DISTRICT COURT, BOULDER COUNTY, COLORADO 1777 6TH Street, Boulder, Colorado 80302	
Plaintiffs: BOARD OF COUNTY COMMISSIONERS OF BOULDER COUNTY, et al. v. **Defendants:** SUNCOR ENERGY (U.S.A.), INC., et al. *Attorneys for Defendant Exxon Mobil Corporation* Colin Harris, Atty. Reg. No. 18215 Matthew D. Clark, Atty. Reg. No. 44704 FAEGRE BAKER DANIELS LLP 1470 Walnut Street, Suite 300 Boulder, CO 80302 Telephone: (303) 447-7700 Facsimile: (303) 447-7800 Email: colin.harris@FaegreBD.com matthew.clark@FaegreBD.com Theodore V. Wells, Jr., *pro hac vice* pending, NY Atty. Reg. 3936770 Daniel J. Toal, *pro hac vice* pending, NY Atty. Reg. 2811578 Jaren Janghorbani, *pro hac vice* pending, NY Atty. Reg. 4284329 Yahonnes Cleary, *pro hac vice* pending, NY Atty. Reg. 4802492 PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP 1285 Avenue of the Americas New York, NY 10019-6064 Telephone: (212) 373-3000 Facsimile: (212) 757-3990 Email: twells@paulweiss.com dtoal@paulweiss.com	**▲COURT USE ONLY▲** Case Number: 2018CV30349 Division: 2

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MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION PURSUANT TO COLO. R. CIV. P. 12(b)(2)	

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Pursuant to Colorado Rule of Civil Procedure 12(b)(2), Defendant Exxon Mobil Corporation ("ExxonMobil") moves to dismiss for lack of personal jurisdiction. ExxonMobil certifies that its counsel has conferred in good faith with opposing counsel regarding the relief requested in this motion, which is opposed.

I. INTRODUCTION

Plaintiffs, the Boards of County Commissioners of Boulder County and San Miguel County, and the City of Boulder, ask this Court to pass judgment on the social utility of fossil fuels over the last half century and to weigh, with the benefit of hindsight, the relative costs and benefits of every historical business activity and decision ExxonMobil has undertaken during this period. Plaintiffs allege that they have been harmed by decades of worldwide fossil fuel production and the global greenhouse gas emissions of countless global individuals and entities—including Plaintiffs themselves. As federal courts have held in two substantially similar cases, and as Defendants' simultaneously filed Rule 12(b)(5) motion explains, Plaintiffs' claims are not justiciable and the Complaint should be dismissed for failure to state a plausible claim for relief. *See City of Oakland* v. *BP p.l.c.*, 325 F. Supp. 3d 1017, 1028 (N.D. Cal. 2018), *appeal pending*, No. 18-16663 (9th Cir.); *City of New York* v. *BP p.l.c.*, 325 F. Supp. 3d 466, 470 (S.D.N.Y. 2018), *appeal pending*, No. 18-2188 (2d Cir.); Defs.' Mot. Dismiss Failure State Claim, Dec. 9, 2019.

On this motion, ExxonMobil requests dismissal for a more basic reason: this action was filed in the wrong forum. The same federal system that prevents Plaintiffs from controlling international energy policy also cabins the authority of Colorado tribunals to impose liability on out-of-state actors like ExxonMobil, a multinational, Texas-based company incorporated in New Jersey. Amended Complaint ("Complaint" or "AC") ¶ 72. Plaintiffs may not assert claims

against ExxonMobil in this jurisdiction for the alleged injuries they claim to have suffered, and expect to suffer, as a result of Defendants' worldwide fossil fuel production and the global complexities of geophysical cause and effect that constitute climate change. *See id.* ¶¶ 123-38.

For this Court to exercise general personal jurisdiction over ExxonMobil, the company must be "at home" in Colorado. It is not. Nor is ExxonMobil subject to specific jurisdiction in this forum, which requires that Plaintiffs' claims "arise out of" ExxonMobil's contacts with Colorado. For Colorado courts to hear claims against ExxonMobil, due process requires that Plaintiffs be able to demonstrate their alleged injuries would not have occurred "but for" ExxonMobil's in-state activities. But Plaintiffs do not, and cannot, allege any such causal link here. To the contrary, Plaintiffs acknowledge that their claimed injuries result from undifferentiated, global climate change caused by "unchecked fossil fuel use" worldwide and "an unprecedented rapid rise in the concentration of greenhouse gases." *Id.* ¶ 7. For that very reason, a federal judge in California—indeed, the *only* court to date to have considered whether courts may exercise personal jurisdiction over fossil fuel producers for climate-change-related tort claims—recently dismissed nearly indistinguishable claims brought against ExxonMobil and other energy companies for lack of personal jurisdiction. *See City of Oakland* v. *BP p.l.c.*, 2018 WL 3609055, at *1 (N.D. Cal. July 27, 2018), *appeal pending*, No. 18-16663 (9th Cir.). As in *Oakland*, the exercise of personal jurisdiction over ExxonMobil here would disregard well-settled legal principles that prevent non-resident corporations from being haled into court to defend against claims that relate to *all of* their business activities wherever they conduct *any* business activities.

Even after having had an opportunity to amend their Complaint, Plaintiffs fail to plead contacts in Colorado sufficient to require ExxonMobil to defend against their sweeping global

climate change claims in the State of Colorado. The claims against ExxonMobil therefore must be dismissed for lack of personal jurisdiction.

II. BACKGROUND

The Complaint alleges that the combustion of fossil fuels is "responsible for the majority of [greenhouse gas] emissions" that "have rapidly accumulated in the atmosphere," "thereby warming the atmosphere and oceans," and "causing alteration of the climate." AC ¶¶ 125-28. The Complaint alleges a litany of past and future consequences of climate change experienced across the nation, and in Colorado, including "increases in extreme hot summer days and increases in minimum nighttime temperatures, precipitation changes, larger and more frequent wildfires, increased concentrations of ground-level ozone, higher transmission of viruses and disease from insects, altered streamflows, bark beetle outbreaks, ecosystem damage, forest die-off, reduced snowpack, and drought." *Id*. ¶¶ 139-40.

Plaintiffs' claims necessarily implicate innumerable third parties, including anyone who used automobiles, jets, ships, trains, power plants, heating systems, and factories since the dawn of the Industrial Revolution. As one federal judge considering similar claims recently recognized, "[e]veryone has contributed to the problem of global warming." *Oakland*, 325 F. Supp. 3d at 1026.[1] Plaintiffs nonetheless seek to hold only ExxonMobil, and three energy companies affiliated

[1] Notwithstanding Defendants' position that Plaintiffs' claims are governed by federal law, *see* Defs.' Mot. Dismiss Failure State Claim 7-9, and that the Complaint fails to state a claim, *see id.* 9-30, and while preserving all appropriate defenses including personal jurisdiction, Defendants have designated other contributors to climate change as nonparties at fault under Colorado Revised Statute § 13-21-111.5(3)(b), *see Bd. of Cty. Commr's of Boulder Cty.* v. *Suncor Energy (U.S.A.) Inc.*, No. 18-1672 (D. Colo.), ECF No. 45 ("Fed. D. Ct. ECF No."). In the event that Defendants' motion to dismiss is denied, Defendants reserve the right to supplement this designation within 60 days of the commencement of discovery. *See* Fed. D. Ct. ECF No. 51.

with Suncor Energy (U.S.A.), Inc. ("Suncor"), solely responsible for their purported response costs.

Plaintiffs allege that ExxonMobil, a New Jersey corporation headquartered in Texas, is a "multinational, vertically integrated, fossil fuel company." AC ¶¶ 72-73. Plaintiffs further allege that ExxonMobil has "substantial contacts" with Colorado. *Id.* ¶ 106. In particular, Plaintiffs allege that ExxonMobil, and in some cases, certain subsidiaries: (i) has, at various points, been registered to do business, and designated an agent for service of process, in Colorado, *see id.* ¶¶ 105, 113, 115-16, 119; (ii) produced a "substantial amount" of natural gas and crude oil in Colorado, has a related interest in land in the Piceance Basin region, and, at an unspecified time and location, produced an unspecified volume of coal in Colorado, *see id.* ¶¶ 107-08; (iii) sells fossil fuels in Colorado, in part, through agreements with retail distributors, at "approximately 50 Exxon-branded gas stations in Colorado," *see id.* ¶ 107; (iv) "built a town in Garfield County, Colorado in connection with its Colony Oil Shale Project," *id.*; (v) "sought to develop and has continuing plans to develop unconventional fossil fuels in Colorado," *id.* ¶ 109; *see also id.* ¶ 114; (vi) through ExxonMobil's "production and transportation activities," "emitted substantial amounts of [greenhouse gases] in Colorado," *id.* ¶ 110; and (vii) "promoted, promotes and plans to continue promoting fossil fuel use" in Colorado and participated in efforts to mislead Colorado consumers about "the existence of climate change and the risks of fossil fuel use," *id.* ¶¶ 107, 111.

As a matter of law, none of these purported contacts remotely permits this Court to exercise general or specific jurisdiction over a non-resident company with global operations for claims resulting from a global phenomenon.

III. ARGUMENT

On a Rule 12(b)(2) motion, Plaintiffs have the burden of establishing a prima facie case of personal jurisdiction. *See Archangel Diamond Corp.* v. *Lukoil*, 123 P.3d 1187, 1192 (Colo. 2005). The complaint can only survive dismissal if it "raises a reasonable inference that the court has jurisdiction over the defendant." *Goettman* v. *N. Fork Valley Rest.*, 176 P.3d 60, 66 (Colo. 2007). In determining whether plaintiffs have met their burden, courts may accept as true the well-pleaded factual allegations in the complaint, but must disregard mere conclusory allegations. *See Gognat* v. *Ellsworth*, 224 P.3d 1039, 1049-51 (Colo. App. 2009).

Plaintiffs seeking to invoke a Colorado court's jurisdiction over a non-resident defendant must comply with Colorado's long-arm statute and constitutional due process. *See Keefe* v. *Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1270-72 (Colo. 2002). Because Colorado's long-arm statute "extends the jurisdiction of Colorado courts to the maximum limit permitted by the due process clauses of the United States and Colorado Constitutions," the jurisdictional analysis under federal and state law is the same. *Goettman*, 176 P.3d at 67; *see* Colo. Rev. Stat. § 13-1-124. Accordingly, Colorado state courts generally look to federal rules and decisions for guidance. *See, e.g.*, *Archangel*, 123 P.3d at 1194; *see also Garrigan* v. *Bowen*, 243 P.3d 231, 235 (Colo. 2010) ("Because the Colorado Rules of Civil Procedure are patterned on the federal rules, we may also look to the federal rules and decisions for guidance.").

The Due Process Clause "sets the outer boundaries of a state tribunal's authority to proceed against a defendant." *Goodyear Dunlop Tires Operations, S.A.* v. *Brown*, 564 U.S. 915, 923 (2011). As such, the exercise of authority over an out-of-state defendant is "subject to review for compatibility with the Fourteenth Amendment's Due Process Clause" because the "assertion of jurisdiction exposes defendants to the [forum] State's coercive power." *Bristol-Myers Squibb*

Co. v. *Superior Court*, 137 S. Ct. 1773, 1779 (2017). The outer boundaries of that coercive power give rise to two distinct categories of personal jurisdiction: "general" (also known as "all-purpose") jurisdiction and "specific" (also known as "case-linked") jurisdiction. *Id.* at 1779-80. General jurisdiction permits a court to adjudicate any claim against a defendant corporation that is "at home" in the forum. *Daimler AG* v. *Bauman*, 571 U.S. 117, 127 (2014); *Magill* v. *Ford Motor Co.*, 379 P.3d 1033, 1037 (Colo. 2016). Specific jurisdiction permits adjudication of *only* those claims "aris[ing] out of the defendant's in-state activities," and thus requires a substantial connection between the forum and the specific claims asserted. *Magill*, 379 P.3d at 1039; *accord Daimler*, 571 U.S. at 127.

These jurisdictional restrictions "are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States." *Bristol-Myers Squibb*, 137 S. Ct. at 1780. As the Supreme Court recently confirmed in *Bristol-Myers Squibb*:

> [E]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Id. at 1780-81.

Application of these settled jurisdictional principles demonstrates that Plaintiffs have failed to allege a basis for personal jurisdiction, general or specific, over ExxonMobil.

A. ExxonMobil Is Not Subject to General Personal Jurisdiction in Colorado

The allegations in the Complaint essentially acknowledge that ExxonMobil is not subject to general jurisdiction in Colorado. As discussed above, due process permits courts to exercise

general jurisdiction over a defendant only when it is "at home" in the forum state. A corporate defendant only is "at home" in the forum state if it: (1) is incorporated in the forum; (2) has its principal place of business in the forum; or (3) in the "exceptional case," has operations that are "so substantial and of such a nature as to render the corporation at home." *Daimler*, 571 U.S. at 137, 139 n.19; *accord Clean Energy Collective LLC* v. *Borrego Solar Sys., Inc.*, 394 P.3d 1114, 1117 (Colo. 2017). Importantly,

> [d]etermining that a corporation is at home simply because it does business in Colorado would be unacceptably grasping. General jurisdiction instead calls for an appraisal of a corporation's activities in their entirety, nationwide and worldwide. A corporation that operates in many places can scarcely be deemed at home in all of them.

Magill, 379 P.3d at 1039 (citations and quotations omitted). Thus, a "nonresident defendant's contacts with [a] state will rarely justify exercising general jurisdiction." *Id.* at 1037.

Here, Plaintiffs do not and cannot allege that ExxonMobil is "at home" in Colorado. ExxonMobil is incorporated in New Jersey, and has its principal place of business in Texas. AC ¶ 105. The limited Colorado contacts alleged in the Complaint here are no different than other recent cases where Colorado courts have found general jurisdiction lacking over a multinational corporation.

For example, in *Magill*, the driver of an automobile involved in an accident brought personal injury claims against Ford Motor Company, which manufactured plaintiff's automobile, and the other driver involved in the accident. 379 P.3d at 1035. It was undisputed that Ford, a Delaware corporation with its principal place of business in Michigan, had a registered agent in Denver County; marketed and sold its cars throughout the country, including Colorado, through franchised dealerships; and maintained several offices and businesses in the state. *Id.* at 1035-36.

The trial court also found that Ford had engaged in "'aggressive' marketing and sales through over thirty dealerships in Colorado," "trains and certifies mechanics to work with Colorado consumers," and "has actively litigated, as both a plaintiff and defendant[,] in cases in Colorado." *Id.* at 1038. Based on these contacts, the trial court denied Ford's motion to dismiss for lack of personal jurisdiction. *See id.* at 1036. On appeal, the Colorado Supreme Court reversed. *Id.* at 1041. Applying *Daimler*, the Colorado Supreme Court held that the trial court erred in exercising general jurisdiction over Ford. *Id.* at 1039. The court explained that "Ford conducts business throughout the country, but [plaintiffs] failed to present any evidence that Ford's contacts with Colorado are somehow different or more substantial than its contacts with other states where it sells cars." *Id.*; *see also BNSF Ry. Co.* v. *Tyrell*, 137 S. Ct. 1549, 1558-59 (2017) (declining to find an "exceptional case" for general jurisdiction in Montana, where defendant corporation maintained "over 2,000 miles of railroad track and more than 2,000 employees").

The same analysis applies here. The Complaint alleges that ExxonMobil is a "multinational, vertically integrated, fossil fuel company," AC ¶ 73, but does not allege that ExxonMobil's contacts with Colorado are different or more substantial than its contacts with other states or countries, *see Magill*, 379 P.3d at 1039.

B. Plaintiffs Cannot Allege Specific Personal Jurisdiction

Due process also precludes this Court from exercising specific jurisdiction over ExxonMobil in connection with Plaintiffs' claims. Plaintiffs allege a hodgepodge of putative contacts with Colorado. But even assuming all of these allegations to be true, those contacts would not give rise to specific jurisdiction because—as the only court to have considered this question

concluded—Plaintiffs cannot allege that, "but for" these contacts, their claimed injuries from global climate change would not have occurred. *Oakland*, 2018 WL 3609055, at *3.

It is well-established that courts may exercise specific personal jurisdiction only if the "litigation arises out of the defendant's forum-related contacts." *Found. for Knowledge in Dev.* v. *Interactive Design Consultants, LLC*, 234 P.3d 673, 678 (Colo. 2010); *accord Daimler*, 571 U.S. at 127. "[M]ere injury to a forum resident is not a sufficient connection to the forum." *Walden* v. *Fiore*, 571 U.S. 277, 290 (2014). Rather, to demonstrate that a litigation arises out of the defendant's forum-related contacts, due process requires Plaintiffs to allege *at least* "but for" causation—i.e., that Plaintiffs would not have been injured absent Defendants' Colorado contacts.[2] *See Tomelleri* v. *MEDL Mobile, Inc.*, 657 F. App'x 793, 796 (10th Cir. 2016); *Floyd's 99 Holdings*, 898 F. Supp. 2d at 1210 n.9; *see also Univ. of Tex. Sw. Med. Ctr.* v. *Nassar*, 570 U.S. 338, 346-47 (2013). Plaintiffs cannot satisfy this threshold.

Moreover, even if Plaintiffs could properly allege a causal link between their claims and ExxonMobil's activities in Colorado, this Court also would have to find that it would be "reasonable" to exercise specific personal jurisdiction under the circumstances presented; that is, in light of the burden imposed on ExxonMobil, whether the exercise of jurisdiction would comport with traditional notions of "fair play and substantial justice." *Youngquist Bros. Oil & Gas, Inc.* v.

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[2] The Tenth Circuit has not yet resolved whether due process demands "but for" causation, or the more restrictive "proximate cause" standard, which requires a court to "examine[] whether any of the defendant's contacts with the forum are relevant to the merits of the plaintiff's claim." *Floyd's 99 Holdings, LLC* v. *Jude's Barbershop, Inc.*, 898 F. Supp. 2d 1202, 1210 n.9 (D. Colo. 2012). However, for the same reasons that Plaintiffs cannot allege that their purported injuries would not have occurred absent ExxonMobil's activities in Colorado, they also cannot allege that those activities are relevant to the *merits* of their claims.

Miner, 390 P.3d 389, 392 (Colo. 2017); *Boustred* v. *Align Corp.*, 410 P.3d 640, 643 (Colo. App. 2016). Plaintiffs cannot meet this threshold either.

1. Plaintiffs' claims do not "arise out" of ExxonMobil's Colorado contacts

Plaintiffs do not, and cannot, allege that their varied injuries purportedly resulting from rising global temperatures during the last half century, including wildfires, pest infestations, drought, extreme heat events, and flooding, would not have occurred but for ExxonMobil's activities *in Colorado.* Climate change is a worldwide phenomenon and Plaintiffs' claims "depend on a global complex of geophysical cause and effect involving all nations of the planet." *See Oakland*, 2018 WL 3609055, at *3. As other courts have recognized, the "undifferentiated nature of greenhouse gas emissions from all global sources and their worldwide accumulation over long periods of time," mean that "there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time."[3] *Native Village of Kivalina* v. *ExxonMobil Corp.*, 663 F. Supp. 2d 865, 880 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). Put differently, "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and *at what place in the world*—'caused' Plaintiffs' alleged global warming related injuries." *Id.* at 881

[3] Plaintiffs conceded this very fact elsewhere in this action. For example, in challenging ExxonMobil's prior removal of this action under the Federal Officer Removal Statute, 28 U.S.C. § 1442, Plaintiffs argued that federal courts did not have subject matter jurisdiction over their claims because Defendants could not establish a "causal nexus between the [P]laintiff's claims and the acts [] performed under the federal officer's discretion." Fed D. Ct. ECF No. 44, at 37-38. Specifically, Plaintiffs argued, their alleged injuries could not be traced to Defendants' production of fossil fuels in a particular place, i.e., on the Outer Continental shelf. *Id.* at 39 ("Defendants may produce a small fraction of their fossil fuels on federal lands, but they do not and cannot argue that the harms at issue occurred *because* of that production." (emphasis added)).

(emphasis added). The *Oakland* court's recent decision dismissing virtually identical claims against ExxonMobil and other energy companies is instructive. There, as here, the plaintiffs asserted that defendants had "contributed to global warming through the worldwide production and sale of fossil fuels." *Oakland*, 2018 WL 3609055, at *3. Yet "although plaintiffs list[ed] significant fossil-fuel-related activities that defendants ha[d] allegedly conducted in California," the court found that personal jurisdiction was lacking because plaintiffs had not and could not "sufficiently explain how these 'slices' of global-warming-inducing conduct causally relate to the worldwide activities alleged." *Id.* The same is true here.

It is "textbook" law that an action "is not regarded as a cause of an event if the particular event would have occurred without it." *Nassar*, 570 U.S. at 347 (quoting W. Keeton et al., *Prosser and Keeton on Law of Torts* 265 (5th ed. 1984)). *Oakland* illustrates this principle as applied to virtually identical facts. As the court there recognized, the "worldwide chain of events" resulting in global warming "does not depend on a particular defendant's contacts with California," and "whatever sales or events occurred in California were causally insignificant in the context of the worldwide conduct leading to the international problem of global warming." *Oakland*, 2018 WL 3609055, at *3. Put differently, "[i]t is manifest that global warming would have continued in the absence of all California-related activities of defendants." *Id.*

Here, the Complaint concedes there are countless contributors to greenhouse gas emissions and climate change across the world, including Plaintiffs themselves. *See, e.g.*, AC ¶ 10 (describing steps Plaintiffs have taken to "reduce their own GHG emissions"), ¶ 67 (identifying dozens of oil products of domestic and foreign companies that contribute to greenhouse gas emissions). The Complaint also alleges that ExxonMobil's worldwide operations supply only a

fraction of global oil demand. *Id.* ¶ 81 ("Exxon supplied nearly 10 percent of global oil demand."). In light of the substantial non-ExxonMobil fossil fuel activity throughout the world, and ExxonMobil's operations outside of Colorado, Plaintiffs do not, and cannot, credibly allege that the climate change consequences they complain of would not have happened absent ExxonMobil's alleged contacts with Colorado. *See Nassar*, 570 U.S. at 346-47.

Because Plaintiffs do not allege that their injuries arise out of ExxonMobil's limited contacts with Colorado, ExxonMobil is not subject to specific jurisdiction.

For the same reasons, the alleged Colorado activities of ExxonMobil's subsidiaries or "agents" identified in the Complaint, AC ¶¶ 107, 111, 113-19, do not suffice to establish personal jurisdiction over ExxonMobil. As an initial matter, to the extent that Plaintiffs are seeking to establish jurisdiction based on an agency theory, the Colorado Supreme Court has made clear that in assessing jurisdiction over a nonresident parent corporation based on the presence of its subsidiaries, Colorado courts must apply a veil-piercing, or "alter ego" analysis, *not* an agency analysis. *Griffith* v. *SSC Pueblo Belmont Operating Co.*, 381 P.3d 308, 312-13 (Colo. 2016); *Meeks* v. *SSC Colo. Springs Colonial Columns Operating Co.*, 380 P.3d 126, 128 (Colo. 2016). To succeed on an "alter ego" theory of personal jurisdiction, Plaintiffs would need to allege that (i) the subsidiary is "merely the alter ego" of its parent; (ii) the subsidiary is "merely a fiction 'used to perpetrate a fraud or defeat a rightful claim;'" and (iii) piercing the corporate veil would "achieve an equitable result." *Griffith*, 381 P.3d at 313-14; *see also Leonard* v. *McMorris*, 63 P.3d 323, 330 (Colo. 2003). Here, Plaintiffs have not alleged *any* facts going to *any* of these elements. Alternatively, to succeed on an "agency" theory (if such a theory were cognizable), Plaintiffs would be required to allege the existence of an agency relationship between the subsidiary and

parent. *See* Restatement (Second) of Agency § 1 (1958); *Dworkin, Chambers & Williams, P.C.* v. *Provo*, 81 P.3d 1053, 1058 (Colo. 2003). Yet Plaintiffs have not alleged facts showing that any of ExxonMobil's subsidiaries had actual or apparent authority to act on their principal's behalf.

2. Exercising specific jurisdiction over ExxonMobil would be unreasonable

Even assuming Plaintiffs could adequately allege that their claims "arise out of" ExxonMobil's purported Colorado contacts, assertion of personal jurisdiction would be inappropriate here because it would not comport with requisite notions of "fair play and substantial justice." *See Youngquist Bros.*, 390 P.3d at 392. In making this determination, the "primary concern" of courts is "the burden" that exercising personal jurisdiction would impose on the defendant. *Bristol-Myers Squibb*, 137 S. Ct. at 1780. Assessing this burden not only requires courts to consider "the practical problems resulting from litigating in the forum," but also "the territorial limitations on the power of the respective States," since "[t]he sovereignty of each State implies a limitation on the sovereignty of all its sister States." *Id.* (alterations omitted).

Here, permitting courts to exercise specific jurisdiction over nonresident defendants for Plaintiffs' sweeping climate-change-related claims would mean that ExxonMobil, and every other company involved in "produc[ing], promot[ing], refining, marketing and s[elling]" fossil fuels, AC ¶ 2, or any other product that contributes to climate change, potentially would be subject to litigation in every jurisdiction where their products are sold or where they maintain operations. Such a regime would impose an undeniable burden on Defendants, including ExxonMobil, wholly inconsistent with due process principles.

Permitting courts of every state allegedly impacted by climate change such broad jurisdiction over every company engaged in any commercial fossil fuel activity in that state also

would eviscerate fundamental "territorial limitations on the power of the respective States," and interfere with the power of each entity's home jurisdiction over their corporate citizens. Well-settled principles of due process do not permit this result either.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs' claims against ExxonMobil should be dismissed in their entirety with prejudice for lack of personal jurisdiction.

Dated: December 9, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of December, 2019, a true and correct copy of the foregoing **MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF PERSONAL JURISDICTION PURSUANT TO COLO. R. CIV. P. 12(b)(2)** was electronically filed with the Court through CCES and served on all counsel of record via the manner indicated below:

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