Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

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

Defendants.

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

CHEVRON CORPORATION'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION [12(b)(2)]

NOTE ON MOTION CALENDAR:

October 5, 2018

ORAL ARGUMENT REQUESTED

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Defendant Chevron Corporation ("Chevron") respectfully moves under Rule 12(b)(2) to dismiss all claims against it for lack of personal jurisdiction. Chevron also joins in full the separate motion to dismiss under Rule 12(b)(6), filed on behalf of all defendants.

INTRODUCTION

Plaintiff seeks to hold Chevron and four other energy companies (collectively, "Defendants") responsible for global climate change, including "warming temperatures, acidifying marine waters, rising seas, increasing flooding risk, decreasing mountain snowpack, and less water in the summer." Compl. ¶ 1. Plaintiff claims that Defendants' wholly lawful acts of producing, marketing, and selling petroleum products are a "public nuisance" and have caused a "trespass" on Plaintiff's land. Plaintiff seeks "hundreds of millions of dollars" to fund infrastructure projects to counter the rising sea level that Plaintiff claims to anticipate as a result of global climate change. *Id.* ¶ 168.

Plaintiff's claims against Chevron must be dismissed because Plaintiff has not alleged facts supporting personal jurisdiction. Indeed, Plaintiff *cannot* allege facts sufficient to establish personal jurisdiction, as Judge Alsup recently held in a materially identical action presenting the same claims, against the same five Defendants, and brought by the same private lawyers representing Plaintiff here. *See City of Oakland v. BP P.L.C.*, No. 17-cv-06011-WHA, Dkt. 239 (July 27, 2018) (Exhibit A). Plaintiff does not even attempt to allege *general* jurisdiction over Chevron, and for good reason—Chevron, a Delaware company headquartered in California, is not "at home" in Washington. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Plaintiff's allegations of *specific* jurisdiction are also insufficient because Plaintiff fails to allege facts showing that Chevron's alleged forum-related conduct is the "but for" cause of the injury allegedly suffered by King County as a result of global climate change. *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1051–52 (9th Cir. 1997); *City of Oakland*, Dkt. 239 at 5 (finding no personal jurisdiction where "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of

global warming").

The Complaint's jurisdictional allegations linking Chevron to Washington are few and tenuous. Plaintiff alleges that Chevron has "substantially participate[d] in the process by which" petroleum products are "delivered, marketed, and sold to Washington residents." Compl. ¶ 29 (ECF No. 1-2). But this broad allegation is unsupported by specifics about Chevron's actual Washington-related conduct. Plaintiff's only specific *forum-related* allegations about Chevron are that it has operated a pipeline, through which some unspecified amount of petroleum has been transported to Washington; and that Chevron has produced oil in Alaska (itself not a forum contact), some unspecified amount of which has been supplied to Washington by someone. *Id.* ¶¶ 51-52, 54.

Setting aside the frailty of the connection these allegations draw between Chevron and Washington, the Complaint fails to establish specific jurisdiction because it does not (and cannot) allege that Plaintiff's injury from global climate change would not have arisen without these activities. Plaintiff's Complaint expressly attributes global climate change to worldwide and centuries-long causal forces—in Plaintiff's words, its climate change injury has resulted from the "cumulative produc[tion] of fossil fuels from the mid-19th century to present." Compl. ¶ 99(b). In comparison to the centuries of global conduct leading to climate change, Chevron's alleged *Washington-related* conduct of operating a pipeline and supplying oil from Alaska is momentary and microscopic. It is implausible to allege (and indeed, Plaintiff does not attempt to allege) that Chevron's *forum-related* conduct is the "but for" cause of *global climate change*. On the contrary, "[i]t is manifest that global warming would have continued in the absence of all [Washington]-related activities of Defendants," and therefore Plaintiff has "failed to adequately link each defendants' alleged [Washington] activities to plaintiffs' harms." *City of Oakland*, Dkt. 239 at 5. This is the end of the inquiry. Without an allegation that King County's injury would not have occurred without Chevron's Washington-related conduct, there is no specific jurisdiction over Chevron.

BACKGROUND AND PLAINTIFF'S ALLEGATIONS

Plaintiff's Complaint alleges (as it must) that there is a long causal chain between Defendants' allegedly tortious acts—the "production, marketing, and sale" of petroleum products—and the purported injury to Plaintiff (global climate change). Compl. ¶ 28. Among the links in that causal chain are the independent decisions of countless third parties around the world to purchase, resell, refine, transport, and ultimately combust the petroleum products. That combustion, in turn, may release greenhouse gas emissions (depending on the manner of the combustion and depending on whether the third party uses emissions-capturing technology). Those emissions, in turn, increase the total amounts of greenhouse gases in the global atmosphere. That change to the atmospheric composition, in turn, is alleged to cause the atmosphere to trap heat, which increases global temperature, which, in turn, is alleged to raise global sea levels. *Id.* ¶¶ 3, 79, 99.

Plaintiff's Complaint contains very few allegations about Chevron's *forum-related* conduct. The Complaint gathers its jurisdictional allegations in Section C, entitled "Defendants' connections to Washington." *Id.* at 8. In an introductory paragraph to this Section, Plaintiff alleges generally that "[e]ach Defendant," "substantially participates in the process by which raw crude oil is extracted from the ground, refined into fossil fuel products, including finished gasoline products, and delivered, marketed, and sold to Washington residents for use." *Id.* ¶ 29. This paragraph contains no details about what Chevron's "participation" in this "process" is alleged to have been. There is no allegation that Chevron owns or operates a single facility in Washington that is engaged in delivery, marketing, or sale of petroleum, other than a pipeline (discussed below). Nor does the Complaint allege the amount of petroleum sold in Washington as a result of Chevron's undefined "participation" in this vague "process."

Only seven short paragraphs contain any *specific* factual allegations about Chevron's supposed "connections to Washington." *Id.* ¶¶ 48-54. There are five allegations:

First, Plaintiff alleges that the Chevron parent company is responsible for certain

"fundamental business decision[s]" and that the parent company's Board has the "highest level of direct responsibility" for "climate change" issues. *Id.* ¶¶ 48-49.

Second, Plaintiff alleges that "Chevron does business in Washington, including through its subsidiaries and agents."[1] *Id.* ¶ 50. Plaintiff names five subsidiaries that "are registered to do business in Washington and have an agent for service of process in Washington." *Id.*

Third, Plaintiff alleges that one particular subsidiary, Chevron Pipe Line Company, "operates pipeline assets that transport" petroleum products, and that "Eastern Washington markets receive petroleum product via the Chevron pipeline." *Id.* ¶¶ 51-52. These paragraphs do *not* allege the volume of petroleum products transported through this pipeline, nor the *owner/seller* of these petroleum products.

Fourth, Plaintiff alleges that a *different* company—Texaco—"co-owned" an oil refinery in Washington, "*[b]efore it merged with Chevron*." *Id.* ¶ 53 (emphasis added). Texaco "divested its share in early 2000," which was "before" the "merg[er]." *Id.*

Fifth, Plaintiff alleges, "upon information and belief," that "Chevron, through its subsidiaries and agents, also produces oil in Alaska, . . . and some of this crude oil is supplied to Washington." *Id.* ¶ 54. Plaintiff does not allege the amount of crude oil allegedly "supplied to" Washington, nor the owner/seller of the oil.

That's it—the sum total of Chevron's alleged "connections to Washington." *Id.* at 8.

LEGAL STANDARD

"Federal courts apply state law to determine the bounds of their jurisdiction over a party." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1020 (9th Cir. 2017) (citing Fed. R. Civ. P. 4(k)(1)(A)). Washington's long-arm statute is "designed to be coextensive with federal due process" and thus authorizes Washington courts to assert personal jurisdiction over nonresident

[1] Chevron is a distinct legal entity from its subsidiaries, but Chevron does not move for dismissal under Rule 12(b)(2) on corporate separateness grounds. Instead, even assuming that the alleged activities of its subsidiaries in the forum could be imputed to Chevron, personal jurisdiction over Chevron is lacking.

defendants "to the extent permitted by the federal due process clause." *Failla v. FixtureOne Corp.*, 336 P.3d 1112, 1116 (Wash. 2014) (en banc) (citation omitted). Thus, this Court may exercise jurisdiction over Chevron only if doing so comports with limits imposed by federal due process. *Daimler*, 571 U.S. at 125.

When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). To carry that burden, the Plaintiff must allege facts sufficient to make out a "prima facie" case for personal jurisdiction. *Stelly v. Gettier, Inc.*, No. C14-5079 RJB, 2014 WL 1670081, at *2 (W.D. Wash. Apr. 28, 2014). In establishing its "prima facie" case, Plaintiff may not "simply rest on the bare allegations of its complaint, but rather [is] obligated to come forward with facts, by affidavit or otherwise, supporting personal jurisdiction." *Amba Mktg. Sys., Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977).

ARGUMENT

Plaintiff's Complaint fails to carry its burden of alleging facts that would establish a "prima facie" case for personal jurisdiction.[2]

I. Plaintiff has not alleged *general* jurisdiction over Chevron

In order to establish *general* jurisdiction over Chevron, Plaintiff must allege facts indicating that Chevron's contacts with Washington are "so 'continuous and systematic' as to render [Chevron] essentially at home" in this state. *Daimler*, 571 U.S. at 127 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). Plaintiff has not attempted to do so. Plaintiff concedes, as it must, that Chevron is incorporated in Delaware and maintains its principal place of business in California. Compl. ¶ 15. These are the "paradigm" forums in which

[2] There is no need or basis for jurisdictional discovery on these issues. Jurisdictional discovery is appropriate only where a plaintiff's specific allegations make out a "colorable basis" for personal jurisdiction. *Lufthansa Technik AG v. Astronics Advanced Elec. Sys. Corp.*, No. C14-1821-RSM, 2016 WL 7899254, at *2 (W.D. Wash. Apr. 26, 2016). Plaintiff's allegations come nowhere close to meeting this standard. Accordingly, the Complaint should be dismissed.

a corporation is "at home." *Daimler*, 571 U.S. at 137. Only in "an exceptional case" would a corporation's contacts be "so substantial and of such a nature as to render the corporation at home" anywhere else. *Id.* at 139 n.19; *see also AM Tr. v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff'd*, 681 F. App'x 587 (9th Cir. 2017) ("The only relevant considerations for purposes of determining general jurisdiction are place of incorporation and principal place of business.").

Plaintiff does not allege any "exceptional" circumstances that would make Chevron "at home" in Washington. *Id.* Merely "doing business" in a forum, as Plaintiffs allege, *see* Compl. ¶¶ 29, 50, is not sufficient to make an out-of-state corporation "at home" in that forum and thereby confer general jurisdiction. *See Daimler*, 571 U.S. at 123, 136 (rejecting general jurisdiction in California because defendant's "slim contacts with the State hardly render[ed] it at home" even though "California sales account[ed] for 2.4% of Daimler's worldwide sales"); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (rejecting general jurisdiction in Montana, even though defendant maintained "over 2,000 miles of railroad track and more than 2,000 employees" in the forum); *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (rejecting general jurisdiction in California even though defendant had contracts "worth between $225 and $450 million" to sell airplanes to a California corporation, sent representatives to California to promote its products, and advertised in California, because these contacts were "minor compared to its other worldwide contacts").

II. Plaintiff's allegations do not establish a "prima facie" case for *specific* jurisdiction because Plaintiff does not allege that Chevron's forum-related conduct was the "but for" cause of Plaintiff's alleged injury

In order to make a "prima facie" case for *specific* jurisdiction, Plaintiff bears the burden of alleging facts that show that its claims "arise[] out of or result[] from [Chevron's] *forum-related* activities," meaning that Chevron's *forum-related* conduct is the "but for" cause of Plaintiff's alleged injury. *Am. Nat'l Red Cross*, 112 F. 3d at 1051 (emphasis added) (affirming dismissal for lack of specific jurisdiction because out-of-state regulatory officer's "relation to blood

transfusions performed in Arizona is far too attenuated to satisfy the 'but for' test").

To satisfy the Ninth Circuit's "but for" test, Plaintiff must allege that King County "would not have sustained [its] injury, 'but for'" Chevron's alleged *forum-related* production and promotion of petroleum products. *Id.* at 1051–52; *see also Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th Cir. 2001) (affirming dismissal for lack of specific jurisdiction because plaintiff did not present evidence that foreign defendant's relevant conduct would not have occurred "but for" its collaboration with company in forum), *abrogated on other grounds as recognized in Yamaha*, 851 F.3d at 1020; *JP Morgan Chase Bank, N.A. v. Jones*, No. C15-1176RAJ, 2016 WL 1182153, at * 12 (W.D. Wash. Mar. 28, 2016) (holding that plaintiffs failed to satisfy the "but for" test because their claims would have arisen regardless of the defendant's contact with Washington). In other words, specific personal jurisdiction is proper only if the plaintiff's injuries "would not have occurred 'but for' [the defendant's] contacts with *Washington*." *Hodjera v. BASF Catalysts LLC*, No. C17-48-RSL, 2017 WL 2263654, at *2 (W.D. Wash. May 23, 2017) (dismissing complaint for lack of specific jurisdiction because plaintiff failed to allege that his exposure to asbestos would not have occurred but for defendant's contacts with Washington).[3]

Plaintiff's own allegations demonstrate that Chevron's alleged *forum-related* conduct cannot possibly be the "but for" cause of King County's alleged injury from global climate change. *Unocal Corp.*, 248 F.3d at 925. Plaintiff claims injury from a global phenomenon caused by the accumulation of worldwide greenhouse gas emissions over the last two centuries; not from Chevron's alleged activities in Washington. Compl. ¶¶ 97, 99. Plaintiff's Complaint itself makes clear that global climate change would have occurred without any of the greenhouse gas emissions that may have resulted from Chevron's alleged conduct of operating a pipeline that transported petroleum products to Washington and supplying crude oil from Alaska to

[3] Other circuits have held, correctly, that a defendant's contacts with the forum must not only be a "but for" cause of the injury, but also the *proximate* cause, to justify the exercise of specific jurisdiction. *See SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 344 (2d Cir. 2018) (discussing circuit split). Chevron preserves this issue for appeal. Regardless, Plaintiff cannot show that its claims arise from Washington-specific conduct under either test.

Washington.[4] *Id.* ¶¶ 51–52, 54. The Complaint acknowledges that even a "dramatic" reduction in *cumulative* global emissions—let alone the infinitesimally small reduction that may have occurred if Chevron's purported Washington activities had never taken place—would not eradicate climate change. *See* Compl. ¶ 8 (alleging that "climate change impacts" would still exist "[e]ven if global . . . GHG [greenhouse gas] emissions decrease dramatically."). It follows that Plaintiff has not alleged and cannot allege that Chevron's *forum-related* "production and promotion" of petroleum products is the "but for" cause of global climate change. Indeed, as Judge Alsup reasoned in dismissing a materially identical action for lack of personal jurisdiction, where "plaintiffs' nuisance claims depend on a global complex of geophysical cause and effect involving all nations of the planet," and "[o]cean rise . . . would have occurred even without regard to each defendants' [state] conduct," personal jurisdiction will not lie. *City of Oakland*, Dkt. 239 at 6.

Because Plaintiff has not satisfied the "but for" test, it has not made out a *prima facie* case of specific jurisdiction in Washington. For that reason, "the Due Process Clause, acting as an instrument of interstate federalism . . . divest[s] the State of its power to render a valid judgment," "even if the defendant would suffer minimal or no inconvenience; . . . even if the forum State has a strong interest in applying its law in the controversy; [and] even if the forum State is the most convenient location for litigation." *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780–81 (2017) (holding that no specific jurisdiction existed over defendant prescription drug manufacturer because the plaintiffs' claims did not arise from the defendant's forum contacts).

CONCLUSION

Chevron is not "at home" in Washington. Plaintiff's alleged injury arises from the *global*

[4] The Complaint's Texaco refinery allegation is irrelevant because it fails on its face to show that *Chevron* conducted any Washington-related activity. Compl. ¶ 53. Plaintiff admits that Texaco sold off all its interests in this refinery "[b]efore" Texaco "merged with Chevron." *Id.* Even if Texaco's Washington-related conduct were alleged to be attributable to Chevron, it would not alter the "but for" analysis.

phenomenon of climate change, and would have occurred *without* any of Chevron's alleged *forum-related* conduct. Therefore, Plaintiff has not met its burden to show that Chevron's alleged *forum-related* conduct was the "but for" cause of Plaintiff's injury. No jurisdictional discovery is appropriate because Plaintiff's allegations fail to establish even a colorable case for specific jurisdiction. Plaintiff's claims against Chevron should be DISMISSED for lack of personal jurisdiction.

Dated: July 27, 2018

By: **/s/ Theodore J. Boutrous, Jr.
/s/ Joshua S. Lipshutz
/s/ Robert M. McKenna
/s/ Adam Nolan Tabor
/s/ Herbert J. Stern
/s/ Joel M. Silverstein
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** Pursuant to this Court's Electronic Filing Procedure III.L, the electronic signatory has obtained approval from all other signatories

CERTIFICATE OF SERVICE

I hereby certify that on the date below, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record.

DATED: July 27, 2018

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Exhibit A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF OAKLAND, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through Oakland City Attorney BARBARA J. PARKER,

Plaintiffs,

v.

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

Defendants
_____/

AND RELATED CASE.
_____/

No. C 17-06011 WHA

and

No. C 17-06012 WHA

ORDER GRANTING MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

INTRODUCTION

In these "global warming" actions asserting claims for public nuisance, certain defendants move to dismiss for lack of personal jurisdiction. For the following reasons, the motions to dismiss are **GRANTED**.

STATEMENT

For purposes of these motions, the jurisdictional facts are not in dispute. Defendants Exxon Mobil Corporation, BP p.l.c., Royal Dutch Shell plc, and ConocoPhillips are four of the

five largest investor-owned producers of fossil fuels worldwide as measured by the greenhouse-gas emissions generated from the fossil fuels they produced. They are collectively (along with non-moving defendant Chevron Corporation) responsible for over eleven percent of the carbon and methane pollution that has accumulated in the atmosphere since the Industrial Revolution (Amd. Compl. ¶ 94).[1]

Plaintiffs' allegations concerning the amount of emissions attributable to each defendant rely on a study by Richard Heede. Heede estimated each defendant's contribution by multiplying the defendant's fossil fuel production volume by certain "combustion emission factors." Based on these calculations, Heede arrived at the following estimates:

DEFENDANT	CONTRIBUTIONS TO GLOBAL EMISSIONS
EXXON	3.22%
BP	2.47%
ROYAL DUTCH SHELL	2.12%
CONOCOPHILLIPS	1.16%

BP is a public limited company registered in England and Wales with headquarters in England. BP does not operate in California but several of BP's subsidiaries do. These subsidiaries produce oil and natural gas in California, own or operate port facilities in California to receive crude oil, ship crude oil from Alaska to California, license the ARCO trademark to gasoline stations in California, and promote gasoline sales through credit card offers and gasoline discounts. Elsewhere in the United States, BP subsidiaries produce fossil fuels, own refineries and pipelines, and market gasoline through BP-branded stores (*id*. ¶¶ 16–18, 35–50).

ConocoPhillips is a Delaware corporation with its principal place of business in Texas. ConocoPhillips operates as a holding company and does not itself have any active operations. Prior to 2012, certain of ConocoPhillips' subsidiaries and their predecessors owned and operated

[1] Oakland and San Francisco's first amended complaints are nearly identical; separate citations to each FAC are provided only where necessary.

refineries in California. ConocoPhillips' subsidiaries have also owned or operated gasoline stations and port facilities for the receipt of crude oil in California. Currently, ConocoPhillips' subsidiaries produce oil in Alaska and ship some of that oil to California (*id.* ¶¶ 22–24, 52–55).

Exxon Mobil is a New Jersey corporation with its principal place of business in Texas. Exxon's subsidiaries produce oil in California, own or operate port facilities for the receipt of crude oil in California, and transport crude oil to California. Exxon subsidiaries previously owned and operated two refineries here. Exxon-branded gasoline stations are located throughout the state, including in the Bay Area. Exxon offers credit cards to consumers through its website to promote sales of gasoline and other products at its gas stations, including gas stations in California (*id.* ¶¶ 25–27, 56–59).

Royal Dutch Shell is a holding company registered in England and Whales and headquartered in the Netherlands. Through its subsidiaries, Royal Dutch Shell produces oil and gas in California, owns or operates port facilities in California for receipt of crude oil, owns and operates a refinery in California, transports crude oil through a pipeline within California, and owns and operates gasoline terminals in California (*id.* ¶¶ 28–30, 60–73).

Defendants have allegedly long known the threat fossil fuels pose to the global climate. Nonetheless, defendants continued to produce fossil fuels in large amounts while engaging in widespread advertising and communications campaigns meant to promote the sale of such fossil fuels. These campaigns portrayed fossil fuels as environmentally responsible and essential to human well-being. These campaigns also downplayed the risks of global warming by emphasizing the uncertainties of climate science or attacking the credibility of climate scientists (*id.* ¶¶ 95–123).

In September 2017, Oakland and San Francisco brought these related actions in California Superior Court. After defendants removed the actions to this district, an order dated February 27, 2018, denied plaintiffs' motions to remand. In addition to moving to dismiss these actions pursuant to FRCP 12(b)(6), BP, ConocoPhillips, Exxon, and Royal Dutch Shell moved to dismiss

for lack of personal jurisdiction. Royal Dutch Shell also moved to dismiss for lack of sufficient service of process (Dkt. Nos. 1, 134, 219–22).[2]

The undersigned judge held oral argument on the various motions to dismiss on May 24. The following day, an order denied plaintiffs' request for jurisdictional discovery as to Exxon, but granted jurisdictional discovery as to BP, ConocoPhillips, and Royal Dutch Shell on the ground that Exxon had not challenged the jurisdictional facts alleged in the amended complaints while the other defendants had made such challenges by submitting declarations in support of their respective motions. BP, ConocoPhillips, and Royal Dutch Shell later withdrew their fact declarations and those portions of the FRCP 12(b)(2) motions which relied on those declarations. In addition, Royal Dutch Shell waived service of summons in these actions, thereby mooting its FRCP 12(b)(5) motion (Dkt. Nos. 256, 259, 273–74, 281–82).

An order dated June 25 granted defendants' motion to dismiss pursuant to FRCP 12(b)(6). At the Court's request, the parties filed a joint submission regarding whether or not the pending FRCP 12(b)(2) motions needed to be reached. The parties agreed that in light of the June 25 dismissal order the undersigned judge had discretion over whether or not to reach the FRCP 12(b)(2) motions prior to entering judgment. Nevertheless, Exxon, BP, ConocoPhillips, and Royal Dutch Shell all requested a decision on their pending motions prior to entry of judgment (Dkt. Nos. 283–85). This order accordingly addresses those defendants' narrowed motions to dismiss pursuant to FRCP 12(b)(2).

ANALYSIS

Personal jurisdiction can be either general or specific. General jurisdiction refers to the authority of the court to exercise jurisdiction even where the cause of action is unrelated to the defendant's contacts with the forum. Specific jurisdiction, by contrast, exists when a suit arises out of or is related to the defendant's contacts with the forum. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1779–80 (2017). Only specific jurisdiction is at issue here.

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the forum, and the litigation."

[2] All docket numbers herein refer to the docket in Case No. C 17-06011 WHA.

Walden v. Fiore, 571 U.S. 277, 283–84 (2014) (internal quotation marks and citations omitted). The Supreme Court has emphasized that "[t]he proper question is not where the plaintiff experienced a particular injury or effect but whether the defendant's conduct connects him to the forum in a meaningful way." *Id*. at 290. "Where a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004).

For a court to exercise specific jurisdiction over a nonresident defendant, three requirements must be met: (1) the defendant must either purposefully direct his activities toward the forum or purposefully avail himself of the privileges of conducting activities in the forum; (2) the claim must be one which "arises out of or relates to" the defendant's forum-related activities; and (3) the exercise of jurisdiction must comport with fair play and substantial justice, *i.e.*, it must be reasonable. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017).

Defendants do not dispute the first prong of this jurisdictional test. Although defendants do not themselves conduct business activities in California, plaintiffs point to significant activities of defendants' alleged agents and subsidiaries — such as the transportation and sale of gas to California consumers — which amount to the purposeful direction of activities towards the forum. Defendants do not concede that these activities are attributable to them under a jurisdictional analysis, but argue that plaintiffs still fail to demonstrate specific jurisdiction even assuming these forum contacts can be imputed.

With respect to the second prong of the jurisdictional test, the required causal analysis is met if "but for" the contacts between the defendant and the forum state, the plaintiff's injury would not have occurred. *Doe v. Am. Nat. Red Cross*, 112 F.3d 1048, 1051–52 (9th Cir. 1997). The question is therefore whether or not plaintiffs' alleged harm — namely, the effects of global warming-induced sea level rise — would have occurred even absent each defendant's respective *California-related* activities. It is manifest that global warming would have continued in the absence of all California-related activities of defendants. Plaintiffs have therefore failed to adequately link each defendants' alleged California activities to plaintiffs' harm.

The gravamen of the amended complaints is that defendants — all alleged to be multinational oil and gas companies — have contributed to global warming through the worldwide production and sale of fossil fuels. From all that appears in the amended complaints, however, this worldwide chain of events does not depend on a particular defendant's contacts with California. Rather, whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming. As earlier orders have pointed out, plaintiffs' nuisance claims depend on a global complex of geophysical cause and effect involving all nations of the planet. Ocean rise, as far as plaintiffs contend, would have occurred even without regard to each defendant's California contacts.

True, district courts in the Ninth Circuit have declined to apply the "but for" test "stringently." *See, e.g.*, *Cal. Brewing Co. v. 3 Daughters Brewing LLC*, No. 15-cv-02278, 2016 WL 1573399, at *6 (E.D. Cal. Apr. 19, 2016) (Judge Kimberly Mueller). Nonetheless — and although plaintiffs list significant fossil-fuel-related activities that defendants have allegedly conducted in California — plaintiffs fail to sufficiently explain how these "slices" of global-warming-inducing conduct causally relate to the worldwide activities alleged in the amended complaints. And, notably, nowhere do plaintiffs contend that sea level rise would not occur absent defendants' California contacts. Instead, plaintiffs argue that defendants' mere contributions to global warming through their California activities can subject them to personal jurisdiction in California. But that is not the causal test for personal jurisdiction applied in this circuit. Because plaintiffs have failed to show that defendants' conduct is a "but for" cause of their harm, as required by the second prong of the jurisdictional analysis, this order does not address whether or not the third prong of the jurisdictional test is met.

In arguing for personal jurisdiction, plaintiffs assert that where injuries have been caused by "the totality of a defendant's national conduct," personal jurisdiction exists so long as the defendant undertook some of the relevant conduct within the forum. Plaintiffs rely primarily on two decisions, neither of which is applicable here. In *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770 (1984), a New York resident sued Hustler Magazine in New Hampshire, claiming that she

had been libeled in five issues of a magazine distributed throughout the country, including in New Hampshire. In concluding that specific jurisdiction was present, the Supreme Court "relied principally on the connection between the circulation of the magazine in New Hampshire and damage allegedly caused within the State." *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1782. *Keeton* noted that "[f]alse statements of fact harm both the subject of the falsehood *and* the readers of the statement." 465 U.S. at 776 (emphasis in original). Accordingly, the defendant's forum conduct was clearly the but-for cause of the plaintiff's forum injury, irrespective of further injury that may have been incurred outside the forum. *Keeton* therefore "held that there was jurisdiction in New Hampshire to consider the full measure of the plaintiff's claim." *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1782. Here, plaintiffs' alleged injury would occur within the forum. Lacking, however, is a causal chain sufficiently connecting plaintiffs' harm and defendants' California activities.[3]

Plaintiffs next cite to *Dubose v. Bristol-Myers Squibb Co.*, No. 17-cv-00244, 2017 WL 2775034 (N.D. Cal. June 27, 2017) (Judge Jon Tigar), where the plaintiff brought a products liability action against prescription drug manufacturers and distributors. Because some of the clinical trials for the pharmaceutical at issue were conducted in California, Judge Tigar concluded that the defendants' California conduct was "part of the unbroken chain of events leading to Plaintiff's alleged injury." *Id.* at *3. In the instant case, by contrast, plaintiffs point to no unbroken chain of events connecting defendants' forum activities to rising sea levels. Plaintiffs are correct that they need not show each defendant's contributions would have alone created the alleged nuisance. But nowhere do plaintiffs assert that sea rise would not have occurred had any defendant reduced or refrained from fossil fuel production in California (or elsewhere in the United States).

Finally, plaintiffs advocate for a less stringent standard of "but for" causation in light of the liability rules underlying public nuisance claims. Such an argument has been rejected by our court of appeals, which has instructed that "liability is not to be conflated with amenability to suit in a particular forum." *AT&T Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir.

[3] For this same reason, plaintiffs' IP infringement cases are inapposite. There, infringing acts within the forum state directly caused injury in that state, and therefore the "but for" test was met even though additional infringing acts occurred outside of the forum.

1996). "Personal jurisdiction has constitutional dimensions," and therefore the policy goals underlying a cause of action "cannot override the due process clause, the source of protection for non-resident defendants." *Ibid.*

In the alternative, plaintiffs contend that personal jurisdiction over BP and Royal Dutch Shell is permissible pursuant to FRCP 4(k)(2), which permits a federal court to exercise personal jurisdiction over a defendant if "the defendant is not subject to jurisdiction in any state's courts of general jurisdiction," and "exercising jurisdiction is consistent with the United States Constitution and laws." FRCP 4(k)(2) imposes three requirements:

> First, the claim against the defendant must arise under federal law. Second, the defendant must not be subject to the personal jurisdiction of any state court of general jurisdiction. Third, the federal court's exercise of personal jurisdiction must comport with due process.

Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1159 (9th Cir. 2006) (citations omitted). The due process analysis under FRCP 4(k)(2) is nearly identical to the traditional personal jurisdiction analysis with one significant difference: rather than considering contacts between the defendant and the forum state, the court considers contacts with the nation as a whole. *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 462 (9th Cir. 2007). For the same reasons discussed above, however, plaintiffs do not satisfy this third requirement. Even taking plaintiffs' allegations as true, they have failed to show that BP or Royal Dutch Shell's national conduct was a "but for" cause of their harm.

CONCLUSION

For the reasons stated above, defendants' motions to dismiss pursuant to FRCP 12(b)(2) are **GRANTED**.

IT IS SO ORDERED.

Dated: July 27, 2018.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE