the Syngenta Defendants where the Complaint fails to adequately allege that the claims arise out of or relate to the Syngenta Defendants' contacts in Pennsylvania, that they are incorporated in Pennsylvania, that they have consented to jurisdiction in Pennsylvania, or that they have made their home in Pennsylvania?

   Suggested Answer: Yes.

* * *

ARGUMENT

The Complaint should be dismissed for several reasons. First, the Court has neither specific nor general personal jurisdiction over the Syngenta Defendants because the Complaint fails to allege that the claims arise out of or relate to the Syngenta Defendants' contacts in Pennsylvania; that the Syngenta Defendants are incorporated in Pennsylvania; that they have consented to the Commonwealth's jurisdiction; or that they have made a home in the Commonwealth. *See* Pa. R. Civ. P. 1028(a)(1). Second, the Court should dismiss the Complaint because, as pleaded, the case has no connection to Philadelphia County. *See id.* at 1028(a)(1)–(2). Third, the claims for breach of implied warranty, loss of consortium, and wrongful death also require dismissal for the independent reason that they suffer from other legal and procedural deficiencies. *See id.* at 1028(a)(2), (4)–(5). Fourth, the Complaint lacks

the specificity required by Pennsylvania rules and law. *See id.* at 1028(a)(2)–(4). Finally, the Complaint flouts Pennsylvania's most basic pleading requirements and, at minimum, requires amendment. *See id.* at 1028 (a)(2), (4).

I. The Court Lacks Personal Jurisdiction Over Syngenta.

The Court should sustain the Syngenta Defendants' first preliminary objection because the Complaint fails to allege that this Court has personal jurisdiction over them. *See* Pa. R. Civ. P. 1028(a)(1). Pennsylvania courts are limited in their authority to exercise jurisdiction over nonresident defendants. *See Mendel v. Williams*, 53 A.3d 810, 817 (Pa. Super. Ct. 2012). To adjudicate the alleged causes of action against the Syngenta Defendants, this Court must confirm that the "activities" of the Syngenta Defendants in Pennsylvania "give rise to either specific jurisdiction or general jurisdiction." *Id.* Based on the allegations in the Complaint, this Court possesses neither specific nor general jurisdiction over the Syngenta Defendants.

A. The Court Lacks Specific Jurisdiction.

The Court lacks specific jurisdiction over the Syngenta Defendants because, as pleaded, the various claims do not arise out of or relate to the Syngenta Defendants' contacts in Pennsylvania. "In order for a Pennsylvania court to exercise personal (specific) jurisdiction over a non-resident defendant, the following two requirements must be met: (1) jurisdiction must be authorized by the Pennsylvania Long-Arm Statute; and (2) the exercise of jurisdiction must comport with constitutional principles of due

process." *Seeley v. Caesars Ent. Corp.*, 206 A.3d 1129, 1133 (Pa. Super. Ct. 2019).

In turn, both the Pennsylvania Long-Arm Statute and the Fourteenth Amendment's Due Process Clause require that a plaintiff's cause of action "arise out of or relate to the out-of-state defendant's forum-related contacts[.]" *See, e.g.*, *Bean Sprouts LLC v. LifeCycle Constr. Servs. LLC*, 270 A.3d 1237, at *1241 (Pa. Super. Ct. 2022); *see also* 42 Pa. C.S. § 5322(a) (Pennsylvania Long-Arm Statute listing several bases for specific jurisdiction regarding a plaintiff's "cause of action . . . arising from" a defendant's activity "in this Commonwealth" or from harm caused "in this Commonwealth"). Put differently, "[i]n order for a state court to exercise specific jurisdiction," there must exist "an affiliation between the forum and the underlying controversy, principally, an activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cty.*, 137 S. Ct. 1773, 1780 (2017) (quotation marks and citation omitted). For example, in *Bristol-Myers Squibb*, the U.S. Supreme Court held that a California state court lacked jurisdiction where the plaintiffs — who claimed that a prescription drug, Plavix, caused them injury — "were not prescribed Plavix in California, did not purchase Plavix in California, did not ingest Plavix in California, and were not injured by Plavix in California." *Id.* at 1781.

The Complaint here suffers from the same deficiencies identified in *Bristol-Myers Squibb*: "what is missing . . . is a connection between the forum and the specific claims at issue." *Id.* Simply put, the

Complaint provides no allegations relating to whether all the unnamed "Plaintiffs'" were specifically given or purchased Paraquat in Pennsylvania, whether they were generally exposed to Paraquat in Pennsylvania, or even whether they were injured by Paraquat in Pennsylvania. Because the claims alleged do not, as pleaded, "aris[e] out of or relat[e] to" the Syngenta Defendants' purported contacts in Pennsylvania, this Court lacks specific jurisdiction over the Syngenta Defendants as to all claims. *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780–81 (alterations in original).

The Syngenta Defendants' relationship to Chevron, FMC, or any other entity that might be at home in Pennsylvania does not alter that conclusion. The U.S. Supreme Court has made it abundantly clear that "a defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *See, e.g.*, *id.* at 1781 (quoting *Walden v. Fiore*, 571 U.S. 277, 286 (2014)).

The ambiguous allegation that "[s]everal" but not all "Plaintiffs' exposures to Paraquat designed and manufactured by Syngenta occurred wholly or partly in Pennsylvania," Compl. ¶ 18(g), also fails to move the jurisdictional needle. At best that allegation demonstrates that some of the unnamed "Plaintiffs" ***might*** be able to allege the necessary facts for this Court's exercise of specific jurisdiction over the Syngenta Defendants in a short-form complaint. It does not, however, satisfy the requirement for the exercise of specific jurisdiction at this stage as to all unnamed "Plaintiffs." *See Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (noting that specific jurisdiction is

not proper over all plaintiffs' claims where it might be proper over some).

B. The Court Lacks General Jurisdiction.

The Court also lacks general jurisdiction over the Syngenta Defendants because neither company has sufficient contacts with the Commonwealth. In Pennsylvania, courts maintain general jurisdiction over non-resident defendant corporations only where the company: (1) "is incorporated under . . . the laws of th[e] Commonwealth;" (2) "consents" to jurisdiction; or (3) "carries on a continuous and systematic part of its general business within th[e] Commonwealth." *Seeley*, 206 A.3d at 1133 (citing 42 Pa. C.S. § 5301(a)(2)(i-iii)). The Complaint fails to establish that the Syngenta Defendants meet any of the foregoing requirements.

First, as the Complaint alleges, neither Syngenta AG nor Syngenta Crop Protection, LLC is incorporated under the laws of Pennsylvania. Syngenta AG is incorporated and headquartered in Basel, Switzerland. *See* Exhibit B, Verification of S. Landsman; *see also* Compl. ¶ 17. And Syngenta Crop Protection, LLC is incorporated in Delaware and headquartered in North Carolina. *See* Exhibit C, Verification of M. Smith; *see also* Compl. ¶ 17.[5]

---

[5] The Complaint avers that Syngenta AG accepts service of process via email and cites an order from the MDL court finding email service appropriate there. *See* Compl. ¶ 17. Allegations like this are not relevant to any claim and thus should be stricken as impertinent. *See* Pa. R. Civ. P. 1028(a)(2). Additionally, the allegation is not accurate or complete as written. Syngenta AG accepts service of process via email only where Syngenta Crop Protection, LLC has been properly served. *See* Exhibit B

Second, the Complaint's assertion that the Syngenta Defendants have consented to general jurisdiction because they are "registered to do business in Pennsylvania" is false and inconsistent with Pennsylvania law. *See* Compl. ¶¶ 19–20. To begin, at least one of the Syngenta Defendants (Syngenta AG) is not even registered to do business in Pennsylvania. *See* Exhibit B. Moreover, the Pennsylvania Supreme Court held just last year that a corporation's registration to do business in the Commonwealth "does ***not*** constitute voluntary consent to general personal jurisdiction." *See Mallory v. Norfolk S. Ry. Co.*, 266 A.3d 542, 547 (Pa. 2021), *cert. granted*, 142 S.Ct. 2646 (Apr. 25, 2022) (emphasis added).

In *Mallory*, the plaintiff filed suit against a Virginia Corporation, alleging — just as Plaintiffs do here — that "a foreign corporation's registration to do business in the Commonwealth" provided the Pennsylvania courts with "general personal jurisdiction" over the corporation. *Id.* at 546–47. The plaintiff sought refuge for that position under 42 Pa. C.S. § 5301, which then permitted "tribunals" of the Commonwealth to "exercise general personal jurisdiction" over "foreign corporations" registered to do business in Pennsylvania. *Id.* § 5301(a)(2). But the *Mallory* Court found that the statutory scheme violated the U.S. Constitution. The scheme "violate[d] due process to the extent it allow[ed] for general jurisdiction over foreign corporations, absent affiliations within the state that are so continuous and systematic as to render the foreign corporation essentially at home in Pennsylvania." *Mallory*, 266 A.3d at 547. The Court stated in the clearest terms

that the Commonwealth's "registration requirement ***does not*** constitute . . . consent to general personal jurisdiction." Id. at 547–556, 564–571 (citing, *inter alia*, *Daimler AG v. Bauman*, 571 U.S. 117 (2014) and *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)) (emphasis added). This Court is bound by that determination.[6]

Third and finally, the Syngenta Defendants' affiliation with Pennsylvania is not sufficiently "continuous and systematic" to support this Court's exercise of general jurisdiction. *See Seeley*, 206 A.3d at 1133. To meet that standard of jurisdictional conduct, a foreign corporation's in-state operations must be so "constant and pervasive 'as to render [it] essentially at

---

[6] The Complaint's further allegation that "Syngenta consented to this Court's personal jurisdiction in cases consolidated into the Mass Tort Program," Compl. ¶ 22, is plain wrong. The two cases cited — *Lutz*, Civil Action No. 2108-01388, Control No. 21103272 and *Strawser*, Civil Action No. 2108-02512, Control No. 21103256 — involved individual plaintiffs whose causes of action arose in Pennsylvania, and so the Court appeared to have specific personal jurisdiction over their claims. The Court's general jurisdiction was not at issue, nor was Syngenta AG a defendant in those cases. The Syngenta Defendants have not consented to this Court's exercise of general jurisdiction in all cases — particularly those brought by out-of-state plaintiffs — by virtue of Syngenta Crop Protection, LLC's decisions to not object to the Court's exercise of general jurisdiction in two cases (where it appeared to have specific jurisdiction) filed before the Mass Tort Program was created.

Moreover, this Court recently dismissed all of Syngenta's previously filed preliminary objections without prejudice. *See* Case Management Order No. 3, Ex. A, *In re: Paraquat Prod. Liab. Litig.*, No. 559 (Pa. Ct. Com. Pl. Phila. Cty. Nov. 30, 2022). The Syngenta Defendants' current set of preliminary objections is controlling over all cases in the Mass Tort Program. *Id.*

home'" in the Commonwealth. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear*, 564 U.S. at 919). This jurisdictional hook is difficult to satisfy and is reserved for only "exceptional" cases. *Id.* at 139 n.19; *see also Mendel*, 53 A.3d at 817 (noting how few cases satisfy the "continuous and systemic" criteria for general jurisdiction).

This case is not exceptional. The "textbook case of general jurisdiction appropriately exercised over a foreign corporation" and one against which all other "exceptional" cases should be measured is *Perkins v. Benguet Consolidated Mining Company*, 342 U.S. 437 (1952). *See Daimler*, 571 U.S. at 129 & n.19; *Mendel*, 53 A.3d at 818. There, a non-resident corporation was considered "at home" in Ohio only because the company's activities were "directed by the company's president from within Ohio." *Daimler*, 571 U.S. at 130 n.8 (recollecting *Perkins*). From his primary office in the state, the president held corporate meetings, kept important company files, paid employee salaries, and supervised all company operations. *Perkins*, 342 U.S. at 447–48; *Mendel*, 53 A.3d at 818–19 (noting the same).

What was true in *Perkins* is not true here. To be sure, the Complaint alleges that the Syngenta Defendants have conducted "activities in Pennsylvania . . . entered into contracts with Pennsylvania-domiciled corporations" and marketed and sold "Paraquat to Pennsylvania distributors and end-users[.]" Compl. ¶¶ 18, 59, 67, 70, 76–77. But those allegations, even if true, are insufficient to demonstrate that the Syngenta Defendants are currently "at home" in Pennsylvania. In contrast to

Perkins, the Complaint here does not allege that either Syngenta AG or Syngenta Crop Protection, LLC's operations are directed from within the Commonwealth. *See Daimler*, 571 U.S. at 130 n.8. Nor does it allege that either company holds important meetings in the Commonwealth, or that any one of their executives have offices here. *See Perkins*, 342 U.S. at 447–48. Without those kinds of specific allegations regarding the extent of the Syngenta Defendants' alleged business in Pennsylvania, the Complaint fails to plead that either Syngenta AG or Syngenta Corp Protection, LLC's operations in Pennsylvania are sufficiently exceptional. Accordingly, unlike the defendant in *Perkins*, the alleged contacts of the Syngenta Defendants (as pleaded) are ***not*** "so substantial and of such a nature as to render the corporation at home in that State." *Daimler*, 571 U.S. at 139 n.19.

At most, the general allegations in the Complaint suggest that the Syngenta Defendants might have ***some*** regular contact with the Commonwealth. But a corporation's regular business in a state does not establish general jurisdiction — "[a] corporation that operates in many places can scarcely be deemed at home in all of them." *Id.* at 139 n.20. To hold otherwise would be to flout binding precedent from the Commonwealth's highest judicial authority. In *Mallory*, the Pennsylvania Supreme Court confirmed that "a state cannot claim, consistent with due process, general jurisdiction over every corporation doing business within its borders." 266 A.3d at 570. Numerous decisions from the U.S. Supreme Court confirm that understanding of the law. *See, e.g.*, *Goodyear*, 564 U.S. at 926–29 (explaining that a non-

resident corporation was not at home in North Carolina simply because its products were distributed to the state); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1554, 1559 (2017) (holding that defendant's 24 facilities, 2,100 workers, and earnings, amounting to 10% of total revenue, in Montana, was not enough for general jurisdiction).

To the extent the Complaint states that either Syngenta Defendant is "at home" in Pennsylvania because of its connection to a third party who might be at home in the Commonwealth — like Chevron, FMC, or some other corporation, *see* Compl. ¶ 18 — that is incorrect. "[A] defendant's relationship with a . . . third party, standing alone, is an insufficient basis for jurisdiction." *See Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (quoting *Walden*, 571 U.S. at 286); *see also Mendel*, 53 A.3d at 820 (mentioning that business agreements with third parties do not establish general jurisdiction).

The final allegation in the Complaint on this front — simply that "Syngenta was essentially at home in Pennsylvania," Compl. ¶ 20 — is conclusory, and otherwise framed in the past tense, so it too cannot serve as a basis for general jurisdiction. *See, e.g., Falsetti v. Loc. Union No. 2026, United Mine Workers of Am.*, 161 A.2d 882, 892 (1960) (noting that conclusory allegations from "the pleader" are "insufficient to support jurisdiction"); *see also, e.g.*, *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 459 n.1 (1980) ("Jurisdiction turns on the facts existing ***at the time the suit commenced***") (emphases added).

* * *

Based on the foregoing, the Court should sustain the Syngenta Defendants' preliminary objection for lack of specific and general personal jurisdiction under Rule 1028(a)(1), or, at a minimum, order limited discovery on any disputed issues of fact arising from the pleadings and place the burden on the Plaintiffs to establish jurisdiction.[7]

* * *

REQUESTED RELIEF

For the foregoing reasons, this Court should enter an order sustaining the Syngenta Defendants' preliminary objections based on jurisdiction, venue, and lack of verification, and dismissing the Complaint in its entirety. If the Court overrules those objections, the Court should enter an order dismissing the claims against Defendants because of their various legal and procedural deficiencies. Alternatively, the Syngenta Defendants respectfully request that the Court — at minimum — order amendment of each of the claims that are insufficiently pleaded or otherwise in violation of Pennsylvania rules.

* * *

[7] In the alternative, the Court should state in its order that a "substantial issue" of personal jurisdiction has been presented, so as to allow for an immediate appeal as of right. *See* Pa. R. App. P. 311(b)(2); *see also J.S. v. R.S.S.*, 231 A.3d 942, 945 n.1 (Pa. Super. Ct. 2020) (detailing similar request).

Appendix G

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

MAY TERM 2022

No. 559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

This document relates to the following actions:
Lutz (Case No. 210801388)
Mabs (Case No. 220902511)
Nemeth (Case No. 210800644)

AFFIDAVIT OF ALAN NADEL

---

1. I, Alan Nadel, am the Head of Global Litigation at Syngenta Crop Protection, LLC ("Syngenta").

2. I am over 18 years of age, of sound mind, and otherwise competent to make this affidavit.

3. The facts set forth in this affidavit are based on facts known to me personally through my work at Syngenta.

4. Syngenta is a limited liability company organized under the laws of Delaware.

5. The headquarters of Syngenta is located in Greensboro, North Carolina. North Carolina is Syngenta's principal place of business.

6. None of Syngenta's members are incorporated in, organized in, or headquartered in Pennsylvania.

7. Syngenta does not maintain executive offices in Pennsylvania.

8. Syngenta does not hold board meetings in Pennsylvania or otherwise direct its operations from within Pennsylvania.

9. Syngenta employs fewer than 15 people in Pennsylvania. Those individuals are employed in mid- or low-level sales roles.

10. Syngenta owns no property in Pennsylvania. Nor does Syngenta run or operate any stores in Pennsylvania.

11. I declare under penalty of perjury under the law of the Commonwealth of Pennsylvania that the foregoing is true and correct.

s/Alan Nadel Dated: 1/6/25

Alan Nadel
Head of Global Litigation
Syngenta Crop Protection, LLC

Appendix H

IN THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
PHILADELPHIA COURT OF COMMON PLEAS
TRIAL DIVISION - CIVIL

MAY TERM 2022

No. 559

IN RE: PARAQUAT PRODUCTS LIABILITY LITIGATION

Filed: May 11, 2023

ORDER

AND NOW, this 10th day of May, 2022, upon consideration of the Petition to Consolidate Paraquat Products Liability Cases (Control No. 22031747; filed under Keith Lutz, v. Syngenta Crop Protection, LLC, et al., August Term 2021 No. 1388), and any response, the Petition is **GRANTED**.

Accordingly, all currently filed Paraquat matters, including those appearing on the attached list of cases, shall be transferred to the Complex Litigation Center and coordinated under the above-captioned Master Docket. Counsel shall have twenty (20) days in which to submit an agreed-upon Case Management Order No. 1 to the Court. Upon failure to agree, counsel shall

notify the Court, and the Court will issue Case Management Order No. 1.

It is further **ORDERED** that all responsive pleading obligations are stayed until responsive pleading deadlines are established under Case Management Order No. 1.

s/Lisette Shirdan-Harris

Lisette Shirdan-Harris, J.
Administrative Judge,
Trial Division

EXHIBIT A
LISTING OF CURRENTLY FILED AND PENDING PARAQUAT CASES IN PHILADELPHIA COURT OF COMMON PLEAS

# OF CASES	**# OF PLAINTIFFS**	**CASE NAME AND DOCKET NO.**	**PLAINTIFF(S)**
1	***1***	*Nemeth v. Syngenta, et al.*, No. 210800644	Douglas Nemeth Dawn Nemeth
2	***2***	*Lutz v. Syngenta, et al.*, No. 210801388	Keith Lutz
3	***3***	*Strawser v. Syngenta, et al.*, No. 210802512	Chester Strawser, Sr.
4	***4***	*Rothermel v. Syngenta, et al.*, No. 210900007	Edwin Rothermel Melva Rothermel

# OF CASES	**# OF PLAINTIFFS**	**CASE NAME AND DOCKET NO.**	**PLAINTIFF(S)**
5	***5***	*Greenlee v. Syngenta, et al.*, No. 210900009	Gregory Greenlee
6	***6***	*Bowen v. Syngenta, et al.*, No. 210900010	Larry Bowen Elizabeth Bowen
7	***7***	*Young v. Syngenta, et al.*, No. 211001869	Leanna Young
8	***8***	*Williams v. Syngenta, et al.*, No. 220102223	Steven Williams

# OF CASES	**# OF PLAINTIFFS**	**CASE NAME AND DOCKET NO.**	**PLAINTIFF(S)**
9	***9*** ***10*** ***11*** ***12*** ***13*** ***14*** ***15*** ***16***	*Koontz, et al. v. Syngenta, et al.*, No. 220102344	Shaun Edgar Koontz John Pierce Phyllis Welsh Frank Baxter Robert Hoffman, Jr. Harry Hoots, Jr. Estate of Kenneth Wade, Sr. George Carpenter
10	***17*** ***18*** ***19*** ***20*** ***21*** ***22***	*Mertens, et al. v. Syngenta, et al.*, No. 220200931	Bill Mertens David Steele Joseph Wochner Barbara Burns Jerry Miller Lauriano Barajas

# OF CASES	# OF PLAINTIFFS	CASE NAME AND DOCKET NO.	PLAINTIFF(S)
11	***23***	*Grycuk, et al. v. Syngenta, et al.*, No. 220202594	Wanda Grycuk
	24		Arthur Maloney
	25		Frank Rochowiak
	26		Harold Hoover
	27		Jason Davis
	28		Walter Rochowiak
	29		Stacey McGrath
	30		John Mabry
	31		John Lane, Jr.
12	***32***	*Sutphin, et al. v. Syngenta, et al.*, No. 220202598	Patricia Sutphin
	33		Dale Walthall
	34		Dan Blanchard
	35		Eugene Black
	36		Michael Jones
	37		Stacey Tood Cruthird

# OF CASES	# OF PLAINTIFFS	CASE NAME AND DOCKET NO.	PLAINTIFF(S)
13	***38***	*Parker, et al. v. Syngenta, et al.*, No. 220300429	Brian Parker
	39		Donald Maabs
	40		Eugene Patton
	41		Jerald Pettit
	42		Daniel Larsen
	43		Stephen Skelton
	44		Edward Stoll
	45		Estate of David Hinton
	46		Peggy Oxendine
	47		Bobby Washington
14	***48***	*Henry, et al. v. Syngenta, et al.*, No. 220300430	Jeff Henry
	49		John Greer
	50		Lloyd Gilbert
	51		Chad Trendle
	52		Johnathan Hayes