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)

ORDER DENYING DEFENDANTS' JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

ORDER DENYING DEFENDANTS' JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction ("Motion"), filed on June 2, 2021 (Dkt. 347), came for video hearing on August 27, 2021 at 8:30 a.m. before the Honorable Jeffrey P. Crabtree. All parties appeared through counsel. Theodore J. Boutrous argued

for all Defendants, Paul Alston argued for Exxon Mobil Corporation and ExxonMobil Oil Corporation, and Corrie J. Yackulic argued for Plaintiffs.

After considering the written submissions and the arguments of counsel, the files herein, and other good cause appearing therefore, Defendants' Joint Motion to Dismiss for Lack of Personal Jurisdiction is DENIED for reasons set forth as follows. This order is the one proposed by Defendants following the court's ruling filed February 28, 2022 -- except for the court's additions to paragraph I B regarding the court's ruling on Plaintiffs' alternative *alter ego* theory.

I. LEGAL STANDARD

A. This is a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction. Plaintiffs' initial burden is to make a *prima facie* showing that 1) the criteria in Hawai‘i's long-arm statute (HRS 634-635) are met, and 2) personal jurisdiction does not violate due process. *Norris v. Six Flags Theme Parks, Inc.*, 102 Haw 203, 207 (2003), as corrected (Aug. 12, 2003). An evidentiary hearing was not requested and so the personal jurisdiction issues were presented on the briefs and at oral argument. Therefore, the court looks to the allegations of the complaint, which are deemed to be true for purposes of the motion. *See Shaw v. N. Am. Title Co.*, 76 Haw 323, 327 (1994), and federal authorities cited therein.

B. The court concludes there is a *prima facie* showing for specific jurisdiction, and therefore DENIES the motion in large part. Per section III, below, the court GRANTS the motion to the limited extent Plaintiffs rely on an *alter ego* theory to attribute the contacts of an "at home" defendant, Aloha Petroleum, Ltd., to an out-of-state corporate parent or intermediate entity, Sunoco LP and Aloha Petroleum LLC, in order to gain general jurisdiction. This limited ruling against the Plaintiffs' *alter ego* theory does not impact the court's ruling as to specific jurisdiction.

The court is simply rejecting what the court concludes is Plaintiffs' alternative and independent argument that general personal jurisdiction is appropriate under an *alter ego* theory.

II. SPECIFIC JURISDICTION

A. The first prong of specific jurisdiction (purposeful availment) is met. The out-of-state Defendants all conducted fossil fuel-related business here and purposefully availed themselves of the forum. Per extensive case law, such availment invokes both benefits and obligations. *See*, *e.g.*, *Ford Motor Co. v. Mont. Eight Judicial Dist. Court*, 141 S. Ct. 1017, 1025 (2021). This first prong does not seem to be in dispute.

B. The second prong is whether the claim "arises out of or relates to" the defendants' forum-related activities. The court agrees that *Ford* controls. Its focus on the second prong is the crux of this motion. Plaintiffs claim the "arising out of or relates to" second prong is met here, because there is a connection between the activities in the forum (marketing fossil fuels) and the claim or controversy (tortious marketing of fossil fuels including failure to warn). Defendants argue the second prong is not met because their allegedly tortious business conduct did not occur in and was not targeted at Hawai'i, and the connection between their allegedly tortious business conduct and a tortious event or impact in Hawai'i is insubstantial, incidental, or not supported by causation.

C. Some of the cases Defendants rely on (*Burger King*, *v. Rudzewicz*, 471 U.S. 462 (1985); *Walden v. Fiore,* 571 U.S. 277 (2014)) focus more on the first prong, and Defendants seem to argue standards for the first prong are part of the second prong. It is important to keep the two prongs separate.

D. <u>Second prong: "arising out of or relates to"</u>. Plaintiffs allege that Defendants' fossil fuel marketing campaign was worldwide, including in Hawai'i, and that the tortious marketing and failure to warn helped drive fossil fuel demand worldwide, *including in Hawai'i*. Plaintiffs further

allege Defendants' tortious marketing activity caused impacts in the forum state. As this court reads *Ford*, combined with the first prong, more is not required. *Ford* does not establish any in-forum, geo-located "causation" requirement. 141 S. Ct. at 1026. Neither does *Ford* require that particular or proportional Hawai'i sales and emissions "cause" harm to Hawai'i. Rather, *Ford* made clear the US Supreme Court has not and does not require a showing that plaintiff's claim occurred due to or because of a defendant's in-state conduct. *Id*. Neither does *Ford* establish any second-prong requirement of "substantial connection." "The plaintiff's claims, we have often stated, 'must arise out of or relate to the defendant's contacts' with the forum." *Id.* at 1025. "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." *Id*. (citation omitted, cleaned up). As contrast, if Defendants were marketing and installing only infrastructure for fossil fuels (e.g., pipelines, storage tanks), the required relationship or affiliation might be lacking. Based on the allegations, the court sees little daylight "between the forum and the underlying controversy." Defendants argue that general activities and injury in the state is not enough. The court agrees. The key is the connection -- the long-time purposeful availment to market fossil fuels in the forum state, the allegedly tortious marketing and failure to warn in the forum state, and the related impacts in the forum state. Defendants argue that *Ford* is distinguishable because, in that case, the actual car crash occurred in the forum state. The court does not see how that one fact is dispositive, when the test is whether there is a relationship or affiliation between contacts and claims. In any event, based on the allegations which are presumed correct for this motion, the court considers the in-state conduct/events here to be just as substantial as in *Ford*. In both cases, in addition to purposeful availment, the alleged result of the alleged tortious conduct allegedly occurred in the forum state.

E. Failure to warn/*Sulak*. Defendants argue failure to warn cannot serve as the basis for jurisdiction, and cite *Sulak v. American Eurocopter Corp.*, CV. No. 09-00135, 2009 WL 2849136 (D. Haw. Aug. 26, 2009), involving a helicopter crash in Hawai‘i. Although *Sulak* is a trial court opinion and is not binding precedent on this court, the court reviewed *Sulak* carefully due to this court's respect for Judge Ezra. In *Sulak*, the court found there was no general jurisdiction and moved to consider whether the exercise of specific jurisdiction was warranted. *Id.* at *6. The evidence of specific jurisdiction was sparse. The court next found there was no purposeful availment (first prong), because the sale of the helicopter did not occur in Hawai‘i, and any business connections between the defendant and Hawai‘i were very limited. *Id.* at *6–7. Post-sale, there was maintenance of the helicopter in Hawai‘i, but the available evidence showed that a third party did the maintenance, not the defendant. *Id.* at 7. The only argument left was Plaintiff's failure-to-warn argument, which alone would never support personal jurisdiction. *Id.* That is what makes *Sulak* easily distinguishable. As discussed above, there is far more here than just a failure to warn.

F. Fairness/reasonableness/due process. Once the first and second prongs of specific jurisdiction are met, the final question is whether exercising personal jurisdiction is unreasonable. *See Hawaii Forest & Trial Ltd. v. Davey,* 556 F. Supp. 2d at 1162, 1169-72 (D. Haw. 2008). The court answers no. Defendants have significant contacts with Hawai‘i, and purposefully availed themselves of the benefits and obligations of operating in the forum state for decades. As discussed above, the court concludes those purposeful forum contacts are related to the claims made, and the tortious acts allegedly culminated in harms in the forum. Under those circumstances, it cannot be a great surprise to be haled into a U.S. court in that forum. Looking at other factors, Defendants' burden in litigating here is not substantial in view of their resources. The harms/damages claimed

are those in Hawai‘i only. Honolulu County and the Board of Water Supply have a strong interest in litigating in Hawai‘i. The location of the evidence and witnesses could create some burden, but the evidence and witnesses will likely be from around the country or world, not just from a Defendant's home state. When balancing the various factors, the court concludes it is not unreasonable to exercise personal jurisdiction over movants.

G. Regarding Exxon's separate argument that no deceptive conduct took place in or targeted Hawai‘i, the court disagrees. See above discussion, especially paragraph II.D. The operative complaint alleges "Exxon has and continues to tortiously distribute, market, advertise, and promote its products in Hawai‘i, with knowledge that those products have caused and will continue to cause climate crisis-related injuries in Hawai‘i . . . ." *See* Amended Complaint ¶ 21(h). Exxon did not factually challenge the allegations of the complaint for purposes of this motion, except to argue the allegations were conclusory and therefore required dismissal. The court respectfully disagrees.

III. GENERAL JURISDICTION

A. The court rejects Plaintiffs' arguments that the alter ego theory applies here. Accordingly, general jurisdiction does not exist as to Sunoco LP and Aloha Petroleum LLC because the contacts of Aloha Petroleum, Ltd. may not be imputed to those entities under a theory of alter ego, essentially for the reasons argued by Defendants. Hawai‘i courts rarely apply the alter ego doctrine, to better effectuate the protections of corporate form.[1] The briefs did not demonstrate that the court should make an exception to the general rule.

For the reasons stated above, and the Court's February 28, 2022 Order (Dkt. 591), Defendants' Joint Motion is DENIED.

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[1] Plaintiffs do not argue that any Defendants other than Sunoco LP and Aloha Petroleum LLC are subject to general personal jurisdiction.

IT IS SO ORDERED.

Dated: Honolulu, Hawai'i, March 31, 2022.

/s/ Jeffrey P. Crabtree

HONORABLE JEFFREY T. CRABTREE
JUDGE OF THE ABOVE-ENTITLED COURT

RE: First Circuit Court, State of Hawai'i

RE: City & County of Honolulu and BWS v. Sunoco, LP, et al;
Civ. No. 1CCV-20-0000380 (JPC)

RE: **ORDER DENYING DEFENDANTS' JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** (motion filed 6/2/21; Dkt. 347)

Note: the court edited paragraph I B above after counsel approved as to form. /jpc

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