

1 Tracie J. Renfroe (*pro hac vice*)  
Carol M. Wood (*pro hac vice*)  
2 KING & SPALDING LLP  
1100 Louisiana Street, Suite 4000  
3 Houston, Texas 77002  
Telephone: (713) 751-3200  
4 Facsimile: (713) 751-3290  
Email: cwood@kslaw.com

Justin A. Torres (*pro hac vice*)  
KING & SPALDING LLP  
1700 Pennsylvania Avenue, NW  
Suite 200  
Washington, D.C. 20006-4707  
Telephone: (202) 737-0500  
Facsimile: (202) 626-3737  
Email: jtorres@kslaw.com

5 Megan R. Nishikawa (SBN 271670)  
6 Nicholas Miller-Stratton (SBN 319240)  
KING & SPALDING LLP  
7 101 Second Street, Suite 2300  
San Francisco, California 94105  
8 Telephone: (415) 318-1267  
Facsimile: (415) 318-1300  
9 Email: mnishikawa@kslaw.com

George Morris (SBN 249930)  
KING & SPALDING LLP  
601 South California Avenue  
Suite 100  
Palo Alto, CA 94304  
Telephone: (650) 422-6700  
Facsimile: (650) 422-6800  
Email: gmorris@kslaw.com

10 *Counsel for Defendant ConocoPhillips*

11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

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

16 Plaintiffs,

17 v.

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

19 Defendants.

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

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

**STIPULATION AND ~~PROPOSED~~**  
**ORDER REGARDING**  
**CONOCOPHILLIPS'S MOTION TO**  
**DISMISS FOR LACK OF PERSONAL**  
**JURISDICTION AND**  
**JURISDICTIONAL DISCOVERY**

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

24 Plaintiffs,

25 v.

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

27 Defendants.

Case No. 3:17-cv-06012-WHA

1           WHEREAS, on April 19, 2018, all Defendants in the above-styled cases filed a motion to  
2 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), while some Defendants—including  
3 ConocoPhillips—filed a separate motion to dismiss pursuant to Federal Rule of Civil Procedure  
4 12(b)(2);

5           WHEREAS, ConocoPhillips’s Rule 12(b)(2) motion to dismiss asserted three distinct  
6 grounds for dismissal: failure to adequately plead that ConocoPhillips’s subsidiaries were its  
7 agents, such that their California contacts could be attributed to ConocoPhillips (“Corporate  
8 Separateness Argument”); failure to adequately plead that alleged in-forum activities were a  
9 “but-for” cause of Plaintiffs’ alleged injury (“But-For Argument”); and that the exercise of  
10 personal jurisdiction over ConocoPhillips was unreasonable under the circumstances  
11 (“Unreasonableness Argument”);

12           WHEREAS, ConocoPhillips also submitted a sworn declaration by Christopher J.  
13 Dodson (“Dodson Declaration”) to support its Corporate Separateness Argument and  
14 Unreasonableness Argument;

15           WHEREAS, Plaintiffs opposed the Rule 12(b)(2) motion by a brief filed May 3, 2018;  
16 ConocoPhillips filed a reply on May 10, 2018; and the Court heard oral argument on  
17 ConocoPhillips’s Rule 12(b)(2) motion, as well as Defendants’ Rule 12(b)(6) motion, on May  
18 24, 2018;

19           WHEREAS, at the conclusion of the May 24 hearing, the Court stated that it would delay  
20 a ruling on the Rule 12(b)(6) motion until Defendants’ jurisdictional defenses were resolved and  
21 that it would allow jurisdictional discovery by Plaintiffs and by personal jurisdiction Defendants,  
22 *see* May 24 Hearing Tr. at 102:18-103:5;

23           WHEREAS, on May 25, 2018, the Court ordered, *inter alia*, that Plaintiffs be afforded  
24 approximately 60 days of jurisdictional discovery and set an August 9, 2018 deadline for  
25 Plaintiffs to file supplemental opposition briefing and an August 16, 2018 deadline for  
26 ConocoPhillips to reply;

27           WHEREAS, it is in the interests of all parties to speed a resolution of the Rule 12(b)(6)  
28 motion;

1           WHEREAS, while ConocoPhillips does not believe it has sufficient contacts with  
2 California for general or specific personal jurisdiction, due to ConocoPhillips' interest in the  
3 Court reaching the merits arguments in Defendants Rule 12(b)(6) motion and to avoid the burden  
4 and expense of jurisdictional discovery in this case, ConocoPhillips is willing to withdraw its  
5 Corporate Separateness Argument and Unreasonableness Argument for the limited purpose of  
6 this particular case;

7           WHEREAS, while Plaintiffs believe this Court has minimum contacts with California  
8 sufficient to support specific jurisdiction over ConocoPhillips and contested ConocoPhillips's  
9 motion to dismiss for that reason, they likewise are interested in the Court reaching the merits  
10 arguments in Defendants' Rule 12(b)(6) motion, and therefore support the final resolution of the  
11 Corporate Separateness Argument and Unreasonableness Argument by stipulation and without  
12 the need for further Court involvement.

13           NOW THEREFORE, the parties HEREBY STIPULATE AND AGREE, subject to the  
14 approval and order of the Court, as follows:

15           1.       ConocoPhillips withdraws its motion for dismissal pursuant to Federal Rule of  
16 Civil Procedure 12(b)(2), to the extent that motion asserts a Corporate Separateness Argument  
17 and an Unreasonableness Argument. Specifically, ConocoPhillips withdraws Argument Sections  
18 II.A and II.C of its opening brief and Argument Sections I.A and I.C of its reply, as well as the  
19 Dodson Declaration, and any other sections or factual averments in its briefing that rely upon the  
20 Dodson Declaration or upon the Corporate Separateness Argument or the Unreasonableness  
21 Argument. However, ConocoPhillips specifically reserves and does not withdraw its But-For  
22 Argument.

23           2.       Plaintiffs will forgo any jurisdictional discovery against ConocoPhillips in  
24 relation to or pursuant to the Court's May 25, 2018 order and May 24 hearing; likewise  
25 ConocoPhillips will forgo any jurisdictional discovery against Plaintiffs in relation to or pursuant  
26 to the Court's May 24 hearing.

27           3.       In light of this stipulation, there is no need for further jurisdictional discovery or  
28 briefing as relates to ConocoPhillips.

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4. This stipulation does not operate as a waiver of personal jurisdiction in any other litigation that has been or will be brought by any other plaintiff against ConocoPhillips, in any forum; nor does it constitute a concession that ConocoPhillips Company or any indirect subsidiary of ConocoPhillips is or has been the agent of ConocoPhillips for any purpose.

5. This agreement does not affect the rights of either party to assert any other argument, claim, or defense in these cases, to the extent permitted by state or federal law, the Federal Rules of Civil Procedure, or the Federal Rules of Evidence.

6. This agreement does not affect the rights of either party to seek appeal from, fees or costs for, or any other right or remedy relating to the Rule 12(b)(6) motion currently pending in these cases in this Court.

**IT IS SO STIPULATED.**

1 Dated: June 5, 2018

Respectfully submitted,

2 By: /s/ George Morris  
Tracie J. Renfroe (*pro hac vice*)  
3 Carol M. Wood (*pro hac vice*)  
KING & SPALDING LLP  
4 1100 Louisiana, Suite 4000  
Houston, TX 77002  
5 Telephone: (713) 751-3200  
6 Facsimile: (713) 751-3290  
Email: cwood@kslaw.com

7 Justin A. Torres (*pro hac vice*)  
8 KING & SPALDING LLP  
1700 Pennsylvania Avenue, NW, Suite 200  
9 Washington, D.C. 20006  
10 Telephone: (202) 626-2959  
Facsimile: (202) 626-3737  
11 Email: jtorres@kslaw.com

12 Megan R. Nishikawa (SBN 271670)  
Nicholas Miller-Stratton (SBN 319240)  
13 KING & SPALDING LLP  
101 Second Street, Suite 2300  
14 San Francisco, CA 94105  
15 Telephone: (415) 318-1267  
Facsimile: (415) 318-1300  
16 Email: mnishikawa@kslaw.com

17 George Morris (SBN 249930)  
KING & SPALDING LLP  
601 South California Avenue, Suite 100  
18 Palo Alto, CA 94304  
19 Telephone: (650) 422-6700  
Facsimile: (650) 422-6800  
20 Email: gmorris@kslaw.com

21 *Counsel for Defendant ConocoPhillips*

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\*\* /s/ Matthew D. Goldberg

DENNIS J. HERRERA, State Bar #139669  
City Attorney  
RONALD P. FLYNN, State Bar #184186  
Chief Deputy City Attorney  
YVONNE R. MERÉ, State Bar #173594  
Chief of Complex and Affirmative Litigation  
ROBB W. KAPLA, State Bar #238896  
Deputy City Attorney  
MATTHEW D. GOLDBERG, State Bar #240776  
Deputy City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4602  
Tel.: (415) 554-4748  
Fax.: (415) 554-4715  
Email: matthew.goldberg@sfcityatty.org

Attorneys for Plaintiffs  
CITY AND COUNTY OF SAN FRANCISCO and  
PEOPLE OF THE STATE OF CALIFORNIA,  
acting by and through San Francisco City Attorney  
DENNIS J. HERRERA

\*\* Pursuant to Civ. L.R. 5-1(i)(3), the  
electronic filer has obtained approval from  
this signatory.

\*\* /s/ Erin Bernstein

BARBARA J. PARKER (State Bar #069722)  
City Attorney  
MARIA BEE (State Bar #167716)  
Special Counsel  
ERIN BERNSTEIN (State Bar #231539)  
Supervising Deputy City Attorney  
MALIA MCPHERSON (State Bar #313918)  
Attorney  
One Frank H. Ogawa Plaza, 6th Floor  
Oakland, California  
Tel.: (510) 238-3601  
Fax: (510) 238-6500  
Email: ebernstein@oaklandcityattorney.org

Attorneys for Plaintiffs  
CITY OF OAKLAND and  
PEOPLE OF THE STATE OF CALIFORNIA,  
acting by and through Oakland City Attorney  
BARBARA J. PARKER

\*\* Pursuant to Civ. L.R. 5-1(i)(3), the  
electronic filer has obtained approval from  
this signatory.

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/s/ Steve W. Berman

STEVE W. BERMAN (*pro hac vice*)  
steve@hbsslw.com  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
1918 Eighth Ave. Suite 3300  
Seattle, Washington 98101  
Tel.: (206) 623-7292  
Fax: (206) 623-0594

SHANA E. SCARLETT (State Bar #217895)  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
715 Hearst Avenue, Suite 202  
Berkeley, California 94710  
shanas@hbsslw.com  
Tel.: (510) 725-3000  
Fax: (510) 725-3001

MATTHEW F. PAWA (*pro hac vice*)  
mattp@hbsslw.com  
BENJAMIN A. KRASS (*pro hac vice*)  
benk@hbsslw.com  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
1280 Centre Street, Suite 230  
Newton Centre, Massachusetts 02459  
Tel.: (617) 641-9550  
Fax: (617) 641-9551


*Of Counsel Attorneys for Plaintiffs*

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~~PROPOSED~~ ORDER

Pursuant to the above Stipulation of the parties, **IT IS SO ORDERED**. The deadlines for supplemental briefing on personal jurisdiction set forth in the Court's May 25 Order permitting jurisdictional discovery relative to ConocoPhillips are **VACATED**.

Date: June 6, 2018.



\_\_\_\_\_  
WILLIAM H. ALSUP  
UNITED STATES DISTRICT JUDGE