

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

BP P.L.C., 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.

No. 2:18-cv-00758-RSL

**DEFENDANT BP P.L.C.'S
CORRECTED MOTION TO
DISMISS FIRST AMENDED
COMPLAINT FOR LACK OF
PERSONAL JURISDICTION**

NOTE ON MOTION CALENDAR:
November 2, 2018

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

BP p.l.c. is a United Kingdom company that is not “at home” in Washington and therefore cannot be subjected to general jurisdiction under *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). Nor can BP p.l.c. be subjected to specific jurisdiction because the County’s claims do not “arise out of or relate to” any BP p.l.c. claim-related Washington activities—even imputing all activities of its subsidiaries to BP p.l.c.¹—as that requirement is defined in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773 (2017), and in controlling Ninth Circuit case law requiring that a foreign defendant’s forum contacts be a “but-for” cause of the claimed injury.

The vast contours of the County’s claims reveal why the County cannot show, as it must, that its claims would not exist but for BP p.l.c.’s imputed Washington activities. The claims attack “worldwide conduct leading to the international problem of global warming,” as the district court observed in dismissing, for lack of personal jurisdiction, identical lawsuits by Oakland and San Francisco. *City of Oakland v. BP p.l.c.*, Nos. C 17-06011 WHA, C 17-06012 WHA, 2018 WL 3609055, at *3 (N.D. Cal. July 27, 2018) (finding “causally insignificant” “whatever sales or events occurred in California”). And the actors involved in the activities that are allegedly producing climate change and related sea-level rise are vast in number. They include sovereign nations that own the fossil fuels and decide to have them produced; private and sovereign companies that extract the fossil fuels, who far outnumber the five defendants the County has sued; transportation companies that move the raw product to treatment and refining centers; and various end users (manufacturers; power plants; airlines; federal, state, and local governments; and ordinary folks who drive cars and heat homes) who burn the fossil fuels. Third, and most critically, the County has not alleged and cannot show that any fossil

¹ The County has named BP p.l.c. as a proxy for various separately organized indirect subsidiary companies that now or in times past have extracted oil or natural gas from the earth. It has done so as a transparent expedient for trying to avoid the due process limitations on personal jurisdiction over those subsidiaries. While BP p.l.c. denies that its indirect subsidiaries’ production of fossil fuels can properly be imputed to it for jurisdictional purposes, and reserves all rights in that regard for any other purpose or proceeding, solely for purposes of this motion it will assume that all Washington conduct by any indirect subsidiary may be imputed to BP p.l.c.

1 fuel production in Washington that can be imputed to BP p.l.c. made *any* contribution, much
 2 less a jurisdictionally significant one, to global greenhouse gas emissions, and consequently, to
 3 the County’s alleged injuries.

4 More specifically, the County’s purported method of quantifying each defendant’s
 5 individual responsibility, its so-called “attribution science” methodology,² would assign a
 6 share of worldwide emissions of industrial greenhouse gases to each defendant, based on that
 7 defendant’s attributed *global production* of fossil fuels since the Industrial Revolution. That
 8 methodology does not even purport to establish any causal link between the County’s claimed
 9 injuries and any oil or gas produced by BP p.l.c.’s indirect subsidiaries in Washington since
 10 1980—the earliest date the County alleges defendants knew about climate change. What’s
 11 more, as discussed below, judicially noticeable government data confirm that *no* production of
 12 oil or natural gas—by anyone—occurred in Washington during the first amended complaint’s
 13 (“FAC”) time period. This fact is dispositive of the jurisdictional issue because production
 14 (*i.e.*, extraction) of fossil fuels is the specific conduct the FAC attacks as tortious and causative
 15 of the County’s claimed injuries. Production is, most notably, the only conduct that the
 16 County’s attribution methodology purports to link to greenhouse gas emissions. Under the
 17 County’s own theory for linking its claimed injuries with the defendants’ conduct (“attribution
 18 science”), therefore, BP p.l.c.’s *zero* production in Washington made *zero* contribution to
 19 global emissions and, therefore, to the County’s injuries. Nor has the County alleged that BP
 20 p.l.c.’s imputed activities in the U.S. as a whole were a but-for cause of its alleged harm.

21 For these reasons, the County cannot show that its claimed property harms would have
 22 looked any different today in the absence of Washington activities of BP p.l.c.’s indirect

23 _____
 24 ² To be clear, although BP p.l.c. does not challenge the attribution methodology solely for purposes of this
 25 motion, BP p.l.c. does not credit or otherwise subscribe to the methodology and, in fact, believes the analyses of
 26 Richard Heede and others discussed below (*infra* pp. 5-7) are flawed for a host of reasons. Nonetheless, because
 the County has the burden to demonstrate that its injuries would not have occurred but for BP p.l.c.’s claim-
 related Washington activities, BP p.l.c. discusses the theory that the County has signaled it will use to estimate
 BP p.l.c.’s individual contribution to its alleged injuries, and shows why, even if the flawed method is applied to
 BP p.l.c.’s Washington activities, the County cannot meet its burden.

1 subsidiaries. It is unsurprising, therefore, that the FAC does not even allege the essential
 2 jurisdictional fact that BP p.l.c.’s Washington activities are a but-for cause of the alleged
 3 public nuisance and trespass in King County. The Court should accordingly dismiss the FAC
 4 as against BP p.l.c. for lack of personal jurisdiction.

5 II. BACKGROUND

6 A. The County’s Claims

7 The County alleges that global warming-induced sea-level rise is threatening public
 8 and private property in the County. (FAC ¶ 1.) It calls each defendant a “multinational,
 9 vertically integrated oil and gas company” (*id.* ¶¶ 12, 15, 18, 21, 24) that is among the “ten
 10 largest producers [of fossil fuels] in all of history” (*id.* ¶ 140). BP p.l.c., it claims, is the fourth
 11 largest such producer. (*Id.* ¶ 143.b.) The County has not named as a defendant any other
 12 fossil fuel producer (including any of the other “largest cumulative producers” (*id.*)), nor other
 13 refiners, transporters, or sellers. Nor has it sued anyone for *using* (combusting) fossil fuels,
 14 which of course is what releases greenhouse gases into the atmosphere. (*Id.* ¶¶ 122, 140.)

15 Defendants allegedly have known “since at least the 1980s” that fossil fuels contribute
 16 to “dangerous global warming.” (*Id.* ¶¶ 2, 5.) Fossil fuels do so, the County alleges, by
 17 releasing “greenhouse gases, including carbon dioxide (CO₂) and methane, which trap
 18 atmospheric heat and increase global temperatures.” (*Id.* ¶ 122.) Greenhouse gases emitted
 19 when a defendant’s fossil fuels are combusted “combine[]” in the atmosphere “with the
 20 greenhouse gas emissions from fossil fuels produced by the other Defendants, among others,”
 21 and can remain for hundreds of years or longer. (*Id.* ¶¶ 4, 206.) Despite allegedly knowing
 22 these facts, defendants continued to produce “massive amounts of fossil fuels” and to promote
 23 their usage as “environmentally responsible,” including by “denying mainstream climate
 24 science.” (*Id.* ¶¶ 2, 5, 6.) The allegedly wrongful conduct at issue in the County’s claims is
 25 the “production and promotion of massive quantities of fossil fuels.” (*E.g., id.* ¶ 206.) The
 26 County is not suing for defendants’ “direct emissions of greenhouse gases.” (*Id.* ¶ 10.)

1 **B. Absence Of Any BP p.l.c. Imputed Forum Contacts**

2 BP p.l.c. is a public limited company that is registered in England and Wales and
3 headquartered in London, England. (*Id.* ¶ 12.) BP p.l.c.’s subsidiaries explore for, produce,
4 refine, market, and sell oil and natural gas around the globe. (*Id.* ¶ 13.) The County does not
5 allege that BP p.l.c. itself is “at home” or directly operates in Washington, as opposed to
6 operating only indirectly through subsidiaries.

7 In one paragraph, the County lists ten indirect subsidiaries of BP p.l.c. that allegedly
8 are registered to do business and have designated agents for service of process in Washington.
9 (*Id.* ¶ 39 (calling each an “agent” of BP p.l.c.)) The County alleges that “through its
10 subsidiaries,” BP p.l.c. has “[c]onnections to Washington” that have included operating oil
11 refineries and terminals (through its subsidiary BP West Coast Products LLC), owning and
12 operating pipelines for transporting refined products (through BP Pipelines (North America)),
13 marketing natural gas (through IGI Resources, Inc.), and marketing gasoline by licensing the
14 ARCO brand to gasoline stations. (*Id.* ¶¶ 39-53.) The County further alleges that BP p.l.c.,
15 through its subsidiaries, does business elsewhere in the United States, including by producing,
16 refining, transporting, marketing, and selling oil and natural gas products. (*Id.* ¶¶ 54-62.)

17 The FAC does not allege, either factually or conclusorily, that these in-forum activities
18 gave rise to the alleged public nuisance or trespass, or caused the County’s claimed sea-level-
19 rise injuries. Nor does it allege that atmospheric greenhouse gas levels (which are what the
20 County asserts cause climate change) would have decreased *at all* in the absence of BP p.l.c.’s
21 alleged contacts with Washington. Based on the FAC’s citations to the journal articles
22 discussed in the next section, the County will seek to rely on an “attribution science” theory to
23 try to prove BP p.l.c.’s individual contribution to global climate change. However, that theory
24 cannot fill this jurisdictional void because it does not show that the alleged sea-level-rise harm
25 would not have arisen but for the Washington activities of BP p.l.c.’s indirect subsidiaries,
26 which made *zero* contribution to emissions if that attribution theory is applied.

1 **C. The County’s Attempt To Link BP p.l.c.’s Conduct To The Claimed Harms**

2 The County asserts defendants “are substantial contributors to the public nuisance of
3 global warming that is causing injury to Plaintiff.” (*Id.* ¶ 9.) Indeed, the County claims
4 defendants’ products “contribute[] measurably to global warming” (*id.*), and even claims that
5 it has quantified defendants’ individual and collective contributions to global greenhouse gas
6 emissions, surface temperature increase, and sea-level rise. (*Id.* ¶ 141.) As purported support
7 for this position, the FAC numerically ranks each defendant on a list of the “largest cumulative
8 producers of fossil fuels,” which the County copied from a 2014 study by Richard Heede in the
9 supposed field of “attribution science” (*id.* ¶ 143.b & n.154 (citing Richard Heede, *Tracing*
10 *Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers,*
11 *1854-2010*, 122 CLIMATIC CHANGE 229 (2014) (“Heede 2014”), available at [https://link.
12 springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf](https://link.springer.com/content/pdf/10.1007%2Fs10584-013-0986-y.pdf)), and cites a 2015 “peer-
13 reviewed scientific” study (*id.* ¶ 143.g & n.158), which, building on the 2014 work, claims to
14 quantify “the responsibility of industrial carbon producers” for “anthropogenic climate
15 change.”³ (Peter C. Frumhoff, Richard Heede, Naomi Oreskes, *The Climate Responsibilities of*
16 *Industrial Carbon Producers*, 132 CLIMATIC CHANGE 157, 161-62 & Fig. 2 (2015), available
17 at <https://link.springer.com/content/pdf/10.1007%2Fs10584-015-1472-5.pdf>.)

18 In these studies, Heede attempted to estimate the percentage of global industrial
19 greenhouse gas emissions since the Industrial Revolution that can be attributed to fossil fuels
20 and cement produced by each of what the studies call ninety “Carbon Majors.” (Heede 2014 at
21 231-32.) To derive these percentages, Heede sought to collect information about *worldwide*

22
23 ³ The County’s private counsel has called the methodology utilized in these studies “hugely important” because
24 it “individualizes responsibility” for climate change “in a way that had not been done before.” (Dan Zegart,
25 *Want To Stop Climate Change? Take the Fossil Fuel Industry to Court*, *The Nation*, May 12, 2014, available
26 at <https://www.thenation.com/article/want-stop-climate-change-take-fossil-fuel-industry-court/>.) In particular,
according to the County’s attorney, these attribution science methodologies “help[] assign blame” by providing
“a list with names and numbers” (*id.*)—a list that “demonstrate[s] how much of the carbon dioxide and methane
from the combustion of fossil fuels in the atmosphere is attributable to Exxon and Chevron and other particular
companies going back to the 1800s.” (*Climate Reparations: Companies to Be Liable for “Harm” “Going Back
to the 1800s,”* YouTube (Feb. 18, 2016), <https://www.youtube.com/watch?v=KFSGJ1-iEo8>.)

1 fossil fuel and cement production by each Carbon Major, including data on oil, gas, and coal
 2 production by worldwide affiliates of BP p.l.c. (or predecessor entities)⁴ going back to 1913.
 3 (*Id.*) After applying numerous interpolations, assumptions, and adjustments to this necessarily
 4 incomplete historical production data, he then sought to calculate the volume of greenhouse
 5 gas emissions allegedly attributable to each Carbon Major’s historical production activities by
 6 multiplying the estimated production volumes times various “emissions factors,” which
 7 attempt to “account[] for the carbon content of each fuel, and therefore the CO₂ released on
 8 combustion to the atmosphere.” (*Id.* at 232.) Finally, Heede sought to compute each Carbon
 9 Major’s percentage contribution to global carbon dioxide and methane emissions by comparing
 10 the CO₂-equivalent emissions attributed to that Carbon Major’s estimated historical production
 11 activities (the numerator) to estimates by other authors of worldwide carbon dioxide and
 12 methane emissions from all “industrial” sources, meaning oil, natural gas, coal, and cement
 13 production (the denominator), from 1751 to 2010. (*Id.* at 232, 237 Table 3.)

14 If the estimates generated by these flawed studies and relied upon by the County are
 15 accepted *arguendo* solely for purposes of this motion, the studies would attribute to all
 16 defendants as a group 11% (FAC ¶ 143.c), and to BP p.l.c. individually 2.47% (Heede 2014
 17 at 237 Table 3), of global “industrial” greenhouse gas emissions between 1854 and 2010. The
 18 2017 study cited in the FAC would attribute to BP p.l.c. a purported “best” estimate of a 1.92%
 19 contribution to global surface temperature rise and a 1.58% contribution to global sea-level
 20 rise, again based on worldwide production from 1880 to 2010. (B. Ekwurzel et al., *The Rise in*
 21 *Global Atmospheric CO₂, Surface Temperature, and Sea Level from Emissions Traced to*
 22 *Major Carbon Producers*, 144 CLIMATIC CHANGE 579 (Oct. 2017) (cited FAC ¶ 141 n.153),
 23 Electronic supplementary material, available at [https://static-content.springer.com/esm/
 24 art%3A10.1007%2Fs10584-017-1978-0/MediaObjects/10584_2017_1978_MOESM2_ESM](https://static-content.springer.com/esm/art%3A10.1007%2Fs10584-017-1978-0/MediaObjects/10584_2017_1978_MOESM2_ESM)

25 ⁴ These studies even impute production to BP p.l.c. by business entities that BP p.l.c. did not own when the
 26 production occurred. For example, Amoco did not join BP p.l.c. until 1998 (FAC ¶ 12), yet the studies count that
 company’s pre-1998 production in BP p.l.c.’s total. As noted, BP p.l.c. does not contest that imputation solely for
 purposes of this motion. (*Supra* note 1.)

1 [.xlsx](#).)⁵ For at least the following reasons, however, these studies are not evidence of any
 2 causal relationship between BP p.l.c.’s (or any defendant’s) claim-related Washington
 3 activities for purposes of establishing personal jurisdiction:

4 *First*, the emissions and climatic impacts the studies would attribute to BP p.l.c. are not
 5 based on production of fossil fuels in Washington at all, but instead on estimates of *worldwide*
 6 fossil fuel and cement production by each Carbon Major. Indeed, the U.S. Energy Information
 7 Administration’s official state energy reports confirm that there has been *no* oil or gas
 8 production in Washington during the generous time period arguably covered by the County’s
 9 claim. (Req. for Judicial Notice, Dkt. No. 123, Ex. A at 9-10 (“no oil production . . . since the
 10 early 1960s” and no natural gas production since “the mid-20th century”), filed Sept. 11, 2018.)
 11 Therefore, the County’s studies do not even purport to attribute any emissions or climatic
 12 effects to any producer’s Washington activities. Stated differently, exactly *zero percent* of the
 13 2.47% of global emissions the County would attribute to BP p.l.c.’s worldwide production is
 14 attributable to production in Washington during the complaint’s time period.

15 *Second*, the emissions the studies would attribute to BP p.l.c. are not limited to *claim-*
 16 *related* production, because they are based on the authors’ estimates of production going back
 17 to 1913. (Richard Heede, *Carbon Majors: Accounting for Carbon and Methane Emissions*
 18 *1854-2010 Methods and Results Report* at 9–15 (Apr. 7, 2014), available at
 19 <http://carbonmajors.org/wp/wp-content/uploads/2014/04/MRR-9.1-Apr14R.pdf>.) The County,
 20 however, claims defendants have tortiously produced and promoted fossil fuel products since
 21 the 1980s, when it alleges defendants first knew of the dangers of global warming. (FAC ¶ 2.)
 22 If the County’s centuries-long studies of worldwide production were limited to counting only
 23 BP p.l.c.’s imputed production during the years 1980 to 2010, plainly they would attribute a
 24 mere fraction of a fraction of their 2.47% of global emissions to BP p.l.c.

25 _____
 26 ⁵ The FAC ignores the 2017 study’s “best” estimates in favor of citing its self-described “high” estimates (2.62% and 2.45%, respectively). (FAC ¶ 141; B. Ekwurzel et al., *supra*, Electronic supplementary material.)

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III. ARGUMENT

THE FAC SHOULD BE DISMISSED FOR LACK OF PERSONAL JURISDICTION OVER BP P.L.C.

The FAC asserts that the Court has personal jurisdiction over BP p.l.c. based on BP p.l.c.'s purported "connections to Washington." (FAC ¶¶ 39-53.) The FAC's theory of jurisdiction is accordingly that Washington's long-arm statute, which permits jurisdiction as broadly as due process allows, applies. *See Easter v. Am. W. Fin.*, 381 F.3d 948, 960 (9th Cir. 2004) ("Washington's long-arm statute . . . permits the exercise of jurisdiction to the full extent of the due process clause of the United States Constitution.").

Due process, however, limits the power of a court "to render a valid personal judgment against a nonresident defendant." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291 (1980). The Supreme Court "recognize[s] two types of personal jurisdiction: 'general' (sometimes called 'all-purpose') jurisdiction and 'specific' (sometimes called 'case-linked') jurisdiction." *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1779-80. General jurisdiction permits a court to hear "any claim against that defendant, even if all the incidents underlying the claim occurred in a different State." *Id.* at 1780 (emphasis original). By contrast, a court exercising specific jurisdiction may only hear suits that "arise[e] out of or relat[e] to the defendant's contacts with the *forum*." *Id.* (quoting *Daimler AG*, 134 S. Ct. at 754).

The plaintiff bears the burden of establishing that jurisdiction is proper, *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1068 (9th Cir. 2015), and must make "a prima facie showing of jurisdictional facts to withstand the motion to dismiss," *id.* (quoting *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1073 (9th Cir. 2011) (quoting *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010))). In evaluating whether the plaintiff has met this burden, the court may not take as true "mere 'bare bones' assertions of minimum contacts with the forum or legal conclusions unsupported by *specific factual allegations*." *Swartz v. KPMG LLP*, 476 F.3d 756, 766 (9th Cir. 2007) (emphasis added);

1 *Abalos v. Bronchick*, No. C07-844RSL, 2008 WL 2544893, at *1 (W.D. Wash. June 23, 2008).

2 As shown below, the County has not pleaded and cannot prove the facts needed to
3 establish either general or specific jurisdiction over BP p.l.c.

4 **A. BP p.l.c. Is Not “At Home” (And Thus Subject To General Jurisdiction) In**
5 **Washington.**

6 A foreign corporation is not subject to general jurisdiction in a state unless its
7 “affiliations with the State are so ‘continuous and systematic’ as to render [it] essentially at
8 home in the forum State.” *Daimler AG*, 134 S. Ct. at 754 (quoting *Goodyear Dunlop Tires*
9 *Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). A corporation is only “at home” in a
10 forum where it is incorporated or has its principal place of business, in all but an “exceptional
11 case.” *Id.* at 760-62 & n.19; *Ranza*, 793 F.3d at 1069; *Hodjera v. BASF Catalysts LLC*, No.
12 C17-48RSL, 2017 WL 3263717, at *2 (W.D. Wash. July 31, 2017). Thus, even a large
13 corporation that operates—and records “sizable” sales—in many places “can scarcely be
14 deemed at home in all of them,” as that result would improperly convert “at home” into a
15 “doing business” test. *Daimler AG*, 134 S. Ct. at 761-62 & n.20. Rather, a foreign
16 corporation’s affiliations with the forum must be “comparable to a domestic enterprise in that
17 State” for it to be considered at home. *Id.* at 758 n.11. A plaintiff who invokes general
18 jurisdiction “must meet an ‘exacting standard’ for the minimum contacts required,” because
19 of the “much broader” assertion of judicial authority the foreign defendant faces. *Ranza*, 793
20 F.3d at 1069 (quoting *CollegeSource, Inc.*, 653 F.3d at 1074).

21 There can be no reasonable debate that BP p.l.c. is not at home in Washington. As the
22 County admits, BP p.l.c. is a “multinational, vertically integrated oil and gas company” that is
23 “registered in England and Wales with its headquarters in London, England.” (FAC ¶ 12.)
24 Nothing in the FAC would justify treating this as an “exceptional case,” moreover. The
25 County does not allege, for example, that Washington has become BP p.l.c.’s global nerve
26

1 center, nor even that BP p.l.c. itself operates in Washington.⁶

2 Far from alleging facts that could establish that BP p.l.c. is at home in Washington, the
 3 FAC merely alleges that subsidiaries of BP p.l.c. have done or are doing business here, just as
 4 the plaintiff in *Daimler AG* alleged. For example, the County alleges that subsidiaries of BP
 5 p.l.c. operate oil refineries and terminals; own and operate pipelines for transporting refined
 6 products; and market and sell natural gas and gasoline to Washington residents. (*Id.* ¶¶ 39-
 7 53.) Even imputing these subsidiaries' Washington business activities to BP p.l.c. (as the
 8 Court assumed *arguendo* in *Daimler AG*), they *at most* show that BP p.l.c. does substantial
 9 business in Washington, just as Daimler did in California, where it was the “largest supplier of
 10 luxury vehicles” with multiple California-based facilities, *see* 134 S. Ct. at 752, and just as
 11 BNSF Railway Company did in Montana, where its 2,000 workers and 2,000 miles of railroad
 12 track did not render it “at home,” *see BNSF Ry. Co.*, 137 S. Ct. at 1559; *see also Martinez v.*
 13 *Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (“This is not such an exceptional case,”
 14 where defendant had “no offices, staff, or other physical presence in California, and it [was]
 15 not licensed to do business in the state”). More is needed to render a foreign corporation at
 16 home. The FAC here provides nothing more.

17 The County has not met, and cannot meet, its “exacting” burden to show that BP p.l.c.
 18 is at home in Washington.

19 **B. Nor Is BP p.l.c. Subject To Specific Jurisdiction In Washington For This Claim.**

20 In contrast with general jurisdiction, for a forum state to assert specific jurisdiction
 21 over a nonresident, “there must be ‘an affiliation between the forum and the underlying
 22 controversy, principally, [an] activity or an occurrence that takes place in the forum State and

23 _____
 24 ⁶ In the case the Supreme Court points to as “exemplif[y]ing” the “exceptional case,” a Philippines corporation
 25 was forced to cease operating in its home nation during the Japanese occupation in World War II, and its president
 26 moved to Ohio, where he kept an office, maintained the company’s files, and oversaw the company’s operations.
Perkins v. Benguet Consol. Mining Co., 342 U.S. 437, 448 (1952); *see BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549,
 1558 (2017) (discussing *Perkins*). General jurisdiction in Ohio over the foreign corporation was proper in these
 unusual circumstances because it effectively had moved its principal place of business there, if only temporarily,
 making Ohio “the center of the corporation’s wartime activities.” *Daimler AG*, 134 S. Ct. at 756 & n.8.

1 is therefore subject to the State’s regulation.” *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780
 2 (quoting *Goodyear Dunlop Tires Operations*, 564 U.S. at 919). More specifically, “‘the suit’
 3 must ‘aris[e] out of or relat[e] to the defendant’s contacts with the *forum*.’” *Id.* (quoting
 4 *Daimler AG*, 134 S. Ct. at 754). In accord with the Supreme Court’s direction, the Ninth
 5 Circuit recognizes “three requirements for a court to exercise specific jurisdiction over a
 6 nonresident defendant”:

7 (1) the defendant must either “purposefully direct his activities” toward the
 8 forum or “purposefully avail[] himself of the privileges of conducting activities
 9 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.”

10 *Axiom Foods, Inc. v. Acerchem Int’l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting *Dole*
 11 *Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)); accord *Morrill v. Scott Fin. Corp.*,
 12 873 F.3d 1136, 1142 (9th Cir. 2017). The plaintiff bears the burden of satisfying the first two
 13 prongs. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

14 Neither the second nor third requirement for exercising specific jurisdiction is met here.

15 **1. The Claim Does Not Arise out of or Relate to BP p.l.c.’s Washington**
 16 **Activities, Even Imputing All Claim-Related Activities of Indirect**
 17 **Subsidiaries to BP p.l.c.**

18 A claim arises out of or relates to the defendant’s forum-related activities only if the
 19 plaintiff “would not have sustained her injury, ‘but for’” that activity. *Doe v. Am. Nat’l Red*
 20 *Cross*, 112 F.3d 1048, 1051-52 (9th Cir. 1997); *Doe v. Unocal Corp.*, 248 F.3d 915, 924 (9th
 21 Cir. 2001) (“the Court considers whether [the] plaintiffs’ claims would have arisen but for [the
 22 defendant]’s contacts with [the forum]”); *Vernon Johnson Family Ltd. P’ship v. Bank One*
 23 *Tex., N.A.*, 80 F. Supp. 2d 1127, 1133-34 (W.D. Wash. 2000) (“arises out of or relates to”
 24 prong requires plaintiffs to “establish that their cause of action would not have arisen ‘but for’
 25 the [defendants’] contacts with Washington”). Under this “but-for” test, the plaintiff must
 26 show that other contributing forces would not still have produced his or her injury in the
 absence of the defendant’s suit-related forum contacts. *Rashidi v. Veritiss, LLC*, No. 2:16-cv-

1 04761-CAS (JPRx), 2016 WL 5219448, at *6 (C.D. Cal. Sept. 19, 2016); *see Dantonio v. S.W.*
2 *Educ. Dev. Lab.*, No. C10–1193RSL, 2011 WL 2118577, at *6 (W.D. Wash. May 26, 2011)
3 (plaintiff failed to support the links in the claimed causal chain to satisfy but-for causation
4 test). Where the plaintiff does not show that the defendant’s forum activities were a
5 “necessary” cause of that injury, the requirement is not met. *Unocal Corp.*, 248 F.3d at 925;
6 *accord Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (defendant’s in-state activities did not
7 cause the plaintiffs’ alleged injuries; thus, no “adequate link” supported specific jurisdiction).

8 In *Doe v. Unocal Corp.*, for example, Burmese farmers alleged they suffered human
9 rights violations at the hands of a French energy corporation (Total S.A.), among others, in
10 furtherance of a gas pipeline project in Burma. *Id.* at 920. They claimed Total was subject to
11 specific jurisdiction in California by virtue of Total’s joint venture agreement with its co-
12 venturer on the pipeline project, a California corporation (Unocal Corp.). The court held the
13 plaintiffs had failed to meet their burden under the but-for test because they could not show
14 that “the pipeline project would not have gone forward without Total’s dealings with Unocal”
15 in California. *Id.* at 925. Total’s California contacts were, in short, “not necessary to the
16 initiation of the project” that allegedly led to the plaintiffs’ injuries. *Id.*

17 Where the defendant conducts business on a national or global scale, the plaintiff must
18 show that the defendant’s *forum* activities, in particular, were a but-for cause of its injuries.
19 In *Hodjera*, 2017 WL 3263717, for example, the Court held that Honeywell was not subject
20 to specific jurisdiction in Washington for a claim alleging mesothelioma from asbestos-
21 containing products, even though Honeywell (through a predecessor) made brake components
22 in Washington that contained asbestos to which the plaintiff was exposed, because the
23 plaintiff’s asbestos exposure occurred in Toronto. *Id.* at *2. Given these facts, the Court
24 concluded that the plaintiff failed to establish that his “exposure would not have occurred ‘but
25 for’ Honeywell’s contacts with Washington.” *Id.* *Hodjera* is in accord with the Supreme
26 Court’s more recent holding in *Bristol-Myers Squibb Co.*, that BMS could not be subjected to

1 specific jurisdiction in California for injury claims involving its drug Plavix, brought by
2 patients who obtained Plavix through sources outside of California. *See* 137 S. Ct. at 1778.
3 Even though BMS sold almost 187 million Plavix pills in California, taking in more than \$900
4 million, and employed 250 sales reps in California, the Court held that there was no “adequate
5 link between the State and the nonresidents’ claims,” because the specific pills that injured the
6 plaintiffs were not developed, made, labelled, packaged, or sold to them in California. *Id.* at
7 1778, 1781. To permit jurisdiction over these claims merely because BMS also sold Plavix to
8 patients in California would, the Court explained, “resemble[] a loose and spurious form of
9 general jurisdiction” that could not be squared with its precedents. *Id.* at 1781.

10 Washington activities also fail the but-for test when actors other than the defendant
11 contributed to the plaintiff’s injury and the plaintiff cannot show that its injury would have
12 been avoided but for the defendant’s forum-related conduct. In *Terracom v. Valley National*
13 *Bank*, 49 F.3d 555 (9th Cir. 1995), for example, the court held that a Kentucky bank’s act of
14 signing a “certificate of sufficiency” without properly investigating the financial strength of a
15 payment bond surety for a California public works project was not a but-for cause of the
16 plaintiff’s (a construction subcontractor) injury because a third party, the federal officer who
17 awarded the contract, had “the sole responsibility of determining the acceptability of an
18 individual surety,” considered factors other than the bank’s certificate in his evaluation, and
19 might have approved the surety even if the bank had not signed the certificate. *Id.* at 561. Put
20 simply, an actor other than the bank contributed to the plaintiff’s injury, making it impossible
21 to say that the plaintiff’s injury would not have arisen but for the bank’s contacts with
22 California. *Id.* Similarly, in *Doe v. American National Red Cross* the court held that the
23 failure of a federal official charged with ensuring the safety of the blood supply to bar high-
24 risk groups from donating blood, to publicize the risks of blood transfusions, and to encourage
25 blood companies to implement certain blood safety tests was not a but-for cause of the
26 plaintiff’s injury because other actors had greater control over the flow of blood and blood

1 products into the forum state. 112 F.3d at 1051-52 (“Therefore, it cannot be said that [the
2 plaintiff] would not have sustained her injury, ‘but for’ [the official’s] alleged misconduct.”).

3 **a. The FAC does not allege any BP p.l.c. Washington activities are a
4 but-for cause of the County’s claimed injury**

5 Here, the County has not alleged, either factually or even in conclusory terms, that BP
6 p.l.c.’s Washington activities are a but-for cause of the “global warming-induced sea level
7 rise” it says is damaging its coastlines. Indeed, not only is the concept of but-for causation
8 entirely missing from the FAC, but the County’s allegations leave no doubt that its theory is
9 that the alleged public nuisance and trespass resulted from *all* human contributions to
10 increased greenhouse gas levels in the atmosphere, including but certainly not limited to the
11 *worldwide* production of fossil fuels by defendants and others. (FAC ¶¶ 12-14 (alleging
12 BP p.l.c. is “a multinational, vertically integrated oil and gas company” that “is responsible
13 for” all “past and current production and promotion of fossil fuel products” by all of “its
14 subsidiaries”); *id.* ¶ 9 (each defendant is a “substantial contributor[] to the public nuisance of
15 global warming” based on its global “cumulative production of fossil fuels”).) As the district
16 court observed in the Oakland and San Francisco cases, “greenhouse gases emanating from
17 overseas sources are equally guilty (perhaps more so) of causing plaintiffs’ harm” as are gases
18 emanating from the consumption of defendants’ fuels in the United States. *Cal. v. BP p.l.c.*,
19 Nos. C 17-06011 WHA & C 17-06012 WHA, 2018 WL 1064293, at *4 (N.D. Cal. Feb. 27,
20 2018). But alleging that *all worldwide* fossil fuel production “substantially contributed” to
21 the purported nuisance is a far stretch from alleging that *BP p.l.c.’s Washington* activities are
22 a but-for cause of the nuisance. The County’s causal theory is thus invalid under *Bristol-*
23 *Myers Squibb Co.* and *Hodjera*, which teach that nationwide or global activities by a large
24 corporation—even activities of the sort the plaintiff complains of—do not establish the
25 requisite but-for causal link between the defendant’s forum contacts and the plaintiff’s injury.

26 Also negating the essential but-for causation is the FAC’s allegation that innumerable
other fossil fuel producers besides BP p.l.c. have contributed to the alleged nuisance. The

1 County admits it has only sued a handful of the world’s “largest cumulative producers of fossil
 2 fuels worldwide.” (FAC ¶ 143.b.) And it avers that global warming results not from the
 3 emissions attributable to any single producer’s production, but rather because greenhouse gases
 4 from fossil fuels produced by *all* producers—defendant and non-defendant—combine in the
 5 global atmosphere where they cannot be physically traced to an individual producer. (*Id.* ¶ 206
 6 (“emissions of greenhouse gases from the fossil fuels [each defendant] produces combines [sic]
 7 with the greenhouse gas emissions from fossil fuels produced by the other Defendants, *among*
 8 *others*, to result in dangerous levels of global warming”) (emphasis added).) These allegations,
 9 too, are deficient to meet the County’s burden to plead that BP p.l.c.’s Washington activities
 10 are a but-for cause of its claimed sea-level-rise harm, because, as in *Terracom* and *Doe v.*
 11 *American National Red Cross*, it cannot be said that contributions of actors other than BP p.l.c.
 12 would not have been sufficient to cause that harm in the absence of BP p.l.c.’s Washington
 13 activities.

14 In sum, the FAC alleges BP p.l.c., the other defendants, and myriad others, acting
 15 around the globe, have produced massive amounts of fossil fuels, yet nowhere alleges that the
 16 County “would not have sustained [its] injury” but for any BP p.l.c. Washington activities.
 17 *See Am. Nat’l Red Cross*, 112 F.3d at 1051-52. It is precisely this “global complex of
 18 geophysical cause and effect involving all nations of the planet” that led the *City of Oakland*
 19 court to find it “manifest that global warming would have continued in the absence of all
 20 California-related activities of defendants.” 2018 WL 3609055, at *3. Here, likewise, from
 21 all that appears in the FAC, the County’s claimed injury would have occurred regardless of
 22 any BP p.l.c. contacts with Washington. The FAC accordingly fails to plead that the County’s
 23 claims arise out of or relate to BP p.l.c.’s Washington activities.

24 **b. The County’s “attribution science” methodology furnishes no**
 25 **evidence that BP p.l.c.’s Washington contacts are a but-for cause**
 26 **of the claimed injuries**

The County cannot meet its burden on this motion because, as shown, the FAC does not

1 *plead* any jurisdictionally sufficient nexus between BP p.l.c.’s alleged in-state activity and the
2 County’s claimed injuries. If the County tries to overcome its pleading’s deficiencies by
3 turning to attribution science, that theory will not help it either. As explained above, those
4 studies seek to estimate BP p.l.c.’s attributed share of emissions and climatic effects based on
5 (i) its *worldwide production* of fossil fuels (ii) since the dawn of the Industrial Revolution.
6 (*Supra* pp. 5-7.) None of the oil or natural gas production imputed to BP p.l.c. in those studies
7 occurred in Washington during the FAC time period. (*Supra* p. 7.) Indeed, because those
8 studies purport to estimate a Carbon Major’s emissions based exclusively on its historical
9 *production* of fossil fuels, their methodology would conclude that BP p.l.c.’s contribution to
10 global industrial emissions and temperature and sea-level rise from Washington production
11 during the complaint’s time period, is *zero*. The studies thus furnish no evidence to establish
12 the requisite causal link between BP p.l.c.’s Washington activities and the County’s injuries.

13 **c. Permitting specific jurisdiction in the absence of any**
14 **jurisdictionally relevant links with the forum would subject BP**
15 **p.l.c. to jurisdiction in every state, a result that cannot be squared**
16 **with recent Supreme Court decisions**

17 As discussed above, in two recent decisions the Supreme Court made abundantly clear
18 that large national or international businesses are not, by virtue of their sprawling operations,
19 subject to jurisdiction everywhere on claims lacking an adequate causal nexus to their forum
20 activities. First, in *Daimler AG*, the Court held that Daimler’s extensive national vehicle
21 distribution operations (which the Court imputed *arguendo* to Daimler), multiple California
22 facilities, and California sales accounting for 2.4% of its worldwide sales, did not render
23 Daimler “at home” in California because, were the law otherwise, “the same global reach
24 would presumably be available in every other State in which MBUSA’s sales are sizable” and
25 would destroy foreign companies’ ability to structure their operations to allow for reasonably
26 predictable jurisdictional outcomes. 134 S. Ct. at 761-62. Then, in *Bristol-Myers Squibb Co.*,
the Court held that BMS’ sales of Plavix pills in every state, including over \$900 million in
California, which accounted for more than 1% of the company’s nationwide sales revenue from

1 all products, did not subject BMS to specific jurisdiction in California for claims by patients
 2 who obtained their medication outside California, because exercising specific jurisdiction in
 3 the absence of “any adequate link between the State and the nonresidents’ claims” would
 4 “resemble[] a loose and spurious form of general jurisdiction.” 137 S. Ct. at 1781.

5 Asserting jurisdiction over BP p.l.c. in this action would directly disregard the
 6 teachings of these controlling decisions, because it would effectively authorize specific
 7 jurisdiction everywhere. Subsidiaries of integrated global energy businesses such as these
 8 defendants operate around the nation and world. If this complaint sufficed to require BP p.l.c.
 9 to defend this claim in this Court, the same “global reach” would presumably be available
 10 everywhere, which would impermissibly “resemble[] a loose and spurious form of general
 11 jurisdiction” even broader than pre-*Daimler AG* cases allowed.

12 **d. BP p.l.c.’s alleged downstream activities add nothing to this analysis.**

13 Unable to allege that subsidiaries of BP p.l.c. produced fossil fuels in Washington
 14 during the FAC’s time period, the County is left to allege that various subsidiaries transported,
 15 refined, marketed, or sold fossil fuels in the state. (FAC ¶¶ 39-53.) These allegations of
 16 “downstream” forum activities cannot cure the County’s inability to plead and prove
 17 necessary but-for causation, however, because the County has not alleged, either generally or
 18 factually, that these activities were the but-for cause of its claimed sea-level-rise harms.
 19 Attribution science does not furnish such a nexus, because it only posits a relationship
 20 between *production* of fossil fuels and emissions, not one between downstream activities (*e.g.*,
 21 refining, transporting, or selling fossil fuel products) and emissions. Attribution science is,
 22 however, the County’s only purported basis for assigning responsibility to defendants for
 23 emissions, global warming, or sea-level rise. The County has not alleged any other theory that
 24 it claims would assign responsibility for these climatic effects to participants in downstream
 25 activities in the fossil fuel business.⁷

26 ⁷ Of course, the County claims its injuries are caused by global warming, which it says results from excessive worldwide *emissions* (FAC ¶¶ 131-39) caused by consumers’ (not defendants’) worldwide combustion of fossil

1 *Bristol-Myers Squibb Co.* teaches that the only forum contacts relevant to specific
 2 jurisdiction analysis are those alleged to be *tortious and causative*. *See also Rice Aircraft*
 3 *Serv., Inc. v. Soars*, No. 2:14-cv-2878 MCE DB, 2018 WL 3203133, at *8-*10 (E.D. Cal.
 4 June 28, 2018). The specific conduct the County attacks here as tortious and causative is the
 5 production and promotion of fossil fuels. As already shown, however, the County has not
 6 alleged and cannot establish that any production by BP p.l.c. in Washington caused its claimed
 7 injuries. Nontortious downstream contacts with the state add nothing to this analysis.⁸

8 2. Exercising Jurisdiction over BP p.l.c. Would Be Unreasonable

9 Even if the first two requirements for specific jurisdiction are met, “in order to satisfy
 10 the Due Process Clause, the exercise of personal jurisdiction must be reasonable.” *Panavision*
 11 *Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998). The Supreme Court instructs that
 12 the “primary concern” in determining whether jurisdiction is reasonable is “the burden on the
 13 defendant.” *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780 (quoting *World-Wide Volkswagen*
 14 *Corp.*, 444 U.S. at 292). Relevant burdens include not only “the practical problems resulting
 15 from litigating in the forum,” but also “the more abstract matter of submitting to the coercive

16 fuels (*id.* ¶ 10 (disclaiming intention to impose “liability on Defendants for their direct emissions”).) The
 17 County’s concession that mere production of fossil fuels—without combustion and emissions by others—could
 18 not and did not cause its alleged injuries confirms that the federal Clean Air Act displaces its claims, as shown in
 19 defendants’ concurrently filed joint motion to dismiss for failure to state a claim.

20 ⁸ Defendants’ concurrently filed motion to dismiss for failure to state a claim demonstrates that the County’s
 21 claims, if any exist, are governed by federal common law. In some cases, the “federal long-arm statute” of
 22 Federal Rule of Civil Procedure 4(k)(2) permits a district court to exercise jurisdiction over a foreign defendant
 23 for a claim arising under federal law, if the defendant is not subject to personal jurisdiction in any state and the
 24 exercise of jurisdiction comports with due process. *Axiom Foods, Inc.*, 874 F.3d at 1072. The due process
 25 analysis under Rule 4(k)(2) is “nearly identical to traditional personal jurisdiction analysis with one significant
 26 difference: rather than considering contacts between [the defendant] and the forum state, [the court] consider[s]
 contacts with the nation as a whole.” *Id.* (quoting *Holland Am. Line Inc. v. Warstila N. Am., Inc.*, 485 F.3d 450,
 462 (9th Cir. 2007)). The rule applies only in “rare situations” where the defendant has “extensive contacts to
 the country.” *EcoDisc Tech. AG v. DVD Format/Logo Licensing Corp.*, 711 F. Supp. 2d 1074, 1086 n.6 (C.D.
 Cal. 2010). Here, while the FAC does not explicitly invoke Rule 4(k)(2) jurisdiction, it alleges subsidiaries of
 BP p.l.c. do business elsewhere in the United States (FAC ¶¶ 54-62), apparently in anticipation of a ruling that
 federal law governs the County’s claim. Rule 4(k)(2) will not aid the County’s jurisdictional case should the
 County actually invoke the rule. As the *City of Oakland* court ruled, the same worldwide causes and worldwide
 effects of global warming that preclude a municipality from showing that localized conduct caused global
 warming-induced sea-level rise equally preclude such a showing based on national conduct. *See* 2018 WL
 3609055, at *4 (“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.”).

1 power of a State that may have little legitimate interest in the claims in question.” *Id.* Concern
2 for the latter recognizes that restrictions on personal jurisdiction are in part “a consequence of
3 territorial limitations on the power of the respective States” and nations. *Id.* These
4 “federalism” and “comity” interests at times “may be decisive.” *Id.* Thus, as the Court has
5 explained, “[e]ven if the defendant would suffer minimal or no inconvenience from being
6 forced to litigate before the tribunals of another State; even if the forum State has a strong
7 interest in applying its law to the controversy; even if the forum State is the most convenient
8 location for litigation, the Due Process Clause, acting as an instrument of interstate federalism,
9 may sometimes act to divest the State of its power to render a valid judgment.” *Id.* at 1780-81.

10 Jurisdiction over BP p.l.c. would be unreasonable under these factors because using
11 Washington or even U.S. common law to regulate *worldwide* fossil fuel production by hailing
12 an English parent company into a Washington forum would elevate the state’s sovereignty
13 beyond any appropriate bounds. *See City of Oakland*, 2018 WL 3109726, at *7 (“[P]laintiffs
14 [cities] would have a single judge or jury in California impose an abatement fund as a result of
15 such overseas behavior [*i.e.*, production and sale of fossil fuels worldwide]. Because this relief
16 would effectively allow plaintiffs to govern conduct and control energy policy on foreign soil,
17 we must exercise great caution.”); *City of N.Y. v. BP p.l.c.*, No. 18 Civ. 182 (JFK), 2018 WL
18 3475470, at *6, *21-*22 (S.D.N.Y. July 19, 2018) (to hold five international oil and gas
19 companies liable for climate change based on worldwide fossil fuel production would pose
20 “serious foreign policy consequences” and implicate “countless foreign governments and their
21 laws and policies”). The state admittedly has an interest in protecting its coastal property. But
22 the County’s claims would reach all worldwide fossil fuel production by BP p.l.c. and the other
23 defendants, and Washington has no greater interest in applying its own or U.S. tort law to that
24 production than any other state or nation would. The sovereignty of UK courts with respect to
25 this controversy, moreover, implies a limitation on the sovereignty of Washington courts,
26 *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1780, particularly as UK courts resist “uninhibited

1 approach[es] to personal jurisdiction” that draw UK corporations into existential litigation in
2 multiple fora, *Daimler AG*, 134 S. Ct. at 763.

3 These concerns are real, not merely theoretical. If jurisdiction were reasonable in this
4 case, and this Court rendered a judgment effectively regulating defendants’ worldwide fossil
5 fuel production, thereby reshaping global energy policy, that exercise might then be repeated
6 in the courts of every other state and nation that have similarly tenuous claims to jurisdiction
7 over BP p.l.c., with innumerable conflicting outcomes. Washington does not have any unique
8 interest in this claim involving conduct and alleged effects dispersed throughout the globe.

9 **IV. CONCLUSION**

10 For all the foregoing reasons, BP p.l.c. respectfully requests that the Court grant this
11 motion and dismiss the FAC as against BP p.l.c. for lack of personal jurisdiction.

12
13 Dated: September 11, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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