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EXXON MOBIL CORPORATION and
EXXONMOBIL OIL CORPORATION

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

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 SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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

Trial Date: None

HAWAIʻI 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 SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Pursuant to the Stipulated Order regarding briefing for Defendants' motion to dismiss, Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation (together, "ExxonMobil") submit this supplemental memorandum of law in further support of their motion to dismiss for lack of personal jurisdiction.[1]

To plead personal jurisdiction over ExxonMobil, Plaintiffs must allege a "strong relationship" among ExxonMobil, Hawaiʻi, and their claims. *See Ford Motor Co.* v. *Mont. Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017, 1028 (2021) (internal quotation mark omitted). They have not remotely done so. Plaintiffs' claims, which they purport to premise on a theory that Defendants misrepresented the risks of climate change, do not arise from or relate to any of ExxonMobil's meager alleged contacts with Hawaiʻi. Plaintiffs have thus failed to meet their burden of pleading a *prima facie* case for this Court's exercise of personal jurisdiction over ExxonMobil, and their claims against ExxonMobil therefore should be dismissed.

[1] For the purposes of this motion only, ExxonMobil assumes the truth of the factual allegations in the FAC. ExxonMobil also has joined in Defendants' joint memorandum in support of their motion to dismiss for lack of personal jurisdiction ("Joint Personal Jurisdiction Mem."), and incorporates those arguments herein.

JURISDICTIONAL ALLEGATIONS

Plaintiffs allege that Exxon Mobil Corporation is incorporated in New Jersey and has its principal place of business in Texas. First Am. Compl. ("FAC") ¶ 21(a). And they allege that ExxonMobil Oil Corporation is incorporated in New York and has its principal place of business in Texas. *Id.* ¶ 21(e). As to ExxonMobil's supposed contacts with Hawai'i, Plaintiffs allege only the following:

- Both Exxon Mobil Corporation and ExxonMobil Oil Corporation are "registered to do business in Hawai'i and [have] a registered agent for service of process in Honolulu, Hawai'i." FAC ¶¶ 21(a), 21(e).

- "[E]ach of Exxon Mobil Corporation's subsidiaries functions as an alter ego of Exxon Mobil Corporation, including by conducting fossil fuel-related business in Hawai'i . . . ." FAC ¶ 21(d).

- "[ExxonMobil] 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, including to the Plaintiffs. A substantial portion of [ExxonMobil's] fossil fuel products are or have been transported, traded, supplied, distributed, promoted, marketed, sold, and/or consumed in Hawai'i, from which [ExxonMobil] derives and has derived substantial revenue. For example, [ExxonMobil] directly and through its subsidiaries and/or predecessors in interest supplied substantial quantities of fossil fuel products, including but not limited to crude oil, to Hawai'i during the period relevant to this litigation." FAC ¶ 21(h).

As described below, even accepted as true, these allegations do not suffice to establish personal jurisdiction.

DISCUSSION

A. Plaintiffs Cannot Establish General Jurisdiction over ExxonMobil

The Supreme Court has identified two definitive bases for general jurisdiction: (1) a company's place of incorporation, and (2) its principal place of business. *See Daimler AG* v. *Bauman*, 571 U.S. 117, 137 (2014). But, as the Complaint itself acknowledges, neither Exxon Mobil Corporation nor ExxonMobil Oil Corporation is incorporated or headquartered in Hawai'i.

See FAC ¶¶ 21(a), 21(e). And "[t]he appointment or maintenance of a registered agent in the State does not by itself create the basis for personal jurisdiction over the represented entity in the State." Haw. Rev. Stat. § 425R-12. *See also* Joint Personal Jurisdiction Mem. at 8–9. As a result, ExxonMobil is not subject to general jurisdiction in Hawai'i.

B. Plaintiffs Cannot Establish Specific Jurisdiction over ExxonMobil

To establish "the 'essential foundation' of specific jurisdiction," Plaintiffs must allege (among other things) a "strong 'relationship among the defendant, the forum, and the litigation.'" *Ford Motor Co.*, 141 S. Ct. at 1028 (quoting *Helicopteros Nacionales de Colombia, S.A.* v. *Hall*, 466 U.S. 408, 414 (1984)); *accord 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."). Indeed, Plaintiffs must establish personal jurisdiction over *each* defendant with respect to *each* claim. *Cisneros* v. *Trans Union, L.L.C.*, 293 F. Supp. 2d 1156, 1161 (D. Haw. 2003); *see also Rush* v. *Savchuk*, 444 U.S. 320, 332 (1980) ("The requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdiction."). They may not "aggregate the contacts" of Defendants to establish this Court's jurisdiction. *Sher* v. *Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990) (citing *Rush*, 444 U.S. 320 at 331–32 (1980)).

Plaintiffs do not, and cannot, meet this test with respect to ExxonMobil. Their conclusory allegations about ExxonMobil's activities in Hawai'i involve contacts that are *de minimis* at best, do not reflect a "substantial connection with Hawai'i," and are "merely incidental" to Plaintiffs' claims. *See Shaw* v. *N. Am. Title Co.*, 76 Hawai'i 323, 328, 330 (1994). Plaintiffs insist that "the tortious conduct" at issue here is "Defendants' campaign of deception and misleading promotion," and have repeatedly attempted to characterize their claims as such. *See, e.g.*, Pl.'s Reply in Supp. of Mot. to Remand at 13, *City and Cnty. of Honolulu* v. *Sunoco LP*, No. 1:20-cv-00163 (D. Haw. Oct. 30, 2020), ECF No. 121; FAC ¶¶ 4, 8–9, 12, 141. Under that theory,

the claims alleged here purportedly rest not on the mere production or sale of fossil fuels in Hawai‘i, but on allegations that Defendants—including ExxonMobil—misled consumers with respect to global climate change. But Plaintiffs do not allege any facts suggesting that any supposedly deceptive promotion by ExxonMobil took place in or targeted Hawai‘i. In fact, even accepted as true, none of ExxonMobil's alleged contacts with the state would involve contact or communications with consumers in the first instance: for example, ExxonMobil is not alleged to have operated any retail stations, offered any credit cards, or maintained any websites in Hawai‘i. In short, Plaintiffs have failed to adequately allege that ExxonMobil engaged in any allegedly deceptive conduct *in Hawai‘i*, or targeted such activity *at Hawai‘i*. And, of at least equal importance, even if Plaintiffs had alleged deception by ExxonMobil that took place in or targeted Hawai‘i, such conduct would not satisfy due process because Plaintiffs have not alleged that their global claims "arise out of or relate to" ExxonMobil's contacts with Hawai‘i, nor could they. *See Ford Motor Co.*, 141 S. Ct. at 1025; *see also* Joint Personal Jurisdiction Mem. at 10–16.

Plaintiffs' lone attempt to provide a factual allegation tying ExxonMobil to Hawai‘i—the alleged "supply" of an unspecified amount of crude oil to the state, FAC ¶ 21(h)—is entirely unmoored from the supposed basis of their claims. In particular, this allegation has nothing to do with ExxonMobil's alleged deception of consumers and policy-makers, any misleading marketing campaigns, or indeed any promotion of its products. Accordingly, this vague allegation is "merely incidental" to Plaintiffs' theory of liability, and cannot satisfy Plaintiffs' burden to allege a "strong relationship among [ExxonMobil], the forum, and the litigation." *See Ford Motor Co.*, 141 S. Ct. at 1028; *Shaw*, 76 Hawai‘i at 328.

The Hawai‘i Supreme Court has rejected the exercise of personal jurisdiction in the face of allegations in other cases that were similarly disconnected from a plaintiff's claims. For

example, in *Norris*, a Hawai‘i resident seeking to recover for injuries sustained at defendants’ theme park in California alleged that defendants had offered discounts to members of the Hawai‘i State Bar Association and supplied advertising materials to a Hawai‘i travel agency. 102 Hawai‘i at 205. The Court disregarded these contacts in its personal jurisdiction analysis because they did not give rise to the plaintiff’s cause of action and were unrelated to her injuries. *Id.* at 209. Similarly, ExxonMobil’s alleged sale of products in Hawai‘i is unrelated to Plaintiffs’ allegations of misleading advertising and deception, and cannot support this Court’s exercise of personal jurisdiction.

Plaintiffs’ other jurisdictional allegations are “[c]onclusory” and therefore also “insufficient to confer personal jurisdiction.” *See In re Boon Glob. Ltd.*, 923 F.3d 643, 654 (9th Cir. 2019). The bare allegation that “[a] substantial portion of [ExxonMobil’s] fossil fuel products are or have been transported, traded, supplied, distributed, promoted, marketed, sold, and/or consumed in Hawai‘i,” FAC ¶ 21(h), is expressly phrased in the alternative and does not advance factual allegations suggesting that ExxonMobil undertook any deceptive activity in, or directed at, Hawai‘i. The allegation is also simply boilerplate, repeated in the complaint with respect to each alleged “family” of Defendants. *See, e.g., id.* ¶ 20(h). The same is true for the generic allegation that ExxonMobil “has and continues to tortiously distribute, market, advertise, and promote its products in Hawai‘i,” and that Exxon Mobil Corporation’s subsidiaries “conduct[] fossil fuel-related business in Hawai‘i.” *Id.* ¶¶ 21(h), 21(g). They are both repeated nearly verbatim in relation to each of the other defendants. *See, e.g.*, FAC ¶¶ 20(h), 21(g). These allegations are simply an attempt to impermissibly pool Defendants’ forum contacts and use vague group pleading in an attempt to create a link among ExxonMobil, Hawai‘i, and their claims when no such link exists. *See Sher* v. *Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990).

Moreover, the sweeping global nature of Plaintiffs' claims prevents a finding of a "substantial" connection here. Plaintiffs do not merely seek local remedies for local harms arising from ExxonMobil's alleged contacts with Hawai‘i; they are attempting to recover for damages allegedly caused by decades of worldwide fossil fuel emissions "no matter where in the world those emissions were released (or who released them)." *See City of New York* v. *Chevron Corp.*, 993 F.3d 81, 91, 93 (2d Cir. 2021) (affirming dismissal of nearly identical claims made by the City of New York against a select group of energy producers, including some of the defendants here); Joint Personal Jurisdiction Mem. at 12. Plaintiffs' allegations against ExxonMobil regarding supply of unspecified amounts of unidentified fossil fuel products at unspecified times to unidentified parties in a state that, in the aggregate, accounts for only a negligible fraction of global greenhouse gas emissions cannot be read as anything but a *de minimis*—and "merely incidental"—connection to Hawai‘i.

In sum, Plaintiffs have failed to allege the requisite relationship among ExxonMobil, Hawai‘i, and their claims. The few tenuous connections to Hawai‘i they allege are neither "substantial," nor do they involve "suit-related conduct," as they have nothing to do with Plaintiffs' theory of alleged "deception" or any other basis for liability. *See Walden* v. *Fiore*, 571 U.S. 277, 284 (2017). As Plaintiffs have failed to allege a "strong 'relationship among the defendant, the forum, and the litigation,'" they have failed to establish any basis for personal jurisdiction over ExxonMobil. *Ford Motor Co.*, 141 S. Ct. at 1028.

CONCLUSION

For the reasons above and in the briefing in support of the Joint Motion, Plaintiffs' claims against Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation should be dismissed for lack of personal jurisdiction.

DATED: Honolulu, Hawai‘i, June 2, 2021.

/s/ CLAIRE WONG BLACK

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