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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

10 CITY OF OAKLAND and THE PEOPLE OF
THE STATE OF CALIFORNIA, acting by
11 and through the Oakland City Attorney,

12 Plaintiffs,

13 v.

14 BP PLC, CHEVRON CORP.,
CONOCOPHILLIPS, EXXONMOBIL
15 CORP., ROYAL DUTCH SHELL PLC, and
DOES 1 through 10,

16 Defendants.

First Filed Case: No. 3:17-CV-6011-WHA
Related Case: No. 3:17-CV-6012-WHA

Case No. 3:17-cv-6011-WHA

**DEFENDANT ROYAL DUTCH SHELL
PLC'S NOTICE OF MOTION AND
MOTION TO DISMISS FOR LACK OF
PERSONAL JURISDICTION,
INSUFFICIENT SERVICE OF PROCESS,
AND FAILURE TO STATE A CLAIM;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Judge: The Honorable William Alsup
Courtroom: 12 (19th Floor)
Hearing Date: May 24, 2018
Hearing Time: 8:00 a.m.

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20 CITY AND COUNTY OF SAN FRANCISCO
and THE PEOPLE OF THE STATE OF
21 CALIFORNIA, acting by and through the San
Francisco City Attorney,

22 Plaintiffs,

23 v.

24 BP PLC, CHEVRON CORP.,
CONOCOPHILLIPS, EXXONMOBIL
25 CORP., ROYAL DUTCH SHELL PLC, and
DOES 1 through 10,

26 Defendants.

Case No. 3:17-cv-6012-WHA

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on May 24, 2018, at 8:00 a.m., in Courtroom 12 (19th Floor) of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Defendant Royal Dutch Shell plc (“Royal Dutch Shell”) will and hereby does move this Court to dismiss the amended complaints, filed by the City of Oakland and the People of the State of California acting by and through the Oakland City Attorney and by the City and County of San Francisco and the People of the State of California acting by and through the San Francisco City Attorney, (1) under Federal Rule of Civil Procedure 12(b)(2), for lack of personal jurisdiction; (2) under Federal Rule of Civil Procedure 12(b)(5), for lack of sufficient service of process; and (3) under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted.

By this motion, Royal Dutch Shell seeks dismissal of the amended complaints with prejudice. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Linda Szymanski (“Szymanski Decl.”) and Rachel Marshall (“Marshall Decl.”) filed concurrently herewith, the pleadings and records on file in these related cases, any additional authority and argument as may be presented in any reply and hearing on this motion, and such other matters of which this Court may take judicial notice. Royal Dutch Shell also hereby incorporates by reference the arguments set forth in Defendants’ Motion To Dismiss and Memorandum of Points and Authorities, filed jointly and on behalf of all Defendants in support of a motion to dismiss for failure to state a claim upon which relief may be granted.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs’ suits advance the unprecedented contention that five energy companies are responsible, in tort, for all injuries allegedly resulting from global climate change, including “thermal expansion of ocean water,” “melting of land-based ice,” “accelerated sea level rise,” and increased

1 “flooding of low-lying areas” in Oakland and San Francisco. FAC ¶ 1.¹ According to Plaintiffs, the
 2 common law of nuisance permits them to obtain monetary relief from Defendants for harms resulting
 3 from two centuries of human activity across the globe. Plaintiffs demand funding for efforts to
 4 protect against what they allege are the *local* effects of *global* climate change.

5 The amended complaints have many flaws, one of which is dispositive of this motion:
 6 Plaintiffs have failed to establish any basis for personal jurisdiction over Royal Dutch Shell. As the
 7 Supreme Court has recently reiterated, “[t]he primary focus of [the] personal jurisdiction inquiry is
 8 the defendant’s relationship to the forum.” *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct.
 9 1773, 1779 (2017). Royal Dutch Shell has no relationship to this forum. It is a holding company
 10 incorporated in England and headquartered in the Netherlands, and it conducts no business in
 11 California or anywhere else in the United States. Because Royal Dutch Shell, being a foreign-based
 12 holding company, has no connection with California or the United States, the Due Process Clause
 13 prohibits the exercise of personal jurisdiction over Royal Dutch Shell in these cases.

14 The amended complaints contain no concrete allegation that Royal Dutch Shell itself has
 15 formed a sufficient connection with this forum to permit the exercise of personal jurisdiction — even
 16 after Royal Dutch Shell highlighted the absence in its original motion to dismiss. Instead, the
 17 amended complaints persist in attempting to attribute to Royal Dutch Shell the alleged activities of
 18 various indirect subsidiaries. *See* FAC ¶¶ 60-73. But Plaintiffs’ conclusory assertions that Royal
 19 Dutch Shell “controls” its subsidiaries’ operations, *id.* ¶ 29, are wholly inadequate to overcome the
 20 settled principle that, when (as here) “a parent and a subsidiary are separate and distinct corporate
 21 entities, the presence of one . . . in a forum state may not be attributed to the other.” *Axiom Foods,*
 22 *Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1071 (9th Cir. 2017). Moreover, even if Plaintiffs could
 23 establish a basis for attribution, the activities alleged in the amended complaints would be insufficient
 24

25 ¹ “FAC” is a collective reference to the First Amended Complaints filed in these related cases
 26 and will be used when the same relevant text appears in the same numbered paragraphs in the two
 27 complaints. “Oak. FAC” refers to the First Amended Complaint filed by the City of Oakland and the
 28 People of the State of California, acting by and through the Oakland City Attorney. *See* ECF No.
 199, Case No. 17-cv-6011-WHA. “S.F. FAC” refers to the First Amended Complaint filed by the
 City and County of San Francisco and the People of the State of California, acting by and through the
 San Francisco City Attorney. *See* ECF No. 168, Case No. 17-cv-6012-WHA.

1 to justify personal jurisdiction, because Plaintiffs do not plausibly allege, and could not show, that
2 their putative injuries would not have occurred but for the alleged forum contacts.

3 BACKGROUND

4 **A.** Plaintiffs seek to hold Royal Dutch Shell and four other energy companies liable for
5 the asserted consequences of global climate change. As described in the amended complaints, the
6 “combustion” of fossil fuels “release[s] greenhouse gases, including carbon dioxide (CO₂) and
7 methane, which trap atmospheric heat and increase global temperatures.” FAC ¶ 74. The amended
8 complaints describe that process as a cause of the phenomenon known as “global warming.” *Id.*
9 That warming, Plaintiffs assert, leads to “melting glaciers and sea ice,” and causes “seawater to
10 expand,” resulting in an “acceleration of sea level rise.” *Id.* ¶ 90. According to the amended
11 complaints, “[g]lobal warming” is “harming” Oakland and San Francisco “now” through “flooding of
12 low-lying areas,” “increased shoreline erosion,” and “salt water impacts” to the cities’ “water
13 treatment system[s].” *Id.* ¶ 1.

14 The amended complaints explain that fossil fuels release greenhouse gases “when
15 combusted,” *id.* ¶ 92, but they disclaim any attempt “to impose liability on Defendants for their direct
16 emissions of greenhouse gases,” *id.* ¶ 11. Instead, the theory of the amended complaints is that
17 Defendants are responsible for the ultimate asserted consequences of emissions generated by the
18 energy-consuming activities of every business, government, and consumer on the planet, including
19 Plaintiffs themselves.

20 **B.** Plaintiffs seek to premise personal jurisdiction over Royal Dutch Shell on the
21 following allegations in the amended complaints:

22 First, the amended complaints allege that several subsidiaries of Royal Dutch Shell “do[]
23 business in California,” are “registered to do business in California,” and have “designated . . .
24 agent[s] for service of process in California.” *Id.* ¶ 60. The amended complaints do not allege that
25 Royal Dutch Shell itself is registered to do business in California or has designated an agent for
26 service of process in California. Nor do the amended complaints allege that any subsidiary of Royal
27 Dutch Shell is incorporated or has its principal place of business in California.

28 Second, with respect to California, the amended complaints allege that various named and

1 unnamed subsidiaries of Royal Dutch Shell own or operate several specified and unspecified facilities
2 in California for producing, refining, and distributing oil and gas. *See id.* ¶¶ 61-65, 67. With respect
3 to the rest of the country, the amended complaints allege that subsidiaries of Royal Dutch Shell have
4 owned a refinery in Washington and have owned or operated pipelines and other distribution
5 facilities elsewhere in the United States. *See id.* ¶¶ 71-72. In addition, the amended complaints
6 assert that “Shell is involved in all facets of the petroleum production and distribution process by
7 design, as ‘part of an integrated value chain.’” *Id.* ¶ 61.² The amended complaints contain no
8 concrete allegation that Royal Dutch Shell itself, apart from the activities of any subsidiary, directly
9 owns or operates any of the specific facilities to which the pleadings refer.

10 Third, the amended complaints allege that there are “numerous Shell-branded gasoline
11 stations in California,” *id.* ¶ 66, and “more than 10,000 Shell-branded retail gasoline stations in the
12 United States,” *id.* ¶ 73. The amended complaints do not allege that Royal Dutch Shell, or even any
13 of its subsidiaries, owns or operates any of those “Shell-branded” stations. The amended complaints
14 assert in a conclusory fashion that “Shell exercises control over gasoline product quality and
15 specifications at Shell-branded retail stations.” *Id.* ¶ 66.

16 Fourth, the amended complaints allege that “Shell offers credit cards to consumers on its
17 interactive website to promote sales of gasoline and other products at its branded gasoline stations”
18 and that “Shell promotes gasoline sales by offering consumers, through its interactive website,
19 twenty-five cents off every gallon of Shell Fuel for the first two months after they open an account.”
20 *Id.* Plaintiffs do not contend that those alleged activities were purposefully directed at California (or
21 any other forum). Nor do Plaintiffs explain how those alleged activities could have caused their
22 claimed injuries in these cases.

23 Fifth, the amended complaints assert that, through subsidiaries and agents, “Shell operates in
24

25 ² The language quoted in this excerpt from the amended complaints comes from Royal Dutch
26 Shell’s 2017 annual report, in a section describing the activities of the “downstream” oil and gas
27 business engaged in by subsidiaries of Royal Dutch Shell. That report explains that “[t]he companies
28 in which Royal Dutch Shell plc has a direct or indirect interest are separate legal entities” and that,
“[i]n addition to the term ‘Shell’, in this Report ‘we’, ‘us’ and ‘our’ are also used to refer to the
Company and its subsidiaries in general or to those who work for them.” Annual Report 5, Royal
Dutch Shell plc (2017), *available at* [https://reports.shell.com/annual-report/2017/servicepages/
download-centre.php](https://reports.shell.com/annual-report/2017/servicepages/download-centre.php).

1 all 50 states and employs more than 20,000 people in the United States.” *Id.* ¶ 69. The amended
2 complaints further assert that “Shell had 854 million barrels of oil equivalent proved reserves for
3 crude oil and natural gas in the United States as of December 31, 2017, and an additional 488 million
4 barrels of oil equivalent of proved undeveloped reserves in the United States.” *Id.* ¶ 70. The
5 amended complaints make no effort to connect those assertions to the claims in these cases.

6 Sixth, the amended complaints allege that unidentified subsidiaries of Royal Dutch Shell own
7 mineral interests and produce natural gas in the United States. *Id.* ¶¶ 70-71.

8 Seventh, the amended complaints contain a few scattershot allegations apparently designed to
9 connect Royal Dutch Shell to the activities alleged in the amended complaints. The amended
10 complaints assert that: (a) “Shell controls company-wide climate change policies and fossil fuel
11 production,” *id.* ¶ 29; (b) “Shell’s website” refers to a “common, worldwide brand,” *id.* ¶ 61;
12 (c) Royal Dutch Shell’s current General Counsel and Secretary previously held positions with a
13 subsidiary of Royal Dutch Shell, *see id.* ¶ 68; and (d) “Shell’s 2017 Annual Report refers those
14 interested in ‘investor relations’ both to Royal Dutch Shell plc and Shell Oil Company,” *id.*³

15 C. The Declaration of Linda Szymanski, Royal Dutch Shell’s General Counsel and
16 Secretary, provides facts regarding Royal Dutch Shell’s lack of connections with California and the
17 United States, as well as Royal Dutch Shell’s relationship with its subsidiaries.

18 Royal Dutch Shell is a public limited company registered in England and Wales and
19 headquartered in The Hague, Netherlands. Szymanski Decl. ¶ 3; *see* FAC ¶ 28. Royal Dutch Shell is
20 a holding company. Szymanski Decl. ¶ 3. It conducts no operations of its own; in particular, it does
21 not produce, transport, market, or sell fossil fuels and has never produced, transported, marketed, or
22 sold fossil fuels. *Id.* ¶¶ 3-4. Royal Dutch Shell is the ultimate parent company of more than 1,100
23 separate companies engaged in the oil and gas business around the world. *Id.* ¶ 5. These wholly and
24 partially owned indirect subsidiaries are sometimes referred to collectively as the “Shell group” for
25 convenience; the Shell group is not a legal entity. *Id.*

26 Royal Dutch Shell owns no assets and conducts no business in the United States, including
27

28 ³ Royal Dutch Shell does not admit the truth of any of the amended complaints’ allegations.

1 California. *Id.* ¶ 7. Royal Dutch Shell is not licensed or otherwise qualified to conduct business in
 2 the United States, including California. *Id.* Royal Dutch Shell has not appointed an agent for service
 3 of process in any jurisdiction in the United States, including California. *Id.*

4 Royal Dutch Shell’s U.S. subsidiaries are separately created, maintain substantial capital,
 5 keep separate financial accounts, and have their own boards of directors. *Id.* ¶ 11. Royal Dutch Shell
 6 does not exercise day-to-day control over the operational activities of its indirect subsidiaries. *Id.*
 7 ¶ 14. As a matter of good corporate governance, Royal Dutch Shell identifies broadly what risks may
 8 be applicable to the Shell group of companies as a whole, and broad objectives for managing those
 9 risks. *Id.* ¶ 15. Climate change is one of those risks, as are factors as diverse as fluctuations in
 10 foreign currency exchange rates and antitrust compliance. *Id.* Royal Dutch Shell does not dictate to
 11 Shell group companies how those corporate-level risks and objectives should be managed and
 12 implemented operationally. *Id.* That responsibility rests with the relevant operating company. *Id.*

13 ARGUMENT

14 **I. Plaintiffs Have Not Established A Basis For Exercising Personal Jurisdiction Over** 15 **Royal Dutch Shell In These Cases**

16 Plaintiffs bear the burden of establishing personal jurisdiction over each defendant. *See, e.g.,*
 17 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Plaintiffs must make a prima facie showing
 18 of personal jurisdiction to survive a motion to dismiss. *See id.* They must “allege facts that support a
 19 finding of personal jurisdiction.” *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*,
 20 284 F.3d 1114, 1118 (9th Cir. 2002); *see also Mizokami Bros. of Ariz., Inc. v. Baychem Corp.*, 556
 21 F.2d 975, 977 (9th Cir. 1977) (per curiam) (“To the extent that the district court grounded its
 22 dismissal upon the failure of the complaint to allege facts establishing in personam jurisdiction, the
 23 judgment must be affirmed.”).

24 In addition, the Court “may not assume the truth of allegations in a pleading which are
 25 contradicted by affidavit.” *Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th
 26 Cir. 1977). Instead, Plaintiffs must “‘come forward with facts, by affidavit or otherwise, supporting
 27 personal jurisdiction.’” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).

28 Under Federal Rule of Civil Procedure 4(k), “a federal district court’s authority to assert

1 personal jurisdiction in most cases is linked to service of process on a defendant ‘who is subject to
 2 the jurisdiction of a court of general jurisdiction in the state where the district court is located.’”
 3 *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting Fed. R. Civ. P. 4(k)(1)(A)). California courts
 4 may exercise personal jurisdiction to the extent permitted by the Due Process Clause of the
 5 Fourteenth Amendment. *See Daimler AG v. Bauman*, 571 U.S. 117, 125-26 (2014); Cal. Code Civ.
 6 P. § 410.10. Accordingly, the Court asks whether personal jurisdiction “comports with the limits
 7 imposed by federal due process.” *Daimler*, 571 U.S. at 125.⁴

8 Applying the Due Process Clause, the Supreme Court has recognized two types of personal
 9 jurisdiction: general and specific. *See, e.g., Bristol-Myers*, 137 S. Ct. at 1779-80. General
 10 jurisdiction allows a court to adjudicate any claim against a defendant, regardless of the connection
 11 between the claim and the forum. *Id.* Specific jurisdiction allows a court to adjudicate only a more
 12 limited set of claims: those that arise out of contacts between the defendant and the forum. *Id.*

13 Plaintiffs have not alleged facts that could support either general or specific jurisdiction over
 14 Royal Dutch Shell in these cases. The Szymanski Declaration demonstrates that Plaintiffs cannot do
 15 so.

16 **A. Royal Dutch Shell Is Not Subject To General Jurisdiction In California Or**
 17 **Anywhere Else In The United States**

18 **1. Royal Dutch Shell Is Not “At Home” In California Or Anywhere Else In**
 19 **The United States**

20 A court may exercise general jurisdiction over a corporation only when the corporation’s
 21 contacts with the forum are so “continuous and systematic” that it is “at home” there. *Daimler*, 571

22 ⁴ Ordinarily, under Federal Rule of Civil Procedure 4(k), the due process inquiry focuses on
 23 the connection between the defendant and the state in which the federal court sits. *See* Fed. R. Civ. P.
 24 4(k)(1)(A); *Walden*, 134 S. Ct. at 1121. Rule 4(k)(2) contains an exception, however, for claims
 25 arising under federal law (such as Plaintiffs’ claims) against a defendant that is not subject to
 26 jurisdiction in any state’s courts (such as Royal Dutch Shell, as explained in the text). *See* Fed. R.
 27 Civ. P. 4(k)(2). As interpreted by the Ninth Circuit, Rule 4(k)(2) confers personal jurisdiction over a
 28 defendant to the extent permitted by the Due Process Clause of the Fifth Amendment. *See Axiom*
Foods, 874 F.3d at 1072; *Getz v. Boeing Co.*, 654 F.3d 852, 859 (9th Cir. 2011). The Ninth Circuit
 has held that the due process analysis is “nearly identical” under the Fifth and Fourteenth
 Amendments, except that, if the Fifth Amendment applies under Rule 4(k)(2), then the court
 considers the defendant’s contacts “with the nation as a whole.” *Axiom Foods*, 874 F.3d at 1072
 (internal quotation marks omitted). As explained in the text, Plaintiffs have not established — and
 cannot establish — personal jurisdiction over Royal Dutch Shell under either approach.

1 U.S. at 127 (internal quotation marks omitted). Doing business in a forum “does not suffice to permit
 2 the assertion of general jurisdiction” over a corporation. *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1559
 3 (2017); *see id.* (“over 2,000 miles of railroad track and more than 2,000 employees” in forum
 4 insufficient); *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 927, 930 n.6 (2011)
 5 (“continuous activity” and “regularly occurring sales” in forum insufficient). Rather, the “paradigm”
 6 forums in which a corporation is regarded as “at home” are its “place of incorporation” and its
 7 “principal place of business.” *Daimler*, 571 U.S. at 137 (internal quotation marks omitted).

8 Royal Dutch Shell neither is incorporated nor has its principal place of business in California
 9 or any other state. As the amended complaints acknowledge, Royal Dutch Shell “is a public limited
 10 company registered in England and Wales with its headquarters in The Hague, Netherlands.” FAC
 11 ¶ 28; *see Szymanski Decl.* ¶ 3. Because Royal Dutch Shell is incorporated and maintains its principal
 12 place of business abroad, it is not subject to general jurisdiction in California or any other state. *See*
 13 *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021-22 (9th Cir. 2017) (holding that *Daimler* bars
 14 the exercise of general jurisdiction over defendant incorporated and headquartered in Japan).⁵

15 2. Imputation Theories Cannot Make Royal Dutch Shell “At Home” In 16 California Or Anywhere Else In The United States

17 *Daimler* also rejected the possibility of general jurisdiction resting on the relationship
 18 between a parent corporation and its subsidiary. The plaintiffs in *Daimler* argued that a German
 19 corporation was subject to general jurisdiction in California based on the forum contacts of its
 20 subsidiary. 571 U.S. at 122-24. The Supreme Court rejected the plaintiffs’ argument, explaining:
 21 “Even if we were to assume that [the subsidiary] is at home in California, and further to assume [the

22 _____
 23 ⁵ This is nothing like the “exceptional case” in which the *Daimler* Court left open the
 24 “possibility” of general jurisdiction existing somewhere other than the place of incorporation and the
 25 principal place of business. 571 U.S. at 139 n.19. As the only example of such a case, the Court
 26 identified *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *Daimler*, 571 U.S. at
 27 129-30. In *Perkins*, World War II had forced the president of the corporate defendant to relocate
 28 from the Philippines to Ohio, making Ohio “the corporation’s principal, if temporary, place of
 business.” *Daimler*, 571 U.S. at 130 (internal quotation marks omitted); *see Goodyear*, 564 U.S. at
 928 (“[t]o the extent that the company was conducting any business during and immediately after the
 Japanese occupation of the Philippines, it was doing so in Ohio”). Even after amending their
 complaints, Plaintiffs allege no facts that could make this an exceptional case along the lines of
Perkins, and the Szymanski Declaration forecloses the possibility. *See Szymanski Decl.* ¶¶ 3-7; *see*
also Martinez v. Aero Caribbean, 764 F.3d 1062, 1070 (9th Cir. 2014) (rejecting attempt to show that
 case was “exceptional” where, as here, defendant was incorporated and headquartered abroad).

1 subsidiary's] contacts are imputable to [the parent], there would still be no basis to subject [the
2 parent] to general jurisdiction in California.” *Id.* at 136. Even under those assumptions, the Court
3 explained, the German parent corporation’s “slim contacts with the State hardly render it at home
4 there.” *Id.*; *see Yamaha*, 851 F.3d at 1022 & n.2 (discussing *Daimler* and holding that “even
5 assuming [a California-based subsidiary’s] contacts could be imputed to [its foreign parent], this does
6 not, on its own, suffice to establish general jurisdiction” over the foreign parent).

7 That conclusion applies squarely here. Like the German parent corporation in *Daimler*, Royal
8 Dutch Shell is, according to the amended complaints, a “multinational” company that is incorporated
9 and has its principal place of business outside of the United States. FAC ¶ 28. Plaintiffs allege no
10 fact that could make Royal Dutch Shell “at home” in California (or in any other state), even with the
11 alleged “contacts” of indirect subsidiaries “attributed to it.” *Daimler*, 571 U.S. at 139. General
12 jurisdiction permits the adjudication of claims having nothing to do with the defendant’s contacts
13 with the forum, and Plaintiffs in these cases seek to premise liability on the worldwide operations of
14 multinational energy companies and their subsidiaries. *See* FAC ¶ 30. If the contacts alleged in the
15 amended complaints were sufficient to establish general jurisdiction over a foreign holding company
16 with subsidiaries worldwide, such as Royal Dutch Shell, then “the same global reach would
17 presumably be available in every other State in which” subsidiaries of the foreign company operate.
18 *Daimler*, 571 U.S. at 139. That is precisely the result that the Supreme Court rejected in *Daimler*,
19 because a corporation whose subsidiaries operate “in many places can scarcely be deemed at home in
20 all of them.” *Id.* at 139 n.20; *see also Havlish v. Royal Dutch Shell plc*, 2014 WL 4828654, at *2-3,
21 *4 n.9 (S.D.N.Y. Sept. 24, 2014) (refusing to exercise general jurisdiction over Royal Dutch Shell
22 based on the forum contacts of its subsidiaries).

23 **B. Royal Dutch Shell Is Not Subject To Specific Jurisdiction In These Cases**

24 Plaintiffs also have not alleged, and could not establish, a basis for exercising specific
25 personal jurisdiction over Royal Dutch Shell in these cases. “There are three requirements for a court
26 to exercise specific jurisdiction over a nonresident defendant: (1) the defendant must either
27 purposefully direct his activities toward the forum or purposefully avail[] himself of the privileges of
28 conducting activities in the forum; (2) the claim must be one which arises out of or relates to the

1 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play
2 and substantial justice, i.e. it must be reasonable." *Axiom Foods*, 874 F.3d at 1068.

3 For multiple reasons, Plaintiffs' allegations do not satisfy any of those requirements. First,
4 Royal Dutch Shell, which is a foreign holding company, has not purposefully directed any activities
5 toward California or the United States or purposefully availed itself of the privileges of conducting
6 activities in the forum. Second, Plaintiffs cannot establish such a connection through the activities of
7 Royal Dutch Shell's indirect subsidiaries. Third, even if all of the alleged contacts of Royal Dutch
8 Shell's indirect subsidiaries were (contrary to governing authority) imputed to Royal Dutch Shell,
9 Plaintiffs still could not plausibly allege that their asserted injuries arise out of the imputed contacts.
10 Fourth, and in all events, it would be unreasonable, and therefore inconsistent with due process, to
11 exercise specific jurisdiction over Royal Dutch Shell in these cases.

12 **1. Royal Dutch Shell Has Not Created A "Substantial Connection" With, Or**
13 **Purposefully Directed Activities Toward, California Or The United States**

14 Plaintiffs' effort to establish specific jurisdiction fails at the threshold, because Royal Dutch
15 Shell has no connection with California or the United States. "For a State to exercise jurisdiction
16 consistent with due process, the defendant's suit-related conduct must create a substantial connection
17 with the forum State." *Walden*, 134 S. Ct. at 1121. To determine whether a foreign defendant has
18 the requisite connection in a tort case, such as this one, the Ninth Circuit asks whether the defendant
19 has purposefully directed its activities toward the forum. *See Axiom Foods*, 874 F.3d at 1068.⁶
20 Allegations that activities outside the forum foreseeably caused injury inside the forum are
21 insufficient to satisfy that inquiry. *See Walden*, 134 S. Ct. at 1124-25; *Axiom Foods*, 874 F.3d at
22 1070. As the Supreme Court explained in *Walden*, "[t]he proper question is not where the plaintiff
23 experienced a particular injury or effect but whether the defendant's conduct connects [it] to the
24 forum in a meaningful way." 134 S. Ct. at 1125. In addition, "it is the defendant, not the plaintiff or
25

26 ⁶ The result would be no different under a purposeful-availment analysis because, as
27 explained in the text, Royal Dutch Shell is a foreign holding company that has not "purposefully
28 availed itself of the privilege of doing business in" California or the United States. *Boschetto v.*
Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008); *see Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1149
(9th Cir. 2017).

1 third parties, who must create contacts with the forum” that are substantial enough for the court to
2 exercise specific jurisdiction. *Id.* at 1126.

3 Plaintiffs have not pleaded, and could not show, that Royal Dutch Shell, a foreign-based
4 holding company, has created a substantial connection with or purposefully directed any activities
5 toward California or the United States. *See id.* at 1121; *Axiom Foods*, 874 F.3d at 1069-71. Even
6 after amending their complaints in response to Royal Dutch Shell’s original motion to dismiss,
7 Plaintiffs fail to plausibly allege that Royal Dutch Shell *itself* has engaged in any relevant conduct, let
8 alone conduct purposefully directed at California or the United States.

9 The Szymanski Declaration demonstrates that Plaintiffs cannot show that Royal Dutch Shell
10 has created a substantial connection with or purposefully directed relevant activities toward
11 California or the United States. As the Declaration explains, Royal Dutch Shell is a foreign holding
12 company that conducts no operations of its own. Szymanski Decl. ¶¶ 3-4. It does not produce,
13 transport, market, or sell fossil fuels and has never produced, transported, marketed, or sold fossil
14 fuels. *Id.* ¶ 4. Royal Dutch Shell owns no assets and conducts no business in the United States,
15 including California. *Id.* ¶ 7; *see id.* ¶¶ 22, 28-29. Royal Dutch Shell has no officers, employees, or
16 other personnel in the United States, including California. *Id.* ¶ 7. Royal Dutch Shell has no place of
17 business or mailing address in the United States, including California. *Id.* Royal Dutch Shell has not
18 appointed an agent for service of process in any jurisdiction in the United States, including
19 California. *Id.* In short, Royal Dutch Shell has no connection with California or the United States.
20 *See Walden*, 134 S. Ct. at 1124 (no personal jurisdiction where defendant “formed no jurisdictionally
21 relevant contacts with” the forum); *Axiom Foods*, 874 F.3d at 1070 (same, where defendant’s
22 contacts were “too attenuated and isolated to support the exercise of jurisdiction”) (citations omitted).

23 2. The Contacts Alleged In The Amended Complaints Cannot Be Imputed 24 To Royal Dutch Shell Under Any Theory

25 Plaintiffs cannot establish specific jurisdiction over Royal Dutch Shell based on the alleged
26 forum contacts of its indirect subsidiaries. As the Ninth Circuit recently reiterated in *Axiom Foods*,
27 “[i]t is well established that, as a general rule, where a parent and a subsidiary are separate and
28 distinct corporate entities, the presence of one . . . in a forum state may not be attributed to the other.”

1 874 F.3d at 1071. Here, as in *Axiom Foods*, Plaintiffs “have provided no reason to deviate from this
2 general rule.” *Id.*

3 **Agency.** The Ninth Circuit has not decided whether an agency theory of specific jurisdiction
4 survives *Daimler*. See *Axiom Foods*, 874 F.3d at 1071 n.5; *Yamaha*, 851 F.3d at 1024. Even if such
5 a theory were permissible, the Ninth Circuit has recognized that a plaintiff would have to show, at a
6 minimum, that the parent corporation has “the right to substantially control its subsidiary’s
7 activities.” *Yamaha*, 851 F.3d at 1024-25.

8 Plaintiffs fail to allege facts plausibly showing that Royal Dutch Shell has “substantial[]
9 control” over the activities of any relevant subsidiary. Even after amending their complaints,
10 Plaintiffs continue to rely on boilerplate assertions that Royal Dutch Shell, “through its employees
11 and/or agents, manages, directs, conducts and/or controls operations relating to its subsidiaries’
12 participation in the process by which fossil fuels . . . are produced, transported, refined, stored,
13 distributed, marketed, and/or sold to consumers.” FAC ¶ 29. The Ninth Circuit has squarely rejected
14 exactly the sorts of “conclusory legal statement[s] unsupported by any factual assertion regarding [the
15 defendant’s] control over [its subsidiary]” that the amended complaints in these cases contain.
16 *Yamaha*, 851 F.3d at 1025 n.5.

17 In addition, the Ninth Circuit and many other courts have refused to impute contacts from a
18 subsidiary to its parent company based on allegations that the parent sets general policies for the
19 subsidiary to implement, such as the amended complaints’ allegations about “company-wide climate
20 change policies.” FAC ¶ 29.⁷ As the Ninth Circuit explained in *Unocal*, even where a parent
21 corporation is alleged to “indirectly control or supervise its subsidiaries,” that is not enough to impute
22

23 ⁷ See *Doe v. Unocal Corp.*, 248 F.3d 915, 926-28 (9th Cir. 2001) (per curiam, adopting
24 relevant portions of district court’s opinion), *abrogated on other grounds by Daimler*, 571 U.S. at
25 133-36; *Lyons v. Philip Morris Inc.*, 225 F.3d 909, 915 (8th Cir. 2000); *Jazini v. Nissan Motor Co.*,
26 148 F.3d 181, 184-85 (2d Cir. 1998); *In re Western States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d
27 1118, 1126-27, 1129, 1133-34, 1141 (D. Nev. 2009); *United States v. Philip Morris Inc.*, 116
28 F. Supp. 2d 116, 120, 123-24, 130 (D.D.C. 2000); *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660,
663-66, 669-70, 672 (W.D. Wis. 1998); *Arch v. American Tobacco Co.*, 984 F. Supp. 830, 837-39
(E.D. Pa. 1997); *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 838-39, 845-46 (Ct.
App. 2000); *State v. American Tobacco Co.*, 707 So. 2d 851, 856 (Fla. Dist. Ct. App. 1998); *cf.*
United States v. Bestfoods, 524 U.S. 51, 72 (1998) (explaining that parent’s “articulation of general
policies and procedures . . . should not give rise to direct liability” for costs of cleaning up waste
generated by subsidiary’s facility).

1 the subsidiaries' activities to the parent. 248 F.3d at 930; *see id.* at 926 (“articulation of general
2 policies and procedures” not enough for attribution) (internal quotation marks omitted). Only where
3 the parent “directly controls the day-to-day activities” of its subsidiaries is imputation potentially
4 available. *Id.* at 930; *see id.* at 926 (“An alter ego or agency relationship is typified by parental
5 control of the subsidiary’s internal affairs or daily operations.”). Plaintiffs’ conclusory allegations
6 about “climate change policies” come nowhere near a showing of day-to-day operational control.

7 Plaintiffs’ references to a “common, worldwide [Shell] brand,” FAC ¶ 61, and to the fact that
8 Ms. Szymanski has held positions with different entities in the Shell group of companies over her
9 career, *see id.* ¶ 68, also do not support their imputation argument. In the closely related context of
10 the alter ego doctrine (discussed further below), the Ninth Circuit has recognized that corporate
11 separateness is not undermined for jurisdictional purposes when a corporate parent “ensures [that the
12 corporate] brand is marketed consistently throughout the world” or when “[s]ome employees and
13 management personnel move between the entities.” *Ranza*, 793 F.3d at 1074. Such allegations are
14 consistent with an ordinary “parent-subsidary relationship,” which is “insufficient, on its own, to
15 justify imputing one entity’s contacts with a forum state to another for the purpose of establishing
16 personal jurisdiction.” *Id.* at 1070. Similarly, the passing assertion that “Shell’s 2017 Annual Report
17 refers those interested in ‘investor relations’ both to Royal Dutch Shell plc and Shell Oil Company,”
18 FAC ¶ 68, provides no basis for imputation, because it is fully consistent with the ordinary operations
19 of a multinational business organization whose stock is traded on the New York Stock Exchange.
20 *See Unocal*, 248 F.3d at 922 (rejecting “listing its stock on various exchanges and promoting sales of
21 stock in the United States” as a basis for personal jurisdiction).

22 The Szymanski Declaration confirms that Plaintiffs cannot demonstrate facts sufficient to
23 impute contacts to Royal Dutch Shell under an agency theory. Royal Dutch Shell does not exercise
24 day-to-day control over the operational activities of its many hundreds of indirect subsidiaries.
25 Szymanski Decl. ¶ 14. Royal Dutch Shell neither directs its subsidiaries’ operational decision
26 making nor mandates how they should achieve general business objectives. *Id.* ¶¶ 14-15. No
27 subsidiary of Royal Dutch Shell, nor any other entity, has ever held express or implied authority to
28 act as Royal Dutch Shell’s agent, including with respect to the production, refining, transport,

1 marketing, or sale of fossil fuels in California or anywhere else in the United States. *Id.* ¶¶ 7, 23, 29.
2 Those facts refute any effort to establish an agency relationship between Royal Dutch Shell and its
3 indirect subsidiaries. *See, e.g., Havlish*, 2014 WL 4828654, at *2-3 (rejecting agency argument on
4 indistinguishable record).

5 ***Alter Ego.*** Nor can Plaintiffs impute the alleged jurisdictional contacts to Royal Dutch Shell
6 on the theory that Royal Dutch Shell’s subsidiaries are its alter egos. The alter ego theory requires
7 plaintiffs to show that “there is such unity of interest and ownership that the separate personalities of
8 the two entities no longer exist” and that “failure to disregard their separate identities would result in
9 fraud or injustice.” *Yamaha*, 851 F.3d at 1021; *see Axiom Foods*, 874 F.3d at 1071 n.5.

10 The Ninth Circuit has refused to recognize that a parent and its subsidiaries are alter egos in
11 cases presenting much more concrete allegations than one finds in Plaintiffs’ amended complaints. In
12 *Ranza*, the parent company was “heavily involved in [the subsidiary’s] operations”; “exercise[d]
13 control over [the subsidiary’s] overall budget and ha[d] approval authority for large purchases;
14 establishe[d] general human resource policies for both entities and [was] involved in some hiring
15 decisions; operate[d] information tracking systems all of its subsidiaries utilize[d]; ensure[d] the
16 [parent company] brand [was] marketed consistently throughout the world; and require[d] some
17 [subsidiary] employees to report to [parent company] supervisors on a ‘dotted-line’ basis.” 793 F.3d
18 at 1074. Similarly, in *Unocal*, the plaintiffs alleged that the parent intervened in its subsidiaries’
19 acquisitions, divestments, and capital expenditures; formulated policies and strategies for its
20 subsidiaries to follow; provided its subsidiaries with financing; and maintained an overlap of
21 directors and officers. *See* 248 F.3d at 927. The Ninth Circuit refused to impute contacts under an
22 alter ego theory in those cases. *See Ranza*, 793 F.3d at 1075; *Unocal*, 248 F.3d at 928. Plaintiffs
23 allege nothing that could support a different outcome here.

24 The Szymanski Declaration demonstrates that Plaintiffs could not in good faith plead
25 allegations that would show that Royal Dutch Shell and its subsidiaries are alter egos. Royal Dutch
26 Shell and its subsidiaries observe all formal requirements to operate as separate entities. Szymanski
27 Decl. ¶ 11. Each is separately created, maintains substantial capital, keeps separate financial
28 accounts, and is managed by its own board of directors. *Id.* Royal Dutch Shell does not exercise

1 day-to-day control over the operational activities of its subsidiaries. *Id.* ¶ 14. Those facts foreclose
 2 reliance on an alter ego theory here. *See Ranza*, 793 F.3d at 1074-75.

3 3. Plaintiffs Cannot Show That Their Claims Arise From The Attenuated 4 Jurisdictional Contacts Alleged In The Amended Complaints

5 Even if Plaintiffs could impute all of the forum contacts alleged in the amended complaints to
 6 Royal Dutch Shell — and they cannot, as explained above — they still would fall short of making a
 7 prima facie showing of specific jurisdiction. A court may exercise specific jurisdiction over a
 8 defendant only if the plaintiff’s claims “aris[e] out of or relat[e] to” the defendant’s contacts with the
 9 forum. *Bristol-Myers*, 137 S. Ct. at 1780. The Ninth Circuit has held that the defendant’s forum
 10 contacts must have caused the plaintiff’s injury for a court to exercise specific jurisdiction. *See*
 11 *Bancroft & Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). Courts in this
 12 circuit “measure this requirement in terms of ‘but for’ causation.” *Id.*⁸

13 Plaintiffs have not pleaded — and could not plausibly plead — allegations that would satisfy
 14 the “requirement” of “‘but for’ causation.” *Id.* Plaintiffs assert that their claims arise out of the
 15 combustion of fossil fuels to produce energy, which emits greenhouse gases, which accumulate in the
 16 atmosphere, which results in a warmer global climate, which yields sea-level rise and extreme
 17 weather events, and which ultimately harms their property interests.⁹ As an initial matter, however,
 18 Plaintiffs’ claims and their underlying theory of causation are not even loosely tethered to the forum
 19 contacts alleged in the amended complaints. Plaintiffs do not so much as imply that the contacts
 20 alleged in the amended complaints, *see* FAC ¶¶ 60-73, could be considered a but-for cause of the sea-
 21 level rise and extreme weather events that allegedly harm Plaintiffs’ property and thereby give rise to

22 ⁸ Other circuits have held, correctly in Royal Dutch Shell’s view, that the defendant’s forum
 23 contacts must amount to the proximate cause of the plaintiff’s injuries for there to be specific
 24 jurisdiction. *See SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (discussing circuit
 split). In all events, as demonstrated in the text, Plaintiffs cannot show that their claims arise from
 the attenuated contacts alleged in the amended complaints even under the more lenient but-for test.

25 ⁹ *See, e.g.*, FAC ¶ 88 (“Today, due primarily to the combustion of fossil fuels produced by
 26 Defendants and others, the atmospheric level of carbon dioxide is 410 ppm, higher than at any time
 27 during human civilization and likely higher than any level in millions of years.”); *id.* ¶ 90 (“Global
 28 warming causes sea level rise by melting glaciers and sea ice, and by causing seawater to expand.”);
 Oak. FAC ¶ 130 (“Oakland has already begun to feel injury from sea level rise, although its most
 severe injuries by far are the injuries that will occur in the future if prompt action is not taken to
 protect Oakland and its residents from rising sea levels caused by global warming.”); S.F. FAC
 ¶¶ 130-35 (alleging similar threat of harm).

1 their claims for a public nuisance. Indeed, some of the contacts alleged in the amended complaints
 2 concern fossil fuels that have not been recovered or refined, let alone marketed to consumers who
 3 could combust them, logically excluding any possibility that those asserted contacts are causally
 4 related to Plaintiffs' claims. *See, e.g., id.* ¶ 70 (asserting that "Shell" has "proved reserves" and
 5 "proved undeveloped reserves" in the United States).

6 Nor could Plaintiffs satisfy the "requirement" of "but for" causation" even if they could
 7 aggregate and impute to Royal Dutch Shell all of the activities of its subsidiaries in California or the
 8 United States. According to a study on which Plaintiffs rely, the combustion of *all* of the fossil fuels
 9 that *all* of Royal Dutch Shell's subsidiaries have allegedly *ever* produced and sold *anywhere in the*
 10 *world* accounts for just 2.12% of the greenhouse gases emitted from industrial sources since the start
 11 of the Industrial Revolution.¹⁰ Although Royal Dutch Shell does not accept the inputs, analysis, or
 12 conclusions in that study, and setting aside the fact that the figure improperly aggregates activities
 13 worldwide rather than forum-wide as due process requires, the important point for present purposes is
 14 that Plaintiffs have not alleged, and could not show, that their claimed injuries would not have
 15 occurred but for the alleged conduct of subsidiaries of Royal Dutch Shell. *See Doe v. American Nat'l*
 16 *Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997) (denying specific jurisdiction where defendant's
 17 forum contacts were "only peripherally" related to plaintiff's alleged injuries and "too attenuated to
 18 satisfy the 'but for' test"). Indeed, Plaintiffs do not ask the Court to make that leap: In an earlier
 19 filing, Plaintiffs disclaimed any possibility that activities on the Outer Continental Shelf, which yield
 20 as much as a third of oil and gas production in the United States in some years, might constitute a
 21 but-for cause of global climate change and their alleged injuries. *See* Pls.' Reply on Mot. Remand at
 22 20-21, ECF No. 108, Case No. 17-cv-6011; ECF No. 91, Case No. 17-cv-6012.

23 4. Exercising Specific Jurisdiction Over Royal Dutch Shell In These Cases 24 Would Be Unreasonable

25 This Court need not decide whether it would be reasonable to exercise specific jurisdiction
 26 over Royal Dutch Shell because Plaintiffs have not carried their burden of showing that Royal Dutch

27 ¹⁰ *See* Oak. FAC ¶ 94 nn.50-51; S.F. FAC ¶ 94 nn.71-72 (citing Richard Heede, *Tracing*
 28 *Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-*
2010, 122 *Climatic Change* 229 (2014), *available at* [https://link.springer.com/content/pdf/10.1007%](https://link.springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf)
2Fs10584-013-0986-y.pdf). Heede presents the relevant figure at 237 tbl. 3.

1 Shell has created sufficient contacts with the forum and that their claims arise out of those contacts.
2 *See Boschetto*, 539 F.3d at 1016 (“[I]f the plaintiff fails at the first step, the jurisdictional inquiry ends
3 and the case must be dismissed.”); *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 807 n.1
4 (9th Cir. 2007) (“Because [plaintiff] has failed to sustain his burden . . . we need not, and do not,
5 reach the third part of the test.”). Nonetheless, it would be unreasonable to exercise specific
6 jurisdiction over Royal Dutch Shell in these cases.

7 The Ninth Circuit considers seven factors in assessing the reasonableness of exercising
8 specific jurisdiction: (1) the extent of the defendant’s “purposeful interjection” into the forum;
9 (2) the burden on the defendant from defending in the forum; (3) the extent of “conflict with the
10 sovereignty of the defendant’s” home state or country; (4) the forum’s interest in adjudicating the
11 dispute; (5) the most efficient judicial resolution of the controversy; (6) the importance of the forum
12 to the plaintiff’s interest in convenient and effective relief; and (7) the existence of an alternative
13 forum. *Glencore Grain*, 284 F.3d at 1125.

14 As in *Glencore Grain*, “[e]ven a cursory glance at the factors reveals the unreasonableness of
15 exercising jurisdiction in this case.” *Id.* With respect to the first factor, as explained above, Royal
16 Dutch Shell has not purposefully interjected itself into California or the United States. With respect
17 to the second factor, “[t]he burden on [Royal Dutch Shell] to defend suit in California appears great,
18 given that it is incorporated in [England and Wales], owns no property in the forum, and has no
19 employees or persons authorized to act on its behalf there.” *Id.* at 1125-26. With respect to the third
20 factor, the Ninth Circuit has explained that, “[w]here, as here, the defendant is from a foreign nation
21 rather than another state, the sovereignty barrier is high and undermines the reasonableness of
22 personal jurisdiction.” *Id.* at 1126. The remaining factors do not support the reasonableness of
23 exercising jurisdiction in these cases because, as explained in the Memorandum of Points and
24 Authorities accompanying Defendants’ Motion To Dismiss under Federal Rule of Civil Procedure
25 12(b)(6), Plaintiffs’ claims raise matters of federal policy and foreign affairs that are not suitable for
26 resolution by the judiciary.

1 **C. Plaintiffs Are Not Entitled To Jurisdictional Discovery**

2 Plaintiffs’ facially insufficient jurisdictional allegations do not entitle them to jurisdictional
 3 discovery. “[W]here a plaintiff’s claim of personal jurisdiction appears to be both attenuated and
 4 based on bare allegations in the face of specific denials made by defendants, the Court need not
 5 permit even limited discovery.” *Terracom v. Valley Nat’l Bank*, 49 F.3d 555, 562 (9th Cir. 1995).¹¹
 6 Any request that Plaintiffs may make for jurisdictional discovery would be “premised on little more
 7 than a hunch that it might yield jurisdictionally relevant facts,” *Boschetto*, 539 F.3d at 1020, as
 8 demonstrated by Plaintiffs’ boilerplate pleadings and suggestion to the Court that “about 2-1/2 years”
 9 will be necessary to undertake “fairly heavy, intensive” pre-trial discovery. Transcript of
 10 Proceedings on Mot. Remand at 39, ECF No. 127, Case No. 17-cv-6011; ECF No. 110, Case No.
 11 17-cv-6012. Far more concrete and credible jurisdictional allegations would be necessary to justify
 12 jurisdictional discovery of a foreign holding company that itself conducts no business in the United
 13 States.

14 **II. Plaintiffs Failed To Effect Service Of Process On Royal Dutch Shell**

15 The amended complaints must also be dismissed pursuant to Federal Rule of Civil Procedure
 16 12(b)(5) for insufficient service of process. A court cannot exercise personal jurisdiction over a
 17 defendant without proper service of process. *Omni Capital Int’l, Ltd. v. Wolff & Co.*, 484 U.S. 97,
 18 104 (1987); *Direct Mail Specialists v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir.
 19 1988). Because the requirements for service of process set forth in Federal Rule of Civil Procedure 4
 20 do “not apply to service of process which was attempted *prior* to removal” — such as Plaintiffs’
 21 purported service here — “the sufficiency of service in this case is determined according to state
 22 law.” *Lee v. City of Beaumont*, 12 F.3d 933, 937 (9th Cir. 1993), *overruled on other grounds by*
 23 *California Dep’t of Water Res. v. Powerex Corp.*, 533 F.3d 1087 (9th Cir. 2008). Plaintiffs’
 24 purported service of process on Royal Dutch Shell did not comply with California law, and Royal
 25 Dutch Shell must be dismissed.

26 _____
 27 ¹¹ See also *Boschetto*, 539 F.3d at 1020 (affirming denial of jurisdictional discovery);
 28 *Butcher’s Union Local No. 498, United Food & Commercial Workers v. SDC Inv., Inc.*, 788 F.2d
 535, 540-41 (9th Cir. 1986) (same); *Mehr v. Federation Internationale de Football Ass’n*, 115
 F. Supp. 3d 1035, 1053-54 (N.D. Cal. 2015) (denying jurisdictional discovery).

1 **A. Plaintiffs’ Service Did Not Comply With Corporations Code § 2110 And Code Of**
2 **Civil Procedure § 416.10(d)**

3 Under California law, a foreign corporation transacting business in California may be served
4 in California by “[d]eliver[ing] by hand” a copy of the complaint and summons to the “general
5 manager” of the foreign corporation. Cal. Corp. Code § 2110; *see also id.* § 2100 (except as
6 otherwise provided, § 2110 “applies *only* to foreign corporations transacting intrastate business” in
7 California) (emphasis added); Cal. Code Civ. P. § 416.10(d) (service under “Section . . . 2110 . . . of
8 the Corporations Code” constitutes valid service on a corporation). Here, Plaintiffs’ purported
9 service of process was insufficient under these provisions for two independent reasons: First, Royal
10 Dutch Shell does not “transact” business in the State of California and is therefore not subject to
11 service under § 2110. Second, Plaintiffs did not serve the complaints and summons upon a “general
12 manager” of Royal Dutch Shell, but instead purported to serve one of its indirect subsidiaries, Shell
13 Oil Company.

14 First, in construing the similarly worded predecessor to § 2110 (then § 6500), the California
15 Supreme Court held in *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77 (1959), that “[t]he validity
16 of the service of process pursuant to section 6500 of the Corporations Code depends first on whether
17 the foreign corporation is ‘doing business in this State’ within the meaning of the statute.” *Id.* at 82;
18 *see also Sales Affiliates v. Superior Court*, 96 Cal. App. 2d 134, 135-36 (1950); *Empire Steel Corp.*
19 *of Tex., Inc. v. Superior Court*, 56 Cal. 2d 823, 828-29 (1961) (“Whether service of process . . . was
20 valid depends herein upon whether [the foreign corporation] was ‘doing business in this State.’”). As
21 set forth above, Plaintiffs have not pleaded and cannot demonstrate that Royal Dutch Shell has
22 transacted business in California. On the contrary, Royal Dutch Shell has submitted a declaration
23 from its General Counsel and Secretary specifically affirming that Royal Dutch Shell does *not*
24 conduct “intrastate” business in California. *See* Szymanski Decl. ¶ 7. Indeed, as a foreign holding
25 company, Royal Dutch Shell does *no* business in the United States, much less in California. *See id.*
26 ¶¶ 3-4, 7. Royal Dutch Shell is therefore not subject to service under Corporations Code § 2110.

27 Second, even assuming for the sake of argument that Plaintiffs could demonstrate that Royal
28 Dutch Shell “transacts” business in the State of California (which they cannot), Plaintiffs failed to

1 properly serve a “general manager” of Royal Dutch Shell. Corporations Code § 2110 permits service
2 of process upon a foreign corporation transacting business in California by serving “its general
3 manager in this state” via “[d]elivery by hand of a copy of any process.” Though the statute does not
4 expressly define the term “general manager,” the California Supreme Court has explained that the
5 “essential factor” in identifying a “general manager” is that the person must, at a minimum, be
6 “performing services for” the foreign corporation in California, thereby “providing it with the
7 opportunity for ‘regular contact with its customers and a channel for a continuous flow of business
8 into the state.’” *Cosper*, 53 Cal. 2d at 84 (citation omitted); *see also id.* at 83 (only an agent with
9 such responsibilities is “of sufficient character and rank to make it reasonably certain that the
10 defendant will be apprised of the service made”). As Royal Dutch Shell has demonstrated, it has no
11 employees or agents in California and conducts no business there, and it therefore does not have any
12 manager, much less a general manager, in this state. *See Szymanski Decl.* ¶ 7.

13 Here, Plaintiffs purportedly served Royal Dutch Shell on the theory that its indirect domestic
14 subsidiary, *Shell Oil Company*, is Royal Dutch Shell’s “general manager” in California. *See Marshall*
15 *Decl.*, Exs. A, B. This theory fails. Plaintiffs have not even bothered to allege any facts that would
16 establish that Shell Oil Company meets any relevant test for designating it as Royal Dutch Shell’s
17 “general manager” in California. As Royal Dutch Shell has shown, “[n]o subsidiary of Royal Dutch
18 Shell . . . has ever held express or implied authority to act as Royal Dutch Shell’s agent, including
19 with respect to the production, refining, transport, marketing, or sale of fossil fuels in . . . California”;
20 Royal Dutch Shell has no “manager[]” in California; and, specifically, “Shell Oil Company is neither
21 an agent nor general manager of Royal Dutch Shell.” *Szymanski Decl.* ¶¶ 7, 9.

22 In view of Royal Dutch Shell’s showing, Plaintiffs cannot carry their burden to prove that
23 Shell Oil Company does any of the things that would be required to show that it is Royal Dutch
24 Shell’s “general manager.” Shell Oil Company does not conduct activities in California that involve
25 the “opportunity” for Royal Dutch Shell to have “regular contact with its customers and a channel for
26 continuous flow of business into the state,” and it therefore does not meet the essential minimum
27 required by *Cosper*. *See* 53 Cal. 2d at 84. Moreover, “[t]he term ‘general manager of a corporation’
28 indicates one who has *general direction and control of the business of the corporation as*

1 distinguished from one who has the management only of a particular branch of the business; he may
2 do everything which the corporation could do in transaction of its business.” *General Motors Corp.*
3 *v. Superior Court*, 15 Cal. App. 3d 81, 86 (1971) (emphasis added); *see also Cospers*, 53 Cal. 2d at
4 83-84 (person “actively engaged in promoting the sales” of foreign corporation was “general
5 manager” for purposes of service). The contention that Shell Oil Company, an indirect subsidiary,
6 has “general direction and control of the business” of Royal Dutch Shell is wholly without merit.

7 Plaintiffs are wrong in their apparent premise that, either for purposes of service of process or
8 for any other purpose, they may disregard the corporate distinctions between Royal Dutch Shell and
9 its subsidiaries and that it is enough that a subsidiary apprises its foreign parent of an attempted
10 service. *See* FAC ¶ 30. The Ninth Circuit recently held that the mere fact that a foreign parent
11 “holds itself and its subsidiaries out as a single integrated global ‘Group,’” and issues consolidated
12 financial statements, is *insufficient* to render the domestic subsidiary a “general manager” for
13 purposes of service of process under California law. *United States ex rel. Miller v. Public*
14 *Warehousing Co. KSC*, 636 F. App’x 947, 949 (9th Cir. 2016). Instead, the plaintiff bears the burden
15 of demonstrating that there is a “sufficiently close connection” between the subsidiary and parent,
16 based on the “frequency and quality of contact between the parent and the subsidiary, the benefits in
17 California that the parent derives from the subsidiary, and the overall likelihood that service upon the
18 subsidiary will provide actual notice to the parent. *Id.*; *Brockmeyer v. May*, 383 F.3d 798, 801 (9th
19 Cir. 2004) (burden of proof rests on party claiming proper service). The fact that the foreign parent
20 in *Miller* was actually apprised of the attempted service, and moved to dismiss under Rule 12(b)(5),
21 was not sufficient; the statute still requires a showing that service was made on a “general manager”
22 under the standards set forth in *Cospers* and its progeny. 636 F. App’x at 949. This accords with the
23 “general rule that subsidiaries and parent corporations are separate entities,” and that not “any large
24 subsidiary” qualifies as “general manager” under California law. *Thomas v. Takeda Pharm. USA,*
25 *Inc.*, 2017 WL 2214956, at *5 (E.D. Cal. May 19, 2017) (granting motion to dismiss for insufficient
26 service of process). For the reasons set forth above, Plaintiffs have not and cannot demonstrate that
27 Royal Dutch Shell has the requisite “close connection” with Shell Oil Company, the entity Plaintiffs
28 purportedly served.

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Respectfully submitted,

2 By: /s/ Brendan J. Crimmins

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CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2018, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

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