

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND**

LI FEN YAO,  
as Administrator of the Estate of Sam Mingsan  
Chen

Plaintiff,

v.

ROBERT CHEN, OTTER AUDITS LLC, and RC  
SECURITY LLC,

Defendants.

Case No. 8:23-cv-00889-TDC

**MEMORANDUM IN SUPPORT OF**  
**DEFENDANTS' MOTION TO DISMISS COMPLAINT**  
**FOR LACK OF PERSONAL JURISDICTION**

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## INTRODUCTION

Plaintiff, the administrator of an estate, has brought the instant action against three Defendants, none of whom have any connection to the State of Maryland. One Defendant is an individual who resides in Bellevue, Washington. The other two Defendants are limited liability companies formed under the laws of South Dakota, both with their principal places of business in Sioux Falls, South Dakota. The Complaint raises a series of claims—mostly arising under Wyoming or South Dakota State law<sup>1</sup>—relating to a since-dissolved company known as OtterSec LLC (“OtterSec”), which was formed under the laws of the State of Wyoming. Plaintiff does not allege any conduct by the Defendants that occurred in or targeted Maryland. The only contacts with Maryland alleged in the Complaint are that: (1) Plaintiff herself is a resident of Maryland; (2) Plaintiff resided in Maryland at the time of her husband’s death; and (3) Plaintiff is the personal representative of her husband’s estate pursuant to letters of administration issued in Maryland. Compl. ¶ 7. These Maryland contacts are uniquely *Plaintiff’s*. As such, they are insufficient to establish personal jurisdiction over the Defendants.

The U.S. Supreme Court has long made clear that personal jurisdiction is exclusively resolved by considering the acts of reaching out to the forum state *by the defendant*, not the plaintiff. *See Hanson v. Denckla*, 357 U.S. 235, 253 (1958). It appears from the face of the Complaint that Plaintiff found the District of Maryland to be a convenient venue, but a forum “does not acquire [personal] jurisdiction by being . . . the most convenient location for litigation.”

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<sup>1</sup> In the conflict of laws context, Maryland courts have also recognized that the internal affairs of a foreign business entity concern the state in which that entity was formed, not Maryland. *Storetrax.com, Inc. v. Gurland*, 915 A.2d 991, 999–1000 (Md. 2007) (quoting *N.A.A.C.P. v. Golding*, 679 A.2d 554, 559 (Md. 1996)).

*Id.* Consequently, there is no personal jurisdiction over Defendants in Maryland. *Id.* The instant case must therefore be dismissed under Federal Rule of Civil Procedure 12(b)(2).

## BACKGROUND

### A. Factual Background

The Complaint centers around the internal affairs of OtterSec, a Wyoming LLC that was formed in February of 2022, pursuant to the Wyoming Limited Liability Act, Wyo. Stat. Ann. § 17-29-101, *et seq.* Compl. ¶ 2. The company was dissolved in 2022. *See id.* ¶ 101. According to the Complaint, “OtterSec was engaged in the business of performing security assessments of software code used by companies operating on the blockchain.” *Id.* ¶ 16. The Complaint adds that “OtterSec audited code for security flaws or weaknesses that potentially exposed clients to risks from malicious actors . . . seeking to exploit vulnerabilities for personal gain or other nefarious reasons.” *Id.*

The Plaintiff alleges that Defendant Robert Chen and David Chen (no relation to Robert)—who is the “minor son” of her deceased husband, Sam Chen—met at a cyber security competition in 2019. Compl. ¶ 18. Robert was also a teenager at the time. *See Ex. 1, Decl. of Robert Chen (“Chen Decl.”) ¶ 8, J.R.002.* Together, Robert and David later developed “the business concept that would eventually become OtterSec.” Compl. ¶¶ 19–20. Allegedly, Robert and David agreed to make Sam Chen the co-owner of OtterSec in place of David Chen because David was still a minor in 2022. *Id.* ¶¶ 20–21.

According to the Complaint, on April 16, 2022, Sam Chen “agreed to an Amended Operating Agreement for OtterSec,” pursuant to which he “transferred 10% of his membership interests to Robert, resulting in Robert owning 60% of OtterSec and Sam owning 40%.” *Id.* ¶ 48. Robert’s relationship with Sam and David is alleged to have deteriorated shortly after this. *See id.*

¶¶ 66–81. The Complaint does not allege that Robert interacted with Sam or David—other than through counsel—after May 13, 2022. *Id.* ¶ 81.

On July 13, 2022, Sam Chen died. Compl. ¶ 97. On September 20, 2022, OtterSec dissolved, following demands from Sam Chen’s lawyers that it do so. *See id.* ¶ 101. According to the Complaint, “Articles of Dissolution were . . . filed with the Wyoming Secretary of State [on] October 6, 2022.” *Id.* ¶ 101. On September 13, 2022, Defendants Otter Audits and RC Security (“the South Dakota Defendants”) were incorporated in South Dakota. *Id.* ¶ 100. The Complaint alleges that “OtterSec’s assets and property” were subsequently transferred “to Defendants Otter Audits and RC Security.” *See id.* ¶ 109. Plaintiff’s Complaint omits the fact that OtterSec’s assets and property were sold via an open auction as part of its dissolution.

#### **B. Plaintiff’s Causes of Action**

In Plaintiff’s First Cause of Action, her Complaint alleges that, following the dissolution of OtterSec, the “Defendants have used and are continuing to use in interstate commerce the OtterSec name, logo, trademarks, website, domain name, and social media and other communication accounts,” in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a). *Id.* ¶¶ 111–22.

The Second Cause of Action seeks a declaratory judgment that “Robert Chen’s dissolution of OtterSec was improper” for a variety of reasons under Wyoming State law, pursuant to the federal Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202. *See id.* ¶¶ 123–30.

Plaintiff’s remaining six claims allege causes of action under state law. Because they relate to the internal affairs of OtterSec and/or the South Dakota Defendants, they would not be governed by Maryland law but instead by Wyoming or South Dakota law. *Storetrax.com, Inc. v. Gurland*, 915 A.2d 991, 1000 (Md. 2007) (“[T]he laws of the state of incorporation generally will govern matters involving the internal workings of a corporation . . .”). The Third Cause of Action alleges

that Robert breached his fiduciary duty to the Wyoming LLC, to Sam Chen, and to the estate. Compl. ¶¶ 131–36. The South Dakota Defendants are alleged to have aided and abetted this breach. *Id.* The Fourth Cause of Action alleges fraud (and aiding and abetting fraud) in connection with ownership of the Wyoming LLC, dissolution of the Wyoming LLC, transfer of the Wyoming LLC’s assets, and the estate’s interest in the Wyoming LLC. *Id.* ¶¶ 137–45. The Fifth Cause of Action alleges misappropriation and conversion of the dissolved Wyoming LLC’s assets. *Id.* ¶¶ 146–50. The Sixth alleges that Robert breached the Wyoming LLC’s Operating Agreement. *Id.* ¶¶ 151–55. The Seventh alleges tortious interference with the dissolved Wyoming LLC’s contracts, business relationships, and opportunities. *Id.* ¶¶ 156–59. The Eighth and final cause of action demands an “accounting” of the transactions and affairs of the dissolved Wyoming LLC and the South Dakota Defendants. *Id.* ¶¶ 160–64.

#### LEGAL STANDARDS

It is the Plaintiff’s burden to establish personal jurisdiction over each of the Defendants. *Consulting Eng’rs Corp. v. Geometric Ltd.*, 561 F.3d 273, 276 (4th Cir. 2009). If a challenge to personal jurisdiction is brought under Federal Rule of Civil Procedure 12(b)(2) “on the basis of motion papers, supporting legal memoranda, and the allegations in the complaint, the plaintiff bears the burden [of] making a prima facie showing of a sufficient jurisdictional basis to survive the jurisdictional challenge.” *Id.* Although it must construe all disputed facts and draw reasonable inferences in the plaintiff’s favor when reviewing a motion to dismiss, a court should not accept a plaintiff’s “speculation,” “conclusory assertions,” or “bare allegations” regarding the defendant’s actions in a selected forum. *Carefirst of Md., Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402–03 (4th Cir. 2003).

## ARGUMENT

There are two ways that personal jurisdiction can be established in federal court. A court may either have general personal jurisdiction over defendants who are “essentially at home” in the forum state or exercise specific personal jurisdiction based on a connection between the forum state and the controversy underlying the plaintiff’s suit. *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Without one or the other form of personal jurisdiction established, a court’s exercise of jurisdiction over a defendant violates the Due Process Clause of the Fourteenth Amendment. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1024 (2021). In the instant case, this Court cannot exercise personal jurisdiction of either type over any of the Defendants. Robert Chen and the South Dakota Defendants are not “at home” in Maryland because none resides or does business in Maryland on a “continuous and systematic” basis. The controversy at hand, as laid out in the Complaint, concerns the actions of a Washington State resident in connection with Wyoming and South Dakota LLCs. The case bears no meaningful connection to the state of Maryland and the Complaint should accordingly be dismissed.

### **I. THE COMPLAINT DOES NOT ALLEGE FACTS THAT CONNECT DEFENDANTS OR THIS LAWSUIT TO MARYLAND.**

The alleged facts relating to Plaintiff’s chosen forum are confined to a single paragraph, which states that Li Fen Yao, Sam’s widow “is a resident of Rockville, Maryland, where she resided with her husband at the time of his passing” and that she represents Sam’s estate “pursuant to Letters of Administration issued . . . by the Register of Wills for Montgomery County, Maryland.” Compl. ¶ 7.<sup>2</sup> Plaintiff therefore seems to have Maryland contacts, as did Sam and, presumably, David. The Supreme Court has been clear, however, that even if Sam and David were in Maryland at all times it would be “impermissibl[e]” to “allow[] a plaintiff’s contacts with the

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<sup>2</sup> The Complaint also mentions Maryland when citing the Maryland long-arm statute. *Id.* ¶ 13.

defendant and forum to drive the jurisdictional analysis.” *Walden v. Fiore*, 571 U.S. 277, 289 (2014).

“The proper question” here, as in every case, is “whether the defendant[s] conduct connects [them] to the forum in a meaningful way.” *Id.* at 290 (“Regardless of where a plaintiff lives or works, an injury is jurisdictionally relevant only insofar as it shows that the defendant has formed a contact with the forum State.”). The Complaint is devoid of any allegations connecting any Defendant to Maryland.

Specifically, the Complaint does not, and cannot, allege *any* contacts between Otter Audits LLC or RC Security LLC and the State of Maryland. Rather:

- Otter Audits has its principal place of business in South Dakota and is incorporated in South Dakota. Compl. ¶ 9; Ex. 2, Decl. of Otter Audits LLC Corporate Representative (“Otter Audits Decl.”) ¶ 5, J.R.006.
- RC Security also has its principal place of business in South Dakota and is incorporated in South Dakota. Compl. ¶ 10; Ex. 3, Decl. of RC Sec’y LLC Corporate Representative (“RC Sec’y Decl.”) ¶ 5, J.R.009.
- Otter Audits has no offices, employees, or property in Maryland and has never performed an audit in Maryland. Otter Audits Decl. ¶¶ 6–10, J.R.006.
- Otter Audits has no physical presence in Maryland, is not registered to do business in Maryland, and has no registered agent in Maryland. *Id.*
- RC Security does not have any offices, employees, property, or business in Maryland. RC Sec’y Decl. ¶¶ 6–10, J.R.009.
- RC Security has no physical presence in Maryland, is not registered to do business in Maryland, and has no registered agent in Maryland. *Id.*
- Both companies were incorporated by Robert four months after his last business dealings with Sam or David. Compl. ¶¶ 81, 101.



Likewise, the Complaint does not allege that Defendant Robert Chen has *any* connection to Maryland. Nor could it. Rather:

- The Complaint alleges that Robert Chen and David Chen (a non-party) exchanged a few text messages and that sometimes Robert, David, and/or Sam Chen had other communications, but does not allege the method of those communications or the location of Robert, David, or Sam at the time of those communications. *See* Compl. ¶¶ 19, 29, 36, 38, 42, 47, 53, 54, 59, 66, 72–74, 76–77, 81, 83, 87.
- Robert has never set foot in Maryland, Chen Decl. ¶ 3, J.R.002, has never owned real property in Maryland, *id.* ¶ 4, and has not solicited business or signed a contract in Maryland, *id.* ¶ 5.
- Robert’s work for OtterSec was digital, was focused on a Wyoming LLC, and had no connection to non-party David’s or Sam’s location. Chen Decl. ¶ 15, J.R.003.
- Robert’s communications with non-party David prior to the formation of OtterSec LLC were entirely online. *See* Compl. ¶ 19; Chen Decl. ¶ 16, J.R.003.
- Robert primarily communicated with non-party David and, to a much lesser degree, Sam, over online chat platforms called Discord and Telegram. Chen Decl. ¶¶ 9–14, J.R.003.
- Robert rarely exchanged emails with Sam or non-party David. Chen Decl. ¶ 12, J.R.003.

In short, the Complaint does not, because it cannot, allege that any of the Defendants had *any* contacts with Maryland at *any* time during the events giving rise to the Complaint—let alone during the seven-month period between the formation and dissolution of OtterSec. This time period is crucial because “[w]hether general or specific jurisdiction is sought, a defendant’s ‘contacts’ with a forum state are measured as of the times the claims arose.” *Old Republic Nat’l Title Ins. Co. v. Georg*, No. 21-cv-842, 2023 WL 3763976, at \*4 (D. Md. June 1, 2023) (quoting *Hardnett v. Duquesne Univ.*, 897 F. Supp. 920, 923 (D. Md. 1995)); *see also* *Rossmann v. State Farm Mut. Auto. Ins. Co.*, 832 F.2d 282, 287 n.2 (4th Cir. 1987) (declining to consider, when assessing jurisdiction, the fact that a party had increased its contacts with the forum state after the accident giving rise to the suit). Because there are no allegations tying any of the Defendants to

the state of Maryland, this Court lacks either general or specific personal jurisdiction over any Defendant.

**II. THE COURT LACKS GENERAL JURISDICTION OVER ANY DEFENDANT BECAUSE NO DEFENDANT IS “AT HOME” IN MARYLAND.**

A state court may exercise general jurisdiction—which broadly extends to all possible claims against a defendant—only when a defendant has “affiliations with the State [that] are so ‘continuous and systematic’ as to render [it] essentially at home in the forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014). Individual defendants are “at home” where they are domiciled—meaning where they are physically present and make their home. *See Reddy v. Buttar*, 38 F.4th 393, 400 (4th Cir. 2022). For a corporation, “the place of incorporation and principal place of business are ‘paradig[m] . . . bases for general jurisdiction.’” *Daimler AG*, 571 U.S. at 137.

Here, no Defendant resides or is “at home” in Maryland. Defendants Otter Audits LLC and RC Security LLC are both South Dakota–incorporated corporations with their principal places of business in South Dakota. Otter Audits Decl. ¶ 5, J.R.006; RC Sec’y Decl. ¶ 5, J.R.009. Defendant Robert Chen resides in Washington State and the Complaint does not even suggest that he has ever been physically present in Maryland—because he has not. Chen Decl. ¶ 3, J.R.002. This Court, sitting in Maryland, cannot exercise general jurisdiction over any of the Defendants.

**III. THIS COURT DOES NOT HAVE SPECIFIC JURISDICTION OVER ANY DEFENDANT WITH RESPECT TO ANY OF THE COMPLAINT’S EIGHT CAUSES OF ACTION.**

With general jurisdiction unavailable, this Court can only exercise personal jurisdiction over Defendants if Plaintiff establishes both “(1) [Maryland’s] long-arm statute confers jurisdiction and (2) the assertion of that jurisdiction is consistent with constitutional due process.”

*Perdue Foods LLC v. BRF S.A.*, 814 F.3d 185, 188 (4th Cir. 2016)<sup>3</sup>; *see* Fed. R. Civ. P. 4(k)(1)(a) (permitting federal courts to exercise personal jurisdiction over a defendant “subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located”). The Fourth Circuit employs a three-part test for the constitutional due process requirements, considering “(1) the extent to which the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) whether the plaintiffs’ claims arise out of those activities directed at the State; and (3) whether the exercise of personal jurisdiction would be constitutionally reasonable.” *Consulting Eng’rs Corp.*, 561 F.3d at 278. Further, because specific jurisdiction depends on the extent to which claims “arise out of” a defendant’s contacts with a forum state, specific jurisdiction must be “assessed on a claim-by-claim” as well as defendant-by-defendant “basis.” *Jones v. Mutual of Omaha Ins. Co.*, 639 F. Supp. 527, 549 (D. Md. 2022). Here, since no Defendant has any connection to Maryland, Plaintiff has not and cannot carry its burden to meet all of these requirements—or, indeed, any of them.

**A. No Provision of Maryland’s Long-Arm Statute Applies Because Each Requires Maryland Contacts That Have Not Been Alleged.**

Plaintiff has not identified which paragraph under subsection (b) of Maryland’s long-arm statute applies here, only providing a general citation to the subsection. Compl. ¶ 13 (citing Md. Code Ann., Courts & Jud. Proc. § 6-103(b)). Plaintiff cannot be more specific than this because none of the long-arm statute’s provisions apply. Only three paragraphs under subsection (b) even

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<sup>3</sup> Although Maryland’s long-arm statute “is coextensive with the limits of personal jurisdiction set by the due process clause of the Constitution,” the Fourth Circuit has cautioned that courts should still analyze the long-arm statute rather than collapsing these two inquiries into one. *Pandit v. Pandit*, 808 F. App’x 179, 185 (4th Cir. 2020) (per curiam); *see also, e.g., Cherdak v. McKirdy*, No. 19-cv-1246, 2020 WL 4286829, at \*6 (D. Md. July 27, 2020).

vaguely evoke the facts of this case.<sup>4</sup>

The first of these, paragraph (b)(1)—providing jurisdiction over “a person who, directly or by an agent . . . transacts any business or performs any character of work or service in the State”—does not apply because the Complaint does not plead that Defendants transact business or perform work or service in Maryland—because they do not. Chen Decl. ¶¶ 5–6, J.R.002; Otter Audits Decl. ¶¶ 6–10, J.R.006; RC Sec’y Decl. ¶¶ 6–10, J.R.009. Paragraph (b)(4) likewise requires the defendant to have some commercial or business connection to Maryland, and therefore does not apply because no such connections have been alleged (or exist). *See also Pandit*, 808 F. App’x. at 187 (noting that “Maryland courts have refused to exercise jurisdiction under [paragraph (b)(4)] even when defendants have engaged in extensive electronic communications with someone in Maryland[.]”).

Paragraph (b)(3), which allows for jurisdiction over persons who “cause[] tortious injury in the State by an act or omission in the State” does not apply because “Maryland courts have consistently held that in order to satisfy § 6-103(b)(3), both the injury itself and the act giving rise to the injury must have occurred and originated within Maryland.” *Pandit*, 808 F. App’x. at 186 (collecting consistent Maryland cases). Where, as here, the Defendants are not alleged to have done anything forming the basis for the claim “while they were in Maryland,” jurisdiction cannot be established through paragraph (b)(3). *Id.* (holding that paragraph (b)(3) did not apply where Plaintiff “[did] not allege[] that [Defendants] wrote or sent the purportedly defamatory emails and letters while they were in Maryland”).

Because no part of the long-arm statute applies, the Defendants are not “subject to the jurisdiction of a court of general jurisdiction in [Maryland]” with respect to any of the eight counts

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<sup>4</sup> Paragraphs (b)(2), (b)(5), and (b)(6) are facially irrelevant to Plaintiff’s claims.

of the Complaint. Fed. R. Civ. P. 4(k)(1)(A). The Federal Rules of Civil Procedure therefore do not permit this Court to exercise its jurisdiction over this case and instead require that it be dismissed in its entirety. *See id.* R. 12(b)(2).

**B. Exercising Jurisdiction Would Violate Defendants’ Rights to Due Process Because Defendants Did Not Direct Any Activities toward the Forum State or Avail Themselves of the Privilege of Conducting Activities There.**

Even if Maryland’s long-arm statute did apply and jurisdiction were established under Rule 4(k)(1)(A), the Complaint would still need to be dismissed because the exercise of jurisdiction over these Defendants by this Court would violate their rights to Due Process under the Fourteenth Amendment. Each part of the Fourth Circuit’s three-part test shows that exercising jurisdiction would be impermissible here. *See supra* p. 9 (citing *Consulting Eng’rs Corp.*, 561 F.3d at 278).

**1. The Defendants Did Not Purposely Avail Themselves of the Benefits of the State of Maryland.**

None of the Defendants ever physically entered Maryland, solicited or directed any business in Maryland, or purposely directed any activities toward Maryland. Chen Decl. ¶¶ 5–6, J.R.002; Otter Audits Decl. ¶¶ 6–10, J.R.006; RC Sec’y Decl. ¶¶ 6–10, J.R.009. Because the Defendants here have never taken any action in Maryland, they have never “availed [themselves] of the privilege of conducting business in” this state and it is therefore unreasonable to let Plaintiff hale them into Court here. *Consulting Eng’rs Corp.*, 561 F.3d at 278.

The Fourth Circuit has identified a list of factors Courts may consider when evaluating whether a defendant “engaged in . . . purposeful availment” “of the privilege of conducting business under the laws of a forum state.” *Consulting Eng’rs Corp.*, 561 F.3d at 278. While “nonexclusive,” these factors are worth considering as their absence shows the Complaint’s total lack of any allegations connecting Defendants to Maryland. Courts may consider:

- “whether the defendant maintains offices or agents” or “owns property in the forum state[;]”

- “whether the defendant reached into the forum state to solicit or initiate business” and “whether the defendant deliberately engaged in significant or long-term business activities in the forum state[;]”
- “whether the parties contractually agreed that the law of the forum state would govern disputes” and “whether the defendant made in-person contact with the resident of the forum in the forum state regarding the business relationship[;]”
- “whether the performance of contractual duties was to occur within the forum[;]”
- and “the nature, quality and extent of the parties’ communications” with persons or entities in the forum state “about the business being transacted.”

*Id.* None of these factors suggests a connection between any of the Defendants and the state of Maryland.

a. The Complaint Alleges No Contacts by Defendants Otter Audits and RC Security with the State of Maryland.

The Complaint alleges that the South Dakota Defendants are LLCs incorporated in South Dakota with principal places of business also in South Dakota, and that they are using OtterSec’s website, domain name, logo, name, and social media.<sup>5</sup> Compl. ¶¶ 9–10, 105–08. The *only* connection between the South Dakota Defendants and Maryland is thus an allegation that they are using assets that previously belonged to a Wyoming LLC that at one point—before either South Dakota Defendant existed—had a single member (Sam Chen) residing in Maryland. This is not “purposeful availment” but is instead “precisely the sort of ‘random’ Maryland contact that cannot justify the exercise of personal jurisdiction.” *Ark. Nursing Home Acquisition, LLC v. CFG Cmty. Bank*, 460 F. Supp. 3d 621, 641 (D. Md. 2020) (“[Defendant] in no way availed itself to Maryland by accepting non-Maryland assets held by . . . non-Maryland LLCs merely because one of these LLCs . . . was controlled by a Maryland member.”). For this reason as well, the Complaint must be dismissed as to the South Dakota Defendants.

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<sup>5</sup> Plaintiff alleged no facts showing a connection between Otter Audits, RC Security, and the OtterSec website.

b. The Complaint Alleges Conduct by Defendant Robert Chen Directed at Wyoming or the Internet—Not Maryland.

The Complaint also fails to allege a connection between Defendant Robert Chen and Maryland. The Complaint’s allegations concern communications and activity by Robert Chen primarily in his capacity as an officer of OtterSec.<sup>6</sup> In that capacity he is alleged to have engaged in some online communications with Sam and non-party David from February 2022 through mid-May 2022 about a *Wyoming* LLC. *E.g.*, Compl. ¶ 22, 81. The Supreme Court has said that “an individual’s contract with an out-of-state party *alone*” is “clearly” not enough to “automatically establish sufficient minimum contacts in the other party’s home forum.” *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985) (emphasis in original). Here, Robert’s only connections to Maryland are his contacts (and contracts) with Sam and non-party David, all of which were directed toward Wyoming where their LLC was formed on internet platforms.

i. The Formation of OtterSec Was Conduct Directed at Wyoming – Robert and Sam incorporated their business in Wyoming, and Robert’s communications with Sam and David concerned that Wyoming LLC. A similar situation concerning a business relationship focused outside Maryland was presented in *Ellicott Machine Corp., Inc. v. John Holland Party Ltd.*, 995 F.2d 474, 478 (4th Cir. 1993). There, the Fourth Circuit explained that even though the defendant “pursued [the Maryland-headquartered plaintiff] to Maryland and executed [a] contract” with the plaintiff “by fax and telephone,” the “significance of these contacts” with Maryland was “[m]itigate[ed]” by “the fact that the contract was not performed in Maryland nor did it result from a longstanding business relationship with [the plaintiff].” *Id.* Specific personal jurisdiction was therefore lacking. *Id.* See also *Mun. Mortg. & Equity v. Southfork Apts. Ltd. P’ship*, 93 F. Supp.

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<sup>6</sup> See Chen Decl. ¶ 17, J.R.003 (stating that after the formation of OtterSec LLC, his communications were in his capacity as member and officer of OtterSec, LLC).

2d 622, 629 (D. Md. 2000) (finding no purposeful availment of Maryland law based in part on “the selection by the parties . . . of Minnesota law over Maryland law,” to govern their contractual relationship “when the choice of Maryland law was clearly an available option”). As in *Ellicott*, there is no personal jurisdiction here.

OtterSec is not a Defendant in this case, so any actions Robert took on OtterSec’s behalf are irrelevant to the personal jurisdiction analysis. Further, any actions Robert took in his official capacity as an officer of OtterSec would not help Plaintiff establish personal jurisdiction because, in assessing contacts with the forum state, courts must look to an individual defendant’s contacts in their individual capacity, not in their corporate capacity. *Hearn v. Edgy Bees Inc.*, No. 21-cv-2259, 2023 WL 3074638, at \*9 (D. Md. Apr. 25, 2023); *see also Mates v. N. Am. Vaccine, Inc.*, 53 F. Supp. 2d 814, 821 (D. Md. 1999) (stating that “if [defendant’s] only contact with the forum state was entirely within the scope of his corporate capacity, he cannot be subjected to this Court’s jurisdiction.”); *Birrane v. Master Collectors, Inc.*, 738 F. Supp. 167, 169 (D. Md. 1990). Because the Complaint only alleges that Robert communicated with others within OtterSec in his official capacity as an officer of the Wyoming LLC, such communications are insufficient to justify personal jurisdiction in connection with a lawsuit against him in his individual capacity. This remains the case even if the communications were with persons located in Maryland.

*ii. Robert’s Communications with Sam and David Were Not Directed at Maryland* – Robert’s alleged communications with Sam and his son (who is not a party to this case) took place almost exclusively over the online chat platforms Discord and Telegram. Chen Decl. ¶¶ 9–14, J.R.003. Robert did not mail letters to them in Maryland. He does not recall ever picking up the phone to call either Sam or David. *Id.* ¶ 13. He does not even recall sending text messages to Sam



or David. *Id.* ¶ 14. The Complaint does not allege otherwise. His online communications with them are not a basis for personal jurisdiction.

Courts have repeatedly held that “correspondence and phone calls from out-of-state defendants to in-state plaintiffs are insufficient as a matter of law to establish the minimum contacts that satisfy due process.” *Ryan v. TEV Corp.*, No. 18-cv-3852, 2019 WL 5683400, at \*9 (D. Md. Nov. 1, 2019) (quoting *Cape v. von Maur*, 932 F. Supp. 124, 128 (D. Md. 1996)); *see also Cricket Grp., Ltd. v. Highmark, Inc.*, 198 F. Supp. 3d 540, 544 (D. Md. 2016) (finding email, telephone, and online chat communications between the plaintiff and defendant “[did] not provide sufficient contacts to justify exercising personal jurisdiction” where the defendant had no other connections to Maryland); *Jones v. Cosmetic Surgery Int’l, Inc.*, No. 07-cv-1871, 2008 WL 11509724, at \*3 (D. Md. May 1, 2008) (observing that “[m]any courts have noted that telephone calls, without more, are insufficient to justify the exercise of personal jurisdiction over an out-of-state defendant” and collecting cases); *Fasolyak v. Cradle Society, Inc.*, No. 06-cv-622, 2006 WL 8457066, at \*4 (D. Md. June 15, 2006) (“[A]n out-of-state resident sending letters or calling a resident of Maryland does not constitute an act that will allow Maryland courts to exercise jurisdiction over the out-of-state defendant.”).

Electronic communications between Defendant Robert on the one hand and Sam on the other would still be insufficient to establish minimum contacts for the additional reason that such “correspondence relates to Maryland *only because plaintiff happens to reside here.*” *Ryan*, 2019 WL 5683400, at \*9 (emphasis added).<sup>7</sup> As the Supreme Court warned in *Walden v. Fiore*, 571

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<sup>7</sup> *Ryan* held that a defendant’s out-of-state communications with the Maryland-based plaintiff should not be given any weight when evaluating the court’s personal jurisdiction over the defendant. 2019 WL 5683400, at \*9 (citing *Walden*, 571 U.S. at 289). Ultimately the *Ryan* court found personal jurisdiction over the defendant, based on the defendant’s *other* substantial contacts with the state of Maryland. *See id.* at \*10.

U.S. 277, 289 (2014), courts should not give weight to a plaintiff’s contacts in analyzing personal jurisdiction as it would “impermissibly allow . . . a plaintiff’s contacts with the defendant and forum to drive the jurisdictional analysis.” While “[i]t is true that the in-forum effects of out-of-forum conduct can constitute minimum contacts with the forum sufficient to support personal jurisdiction” in some circumstances, it is clear that “[t]hese effects must create a connection to the *forum*, not just to parties who happen to live there,” and “[t]he connection must be ‘substantial.’” *Hawkins v. i-TV Digitális Távközlési zrt.*, 935 F.3d 211, 230 (4th Cir. 2019). Robert’s only connection to Maryland (communication with persons who happened to live in Maryland) was “random,” “fortuitous,” and “attenuated.” *Burger King Corp.*, 471 U.S. at 475 (“This ‘purposeful availment’ requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts.”).<sup>8</sup>

In sum, the alleged facts reveal that Defendant Robert Chen never purposefully availed himself of the privilege of doing business in Maryland. Consequently, the exercise of this Court’s jurisdiction over him fails on the first prong of the Fourth Circuit’s three-part test, and thus would violate due process. *See Consulting Eng’rs Corp.*, 561 F.3d at 278.

## **2. Plaintiffs’ Claims Do Not Arise Out of or Relate to Defendants’ (Nonexistent) Contacts with Maryland.**

The second prong of the Fourth Circuit’s test is also unmet here. *See supra* p. 9 (citing *Consulting Eng’rs Corp.*, 561 F.3d at 278). Plaintiff’s claims cannot arise out of any Defendant’s contact with Maryland because, as has been explained, no Defendant had any such contacts. Plaintiff’s claims against the South Dakota Defendants, though underexplained, necessarily relate

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<sup>8</sup> It is not significant that Plaintiff, or Sam Chen, “felt” the alleged injury in Maryland because “the plaintiff *always* feels the impact of the harm” in the plaintiff’s home state and the personal jurisdiction inquiry jurisdiction cannot “depend on a *plaintiff’s* decision about where to establish residence.” *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617, 626 (4th Cir. 1997) (emphasis in original) (finding no personal jurisdiction under the long-arm statute).

to their conduct in South Dakota, where those Defendants exist. The claims against Robert all arise out of and relate to the internal business affairs of OtterSec, a Wyoming corporation operated by Robert from Washington. They all concern OtterSec, and do not arise directly or independently from communications Robert had with Sam or David while they may have been in Maryland between February and May 2022. A “claim-by-claim” review of the Complaint, *Jones* 639 F. Supp. at 549 (requiring this), shows that none of Plaintiff’s claims arise out of or relate to any Defendant’s negligible connections to this state:

*First Cause of Action.* Plaintiff’s first cause of action asserts claims of false advertisement and false association under the Lanham Act, which are premised on Defendants’ alleged use of OtterSec’s logo, name, and assets. Compl. ¶¶ 111–22. OtterSec was a Wyoming company. *Id.* ¶ 15. The claim thus alleges that a Washington resident and two South Dakota companies are improperly using the assets of a dissolved Wyoming company and does not arise out of or relate to any contacts with Maryland.

*Second and Third Causes of Action.* The Second Cause of Action, which seeks declaratory relief in the form of declarations concerning the dissolution of OtterSec, a Wyoming LLC, fiduciary duties to OtterSec, and Plaintiff’s interest in OtterSec, Compl. ¶¶ 123–30, and the Third Cause of Action, which alleges breach of fiduciary duty, *id.* ¶¶ 131–36, all concern the internal affairs and operations of the Wyoming LLC and thus arise out of or relate to the Defendants’ contacts with OtterSec in Wyoming, not Maryland.

*Fourth Cause of Action.* Plaintiff’s Fourth Cause of Action alleges that the decedent was defrauded of ten percent ownership in OtterSec and that Defendants fraudulently caused the dissolution of OtterSec, transfer of its assets, and loss of the estate’s interest in the LLC. Compl. ¶¶ 137–45. Plaintiff bases these claims on allegations related to the internal business affairs of the

Wyoming LLC and on Robert’s communications with a non-member of the LLC (David). *Id.* ¶¶ 143–44. The only connection to Maryland is that Plaintiff has the “fel[t] the impact of the harm” there, but this is not relevant to the jurisdictional analysis. *ESAB Grp., Inc. v. Centricut, Inc.*, 126 F.3d 617, 626 (4th Cir. 1997).

*Fifth, Sixth, Seventh, and Eighth Causes of Action.* Finally, the Plaintiff’s Fifth Cause of Action (misappropriation and conversion of the Wyoming LLC’s assets), Sixth Cause of Action (breach of the operating agreement for the Wyoming LLC), Seventh Cause of Action (tortious interference in the Wyoming LLC’s contracts and relationships), and Eighth Cause of Action (accounting for the transactions and affairs of a Wyoming LLC and two South Dakota LLCs), *id.* ¶¶ 146–64, all relate to the internal business affairs of non-Maryland LLCs and would not arise out of or relate to contacts in Maryland had the Plaintiff alleged any in the Complaint.

**3. It Is Not Constitutionally Reasonable to Require Defendants to Litigate in this Forum to Which They Lack Any Connection.**

As the Complaint fails at each previous stage of the analysis, it should come as no surprise that the exercise of jurisdiction that it invokes over these Defendants is also unreasonable under the third prong of the Fourth Circuit’s test. *See supra* p. 9 (citing *Consulting Eng’rs Corp.*, 561 F.3d at 278). This final prong “permits a court to consider additional factors to ensure the appropriateness of the forum once it has determined that a defendant has purposefully availed itself of the privilege of doing business there.” *Id.* Were this Court to make such a determination here, personal jurisdiction is still improper under this final prong which evaluates concerns including “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining the most efficient resolution of controversies, and the shared interest of the several States in furthering fundamental substantive social policies.” *Christian Sci. Bd. of Directors of the First*

*Church of Christ, Scientist v. Nolan*, 259 F.3d 209, 217 (4th Cir. 2001) (quoting *Burger King*, 471 U.S. at 477). This prong exists to confirm that “litigation is not so gravely difficult as to place the defendant at a severe disadvantage in comparison to his opponent.” *CFA Inst. v. Inst. of Chartered Fin. Analysts of India*, 551 F.3d 285, 296 (4th Cir. 2009) (internal quotation marks omitted).

Here, the burden on the Defendants of litigating in Maryland will be significant. The South Dakota Defendants have no offices in Maryland and have not done business here. Robert Chen lives on the other side of the country, in Washington State. Plaintiff may have an interest in obtaining relief in Maryland, but litigating here places Defendants at precisely the sort of disadvantage that the Fourth Circuit cautions should be avoided.

Further, the burden on this Court in adjudicating this multi-jurisdictional dispute will be significant. The federal claims may be straightforward enough, but Plaintiff’s state law claims will require significant choice-of-law analysis before they can even be considered. As “[a] federal court hearing a diversity claim,” this Court will need to “apply the choice-of-law rules of the state in which it sits,” Maryland. *Res. Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 635 (4th Cir. 2005). To avoid “conflicting demands” from different state laws, “the laws of the state of incorporation”—Wyoming for OtterSec and South Dakota for the South Dakota Defendants—“generally will govern matters involving the internal workings of a corporation.” *Storetrax.com, Inc. v. Gurland*, 915 A.2d 991, 1000 (Md. 2007).

Even after navigating the choice-of-law issues, then, the Court would need to decide many of Plaintiff’s claims under Wyoming and/or South Dakota law, depending on the specific claim and defendant. Again, the forum state may have an interest in obtaining remedies for Maryland-based estates, but when those remedies depend on the specifics of Wyoming or South Dakota corporate law, Maryland’s interest is outweighed by the burden that would be imposed on this

Court. Asserting jurisdiction over these Defendants is thus unreasonable, both for Defendants themselves and for the Court.

### CONCLUSION

For the foregoing reasons, the Complaint must be dismissed under Fed. R. Civ. P. 12(b)(2) for lack of personal jurisdiction over any of the Defendants.

Respectfully submitted,

Dated: October 6, 2023

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**CERTIFICATE OF SERVICE**

I certify that on February 5, 2024, I filed the foregoing Memorandum of Law via CM/ECF which serves a copy on all counsel of record.

/s/ Rachel Clattenburg  
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