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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

THE PEOPLE OF THE STATE OF  
CALIFORNIA, acting by and through Oakland  
City Attorney BARBARA J. PARKER,

Plaintiff and Real Party in  
Interest,

v.

BP PLC, CHEVRON CORP.,  
CONOCOPHILLIPS CO., EXXONMOBIL  
CORP., ROYAL DUTCH SHELL PLC, and  
DOES 1 through 10,

Defendants.

First Filed Case: No. 3:17-CV-6011-WHA  
Related Case: No. 3:17-CV-6012-WHA

Case No. 3:17-cv-6011-WHA

**DEFENDANT ROYAL DUTCH SHELL  
PLC'S NOTICE OF MOTION AND  
MOTION TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION,  
INSUFFICIENT SERVICE OF PROCESS,  
AND FAILURE TO STATE A CLAIM;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

Judge: The Honorable William Alsup  
Courtroom: 12 (19th Floor)  
Hearing Date: To Be Determined  
Hearing Time: To Be Determined

THE PEOPLE OF THE STATE OF  
CALIFORNIA, acting by and through San  
Francisco City Attorney DENNIS J.  
HERRERA,

Plaintiff and Real Party in  
Interest,

v.

BP PLC, CHEVRON CORP.,  
CONOCOPHILLIPS CO., EXXONMOBIL  
CORP., ROYAL DUTCH SHELL PLC, and  
DOES 1 through 10,

Defendants.

Case No. 3:17-cv-6012-WHA

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**NOTICE OF MOTION AND MOTION**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that, on a date to be set by the Court, in Courtroom 12 (19th Floor) of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, Defendant Royal Dutch Shell plc will and hereby does move this Court to dismiss the complaints, filed by the People of the State of California acting by and through Oakland City Attorney Barbara J. Parker and by the People of the State of California acting by and through San Francisco City Attorney Dennis J. Herrera, (1) under Federal Rule of Civil Procedure 12(b)(2), for lack of personal jurisdiction; (2) under Federal Rule of Civil Procedure 12(b)(5), for lack of sufficient service of process; and (3) under Federal Rule of Civil Procedure 12(b)(6), for failure to state a claim upon which relief may be granted.<sup>1</sup>

By this motion, Royal Dutch Shell plc seeks dismissal of the complaints with prejudice. This motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declarations of Linda Szymanski (“Szymanski Decl.”) and Rachel Marshall (“Marshall Decl.”) filed concurrently herewith, the pleadings and records on file in these related cases, any additional authority and argument as may be presented in any Reply and hearing on this Motion, and such other matters of which this Court may take judicial notice. Royal Dutch Shell plc also hereby incorporates by reference the arguments set forth in Defendants’ Motion to Dismiss and Memorandum of Points and Authorities, filed jointly and on behalf of all Defendants in support of a motion to dismiss for failure to state a claim upon which relief may be granted.

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<sup>1</sup> In its Notice of Tutorial dated February 27, 2018, this Court “invite[d] counsel to conduct a two-part tutorial on the subject of global warming and climate change” on March 21, 2018. ECF No. 135, Case No. 17-cv-6011; ECF No. 117, Case No. 17-cv-6012. Royal Dutch Shell appreciates the Court’s invitation. In view of this motion to dismiss based on lack of personal jurisdiction, counsel for Royal Dutch Shell plan to attend the tutorial but will not be conducting the tutorial. Counsel for Royal Dutch Shell understand that counsel for Chevron Corporation (“Chevron”) have accepted the Court’s invitation to conduct the tutorial and anticipate that Chevron’s presentation will satisfy the Court’s objectives in requesting the tutorial. In light of Royal Dutch Shell’s objection to the assertion of personal jurisdiction, it respectfully notes that statements by Chevron or other defendants and their counsel at the tutorial are made on behalf of Chevron or those defendants, not Royal Dutch Shell.

**MEMORANDUM OF POINTS AND AUTHORITIES****INTRODUCTION**

1  
2  
3 Plaintiffs' suits advance the unprecedented contention that five energy companies are respon-  
4 sible, in tort, for all injuries allegedly resulting from global climate change, including "thermal ex-  
5 pansion of ocean water," "melting of land-based ice," "accelerated sea level rise," and increased  
6 "flooding of low-lying areas" in San Francisco and Oakland. Compls.<sup>2</sup> ¶ 1. According to Plaintiffs,  
7 the common law of nuisance permits them to obtain monetary relief from Defendants for harms re-  
8 sulting from two centuries of human activity across the globe. Plaintiffs demand funding for efforts  
9 to protect against what they allege are the *local* effects of *global* climate change.

10 The complaints have many flaws, one of which is dispositive of this motion: Plaintiffs have  
11 failed to establish any basis for personal jurisdiction over Royal Dutch Shell. As the Supreme Court  
12 has recently reiterated, "[t]he primary focus of [the] personal jurisdiction inquiry is the defendant's  
13 relationship to the forum." *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779  
14 (2017). Royal Dutch Shell has no relationship to this forum. It is a holding company incorporated in  
15 England and headquartered in the Netherlands, and it conducts no business in California, or anywhere  
16 else in the United States. Because Royal Dutch Shell, being a foreign-based holding company, has  
17 no connection with California (or the United States), the Due Process Clause prohibits the assertion  
18 of personal jurisdiction over Royal Dutch Shell in these cases.

19 Plaintiffs do not even allege that Royal Dutch Shell itself has formed a sufficient connection  
20 with this forum to permit the exercise of personal jurisdiction. Instead, the complaints attempt to at-  
21 tribute to Royal Dutch Shell the alleged activities of unidentified "subsidiaries" in California.  
22 Compls. ¶ 37. But the complaints' conclusory assertions that Royal Dutch Shell "controls" its sub-  
23 sidiaries' operations (Compls. ¶ 28) are wholly inadequate to overcome the settled principle that,  
24 where, as here, "a parent and a subsidiary are separate and distinct corporate entities, the presence of  
25

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26 <sup>2</sup> "Compls." is a collective reference to the complaints filed in these related cases. "Oak.  
27 Compl." refers to the complaint filed by the People of the State of California, acting by and through  
28 Oakland City Attorney Barbara J. Parker. "S.F. Compl." refers to the complaint filed by the People  
of the State of California, acting by and through San Francisco City Attorney Dennis J. Herrera.

1 one . . . in a forum state may not be attributed to the other.” *Axiom Foods, Inc. v. Acerchem Int’l,*  
2 *Inc.*, 874 F.3d 1064, 1071 (9th Cir. 2017). In any event, the alleged California activities would be  
3 insufficient to justify personal jurisdiction because Plaintiffs do not plausibly allege, and could not  
4 show, that Plaintiffs’ alleged injuries arise from the California contacts alleged in the complaints.

### 5 BACKGROUND

6 **A.** The complaints seek to hold Royal Dutch Shell and four other energy companies liable  
7 for the asserted consequences of global climate change. As described in the complaints, the “com-  
8 bustion” of fossil fuels “release[s] greenhouse gases, including carbon dioxide (CO<sub>2</sub>) and methane,  
9 which trap atmospheric heat and increase global temperatures.” Compls. ¶ 38. The complaints de-  
10 scribe that process as a cause of the phenomenon known as “global warming.” *Id.* That warming, the  
11 complaints assert, leads to “melting glaciers and sea ice,” and causes “seawater to expand,” resulting  
12 in an “acceleration of sea level rise.” Oak. Compl. ¶ 50; S.F. Compl. ¶ 51. According to the com-  
13 plaints, “[g]lobal warming” is “harming” Oakland and San Francisco “now” through “flooding of  
14 low-lying areas,” “increased shoreline erosion,” and “salt water impacts” to the cities’ “water treat-  
15 ment system[s].” Compls. ¶ 1.

16 The complaints assert that fossil fuels release greenhouse gases “when combusted.” Oak.  
17 Compl. ¶ 52; S.F. Compl. ¶ 53. But they disclaim any attempt “to impose liability on Defendants for  
18 their direct emissions of greenhouse gases.” Compls. ¶ 11. Instead, the theory of the complaints is  
19 that Defendants are responsible for the ultimate asserted consequences of emissions generated by the  
20 energy-consuming activities of every business, government, and consumer on the planet, including  
21 Plaintiffs themselves.

22 **B.** According to the complaints, Royal Dutch Shell “is responsible for” all of its subsidi-  
23 aries’ “past and current production and promotion of fossil fuel products” *worldwide*. Compls. ¶ 29.  
24 The complaints attempt to justify that contention with conclusory assertions that Royal Dutch Shell  
25 “controls” the “climate change policies and fossil fuel production” of “its subsidiaries[.]” Compls.  
26 ¶ 28; *see id.* ¶ 29.



1 Plaintiffs seek to premise an assertion of jurisdiction over Royal Dutch Shell on a handful of  
2 unelaborated allegations of contacts with California by unidentified subsidiaries of Royal Dutch  
3 Shell. According to the complaints, Royal Dutch Shell’s alleged “connections to California” are lim-  
4 ited to the following:

- 5 • *First*, the complaints assert that Royal Dutch Shell, acting “through its subsidiaries,”  
6 “owns and/or operates” various facilities in California, including unspecified port fa-  
7 cilities and terminals, an unspecified pipeline, and one refinery. Compl. ¶ 37.
- 8 • *Second*, according to the complaints, “[t]here are numerous Shell-branded gasoline  
9 stations in California.” *Id.* The complaints do not allege, however, that Royal Dutch  
10 Shell or any of its subsidiaries owns or operates those stations.
- 11 • *Third*, the complaints assert that “Shell offers credit cards to consumers on its interac-  
12 tive website to promote sales of gasoline and other products at its branded gasoline  
13 stations. Shell promotes gasoline sales by offering consumers, through its interactive  
14 web site, twenty-five cents off every gallon of Shell Fuel for the first two months after  
15 they open an account.” *Id.* Those allegations do not mention California or suggest  
16 that the alleged activities were purposefully directed at California (or any other forum)  
17 or that they have any connection to Plaintiffs’ claimed injuries in these cases.

18 C. The Declaration of Linda Szymanski, Royal Dutch Shell’s General Counsel and Sec-  
19 retary, provides facts regarding Royal Dutch Shell’s lack of connections with California and the  
20 United States, as well as its relationship with its subsidiaries.

21 Royal Dutch Shell is a public limited company registered in England and Wales and head-  
22 quartered in The Hague, Netherlands. Szymanski Decl. ¶ 3; *see* Compl. ¶ 27. Royal Dutch Shell is  
23 a holding company. Szymanski Decl. ¶ 3. It conducts no operations of its own; in particular, it does  
24 not produce, transport, market, or sell fossil fuels and has never produced, transported, marketed, or  
25 sold fossil fuels. *Id.* ¶¶ 3-4. Royal Dutch Shell is the ultimate parent company of more than 1,100  
26 separate companies engaged in the oil and gas business around the world. *Id.* ¶ 5. These wholly and  
27 partially owned indirect subsidiaries are sometimes referred to collectively as the “Shell group” for

1 convenience; the Shell group is not a legal entity. *Id.* Other than through its indirect ownership of  
 2 separately formed subsidiaries, Royal Dutch Shell owns no assets and conducts no business in the  
 3 United States, including California. *Id.* ¶ 7.

4 Royal Dutch Shell’s U.S. subsidiaries are separately created, maintain substantial capital,  
 5 keep separate financial accounts, and have their own boards of directors. *Id.* ¶ 11. Royal Dutch Shell  
 6 does not exercise day-to-day control over the operational activities of its indirect subsidiaries. *Id.*  
 7 ¶ 14. As a matter of good corporate governance, Royal Dutch Shell identifies broadly what risks may  
 8 be applicable to the Shell group of companies as a whole, and broad objectives for managing those  
 9 risks. *Id.* ¶ 15. Climate change is one of those risks, as are factors as diverse as fluctuations in for-  
 10 eign currency exchange rates and antitrust compliance. *Id.* Royal Dutch Shell does not dictate to  
 11 Shell group companies how those corporate-level risks and objectives should be managed and imple-  
 12 mented operationally. *Id.* That responsibility rests with the relevant operating company. *Id.*

### ARGUMENT

#### **I. Plaintiffs Have Not Established A Basis For Exercising Personal Jurisdiction Over Royal Dutch Shell In These Cases**

16 Plaintiffs bear the burden of establishing personal jurisdiction over each defendant. *See, e.g.,*  
 17 *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015). Plaintiffs must make a prima facie showing  
 18 of personal jurisdiction to survive a motion to dismiss on the pleadings. *Id.* They must “allege facts  
 19 that support a finding of personal jurisdiction.” *Glencore Grain Rotterdam B.V. v. Shivnath Rai*  
 20 *Harnarain Co.*, 284 F.3d 1114, 1118 (9th Cir. 2002); *see also Mizokami Bros. of Arizona, Inc. v.*  
 21 *Baychem Corp.*, 556 F.2d 975, 977 (9th Cir. 1977) (per curiam) (“To the extent that the district court  
 22 grounded its dismissal upon the failure of the complaint to allege facts establishing in personam juris-  
 23 diction, the judgment must be affirmed.”).

24 In addition, the Court “may not assume the truth of allegations in a pleading which are contra-  
 25 dicted by affidavit.” *Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir.

1 1977). Instead, Plaintiffs must “come forward with facts, by affidavit or otherwise, supporting per-  
2 sonal jurisdiction.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986) (internal quotation marks  
3 omitted).

4 Under Federal Rule of Civil Procedure 4(k), “a federal district court’s authority to assert per-  
5 sonal jurisdiction in most cases is linked to service of process on a defendant ‘who is subject to the  
6 jurisdiction of a court of general jurisdiction in the state where the district court is located.’” *Walden*  
7 *v. Fiore*, 134 S. Ct. 1115, 1121 (2014) (quoting Fed. R. Civ. P. 4(k)(1)(A)). California courts may  
8 exercise personal jurisdiction to the extent the Due Process Clause of the Fourteenth Amendment per-  
9 mits. *See Daimler AG v. Bauman*, 571 U.S. 117, 134 S. Ct. 746, 753 (2014); Cal. Code Civ. P. §  
10 410.10. Accordingly, the Court asks whether personal jurisdiction “comports with the limits imposed  
11 by federal due process.” *Daimler*, 134 S. Ct. at 753.

12 Applying the Due Process Clause, the Supreme Court has recognized two types of personal  
13 jurisdiction: general and specific. *See, e.g., Bristol-Myers*, 137 S. Ct. at 1779-80. General jurisdic-  
14 tion allows a court to adjudicate any claim against a defendant, regardless of the connection between  
15 the claim and the forum. *Id.* Specific jurisdiction allows a court to adjudicate only a more limited set  
16 of claims: those that arise out of contacts between the defendant and the forum. *Id.*

17 Plaintiffs have not alleged facts that could support either general or specific jurisdiction over  
18 Royal Dutch Shell in these cases. The Declaration of Linda Szymanski demonstrates that Plaintiffs  
19 cannot do so.

20 **A. Royal Dutch Shell Is Not Subject To General Jurisdiction In California Or**  
21 **Anywhere Else In The United States**

22 **1. Royal Dutch Shell Is Not “At Home” In California Or Anywhere Else In**  
23 **The United States**

24 A court may exercise general jurisdiction over a corporation only when the corporation’s con-  
25 tacts with the forum are “so continuous and systematic” that it is “at home” there. *Daimler*, 134 S.  
26 Ct. at 754 (internal quotation marks omitted). Doing business in a forum “does not suffice to permit  
27 the assertion of general jurisdiction” over a corporation. *BNSF Railway Co. v. Tyrrell*, 137 S. Ct.  
28 1549, 1559 (2017); *see id.* (“over 2,000 miles of railroad track and more than 2,000 employees” in

1 forum insufficient); *Goodyear Dunlop Tires Ops., S.A. v. Brown*, 564 U.S. 915, 927, 930 n.6 (2011)  
 2 (“continuous activity” and “regularly occurring sales” in forum insufficient). Rather, the “paradigm”  
 3 forums in which a corporation is regarded as “at home” are its “place of incorporation” and its “prin-  
 4 cipal place of business.” *Daimler*, 134 S. Ct. at 760.

5 Royal Dutch Shell neither is incorporated nor has its principal place of business in California  
 6 or any other state. As the complaints acknowledge, Royal Dutch Shell “is a public limited company  
 7 registered in England and Wales with its headquarters in The Hague, Netherlands.” Compl. ¶ 27;  
 8 *see Szymanski Decl.* ¶ 3. Because Royal Dutch Shell is incorporated and maintains its principal  
 9 place of business abroad, it is not subject to general jurisdiction in California or any other state.  
 10 *See Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015, 1021-22 (9th Cir. 2017) (holding that *Daim-*  
 11 *ler* bars the exercise of general jurisdiction over defendant incorporated and headquartered in Japan).<sup>3</sup>

## 12 2. Imputation Theories Cannot Make Royal Dutch Shell “At Home” In 13 California Or Anywhere Else In The United States

14 *Daimler* also rejected the possibility of general jurisdiction resting on the relationship be-  
 15 tween a parent corporation and its subsidiary. The plaintiffs in *Daimler* argued that a German corpo-  
 16 ration was subject to general jurisdiction in California based on the forum contacts of its subsidiary.  
 17 134 S. Ct. at 752. The Supreme Court rejected the plaintiffs’ argument, explaining: “Even if we  
 18 were to assume that [the subsidiary] is at home in California, and further to assume [the subsidiary’s]  
 19 contacts are imputable to [the parent], there would still be no basis to subject [the parent] to general  
 20

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21 <sup>3</sup> This is nothing like the “exceptional case” in which the *Daimler* Court left open the “possi-  
 22 bility” of general jurisdiction existing somewhere other than the place of incorporation and the princi-  
 23 pal place of business. 134 S. Ct. at 761 n.19. As the only example of such a case, the Court identi-  
 24 fied *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952). *Daimler*, 134 S. Ct. at 755-  
 25 56. In *Perkins*, World War II had forced the president of the corporate defendant to relocate from the  
 26 Philippines to Ohio, making Ohio “the corporation’s principal, if temporary, place of business.” *Id.*  
 27 at 756; *see Goodyear*, 564 U.S. at 928 (“[t]o the extent that the company was conducting any busi-  
 28 ness during and immediately after the Japanese occupation of the Philippines, it was doing so in  
 Ohio”). Plaintiffs allege no facts that could make this an exceptional case along the lines of *Perkins*,  
 and the Szymanski Declaration forecloses the possibility. *See Szymanski Decl.* ¶¶ 3-7; *see also Mar-*  
*tinéz v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (rejecting attempt to show that case  
 was “exceptional” where, as here, defendant was incorporated and headquartered abroad).

1 jurisdiction in California.” *Id.* at 760. Even under those assumptions, the Court explained, the Ger-  
2 man parent corporation’s “slim contacts with the State hardly render it as home there.” *Id.*; *see*  
3 *Yamaha*, 851 F.3d at 1022 & n.2 (discussing *Daimler* and holding that “even assuming [a California-  
4 based subsidiary’s] contacts could be imputed to [its foreign parent], this does not, on its own, suffice  
5 to establish general jurisdiction” over the foreign parent).

6 That conclusion applies squarely here. Like the German parent corporation in *Daimler*, Royal  
7 Dutch Shell is, according to the complaints, a “multinational” company that is incorporated and has  
8 its principal place of business outside of the United States. Compls. ¶ 27. Plaintiffs allege no fact  
9 that could make Royal Dutch Shell “at home” in California (or in any other state), even with the al-  
10 leged “contacts” of unidentified subsidiaries “attributed to it.” *Daimler*, 134 S. Ct. at 762. General  
11 jurisdiction permits the adjudication of claims having nothing to do with the defendant’s contacts  
12 with the forum, and Plaintiffs in these cases seek to premise liability on the worldwide operations of  
13 multinational energy companies and their subsidiaries. If the few contacts alleged in the complaints  
14 were sufficient to establish general jurisdiction over a foreign holding company with subsidiaries  
15 worldwide, such as Royal Dutch Shell, then “the same global reach would presumably be available in  
16 every other State in which” subsidiaries of the foreign company operate. *Id.* at 761; *see Havlish v.*  
17 *Royal Dutch Shell plc*, No. 13 Civ. 7074 (GBD), 2014 WL 4828654, at \*2-3 (S.D.N.Y. Sep. 24,  
18 2014) (refusing to exercise general jurisdiction over Royal Dutch Shell based on the forum contacts  
19 of its subsidiaries). That is precisely the result that the Supreme Court rejected in *Daimler*, because a  
20 corporation whose subsidiaries operate “in many places can scarcely be deemed at home in all of  
21 them.” *Id.* at 762 n.20.

### 22 **B. Royal Dutch Shell Is Not Subject To Specific Jurisdiction In These Cases**

23 Plaintiffs also have not alleged, and could not establish, a basis for exercising specific per-  
24 sonal jurisdiction over Royal Dutch Shell in these cases. “There are three requirements for a court to  
25 exercise specific jurisdiction over a nonresident defendant: (1) the defendant must either purpose-  
26 fully direct his activities toward the forum or purposefully avail[ ] himself of the privileges of con-  
27 ducting activities in the forum; (2) the claim must be one which arises out of or relates to the

1 defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play  
2 and substantial justice, i.e. it must be reasonable." *Axiom Foods*, 874 F.3d at 1068 (brackets in origi-  
3 nal).

4 For multiple reasons, Plaintiffs' allegations do not satisfy any of those requirements. *First*,  
5 Royal Dutch Shell, which is a foreign holding company, has not purposefully directed (the relevant  
6 standard in a tort case such as this one) any activities toward California or the United States. *Second*,  
7 Plaintiffs cannot establish such a connection through the activities of Royal Dutch Shell's indirect  
8 subsidiaries. *Third*, even if all of the alleged contacts of Royal Dutch Shell's indirect subsidiaries  
9 were (contrary to governing authority) imputed to Royal Dutch Shell, Plaintiffs still could not show  
10 that their alleged injuries arise out of the imputed contacts. *Fourth*, and in all events, it would be un-  
11 reasonable for this Court to exercise specific jurisdiction over Royal Dutch Shell in these cases.

12 **1. Royal Dutch Shell Has Not Created A "Substantial Connection" With, Or**  
13 **Purposefully Directed Activities Toward, California Or The United States**

14 Plaintiffs' effort to establish specific jurisdiction fails at the threshold, because Royal Dutch  
15 Shell has no connection with California or the United States. "For a State to exercise jurisdiction  
16 consistent with due process, the defendant's suit-related conduct must create a substantial connection  
17 with the forum State." *Walden*, 134 S. Ct. at 1121. To determine whether a foreign defendant has  
18 the requisite connection in a tort case, such as this one, the Ninth Circuit asks whether the defendant  
19 has purposefully directed its activities toward the forum. *Axiom Foods*, 874 F.3d at 1068.<sup>4</sup> Allega-  
20 tions that activities outside the forum foreseeably caused injury inside the forum are insufficient to  
21 satisfy this inquiry. *See Walden*, 134 S. Ct. at 1124-25; *Axiom Foods*, 874 F.3d at 1070. In addition,  
22 "it is the defendant, not the plaintiff or third parties, who must create contacts with the forum" that  
23 are substantial enough for the court to exercise specific jurisdiction. *Walden*, 134 S. Ct. at 1126. As

24 \_\_\_\_\_  
25 <sup>4</sup> The result would be no different under a purposeful-availing analysis because, as ex-  
26 plained in the text, Royal Dutch Shell is a foreign-based holding company that has not "purposefully  
27 availed itself of the privilege of doing business in" California or the United States. *Boschetto v.*  
*Hansing*, 539 F.3d 1011, 1016 (9th Cir. 2008); *see Morrill v. Scott Fin. Corp.*, 873 F.3d 1136, 1149  
28 (9th Cir. 2017).

1 the Supreme Court explained in *Walden*, “[t]he proper question is not where the plaintiff experienced  
2 a particular injury or effect but whether the defendant’s conduct connects [it] to the forum in a mean-  
3 ingful way.” 134 S. Ct. at 1125.<sup>5</sup>

4 Plaintiffs have not pleaded, and could not show, that Royal Dutch Shell, a foreign-based hold-  
5 ing company, has created a substantial connection with or purposefully directed any activities toward  
6 California or the United States. *See Walden*, 134 S. Ct. at 1121; *Axiom Foods*, 874 F.3d at 1069-71.  
7 Plaintiffs do not allege that Royal Dutch Shell *itself* has engaged in *any* relevant conduct, let alone  
8 conduct purposefully directed at California or the United States.

9 The Szymanski Declaration demonstrates that Plaintiffs cannot show that Royal Dutch Shell  
10 has created a substantial connection with or purposefully directed relevant activities toward Califor-  
11 nia or the United States. As the Declaration explains, Royal Dutch Shell is a foreign holding com-  
12 pany that conducts no operations of its own. Szymanski Decl. ¶¶ 3-4. Royal Dutch Shell owns no  
13 assets and conducts no business in the United States, including California. *Id.* ¶ 7. Royal Dutch  
14 Shell has no officers, employees, or other personnel in the United States, including California. *Id.*  
15 Royal Dutch Shell has no place of business or mailing address in the United States, including Califor-  
16 nia. *Id.* Royal Dutch Shell has not appointed an agent for service of process in any jurisdiction in the  
17 United States, including California. *Id.* In short, Royal Dutch Shell has no connection with Califor-  
18 nia or the United States. *See Walden*, 134 S. Ct. at 1124 (no personal jurisdiction where defendant  
19 “formed no jurisdictionally relevant contacts with” the forum); *Axiom Foods*, 874 F.3d at 1070  
20

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21 <sup>5</sup> Ordinarily, under Federal Rule of Civil Procedure 4(k), the due process inquiry focuses on  
22 the connection between the defendant and the state in which the federal court sits. *See Fed. R. Civ. P.*  
23 *4(k)(1)(A); Walden*, 134 S. Ct. at 1121. Rule 4(k)(2) contains an exception, however, for claims aris-  
24 ing under federal law (such as Plaintiffs’ claims) against a defendant that is not subject to jurisdiction  
25 in any state’s courts (such as Royal Dutch Shell, as explained in this memorandum). *See Fed. R. Civ.*  
26 *P. 4(k)(2)*. As interpreted by the Ninth Circuit, Rule 4(k)(2) confers personal jurisdiction over a de-  
27 fendant to the extent permitted by the Due Process Clause of the Fifth Amendment. *See Axiom*  
28 *Foods*, 874 F.3d at 1072; *Getz v. Boeing Co.*, 654 F.3d 852, 859 (9th Cir. 2011). The Ninth Circuit  
has held that the due process analysis is “nearly identical” under the Fifth and Fourteenth Amend-  
ments, except that, if the Fifth Amendment applies under Rule 4(k)(2), then the court considers the  
defendants’ contacts “with the nation as a whole.” *Axiom Foods*, 874 F.3d at 1072 (quoting *Holland*  
*Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 462 (9th Cir. 2007).

1 (same, where defendant’s contacts were “too attenuated and isolated to support the exercise of juris-  
2 diction”) (citations omitted).

3 **2. The Contacts Alleged In The Complaints Cannot Be Imputed To Royal**  
4 **Dutch Shell Under Any Theory**

5 Plaintiffs cannot establish specific jurisdiction over Royal Dutch Shell based on the alleged  
6 forum contacts of its indirect subsidiaries. The complaints allege that Royal Dutch Shell, “through its  
7 subsidiaries: owns and/or operates port facilities in California for receipt of crude oil, owns and oper-  
8 ates a refinery in California where crude oil is refined into finished fuel products including gasoline,  
9 transports crude oil through a pipeline within California, and owns and operates approximately six  
10 gasoline terminals in California.” Compl. ¶ 37. The complaints also allege that “[t]here are numer-  
11 ous Shell-branded gasoline stations in California” and that “Shell offers credit cards to consumers on  
12 its interactive website to promote sales of gasoline and other products at its branded gasoline sta-  
13 tions.” *Id.*

14 Those alleged contacts cannot be imputed to Royal Dutch Shell under any theory. As the  
15 Ninth Circuit recently reiterated in *Axiom Foods*, “[i]t is well established that, as a general rule,  
16 where a parent and a subsidiary are separate and distinct corporate entities, the presence of one . . . in  
17 a forum state may not be attributed to the other[.]” 874 F.3d at 1071 (second alteration in original).  
18 Here, as in that case, Plaintiffs “have provided no reason to deviate from this general rule.” *Id.*

19 **Agency.** The Ninth Circuit has not decided whether an agency theory of specific jurisdiction  
20 survives *Daimler*. See *Axiom Foods*, 874 F.3d at 1071 n.5; *Yamaha*, 851 F.3d at 1024. Even if such  
21 a theory were permissible, the Ninth Circuit has recognized that a plaintiff would have to show, at a  
22 minimum, that the parent corporation has “the right to substantially control its subsidiary’s activi-  
23 ties.” *Yamaha*, 851 F.3d at 1024-25.

24 Plaintiffs fail to allege facts plausibly showing that Royal Dutch Shell has “substantial[] con-  
25 trol” over the activities of any relevant subsidiary. The complaints contain boilerplate assertions that  
26 Royal Dutch Shell, “through its employees and/or agents, manages, directs, conducts and/or controls  
27  
28



1 operations relating to its subsidiaries’ participation in the process by which fossil fuels . . . are pro-  
 2 duced, transported, refined, stored, distributed, marketed, and/or sold to consumers.” Compls. ¶ 28.  
 3 The complaints also assert in a conclusory fashion that, “[a]s a result of its management, direction,  
 4 conduct and/or control of operations relating to company-wide climate change policies and fossil fuel  
 5 production, Defendant Shell is responsible for its subsidiaries’ past and current production and pro-  
 6 motion of fossil fuel products.” Compls. ¶ 29.

7 The Ninth Circuit has squarely rejected exactly the sorts of “conclusory legal statement[s] un-  
 8 supported by any factual assertion regarding [the defendant’s] control over [its subsidiary]” that the  
 9 complaints in these cases contain. *Yamaha*, 851 F.3d at 1025 n.5. Indeed, the complaints do not at-  
 10 tempt even to identify any of the subsidiaries at issue, let alone allege facts that would demonstrate  
 11 the substantial control required by the Ninth Circuit’s cases.

12 In addition, the Ninth Circuit and many other courts have refused to impute contacts from a  
 13 subsidiary to its parent company based on allegations that the parent sets general policies for the sub-  
 14 sidiary to implement, such as the complaints’ allegations about “company-wide climate change poli-  
 15 cies.”<sup>6</sup> As explained in *Unocal*, even where a parent corporation is involved in the “macro-manage-  
 16 ment of its subsidiaries,” that is not enough to impute the subsidiaries’ activities to the parent. 248  
 17 F.3d at 927; *see id.* at 930 (refusing to impute contacts from subsidiaries to parent where parent “indi-  
 18 rectly control[s] or supervise[s] its subsidiaries”). Only where the parent’s control extends to the  
 19 “day-to-day activities” of its subsidiaries is imputation potentially available. *Id.* at 930. Plaintiffs’  
 20 conclusory allegations about climate policy come nowhere near a showing of day-to-day control.

21 <sup>6</sup> *See Doe v. Unocal Corp.*, 248 F.3d 915, 926-28 (9th Cir. 2001) (per curiam, adopting rele-  
 22 vant portions of district court’s opinion), *abrogated on other grounds by Daimler*, 134 S. Ct. at 758-  
 23 60; *Lyons v. Philip Morris Inc.*, 225 F.3d 909, 915 (8th Cir. 2000); *Jazini v. Nissan Motor Co., Ltd.*,  
 24 148 F.3d 181, 184-85 (2d Cir. 1998); *In re Western States Wholesale Natural Gas Litig.*, 605 F.  
 25 Supp. 2d 1118, 1126-27, 1129, 1133-34, 1141 (D. Nev. 2009); *United States v. Philip Morris Inc.*,  
 26 116 F. Supp. 2d 116, 120, 123-24, 130 (D.D.C. 2000); *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d  
 27 660, 663-66, 669-70, 672 (W.D. Wis. 1998); *Arch v. American Tobacco Co.*, 984 F. Supp. 830, 837-  
 28 39 (E.D. Pa. 1997); *Sonora Diamond Corp. v. Superior Court*, 99 Cal. Rptr. 2d 824, 838-39, 845-46  
 (Cal. Ct. App. 2000); *State v. American Tobacco Co.*, 707 So. 2d 851, 856 (Fla. Dist. Ct. App. 1998);  
*cf. United States v. Bestfoods*, 524 U.S. 51, 72 (1998) (explaining that parent’s “articulation of gen-  
 eral policies and procedures . . . should not give rise to direct liability” for costs of cleaning up waste  
 generated by subsidiary’s facility).

1 The Szymanski Declaration confirms that Plaintiffs cannot demonstrate facts sufficient to im-  
2 pute contacts to Royal Dutch Shell under an agency theory. Royal Dutch Shell does not exercise  
3 day-to-day control over the operational activities of its many hundreds of indirect subsidiaries. Szy-  
4 manski Decl. ¶ 14. Royal Dutch Shell neither directs its subsidiaries' operational decision making  
5 nor mandates how they should achieve general business objectives. *Id.* ¶¶ 14-15. No subsidiary of  
6 Royal Dutch Shell, nor any other entity, has ever held express or implied authority to act as Royal  
7 Dutch Shell's agent, including with respect to the production, refining, transport, marketing, or sale  
8 of fossil fuels in California or anywhere else in the United States. *Id.* ¶ 7. Those facts refute any ef-  
9 fort to establish an agency relationship between Royal Dutch Shell and its indirect subsidiaries. *See,*  
10 *e.g., Havlish*, 2014 WL 4828654, at \*2-3 (rejecting agency argument on indistinguishable record).

11 ***Alter Ego.*** Nor can Plaintiffs impute the alleged jurisdictional contacts to Royal Dutch Shell  
12 on the theory that Royal Dutch Shell's subsidiaries are its alter egos. The alter ego theory requires  
13 plaintiffs to show that "there is such unity of interest and ownership that the separate personalities of  
14 the two entities no longer exist" and that "failure to disregard their separate identities would result in  
15 fraud or injustice." *Yamaha*, 851 F.3d at 1021; *see also Axiom Foods*, 874 F.3d at 1071 n.5.

16 The complaints contain no factual allegations that could come close to meeting that standard.  
17 The Ninth Circuit has refused to recognize that a parent and its subsidiaries are alter egos in cases  
18 presenting much more concrete allegations than one finds in Plaintiffs' complaints. In *Ranza*, the  
19 parent company was "heavily involved in [the subsidiary's] operations"; it "exercise[d] control over  
20 [the subsidiary's] overall budget and ha[d] approval authority for large purchases; establishe[d] gen-  
21 eral human resource policies for both entities and [was] involved in some hiring decisions; operate[d]  
22 information tracking systems all of its subsidiaries utilize[d]; ensure[d] the [parent company] brand  
23 [was] marketed consistently throughout the world; and require[d] some [subsidiary] employees to re-  
24 port to [parent company] supervisors on a 'dotted-line' basis." 793 F.3d at 1074. Similarly, in *Un-*  
25 *ocal*, the plaintiffs alleged that the parent intervened in its subsidiaries' acquisitions, divestments, and  
26 capital expenditures; formulated policies and strategies for its subsidiaries to follow; provided its sub-  
27 sidiaries with financing; and maintained an overlap of directors and officers. *See* 248 F.3d at 927.

1 The Ninth Circuit refused to impute contacts under an alter-ego theory in those cases. *See Ranza*,  
 2 793 F.3d at 1075; *Unocal*, 248 F.3d at 928. Plaintiffs allege nothing that could support a different  
 3 outcome here.

4 The Szymanski Declaration demonstrates that Plaintiffs could not in good faith plead allega-  
 5 tions that would show that Royal Dutch Shell and its subsidiaries are alter egos. Royal Dutch Shell  
 6 and its subsidiaries observe all formal requirements to operate as separate entities. Szymanski Decl.  
 7 ¶ 11. Each is separately created, maintains substantial capital, keeps separate financial accounts, and  
 8 is managed by its own board of directors. *Id.* Royal Dutch Shell does not exercise day-to-day con-  
 9 trol over the operational activities of its subsidiaries. *Id.* ¶ 14. Those facts foreclose reliance on an  
 10 alter-ego theory here. *See Ranza*, 793 F.3d at 1074-75.

### 11 **3. Plaintiffs Cannot Show That Their Claims Arise From The Attenuated** 12 **Jurisdictional Contacts Alleged In The Complaints**

13 Even if Plaintiffs could impute all of the forum contacts alleged in the complaints to Royal  
 14 Dutch Shell — and they cannot, as explained above — they still would fall short of making a prima  
 15 facie showing of specific jurisdiction. A court may exercise specific jurisdiction over a defendant  
 16 only if the plaintiff’s claims “aris[e] out of or relat[e] to” the defendant’s contacts with the forum.  
 17 *Bristol-Myers*, 137 S. Ct. at 1780. The Ninth Circuit has held that the defendant’s forum contacts  
 18 must have caused the plaintiff’s injury for a court to exercise specific jurisdiction. *See Bancroft &*  
 19 *Masters, Inc. v. Augusta Nat’l Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). Courts in this circuit  
 20 “measure this requirement in terms of ‘but for’ causation.” *Id.*<sup>7</sup>

21 Plaintiffs have not pleaded — and could not plausibly plead — allegations that would satisfy  
 22 the “requirement” of “‘but for’ causation.” *Id.* Plaintiffs assert that their claims arise out of the com-  
 23

24 \_\_\_\_\_  
 25 <sup>7</sup> Other circuits have held, correctly in Royal Dutch Shell’s view, that the defendant’s forum  
 26 contacts must amount to the proximate cause of the plaintiff’s injuries for there to be specific juris-  
 27 diction. *See SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (noting circuit split). As  
 28 demonstrated in the text, Plaintiffs cannot show that their claims arise from the attenuated contacts  
 alleged in the complaints even under the more lenient but-for test that the Ninth Circuit employs.

1 bustion of fossil fuels to produce energy, which emits greenhouse gases, which accumulate in the at-  
2 mosphere, which results in a warmer global climate, which yields sea-level rise and extreme weather  
3 events, and which ultimately harms their property interests.<sup>8</sup> As an initial matter, however, Plaintiffs’  
4 claims and their underlying theory of causation are not even loosely tethered to the forum contacts  
5 alleged in the complaints. Plaintiffs do not so much as imply that the few isolated California activi-  
6 ties alleged in the complaints, *see* Compls. ¶ 37, could be considered a but-for cause of the sea-level  
7 rise and extreme weather events that allegedly harm Plaintiffs’ property and thereby give rise to their  
8 claims for a public nuisance.

9 Nor could Plaintiffs satisfy the “requirement” of “‘but for’ causation” even if they could ag-  
10 gregate and impute to Royal Dutch Shell all of the activities of its subsidiaries in California or the  
11 United States. According to a study on which Plaintiffs rely, the combustion of *all* of the fossil fuels  
12 that *all* of Royal Dutch Shell’s subsidiaries has allegedly *ever* produced and sold *anywhere in the*  
13 *world* accounts for just 2.12% of the greenhouse gases emitted from industrial sources since the start  
14 of the Industrial Revolution.<sup>9</sup> Although Royal Dutch Shell does not accept the inputs, analysis, or  
15 conclusions in that study, and setting aside the fact that the figure improperly aggregates activities  
16 worldwide rather than forum-wide as the Due Process Clause requires, the important point for present  
17 purposes is that Plaintiffs have not alleged, and could not show, that their claimed injuries would not  
18 have occurred but for the alleged conduct of subsidiaries of Royal Dutch Shell. *See Doe v. American*

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20  
21 <sup>8</sup> *See, e.g.*, Oak. Compl. ¶ 48; S.F. Compl. ¶ 49 (“Today, due primarily to the combustion of  
22 fossil fuels 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 of  
24 years.”); Oak. Compl. ¶ 50; S.F. Compl. ¶ 51 (“Global warming causes sea level rise by melting glac-  
25 iers and sea ice, and by causing seawater to expand.”); Oakland Compl. ¶ 87 (“Oakland has already  
26 begun to feel injury from sea level rise, although its most severe injuries by far are the injuries that  
27 will occur in the future if prompt action is not taken to protect Oakland and its residents from rising  
28 sea levels caused by global warming.”); S.F. Compl. ¶¶ 88-92 (alleging similar threat of harm).

<sup>9</sup> *See* Oak. Compl. ¶ 55 n.13; S.F. Compl. ¶ 56 n.34 (citing Peter C. Frumhoff et al., *The Cli-  
mate Responsibilities of Industrial Carbon Producers*, 132 *Climatic Change* 157, 167 (2015), *availa-  
ble at* <https://link.springer.com/content/pdf/10.1007%2Fs10584-015-1472-5.pdf>). Frumhoff et al.  
present the relevant figure at 162.

1 *Nat'l Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997) (denying specific jurisdiction where defend-  
2 ant's forum contacts were "only peripherally" related to plaintiff's alleged injuries and "too attenu-  
3 ated to satisfy the 'but for' test"). Indeed, Plaintiffs do not ask the Court to make that leap: In an ear-  
4 lier filing, Plaintiffs disclaimed any possibility that activities on the Outer Continental Shelf, which  
5 yield nearly a third of oil and gas production in the United States each year, might constitute a but-for  
6 cause of global climate change and their alleged injuries. *See* Pls.' Reply on Mot. Remand at 20-21,  
7 ECF No. 108, Case No. 17-cv-6011; ECF No. 91, Case No. 17-cv-6012.

8 **4. It Would Be Unreasonable For The Court To Exercise Specific Jurisdic-**  
9 **tion Over Royal Dutch Shell In These Cases**

10 This Court need not decide whether it would be reasonable to exercise specific jurisdiction  
11 over Royal Dutch Shell because Plaintiffs have not carried their burden of showing that Royal Dutch  
12 Shell has created sufficient contacts with the forum and that their claims arise out of those contacts.  
13 *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 807 n.1 (9th Cir. 2007) ("Because  
14 [plaintiff] has failed to sustain his burden . . . we need not, and do not, reach to the third part of the  
15 test."). Nonetheless, it would in fact be unreasonable for this Court to exercise specific jurisdiction  
16 over Royal Dutch Shell in these cases.

17 The Ninth Circuit considers seven factors in assessing the reasonableness of exercising spe-  
18 cific jurisdiction: (1) the extent of the defendant's "purposeful interjection" into the forum; (2) the  
19 burden on the defendant from defending in the forum; (3) the extent of "conflict with the sovereignty  
20 of the defendant's" home state or country; (4) the forum's interest in adjudicating the dispute; (5) the  
21 most efficient judicial resolution of the controversy; (6) the importance of the forum to the plaintiff's  
22 interest in convenient and effective relief; and (7) the existence of an alternative forum. *Glencore*  
23 *Grain*, 284 F.3d at 1125.

24 As in *Glencore Grain*, "[e]ven a cursory glance at the factors reveals the unreasonableness of  
25 exercising jurisdiction in this case." *Id.* With respect to the first factor, as explained above, Royal  
26 Dutch Shell has not purposefully interjected itself into California or the United States. With respect  
27 to the second factor, "[t]he burden on [Royal Dutch Shell] to defend suit in California appears great,  
28

1 given that it is incorporated in [England and Wales], owns no property in the forum, and has no em-  
 2 ployees or persons authorized to act on its behalf there.” *Id.* at 1125-26. With respect to the third  
 3 factor, the Ninth Circuit has explained that, “[w]here, as here, the defendant is from a foreign nation  
 4 rather than another state, the sovereignty barrier is high and undermines the reasonableness of per-  
 5 sonal jurisdiction.” *Id.* at 1126. The remaining factors do not support the reasonableness of exercis-  
 6 ing jurisdiction in these cases because, as explained in the contemporaneously filed joint motion to  
 7 dismiss under Rule 12(b)(6), Plaintiffs’ claims are not suitable for judicial resolution in any forum.

### 8 **C. Plaintiffs Are Not Entitled To Jurisdictional Discovery**

9 Plaintiffs’ facially insufficient jurisdictional allegations do not entitle them to jurisdictional  
 10 discovery. “[W]here a plaintiff’s claim of personal jurisdiction appears to be both attenuated and  
 11 based on bare allegations in the face of specific denials made by defendants, the Court need not permit  
 12 even limited discovery.” *Terracom v. Valley Nat. Bank*, 49 F.3d 555, 562 (9th Cir. 1995) (brackets in  
 13 original).<sup>10</sup> Any request that Plaintiffs may make for jurisdictional discovery would “premised on  
 14 little more than a hunch that it might yield jurisdictionally relevant facts,” *Boschetto*, 539 F.3d at  
 15 1020, as demonstrated by Plaintiffs’ boilerplate pleadings and suggestion to the Court that “about 2-  
 16 1/2 years” will be necessary to undertake “fairly heavy, intensive” pre-trial discovery. Transcript of  
 17 Proceedings on Mot. Remand at 39, ECF No. 127, Case No. 17-cv-6011; ECF No. 110, Case No. 17-  
 18 cv-6012. Far more concrete and credible jurisdictional allegations would be necessary to justify ju-  
 19 risdictional discovery of a foreign holding company that itself conducts no business in the United  
 20 States.

### 21 **II. Plaintiffs Failed To Effect Service Of Process On Royal Dutch Shell**

22 The complaints must also be dismissed pursuant to Federal Civil Procedure Rule 12(b)(5) for  
 23 insufficient service of process. A court cannot exercise personal jurisdiction over a defendant with-  
 24

25  
 26 <sup>10</sup> See *Boschetto*, 539 F.3d at 1020 (affirming denial of jurisdictional discovery); *Butcher’s*  
 27 *Union Local No. 498, United Food & Commercial Workers v. SDC Inv., Inc.*, 788 F.2d 535, 540-41  
 28 (9th Cir. 1986) (same); *Mehr v. Federation Internationale de Football Ass’n*, 115 F. Supp. 3d 1035,  
 1053-54 (N.D. Cal. 2015) (denying jurisdictional discovery).

1 out proper service of process. *Omni Capital Int’l, Ltd. v. Wolff & Co.*, 484 U.S. 97, 104 (1987); *Di-*  
2 *rect Mail Specialists v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988). Because  
3 the requirements for service of process set forth in Federal Rule of Civil Procedure Rule 4 do “not  
4 apply to service of process which was attempted *prior* to removal” — such as Plaintiffs’ purported  
5 service here — “the sufficiency of service in this case is determined according to state law.” *Lee v.*  
6 *City of Beaumont*, 12 F.3d 933, 937 (9th Cir.1993), *overruled on other grounds by Cal. Dep’t of Wa-*  
7 *ter Res. v. Powerex Corp.*, 533 F.3d 1087 (9th Cir.2008). Plaintiffs’ purported service of process on  
8 Royal Dutch Shell did not comply with California law, and Royal Dutch Shell must be dismissed.

9 Under California law, a foreign corporation transacting business in California may be served  
10 in California by “[d]eliver[ing] by hand” a copy of the complaint and summons to the “general man-  
11 ager” of the foreign corporation. Cal. Corp. Code § 2110; *see also id.* § 2100 (except as otherwise  
12 provided, section 2110 “applies *only* to foreign corporations transacting intrastate business” in Cali-  
13 fornia) (emphasis added); Cal. Code Civ. P. § 416.10(d) (service under section 2110 constitutes valid  
14 service on a corporation). Here, Plaintiffs’ purported service of process is insufficient for two inde-  
15 pendent reasons: First, Royal Dutch Shell does not “transact” business in the State of California and  
16 is therefore not subject to service under section 2110. Second, Plaintiffs did not serve the complaint  
17 and summons upon a “general manager” of Royal Dutch Shell, but instead purported to serve one of  
18 its indirect subsidiaries, Shell Oil Company.

19 In construing the similarly worded predecessor to section 2110 (then section 6500), the Cali-  
20 fornia Supreme Court held in *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77 (1959), that “[t]he  
21 validity of the service of process pursuant to section 6500 of the Corporations Code depends first on  
22 whether the foreign corporation is ‘doing business in this State’ within the meaning of the statute.”  
23 *Id.* at 82; *see also Sales Affiliates v. Superior Ct.*, 96 Cal. App. 2d 134, 135-36 (1950); *Empire Steel*  
24 *Corp. of Texas, Inc. v. Superior Court*, 56 Cal.2d 823, 828-29 (1961) (“Whether service of process ...  
25 was valid depends herein upon whether [the foreign corporation] was ‘doing business in this  
26 State.’”). As set forth above, Plaintiffs have not pleaded and cannot demonstrate that Royal Dutch  
27  
28

1 Shell has transacted business in California. On the contrary, Royal Dutch Shell has submitted a dec-  
2 laration from its General Counsel and Secretary specifically affirming that Royal Dutch Shell does  
3 *not* conduct “intrastate” business in California. *See* Szymanski Decl. ¶ 7. Indeed, as a foreign hold-  
4 ing company, Royal Dutch Shell does *no* business in the United States, much less in California. *See*  
5 *id.* ¶¶ 3-4, 7. Royal Dutch Shell is therefore not subject to service under Corporations Code § 2110.  
6 *See* Cal. Corp. Code § 2100.

7         Second, even assuming for the sake of argument that Plaintiffs could demonstrate that Royal  
8 Dutch Shell “transacts” business in the State of California (which they cannot), Plaintiffs failed to  
9 properly serve a “general manager” of Royal Dutch Shell. California Corporations Code § 2110 per-  
10 mits service of process upon a foreign corporation transacting business in California by serving “its  
11 general manager in this state” via “[d]elivery by hand of a copy of any process.” Though the statute  
12 does not expressly define the term “general manager,” the California Supreme Court has explained  
13 that the “essential factor” in identifying a “general manager” is that the person must, at a minimum,  
14 be “performing services for” the foreign corporation in California, thereby “providing it with the op-  
15 portunity for ‘regular contact with its customers and a channel for a continuous flow of business into  
16 the state.’” *Cosper*, 53 Cal. 2d at 84 (citation omitted); *see also id.* at 83 (only an agent with such re-  
17 sponsibilities is “of sufficient character and rank to make it reasonably certain that the defendant will  
18 be apprised of the service made”). As Royal Dutch Shell has demonstrated, it has no employees or  
19 agents in California and conducts no business there, and it therefore does not have any manager,  
20 much less a general manager, in this State. *See* Szymanski Decl. ¶ 7.

21         Here, Plaintiffs purportedly served Royal Dutch Shell on the theory that its indirect domestic  
22 subsidiary, *Shell Oil Company*, is Royal Dutch Shell’s “general manager” in California. *See* Marshall  
23 Decl., Exs. A, B. This theory fails. Plaintiffs have not even bothered to allege any facts that would  
24 establish that Shell Oil Company meets any relevant test for designating it as Royal Dutch Shell’s  
25 “general manager” in California. As Royal Dutch Shell has shown, “[n]o subsidiary of Royal Dutch  
26 Shell . . . has ever held express or implied authority to act as Royal Dutch Shell’s agent, including  
27 with respect to the production, refining, transport, marketing, or sale of fossil fuels in . . . California”;



1 Royal Dutch Shell has no “manager[]” in California; and, specifically, “Shell Oil Company is neither  
2 an agent nor general manager of Royal Dutch Shell.” Szymanski Decl. ¶¶ 7, 9.

3 In view of Royal Dutch Shell’s showing, Plaintiffs cannot carry their burden to prove that  
4 Shell Oil Company does any of the things that would be required to show that it is Royal Dutch  
5 Shell’s “general manager.” Shell Oil Company does not conduct activities in California that involve  
6 the “opportunity” for Royal Dutch Shell to have “regular contact with its customers and a channel for  
7 continuous flow of business into the state,” and it therefore does not meet the essential minimum re-  
8 quired by *Cosper*. See 53 Cal. 2d at 84. Moreover, “[t]he term ‘general manager of a corporation’  
9 indicates one who has *general direction and control of the business of the corporation* as distin-  
10 guished from one who has the management only of a particular branch of the business; he may do  
11 everything which the corporation could do in transaction of its business.” *Gen. Motors Corp. v. Su-*  
12 *perior Ct.*, 15 Cal. App. 3d 81, 86 (1971) (emphasis added); see also *Cosper*, 53 Cal. 2d at (person  
13 “actively engaged in promoting the sales” of foreign corporation was “general manager” for purposes  
14 of service). The contention that Shell Oil Company, an indirect subsidiary, has “general direction  
15 and control of the business” of Royal Dutch Shell is wholly without merit.

16 Plaintiffs are wrong in their apparent premise that, either for purposes of service of process or  
17 for any other purpose, they may disregard the corporate distinctions between Royal Dutch Shell and  
18 its subsidiaries. See Compls. ¶ 29. The Ninth Circuit recently held that the mere fact that a foreign  
19 parent “holds itself and its subsidiaries out as a single integrated global ‘Group,’” and issued consoli-  
20 dated financial statements, was *insufficient* to render the domestic subsidiary a “general manager” for  
21 purposes of service of process under California law. *United States ex rel. Miller v. Public Warehous-*  
22 *ing Co. KSC*, 636 F. App’x 947, 949 (9th Cir. 2016). Instead, the plaintiff bears the burden of  
23 demonstrating that there is a “sufficiently close connection” between the subsidiary and parent, based  
24 on the “frequency and quality of contact between the parent and the subsidiary, the benefits in Cali-  
25 fornia that the parent derives from the subsidiary, and the overall likelihood that service upon the sub-  
26 subsidiary will provide actual notice to the parent. *Id.*; *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir.  
27 2004) (burden of proof rests on party claiming proper service). This accords with the “general rule  
28

1 that subsidiaries and parent corporations are separate entities,” and that not “any large subsidiary”  
 2 qualifies as “general manager” under California law. *Thomas v. Takeda Pharm. USA, Inc.*, 2017 WL  
 3 2214956, at \*5 (E.D. Cal. May 19, 2017) (emphasis in the original) (granting motion to dismiss for  
 4 insufficient service of process). For the reasons set forth above, Plaintiffs have not and cannot  
 5 demonstrate that Royal Dutch Shell has the requisite “close connection” with Shell Oil Company, the  
 6 entity Plaintiffs purportedly served.<sup>11</sup>

7 **III. The Complaints Fail To State Any Claim Upon Which Relief May Be Granted**

8 Royal Dutch Shell also incorporates by reference the arguments set forth in Defendants’  
 9 Motion to Dismiss and Memorandum of Points and Authorities, filed jointly and on behalf of all De-  
 10 fendants in support of a motion to dismiss for failure to state a claim upon which relief may be  
 11 granted.

12 **CONCLUSION**

13 The Court should grant Royal Dutch Shell’s motion to dismiss with prejudice.

14 Dated: March 20, 2018

Respectfully submitted,

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24  
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 26  
 27 <sup>11</sup> For the same reasons, Shell Oil Company does not qualify as a “general manager” under  
 28 Cal. Code Civ. P. § 416.10(b), and service cannot be upheld under that provision either.

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 20, 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, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

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