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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU, AND HONOLULU BOARD OF WATER SUPPLY, Plaintiffs,	CIVIL NO. 1CCV-20-0000380 (JPC) (Other Non-Vehicle Tort) **JOINT REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION**

vs.

SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM LLC; EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORP; CHEVRON USA INC.; BHP GROUP LIMITED; BHP GROUP PLC; BHP HAWAII INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive,

Defendants.

TO DISMISS FOR LACK OF PERSONAL JURISDICTION; CERTIFICATE OF SERVICE

HEARING:
Date: August 27, 2021
Time: 8:30 a.m.
Judge: Honorable Jeffrey P. Crabtree

Trial Date: None

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JOINT REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

I. INTRODUCTION

Plaintiffs' Opposition demonstrates that the exercise of personal jurisdiction against Defendants in this case would be improper.[1] Plaintiffs seek to expand dramatically the bounds of specific jurisdiction, with a theory that would apply to Defendants in any state in which they may have sold any amount of fossil fuels, at any point in time, no matter how small. If this Court accepted Plaintiffs' novel and expansive theory, it would then follow that there would be jurisdiction in this Court over *any* corporate defendant that is alleged to have conducted *any* business in the state, at any point in time, for *all* claims affiliated with that business no matter how attenuated the relationship between the business, Hawai'i, and the claims—virtually erasing the distinction between general and specific jurisdiction. Such an unprecedented expansion would violate Defendants' due process rights and has been soundly rejected by both the United States and Hawai'i Supreme Courts. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 137 S. Ct. 1773, 1781 (2017); *Shaw v. N. Am. Title Co.*, 76 Hawai'i 323, 328 (1994).

As Defendants' Joint Brief demonstrates, personal jurisdiction is improper here for three primary reasons: (1) Plaintiffs' claims do not "arise out of or relate to" Defendants' alleged activities in Hawai'i, *see Ford Motor Co. v. Mont. Eighth Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021); (2) Defendants did not have the constitutionally requisite "clear notice" they could be subject to suit in Hawai'i for the alleged impacts of their conduct elsewhere, *id.* at 1027; and (3) exercising personal jurisdiction over Defendants would be unreasonable under the Due Process

[1] For ease of reference, the term "Defendants" is used throughout this Memorandum to refer to the 18 out-of-state Defendants challenging personal jurisdiction.

Clause, *see In Interest of Doe*, 83 Hawai‘i 367, 374 (1996). The Court should grant Defendants' Motion and dismiss Plaintiffs' First Amended Complaint (hereinafter, "Complaint").

II. ARGUMENT

A. Defendants Are Not Subject to Specific Jurisdiction in Hawai‘i.[2]

1. Plaintiffs' Claims Do Not "Relate to" Defendants' Contacts with Hawai‘i.[3]

Plaintiffs agree, as they must, that the Court has personal jurisdiction over Defendants only if their claims "arise from or relate to" Defendants' in-state activities. Opp. at 7. Unable to satisfy this burden, however, Plaintiffs falsely accuse Defendants of arguing that a "strict causal relationship" is required and then devote multiple pages to attacking that strawman. Opp. at 11–14. But Defendants agree that but-for causation is not always required and do not argue otherwise. Rather, as explained in their Joint Brief, Defendants' alleged conduct in Hawai‘i is "merely incidental" to Plaintiffs' purported injuries from *global* climate change, which is insufficient to confer specific personal jurisdiction. *See Shaw*, 76 Hawai‘i at 328. Plaintiffs offer no legitimate response to this argument. Critically, they do not dispute that the Complaint fails to allege any of Defendants' activities in Hawai‘i "were substantially connected to bringing about the global climate events that Plaintiffs allege caused their injuries." J. Br. at 6. Nor could they. Total greenhouse gas emissions from fossil fuel consumption in Hawai‘i—of which Plaintiffs can attempt to attribute at most a portion to any individual Defendant's products—account for a negligible fraction of worldwide greenhouse gas emissions. Thus, Defendants' conduct in Hawai'i is "merely incidental"

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[2] Plaintiffs unsuccessfully attempt to argue that there is general jurisdiction over only Defendants Sunoco L.P. and Aloha Petroleum LLC. *See* Part II.B, *infra.* Plaintiffs do not allege that Hawai‘i courts can exercise general jurisdiction over any other Defendant.

[3] Defendants Exxon Mobil Corp. and ExxonMobil Oil Corporation address Plaintiffs' arguments responding to their supplemental memorandum in a separate reply brief, filed concurrently.

to Plaintiffs' purported injuries, which is insufficient to confer specific personal jurisdiction. *See Shaw*, 76 Hawai‘i at 328.

As an overarching matter, Plaintiffs' heavy reliance on *Ford Motor* is misplaced because they assiduously ignore the key distinction between that case and this one: in *Ford Motor*, the complaint alleged that Ford's product malfunctioned *in* the forum state, causing injury there. 141 S. Ct. at 1027; *see also* J. Br. at 15–16. Plaintiffs here do not and cannot allege that their injury resulted from Defendants' products malfunctioning *in Hawai‘i*, much less that their claims are "substantially" or "directly" based on Defendants' in-state conduct. Plaintiffs do not even acknowledge, much less address, this critical distinction.

Plaintiffs instead rely on *Ford Motor* to argue that it does not matter that their claims "'would be precisely the same if [Defendants] had never done anything in [the forum state].'" Opp. at 13 (citing *Ford Motor*, 141 S. Ct. at 1029). But here, unlike in *Ford Motor*, Plaintiffs' claims would be precisely the same even if *none of* Defendants' *products* had ever entered the forum state. In other words, because Plaintiffs' alleged injuries are based on the cumulative use and emissions of fossil fuels across the world, they do not depend on Defendants' fossil fuels ever being sold or consumed in Hawai‘i. That was not true in *Ford Motor*. And the Supreme Court has long held that the mere occurrence of an injury in the forum state is insufficient to establish specific personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980); *see also Walden v. Fiore*, 571 U.S. 277, 290 (2014) ("mere injury to a forum resident" is insufficient). That is all Plaintiffs allege here: Defendants' lawful conduct outside of Hawai‘i purportedly has caused an injury in Hawai‘i. Indeed, Plaintiffs' Complaint fails to identify *a single* misrepresentation, omission, or other act of "deception" made in Hawai‘i. And notably, they do not even try to do so in their Opposition. That failure is fatal to the personal jurisdiction inquiry.

At bottom, Plaintiffs' theory would obliterate the distinction between general and specific jurisdiction. Due process requires a stronger connection between the claims and the contacts with the forum state, and Plaintiffs have utterly failed to meet *their* burden of showing that here.

a. Plaintiffs Incorrectly Assert That Defendants Argue "But-For" Causation Is Required.

Unable to show that their claims "relate to" Defendants' in-state activities, Plaintiffs spend much of their Opposition attacking a strawman. They wrongly claim that Defendants argue personal jurisdiction requires the defendant's in-state contacts to be the "exclusive cause" of the plaintiff's injuries. *See, e.g.*, Opp. at 2 ("Defendants' argument that Plaintiffs nonetheless cannot satisfy the second prong of the test because their in-state activities are not the exclusive cause of Plaintiffs' injuries is directly at odds with the Supreme Court's recent decision in *Ford Motor*.") (citation omitted). But Defendants acknowledged in their Joint Brief that strict but-for causation is not always required under *Ford Motor*. *See* J. Br. at 15. Rather, Defendants showed that the "relate to" prong of the personal jurisdiction test requires that the defendant's contacts with the forum be more than "'*merely incidental*' to the cause of action." J. Br. at 10 (quoting *Shaw*, 76 Hawai'i at 328). And, as described in Defendants' Joint Brief and below, Plaintiffs do not, and cannot, meet this standard. J. Br. at 10–16.

b. Defendants' Contacts with Hawai'i Are "Merely Incidental" and Not "Substantially Connected" to Plaintiffs' Claims.

Plaintiffs' claims must "arise out of or relate to" Defendants' contacts with Hawai'i, which requires a "direct nexus" or a "substantial connection" between Plaintiffs' alleged injuries resulting from climate change and Defendants' in-state activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 479 (1985); *Coffey v. Mesa Airlines, Inc.*, 812 F. App'x 657, 658 (9th Cir. 2020). Plaintiffs fail to show that Defendants' contacts with Hawai'i have a substantial connection to claims relating

to global greenhouse gas pollution and global climate change. Plaintiffs thus cannot establish that their claims "arise out of or relate to" Defendants' alleged forum contacts. *Ford Motor*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780).

Plaintiffs do not—and cannot—dispute that their claims must have a "substantial connection" to Defendants' conduct in Hawai'i. *Burger King Corp.*, 471 U.S. at 479. As the Ninth Circuit has consistently held in dismissing claims for lack of specific personal jurisdiction, there must be a "substantial connection" between the defendant's in-state conduct and the plaintiff's claims. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (defendant's alleged act must create "a substantial connection with the forum") (quotation omitted); *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2017) (same). Further, Plaintiffs fail to address, and have no answer to, the Hawai'i Supreme Court's clear instruction that a defendant's contacts with Hawai'i must be more than "merely incidental" to the plaintiff's claims and alleged injuries. *Shaw*, 76 Hawai'i at 328. Similarly, Plaintiffs ignore a mountain of precedent from Hawai'i and other jurisdictions making clear that "relate to" requires a "direct," "material," or "substantial connection" between the defendant's in-state conduct and the plaintiff's claims, which precludes personal jurisdiction here. J. Br. at 11.[4]

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[4] *See also Walden*, 571 U.S. at 284 ("For a State to exercise jurisdiction consistent with due process, the defendant's suit-related conduct must create a *substantial connection* with the forum state." (emphasis added)); *Shaw*, 76 Hawai'i at 328; *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 335 (2d Cir. 2016) (same); *Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 27 (1st Cir. 2008) ("There must be *more than just an attenuated connection* between the contacts and the claim, the defendant's in-state conduct must form an *important*, or [at least] *material*, element of proof in the plaintiff's case." (emphases added) (internal quotation marks omitted)); *Sullivan v. Barclays PLC*, 2017 WL 685570, at *44 (S.D.N.Y. Feb. 21, 2017) (rejecting personal jurisdiction where operative facts did not have "'nucleus' or 'focal point'" in the forum); *CSR, Ltd. v. Taylor*, 983 A.2d 492, 503 (Md. 2009) (requiring that a cause of action be "*directly related* to[] the defendant's contacts with the forum state" (emphasis added)); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007) ("[T]here must be a *substantial connection* between [the forum] contacts and the operative facts of the litigation." (emphasis added)); *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1270–71 (Colo. 2002) (using "substantial connection" language and requiring foreseeability).

When accurately framed, Plaintiffs fail this test. Defendants' alleged connections to the forum, far from being substantial, are "merely incidental" to Plaintiffs' claims for alleged harms arising from global climate change. In their Opposition, Plaintiffs painstakingly avoid addressing any alleged relationship or affiliation between in-state conduct and global climate change. For example, Plaintiffs do not dispute that Hawai'i accounts for a mere fraction of greenhouse gas emissions that are alleged to have contributed to climate change, J. Br. at 13, nor do they even attempt to allege *any* relationship between these emissions and their alleged injury. Accordingly, Plaintiffs do not, and cannot, dispute that the "Complaint does not allege that Defendants' *in-state* conduct is directly or substantially related to *global* climate change." *Id.* at 2. This is dispositive and should end the inquiry—because Plaintiffs' claims for injuries based on global climate change do not relate in any direct or substantial way to Defendants' in-state activities, personal jurisdiction is lacking.

Rather than addressing this flaw, Plaintiffs attempt to shift the focus of the relevant inquiry. They assert that there is personal jurisdiction because Defendants engage in "significant fossil-fuel based business in Hawai'i."[5] Opp. at 5. This fails because, according to Plaintiffs, their theory of liability here is not premised on Defendants' fossil-fuel "businesses," but on Plaintiffs' allegations that Defendants engaged in a "decades-long campaign designed to maximize continued dependence on their products." Compl. ¶ 92; *see also* Opp. at 1 ("Plaintiffs seek tort remedies for harms resulting from Defendants' long-running campaign to promote their fossil fuel products.").

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[5] Plaintiffs incorrectly assert that Defendants "concede" purposeful availment. Opp. at 2, 8, 17 n.5. The Motion clearly states that, while Defendants do not contest that prong of specific jurisdiction *on this Motion* (because the Motion can be resolved on the second and third prongs), "Defendants do not concede that prong [*i.e.*, purposeful availment] is satisfied here, and reserve all rights to challenge purposeful availment at a later stage of this proceeding if necessary." J. Br. at 10 n.5.

Plaintiffs, however, fail to make a *single* Hawai‘i-specific allegation in support of that theory in their Complaint—or even in their Opposition after Defendants called out this critical failure. *See* Opp. at 4. Plaintiffs do not allege a single misrepresentation occurring in Hawai‘i. *Id.* They do not allege a single act of deception occurring in Hawai‘i. *Id.* They do not allege a single omission from an advertisement in Hawai‘i. *Id.* And Plaintiffs' generic allegations concerning Defendants' general marketing and promotion activities in Hawai‘i are "merely incidental" to Plaintiffs' claims premised on an alleged "decades-long campaign" of deception.

Plaintiffs nevertheless assert, without explanation, that their claims are "directly related" to Defendants' forum contacts. Opp. at 10. They are not. Plaintiffs rely on allegations in their Complaint that focus on Defendants' general business practices in Hawai‘i—far removed from Plaintiffs' claims relating to global climate change premised upon alleged misrepresentations and deception. *Id.* Plaintiffs' claims are for alleged harms from *global* greenhouse gas emissions that allegedly result in global climatic events such as rising sea levels. Indeed, Plaintiffs do not dispute that they "seek damages and equitable relief from this select group of Defendants for *harms allegedly resulting from over a century of energy consumption and climatic events around the world*." J. Br. at 1 (emphasis added). In fact, Plaintiffs themselves allege that their claimed injuries are "*all due* to anthropogenic *global* warming," Compl. ¶ 10 (emphases added), caused by the "increase in atmospheric CO_2 and other greenhouse gases" from the worldwide combustion of oil and gas over the past century. *Id.* ¶ 4. These claimed injuries cannot legally, or logically, be said to "relate to" any, or even all, of Defendants' alleged in-state activities. Critically, the Complaint does not allege that Defendants' *in-state* activities, whether they be business operations, marketing, promotion, sale, production, or a combination of them all, are directly or materially related to global climate change.

This is exactly what the "relate to" prong was intended to prevent—exercising jurisdiction over a defendant for in-state conduct that is at most tangentially associated with a plaintiff's claims. As the Supreme Court has explained, "For specific jurisdiction, a defendant's *general connections with the forum are not enough*." *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (emphasis added). In fact, conducting business in a state—even a "substantial, continuous, and systematic course of business"—is insufficient for general jurisdiction. *Daimler AG v. Bauman*, 571 U.S. 117, 138 (2014). Yet, that is all Plaintiffs allege here, relying on generalized allegations that Defendants conducted "fossil fuel-based business in Hawai'i." Opp. at 5. None of the conduct allegedly constituting deception and misrepresentation that resulted in global climate change, upon which Plaintiffs claim liability rests, is specifically alleged to have occurred in Hawai'i.

And importantly, even if general business activities were sufficient (they are not) and Defendants had acted deceptively in Hawai'i (although no such acts are alleged), those activities still would not be sufficiently "related to" Plaintiffs' claims based on global climate change. Energy consumed in Hawai'i accounts for a negligible fraction of resulting worldwide greenhouse gas emissions, and, therefore, even if any Defendant's in-state activities caused an incrementally higher use of fossil fuels by Hawai'i consumers, such an increase would still not be substantially connected to Plaintiffs' alleged injuries. *See Burger King*, 471 U.S. at 479. There can be no legitimate dispute that Plaintiffs' injuries here did not arise from, nor are they even directly connected or affiliated with, anything that occurred in Hawai'i.

Plaintiffs' claims here are nothing like those asserted in *Ford Motor* where, as Plaintiffs noted, the defendant's product malfunctioned *in the forum*, causing an accident in the forum that injured the plaintiff in the forum. Opp. at 13 ("Each Plaintiff's suit arose from a car accident in the forum."). Plaintiffs do not allege that an "accident" occurred in Hawai'i. Rather, the "accidents"

for which Plaintiffs seek damages consist of the alleged global climatic events brought about by the entirety of accumulated energy consumption and emissions around the world occurring over several decades.[6]

Plaintiffs do not address this critical distinction. Unlike in *Ford Motor*, Plaintiffs' claims, which are based on the cumulative use and emissions of fossil fuels across the world, would be identical if Defendants' *products* had never entered or been consumed in the forum state. But the "mere injury to a forum resident" is insufficient for specific jurisdiction. *Walden*, 571 U.S. at 290. And that is all Plaintiffs allege here—that Defendants' worldwide conduct has caused global climate change that in turn produced harms in Hawai‘i. Indeed, Plaintiffs fail to identify *a single* misrepresentation, omission, or other act of "deception" made in Hawai‘i.

In short, all of Defendants' alleged contacts with Hawai‘i are "merely incidental" to Plaintiffs' claims based on global climate change and are entirely unrelated to any claims premised on alleged misrepresentations or deception. Plaintiffs cannot get around this dispositive fact with their novel theory of jurisdiction. Because Plaintiffs' claims do not arise out of or relate to Defendants' in-state conduct, personal jurisdiction is lacking and the Court should dismiss the claims. *In Interest of Doe*, 83 Hawai‘i at 374.

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[6] And the alleged effects of global climate change in Hawai‘i cannot be found to "arise from or relate to" Defendants' contacts with Hawai‘i because greenhouse gas emissions cannot be traced to their source. *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). In fact, Plaintiffs allege that "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses [sic] quickly diffuse and comingle in the atmosphere." *See, e.g.*, Compl. ¶ 171.

c. Plaintiffs Mischaracterize Supreme Court Precedent, Incorrectly Asserting Mere "Affiliation" Is Sufficient for Personal Jurisdiction.

Plaintiffs make a last ditch effort to salvage their personal jurisdiction argument by asserting that all that is needed is "an *affiliation* between the forum and the underlying controversy." Opp. at 12. That is incorrect. Mere "affiliation" between Plaintiffs' claims and Defendants' Hawai'i business contacts is insufficient. As the Supreme Court recently explained, for an "affiliation" to be sufficient for specific jurisdiction, that affiliation must connect the "*underlying controversy*" with "'an activity [or] occurrence' involving the defendant that takes place in the State." *Ford Motor*, 141 S. Ct. at 1027 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1781) (alteration in original). The "affiliation" standard is simply another way of saying that the claims must "arise out of or relate to" the defendant's in-state activities, which Plaintiffs cannot satisfy for the reasons explained above. The language from the Supreme Court's decision in *Ford Motor*—which Plaintiffs selectively quote and take out of context—makes this abundantly clear:

> The plaintiff's claims, we have often stated, 'must arise out of or relate to the defendant's contacts' with the forum. *Or put just a bit differently*, 'there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation.'

Ford Motor, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780) (internal quotation marks omitted) (alteration in original) (citations omitted) (emphasis added). Contrary to Plaintiffs' suggestion then, there is no amorphous general "affiliation" test. Rather, to say that an "affiliation" is required simply means that Plaintiffs' claims must "arise out of or relate to" Defendants' conduct in Hawai'i, which, for the reasons explained above, they do not.

d. Plaintiffs Seek to Impermissibly Expand the Bounds of Personal Jurisdiction.

Plaintiffs' theory of jurisdiction is, at bottom, premised on the unsupportable proposition that Plaintiffs' purported injuries allegedly caused by the "cumulative nature of the greenhouse effect" that purportedly has resulted from decades of production, promotion, and use of fossil fuels around the world are somehow affiliated with Defendants' *general business activities* in Hawai'i. Opp. at 2. But the Supreme Court has rejected this argument, holding that, "[f]or specific jurisdiction, a defendant's general connections with the forum are not enough." *Bristol-Myers Squibb*, 137 S. Ct. at 1781. Plaintiffs' theory would expand the bounds of specific jurisdiction to the point where it would impermissibly "resemble[] a loose and spurious form of general jurisdiction." *Id.* Such a result would fly in the face of the Supreme Court's decision in *Ford Motor*, which states that the "arise out of or relate to" requirement has "real limits" and "does not mean anything goes." *Ford Motor*, 141 S. Ct. at 1026 (internal quotation marks omitted).

Again, Plaintiffs' reliance on (and repeated citations to) *Ford Motor* are entirely misplaced—Plaintiffs' allegations here are *nothing* like those in *Ford Motor*. Unlike the plaintiffs in *Ford Motor*, Plaintiffs have not sued for injuries allegedly suffered in Hawai'i because oil and gas consumed in Hawai'i malfunctioned in Hawai'i and caused an accident in Hawai'i. Instead, Plaintiffs seek damages for harms allegedly suffered as a result of global climate change, which cannot be said to relate to activities in Hawai'i no matter how hard Plaintiffs try to distort the inquiry. For example, Plaintiffs assert that "Defendants' contacts with Hawai'i and Plaintiffs' claims have a direct connection to Defendants' fossil fuel products and Defendants' sale, marketing, and promotion of those products." Opp. at 11. In other words, Plaintiffs' claims and Defendants' in-state conduct are *not* directly related to each other—the only plausible connection between them is that they both relate to Defendants' general business activities in the oil and gas industry. No

court has imposed such a test—Plaintiffs' claims must relate to Defendants' relevant in-state conduct, not to Defendants' general "sales, marketing, and promotion," which is all that Plaintiffs allege.

As the Supreme Court has explained, "even regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 931 n.6 (2011); *see also Bristol-Myers Squibb*, 137 S. Ct. at 1781 (rejecting a "sliding scale approach" similar to the one Plaintiffs appear to assert here, in which "the strength of the requisite connection . . . is relaxed if the defendant has extensive forum contacts that are unrelated to those claims"). "A corporation's continuous activity of some sorts within a state . . . is not enough to support the demand that the corporation be amenable to suits unrelated to that activity." *Bristol-Myers Squibb*, 137 S. Ct. at 1781 (quoting *Goodyear Dunlop Tires Ops.*, 564 U.S. 927) (alteration omitted). Plaintiffs' expansive approach is at odds with Supreme Court and Hawai‘i precedent, and is not supported by logic or common sense, because it would subject any corporation doing business in Hawai‘i to personal jurisdiction in Hawai‘i for virtually any claims relating generally to its business. *Id.* ("For specific jurisdiction, a defendant's general connections with the forum are not enough.").

Both the Supreme Court and Hawai‘i courts acknowledge an important distinction between general and specific jurisdiction: While claims based on general jurisdiction "may concern events and conduct anywhere in the world," "[s]pecific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to a *narrower class of claims*." *Ford Motor*, 141 S. Ct. at 1024 (emphasis added). Plaintiffs' theory would erase this distinction, allowing claims against corporate defendants in any state in which they conducted business at any time. It would also collapse the Supreme Court's three-part test for specific personal jurisdiction into a single

inquiry: whether the defendant "purposefully availed itself" of the market in the forum state. If so, plaintiffs in the forum state could sue those defendants on virtually any claim at all, because anything can be "related to" anything else at some level. *Id.* at 1033 (Alito, J., concurring) ("Applying that phrase [*i.e.*, "related to"] 'according to its terms [is] a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else.'" (quoting *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring)) (alteration in original)).

Plaintiffs' theory would improperly erase any meaningful distinction between specific and general jurisdiction. It would subject defendants to litigation on virtually any claim in any state in which they operate, no matter how tenuously the claim supposedly relates to the defendant's operations in the state. A stronger connection between the claims and the contacts with the forum state is required. Plaintiffs bear that burden, *see Victory Carriers, Inc. v. Hawkins*, 44 Haw. 250, 259 (1960), and they have failed to meet it here.

e. Jurisdiction Is Not Proper Under the "Effects" Test.

Plaintiffs' assertion that jurisdiction is proper under the *Calder* "effects" test, Opp. at 16–19, is likewise unsupported by the facts or law. As the Supreme Court explained in *Calder*, a court may exercise specific jurisdiction over a foreign defendant based on out-of-state conduct if the defendant "*expressly aimed*" its "intentional, and allegedly tortious, actions" at the forum state. *Calder v. Jones*, 465 U.S. 783, 789 (1984) (emphasis added); *see also Shaw*, 76 Hawai'i at 331. "[M]ere injury to a forum resident is not a sufficient connection to the forum." *Walden*, 571 U.S. at 290. "The proper question is not where the plaintiff experienced a particular injury or effect but whether the *defendant's conduct* connects him to the forum in a meaningful way." *Id.* Moreover, even a *foreseeable* injury in the forum does not suffice. *Id.* at 282 (reversing Ninth Circuit's

decision that "foreseeable harm" in the forum state was sufficient for specific jurisdiction). In *Burger King*, the Court expressly rejected the argument that "the foreseeability of causing *injury* in another State should be sufficient to establish [the requisite] contacts." 471 U.S. at 474 ("[T]he Court has consistently held that this kind of foreseeability is not a 'sufficient benchmark' for exercising personal jurisdiction.") (quoting *World-Wide Volkswagen*, 444 U.S. at 295). And mere "*untargeted*," worldwide activities are insufficient. *Shaw*, 76 Hawai'i at 332 (quoting *Karsten Manufacturing Corp. v. United States Golf Association*, 728 F. Supp. 1429, 1433 (D. Ariz. 1990)) (emphasis in original). Because Plaintiffs do not, and cannot, allege that Defendants "expressly aimed" any of their alleged tortious conduct at Hawai'i, there is no specific personal jurisdiction.

Where a defendant "focuse[s] its activities more generally on customers located throughout the United States" "without focusing on and targeting" the forum state, specific jurisdiction is not proper under the "effects" test. *ESAB Grp. v. Centricut, Inc.*, 126 F.3d 617, 625 (4th Cir. 1997). Plaintiffs here do not allege that Defendants "aimed" their conduct at Hawai'i. To the contrary, Plaintiffs claim the audience for Defendants' purportedly deceptive conduct was the world at large, or at least at the United States as a whole. Indeed, Plaintiffs specifically allege that Defendants misled the "general public." Opp. at 4 ("Defendants took [affirmative steps] 'to conceal, from Plaintiffs and the general public, the foreseeable impacts of the use of their fossil fuel products.'") (quoting Compl. ¶ 94); *see also id.* at 5 (alleging that Defendants "could have taken reasonable measures to reduce use of their fossil fuel products . . . by, inter alia, '[f]orthrightly communicating with Defendants' shareholders, banks, insurers, the *public*, regulators, and Plaintiffs") (quoting Compl. ¶ 135(b)) (emphasis added). None of these allegations show that Defendants *intentionally targeted Hawai'i*. In fact, paragraphs 94–117 of the Complaint, which purportedly "detail[] the 'affirmative steps' Defendants took," Opp. at 4, do not include *any* allegations specific to Hawai'i.

The Complaint does not identify a *single* publication, report, or promotional act that was *specifically targeted at Hawai'i* (let alone any one that was purportedly deceptive or misleading) or allege that anyone in Hawai'i ever read such a publication or report. Just as Plaintiffs fail to identify any supposed misrepresentation with the specificity required by Rule 9, *see* Merits Reply at 19–23, they likewise fail to identify any statements directed at Hawai'i.

Plaintiffs' heavy reliance on *Shaw* to argue that jurisdiction is proper because Defendants supposedly "targeted Hawai'i," Opp. at 18, is misplaced. In *Shaw*, the Court found that the defendant "targeted [the plaintiff] in Hawai'i" by: (1) "agreeing to forward his creditors' checks to him and then . . . clos[ing] his trust account . . . rendering the checks worthless"; and (2) "reissu[ing] checks directly to [plaintiff's] creditors . . . rather than giving the reissued checks to plaintiff." *Shaw*, 76 Hawai'i at 332. Based on these facts, the Court held that the plaintiff sufficiently alleged "tortious injuries against him *in Hawai'i.*" *Id.* (emphasis added). Plaintiffs here, however, do not allege that any tortious conduct central to their claim *targeted* Plaintiffs or Hawai'i. Instead, Plaintiffs simply refer to their allegations about Defendants' general business activities in Hawai'i, noting that Defendants "transact business in the state" and "marketed and promoted their products in Hawai'i." Opp. at 4. But again, Plaintiffs cannot point to a single allegation that Defendants targeted their alleged "campaign of deception" *at Hawai'i*. Compl. ¶¶ 94–117.[7] Accordingly, Plaintiffs fail the "effects" test as well.

[7] Even if Defendants were alleged to have targeted Hawai'i (they are not), Plaintiffs' alleged localized injuries could not be traced back to, nor said to relate to, the minuscule amount of emissions generated in Hawai'i purportedly as a result of such targeting. This stands in stark contrast with *Shaw*, where the Hawai'i targeting led to the plaintiff's injuries, and with *Calder*, where California was the "focal point . . . of the harm suffered." *Shaw*, 76 Hawai'i at 332; *Calder*, 465 U.S. at 789. Plaintiffs' reliance on *Cisco Systems, Inc. v. Dexon Computer, Inc.* is misplaced for the same reason—there, the California-targeted conduct was the sole source of the California-based injuries. 2021 WL 2207343, at *6 (N.D. Cal. June 1, 2021).

2. Defendants Did Not Have "Clear Notice" That Personal Jurisdiction Would Exist in Hawai‘i for Suits Based on Global Climate Change.

Plaintiffs do not dispute that *Ford Motor* requires a defendant to have "clear notice" that it may be subject to jurisdiction in a forum; in fact, Plaintiffs concede that the Supreme Court referred to "clear notice" three separate times. Opp. at 14. Rather, Plaintiffs dispute whether "clear notice" is a separate requirement or a requirement of the reasonableness prong of the personal jurisdiction test. *Id.* at 14–15. Either way, it is a requirement, and one Plaintiffs fail to satisfy here.

In *Ford Motor*, the Supreme Court held that Ford had clear notice of potential lawsuits for injuries caused when a "product malfunctions" in a state whose market Ford actively served. 141 S. Ct. at 1027. The same is not true here. Plaintiffs do not allege injury from a product malfunctioning in the forum state. As explained above, Plaintiffs do not allege—nor could they—that the use of Defendants' products in Hawai‘i, or Defendants' promotion of those products in Hawai‘i, gave rise to global climate change and thus to Plaintiffs' alleged injuries. Rather, Plaintiffs' alleged injury expressly arises from and relates to extra-forum, worldwide conduct by Defendants and countless others. Even accepting all of Plaintiffs' allegations as true, Defendants did not have "clear notice" that they would become subject to jurisdiction in the State's courts for the alleged local effects of decades-long global climate change—a complex worldwide phenomenon resulting from the cumulative effects of global greenhouse gas emissions by countless individuals and entities (including Plaintiffs themselves).

To be sure, the Supreme Court in *Ford Motor* found no unfairness to Ford despite Ford's argument that "plaintiffs' claims would be precisely the same if Ford had never done anything in [the forum states]." *Id.* at 1029; Opp. at 15. But that argument "merely restate[d] Ford's demand for an exclusively causal test of connection." 141 S. Ct. at 1029. The Court explained that even though the vehicles were designed, manufactured, and sold outside of the forum state, "Ford had

systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs alleged *malfunctioned and injured* them *in those States*." *Id.* at 1028 (emphasis added).

Here, by contrast, Plaintiffs are not suing for injuries from products that malfunctioned in Hawai‘i. Unlike in *Ford*, Plaintiffs' claims would be precisely the same even if Defendants' *products* had *never entered* Hawai‘i. Plaintiffs' argument therefore requires an enormous leap not required in *Ford Motor*. Plaintiffs cannot reasonably contend that Defendants had fair warning that, by allegedly producing, marketing, and/or selling fossil fuel products in Hawai‘i, they could be subject to jurisdiction based on the undifferentiated conduct of countless individuals and entities who consumed fossil fuel products *around the world*, which allegedly resulted in local climate-related injuries. Exercising personal jurisdiction over Defendants in this case would contravene the requirement that Defendants have "fair warning" that "a particular activity may subject [them] to the jurisdiction of a foreign sovereign." *Burger King*, 471 U.S. at 472 (internal quotation marks omitted) (alteration in original); *see also In Interest of Doe*, 83 Hawai‘i at 373. Such an unbounded exercise of jurisdiction exceeds the limits of due process.

3. Exercising Specific Jurisdiction Over Defendants Would Be Unreasonable and Conflict with Federalism Principles.

Exercising jurisdiction here would be additionally unreasonable for three fundamental reasons set forth in Defendants' Motion: (1) Plaintiffs seek to expand the bounds of personal jurisdiction to allow jurisdiction to be exercised over Defendants for claims related to *global* climate change in any state where Defendants conduct even the smallest amount of fossil fuel-related business; (2) Plaintiffs seek to regulate nationwide (indeed, worldwide) activities; and (3) Plaintiffs seek to enforce local "substantive social policies" against Defendants' nationwide activities that are not shared across states and nations. *See* J. Br. at 17–21.

First, Plaintiffs disagree that Defendants "could be 'forced to appear before any court in the United States based on [their] alleged contribution to global climate change.'" Opp. at 24 (quoting J. Br. at 19) (alteration in original). Plaintiffs assert that Defendants "are subject to suit in Hawai'i based on their substantial contacts with this state, contacts that are directly related to Plaintiffs' claims." Opp. at 24. But as discussed above, *supra* at 4–9, Defendants' contacts are not "directly related to Plaintiffs' claims"—Defendants' alleged forum contacts consist of general business practices unrelated to Plaintiffs' claims of alleged deception concerning the risks of climate change. Plaintiffs' expansive view of "relate to" would subject Defendants to jurisdiction for climate change-related lawsuits in *any* state in which they engage in even a minuscule amount of fossil fuel-related business, as, under Plaintiffs' theory, such business, no matter how *de minimis,* contributes to global climate change. Such an outcome would be "surprising" and far from "predictable," *Ford Motor,* 141 S. Ct. at 1030—it would be unreasonable and violate due process.

Second, despite their protests to the contrary, Plaintiffs seek to regulate nationwide and even international activities. Opp. at 25. While Plaintiffs pretend to limit their requested relief to "harms suffered in the state," they have pointed to nothing in the Complaint that would limit their claims to "torts committed in or aimed at Hawai'i." Opp. at 25; *supra* at 7, 13–15. In fact, Plaintiffs' claims involve conduct taking place entirely outside of the state and include no specific allegations related to Defendants' alleged "campaign of deception" taking place in, or aimed at, Hawai'i. Opp. at 4; *see* J. Br. at 15 ("The Complaint contains no non-conclusory factual allegations about misrepresentations or wrongful promotion by Defendants in or directed at Hawai'i. Indeed, the Complaint does not identify a single allegedly misleading publication or report that actually targeted Hawai'i. And, in any event, the Complaint fails to allege that any such deceptive conduct in Hawai'i could be anything more than incidental to Plaintiffs' purported climate change

injuries."). Plaintiffs seek to base liability on Defendants' out-of-state conduct, not Defendants' unrelated fossil fuel activities in Hawai‘i.

Finally, Plaintiffs fail to address Defendants' argument that "the 'substantive social policies' Plaintiffs seek to advance . . . are not shared across the various states and nations." J. Br. at 20. As the Second Circuit recognized, "this is an interstate matter raising significant federalism concerns." *City of New York v. Chevron Corporation*, 993 F.3d 92, 93 (2021). In fact, just last week, the Biden Administration announced that it is "engaging with relevant OPEC+ members" to encourage "*production increases*" of crude oil in hopes of lowering "high[] gasoline costs," because "reliable and stable energy supplies" are essential to the "ongoing global recovery" from the pandemic.[8] And "[a]ny actions the [Defendants] take to mitigate their liability, then, must undoubtedly take effect across every state (and country). And all without asking what the laws of those other states (or countries) require." *City of New York*, 993 F.3d at 92. Here, the "substantive interests of other nations" and states compared with the relatively "slight interests of the plaintiff[s] and the forum State," render the exercise of personal jurisdiction "unreasonable and unfair." *Asahi Metal Industry Co. v. Superior Court of Cal., Solano Cty.*, 480 U.S. 102, 115–16 (1987).

B. Defendants Sunoco LP and Aloha Petroleum LLC Are Not Subject to General Jurisdiction.

Plaintiffs' alter ego theory, Opp. at 28–30, is insufficient as a matter of law to impute general jurisdiction to Sunoco LP and Aloha Petroleum LLC based on the jurisdictional contacts of Aloha Petroleum, Ltd. Although Aloha Petroleum, Ltd. is incorporated in Hawai‘i, Plaintiffs' allegations that Aloha Petroleum, Ltd.'s contacts with Hawai‘i may be imputed to Sunoco LP and Aloha Petroleum LLC "because they are alter egos of one another," *id.* at 27, are insufficient to support

[8] The White House, *Statement by National Security Advisor Jake Sullivan on the Need for Reliable and Stable Global Energy Markets*, Aug. 11, 2021, https://bit.ly/3yXWVFO.

personal jurisdiction—whether general or specific[9]—even at the motion to dismiss stage. *See In re Boon Glob. Ltd.*, 923 F.3d 643, 654 (9th Cir. 2019); *accord Kealoha v. Machado*, 131 Hawai‘i 62, 79 n.26, 315 P.3d 213, 230 (2013) (broad and conclusory allegations unsupported by specific facts are insufficient to survive even the generous principles applied for a motion to dismiss).

Hawai‘i courts "apply the alter ego doctrine with great caution and reluctance." *Robert's Hawaii Sch. Bus, Inc. v. Laupahoehoe Transp. Co.*, 91 Hawai‘i 224, 241, 982 P.2d 853, 870 (1999) (quoting Fletcher Cyclopedia of the Law of Private Corporations § 41.10, at 561–81 (perm. ed. 1999)), *superseded by statute on other grounds*. "In fact, many courts require exceptional circumstances before disregarding the corporate form." *Id.*; *see also Suzuki v. Castle & Cooke Reports*, 124 Hawai‘i 230, 233, 239 P.3d 1280, 1283 (App. 2010) ("Hawai‘i courts are generally reluctant to disregard the corporate entity."). As a result, using alter ego to establish personal jurisdiction is a "rare" and "extreme remedy."[10]

Here, Plaintiffs fail to allege any exceptional circumstance to justify application of this extreme remedy to Sunoco LP and Aloha Petroleum LLC and instead make only general and conclusory statements about corporate relationships,[11] which are insufficient as a matter of law.

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[9] The test for alter ego is the same whether Plaintiffs seek to use it to impute general or specific personal jurisdiction. *See, e.g.*, *Ranza v. Nike*, 793 F.3d 1059, 1073 (9th Cir. 2015) (analyzing alter ego for purposes of general jurisdiction); *see also Am. Tel. & Tel. Co. v. Compagnie Bruxelles Lambert*, 94 F.3d 586, 591 (9th Cir.) (analyzing same alter ego test for purposes of specific jurisdiction), *supplemented*, 95 F.3d 1156 (9th Cir. 1996); *JJCO, Inc. v. Isuzu Motors Am., Inc.*, 2009 WL 3245556, at *8 (D. Haw. Oct. 9, 2009) (same), *aff'd*, 2009 WL 3818247 (D. Haw. Nov. 12, 2009).

[10] *See, e.g.*, *Dole Food Co. v. Patrickson*, 538 U.S. 468, 475 (2003) (recognizing that piercing the corporate veil through the use of alter ego is the "rare exception"); *see also Ruiz v. Gen. Ins. Co. of Am.*, 2020 WL 4018274, at *4 (E.D. Cal. July 15, 2020) (recognizing that "[d]isregarding the corporate entity is recognized as an extreme remedy").

[11] To the extent that Plaintiffs focus on Sunoco LP and Aloha Petroleum LLC because Aloha Petroleum, Ltd. is not contesting the Court's general jurisdiction over it, this does not change the conclusory nature of the allegations. Plaintiffs' Complaint makes identical boilerplate allegations for each of the defendants in this case. *Compare* Compl. ¶¶ 20(b)–(d) (". . . controls and has

See, e.g., Compl. ¶¶ 20–27. "[T]he court need not consider merely conclusory claims, or legal conclusions in the complaint as establishing jurisdiction."[12] *NuCal Foods, Inc. v. Quality Egg LLC*, 887 F. Supp. 2d 977, 988 (E.D. Cal. 2012). But, even taking the allegations as true, which the Court need not do, Plaintiffs' remaining factual allegations are plainly insufficient to meet the first prong of Hawai'i's alter ego test, which requires that there be such "unity of interest" that separateness of Sunoco LP, Aloha Petroleum LLC, and Aloha Petroleum, Ltd. has ceased to exist.[13] *See, e.g.*, *Robert's Haw. Sch. Bus*, 91 Hawai'i at 242, 982 P.2d at 871 (generally describing two-part test for alter ego); *Ranza*, 793 F.3d at 1073 (applying same two-part alter ego test for purposes of personal jurisdiction); *Williams v. Yamaha Motor Co*., 851 F.3d 1015, 1021–22 (9th Cir. 2017) (same); *Yamashita v. LG Chem, Ltd.*, 2020 WL 4431666, at *11 (D. Haw. July 31, 2020) (same).

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controlled companywide decisions about the quantity, nature, and extent of fossil fuel production, marketing, and sales, including those of its subsidiaries.") *with* Compl. ¶¶ 21(b)–(d) (". . . controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries."), 22(b)–(d) (". . . controls and has controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries."), 23(b)–(d) (". . . controls and has controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries."), 24(b)–(d) (". . . controls and has controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries."), 25(b)–(d) (". . . controls and has controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries."), 26(c)–(e) (". . . controls and has controlled companywide decisions about the quantity and extent of its fossil fuel production and sales, including those of their subsidiaries."), 27(b)–(d) (". . . controls and has controlled companywide decisions about the quantity and extent of fossil fuel production and sales, including those of its subsidiaries.").

[12] While Plaintiffs' factual allegations are generally taken as true for the purposes of a motion to dismiss, Hawai'i's notice pleading standard does not require the Court to "accept conclusory allegations on the legal effect of the events alleged." *Office of Hawaiian Affairs v. State*, 110 Hawai'i 338, 354, 133 P.3d 767, 783 (2006).

[13] Hawai'i courts generally only find alter ego to exist where there is (i) "unity of interest" and (ii) "adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice." *Robert's Haw. Sch. Bus*, 91 Hawai'i at 242, 982 P.2d at 871. Plaintiffs fall far short of sufficiently pleading any facts in support of either prong.

First, Plaintiffs allege that Sunoco LP controls "companywide decisions" regarding broad topics including fossil fuels, climate change, and greenhouse gas emissions. *See* Compl. ¶¶ 20(b)–(c); *see also* Opp. at 29–30. At best, these allegations describe the type of broad involvement and influence that is always present in a parent-subsidiary relationship,[14] but is inadequate to pierce the corporate veil.[15] It is well-established that "[t]he existence of a parent-subsidiary relationship is insufficient, on its own, to justify imputing one entity's contacts with a forum state to another for the purpose of establishing personal jurisdiction." *Ranza*, 793 F.3d at 1070 (*citing Dole*, 538 U.S. at 474; *Bestfoods*, 524 U.S. at 61); *see also Yamaha*, 851 F.3d at 1021. Instead, to establish alter ego, Plaintiffs must allege facts showing "pervasive control," such as where the parent "dictates every facet of the subsidiary's business—from broad policy decisions to routine matters of day-to-day operation[s]." *Ranza*, 793 F.3d at 1073. Put another way, Plaintiffs "must show that the parent exercises such control over the subsidiary so as to 'render the latter the mere instrumentality of the former.'" *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd*., 328 F.3d 1122, 1135 (9th Cir. 2003) (*quoting Unocal*, 248 F.3d at 926). In this case, even taking as true Plaintiffs' allegations that Sunoco LP broadly influences policy decisions related to fossil fuels and climate change,

[14] Appropriate parental involvement that falls short of alter ego status includes, for example, "monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures. . . . A parent corporation may be directly involved in financing and macro-management of its subsidiaries, [] without exposing itself to a charge that each subsidiary is merely its alter ego." *Doe v. Unocal*, 248 F.3d 915, 926–27 (9th Cir. 2001) (citing *U.S. v. Bestfoods*, 524 U.S. 51, 70 (1998)), *abrogated on other grounds*; *see also Iconlab, Inc. v. Bausch Health Companies, Inc.*, 828 F. App'x 363, 364–65 (9th Cir. 2020) (upholding a finding of no unity of interest where the parent "approved [its subsidiaries'] large purchases, financed their activity, issued collective media releases, and submitted consolidated earnings reports," all of which reflect routine operations between a parent and its subsidiary).

[15] *See, e.g.*, *IDS Life Ins. Co. v. SunAmerica Life Ins. Co.*, 136 F.3d 537, 540 (7th Cir. 1998) ("Parents of wholly owned subsidiaries necessarily control, direct, and supervise the subsidiaries to some extent . . . .").

including by common management, those allegations fail to rise to the level of pervasive control over day-to-day operations that is required to establish alter ego.

Second, Plaintiffs allege that Sunoco LP's subsidiaries "conduct[] fossil fuel-related business in Hawaii that Sunoco LP would otherwise conduct if it were present in Hawaii." *See* Compl. ¶ 20(d); *see also* Opp. at 29–30. This conclusory allegation borrows language from a now defunct Ninth Circuit theory that personal jurisdiction could be imputed through *agency* where the subsidiary performed services that were so "important" to the parent that the parent would otherwise perform those services if the subsidiary did not exist. *See Daimler*, 571 U.S. at 135–36. In *Daimler*, however, the Supreme Court rejected that argument. "Formulated this way, the inquiry into importance stacks the deck, for it will always yield a pro-jurisdiction answer: 'Anything a corporation does through an independent contractor, subsidiary, or distributor is presumably something that the corporation would do 'by other means' if the independent contractor, subsidiary, or distributor did not exist.'" *Id.*; *see also Yamaha*, 851 F.3d at 1020–24 (citing the same reasoning in *Daimler* to invalidate the previously used formulation for agency in the context of specific jurisdiction).

Third, Plaintiffs' alter ego theory is based on conclusory allegations that the entities "shar[e] directors and officers with supervisory roles over both Sunoco LP and the subsidiary, and employ[] the same people." *See* Compl. ¶ 20(d); *see also* Opp. at 29–30. Again, even assuming *arguendo* that this is true, these statements are insufficient to sufficiently allege alter ego as a matter of law: "Total ownership and shared management personnel are alone insufficient to establish the requisite level of control." *Ranza*, 793 F.3d at 1073. "[I]t is entirely appropriate for directors of a parent corporation to serve as directors of its subsidiary[.]" *Unocal*, 248 F.3d at 926 (*quoting Bestfoods*, 524 U.S. at 69). This is because overlapping directors and officers are presumed to wear the

appropriate "hat" when acting on behalf of the respective entities. *See Bestfoods*, 524 U.S. at 69–70. Similarly, Plaintiffs' conclusory allegation that Sunoco LP and its subsidiaries "employ[] the same people" is precisely the kind of unreasonable, broad allegation that this Court need not accept, even on a motion to dismiss. *See Kealoha*, 131 Hawai'i at 79 n.26, 315 P.3d at 230 ("[Courts] do not . . . simply accept conclusory allegations unsupported by specific facts, nor do [they] draw unreasonable inferences in the plaintiff's favor.").[16]

Finally, Plaintiffs also clearly fail to meet the second prong of the alter ego test, which requires that "adherence to the fiction of the separate existence of the corporation would, under the particular circumstances, sanction a fraud or promote injustice." *See Robert's Haw. Sch. Bus*, 91 Hawai'i at 242, 982 P.2d at 871 (holding that an entity seemingly created to circumvent state bidding rules was a "mere instrumentality" of another). Plaintiffs make no allegations or argument (nor can they) that recognizing the separate existences of Sunoco LP, Aloha Petroleum LLC, and Aloha Petroleum, Ltd. would sanction a fraud or promote an injustice. Having failed to meet both prongs of the alter ego test, Plaintiffs cannot establish general personal jurisdiction over Sunoco LP and Aloha Petroleum LLC based on the jurisdictional contacts of Aloha Petroleum, Ltd.

III. CONCLUSION

This Court lacks personal jurisdiction over Defendants, and Plaintiffs' Complaint should be dismissed.

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[16] Plaintiffs cite a Northern District of California case, *Vista v. USPlabs, LLC*, 2014 WL 5507648 (N.D. Cal. Oct. 30, 2014), as "instructive," but upon closer reading it serves only to highlight how lacking Plaintiffs' alter ego claims are here. *See* Opp. at 30. In *Vista*, the plaintiffs submitted numerous exhibits supporting detailed allegations of common management, common ownership, common signatories, shared transactions, and lack of independence and corporate formalities. *Vista*, 2014 WL 5507648, at *2–3. Here, Plaintiffs' conclusory allegations fall far short of those in *Vista*.

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU, AND HONOLULU BOARD OF WATER SUPPLY, Plaintiffs, vs. SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM LLC; EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORP; CHEVRON USA INC.; BHP GROUP LIMITED; BHP GROUP PLC; BHP HAWAII INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive, Defendants.	CIVIL NO. 1CCV-20-0000380 (JPC) (Other Non-Vehicle Tort) **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date a copy of the foregoing document was duly served electronically through JIMS/JEFS and a copy sent via email to the following parties at their last known addresses:

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