

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

COUNTY OF MULTNOMAH,

Plaintiff,

vs.

Case No. 23CV25164

EXXON MOBIL CORP., SHELL PLC, F.K.A.
ROYAL DUTCH SHELL PLC, SHELL
U.S.A., INC., EQUILON ENTERPRISES LLC
DBA SHELL OIL PRODUCTS US, BP PLC,
BP AMERICA, INC., BP PRODUCTS
NORTH AMERICA, INC., CHEVRON
CORP., CHEVRON U.S.A., INC.,
CONOCOPHILLIPS, MOTIVA
ENTERPRISES, LLC, OCCIDENTAL
PETROLEUM F.K.A. ANADARKO
PETROLEUM CORP., SPACE AGE FUEL,
INC., VALERO ENERGY CORP.,
TOTALENERGIES MARKETING USA
F.K.A. TOTAL SPECIALTIES USA, INC.,
MARATHON OIL COMPANY,
MARATHON OIL CORP., MARATHON
PETROLEUM CORP., KOCH INDUSTRIES,
INC., AMERICAN PETROLEUM
INSTITUTE, WESTERN STATES
PETROLEUM ASSOCIATION, MCKINSEY
& COMPANY, INC., MCKINSEY
HOLDINGS, INC., NW NATURAL F.K.A.
NORTHWEST NATURAL GAS COMPANY,
OREGON INSTITUTE OF SCIENCE AND
MEDICINE and DOES 1-250 INCLUSIVE,

Defendants.

**OCCIDENTAL PETROLEUM
CORPORATION'S MOTION TO
DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT
PURSUANT TO ORCP 21**

(Hon. Benjamin Souede)

Oral Argument Requested

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1 **UTCR 5.010 CERTIFICATE OF COMPLIANCE**

2 No conferral is required pursuant to UTCR 5.010 because this is a motion to dismiss for
3 failure to state a claim and for lack of personal jurisdiction.

4 **MOTION**

5 Pursuant to ORCP 21 (A)(1)(b) and (h), Defendant Occidental Petroleum Corporation
6 (“OPC”),¹ through its undersigned counsel, respectfully requests this Court dismiss OPC from the
7 case with prejudice. Pursuant to UTCR 5.050, oral argument is requested and estimated to take
8 approximately 20 minutes; official court reporting services are requested.

9 **I. INTRODUCTION**

10 OPC joins in Defendants’ Joint Motion to Dismiss Plaintiff’s Second Amended Complaint
11 for Lack of Personal Jurisdiction and Defendants’ Joint Motion to Dismiss Plaintiffs’ Second
12 Amended Complaint for Failure to State a Claim. OPC files this individual motion to provide OPC-
13 specific reasons why this Court lacks jurisdiction over OPC, or in the alternative, why Plaintiff has
14 failed to state a claim against OPC.

15 In Plaintiff’s Second Amended Complaint (hereinafter “SAC”), OPC is mentioned in *two*
16 substantive allegations—neither of which supports exercising personal jurisdiction over OPC or
17 states facts sufficient to constitute a claim against OPC. The SAC alleges no facts linking OPC to
18 Oregon—it does not allege that OPC is present in Oregon, does business here, directs activities
19 here, or owns property here—and so the Court cannot find that Plaintiff’s claims arise out of or
20 relate to OPC’s nonexistent activities within Oregon. The SAC also alleges no OPC-specific facts
21 in support of its claims for relief. Rather, Plaintiff employs improper collective pleading to group
22 Defendants together in an attempt to circumvent its obligations under ORCP 18 A to allege facts
23 sufficient (i) to show this Court may exercise personal jurisdiction over OPC and (ii) that Plaintiff
24 is entitled to relief against OPC. Plaintiff has failed to satisfy each of these obligations. Therefore,
25 OPC respectfully requests that this Court grant its Motion and dismiss OPC from this matter.

26
27 ¹ Plaintiff names “Occidental Petroleum F.K.A. Anadarko Petroleum Corp” as a Defendant. *See*
28 County of Multnomah’s October 4, 2024, Second Amended Complaint ¶ 102. OPC’s correct name
is “Occidental Petroleum Corporation.” OPC never has been formerly known as Anadarko
Petroleum Corporation, which is a distinct corporation that OPC acquired in 2019.

1 **II. BACKGROUND**

2 Of the 552 paragraphs in the SAC, only **two** mention OPC by name. These two allegations
3 are both found in the Party “Background Section” of the SAC, where Plaintiff identifies the parties
4 to the lawsuit. *See* SAC ¶¶ 102, 105. As to OPC, Plaintiff alleges:

5 102. Defendant, Occidental Petroleum F.K.A. Anadarko Petroleum Corp. (Anadarko) is an
6 American Petroleum and natural gas exploration company headquartered in the Woodlands,
7 Texas. Anadarko is ranked 257th on the Fortune 500[] and is registered with the SEC and is
8 traded as APC.

9 ...

10 105. In 2019, Anadarko was acquired by Occidental Petroleum.

11 ...

12 SAC. ¶¶ 102, 105. There are no substantive references to OPC in remainder of the SAC. Plaintiff
13 does not allege any OPC contacts with or conduct by OPC in the State of Oregon.

14 **III. ARGUMENT**

15 **A. This Court Lacks Personal Jurisdiction Over OPC.**

16 Oregon courts exercise jurisdiction over out-of-state defendants pursuant to ORCP 4. *See*
17 *State ex rel. Circus Circus Reno, Inc. v. Pope*, 317 Or 151, 153 (1993). ORCP 4 permits the Court
18 to exercise jurisdiction whenever consistent with the Due Process Clause of the Fourteenth
19 Amendment to the United States Constitution. *Id.* at 156. The Constitution authorizes two types of
20 personal jurisdiction—general, all-purpose jurisdiction and specific jurisdiction.

21 A corporation is subject to general jurisdiction only in the forum where it is “at home.”
22 *Daimler AG v. Bauman*, 571 US 117, 122 (2014). This Court has general jurisdiction only over
23 entities whose “place of incorporation, [or] principal place of business” is in Oregon. *Id.* at 137;
24 *see also Cox v. HP Inc.*, 317 Or App 27, 32 (2022) (“*Cox I*”) (citing *Ford Motor Co. v. Montana*
25 *Eighth Judicial District Ct.*, 592 US 351, 358 (2021)).

26 An out-of-state corporation can be subject to specific jurisdiction. *See Cox v. HP Inc.*, 368
27 Or 477, 482 (2021) (“*Cox II*”). Oregon courts follow the federal test for specific jurisdiction,
28 namely that “[f]irst, the defendant must have ‘minimum contacts’ with the forum state.” *Circus*

1 *Circus*, 317 Or at 159. “‘Minimum contacts’ will be found where the defendant has ‘purposefully
2 directed’ its activities at residents of the forum state **and** where the litigation ‘arises out of or relates
3 to’ those activities.” *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 US 462, 472 (1985))
4 (emphasis added); *see also Sunrise Exp., Inc. v. Rhett Votaw & Co., Inc.*, 118 Or App 722, 725
5 (1993). “Second, even if minimum contacts exist, the exercise of jurisdiction must be reasonable;
6 in light of various factors deemed relevant by the Court, the exercise of jurisdiction must comport
7 with ‘fair play and substantial justice.’” *Circus Circus*, 317 Or at 159-60 (citing *Burger King*, 471
8 US at 476-77). Reasonableness depends on a number of factors, including: “(1) the extent of the
9 defendants’ purposeful interjection into the forum state’s affairs; (2) the burden on the defendant
10 of defending in the forum; (3) the extent of conflict with the sovereignty with the defendants’ state;
11 (4) the forum state’s interest in adjudicating the dispute; (5) the most efficient judicial resolution
12 of the controversy; (6) the importance of the forum to the plaintiff’s interest in convenient and
13 effective relief; and (7) the existence of an alternative forum.” *Munson v. Valley Energy Inv. Fund*,
14 *U.S., LP*, 264 Or App 679, 700 (2014) (citing *Harris Rutsky & Co. Ins. Serv. v. Bell & Clements*
15 *Ltd.*, 328 F3d 112, 1132 (9th Cir 2003)).

16 When considering motions to dismiss based on lack of personal jurisdiction, Oregon courts
17 “assume the truth of all well pleaded allegations and any facts that may be adduced as proof of
18 those allegations.” *Sutherland v. Brennan*, 131 Or App 25, 28 (1994). The plaintiff bears the burden
19 of alleging and proving the facts necessary to establish personal jurisdiction. *Id.* (citing *State ex rel.*
20 *Sweere v. Crookham*, 289 Or 3, 7 (1980)).

21 **i. The Court Lacks General Jurisdiction over OPC.**

22 Plaintiff acknowledges that OPC is headquartered in Texas, SAC ¶ 102, and it is a matter
23 of public record that OPC is incorporated in Delaware.² OPC is not “at home” in Oregon. *Daimler*,
24 571 US at 137. Thus, there is no general jurisdiction in Oregon.

25 ² Under OEC 201, a fact can be judicially noticed if it is “capable of accurate and ready
26 determination by resort to sources whose accuracy cannot be reasonably questioned.” OPC’s state
27 of incorporation and principal place of business are matters of public record and publicly available
28 in OPC’s annual reports. *See* February 4, 2025 Declaration of Cody Hoesly filed in support of
OPC’s Motion to Dismiss Plaintiff’s SAC (“C. Hoesly Decl.”), at ¶ 3 (identifying OPC’s state of
incorporation as Delaware with its principal executive offices in Texas).

1 **ii. The Court Lacks Specific Jurisdiction Over OPC.**

2 Plaintiff does not allege that OPC has any contact with Oregon—the SAC alleges only that
3 OPC is a Texas company and that OPC acquired Anadarko. *See* SAC ¶¶ 102, 105. Those allegations
4 have nothing to do with Oregon. Since Plaintiff does not allege that OPC has any contacts with
5 Oregon, Plaintiff’s claims cannot possibly “arise out of or relate to” OPC’s (nonexistent) contacts
6 with Oregon. OPC is therefore not subject to personal jurisdiction in this case.

7 Plaintiff’s decision to name OPC as “Occidental Petroleum F.K.A. Anadarko Petroleum
8 Corp.” does not remedy the jurisdictional defect. That is not OPC’s legal name, and Anadarko is a
9 separate legal entity whose actions or inactions cannot be imputed to OPC.³ *See supra* n. 1; *see also*
10 *Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F3d 450, 459 (9th Cir 2007) (“It is well
11 established that, as a general rule, where a parent and subsidiary are separate and distinct corporate
12 entities, the presence of one ... in a forum state may not be attributed to the other.”); *Axiom Foods,*
13 *Inc. v. Acerchem Int’l, Inc.*, 874 F3d 1074, 1071 (9th Cir 2017); *Mehl v. LG Chem Ltd.*, No. 6:21-
14 cv-01149-AA, 2022 WL 359089 at *6 (D Or Aug. 23, 2022) (“The court cannot impute the parent
15 company’s contacts to the subsidiary, or vice versa, absent allegations of agency, alter ego, or a
16 similar relationship.”). Plaintiff’s allegations do not set forth any facts suggesting an agency or alter
17 ego relationship between OPC and Anadarko, nor do Plaintiff’s allegations set forth facts showing
18 that the Court has jurisdiction over Anadarko. *See infra* Section III(b).

19 **iii. Other Courts Have Dismissed OPC For Lack of Personal Jurisdiction**
20 **Even Where Plaintiff Made Substantive Allegations Against OPC.**

21 In California state court, Judge Schulman recently dismissed OPC from a batch of similar
22 cases. *See* C. Hoesly Decl., at ¶ 5, Ex. B, *Fuel Industry Climate Cases*, No. CJC-24-005310, Order
23 on Specially Appearing Defendant Occidental Petroleum Corporation’s Motion to Quash
24 Summonses and Dismiss the California Sub-Sovereign Complaints for Lack of Personal
25 Jurisdiction (Dec. 17, 2024) (hereinafter “California Order”). The plaintiffs in the California cases
26 alleged that “OPC engaged in fossil fuel production, transport, marketing and sales in California

27 _____
28 ³ Anadarko’s status as a subsidiary of OPC also can be judicially noticed pursuant to OEC 201.
See C. Hoesly Decl., at ¶ 4 (identifying Anadarko as a subsidiary of OPC).

1 for decades...during which time Plaintiffs allege OPC deceived and failed to warn consumers about
2 the climate change dangers of its fossil fuel products.” Ex. B, California Order at 13:11-14. The
3 plaintiffs argued that OPC was a proper defendant because historically: (a) OPC was headquartered
4 in Los Angeles; (b) OPC produced “oil and natural gas *in California for California*,” (c) OPC had
5 more than 1,100 employees in Los Angeles County; (d) OPC was California’s largest acreage
6 holder with 1.3 million net leasehold acres; and (e) OPC had advertised itself in California. Ex. B,
7 California Order at 9:16-23. Those historical facts, however, did not establish that the plaintiffs’
8 claims arose out of or related to OPC’s contacts with California. Ex. B, California Order at 11:19-
9 21; 13:9-10. “[D]eceptive marketing conduct ... is the gravamen of [p]laintiffs’ claims.” Ex. B,
10 California Order at 15:4-8. OPC’s limited in-state activities had nothing to do with deceptive
11 marketing; indeed, as a parent company that does not itself engage in, and the subsidiaries of which
12 also do not engage in, the downstream segment of the oil-and-gas industry—they neither make nor
13 sell fossil fuels—it is obvious that OPC’s activities could not possibly give rise to or relate to
14 deceptive marketing claims.

15 Here, Plaintiff fails to allege that OPC conducts (or historically conducted) any activity in
16 Oregon. Plaintiff has not alleged that OPC extracted hydrocarbons in Oregon, employed anyone in
17 Oregon, or held any property interest in Oregon. *See* SAC ¶¶ 102, 105. Thus, like in the California
18 Order, where the court held that the municipalities had not established that the complained-of
19 conduct related to OPC’s intrastate activity, Plaintiff has failed to establish **any** OPC-specific
20 contacts that relate to the complained-of conduct in the SAC.⁴

21 The California court also correctly held that allegations of conduct by OPC’s wholly-owned
22 subsidiaries did not subject OPC to personal jurisdiction, absent something more, and even after
23 jurisdictional discovery, the plaintiffs failed to meet their burden of proof as to OPC. Ex. B,
24 California Order at 14:12-21. Like the plaintiffs in California, Plaintiff here apparently seeks to
25 impute Anadarko’s alleged contacts with Oregon to OPC. However, Plaintiff has failed to allege

26 ⁴ Here, Plaintiff alleges that its claims relate, not only to deceptive marketing, but also to emissions.
27 *See, e.g.*, SAC ¶ 109 (alleging that Anadarko’s emissions in Oregon have caused enormous harm
28 to Plaintiff). That does not help Plaintiff establish personal jurisdiction over OPC, however, for
Plaintiff has not alleged that OPC engaged in any emissions activities in Oregon.

1 facts sufficient to allow this Court to exercise personal jurisdiction over Anadarko, let alone facts
2 sufficient to allow this Court to impute such contacts to OPC, and thus, exercise personal
3 jurisdiction over OPC.

4 **B. Plaintiff Has Failed to State a Claim Against OPC.**

5 Plaintiff's allegations in the SAC are so deficient, they not only fail to establish personal
6 jurisdiction; they also fail "to state ultimate facts sufficient to constitute a claim." ORCP 21
7 (A)(1)(h). Under ORCP 18 A, a pleading must contain "[a] plain and concise statement of the
8 ultimate facts constituting a claim for relief without unnecessary repetition." ORCP 18 A. To
9 comply with Oregon's fact-pleading requirement, a "plaintiff must do more than allege in a vague
10 and conclusory manner that" a defendant committed the elements of the alleged tort. *Huang v.*
11 *Claussen*, 147 Or App 330, 335 (1997). Rather, "facts must be alleged which, if proved, will
12 establish the right to recover," "it is no longer permissible to veil the facts or theory behind a
13 nonfactual pleading...and thereafter prove any state of facts which, historically, could support
14 recovery." *Davis v. Tyee Indus., Inc.*, 295 Or 467, 476-77 (1983).

15 In its SAC, Plaintiff asserts four causes of action against OPC:

- 16 1. Intentional and Negligent Creation of Public Nuisance
- 17 2. Negligence
- 18 3. Fraud and Deceit
- 19 4. Trespass

20 SAC ¶¶ 519-552. Yet, zero paragraphs in the SAC allege that OPC was involved in, or even aware
21 of, the conduct giving rise to those claims. There are no OPC-specific allegations underlying
22 Plaintiff's causes of action—no allegations that OPC engaged in fraud or deceptive practices, that
23 it produced or disseminated any misinformation or misrepresentations, or that it participated in any
24 purported enterprise or conspiracy. Likewise, no factual allegations support Plaintiff's theories of
25 intentional and negligent creation of a public nuisance, negligence, fraud and deceit, and trespass.
26 There are not even any allegations that OPC marketed or sold fossil-fuel products to consumers or
27 contributed to GHG emissions in Oregon.

28 Rather, in lieu of OPC-specific allegations, Plaintiff groups the Defendants together as: (1)

1 “Oil and Gas Defendants,” SAC ¶¶ 24-160; (2) “Gas Defendants,” SAC ¶¶ 161-69; (3) “Carbon
2 Footprint for Fossil Fuel Defendants,” SAC ¶¶ 170-71; (4) “Trade and Front Groups,” SAC ¶¶ 172-
3 89; and (5) “Other Defendants,” SAC ¶¶ 190-200. Plaintiff then sets forth general, collective
4 allegations against each group in circumvention of the ORCP 18 A requirement that a plaintiff state
5 “ultimate facts constituting a claim for relief” against each defendant. ORCP 18 A, 21 (A)(1)(h);
6 *see, e.g.*, SAC ¶ 223 (“Defendants’ collective conduct combined to cause the massive damages
7 caused by the 2021 [Pacific Northwest] heat dome”); ¶ 224 (“Defendants’ GHG emissions, in
8 Oregon, were individually and collectively (with the other Defendants) a cause of the occurrence
9 and severity of the heat dome”); ¶ 263 (“[b]ecause of Defendants’ acts or omissions related to the
10 burning of fossil fuels, [Plaintiff] will suffer harm from smoke penetration, including adverse health
11 impacts on its citizens from the intense smoke”). Plaintiff continues its improper collective pleading
12 in each of its Claims for Relief. *See* SAC ¶¶ 519-32 (Plaintiff’s Intentional and Negligent Creation
13 of Public Nuisance Claim); ¶¶ 533-37 (Plaintiff’s Negligence Claim); ¶¶ 538-44 (Plaintiff’s Fraud
14 and Deceit Claim); and ¶¶ 545-52 (Plaintiff’s Trespass Claim).

15 Plaintiff’s collective or group pleading against OPC fails to provide OPC notice of any
16 alleged wrongful conduct and fails to identify any bases to support an inference that OPC could be
17 liable for the claims pled. *See, e.g., Munson*, 264 Or App at 710 n 23 (“Plaintiffs’ general allegations
18 that defendants were all agents of one another...and the defendants ‘knew of the acts of each of the
19 other defendants and accepted the benefits flowing from the acts with full knowledge of all material
20 facts, and therefore ratified each of the wrongful acts of each other defendant that are alleged in
21 this lawsuits’ are insufficient to save their claims.”); *see also Bank of Am., N.A v. Knight*, 725 F3d
22 815, 818 (7th Cir 2013) (“Each defendant is entitled to know what he or she did that is asserted to
23 be wrongful. A complaint based on a theory of collective responsibility must be dismissed.”); *see*
24 *also In re Auto. Antitrust Cases I & II* (2005) 135 Cal App 4th 100, 113 (finding “[t]he purposes
25 and acts of one party...cannot be imputed to a third party to establish jurisdiction over the third
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1 party defendant” in the conspiracy context);⁵ *State v. Watson Pharm Inc.*, 440 P3d 727, 732-33
2 (Utah Ct App. 2019) (finding plaintiff’s collective allegations of related entities failed even to meet
3 Utah’s **notice pleading** requirement (a lower pleading standard than Oregon’s fact pleading
4 requirement)); *Barlow v. Skroupa*, 76 Misc 3d 587, 591 (NY Sup Ct 2022) (finding plaintiff failed
5 to meet New York’s fact pleading requirement when pleading fraud “against all defendants
6 collectively, without any specification of the conduct charged to particular defendants,” depriving
7 notice to certain defendants of the complained-of conduct). While it may be true that “[t]here is no
8 flaw in pleading...where collective allegations are used to describe the actions of multiple
9 defendants...alleged to have engaged in precisely the same conduct,” *U.S. v. U. Healthcare Ins.*
10 *Co.*, 848 F3d 1161, 1184 (9th Cir 2016), a plausible claim must include “factual content that allows
11 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”
12 *Ashcroft v. Iqbal*, 556 US 662, 663 (2009). Group pleading alone cannot be the only basis for claims
13 against a defendant as it runs afoul of Oregon’s longstanding fact-pleading requirement to state a
14 claim against a defendant. *See generally Davis*, 295 Or at 476-77; *see also* ORCP 18 A (requiring
15 parties set forth a “plain and concise statement of the ultimate facts constituting a claim for relief”).

16 Yet here, group pleading is the only basis for the claims against OPC. Every substantive
17 allegation that arguably relates to OPC does so, not by naming OPC, but by group pleading. Thus,
18 Plaintiff has failed to state a claim against OPC.

19 **IV. CONCLUSION**

20 For the foregoing reasons, OPC respectfully requests the Court hold that it lacks personal
21 jurisdiction over OPC or, in the alternative, that Plaintiff has failed to state a claim against OPC,
22 and dismiss OPC from this case.

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27 ⁵ Like Oregon, California is a fact-pleading jurisdiction, requiring parties to set forth a “statement
28 of the facts constituting the cause of action, in ordinary and concise language.” Cal Civ Proc Code
§ 425.10.

1 Dated: February 4, 2025

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing Motion to Dismiss Plaintiff's Second Amended
3 Complaint Pursuant to ORCP 21 on the following:

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