

PAUL ALSTON 1126  
JOHN-ANDERSON L. MEYER 8541  
CLAIRE WONG BLACK 9645  
GLENN T. MELCHINGER 7135  
DENTONS US LLP  
1001 Bishop Street, Suite 1800  
Honolulu, Hawai'i 96813-3689  
Tel: (808) 524-1800  
Fax: (808) 524-4591  
Email: paul.alston@dentons.com  
anderson.meyer@dentons.com  
claire.black@dentons.com  
glenn.melchinger@dentons.com

**Electronically Filed**  
**FIRST CIRCUIT**  
**1CCV-20-0000380**  
**18-AUG-2021**  
**02:55 PM**  
**Dkt. 441 REPLY**

THEODORE V. WELLS, JR. (Admitted *Pro Hac Vice*)  
DANIEL J. TOAL (Admitted *Pro Hac Vice*)  
YAHONNES CLEARY (Admitted *Pro Hac Vice*)  
PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Tel: (212) 373-3089  
Fax: (212) 492-0089  
Email: twells@paulweiss.com  
dtoal@paulweiss.com  
ycleary@paulweiss.com

Attorneys for Defendants  
EXXON MOBIL CORPORATION  
and EXXONMOBIL OIL CORPORATION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU AND  
HONOLULU BOARD OF WATER SUPPLY,

Plaintiffs,

v.

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

CIVIL NO. 1CCV-20-0000380 (JPC)  
(Other Non-Vehicle Tort)

**EXXONMOBIL'S REPLY IN  
SUPPORT OF MOTION TO  
DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

Hearing Date: August 27, 2021

Hearing Time: 8:30 a.m.

Hearing Judge:

Honorable Jeffrey P. Crabtree

Trial Date: None

HAWAI‘I INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive,

Defendants.

**EXXONMOBIL’S REPLY IN SUPPORT OF MOTION TO DISMISS  
FOR LACK OF PERSONAL JURISDICTION**

**DISCUSSION**

Plaintiffs’ opposition to ExxonMobil’s Supplemental Memorandum in Support of Defendants’ Motion to Dismiss for Lack of Personal Jurisdiction—consisting of scarcely a page buried in their joint opposition, *see* Opp. at 19–20—only betrays the infirmity of their jurisdictional allegations against ExxonMobil.<sup>1</sup>

The legal standard here is undisputed. For this Court to exercise specific personal jurisdiction over ExxonMobil, Plaintiffs’ claims must “arise out of or relate to” ExxonMobil’s contacts with Hawai‘i. *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021). That “arise out of or relate to” standard requires a “substantial connection” between Plaintiffs’ claims and Defendants’ in-state activities, not one that is “merely incidental.” *Id.* at 1028; *Shaw v. N. Am. Title Co.*, 76 Hawai‘i 323, 328, 330 (1994); *see also Norris v. Six Flags Theme Parks, Inc.*, 102 Hawai‘i 203, 209 (2003) (“[W]e examine Defendants’ activities that are *related to* the present causes of action.” (emphasis added)). But no sooner do Plaintiffs acknowledge this standard than they disregard it. Plaintiffs identify no substantial connection between ExxonMobil’s alleged contacts with Hawai‘i, and their own claims—namely, that

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<sup>1</sup> ExxonMobil incorporates herein all arguments made by Defendants in their joint personal jurisdiction reply brief filed concurrently.

ExxonMobil purportedly made deceptive statements about climate science and policy elsewhere, and that global climate change caused injuries in Hawai‘i. Where, as here, a “strong ‘relationship among the defendant, the forum, and the litigation’” is absent, the “essential foundation” for specific jurisdiction does not exist.<sup>2</sup> *Ford Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S. A. v. Hall*, 466 U.S. 408, 414 (1984)). Plaintiffs’ claims against ExxonMobil thus should be dismissed in their entirety.

**A. Plaintiffs’ Conclusory Allegations Regarding ExxonMobil’s Sale of Fossil Fuel Products in Hawai‘i Do Not Provide a Basis for Specific Jurisdiction**

Plaintiffs’ allegations regarding ExxonMobil’s alleged sale of fossil fuel products in Hawai‘i cannot provide a basis for the Court’s exercise of personal jurisdiction for several independent reasons, each of which requires dismissal of Plaintiffs’ claims against ExxonMobil.

*First*, Plaintiffs’ Opposition confirms their allegations regarding ExxonMobil’s business activities in Hawai‘i consist of a single paragraph generically describing unspecified sales and promotion of unspecified products in Hawai‘i. *See* First Am. Compl. (“FAC”) ¶ 21h. There is no allegation, for example, of what products allegedly were sold by ExxonMobil in Hawai‘i, when they were sold, to whom they were sold, or in what quantity. Even if Plaintiffs’ claims actually arose from or related to such in-state activities by ExxonMobil, which they do not, such conclusory allegations would not provide a valid basis for the Court to exercise personal jurisdiction over ExxonMobil. *See In re Boon Glob. Ltd.*, 923 F.3d 643, 654 (9th Cir. 2019) (requiring “something more” than “conclusory allegations” to confer personal jurisdiction); *Alwand Vahan Jewelry, Ltd. v. Lustour, Inc.*, No. 21 Civ. 1959, 2021 WL 3604517, at \*5 (S.D.N.Y.

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<sup>2</sup> Plaintiffs’ assertion that they “need not show a ‘strict causal relationship,’” Opp. at 19, between ExxonMobil’s forum-related contacts and their claims mischaracterizes ExxonMobil’s argument and is ultimately beside the point. Plaintiffs have failed to allege any connection between ExxonMobil’s conduct in Hawai‘i and Plaintiffs’ claims. A mere “affiliation” between ExxonMobil’s forum-related conduct and Plaintiffs’ climate change-related claims also will not suffice. *See* Opp. at 20; Joint Reply at 10.

Aug. 13, 2021) (“The burden is plaintiff’s to establish jurisdiction, and allegations or evidence of activity constituting the basis of jurisdiction must be non-conclusory and fact-specific.” (internal quotation marks omitted)); ExxonMobil Br. at 5. Lacking any meaningful response to ExxonMobil’s argument that their allegations against ExxonMobil are too conclusory to support personal jurisdiction, Plaintiffs assert that ExxonMobil has “offered no evidence to dispute” them. Opp. at 19. But that argument misstates the law. It is Plaintiffs’ burden to allege an adequate jurisdictional link, and they have failed to do so. *See Cisneros v. Trans Union, L.L.C.*, 293 F. Supp. 2d 1156, 1161 (D. Haw. 2003).<sup>3</sup>

*Second*, ExxonMobil’s alleged business activities in Hawai‘i cannot provide a basis for personal jurisdiction because Plaintiffs do not allege their injuries stem from those activities. To the contrary, Plaintiffs acknowledge their claimed injuries are “*all* due to anthropogenic *global* warming” allegedly caused by emissions from worldwide “unrestricted production and use of fossil fuel[s]” over many decades. FAC ¶¶ 1, 4, 10 (emphasis added). In view of the global nature of their claims, Plaintiffs’ alleged injuries would be essentially the same even if ExxonMobil’s products had never been sold or consumed in Hawai‘i. ExxonMobil’s alleged in-state business activities therefore are entirely incidental to Plaintiffs’ alleged injuries and cannot provide any basis for personal jurisdiction. *See Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1781 (2017) (“[S]pecific jurisdiction is lacking regardless of the extent of a defendant’s unconnected activities in the State.”).

*Third*, ExxonMobil’s alleged sale of fossil fuel products in Hawai‘i cannot provide a basis for personal jurisdiction because Plaintiffs have insisted that their claims are “predicated

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<sup>3</sup> Notably, Plaintiffs assert the same conclusory, boilerplate allegations against every Defendant. But Plaintiffs cannot rely on group pleading to establish personal jurisdiction. To the contrary, “a plaintiff must establish personal jurisdiction over each defendant individually.” *See Cisneros*, 293 F. Supp. 2d at 1163; *see also Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990); ExxonMobil Br. at 5; Joint Reply at 20–21 n.11.

on Defendants' failure to warn and deceptive conduct," Opp. at 19, not on Defendants' production or sale of fossil fuels. *See* Merits Opp. at 9 ("[U]nder the Complaint, Defendants can continue to sell as many fossil fuel products as they wish without fear of incurring future liability, so long as they do not use deception to do so."). In light of Plaintiffs' framing of their claims, ExxonMobil's production and sale of fossil fuels in Hawai'i are jurisdictionally irrelevant, and cannot form the requisite connection to the forum that is required to justify the exercise of specific personal jurisdiction.

**B. Alleged Misrepresentations Outside of Hawai'i Do Not Provide a Basis for Specific Jurisdiction**

Plaintiffs' allegations regarding ExxonMobil's alleged misrepresentations likewise fail to provide any basis for personal jurisdiction. As their Opposition confirms, Plaintiffs have not alleged that ExxonMobil made any misrepresentations in, or directed at, Hawai'i. Plaintiffs instead point to six paragraphs in the First Amended Complaint that purportedly describe "specific misrepresentations by Exxon and its representatives" supporting personal jurisdiction. Opp. at 19 (citing FAC ¶¶ 95, 100, 102–104, 114). But none of these purported misrepresentations is alleged to have been made in, or directed at, Hawai'i. *See, e.g.*, FAC ¶ 95 (1988 internal memorandum by Exxon, headquartered in Texas); *id.* at ¶ 100 (Exxon corporate report, published in Texas); *id.* at ¶ 102 (1997 speech by then-Exxon CEO in Beijing); *id.* at ¶ 103 (1998 publication by Imperial Oil, a *Canadian* company), *id.* at ¶ 104 (Mobil "advertisements located in the editorial section of the New York Times"); and *id.* at ¶ 114 (claiming "Defendants have funded dozens of" third party organizations, none of which are alleged to have any connection to Hawai'i). As these supposed misrepresentations lack any alleged connection to Hawai'i, none provides any basis for this Court's exercise of personal jurisdiction over ExxonMobil.

Plaintiffs’ argument that their claims are based on ExxonMobil’s purported “failure to warn and deceptive conduct,” Opp. at 19, does not alter this conclusion. As an initial matter, a *failure* to act in a forum—as opposed to affirmative acts taken in the forum—cannot provide a basis for personal jurisdiction. *See, e.g., Chlebda v. H.E. Fortna & Bro., Inc.*, 609 F.2d 1022, 1023–24 (1st Cir. 1979) (an “omission” or a “failure to act,” cannot “furnish the minimum contact with that state that is needed to confer jurisdiction”); *Zapata v. HSBC Holdings plc*, No. 1:16-CV-030, 2017 WL 6939209, at \*1 (S.D. Tex. Sept. 14, 2017) (holding that “inaction” is an “insufficient” contact to “justify the assumption of jurisdiction”); *Brock v. Wash. State Dep’t of Corr.*, No. C08-5167, 2008 WL 5000250, at \*2 (W.D. Wash. Nov. 21, 2008) (holding failure to take “direct action” in forum did not subject defendant to suit).

And, of course, even if Plaintiffs had alleged deceptive conduct by ExxonMobil in, or targeted at, Hawai‘i, that conduct would still fail to establish any basis for personal jurisdiction over ExxonMobil given the global nature of Plaintiffs’ claims and alleged injuries from “global warming.” Joint Reply at 4–9.

\* \* \*

As Plaintiffs have failed to allege any substantial connection between ExxonMobil’s business activities in Hawai‘i and their claims regarding allegedly deceptive statements made elsewhere, or claimed injuries supposedly stemming from global climate change, Plaintiffs have failed to establish any basis for this Court to exercise personal jurisdiction over ExxonMobil.

### CONCLUSION

For the reasons set forth above, in ExxonMobil’s Supplemental Memorandum in Support of the Motion to Dismiss for Lack of Personal Jurisdiction, and in the briefing in support

of the Joint Motion, Plaintiffs' claims against Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation must be dismissed for lack of personal jurisdiction.

DATED: Honolulu, Hawai'i, August 18, 2021.

/s/ PAUL ALSTON

PAUL ALSTON  
CLAIRE WONG BLACK  
GLENN T. MELCHINGER  
JOHN-ANDERSON L. MEYER

THEODORE V. WELLS, JR.  
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