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10 *Counsel for Defendant ConocoPhillips*

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

13 CITY OF OAKLAND, a Municipal Corporation,
14 and THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through the
15 Oakland City Attorney,

16 Plaintiffs,

17 v.

18 BP P.L.C., *et al.*,

19 Defendants.

First Filed Case: 3:17-cv-06011-WHA
Related Case: 3:17-cv-06012-WHA

Case No. 3:17-cv-06011-WHA

STIPULATION AND ~~PROPOSED~~
ORDER REGARDING
CONOCOPHILLIPS'S MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION AND
JURISDICTIONAL DISCOVERY

21 CITY AND COUNTY OF SAN FRANCISCO,
22 a Municipal Corporation, and THE PEOPLE OF
THE STATE OF CALIFORNIA, acting by and
23 through the San Francisco City Attorney
DENNIS J. HERRERA,

24 Plaintiffs,

25 v.

26 BP P.L.C., *et al.*,

27 Defendants.

Case No. 3:17-cv-06012-WHA

1 WHEREAS, on April 19, 2018, all Defendants in the above-styled cases filed a motion to
2 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), while some Defendants—including
3 ConocoPhillips—filed a separate motion to dismiss pursuant to Federal Rule of Civil Procedure
4 12(b)(2);

5 WHEREAS, ConocoPhillips’s Rule 12(b)(2) motion to dismiss asserted three distinct
6 grounds for dismissal: failure to adequately plead that ConocoPhillips’s subsidiaries were its
7 agents, such that their California contacts could be attributed to ConocoPhillips (“Corporate
8 Separateness Argument”); failure to adequately plead that alleged in-forum activities were a
9 “but-for” cause of Plaintiffs’ alleged injury (“But-For Argument”); and that the exercise of
10 personal jurisdiction over ConocoPhillips was unreasonable under the circumstances
11 (“Unreasonableness Argument”);

12 WHEREAS, ConocoPhillips also submitted a sworn declaration by Christopher J.
13 Dodson (“Dodson Declaration”) to support its Corporate Separateness Argument and
14 Unreasonableness Argument;

15 WHEREAS, Plaintiffs opposed the Rule 12(b)(2) motion by a brief filed May 3, 2018;
16 ConocoPhillips filed a reply on May 10, 2018; and the Court heard oral argument on
17 ConocoPhillips’s Rule 12(b)(2) motion, as well as Defendants’ Rule 12(b)(6) motion, on May
18 24, 2018;

19 WHEREAS, at the conclusion of the May 24 hearing, the Court stated that it would delay
20 a ruling on the Rule 12(b)(6) motion until Defendants’ jurisdictional defenses were resolved and
21 that it would allow jurisdictional discovery by Plaintiffs and by personal jurisdiction Defendants,
22 *see* May 24 Hearing Tr. at 102:18-103:5;

23 WHEREAS, on May 25, 2018, the Court ordered, *inter alia*, that Plaintiffs be afforded
24 approximately 60 days of jurisdictional discovery and set an August 9, 2018 deadline for
25 Plaintiffs to file supplemental opposition briefing and an August 16, 2018 deadline for
26 ConocoPhillips to reply;

27 WHEREAS, it is in the interests of all parties to speed a resolution of the Rule 12(b)(6)
28 motion;

1 WHEREAS, while ConocoPhillips does not believe it has sufficient contacts with
2 California for general or specific personal jurisdiction, due to ConocoPhillips' interest in the
3 Court reaching the merits arguments in Defendants Rule 12(b)(6) motion and to avoid the burden
4 and expense of jurisdictional discovery in this case, ConocoPhillips is willing to withdraw its
5 Corporate Separateness Argument and Unreasonableness Argument for the limited purpose of
6 this particular case;

7 WHEREAS, while Plaintiffs believe this Court has minimum contacts with California
8 sufficient to support specific jurisdiction over ConocoPhillips and contested ConocoPhillips's
9 motion to dismiss for that reason, they likewise are interested in the Court reaching the merits
10 arguments in Defendants' Rule 12(b)(6) motion, and therefore support the final resolution of the
11 Corporate Separateness Argument and Unreasonableness Argument by stipulation and without
12 the need for further Court involvement.

13 NOW THEREFORE, the parties HEREBY STIPULATE AND AGREE, subject to the
14 approval and order of the Court, as follows:

15 1. ConocoPhillips withdraws its motion for dismissal pursuant to Federal Rule of
16 Civil Procedure 12(b)(2), to the extent that motion asserts a Corporate Separateness Argument
17 and an Unreasonableness Argument. Specifically, ConocoPhillips withdraws Argument Sections
18 II.A and II.C of its opening brief and Argument Sections I.A and I.C of its reply, as well as the
19 Dodson Declaration, and any other sections or factual averments in its briefing that rely upon the
20 Dodson Declaration or upon the Corporate Separateness Argument or the Unreasonableness
21 Argument. However, ConocoPhillips specifically reserves and does not withdraw its But-For
22 Argument.

23 2. Plaintiffs will forgo any jurisdictional discovery against ConocoPhillips in
24 relation to or pursuant to the Court's May 25, 2018 order and May 24 hearing; likewise
25 ConocoPhillips will forgo any jurisdictional discovery against Plaintiffs in relation to or pursuant
26 to the Court's May 24 hearing.

27 3. In light of this stipulation, there is no need for further jurisdictional discovery or
28 briefing as relates to ConocoPhillips.

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4. This stipulation does not operate as a waiver of personal jurisdiction in any other litigation that has been or will be brought by any other plaintiff against ConocoPhillips, in any forum; nor does it constitute a concession that ConocoPhillips Company or any indirect subsidiary of ConocoPhillips is or has been the agent of ConocoPhillips for any purpose.

5. This agreement does not affect the rights of either party to assert any other argument, claim, or defense in these cases, to the extent permitted by state or federal law, the Federal Rules of Civil Procedure, or the Federal Rules of Evidence.

6. This agreement does not affect the rights of either party to seek appeal from, fees or costs for, or any other right or remedy relating to the Rule 12(b)(6) motion currently pending in these cases in this Court.

IT IS SO STIPULATED.

Dated: June 5, 2018

Respectfully submitted,

By: /s/ George Morris

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** Pursuant to Civ. L.R. 5-1(i)(3), the
electronic filer has obtained approval from
this signatory.

** /s/ Erin Bernstein

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** Pursuant to Civ. L.R. 5-1(i)(3), the
electronic filer has obtained approval from
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~~PROPOSED~~ ORDER

Pursuant to the above Stipulation of the parties, **IT IS SO ORDERED**. The deadlines for supplemental briefing on personal jurisdiction set forth in the Court's May 25 Order permitting jurisdictional discovery relative to ConocoPhillips are **VACATED**.

Date: June 6, 2018.



WILLIAM H. ALSUP
UNITED STATES DISTRICT JUDGE