IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH
1200 SW First Avenue Portland Oregon 97204

**County of Multnomah,**
**Plaintiff,**

**vs**

**Exxon Mobil Corp. et al.,**
**Defendants.**

**Case No: 23CV25164**

**ORDER ON DEFENDANTS' JOINT AND INDIVIDUAL MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION**

**AND**

**DEFENDANTS' JOINT MOTIONS TO DISMISS ON GROUNDS OF FEDERAL PREEMPTION, NON-JUSTICIABLE POLITICAL QUESTIONS, AND VIOLATION OF THE SEPARATION OF POWERS DOCTRINE**

**Hearing Dates: June 24 and 25, 2026**

This matter came before the Court for a hearing on June 24 and 25, 2025 on various ORCP 21 motions to dismiss as filed by Defendants. Specifically, the Court heard oral argument regarding: (1) Defendants' Exxon Mobil Corporation ("Exxon"), Shell plc, Shell USA, Inc., Equilon Enterprises LLC dba Shell Oil Products US (collectively "Shell"), BP p.l.c., BP America Inc., BP Products North America, Inc. (collectively "BP"), Chevron Corporation, Chevron U.S.A. Inc. ("Chevron"), ConocoPhillips, Valero Energy Corp. ("Valero"), Koch Industries, LLC (F/K/A Koch Industries, Inc.)("Koch Industries"), American Petroleum Institute ("API"), and Western States Petroleum Association's Joint ORCP 21A(1)(b) Motions to Dismiss for Lack of Personal Jurisdiction; (2) Defendants' ConocoPhillips, Exxon, Koch Industries, Valero, and API's Individual ORCP 21A(1)(b) Motions to Dismiss for Lack of Personal Jurisdiction; and (3) Defendants' Joint ORCP 21A(1)(h) Motion to Dismiss on grounds Plaintiff's claims are barred by

federal preemption, present nonjusticiable political questions, and violate the separation of powers doctrine.

The parties appearing through their respective counsel of record, and the Court having otherwise reviewed the pleadings, papers, and arguments as submitted by the parties, does hereby FIND AND ORDER as follows:

(1) Defendants' Exxon, Shell, BP, Chevron, ConocoPhillips, Valero, Koch, API and Western States Petroleum Association's Joint ORCP 21A(1)(b) Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for the reasons that follow;

(2) Defendant ConocoPhillips's Individual ORCP 21A(1)(b) Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for the reasons that follow;

(3) Defendant Exxon Mobile Corp.'s Individual ORCP 21A(1)(b) Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for the reasons that follow;

(4) Defendant Koch Industries, Inc.'s Individual ORCP 21A(1)(b) Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for the reasons that follow;

(5) Defendant Valero Energy Corp.'s Individual ORCP 21A(1)(b) Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED for the reasons that follow;

(6) Defendant American Petroleum Institute's ("API")'s Individual Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for the reasons that follow;

(7) Defendants' Joint ORCP 21A(1)(h) Motion to Dismiss for Failure to State a Claim on Grounds of Federal Preemption is DENIED for the reasons that follow; and

(8) Defendants' Joint ORCP 21A(1)(h) Motions to Dismiss on Grounds Plaintiff's Claims Present Nonjusticiable Political Questions and/or Violate the Separation of Powers Doctrine are DENIED for the reasons that follow.

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## I. NATURE OF PLAINTIFF'S ACTION.

Plaintiff, Multnomah County (hereinafter "the County"), alleges that Defendants, a collection of alleged fossil fuel producers, sellers, distributors, trade associations, and/or other industry groups representing the interests of the fossil fuel industry, engaged in a decades-long campaign of deception and misinformation regarding the existence of climate change and the impact of fossil fuel consumption on greenhouse gas emissions and climate change. According to the County, Defendants knew for decades that an increase in fossil fuel consumption would lead to further greenhouse gas emissions, a warming planet, and anthropogenic climate change. Rather than disclose what they knew, the County alleges that Defendants, either directly or through various entities which Defendants sought to control, engaged in an effort to sow doubt regarding the existence and causes of climate change. They did so, according to the County, in an effort to sell more fossil fuel products and otherwise enrich themselves or the members they serve.

As a result of this alleged deceptive conduct, the County asserts that fossil fuel consumption increased, which in turn led to an increase in greenhouse gas emissions (both globally and locally), and regional climate shifts in Oregon, including extreme temperatures such as the 2021 Heat Dome incident, wildfires, and other weather-related events for which the County was unprepared. In the alternative, the County alleges that Defendants' in-state emissions in and of themselves resulted in adverse climate change effects in Oregon, including the extreme weather events, fires, and other harms as alleged throughout the County's complaint.

To address these alleged harms, the County seeks four claims for relief against all defendants—intentional and negligent creation of public nuisance, negligence, fraud/deceit, and trespass. On these claims, the County seeks over $51 billion in compensatory and future damages, along with a declaration that Defendants' alleged conduct is unlawful.

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## II. DEFENDANTS' MOTIONS TO DISMISS.

Defendants jointly move to dismiss each and every one of the County's claims on grounds such claims are federally preempted by 41 U.S.C. § 7401 *et seq.*, the Clean Air Act ("CAA"), present nonjusticiable political questions, and violate the separation of powers doctrine. Defendants also jointly move to dismiss the County's claims for lack of personal jurisdiction under ORCP 21A(1)(b). Several individual Defendants also bring their own separate and unique motions to dismiss for lack of personal jurisdiction. As jurisdiction is a threshold issue, the Court begins by first addressing Defendants' joint and individual motions to dismiss for lack of personal jurisdiction under ORCP 21A(1)(b).

### A. Defendants' Joint Motion to Dismiss Under ORCP 21A(1)(b).

The County bears the burden of alleging and proving facts sufficient to establish jurisdiction over each defendant. *Cox. v. HP Inc.*, 317 Or App 27, 31 (2022)("*Cox II*"). For purposes of their joint motion only, Defendants accept as true all factual allegations as contained in the County's Second Amended Complaint ("SAC"). *Defendants' Joint Motion* at p. 2.

Here, no party argues that general jurisdiction exists, and thus, the Court turns to whether the County has established specific personal jurisdiction over defendants under ORCP 4, Oregon's long-arm statute. The County argues that ORCP 4L—the catchall provision of Oregon's long-arm statute—provides for jurisdiction over defendants. Pursuant to ORCP 4L, Oregon may exercise personal jurisdiction over any defendant "in any action where prosecution of the action is not inconsistent with the [Oregon Constitution] or the Constitution of the United States." ORCP 4L.

For Oregon to exercise personal jurisdiction over a particular defendant under ORCP 4L, there must be "minimum contacts" between the defendant and Oregon. *Novalpina Capital Partners I GP S.A.R.L. v. Oregon Dep't of Justice*, 353 Or App 116, 128-29 (2026). In determining

whether minimum contacts exist, Oregon courts looks to three considerations: (1) whether the defendant purposefully availed itself of the privilege of conducting activities in Oregon or purposefully directed its activities at residents in Oregon, (2) whether the litigation arises out of or relates to defendant's alleged minimum contacts with Oregon, and (3) whether the court's exercise of jurisdiction over a particular defendant comports with "fair play and substantial justice." *Id.* at 129 (citations omitted). If the first two prongs of the test are satisfied, the burden shifts to the party contesting jurisdiction to come forward with facts demonstrating that the exercise of jurisdiction does not comport with traditional notions of fair play and substantial justice. *Id.* at 134; *Cox II*, 317 Or App at 31.

**1. Purposeful Availment.**

A foreign defendant's activities within Oregon will rise to the level of "minimum contacts" where the defendant "purposefully availed' itself of the privilege of conducting activities in Oregon or 'purposefully directed' its activities at residents in Oregon." *M.C. v. Quest Global, Inc.*, 328 Or App 378, 383 (2023), *rev den*, 372 Or 718 (2024). The analysis is a qualitative one involving an evaluation of the defendant's alleged contact(s) with Oregon "to determine whether the defendant's conduct and connection with [Oregon] are such that he should reasonably anticipate being haled into court there." *Novalpina Capital Partners*, 353 Or App at 129 (quoting *Munson v. Valley Energy Investment Fund*, 264 Or App 679, 699, 333 P3d 1102 (2014)). Injury alone to a forum resident is insufficient to establish a connection to a forum state. *M.C.*, 328 Or App at 384. Instead, "the defendant 'must have deliberately reached out beyond its home by engaging in some act in the forum state,' and that act, or acts, 'must create a substantial connection with the forum state *and must have been created by the defendant himself.*'" *Novalpina Capital Partners*, 353 Or App at 130 (emphasis added)(quoting *M.C.*, 328 Or App 378, 384 (internal quotation marks and brackets omitted)).

A defendant's exercise of control over a separate entity with minimum contacts in Oregon may serve to satisfy the first prong of the minimum contacts test where the defendant treated the entity as its alter ego. *Cerner Middle East Ltd. v. Belbadi Enterprises LLC*, 305 Or App 413, 419 (2020)("*in personam* jurisdiction can arise based on a defendant's presence in Oregon through a corporate alter ego."); *see also Rice v. Oriental Fireworks Co.*, 75 Or App 627 (1985). To establish personal jurisdiction based upon an alter ego theory, Oregon courts apply the same test for determining whether to impose personal liability against a corporate shareholder. *Id.* Specifically, a court will look to whether: (1) the defendant actually controlled or was under common control with the forum entity with jurisdiction in Oregon, (2) defendant used its control over the entity with jurisdiction in Oregon to engage in improper conduct, and (3) as a result of such improper conduct, plaintiff would be harmed.[1] *Id.* On a motion to dismiss for lack of personal jurisdiction, a plaintiff need only make a prima facie showing that the facts necessary to meet these criteria could be found. *Id.*

Here, Defendants' joint motion does not address the first step in the Court's inquiry as to the existence of minimum contacts. Instead, Defendants reserve all rights to challenge this prong at a later date or by way of their own unique individual motions to dismiss. For that reason, the Court assumes without deciding that minimum contacts exist as to each named defendant for purposes of determining Defendants' Joint ORCP 21A(1)(b) Motion to Dismiss.

**2. Does the Litigation Arise Out of or Relate to Defendants' Alleged Minimum Contacts.**

The second prong of the Court's analysis, and the one which is the primary subject of Defendants' joint motion to dismiss, involves a determination of whether the litigation arises out

[1] The County urges the Court to adopt a co-conspirator theory of establishing personal jurisdiction. However, a co-conspirator theory of personal jurisdiction has never been adopted by an appellate court in Oregon, and the Court declines to rely on such a theory here.

or relates to Defendants' alleged contacts with Oregon. To satisfy this requirement, "the 'nature and quality' of the defendant's Oregon activities must permit a determination that it was 'reasonably foreseeable' that the defendant would be sued in Oregon for the type of claim at issue." *Novalpina Capital Partners*, 353 Or App at 134; *Cox v. HP Inc.*, 368 Or 477, 496 (2021)("*Cox I*"). It is a fact-intensive, case specific analysis. *Cox II*, 317 Or App at 37. The lack of a "but-for" causal connection between a defendant's contacts and the subject litigation does not negate the possibility that Defendants' alleged contacts may still satisfy the "relate to" portion of the test in order to support the exercise of specific jurisdiction.

Here, the County has alleged the following jurisdictional facts in its SAC, which, for purposes of analyzing Defendants' Joint Motion to Dismiss, the Court accepts as true:[2]

- Fossil fuel-induced climate change is causing harm in Oregon and to Multnomah County.
- Human-made climate change is caused by the burning of fossil fuels, including those extracted, refined, transported, marketed and/or sold by Defendants.
- Emissions from fossil fuel products, including those sold in Oregon to Oregonians for use in Oregon, are causing harm in Oregon and to Multnomah County.
- Emissions from fossil fuel products marketed and sold by Defendants, including those sold in Oregon, to Oregonians, and for use in Oregon, are a proximate cause of harm in Oregon and to Multnomah County.
- Defendants knew for decades that fossil fuel products would produce harmful climate change, including in Oregon, and cause extreme weather events like the 2021 Heat Dome incident, other heat events, droughts, and forest fires.

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[2] Many of the allegations contained within the County's SAC refer to "Defendants" globally, without distinction as to whether "Defendants" refers only to a specific group of Defendants, for example, the alleged Oil and Gas Defendants versus fossil fuel industry trade or interest groups. Because Defendants have elected to accept as true all allegations as contained in the County's SAC for purposes of their Motion to Dismiss for Lack of Personal Jurisdiction, the Court treats any allegations which reference Defendants generally as referring to "all Defendants" for purposes of determining Defendants' Joint Motion to Dismiss on grounds of personal jurisdiction.

- Even though Defendants were aware of these harms, Defendants knowingly and intentionally failed to warn or disclose those harms to Oregonians.
- Instead of disclosing the dangers posed by fossil fuel business activities, defendants individually, collectively, and with the assistance of other groups also named as Defendants, such as API and WSPA, engaged in a national marketing campaign designed to deceive Oregonians, including Multnomah County, about the nature and extent of harms caused by the use of fossil fuel products.
- Defendants chose to sow doubt in the mind of the public, including Oregonians, about the dangers posed by fossil fuel business activities so that they or entities whose interests they represent could sell more fossil fuel products, including to Oregonians in Oregon, and make more money.
- Defendants Exxon, Shell, Chevron, BP, and ConocoPhillips are members of Defendant trade group API, an organization which sought to promote the production and sale of fossil fuels and wherein information regarding the impacts of fossil fuel usage on climate change was known for decades and shared among defendant members but not with the public.
- Defendants relied on trade groups such as defendants API, as well as WSPA, to issue alleged propaganda downplaying the dangers posed by consumption of fossil fuel products.
- Defendants' campaign of deceit resulted in the sale of more fossil fuel products, which, in turn, contributed to climate change because it directly led to more Oregonians (and others) using fossil fuel products.
- This increased use of Defendants' fossil fuel products sold in Oregon to Oregonians was a proximate cause of the alleged harm suffered in Oregon and by Multnomah County.

- Defendants' knowingly and intentionally targeted Oregon and Oregonians (as well as others outside Oregon) in their campaign of deceit.

Based upon the above record, the County has satisfied its burden to demonstrate that Defendants had minimum contacts which Oregon which either gave rise to or otherwise related to the claims as asserted in this litigation.

**3. Fair Play and Substantial Justice.**

Under the third prong of test as to whether specific jurisdiction has been established under ORCP 4L, Oregon courts look to whether the exercise of jurisdiction would comport with fair play and substantial justice. It is a fact-specific inquiry involving a balancing of seven factors, namely: (1) the extent of defendant's purposeful interjection into the forum state, (2) the burden on the defendant in defending the asserted claims, (3) the extent of conflict with the sovereignty of the defendant's state, (4) the form state's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of the forum state the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum for plaintiff to bring their claims. *Id.* at 135 (quoting *Munson v. Valley Energy Investment Fund*, 264 Or App 679, 700 (2014)). As noted above, once the first two prongs of test for specific jurisdiction have been met, the burden shifts to the defendant challenging jurisdiction to demonstrate that litigation in the forum state would not comport with fair play and substantial justice.

Based upon the record presented, and balancing the various factors as set out in *Munson*, Defendants have not met their burden to demonstrate that the exercise of jurisdiction fails to comport with traditional notions of fair play and substantial justice. Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction is therefore DENIED.

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### B. Defendant's Individual Motions to Dismiss for Lack of Personal Jurisdiction.

The Court next turns to various Defendants' individual personal jurisdiction motions. Unless otherwise stated below, the Court accepts as true all allegations as asserted against these moving Defendants in the SAC, including all reasonable inferences as may be derived from such allegations.

#### 1. Legal Standard.

The legal standard on Defendants' individual ORCP 21A(1)(b) motions is the same as that on Defendants' Joint Motion. Once again, the County bears the burden of alleging and proving facts sufficient to establish jurisdiction over each individual defendant. *Cox II*, 317 Or App at 31. As no party argues that general jurisdiction exists, the County must demonstrate that specific jurisdiction exists under ORCP 4 as to each moving defendant. Here, the County relies once again on ORCP 4L, the catchall provision of Oregon's long-arm statute, to establish personal jurisdiction over each moving defendant. And pursuant to ORCP 4L, Oregon may exercise personal jurisdiction over defendants "where prosecution of the action is not inconsistent with the [Oregon Constitution] or the Constitution of the United States." ORCP 4L.

As noted above, Oregon courts looks to three considerations in determining whether to apply specific jurisdiction under ORCP 4L: (1) whether the defendant purposefully availed itself of the privilege of conducting activities in Oregon or purposefully directed its activities at residents in Oregon, (2) whether the litigation arises out of or relates to defendant's alleged minimum contacts with Oregon, and (3) whether the court's exercise of jurisdiction over a particular defendant comports with "fair play and substantial justice." *Id.* at 129 (citations omitted). If the first two prongs of the test are satisfied, the burden shifts to the party contesting jurisdiction to come forward with facts demonstrating that the exercise of jurisdiction does not comport with traditional notions of fair play and substantial justice. *Id.* at 134; *Cox II*, 317 Or App at 31.

A foreign defendant's activities within Oregon will rise to the level of "minimum contacts" where the defendant "purposefully availed' itself of the privilege of conducting activities in Oregon or 'purposefully directed' its activities at residents in Oregon." *M.C.*, 328 Or App at 383. Injury to a forum resident alone is insufficient to establish a connection to a forum state. *Novalpina Capital Partners*, 353 Or App at 129. Instead, "the defendant 'must have deliberately reached out beyond its home by engaging in some act in the forum state,' and that act, or acts, 'must create a substantial connection with the forum state *and must have been created by the defendant himself.*'" *Id.* at 130 (emphasis added).

A defendant's exercise of control over a separate entity with minimum contacts in Oregon may serve to satisfy the first prong of the minimum contacts test where the defendant treated the entity as its alter ego. *Cerner Middle East Ltd.*, 305 Or App at 419 (2020)("*in personam* jurisdiction can arise based on a defendant's presence in Oregon through a corporate alter ego."); *Rice,* 75 Or App at 630 (1985). To establish personal jurisdiction based upon an alter ego theory, Oregon courts apply the same test for determining whether to impose personal liability against a corporate shareholder. *Id.* Specifically, courts look to whether: (1) the defendant actually controlled or was under common control with the forum entity with jurisdiction in Oregon, (2) defendant used its control over the entity with jurisdiction in Oregon to engage in improper conduct, and (3) as a result of such improper conduct, plaintiff would be harmed. *Id.* On a motion to dismiss for lack of personal jurisdiction, a plaintiff must only make a prima facie showing that the facts necessary to meet these criteria could be found. *Id.*

If the Court finds that defendant has minimum contacts with Oregon it moves to the next part of the test, which is a determination as to whether the litigation arises out of or relates to the defendant's alleged contacts with Oregon. *Id.* at 134. To satisfy this requirement, "the 'nature and quality' of the defendant's Oregon activities must permit a determination that it was 'reasonably

foreseeable' that the defendant would be sued in Oregon for the type of claim at issue." *Id.* (*quoting Cox I*, 368 Or at 496). Notably, the lack of a "but-for" causal connection between a defendant's contacts and the subject litigation does not negate the possibility that a defendant's contacts may still satisfy the "relate to" portion of the test to support the exercise of specific jurisdiction.

Finally, assuming the first two prongs of the specific jurisdiction test are met, Oregon courts look to whether the exercise of jurisdiction would comport with fair play and substantial justice. Courts do this by engaging in a fact-specific inquiry involving a balancing of seven factors, namely: (1) the extent of defendant's purposeful interjection into Oregon as the forum state, (2) the burden on the defendant in defending the asserted claims in Oregon, (3) the extent of conflict with the sovereignty of the defendant's state, (4) Oregon's interest in adjudicating the dispute, (5) the most efficient judicial resolution of the controversy, (6) the importance of Oregon to the plaintiff's interest in convenient and effective relief, and (7) the existence of an alternative forum for plaintiff to bring their claims. *Id.* at 135 (quoting *Munson v. Valley Energy Investment Fund*, 264 Or App 679, 700 (2014)). The party contesting jurisdiction bears the burden of demonstrating that the exercise of jurisdiction would not comport with fair play and substantial justice.

**2. Defendant ConocoPhillips's Individual Motion to Dismiss for Lack of Personal Jurisdiction.**

ConocoPhillips argues that the County has failed to satisfy either the first or second prongs of the three-part test to establish specific personal jurisdiction under ORCP 4L. As to ConocoPhillips, the County alleges or has come forward (through declarations and exhibits) the following jurisdictional facts:

- ConocoPhillips, including its predecessor entities, has been doing business in Oregon since 1943.
- ConocoPhillips markets and sells fossil fuel products in Multnomah County and Oregon.

- ConocoPhillips, and its predecessor entities, transported and sold billions of dollars of gasoline and other fossil fuels in Oregon.
- ConocoPhillips is the fifth largest investor-owned greenhouse gas emitter.
- ConocoPhillips knew that consumption of fossil fuel products would produce harmful climate change, including in Oregon, and cause extreme weather events like the 2021 Heat Dome incident, other heat events, droughts, and forest fires, but did not disclose or warn Oregonians about such harms.
- ConocoPhillips is a member of defendant trade groups API and the WSPA. As to API, Conoco was also a founding member.
- In 2014, the WSPA issued a presentation noting activities directed at Oregon. Other parts of the presentation noted its purpose was to change public opinion on climate change.
- A predecessor entity of ConocoPhillips was also a member of the Global Climate Coalition ("GCC").
- Members of the GCC created a taskforce and action plan with stated goals of making sure average citizens recognize uncertainties in climate science and that media coverage reflect balance on climate science.
- The GCC went on to fund individuals who organized and distributed a petition referred to as the "Oregon Petition," launched from Oregon by defendant, Oregon Institute of Science and Medicine ("OISM"), to misinform and deceive the public about the scientific results and consensus on climate change.

Based upon the record presented, the Court finds that the County has satisfied its burden to demonstrate that ConocoPhillips had minimum contacts with Oregon which either give rise to or relate to the claims as alleged in this case. In so finding, the Court does not adopt either the County's co-conspirator or alter ego theories of personal jurisdiction. The County has alleged that ConocoPhillips historically sold fossil fuels in Oregon and failed to disclose or otherwise

warn Oregonians, including the County, about the information it knew regarding the impact of fossil fuel consumption on greenhouse gas emissions and climate change.[3] Actionable fraud may committed by either concealment of material facts or affirmative misrepresentations. *Ogan v. Ellison*, 297 Or 25, 34 (1984). As well, a party's conduct may serve as the basis for a claim of fraud where such conduct is "calculated to convey a misleading impression under the circumstances." *Smallwood v. Fisk*, 146 Or App 695, 701 (1997). In other words, "fraud may be committed by conduct, but only to the extent that such conduct *communicates a representation* that is false and material." *Smallwood*, 146 Or App at 700 (emphasis in original).

Given ConocoPhillips's alleged failures to disclose/warn, as well as its alleged marketing and sale of fossil fuel products in Oregon, the County has satisfied the first and second prongs of the specific jurisdiction test under ORCP 4L. The burden thus shifts to ConocoPhillips to demonstrate that the exercise of personal jurisdiction would not comport with fair play and substantial justice. Defendant has not met its burden. Thus, ConocoPhillips's individual motion to dismiss on grounds of personal jurisdiction is DENIED.

### 3. Defendant Exxon's Individual Motion to Dismiss for Lack of Personal Jurisdiction.

Exxon does not challenge the first prong of the three-party test to establish specific personal jurisdiction under ORCP 4L and instead focuses on the second prong of the Court's required analysis. As to Exxon, the County alleges the following jurisdictional facts:

- Exxon and its predecessor entities advertised and sold gasoline at numerous gas stations throughout Oregon.
- Exxon is the second largest investor-owned greenhouse gas emitter.

[3] Whether ConocoPhillips had a duty to speak is a separate legal issue that is not before the Court on Defendant's present motion. The Court understands this issue may be addressed in other joint and individual motions still awaiting oral argument and a decision from this Court.

- Exxon knew that consumption of fossil fuel products would produce harmful climate change, including in Oregon, and cause extreme weather events like the 2021 Heat Dome incident, other heat events, droughts, and forest fires, but did not disclose or warn Oregonians about such harms.
- Even though Exxon was aware of these harms, Exxon knowingly and intentionally failed to warn or disclose those harms to Oregonians.
- Emissions from Exxon's fossil fuel products, including those sold in Oregon to Oregonians for use in Oregon, are a proximate cause of harm in Oregon and to Multnomah County.
- Exxon previously took out ad space in the NY Times to publish articles proclaiming climate change as too uncertain to mandate a plan of action.
- Exxon is a member of defendant trade group API, which has over the years helped to fund and support various communications designed to sow doubt about the existence of climate change. Exxon's former chairman served as chairman of API's Executive Committee.
- In or around 1998, a then-executive at Exxon contributed to the development of the GCC's taskforce and action plan. Members of the GCC created a taskforce and action plan with stated goals of making sure average citizens recognize uncertainties in climate science and that media coverage reflect a balance on climate science.
- The GCC went on to fund individuals who organized and distributed a petition referred to as the "Oregon Petition," launched from Oregon by defendant, OISM, to misinform and deceive the public about the scientific results and consensus on climate change.
- OISM receives funding from the Heartland Institute, which is in turn funded by Exxon, among others.

- The Heartland Institute published and mailed a book to over 200,000 science teachers throughout the U.S in 2017 entitled "Why Scientists Disagree About Global Warming" and with the alleged purpose of sowing doubt as to whether the science of climate change was settled.
- A policy advisor to the Heartland Institute published articles at the behest of "Fossil Fuel Defendants" in the Oregonian which propagated false and misleading denials of the existence of climate change and downplayed the causal relationship between climate change and carbon pollution.
- Exxon is a member of the WSPA, which in 2014 issued a presentation noting activities directed at Oregon and which included in other parts of such presentation its purpose as that of changing public opinion on climate change.

Based upon the record provided, the County has satisfied its burden to show that Exxon's alleged minimum contacts either give rise to or relate to the County's claims as alleged in this case. In so finding, the Court does not adopt the County's co-conspirator theory of personal jurisdiction. The Court does not decide whether the County has sufficiently alleged an alter ego theory of personal jurisdiction as to Exxon because the Court finds that Exxon's alleged marketing and sale of fossil fuels in Oregon, combined with its alleged failure to disclose or otherwise warn Oregonians, including the County, about the information it knew regarding the impact of fossil fuel consumption on greenhouse gas emissions and climate change, satisfies the second prong of the three-part test to establish personal jurisdiction under ORCP 4L.[4] Defendant Exxon has failed to meet its burden to demonstrate that the exercise of personal jurisdiction would not comport with fair play and substantial justice. Thus, Defendant's motion is DENIED.

[4] Whether Exxon had a duty to speak is a separate legal issue addressed in other motions still awaiting oral argument.

### 4. Defendant Koch Industries' s Individual Motion to Dismiss for Lack of Personal Jurisdiction.

Similar to Exxon, Koch Industries's motion focuses on the second prong of the three-part test regarding personal jurisdiction under ORCP 4L. As to Koch Industries, the County has alleged or come forward with the following jurisdictional facts:

- One of Koch Industries' s wholly owned subsidiaries, Georgia Pacific, has four locations in Oregon, including in Multnomah County.
- Koch Industries' s subsidiary Flint Hill Resources is registered to do business in Oregon.
- Koch Industries controls companywide decision-making, including related to its subsidiaries, for the marketing/advertising of the products they distribute or sell and on matters related to fossil fuels and climate change.
- Koch Industries, through one or more subsidiaries, sold fossil fuel products at several gas stations owned and operated in Oregon.
- Koch Industries knew that consumption of fossil fuel products would produce harmful climate change, including in Oregon, and cause extreme weather events like the 2021 Heat Dome incident, other heat events, droughts, and forest fires, but did not disclose or warn Oregonians about such harms.
- Koch Industries' s subsidiary, Georgia Pacific, is a member of the GCC.
- The GCC went on to fund individuals who organized and distributed a petition referred to as the "Oregon Petition," launched from Oregon by defendant, OISM, to misinform and deceive the public about the scientific results and consensus on climate change.
- OISM receives funding from the Heartland Institute, which is in turn funded by the Koch brothers, among others.

- Koch Industries provided funding to the Heartland Institute, which has propagated false and misleading denials of the causal relationship between carbon pollution and climate change in Oregon.
- The Heartland Institute published and mailed a book to over 200,000 science teachers throughout the U.S in 2017 entitled "Why Scientists Disagree About Global Warming" and with the alleged purpose of sowing doubt as to whether the science of climate change was settled.
- Koch Industries provided political campaign funds to State Senator Doug Whitsett who distributed bulletins denying the existence of climate change.
- Koch Industries funded and controlled Americans for Prosperity, a group with an Oregon chapter and which hosted multiple events in Oregon, including a 2009 hot air balloon tour with the slogan "Global Warming Alarmism, Lost Jobs, Higher Taxes, Less Freedom."

Based upon the record provided, the County has satisfied its burden to demonstrate that Koch Industries had minimum contacts with Oregon which either give rise to or relate to the County's claims as asserted in this case. In so finding, the Court does not rely on any of the alleged conduct or activities of Koch Industries's subsidiaries. Nonetheless, the jurisdictional facts otherwise alleged or shown by supporting declarations and exhibits satisfy the first and second prongs of specific jurisdiction test under ORCP 4L.

Turning to the third prong in the Court's analysis, Koch Industries has failed to meet its burden to demonstrate that the exercise of personal jurisdiction would not comport with fair play and substantial justice. Thus, Defendant's motion is DENIED.

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### 5. Defendant Valero's Individual Motion to Dismiss for Lack of Personal Jurisdiction.

Defendant Valero challenges both the first and second prongs of the test for specific jurisdiction under ORCP 4L. As to Valero, the County has alleged or come forward with the following jurisdictional facts:

- Valero's wholly owned subsidiary, Valero Marketing and Supply Company ("VMSC"), markets, distributes, and sells fossil fuel products in Oregon to Oregonians.
- Valero and VMSC share the same officers and office building location.
- Valero's subsidiaries VMSC, Valero Payment Services Company, and Valero Refining Company-California, are all registered to do business in Oregon.
- Valero has helped to fund activities of the WSPA.
- The WSPA engaged in a climate deception/misinformation campaign about the harms of fossil fuel use in Oregon, to continue to further the business objectives of its membership and increase the demand and consumption of fossil fuel products.

The above jurisdictional facts are insufficient to establish that Valero had minimum contacts with Oregon which either give rise to or relate to the claims as alleged against Valero. Valero does not directly manufacture, produce, market, or sell fossil fuels in Oregon (although one or more of its subsidiaries may). Likewise, there are not sufficient facts to demonstrate an alter ego theory of liability as to Valero and any of its subsidiaries or other groups to which it has been an alleged member. Although the County has come forward with an allegation and at least some evidence that a "Valero" entity at one time provided funds to the WSPA, there is no allegation or evidence presented that such funds were used to engage in the alleged climate deception/misinformation campaign attributed to WSPA in the SAC. As the County has failed to

satisfy the first and second prongs of three-part test to establish personal jurisdiction under ORCP 4L, Defendant Valero's Motion to Dismiss for Lack of Personal Jurisdiction is hereby GRANTED.

**6. Defendant API's Individual Motion to Dismiss for Lack of Personal Jurisdiction.**

API argues that the County has failed to allege ultimate facts sufficient to establish specific jurisdiction under both the first and second prongs of the three-part test to establish specific personal jurisdiction under ORCP 4L. As to API, the County has alleged or presented the following jurisdictional facts through one or more exhibits and/or declarations in response to API's motion:

- API hired its own scientific consultants who, by 1968, warned of the effects of carbon emissions on climate.
- Despite those warnings, API promoted fossil fuel use nationwide, including by publishing a booklet for junior and high school students across the United States which promoted a petroleum-heavy future without warnings of the effects of climate change or impact of greenhouse gas emissions on the same.
- API is a member of the GCC.
- The GCC went on to fund individuals who organized and distributed a petition referred to as the "Oregon Petition," launched from Oregon by defendant, OISM, to misinform and deceive the public about the scientific results and consensus on climate change.
- API has produced and disseminated materials in Oregon regarding ways in which the oil and gas industry supports the local economy and questioning the need for proposed ozone regulation noting, among other things, that "the nation's air quality has improved over the past several years, and ozone emissions will continue to decline without new regulations" and that "the science is simply not showing a need to reduce ozone levels."

Based upon the record provided, the County has satisfied its burden to show that the first and second prongs of specific personal jurisdiction test under ORCP 4L are satisfied. Defendant API has failed to meet its burden to demonstrate that the exercise of personal jurisdiction would not comport with fair play and substantial justice. Thus, Defendant's motion is DENIED.

### C. Defendants' Joint Motions to Dismiss Under ORCP 21A(1)(h).

ORCP 18A requires that all pleadings asserting a claim for relief contain "[a] plain and concise statement of the ultimate facts constituting a claim for relief without unnecessary repetition." ORCP 18A. An "ultimate fact" is one from which legal conclusions may be drawn. *Fearing v. Bucher*, 328 Or 367, 375 n 5 (1999) *citing Moore v. Willis*, 307 Or 254, 259 (1988).

On a motion to dismiss for failure to state a claim for relief under Rule 21A(1)(h), the trial court assumes the truth of all well-plead allegations and draws all reasonable inferences from such allegations in favor of the non-moving party. *Furrer v. Sw. Or. Cmty. Coll.*, 196 Or App 374, 376 (2004). Whether the facts alleged are sufficient to state a claim for relief is a question of law. *Huskey v. Oregon Dep't of Corrections*, 373 Or 270, 276 (2025). So long as a pleading contains even vague allegations of material facts, a motion to dismiss under Rule 21A(1)(h) should be denied. *Slover v. Oregon State Bd. Of Clinical Soc. Workers*, 144 Or App 565, 571 (1996)(quoting *Sustina Ltd. V. Pac. First Fed.*, 118 Or App 126, 128 (1993)).

#### 1. Federal Preemption.

Defendants jointly move under ORCP 21A(1)(h) to dismiss each and every one of the County's claims on the ground such claims are federally preempted by the CAA. Defendants' joint motion is denied for the reasons set forth below.

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### a. The CAA Has Displaced Federal Common Law.

Any federal common law concerning air pollution claims has been displaced by the CAA. *Am. Elec. Power Co. v. Connecticut ("AEP")*, 564 U.S. 410, 424, 131 S. Ct. 2527, 180 L. Ed. 2d 435 (2011). The availability of any state law claims based on such displacement, thus depends on the preemptive effect of the CAA. *Id.* at 429. To determine whether the County's state law claims are preempted by the CAA, the Court must then analyze whether the CAA expressly or impliedly bars the County's claims as alleged in this case.

Under the Supremacy Clause of the United States Constitution, federal law preempts state law if Congress intends that it do so. *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 152-54, 102 S.Ct. 3014, 73 L. Ed. 664 (1982); U.S. CONST. art. VI, cl. 2. Traditionally the police powers of the States are not to be superseded absent a clear and manifest purpose of Congress. *P.R. Dep't of Consumer Affs. v. Isla Petroleum Corp.*, 485 U.S. 495, 503, 108 S.Ct. 1350, 99 L. Ed. 2d 582 (1988). Courts will find that state law is federally preempted where a federal statute or constitutional provision either explicitly or implicitly preempts such law. Express preemption occurs where Congress' intent to preempt state law "is explicitly stated in [a] statute's language." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383, 112 S.Ct. 2031, 119 L. Ed. 2d 157 (1992). Implicit preemption can take one of two forms—field or conflict preemption. Arizona v. U.S., 567 U.S. 387, 399, 132 S.Ct. 2492, 183 L.Ed. 2d 351 (2012). Field preemption describes the circumstance where Congress intends that the federal government occupy a particular field of law exclusively. *Id.* Courts will infer a Congressional intent to invoke field preemption where: (1) Congress has adopted a framework of regulation that is so pervasive that there is left no room for state law to supplement it, or (2) where a federal interest is dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject matter. *Id.* Conflict preemption occurs where a state law conflicts with a federal law in one of two ways "either when

simultaneous compliance with federal and state law is physically impossible or when compliance with state law interferes with the objective of federal law." *Martin v. Comcast of Cal./Colorado/Florida/Oregon, Inc.*, 209 Or App 82, 90-91 (2006).

**b. The County's Claims Are Not Expressly Preempted.**

Defendants do not argue that the CAA carries an express provision which preempts the County's claims, and the Court does not find such a provision within the CAA. Instead, this Court turns to whether the CAA implicitly preempts the County's state law tort claims utilizing the framework as set forth above.

**c. The County's Claims Are Not Implicitly Preempted.**

Based upon the record presented, Defendants have not met their burden to demonstrate that the CAA implicitly preempts the County's state law tort claims, whether under a theory of field or conflict preemption. Although each of the County's claims relies on a theory of causation that involves interstate (and/or international) greenhouse gas emissions,[5] the conduct from which the County's claims allegedly arise is that of Defendants' alleged misrepresentations and/or failures to disclose/warn. It is that conduct which forms the gravamen of the County's claims and from which the Court must analyze whether the CAA implicitly preempts state law claims. Nothing contained in the CAA suggests that Congress intended to occupy the field of misrepresentations or claims of deceit/fraud as it relates to fossil fuel consumption and its impact on greenhouse gas emissions and climate change. Likewise, the Court does not find that Defendants have met their burden to demonstrate that the County's state law claims create a conflict with defendants' compliance with the CAA.

[5] Except the County's alternative theory of relief as addressed below.

Finally, and notwithstanding the above, the County's claims based upon the alternate theory[6] that the so-called "Fossil Fuel Defendants'" in-state emissions caused the harm and damages for which the County now seeks relief are expressly reserved and not preempted by the CAA. *Int'l Paper Co. v. Oulette*, 479 U.S. 481, 497, 107 S.Ct. 805, 93 L. Ed. 2d 883 (1987). Thus, and notwithstanding the Court's other rulings as to federal preemption, Defendants' joint motion to dismiss the County's claims as federally preempted is DENIED.

**2. Non-Justiciable Political Questions.**

A non-justiciable political question exists where to resolve the dispute a court must make a policy judgment of a legislative nature rather than engage in a factual and legal analysis. *E.E.O.C. v. Peabody Western Coal Co.*, 400 F3d 774, 785 (9th Cir 2005). Non-justiciable political questions are those for which there is "a lack of judicially discoverable and manageable standards for resolving [the question]; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion." *Baker v. Carr*, 369 U.S. 186, 217, 82 S.Ct. 691, 7 L. Ed. 2d 663 (1962). The Court does not find that this case presents claims for which the Court lacks judicially discoverable and manageable standards to resolve. Further, the County's claims do not require a policy determination of a kind meant for nonjudicial discretion. Defendants' joint motion on this ground is therefore DENIED.

**3. Separation of Powers.**

Whether the County's claims violate the separation of powers doctrine is a two-step inquiry. *Chernaik v. Kitzhaber*, 263 Or App 463, 470 (2014). First, the court must determine whether the claims and relief sought would unduly burden the actions of another branch of government in an area of responsibility or authority committed to such other branch of

[6]*See* SAC at ¶¶528, 537, 547.

government. *Id.* Second, the court must determine whether the claims and the relief sought would require the court to perform functions committed to other branches of government. *Id.*

Here, resolution of the County's tort claims is an area of responsibility committed to the judiciary. The County's claims do not require the Court to resolve how Oregon's legislature or executive branch should respond to issues of climate change. Thus, based upon the record presented, Defendants' Joint Motion to Dismiss on grounds the County's claims violate the separation of powers doctrine is DENIED.

## III. CONCLUSION.

Defendant Valero's motion to dismiss on grounds of personal jurisdiction is GRANTED. All other joint and individual motions to dismiss are DENIED for the reasons set forth above. Counsel for Valero is directed to prepare a proposed Limited Judgment of Dismissal without prejudice for entry by the Court, consistent with the Court's ruling.

November 2, 2026

Adele J. Ridenour

Hon. Adele J. Ridenour