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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CITY OF OAKLAND, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Oakland City Attorney,

Plaintiffs,

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.: 3:17-cv-06011-WHA

PLAINTIFFS' RESPONSE IN OPPOSITION TO ROYAL DUTCH SHELL PLC'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Hearing Date: May 24, 2018
Hearing Time: 8:00 a.m.
Courtroom 12 (19th floor)
Judge: Hon. William Alsup

CHEVRON CORP.,

Third Party Plaintiff,

v.

STATOIL ASA,

Third Party Defendant.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the San Francisco City Attorney DENNIS J. HERRERA,

Plaintiffs,

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.

CHEVRON CORP.,

Third Party Plaintiff,

v.

STATOIL ASA,

Third Party Defendant.

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I. INTRODUCTION

Royal Dutch Shell plc ("Shell") produces, imports, refines, sells and advertises fossil fuels in California. These California-based activities are a substantial and an inextricable part of Shell's overall contribution to global warming. Shell contests jurisdiction, primarily on two grounds.

First, it claims it is a mere holding company that "conducts no business in California or anywhere else in the United States." Shell Motion to Dismiss for Lack of Personal Jurisdiction etc. ("Br.") 2. But Shell does not act as a holding company with respect to the tortious conduct in this case. Rather, Shell is the decisionmaker for its corporate family on fossil fuel production levels and managing climate change policies and risks. These are the most fundamental business decisions made at the company about its core business. Shell's subsidiaries may operationally carry out the parent's decision to produce massive amounts of fossil fuels by producing, marketing and selling fossil fuels in California but it is Shell the parent company that makes the key decisions.

Second, Shell's argument that its California-based contribution to global warming must cause all of the injury to the Plaintiffs ("Cities") is an incorrect statement of the but-for personal jurisdiction causal standard. Courts routinely assert jurisdiction where the plaintiff's injury was produced by nationwide conduct that extends into the forum state, without requiring the plaintiff to show that the injury was caused by just the slice that occurred in the forum. This approach to personal jurisdiction causation is particularly appropriate here, where causation on the merits is governed by a multiple-contributor rule that does not require each defendant's contribution standing alone to cause the nuisance. Finally, Shell's argument on service of process must be rejected as the Cities properly served Shell's general manager in California. Shell's motion should be denied.

II. FACTS

A. Shell makes the business decision to produce fossil fuels at massive levels, taking into account climate change.

Shell is a publicly traded, multinational, vertically integrated oil and gas company that explores for, produces, refines, markets, and sells oil, natural gas and fossil fuel products. First

Amended Complaint ("FAC") ¶ 28.[1] Shell is one of the largest investor-owned fossil fuel corporations in the world as measured by historic production of fossil fuels. *Id.* ¶¶ 2, 94. In its most recent annual report, Shell states: "Oil and gas will remain central to our business for many years."[2] The annual report discloses Shell's overall production levels as follows: "Our delivery of new projects continues and we remain on track to deliver 1 million barrels of oil equivalent a day (boe/d) from new projects between 2014 and 2018. Overall, our production averaged 3.7 million boe/d in 2017, in line with 2016, with production from new fields offsetting the impact of field declines and divestments."[3] Given that these are aggregate companywide production levels, these statements can only refer to Shell the parent company, notwithstanding the report's standard disclaimer that terms such as "Shell," "our" or "we" are "used to refer to the Company and its subsidiaries in general or to those who work for them."[4]

Shell's control, as the parent company, over the companywide production decisions became unmistakably clear in a preliminary injunction hearing in 2015 in a case brought by two of Shell's U.S. subsidiaries against Greenpeace in federal district court in Alaska. The Shell subsidiaries sought to restrain Greenpeace from protesting in close proximity to drilling ships exploring for oil off the coast of Alaska. Under cross examination, a subsidiary employee admitted that the decision to drill for oil was made by Royal Dutch Shell's Board of Directors in the Hague: "A: It's made at the board level, yes. . . Q: The board of Royal Dutch Shell? A: Yes."[5] This should not be surprising given that such decisions involve billions of dollars ($7 billion in that case).[6]

In November, 2017, Shell made a major announcement that it would be reducing the carbon

[1] The Cities' amended complaints are nearly identical; separate citations to each FAC are provided only where necessary.

[2] Decl. of Steve W. Berman in Support of Plaintiffs' Opposition to Royal Dutch Shell's Motion to Dismiss for Personal Jurisdiction ("Berman Decl."), Ex. 1 (Royal Dutch Shell plc, Annual Report and Form 20-F for the year ended Dec. 31, 2017) at 06, filed concurrently herewith.

[3] *Id.* at 07.

[4] *Id.* at 05.

[5] *See id.,* Ex. 2 (Tr. at 175:17-177:25).

[6] *Id.*

footprint of "its energy products" by "around" half by 2050.[7] The Shell parent expressly took responsibility for greenhouse gas emissions from the combustion of Shell's fossil fuel products by consumers because Shell's carbon reduction goal involves "not just emissions from its own operations but also those produced when using *Shell products*."[8] Shell's CEO stated that Shell would seek to reduce the carbon footprint of its products "by reducing the net carbon footprint of the full range of Shell emissions, from our operations *and from the consumption of our products*."[9]

On April 5, 2018 – two days after the Cities filed their amended complaints – investigative journalists disclosed previously unseen documents relating to Shell's early knowledge of climate change risks. These documents point to the Shell parent company as the entity that controls production and climate decisions. In 1988, Shell Internationale Petroleum Maatschappij B.V., based in The Hague, issued an internal report – "The Greenhouse Effect" – that was marked "confidential," based upon 1986 research, and prepared for the Shell Environmental Conservation Committee.[10] The report stated that "fossil fuel combustion [is] the major source of CO2 in the atmosphere" and continued: "It is generally accepted that the increasing concentration of CO2 in the atmosphere is primarily determined by the combustion of fossil fuels."[11] Shell's report recognized that an "overall reduction in fossil fuel use would of course reduce CO2 production," and "it is the world wide fossil fuel usage that affects the level of CO2 in the atmosphere."[12] Possible "Implications for Shell Companies" included "[c]hanging demand for our products."[13]

The report stated that there is "reasonable scientific agreement that increased levels of greenhouse gases would cause a global warming."[14] While the "most sophisticated geophysical computer models predict that [] a doubling of [the atmospheric CO2 concentration] could increase

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[7] *Id.*, Ex. 3 (Royal Dutch Shell plc, press release). Shell in fact was merely agreeing to reduce the carbon "intensity" of its mix of energy products (*i.e.*, the carbon emissions per unit of energy).

[8] *Id.* (emphasis added).

[9] *Id.* (emphasis added).

[10] *Id.*, Ex. 4 (Shell Internationale Petroleum Maatschappij B.V., The Greenhouse Effect).

[11] *Id.* at 1, 17.

[12] *Id.* at 28.

[13] *Id.*

[14] *Id.* at 1.

the global mean temperature by 1.3 – 3.3º C," and while Shell could not pinpoint the exact amount of future warming within this range, the "potential impacts are sufficiently serious for research to be directed more to the analysis of policy and energy options than to studies of what we will be facing exactly."[15] Based upon these same mathematical models, the projected warming "could create significant changes in sea level, ocean currents, precipitation patterns, regional temperature and weather." It warned: "These changes could be larger than any that have occurred over the last 12,000 years" and that such "relatively fast and dramatic changes would impact on the human environment, future living standards and food supplies."[16] The report further warned that the "rising level of atmospheric carbon dioxide" could have a "substantial impact on global habitability."[17] Shell stated: "The changes may be the greatest in recorded history."[18]

The recent disclosures also demonstrate that as early as 1988 Shell was taking responsibility for companywide fossil fuel production and, as the Cities allege here, was able to calculate the percentage of greenhouse gas emissions for which its products were responsible.[19] The 1988 report stated: "Fossil fuels which are marketed and used by the Group account for the production of 4% of the CO2 emitted worldwide from combustion" and referred to a table entitled "Contribution to global CO2 emissions *from fuels sold by the Shell Group* in 1984" for this percentage calculation.[20]

In a Shell "Group Scenarios 1998-2020" document, which "shows how the two [Shell] scenarios develop in selected regions of the world," Shell posits what would happen in 2010 if a "series of violent storms causes extensive damage to the eastern coast of the US," taking into account that "two successive IPCC reports since 1995 have reinforced the human connection to climate change."[21] Shell describes one possibility: "Following the storms, a coalition of environmental NGOs brings a class-action suit against the US government and fossil-fuel companies on the grounds

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[15] *Id.*
[16] *Id.*
[17] *Id.* at 6.
[18] *Id.* at 25.
[19] *Id.* at 57.
[20] *Id.* at 29, 57 (emphasis added).
[21] *Id.*, Ex. 5 (Group Scenarios 1998-2020, Volume 2: Regions and Quantification) at 115.

of neglecting what scientists (*including their own*) have been saying for years: that something must be done."[22]

In addition to these new disclosures, it is basic petroleum economics, recognized in Shell's own annual reports, that the level of oil and gas reserves principally determines the company's overall global production levels with nothing less than the value of the company at stake: "In the longer term, replacement of proved oil and gas reserves *will affect our ability to maintain or increase production levels, which in turn will affect our earnings and cash flows*."[23] Shell's annual report lists over a thousand separate subsidiaries.[24]

The Shell parent company – not a subsidiary – submits annual responses to climate change questionnaires from a non-profit organization called CDP.[25] In its 2016 response, Shell publicly stated that its "Board or individual/sub-set of the Board or other committee appointed by the Board" has the highest level of direct responsibility for climate change within the company.[26] Climate change is, of course, a major risk to Shell's business because fossil fuels emit carbon dioxide when used as intended and thus any significant climate change action may have an impact on Shell's business. Shell states that "overall accountability for climate change within Shell lies with the Chief Executive Officer (CEO) and the Executive Committee (EC - CEO, CFO and main business and functional Directors)."[27] In addition, "Group CO2, a corporate team with global remit is responsible for evaluating climate change related risks to the Shell group, supports the business in developing CO2 management strategies and has oversight of the company's CO2 management implementation programme."[28] "Shell's strategy is actively driven by Group CO2, a corporate function that monitors and examines the strategic implications of climate change to Shell's business and the impact of developments in governmental policy and regulation with a direct line of accountability to the CEO

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[22] *Id.* at 118 (emphasis added).

[23] *Id.*, Ex. 1 (Annual Report) at 55 (emphasis added).

[24] *Id.* (Annual Report) at E2-E20.

[25] https://www.cdp.net/en.

[26] Berman Decl., Ex. 6 (Shell Responses to Climate Change 2016 Information Request from Carbon Disclosure Project ("CDP response")) at 2; *see also* FAC ¶ 29.

[27] Berman Decl., Ex. 6 (CDP response) at 2.

[28] *Id.* at 2.

and oversight of the company's GHG management programme."[29]

Shell's CDP response further states: "Shell has a global approach to climate change risk management, covering all regions worldwide where we operate or explore."[30] Shell's global approach to climate change applies to existing and new projects:

> The risks and opportunities of climate change are assessed for new assets or projects in development by considering a project screening value of GHG emissions at $40/tonne in all investment decisions. New and existing assets are required to have a GHG & Energy Management Plan (details improvement options considering the GHG Project Screening Value, emissions and/or energy intensity target(s)).[31]

Shell as the parent company also takes companywide responsibility for the issue of "stranded assets," *i.e.*, the possibility that fossil fuel reserves may become stranded assets if, prior to the end of their economic life, they no longer can earn an economic return because of climate change. Shell's position on this issue is straightforward (as reported by Reuters): "Royal Dutch Shell has dismissed the possibility that its proven oil or gas reserves will become unusable as a result of climate change regulation, saying fossil fuels will play a key role in global energy to 2050 and beyond."[32] In 2016, Royal Dutch Shell's CEO, Ben van Beurden, reportedly stated that the "company is valued on produceable reserves that we can produce in the next 12 or 13 years," and "[w]e should certainly be able to produce those under any climate outcome. Even if global temperatures can only rise by two degrees."[33] With respect to climate change risks, Shell's CEO states: "We know our long-term success as a company depends on our ability to anticipate the types of energy that people will need in the future in a way that is both commercially competitive and environmentally sound."[34]

B. Shell engages in production, sales and promotion of fossil fuels in California.

Shell directs its subsidiaries to carry out its companywide production decisions operationally through production, marketing and sales of fossil fuels in and for California and the United States. Shell does not dispute that Shell entities carry on substantial fossil fuel activities in California.

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[29] *Id.* at 3.
[30] *Id.* at 2.
[31] *Id.* at 3.
[32] *Id.*, Ex. 7 (Shell says fossil fuel reserves won't be "stranded" by climate regulation).
[33] *Id.*, Ex. 8 ("Stranded reserves" due to climate change? Not likely, says Shell boss).
[34] *Id.*, Ex. 9 (Shell, A Better Life with a Health Planet: Pathways to Net-Zero Emissions) at 3.

Multiple Shell agents and subsidiaries (together, "agents") do business in California and have been registered to do business in California for decades, including Shell Oil Company (registered to do business since 1949), Shell Exploration & Production Company (1995), Shell Marine Products (US) Company (1999), and Equilon Enterprises LLC (1998). FAC ¶ 60.

According to its annual report, Shell is involved in all facets of the petroleum production and distribution process by design, as "part of an integrated value chain, including trading activities, that turns crude oil and other feedstocks into a range of products which are moved and marketed around the world for domestic, industrial and transport use."[35] Shell, including through its agents, produces oil and gas in California, owns and/or operates port facilities in California for receipt of crude oil, owns and operates a refinery in California where crude oil is refined into finished fossil fuel products, including gasoline, transports crude oil through a pipeline within California, and owns and operates approximately six gasoline terminals in California. *Id.* ¶¶ 61-67.

Through its agents, Shell is the owner or operator of over 200 oil and gas wells in California and has a 51.8% interest in Aera Energy LLC, which operates approximately 15,000 oil and gas wells in California. *Id.* ¶ 62. Since 1915, Shell, including through its agents, has owned a gasoline refinery in Martinez, California, thirty miles northeast of San Francisco. *Id.* ¶ 63. Shell, including through its agents, previously owned and operated the Carson Refinery from approximately 1923 through 1992, where crude oil was refined into gasoline, and has since operated the over 400-acre facility for receipt and distribution of fossil fuels throughout the Southern California region via pipeline and truck delivery. *Id.* Shell's website claims that its "Southern California Products System is part of a network that provides unequaled access to key refining centers and markets in North America."[36] Shell, including through its agents, previously owned and operated the Wilmington refinery until 2007 (98,000 barrels of crude oil per day capacity), and the Bakersfield refinery until 2005 (70,000 barrels per day capacity). FAC ¶ 63. Through its agent, Shell also owns or operates port facilities at the Wilmington port facility in Los Angeles County and at the Long Beach port for

[35] Berman Decl., Ex. 1 at 46.

[36] Berman Decl., Ex. 10 at 2.

receipt of crude oil, and owns and operates at least eight gasoline terminals in California that store fossil fuel products, located in Carson, Colton, Signal Hill, Martinez, West Sacramento, Stockton, San Jose, and Van Nuys. *Id.* ¶¶ 64-65. Shell has numerous Shell-branded gasoline stations in California, and exercises control over gasoline product quality and specifications at these stations. *Id.* ¶ 67. Shell offers credit cards and discounts to consumers through its interactive website to promote sales of gasoline and other products at its branded gasoline stations. *Id.*

C. Shell engages in production, sales and promotion of fossil fuels in the United States.

Shell does oil and gas business in the United States, including through its agents, in all 50 states and employs more than 20,000 people in the United States. *Id.* ¶ 69. As of December 31, 2018, Shell owned 854 million barrels of oil equivalent proved reserves for crude oil and natural gas in the United States and an additional 488 million barrels of oil equivalent of proved undeveloped reserves in the United States. *Id.* ¶ 70. Shell, including through agents, has approximately 30,000 mineral leases for shales, and has interests in more than 2,300 productive wells. *Id.* Nearly 70% of Shell's proven shale reserves worldwide are in the United States, and 88% of its shales liquids proved reserves are in the United States. *Id.* Shell's share of shales production averaged 137,000 barrels of oil equivalent per day in 2017. *Id.*

Shell, including through its agent Shell Oil Products US, has owned the Puget Sound Refinery since 2001 in Anacortes, Washington, which processes up to 145,000 barrels of crude oil per day into fossil fuel products including gasoline. *Id.* ¶ 71. Shell, including through its agents, produces natural gas in the Marcellus and Utica formations in Pennsylvania and Ohio, and owns approximately 850,000 acres in Pennsylvania, Ohio and New York. *Id.* Methane is the second most important greenhouse gas causing global warming and, as defendants know, routinely escapes from facilities operated by defendants' customers, and also consumers. *Id.* ¶ 92. Shell, through its agents, including Shell Pipeline Company LP, has owned and/or operated fossil fuel pipelines in the United States for 95 years. *Id.* ¶ 72. Shell currently owns and operates seven tank farms across the U.S., transports more than 1.5 billion barrels of crude oil and refined products annually through 3,800 pipeline miles across the Gulf of Mexico and five states, and has ownership interests in an additional

8,000 pipeline miles. *Id.* There are more than 10,000 Shell-branded gasoline stations in the United States; Shell exercises control over gasoline product quality at these Shell-branded stations. *Id.* ¶ 73.

D. Shell has contributed to global warming, which is causing severe injuries to the Cities.

Shell, through its fossil fuel business, knowingly has contributed, and continues to contribute, to the global warming nuisance. *Id.* ¶¶ 2, 34, 92, 94(d), 95, 104. Shell is the sixth-largest cumulative producer of fossil fuels worldwide in history and is responsible for over 2 percent of total atmospheric greenhouse gases ("GHGs") (carbon dioxide and methane) from industrial sources. *Id.* ¶ 94.[37] Defendants are collectively responsible through their production, marketing and sale of fossil fuels for over 11% of all GHG pollution from industrial sources; more than half of current pollution levels from defendants' fossil fuels is attributable to production since 1980. *Id.* ¶¶ 92, 94(b-c). Global warming has caused and continues to cause accelerated sea level rise in San Francisco Bay, with severe, and potentially catastrophic, consequences for the Cities. *Id.* ¶¶ 125, 130-31.

III. LEGAL STANDARD

The Cities need make only a *prima facie* showing of jurisdictional facts to satisfy their burden of demonstrating jurisdiction over Shell, in the absence of an evidentiary hearing. *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127 (9th Cir. 2010). The Court must take uncontroverted allegations in the complaints as true, and resolve any factual conflicts and draw all reasonable inferences in favor of the Cities. *Id.*

IV. ARGUMENT

A. This Court has specific jurisdiction over the Cities' claims against Shell.

Under Rule 4(k)(1)(A), this Court applies California's long-arm statute, which authorizes jurisdiction to the full extent constitutionally permitted. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1067 (9th Cir. 2017). To exercise jurisdiction, three requirements must be met: 1) the defendant must purposefully direct its activities toward the forum; 2) the claim must arise out of or relate to the defendant's forum-related activities; and 3) the exercise of jurisdiction must be

[37] *See* Table 3 of Richard Heede, *Tracing Anthropogenic Carbon Dioxide and Methane Emissions to Fossil Fuel and Cement Producers, 1854–2010*, Climactic Change, Jan. 2014, cited in FAC ¶ 101 n.71.

reasonable, *i.e.*, comport with fair play and substantial justice. *Id.* at 1068. Alternatively, since the Court has found that the Cities raise a federal claim, Rule 4(k)(2) permits the Court to aggregate Shell's contacts with the United States as a whole instead of a particular state forum. If the Cities meet the first two requirements, the burden shifts to Shell to present a compelling case that the exercise of jurisdiction would be unreasonable. *Id.* at 1068-69.

1. Shell has sufficient contacts with California to support specific jurisdiction.

Shell argues that, as an alleged holding company, it has no contacts with California or the United States, directly or through its subsidiaries, agents or predecessors.

A "parent company may still be subject to jurisdiction based on its own contacts with a forum state." *Herring Networks, Inc. v. AT&T Servs., Inc.*, 2016 WL 4055636, at *7 (C.D. Cal. July 25, 2016). For example, a "defendant's transmission of goods [into the forum state] permits the exercise of jurisdiction . . . where the defendant can be said to have targeted the forum," but "as a general rule, it is not enough that the defendant might have predicted that its goods will reach the forum State." *McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011). Alternatively, as the Supreme Court observed in *Daimler AG v. Bauman*: "Agency relationships [] . . . may be relevant to the existence of specific jurisdiction" because "a corporation can purposefully avail itself of a forum by directing its agents or distributors to take action there." 134 S. Ct. 746, 759 n.13 (2014). A parent may be subject to jurisdiction for the acts of its subsidiaries, when the latter is acting "on the principal's behalf and subject to the principal's control." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1024 (9th Cir. 2017). An agent's acts ratified after the fact also may be imputed to a principal for purposes of personal jurisdiction. *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1073 (9th Cir. 2001). District courts within the Ninth Circuit have held that a parent corporation may be subject to specific jurisdiction by directing its agents to take actions in the forum state. For example, in *Herring Networks, Inc. v. AT&T Services, Inc.*, the court held that if the parent company "directed and/or authorized [its subsidiary] to engage in conduct in California, those actions may be attributed to AT&T, Inc. for purposes of evaluating personal jurisdiction." *Id.* And in *Weaver v. Johnson & Johnson, Ethicon, Inc.*, the court held: "A parent corporation may be amenable to specific jurisdiction in a forum state, through an agency relationship, if it itself targeted the forum or it

'purposefully availed itself of a forum by directing its agents or distributors to take action there.'" 2016 WL 1668749, at *5 (S.D. Cal. Apr. 27, 2016) (quoting *Daimler*, 134 S. Ct. at 759 n.13).

Here, the Shell parent company is the ultimate decisionmaker on the level of companywide fossil fuels to produce, including taking into account climate change risks, and directs its subsidiaries to carry out that decision operationally through production, marketing and sales of fossil fuels in and for California. *See supra* pp. 1-6. Shell's 2017 announcement that it would seek to reduce the net carbon footprint of the "full range of Shell emissions, from our operations *and from the consumption of our products*" clearly demonstrates this point. Berman Decl., Ex. 3 at 1. (emphasis added). It is utterly absurd to suggest that each of the over one thousand Shell subsidiaries – and not the Shell parent – are annually making individual decisions that add up randomly to some companywide fossil fuel production level that is critical to the parent company's bottom line but as to which the parent company exerts no control. The assertion, which no doubt would be interesting news to Shell's shareholders, simply defies belief. Shell thus has directed its activities towards California by engaging in substantial oil and gas operations in the forum state as part of a companywide decision regarding global production levels. The Szymanski declaration very carefully states that Shell "does not exercise day-to-day control over the *operational* activities of its many hundreds of indirect subsidiaries." ECF No. 186-2 ¶ 14 (emphasis added).[38] But the tortious conduct here was the *decision* to produce massive amounts of fossil fuels globally. This case is not at all like a personal injury case relating to a specific oil rig or a property damages case arising from a single pipeline leak. Here the subsidiaries have been merely carrying their individual pieces of a global decision that is core to the parent company's bottom line.

Shell cites *Walden v. Fiore*, 134 S. Ct. 1115 (2014), and *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064 (9th Cir. 2017), but these cases are of no help to its argument. Here, unlike in *Walden* where it was "undisputed that no part of [defendant's] course of conduct occurred" in the forum state, jurisdiction over Shell properly is "based on intentional conduct by the defendant that

[38] The declaration similarly qualifies numerous other statements by referring to "operations" or operational aspects. *Id.* ¶¶ 3, 10, 14-16, 22-23, 28.

creates the necessary contacts with the forum." 134 S. Ct. at 1123-24. The court in *Axiom Foods* actually "[a]ssum[ed], without deciding, that an agency relationship between [a parent and subsidiary] would be 'relevant to the existence of *specific* jurisdiction,'" and simply held there was no jurisdiction where defendant "sent one newsletter to a maximum of ten recipients located in California, in a market where [the subsidiary] has no sales or clients." 874 F.3d at 1071 & n.5 (quoting *Daimler*, 134 S. Ct. at 759 n.13). Here, by contrast, the "defendant's contacts with the forum State itself" are extensive, long-standing, and important to its core fossil fuel business. *See id.* at 1070 (quotation omitted); *supra* section II.B, C. The Ninth Circuit in *Williams*, which Shell relies upon to argue against agency jurisdiction, assumed that agency continues to be relevant to specific jurisdiction, and exists where the parent company has the "right to substantially control its subsidiary's activities." *Williams,* 851 F.3d at 1024-25. Here, the Shell parent not only controls but actually makes the critical decision on the companywide levels of fossil fuels to produce, taking into account climate change risks. Shell cites cases allegedly holding that a parent's control over "general policies" does not allow for imputation of contacts under an agency theory but the cases Shell cites are easily distinguished.[39] Shell relies on a case that actually supports jurisdiction here because the Court held that a "parent is directly liable for its own actions." *United States v. Bestfoods*, 524 U.S. 51, 65 (1998). Shell also points to four cases holding no jurisdiction over the same tobacco entity (BAT Ind.), but those decisions rested on facts and theories inapplicable here.[40]

[39] *See Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (discussing attribution under *general* jurisdiction); *Lyons v. Philip Morris Inc.*, 225 F.3d 909, 915 (8th Cir. 2000) (plaintiff on appeal included "no factual materials supporting" personal jurisdiction over holding company); *Jazini v. Nissan Motor Co., Ltd.*, 148 F.3d 181, 183-84 (2d Cir. 1998) (plaintiff "state[d] no facts" for *general* jurisdiction over Japanese corporation involving car accident in Iran); *In re: Western States Wholesale Nat. Gas Antitrust Litig.*, 605 F. Supp. 2d 1118, 1137-38 (D. Nev. 2009) ("no evidence" parent impacted decisions about "whether, when, to whom, [and] in what volume" to sell natural gas).

[40] *See, e.g., U.S. v. Philip Morris Inc.*, 116 F. Supp. 2d 116, 124 (D.D.C. 2000) (no jurisdiction under conspiracy theory of jurisdiction where no "prima facie showing that [parent] had an agreement with its subsidiaries"); *Insolia v. Philip Morris Inc.*, 31 F. Supp. 2d 660, 672 (W.D. Wisc. 1998) (only allegations were that parent profited from subsidiary and ratified its actions); *Arch v. Am. Tobacco Co.*, 984 F. Supp. 830, 840 (E.D. Pa. 1997) (parent only engaged in "business of investment"); *State v. American Tobacco Co.*, 707 So.2d 851, 856 (Fla. Dist. Ct. App. 1998) (corporate structure of parent at issue "offers a high degree of autonomy" to subsidiaries).

2. Shell has sufficient contacts with the United States to support specific jurisdiction.

Even if the Court decides that Shell is outside the reach of the California long-arm statute, the Court may nonetheless exercise jurisdiction over Shell under Rule 4(k)(2), the federal long-arm statute, which permits the Court to aggregate Shell's contacts with the United States as a whole instead of a particular state forum. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1158 (9th Cir. 2006). Unless a defendant names some other state in which the suit could proceed, the Court may assert jurisdiction if the claim arises under federal law and jurisdiction comports with due process. *Holland America Line, Inc. v. Wartsila North America, Inc.*, 485 F.3d 450, 461 (9th Cir. 2007); *Axiom Foods*, 874 F.3d at 1072. This Court has determined that the Cities' nuisance claims "are necessarily governed by federal common law," and Shell has not identified any court in the United States where it would submit itself to jurisdiction. Order Denying Motions to Remand, ECF No. 134. Shell's extensive United States oil and gas contacts subject it to jurisdiction. *See supra* Section II.

3. The Cities' claims arise out of or relate to Shell's conduct in California or the United States.

The second prong of the personal jurisdiction test involves a causal analysis. The Ninth Circuit has adopted a but-for test: "Under the 'but for' test, a lawsuit arises out of a defendant's contacts with the forum state if a direct nexus exists between those contacts and the cause of action." *Learjet, Inc. v. Oneok, Inc.*, 715 F.3d 716, 742 (9th Cir. 2013) (quotation marks omitted), *aff'd sub nom. Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015). "Despite its apparently strict language, many district courts in the Ninth Circuit have not applied the 'but for' test stringently." *California Brewing Co. v. 3 Daughters Brewing LLC*, 2016 WL 1573399, at *6 (E.D. Cal. Apr. 19, 2016).[41] Shell argues that the Cities cannot satisfy this requirement because Shell's production, sales and promotion of fossil fuels in California did not by themselves cause *all* of the Cities' injuries. But

[41] *See also Adidas Am., Inc. v. Cougar Sport, Inc.*, 169 F. Supp. 3d 1079, 1085, 1092–93 (D. Or. 2016) (test "should not be narrowly applied; rather, the requirement is merely designed to confirm that there is some nexus between the cause of action and defendant's contact with the forum"; sustaining jurisdiction where defendant's infringing product was purchased over the web by only three people in the forum) (quotation marks omitted); *Elec. Recyclers Int'l, Inc. v. Calbag Metals Co.*, 2015 WL 1529490, at *4 (E.D. Cal. Apr. 2, 2015) ("Despite the apparently strict language of the but-for test, the Ninth Circuit has not applied the [but-for] test stringently.").

where the plaintiff's injuries have been caused by the totality of national conduct, personal jurisdiction exists if the defendant undertook some of this conduct within the forum. For example, in *Keeton v. Hustler Magazine, Inc*., the Supreme Court held that a court could exercise personal jurisdiction over a non-resident tortfeasor even though "the bulk of the harm done to [the plaintiff] occurred outside" the state. 465 U.S. 770, 780 (1984). The defendant publisher was sued in New Hampshire by a plaintiff seeking "nationwide damages" for allegedly libelous statements made in the national publication. *Id.* at 775. Even though New Hampshire represented only a tiny fraction of the defendant's national sales, and the libelous reports were apparently investigated, written, edited, or produced elsewhere, the Court held that the defendant's actions in "carrying on a 'part of its general business' in New Hampshire . . . is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire." *Id.*; s*ee also Shute v. Carnival*, 897 F.2d 377, 386 (9th Cir. 1990) (upholding personal jurisdiction where defendant had advertised in forum state but had no offices, employees or assets in the forum).

Subsequent cases have continued to make clear that the defendant's forum-based activities need not cause the entire harm. For example, in *Dubose v. Bristol-Myers Squibb Co*., a resident of South Carolina sued foreign corporations in California for failure to warn and fraudulent misrepresentation with respect to a drug product that the defendants had tested at clinical trials in California and many other states. 2017 WL 2775034 (N.D. Cal. June 27, 2017). The court, applying the Ninth Circuit's but-for test and upholding jurisdiction, rejected the defendants' argument that there is a numerical threshold for in-state conduct when the injury is caused by conduct spread across many jurisdictions:

> What would that threshold be? If 25 percent of the clinical trials were conducted in California, would that be enough? 50 percent? 75 percent? The point is that our existing case law provides no basis for imposing an arbitrary cut-off, and the Court is disinclined to fashion a new barrier to the exercise of its jurisdiction from whole cloth.

Id. at *4. The court held that since the California clinical trials were "*part of* the unbroken chain of events leading to plaintiff's injury" they did not have to be the sole cause of the injury. *Id*. at *3 (emphasis added). In *Wilden Pump & Engineering Co. v. Versa-Matic Tool, Inc.*, the manufacturer's

sales of the product to California were only one to three percent of its annual sales, but the court concluded that applying the but-for test to require just the California sales to cause the injury would lead to an "absurd result." 1991 WL 280844, at *4 (C.D. Cal. July 29, 1991).

Copyright cases have reached the same result. In *Mavrix v. Brand Technologies*, the Ninth Circuit upheld specific jurisdiction where the defendant's website largely "court[ed] a national audience" but also was accessible to users in the forum state. 647 F.3d 1218, 1222, 1228 (9th Cir. 2011); *accord Adidas*, 169 F. Supp. 3d at 1092. And in *Hendricks v. New Video Channel America*, the court held that defendants' promotion and distribution of the copyrighted material in California satisfied the causal relationship test, even though the defendants' conduct had occurred nationwide. Like *Wilden Pump*, the court interpreted the but-for test to avoid the "absurd result" that California conduct contributing to a California injury could not give rise to specific personal jurisdiction where the nature of the claim involved the defendant's nationwide injurious conduct. 2015 WL 3616983, at *7 & n.11 (C.D. Cal. June 8, 2015). These cases demonstrate that personal jurisdiction exists where a large and harmful course of conduct extends into the forum state; forum conduct alone need not cause the injury. And while Shell accuses the Cities of taking a contrary position in their motion to remand, Br. 16, the Cities have in fact been consistent: their claims are not dependent on any one subset of defendants' fossil fuel production activities but stem from all of the conduct. ECF No. 91 at 20-21.

Here, Shell engages in substantial in-state conduct to produce, sell and promote its fossil fuels. Its website even offers discounts off every gallon of Shell fuel to promote sales of gasoline at its branded gasoline stations, including in California – which is much like the website in *Mavrix* that caused injury merely by making copyrighted materials "accessible to users" in California. FAC ¶ 66; *Mavrix*, 647 F.3d at 1228. This conduct is another causal factor in the Cities' injuries, insofar as the nuisance was caused both by production and by activities promoting additional consumption – promotions aimed in part at California, one of the largest markets for fossil fuels in the country. Shell has numerous franchises in California over which it exercises substantial control with respect to promotion of fossil fuels. *Cf. Exxon Mobil Corp. v. Attorney Gen.*, 2018 WL 1769759, at *3 (Mass. Apr. 13, 2018) (holding parent Exxon subject to specific jurisdiction in Massachusetts related

to civil investigative demand "concerned primarily with Exxon's marketing and advertising of its fossil fuel products to Massachusetts consumers").

Moreover, the personal jurisdiction analysis "depends, to a significant degree, on the specific type of tort … at issue"—which in this case is nuisance. *Picot v. Weston*, 780 F.3d 1206, 1214 (9th Cir. 2015) (analyzing purposeful direction element); *cf. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000) (courts may not "raise the standing hurdle higher than the necessary showing for success on the merits in an action"). Nuisance has a well-established causal standard applicable in multiple tortfeasor cases that emphatically does not require the plaintiff to untangle which molecules came from where. Nuisance liability only requires that a defendant "contribute[]" to the nuisance. *Cox v. City of Dallas*, 256 F.3d 281, 292 n.19 (5th Cir. 2001). In a nuisance case involving multiple contributors where the pollution has mixed together, there is an indivisible injury and, absent a valid basis to apportion responsibility, each defendant is liable for the entire harm. Restatement (Second) of Torts ("Restatement") § 875. As the Restatement provides, "the fact that other persons contribute to a nuisance is not a bar to the defendant's liability for his own contribution." Restatement § 840E (1979); *see also id.* § 875. Indeed, the burden of apportionment is on the defendant. Restatement § 433B(2); *Connecticut v. Am. Elec. Power Co., Inc.*, 582 F.3d 309, 349 (2d Cir. 2009) ("in a federal common law of nuisance case involving air pollution, where the ambient air contains pollution from multiple sources . . . liability is joint and several"), *aff'd in relevant part, rev'd on other grounds*, 564 U.S. 410 (2011). And it is no defense that the defendant's conduct by itself would not have caused the harm, even when there are a great many contributors. So long as the defendant is aware that its conduct combines with that of others to create the nuisance, the defendant may be held liable.[42]

[42] *See, e.g.*, *Boim v. Holy Land Found. for Relief & Dev.*, 549 F.3d 685, 696-97 (7th Cir. 2008) (en banc) ("pollution of a stream to even a slight extent becomes unreasonable [and therefore a nuisance] when similar pollution by others makes the condition of the stream approach the danger point.") (quotation omitted); *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 823 (E.D.N.Y. 1984) ("In the pollution and multiple crash cases, the degree to which the individual defendant's actions contributed to an individual plaintiff's injuries is unknown and generally unascertainable," yet "all defendants have been held liable"); *Michie v. Great Lakes Steel Div. Nat'l Steel Corp.*, 495 F.2d 213, 215-18 (6th Cir. 1974); *California v. Gold Run Ditch & Mining Co.*, 4 P. 1152, 1156 (Cal. 1884) (defendant's pollution alone would not have caused injury given the "vast amount" of mining previously and currently undertaken on the river by numerous others but

Shell's reliance on *Doe v. Am. Nat'l Red Cross*, 112 F.3d 1048 (9th Cir. 1997), is misplaced. There the plaintiff sued multiple Arizona defendants as well a non-resident FDA administrator, claiming that the defendants contributed to her husband contracting AIDS from a blood transfusion he received at an Arizona hospital. *Id.* at 1051-52. The court concluded that the plaintiff's claims did not arise from the federal defendant's contacts with the forum because the federal officer had not "engaged in affirmative conduct allowing or promoting the transaction of business in Arizona," nor controlled distribution of blood products. *Id*. Here, Shell's forum conduct forms a direct nexus with the Cities' claims.

4. Exercising personal jurisdiction over Shell is reasonable.

Once the Cities establish the first two elements of specific jurisdiction, the burden shifts to Shell to present a "compelling case" establishing that the exercise of jurisdiction is unreasonable. *Bancroft & Masters, Inc. v. August Nat'l, Inc*., 223 F.3d 1082, 1088 (9th Cir. 2000). Shell does not meet its "heavy burden to present a compelling case that the exercise of jurisdiction is unreasonable." *Chunghwa Telecom Global v. Medcom*, 2016 WL 5815831, at *6 (N.D. Cal. Oct. 5, 2016). Shell relies on *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114 (9th Cir. 2002), but that case addresses the reasonableness of asserting *general jurisdiction*. It is reasonable here to assert specific jurisdiction.

Under factor one, the extent of the defendant's purposeful interjection into the forum state, Shell purposefully engaged in conduct in California and the United States by deciding to produce massive amounts of fossil fuels, in part in California, and engaging in (or authorizing) substantial oil and gas business activities in California. Under factor two, the burden on Shell in defending in the forum is not heavy given Shell's responsibility for corporate-wide decisions on fossil fuel production as they relate to global warming, and its substantial, on-going business in California over the past decades through its subsidiaries. *Kabo Tool Co. v. Porauto Industrial Co.*, 2013 WL 5328496, at *7 (D. Nev. Sep. 20, 2013) ("While jurisdiction in Nevada may not be as convenient to the defendants,

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defendant still liable for contributing to the nuisance); Restatement (Second) of Torts § 881 cmt. d ("It is also immaterial that the act of one of them by itself would not constitute a tort if the actor knows or should know of the contributing acts of the others.").

it does not present an unreasonable burden. The defendants have been conducting business in Nevada for over 10 years. If the defendants have the ability to sufficiently conduct business, they also have the ability to defend their actions in Nevada."). "[M]odern advances in communications and transportation have significantly reduced the burden of litigating in another country." *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (9th Cir. 1988). "[T]o present a 'compelling case' against jurisdiction, [Shell] must do more than simply claim, without elaboration, that litigation in a distant country presents an unreasonable burden." *Richmond Techns., Inc. v. Aumtech Business Solutions*, 2011 WL 2607158, at *7 (N.D. Cal. July 1, 2011) (jurisdiction reasonable over defendants from India where "Defendants have not alleged that litigation in California would present a serious financial or physical hardship, nor have they suggested that India or some other state has a greater interest in the litigation or would provide a more efficient forum for resolving the dispute."). Shell has not identified any conflicts with the sovereignty of its resident country (factor three). The forum state has an interest in adjudicating the dispute (factor four) since "California has an interest in protecting its residents," an interest particularly strong here because the Cities bring claims, in part, in their sovereign capacities to redress injuries to the Cities and their residents. *Universal Stabilization Techns., Inc. v. Advanced BioNutrition Corp.*, 2017 WL 1838955, at *6 (S.D. Cal. May 8, 2017). With respect to factor five, the most efficient judicial resolution of the controversy, California is the most efficient forum, given that the injuries and some of the injury-inducing conduct occurred in this state. Factor six is the importance of the forum to the plaintiff's interest in convenient and effective relief, and this forum offers convenient and effective relief for the Cities' given the well-developed body of U.S. nuisance law in multiple-tortfeasor cases; Shell has not identified any court that would be more effective or convenient. Finally, Shell has not identified an alternative forum (factor seven). If the Netherlands is considered an alternate forum, any inconvenience to Shell of litigating in California would be transferred to the Cities and thus cancelled out. *See, e.g., North Sister Publishing, Inc. v. Schefren*, 2015 U.S. Dist. LEXIS 64637, at *16 (D. Or. Apr. 6, 2015).

B. Alternatively, the Cities are entitled to jurisdictional discovery.

In the alternative, to the extent that the Court may not be inclined to deny Shell's motion outright, the Cities should be allowed jurisdictional discovery. *See, e.g., Laub v. United States DOI*, 342 F.3d 1080, 1093 (9th Cir. 2003); *Illumina, Inc. v. Qiagen NV*, 2016 WL 3902541, at *4-5 (N.D. Cal. July 19, 2016); *SA Luxury Expeditions LLC v. Latin America for Less, LLC*, 2014 WL 6065838, at *2 (N.D. Cal. Nov. 12, 2014); *Macias v. Waste Mgmt. Holdings, Inc.*, 2014 WL 4793989, at *3 (N.D. Cal. Sept. 25, 2014). Discovery would be appropriate, for example, regarding Shell's role as the ultimate decisionmaker with respect to levels of companywide production of fossil fuels, its control over global climate policies, and its decisions to have its subsidiaries and agents carry out decisions regarding fossil fuel production and climate policies in California and the United States.

C. The Cities properly served Shell.

Shell's objection to service of process is meritless. The California Code of Civil Procedure ("CCP") authorizes service on a corporation by delivering process to "a general manager" of the corporation. Cal. Code Civ. P. § 416.10(b). A similar procedure is separately authorized by California Corporations Code ("CC") § 2110, which CCP § 416.10(d) incorporates into the CCP.

California courts have "adopted a very broad definition of the term 'general manager' for purposes of service of process, finding it to include the domestic sales representative(s) and local distributor(s) of a foreign corporation." *Hatami v. Kia Motors Am., Inc.*, 2008 WL 4748233, at *2 (C.D. Cal. Oct. 29, 2008). "'[E]very object of the service is obtained when the agent served is of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made.'" *Id.* (quoting *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 83 (1959)); *Yamaha Motor Co., Ltd. v. Superior Court*, 174 Cal. App. 4th 264, 273 n.9 (2009).

In general, service may be made on the domestic subsidiary of a foreign corporation if (1) the foreign parent is not otherwise "readily available for service in California," and (2) the parent and subsidiary have a "sufficiently close connection" such that the parent derives benefits from the subsidiary's California operations and it is likely that the subsidiary will notify the parent of having received service of process. *See U.S. ex rel. Miller v. Pub. Warehousing Co. KSC*, 636 F. App'x 947, 949 (9th Cir. 2016) (remanding for further factual development concerning parent-subsidiary

relationship). Service on a domestic subsidiary as the general manager of a foreign parent is appropriate where the parent, through its subsidiary, receives business advantages it would otherwise receive if it conducted its own business in the state. *Id.*; *see also Khachatryan v. Toyota Motor Sales, U.S.A., Inc.*, 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008) (service on domestic subsidiary as general manager of foreign parent was sufficient); *Gray v. Mazda Motor of Am., Inc.*, 560 F. Supp. 2d 928, 931 (C.D. Cal. 2008) (same).

Here, the Cities properly served Shell through the registered statutory agent of Shell's "general manager" in California, *i.e.*, Shell's domestic subsidiary, Shell Oil Company ("SOC"). *See* ECF Nos. 150-3, 150-4, 150-5. Nonetheless, Shell incorrectly asserts that it cannot be served through a general manager because Shell itself "does not 'transact' business in the State of California and is therefore not subject to service under [CC] section 2110." Br. 19. Shell says this is because section 2110 applies only to "foreign corporations transacting intrastate business," and because, according to Shell, it does not conduct business in California. *Id.* Shell's assertion is irrelevant, however, because CCP section 416.10 independently allows a corporation to be served through its general manager, and that provision is not limited by CC section 2100. *Compare* Cal. Code Civ. P. 416.10(b) (independently authorizing service on "a corporation" through "a general manager") *with* Cal. Code Civ. P. 416.10(d) (authorizing service on corporations under provisions separately established in California CC). CCP section 416.10 authorizes service on a corporation "by any of" four enumerated methods, only some of which involve service according to the procedures established separately in the CC. Cal. Code Civ. P. § 416.10; *Ault v. Dinner for Two, Inc.*, 27 Cal. App. 3d 145, 150 (1972). Shell argues that section 416.10(b) only permits service on a general manager outside California, Br. 22, but that is demonstrably incorrect. *Hatami*, 2008 WL 4748233, at *2 (upholding service on general manager in California).

In this regard, Shell's reliance on *Cosper* and *Empire Steel Corp. of Texas, Inc. v. Superior Court*, 56 Cal. 2d 823 (1961), is misplaced. Those cases involved a since-repealed subsection of the CCP that made specific reference to corporations "doing business in this State"; such language is not found in the current version of section 416.10. *See Empire Steel Corp.*, 56 Cal. 2d at 828; *Cosper*, 53 Cal. 2d at 82; *see also Ault*, 27 Cal. App. 3d at 150 (discussing differences between old and new

versions of statute). Moreover, *Cosper* and *Empire Steel* focused not on whether "doing business in" California was a procedural requirement for service on a general manager, but instead on personal jurisdiction. *Empire Steel Corp.*, 56 Cal. 2d at 829; *Cosper*, 53 Cal. 2d at 82. The new version of this statute, however, "separates service of process from bases of jurisdiction." *Ault*, 27 Cal. App. 3d at 149.

Shell also argues that SOC cannot be its general manager because SOC has never "held express or implied authority to act as [] Shell's agent, including with respect to the production, refining, transport, marketing or sale of fossil fuels . . . in California." Br. 20 (quoting ECF No. 186-2 ¶¶ 7, 9). But this is a straw man argument: the underlying rationale of California's "general manager" service rule is simply to ensure that the subsidiary served is reasonably likely to apprise the corporate parent of the lawsuit. *Cosper*, 53 Cal. 2d at 83; *Yamaha*, 174 Cal. App. 4th at 273 n.9. "General managers may be domestic distributors, salesmen or advertisers, or customer service liaisons of foreign manufacturers even if the foreign-domestic relationship is 'casual' or 'non-exclusive' as long as the domestic entity provides the foreign entity an open channel for the regular flow of business from the foreign entity into California." *Brighton Collectibles, Inc. v. Winston Brands, Inc.*, 2013 WL 394060, at *6 (S.D. Cal. Jan. 30, 2013). Here, Shell does not dispute that SOC is registered to do business in California. *See* ECF No. 186-2 ¶ 18; ECF No. 186-3. Nor does Shell dispute that Shell subsidiaries have extensive oil and gas operations in California. ECF No. 186-2 ¶¶ 18-22; ECF No. 150-3.

Shell admits, moreover, that it "sets the overall strategy and business principles" for all of its subsidiaries, including SOC. *See* ECF No. 186-2 ¶ 13. Indeed, "it appears there would be ample regular contact between" Shell and SOC, and that the "contact would be of sufficient rank and character to make it reasonably certain that [Shell] would be appraised of the service of process" on SOC. *Halo Elecs., Inc. v. Bel Fuse Inc.*, 2010 WL 2605195, at *2 (N.D. Cal. June 28, 2010) (service on general manager sufficient). This is not a case like *General Motors Corp. v. Superior Court*, where the plaintiffs did not offer sufficient factual allegations regarding the role of the person served as a general manager within the foreign corporation's overall business. 15 Cal. App. 3d 81 (1971). SOC clearly did apprise its corporate parent of the Cities' cases and, Shell has appeared to defend

itself. And, while service of process rules must of course be followed, such rules "should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant." *Gibble v. Car-Lene Research, Inc.*, 67 Cal. App. 4th 295, 313 (1998); *Hatami,* 2008 WL 4748233, at *1; *see also Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013) (service of process rules "should be liberally construed so long as a party receives sufficient notice of the complaint"); *Khachatryan*, 578 F. Supp. 2d at 1227 (service on general manager sufficient, in part, because foreign parent company was in fact put on notice by service on general manager); *Gray*, 560 F. Supp. 2d at 931 (same). The Cities served defendant BP p.l.c. ("BP") in exactly the same manner used for service on Shell, but, unlike Shell, BP has not objected to service of process.

D. The Cities have stated a claim upon which relief may be granted.

Without identifying any specific arguments, Shell seeks to incorporate its motion to dismiss for failure to state a claim but the Court need only consider arguments that are specifically and distinctively raised by the parties in their briefs.[43] Alternatively, should the Court consider Shell's other brief, the Cities likewise incorporate their opposition to the motion to dismiss on the merits.

V. CONCLUSION

The Court should deny Shell's motion and find that Shell is subject to jurisdiction and was properly served.

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Respectfully submitted,

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[43] *Independent Towers of Washington v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003).

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