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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

BP PLC, CHEVRON CORP., CONOCOPHILLIPS, EXXONMOBIL CORP., ROYAL DUTCH SHELL PLC, and DOES 1 through 10,

Defendants.

First Filed Case: No. 3:17-CV-6011-WHA
Related Case: No. 3:17-CV-6012-WHA

Case No. 3:17-cv-6011-WHA

DEFENDANT ROYAL DUTCH SHELL PLC'S REPLY IN SUPPORT OF ITS MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION, INSUFFICIENT SERVICE OF PROCESS, AND FAILURE TO STATE A CLAIM

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

CITY AND COUNTY OF SAN FRANCISCO and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the San Francisco City Attorney,

Plaintiffs,

v.

BP PLC, CHEVRON CORP., CONOCOPHILLIPS, EXXONMOBIL CORP., ROYAL DUTCH SHELL PLC, and DOES 1 through 10,

Defendants.

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

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INTRODUCTION

Plaintiffs have not satisfied the fundamental due process requirements for specific personal jurisdiction. They have not alleged or shown that Royal Dutch Shell plc's "suit-related conduct . . . create[d] a substantial connection with the forum." *Walden v. Fiore*, 571 U.S. 277, 134 S. Ct. 1115, 1121 (2014). Royal Dutch Shell is a holding company registered in England and Wales and headquartered in the Netherlands. The amended complaints do not plausibly allege that Royal Dutch Shell has created *any* connection with the forum, much less a substantial one, and Royal Dutch Shell has submitted unrebutted evidence confirming that it has no such connection.

In the face of that showing, Plaintiffs' Opposition utterly fails to provide a basis for exercising jurisdiction. Plaintiffs do not satisfy the Ninth Circuit's standard for imputing to Royal Dutch Shell the alleged jurisdictional contacts of its indirect subsidiaries. That standard requires "parental control of the subsidiary's internal affairs or daily operations." *Doe v. Unocal Corp.*, 248 F.3d 915, 926 (9th Cir. 2001) (per curiam). Plaintiffs' assertion (at 1) that Royal Dutch Shell "is the decisionmaker for its corporate family on fossil fuel production levels and managing climate change policies and risks" is legally insufficient and factually unsupported. It is legally insufficient because it describes nothing more than the "articulation of general policies and procedures," which is "[a]ppropriate parental involvement," not operational control and not a basis for disregarding corporate separateness. *Unocal*, 248 F.3d at 926. And the snippets of Internet research quoted by Plaintiffs do not substantiate their assertion as a factual matter.

Even if Plaintiffs could impute to Royal Dutch Shell the jurisdictional contacts of its operating subsidiaries, they still could not show that those contacts are a "'but for'" cause of Plaintiffs' claimed injuries. *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 1082, 1088 (9th Cir. 2000). Critically, Plaintiffs do not disavow their earlier representation that conduct amounting to a third of annual U.S. production is not a but-for cause of their alleged harm.

Plaintiffs also fail to show that the exercise of jurisdiction over Royal Dutch Shell would be reasonable; that they are entitled to jurisdictional discovery; or that service of process was sufficient.[1]

[1] Royal Dutch Shell also incorporates by reference the arguments set forth in the reply filed jointly and on behalf of all Defendants in support of the motion to dismiss the amended complaints for failure to state a claim upon which relief may be granted.

ARGUMENT

I. Plaintiffs Fail To Establish Personal Jurisdiction Over Royal Dutch Shell

Plaintiffs do not dispute that subjecting Royal Dutch Shell to general jurisdiction would violate due process. RDS Mot. 7-9. Accordingly, to establish personal jurisdiction, Plaintiffs must meet the test for specific jurisdiction. They must show (a) that Royal Dutch Shell created "a substantial connection with the forum," *Walden*, 134 S. Ct. at 1121; (b) that their claims "arise[] out of or relate[] to the defendant's forum-related activities," *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017); and (c) that exercising jurisdiction would "be reasonable," *id.* Plaintiffs' Opposition confirms that those requirements are not satisfied here.

A. Plaintiffs Have Not Shown That Royal Dutch Shell Created A Substantial Connection With The Forum

1. Plaintiffs fail to identify any conduct of Royal Dutch Shell that created "a substantial connection with the forum." *Walden*, 134 S. Ct. at 1121. The gravamen of the amended complaints is that Defendants' "*production* of fossil fuels" (*e.g.*, FAC ¶ 10 (emphasis added)) has allegedly caused a public nuisance. Plaintiffs fail to dispute Royal Dutch Shell's evidentiary showing that, as a holding company, it "does not produce, transport, market or sell fossil fuels." Szymanski Decl. ¶ 3.

Plaintiffs attempt to impute the alleged production activities of Royal Dutch Shell's indirect subsidiaries to Royal Dutch Shell, yet they identify no basis upon which to do so. They fail even to acknowledge the "well established" "general rule" that "the presence of [a subsidiary] in a forum state may not be attributed to [a parent]." *Axiom Foods*, 874 F.3d at 1071. Nor do they make any effort to satisfy the Ninth Circuit's standard for imputing jurisdictional contacts on an alter ego theory. RDS Mot. 14-15. To establish specific jurisdiction on an agency theory, Plaintiffs must show, at a minimum, that Royal Dutch Shell has "the right to substantially control its subsidiary's activities." *Williams v. Yamaha Motor Co.*, 851 F.3d 1015, 1025 (9th Cir. 2017).

Plaintiffs' assertions (at 11-12) that Royal Dutch Shell "controls" decisions about the "level of companywide fossil fuels to produce" would not, even if true, suffice to show the requisite degree of control. The Ninth Circuit has explained that the "articulation of general policies and procedures" — such as the decision to be in the oil and gas business, rather than selling toothbrushes — is the kind of "[a]ppropriate parental involvement" in a subsidiary's affairs that does not provide a basis for

imputing the subsidiary's jurisdictional contacts to the parent. *Unocal*, 248 F.3d at 926. Rather, "an agency relationship is typified by parental control of the subsidiary's internal affairs or daily operations." *Id.* (citing *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980) (per curiam)).[2] Plaintiffs' attempt (at 12 n.39) to distinguish *Unocal* as "discussing attribution under *general* jurisdiction" fails because, in *Williams*, the Ninth Circuit pointed to *Unocal* as articulating the minimum standard that would be necessary to establish specific jurisdiction on an agency theory. *See Williams*, 851 F.3d at 1025.

Insolia v. Philip Morris Inc., 31 F. Supp. 2d 660 (W.D. Wis. 1998), cited in Royal Dutch Shell's motion (at 12 n.7), illustrates the legal insufficiency of Plaintiffs' policy-control theory. There, as here, the plaintiffs alleged that the defendants' products (there, cigarettes; here, fossil fuels) were themselves a basis for liability, and the plaintiffs sought to establish personal jurisdiction over the parent tobacco corporation based on its subsidiary's sales of cigarettes in the forum. The record showed that the parent corporation "issued a policy directive" containing "specific guidelines" ranging from "domestic and international sales targets to management and product quality objectives." *Id.* at 665. The court held that such evidence was insufficient to establish either general or specific jurisdiction because, among other deficiencies, the plaintiffs had not shown that the parent had "responsibility for the daily operations" of the subsidiary. *Id.* at 670; *see id.* at 672.[3]

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[2] In *Kramer*, the Ninth Circuit refused to exercise personal jurisdiction on an agency theory where the parent company "had general executive responsibility for the operation of [the subsidiary], and reviewed and approved its major policy decisions," and where "[e]xecutives of [the parent] work[ed] closely with executives of [the subsidiary] on pricing of vehicles for the United States market and sometimes travel[ed] to the United States for talks on pricing." 628 F.2d at 1177.

[3] Plaintiffs ignore (at 12 n.40) the quoted portions of *Insolia*, and they offer no persuasive distinction between the related cases before the Court and the four other cases Royal Dutch Shell cited in its motion that rejected personal jurisdiction in the tobacco context. *See United States v. Philip Morris Inc.*, 116 F. Supp. 2d 116, 120, 123-24, 130 (D.D.C. 2000) (holding that parent was "merely acting in its role as a holding company" when making corporate policy decisions); *id.* at 127 & n.12, 128-29 (rejecting argument that parent was subject to personal jurisdiction for its own actions, including making policy statements); *State v. American Tobacco Co.*, 707 So. 2d 851, 856 (Fla. Dist. Ct. App. 1998) (parent "company's policy statements which established goals for its subsidiaries" not sufficient for "agency relationship"); *Lyons v. Philip Morris Inc.*, 225 F.3d 909, 915 (8th Cir. 2000) (no imputation where parent did not "control[]" subsidiaries' "day-to-day operations"); *Arch v. American Tobacco Co.*, 984 F. Supp. 830, 837 (E.D. Pa. 1997) (same).

Plaintiffs' attempts (at 12 & nn.39-40) to distinguish Royal Dutch Shell's other cases are equally unavailing. The court in *In re Western States Wholesale Nat. Gas Litig.*, 605 F. Supp. 2d 1118 (D. Nev. 2009), held that setting "overall limits" on the subsidiary's natural-gas trading was not

2. Plaintiffs cite no case sustaining personal jurisdiction in analogous circumstances. They rely (at 10) on *Herring Networks, Inc. v. AT&T Services, Inc.*, 2016 WL 4055636 (C.D. Cal. July 25, 2016). But in that case the complaint contained concrete allegations — "uncontroverted by" the defendant's affidavits — that "the Chairman and CEO" of the parent company "authorized and instructed" two officers of the subsidiary to make specific allegedly fraudulent representations to the plaintiff. *Id.* at *7. The court expressly distinguished those allegations (which sufficed to support personal jurisdiction) from allegations like those on which Plaintiffs rely here. The plaintiff's assertion that the parent company "set corporate policies for its subsidiaries" did "not support the exercise of specific personal jurisdiction," the court explained, because "plaintiff cannot establish that these acts were 'expressly aimed' at California, let alone plaintiff. Indeed, it does not appear that these acts were directed at *any* state in particular." *Id.* at *6 n.3; *see Axiom Foods*, 874 F.3d at 1069 (discussing requirement that defendant's conduct have been "expressly aimed at the forum").

Plaintiffs also quote (at 12) the statement in *United States v. Bestfoods*, 524 U.S. 51 (1998), that a parent can be "directly liable for its own actions." *Id.* at 65. But they ignore the Court's more on-point explanation that conduct such as "monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures" does not support such direct liability. *Id.* at 72.[4]

3. In addition to being legally insufficient, the factual premise of Plaintiffs' argument is

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a basis for imputation because the parent did not dictate "*daily decisions* regarding whether, when, to whom, in what volume, or at what price" to sell natural gas (Plaintiffs omit the italicized language). *Id.* at 1137-38; *see Jazini v. Nissan Motor Co.*, 148 F.3d 181, 185 (2d Cir. 1998) (rejecting imputation based on references in annual report to "a truly global company"). Plaintiffs ignore *Sonora Diamond Corp. v. Super. Ct.*, 99 Cal. Rptr. 2d 824 (Ct. App. 2000), in which the California Court of Appeal explained that agency requires proof that the parent "moved beyond the establishment of general policy and direction for the subsidiary and in effect [took] over performance of the subsidiary's *day-to-day* operations in carrying out that policy." *Id.* at 839.

[4] Plaintiffs' other authorities (at 10-11) are off point. *See J. McIntyre Machinery, Ltd. v. Nicastro*, 564 U.S. 873, 882 (2011) (plurality op.) (stating that "[t]he defendant's transmission of goods permits the exercise of jurisdiction only where the defendant can be said to have targeted the forum"; no discussion of jurisdiction over foreign holding companies that do not themselves transmit goods); *Myers v. Bennett Law Offices*, 238 F.3d 1068, 1071, 1073 (9th Cir. 2001) (law firm subject to personal jurisdiction based on actions of its paralegal); *Weaver v. Johnson & Johnson*, 2016 WL 1668749, at *5 (S.D. Cal. 2016) (recognizing that a plaintiff bears "the burden to prove that the defendant directed its [subsidiary] agents . . . to take action in California").

unsubstantiated. Plaintiffs' nearly verbatim reproduction of the amended complaints' allegations (at 6-9) is insufficient for two reasons. First, as explained in Royal Dutch Shell's motion, even if taken as true, those allegations do not plausibly show that Royal Dutch Shell itself created a substantial connection to the forum. Second, in resolving a motion to dismiss for lack of personal jurisdiction, the Court "may not assume the truth of allegations in a pleading which are contradicted by affidavit." *Data Disc, Inc. v. Systems Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977); *see* RDS Mot. 6. Royal Dutch Shell submitted an unrebutted declaration from its General Counsel and Secretary demonstrating (a) that Royal Dutch Shell itself does not conduct any of the activities alleged in the amended complaints and (b) that indirect subsidiaries of Royal Dutch Shell that operate in California and elsewhere in the United States are not its agents. *See* Szymanski Decl. ¶¶ 18-29.

Plaintiffs also discuss (at 1-6) a handful of additional sources, none of which supports the assertion (at 11) that Royal Dutch Shell sets a "level of companywide fossil fuels to produce."

First, Plaintiffs misconstrue (at 2) the reporting of group-wide production figures in Royal Dutch Shell's annual report as "only refer[ring] to Shell the parent company." As the report explains, the term "our" refers to "the Company *and its subsidiaries*," meaning that the phrase "our production" reports aggregate production figures for the operating subsidiaries in the Shell group. Berman Decl., Ex. 1, at 5. The *Insolia* court explained that "[r]eferences to tobacco products produced by [the parent] and 'the Group' in documents created by [the parent] are not concessions that [the parent] manufacturers cigarettes." 31 F. Supp. 2d at 663. Likewise, the statements in Royal Dutch Shell's annual report are not concessions that Royal Dutch Shell produces fossil fuels; they are instead statements about the aggregate production activities of operating subsidiaries. *See Moody v. Charming Shoppes of Delaware, Inc.*, 2008 WL 2128955, at *7 (N.D. Cal. May 20, 2008) (parent's "reporting on its subsidiaries' financial results" does not undermine corporate separateness).

Second, Plaintiffs cite (at 2) testimony from a different lawsuit for the proposition that Royal Dutch Shell's board approved a plan to spend $7 billion exploring for oil near Alaska. But approval of a subsidiary's major investment neither undermines corporate separateness, *see Unocal*, 248 F.3d at 927-28, nor shows that Royal Dutch Shell sets "companywide levels" of production, Opp. 12.

Third, Plaintiffs cite (at 3) Royal Dutch Shell's announced "ambition" to reduce the net

carbon footprint of the Shell group's products by around half by 2050. An "ambition" is not a mandate, and in any event, that is the kind of long-term, broad policy setting that is consistent with the ordinary parent-subsidiary relationship under *Unocal*. Similarly, Plaintiffs' quotations (at 5-6) from Royal Dutch Shell's report to the Carbon Disclosure Project reflect what Royal Dutch Shell already demonstrated in its declaration: Royal Dutch Shell identifies broadly what risks may be applicable to the Shell group of companies as a whole, including climate change, and individual subsidiaries are responsible for managing those risks at an operational level. *See* Syzmanski Decl. ¶¶ 15-16. That is neither "absurd" nor "interesting news to Shell's shareholders." Opp. 11. Instead, it is "consistent" with Royal Dutch Shell's status as a parent company. *Unocal*, 248 F.3d at 926.

Fourth, Plaintiffs quote (at 3-4) from a document discussing climate science that purports to have been produced by a subsidiary in the Shell group. Plaintiffs identify nothing in that document supporting their assertion (at 3) that it "point[s] to" Royal Dutch Shell "as the entity that controls production and climate decisions." Royal Dutch Shell was not even the parent corporation of the Shell group when that 1988 document was created. *See* Szymanski Decl. ¶ 6.

Fifth, Plaintiffs cite (at 6) press statements about whether regulatory responses to climate change will render some oil and gas reserves held by Royal Dutch Shell subsidiaries uneconomical to develop (so-called "stranded assets"). The fact that a publicly traded parent corporation would engage with investor inquiries regarding the value of assets held by its subsidiaries provides no basis for attributing those subsidiaries' activities to the parent. *See Moody*, 2008 WL 2128955, at *7.

B. Plaintiffs' Claims Do Not Arise From The Contacts Alleged In The Complaints

Even if Plaintiffs could impute all of the conduct of Royal Dutch Shell's operating subsidiaries to Royal Dutch Shell — and they cannot, as explained above — they still would fall short of making a prima facie showing of specific jurisdiction. That is because they cannot show that their claims "aris[e] out of or relat[e] to" the imputed forum contacts. *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1780 (2017); *see* RDS Mot. 15-16. Courts in this Circuit "measure this requirement in terms of 'but for' causation." *Bancroft & Masters*, 223 F.3d at 1088. Thus, "[t]he proper inquiry" is "whether Plaintiffs' alleged injuries would have occurred 'but for'" the defendant's activities in the forum. *Harter v. Ascension Health*, 2018 WL 496911, at *5 (D. Ariz.

Jan. 22, 2018). "For specific jurisdiction to exist, the answer must be 'no.'" *Id.*

In briefing on the motion to remand, Plaintiffs conceded that the alleged contacts supposedly attributable to Royal Dutch Shell are *not* a but-for cause of global climate change and their alleged injuries. Plaintiffs disclaimed any possibility that activities on the Outer Continental Shelf, which yield as much as one-third of oil and gas production in the United States in some years, might constitute a but-for cause of the rising sea levels and other phenomena that supposedly give rise to their claims. RDS Mot. 16. Plaintiffs do not assert that Royal Dutch Shell is responsible for a greater portion of U.S. production; nor have they attempted to disavow their concession. Instead, Plaintiffs state (Opp. 15) that they have been "consistent" in acknowledging that their "claims are not dependent on any one subset of defendants' fossil fuel production activities" (apparently including any one defendant's activities) "but stem from all of the conduct." Whatever its perceived litigation benefit in other contexts, Plaintiffs' theory precludes specific jurisdiction over Royal Dutch Shell.

Plaintiffs fail in their attempt (at 13-17) to show that the Ninth Circuit's express requirement of but-for causation does not really mean but-for causation. They quote (at 13) *Learjet, Inc. v. Oneok, Inc.*, 715 F.3d 716, 742 (9th Cir. 2013), for the proposition that but-for causation requires "'a direct nexus'" between the defendant's forum contacts and the plaintiff's injuries and imply that "a direct nexus" means something less than but-for causation. But *Learjet* was in turn quoting *Fireman's Fund Ins. Co. v. Nat'l Bank of Cooperatives*, 103 F.3d 888, 894 (9th Cir. 1996), and there the Ninth Circuit equated "a direct nexus" with but-for causation: "*Absent [defendant's] California-related activities*, [plaintiffs] would have no reason to pursue declaratory relief. Unquestionably, the requisite nexus exists." *Id.* (emphasis added). *Learjet* itself likewise articulated "a direct nexus" in terms of but-for causation. The Ninth Circuit explained that "[t]here is no question that the [plaintiffs'] state antitrust claims arise out of the [defendants']" forum activities because the plaintiffs plausibly alleged that they "paid higher prices for natural gas *than they otherwise would have paid if the defendants' conspiracy had not existed*." *Learjet*, 715 F.3d at 742 & n.23 (emphasis added).

For much the same reason, Plaintiffs err in relying (at 13 & n.41) on *California Brewing Co. v. 3 Daughters Brewing LLC*, 2016 WL 1573399, at *6 (E.D. Cal. Apr. 19, 2016), *Adidas Am., Inc. v. Cougar Sport, Inc.*, 169 F. Supp. 3d 1079, 1085, 1092-93 (D. Or. 2016), and *Elec. Recyclers Int'l,*

Inc. v. Calbag Metals Co., 2015 WL 1529490, at *4 (E.D. Cal. Apr. 2, 2015), for the proposition that some district courts have not applied the but-for test "stringently." In each of those cases, the court applied a but-for analysis. In *California Brewing*, the court concluded that "Plaintiff's injury would not have occurred *but for* defendants' contacts with California." 2016 WL 1573399, at *6 (emphasis added). In *Adidas*, a trademark case, the plaintiff alleged that the defendant's infringing sales had resulted in a "diversion of [] potential customers," and the court concluded that "there is evidence in the record that [the defendant] sold its allegedly infringing merchandise to customers located in [the forum]." "Thus, [the plaintiff's] claims arise out of [the defendant's] forum-related contacts." 169 F. Supp. 3d at 1093. And in *Elec. Recyclers*, the court concluded that "[h]ad [the defendant] not made any offer, had the parties not agreed at all, and had [the defendant's] contacts with [the plaintiff] not been made, [the plaintiff] would have had no cause to file its complaint." 2015 WL 1529490, at *4.

Plaintiffs also mischaracterize the issue, asserting (at 13) that "Shell argues that the Cities cannot satisfy [the but-for] requirement because Shell's production, sales and promotion of fossil fuels in California did not by themselves cause *all* of the Cities' injuries." But the question is not *how much* of Plaintiffs' alleged injuries were caused by conduct allegedly attributable to Royal Dutch Shell. The question is whether conduct allegedly attributable to Royal Dutch Shell was a but-for cause of those injuries *at all*. Plaintiffs never explain how they can establish an affirmative answer to that question consistent with their representation that conduct amounting to one-third of U.S. production annually is not a but-for cause of their alleged injuries.[5]

[5] Moreover, none of the cases Plaintiffs cite (at 14) suggests that specific jurisdiction can exist without a but-for connection between the defendant's contacts and the plaintiff's injuries. In *Keeton*, the defendant's libelous publication in the forum was undoubtedly the but-for cause of the plaintiff's injury in the forum, and the only issue was whether plaintiff could sue there when she had suffered greater injury elsewhere. *See* 465 U.S. at 776, 780. Similarly, in *Dubose*, the court "conclude[d] that [plaintiff's] injuries would not have occurred but for [the defendants'] contacts with California," and the only issue was whether plaintiff could sue there when specific jurisdiction might also exist in some other forum. 2017 WL 2775034, at * 3-4. In *Shute*, the plaintiffs bought a ticket for a cruise after seeing the operator's advertisements in the forum. 897 F.2d at 379, 386. They sued for negligence after a slip-and-fall on deck, and in holding that there was personal jurisdiction, the Ninth Circuit concluded that "[i]n the absence of [the cruise operator's] activity [in the forum], the [plaintiffs] would not have taken the cruise, and [the] injury would not have occurred." *Id.* at 386. In *Wilden*, the plaintiff sued for patent infringement, and the defendant contested personal jurisdiction on the ground that it had not actually sold the allegedly infringing products in California. 1991 WL 280844, at *1-3. In rejecting that argument, the court explained that the defendant "solicited business in California by purchasing a trade-show booth, advertising in nationwide trade journals, and

Plaintiffs finally resort to the argument (at 16) that in nuisance cases it is enough to show that the defendant somehow contributed to the condition. But Plaintiffs' reliance on cases involving localized actions resulting in localized pollution causing localized injuries does not satisfy the due process requirements for asserting specific jurisdiction over a foreign defendant based on its alleged contribution (along with millions of others) to a global phenomenon. Moreover, "liability is not to be conflated with amenability to suit in a particular forum," because "[p]ersonal jurisdiction has constitutional dimensions." *AT&T v. Compagnie Bruxelles Lambert*, 94 F.3d 586 (9th Cir. 1996).[6] The constitutional inquiry is whether Plaintiffs' putative injuries would not have occurred but for the forum activities allegedly attributable to Royal Dutch Shell. Plaintiffs have not met that standard.

C. Exercising Jurisdiction Over Royal Dutch Shell Would Be Unreasonable

In all events, it would be unreasonable to exercise specific jurisdiction over Royal Dutch Shell in these cases. As in *Glencore Grain*, "[e]ven a cursory glance at the factors" the Ninth Circuit considers "reveals the unreasonableness of exercising jurisdiction in this case." 284 F.3d at 1125; *see* RDS Mot. 16. Plaintiffs' contrary argument rests on the premise that "Shell purposefully engaged in conduct in California," Opp. 17, an assertion that is baseless for the reasons explained above.

Plaintiffs seek (at 17) to dismiss *Glencore Grain* as a case about general rather than specific jurisdiction. But the reasonableness inquiry has not been applied differently in those contexts. *See Cargnani v. Pewag Austria G.m.b.H.*, 2007 WL 415992, at *5 n.4 (E.D. Cal. 2007) ("[T]he reasonableness inquiry for specific jurisdiction parallels the same inquiry into reasonableness in assessing general jurisdiction."); *see also Met. Life Ins. Co. v. Robertson-Ceco Corp.*, 84 F.3d 560, 573 (2d Cir. 1996) ("[W]e see no basis for distinguishing between general and specific jurisdiction

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maintaining a nationwide toll-free number for its customers. [Defendant's] solicitation resulted in the sale of [the allegedly infringing products] to California distributors." *Id.* at 3. In *Mavrix v. Brand Technologies*, 647 F.3d 1218 (9th Cir. 2011), a copyright case, the court held that there was specific jurisdiction only after concluding that "a significant number of Californians would have bought publications . . . in order to see the photos" but for the defendants' infringing posts on a website. *Id.* at 1231-32. The court reasoned that "[b]ecause [defendant's] actions destroyed this California-based value, a jurisdictionally significant amount of [plaintiff's] economic harm took place in California." *Id.* Likewise, in *Hendricks v. New Video Channel America*, 2015 WL 3616983, at *7 & n.11 (C.D. Cal. June 8, 2015), another copyright case, the court concluded that specific jurisdiction exists where "the defendant's contacts in the forum injured the plaintiff as alleged in plaintiff's claim." *Id.*

[6] Additionally, as explained in Part II.C of Defendants' reply in support of the joint motion to dismiss for failure to state a claim, Plaintiffs misstate the substantive causation standard as well.

cases for the purposes of the reasonableness inquiry.").[7] Indeed, in *Glencore Grain* itself, the Ninth Circuit rejected both specific and general jurisdiction and then concluded that it would be unreasonable to exercise jurisdiction over the defendant, without any suggestion that the reasonableness standard differed depending on the type of jurisdiction. *See* 284 F.3d at 1123-1126.

Plaintiffs cite no case finding a comparable assertion of jurisdiction to be reasonable. In *Richmond Techs.*, the court concluded that specific jurisdiction was appropriate "[g]iven the degree of purposeful interjection required in starting a company in California," 2011 WL 2607158, at *7, a consideration not present here. And in *Stablization Techs.*, the defendant was a domestic corporation whose employees had arranged meetings in the forum, 2017 WL 1838955, at *4-5, which makes it unlike Royal Dutch Shell, a foreign holding company with no employees or operations in the forum.

D. Plaintiffs Are Not Entitled To Jurisdictional Discovery

Plaintiffs' passing request for jurisdiction discovery fails to carry their "burden to allege in the complaint or an affidavit what evidence [they] believe[] could be obtained through jurisdictional discovery that would properly permit the exercise of personal jurisdiction." *Harter*, 2018 WL 496911, at *6; *see id.* (denying discovery where plaintiffs had "generally assert[ed] that jurisdictional discovery" would be appropriate without specifically "indicat[ing] what evidence they believe could be obtained that would show jurisdiction is proper"); *Arizona School Risk Retention Trust, Inc. v. NMTC, Inc.*, 169 F. Supp. 3d 931, 942-43 (D. Ariz. 2016) (denying discovery where plaintiff failed to identify specifically what evidence might be obtained); RDS Mot. 18 & n.11 (citing cases).[8]

[7] The Supreme Court has more recently instructed that the reasonableness inquiry is intended to operate as a "check" on the exercise of specific rather than general jurisdiction, without suggesting any error in the way that standard had been applied in cases such as *Glencore Grain*. *See Daimler*, 571 U.S. at 139 n.20; *Ranza*, 793 F.3d at 1070 n.3.

[8] Plaintiffs cite (at 19) no comparable case ordering jurisdictional discovery. *Laub v. Dep't of Interior*, 342 F.3d 1080 (9th Cir. 2003), involved subject-matter jurisdiction, not personal jurisdiction. In *Illumina, Inc. v. Qiagen NV*, 2016 WL 3902541, at *4-5 (N.D. Cal. July 19, 2016), this Court permitted jurisdictional discovery in part because of "too many factual disputes" and in part because neither party had considered the possibility of personal jurisdiction under Fed. R. Civ. P. 4(k)(2). *Id.* Neither concern exists here; Plaintiffs have not even properly alleged facts supporting jurisdiction, let alone produced evidence disputing the key points in Royal Dutch Shell's declaration. In *SA Luxury Expeditions LLC v. Latin America for Less LLC*, 2014 WL 6065838, at *3 (N.D. Cal. Nov. 12, 2014), this Court determined that jurisdictional discovery was needed because "plaintiff's opposition contains a lot of attorney argument lacking evidentiary support and defendant's declarations dodge the key issues with artful wording." *Id.* While Plaintiffs also rely "a lot of attorney argument lacking evidentiary support," Royal Dutch Shell's declaration addresses the key

II. Plaintiffs Fail To Establish Proper Service Of Process On Royal Dutch Shell

Plaintiffs' Opposition does *not* argue that their purported service of process can be upheld under Corporations Code § 2110 and Code of Civil Procedure § 416.10(d). As Royal Dutch Shell has explained (RDS Mot. 19), these provisions apply only to a corporation that is "transacting intrastate business" in California (Cal. Corp. Code § 2100), and Plaintiffs do *not* contend (and could not contend) that Royal Dutch Shell conducts intrastate business in California. Plaintiffs instead rely exclusively on Code of Civil Procedure § 416.10(b), *see* Opp. 20, but this contention likewise fails.

Plaintiffs' purported service does not comply with § 416.10(b) because Plaintiffs have failed to carry their burden to show that Shell Oil Company is Royal Dutch Shell's "general manager" in California. As the term suggests, a "general *manager*" is a person who "perform[s] services *for*" the defendant by "providing it with the opportunity for 'regular contact with its customers and a channel for a continuous flow of business into the state,'" *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 84 (1959) (emphasis added), and who has "'*general direction and control of the business of the corporation* as distinguished from one who has the management only of a particular branch of the business,'" *Gen. Motors Corp. v. Super. Ct.*, 15 Cal. App. 3d 81, 86 (1971) (emphasis added). Plaintiffs have not presented any non-conclusory allegations, much less evidence, to show that Shell Oil Company performs such tasks, and has such authority, with respect to Royal Dutch Shell. Indeed, Plaintiffs do not even claim that Shell Oil Company conducts "oil and gas operations in California" (much less that it does so as "general manager" for Royal Dutch Shell); instead, they claim only that *other* unnamed "Shell subsidiaries have extensive oil and gas operations in California." (Opp. 21.) The unrebutted evidence establishes that Shell Oil Company does not qualify as Royal Dutch Shell's general manager in California. *See* Szymanski Decl., ¶¶ 7, 9.

Plaintiffs' failure of proof on this score is confirmed by the very cases they cite. These cases involved a domestic subsidiary that sold or distributed products *manufactured by the foreign parent*, thereby offering the *parent* a "'*channel for continuous flow of business into the state*.'" *Yamaha*

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issues; it does not "dodge" them. In *Macias v. Waste Mgmt. Holdings, Inc.*, 2014 WL 4793989, at *3 (N.D. Cal. Sept. 25, 2014), this Court permitted jurisdictional discovery because the plaintiffs and defendants had submitted specific yet contradictory declarations, a circumstance not present here.

Motor Co. v. Super. Ct., 174 Cal. App. 4th 264, 273 n.9 (2009); *see id.* at 274 (subsidiary had an "exclusive arrangement to sell" parent's products in California, provided warranty services, testing, and marketing, and received complaints); *Khachatryan v. Toyota Motor Sales, U.S.A., Inc.*, 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008) (subsidiary distributed parent's products in California); *Gray v. Mazda Motor of Am., Inc.*, 560 F. Supp. 2d 929, 930-31 (C.D. Cal. 2008) (same); *Hatami v. Kia Motors Am., Inc.*, 2008 WL 4748233, at *3 (C.D. Cal. Oct. 29, 2008) (same); *Halo Elecs., Inc. v. Bel Fuse Inc.*, 2010 WL 2605195, at *2 (N.D. Cal. June 28, 2010) (subsidiary acted as customer "liaison" for parent).[9] Plaintiffs cannot allege a similar relationship between Shell Oil Company and Royal Dutch Shell, because Royal Dutch Shell is a foreign holding company that does not manufacture anything. Szymanski Decl. ¶¶ 3, 7, 9, 29.

Finally, Plaintiffs argue that "general manager" should be "'liberally construed'" and that it suffices if "the subsidiary served is reasonably likely to apprise the corporate parent of the lawsuit." (Opp. 21-22.) But "a liberal construction of the statute does not permit [the Court] to disregard or enlarge the plain meaning of the statute," *In re Marriage of Stutz*, 126 Cal. App. 3d 1038, 1041 (1981), and Plaintiffs ignore the Legislature's explicit command that the person served be a "*manager*" and, indeed, a "*general* manager." Plaintiffs' argument also ignores settled case law holding that merely asserting a parent-subsidiary relationship is insufficient, *see U.S. ex rel. Miller v. Pub. Warehousing Co. KSC*, 636 F. App'x 947, 949 (9th Cir. 2016); *Thomas v. Takeda Pharm. USA, Inc.*, 2017 WL 2214956, at *5 (E.D. Cal. May 19, 2017), as well as the cases cited above that discuss what it means to possess "general" authority to "manage" a parent company's business. And Plaintiffs' circular argument that service is valid because Royal Dutch Shell has appeared to contest it (Opp. 21-22) would read Fed. R. Civ. P. 12(b)(5) out of the federal rules.

CONCLUSION

The Court should grant Royal Dutch Shell's motion to dismiss with prejudice.

[9] These cases thus also refute Plaintiffs' oxymoronic notion (Opp. 19-20) that Royal Dutch Shell can somehow have a "general manager" in California even if it does not conduct business in California for the general manager to manage. Nothing in §416.10(b) endorses such a notion, and *Cosper* "is *still* binding." *Yamaha*, 174 Cal. App. 4th at 273 (emphasis in original).

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2018, I electronically filed the foregoing document using the CM/ECF system which will send notification of such filing to the e-mail addresses registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby certify that I have caused to be mailed a paper copy of the foregoing document via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the CM/ECF system.

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