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Hon. Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

KING COUNTY,

Plaintiff,

v.

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

Defendants.

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

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

NOTE ON MOTION CALENDAR:

September 28, 2018

ORAL ARGUMENT REQUESTED

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

INTRODUCTION

Plaintiff seeks to hold Chevron and four other energy companies (collectively, "Defendants") responsible for global climate change, including "warming temperatures, acidifying marine waters, rising seas, increasing flooding risk, decreasing mountain snowpack, and less water in the summer." Am. Compl. ¶ 1 (ECF No. 113). Plaintiff claims that Defendants' wholly lawful acts of producing, marketing, and selling petroleum products are a "public nuisance" and have caused a "trespass" on Plaintiff's land. Plaintiff seeks "hundreds of millions of dollars" to fund infrastructure projects to counter the rising sea level that Plaintiff claims to anticipate as a result of global climate change. *Id.* ¶ 213.

Plaintiff's claims against Chevron must be dismissed because Plaintiff has not alleged facts supporting personal jurisdiction. Indeed, Plaintiff *cannot* allege facts sufficient to establish personal jurisdiction, as Judge Alsup recently held in a materially identical action presenting the same claims, against the same five Defendants, and brought by the same private lawyers representing Plaintiff here. *See City of Oakland v. BP P.L.C.*, 2018 WL 3609055 (N.D. Cal. July 27, 2018). Plaintiff does not even attempt to allege *general* jurisdiction over Chevron, and for good reason—Chevron, a Delaware company headquartered in California, is not "at home" in Washington. *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). Plaintiff's allegations of *specific* jurisdiction are also insufficient because Plaintiff fails to allege facts showing that Chevron's alleged forum-related conduct is the "but for" cause of the injury allegedly suffered by King County as a result of global climate change. *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048, 1051–52 (9th Cir. 1997); *City of Oakland*, 2018 WL 3609055, at *3 (finding no personal jurisdiction where "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming").

Despite its jurisdictional allegations purporting to link Chevron to Washington, the Amended Complaint fails to establish specific jurisdiction because it does not (and cannot) allege that Plaintiff's injury from global climate change would not have arisen without Chevron's alleged Washington-related conduct. Plaintiff's Amended Complaint expressly attributes global climate change to worldwide and centuries-long causal forces—in Plaintiff's words, its climate change injury has resulted from the "cumulative produc[tion] of fossil fuels from the mid-19th century to present." Am. Compl. ¶ 143(b). In comparison to the centuries of global conduct leading to climate change, Chevron's alleged *Washington-related* conduct is momentary and microscopic. It is implausible to allege (and indeed, Plaintiff does not attempt to allege) that Chevron's *forum-related* conduct is the "but for" cause of *global climate change*. On the contrary, "[i]t is manifest that global warming would have continued in the absence of all [Washington]-related activities of Defendants," and therefore Plaintiff has "failed to adequately link each defendants' alleged [Washington] activities to [Plaintiff's] harms." *City of Oakland*, 2018 WL 3609055, at *3. This is the end of the inquiry. Without an allegation that King County's injury would not have occurred without Chevron's Washington-related conduct, there is no specific jurisdiction over Chevron.

BACKGROUND AND PLAINTIFF'S ALLEGATIONS

Plaintiff filed its Complaint on May 9, 2018 in King County Superior Court and Chevron removed the action to this Court on May 25, 2018. ECF No. 1. On July 27, 2018, Defendants jointly moved to dismiss Plaintiff's Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). ECF No. 111. Each Defendant also moved to dismiss for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2). ECF Nos. 106, 108, 109, 110, 112. Plaintiff then filed an Amended Complaint on August 17, 2018. ECF No. 113. Even after amending, Plaintiff still has not alleged—because it cannot allege—sufficient contacts between Chevron and Washington.

Plaintiff's Amended Complaint alleges (as it must) that there is a long causal chain

between Defendants' allegedly tortious acts—the "production, marketing, and sale" of petroleum products—and the purported injury to Plaintiff (global climate change). Am. Compl. ¶ 28. Among the links in that causal chain are the independent decisions of countless third parties around the world to purchase, resell, refine, transport, and ultimately combust the petroleum products. That combustion, in turn, may release greenhouse gas emissions (depending on the manner of the combustion and depending on whether the third party uses emissions-capturing technology). Those emissions, in turn, increase the total amounts of greenhouse gases in the global atmosphere. That change to the atmospheric composition, in turn, is alleged to cause the atmosphere to trap heat, which increases global temperature, which, in turn, is alleged to raise global sea levels. *Id.* ¶¶ 3, 122, 143.

Plaintiff's Amended Complaint added to the very few allegations about Chevron's *forum-related* conduct that existed in Plaintiff's initial complaint. The Amended Complaint gathers its jurisdictional allegations in Section C, entitled "Defendants' connections to Washington." *Id.* at 9. In an introductory paragraph to this Section, Plaintiff alleges generally that "[e]ach Defendant," "substantially participates in the process by which raw crude oil is extracted from the ground, refined into fossil fuel products, including finished gasoline products, and delivered, marketed, and sold to Washington residents for use." *Id.* ¶ 29. This paragraph contains no details about what Chevron's "participation" in this "process" is alleged to have been.

The Amended Complaint's *specific* factual allegations about Chevron's supposed "connections to Washington" are as follows:

First, Plaintiff alleges that the Chevron parent company is responsible for certain "fundamental business decision[s]" and that the parent company's Board has the "highest level of direct responsibility" for "climate change" issues. *Id.* ¶¶ 63–64.

Second, Plaintiff alleges that "Chevron does business in Washington, including through

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its subsidiaries and agents."[1] *Id.* ¶ 65. Plaintiff names six subsidiaries that "are registered to do business in Washington and have an agent for service of process in Washington." *Id.* Plaintiff further alleges that two Chevron subsidiaries are licensed as "fuel supplier[s]" in Washington, which "allows for import and export of fuel," and that one of those subsidiaries is also licensed as an "aircraft fuel distributor in Washington." *Id.* ¶ 73.

Third, Plaintiff alleges that several Chevron subsidiaries participate in transporting petroleum products to Washington. *Id.* ¶¶ 66–69. Plaintiff asserts that Chevron Pipe Line Company "operates pipeline assets that transport" petroleum products, and that "Eastern Washington markets receive petroleum product via the Chevron pipeline," including petroleum product which is delivered to a facility in Pasco, Washington. *Id.* ¶¶ 66, 69. Plaintiff further alleges that Chevron "owns and operates a refinery in Salt Lake City, Utah" which "supplies petroleum products, including gasoline, to eastern Washington." *Id.* ¶ 68.

Fourth, Plaintiff alleges that, in the past, Chevron has owned companies or assets involved in transporting petroleum products to Washington and refining asphalt in Washington. Plaintiff alleges that Chevron partially owned "the Yellowstone Pipeline that transports fossil fuel products, including gasoline, into Washington" until "at least 2002" and "owned the Northwest Pipeline, which supplied fossil fuel products from Salt Lake City, Utah, into eastern Washington" until 2013. *Id.* ¶ 67. Similarly, Plaintiff alleges that Chevron "owned and/or operated a fleet of tanker trucks to deliver gasoline to retail gasoline stations in Washington" and that, until 2005, Chevron "owned Point Wells, a 97–acre parcel of land used for an asphalt refining plant and petroleum product storage" in Washington. *Id.* ¶¶ 75–76.

Fifth, Plaintiff alleges that a *different* company—Texaco—"co-owned" an oil refinery in Washington, "*[b]efore it merged with Chevron*." *Id.* ¶ 70 (emphasis added). Texaco "divested its

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

share in early 2000," which was "before" the "merg[er]." *Id.* Plaintiff contends that "Chevron entered into contracts to purchase hundreds of thousands of barrels of fossil fuel products, including gasoline, diesel, and jet fuel, from the Anacortes refinery prior to Texaco's merger with Chevron." *Id.* ¶ 72.

Sixth, Plaintiff alleges, "upon information and belief," that "Chevron, through its subsidiaries and agents, also produces oil in Alaska, . . . and some of this crude oil is supplied to Washington." *Id.* ¶ 71. Plaintiff does not allege the amount of crude oil allegedly "supplied to" Washington from Alaska, nor the owner/seller of the oil.

Seventh, Plaintiff alleges that "Chevron has entered into contracts with owners and/or operators of Chevron-branded retail gasoline stations in Washington" and that "Chevron exercises control over gasoline product quality and specifications" at those stations. *Id.* ¶ 74. Plaintiff asserts that Chevron "promote[s] sales of gasoline and other products at its branded gasoline stations" in Washington by "offer[ing] credit cards" and "cents-per-gallon fuel credits" to consumers through its "interactive website." *Id.* The Amended Complaint also includes quotations from that website indicating that convenience stores affiliated with Chevron operate in Washington. *Id.*

These allegations are the sum total of Chevron's claimed "connections to Washington." *Id.* at 8. Notably, despite amending its complaint, Plaintiff nowhere contends that its purported injuries from global climate change would not have occurred without Chevron's alleged Washington-related conduct. Plaintiff's ongoing failure to allege sufficient contacts with Washington shows that such contacts simply do not exist, and Plaintiff's arguments for personal jurisdiction fail as a matter of law.

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.*, 336 P.3d 1112, 1116 (Wash. 2014) (en banc) (citation omitted). Thus, this Court may exercise jurisdiction over Chevron only if doing so comports with limits imposed by federal due process. *Daimler*, 571 U.S. at 125.

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

ARGUMENT

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

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

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

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

principal place of business in California. Am. Compl. ¶ 15. These are the "paradigm" forums in which a corporation is "at home." *Daimler*, 571 U.S. at 137. Only in "an exceptional case" would a corporation's contacts be "so substantial and of such a nature as to render the corporation at home" anywhere else. *Id.* at 139 n.19; *see also AM Tr. v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff'd*, 681 F. App'x 587 (9th Cir. 2017) ("The only relevant considerations for purposes of determining general jurisdiction are place of incorporation and principal place of business.").

Plaintiff does not allege any "exceptional" circumstances that would make Chevron "at home" in Washington. *Id.* Merely "doing business" in a forum, as Plaintiff alleges, *see* Am. Compl. ¶¶ 29, 65, is not sufficient to make an out-of-state corporation "at home" in that forum and thereby confer general jurisdiction. *See Daimler*, 571 U.S. at 123, 136 (rejecting general jurisdiction in California because defendant's "slim contacts with the State hardly render[ed] it at home" even though "California sales account[ed] for 2.4% of Daimler's worldwide sales"); *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1559 (2017) (rejecting general jurisdiction in Montana, even though defendant maintained "over 2,000 miles of railroad track and more than 2,000 employees" in the forum); *Martinez v. Aero Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014) (rejecting general jurisdiction in California even though defendant had contracts "worth between $225 and $450 million" to sell airplanes to a California corporation, sent representatives to California to promote its products, and advertised in California, because these contacts were "minor compared to its other worldwide contacts").

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

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

lack of specific jurisdiction because out-of-state regulatory officer's "relation to blood transfusions performed in Arizona is far too attenuated to satisfy the 'but for' test").

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

Plaintiff's own allegations demonstrate that Chevron's alleged *forum-related* conduct cannot possibly be the "but for" cause of King County's alleged injury from global climate change. *Unocal Corp.*, 248 F.3d at 925. Plaintiff claims injury from a global phenomenon caused by the accumulation of worldwide greenhouse gas emissions over the last two centuries; not from Chevron's alleged activities in Washington. Compl. ¶¶ 141, 143. Plaintiff's Amended Complaint itself makes clear that global climate change would have occurred without any of the greenhouse gas emissions that may have resulted from Chevron's alleged Washington-related conduct of

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

1 supplying and transporting some portion of petroleum products to Washington, promoting
2 gasoline sales at Chevron-branded gasoline stations in Washington, refining asphalt in
3 Washington, or purchasing petroleum products from a refinery in Washington. *Id.* ¶¶ 66–76. The
4 Amended Complaint acknowledges that even a "dramatic" reduction in *cumulative* global
5 emissions—let alone the infinitesimally small reduction that may have occurred if Chevron's
6 purported Washington activities had never taken place—would not eradicate climate change. *See*
7 Am. Compl. ¶ 8 (alleging that "climate change impacts" would still exist "[e]ven if
8 global . . . GHG [greenhouse gas] emissions decrease dramatically"). It follows that Plaintiff has
9 not alleged and cannot allege that Chevron's *forum-related* "production and promotion" of
10 petroleum products is the "but for" cause of global climate change. Indeed, as Judge Alsup
11 reasoned in dismissing a materially identical action for lack of personal jurisdiction, where
12 "plaintiffs' nuisance claims depend on a global complex of geophysical cause and effect
13 involving all nations of the planet," and "[o]cean rise . . . would have occurred even without
14 regard to each defendants' [state] conduct," personal jurisdiction will not lie. *City of Oakland*,
15 2018 WL 3609055, at *3.

16 Because Plaintiff has not satisfied the "but for" test, it has not made out a *prima facie* case
17 of specific jurisdiction in Washington. For that reason, "the Due Process Clause, acting as an
18 instrument of interstate federalism . . . divest[s] the State of its power to render a valid judgment,"
19 "even if the defendant would suffer minimal or no inconvenience; . . . even if the forum State has
20 a strong interest in applying its law in the controversy; [and] even if the forum State is the most
21 convenient location for litigation." *Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct.
22 1773, 1780–81 (2017) (holding that no specific jurisdiction existed over defendant prescription
23 drug manufacturer because the plaintiffs' claims did not arise from the defendant's forum
24 contacts).

25 **CONCLUSION**

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

Dated: August 31, 2018

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** Pursuant to this Court's Electronic Filing Procedure III.L, the electronic signatory has obtained approval from all other signatories

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CERTIFICATE OF SERVICE

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

DATED: August 31, 2018

ORRICK, HERRINGTON & SUTCLIFFE LLP

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