

*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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1 **INTRODUCTION**

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." FAC ¶ 1.<sup>1</sup> According to  
6 Plaintiff, the law of nuisance and trespass permits it to obtain damages for harms resulting  
7 from two centuries of human activity across the world. Plaintiff seeks funding for *future*  
8 efforts to protect against what it alleges may be the local effects of global climate change.

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

15 There is no basis for *general* personal jurisdiction over Royal Dutch Shell. As Plaintiff  
16 acknowledges, Royal Dutch Shell is "registered in England and Wales with its headquarters in  
17 The Hague, Netherlands." FAC ¶ 24. And there is no basis for *specific* personal jurisdiction  
18 over Royal Dutch Shell. As the court in *City of Oakland* recognized in granting motions to  
19 dismiss for lack of personal jurisdiction, "[i]t is manifest that global warming would have  
20 continued in the absence of all [forum]-related activities of defendants," and "Plaintiffs have  
21 therefore failed to adequately link each defendant's alleged [forum] activities to plaintiffs'  
22 harm." 2018 WL 3609055, at \*3 (N.D. Cal. July 27, 2018). So too here.

23  
24 <sup>1</sup> "FAC" refers to Plaintiff's First Amended Complaint, ECF No. 113.

**BACKGROUND**

1

2           **A.**     Plaintiff seeks to hold Royal Dutch Shell and four other energy companies

3 liable for the asserted consequences of global climate change. As described in the complaint,

4 the “combustion” of fossil fuels “release[s] greenhouse gases, including carbon dioxide (CO<sub>2</sub>)

5 and methane, which trap atmospheric heat and increase global temperatures.” FAC ¶ 122.

6 The complaint describes that process as a cause of the phenomenon known as “global

7 warming.” *Id.* That warming, Plaintiff asserts, leads to “melting glaciers and sea ice” and

8 causes “seawater to expand,” resulting in an “acceleration of sea level rise [that] is

9 unprecedented in the history of human civilization.” *Id.* ¶ 138. According to the complaint,

10 “[g]lobal warming is here and it is harming King County now” through “warming

11 temperatures, acidifying marine waters, rising seas, increasing flooding risk, decreasing

12 mountain snowpack, and less water in the summer.” *Id.* ¶ 1.

13           The complaint explains that fossil fuels release greenhouse gases “when combusted,”

14 *id.* ¶ 140, but it disclaims any attempt “to impose liability on Defendants for their direct

15 emissions of greenhouse gases,” *id.* ¶ 10. Instead, the theory of the complaint is that

16 Defendants are responsible for the ultimate asserted consequences of emissions generated by

17 the fossil-fuel-consuming activities of every business, government, and other consumer on the

18 planet, including Plaintiff itself.

19           **B.**     Plaintiff seeks to premise personal jurisdiction over Royal Dutch Shell on a

20 grab bag of alleged forum contacts.

1 First, the complaint alleges that “Shell operates in all 50 states and employs more than  
 2 20,000 people in the United States.” *Id.* ¶ 115.<sup>2</sup> According to the complaint, several alleged  
 3 subsidiaries or affiliates of Royal Dutch Shell are “registered to do business . . . and have an  
 4 agent for service of process in Washington.” *Id.* ¶ 107; *cf. id.* ¶ 112 (alleging that two such  
 5 entities are “licensed as fuel suppliers and aircraft fuel distributors in Washington”). Also  
 6 according to the complaint, “Shell’s website states that it ‘has been a proud member of the  
 7 Pacific Northwest community for over 60 years,’” *id.* ¶ 108, and “Shell” has authorized the  
 8 “use and display” of its “logos and trademarks in Washington,” *id.* ¶ 114.

9 Second, the complaint alleges that “Shell, through its subsidiaries and agents, engages  
 10 in oil refining and accounts for a total capacity of 426,400 barrels per day.” *Id.* ¶ 108.<sup>3</sup> The  
 11 complaint identifies a handful of specific facilities in Washington with an alleged connection  
 12 to a Royal Dutch Shell subsidiary. *See id.* ¶¶ 108-113. According to the complaint, two of  
 13 those facilities have not been owned or operated by a subsidiary of Royal Dutch Shell for  
 14

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15 <sup>2</sup> Plaintiff refers throughout the complaint to “Shell,” obscuring the distinction between  
 16 Royal Dutch Shell (which is a party to this lawsuit) and Royal Dutch Shell’s various  
 17 subsidiaries (none of which are parties to this lawsuit). There is no basis in law or fact for  
 18 imputing to Royal Dutch Shell the alleged jurisdictional contacts of its subsidiaries. For  
 19 purposes of this motion, however, Royal Dutch Shell assumes *arguendo* Plaintiff’s (erroneous)  
 20 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 City of*  
*Oakland*, 2018 WL 3609055, at \*3 (“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.”).

21 <sup>3</sup> The complaint implies that this is the amount of oil refined in Washington by  
 22 subsidiaries of Royal Dutch Shell, but the source Plaintiff cites claims that this is the amount  
 23 of oil refined in the entire United States by subsidiaries of Royal Dutch Shell, which according  
 24 to the same source made those subsidiaries collectively the fourteenth largest refiner in the  
 United States as of 2014. *See* FAC ¶ 108 (citing Will Smith, Energy Transitions Laboratory,  
 Western Washington University, *A Refining History of Washington State* 5 (Aug. 2015),  
[http://www.energytrans.org/uploads/4/7/9/7/47971323/2015-08-20\\_jones\\_refineries.pdf](http://www.energytrans.org/uploads/4/7/9/7/47971323/2015-08-20_jones_refineries.pdf)).



1 almost 20 years. *See id.* ¶¶ 109-110. The complaint also identifies a handful of specific  
2 facilities in *other* states with an alleged connection to a Royal Dutch Shell subsidiary. *See id.*  
3 ¶¶ 117-118. According to the complaint, two of those facilities have not been owned or  
4 operated by a subsidiary of Royal Dutch Shell for over 10 years. *See id.* ¶ 117.

5 Third, the complaint alleges that “[t]here are numerous Shell-branded gasoline stations  
6 in Washington,” *id.* ¶ 114, and “more than 10,000” such stations in the United States, *id.*  
7 ¶ 119. The complaint does not allege that Royal Dutch Shell or any of its subsidiaries owns or  
8 operates those stations. Instead, the complaint asserts that “Shell Oil Company[] previously  
9 owned retail gasoline stations in . . . Snohomish, King, and Pierce counties,” and that “Shell,  
10 including through its agent and subsidiary Equilon Enterprises LLC, has entered into contracts  
11 with individuals and/or entities to own, lease, and/or operate Shell-branded retail gasoline  
12 stations.” *Id.* ¶ 114. The complaint also asserts in a conclusory fashion that “Shell exercises  
13 control over gasoline product quality and specifications at Shell-branded retail stations.” *Id.*

14 Fourth, the complaint alleges that “Shell offers credit cards to consumers on its  
15 interactive website to promote sales of gasoline and other products at its branded gasoline  
16 stations,” and that “Shell promotes gasoline sales by offering consumers, through its  
17 interactive website, cents per gallon discounts off every gallon of Shell Fuel for the first two  
18 months after they open an account.” *Id.* The complaint does not allege that those activities  
19 were purposefully directed at Washington or the United States.

20 Fifth, the complaint alleges that “Shell had 854 million barrels of oil equivalent proved  
21 reserves . . . in the United States as of December 31, 2017,” as well as “488 million barrels of  
22 oil equivalent . . . proved undeveloped reserves,” “30,000 mineral leases,” and “interests in  
23 more than 2,300 productive wells.” *Id.* ¶ 116.

**ARGUMENT**

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

Plaintiff bears the burden of establishing personal jurisdiction over each defendant.

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

Under Federal Rule of Civil Procedure 4(k), “a federal district court’s authority to assert personal jurisdiction in most cases is linked to service of process on a defendant ‘who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located.’” *Walden v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting Fed. R. Civ. P. 4(k)(1)(A)). “Washington’s long-arm statute,” Wash. Rev. Code § 4.28.185, “permits the exercise of personal jurisdiction to the extent that due process allows.” *Hodjera v. BASF Catalysts LLC*, 2017 WL 3262501, at \*2 n.2 (W.D. Wash. July 31, 2017) (citing *Shute v. Carnival Cruise Lines*, 783 P.2d 78, 82 (Wash. 1989)). Accordingly, the Court asks whether personal jurisdiction “comports with the limits imposed by federal due process.” *Daimler AG v. Bauman*, 571 U.S. 117, 125 (2014).<sup>4</sup>

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<sup>4</sup> Ordinarily, under Federal Rule of Civil Procedure 4(k), the due process inquiry focuses on the connection between the defendant and the state in which the federal court sits.

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

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

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

11 A court may exercise general jurisdiction over a corporation only when the  
 12 corporation's contacts with the forum are so "continuous and systematic" that it is "at home"  
 13 there. *Daimler*, 571 U.S. at 127 (internal quotation marks omitted). Doing business in a  
 14 forum "does not suffice to permit the assertion of general jurisdiction" over a corporation.

15 \_\_\_\_\_  
 16 *See* Fed. R. Civ. P. 4(k)(1)(A); *Walden*, 134 S. Ct. at 1121. Rule 4(k) contains an exception,  
 17 however, for claims arising under federal law against a defendant not subject to jurisdiction in  
 18 any state's courts. *See* Fed. R. Civ. P. 4(k)(2). As interpreted by the Ninth Circuit, Rule  
 19 4(k)(2) confers personal jurisdiction over a defendant to the extent permitted by the Due  
 20 Process Clause of the Fifth Amendment. *See Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874  
 21 F.3d 1064, 1072 (9th Cir. 2017); *Getz v. Boeing Co.*, 654 F.3d 852, 859 (9th Cir. 2011). The  
 22 Ninth Circuit has held that the due process analysis is "nearly identical" under the Fifth and  
 23 Fourteenth Amendments, except that, if the Fifth Amendment applies under Rule 4(k)(2), then  
 24 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* FAC ¶¶ 204-226. 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  
 24 analysis. Regardless, personal jurisdiction is lacking under either approach. *See City of*  
*Oakland*, 2018 WL 3609055, at \*4 (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 *BNSF Ry. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017); *see id.* (“over 2,000 miles of railroad track  
 2 and more than 2,000 employees” in forum are insufficient); *Goodyear Dunlop Tires Ops., S.A.*  
 3 *v. Brown*, 564 U.S. 915, 927, 930 n.6 (2011) (“continuous activity” and “regularly occurring  
 4 sales” in forum are insufficient). Rather, the “paradigm” places where a corporation is  
 5 regarded as “at home” are its “place of incorporation” and its “principal place of business.”  
 6 *Daimler*, 571 U.S. at 137 (internal quotation marks omitted).

7 Royal Dutch Shell neither is incorporated nor has its principal place of business in  
 8 Washington or any other state. As Plaintiff acknowledges, Royal Dutch Shell “is a public  
 9 limited company registered in England and Wales with its headquarters in The Hague,  
 10 Netherlands.” FAC ¶ 24. Because Royal Dutch Shell is incorporated and maintains its  
 11 principal place of business abroad, it is not subject to general jurisdiction in Washington or  
 12 any other state. *See Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1021-22 (9th Cir. 2017)  
 13 (holding that *Daimler* bars the exercise of general jurisdiction over defendant incorporated and  
 14 headquartered in Japan); *Hodjera*, 2017 WL 3262501, at \*2 (“Because Imerys Talc is not  
 15 incorporated in Washington and does not have its principal place of business in Washington,  
 16 the Court agrees that it lacks general personal jurisdiction over Imerys Talc.”).<sup>5</sup>

17  
 18  
 19 <sup>5</sup> This is nothing like the “exceptional case” in which the *Daimler* Court left open the  
 20 “possibility” of general jurisdiction existing somewhere other than the place of incorporation  
 21 and the principal place of business. 571 U.S. at 139 n.19. As the only example of such a case,  
 22 the Court identified *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).  
 23 *Daimler*, 571 U.S. at 129-30. In *Perkins*, World War II had forced the president of the  
 24 corporate defendant to relocate 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”). Plaintiff alleges no facts that could make this an exceptional case along  
 the lines of *Perkins*. *See Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014)

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.<sup>6</sup> 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.*<sup>7</sup> 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 injured ‘but for’ [defendant’s] contacts with [the forum].”); *Doe v. Unocal Corp.*, 248 F.3d  
 12 915, 924 (9th Cir. 2001) (per curiam; adopting relevant portions of district court’s opinion)  
 13 (“To determine whether a claim arises out of forum-related activities, . . . the Court considers  
 14 whether plaintiffs’ claims would have arisen but for [defendant’s] contacts with [the forum].”);

15  
 16 \_\_\_\_\_  
 16 (rejecting attempt to show that case was “exceptional” where, as here, defendant was  
 17 incorporated and headquartered abroad).

18           <sup>6</sup> In a tort case such as this one, specific jurisdiction also requires a showing that the  
 19 defendant “purposefully direct[ed] his activities toward the forum” and that the exercise of  
 20 jurisdiction would be “reasonable.” *Axiom Foods*, 874 F.3d at 1068. For purposes of this  
 21 motion only, Royal Dutch Shell assumes *arguendo* Plaintiff’s (erroneous) premise that the  
 22 forum contacts attributed to Royal Dutch Shell in the complaint were “purposefully directed”  
 23 toward the forum, so as to focus the specific-jurisdiction inquiry in the first instance on the  
 24 facial inadequacy of the complaint with respect to whether the claims here arise out of the  
 alleged forum contacts. As explained below, at all events, the exercise of jurisdiction here  
 would be unreasonable. *See infra* Part I.C.

22           <sup>7</sup> 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 *Doe v. American Nat'l Red Cross*, 112 F.3d 1048, 1051-52 (9th Cir. 1997) (specific  
2 jurisdiction lacking where “it cannot be said that [plaintiff] would not have sustained her  
3 injury, ‘but for’ [defendant’s] alleged misconduct”); *Terracom v. Valley Nat'l Bank*, 49 F.3d  
4 555, 561 (9th Cir. 1995) (plaintiff must show that “‘but for’ the contacts between the  
5 defendant and the forum state, the cause of action would not have arisen”); *City of Oakland*,  
6 2018 WL 3609055, at \*3 (“the required causal analysis is met if ‘but for’ the contacts between  
7 the defendant and the forum state, the plaintiff’s injury would not have occurred”); *Hodjera*,  
8 2017 WL 3262501, at \*2 (specific jurisdiction lacking where “there is no allegation that  
9 [plaintiff’s injury] would not have occurred ‘but for’ [defendant]’s contacts with [the forum]”).

10 *City of Oakland* is on all fours with this case. There, two California municipalities  
11 sued the same five energy companies that King County has sued in this case. 2018 WL  
12 3609055, at \*1-2. As here, the municipalities sought to hold the defendants liable for the  
13 alleged local effects of global climate change under a public nuisance theory. *Id.* at \*1.  
14 Indeed, the complaints in that case were materially identical to the complaint in this case; as  
15 the court there explained, “the gravamen of the amended complaints is that defendants — all  
16 alleged to be multinational oil and gas companies — have contributed to global warming  
17 through the worldwide production and sale of fossil fuels.” *Id.* at \*3.

18 The court applied the but-for test and granted motions to dismiss for lack of personal  
19 jurisdiction. *Id.* at \*3-4. It concluded that “whatever sales or events occurred in California  
20 were causally insignificant in the context of the worldwide conduct leading to the international  
21 problem of global warming.” *Id.* at \*3. Put differently, “[i]t is manifest that global warming  
22 would have continued in the absence of all California-related activities of defendants,” and  
23 “[p]laintiffs’ have therefore failed to adequately link each defendants’ alleged California

1 activities to plaintiffs’ harm.” *Id.* The court also held that the result would not change if the  
2 foreign defendants’ alleged contacts were aggregated nationwide rather than statewide. *Id.* at  
3 \*4. “Even taking plaintiffs’ allegations as true,” the court explained, “they have failed to show  
4 that BP or Royal Dutch Shell’s national conduct was a ‘but for’ cause of their harm.” *Id.* That  
5 reasoning applies fully here and requires the same result.

6 This Court’s decision in *Hodjera* also illustrates the controlling principle. The  
7 Hodjeras sued several companies that had allegedly “mined, manufactured, produced, and/or  
8 placed into the stream of commerce” asbestos and asbestos-containing products. 2017 WL  
9 3262501, at \*2. The Hodjeras asserted that the companies had known of the risks of asbestos,  
10 but that they “fail[ed] to warn” of those risks and “made misrepresentations” about the safety  
11 of their products. *Id.* at \*1. To establish specific jurisdiction over one defendant, Imerys Talc  
12 America Inc., the Hodjeras alleged that it had mined and processed asbestos-containing talc  
13 intended for “widespread distribution throughout North America,” that it was licensed to do  
14 business in Washington, and that the products it sold in Washington were “the same kind of  
15 products” that “caused [Mr. Hodjera’s] exposure to asbestos” in Ontario. *Id.* at \*2. In  
16 granting the motion to dismiss, this Court explained that it could not exercise specific  
17 jurisdiction because “[t]here is no allegation that Mr. Hodjera’s exposure would not have  
18 occurred ‘but for’ Imerys Talc’s contacts with Washington.” *Id.*

19 Here, Plaintiff has not asserted that its injuries would not have occurred but for the  
20 forum contacts supposedly attributable to Royal Dutch Shell. Plaintiff asserts that its claims  
21 arise out of the worldwide combustion of fossil fuels to produce energy, which emits  
22 greenhouse gases, which accumulate in the atmosphere, which results in a warmer global  
23 climate, which yields extreme weather events, sea-level rise, and other hydrologic changes,  
24

1 and which ultimately harms Plaintiff’s property and upsets the surrounding ecosystem.<sup>8</sup> But  
 2 Plaintiff’s claims and underlying theory of causation are not even loosely tethered to the  
 3 contacts that allegedly exist between Royal Dutch Shell and the forum. Nowhere does the  
 4 complaint assert that Plaintiff’s claimed injuries “would not have occurred ‘but for’ [Royal  
 5 Dutch Shell]’s contacts with Washington” or the United States. *Id.* Dismissal is therefore  
 6 required. *See City of Oakland*, 2018 WL 3609055, at \*3; *Hodjera*, 2017 WL 3262501, at \*2.

7 Indeed, many of the alleged forum contacts do not even concern fossil fuels (or fossil  
 8 fuels that have been extracted from the earth), excluding any possibility that they are causally  
 9 related to Plaintiff’s claims. *See, e.g.*, FAC ¶ 107 (asserting that certain “subsidiaries and  
 10 agents” of Royal Dutch Shell “are registered to do business in Washington and have an agent  
 11 for service of process in Washington”); *id.* ¶ 108 (asserting that “Shell’s website states that it  
 12 ‘has been a proud member of the Pacific Northwest community for over 60 years’”); *id.* ¶ 114  
 13 (asserting that Shell has authorized the “use and display” of its “logos and trademarks in  
 14 Washington”); *id.* ¶ 116 (asserting that “Shell had . . . 488 million barrels of oil equivalent . . .  
 15 proved undeveloped reserves” in the United States as of December 31, 2017). Rather than  
 16 supporting the exercise of specific jurisdiction, such allegations are nothing more than a futile  
 17 attempt to establish a “loose and spurious form of general jurisdiction.” *Bristol-Myers*, 137  
 18 S. Ct. at 1781; *see also American Nat’l Red Cross*, 112 F.3d at 1051 (no specific jurisdiction  
 19 where defendant’s forum contacts were “only peripherally” related to plaintiff’s alleged  
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21 <sup>8</sup> *See, e.g.*, FAC ¶ 136 (“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.* ¶ 138 (“Global warming causes sea level rise by melting glaciers and sea ice,  
 and by causing seawater to expand.”); *id.* ¶ 180 (“Climate change in the Pacific Northwest  
 including King County is projected to cause more severe heat events, summer droughts,  
 decreased water supplies for people and fish, and changes in habitat and species distribution.”).



1 injuries and “too attenuated to satisfy the ‘but for’ test”); *cf. OBB Personenverkehr v. Sachs*,  
 2 136 S. Ct. 390, 396 (2015) (“an action is ‘based upon’ the ‘particular conduct’ that constitutes  
 3 the ‘gravamen’ of the suit”).

4 Nor could Plaintiff plausibly allege but-for causation even assuming for purposes of  
 5 this motion that it is proper to impute to Royal Dutch Shell all of its subsidiaries’ production  
 6 and distribution activities in Washington or the United States. According to a paper cited by  
 7 Plaintiff, the combustion of *all* of the fossil fuels that *all* of Royal Dutch Shell’s subsidiaries  
 8 have *ever* produced and sold *anywhere in the world* allegedly accounts for just 2.12% of  
 9 industrial greenhouse gas emissions since 1751.<sup>9</sup> According to another paper also cited by  
 10 Plaintiff, those cumulative emissions allegedly account for at most 2.27% of an estimated  
 11 1.0°C increase in global mean surface temperature since 1880, *i.e.*, 0.022°C, and at most  
 12 2.13% of an estimated 21.2-centimeter rise in sea level since 1880, *i.e.*, 0.45 centimeter.<sup>10</sup>

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 14 <sup>9</sup> See FAC ¶ 143 & nn.154-55 (citing Richard Heede, *Tracing Anthropogenic Carbon*  
 15 *Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854-2010*, 122  
 16 *Climatic Change* 229 (2014), <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  
 17 *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.

18 <sup>10</sup> See FAC ¶ 141 & n.153 (citing Brenda Ekwurzel et al., *The Rise in Global*  
 19 *Atmospheric CO<sub>2</sub>, Surface Temperature, and Sea Level from Emissions Traced to Major*  
 20 *Carbon Producers*, 144 *Climatic Change* 579, 585 fig. 2 (2017), <https://link.springer.com/content/pdf/10.1007%2Fs10584-017-1978-0.pdf>). Ekwurzel et al. graphically depict “median  
 21 best estimate[s]” of the share of the increase in global mean surface temperature and rise in sea  
 22 level attributable to “industrial carbon producers” at 585 fig. 2 — the pin cite that Plaintiff  
 23 provides — but these “best estimates” appear to be significantly lower than the 2.27% and  
 24 2.13% estimates for Royal Dutch Shell alleged in the complaint. It appears that Plaintiff is  
 instead drawing on what Ekwurzel et al. label “high” estimates in the paper’s data supplement,  
 available only electronically. See Supplementary Material, ESM 2, Tbls. 5 & 6, <https://link.springer.com/article/10.1007%2Fs10584-017-1978-0>. Accordingly, Royal Dutch Shell arrives  
 at its 0.022°C and 0.45-centimeter estimates by relying on the 2.27% and 2.13% “high”  
 estimates in the complaint and data supplement, as well as the corresponding 1.0°C and 21.2-  
 centimeter “high” estimates in the data supplement.

1 Although Royal Dutch Shell does not accept the inputs, analysis, or conclusions in either  
2 paper — and setting aside that the authors aggregate activities worldwide rather than forum-  
3 wide as the due-process analysis requires — Plaintiff has not alleged, and could not plausibly  
4 allege, that its putative injuries would not have occurred but for that 2.12% of global industrial  
5 emissions, 0.022°C increase in global mean surface temperature, and 0.45-centimeter rise in  
6 sea level.

7 In addition, federal courts have recognized that it is untenable to assert a causal  
8 connection between particular sources of emissions (much less particular fossil fuels) and  
9 particular effects of global warming. In dismissing nearly identical complaints, the court in  
10 *City of Oakland* explained that claims in cases like this one depend “on a global complex of  
11 geophysical cause and effect involving all nations on the planet (and the oceans and  
12 atmosphere),” 2018 WL 3109726, at \*3, and a different court agreed that such claims depend  
13 on activities “in all 50 states and around the world,” *City of New York*, 2018 WL 3475470, at  
14 \*5. In dismissing another similar case, another court in this Circuit explained that “[t]he  
15 undifferentiated nature of greenhouse gas emissions from all global sources and their  
16 worldwide accumulation over long periods of time . . . makes clear that there is no realistic  
17 possibility of tracing any particular alleged effect of global warming to any particular  
18 emissions by any specific person, entity, [or] group at any particular point in time.” *Native*  
19 *Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff’d*, 696  
20 F.3d 849 (9th Cir. 2012). And in dismissing a case challenging federal approvals of oil and  
21 gas leases, yet another court explained that “climate change is dependent on an unknowable  
22 multitude of [greenhouse gas] sources and sinks, and it is impossible to say with any certainty  
23 that Plaintiffs’ alleged injuries were the result of any particular action or actions by  
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1 Defendants.” *Amigos Bravos v. U.S. Bureau of Land Mgmt.*, 816 F. Supp. 2d 1118, 1135  
2 (D.N.M. 2011). Those decisions demonstrate that Plaintiff cannot premise specific jurisdiction  
3 on assertions that “emissions of greenhouse gases from the fossil fuels” that Royal Dutch Shell  
4 has allegedly produced “combine[] with the greenhouse gas emissions from fossil fuels  
5 produced by the other Defendants, among others, to result in dangerous levels of global  
6 warming with grave harms for coastal areas like King County.” FAC ¶ 206.

7 Plaintiff likewise cannot rely on the assertion that “Defendants are *substantial*  
8 *contributors* to the public nuisance of global warming that is causing injury to Plaintiff,” FAC  
9 ¶ 9 (emphasis added), to establish specific jurisdiction. First, the label “substantial  
10 contributor[]” is the kind of conclusory assertion that is not entitled to an assumption of truth  
11 on a motion to dismiss. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678-80 (2009). Second, on  
12 its face, the assertion does not even attempt to connect the claimed injury to Royal Dutch  
13 Shell’s alleged *forum contacts*, as required for specific jurisdiction. Third, the specific-  
14 jurisdiction standard in this Circuit requires but-for causation, not substantial contribution. To  
15 the extent Plaintiff would argue that something less than but-for causation will support specific  
16 jurisdiction in nuisance cases because (according to Plaintiff) something less than but-for  
17 causation will support *liability* in nuisance cases, that argument fails. “Liability is not to be  
18 conflated with amenability to suit in a particular forum,” the Ninth Circuit has instructed,  
19 because “[p]ersonal jurisdiction has constitutional dimensions.” *AT&T v. Compagnie*  
20 *Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir. 1996); *see City of Oakland*, 2018 WL 3609055,  
21 at \*4 (“[P]laintiffs advocate for a less stringent standard of ‘but for’ causation in light of the  
22 liability rules underlying public nuisance claims. Such an argument has been rejected by our  
23 court of appeals.”). The constitutional inquiry is whether Plaintiff’s putative injuries would  
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1 not have occurred but for the forum activities supposedly attributable to Royal Dutch Shell.  
2 *See, e.g., Bancroft & Masters*, 223 F.3d at 1088; *City of Oakland*, 2018 WL 3609055, at \*3-4;  
3 *Hodjera*, 2017 WL 3262501, at \*2. Plaintiff’s failure even to allege but-for causation is  
4 therefore fatal to any argument for exercising specific jurisdiction over Royal Dutch Shell in  
5 this case.

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

8 The complaint also fails to allege facts that would make it reasonable to exercise  
9 personal jurisdiction over Royal Dutch Shell in this case. For a court to exercise specific  
10 jurisdiction over a nonresident defendant, “the exercise of jurisdiction must comport with fair  
11 play and substantial justice, i.e. it must be reasonable.” *Axiom Foods*, 874 F.3d at 1068.  
12 Plaintiff’s theory of personal jurisdiction is in no way specific to this forum. If accepted, it  
13 would support personal jurisdiction in any forum.

14 Permitting jurisdiction based on such an attenuated connection between the defendant’s  
15 forum contacts and the plaintiff’s asserted injuries would be unreasonable. *See Advanced*  
16 *Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014)  
17 (rejecting plaintiff’s approach to specific jurisdiction as having “no limiting principle — a  
18 plaintiff could sue everywhere”). It would resurrect the loose approaches to personal  
19 jurisdiction that the Supreme Court rejected in *Daimler* and *Bristol-Meyers* and make large  
20 multinational businesses with numerous subsidiaries operating around the globe subject to suit  
21 everywhere. Just as “[a] corporation that operates in many places can scarcely be deemed at  
22 home in all of them,” *Daimler*, 571 U.S. at 139 n.20, a defendant’s “general connections with  
23 the forum are not enough” for specific jurisdiction, *Bristol-Myers*, 137 S. Ct. at 1781. Plaintiff  
24 has alleged nothing more that could render the exercise of jurisdiction reasonable here. The

1 acknowledged fact that Royal Dutch Shell is incorporated and headquartered abroad  
2 underscores the unreasonableness of Plaintiff’s jurisdictional theory in this case.<sup>11</sup>

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

4 Royal Dutch Shell incorporates by reference the arguments set forth in Defendants’  
5 Motion To Dismiss and Memorandum of Points and Authorities, filed jointly and on behalf of  
6 all Defendants in support of a motion to dismiss for failure to state a claim upon which relief  
7 may be granted.

8 **CONCLUSION**

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

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<sup>11</sup> See *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102, 114 (1987) (“The unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.”); *Glencore Grain*, 284 F.3d at 1126 (“[that] the defendant is from a foreign nation rather than another state . . . undermines the reasonableness of personal jurisdiction”); *Instasol, LLC v. EM Digital Ltd.*, 2018 WL 3831292, at \*4 (W.D. Wash. Aug. 13, 2018) (“Courts should be cautious in extending personal jurisdiction over foreign corporations.”).

1 Dated: August 31, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 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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