

Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KING COUNTY,

Plaintiff,

v.

BP P.L.C., CHEVRON CORPORATION,
CONOCOPHILLIPS, EXXON MOBIL
CORPORATION, ROYAL DUTCH SHELL
PLC, and DOES 1 through 10,

Defendants.

No. 18-cv-00758-RSL

DEFENDANT ROYAL DUTCH SHELL
PLC'S MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION
AND FAILURE TO STATE A CLAIM

NOTE ON MOTION CALENDAR:
OCTOBER 5, 2018

ORAL ARGUMENT REQUESTED

**DEFENDANT ROYAL DUTCH SHELL PLC'S MOTION TO DISMISS FOR
LACK OF PERSONAL JURISDICTION AND FAILURE TO STATE A CLAIM**

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<https://link.springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf> 10

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INTRODUCTION

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2 Plaintiff's suit advances the remarkable contention that five energy companies are
3 responsible, in tort, for injuries allegedly resulting from the impacts of global climate change,
4 including "warming temperatures, acidifying marine waters, rising seas, increasing flooding
5 risk, decreasing mountain snowpack, and less water in the summer." Compl. ¶ 1 (May 9,
6 2018) (ECF No. 1-2). According to Plaintiff, the law of nuisance and trespass permits it to
7 obtain monetary relief from Defendants for harms resulting from two centuries of human
8 activity across the globe. Plaintiff asks for damages as well as funding for *future* efforts to
9 protect against what it alleges may be the *local* effects of *global* climate change.

10 The complaint has many flaws, and two courts have recently dismissed materially
11 identical complaints brought by other local governments for failure to state a claim. *See City*
12 *of Oakland v. BP P.L.C.*, 2018 WL 3109726 (N.D. Cal. June 25, 2018); *City of New York v.*
13 *BP P.L.C.*, 2018 WL 3475470 (S.D.N.Y. July 19, 2018). This motion focuses on an additional
14 threshold inadequacy of Plaintiff's complaint: it fails to establish any basis under the Due
15 Process Clause for exercising personal jurisdiction over Defendant Royal Dutch Shell plc.

16 There is no basis for *general* personal jurisdiction over Royal Dutch Shell because it is
17 "registered in England and Wales with its headquarters in The Hague, Netherlands." Compl.
18 ¶ 24. And there is no basis for *specific* personal jurisdiction over Royal Dutch Shell because,
19 as the court in *City of Oakland* held in an order issued shortly before the filing of this motion,
20 the alleged forum contacts supposedly attributable to Royal Dutch Shell are not alleged to be a
21 but-for cause of global climate change and Plaintiff's asserted injuries. *See Order Granting*
22 *Mot. Dismiss 7, City of Oakland v. BP P.L.C.*, ECF No. 287, 18-cv-6011-WHA (N.D. Cal.
23 July 27, 2018) (personal jurisdiction lacking because "nowhere do plaintiffs assert that sea rise
24

1 would not have occurred had any defendant reduced or refrained from fossil fuel production in
2 California (or elsewhere in the United States)”) (attached hereto as Exh. A).

3 BACKGROUND

4 **A.** Plaintiff seeks to hold Royal Dutch Shell and four other energy companies
5 liable for the asserted consequences of global climate change. As described in the complaint,
6 the “combustion” of fossil fuels “release[s] greenhouse gases, including carbon dioxide (CO₂)
7 and methane, which trap atmospheric heat and increase global temperatures.” *Id.* ¶ 79. The
8 complaint describes that process as a cause of the phenomenon known as “global warming.”
9 *Id.* That warming, Plaintiff asserts, leads to “melting glaciers and sea ice” and causes
10 “seawater to expand,” resulting in an “acceleration of sea level rise [that] is unprecedented in
11 the history of human civilization.” *Id.* ¶ 95. According to the complaint, “[g]lobal warming is
12 here and it is harming King County now” through “warming temperatures, acidifying marine
13 waters, rising seas, increasing flooding risk, decreasing mountain snowpack, and less water in
14 the summer.” *Id.* ¶ 1.

15 The complaint explains that fossil fuels release greenhouse gases “when combusted,”
16 *id.* ¶ 97, but it disclaims any attempt “to impose liability on Defendants for their direct
17 emissions of greenhouse gases,” *id.* ¶ 10. Instead, the theory of the complaint is that
18 Defendants are responsible for the ultimate asserted consequences of emissions generated by
19 the fossil fuel-consuming activities of every business, government, and other consumer on the
20 planet, including Plaintiff itself.

21 **B.** Plaintiff seeks to premise personal jurisdiction over Royal Dutch Shell on a
22 handful of forum contacts alleged in the complaint.

1 First, the complaint alleges that “Shell does business in Washington, including through
2 its subsidiaries and agents.” *Id.* ¶ 75.¹ According to the complaint, “Shell Oil Company, Shell
3 Oil Company, LLC, and Shell Marine Products (US) Company” are “registered to do business
4 in Washington and have an agent for service of process in Washington.” *Id.*

5 Second, the complaint alleges that “Shell, through its subsidiaries and agents, engages
6 in oil refining and account [sic] for a total capacity of 426,400 barrels per day.” *Id.* ¶ 76. The
7 complaint identifies only three specific facilities with an alleged connection to a Royal Dutch
8 Shell subsidiary, one of which (according to the complaint) has not been owned or operated by
9 a subsidiary of Royal Dutch Shell for 20 years. *See id.* ¶¶ 76-77.

10 Third, the complaint alleges that “[t]here are numerous Shell-branded gasoline stations
11 in Washington.” *Id.* ¶ 78. The complaint does not allege that Royal Dutch Shell or any of its
12 subsidiaries owns or operates those “Shell-branded” stations. Instead, the complaint asserts in
13 a conclusory fashion that “Shell exercises control over gasoline product quality and
14 specifications at Shell-branded retail stations.” *Id.*

15 Fourth, the complaint alleges that “Shell offers credit cards to consumers on its
16 interactive website to promote sales of gasoline and other products at its branded gasoline
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19 ¹ Plaintiff refers throughout the complaint to “Shell,” obscuring the distinction between
20 Royal Dutch Shell (which is a party to this lawsuit) and Royal Dutch Shell’s various
21 subsidiaries (none of which are parties to this lawsuit). There is no basis in law or fact for
22 imputing to Royal Dutch Shell the alleged jurisdictional contacts of its subsidiaries. For
23 purposes of this motion, however, Royal Dutch Shell assumes *arguendo* Plaintiff’s (erroneous)
24 premise that the complaint properly imputes to Royal Dutch Shell (a holding company) all of
the alleged forum contacts of its direct and indirect subsidiaries. Royal Dutch Shell does so
only to focus the jurisdictional inquiry at this stage on the facial inadequacy of the complaint,
and it reserves all rights in this regard for any other purpose or proceeding. *See Order*
Granting Mot. Dismiss 5, City of Oakland (Exh. A) (“Defendants do not concede that these
activities are attributable to them . . . but argue that plaintiffs still fail to demonstrate specific
jurisdiction even assuming that [the] forum contacts can be imputed.”).

1 stations,” and that “Shell promotes gasoline sales by offering consumers, through its
 2 interactive website, cents per gallon discounts off every gallon of Shell Fuel for the first two
 3 months after they open an account.” *Id.* ¶ 78. The complaint does not allege that those
 4 activities were purposefully directed at Washington (or any other forum).

5 Fifth, the complaint alleges that “Shell’s website states that it ‘has been a proud
 6 member of the Pacific Northwest community for over 60 years.’” *Id.* ¶ 76.

7 ARGUMENT

8 **I. Plaintiff Has Not Alleged A Basis For Exercising Personal Jurisdiction Over 9 Royal Dutch Shell In This Case**

10 Plaintiff bears the burden of establishing personal jurisdiction over each defendant.
 11 *See, e.g., Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Plaintiff must make a
 12 prima facie showing of personal jurisdiction to survive a motion to dismiss. *See, e.g., id.* In
 13 other words, Plaintiff must “allege facts that support a finding of personal jurisdiction.”
 14 *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1118 (9th Cir.
 15 2002); *see Mizokami Bros. of Ariz., Inc. v. Baychem Corp.*, 556 F.2d 975, 977 (9th Cir. 1977)
 16 (per curiam) (“To the extent that the district court grounded its dismissal upon the failure of
 17 the complaint to allege facts establishing in personam jurisdiction, the judgment must be
 18 affirmed.”).

19 Under Federal Rule of Civil Procedure 4(k), “a federal district court’s authority to
 20 assert personal jurisdiction in most cases is linked to service of process on a defendant ‘who is
 21 subject to the jurisdiction of a court of general jurisdiction in the state where the district court
 22 is located.’” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting Fed. R. Civ. P.
 23 4(k)(1)(A)). “Washington’s long-arm statute,” Wash. Rev. Code § 4.28.185, “permits the
 24 exercise of personal jurisdiction to the extent that due process allows.” *Hodjera v. BASF*

1 *Catalysts LLC*, 2017 WL 3262501, at *2 n.2 (W.D. Wash. July 31, 2017) (citing *Shute v.*
 2 *Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989)). Accordingly, the Court asks whether
 3 personal jurisdiction “comports with the limits imposed by federal due process.” *Daimler AG*
 4 *v. Bauman*, 571 U.S. 117, 125 (2014).²

5 Applying the Due Process Clause, the Supreme Court has recognized two types of
 6 personal jurisdiction: general and specific. *See, e.g., Bristol-Myers Squibb Co. v. Superior*
 7 *Court*, 137 S. Ct. 1773, 1779-80 (2017). General jurisdiction allows a court to adjudicate any
 8 claim against a defendant, regardless of the connection between the claim and the forum. *Id.*
 9 Specific jurisdiction allows a court to adjudicate only a limited set of claims: those that arise
 10 out of contacts between the defendant and the forum. *Id.*

11 Plaintiff has not alleged facts that could support either general or specific jurisdiction
 12 over Royal Dutch Shell in this case.

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 15 ² Ordinarily, under Federal Rule of Civil Procedure 4(k), the due process inquiry
 16 focuses on the connection between the defendant and the state in which the federal court sits.
 17 *See Fed. R. Civ. P. 4(k)(1)(A); Walden*, 134 S. Ct. at 1121. Rule 4(k)(2) contains an
 18 exception, however, for claims arising under federal law against a defendant that is not subject
 19 to jurisdiction in any state’s courts. *See Fed. R. Civ. P. 4(k)(2)*. As interpreted by the Ninth
 20 Circuit, Rule 4(k)(2) confers personal jurisdiction over a defendant to the extent permitted by
 the Due Process Clause of the Fifth Amendment. *See Axiom Foods, Inc. v. Acerchem Int’l,*
Inc., 874 F.3d 1064, 1072 (9th Cir. 2017); *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).

21 Plaintiff has purported to assert claims under state law. *See Compl.* ¶¶ 159-81. Royal
 22 Dutch Shell contends that those claims arise under federal law and that it is not subject to
 23 jurisdiction in any state’s courts, thus implicating Rule 4(k)(2) and the nationwide due process
 analysis. Regardless, personal jurisdiction is lacking under either approach. *See Order*
 24 *Granting Mot. Dismiss 8, City of Oakland* (Exh. A) (rejecting possibility of personal
 jurisdiction under Rule 4(k)(2) where “[plaintiffs] have failed to show that BP or Royal Dutch
 Shell’s national conduct was a ‘but for’ cause of their harm”).

1 **A. Royal Dutch Shell Is Not Subject To General Jurisdiction In Washington**
 2 **Or Anywhere Else In The United States**

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

13 Royal Dutch Shell neither is incorporated nor has its principal place of business in
 14 Washington or any other state. As Plaintiff acknowledges, Royal Dutch Shell “is a public
 15 limited company registered in England and Wales with its headquarters in The Hague,
 16 Netherlands.” Compl. ¶ 24. Because Royal Dutch Shell is incorporated and maintains its
 17 principal place of business abroad, it is not subject to general jurisdiction in Washington or
 18 any other state. *See Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021-22 (9th Cir. 2017)
 19 (holding that *Daimler* bars the exercise of general jurisdiction over defendant incorporated and
 20 headquartered in Japan); *Hodjera*, 2017 WL 3262501, at *2 (“Because Imerys Talc is not
 21 incorporated in Washington and does not have its principal place of business in Washington,
 22 the Court agrees that it lacks general personal jurisdiction over Imerys Talc.”).³

23 ³ 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

1 **B. Royal Dutch Shell Is Not Subject To Specific Jurisdiction In This Case**

2 Plaintiff also has not alleged a basis for exercising specific personal jurisdiction over
 3 Royal Dutch Shell in this case. A court may exercise specific jurisdiction over a defendant
 4 only if the plaintiff’s claims “aris[e] out of or relat[e] to” the defendant’s contacts with the
 5 forum. *Bristol-Myers*, 137 S. Ct. at 1780.⁴ The Ninth Circuit has held that this requires a
 6 showing that the defendant’s contacts *caused* the plaintiff’s injury. *See Bancroft & Masters,*
 7 *Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). Courts in this Circuit
 8 “measure this requirement in terms of ‘but for’ causation.” *Id.*⁵ Thus, the plaintiff must allege
 9 that its injuries would not have occurred but for the defendant’s contacts with the forum. *See*
 10 *id.*; *Glencore Grain*, 284 F.3d at 1123 (“[Plaintiff] must show that it would not have been

11 _____
 12 and the principal place of business. 571 U.S. at 139 n.19. As the only example of such a case,
 13 the Court identified *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).
 14 *Daimler*, 571 U.S. at 129-30. In *Perkins*, World War II had forced the president of the
 15 corporate defendant to relocate from the Philippines to Ohio, making Ohio “the corporation’s
 16 principal, if temporary, place of business.” *Daimler*, 571 U.S. at 130 (internal quotation marks
 17 omitted); *see Goodyear*, 564 U.S. at 928 (“[t]o the extent that the company was conducting
 18 any business during and immediately after the Japanese occupation of the Philippines, it was
 19 doing so in Ohio”). Plaintiff alleges no facts that could make this an exceptional case along
 20 the lines of *Perkins*. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014)
 21 (rejecting attempt to show that case was “exceptional” where, as here, defendant was
 22 incorporated and headquartered abroad).

17 ⁴ In a tort case such as this one, specific jurisdiction also requires a showing that the
 18 defendant “purposefully direct[ed] his activities toward the forum” and that the exercise of
 19 jurisdiction would be “reasonable.” *Axiom Foods*, 874 F.3d at 1068. For purposes of this
 20 motion only, Royal Dutch Shell assumes *arguendo* Plaintiff’s (erroneous) premise that the
 21 forum contacts attributed to Royal Dutch Shell in the complaint were “purposefully directed”
 22 toward the forum, so as to focus the specific-jurisdiction inquiry in the first instance on the
 23 facial inadequacy of the complaint with respect to whether the claims here arise out of the
 24 alleged forum contacts. As explained below, in all events, the exercise of jurisdiction here
 would be unreasonable. *See infra* Part I.C.

22 ⁵ Other circuits have held, correctly in Royal Dutch Shell’s view, that the defendant’s
 23 forum contacts must also be a 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). At all events, as demonstrated in the text, Plaintiff cannot show that its claims
 arise from the forum contacts alleged in the complaint even under the but-for test.

1 injured ‘but for’ [defendant’s] contacts with [the forum.]”); *Doe v. Unocal Corp.*, 248 F.3d
2 915, 924 (9th Cir. 2001) (per curiam; adopting relevant portions of district court’s opinion)
3 (“To determine whether a claim arises out of forum-related activities, . . . the Court considers
4 whether plaintiffs’ claims would have arisen but for [defendant’s] contacts with [the forum.]”);
5 *Doe v. American Nat’l Red Cross*, 112 F.3d 1048, 1051-52 (9th Cir. 1997) (specific
6 jurisdiction lacking where “it cannot be said that [plaintiff] would not have sustained her
7 injury, ‘but for’ [defendant’s] alleged misconduct”); *Terracom v. Valley Nat’l Bank*, 49 F.3d
8 555, 561 (9th Cir. 1995) (plaintiff must show that “‘but for’ the contacts between the
9 defendant and the forum state, the cause of action would not have arisen”); *Hodjera*, 2017 WL
10 3262501, at *2.

11 This Court’s decision in *Hodjera* illustrates the controlling principle. The Hodjeras
12 sued several companies that allegedly “mined, manufactured, produced, and/or placed into the
13 stream of commerce” asbestos and asbestos-containing products. 2017 WL 3262501, at *2.
14 The Hodjeras asserted that the companies knew of the risks of asbestos, but that they “fail[ed]
15 to warn” of those risks and “made misrepresentations” about the safety of their products. *Id.* at
16 *1. To establish specific jurisdiction over one corporate defendant, Imerys Talc America Inc.,
17 the Hodjeras alleged that it mined and processed asbestos-containing talc intended for
18 “widespread distribution throughout North America,” that it was licensed to do business in
19 Washington, and that the products it sold in Washington were “the same kind of products” that
20 “caused [Mr. Hodjera’s] exposure to asbestos” in Ontario. *Id.* at *2. This Court dismissed
21 Imerys Talc America Inc. for lack of personal jurisdiction. In doing so, this Court explained
22 that it could not exercise specific jurisdiction because “[t]here is no allegation that Mr.
23
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1 Hodjera’s exposure would not have occurred ‘but for’ Imerys Talc’s contacts with
 2 Washington.” *Id.*

3 Here, Plaintiff has not even asserted that its injuries would not have occurred but for
 4 the forum contacts supposedly attributable to Royal Dutch Shell. Plaintiff asserts that its
 5 claims arise out of the combustion of fossil fuels to produce energy, which emits greenhouse
 6 gases, which accumulate in the atmosphere, which results in a warmer global climate, which
 7 yields extreme weather events, sea-level rise, and other hydrologic changes, and which
 8 ultimately harms Plaintiff’s property and upsets the surrounding ecosystem.⁶ But Plaintiff’s
 9 claims and underlying theory of causation are not even loosely tethered to the contacts that
 10 allegedly exist between Royal Dutch Shell and the forum. Nowhere does the complaint assert
 11 that Plaintiff’s claimed injuries “would not have occurred ‘but for’ [Royal Dutch Shell]’s
 12 contacts with Washington” or the United States. *Id.* Dismissal is therefore required, as the
 13 court held in *City of Oakland*. See Order Granting Mot. Dismiss (Exh. A.).

14 Indeed, some of the alleged contacts do not even concern fossil fuels, excluding any
 15 possibility that they are causally related to Plaintiff’s claims. See, e.g., Compl. ¶ 75 (asserting
 16 that “Shell Oil Company, Shell Oil Company, LLC, and Shell Marine Products (US)
 17 Company[] are registered to do business in Washington and have an agent for service of
 18 process in Washington”); *id.* ¶ 76 (asserting that “Shell’s website states that it ‘has been a
 19 proud member of the Pacific Northwest community for over 60 years’”). Rather than
 20

21 ⁶ See, e.g., Compl. ¶ 93 (“Today, due primarily to the combustion of fossil fuels
 22 produced by Defendants and others, the atmospheric level of carbon dioxide is 410 ppm,
 23 higher than at any time during human civilization and likely higher than any level in millions
 24 of years.”); *id.* ¶ 95 (“Global warming causes sea level rise by melting glaciers and sea ice, and
 by causing seawater to expand.”); *id.* ¶ 143 (“Projected climate impacts in King County have
 widespread implications for people, infrastructure, and ecosystems in the Puget Sound region
 and have direct and indirect economic impacts on King County.”).

1 supporting the exercise of specific jurisdiction, such allegations are nothing more than a futile
 2 attempt to establish a “loose and spurious form of general jurisdiction.” *Bristol-Myers*, 137
 3 S. Ct. at 1781; *see also American Nat’l Red Cross*, 112 F.3d at 1051 (no specific jurisdiction
 4 where defendant’s forum contacts were “only peripherally” related to plaintiff’s alleged
 5 injuries and “too attenuated to satisfy the ‘but for’ test”); *cf. OBB Personenverkehr v. Sachs*,
 6 136 S. Ct. 390, 396 (2015) (“an action is ‘based upon’ the ‘particular conduct’ that constitutes
 7 the ‘gravamen’ of the suit”).

8 Nor could Plaintiff plausibly allege but-for causation even assuming for purposes of
 9 this motion that it is proper to impute to Royal Dutch Shell all of its subsidiaries’ production
 10 and distribution activities in Washington or the United States. According to a paper cited by
 11 Plaintiff, the combustion of *all* of the fossil fuels that *all* of Royal Dutch Shell’s subsidiaries
 12 have allegedly *ever* produced and sold *anywhere in the world* accounts for just 2.12% of
 13 industrial greenhouse gas emissions since 1751.⁷ Although Royal Dutch Shell does not accept
 14 the inputs, analysis, or conclusions in that paper — and setting aside that the figure improperly
 15 aggregates activities worldwide rather than forum-wide as due process requires — Plaintiff has
 16 not alleged, and could not plausibly allege, that its putative injuries would not have occurred
 17 but for that 2.12% of global industrial emissions.

18 In addition, federal courts have recognized that it is untenable to assert a causal
 19 connection between particular sources of emissions (much less particular fossil fuels) and
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21 ⁷ *See* Compl. ¶ 99, nn.120-21 (citing Richard Heede, *Tracing Anthropogenic Carbon*
 22 *Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, 122
 23 *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)
 24 [2Fs10584-013-0986-y.pdf](https://link.springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf)). Heede presents the relevant figure at 237 tbl. 3. Because there
 are significant *non-industrial* sources of greenhouse gas emissions — *e.g.*, deforestation — the
 2.12% estimate necessarily overstates the share of total emissions even theoretically traceable
 to fossil fuels that Royal Dutch Shell’s subsidiaries have ever produced and sold.

1 particular effects of global warming. In dismissing nearly identical cases, the court in *City of*
2 *Oakland* explained that claims in cases like this one depend “on a global complex of
3 geophysical cause and effect involving all nations on the planet (and the oceans and
4 atmosphere),” 2018 WL 3109726, at *3, and a different court agreed that such claims depend
5 on activities “in all 50 states and around the world,” *City of New York*, 2018 WL 3475470, at
6 *5. In dismissing another similar case, another court in this Circuit explained that “[t]he
7 undifferentiated nature of greenhouse gas emissions from all global sources and their
8 worldwide accumulation over long periods of time . . . makes clear that there is no realistic
9 possibility of tracing any particular alleged effect of global warming to any particular
10 emissions by any specific person, entity, [or] group at any particular point in time.” *Native*
11 *Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff’d*, 696
12 F.3d 849 (9th Cir. 2012). And in dismissing a case challenging federal approvals of oil and
13 gas leases, yet another court explained that “climate change is dependent on an unknowable
14 multitude of [greenhouse gas] sources and sinks, and it is impossible to say with any certainty
15 that Plaintiffs’ alleged injuries were the result of any particular action or actions by
16 Defendants.” *Amigos Bravos v. U.S. Bureau of Land Mgmt.*, 816 F. Supp. 2d 1118, 1135
17 (D.N.M. 2011). Those decisions demonstrate that Plaintiff cannot premise specific jurisdiction
18 on assertions that “emissions of greenhouse gases from the fossil fuels” that Royal Dutch Shell
19 has allegedly produced “combine[] with the greenhouse gas emissions from fossil fuels
20 produced by the other Defendants, among others, to result in dangerous levels of global
21 warming with grave harms for coastal areas like King County.” Compl. ¶ 161.

22 Plaintiff likewise cannot rely on the assertion that “Defendants are *substantial*
23 *contributors* to the public nuisance of global warming that is causing injury to Plaintiff,”

1 Compl. ¶ 9 (emphasis added), to establish specific jurisdiction. First, the label “substantial
2 contributor[.]” is the kind of conclusory assertion that is not entitled to an assumption of truth
3 on a motion to dismiss. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678-80 (2009). Second, on
4 its face, the assertion does not even attempt to connect the claimed injury to Royal Dutch
5 Shell’s alleged *forum contacts*, as required for specific jurisdiction. Third, the specific-
6 jurisdiction standard in this Circuit requires but-for causation, not substantial contribution. To
7 the extent Plaintiff would argue that something less than but-for causation will support specific
8 jurisdiction in nuisance cases because (according to Plaintiff) something less than but-for
9 causation will support *liability* in nuisance cases, that argument fails. *See Order Granting Mot.*
10 *Dismiss at 7-8, City of Oakland* (Exh. A). “Liability is not to be conflated with amenability to
11 suit in a particular forum,” the Ninth Circuit has instructed, because “[p]ersonal jurisdiction
12 has constitutional dimensions.” *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591
13 (9th Cir. 1996). The constitutional inquiry is whether Plaintiff’s putative injuries would not
14 have occurred but for the forum activities supposedly attributable to Royal Dutch Shell. *See*
15 *Bancroft & Masters*, 223 F.3d at 1088; *Hodjera*, 2017 WL 3262501, at *2. Plaintiff’s failure
16 even to allege but-for causation is therefore fatal to any argument for exercising specific
17 jurisdiction over Royal Dutch Shell in this case.

18 **C. Exercising Personal Jurisdiction Over Royal Dutch Shell In This Case**
19 **Would Be Unreasonable**

20 The complaint also fails to allege facts that would make it reasonable to exercise
21 personal jurisdiction over Royal Dutch Shell in this case. For a court to exercise specific
22 jurisdiction over a nonresident defendant, “the exercise of jurisdiction must comport with fair
23 play and substantial justice, i.e. it must be reasonable.” *Axiom Foods*, 874 F.3d at 1068.
24

1 Plaintiff's theory of personal jurisdiction is in no way specific to this forum. If accepted, it
2 would support personal jurisdiction in any forum.

3 Permitting jurisdiction based on such an attenuated connection between the defendant's
4 forum contacts and the plaintiff's asserted injuries would be unreasonable. *See Advanced*
5 *Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014)
6 (rejecting plaintiff's approach to specific jurisdiction as having "no limiting principle — a
7 plaintiff could sue everywhere"). It would resurrect the loose approach to general jurisdiction
8 that the Supreme Court rejected in *Daimler* and make large multinational businesses with
9 numerous subsidiaries operating around the globe subject to suit everywhere. Just as "[a]
10 corporation that operates in many places can scarcely be deemed at home in all of them,"
11 *Daimler*, 571 U.S. at 139 n.20, a defendant's "general connections with the forum are not
12 enough" for specific jurisdiction, *Bristol-Myers Squibb*, 137 S. Ct. at 1781. Plaintiff has
13 alleged nothing more that could render the exercise of jurisdiction reasonable here. The
14 acknowledged fact that Royal Dutch Shell is incorporated and headquartered abroad
15 underscores the unreasonableness of Plaintiff's jurisdictional theory in this case.⁸

16 **II. The Complaint Fails To State A Claim Upon Which Relief May Be Granted**

17 Royal Dutch Shell incorporates by reference the arguments set forth in Defendants'
18 Motion To Dismiss and Memorandum of Points and Authorities, filed jointly and on behalf of
19
20

21 _____
22 ⁸ *See Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) ("The unique
23 burdens placed upon one who must defend oneself in a foreign legal system should have
24 significant weight in assessing the reasonableness of stretching the long arm of personal
jurisdiction over national borders."); *Glencore Grain*, 284 F.3d at 1126 (fact that "the
defendant is from a foreign nation rather than another state . . . undermines the reasonableness
of personal jurisdiction").

1 all Defendants in support of a motion to dismiss for failure to state a claim upon which relief
2 may be granted.

3 **CONCLUSION**

4 This Court should grant Royal Dutch Shell’s motion to dismiss with prejudice.

5 Dated: July 27, 2018

Respectfully submitted,

6 By: /s/ Erika L. Holsman

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CERTIFICATE OF SERVICE

I hereby certify that on July 27, 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.

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