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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MW GESTION, MW OPTIMUM, ALTIMEO PARTICIPATIONS, and CYRILLE PICHOT, Individually and On Behalf of All Others Similarly Situated, Plaintiffs-Below Appellants, v. SINOVAC BIOTECH LTD., WEIDONG YIN, NAN WANG, SIMON ANDERSON, YUK LAM LO, MENG MEI, SHAN FU, VIVO CAPITAL, LLC, VIVO CAPITAL VIII, LLC, VIVO CAPITAL FUND VIII, L.P., VIVO CAPITAL SURPLUS FUND VIII, L.P., VIVO CAPITAL IX, LLC, and VIVO CAPITAL FUND IX, L.P., Defendants-Below Appellees.	)	No. 245, 2026 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2025-0417-JTL

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PRELIMINARY STATEMENT

In seeking to justify the dismissal of this action on *forum non conveniens* grounds, Appellees' Corrected Answering Brief ("AB") repeats the Court of Chancery's errors. Defendants-Appellees ("Defendants") mischaracterize the nature of the Antigua law issues in this action, which are governed by a well-developed body of English-language sources. Defendants have not pointed to any Antigua law issues that are actually unsettled, making this case no different than others where the application of foreign law does not constitute an "overwhelming hardship."[1]

While the need to apply Antigua law was the Court of Chancery's main reason for dismissal, Defendants also misapply the other *Cry-Maid* factors. The location of witnesses and evidence—which Defendants agree is not dispositive—does not support dismissal because all of the relevant individuals are directors and officers of Sinovac and the Vivo Defendants, and the underlying events are dispersed across multiple forums.

The Antigua Action—another factor that Defendants say is not dispositive—not only does not support dismissal; it strongly favors Plaintiffs because they are not parties to it and cannot obtain complete relief from it. The law therefore requires an assessment of the burden that litigating in Antigua would cause Plaintiffs. The

[1] Citations and internal quotation marks are omitted, and emphases are added, unless noted otherwise below. Terms not defined herein have the same meaning as in Appellants' Opening Brief.

inability of the Privy Council's decision in Sinovac's prior seven-year Antigua litigation to resolve the battle for control of the Company highlights why Sinovac's minority shareholders are not able to obtain complete relief in Antigua. Yet as the new Antigua Action winds through the Antiguan courts, Defendants continue to this day to misappropriate additional hundreds of millions of dollars of Sinovac's assets, making it even more important for Plaintiffs to be able to proceed in Delaware.

Defendants also mischaracterize the other *forum non conveniens* factors. Sinovac's prior Delaware Action proves that litigating this action in Delaware will not cause Defendants an overwhelming—or any—hardship. Moreover, Defendants ignore the strong interest in protecting shareholders of a U.S.-listed company rather than forcing them to litigate in Antigua, especially when that would cause them severe prejudice. Delaware also has a strong interest in holding the Vivo Defendants accountable because they used transaction-related Delaware entities as part of Defendants' efforts to improperly gain control of Sinovac and misappropriate billions of dollars from the Company.

Additionally, Defendants do not account for the Court of Chancery's improper application of the *Gramercy* framework rather than assessing whether proceeding in Delaware poses an "overwhelming hardship" on Defendants. Even if *Gramercy* applied, however, a neutral assessment supports maintaining this action in Delaware for the reasons described herein.

The Court of Chancery also erroneously dismissed the Individual Defendants for lack of personal jurisdiction. Defendants misstate the law by asserting that there can never be personal jurisdiction over individuals based on the acts of a corporation. That ignores the express provision for such jurisdiction where, as here, the individuals acted for their personal interests rather than those of the corporation. Therefore, there is personal jurisdiction over the Individual Defendants under both the regular test and the "conspiracy theory" of jurisdiction. Defendants' only other responses improperly try to relitigate the Court of Chancery's ruling that there is a basis for personal jurisdiction over Sinovac and mischaracterize Plaintiffs' well-pled allegations concerning the Individual Defendants' connection to the Delaware acts that were a key part of their misconduct.

ARGUMENT

I. THE COURT OF CHANCERY ERRED IN DISMISSING THIS ACTION ON *FORUM NON CONVENIENS* GROUNDS

A. Defendants Have Not Shown an "Overwhelming Hardship"

The Court of Chancery applied the wrong legal standard to its *forum non conveniens* analysis by using the *Gramercy* framework rather than the "overwhelming hardship" standard. *See* Appellants' Opening Brief ("OB") at 18-20. Defendants do not seriously contest that the "overwhelming hardship" standard applies, but mischaracterize the court's erroneous application of *Gramercy* as a "passing remark." AB at 3, 5, 18. In *Holden v. Gaico Inc.*, however, the court stated its "inclin[ation]" at an earlier hearing, which "clearly . . . was not meant to be a ruling." 2001 WL 34083881, at *4 n.3 (Del. Super. Sep. 20, 2001). The Court of Chancery's comments here, in contrast, were made when it issued its ruling and influenced the rest of its analysis. *See* OB at 19, 21, 23-24, 33-34.

1. The Role of Antigua Law Does Not Support Dismissal

a) <u>The Type of Antigua Law Issues Present Here Do Not Support Dismissal</u>

The need to address Antigua law in this case is no different than in other cases where the role of foreign law is not a basis for dismissal. *See* OB at 21-26.

Defendants try to avoid that result based on *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102 (Del. 2014). *See* AB at 20-21. Courts post-*Martinez*, however, continue to hold that the need to apply the law of other jurisdictions,

including foreign countries, is not a reason to dismiss. *See* OB at 22-23. Defendants thus resort to arguing that those cases "involved some Delaware interest." AB at 21-22. But Defendants cite a varied assortment of interests that are not greater than Delaware's interest in governing the transaction-related Delaware entities here and protecting shareholders of a U.S.-listed company who would face severe prejudice from being forced to litigate in Antigua. *See infra* p. 13-14, 17-18. Defendants also have a particularly weak hardship argument because Sinovac chose to litigate the Delaware Action here. *Infra* p. 18.

Moreover, Defendants are wrong that this case involves the type of "open or unsettled" foreign legal issue that was the basis for *Martinez*. AB at 21, 23. *Martinez* addressed "complex and unsettled issues of Argentine tort law, based on expert testimony extrapolating from sources of law expressed in a foreign language." *Martinez*, 86 A.3d at 1108. The Court emphasized that "the governing law is set forth in Spanish, not English." *Id.* at 1106. Additionally, *Martinez* "implicate[d] important interests of Argentina itself" because the "lawsuit was a test case for a large number of cases facing DuPont that raise the same novel issue of Argentine law." *Id.* at 1107.

The Antigua law issues here, in contrast, are based on English-language sources and do not involve unsettled legal issues. While the parties dispute how various Antiguan legal issues apply to the facts of this case, that is the inherent nature of litigation. It does not create an unsettled issue of Antigua law because all of the

legal issues are governed by well-established sources. Indeed, the federal court in Massachusetts has already rejected Sinovac's *forum non conveniens* argument concerning the same issues of Antigua law that arise here. *See* OB at 22-23 (citing *Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 542 F. Supp. 3d 59, 68-69 (D. Mass. 2021)). Unlike *Martinez*, which involved many plaintiffs and cases involving asbestos exposure at "various textile plants in Argentina," this case is "based on a specific set of facts that will not be repeated." *Olson v. AMR GP Holdings, LLC*, 2024 WL 1005566, at *5 (Del. Super. Mar. 7, 2024).

Even more unlike *Martinez*, which involved the issue of "when parent corporations can be held liable" in "occupational injury cases," *Martinez*, 86 A.3d at 1107, this case involves corporate law issues related to Defendants' efforts to control Sinovac and enrich themselves at the expense of minority shareholders—the type of issue that Delaware courts routinely address. Courts since *Martinez* do not dismiss on *forum non conveniens* grounds cases that raise foreign legal issues more complex than those here. For example, even though "there could be complexity in determining the terms of a license to Nokia's patents," that did not support dismissal because "Delaware courts often decide legal issues—even unsettled ones—under the law of other jurisdictions." *Continental Auto. Sys., Inc. v. Nokia Corp.*, 2023 WL 1370523, at *10, *24 (Del. Ch. Jan. 31, 2023). *Continental* addressed a dispute involving multiple parties and litigations filed in different jurisdictions related to

complex patent licensing issues "essential to cellular standards," yet the need to apply French law was "an insufficient reason to dismiss." *Id.* at *1, *24.

Martinez agreed that "all the inconvenience and expense associated with foreign experts, translators, etc., are not important factors that warrant dismissal." *Martinez*, 86 A.3d at 1112 n.41. Defendants read this overly narrowly to mean that just the "cost" of such efforts does not justify dismissal. AB at 22-23. But the need for those submissions, by their nature, means that the court will have to decide between competing, in-depth arguments under foreign law. That does not make the Antigua law issues here unsettled. *See Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 588 F. Supp. 3d 153, 156-60 (D. Mass. 2022) (*Heng Ren II*) (discussing expert submissions).

b) Defendants Do Not Raise Any Actual Unsettled Issue of Antigua Law

To raise an unsettled issue of foreign law, Defendants must actually point to sources of law that are unsettled, as was the case in *Martinez*. *See Martinez*, 86 A.3d at 1108 n.33 (noting that "none of the experts were able to point to any case law in Argentina supporting acceptance of the theory"). Here, in contrast, the Court of Chancery erred by simply assuming that this case presents unsettled issues of Antigua law.

This case "does not present novel issues of" Antigua law because Antigua

"recognizes the type of claim being made in this case." *Olson*, 2024 WL 1005566, at *5. The parties did not dispute whether any of Plaintiffs' causes of action exist under Antigua law. They argued only about whether those claims are "direct or derivative." AB at 19, 24. But that issue is governed by well-established sources under Antigua law. *See Heng Ren II*, 588 F. Supp. 3d at 158-59. Defendants admit that for "the Antigua question [in *Heng Ren*] there was a straightforward statutory prerequisite to suit." AB at 23. When arguing over that issue here, the parties pointed to ordinary sources of Antigua law (or in the case of the Individual Defendants did not cite to Antigua law at all), including Canadian decisions, which the parties agree apply under Antigua law. *See* A0740-41(Sinovac's MTD Brief at 34-35); A0184-86(Individual Defendants' MTD Brief at 37-39); A1535-41(Plaintiffs' MTD Opposition at 55-61).[2]

Defendants also try to raise additional issues of Antigua law, but those are not the type of unsettled issues that *Martinez* addressed. They are either issues that the parties do not dispute or are matters of Delaware (not Antigua) law.[3] ***First***,

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[2] Plaintiffs also argued, in the alternative, that if Delaware law applies to the direct-versus-derivative issue, their claims are direct under Delaware law. A1541-45. But if Delaware law were to apply to this issue, that is a matter of Delaware, not Antigua, law under Delaware's well-established test for this issue. So too is the related issue of demand futility. *See* AB at 24; A1548-49.

[3] The Delaware law issues relevant here also do not raise unsettled legal issues under Delaware law, for the reasons explained above.

Defendants describe "the applicable statute of limitations" as a "difficult issue[]" under Antigua law. AB at 18-19. But the parties' dispute over the statute of limitations was only whether Delaware's or Antigua's statute of limitations applies. That choice-of-law issue—including how Delaware's Borrowing Statute applies—is ***a matter of Delaware law***. *See* OB at 26. If Delaware law determines that Antigua's statute of limitations applies, Defendants have not identified any unsettled issue of Antigua law concerning its statute of limitations. *See* A1553(Plaintiffs' MTD Opposition at 73; A0173-83(Individual Defendants' MTD Brief at 26-36); A0743-49(Sinovac's MTD Brief at 37-43).[4] When discussing this issue, the Court of Chancery referenced only Delaware law,[5] without explaining why it is unsettled under Antigua law. *See* Ex. B ("Tr.") at 45:3-8; 46:21-47:4.[6] Defendants and the Court of Chancery cannot simply assume that an issue of Antigua law is unsettled when Defendants did not contest Plaintiffs' position on it or submit any evidence on the issue.

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[4] Even in their reply briefs below, Defendants relied on Plaintiffs' expert's description of Antigua's statute of limitations. *See* A1956(Individual Defendants' MTD Reply at 20).

[5] As to Delaware law, even if "*IAC* is such a squishy test," Tr. at 49:19-22, that does not make the issue unsettled because the legal standard itself is set.

[6] Citing to the Court of Chancery, Defendants also raise "whether Antigua law recognizes any analogue to Delaware's inherently-unknowable-injury doctrine." AB at 24. While the court did not raise that particular timeliness doctrine, the same reasoning described above applies to it.

Second, Defendants raise "whether the Rights Agreement was statutorily unauthorized" under Antigua law. AB at 19, 24. But they admit that this question has been decided definitively by the Privy Council. *See* AB at 24. The fact that the Privy Council settled this issue in the past does not mean that the specific issues present in this litigation are unsettled. Defendants also argue that the Privy Council's decision "spurred multiple new pending proceedings." AB at 24. But that is only because of Defendants' attempts to evade the clear meaning of the Privy Council's ruling. Defendants cannot use their own spurious actions as proof of the unsettled nature of the issues that they raise.

Third, Defendants raise "the treatment of the follow-on transactions" under Antigua law. AB at 19, 24.[7] But that is a merits issues that the parties have not yet addressed. The parties agreed to bifurcate motion to dismiss briefing to limit the first round to arguments "on the basis of jurisdiction, *forum non conveniens*, timeliness/statute of limitations, and standing, including standing to pursue the claims derivatively." Ex. E at 2-3. The parties have therefore not yet addressed the merits of the follow-on transactions. Defendants also did not submit any sources of Antigua law on this issue to support their *forum non conveniens* analysis. Here too,

[7] Even if Antigua law is different than Delaware law on some of these issues—as the Court of Chancery speculated even though the parties have not addressed it—that would not make them unsettled. If the laws of different jurisdictions were always the same, there would be no need for this, or any choice-of-law, analysis in the first place. *See* Tr. at 46:1-6.

the Court of Chancery simply assumed that these issues are unsettled without referencing any sources of Antigua law. Indeed, the court acknowledged that "I don't think I directly have to address those things." Tr. at 46:10-12. Moreover, the one merits issue that the court raised *sua sponte* under Delaware law—*Moelis & Co. v. W. Palm Beach Firefighters' Pension Fund*, 360 A.3d 215 (Del. 2026)—is not unsettled under Delaware law because *Moelis* decided it. *See* Tr. at 46:7-20.[8]

Although the Court should not speculate about the validity of the follow-on transactions under Antigua law, there also is no reason to think that Plaintiffs' claims raise unsettled issues. Plaintiffs seek to recover for Defendants' blatantly improper efforts to control Sinovac and misappropriate billions of dollars from the Company. *See* OB at 7-8, 11-15.

2. The Location of the Parties, Evidence, and Witnesses Does Not Support Dismissal

Defendants concede that the Court of Chancery found that the location of the parties, witnesses, and evidence was not "dispositive." AB at 24. They argue that the Individual Defendants "possess evidence relevant to the claims against them and are likely" trial witnesses, but "none is subject to" compulsory process in Delaware. AB

[8] This issue also was not unsettled under Delaware law even before *Moelis* because the distinction between void and voidable transactions arose ***only for timeliness purposes***. *See Moelis*, 360 A.3d at 220 (holding the "validity of voidable acts, of course, can be challenged," subject "to equitable defenses, including laches"). *Moelis* does not affect how such corporate misconduct should be treated on the merits.

at 25. But that is not a concern because the Individual Defendants are all officers and directors of Sinovac and the Vivo Defendants, which are Defendants. In addition to being able to "compel [their] directors, officers, and managing agents to appear," OB at 28, Sinovac and the Vivo Defendants have the Individual Defendants' documents. Defendants also do not explain why their roles as "officers and directors of an Antigua corporation" make them more "answerable in Antigua"—where they do not reside and the underlying events did not occur—than those same roles make them answerable in Delaware when their corporations are Defendants. AB at 26. Defendants also do not specify what information these individuals possess that Sinovac and the Vivo Defendants lack.[9] *See* OB at 28. In the cases that Defendants cite, in contrast, the defendants detailed why specific witnesses unrelated to the defendant companies were necessary, where the underlying events took place in the alternative forum.[10]

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[9] Defendants' argument also fails for the independent reason that there is personal jurisdiction over the Individual Defendants. *See infra* pp. 20-23.

[10] These cases also came out in the plaintiff's favor or were decided under different legal standards. *See* AB at 25-26 (citing *Ward v. Tishman Hotel & Realty, L.P.*, 2010 WL 5313549, at *3 (Del. Super. Nov. 30, 2010) (personal injury case where injury took place in alternative forum); *Rudisill v. Sheraton Copenhagen Corp.*, 817 F. Supp. 443, 448 (D. Del. 1993) (same); *Barrera v. Monsanto Co.*, 2016 WL 4938876, at *7 (Del. Super. Sep. 13, 2016) (this factor did "not weigh in favor of dismissal"); *Lisa, S.A. v. Mayorga*, 2009 WL 1846308, at *10 (Del. Ch. June 22, 2009), *aff'd*, 993 A.2d 1042, 1047 n.3, 1048 (Del. 2010) (affirmed on other grounds, under *McWane*, where evidence was located in Guatemala, in Spanish, and plaintiff filed

Defendants also admit that the Individual Defendants reside in Canada and China, and that the Vivo Defendants are Delaware entities, showing that the parties are "too dispersed for compulsory process to favor any forum." AB at 25-26; OB at 27. Overall, Defendants have not identified any circumstances that create an overwhelming hardship based on the location of the parties and evidence. *See* OB at 26-28.

3. Pending Foreign Actions Support Plaintiffs

Defendants mischaracterize the role of other foreign actions. Because Plaintiffs are not parties to the later-filed Antigua Action and cannot obtain complete relief from it, that weighs strongly ***against*** dismissal. *See* OB at 29. Moreover, the mere existence of a related foreign action does constitute an overwhelming hardship. As Defendants concede and the Court of Chancery noted, "this factor cannot carry the appeal" because "the lack of an existing comparable action is not dispositive." AB at 30.

But Defendants elide that the absence of a prior pending action that the plaintiff is involved "***weighs significantly against***" dismissal when bringing claims in a foreign forum will entail significant "cost and delay to the plaintiff." OB at 29-30 (quoting *Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 845 (Del. 1999);

"numerous related actions" there)). *See also* OB at 24 (discussing *Gramercy*) and *infra* p. 16 (discussing *Hall*).

Everphone, Inc. v. Go Tech. Mgmt., LLC, 2023 WL 7996560, at *7 (Del. Super. Nov. 17, 2023)). This factor is particularly favorable for Plaintiffs because of their inability to obtain adequate relief in Antigua given the Antiguan court's inability to stem Defendants' intransigent efforts to evade the Privy Council's ruling. *See* OB at 30-32. The indefinite delay that Plaintiffs are suffering is especially acute considering how long Defendants' misconduct has been ongoing, with the prior action in Antigua commenced in 2018. *See* OB at 8-17. In addition to this extreme delay, Defendants ***continue to misappropriate at least hundreds of millions of dollars of Sinovac's assets*** while they remain in control of Sinovac because of how they are manipulating the Antiguan court process. *See* OB at 16. Most recently, in the first half of 2026, Sinovac spent $321.8 million "mainly" on "payment for the long-term employee incentive plan established in 2022 and year-end bonuses" and its subsidiaries paid $24.5 million in dividends to their shareholders (as distinguished from Sinovac's common shareholders). AR030(8/17/26 Sinovac Press Release). The continued delay of the Antigua Action thus severely prejudices Plaintiffs by allowing Defendants to continue to siphon off Sinovac's assets.

Furthermore, Defendants mischaracterize the extent of the overlap with the Antigua Action. *See* AB at 27-28. While the validity of the PIPE Transaction is relevant to some of Plaintiffs' claims, it is not relevant to their claim that Defendants' implementation of the invalid Rights Agreement caused trading in Sinovac stock to

be halted since 2019. *See* OB at 11-12, 17, 29. The Antigua Action also cannot provide Plaintiffs with complete relief concerning the PIPE Transaction because the interests of minority shareholders are not represented in that action. *Id.* at 12-13, 16-17, 29.

Defendants reference "the years the Antigua courts have devoted to these disputes." AB at 29. But that conflates the pending Antigua Action with the prior one that resulted in the Privy Council's decision. The fact that the prior action took nearly seven years to be resolved, the current Antigua Action exists only because Defendants are seeking to evade the Privy Council's prior ruling, and the Antiguan-court process allows Defendants to do so, highlights why being forced to proceed in Antigua would severely prejudice Plaintiffs. *See* OB at 30-32. This is not a matter of "Plaintiffs disagree[ment] with the Antigua courts' interim rulings" (AB at 30), but rather, that the structure of Antigua's litigation process is not able to efficiently resolve these disputes given Defendants' intransigence. Defendants also do not dispute that there is no timeline for when the Antigua Action will be resolved and that the Vivo Defendants challenge the Antiguan court's jurisdiction. *See* OB at 14-16, 30-31; AB at 29-30.

All of the cases that Defendants cite concerning other pending actions involved vastly different circumstances, highlighting how this factor supports

Plaintiffs.[11] Incredibly, Defendants quote language in *Ison* that discussed *McWane*, which did not apply because, as here, the other action "involves different plaintiffs." 729 A.2d at 844-45. Defendants also fail to note that in *Hall v. Maritek Corp.*, this Court affirmed the dismissal only because, unlike here, "the plaintiff had already advanced the core of his argument based on new evidence to the Privy Council." 182 A.3d 113 (Del. 2018).

Defendants also reference an arbitration pending in Hong Kong. But they have not provided enough information to assess the relevance of that proceeding. *See* AB at 27-28 (citing Defendants' reply briefs below). Even then, Defendants admit that the Hong Kong arbitration addresses only "some of these same issues" and does not involve Plaintiffs, making those actions even more irrelevant here. A1949, A1951-52.

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[11] *See* AB at 27-29 (citing *Chemtura Corp. v. Certain Underwriters at Lloyd's*, 2015 WL 5340475, at *5-6 (Del. Super. Aug. 26, 2015) (holding similar actions in New York "failed to meet the 'overwhelming hardship' standard"); *Kurtin v. KRE, LLC*, 2005 WL 1200188, at *4 (Del. Ch. May 16, 2005) (applying *McWane*); *Banco Nominees Ltd. v. Iroquois Brands, Ltd.*, 748 F. Supp. 1070, 1072 (D. Del. 1990) (applying federal standard where London action was filed first); *Hamilton Partners, L.P. v. Englard*, 11 A.3d 1180, 1217 (Del. Ch. 2010) (rejecting dismissal and holding this factor is not "outcome-determinative"); *Brookstone Partners Acquisition XVI, LLC v. Tanus*, 2012 WL 5868902, at *3 (Del. Ch. Nov. 20, 2012) (applying *McWane* and staying, not dismissing, action); *Karmel v. Great Lakes Chem. Corp.*, 1981 WL 15143, at *2 (Del. Ch. Dec. 4, 1981) (explaining that after a stay was "previously denied," plaintiff "actively" pursued Indiana litigation); *Focus Fin. Partners, LLC v. Holsopple*, 250 A.3d 939, 955 (Del. Ch. 2020) (plaintiff was also a party to California Action)).

4. Other Factors Support Maintaining This Action in Delaware

Defendants ignore Delaware's significant interest in holding the Vivo Defendants accountable because they are not only Delaware entities, but "transaction-related entities" that were created to conduct the transactions at issue here. OB at 2, 35-36; A1992-93(Order Denying Vivo MTD); AR013, AR017-19(Vivo MTD Opposition at 8, 12-14); *Hamilton Partners*, 11 A.3d at 1218 (holding "prominent use of a Delaware transaction vehicle" precluded dismissal).

Additionally, Defendants fail to distinguish *Heng Ren*'s holding that there "is a strong public interest in making U.S. courts available" for disputes involving shares of a NASDAQ-listed company. OB at 36. According to Defendants' logic that this a national rather than Delaware interest (AB at 32), this interest would never be vindicated by any U.S. court. Additionally, the presence of a Massachusetts plaintiff was a separate consideration in *Heng Ren*. Although Plaintiffs are foreign, they are still entitled to "the presumption that their choice of forum should be respected," particularly because they seek to represent the minority shareholders of a U.S.-listed company who will face severe prejudice if forced to litigate in Antigua. OB at 36; *see supra* pp. 13-14.

Defendants also try to argue that Plaintiffs' "hardship is irrelevant." AB at 33. But the language they cite from Plaintiffs' Opening Brief was referring to the hardship on the court, not plaintiffs. *See* OB at 33. The burden on Plaintiffs is

important to consider because of the absence of a prior pending action that Plaintiffs are involved in. *See supra* pp. 13-14; OB at 29-30.

Next, Defendants' discussion of their purported hardship merely repeats their unavailing arguments under the other *Cryo-Maid* factors discussed above. *See* AB at 32-33. Defendants also downplay the significance of Sinovac's prior litigation in Delaware that was a crucial part of Defendants' attempt to take control of the Company. Sinovac and its officers could not possibly face an overwhelming—or any—hardship from litigating in Delaware when the Company chose to bring a prior related action here. *See* OB at 2, 34-35.

Lastly, Defendants do not cite any support for the burden on the court being a basis for dismissal. *See* AB at 30-31. They also do not explain how any purported burden on the court here is greater than in *Asbestos*, where dismissal was "not warranted" for mass-tort litigation involving over 100 cases addressing "foreign plaintiffs, foreign exposures and foreign substantive law." *In re Asbestos Litig.*, 929 A.2d 373, 379, 389 (Del. Super. 2006). This argument also depends on Defendants' flawed analysis of the other *Cryo-Maid* factors discussed above.

B. *Gramercy* Does Not Support Dismissal

Defendants halfheartedly argue, for the first time on appeal, that the *Gramercy* framework applies not based on the later-filed current Antigua Action, but based on the prior Antigua action between Sinovac and 1Globe. AB at 34. That is not what

Gramercy addresses. *See* OB at 19-21. ***First***, the prior Antigua was not dismissed "for reasons not going to the merits," because it resulted in the Privy Council's final, merits decision. OB at 19. ***Second***, the prior Antigua action did not raise the same issues as this one. Instead, it was a "game changing" decision that paved the way for this action. Tr. at 49:18-19; *see* OB at 9-11. ***Third***, Plaintiffs were not parties to the prior Antigua action. *See* OB at 20-21. Defendants argue that the actions do not need to be identical, but merely cite to their prior argument based on inapposite cases. *See* AB at 34; *supra* pp. 15-16.[12]

Furthermore, even if *Gramercy* applied (it does not), it would not support dismissal. Defendants base their argument entirely on their flawed "overwhelming hardship" analysis. *See* AB at 34-35. They also fail to account for the large burden that litigating in Antigua would place on Plaintiffs, which decidedly supports Plaintiffs under *Gramercy*'s "neutral burden assessment." OB at 21.

[12] Defendants' only other case, *Lincoln Benefit Life Co. v. Wilmington Tr., N.A.*, involved the same parties litigating "identical action[s]" and the court considered only whether to stay the case after having previously declined to dismiss. 2019 WL 1307870, at *4-5 (Del. Super. Mar. 21, 2019).

II. THE COURT OF CHANCERY ERRED IN HOLDING IT LACKED PERSONAL JURISDICTION OVER THE INDIVIDUAL DEFENDANTS

A. The Individual Defendants Transacted Business in Delaware

The Individual Defendants transacted business in Delaware based on their directing Sinovac to bring the Delaware Action against 1Globe, transactions with the Vivo Defendants, and adopting the Rights Agreement. OB at 39-43

Defendants argue that there is never personal jurisdiction over corporate officers or directors "simply because" they "directed the corporation to take [an] act." AB at 38 (quoting *Ruggiero v. FuturaGene, plc.*, 948 A.2d 1124, 1134 (Del. Ch. 2008)). But when a director or officer uses the corporation to advance their personal interests, that supports personal jurisdiction. *See* OB at 42-43 (citing cases).[13] Defendants fail to distinguish these cases given their efforts to improperly take control of Sinovac and misappropriate billions of dollars from it. *See* AB at 39 n.8. The Individual Defendants' status as "imposter" directors since 2018 means that their actions cannot even be considered those of actual directors. *See* OB at 10-11. Plaintiffs have alleged specifically why the Individual Defendants' acts were taken for their personal interests, at the expense of Sinovac. *Id.* at 40-43.

[13] *Ruggiero*, in contrast, addressed whether milestones in a merger agreement were triggered and involved "absolutely no" actions taken for purely personal interests. 948 A.2d at 1129-30, 1135.

Defendants also argue that the Delaware Action "involved different parties, claims, and transactions." AB at 39. But that ignores the Court of Chancery's decision that the prior litigation supports personal jurisdiction over Sinovac. Ex. A ¶2. That decision is not at issue in this appeal and was supported by Plaintiffs' extensive arguments below. A1503-11.

Lastly, Defendants' due process argument does not add anything to the analysis. *See* AB at 40 (citing *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027 (Del. 2012) (personal jurisdiction adequately alleged)).

B. Personal Jurisdiction Exists Under the Conspiracy Theory of Jurisdiction

There is also personal jurisdiction over the Individual Defendants under the conspiracy theory of jurisdiction because they conspired with Sinovac, the Vivo Defendants, and each other. *See* OB at 43-45.

Defendants are wrong that this "was never pleaded." AB at 41-42. "This argument conflates a reasonable inference drawn from the pleaded facts with the pleaded facts themselves." *Leb. Cnty. Emps.' Ret. Fund v. Collis*, 311 A.3d 773, 804-05 (Del. 2023); *see also Grabski ex rel. Coinbase Glob., Inc. v. Andreessen*, 2024 WL 390890, at *7 (Del. Ch. Feb. 1, 2024) (same regarding plaintiff's legal theory).[14]

[14] Plaintiffs also could easily amend the Complaint on this theory because "leave to amend is freely given." *See NACCO Indus. v. Applica*, 2008 WL 2082145,

Defendants are also wrong that Plaintiffs have not alleged the basis for a conspiracy theory of jurisdiction under *Istituto Bancario Italiano SpA v. Hunter Eng'g Co.*, 449 A.2d 210 (Del. 1982). *See* AB at 41. While this basis for jurisdiction is described as a "conspiracy to defraud," it is "not limited to that particular tort." OB at 44 (quoting *In re Tilray, Inc. Reorganization Litig.*, 2021 WL 2199123, at *19 (Del. Ch. June 1, 2021)).

Next, Defendants argue that the Delaware Action does not suffice because a corporation cannot conspire with its officers or agents. AB at 41-42. But that is precisely what happened in *Matthew*, 56 A.3d at 1029-30. *See* OB at 45. Even Defendants' case recognized that "this general rule does not apply" where the defendant "acted for his own personal benefit." *LVI Grp. Invs., LLC v. NCM Grp. Holdings, LLC*, 2017 WL 3912632, at *2 (Del. Ch. Sep. 7, 2017). That is precisely what the Individual Defendants did here. *See supra* p. 20.

Defendants are also wrong that Plaintiffs have not adequately alleged that the Individual Defendants directed the Delaware Action. AB at 42. The Complaint alleges in detail how that litigation was a crucial part of the Individual Defendants' misconduct. *See* OB at 40-44. Defendants then argue that the Delaware Action is not sufficiently connected to Plaintiffs' claims. AB at 42-44. But all that the last *Istituto* factor requires is that the Delaware act at issue—the Delaware Action—"was a direct

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at *2 (Del. Ch. May 7, 2008).

and foreseeable result" of the conspiracy. *Istituto*, 449 A.2d at 225. At any rate, Plaintiffs have alleged that the Delaware Action was a crucial step in Defendants' scheme to control Sinovac and caused Plaintiffs substantial harm. *See* OB at 8-9, 11-13; A1336(¶15), A1371-74(¶¶124-32), A1381-84(¶¶148-53), A1393-94(¶¶176-77). Defendants' argument to the contrary ignores the Court of Chancery's ruling that it provided a basis for personal jurisdiction over Sinovac. *See supra* p. 21.

An independent basis for the conspiracy theory of jurisdiction is the Individual Defendants' actions with the Vivo Defendants, which are Delaware entities. *See* OB at 44. Defendants are wrong that Plaintiffs made only a "passing reference" to this theory below. Plaintiffs' brief made clear that this argument incorporated the earlier section of the brief discussing this issue as to Sinovac (A1513-14 (referencing A1509-10)) and repeated this point later on (A1516).

Defendants also wrongly assert that Plaintiffs have not identified the transactions with the Vivo Defendants that were part of the conspiracy. AB at 43. Plaintiffs have done just that. *See* OB at 35-36, 43-44.

CONCLUSION

Plaintiffs therefore respectfully request that the Court reverse the Court of Chancery's dismissal of this action on the grounds of *forum non conveniens* and its dismissal of the Individual Defendants for lack of personal jurisdiction.

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