EFiled: Jan 09 2026 04:54PM EST
Transaction ID 78165456
Case No. N25C-07-194 SKR

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

EMMANUEL MACRON and BRIGITTE MACRON, Plaintiffs, v. CANDACE OWENS, CANDACE OWENS LLC, and GEORGETOM, INC., Defendants.	C.A. No. N25C-07-194 SKR

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION TO DISMISS AND TO STRIKE THE FIRST AMENDED COMPLAINT

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Dated: January 9, 2026

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES & RULES

OTHER AUTHORITIES

INTRODUCTION

Plaintiffs' attempt to muzzle an American journalist through a contrived defamation suit not only tramples the First Amendment—it comprehensively fails as a matter law. Plaintiffs' opposition cannot correct several dispositive flaws in their pleading. Thus, this Court should dismiss with prejudice Plaintiffs' Amended Complaint for four reasons.

First, this Court lacks jurisdiction over Owens.[1] Notwithstanding Plaintiffs' belief that Delaware courts may exercise general jurisdiction over any person, anywhere, even if they lack any meaningful connection to the state, Delaware statutes—and due process principles—instruct otherwise. Plaintiffs similarly neglect to provide valid grounds to exercise specific jurisdiction.

Second, Plaintiffs' Amended Complaint impermissibly adds factual allegations that post-date Plaintiffs' original pleading in violation of Superior Court Civil Rule 15. Plaintiffs' opposition provides no legally cognizable basis for their improper supplementation.

Third, Plaintiffs cannot overcome Defendants' showing that Delaware's borrowing statute requires the Court to apply France's three-month statute of limitations. That flaw is fatal to all of Plaintiffs' claims.

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[1] Capitalized terms have the meanings given in Defendants' Opening Brief in Support of Their Motion to Dismiss and to Strike the First Amended Complaint (the "Opening Brief" or "Op.Br.").

Fourth, Plaintiffs' argument that this Court should hear this case—despite the state lacking any real connection to the case and Plaintiffs' concession that Delaware law does not apply—misapprehends the law of *forum non conveniens*. As such, the relevant *Cryo-Maid* factors favor dismissal.

ARGUMENT

I. PLAINTIFFS CANNOT MEET THEIR BURDEN TO ESTABLISH JURISDICTION

Plaintiffs concede it is their burden to establish jurisdiction under both Delaware statutory law and due process principles; however, they fail to meet this burden on any theory. Accordingly, this Court lacks personal jurisdiction over Owens.

A. No Valid Statutory Basis for Jurisdiction

1. Plaintiffs Fail to Establish General Jurisdiction Under Section 3104(c)(4)

As shown (Op.Br. 11–13), Owens is not subject to general jurisdiction under 10 *Del. C.* § 3104(c)(4).[2] Plaintiffs appear to assert that Owens may be sued in Delaware for any tort committed *outside* the state. That is absurd.

[2] Plaintiffs' assertion that "Owens does not meaningfully dispute that she is subject to general jurisdiction under Section 3104(c)(4)" is bizarre, and it is belied by the many pages (Opp. 13–17) in which *Plaintiffs oppose* Owens's general jurisdiction arguments.

To establish general jurisdiction, Plaintiffs must demonstrate that Owens has a "general presence" in Delaware. *Comput. People, Inc. v. Best Int'l Grp., Inc.*, 1999 WL 288119, at *7 (Del. Ch. Apr. 27, 1999). Plaintiffs can neither make such a showing, nor establish any of the "limited set of affiliations with a forum [that] will render a defendant amenable to all-purpose jurisdiction there," which "each ordinarily indicate[] only one place" (for individuals, their "domicile"). *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014).

First, Plaintiffs assert the Court's general jurisdiction over Owens on the ground that she "regularly conducts or solicits business in Delaware," because she owns and manages Delaware entities. (Opp. 14.) Not so. "[D]oing business in Delaware [is] insufficient to confer general jurisdiction in Delaware over a dispute that is otherwise unknown to this state." *Rosado v. State Farm Mut. Auto. Ins. Co.*, 2020 WL 3887880, at *2 (Del. Super. July 9, 2020) (internal quotation marks omitted); *SDF Funding LLC v. Fry*, 2022 WL 1521309, at *2 n.7 (Del. Ch. May 13, 2022) (forming Delaware entities does not establish general jurisdiction).

Second, Plaintiffs assert general jurisdiction exists because Owens—"through her business entities"—"contract[s] with" various Delaware entities not headquartered in Delaware. (Opp. 14.) But no authority supports this theory: merely contracting with Delaware entities is insufficient to establish specific—much less general—jurisdiction.[3] *See Abajian v. Kennedy*, 1992 WL 8794, at *10 (Del. Ch. Jan. 17, 1992) (contracting with Delaware entities "does not . . . support a finding of jurisdiction").

Third, Plaintiffs claim that "Owens derives substantial revenue from Delaware." (Opp. 15.) Again, this claim is factually unsupported, and it improperly conflates Owens with the other Defendants. Indeed, Plaintiffs do not allege that Owens herself derives *any* revenue from Delaware. *See Kabbaj v. Simpson*, 2013 WL 2456108, at *8 (D. Del. June 6, 2013) (declining to exercise jurisdiction absent any "factual basis supporting that a substantial number of defendant's books are sold and shipped regularly to this forum").

Fourth, Plaintiffs do not dispute that Owens has never owned any Delaware real estate (Owens Aff. ¶ 4); that she does not reside in Delaware (*Id.* ¶ 3); or that she does not conduct business in Delaware (*Id.* ¶ 5). Instead, they rely on her purported contracts, revenue, and ownership of Delaware companies without alleging any conduct by Owens that occurred here. Plaintiffs' claims also are based on statements allegedly made on Owens's podcast, which is broadcast from Tennessee. (Am. Compl. ¶¶ 2, 11, 13; Owens Aff. ¶¶ 12, 13.) That is insufficient.

[3] Nor does unrelated litigation in Delaware establish the Court's general jurisdiction over Owens. (Opp. 14.) Plaintiffs provide no legal authority to the contrary. Under Plaintiffs' theory, anyone could sue the *Macrons* in Delaware—for torts the Macrons commit anywhere else in the world—because the Macrons have filed this litigation here. That is nonsense.

See Ross v. Earth Movers, LLC, 288 A.3d 284, 296 (Del. Super. 2023) ("Not only is there no 'persistent course of conduct in Delaware,' there is no conduct directed at or in Delaware at all.").

Lastly, Plaintiffs argue that anyone who operates a website through a Delaware entity subjects themselves to general jurisdiction here. That is wrong: "maintain[ing] a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction." *Rotblut v. Terrapinn, Inc.*, 2016 WL 5539884, at *6 (Del. Super. Sept. 30, 2016) (citation omitted).[4]

2. Plaintiffs Cannot Demonstrate Long-Arm Jurisdiction—Sections 3104(c)(1), (3)

Nor can Plaintiffs demonstrate long-arm jurisdiction. Plaintiffs' assertion that "Owens has not contested Plaintiffs' well-pleaded [jurisdictional] allegations" (Opp. 9.), and therefore has conceded them, fails. Once Owens moved to dismiss on jurisdictional grounds, it became *Plaintiffs*' burden to "show[] that the court has personal jurisdiction over [her]." *Newspan, Inc. v. Hearthstone Funding Corp.*, 1994 WL 198721, at *3 (Del. Ch. May 10, 1994). Owens need not have anticipated in her Opening Brief every jurisdictional theory Plaintiffs might raise. *See Anew Ventures II, LLC v. Terra Glob. Inv. Mgmt., LLC*, 2025 WL 3188312, at *4 n.41

[4] Plaintiffs' reliance on *LaNuova* is misplaced; that (pre-*Daimler*) case does not relate to maintaining a website but rather involved an "intentional and consumer-directed" presence in Delaware. *LaNuova D&B, S.p.A. v. Bowe Co.*, 513 A.2d 764, 770 (Del. 1986).

(Del. Super. Nov. 14, 2025) ("[T]he purpose of the reply brief is to respond to matters raised in the answering brief. The point of the rule [against new arguments on reply] is to prevent sandbagging, not require movants to anticipate their opponents' arguments."). Regardless, Owens *did* contest Plaintiffs' asserted factual bases for jurisdiction (Op.Br. 9–21), and Plaintiffs' new theories under Section 3104 fail for the same reasons.

As to Section 3104(c)(1): Plaintiffs allege that Owens "contract[s] with Delaware entities and s[ells] things consumed in Delaware." (Am. Compl. ¶ 19.) As shown (*supra* Section I.a.1), contracting with Delaware entities is insufficient. Further, "for this Court to exercise jurisdiction under Section 3104(c)(1), some act must actually occur in Delaware." *Mobile Diagnostic Grp. Hldgs., LLC v. Suer*, 972 A.2d 799, 804 (Del. Ch. 2009) (cleaned up). But here, Plaintiffs allege no act by Owens in Delaware. *Cf. Hartsel v. Vanguard Grp., Inc.*, 2011 WL 2421003, at *14 (Del. Ch. June 15, 2011) (rejecting jurisdiction under Section 3104(c)(3) where "none of the acts by the Individual Defendants alleged to have caused injury . . . took place in Delaware").

Moreover, the "mere formation of a Delaware entity, without more, is insufficient for [a] Court to exercise jurisdiction," *Lone Pine Resources, LP v. Dickey*, 2021 WL 2311954, at *5 (Del. Ch. June 7, 2021) (citation omitted), and Plaintiffs show no "nexus between the formation of the Delaware entit[ies] and the cause of action asserted." *Terramar Retail Ctrs., LLC. v. Marion #2-Seaport Tr. U/A/D/ June 21, 2002*, 2017 WL 3575712, at *5–6 (Del. Ch. Aug. 18, 2017). A "nexus" exists when the entity's *formation* "is an integral component of the conduct giving rise to the cause of action" or "set in motion a series of events which form the basis for the cause of action" at issue. *Id.* at *6 (citations omitted). In Plaintiffs' *Terramar* case, "[c]reating the [Delaware entity] was necessary both to complete the transaction and to give effect to the contract" that formed the basis of the litigation. *Id.* at *7; *see also AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus.*, 871 A.2d 428, 440 (Del. 2005) (jurisdiction based on Delaware entity appropriate where it was created "for the express purpose of facilitating private equity investments in the United States, including Delaware," and entity's Delaware-focused conduct was the subject of suit); *SDF Funding*, 2022 WL 1521309, at *2 ("[T]he Delaware entity must have been formed *for the purpose* of engaging in the challenged transaction."). Here, however, as Plaintiffs concede, the entity defendants were formed years before Owens made any of the challenged statements (*see* Humphrey Aff. Ex. F), and their formation has nothing to do with Plaintiffs' claims. Accordingly, Section 3104(c)(1) is no basis for jurisdiction here.[5]

[5] Plaintiffs cite *Albert*, but there, unlike here, managers of a Delaware entity were sued "for their actions in managing the Delaware entity." *Albert v. Alex. Brown Mgmt Servs., Inc.*, 2005 WL 2130607, at *16 (Del. Ch. Aug. 26, 2005).

As to Section 3104(c)(3), Plaintiffs allege Owens "caused [them] reputational and other injury in the State through her tortious conduct of publishing and distributing the Series and related X posts for Delaware citizens and residents to view through Delaware entities." (Am. Compl. ¶ 19.) Plaintiffs, however, do not allege Owens committed any relevant conduct *in Delaware*, and Section 3104(c)(3) jurisdiction exists only "if the plaintiff demonstrates that the non-resident defendant has caused a tortious injury in Delaware *and* such injury was due to an act or omission by the defendant in Delaware." *Rotblut*, 2016 WL 5539884, at *5 (citation omitted). Thus, "for *a [defamation] defendant* to be subject to Section 3104(c)(3), [she], or [her] agent, *must have been present in Delaware* when the article was written or published." *Id.* at *7 (emphasis added). Plaintiffs cannot allege that Owens was present in Delaware or acted here, as all "publishing and distributing" occurred in Tennessee.

That Owens's posts and statements are accessible from Delaware (Opp. 12–13) or that purchases from Delaware are not prohibited (Humphrey Aff. Ex. A) does not support personal jurisdiction. *See, e.g.*, *Rotblut*, 2016 WL 5539884, at *6 ("Holdings' knowledge that its website may be viewed in Delaware or accessed by Delaware residents is not sufficient to establish jurisdiction under Section 3104(c)(3)."); *Kane v. Coffman*, 2001 WL 914016, at *5 (Del. Super. Aug. 10, 2001) ("[A]n internet posting made from outside the state and received by a party inside the state also fails to provide sufficient minimum contacts to allow this Court to exercise jurisdiction . . . via § 3104(c)(3).”); *Ciabattoni v. Teamsters Local 326*, 2016 WL 4442277, at *5 (Del. Super. Aug. 22, 2016) (“Plaintiff does not allege [defendant] was ever physically present in Delaware, let alone that the Facebook posts were posted while [defendant] was in Delaware. There is no evidence that [defendant] ever ‘acted’ in Delaware.”); *Kabbaj*, 2013 WL 2456108, at *7 (“The mere ability to access the postings from one’s computer does not confer personal jurisdiction.”). For example, *Cytotheryx, Inc. v. Castle Creek Biosciences, Inc.* recently rejected jurisdiction for defamation claims based on a press release published in the Delaware category of a website because defendants must “be physically present in Delaware while making defamatory statements” to support jurisdiction. 2025 WL 3142373, at *9 (Del. Ch. Nov. 10, 2025). Owens was not in Delaware when the statements were made, nor do Plaintiffs allege that any Delaware resident was defamed.

3. Plaintiffs’ Agency Allegations Do Not Change the Analysis.

For the first time, Plaintiffs now assert the entity defendants are “agents” of Owens. Yet in Delaware, “[a] plaintiff has the burden to plead facts establishing a court’s personal jurisdiction in its complaint,” *Boissonneault v. Delaware Podiatric Medicine, P.A.*, 2025 WL 2782379, at *3 (Del. Super. Sept. 26, 2025), and “[a] party cannot amend his pleading through briefing a motion to dismiss,” *Cushing v.*

Holowaty, 2025 WL 3554601, at *5 (Del. Super. Dec. 11, 2025). Plaintiffs made no agency allegations in their Amended Complaint, and the Court should reject their attempt to do so through briefing.

Plaintiffs' agency argument also fails substantively. Even if the entity defendants were Owens's agents, they still cannot subject Owens to jurisdiction here. *EBG Holdings LLC v. Vredezicht's Gravenhage 109 B.V.*, 2008 WL 4057745, at *11 (Del. Ch. Sept. 2, 2008) ("As theories of indirect jurisdiction, the underlying question on both theories is whether the subsidiary's actions satisfy § 3104 of the long-arm statute.").

Further, Plaintiffs have failed to establish agency. "Establishing [a] corporation was acting as the director's agent or alter ego is tantamount to piercing the corporate veil." *Microsoft Corp. v. Amphus, Inc.*, 2013 WL 5899003, at *10 n.40 (Del. Ch. Oct. 31, 2013). None of Plaintiffs' allegations supports such a finding. *See Fitzgerald v. Cantor*, 1999 WL 182575, at *1 (Del. Ch. Mar. 25, 1999) (rejecting agency theory where allegations "in no way support a finding that Cantor or Fisher consented to have MDC act on their behalf in the sense of a principal-agent relationship," and noting that "a corporation . . . is not the agent of a person who can direct its conduct because she holds a majority of its voting shares of stock. Likewise, a corporation is not the agent of a person who can direct its conduct because of his position as Chief Executive Officer of that corporation."). The

Macrons do not allege Owens consented to the entity defendants' acting on her behalf in a "principal-agent relationship." *See id.* Moreover, the mere fact that Owens directs these entities does not make them her agents. *Id.*

Even if the entity defendants *were* Owens's agents, Plaintiffs do not allege a single act in Delaware, as required by both Sections 3104(c)(1) and 3104(c)(3). This contrasts sharply with *Cuppels v. Mountaire Corp.*, 2020 WL 3414848, at *8 (Del. Super. June 18, 2020), where the "contacts with the State . . . were numerous and purposeful."

4. This Court May Not Consider Plaintiffs' Alter Ego Arguments.

Plaintiffs claim they "can satisfy the long-arm [*sic*] by showing that an individual is the alter ego of a Delaware entity with significant contact with the State." (Opp. 18.) This argument fails: "Because the Delaware Court of Chancery has sole subject matter jurisdiction over actions to 'pierce the corporate veil,' this Court cannot properly exercise personal jurisdiction . . . under an alter ego theory." *Yu v. GSM Nation, LLC*, 2018 WL 2272708, at *6 (Del. Super. Apr. 24, 2018). This Court lacks jurisdiction to consider Plaintiffs' alter ego theory.

5. Plaintiffs Cannot Demonstrate Manager Consent Jurisdiction Over Owens—Section 18-809

Plaintiffs' Section 18-109 arguments fail for five reasons:

First, Plaintiffs concede their failure to effect service under Section 18-109, defeating their jurisdictional argument from the start. (Opp. 24–25; Op.Br. 13–14.)

Second, Plaintiffs cite *Hazout v. Tsang Mun Ting*, 134 A.3d 274 (Del. 2016), to no avail, as *Hazout* concerns a different statute.[6]

Third, Plaintiffs do not explain or allege how their claims deal with the internal affairs of Candace Owens LLC.

Fourth, Plaintiffs do not explain or allege how Owens made purportedly defamatory statements in her formal capacity as a manager of Candace Owens LLC.

Fifth, Plaintiffs cannot distinguish well-settled law in this area. *Vichi v. Koninklijke Philips Electronics N.V.* ruled that claims fall outside the scope of Section 18-109 where they do not "relate to the rights, duties and responsibilities [the defendant] owes to [the LLC], or in any other way to the internal business affairs of [the LLC] or to the running of [the LLC's] day-to-day operations." 2009 WL 4345724, at *8 (Del. Ch. Dec. 1, 2009). Similarly, because Plaintiffs challenge Owens's conduct independent of Candace Owens LLC,[7] Section 18-109 does not apply. (*See, e.g.*, Op.Br. at 15–17 (citing cases).)

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[6] These statutes are not interchangeable: "§ 18-109 does not include the 'necessary or proper party' language found in § 3114." *Assist Stock Mgmt. L.L.C. v. Rosheim*, 753 A.2d 974, 980 (Del. Ch. 2000) (citation omitted).

[7] The Macrons do not allege, for example, that Owens claimed to make her statements "on behalf of Candace Owens LLC."

6. Plaintiffs Cannot Demonstrate Director Consent Jurisdiction Over Owens—Section 3114

Plaintiffs' argument under 10 *Del. C.* § 3114 likewise fails. (Opp. 25.) Plaintiffs did not serve Owens under Section 3114, precluding jurisdiction under that statute. (*See* Op.Br. 13–14.) Further, under Section 3114, Owens must be either an officer (of a specific type) or a director of Georgetom, Inc. 10 *Del. C.* § 3114. Merely "maintain[ing] control over Georgetom" (Opp. 25.) is insufficient to trigger the statute, and Plaintiffs allege only that Owens is Georgetom's "member or manager." (Am. Compl. ¶ 13.)

Even if Plaintiffs' allegations triggered Section 3114, *Hazout* is unavailing, as "only claims that involve conduct by the nonresident fiduciary using [her] corporate power will make [her] a necessary or proper party." 134 A.3d at 289. Plaintiffs do not allege that Owens exercised her power as Georgetom's fiduciary to make the statements challenged here. By contrast, in *Hazout*, "the claims against Hazout involve[d] his actions in his official capacity of negotiating contracts that involved the change of control of a Delaware public corporation," and the contracts chose Delaware law. *Id.* at 293. Thus, even if Plaintiffs had served Owens under Section 3114, that statute could not sustain personal jurisdiction over her.

B. Jurisdiction Over Owens Would Not Satisfy Due Process.

Even if some statutory basis for personal jurisdiction over Owens existed, due process would not allow jurisdiction here.[8] As discussed in the Opening Brief, Plaintiffs cannot meet the "minimum contacts" requirement, and every action relevant to Plaintiffs' claims occurred in Tennessee. The entity defendants' formation under Delaware law also is not enough to satisfy due process for *Owens*.

First, Plaintiffs ignore Delaware law regarding online presence. In *Rotblut*, now-Justice LeGrow held that "knowledge that [a] website may be viewed in Delaware or accessed by Delaware residents is not sufficient to establish [personal] jurisdiction." 2016 WL 5539884, at *6. Plaintiffs have made no factual showing, as they must to prevail, that Owens's statements were targeted towards Delaware. *See id.* (noting lack of evidence that defendant "targeted the contents of its website toward Delaware . . . rather than North America generally").

That Delaware residents can interact with www.candaceowens.com does not matter: postings must have "specifically targeted readers who are physically located in Delaware, not merely generally directed to readers world-wide." *Kabbaj*, 2013 WL 2456108, at *9. Plaintiffs do not allege that Owens made defamatory statements about a Delaware resident, and accordingly, due process is not satisfied merely by

[8] Plaintiffs' arguments about "fairness" (Opp. 22–23) should be disregarded. *Plaintiffs* chose to sue a Tennessee resident in Delaware court over statements made in Tennessee.

Owens's online presence: "defendant in blogs and other Internet sites directed [her] comments and writings to a world-wide audience, which is inadequate to meet due process requirements." *Id.* Owens also never spoke about anyone (let alone a Delaware plaintiff) "*while in Delaware*." *See Ciabattoni*, 2016 WL 4442277, at *7 ("While Plaintiff, a Delaware resident, was often a topic of conversation on the Facebook page, and there may have been Delaware-specific content posted thereon, this is insufficient to confer personal jurisdiction over [defendant] where the record is devoid of any evidence that the writings were posted, by him or anyone else, *while in Delaware*.").

Second, Plaintiffs cannot satisfy Section 18-109's three-part test, as the claims here do not focus on Owens's "rights, duties and obligations as a manager" of Candace Owens LLC. *See Ramco Asset Mgmt., LLC v. USA Rare Earth, LLC*, 2023 WL 6939263, at *5 (Del. Ch. Oct. 20, 2023) (referencing the three-part test in "consider[ing] whether the allegations are consistent with the statutory waiver and construed sufficiently narrowly to comply with due process") (citation and quotation marks omitted); *Hartsel*, 2011 WL 2421003, at *9 ("Plaintiffs' claims do not involve or relate to [the LLC's] business in the sense of its internal business as required by the statute and the Due Process Clause.").

Third, *Hazout* makes clear that due process is not satisfied here because, among other things, "Delaware's status as the state of incorporation had no rational connection to the cause of action" and "the underlying conduct and claims have no rational connection to Delaware." 134 A.3d at 291 n.60. Judge Winston's recent decision in *Cytotheryx* makes a similar point, identifying eight factors that do not support jurisdiction here (including that the statements at issue were made in Tennessee by a Tennessee resident[9] and no Delaware law-governed contract is at issue[10]). *See* 2025 WL 3142373, at *11.

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Because Plaintiffs fail to allege any relevant contacts between Owens and Delaware, exercising personal jurisdiction over her would violate due process. Thus, she must be dismissed under Rule 12(b)(2).

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[9] Unlike in *Lead Stories*, the analysis here focuses on the claim against the alleged speaker of the defamatory statements, not the website operator. *Owens v. Lead Stories, LLC*, 2021 WL 3076686, at *7 (Del. Super. July 20, 2021), *aff'd*, 273 A.3d 275 (Del. 2022) (TABLE).

[10] *FeraDyne Outdoors, LLC v. Reaser* does not support jurisdiction here for these reasons and because there, the underlying claim concerned actions taken in the defendant's official capacity. *See* 2025 WL 1503810, at *16 (Del. Super. Apr. 10, 2025) (noting that "the claims relate to [manager's] actions in his official capacity of negotiating a contract under which the Delaware LLC acquired the business of other companies" that "contains a Delaware governing law provision and a Delaware forum selection clause"); *see also 2009 Caiola Fam. Tr. v. PWA, LLC*, 2014 WL 7232276, at *7 (Del. Ch. Dec. 18, 2014) ("[B]ecause Katz voluntarily undertook to manage a Delaware limited liability company, received benefits for so doing, and now is accused of causing damage to Plaintiffs arising directly out of his management of the Company, it is reasonable and comports with due process to require him to answer for that alleged wrongdoing in this Court.").

II. THE AMENDED COMPLAINT SHOULD BE STRICKEN

As demonstrated in Defendants' Opening Brief, Plaintiffs unilaterally filed their Amended Complaint without leave and impermissibly included allegations that post-date their original complaint. (Op.Br. 21–23.) Plaintiffs provide no legally cognizable basis for their improper supplementation, and their new allegations should be stricken as a result.[11]

Plaintiffs first argue that leave was not required because their supplemental allegations are "indicative of [Owens'] state of mind ... at the time of publication" and pertain to actual malice. (Opp. 32.) This contravenes Delaware law. As shown (Op.Br. 22–23), actual malice must be assessed based on what a declarant knew at the time of publication. Here, the original complaint concerned statements occurring between **January 31 and February 20, 2025** (Am. Compl. ¶¶ 305–690), whereas Plaintiffs' supplemental allegations concern conduct occurring over **six months later, on September 4, 2025** (*id.* ¶¶ 189–232). Plaintiffs' supplemental allegations cannot, as a matter of law, be relevant to actual malice.

[11] Without citation, Plaintiffs claim that "Rule 15(a)'s grant of an automatic amendment" applies equally to Rule 15(d). (Opp. 30.) To the contrary, Rule 15 provides a distinct procedural mechanism for "supplemental pleadings," requiring that they "be filed **only with leave of court**." *Pella Corp. v. Am. Cas. Co. of Reading, P.A.*, 2012 WL 1408855, at *1 (Del. Super. Mar. 14, 2012) (emphasis added); *Citron v. Lindner*, 1985 WL 44689, at *1 (Del. Ch. Nov. 14, 1985) (same).

Plaintiffs' contrary claim (Opp. 30) belies common sense, and their legal authority does not support using evidence after an allegedly defamatory publication to establish contemporaneous actual malice.[12] Plaintiffs also claim supplementation was proper because the Amended Complaint asserts "no new causes of action." (Opp. 32–34). Rule 15, however, makes no mention of "causes of actions," and no Delaware court—including *Pella*—has cabined Rule 15 as Plaintiffs suggest.[13]

Finally, Plaintiffs argue that a single paragraph of jurisdictional allegations—nestled among *several hundred* new factual allegations—renders their supplementation proper. (Opp. 29.) Plaintiffs offer no legal authority to support that claim, however, and as shown (Op.Br. 9–21; *supra* Section I), Plaintiffs' new jurisdictional allegations are futile.

At any rate, the balance of Plaintiffs' supplemental allegations does not concern jurisdictional issues, violate Rule 15(d), and should be stricken. *See Pella*,

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[12] *Nunes v. Lizza*, 12 F.4th 890, 900–01 (8th Cir. 2021) merely suggests that "republication" of a defamatory statement after the declarant has notice of its falsity may support an inference of actual malice for claims based on *republication*, not the original publication. As for *Dominion v. Fox News Network*, 293 A.3d 1002 (Del. Super. 2023), and *Dominion v. Newsmax*, 2025 WL 1092289 (Del. Super. Apr. 9, 2025), both consider evidence of actual malice *at the time the statements were made*, and neither case relies on evidence arising six months after the statements at issue.

[13] Plaintiffs' assertion (Opp. 32–33) that the *Pella* Court deemed a complaint supplemental *solely* because it added "an entirely new claim" is wrong. 2012 WL 1408855, at *1. In fact, the pleading was deemed supplemental because it alleged "transactions or occurrences or events which have happened since the date of the original complaint," just as Plaintiffs do here. *See id*, at *2 (citation omitted).

2012 WL 1408855, at *2–3 (permitting "amended" facts pre-dating complaint while striking "supplemented" facts post-dating complaint). Further, Plaintiffs' footnoted request for leave to refile as a supplemental pleading should be denied, both as procedurally improper and as requesting futile relief: even if properly submitted, the supplemental allegations are legally irrelevant to the claims at issue here.

III. PLAINTIFFS' CLAIMS ARE TIME-BARRED.

As shown (Op.Br. 23–29), Delaware's borrowing statute requires dismissal of Plaintiffs' claims because Plaintiffs' claims arose in France, and France's three-month limitations period for defamation is shorter than Delaware's two-year period. Plaintiffs' claims are thus time-barred.

Plaintiffs offer no cognizable grounds on which the Court may find otherwise. Further, no policy or doctrine—including the First Amendment—permits Plaintiffs to ignore Delaware's borrowing statute, particularly where, as here, dismissal comports with the statute's intended purpose.

A. The Borrowing Statute Requires Dismissal.

As shown, Delaware courts applying the borrowing statute first determine where the claims at issue arose and then apply the shorter of the potentially applicable limitations periods. (Op.Br. 24.) Plaintiffs do not dispute this analytical framework. Instead, they argue that their claims "arose" in Tennessee. (Opp. 39–40.) Plaintiffs are wrong.

To determine where a claim "arises," Delaware courts rely on (1) the "body of case law surrounding substantive choice of law determinations," *Dymond v. National Broadcasting Co.*, 559 F. Supp. 734, 737 (D. Del. 1983), and (2) the Restatement (Second) of Conflicts of Law. *Stephen G. Perlman, Rearden LLC v. Vox Media, Inc.*, 2015 WL 5724838, at *10 (Del. Ch. Sept. 30, 2015). Under both the *Second Restatement* and caselaw, for multistate defamation actions, "the local law of the state of the plaintiff's domicile applies unless, *with respect to the particular issue*, one of the other states has a more significant relationship to the occurrence and the parties." *Johnson v. Warner Bros. Ent.*, 2017 WL 588714, at *3 (D. Del. Feb. 14, 2017) (emphasis added). That rule applies "because 'defamation produces a special kind of injury that has its principal effect among one's friends, acquaintances, neighbors and business associates in the place of one's residence.'" *Aoki v. Benihana, Inc.*, 839 F. Supp. 2d 759, 765 (D. Del. 2012) (quoting *Fuqua Homes, Inc. v. Beattie*, 388 F.3d 618, 622 (8th Cir. 2004)). To overcome this presumption, a party must demonstrate that another state has "a greater interest in the determination of the particular issue." Restatement (Second) of Conflict of Laws § 150, cmt b.

Here, Plaintiffs reside and are domiciled **in France**. They also serve as the President and First Lady of France, meaning the "principal effect" of any purportedly defamatory statements would necessarily be felt there, where they and their constituents reside. *See Nunes v. Cable News Network, Inc.*, 31 F.4th 135, 145 (2d Cir. 2022) (noting the presumption that plaintiff "suffered the *greatest* harm in his home state . . . among [the] constituents who" elected him). Indeed, Plaintiffs themselves invoke purported "damage [to] the election hopes" of Macron *in France* (Am. Compl. ¶ 22 n.8) and complain about the President's discussion of this case with journalists "in Paris" (*id.* ¶ 299).

Plaintiffs do not dispute that they suffered their alleged injuries in France, instead arguing that a plaintiff's domicile is given less weight in multi-state defamation suits. (Opp. 39.) But Plaintiffs misstate Delaware law,[14] which confirms that multi-state defamation claims presumptively arise where the plaintiff resides. *See, e.g.*, *Schmidt v. Wash. Newspaper Publ'g Co.*, 2019 WL 4785560, at *3–4 (Del. Super. Sept. 30, 2019) (noting presumption that statute of limitations of plaintiff's

[14] Plaintiffs cite only two cases where the presumption was overcome, but in both cases—unlike here—the plaintiff's domicile was disputed. *See Sarver v. Chartier*, 813 F.3d 891, 898 (9th Cir. 2016); *Evans v. TheHuffingtonPost.com, Inc.*, 2023 WL 5275383, at *3 (D. Del. Aug. 16, 2023). Plaintiffs also repeatedly cite *US Dominion, Inc. v. Newsmax Media, Inc.*, 2025 WL 211497 (Del. Super. Jan. 16, 2025), but that case defeats Plaintiffs' argument: that court applied the law of the plaintiff's domicile, despite that the "overwhelming bulk" of the defamatory statements were made in a different state. *Id.* at *5.

domicile applies to multi-state defamation action); *Johnson*, 2017 WL 588714, at *3–4 (same); *Vox Media*, 2015 WL 5724838, at *11 (same).[15]

To rebut this presumption, Plaintiffs were required to show that a jurisdiction *other than* France has a more significant interest in applying its statute of limitations. *Johnson*, 2017 WL 588714, at *3. Without any legal support, Plaintiffs claim Tennessee has a more significant interest than France in applying its statute of limitations because the purportedly defamatory statements were made in Tennessee (where Owens is domiciled). Opp. 40. As Delaware courts have repeatedly held, however, a mere discrepancy between the location from which an allegedly defamatory statement was published and plaintiff's domicile will not rebut the presumption that the limitations period of plaintiff's domicile applies. *See, e.g.*, *Triestman*, 2020 WL 1450562, at *3; *Schmidt*, 2019 WL 4785560, at *4.

Plaintiffs' theory also misapprehends the interests courts consider when determining which statute of limitations applies. Statutes of limitation "represent a pervasive legislative judgment that it is unjust to fail to put the adversary on notice to defend within a specified period . . . and although affording plaintiffs what the legislature deems a reasonable time to present their claims, **they protect defendants and the courts**." *United States v. Kubrick*, 444 U.S. 111, 117 (1979) (emphasis

[15] *See also Triestman v. Slate Grp., LLC*, 2020 WL 1450562, at *2–3 (D. Del. Mar. 25, 2020) (same); *Grubbs v. Univ. of Del.*, 2015 WL 13873268, at *2 (D. Del. Nov. 30, 2015) (same).

added). Accordingly, because statutes of limitations exist to protect defendants, Tennessee has no interest in exposing its citizen *defendants* to a longer statute of limitations—let alone an interest sufficient to overcome the presumption that Plaintiffs' claim "arose" where they are domiciled and serve in public office. Plaintiffs' theory that Tennessee has some overriding interest in allowing French plaintiffs to exploit Tennessee's longer limitations period when suing Tennessee citizens belies common sense. France's three-month limitations period applies here, and it bars all of Plaintiffs' claims. (Op.Br. 23–24.)[16]

B. The Borrowing Statute Applies to Prevent Plaintiffs' Forum Shopping.

Unable to overcome this straightforward application of Delaware's borrowing statute, Plaintiffs argue its application here would contravene its purpose because Plaintiffs are "not" forum shopping. (*See* Op.Br. 35–36.) Plaintiffs' position is absurd: the President and First Lady *of France*, who have no apparent connection to Delaware, have brought a "foreign cause of action" that arose *in France*,[17] seeking

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[16] (*See* Op.Br. 26; Dreyer Decl. ¶¶ 22–32.) Plaintiffs do not contest that France's limitations period is three months (*see* Opp. 34–40 (failing to contest same)) and have thus conceded the point. *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived.").

[17] Plaintiffs' assertion their claims are "uniquely American" because they have "assert[ed] defamation claims under United States defamation law" (Opp. 36), is squarely contradicted by applicable caselaw. *See, e.g.*, *Pack v. Beech Aircraft Corp.*, 132 A.2d 54, 57 (Del. 1957) (clarifying that borrowing statute was intended to shorten the limitations period "applicable to *actions arising in foreign*

redress for alleged loss of business opportunities, reputational harm, and diminished election hopes *in France*. (*See* Op.Br. 26.) Nevertheless, Plaintiffs sued in Delaware, a jurisdiction that: (1) is not where the statements were made, and (2) has nothing to do with either the statements or the alleged harm resulting therefrom. Plaintiffs also do not allege that they felt any harm in Delaware, or that they have property or business interests in Delaware, or even that they have set foot in the state. Manifestly, Plaintiffs chose to bring their claims in Delaware—and attempt to ignore the State's borrowing statute—to evade France's shorter limitations period. (Op.Br. 29.)[18]

In short, this lawsuit is quintessential forum shopping—the very harm Delaware's borrowing statute is intended to prevent. *See Frombach*, 236 A.2d at 365 ("If a non-resident chooses to bring a foreign cause of action into Delaware for enforcement, he must bring the foreign statute of limitations along with him.") (citation modified). And, in any event, Delaware courts have rejected Plaintiffs' argument the borrowing statute has some unwritten requirement that it apply only where the plaintiff is forum shopping: "[A]ny greater alteration to the statute, such as limiting its application solely to situations where there is evidence of forum

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jurisdictions," or "foreign cause[s] of action") (emphasis added); *Frombach v. Gilbert Assocs.*, 236 A.2d 363, 365–66 (Del. 1967) (same).

[18] Notably, Plaintiffs' Opposition also ignores that a French court dismissed defamation claims that Plaintiffs brought against other journalists based on similar statements to those at issue here. (Dreyer Decl. ¶ 15.)

shopping, is the province of the Legislature." *TrustCo Bank v. Mathews*, 2015 WL 295373, at *8 (Del. Ch. Jan. 22, 2015).

Further, *Saudi Basic IndustriesCorp. v. Mobil Yanbu Petrochemical Co.*, 866 A.2d 1, 17–18 (Del. 2005), relied on by Plaintiffs (Opp. 36), in fact only confirms that Delaware's borrowing statute requires the application of the French limitations period under these circumstances. In *Saudi*, plaintiff SABIC (a Saudi Arabian corporation) sought a declaratory judgment that it had not breached a contract with ExxonMobil in Delaware. 866 A.2d at 10. The Court rejected SABIC's attempt to dismiss ExxonMobil's claim as time-barred under Delaware's shorter statute of limitations. Affirming the trial court's analysis, the Delaware Supreme Court ruled that because SABIC had brought a declaratory suit in Delaware to avail itself of a shorter limitations period for ExxonMobil's damages claims, applying the borrowing statute to bar Exxon's counterclaims "would subvert the statute's underlying purpose":

> Under [the] "standard scenario," the borrowing statute operates to prevent the plaintiff from circumventing the shorter limitations period mandated by the jurisdiction where the cause of action arose.
>
> …
>
> Here, . . . [g]iven the nature of SABIC's affirmative claim for declaratory relief, ExxonMobil was entitled to assert its overcharge causes of action as counterclaims for damages. In these circumstances, as the trial judge found,

> the party that was "shopping for the most favorable forum" was SABIC, not ExxonMobil.

Id. at 16–17. Plaintiffs also ignore the decisions rejecting their theory and limiting *Saudi* to its facts, a plaintiff seeking declaratory relief to deprive an opponent of otherwise timely counterclaims[19]—a limited exception that is inapplicable here. *Id.* at 17.

Here, Plaintiffs' Amended Complaint fits neatly into the "standard" forum shopping scenario described in *Saudi*: "a claim in a Delaware court that (i) arises under the law of [France] and (ii) is barred by that jurisdiction's statute of limitations but would not be time-barred in Delaware." *Id.* at 16. Thus, *Saudi* confirms that the Macrons should be "prevent[ed] from circumventing the shorter limitations period mandated by" France. *Id.* at 16–17.

[19] *See, e.g.*, *Rumbo v. Am. Med. Sys., Inc.*, 2021 WL 1694733, at *4 & n.39 (Del. Super. Apr. 29, 2021), *aff'd*, 277 A.3d 295 (Del. 2022) (TABLE) ("[T]he *Saudi Basic* Court crafted an exception to the borrowing statute to disallow plaintiff from avoiding counterclaims by choosing Delaware as the forum."); *TrustCo*, 2015 WL 295373, at *8 ("[*Saudi*] has been read as delivering a fairly narrow holding . . . . Presumptively, therefore, the Borrowing Statute does apply when a plaintiff's cause of action arose out of state, irrespective of whether the plaintiff is forum shopping."); *Huffington v. T.C. Grp., LLC*, 2012 WL 1415930, at *9 (Del. Super. Apr. 18, 2012) ("*Saudi Basic* did not create a broad rule banning the use of the borrowing statute in all situations except for the 'typical' scenario. Rather, it demonstrates the Delaware Supreme Court's unwillingness to allow the borrowing statute to be abused by a party shopping for a forum to avoid an adversary's counterclaims.").

C. The First Amendment Does Not Change the Relevant Limitations Period.

Plaintiffs argue in the alternative that the First Amendment prevents the Court from applying France's three-month statute of limitations. (Opp. 38.) Plaintiffs are incorrect. Although U.S. courts have declined to apply foreign *substantive* defamation law that contravenes the First Amendment, as shown (Op.Br. 27 n.8), the question of which *limitations period* applies under a borrowing statute is a matter of procedural, not substantive, law. *Am. Energy Techs., Inc. v. Colley & McCoy Co.*, 1999 WL 301648, at *2 (D. Del. Apr. 15, 1999) ("Statutes of limitations are generally considered to be procedural rather than substantive law."). Plaintiffs cite no legal authority supporting their claim that the First Amendment bars application of a foreign jurisdiction's shorter statute of limitations, because none exists.[20]

Applying a foreign limitations period would not violate (or even implicate) the First Amendment. Under the doctrine of depecage, choice-of-law determinations are made "on an issue[-]by[-]issue basis, with the result that the law of one state may be determined to apply to one issue and the law of a different state to another issue in the same case." *Pittman v. Maldania, Inc.*, 2001 WL 1221704, at *3 (Del. Super.

[20] Plaintiffs' authorities strictly concern how the First Amendment may bar application of foreign *substantive* defamation law and are silent as to the application of foreign statutes of limitations via borrowing statute—a *procedural* concept. *See generally Depp v. Heard*, 2021 WL 8315070, at *7 (Va. Cir. Ct. Aug. 17, 2021); *DeRoburt v. Gannett Co.*, 83 F.R.D. 574, 579–80 (D. Haw. 1979).

July 31, 2001); *Baker v. Gonzalez*, 2020 WL 7342052, at *1 (Del. Super. Dec. 14, 2020); *Taylor v. Mooney Aircraft Corp.*, 265 F. App'x 87, 93 (3d Cir. 2008) (depecage allows "one state's law [to apply] to one issue in the case (*e.g.,* the [substantive] issue), while another state's law applies to a different issue (*e.g.,* the timeliness issue)"). Here, applying France's limitations period—a function of Delaware procedural law—also has no bearing on substantive First Amendment protections. If anything, France's shorter statute of limitations affords *greater* protections to Defendants' speech, thus enhancing the First Amendment's substantive protections.

IV. DISMISSAL UNDER *FORUM NON CONVENIENS* IS APPROPRIATE

Plaintiffs admit "Owens is a Nashville resident ... [who] records her podcast in the basement of her Nashville home ... [and] made the defamatory statements while located in Nashville." (Opp. 40.) Plaintiffs further admit that Tennessee law may apply to their claims because of their significant relationship to Tennessee. (*Id.*) Plaintiffs nevertheless argue that "none of the *Cryo-Maid* factors justify dismissal." (Opp. 43.)

The opposite is true. The *Cryo-Maid* factors convincingly favor dismissal: this case has no meaningful connection to this state and does not belong here. Thus, the Court should dismiss this action on *forum non conveniens* grounds.

A. Defendants Have Met Their Burden.

While the *forum non conveniens* standard is "stringent," it is not meant to be "preclusive" or "insurmountable." *Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1105–06 (Del. 2014). Delaware courts are encouraged to review the circumstances of each case to determine whether a defendant has demonstrated overwhelming hardship. *Id*. at 1104–05. And it is well within this Court's discretion to dismiss under *forum non conveniens* when a case involves plaintiffs who "are not residents of Delaware, whose injuries did not take place in Delaware, and whose claims are not governed by Delaware law." *Id*. at 1111; *see also Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1253 (Del. 2018) (affirming *forum non conveniens* dismissal where Argentinian plaintiffs brought claims under Argentinian law for injuries in Argentina).

That is the situation here. While Plaintiffs emphasize the importance of their choice of forum, those "public policy concerns . . . are not as strong where . . . the plaintiff does not reside in Delaware." *Hupan v. All. One Int'l, Inc.*, 2015 WL 7776659, at *4 (Del. Super. Nov. 30, 2015) (citation omitted). Nor does the presence of two Delaware entity defendants matter without any meaningful connection between this state and Plaintiffs' claims. Instead, "precedent makes clear that even Delaware corporations [and their non-resident officers and directors] can avoid facing suit in Delaware, where the connection between the claims at issue and

Delaware are attenuated and the defendant corporation faces an undue burden." *Hazout*, 134 A.3d at 279.

B. The *Cryo-Maid* Factors Justify Dismissal.

The *Cryo-Maid* factors favor dismissal and Plaintiffs' contrary assertions lack merit.

First, as Plaintiffs concede, the relevant evidence and material witnesses are not located in Delaware, but rather in Tennessee or France. (*See* Opp. 44.) That some potential non-parties with attenuated connections to this case (such as Meta) may be Delaware entities does not alter that fact. Thus, the first *Cryo-Maid* factor supports dismissal where—as here—the "majority of evidence and proof necessary to litigate [p]laintiffs' claims is located" outside of Delaware. *Abrahamsen v. ConocoPhillips Co.*, 2014 WL 2884870, at *2–3 (Del. Super. May 30, 2014).

Second, the unavailability of compulsory process in Delaware for witnesses supports dismissal. The Court should give no weight to Plaintiffs' argument that "many of the witnesses identified are employees of the Delaware business entities or Owens herself, who controls the business-entity Defendants." (Opp. 45.) Plaintiffs never identify these "many witnesses," their roles at Delaware companies, the allegedly relevant information in their possession, or how they could be compelled to travel to Delaware for trial. Thus, this factor favors dismissal. *See*

BCORE Timber EC Owner LP v. Qorvo US, Inc., 2023 WL 2985250, at *5 (Del. Super. Apr. 18, 2023).[21]

Third, whether the controversy depends on Delaware law—perhaps the most important factor—strongly favors dismissal. To avoid dismissal under Delaware's borrowing statute, Plaintiffs urge the Court to apply Tennessee law. (*See* Opp. 39–40.) But Plaintiffs also argue *against* applying Tennessee law to avoid a *forum non conveniens* dismissal. (*See id.* 48.) They cannot have it both ways. Regardless, under either scenario, Delaware substantive law does not apply to Plaintiffs' claims, so this Court would be required to decide important issues arising under another jurisdiction's laws. Under these circumstances, dismissal under *forum non conveniens* is appropriate. *See Aranda*, 183 A.3d at 1252–53.

Fourth, the *Cryo-Maid* factor considering whether a related case is pending elsewhere is neutral. Plaintiffs would suffer no prejudice if they sued in Tennessee.

Lastly, practical considerations weigh in favor of dismissal. A Delaware court—and potentially, a Delaware jury—should not have to devote time and resources to a matter with no connection to Delaware. (*See* Op.Br. 34–35.) This is particularly true where the primary defendant (Owens) is not subject to personal

[21] The parties agree that the third *Cryo-Maid* factor (viewing the premises) is irrelevant here.

jurisdiction here, making it possible that the parties will litigate overlapping issues in separate fora.

Plaintiffs' response rests on their mistaken assumption that the formation of the entity defendants in Delaware requires that this case be litigated here. (Opp. 49.) Yet as explained above, Plaintiffs are wrong, particularly in the absence of any other connection to Delaware. *Williams Gas Supply Co. v. Apache Corp.*, 1991 WL 18091, at *3 (Del. Super. Feb. 12, 1991).

Taken together, the *Cryo-Maid* factors demonstrate that Delaware is an inconvenient forum to litigate this defamation action—brought by citizens of France, against a Tennessee resident, regarding statements made in Tennessee, that allegedly caused injury in France. Allowing this matter to proceed in Delaware would cause Defendants overwhelming hardship. Thus, this action should be dismissed under *forum non conveniens*.

CONCLUSION

For the foregoing reasons, this case should be dismissed in its entirety.

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Dated: January 9, 2026