UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY OF NEW YORK,

Plaintiff,

v.

B.P. P.L.C., CHEVRON CORPORATION, CONOCOPHILLIPS CORPORATION, EXXON MOBIL CORPORATION, and ROYAL DUTCH SHELL PLC,

Defendants.

No. 18 Civ. 182 (JFK)

MEMORANDUM OF LAW IN SUPPORT OF EXXON MOBIL CORPORATION'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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

PRELIMINARY STATEMENT

Frustrated by its inability to effectuate fundamental changes to the Nation's energy policy within the confines of our federal system, the City of New York (the "City") asks the Court to wade into a political thicket and, in the words of its Mayor, "bring the death knell" to the energy industry as we know it.[2] To achieve this goal, the City invites the Court to pass judgment on the social utility of the "production, marketing, and sale of fossil fuels … since the dawn of the Industrial Revolution"—to weigh, with the benefit of hindsight, the relative costs and benefits of every business activity and decision ExxonMobil has undertaken in its 135-year history. (Compl. ¶ 3.) Putting to one side the justiciability of these policy questions, and the hypocrisy in the City's continued use of fossil fuels while advancing such claims, the Complaint suffers from a defect that is simpler, but equally fatal: it was filed in the wrong forum.

The same federal system that prevents the City from making international energy policy also cabins the authority of tribunals in New York State to judge—or, if the City's Mayor is to be believed, destroy—out-of-state actors like ExxonMobil, which is a Texas-based company incorporated in New Jersey. Due process requires that if courts in New York are to sit in judgment of ExxonMobil, the plaintiff seeking that judgment must be able to demonstrate that its injuries would not have occurred but for ExxonMobil's activities in New York. That causal link

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[1] As set forth in its Notice of Motion, ExxonMobil also moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (b)(6) for the reasons set forth in the Memorandum of Law of Chevron Corporation, ConocoPhillips, and Exxon Mobil Corporation Addressing Common Grounds In Support of their Motions to Dismiss.

[2] Bob Van Voris, *New York Mayor Wants to Bring on "Death Knell" of Oil Industry*, Bloomberg (Jan. 25, 2018), https://www.bloomberg.com/news/articles/2018-01-26/new-york-mayor-wants-to-bring-on-death-knell-of-oil-industry.

is lacking where, as here, a complaint pleads scant connections to New York—of a type that virtually any large company would have with any forum—while claiming injuries from an undifferentiated global phenomenon allegedly caused by all fossil fuel combustion worldwide over the last two centuries. To exercise personal jurisdiction over ExxonMobil in connection with the City's claims would thus discard well-settled principles that prevent 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 *these* claims in *this* forum, and ExxonMobil therefore should be dismissed from this case.

BACKGROUND

The City's complaint 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 over the past two centuries. As described in the Complaint, "the combustion and use of fossil fuels" leads to the emission of greenhouse gas, which "accumulates and remains in the atmosphere for up to hundreds of years, where it traps heat, a process commonly referred to as 'climate change' or 'global warming.'" (Compl. ¶ 1.) This warming, the Complaint asserts, leads to a number of "impacts, including hotter temperatures, longer and more severe heat waves, extreme precipitation events including heavy downpours, [and] rising sea levels." (*Id.*) The Complaint claims that these impacts are "harming New York City now." (*Id.* ¶ 2.)

Although the City seeks to lay *all* of the costs of responding to these phenomena at the feet of ExxonMobil and its co-defendants jointly and severally, the Complaint also freely acknowledges that dozens of others are similarly "responsible" for the state of affairs the City

laments. (*Id.* ¶ 3.) The Complaint also concedes that the "[g]reenhouse gas molecules" that may have caused the climatic conditions leading to the City's claimed injuries "cannot be traced to their source" because they "quickly diffuse and commingle in the atmosphere." (*Id.* ¶ 58.) And the Complaint conspicuously fails to allege that any particular climate-related incident—whether a storm, heat wave, or other event—can be traced to particular emissions, let alone that those emissions can be traced to any emitter or underlying fossil fuel producer.

Despite acknowledging all this, the Complaint nevertheless alleges that "100 fossil fuel producers"—95 more than the five named in this lawsuit—are "responsible for 62% of all [greenhouse gas] emissions from industrial sources since the dawn of the Industrial Revolution and for 71% of emissions since 1988." (*Id.* ¶ 3.) While ExxonMobil finds dubious the prospect that such emissions can be attributed at all in the numerical fashion attempted by the Complaint, by the City's own allegations it is not the defendants who are the *actual* emitters of the overwhelming majority of the greenhouse gases the City attributes to them. In fact, the City acknowledges that "over 90% of these emissions are attributable to the fossil fuels that [producers] sell (rather than emit from their own operations)." (*Id.*) In other words, an untold number of third parties—virtually anybody who has used electricity, or travelled in a car or an airplane in the last 100 years—bears responsibility for the actual combustion of fossil fuels which emitted the greenhouse gases that purportedly caused the City's injuries.

By the Complaint's own telling, the five defendants bear any measure of responsibility for only "11% of all the carbon and methane pollution from industrial sources that has accumulated in the atmosphere since the dawn of the Industrial Revolution." (*Id.*) And according to the source cited by the Complaint, ExxonMobil is allegedly responsible, albeit

indirectly, for only 3.2% of global emissions.[3] Synthesizing these allegations, the Complaint (1) concedes that 97% of emissions purportedly causing the City's injuries have *no* connection to ExxonMobil *at all*, (2) admits that approximately 90% of the 3% of emissions that *may* have some connection to ExxonMobil were emitted by unknown third parties, and (3) fails to allege that *any* emissions even tangentially related to ExxonMobil have actually caused *any* of the City's injuries; to the contrary, the Complaint expressly concedes that emissions *cannot* be traced back to an emitter or fossil fuel producer. And based on these tenuous allegations, the City seeks to hold ExxonMobil jointly and severally liable for up to 100% of all present and future climate-related injuries New York City may suffer—as the City's Mayor told *The Bernie Sanders Show*, "we're looking for billions" to "help bring the death knell to this industry."[4]

In contrast to the breathtakingly broad sweep of the City's claims, the Complaint's allegations regarding ExxonMobil's connections to New York are almost vanishingly narrow. As alleged in the Complaint, ExxonMobil's claimed "connections to New York" are limited to the following facts:

- *First*, ExxonMobil supplies gasoline from its out-of-state refineries to "the New York Harbor area" via the Colonial Pipeline. (Compl. ¶ 29.) This artfully worded allegation neglects to mention that the Colonial Pipeline does not touch New York at all, but terminates in Linden, New Jersey.[5]

- *Second*, ExxonMobil, "through its subsidiaries," produces oil in North Dakota that the City believes "is loaded onto railroad cars and shipped to locations including Albany, New York, where it is then loaded onto barges for delivery to refineries." (*Id.*) This allegation—which, at most, claims that ExxonMobil products pass through New York on their way elsewhere—does not even suggest that it is ExxonMobil itself that brings those

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[3] Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010*, CLIMATIC CHANGE, Jan. 2014 (cited at Compl. ¶ 3), https://link.springer.com/article/10.1007/s10584-013-0986-y (cited information contained at Table 3).

[4] Bob Van Voris, *New York Mayor Wants to Bring on "Death Knell" of Oil Industry*, Bloomberg (Jan. 25, 2018), https://www.bloomberg.com/news/articles/2018-01-26/new-york-mayor-wants-to-bring-on-death-knell-of-oil-industry.

[5] *See* System Map | Colonial Pipeline, http://web.colpipe.com/home/about-colonial/system-map.

products to or through New York, or that these quantities of oil are sold or consumed in New York.

- *Third*, "Exxon branded gasoline stations" exist in New York State. In other words, the Complaint alleges that ExxonMobil's trademarks may be displayed at service stations in New York. It does not allege these service stations are owned or operated by ExxonMobil. Nor does it allege that these stations sell fossil fuels extracted by ExxonMobil. (*Id.*)

- *Fourth*, "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 do not reference New York at all, but instead simply describe purported aspects of the nationwide retail gasoline business without any suggestion that these activities are directed at New York or have any relation to the City's claimed injuries in this case.

- *Fifth*, and finally, the Complaint alleges that ExxonMobil "has used New York advertising firms to promote fossil fuel products." (*Id.*) This wholly generic allegation likewise fails to suggest that any services that may have been provided by New York-based advertising firms were rendered in New York, aimed at New York, or had any connection to the City's claimed injuries.

On this unstable foundation, the City seeks to hale ExxonMobil into Court to answer for climatic injuries supposedly caused by the sum total of ExxonMobil's worldwide business operations—and those of all other producers and consumers of fossil fuels—spanning the company's entire 135-year history.

ARGUMENT

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

I. APPLICABLE LEGAL STANDARD

"Personal jurisdiction of a federal court over a non-resident defendant is governed by the law of the state in which the court sits—subject, of course, to certain constitutional limitations of

due process." *Robinson* v. *Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994). Thus, for a federal court to accept jurisdiction over a non-resident defendant, even assuming *arguendo* that jurisdiction is authorized by the forum state's long-arm statute, jurisdiction must comply with the demanding strictures of due process. As the party haling defendants into court, the "plaintiff bears the burden of demonstrating personal jurisdiction over a person or entity against whom it seeks to bring suit." *Penguin Group (USA) Inc.* v. *American Buddha*, 609 F.3d 30, 34 (2d Cir. 2010). This burden must be met as to each defendant, and "with respect to *each* claim asserted." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262 (NRB), 2015 WL 6243526, at *27 (S.D.N.Y. Oct. 20, 2015) (citing *Sunward Elecs., Inc.* v. *McDonald*, 362 F.3d 17, 24 (2d Cir. 2004)) (emphasis in original).

To carry its personal jurisdiction burden, a plaintiff's pleading "must include an averment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant." *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013) (citation omitted). And while pleadings "are construed in the light most favorable to the plaintiff," *Banker* v. *Esperanza Health Sys.*, *Ltd.*, 201 F. App'x 13, 15 (2d Cir. 2006), when undertaking the personal jurisdiction analysis the Court need not "draw argumentative inferences in the plaintiff's favor," *Robinson*, 21 F.3d at 507. Nor must courts accept as true "a legal conclusion couched as a factual allegation." *Jazini* v. *Nissan Motor Co., Ltd.*, 148 F.3d 181, 185 (2d Cir. 1998).

II. THE DUE PROCESS CLAUSE PRECLUDES THE EXERCISE OF PERSONAL JURISDICTION OVER EXXONMOBIL IN NEW YORK.

"[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 of California, San*

Francisco County, 137 S. Ct. 1773, 1780 (2017) (quoting *Hanson* v. *Denckla,* 357 U.S. 235, 251 (1958)). Accordingly, as the Court in *Bristol-Myers Squibb* explained mere months 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 (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.'" *Bristol-Myers Squibb*, 137 S. Ct. 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 inflict 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." *Bristol-Myers Squibb*, 137 S. Ct. 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. *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (citation omitted). 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)) (emphasis in original). Application of these well-settled principles demonstrates that out-of-state defendant ExxonMobil is not susceptible to jurisdiction under either theory, and must be dismissed from this case.

A. ExxonMobil Is Not Subject to General Jurisdiction in New York.

It should be beyond serious debate that ExxonMobil is not subject to so-called "general" jurisdiction in New York. 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. But a defendant is only "at home" in a forum when it is either: (1) is incorporated in the forum; (2) has its primary place of business in that forum; or (3), in an "exceptional case," the defendant 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; *In re Roman Catholic Diocese of Albany, New York, Inc.*, 745 F.3d 30, 39 (2d Cir. 2014).

None of the above considerations applies to ExxonMobil. By the Complaint's own telling, ExxonMobil is a New Jersey corporation with its "principal place of business" in Irving, Texas. (Compl. ¶ 19.) The Complaint alleges only meager connections between ExxonMobil and New York—that oil extracted by ExxonMobil in North Dakota may pass through New York on railroad cars on its way elsewhere, that ExxonMobil may use a pipeline with a terminus *near* New York, and that ExxonMobil's trademarks and advertisements may be displayed in New York. These allegations do not come close to describing an "exceptional case" that would make ExxonMobil "at home" here. *Daimler*, 134 S. Ct. at 761 n.19; *Roman Catholic Diocese of Albany*, 745 F.3d at 39. Indeed, ExxonMobil's contacts with New York are no more extensive than those of any other "multinational, integrated" company (Compl. ¶ 9) that conducts interstate commerce and national advertising campaigns. Put differently, if ExxonMobil could be deemed

"at home" in New York based on the mundane contacts described in the Complaint, it is difficult to conceive of any large company that would not be.

That is precisely what *Daimler* sought to avoid. As Justice Ginsburg cautioned in *Daimler* and the Second Circuit echoed in *Roman Catholic Diocese of New York*, "'[a] corporation that operates in many places can scarcely be deemed at home in all of them.'" *Roman Catholic Diocese of New York*, 745 F.3d at 41 (quoting *Daimler*, 134 S. Ct. at 762 n.20). The exercise of general jurisdiction over ExxonMobil in this case—where plaintiffs plead only routine contacts between a large corporation and a major center of commerce—could only be justified by resort to a "doing business" theory that the law has "evolved" away from. *Id.* A finding of general jurisdiction over ExxonMobil in New York thus cannot be squared with the Supreme Court's recent precedents foreclosing such a theory. *See BNSF Ry. Co.* v. *Tyrrell*, 137 S. Ct. 1549, 1559 (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").

B. ExxonMobil Is Not Subject to Specific Jurisdiction in New York 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 City. Specific jurisdiction may be proper where 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). The connection between the defendant's conduct and the forum cannot be attenuated or merely fortuitous, but rather "the defendant's suit-related conduct must create a *substantial* connection with the forum State." *Walden* v. *Fiore*, 134 S. Ct. 1115, 1121 (2014) (emphasis added).

1. Plaintiff's Claims Do Not Arise out of ExxonMobil's Forum Contacts.

In this Circuit, courts analyze whether a claim "arises out of" a defendant's forum contacts by reference to a "sliding-scale test." *Gucci America, Inc.* v. *Weixing Li*, 135 F. Supp. 3d 87, 98 (S.D.N.Y. 2015) (citing *Chew* v. *Dietrich*, 143 F.3d 24, 29 (2d Cir. 1998)). Under this "sliding-scale" analysis:

> [W]hen an entity has only limited contacts with a forum, relatedness requires that 'the plaintiff's injury was proximately caused by those contacts,' but when an entity's contacts with the forum 'are more substantial,' it is not unreasonable to exercise personal jurisdiction 'even though the acts within the state are not the proximate cause of the plaintiff's injury.'

Gucci, 135 F. Supp. 2d at 98 (quoting *Chew*, 143 F.3d at 29); *see also SEC.* v. *Straub*, 921 F. Supp. 2d 244, 254 n. 6 (S.D.N.Y. 2013) (recognizing the analysis articulated in *Chew*); *Del Ponte* v. *Universal City Dev. Partners, Ltd.*, No. 07 Civ. 2360 (KMK), 2008 WL 169358, at *9-10 (S.D.N.Y. Jan. 16, 2008). Yet even where a defendant's contacts with a forum are on the "more substantial" end of the spectrum, a defendant's forum contacts must, at a minimum, "be a 'but for' cause of the plaintiff's injury." *Gucci*, 135 F. Supp. 2d at 98 (quoting *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262 (NRB), 2015 WL 4634541, at *23 (S.D.N.Y. Aug. 4, 2015)).

It is axiomatic that "but for" causation "requires the plaintiff to show that the harm would not have occurred in the absence of" the conduct in question. *Univ. of Texas S.W. Med. Ctr.* v. *Nassar*, 133 S. Ct. 2517, 2525 (2013) (citation omitted). Put differently, it is "textbook" law "that an action 'is not regarded as a cause of an event if the particular event would have occurred without it.'" *Id.* (quoting W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 265 (5th ed. 1984)).[6]

6 In *Bristol-Myers Squibb*, the Supreme Court rejected the California courts' "sliding scale approach" whereby specific jurisdiction could be asserted over claims without forum contacts if a defendant had other, "wide

2. The Complaint Has Not Adequately Alleged That ExxonMobil's Limited Forum Contacts Caused the City's Claimed Injuries.

Even taking as true the Complaint's allegations connecting ExxonMobil to New York (*see* Compl. ¶ 29),[7] those connections are not a "but for" cause of the injuries the City has alleged, much less the proximate cause of such injuries. According to the Complaint, the City's claimed injuries consist of increased temperatures in the City, rising sea levels, increased flooding from coastal storms, and "extreme precipitation events" that allegedly resulted from the greenhouse effect. (Compl. ¶ 10.) Even though the Complaint claims to take issue with the *extraction* and *promotion* of fossil fuels, not the emissions from their combustion, the City's pleading makes clear that the greenhouse effect leading to the City's claimed injuries is the result of worldwide greenhouse gas emissions caused by fossil fuel combustion since "the dawn of the Industrial Revolution." (*See, e.g.*, Compl. ¶¶ 1, 3.)

Disregarding its burden to establish jurisdiction over ExxonMobil, the Complaint fails to tie ExxonMobil's conduct in New York to any particular emissions (in New York or elsewhere), to any purported climate event supposedly caused by such emissions (in New York or elsewhere), or to the specific injuries claimed by the City. Plaintiff's allegations thus fall far short of plausibly alleging the causal link needed to support jurisdiction. To the contrary, to establish the necessary "but for" causal link between the *New York* connections alleged in the Complaint and the climate injuries claimed by the City would require leaps of logic and the assumption of unpled facts. Indeed, the Complaint does not allege that the claimed climatic

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ranging" contacts with the forum. 137 S. Ct. at 1775-76. The "sliding scale approach" rejected in *Bristol-Myers Squibb* is thus distinct from the similarly named test laid out in *Chew* and ExxonMobil is not aware of any case that has questioned the vitality of *Chew* in light of *Bristol-Myers Squibb*. In any event, the Complaint fails to satisfactorily plead the existence of personal jurisdiction even applying the most forgiving standard permitted by *Chew*—that of "but for" causation.

[7] ExxonMobil does not concede the accuracy of the Complaint's allegations about the company's New York contacts, but simply assumes their truth for purposes of this motion.

injuries the City has suffered—which, in the Complaint's own telling, are the combined result of all fossil fuel combustion since the Industrial Revolution—*would not have occurred* absent the scant New York contacts it cites: limited quantities of oil traversing New York on trains, as well as Exxon branding and discounts displayed at service stations. (Compl. ¶ 29.); *Univ. of Texas S.W. Med. Ctr.*, 133 S. Ct. at 2525. To find a causal link based on these allegations would require the adoption of Rube Goldberg theories of causation that are not pled in the Complaint, much less plausibly so, and which can not suffice under the law of this Circuit to establish that the City's claimed injuries "arise out of" the alleged contacts between ExxonMobil and New York. *Gucci*, 135 F. Supp. 3d at 96 *In re LIBOR*, 2015 WL 4634541, at *23. Instead, the jurisdictional theory the Complaint embraces—that *any* business operations in a forum can subject a company to general jurisdiction for *all* of its business operations worldwide for the company's entire history —was rejected by the Supreme Court less than a year ago when it held that mere "[i]n-state business . . . does not suffice to permit the assertion of general jurisdiction." *BNSF Ry. Co.*, 137 S. Ct. at 1559.

3. The City Has Not Adequately Alleged Causation Even if ExxonMobil's Alleged Worldwide Emissions Could Be Connected to New York.

The Complaint's failure to allege a causal link between ExxonMobil's conduct and the City's alleged injuries would be the same even if *all* of the *worldwide* emissions attributed to ExxonMobil in the Complaint could be tied to New York—and they cannot be. The Complaint alleges that ExxonMobil and its co-defendants are collectively indirectly responsible for a mere 11% of emissions in the modern era. (Compl. ¶ 3.) According to the sources cited by the City, the *worldwide* conduct of ExxonMobil accounts for just 3.2% of such emissions. (*Id*.)

Tellingly, the City does not allege that the specific climatic conditions it complains of "would not have occurred" absent the 3.2% of emissions purportedly generated by

ExxonMobil's products. *Univ. of Texas S.W. Med. Ctr.*, 133 S. Ct. at 2525. That is for good reason: federal courts have recognized the inherent impossibility of drawing a causal link between any particular emissions and discrete climatic impacts. As explained by the U.S. District Court for the Northern District of California in a similar case brought by Matthew Pawa, the City's private attorney in this matter:

> [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 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). The City's pleading in this case concedes as much, freely admitting that "[g]reenhouse gas molecules cannot be traced to their source, and greenhouse gases quickly diffuse and comingle in the atmosphere." (Compl. ¶ 31.) Under such circumstances, as *Kivalina* concluded, "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' Plaintiffs' alleged global warming related injuries." 663 F. Supp. 2d at 881; *cf. Bristol-Myers Squibb*, 137 S. Ct. at 1783 (finding that defendant's use of an in-state distributor could not justify specific jurisdiction 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 forum-based distributor). The same conclusion follows here, and thus even if *all* of the claimed ExxonMobil-related emissions arose out of its New York contacts, it would be impossible to conclude that they are a "but for" cause of the injuries the City complains of, rendering specific jurisdiction improper. *Gucci*, 135 F. Supp. 3d at 98; *In re LIBOR*, 2015 WL 4634541, at *23.

In sum, the Complaint does not, and cannot, plead that the City would not have been

injured but for ExxonMobil's conduct *in New York*. Accordingly, ExxonMobil cannot be subject to jurisdiction in this forum under the law of this Circuit. To hold otherwise would be to endorse the precise sort of "loose and spurious form of general jurisdiction" that the Supreme Court in *Bristol-Myers Squibb* explicitly rejected mere months ago. 137 S. Ct. at 1776. *Cf. Absolute Activist Master Value Fund* v. *Ficeto*, No. 09 Civ. 8862 (GBD), 2013 WL 1286170, at *12 (S.D.N.Y. Mar. 28, 2013) (dismissing a Swiss defendant for want of personal jurisdiction because the forum contacts were "at best, attenuated, 'but for' causes of the injury," and were "insufficient to confer personal jurisdiction under Second Circuit precedent").

CONCLUSION

To find ExxonMobil subject to personal jurisdiction in New York for the claims asserted in the Complaint would be an endorsement of jurisdictional principles that have no discernible limit. The mundane contacts between ExxonMobil and New York State claimed in the Complaint could describe virtually any large corporation in the world. If, as the City urges, a multinational corporation can be forced to answer for *all* of its business activities wherever it conducts *any* of its business activities, that would spell the end of the long-standing requirement that there be a substantial, concrete nexus between the particular claims asserted and the defendant's contacts with the forum. That is not, and should not be, the law. The City has thus pursued its claims in an improper forum, and ExxonMobil should be dismissed from this case.

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EXXON MOBIL CORPORATION

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