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1 Defendants BP p.l.c., Chevron Corporation, ConocoPhillips, Exxon Mobil Corporation, and
2 Royal Dutch Shell plc (collectively, the “Defendants”) respectfully move under Rule 12(b)(2) to
3 dismiss all claims against them for lack of personal jurisdiction. As set forth below, this Court does
4 not have personal jurisdiction over these out-of-state Defendants, and Plaintiff’s claims against these
5 Defendants should be dismissed.

6 INTRODUCTION

7 Plaintiff, King County, seeks to hold five out-of-state energy companies liable for the alleged
8 impacts of *global* climate change, including “warming temperatures, acidifying marine waters, rising
9 seas, increasing flooding risk, decreasing mountain snowpack, and less water in the summer.”
10 Plaintiff’s First Amended Complaint (hereinafter, “Complaint”) ¶ 1, Dkt. 113. According to Plaintiff,
11 Washington law permits it to seek damages and equitable relief from this select group of Defendants
12 for harms allegedly resulting from over a century of energy consumption and climatic events around
13 the world. The Complaint suffers from numerous fatal defects, including those addressed in
14 Defendants’ Renewed Joint Motion to Dismiss for Failure to State a Claim. This Motion focuses on
15 one particular defect of Plaintiff’s Complaint: Defendants are not subject to personal jurisdiction in
16 Washington for these claims.

17 As an initial matter, this Court lacks general jurisdiction over Defendants because, as the
18 Complaint acknowledges, none of them is incorporated or headquartered in Washington, and thus none
19 is “at home” in this forum. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014).

20 In addition, this Court lacks specific personal jurisdiction over each of the Defendants for three
21 separate reasons, each of which independently requires dismissal.

22 *First*, Plaintiff’s claims do not “arise out of or relate to” Defendants’ alleged contacts with
23 Washington. *See Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021).
24 To the contrary, Plaintiff expressly acknowledges that its injuries are caused by “global warming”
25 allegedly attributable to the worldwide “combustion of fossil fuels produced by Defendants and
26 others.” Compl. ¶ 136; *see also id.* ¶¶ 2, 122, 138. Critically, the Complaint does not allege that
27 Defendants’ *in-state* conduct is directly or substantially related to *global* climate change. Nor could it.

1 Total energy consumption in Washington—of which Plaintiff can attempt to attribute at most a small
2 portion to any individual Defendant’s products—accounts for a tiny fraction of worldwide greenhouse
3 gas emissions. In fact, Plaintiff itself alleges that the combined contribution of all five Defendants’
4 worldwide production, marketing, and sale of oil and gas accounts for only “11% of all the carbon and
5 methane pollution from industrial sources . . . since the Dawn of the Industrial Revolution.” Compl.
6 ¶ 143(c). Plaintiff’s own allegations thus demonstrate that any single Defendant’s purported
7 contribution to global emissions and climate change from activities in Washington would be negligible
8 at best. In short, there is not the requisite “substantial connection” or “direct nexus” between Plaintiff’s
9 claims and Defendants’ in-state activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985);
10 *Coffey v. Mesa Airlines, Inc.*, 812 F. App’x 657, 658 (9th Cir. 2020).

11 Exercising personal jurisdiction against Defendants here would expand the bounds of specific
12 jurisdiction dramatically, in clear contravention of the Supreme Court’s guidance. The U.S. Supreme
13 Court recently emphasized that the “arise out of or relate to” requirement has “real limits” and “does
14 not mean anything goes.” *Ford Motor*, 141 S. Ct. at 1026 (internal quotation marks omitted). But if
15 specific jurisdiction could be stretched so far as to apply to Defendants here, it would follow that there
16 would be jurisdiction in this Court over *any* corporate defendant doing *any* business in the state for *all*
17 claims connected to that business no matter how attenuated the connections. Such an approach is
18 inconsistent with the Constitution as interpreted by the U.S. and Washington Supreme Courts, and it
19 should be rejected.

20 *Second*, Defendants did not have “clear notice,” as due process requires, that by producing,
21 promoting, or selling oil and gas in Washington (either directly or through subsidiaries), they would
22 become subject to jurisdiction in this forum for claims for injuries allegedly resulting, not from local
23 consumption, but instead from the cumulative worldwide consumption of *all* fossil fuel products. *Ford*
24 *Motor*, 141 S. Ct. at 1025; *see also City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1026 (N.D. Cal.
25 2018) (“*Oakland I*”) (“Everyone has contributed to the problem of global warming and everyone will
26 suffer the consequences—the classic scenario for a legislative or international solution.”), *vacated on*
27 *other grounds*, 960 F.3d 570 (9th Cir. 2020). Given the lack of any discernible link between emissions

1 in Washington purportedly attributable to Defendants’ alleged in-state contacts and any local impacts
2 of global climate change, Defendants had no way to anticipate—let alone had “clear notice”—that
3 producing, promoting, and selling oil and gas in Washington might subject them to suit here for
4 Plaintiff’s claims.

5 *Third*, the exercise of specific personal jurisdiction over Defendants would be unreasonable
6 under the Due Process Clause. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San*
7 *Francisco Cnty.*, 137 S. Ct. 1773, 1786 (2017). Litigating this case in Washington federal court would
8 contravene “the interstate judicial system’s interest in obtaining the most efficient resolution of
9 controversies” because Plaintiff’s claims implicate *global* conduct and are not localized to Washington.
10 *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). And it would threaten the
11 “interest of the several States in furthering fundamental substantive social policies” because, among
12 other things, many states and the federal government promote the very energy production and policies
13 that Plaintiff seeks to penalize through this lawsuit. *Id.* Moreover, it would impermissibly require
14 nonresident Defendants to submit to the “coercive power” of an out-of-state tribunal with respect to
15 conduct unconnected with the forum, leaving their national and even worldwide conduct subject to
16 conflicting state rules. *See Bristol-Myers Squibb*, 137 S. Ct. at 1780.

17 Because the factual allegations in Plaintiff’s Complaint, even accepted as true, do not provide
18 a basis for exercising personal jurisdiction that comports with the Due Process Clause, the Court should
19 dismiss all claims against Defendants.

20 **BACKGROUND AND PLAINTIFF’S ALLEGATIONS**

21 Plaintiff alleges an attenuated causal chain between Defendants’ allegedly tortious acts and
22 Plaintiff’s purported injuries from global climate change. Among the links in Plaintiff’s causal chain
23 are the decisions of countless third parties around the world to purchase, sell, refine, transport, and
24 ultimately combust (*i.e.*, use) Defendants’ petroleum products. That combustion, in turn, may release
25 greenhouse gas emissions (depending on the manner of the combustion and depending on whether the
26 third party uses emissions-capturing technology). Those emissions—in addition to emissions
27 originating from countless other natural and anthropogenic sources—then increase the total amount of

1 greenhouse gases in the global atmosphere. That change to the atmospheric composition, in turn,
 2 causes the atmosphere to trap more heat, which increases global temperatures, which, in turn, is alleged
 3 to raise global sea levels, among other geophysical phenomena. Compl. ¶¶ 3, 122, 143.

4 Plaintiff’s Complaint contains very few allegations about any Defendant’s *forum-related*
 5 conduct. Instead, Plaintiff relies on vague, boilerplate allegations that constitute nothing more than
 6 legal conclusions with respect to each Defendant—that “[e]ach Defendant” “substantially participates
 7 in the process by which raw crude oil is extracted from the ground, refined into fossil fuel products,
 8 including finished gasoline products, and delivered, marketed, and sold to Washington residents for
 9 use.” *Id.* ¶ 29. This paragraph contains no details about what Defendants’ “participation” in this
 10 “process” is alleged to have been, much less which portions of this process occurred in Washington,
 11 and how much was sold to, or used by, Washington residents.

12 The Complaint’s remaining jurisdictional allegations are equally deficient. Plaintiff alleges that
 13 some Defendants conduct general “business in Washington, including through [their] subsidiaries and
 14 agents,”² *id.* ¶¶ 39, 65, 80, 89, 107— for example, by having offices in Washington; owning or
 15 operating interstate pipelines; owning or operating petroleum facilities, refineries, and terminals;
 16 operating gas stations; operating tanker trucks; transporting oil and gas; and having agents for service
 17 in Washington, *see id.* ¶¶ 28–119. But, critically, the Complaint does not allege that these activities in
 18 Washington were substantially connected to bringing about the global climate events that Plaintiff
 19 alleges caused its injuries. Plaintiff’s failure to allege sufficient contacts with Washington related to
 20 its claims shows that such contacts simply do not exist, and Plaintiff’s arguments for personal
 21 jurisdiction fail as a matter of law.

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 25 ² The Complaint improperly conflates the activities of Defendants with the activities of their separately organized
 26 predecessors, subsidiaries, or affiliates. There is no factual basis alleged in the Complaint for imputing to any Defendant
 27 the alleged jurisdictional contacts of any other entity. And Defendants deny that their subsidiaries’ fossil-fuel operations
 28 can be imputed to them for jurisdictional purposes. Nevertheless, Defendants assume *arguendo* Plaintiff’s (erroneous)
 imputation of forum-related contacts for the purpose of this Joint Motion. Even with this assumption, however, Plaintiff’s
 allegations fail to provide any basis for personal jurisdiction. Defendants reserve all rights to challenge Plaintiff’s incorrect
 imputation theory and allegations about corporate relationships for any other purpose or proceeding.

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 defendants “to the extent permitted by the federal due process clause.” *Failla v. FixtureOne Corp.*, 181 Wash. 2d 642, 649-50(Wash. 2014) (en banc) (citation omitted). Thus, this Court may exercise jurisdiction over Defendants only if doing so comports with limits imposed by federal due process. *Daimler*, 571 U.S. at 125.³

In applying the Due Process Clause, courts have recognized two types of personal jurisdiction: general and specific. *Bristol-Myers Squibb*, 137 S. Ct. at 1779–80. General jurisdiction allows a court to adjudicate any claim against a defendant, regardless of the connection between the claim and the forum, so long as the defendant is “at home” in that forum. *Id.* at 1779–80 (internal quotation marks omitted). Specific jurisdiction applies “only as to a narrower class of claims”—these claims “must arise out of or relate to the defendant’s contacts” with the forum. *Ford Motor*, 141 S. Ct. at 1025 (internal quotation marks omitted).

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, 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 evaluating whether the plaintiff has met this burden, the court may not take as true “mere ‘bare bones’ assertions of minimum contacts with the

³ In federal district court, the due process inquiry ordinarily focuses on the connection between each defendant and the state where the federal court is located. *See* Fed. R. Civ. P. 4(k)(1)(A); *Walden*, 134 S. Ct. at 1121. Rule 4(k) contains an exception, however, for claims arising under federal law against a defendant “not subject to jurisdiction in any state’s courts.” Fed. R. Civ. P. 4(k)(2). As plaintiff concedes, BP p.l.c. is organized under the laws of England and Wales with its headquarters in London, England and Royal Dutch Shell plc is organized under the laws of England and Wales with its headquarters in The Hague, Netherlands. *See* Compl. ¶¶ 12, 24. As such, they are not subject to general jurisdiction in any state’s courts. *See Daimler*, 571 U.S. at 139. Plaintiff has purported to assert claims under state law and does not invoke Rule 4(k)(2). *See* Compl. ¶¶ 204–226. If Plaintiff invokes Rule 4(k)(2) for the first time in its opposition, BP and Royal Dutch Shell reserve the right to address it in reply.

1 forum or legal conclusions unsupported by *specific factual allegations*.” *Swartz v. KPMG LLP*, 476
2 F.3d 756, 766 (9th Cir. 2007) (emphasis added); *Abalos v. Bronchick*, No. C07-844RSL, 2008 WL
3 2544893, at *1 (W.D. Wash. June 23, 2008).

4 ARGUMENT

5 Plaintiff does not, and cannot, allege facts that support this Court’s exercise of personal
6 jurisdiction over Defendants for the claims asserted in the Complaint. There is no general jurisdiction
7 over Defendants because none of them is “at home” in Washington. Nor is there specific jurisdiction
8 because (1) the Complaint avers, as it must, that Plaintiff’s alleged injuries “arise out of or relate to”
9 *worldwide* conduct by countless actors, not Defendants’ alleged contacts with Washington; (2)
10 Defendants did not have “clear notice” that as a result of their activities in Washington they could be
11 sued here for the alleged combined effects of activity occurring around the world over decades; and (3)
12 exercising jurisdiction would be constitutionally unreasonable.

13 **I. Defendants Are Not Subject to General Jurisdiction in Washington.**

14 Plaintiff has not even attempted to allege that Defendants are subject to general jurisdiction in
15 Washington. It concedes that none of the Defendants is incorporated or headquartered in Washington.
16 Compl. ¶¶ 12, 15, 18, 21, 24. Therefore, none of the Defendants is “at home” in this state. *Daimler*,
17 571 U.S. at 139 (citation omitted). And Defendants’ business activities in Washington do not create
18 general jurisdiction because it would be “unacceptably grasping” to approve the exercise of general
19 jurisdiction when an out-of-state corporation merely “engages in a substantial, continuous, and
20 systematic course of business” in a state. *Id.* at 138. Therefore, the Court lacks general jurisdiction
21 over Defendants.

22 **II. Defendants Are Not Subject to Specific Jurisdiction in Washington.**

23 Because none of the Defendants is subject to general jurisdiction in Washington, Plaintiff may
24 proceed against Defendants in this forum only if it can establish specific jurisdiction over *each*
25 Defendant, which it has not done, and cannot do. *Bristol-Myers Squibb*, 137 S. Ct. at 1783 (noting that
26 the requirements for specific jurisdiction “must be met as to each defendant”) (quoting *Rush v. Savchuk*,
27 444 U.S. 320, 332 (1980)). Specific jurisdiction exists only if: (1) the defendant purposefully availed
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1 itself of the privilege of conducting activities in the State; (2) the plaintiff’s claims arise out of or relate
 2 to those activities directed at the State; *and* (3) the exercise of personal jurisdiction would be
 3 constitutionally reasonable. *Id.* at 1785–86. These jurisdictional restrictions “are more than a
 4 guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial
 5 limitations on the power of the respective States”; for a State’s exercise of sovereign power “imply[s]
 6 a limitation on the sovereignty” of other States and even foreign nations. *Bristol-Myers Squibb*, 137
 7 S. Ct. at 1780 (alteration in original) (internal quotation marks omitted). Thus, “[e]ven if the defendant
 8 would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another
 9 State; even if the forum State has a strong interest in applying its law to the controversy; even if the
 10 forum State is the most convenient location for litigation, the Due Process Clause, acting as an
 11 instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid
 12 judgment.” *Id.* at 1780–81 (alteration in original) (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

13 Here, Plaintiff fails to allege a prima facie case of specific jurisdiction because the Complaint,
 14 on its face, flunks the second and third requirements for specific jurisdiction with respect to each
 15 Defendant: the claims asserted in the Complaint do not arise out of or relate to Defendants’ alleged
 16 contacts with Washington, and exercising personal jurisdiction in this case would be constitutionally
 17 unreasonable.⁴

18 **A. Plaintiff’s Claims Do Not “Arise Out of or Relate to” Defendants’ Alleged**
 19 **Contacts with Washington.**

20 Plaintiff cannot establish specific jurisdiction over Defendants because the Complaint does not
 21 allege claims that “arise out of or relate to” Defendants’ alleged forum contacts. *Ford Motor*, 141 S.
 22 Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).

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 26 ⁴ Because this Motion can be resolved based on Plaintiff’s failure to allege facts establishing that its injuries arise out of
 27 or relate to Defendants’ alleged contacts with Washington, or that exercising personal jurisdiction over Defendants would
 28 be reasonable, the Court need not consider whether Defendants are alleged to have purposefully availed themselves of the
 privilege of conducting business in Washington to decide this Motion. Defendants do not concede that prong is satisfied
 here, and reserve all rights to challenge purposeful availment at a later stage of this proceeding if necessary.

1 While claims based on general jurisdiction “may concern events and conduct anywhere in the
2 world,” “[s]pecific jurisdiction is different: It covers defendants less intimately connected with a State,
3 but only as to *a narrower class of claims.*” *Ford Motor*, 141 S. Ct. at 1024 (emphasis added). For
4 there to be specific jurisdiction, “[t]he plaintiff’s claims . . . ‘must arise out of or relate to the
5 defendant’s contacts’ with the forum.” *Id.* at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).
6 “When there is no such connection, specific jurisdiction is lacking regardless of the extent of a
7 defendant’s unconnected activities in the State.” *Bristol-Myers Squibb*, 137 S. Ct. at 1781. And “the
8 phrase ‘relate to’ incorporates real limits.” *Ford Motor*, 141 S. Ct. at 1026.

9 Consistent with the Supreme Court’s approach, the Ninth Circuit has consistently held, in
10 dismissing claims for a lack of specific personal jurisdiction, that there must be a “substantial
11 connection” between the defendant’s in-state conduct and the plaintiff’s claims. *See, e.g., Axiom*
12 *Foods, Inc. v. Archem International, Inc.*, 874 F.3d 1064, 1070 (9th Cir. 2017); *Picot v. Weston*, 780
13 F.3d 1206, 1212–13 (9th Cir. 2017). So too have Washington courts, holding that the alleged forum
14 contacts cannot be “too attenuated.” *Nam Chuong Huynh v. Aker Biomarine Antarctic AS*, 199 Wash.
15 App. 1005 (2017) (“[I]f the connection between the defendant’s contacts with the forum and the claim
16 is too attenuated, then jurisdiction would be unreasonable.”) (internal quotation marks omitted).

17 Other courts have similarly held that the “relate to” requirement mandates that a defendant’s
18 in-state activities have a *direct, material, or substantial* connection with the plaintiff’s claims—
19 otherwise, this requirement would lose all meaning. *See, e.g., Walden v. Fiore*, 571 U.S. 277, 284
20 (2014) (“For a State to exercise jurisdiction consistent with due process, the defendant’s suit-related
21 conduct must create a *substantial connection* with the forum State.”); *Burger King Corp.*, 471 U.S. at
22 479 (requiring a “substantial connection” between plaintiff’s claims and defendant’s forum contacts);
23 *Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 27 (1st Cir. 2008) (“There must be *more than just an*
24 *attenuated connection* between the contacts and the claim, the defendant’s in-state conduct must form
25 an *important, or [at least] material, element of proof* in the plaintiff’s case.”) (emphases added)
26 (internal quotation marks omitted); *CSR, Ltd. v. Taylor*, 983 A.2d 492, 503 (Md. 2009) (requiring that
27 a cause of action must “arise[] from” or be “*directly related to*[] the defendant’s contacts with the forum

1 state”) (emphasis added); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007)
 2 (“[T]here must be a *substantial connection* between [the forum] contacts and the operative facts of the
 3 litigation.”) (emphasis added); *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1270–71
 4 (Colo. 2002) (using “substantial connection” language and requiring foreseeability). The Second
 5 Circuit goes further and requires that the “nucleus” or “focal point” of the plaintiff’s claims must be
 6 the forum state. *See Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 340 (2d Cir. 2016); *see also*
 7 *Sullivan v. Barclays PLC*, 2017 WL 685570, at *44 (S.D.N.Y. Feb. 21, 2017) (rejecting personal
 8 jurisdiction where operative facts did not have “‘nucleus’ or ‘focal point’” in the forum).

9 In short, at a minimum, there must be a “strong ‘relationship among the defendant, the forum,
 10 and the litigation’” for an exercise of personal jurisdiction to be constitutionally appropriate. *Ford*
 11 *Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S.
 12 408, 414 (1984)).

13 Plaintiff does not and cannot plead that Defendants’ contacts with Washington are substantially
 14 connected to claims based on alleged harms due to *global* climate change. Plaintiff’s claims “depend
 15 on a global complex of geophysical cause and effect involving all nations of the planet.” *City of*
 16 *Oakland v. BP p.l.c.*, 2018 WL 3609055, at *3 (N.D. Cal. Jul. 27, 2018) (“*Oakland II*”). In affirming
 17 dismissal of a materially similar climate change tort suit brought by the City of New York, the Second
 18 Circuit rejected the City’s efforts to portray its claims as merely seeking remedies for local harms,
 19 concluding that “[a]rtful pleading cannot transform [plaintiff’s] complaint into anything other than a
 20 suit over *global* greenhouse gas emissions,” with the goal being “to effectively impose strict liability
 21 for the damages caused by fossil fuel emissions no matter where in the world those emissions were
 22 released (or who released them).” *City of New York v. Chevron Corp.*, 993 F.3d 81, 91, 93 (2d Cir.
 23 2021) (emphasis added).

24 Plaintiff’s Complaint asserts that the alleged injuries will occur only as a result of total,
 25 cumulative, worldwide greenhouse gas emissions from global combustion of fossil fuels produced and
 26 sold by Defendants as well as countless other sources. *See, e.g.*, Comp. ¶ 138 (“Ongoing and future
 27 warming caused by past and ongoing use of massive quantities of fossil fuels will cause increasingly
 28

1 severe harm to King County through accelerating sea level rise, among other impacts.”); *id.* ¶ 134 (“[I]t
 2 is extremely likely that human activities, especially emissions of greenhouse gases, are the dominant
 3 cause of the observed warming since the mid-20th century.”). The Complaint acknowledges that even
 4 a “dramatic” reduction in *cumulative* global emissions would not eradicate climate change. *See* Compl.
 5 ¶ 8 (alleging that “climate change impacts” would still exist “[e]ven if global . . . GHG [greenhouse
 6 gas] emissions decrease dramatically”).

7 Plaintiff has not articulated any theory demonstrating that Defendants’ *forum-related*
 8 “production and promotion” of petroleum products is substantially related to the increase in greenhouse
 9 gases that is alleged to have caused global climate change. *See* *Fidrych v. Marriott Int’l, Inc.*, 952 F.3d
 10 124, 143 (4th Cir. 2020) (holding that the defendant’s “case-related contacts” with the forum were “too
 11 tenuous and too insubstantial to constitutionally permit the exercise of specific jurisdiction” where
 12 those contacts did not specifically “target” in-forum residents). Such activities are clearly “too
 13 attenuated” from Plaintiff’s claims. *Shute v. Carnival Cruise Lines*, 113 Wash. 2d 763, 769 (Wash.
 14 1989) (en banc). That is because the Complaint’s allegations about Defendants’ production, promotion,
 15 and sales activities in Washington cannot erase the fact that *total* energy consumption in Washington,
 16 with a population of fewer than 8 million people, indisputably accounts for a miniscule fraction of
 17 energy consumption in the United States and around the world. In fact, Plaintiff asserts that *all five*
 18 Defendants are collectively responsible, through all of their “production, marketing, and sale of fossil
 19 fuels” *across the world*, for *only 11%* of global emissions “that ha[ve] accumulated in the atmosphere
 20 since the dawn of the Industrial Revolution.” Compl. ¶ 143(c).⁵ Plaintiff’s own allegations thus
 21 demonstrate that greenhouse gas emissions resulting from the combustion of products Defendants
 22 produce, sell, or promote in Washington make up, at most, a very small amount of the global
 23 greenhouse gas emissions that allegedly contribute to climate change and, ultimately, Plaintiff’s
 24 claimed injury.

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 27 ⁵ Defendants do not concede that greenhouse gases can be attributed to particular emitters as the Complaint suggests,
 28 nor do they concede the accuracy of this calculation or the methodology used in the sources cited by the Complaint.

1 Moreover, the alleged effects of global climate change in Washington also cannot be found to
2 “arise out of or relate to” Defendants’ contacts with Washington because, as other courts have
3 recognized, “the undifferentiated nature of greenhouse gas emissions from all global sources and their
4 worldwide accumulation over long periods of time” mean that “there is no realistic possibility of tracing
5 any particular alleged effect of global warming to any particular emissions by any specific person,
6 entity, [or] group at any particular point in time.” *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F.
7 Supp. 2d 863, 880 (N.D. Cal. 2009), *aff’d*, 696 F.3d 849 (9th Cir. 2012). In other words, “it is not
8 plausible to state which emissions—emitted by whom and at what time in the last several centuries *and*
9 *at what place in the world*—‘caused’ Plaintiff[’s] alleged global warming related injuries.” *Id.* at 881
10 (emphasis added).

11 It is no answer for Plaintiff to assert that its claims arise out of Defendants’ Washington contacts
12 on the theory that the “effects” of Defendants’ out-of-state activities are foreseeably being felt, or will
13 be felt, in Washington. As the Supreme Court has repeatedly explained, “‘foreseeability’ alone has
14 never been a sufficient benchmark for personal jurisdiction under the Due Process Clause,” even when
15 it “was ‘foreseeable’ that the [product] would cause injury in” the forum state. *World-Wide*
16 *Volkswagen*, 444 U.S. at 295; *Walden*, 571 U.S. at 290 (“[M]ere injury to a forum resident” is
17 insufficient.); *Burger King Corp.*, 471 U.S. at 474 (The “foreseeability of causing *injury* in another
18 State . . . is not a ‘sufficient benchmark’ for exercising personal jurisdiction.”).

19 The Supreme Court’s recent decision in *Ford Motor* confirms there is no specific personal
20 jurisdiction over Defendants for these claims. In *Ford Motor*, two individual consumers sued an
21 automobile manufacturer in Montana and Minnesota state courts, asserting product liability claims
22 stemming from allegedly defective automobiles that were manufactured and sold initially out of state,
23 but that caused accidents in the forum states. The Supreme Court held that the plaintiffs’ product
24 liability claims were sufficiently related to Ford’s activities in the forum states of selling, promoting,
25 and servicing the very same type of automobile that injured the plaintiffs in the forum states. *Ford*
26 *Motor*, 141 S. Ct. at 1032. *Ford Motor* cautioned that the “relate to” requirement “incorporates real
27 limits” and “does not mean anything goes,” but is satisfied where “a company . . . serves a market for

1 a product in the forum State and the product *malfunctions there*” “*caus[ing] injury in the State* to one
2 of its residents.” *Id.* at 1022, 1026–27 (emphasis added).

3 Here, unlike in *Ford Motor*, Plaintiff’s claims would be precisely the same even if Defendants’
4 products had *never entered Washington*—it is only because of the *global* use and combustion of
5 petroleum products that Plaintiff alleges it will suffer any injuries. In this regard, Plaintiff’s claims
6 here are nothing like those asserted in *Ford Motor*, where the defendant’s product malfunctioned in the
7 forum causing an accident in the forum that injured the plaintiffs in the forum. *Ford Motor*, 141 S. Ct.
8 at 1032. Unlike in *Ford Motor*, Plaintiff’s claimed injuries in this matter are allegedly caused by a
9 complex geophysical *global* phenomenon, which, according to Plaintiff, is caused by cumulative
10 energy consumption and emissions around the world occurring over decades—not by any malfunction
11 (or ordinary use) of Defendants’ products within Washington. Energy consumed in Washington
12 accounts for a tiny fraction of worldwide greenhouse gas emissions; therefore, even if any in-state
13 activities caused Washington consumers to increase fossil fuel use, that increase would be “too
14 attenuated” from Plaintiff’s alleged injuries. *Shute*, 113 Wash. 2d at 769. In short, Plaintiff, unlike the
15 *Ford Motor* plaintiffs, is not alleging that Defendants’ products malfunctioned in Washington causing
16 an accident in Washington that injured Plaintiff in Washington. Rather, the “accidents” for which
17 Plaintiff seeks damages are the alleged global climatic phenomenon brought about by all energy
18 consumption and emissions across the world occurring over half a century.

19 Having failed to demonstrate that its claims “arise out of or relate to” Defendants’ alleged
20 contacts with Washington, Plaintiff has not established a *prima facie* case of specific personal
21 jurisdiction, and its claims therefore should be dismissed.

22 **B. Defendants Were Not On “Clear Notice” That Personal Jurisdiction Would Exist**
23 **in Washington for Suits Based on Harms from Global Climate Change.**

24 In *Ford Motor*, the Supreme Court also held that the “fair[ness]” requirement of the Due Process
25 Clause requires a defendant have “clear notice” that, in light of its activities in the forum, it is
26 susceptible to a lawsuit in the state for the claims asserted by the plaintiff. *Id.* at 1025, 1030. Unlike
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1 in *Ford Motor*, where the Court found Ford had clear notice of potential lawsuits for harms caused by
2 “product malfunctions” within the state, *id.* at 1027, the “clear notice” requirement is not met here.

3 Plaintiff here does not allege it suffered injury caused by a product malfunction in the forum
4 state. It does not allege—nor could it—that the use of Defendants’ products in Washington, or
5 Defendants’ production or promotion of those products in Washington, gave rise to global climate
6 change and thus to Plaintiff’s alleged injuries. To the contrary, Plaintiff’s theory is predicated upon
7 extra-forum, *worldwide* conduct by Defendants and countless others worldwide. Even accepting all of
8 Plaintiff’s allegations as true, Defendants did not have “clear notice” that they would become subject
9 to jurisdiction in the State’s courts for the alleged local effects of decades-long global climate change—
10 a complex worldwide phenomenon resulting from the cumulative effects of global greenhouse gas
11 emissions by countless individuals and entities (including Plaintiff itself). *See, e.g., Oakland II*, 2018
12 WL 3609055, at *3 (“Plaintiffs’ nuisance claims depend on a global complex of geophysical cause and
13 effect involving all nations of the planet.”). Such claims inherently concern transboundary and global
14 conduct, thus amounting to “an extraterritorial nuisance action.” *City of New York*, 993 F.3d at 91–92,
15 103. As in *City of New York*, Plaintiff here “requests damages for the cumulative impact of conduct
16 occurring simultaneously across just about every jurisdiction on the planet.” *Id.* at 92.

17 Defendants had no way to anticipate that, by allegedly processing, marketing, and/or selling
18 fossil fuel products in Washington, either directly or through subsidiaries, they could be sued for
19 alleged local environmental injuries resulting from the undifferentiated conduct of countless
20 individuals and entities who consumed fossil fuel products around the world. This case is thus far
21 afield from *Ford Motor*, where Ford should reasonably have expected to be sued for in-forum injuries
22 resulting directly from in-forum use of products it sold in the forum states. Exercising personal
23 jurisdiction over Defendants in this case would deprive Defendants of the “fair warning” that “a
24 particular activity may subject [them] to the jurisdiction of a foreign sovereign,” and thus would not
25 comport with core principles of due process. *Burger King*, 471 U.S. at 472 (internal quotation marks
26 omitted) (alteration in original). Such an unbounded exercise of jurisdiction exceeds the limits of due
27 process.

1 **C. Exercising Personal Jurisdiction over Defendants Would Be Unreasonable and**
 2 **Conflict with Federalism Principles.**

3 Because Plaintiff has not alleged, and cannot allege, facts that, if true, would show that its
 4 claims arise out of or relate to Defendants’ contacts with Washington, the Court need not reach the
 5 reasonableness inquiry. Nonetheless, the unreasonableness of exercising jurisdiction here provides an
 6 additional reason to dismiss the Complaint. *See Bristol-Myers Squibb*, 137 S. Ct. at 1786 (“[T]he
 7 exercise of jurisdiction must be reasonable under the circumstances.”).

8 In determining whether jurisdiction is reasonable under the Due Process Clause, courts consider
 9 “the burden on the defendant, the forum State’s interest in adjudicating the dispute, the plaintiff’s
 10 interest in obtaining convenient and effective relief, the interstate judicial system’s interest in obtaining
 11 the most efficient resolution of controversies, and the shared interest of the several States in furthering
 12 fundamental substantive social policies.” *Burger King*, 471 U.S. at 477 (quoting *Worldwide*
 13 *Volkswagen*, 444 U.S. at 292). The primary concern in assessing the reasonableness of personal
 14 jurisdiction is the burden of “submitting to the coercive power” of a court in light of the limits of
 15 interstate federalism on a court’s ability to exercise jurisdiction. *Bristol-Myers Squibb*, 137 S. Ct. at
 16 1780. “[R]estrictions on personal jurisdiction ‘are more than a guarantee of immunity from
 17 inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the
 18 respective States.’” *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Indeed, the Supreme
 19 Court has admonished courts to take into consideration the interests of the “several States,” and
 20 emphasized that “[g]reat care and reserve should be exercised when extending our notions of personal
 21 jurisdiction into the international field.” *Asahi Metal Indus. Co. v. Super. Ct. of Cal., Solano Cnty.*,
 22 480 U.S. 102, 115 (1987) (internal quotation marks omitted). A majority of the relevant considerations
 23 weigh decisively against the exercise of personal jurisdiction in this case.

24 *First*, exercising specific jurisdiction over these out-of-state Defendants for global climate
 25 change-related claims would expand the jurisdiction of this Court well beyond the limits of due process,
 26 burdening these Defendants and interfering with the power of each Defendant’s home state’s
 27 jurisdiction over its corporate citizens. This is not a case where one state has a more “significant
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1 interest[.]” in addressing climate change. *See Ford Motor*, 141 S. Ct. at 1030. Plaintiff’s position would
 2 resurrect the loose approaches to personal jurisdiction that the Supreme Court rejected in *Daimler* and
 3 *Bristol-Myers Squibb*, and would make companies of any size operating in any capacity related to the
 4 production, distribution, promotion, or sale of energy products anywhere in the world susceptible to
 5 climate change suits in every forum in the country based on the slightest activity within the forum. As
 6 the Supreme Court explained in *Asahi*, a products liability case involving the sale and distribution of
 7 tires to California by out-of-state defendants:

8 The procedural and substantive interests of other nations in a state court’s assertion of
 9 jurisdiction over an alien defendant will differ from case to case. In every case,
 10 however, those interests, as well as the Federal interest in Government’s foreign
 11 relations policies, will be best served by a careful inquiry into the reasonableness of the
 12 assertion of jurisdiction in the particular case, and an unwillingness to find the serious
 burdens on an alien defendant outweighed by minimal interests on the part of the
 plaintiff or the forum State.

13 *Asahi*, 480 U.S. at 115. This problem is particularly pronounced with respect to foreign Defendants.⁶
 14 Under Plaintiff’s theory, *any* foreign energy company could be forced to appear before *any* court in the
 15 United States based on its alleged contribution to global climate change, so long as that company
 16 operates within that court’s jurisdiction. If other nations adopted a similar rule, American companies
 17 could be sued on climate change-related claims in courts around the world. Well-settled principles of
 18 due process do not permit such a result.

19 *Second*, the assertion of jurisdiction here would offend the principles underlying the interstate
 20 judicial system because Plaintiff seeks to use Washington tort law to regulate Defendants’ nationwide
 21 (indeed, worldwide) activities, including fossil fuel production and sale—activities heavily regulated
 22 by the federal government, all 50 States, and every other country in the world in which these companies
 23 operate. As the Second Circuit observed, “a substantial damages award like the one requested by the
 24 City would effectively regulate the Producers’ behavior far beyond [the State]’s borders.” *City of New*
 25 *York*, 993 F.3d at 92. The interests of the “interstate judicial system” are not served by requiring
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 28 ⁶ As explained above, *supra* n.3, Defendants BP p.l.c. and Royal Dutch Shell plc are foreign corporations.

1 witnesses and counsel to litigate the same climate change actions simultaneously under different legal
2 rules, especially given the substantial risk of inconsistent decisions.

3 *Third*, the “substantive social policies” Plaintiff seeks to advance—curbing energy production
4 and the use of fossil fuels or allocating the downstream costs of consumer use to the energy companies
5 to bear directly—are not shared across the various states and nations. Indeed, the Second Circuit
6 recognized that “amicus briefs [filed by states] on both sides of this dispute aptly illustrate[] that this
7 is an interstate matter raising significant federalism concerns.” *City of New York*, 993 F.3d at 92; *see*
8 *also id.* at 93 (“[A]s states will invariably differ in their assessment of the proper balance between these
9 national and international objectives, there is a real risk that subjecting the Producers’ global operations
10 to a welter of different states’ laws could undermine important federal policy choices.”); *Oakland I*,
11 325 F. Supp. 3d at 1026 (“[P]laintiffs would have a single judge or jury in California impose an
12 abatement fund as a result of such overseas behavior. Because this relief would effectively allow
13 plaintiffs to govern conduct and control energy policy on foreign soil, we must exercise great
14 caution.”). In fact, just last week, the Biden Administration announced that it is “engaging with
15 relevant OPEC+ members” to encourage “*production increases*” of crude oil in hopes of lowering
16 “high[] gasoline costs,” because “reliable and stable energy supplies” are essential to the “ongoing
17 global recovery” from the pandemic.⁷ Plaintiff’s claims here similarly implicate the interests of
18 numerous other states and nations, and thus this Court cannot reasonably exercise jurisdiction over
19 Defendants consistent with principles of interstate federalism. *See Asahi*, 480 U.S. at 115–16 (holding
20 in part that the “international context” and “substantive interests of other nations,” compared with the
21 “the slight interests of the plaintiff and the forum State,” rendered the exercise of personal jurisdiction
22 “unreasonable and unfair”).

23 **CONCLUSION**

24 For the foregoing reasons, Plaintiff’s claims against the out-of-state Defendants should be
25 dismissed in their entirety for lack of personal jurisdiction.

26 _____
27 ⁷ The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global*
28 *Energy Markets*, Aug. 11, 2021, <https://bit.ly/3yXWVFO>.

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