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20 **UNITED STATES DISTRICT COURT**  
21 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

22 The PEOPLE OF THE STATE OF  
23 CALIFORNIA, acting by and through Oakland  
City Attorney BARBARA J. PARKER,

24 Plaintiff,

25 v.

26 BP P.L.C., et al.,

27 Defendants.

First Filed Case: 3:17-cv-06011-WHA  
Related Case: 3:17-cv-06012-WHA

**NOTICE OF MOTION TO DISMISS  
FOR LACK OF PERSONAL  
JURISDICTION OF DEFENDANT  
CONOCOPHILLIPS COMPANY;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT  
THEREOF**

Case No. 3:17-cv-06011-WHA

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THE PEOPLE OF THE STATE OF  
CALIFORNIA, acting by and through the San  
Francisco City Attorney DENNIS J. HERRERA,

Plaintiff,

v.

BP P.L.C., et al.,

Defendants.

Case No. 3:17-cv-6012-WHA

DATE: APRIL 26, 2018

TIME: 8:00 A.M.

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**NOTICE OF MOTION AND MOTION TO DISMISS**

TO THE CLERK OF THE COURT AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT, on April 26, 2018, at 8:00 A.M., or as soon thereafter as the matter may be heard, in the United States District Court, Northern District of California, San Francisco Courthouse, Courtroom 12, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, before the Honorable William Alsup, Defendant ConocoPhillips Company will and hereby does move this Court to dismiss these related actions for lack of personal jurisdiction. The motion will be made on the grounds that this forum cannot exercise personal jurisdiction over ConocoPhillips Company, which is a Delaware company headquartered in Houston, Texas and does not have the requisite minimum contacts with the State of California. This Motion to Dismiss is based upon this Notice, the attached Memorandum of Points and Authorities, the Complaints, and all records and pleadings as may be presented at or before the hearing on this motion.

DATED: March 20, 2018

KING & SPALDING LLP

By: /s/ Carol M. Wood  
CAROL M. WOOD

*Attorney for Defendant  
ConocoPhillips Company*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendant ConocoPhillips Company respectfully submits this motion to dismiss for lack  
3 of personal jurisdiction pursuant to Fed. R. Civ. P. 12(b)(2).<sup>1</sup>

4 **INTRODUCTION AND STATEMENT OF ISSUES**

5 The People of the State of California through Oakland City Attorney Barbara J. Parker  
6 and San Francisco City Attorney Dennis J. Herrera (together, “Plaintiff”) have brought claims  
7 for public nuisance against five oil-and-gas companies, including ConocoPhillips Company.  
8 Plaintiff alleges that these companies’ federally authorized production and promotion of fossil  
9 fuels resulted in third parties using oil and gas, which resulted in greenhouse gas emissions,  
10 which has contributed to sea-level rise, which is damaging coastal communities in California.  
11 Plaintiff’s novel claims are not viable and must be dismissed pursuant to Rule 12(b)(6), as  
12 argued in the separate motion to dismiss filed today by Defendants in this case, including  
13 ConocoPhillips Company. *See* Dkt. No. 140 (Mar. 20, 2018). In addition, however, defendant  
14 ConocoPhillips Company must separately be dismissed from this action because this Court  
15 cannot exercise personal jurisdiction over it.

16 ConocoPhillips Company is a Delaware company headquartered in Houston, Texas,  
17 making the exercise of general jurisdiction improper under the Supreme Court’s *Daimler*  
18 decision. Specific jurisdiction is also lacking: Plaintiff does not adequately allege that  
19 ConocoPhillips Company directly targeted California with conduct that created a substantial  
20 connection to California, out of which Plaintiff’s alleged injuries arise, as required under the  
21 Supreme Court’s recent *Bristol-Myers Squibb* decision. Instead, Plaintiff alleges that  
22 ConocoPhillips Company’s *subsidiaries* have engaged in conduct in California. But the forum  
23 contacts of ConocoPhillips Company’s subsidiaries cannot be attributed to it under black letter

24 \_\_\_\_\_  
25 <sup>1</sup> The Court has invited the parties to participate in a tutorial explaining the current state of  
26 climate science on March 21, 2018, the day after this motion is filed. ConocoPhillips Company  
27 does not understand that this tutorial is designed to elicit arguments on the merits of this case or  
28 that participation in the tutorial could constitute waiver of any defense under Federal Rule of  
Civil Procedure Rule 12. Regardless, this motion is filed before the tutorial took place and thus  
ConocoPhillips Company does not waive its objection to personal jurisdiction by appearing at, or  
participating in, the tutorial.

1 law, and Plaintiff’s allegations of “control” are conclusory and devoid of specific factual detail.  
2 If anything, Plaintiff’s “control” allegations only underscore that Plaintiff’s claims rely on  
3 allegations about policy-setting and decision-making that occurred outside of California.  
4 Plaintiff’s inadequately pleaded jurisdictional allegations fail as a matter of law, and the claims  
5 against ConocoPhillips Company should be dismissed.

## 6 ARGUMENT

7 Plaintiff bears the burden of proving that minimum contacts exist between  
8 ConocoPhillips Company and California so as to justify an exercise of personal jurisdiction. *See*  
9 *Bristol-Myers Squibb Co. v. Super. Ct. of Cal., S.F. Cnty.*, 137 S. Ct. 1773, 1779 (2017); *Harris*  
10 *Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1128–29 (9th Cir. 2003).  
11 The personal-jurisdiction inquiry centers on a defendant’s contacts with the forum state and is  
12 dictated by due-process concerns. *See Bristol-Myers Squibb*, 137 S. Ct. at 1779. Exercising  
13 personal jurisdiction over a nonresident defendant will comport with due process only if the  
14 defendant has sufficient “minimum contacts” with the forum state, such that maintaining the suit  
15 does not offend “traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v. Wash.*,  
16 326 U.S. 310, 316 (1945). As this Court is aware, personal jurisdiction comes in two forms:  
17 (1) “general jurisdiction,” which applies where a defendant’s “continuous and systematic”  
18 activities make it so “at home” in the forum that a court may adjudicate any claims against that  
19 defendant arising from anywhere in the world; and (2) “specific jurisdiction,” which allows a  
20 court to adjudicate claims arising from the defendant’s suit-related contacts with the forum state.  
21 *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). Plaintiff has not  
22 met its burden to establish either general or specific jurisdiction over ConocoPhillips Company.

### 23 I. THE COURT CANNOT EXERCISE GENERAL JURISDICTION OVER 24 CONOCOPHILLIPS COMPANY.

25 Meeting the test for general jurisdiction is “exacting,” because a finding of general  
26 jurisdiction “permits a defendant to be haled into court in the forum state to answer for any of its  
27 activities anywhere in the world.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,  
28 801 (9th Cir. 2004). It is only in the “exceptional” case that a company’s contacts with a forum



1 would be so continuous and systematic that it could be sued generally in some forum other than  
2 its place of incorporation or principal place of business. *Daimler AG v. Bauman*, 134 S. Ct. 746,  
3 762 (2014); *see also AM Tr. v. UBS AG*, 78 F. Supp. 3d 977, 986 (N.D. Cal. 2015), *aff'd*, 681 F.  
4 App'x 587 (9th Cir. 2017) (“The only relevant considerations for purposes of determining  
5 general jurisdiction are place of incorporation and principal place of business.”). Few business  
6 activities in the normal course would constitute an “exceptional” circumstance that would alter  
7 the straightforward application of the *Daimler* test. *See Martinez v. Aero Caribbean*, 764 F.3d  
8 1062, 1070 (9th Cir. 2014).<sup>2</sup>

9 Plaintiff does not even attempt to meet this exacting test. Instead, it readily  
10 acknowledges that ConocoPhillips Company is organized under Delaware law and headquartered  
11 in Texas. Oak. Compl. ¶ 21; SF Compl. ¶ 21. Plaintiff does allege that ConocoPhillips  
12 Company “controls company-wide climate change policies and fossil fuel production,” including  
13 “operations relating to its subsidiaries’ participation in the process by which fossil fuels . . . are  
14 produced, transported, refined, stored, distributed, marketed, and/or sold to consumers,”  
15 including refining and shipping activities *by subsidiaries* within California. Oak. Compl. ¶¶ 22,  
16 35; SF Compl. ¶¶ 22, 35. But even if these control allegations are taken as true (which they  
17 should not be, for reasons explained below), merely being the corporate parent of a subsidiary  
18 with forum contacts in California cannot confer jurisdiction over the parent, since ““only a  
19 limited set of affiliations with a forum will render a defendant amenable to’ general jurisdiction  
20 in that State.” *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (quoting *Daimler*, 134 S. Ct. at 760).

21 In *Daimler*, the U.S. Supreme Court considered whether a subsidiary’s activities within a  
22 state could be attributed to its parent, for the purpose of exercising general jurisdiction over the  
23 parent. The Court rejected as “unacceptably grasping” the approach of attributing a subsidiary’s  
24 forum contacts to its parent. *Daimler*, 134 S. Ct. at 760–61. The Court noted that a

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25 <sup>2</sup> The Supreme Court has found such exceptional circumstances only once, in *Perkins v. Benguet*  
26 *Consol. Mining Co.*, 342 U.S. 437 (1952). There, the defendant had temporarily relocated its  
27 headquarters from the Philippines to Ohio during World War II. *Id.* at 447–48. As a result, the  
28 Court concluded that the defendant was “at home” in Ohio. *See Daimler*, 134 S. Ct. at 755–56  
(describing the circumstances of *Perkins*).

1 corporation's place of incorporation or principal place of business—which in this case are  
2 Delaware and Texas—constitute “paradigm[atic] all-purpose forums” and “afford plaintiffs  
3 recourse to at least one clear and certain forum in which a corporate defendant may be sued on  
4 any and all claims.” *Id.* at 760. Absent exceptional circumstances, the Court concluded, simply  
5 owning a subsidiary that does business in a forum state does not subject a parent to jurisdiction  
6 there. *Id.*

7 Plaintiff has alleged no “exceptional” circumstances, and any claim that ConocoPhillips  
8 Company is subject to general jurisdiction in California must therefore fail.

9 **II. THIS COURT MAY NOT EXERCISE SPECIFIC JURISDICTION OVER**  
10 **CONOCOPHILLIPS COMPANY.**

11 Where, as here, a defendant's activities within the state are not so pervasive to justify the  
12 exercise of general jurisdiction, “the defendant's suit-related conduct [must] create a substantial  
13 connection with the forum State” to support specific jurisdiction. *Walden v. Fiore*, 134 S. Ct.  
14 1115, 1121 (2014). “[S]pecific jurisdiction is confined to adjudication of issues deriving from,  
15 or connected with, the very controversy that establishes jurisdiction.” *Bristol-Myers Squibb*, 137  
16 S. Ct. at 1780 (quoting *Goodyear*, 564 U.S. at 919). The suit itself must “aris[e] out of or relat[e]  
17 to the defendant's contacts with the forum.” *Id.* (quoting *Daimler*, 134 S. Ct. at 754); *see also*  
18 *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). In addition, the requisite “minimum  
19 contacts” must be “with the forum State itself, not . . . with persons who reside there.” *Walden*,  
20 134 S. Ct. at 1122. “This ‘purposeful availment’ requirement ensures that a defendant will not  
21 be haled into a jurisdiction solely as a result of ‘random,’ ‘fortuitous,’ or ‘attenuated’ contacts, or  
22 of the ‘unilateral activity of another party or a third person.’” *Burger King*, 471 U.S. at 475  
23 (citation omitted).

24 The Ninth Circuit has distilled these requirements into a three-part test: (1) the defendant  
25 must “purposefully direct” its activities to the forum or “purposefully avail” itself of the benefits  
26 afforded by the forum's laws, (2) the claim must “arise[] out of or relate[] to the defendant's  
27 forum-related activities,” and (3) “the exercise of jurisdiction [must] comport with fair play and  
28 substantial justice, *i.e.*, it [is] reasonable.” *Williams v. Yamaha Motor Co. Ltd.*, 851 F.3d 1015,

1 1023 (9th Cir. 2017) (quoting *Dole Food Co. v. Watts*, 303 F.3d 1104, 1111 (9th Cir. 2002)).  
2 This test is not satisfied here. Plaintiff does not adequately allege that ConocoPhillips  
3 Company's California-directed conduct has a substantial connection to Plaintiff's alleged injury.

4 **A. The Conduct of ConocoPhillips Company Was Not a "But-For" Cause of the**  
5 **Alleged Injury.**

6 Plaintiff's claims fail the test for specific jurisdiction because it has not alleged any  
7 activity that is "directed at" California and is a "but-for" cause of its alleged injury. Specific  
8 jurisdiction requires a careful examination of the nature of the asserted claims to ensure that the  
9 underlying controversy arises out of or relates to the defendant's contacts with the forum.  
10 *Bristol-Myers*, 137 S. Ct. at 1780–81. This careful examination is designed to uncover whether  
11 "the defendant's suit-related conduct" had a "substantial connection with the forum State."  
12 *Walden*, 134 S. Ct. at 1121; *see also Bristol-Myers*, 137 S. Ct. at 1780 ("[T]here must be 'an  
13 affiliation between the forum and the underlying controversy, principally, [an] activity or an  
14 occurrence that takes place in the forum State and is therefore subject to the State's regulation.'" (quoting *Goodyear*, 564 U.S. at 919)). Importantly, this inquiry is *defendant*-focused, looking to  
15 the defendant's allegedly tortious conduct, and not to the injury allegedly sustained by a plaintiff.  
16 *See Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017). Absent an  
17 "adequate link" "between the forum and the specific claims" asserted by plaintiff, a court may  
18 not bind an out-of-state defendant based on specific personal jurisdiction "even if the defendant  
19 would suffer minimal or no inconvenience from being forced to litigate before the tribunals of  
20 another State; even if the forum State has a strong interest in applying its law to the controversy;  
21 [and] even if the forum State is the most convenient location for litigation." *Bristol-Myers*, 137  
22 S. Ct. at 1780–81 (citation and alterations omitted).

23  
24 The "substantial connection" test is not satisfied by "attenuated" or "isolated" activities  
25 within the forum state. *Axiom Foods*, 874 F.3d. at 1068. For example, the delivery or  
26 consumption of products in the forum state that are "random," "fortuitous," or "attenuated" does  
27 not satisfy this requirement. *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1230 (9th  
28 Cir. 2011). And simply placing a product into a stream of commerce, even with the knowledge

1 that it will be sold and used in California, is not sufficient. Instead, there must be “additional  
2 conduct” directed at the forum state, such as “designing the product for the market in the forum  
3 State, advertising in the forum State, establishing channels for providing regular advice to  
4 customers in the forum State, or marketing the product through a distributor who has agreed to  
5 serve as the sales agent in the forum State.” *Asahi Metal Industry Co. v. Super. Ct. of Solano*  
6 *Cnty.*, 480 U.S. 102, 107 (1987). The Ninth Circuit has distilled these principles into a  
7 requirement that in-state conduct must be a “but-for” cause of the alleged injury suffered by  
8 plaintiff. *Ballard v. Savage*, 65 F.3d 1495, 1500 (9th Cir. 1995). Where the plaintiff presents  
9 “no evidence” that the defendant’s California activities were a “necessary” cause of that injury,  
10 the but-for requirement is not met. *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001),  
11 *abrogated in non-relevant part by Yamaha Motor Corp.*, 851 F.3d at 1023.

12 Plaintiff’s allegations do not satisfy this test. Plaintiff alleges only attenuated activities  
13 within California by *subsidiaries* of ConocoPhillips Company that are far from a “but-for” cause  
14 of the global warming effects that are central to Plaintiff’s claims. According to the Complaints,  
15 Plaintiff’s claimed injuries consist of increased temperatures, rising sea levels, increased  
16 flooding from coastal storms, and “extreme precipitation events” that allegedly resulted from the  
17 greenhouse gas effect and require remediation and rebuilding of infrastructure. Oak. Compl.  
18 ¶¶ 84-87; SF Compl. ¶¶ 85-88. But sea-level rise is necessarily a *global* effect of the *global*  
19 conduct of a variety of actors. *See* Oak. Compl. ¶¶ 38–51; SF Compl. ¶¶ 38–51 (alleging that  
20 worldwide greenhouse gas emissions by Defendants and other parties have caused global  
21 temperatures to rise, and that this global warming is leading to “effects all around the world”).  
22 As the Court has acknowledged, these claims “attack behavior worldwide.” Dkt. No. 134 at 7  
23 (Order Denying Mots. To Remand). Plaintiff also acknowledges that some of these actors are  
24 third parties not named in this suit. Oak. Compl. ¶ 52; SF Compl. ¶ 53 (alleging that consumers  
25 cause the combustion of fossil fuels that release gases that contribute to climate change); *see also*  
26 Dkt. No. 134 at 6 n.2 (the claims “are not localized . . . and instead concern fossil fuel  
27 consumption worldwide” by non-parties). The global effects caused by the global conduct of a  
28 variety of global actors, most not found in California, is not a “but-for” cause of an injury in

1 California.

2 In *Bristol-Myers*, the defendant owned no fewer than five research and laboratory  
3 facilities, employed over 400 workers, and sold the challenged drug in California, 137 S. Ct. at  
4 1778, but that was not sufficient to establish specific jurisdiction because there was no  
5 “substantial connection” between that conduct and the alleged injuries. Here, the in-forum  
6 conduct alleged by Plaintiff is far less substantial than in *Bristol-Myers*. Plaintiff alleges that  
7 ConocoPhillips Company’s *subsidiaries* own and/or operate “port facilities in California for  
8 receipt of crude oil” and “previously owned and operated a refinery” in California.<sup>3</sup> Oak.  
9 Compl. ¶ 35; SF Compl. ¶ 35. Plaintiff also alleges that ConocoPhillips Company “through its  
10 subsidiaries also produces oil in Alaska, and transports some of this crude oil to California.” *Id.*  
11 Even taking as true the Complaints’ allegations “connecting” ConocoPhillips Company to  
12 California or attributing the forum contacts of subsidiaries to the parent company, those limited  
13 connections are not a but-for cause of global sea-level rise.

14 As this Court noted in applying *Bristol-Myers* in a recent case, “Plaintiffs need more than  
15 conduct by [defendant] in California; they need ‘suit-related conduct’ by [defendant] that occurs  
16 in California or ‘create[s] a substantial connection’ with California.” *In re Nexus 6P Prod. Liab.*  
17 *Litig.*, No. 17-CV-02185-BLF, 2018 WL 827958, at \*5 (N.D. Cal. Feb. 12, 2018). Here, the  
18 Complaints fail to tie the shipping of indeterminate amounts of crude oil into California, or the  
19 operation of a single refinery there, to any particular sale of fossil fuels (in California or  
20 elsewhere); to any particular emissions of greenhouse gases (in California or elsewhere); to any  
21 purported climate event supposedly caused by those emissions (in California or elsewhere); or to  
22 any specific injury. Plaintiff has not even *attempted* to allege that these activities are a but-for or

23  
24  
25 <sup>3</sup> Since April 2012, ConocoPhillips Company has been exclusively an exploration and  
26 production company, not a fuel refiner. See ConocoPhillips FY 2012 Form 10-K, at pt. 1,  
27 *available at* [https://www.sec.gov/Archives/edgar/data/1163165/000119312513065426/  
d452384d10k.htm](https://www.sec.gov/Archives/edgar/data/1163165/000119312513065426/d452384d10k.htm) (noting that “[o]n April 30, 2012, we completed the separation of our  
28 downstream businesses into an independent, publicly traded company.”).

1 necessary cause of its alleged injuries. Plaintiff’s allegations thus fall far short of plausibly  
2 alleging the causal link needed to support specific jurisdiction.

3 **B. The Forum Contacts of Subsidiaries Cannot Be Attributed to ConocoPhillips**  
4 **Company.**

5 Plaintiff does not even allege conduct *by ConocoPhillips Company*—highlighting just  
6 how “attenuated” these alleged forum contacts are. Plaintiff instead alleges limited contacts  
7 between ConocoPhillips Company’s *subsidiaries* and California. Oak. Compl. ¶ 35; SF Compl.  
8 ¶ 35. These contacts are insufficient: “It is well-established that a parent-subsidiary relationship  
9 alone is insufficient to attribute the contacts of the subsidiary to the parent for jurisdictional  
10 purposes.” *Harris Rutsky*, 328 F.3d at 1134.

11 Plaintiff attempts to sidestep this problem by alleging that ConocoPhillips Company  
12 controls these subsidiaries, but its inadequate allegations cannot be credited on a motion to  
13 dismiss. Whether the “agency” theory of specific jurisdiction survived the Supreme Court’s  
14 *Daimler* decision has not been definitively settled by the Ninth Circuit. *See Yamaha Motor Co.*,  
15 851 F.3d at 1024 (assuming, without deciding, that “some standard of agency continues to be  
16 relevant” to the question of specific jurisdiction, but affirming dismissal for failure to make out  
17 *prima facie* case) (quotation marks omitted). But even if it does, to make out an agency case for  
18 specific jurisdiction, a plaintiff must adequately allege that “the parent company must have the  
19 right to substantially control its subsidiary’s activities.” *Id.* at 1025. The Court is not to credit  
20 “conclusory legal statement[s] unsupported by any factual assertion regarding . . . control.” *Id.* at  
21 1025 n.5; *see also Bui v. Golden Biotechnology Corp.*, No.: 5:13–CV–04939–EJD, 2014 WL  
22 4072112, at \*3 (N.D. Cal. Aug. 14, 2014) (“[T]he court need not assume mere conclusory  
23 allegations [of control] to be true”); *Lovesy v. Armed Forces Benefit Ass’n*, No. C 07-2745 SBA,  
24 2008 WL 4856144, at \*4 (N.D. Cal. Nov. 7, 2008) (“It is not sufficient, at the pleading stage, to  
25 make conclusory allegations of control.”).

26 Plaintiff’s conclusory allegations of control amount to little more than bare allegations  
27 that ConocoPhillips Company, acting through employees or agents, “manages, directs, conducts,  
28 and/or controls operations” of subsidiaries or “exercises control over company-wide decisions”

1 through means such as “its employees’ and/or agents’ implementation of policies, procedures,  
2 and programs.” Oak. Compl. ¶ 22; SF Compl. ¶ 22. Plaintiff provides no factual detail on which  
3 operations ConocoPhillips Company supposedly controlled, of which subsidiary, in what  
4 manner, and through what specific means, or what sources of information these allegations are  
5 based on. This lack of detail and attribution underscore the conclusory nature of Plaintiff’s  
6 allegations. *See, e.g., Naiman v. TranzVia LLC*, No. 17-CV-4813-PJH, 2017 WL 5992123, at  
7 \*11 (N.D. Cal. Dec. 4, 2017) (dismissing allegations of control that lacked “any facts showing  
8 how TranzVia did those things or how it knew those things, or what facts the allegations are  
9 based on”); *Lovesy*, 2008 WL 4856144 at \*4 (“In order to withstand a motion to dismiss, the  
10 plaintiff must, at a minimum, se[t] forth some examples of alleged domination.”) (quotation  
11 omitted). Plaintiff’s allegations of “control” thus require dismissal under even the minimum  
12 standard stated by the Ninth Circuit in *Yamaha Motor Company*.

13 **C. Plaintiff’s Alleged Injuries Arise From Alleged Decision-Making and Policy-**  
14 **Setting Conduct That Did Not Occur In California.**

15 If anything, Plaintiff’s allegations of control by ConocoPhillips Company over company-  
16 wide conduct and decision-making only highlight that California is not an appropriate forum for  
17 adjudicating these claims. Plaintiff cannot deny that the production and use of fossil fuels are  
18 legal activities, highly regulated by the federal government (and by the State of California  
19 through agencies such as the California Air Resources Board). The gravamen of its claims,  
20 therefore, is that defendants allegedly misled the public and regulators by promoting continued  
21 use of fossil fuels in the face of their actual knowledge that this use would cause sea-level rise  
22 and attendant injuries. Oak. Compl. ¶ 97; SF Compl. ¶ 98. This scheme, Plaintiff alleges,  
23 included activities such as setting up industry-funded groups to lead advertising campaigns to  
24 mislead the public and regulators. Oak. Compl. ¶¶ 62–76; SF Compl. ¶¶ 63–77. Plaintiff also  
25 alleges direct statements by ConocoPhillips Company and the other defendants that it claims  
26 promoted use of fossil fuels. Oak. Compl. ¶ 78; SF Compl. ¶ 79.

27 All of these activities will be subject to defenses on the merits. But the important point,  
28 for jurisdictional purposes, is that none of this policy- and decision-making or opinion-shaping

1 conduct, so central to Plaintiff's claims, allegedly occurred in California. According to the  
2 Complaints' allegations, ConocoPhillips Company "controls company-wide policies and fossil  
3 fuel production" and "exercises control over company-wide decisions on production and use of  
4 fossil fuel reserves considering climate change impacts." Oak. Compl. ¶ 22; SF Compl. ¶ 22.  
5 But if ConocoPhillips Company exercises this control, as Plaintiff alleges, as a simple matter of  
6 common sense that conduct occurred in the company's headquarters in Houston, Texas. *See,*  
7 *e.g., Commc'ns Network Billing, Inc. v. ILD Telecomms., Inc.*, No. CV 17-10260, 2017 WL  
8 3499869, at \*4-5 (E.D. Mich. Aug. 16, 2017) (granting non-resident corporation's motion to  
9 dismiss for lack of personal jurisdiction because the underlying controversy in the case was the  
10 defendant's alleged failure to remit fees collected; "the critical question is where [d]efendant  
11 allegedly made the decision to withhold [plaintiff]'s payments," and any decision to withhold  
12 money from plaintiff would have occurred outside of the forum); *Buelow v. Plaza Motors of*  
13 *Brooklyn, Inc.*, No. 2:16-cv-02592-KJM-AC, 2017 WL 2813179, at \*4 (E.D. Cal. June 29, 2017)  
14 (granting non-resident car dealership's motion to dismiss under *Bristol-Myers Squibb* where all  
15 alleged wrongdoing occurred in online or telephonic communications or in New York, and none  
16 of the "defendant's suit-related conduct" was connected to California).

17 Plaintiff's theory is that it (and every other person and municipality in the world) was  
18 harmed by a series of policies and decisions that were developed and made in places other than  
19 California. This suit can only be brought in a forum that has a "substantial connection" to that  
20 allegedly tortious conduct, and based on a fair reading of Plaintiff's own allegations, California  
21 is not that forum.

## 22 CONCLUSION

23 The Court cannot exercise personal jurisdiction over Defendant ConocoPhillips Company  
24 and should therefore grant the motion to dismiss.

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Dated: March 20, 2018

Respectfully submitted,

By: /s/ Carol M. Wood

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**CERTIFICATION OF SERVICE**

I HERE CERTIFY that on March 20, 2018, I caused the foregoing to be filed with the Clerk of the Court via CM/ECF. Notice of this filing will be sent by email to all counsel of record by operation of the Court's electronic filing systems.

By: /s/ Carol M. Wood  
Carol M. Wood

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