HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS, a Delaware corporation, EXXON MOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,

Defendants.

Case No. 2:18-cv-00758-RSL

DEFENDANT EXXON MOBIL CORPORATION'S MOTION TO DISMISS THE AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION

Note on Motion Calendar: September 28, 2018

ORAL ARGUMENT REQUESTED

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Defendant Exxon Mobil Corporation ("ExxonMobil") respectfully submits this motion pursuant to Federal Rule of Civil Procedure 12(b)(2) to dismiss it from this case for lack of personal jurisdiction.[1]

I. PRELIMINARY STATEMENT

King County (the "County") asks the Court to wade into a political thicket and reshape the energy industry as we know it. Dissatisfied with our federal climate policies, the County invites the Court to pass judgment on the social utility of fossil fuels since "the dawn of the Industrial Revolution" and to weigh, with the benefit of hindsight, the relative costs and benefits of every historical business activity and decision ExxonMobil has undertaken in its 135-year existence. (Compl. ¶¶ 2, 143(a), (c).)[2] Notwithstanding other courts' decisions holding such claims nonjusticiable, *see City of Oakland et al.* v. *BP P.L.C. et al.*, Nos. C 17-06011, 17-06012, 2018 WL 3109726, at *4 (N.D. Cal. June 25, 2018); *City of New York* v. *BP P.L.C., et al*, No. 18 Civ. 182, 2018 WL 3475470 (S.D.N.Y. July 19, 2018), and the County's continued reliance on fossil fuels while advancing such claims, the present Complaint—like the County's initial pleading—suffers from a defect that has already resulted in the dismissal of an indistinguishable lawsuit: it was filed in the wrong forum.

The same federal system that prevents the County from making international energy policy also cabins the authority of tribunals in Washington to impose liability on out-of-state actors like ExxonMobil, a Texas-based company incorporated in New Jersey. Due process requires the plaintiff seeking judgment of ExxonMobil in Washington to demonstrate that its injuries would not have occurred but for ExxonMobil's activities in Washington. That causal link is lacking where, as here, a complaint pleads scant connections to Washington while claiming injuries resulting from an undifferentiated global phenomenon caused by "carbon and methane pollution generated from the use of" fossil fuels "from the mid-19th century to present." (Compl. ¶ 99(b).) As another federal judge held in dismissing two complaints for lack of personal jurisdiction in an

[1] ExxonMobil also moves to dismiss for the reasons set forth in the joint brief submitted by all Defendants.

[2] References to the "Compl." refer to Plaintiff's first amended complaint in this case, ECF No. 113.

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indistinguishable case brought by the same counsel, the "worldwide chain of events" causing climate change means that "[i]t is manifest that global warming would have continued in the absence of all [particular forum]-related activities of defendants." *City of Oakland* v. *BP p.l.c.*, Nos. C 17-06011, C 17-06012, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018). Here as in *City of Oakland*, the exercise of personal jurisdiction over ExxonMobil in connection with the County's claims would be improper and disregards well-settled principles preventing a corporation from being called to answer for *all* of its business activities wherever it conducts *any* of its business activities. The Complaint fails to plead sufficient contacts to require ExxonMobil to defend itself against such sweeping claims in this forum, and here as in *City of Oakland*, ExxonMobil should be dismissed from this case for lack of personal jurisdiction.

II. BACKGROUND

The County seeks to hold ExxonMobil and four other energy companies uniquely liable for virtually all of the alleged negative consequences of the energy system that humanity has developed and relied on "since the dawn of the Industrial Revolution." (Compl. ¶ 143(c).) Yet the Complaint fails to allege that the County's claimed injuries would not have occurred absent ExxonMobil's activities in Washington. Although the Complaint claims not to take issue with carbon emissions directly, the consequences the County complains of are the result of the combustion of fossil fuels, which "release[s] greenhouse gases … which trap atmospheric heat and increase global temperatures." (Compl. ¶ 122.) This warming, the Complaint claims, leads to "warming temperatures, acidifying marine waters, rising seas, increasing flooding risk, decreasing mountain snowpack, and less water in the summer." (Compl. ¶ 1.)

The Complaint implicates innumerable third parties—anyone who used automobiles, jets, ships, trains, power plants, heating systems, and factories since the dawn of the Industrial Revolution—yet seeks to hold ExxonMobil and its co-defendants jointly and severally liable for *all* of the County's hypothetical response costs (Compl. ¶ 9). In the words of Judge Alsup of the Northern District of California, "[e]veryone has contributed" to climate change. *City of Oakland*, 2018 WL 3109726, at *7. Indeed, the Complaint concedes that its claims arise from "other

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contributors" to the global warming phenomenon, details the *paucity* of ExxonMobil's purported contribution to global emissions, and acknowledges that *all five* Defendants in this action are "*collectively* responsible, through their production, marketing, and sale of fossil fuels" for only 11% of emissions "since the dawn of the Industrial Revolution." (*Id.* ¶ 143(c) (emphasis added).) And the source the Complaint cites for that proposition (*Id.* n. 154) makes clear that 97% of emissions since the Industrial Revolution have no connection to ExxonMobil (or its predecessors or affiliates) at all.[3]

Notwithstanding the contribution of billions of third parties to the conditions of which the County complains, the Complaint fails to relate any particular climate-related injury—whether a storm surge or generalized sea level rise—to any particular carbon emissions in the State of Washington or elsewhere. Nor does the Complaint plead any link between such emissions and any particular emitter or, as necessary for Plaintiff's claims, to any conduct of the defendant fossil fuel producers or marketers. As Judge Alsup concluded, where injuries are claimed to be caused by climate change, "their causes are worldwide," and "depend on a global complex of geophysical cause and effect involving all nations of the planet." *City of Oakland*, 2018 WL 3109726, at *3, 9.

And although the County's Complaint does not admit the impracticability of attributing claimed injuries to a particular emitter or fossil fuel producer, in another case brought by the County's private attorney, Matthew Pawa, another federal judge ruled that "there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, or group at any particular point in time." *Native Village of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff'd on other grounds*, 696 F.3d 849 (9th Cir. 2012). Consistent with that reasoning, Mr. Pawa recently conceded as much in a parallel nuisance lawsuit filed against the same five defendants in New York. There, the plaintiff City of New York—in a filing signed by Mr. Pawa—admitted that the "[g]reenhouse gas

[3] Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010*, 122 Climatic Change 229, 237 (2014), https://link.springer.com/article/10.1007/s10584-013-0986-y.

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molecules" purportedly causing New York City's claimed injuries "cannot be traced to their source" because they "quickly diffuse and comingle in the atmosphere."[4] Judge Alsup echoed this principle when he dismissed the California plaintiffs' actions for lack of jurisdiction, reasoning that the "worldwide chain of events" underlying climate change "does not depend on a particular defendant's contacts with [a single forum state]. Rather, whatever sales or events occurred in [the forum] were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming." *City of Oakland*, 2018 WL 3609055, at *3.

The County's amended Complaint alleges scant few ExxonMobil connections to Washington, even after the County elected to overhaul those allegations in an amended pleading and two California actions were dismissed for lack of personal jurisdiction on an indistinguishable record. The Complaint alleges a hodgepodge of connections between ExxonMobil and Washington, none of which can plausibly be labeled a "but for" cause of the County's claimed injuries:

First, that ExxonMobil and at least three of its non-party subsidiaries are registered to do business in Washington and have designated agents for service of process here—facts that are irrelevant to the question of whether ExxonMobil can be compelled to answer *these* claims in Washington. (Compl. ¶ 89.)

Second, that ExxonMobil's subsidiaries produce oil in Alaska and North Dakota, some unspecified quantity of which is purportedly refined in Washington—although the Complaint fails to explain where any such refined products are ultimately sold or combusted, let alone how the transport of any crude oil to Washington refineries caused the County's claimed injuries. (*Id.* ¶¶ 91-92.)

[4] *See* Amended Complaint, *City of New York* v. *B.P. PLC et al.*, No. 18 Civ. 182 (S.D.N.Y.), ECF No. 80 (hereinafter "New York Complaint") at ¶ 75. In the New York Complaint, aside from conceding that 97% of emissions have no connection to ExxonMobil, Mr. Pawa also conceded that approximately 90% of the 3% of emissions that *may* have some link to ExxonMobil were emitted by unknown third parties, not ExxonMobil itself. (*Id.* ¶ 3.) ExxonMobil does not concede that greenhouse gases can be attributed to particular emitters as the New York Complaint suggests, nor does it concede the accuracy of the methodology used in the sources cited by the New York Complaint.

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Third, that an indirect subsidiary of a predecessor of ExxonMobil operated a refinery in Ferndale, Washington *more than 30 years ago*. (*Id.* ¶ 93.) Putting aside the fact that the Complaint does not adequately plead facts enabling these contacts to be attributed to ExxonMobil, the Complaint fails to assert that the fossil fuels refined at these facilities were extracted by ExxonMobil or sold by ExxonMobil to consumers, or that the finished fossil fuel products produced at these refineries were the "but for" cause of the County's injuries.

Fourth, that ExxonMobil's subsidiaries or agents operate a refinery in *Montana* that allegedly supplies some unspecified quantum of refined gasoline to Washington. (*Id.* ¶ 94.)

Fifth, that ExxonMobil or its subsidiaries are licensed to own, and purportedly do own, petroleum product terminals or pipelines in Seattle and Spokane, Washington. (*Id.* ¶¶ 95-97.) The Complaint does not specify the volume of "petroleum products" stored at ExxonMobil's alleged terminals or flowing through ExxonMobil's alleged pipelines, where those products were extracted, what amount was sold within King County, where those products were combusted, or how the existence of storage or transport facilities in Washington can be a "but for" cause of the County's injuries derived from a global climatic phenomenon.

Sixth, that "Exxon-branded gasoline stations" exist in Washington. (*Id.* ¶ 98.) In other words, the Complaint alleges that ExxonMobil's trademarks may be displayed at service stations in Washington. Although Plaintiff asserts that "Exxon exercises control over gasoline product quality and specifications" at these stations, there is no allegation that these service stations are owned or operated by ExxonMobil. (*Id.*) Nor is there any allegation that these stations sell fossil fuels extracted by ExxonMobil, and the Complaint likewise fails to allege how any fossil fuels sold by such stations caused the County's claimed injuries.

Seventh, that "Exxon offers credit cards to consumers, through its interactive website, to promote sales of gasoline and other products at its branded gasoline stations" and "offer[s] consumers discounts" on gasoline at ExxonMobil-branded stations. (*Id.*) These allegations simply describe purported aspects of the nationwide retail gasoline business without any suggestion that these activities have any relation to the County's claimed injuries in this case.

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In sum, for all the new filler injected into the Complaint, it retains the fatal flaw of the County's original pleading, and which resulted in dismissal of the California actions: it fails to allege at all, much less plausibly, that the County's claimed climatic injuries would not have occurred absent ExxonMobil's activities in Washington. On this slim foundation, the County seeks to hale out-of-state actor ExxonMobil into Court to answer for alleged climatic injuries supposedly caused by the sum total of its worldwide business operations, and those of all other producers and users of fossil fuels, spanning the company's entire 135-year history.

III. ARGUMENT

The Washington contacts alleged in the Complaint do not support compelling ExxonMobil to defend the entirety of its worldwide business activities in a foreign forum. As detailed below, to hold otherwise would be to abandon settled notions of due process and to instead endorse jurisdictional theories with no apparent limiting principle.

A. The Due Process Clause Precludes The Exercise of Personal Jurisdiction Over ExxonMobil In Washington

"Federal courts apply state law to determine the bounds of their jurisdiction over a party." *Williams* v. *Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington's long-arm statute, Wash. Rev. Code § 4.28.185, "is coextensive with federal due process law." *Pruczinski* v. *Ashby*, 374 P.3d 102, 106 (Wash. 2016). Accordingly, "the jurisdictional analyses under state and federal law are the same." *Carolan* v. *Cardiff Univ.*, 113 F. App'x 193, 194 (9th Cir. 2004) (citing Wash. Rev. Code § 4.28.185). To exercise jurisdiction consistent with due process, a plaintiff must, *inter alia*, demonstrate that its claim "arises out of or relates to the defendant's forum-related activities." *Axiom Foods, Inc.* v. *Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting *Dole Food Co., Inc.* v. *Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)) (internal quotation marks omitted). As the party haling defendants into court, the "plaintiff bears the burden of satisfying" this requirement. *Id.* (quoting *Schwarzenegger* v. *Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004)) (internal quotation marks omitted).

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"[R]estrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Bristol-Myers Squibb Co.* v. *Superior Court*, 137 S. Ct. 1773, 1780 (2017) (quoting *Hanson* v. *Denckla*, 357 U.S. 235, 251 (1958)). Accordingly, as the Supreme Court in *Bristol-Myers Squibb* confirmed barely more than a year ago:

> Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

137 S. Ct. at 1780-81 (internal quotation marks omitted) (quoting *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U.S. 286, 294 (1980)). In recognition of this bedrock principle of our federal system, the exercise of authority over an out-of-state defendant is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause" because the "assertion of jurisdiction exposes defendants to the [forum] State's coercive power . . . ." *Id.* at 1779 (quoting *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 918 (2011)).

The Due Process Clause cabins the authority of courts in a particular forum to exercise coercive power on out-of-state defendants within "two types of personal jurisdiction: 'general' (sometimes called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-linked') jurisdiction." *Id.* at 1780 (citing *Goodyear*, 564 U.S. at 919). A court properly imbued with general jurisdiction may hear any claim against a defendant, even if all the conduct underlying the claim occurred outside of the forum state. *Id.* But our federal system limits the exercise of general jurisdiction to forums where a defendant "is fairly regarded as at home." *Id.* (quoting *Goodyear*, 564 U.S. at 924). Specific jurisdiction, by contrast, may be proper where a defendant is not "at home," but must be predicated on a substantial relationship between the forum and the discrete claim asserted—in other words, for a court "to exercise specific jurisdiction [over a particular defendant], 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum*.'" *Id.* (quoting *Daimler AG* v. *Bauman*, 134 S. Ct. 746, 754 (2014)). Application of these well-

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settled principles demonstrates that out-of-state defendant ExxonMobil is not susceptible to jurisdiction under either theory, and must be dismissed from this case.

1. ExxonMobil Is Not Subject To General Jurisdiction In Washington.

ExxonMobil is not subject to "general" jurisdiction in Washington. Due process permits courts to exercise general jurisdiction over a defendant—and hear any and all claims against that defendant—only when that defendant can be deemed "at home" in the forum state. *Bristol-Myers Squibb*, 137 S. Ct. at 1780. But a defendant is "at home" in a forum only when it: (1) is incorporated in the forum; (2) has its principal place of business in that forum; or (3), in an "exceptional case," has operations that are "so substantial and of such a nature as to render the corporation at home" in the forum. *Daimler*, 134 S. Ct. at 760-61, 761 n.19; *AM Tr.* v. *UBS AG*, 681 F. App'x 587, 588 (9th Cir. 2017).

ExxonMobil is not "at home" in Washington. The Complaint acknowledges that ExxonMobil is a New Jersey corporation with its "principal place of business" in Irving, Texas. (Compl. ¶ 21.) The connections between ExxonMobil and Washington alleged in the Complaint do not describe an "exceptional case" that would make ExxonMobil "at home" here. *See Daimler*, 134 S. Ct. at 761 n.19; *UBS AG*, 681 F. App'x at 588. To the contrary, ExxonMobil's contacts with Washington "are minor compared to its other worldwide contacts." *Martinez* v. *Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (affirming an order dismissing plaintiffs' claims for want of general jurisdiction). And those contacts are no more extensive than those of any other "multinational, vertically integrated" company (Compl. ¶ 21) that has, at some point in the past, maintained some facilities here, conducted interstate commerce, and engaged in national advertising campaigns in major centers of trade. If ExxonMobil could be deemed "at home" in Washington based on the contacts described in the Complaint, a plethora of large companies would similarly constitute "exceptional" cases—and the exception would impermissibly swallow the rule. *See Daimler*, 134 S. Ct. at 761-62 & n.19.

That is precisely what *Daimler* sought to avoid. As Justice Ginsburg cautioned in *Daimler* and the Ninth Circuit observed in *UBS AG*, "[a] corporation that operates in many places can

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scarcely be deemed at home in all of them." *UBS AG*, 681 F. App'x at 588 (quoting *Daimler*, 134 S. Ct. at 762 n.20). The exercise of general jurisdiction over ExxonMobil in this case could be justified only by resort to a "doing business" theory that the law has "evolved" away from. *Daimler*, 134 S. Ct. at 762 n.20. A finding of general jurisdiction over ExxonMobil in Washington thus cannot be squared with controlling precedents that foreclose such a theory. *See BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1558-59 (2017) (declining to find an "exceptional case" justifying general jurisdiction in Montana, where a Texas-based Delaware corporation maintained "over 2,000 miles of railroad track and more than 2,000 employees"); *see also UBS AG*, 681 F. App'x at 588-89 (rejecting "a rule that would subject a large bank to general personal jurisdiction in any state in which the bank maintains a branch").

2. ExxonMobil Is Not Subject To Specific Jurisdiction In Washington For The Claims Alleged In The Complaint.

The Due Process Clause likewise does not permit the exercise of specific jurisdiction over ExxonMobil in connection with the claims asserted by the County. The exercise of specific jurisdiction requires that a claim asserted by a plaintiff "aris[es] out of or relat[es] to the defendant's contacts with the forum." *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Daimler*, 134 S. Ct. at 754).

In this Circuit, to adequately allege that claims "arise out of" a defendant's forum contacts, the plaintiff must establish "but for" causation, *i.e.*, "that it would not have been injured 'but for' [the Defendant's] contacts with [the forum state]."[5] *Glencore Grain Rotterdam B.V.* v. *Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1123 (9th Cir. 2002) (citing *Doe* v. *Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001) (per curiam), *overruled on other grounds by Daimler*, 134 S. Ct. at 759-60).[6] And it is "textbook" law "that an action 'is not regarded as a cause of an event if the

5 *See also, e.g.*, *Del Rio* v. *Ipeco Holdings, LTD*, No. C17-0690-JCC, 2018 U.S. Dist. LEXIS 16719, at *15 (W.D. Wash. Feb. 1, 2018) ("The Ninth Circuit uses a 'but for' causation test to determine whether a plaintiff's claim arises out of or relates to a defendant's contacts with the forum state."); *Kosta Intern.* v. *Brice Mfg. Co.*, Inc., No C14-0219-JCC, 2014 WL 3847365, at *4 (W.D. Wash. Aug. 5, 2014) (citing the "but for" standard).

6 Other circuits have held that due process requires in-forum conduct to be the proximate cause, rather than the "but for" cause, of a plaintiff's injuries. *See, e.g., SPV Osus Ltd.* v. *UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (recognizing a circuit split on this issue). ExxonMobil does not concede that the "but for" standard is the

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particular event would have occurred without it.'" *Univ. of Tex. S.W. Med. Ctr.* v. *Nassar*, 133 S. Ct. 2517, 2525 (2013) (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 265 (5th ed. 1984)). The County's Complaint does not even attempt to hurdle this bar.

Disregarding the burden to plead facts establishing jurisdiction, the County's amended Complaint fails to even allege that the County's alleged climatic injuries—purportedly resulting from worldwide fossil fuel use from "the mid-19th century to present"—*would not have occurred* absent the limited contacts alleged between ExxonMobil and Washington: a predecessor's ownership of a refinery in Washington, ExxonMobil's mere storage or transport of some unspecified volume of fuel in or through Washington, or ExxonMobil branding and discounts at service stations in Washington. (Compl. ¶¶ 91-98); *Univ. of Texas S.W. Med. Ctr.*, 133 S. Ct. at 2525. Indeed, despite the clear law in this Circuit and Judge Alsup's dismissal of a parallel action with indistinguishable jurisdictional allegations, the County's Complaint inexplicably makes no effort to tie ExxonMobil's conduct in Washington to any particular emissions (in Washington or elsewhere), to any purported climate event supposedly caused by such emissions (in Washington or elsewhere), or to the specific injuries claimed by the County.

As Judge Alsup recently held, such a failure to plausibly plead "but for" causation precludes the exercise of specific jurisdiction. *City of Oakland*, 2018 WL 3609055, at *3. Even if the County *had* attempted to plead such causation, those allegations would be fundamentally implausible and dismissal would still be warranted. Climate change-related "nuisance claims depend on a global complex of geophysical cause and effect involving all nations of the planet," and it is "manifest that global warming would have continued in the absence of all [forum]-related activities of defendants." *Id.* Put differently, this "worldwide chain of events does not depend on a particular defendant's contacts with" any particular forum. *Id.*

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correct one, but the allegations in the Complaint do not come close to meeting even this lower bar. Nor, *a fortiori*, does the Complaint adequately plead that ExxonMobil's conduct in Washington is a proximate cause of the County's injuries.

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Judge Alsup is not alone in ruling that climate change-related injuries cannot be traced to discrete conduct in a particular forum. Judge Armstrong of the Northern District of California explained when dismissing a similar case brought against ExxonMobil by Mr. Pawa that:

> [T]he undifferentiated nature of greenhouse gas emissions from all global sources and their worldwide accumulation over long periods of time . . . makes clear that there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time.

Native Vill. of Kivalina v. *ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff'd on other grounds*, 696 F.3d 849 (9th Cir. 2012). The County's amended Complaint makes no attempt to overcome the logic of either *City of Oakland* or *Kivalina*—and, moreover, the County's attorney conceded the validity of this reasoning when, on behalf of the City of New York, he filed an amended complaint admitting that "[g]reenhouse gas molecules cannot be traced to their source." (New York Complaint ¶ 75.) Thus, here, as in *Kivalina*, "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and at what place in the world—'caused' [p]laintiffs' alleged global warming related injuries." 663 F. Supp. 2d at 881.[7] And here, as in *Kivalina*, having failed to plausibly plead that any of ExxonMobil's *worldwide* conduct has caused its injuries, the County has, *a fortiori*, failed to plead that its injuries "arise out of" the small sliver of ExxonMobil's worldwide conduct that occurred in Washington.[8]

Thus, given the County's failure to plausibly plead it would "not have been injured 'but for' [ExxonMobil's] contacts with [the forum state]," the County cannot sue ExxonMobil in this forum. *City of Oakland*, 2018 WL 3609055, at *3; *Glencore*, 284 F.3d at 1123 (citing *Unocal*, 248 F.3d at 924). To hold otherwise—to find ExxonMobil subject to jurisdiction because it has

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[7] *Cf. Bristol-Myers Squibb*, 137 S. Ct. at 1783 (finding that defendant's use of a California distributor could not justify specific jurisdiction in California because the plaintiffs "have adduced no evidence to show how or by whom the [drug] they took was distributed to the pharmacies that dispensed it to them," and observing that "[i]t is impossible to trace a particular pill" that injured a specific plaintiff to the California-based distributor).

[8] Moreover, the County ignores corporate separateness and improperly aggregates the activities of ExxonMobil's subsidiaries and affiliates. *See Ranza* v. *Nike*, 793 F.3d 1059, 1070-71, 1073-74 (9th Cir. 2015); *Chan* v. *Soc'y Expeditions, Inc.*, 123 F.3d 1287, 1294 (9th Cir. 1997). There is no personal jurisdiction in Washington whether the activities are improperly aggregated to Exxon Mobil Corporation or properly allocated to the various subsidiaries and affiliates.

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engaged in some *other* business in Washington that does *not* give rise to the County's claims—would be to endorse the precise sort of "loose and spurious form of general jurisdiction" that the Supreme Court in *Bristol-Myers Squibb* squarely rejected just one year ago. 137 S. Ct. at 1781.

IV. CONCLUSION

Subjecting ExxonMobil to personal jurisdiction in Washington for the claims asserted in the Complaint would endorse discredited jurisdictional principles that extend well past the boundaries marked by the Supreme Court. The contacts alleged between ExxonMobil and Washington could describe those of any number of large corporations around the world. Forcing a corporation to answer for *all* of its historical business activities wherever it has conducted *any* such business would gut the long-standing "but for" requirement regarding forum contacts. That

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is not, and should not be, the law. The County has thus pursued its claims in an improper forum, and ExxonMobil should be dismissed from this case.

Dated this 31st day of August, 2018.

/s/ Angelo J. Calfo
/s/ Gabriel Reilly-Bates

/s/ Theodore V. Wells, Jr.
/s/ Daniel J. Toal
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