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12 Attorneys for Defendant  
13 CONOCOPHILLIPS

14 **UNITED STATES DISTRICT COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN FRANCISCO DIVISION**

16 CITY OF OAKLAND, a Municipal Corporation,  
17 and THE PEOPLE OF THE STATE OF  
18 CALIFORNIA, acting by and through the  
19 Oakland City Attorney,

20 Plaintiff,

21 v.

22 BP P.L.C., et al.,

23 Defendants.

First Filed Case: 3:17-cv-06011-WHA  
Related Case: 3:17-cv-06012-WHA

**NOTICE OF MOTION TO DISMISS  
FIRST AMENDED COMPLAINT FOR  
LACK OF PERSONAL  
JURISDICTION OF DEFENDANT  
CONOCOPHILLIPS;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Case No. 3:17-cv-06011-WHA

1 CITY AND COUNTY OF SAN FRANCISCO,  
2 a Municipal Corporation, and THE PEOPLE OF  
3 THE STATE OF CALIFORNIA, acting by and  
4 through the San Francisco City Attorney  
5 DENNIS J. HERRERA,

6 Plaintiff,

7 v.

8 BP P.L.C., et al.,

9 Defendants.

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

Date: May 24, 2018

Time: 8:00 a.m.

Location: Courtroom 12, 19th Floor  
The Honorable William H. Alsup

10 **NOTICE OF MOTION AND MOTION TO DISMISS**

11 **TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR**  
12 **ATTORNEYS OF RECORD:**

13 **PLEASE TAKE NOTICE THAT**, on May 24, 2018 at 8:00 a.m., in the United States  
14 District Court, Northern District of California, San Francisco Courthouse, Courtroom 12, 19th  
15 Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable William  
16 Alsup, Defendant ConocoPhillips will and hereby does move this Court to dismiss these related  
17 actions for lack of personal jurisdiction. The motion will be made on the grounds that this  
18 forum cannot exercise personal jurisdiction over ConocoPhillips, which is a Delaware company  
19 headquartered in Houston, Texas and does not have the requisite minimum contacts with the  
20 State of California. This Motion to Dismiss is based upon this Notice, the attached  
21 Memorandum of Points and Authorities, the First Amended Complaints, and all records and  
22 pleadings as may be presented at or before the hearing on this motion.  
23

24  
25 DATED: April 19, 2018

KING & SPALDING LLP

26 By: /s/ George Morris

27 GEORGE MORRIS

28 Attorney for Defendant ConocoPhillips

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27

28

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant ConocoPhillips respectfully submits this motion to dismiss the First Amended  
3 Complaints for lack of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).  
4

5 **INTRODUCTION**

6 The People of the State of California and the city of Oakland and city and county of San  
7 Francisco (together, “Plaintiff”) have brought claims for public nuisance against five oil and gas  
8 companies, including ConocoPhillips. Plaintiff’s claims and allegations will be subject to  
9 extensive briefing on the merits. But Defendant ConocoPhillips must separately be dismissed  
10 from this action because this Court cannot exercise personal jurisdiction over it. ConocoPhillips  
11 is a Delaware company headquartered in Houston, Texas and has no operations in California,  
12 maintains no offices or employees there, and has no assets in the State. More to the point,  
13 ConocoPhillips has no oil and gas exploration, production, or marketing operations *anywhere*: it  
14 is solely a holding company with a single subsidiary (ConocoPhillips Company). This is an  
15 insufficient basis on which to exercise either general or specific jurisdiction over a foreign  
16 defendant with no systematic or continuous operations in the forum state. The forum contacts of  
17 ConocoPhillips’ direct and indirect subsidiaries cannot be attributed to the parent company;  
18 Plaintiff’s allegations of “control” over these subsidiaries are conclusory, without an identifiable  
19 basis, entirely devoid of specific factual detail, and directly contradicted by a sworn declaration.  
20 Even if these contacts could be attributed to ConocoPhillips, Plaintiff’s claims do not arise from  
21 any substantial, forum-related activity. Plaintiff’s allegations fail as a matter of law, and  
22 ConocoPhillips’ motion to dismiss must be granted.  
23  
24

25 **STATEMENT OF RELEVANT FACTS**

26 Defendant ConocoPhillips is a corporation organized under Delaware law, with its  
27 principal place of business in Houston, Texas. Declaration of Christopher J. Dodson  
28 (hereinafter, “Dodson Decl.”) ¶ 2; Oak. First Amended Complaint (“FAC”) ¶ 22; SF FAC ¶ 22.

1 ConocoPhillips operates as a holding company and does not have any active operations or  
2 produce goods or services itself. Dodson Decl. ¶ 3-4. ConocoPhillips does not have any  
3 employees based in California. Dodson Decl. ¶ 10. It has no facilities, operations, or offices in  
4 California; no telephone or facsimile listings or mailing addresses in California; and it maintains  
5 no books or records in California. Dodson Decl. ¶ 11. ConocoPhillips has no bank accounts or  
6 tangible personal or real property in California; has no sales in California; has no California  
7 income and has not paid any California income tax. Dodson Decl. ¶ 12. It does not direct any  
8 advertising toward California residents, and has not caused oil or natural gas to be shipped into  
9 California or sold oil or natural gas products in California. Dodson Decl. ¶¶ 4, 13.

11 Plaintiff does not allege negligent or intentional acts by ConocoPhillips in California.  
12 Instead, ConocoPhillips appears to have been named as a defendant almost entirely because of its  
13 subsidiaries' activities. Plaintiff alleges:

- 14 • ConocoPhillips is “responsible for its subsidiaries’ past and current production and  
15 promotion of fossil fuel products,” Oak. FAC ¶ 23; SF FAC ¶ 23;
- 16 • ConocoPhillips’ subsidiaries do business in California and have registered agents in  
17 California, Oak. FAC ¶ 52; SF FAC ¶ 52;
- 18 • ConocoPhillips’ subsidiaries and their predecessors (allegedly “Tosco Corp.” and  
19 “Phillips Petroleum”) owned and operated refineries in California, though Plaintiff  
20 acknowledges that this activity ceased no later than 2012, Oak. FAC ¶ 53; SF FAC ¶  
21 53;
- 22 • ConocoPhillips’ subsidiaries produce oil in Alaska, ship that oil to California, and  
23 “owned and/or operated” port facilities in California in the past (but not currently) for  
24 the receipt of oil, Oak. FAC ¶ 54; SF FAC ¶ 54; and
- 25 • ConocoPhillips’ subsidiaries “previously” operated Conoco-branded gas stations in  
26 California, and “upon information and belief ConocoPhillips entered into contracts  
27  
28

1 with operators of Conoco-branded retail stations in California, and/or distributors,  
2 which, among other things, required these operators to sell only gasoline with Conoco  
3 proprietary additives, and for supply of certain volumes of such gasoline to Conoco-  
4 branded stations,” Oak. FAC ¶ 55; SF FAC ¶ 55.

5 ConocoPhillips Company has its own management team, offices, and bank accounts; it is  
6 separately (and sufficiently) capitalized; and ConocoPhillips follows all corporate formalities and  
7 respects the corporate separateness of its direct and indirect subsidiaries. Dodson Decl. ¶¶ 14-15.  
8

9 Tosco Corporation was acquired by Phillips Petroleum Company in 2001. In 2002,  
10 Phillips Petroleum Company changed its name to ConocoPhillips Company; this is  
11 ConocoPhillips’ sole subsidiary. Dodson Decl. ¶ 16. In 2003, Tosco Corporation merged with  
12 ConocoPhillips Company, with ConocoPhillips Company as the surviving entity. Dodson Decl.  
13 ¶ 17. Neither Phillips Petroleum Company nor any of its successors-in-interest ever merged or  
14 otherwise consolidated with ConocoPhillips. Dodson Decl. ¶ 16.  
15

### 16 ARGUMENT

17 Plaintiff bears the burden of proving that minimum contacts exist between  
18 ConocoPhillips and California so as to justify an exercise of personal jurisdiction. *See Bristol-*  
19 *Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1779 (2017); *Harris Rutsky*  
20 *& Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir. 2003). The  
21 personal-jurisdiction inquiry centers on a defendant’s contacts with the forum state and is  
22 dictated by due-process concerns. *See Bristol-Myers Squibb*, 137 S. Ct. at 1779. Exercising  
23 personal jurisdiction over a nonresident defendant will comport with due process only if the  
24 defendant has sufficient “minimum contacts” with the forum state, such that maintaining the suit  
25 does not offend “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Wash.*,  
26 326 U.S. 310, 316 (1945). As this Court is aware, personal jurisdiction comes in two forms: (1)  
27 “general jurisdiction,” which applies where a defendant’s “continuous and systematic” activities  
28



1 make it so “at home” in the forum that a court may adjudicate any claims against that defendant  
2 arising from anywhere in the world; and (2) “specific jurisdiction,” which allows a court to  
3 adjudicate claims arising from the defendant’s suit-related contacts with the forum state.  
4 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Plaintiff has not  
5 met its burden to establish either general or specific jurisdiction over ConocoPhillips.

6 **I. THE COURT CANNOT EXERCISE GENERAL JURISDICTION OVER**  
7 **CONOCOPHILLIPS.**

8 Meeting the test for general jurisdiction is “exacting,” because a finding of general  
9 jurisdiction “permits a defendant to be haled into court in the forum state to answer for any of its  
10 activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,  
11 801 (9th Cir. 2004). It is only in the “exceptional” case that a company’s contacts with a forum  
12 would be so continuous and systematic that it could be sued generally in some forum other than  
13 its place of incorporation or principal place of business. *Daimler AG v. Bauman*, 134 S. Ct. 746,  
14 762 (2014); *see also AM Tr. v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff’d*, 681 F.  
15 App’x 587 (9th Cir. 2017) (“The only relevant considerations for purposes of determining  
16 general jurisdiction are place of incorporation and principal place of business.”). Few business  
17 activities in the normal course would constitute an “exceptional” circumstance that would alter  
18 the straightforward application of the *Daimler* test. *See Martinez v. Aero Caribbean*, 764 F.3d  
19 1062, 1070 (9th Cir. 2014).<sup>1</sup>

20  
21  
22 Plaintiff does not even attempt to meet this exacting test. Instead, it readily  
23 acknowledges that ConocoPhillips is organized under Delaware law and headquartered in Texas.  
24 Oak. FAC ¶ 22; SF FAC ¶ 22. Plaintiff does allege that ConocoPhillips “controls company-wide

25  
26 <sup>1</sup> The Supreme Court has found such exceptional circumstances only once, in *Perkins v. Benguet*  
27 *Consol. Mining Co.*, 342 U.S. 437 (1952). There, the defendant had temporarily relocated its  
28 headquarters from the Philippines to Ohio during World War II. *Id.* at 447–48. As a result, the  
Court concluded that the defendant was “at home” in Ohio. *See Daimler*, 134 S. Ct. at 755–56  
(describing the circumstances of *Perkins*).

1 climate change policies and fossil fuel production,” including “operations relating to *its*  
2 *subsidiaries*’ participation in the process by which fossil fuels . . . are produced, transported,  
3 refined, stored, distributed, marketed, and/or sold to consumers,” including refining, shipping,  
4 and sales activities by subsidiaries within California. Oak. FAC ¶¶ 23, 52-55; SF FAC ¶¶ 23,  
5 52-55 (emphasis added). But even if these control allegations are taken as true (which they  
6 should not be, for reasons explained below), merely being the corporate parent of a subsidiary  
7 with forum contacts in California cannot confer general jurisdiction over the parent, since ““only  
8 a limited set of affiliations with a forum will render a defendant amenable to’ general jurisdiction  
9 in that State.” *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Daimler*, 134 S. Ct. at 760).

11 In *Daimler*, the U.S. Supreme Court considered whether a subsidiary’s activities within a  
12 state could be attributed to its parent, for the purpose of exercising general jurisdiction over the  
13 parent. The Court rejected this approach as “unacceptably grasping.” *Daimler*, 134 S. Ct. at  
14 760–61. The Court noted that a corporation’s place of incorporation or principal place of  
15 business—which in this case are Delaware and Texas—constitute “paradigm[atic] all-purpose  
16 forums” and “afford plaintiffs recourse to at least one clear and certain forum in which a  
17 corporate defendant may be sued on any and all claims.” *Id.* at 760. Absent exceptional  
18 circumstances, the Court concluded, simply owning a subsidiary that does business in a forum  
19 state does not subject a parent to jurisdiction there. *Id.*

21 Plaintiff has alleged no “exceptional” circumstances, and any claim that ConocoPhillips  
22 is subject to general jurisdiction in California must therefore fail.

24 **II. THIS COURT MAY NOT EXERCISE SPECIFIC JURISDICTION OVER CONOCOPHILLIPS.**

25 Where, as here, a defendant’s activities within the state are not so pervasive to justify the  
26 exercise of general jurisdiction, “the defendant’s suit-related conduct [must] create a substantial  
27 connection with the forum State” to support specific jurisdiction. *Walden v. Fiore*, 134 S. Ct.  
28 1115, 1121 (2014). “[S]pecific jurisdiction is confined to adjudication of issues deriving from,

1 or connected with, the very controversy that establishes jurisdiction.” *Bristol-Myers Squibb*, 137  
2 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 919). The suit itself must “aris[e] out of or relat[e]  
3 to the defendant's contacts with the forum.” *Id.* (quoting *Daimler*, 134 S. Ct. at 754); *see also*  
4 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). In addition, the requisite “minimum  
5 contacts” must be “with the forum State itself, not . . . with persons who reside there.” *Walden*,  
6 134 S. Ct. at 1122. A defendant may “not be haled into a jurisdiction solely as a result of  
7 ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, or of the ‘unilateral activity of another party or a  
8 third person.’” *Burger King*, 471 U.S. at 475 (citation omitted).

10 The Ninth Circuit has distilled these requirements into a three-part test: (1) the defendant  
11 must “purposefully direct” its activities to the forum or “purposefully avail” itself of the benefits  
12 afforded by the forum’s laws, (2) the claim must “arise[] out of or relate[] to the defendant’s  
13 forum-related activities,” and (3) “the exercise of jurisdiction [must] comport with fair play and  
14 substantial justice, *i.e.*, it [is] reasonable.” *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015,  
15 1023 (9th Cir. 2017) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)). No  
16 part of this test is not satisfied here. Plaintiff does not adequately allege that ConocoPhillips  
17 purposefully directed its activities into the forum, or that any California-directed conduct has a  
18 substantial connection to Plaintiff’s alleged injury or that this Court’s exercise of jurisdiction  
19 over ConocoPhillips is reasonable.

21 **A. ConocoPhillips Did Not Purposefully Direct Any Activities Into California.**

22 Plaintiff does not satisfy the first prong of the Ninth Circuit’s three-part test for specific  
23 jurisdiction, which requires the defendant to “purposefully direct” its activities to the forum or  
24 “purposefully avail” itself of the benefits afforded by the forum’s laws.” “Purposeful availment”  
25 and “purposeful direction” are distinct concepts. Purposeful availment is “most often used in  
26 suits sounding in contract” and “typically consists of evidence of the defendant’s actions in the  
27 forum, such as executing or performing a contract there” by which a defendant “purposefully  
28

1 avails itself of the privilege of conducting activities within the forum state, thus invoking the  
2 benefits and protections of its laws.” *Schwarzenegger*, 374 F.3d at 802 (citations omitted).  
3 Plaintiff cannot satisfy this test. The climate change allegations in the First Amended  
4 Complaints do not arise from any contract ConocoPhillips entered into from which it received  
5 any “benefit, privilege, or protection from California.” *Id.* at 803. “[T]he traditional quid pro  
6 quo justification for finding purposeful availment thus does not apply.” *Id.*

7  
8 In contrast to “purposeful availment,” the “purposeful direction” standard is most often  
9 employed in suits sounding in tort. *Schwarzenegger*, 374 F.3d at 802. This showing “usually  
10 consists of evidence of the defendant’s actions outside the forum state that are directed at the  
11 forum.” *Id.* at 803. Simply placing a product such as oil or natural gas into a stream of  
12 commerce, even with the knowledge that it will be sold and used in California, is not sufficient;  
13 rather, there must be “additional conduct” such as “designing the product for the market in the  
14 forum State, advertising in the forum State, establishing channels for providing regular advice to  
15 customers in the forum State, or marketing the product through a distributor who has agreed to  
16 serve as the sales agent in the forum State.” *Asahi Metal Industry Co. v. Super. Ct. of Solano*  
17 *Cnty.*, 480 U.S. 102, 107 (1987). As the Ninth Circuit has stated, the defendant’s conduct must  
18 be “expressly aimed” at the forum state for specific jurisdiction to comport with due process.  
19 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1156 (9th Cir. 2006); *see also Sinatra v. Nat’l*  
20 *Enquirer, Inc.*, 854 F.2d 1191, 1197 (9th Cir. 1988) (tortfeasor may only be sued in California if  
21 it intentionally “aims its conduct” at California). Here, ConocoPhillips does not conduct oil and  
22 natural gas activities in California and is not the successor-in-interest to any entity that conducted  
23 such activities in the State. Dodson Decl. ¶¶ 4-13, 16-17.

24  
25  
26 Plaintiff cannot show that ConocoPhillips committed any alleged intentional act that was  
27 “expressly aimed” at California, because there was no “individualized targeting” of California  
28 residents with respect to the conduct at issue. *Bancroft & Masters, Inc. v. Augusta National*,

1 *Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). The First Amended Complaints contain no allegations  
2 that ConocoPhillips directed exploration, production, or sales activities at California; rather, they  
3 allege limited contacts between ConocoPhillips' direct and indirect *subsidiaries* and California.  
4 Oak. FAC ¶ 35, 52-55; SF FAC ¶ 35, 52-55. Furthermore, Plaintiff concedes that certain  
5 activities of ConocoPhillips' direct and indirect subsidiaries in California ceased no later than  
6 2012. Oak. FAC ¶ 53; SF FAC ¶ 53. Those subsidiary-forum contacts are not enough for  
7 specific jurisdiction over the parent, since "[i]t is well-established that a parent-subsidiary  
8 relationship alone is insufficient to attribute the contacts of the subsidiary to the parent for  
9 jurisdictional purposes." *Harris Rutsky*, 328 F.3d at 1134. And while the First Amended  
10 Complaints allege general statements made by ConocoPhillips, either directly or through  
11 industry associations, there is no allegation that any of these statements were directed  
12 specifically towards California or any California resident. *See Cybersell, Inc. v. Cybersell, Inc.*,  
13 130 F.3d 414, 419 (9th Cir. 1997) (posting information on "essentially passive" website not  
14 directed towards state's residents not sufficient to establish minimum contacts).  
15

16  
17 Nor does Plaintiff adequately allege that ConocoPhillips controlled its subsidiaries as  
18 agents; Plaintiff's conclusory allegations of control cannot be credited on a motion to dismiss.  
19 Whether the "agency" theory of specific jurisdiction survived the Supreme Court's *Daimler*  
20 decision has not been definitively settled by the Ninth Circuit. *See Yamaha Motor Co.*, 851 F.3d  
21 at 1024 (assuming, without deciding, that "some standard of agency continues to be relevant" to  
22 the question of specific jurisdiction, but affirming dismissal for failure to make out a *prima facie*  
23 case). At a minimum, to make out an agency case for specific jurisdiction, a plaintiff must  
24 adequately allege that "the parent company must have the right to substantially control its  
25 subsidiary's activities." *Id.* at 1025. However, the court is not to credit "conclusory legal  
26 statement[s] unsupported by any factual assertion regarding . . . control." *Id.* at 1025 n.5; *see*  
27 *also Bui v. Golden Biotechnology Corp.*, 2014 WL 4072112, at \*3 (N.D. Cal. Aug. 14, 2014)  
28

1 (“[T]he court need not assume mere conclusory allegations [of control] to be true”); *Lovesy v.*  
2 *Armed Forces Benefit Ass’n*, 2008 WL 4856144, at \*4 (N.D. Cal. Nov. 7, 2008) (“It is not  
3 sufficient, at the pleading stage, to make conclusory allegations of control.”).

4 Plaintiff’s conclusory allegations of control amount to little more than bare allegations  
5 that ConocoPhillips, acting through employees or agents, “manages, directs, conducts, and/or  
6 controls operations” of subsidiaries or “exercises control over company-wide decisions” through  
7 means such as “its employees’ and/or agents’ implementation of policies, procedures, and  
8 programs.” Oak. FAC ¶ 23; SF FAC ¶ 23. The First Amended Complaints merely repeat, in a  
9 rote and conclusory manner, that through “its subsidiaries acting as its agents,” ConocoPhillips  
10 refined oil in California, shipped oil and natural gas into California, and directed the sale of gas  
11 in Conoco-branded gas stations. Oak. FAC ¶¶ 52-55; SF FAC ¶¶ 52-55. But Plaintiff provides  
12 no factual detail on which specific operations ConocoPhillips supposedly controlled, of which  
13 subsidiary, or how ConocoPhillips exercised that control or through what specific means.<sup>2</sup> And  
14 Plaintiff provides no attribution at all for these control allegations. This lack of detail and  
15 attribution underscores the conclusory nature of Plaintiff’s allegations. *See, e.g., Naiman v.*  
16 *TranzVia LLC*, No. 17-CV-4813-PJH, 2017 WL 5992123, at \*11 (N.D. Cal. Dec. 4, 2017)  
17 (dismissing allegations of control that lacked “any facts showing how TranzVia did those things  
18 or how it knew those things, or what facts the allegations are based on”); *Lovesy*, 2008 WL  
19 4856144 at \*4 (“In order to withstand a motion to dismiss, the plaintiff must, at a minimum, se[t]  
20 forth some examples of alleged domination.”) (quotation omitted). The threadbare nature of  
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24 <sup>2</sup> The First Amended Complaints allege that “[u]pon information and belief, ConocoPhillips  
25 entered into contracts with operators of Conoco-branded retail stations in California, and/or  
26 distributors, which, among other things, required these operators to sell only gasoline with  
27 Conoco proprietary additives, and for supply of certain volumes of such gasoline to Conoco-  
28 branded stations.” Oak. FAC ¶ 55; SF FAC ¶ 55. This allegation is directly contradicted by the  
Dodson Declaration at ¶¶ 7-8, and thus cannot be credited by the Court. *See Data Disc, Inc. v.*  
*Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977).

1 Plaintiff's allegations of control require dismissal under even the minimum standard stated by  
2 the Ninth Circuit in *Yamaha Motor Company*.

3 Moreover, even to the extent that Plaintiff's allegations rise above the level of  
4 conclusory—and they do not—these allegations are contradicted by the Dodson Declaration.  
5 Mr. Dodson attests that ConocoPhillips—as a holding company—has no oil and gas operations  
6 in California, such that ConocoPhillips could reasonably be expected to be haled into court in  
7 California. Dodson Decl. ¶¶ 4-6. ConocoPhillips Company, the sole subsidiary of  
8 ConocoPhillips, is separately capitalized from ConocoPhillips. ConocoPhillips Company has its  
9 own assets, cash flows, and income, separate from ConocoPhillips. Dodson Decl. ¶ 14.  
10 ConocoPhillips follows all corporate formalities and respects the corporate separateness of its  
11 direct and indirect subsidiaries. Dodson Decl. ¶ 15. The Court cannot credit allegations directly  
12 contradicted by affidavit. *See Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284  
13 (9th Cir. 1977).  
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15 **B. Plaintiff's Claim Does Not Arise Out Of Or Relate to ConocoPhillips'**  
16 **Alleged Contacts With the Forum.**

17 Plaintiff also does not satisfy the second prong of the specific jurisdiction test by showing  
18 that, but for ConocoPhillips' California contacts, Plaintiff's claims would not have arisen. *See*  
19 *Doe v. American Nat'l Red Cross*, 112 F.3d 1048, 1051 (9th Cir. 1997). Since ConocoPhillips  
20 does not engage in any relevant conduct in California (or any relevant conduct at all, as merely a  
21 holding company), ConocoPhillips could not have caused any alleged harm there. Moreover, the  
22 subsidiaries' forum contacts cannot be attributed to ConocoPhillips, either on their own or by  
23 operation of an "agency" allegation. *See supra* at § II.A. As such, Plaintiff's claims do not  
24 "arise out of or relate to the defendant's contacts with the forum." *Bristol-Myers Squibb*, 137 S.  
25 Ct. at 1780 (2017) (quoting *Daimler*, 134 S. Ct. at 754).  
26

27 However, even if the forum contacts of ConocoPhillips' subsidiaries were attributed to it  
28 (which, under binding law, they should not be), Plaintiff's claims would still fail this prong of

1 the test for specific jurisdiction. Specific jurisdiction requires a careful examination of the nature  
2 of the asserted claims to ensure that the underlying controversy arises out of or relates to the  
3 defendant's contacts with the forum. *Bristol-Myers*, 137 S. Ct. at 1780–81. This careful  
4 examination is designed to uncover whether “the defendant’s suit-related conduct” had a  
5 “substantial connection with the forum State.” *Walden*, 134 S. Ct. at 1121; *see also Bristol-*  
6 *Myers*, 137 S. Ct. at 1780 (“[T]here must be ‘an affiliation between the forum and the underlying  
7 controversy, principally, [an] activity or an occurrence that takes place in the forum State and is  
8 therefore subject to the State’s regulation.’” (quoting *Goodyear*, 564 U.S. at 919)). Importantly,  
9 this inquiry is *defendant*-focused, looking to the defendant’s allegedly tortious conduct, and not  
10 to the injury allegedly sustained by a plaintiff. *See Axiom Foods, Inc. v. Acerchem Int’l, Inc.*,  
11 874 F.3d 1064, 1068 (9th Cir. 2017). Without an “adequate link” “between the forum and the  
12 specific claims” asserted by plaintiff, a court may not exercise specific jurisdiction over an out-  
13 of-state defendant “even if the defendant would suffer minimal or no inconvenience from being  
14 forced to litigate before the tribunals of another State; even if the forum State has a strong  
15 interest in applying its law to the controversy; [and] even if the forum State is the most  
16 convenient location for litigation.” *Bristol-Myers*, 137 S. Ct. at 1780–81 (citation and alterations  
17 omitted).

20 The “substantial connection” test is not satisfied by “attenuated” or “isolated” activities  
21 within the forum state. *Axiom Foods*, 874 F.3d. at 1068. For example, the delivery or  
22 consumption of products in the forum state that are “random,” “fortuitous,” or “attenuated” does  
23 not satisfy this requirement. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th  
24 Cir. 2011). And simply placing a product into a stream of commerce, even with the knowledge  
25 that it will be sold and used in California, is not sufficient; “additional conduct” is required.  
26 *Asahi Metal Industry*, 480 U.S. at 107. Rather, in-state conduct must be a “but-for” cause of the  
27 alleged injury suffered by plaintiff to justify specific jurisdiction. *Ballard v. Savage*, 65 F.3d  
28



1 1495, 1500 (9th Cir. 1995). Where the plaintiff presents “no evidence” that the defendant’s  
2 California activities were a “necessary” cause of that injury, the but-for requirement is not met.  
3 *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001), *abrogated in non-relevant part by*  
4 *Yamaha Motor Corp.*, 851 F.3d at 1023.

5 Plaintiff’s allegations do not satisfy this test. Plaintiff alleges only attenuated activities  
6 within California by direct and indirect *subsidiaries* of ConocoPhillips that are far from a “but-  
7 for” cause of the global warming effects that are central to Plaintiff’s claims. According to the  
8 First Amended Complaints, Plaintiff’s claimed injuries consist of increased temperatures, rising  
9 sea levels, increased flooding from coastal storms, and “extreme precipitation events” that  
10 allegedly resulted from the greenhouse gas effect and require remediation and rebuilding of  
11 infrastructure. Oak. FAC ¶¶ 130-36; SF FAC ¶¶ 130-36. But sea-level rise is necessarily a  
12 *global* effect of the *global* conduct of a variety of actors. Though the First Amended Complaints  
13 attempt to downplay the point, Plaintiff cannot but acknowledge that “others”—*i.e.*, other energy  
14 companies, businesses, governments, and consumers—contribute to the greenhouse gas  
15 emissions that cause climate change. *See* Oak. FAC ¶¶ 88, 140 145; SF FAC ¶¶ 88, 140, 145.  
16 As the Court has acknowledged, these claims “attack behavior worldwide.” Dkt. No. 134 at 7  
17 (Order Denying Mots. To Remand). Plaintiff also acknowledges that some of these actors are  
18 third parties not named in this suit. Oak. FAC ¶ 92; SF FAC ¶ 92 (alleging that consumers’  
19 activities cause release of gases that contribute to climate change); *see also* Dkt. No. 134 at 6 n.2  
20 (the claims “are not localized . . . and instead concern fossil fuel consumption worldwide” by  
21 non-parties). The global effects caused by the global conduct of a variety of global actors, most  
22 not found in California, are not a “but-for” cause of an injury in California. Even taking as true  
23 the First Amended Complaints’ allegations “connecting” ConocoPhillips to California or  
24 attributing the forum contacts of subsidiaries to the parent company, those limited connections  
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1 are not a but-for cause of global sea-level rise, which is caused by a host of factors unconnected  
2 to the activities of ConocoPhillips or its subsidiaries.

3 Moreover, even assuming that all California or U.S. activities of ConocoPhillips’  
4 subsidiaries could be attributed to it, that would not satisfy the but-for test. According to a study  
5 on which Plaintiff relies, the combustion of all of the fossil fuels that all of ConocoPhillips’  
6 subsidiaries have allegedly ever produced and sold anywhere in the world, at any time, accounts  
7 for just 1.16% of the greenhouse gases emitted from industrial sources since 1854.  
8 ConocoPhillips rejects this analysis and the conclusions of this report, which also aggregates  
9 global activities rather than focusing on forum contacts as case law and the Due Process clause  
10 require. But even taking this analysis at face value, it makes clear that Plaintiff has not alleged  
11 and cannot show that these alleged emissions have anything but an “attenuated” or “peripheral”  
12 relationship to the alleged injuries. *Doe*, 112 F.3d at 1051.

14 As this Court noted in applying *Bristol-Myers* in a recent case, “Plaintiffs need more than  
15 conduct by [defendant] in California; they need ‘suit-related conduct’ by [defendant] that occurs  
16 in California or ‘create[s] a substantial connection’ with California.” *In re Nexus 6P Prod. Liab.*  
17 *Litig.*, No. 17-CV-02185-BLF, 2018 WL 827958, at \*5 (N.D. Cal. Feb. 12, 2018). Here, the  
18 First Amended Complaints fail to tie the alleged shipping by ConocoPhillips’ direct or indirect  
19 subsidiaries of indeterminate amounts of crude oil into California, or their operation of refineries  
20 in the State, to any particular sale of fossil fuels (in California or elsewhere); to any particular  
21 emissions of greenhouse gases (in California or elsewhere); to any purported climate event  
22 supposedly caused by those emissions (in California or elsewhere); or to any specific injury.  
23 Plaintiff has not even *attempted* to allege that the activities of ConocoPhillips or its subsidiaries  
24 are a but-for or necessary cause of its alleged injuries. Plaintiff’s allegations thus fall far short of  
25 plausibly alleging the causal link needed to support specific jurisdiction.  
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1           **C. The Exercise of Specific Jurisdiction Over ConocoPhillips Here Is**  
2           **Unreasonable.**

3           Because Plaintiff cannot satisfy either of the first two prongs of the specific jurisdiction  
4 inquiry for the parent company, Defendant ConocoPhillips should be dismissed from this case.  
5 Even if the first two prongs could be satisfied, jurisdiction over ConocoPhillips nevertheless  
6 would be unreasonable.

7           Courts consider seven factors to determine the reasonableness of exercising personal  
8 jurisdiction over an out-of-state defendant:

9                   (i) the extent of the defendant's purposeful interjection into the  
10                   forum state's affairs; (ii) the burden on the defendant of defending  
11                   in the forum; (iii) the extent of conflict with the sovereignty of the  
12                   defendant's state; (iv) the forum state's interest in adjudicating the  
13                   dispute; (v) the most efficient judicial resolution of the  
14                   controversy; (vi) the importance of the forum to the plaintiff's  
15                   interest in convenient and effective relief; and (vii) the existence of  
16                   an alternative forum.

17           *Core-Vent Corp. v. Nobel Industries AB*, 11 F.3d 1482, 1487-88 (9th Cir. 1993). In this case, the  
18 complete lack of "purposeful interjection" into California alone makes the exercise of specific  
19 jurisdiction unreasonable. "[T]he smaller the element of purposeful interjection, the less is  
20 jurisdiction to be anticipated and the less reasonable is its exercise." *Id.* at 1488 (citation  
21 omitted). As set forth above, ConocoPhillips has no oil or gas operations in California, has not  
22 committed any relevant conduct anywhere in California, and has not established any presence in  
23 or contacts with the forum. Accordingly, this factor strongly favors a finding that the exercise of  
24 jurisdiction would be unreasonable.

25           Moreover, haling ConocoPhillips into a California court substantially burdens the  
26 company and fail to promote efficient resolution of the dispute. "The law of personal  
27 jurisdiction is asymmetrical and is primarily concerned with the defendant's burden." *Terracom*  
28 *v. Valley Nat'l Bank*, 49 F.3d 555, 561 (9th Cir. 1995). One important concern is where the  
witnesses and evidence will likely be located. *Core-Vent*, 11 F.3d at 1489. Here, the burden on  
ConocoPhillips is considerable, given that it has no offices, personnel, facilities, or other ties to

1 this forum, and it has no books and records located in this forum. Dodson Decl. ¶¶ 9-12.  
2 Meanwhile, Plaintiff has not demonstrated that it would be unable to seek relief in another  
3 forum; for example, both Delaware and Texas—which as the state of incorporation and principal  
4 place of business are “paradigm[atic] all-purpose forums” for jurisdictional purposes, *Daimler*,  
5 134 S. Ct. at 761—are available to Plaintiff and can afford any relief to which Plaintiff might be  
6 entitled.

7  
8 **CONCLUSION**

9 Considering the foregoing, the Court cannot exercise personal jurisdiction over  
10 Defendant ConocoPhillips, and its motion to dismiss should be granted.  
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1 Dated: April 19, 2018

Respectfully submitted,

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**CERTIFICATION OF SERVICE**

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I HERE CERTIFY that on April 19, 2018, I caused the foregoing to be filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all counsel of record by operation of the Court’s electronic filing systems.

By:  /s/ George Morris  
George Morris