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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI‘I

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	CIVIL NO. 1CCV-20-0000380 (JPC) (Other Non-Vehicle Tort) **PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND EXXONMOBIL’S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION** Hearing Date: August 27, 2021 Hearing Time: 8:30 AM (HT) The Honorable Jeffrey P. Crabtree Courtroom/Division: First Circuit 6th Division

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.	Trial Date: None.

PLAINTIFFS' OPPOSITION TO (1) DEFENDANTS' JOINT MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND (2) EXXONMOBIL'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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Plaintiffs City and County of Honolulu ("City") and Honolulu Board of Water Supply ("BWS") (collectively, "Plaintiffs") respectfully submit this opposition to Defendants'[1] Motion to Dismiss for Lack of Personal Jurisdiction.[2]

I. INTRODUCTION

Plaintiffs bring this action to vindicate local injuries within their jurisdiction caused by Defendants' decades-long campaign to discredit the science of global warming, to conceal the catastrophic dangers posed by their fossil fuel-products, and to misrepresent their role in combatting the climate crisis. Each of the companies named in this suit has ample contacts with Hawai‘i to justify the exercise of personal jurisdiction: Defendants own and operate assets in Hawai‘i, including refineries and fuel terminals; promote and market their products at branded, retail gas stations in Hawai‘i; supply fossil fuel products to purchasers in Hawai‘i; and/or have directed misleading statements at Hawai‘i. One Defendant, Aloha Petroleum Ltd., is incorporated in Hawai‘i.[3]

All three elements of the specific jurisdiction test are satisfied as to each Defendant: (1) they purposefully availed themselves of the privilege of conducting activities in Hawai‘i, where each of them sold, marketed, and promoted their fossil fuel products; (2) Plaintiffs' failure to warn and deception claims arise out of or relate to Defendants' sales, marketing, and promotion of those products in Hawai‘i; and (3) Defendants cannot carry their burden to show

[1] For the purposes of this brief, "Defendants" includes all named Defendants except BHP Group Limited, BHP Group PLC, and BHP Hawaii Inc.

[2] This opposition brief responds to arguments raised in (1) Defendants' Joint Memorandum in Support of Defendants' Motion to Dismiss for Lack of Personal Jurisdiction ("Joint MPA"), and (2) ExxonMobil's Supplemental Memorandum in Support of Motion to Dismiss for Lack of Personal Jurisdiction ("Exxon MPA"). Plaintiffs will respond to Defendants BHP Group Limited and BHP Group PLC's Motion to Dismiss for Lack of Personal Jurisdiction in a separate brief.

[3] BHP Hawaii Inc., which will be addressed in a separate brief, is also incorporated in Hawai‘i.

that the exercise of personal jurisdiction would be unreasonable, especially given the extent of Defendants' contacts with Hawai‘i, Hawai‘i's strong interest in adjudicating a dispute arising out of injuries to its residents, and the minimal burden Defendants — all large, multinational corporations — face in litigating in Hawai‘i.

Defendants concede, as they must, the "purposeful availment" prong of the specific jurisdiction test, given their extensive and long-standing commercial operations in Hawai‘i. 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 Co. v. Mont. Eight Judicial Dist. Court*, 141 S. Ct. 1017 (2021). The Court expressly *rejected* the notion that "only a strict causal relationship between the defendant's in-state activity and the litigation will do." *Id.* at 1026. Instead, it is enough that there is "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.* at 1025 (cleaned up). Moreover, the issue of whether Plaintiffs can prove Defendants' conduct caused the alleged harm is a merits question not subject to this Court's determination at the pleading stage. *See Mitchell v. Branch*, 45 Haw. 128, 139 (1961) ("Where there is conflicting evidence . . . on the issue of proximate causation, the question is one for the trier of fact.").

There is a clear affiliation here. Defendants have known for more than 60 years that their fossil fuel products are the principal cause of climate change, and that, given the cumulative nature of the greenhouse effect, the more fossil fuels are consumed, the more extreme the impacts of climate change will be. First Amended Complaint ("FAC") ¶¶ 49–87. These foreseeable impacts, the result of incremental contributions of greenhouse gases to the

atmosphere, are experienced locally in Hawai‘i. *Id.* ¶¶ 148–152. Knowing this, Defendants misled consumers and intentionally sought to disinform the public and marketed and sold their fossil fuel products in Hawai‘i. *Id.* ¶¶ 94, 114. That Defendants also did so elsewhere, further contributing to global climate change, does not erase the basic connection between their activities in Hawai‘i and the climate harms suffered here.

Several Defendants—Sunoco LP, Aloha Petroleum, Ltd., and Aloha Petroleum LLC—are subject to general jurisdiction in Hawai‘i because they are either incorporated here or are alter egos of entities that are at home here. In particular, Aloha Petroleum is incorporated here, and Sunoco LP and Aloha Petroleum LLC have offered no evidence to rebut Plaintiffs' allegations that they are alter egos of Aloha Petroleum, Ltd.

II. BACKGROUND

A. The Complaint Sufficiently Pleads Personal Jurisdiction.

Plaintiffs seek tort remedies for harms resulting from Defendants' long-running campaign to promote their fossil fuel products while deceiving Plaintiffs and their residents, and failing to warn them about the devastating effects of unabated use of those products. All Defendants, seven families of fossil fuel companies named in the First Amended Complaint, have extensive commercial operations and facilities in Hawai‘i.

Plaintiffs allege that Defendants' wrongful conduct in failing to warn consumers, including in Hawai‘i, about the risks of unabated use of their products; and in their deceptive marketing and promotion aimed at Hawai‘i, its citizens, and others; is a substantial cause of climate change and thus of Plaintiffs' injuries. Plaintiffs today are experiencing the very harms Defendants *knew* would occur, ranging from sea level rise to extreme weather events, to disruption of the hydrologic cycle. *See* FAC ¶¶ 55, 148-154.

As to these Defendants' tortious conduct in Hawai'i, directed at Hawai'i, and profoundly threatening the well-being of and vitality of Plaintiffs in Hawai'i, the Complaint:

- Describes each Defendant's substantial fossil fuel-related business in Hawai'i, including, e.g., operation of fuel terminals and refineries, as well as the marketing, promotion, and sale of gasoline and other fossil fuel products to Hawai'i consumers through branded gasoline stations in Hawai'i, FAC ¶¶ 20h (Sunoco entities), 21h (Exxon entities), 22h (Shell entities), 23h (Chevron entities), 24h (BHP entities), 25g (BP entities), 26g (Marathon), 27i (ConocoPhillips entities);

- Documents Defendants' decades-long knowledge, acquired through industry-controlled research, that continued use of Defendants' products would cause steady increases in global mean temperatures, with dire consequences, including sea level rise, hydrologic cycle disruption, including in Hawai'i and Honolulu, FAC ¶¶ 56–86 (detailing studies, investigations, and reports by and on behalf of Defendants), 148 (describing climate impacts in Hawai'i);

- Alleges Defendants were aware of the cumulative nature of the greenhouse effect, and knew that incremental increases in emissions would cause incremental increases in climate change impacts. For example, Defendants were informed that a 1-degree Celsius increase in global temperatures would be barely noticeable, a 2.5-degree increase would result in major economic consequences, and a 5-degree rise would have globally catastrophic effects, FAC ¶ 66;

- Alleges Defendants abdicated their "responsibility to consumers and the public, including Plaintiffs, to act on their unique knowledge of the reasonably foreseeable hazards of unabated production and consumption of their fossil fuel products," FAC ¶ 87;

- Details the "affirmative steps" Defendants took "to conceal, from Plaintiffs and the general public, the foreseeable impacts of the use of their fossil fuel products on the Earth's climate and associated harms to people and communities." FAC ¶ 94. These affirmative steps included "a concerted public relations campaign to cast doubt on the science connecting global climate change to fossil fuel products and greenhouse gas emissions, in order to influence public perception of the existence of anthropogenic global warming and sea level rise, disruptions to weather cycles, extreme precipitation and drought, and other associated consequences. The effort included promoting their hazardous products through advertising campaigns . . . and the initiation and funding of climate change denialist organizations, designed to influence consumers to continue using Defendants' fossil fuel products irrespective of those products' damage to communities and the environment." *Id.* ¶ 94; *see also* ¶¶ 95–117 (describing specific communications strategies, publications, and other actions employed by Defendants and their surrogates to sow doubt about climate science and prop up demand for their products);

- Describes Defendants' efforts to misrepresent "the scientific consensus that Defendants' fossil fuel products were causing climate change, sea level rise, and injuries to **Plaintiffs**, among other communities." FAC ¶ 114 (emphasis added);

- Alleges that Defendants could have taken reasonable measures to reduce use of their fossil fuel products (thereby mitigating the harms from consumption of those products) by, inter alia, "[f]orthrightly communicating with Defendants' shareholders, banks, insurers, the public, regulators, and **Plaintiffs** about the global warming and sea level rise hazards . . . that were known to Defendants." FAC ¶ 135.b (emphasis added);

- Alleges that: "As a result of Defendants' tortious, false, and misleading conduct, reasonable consumers of Defendants' fossil fuel products and policy-makers have been deliberately and unnecessarily deceived about: . . . the fact that the continued increase in fossil fuel product consumption creates severe environmental threats and significant economic costs for communities like the **City** and resource managers like **BWS**." FAC ¶ 117 (emphasis added); and

- Alleges that: "As a direct and proximate result of Defendants' and each of their acts and omissions, **Plaintiffs** have sustained and will sustain substantial expenses and damages set forth in this Complaint, including damage to publicly owned infrastructure and real property, and injuries to public resources that interfere with the rights of Plaintiffs, and of their residents and customers." FAC ¶ 183 (emphasis added).

In short, the FAC describes Defendants' significant fossil fuel-based business in Hawai‘i, and their intentional and negligent course of conduct to mislead and conceal from the public—including Plaintiffs and Hawai‘i residents—the serious adverse consequences for Hawai‘i from continued use of their products. As Defendants foresaw decades ago, the effects of global warming for coastal regions, including Hawai‘i, are now occurring and will continue to harm Plaintiffs, their residents, and their resources.

B. Procedural History

The City filed suit in this circuit court on March 9, 2020. Defendants removed to federal court, asserting, as they do now, that "[t]his case is about *global* greenhouse gas emissions" and "Plaintiff's claims depend on Defendants' nationwide and global activities." Notice of Removal

at 3, *City & Cty. of Honolulu v. Sunoco LP*, No. 20-cv-00163, Dkt. No. 1 (D. Haw. Apr. 15, 2020).

In granting the City's motion to remand, the federal court rejected these attempts to mischaracterize the complaint: "The principal problem with Defendants' arguments is that they misconstrue Plaintiffs' claims. More specifically, contrary to Defendants' contentions, Plaintiffs have chosen to pursue claims that target Defendants' alleged concealment of the dangers of fossil fuels, rather than the acts of extracting, processing, and delivering those fuels." *City & Cty. of Honolulu v. Sunoco LP*, No. 20-cv-00163-DKW-RT, 2021 WL 531237, at *1 (D. Haw. Feb. 12, 2021).

On March 22, 2021, after the case was remanded, the City amended its complaint to add BWS as a plaintiff.

On June 2, 2021, Defendants filed a joint motion to dismiss for lack of personal jurisdiction. Additionally, ExxonMobil Corporation and ExxonMobil Oil Corporation (collectively, "Exxon") submitted a supplemental memorandum in support of their motion to dismiss.

III. LEGAL STANDARD

To defeat a motion to dismiss for lack of personal jurisdiction, Plaintiffs "need make only a *prima facie* showing that: (1) the [defendants'] activities in Hawai‘i fall into a category specified by Hawai‘i's long arm statute, Hawai‘i Revised Statutes (HRS) § 634–635; and (2) the application of HRS § 634–635 comports with due process." *Shaw v. N. Am. Title Co.*, 76 Hawai‘i 323, 327 (1994). Defendants do not challenge the first requirement, conceding that their activities fall into at least one of the categories specified by Hawai‘i's long arm statute. As to the due process requirement, a defendant may be subject to personal jurisdiction in two ways:

general or specific jurisdiction. *In Interest of Doe*, 83 Hawai‘i 367, 374 (1996). “[G]eneral jurisdiction exists where a defendant has continuous and systematic contacts with the forum.” *Id.* “A court with general jurisdiction may hear *any* claim against that defendant, even if all the incidents underlying the claim occurred in a different State.” *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1780 (2017).[4] Specific jurisdiction exists where a suit arises out of or relates to the defendant’s contacts with the forum. *Ford Motor*, 141 S. Ct. at 1026. A company will be subject to specific jurisdiction where it has “systematically served a market” for its products, and thus where the company “‘enjoy[ed] the benefits and protection of [the state’s] laws’—the enforcement of contracts, the defense of property, the resulting formation of effective markets.” *Id*. at 1028–29 (cleaned up). Hawai‘i courts apply a three-part test for specific jurisdiction: (1) the defendant purposefully directs activities at a resident of the forum, (2) the plaintiff’s claim arises out of or relates to the defendants’ forum-related activities, and (3) the exercise of jurisdiction comports with fair play and substantial justice. *In Interest of Doe*, 83 Hawai‘i at 374.

“In scrutinizing a motion to dismiss based upon lack of personal jurisdiction, the court looks to the uncontroverted allegations of the complaint, affidavits and depositions.” *Pure, Ltd. v. Shasta Beverages, Inc*., 691 F. Supp. 1274, 1277 (D. Haw. 1988). Where a defendant does not contest the truth of the allegations set forth in the complaint, those allegations are presumed true and all factual disputes are decided in the plaintiff’s favor. *Shaw*, 76 Hawai‘i at 327.

[4] Hawai‘i courts may look to federal case law for guidance on issues concerning personal jurisdiction and the application of Rule 12(b)(2). *Shaw*, 76 Hawai‘i at 326.

IV. ARGUMENT

A. Defendants Are Subject to Specific Jurisdiction in Hawai‘i.

All Defendants are subject to specific jurisdiction because they purposefully availed themselves of the privilege of conducting activities in Hawai‘i; Plaintiffs' claims arise out of and/or relate to Defendants' acts and omissions in Hawai‘i; and exercising jurisdiction in this case would be reasonable. *See In Interest of Doe*, 83 Hawai‘i at 374.

Defendants concede the first prong of the specific jurisdiction test: purposeful availment. They focus on the second prong, arguing there is no causal connection between Defendants' in-state activities and Plaintiffs' injuries because climate change is the result of global activities. But this argument cannot be squared with the Supreme Court's decision in *Ford Motor*, which confirmed that a "strict causal relationship" is *not* required to establish specific jurisdiction. 141 S. Ct. at 1026. Rather, it is enough that there is "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*. at 1025 (cleaned up). Defendants' remaining arguments concerning the reasonableness of exercising jurisdiction also miss the mark since Defendants have extensive contacts with Hawai‘i and can litigate in the state without undue burden.

1. Defendants Purposefully Directed Their Activities at Hawai‘i and Availed Themselves of the Privilege of Conducting Activities in the State.

The first prong of the specific jurisdiction test—purposeful availment—is satisfied if a defendant "purposefully avails itself of the privilege of conducting activities within the forum State, thus invoking the protection of its laws." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985) (cleaned up) (concerning a Michigan franchisee subject to personal jurisdiction in

Florida where he voluntarily accepted "the long-term and exacting regulation of his business from Burger King's Miami headquarters," and his misconduct "caused foreseeable injuries to the corporation in Florida"). This analysis "examines whether the defendant's contacts with the forum are attributable to his own actions or are solely the actions of the plaintiff." *In Interest of Doe*, 83 Hawai'i at 374 (cleaned up).

Here, Defendants do not contest that Plaintiffs have satisfied the purposeful availment prong. Joint Memorandum in Support of Defendants' Motion to Dismiss for Lack of Personal Jurisdiction ("Joint MPA"), Dkt. 347 at 10 n.5 (Jun. 2, 2021). Nor could they. Plaintiffs have alleged that each of the Defendants transacted substantial fossil-fuel-related business in Hawai'i, engaged in a concerted campaign to conceal the foreseeable impacts of the use of their fossil fuel products from Plaintiffs and their residents, and failed to warn Plaintiffs and Hawai'i consumers of the reasonably foreseeable hazards of unabated production and consumption of their fuel products. FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i, 32, 94.

2. Plaintiffs' Claims Relate to Defendants' Contacts with Hawai'i.

Plaintiffs also readily satisfy the second prong of the specific jurisdiction test because their claims "arise out of or relate to the defendants' contacts with the forum." *Ford Motor*, 141 S. Ct. at 1025 (cleaned up). No Defendant submitted evidence contradicting the factual allegations of the FAC, including allegations that Defendants engaged in a campaign of deception directed at Hawai'i, failed to warn Hawai'i consumers of the dangers of their products, and availed themselves of the privilege of doing business in Hawai'i by selling substantial amounts of their fossil fuel products in the state. *See supra* Part IV.A.1. These uncontroverted allegations are directly related to Plaintiffs' claims that Defendants misled Plaintiffs and their residents and failed to warn them of the dangers of the very fossil fuel products Defendants

promoted and sold in Hawai‘i. Defendants argue that Plaintiffs cannot prove their in-state conduct was the direct cause of their injuries, but they ignore that the Supreme Court in *Ford Motor* rejected such an argument, stating "we have never framed the specific jurisdiction inquiry as always requiring proof of causation—*i.e.*, proof that the plaintiff's claim came about because of the defendant's in-state conduct." 141 S. Ct. at 1026. Ultimately, the causal connection between Defendants' alleged actions and Plaintiffs' alleged injuries is a merits question, to be determined at trial. *See Shaw*, 76 Hawai‘i at 329 (rejecting defendants' arguments that plaintiff was negligent and failed to present evidence of injury as premature on a Rule 12(b)(2) motion). The sole issue here is whether the complaint's allegations sufficiently allege such a connection. They do.

a. Plaintiffs' Uncontroverted Allegations Concerning Defendants' In-State Conduct are Directly Related to Plaintiffs' Claims.

There is a direct connection between Defendants' uncontroverted contacts with Hawai‘i and the Plaintiffs' claims. Plaintiffs have alleged, and Defendants do not dispute, that they engaged in the following activities in Hawai‘i: distributed, marketed, advertised and/or promoted their products, FAC*;* ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i; operated branded gasoline stations, *id.* ¶¶ 20h, 22h, 23h, 25g, 27i; maintained smartphone applications that offer Hawai‘i consumers a cashless payment method for their fossil fuel products; *id.* ¶¶ 22h, 23h, 27i; maintained interactive websites that direct prospective customers to retail locations in Hawai‘i which sell their products, *id*. ¶¶ 20h, 22h, 23h, 25g, 27i; offered proprietary credit cards which allow consumers in Hawai‘i to pay for Defendants' fossil fuel products, *id.* ¶¶ 20h, 22h, 23h, 25g, 27i; supplied substantial amounts of crude oil and other fossil fuel products, 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i; and/or owned and operated refineries, terminals, or other assets related to the production and distribution of fossil fuel products, *id.* ¶¶ 22h, 23h, 24h, 27i.

The connection between these contacts and the Plaintiffs' claims is clear and direct. Plaintiffs assert claims for nuisance, trespass, and failure to warn based on Defendants' efforts to conceal the dangers associated with their fossil fuel products and their failures to warn about those known hazards. FAC ¶¶ 155–207. Plaintiffs' claims are based on representations and omissions made in Hawai‘i, products sold in Hawai‘i, and injuries suffered in Hawai‘i. *See Ford Motor*, 141 S. Ct. at 1031 (finding that the second prong of specific jurisdiction was satisfied, even though defendant sold products in other states, since plaintiffs were residents of forum states, they used the defective products in the forum states, and they suffered injuries when those products malfunctioned in the forum states). Both 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. Moreover, the misrepresentations and omissions made by Defendants had a direct impact on the consumption and use of their products, including in Hawai‘i, as well as on Defendants' operations in the state.

As a result of this direct connection between Defendants, the forum, and the litigation, the Court's exercise of personal jurisdiction is both "reasonable" and "predictable." *See Ford Motor*, 141 S. Ct. at 1030. Defendants could have structured their conduct to avoid litigation in Hawai‘i, but instead chose to deceptively market, promote, sell, and/or otherwise distribute their products in the state.

b. Plaintiffs Need Not Show a "Strict Causal Relationship" Between the Litigation and Defendants' In-State Activity.

Even though Defendants have systematically served the Hawai‘i market with their fossil fuel products for decades, they never warned or disclosed to Plaintiffs or Hawai‘i consumers that continued use of their products would result in devastating harm to public health, safety and the environment, and they actively engaged in a decades-long campaign of deception attacking the

science of climate change and the relationship between their products and its devastating effects on the State. Defendants argue that this Court does not have jurisdiction over them since the "cause" of Plaintiffs' harms is the cumulative effects of global emissions and global climate change. Joint MPA at 12. Defendants' novel theory of personal jurisdiction, if credited, would have stark consequences, precluding any city or state from bringing a climate action anywhere except where general jurisdiction is present. The Supreme Court in *Ford Motor* expressly rejected the notion that there must be a "strict causal relationship" between a defendant's forum contacts and a plaintiff's claims. 141 S. Ct. at 1026. Rather, "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.* at 1025 (cleaned up).

Ford Motor involved two products liability actions brought by residents of Minnesota and Montana injured in car accidents that took place in the respective forums. 141 S. Ct. at 1022. Ford did substantial business in both Minnesota and Montana, including "advertising, selling, and servicing the model of vehicle the suit claims is defective." *Id.* As in this case, Ford did not contest that it purposefully availed itself of the privilege of doing business in forum states. *Id.* at 1026. Ford nevertheless argued that its forum activities were not sufficiently linked to the plaintiffs' claims because of a lack of causation — the plaintiffs did not purchase the cars at issue in the forum states, and the vehicles were not manufactured or designed there. *Id.* at 1026.

The Supreme Court concluded that "Ford's causation-only approach finds no support in this Court's requirement of a 'connection' between a plaintiff's suit and a defendant's activities." *Ford Motor*, 141 S. Ct. at 1026. The specific jurisdiction test demands that a suit either (1) "arise out of" or (2) "relate to" the defendant's contacts with the forum, and the 'relating to' standard

"contemplates that some relationships will support jurisdiction without a causal showing." *Id.* Thus, it is not necessary to show that a "plaintiff's claim came about because of the defendant's in-state conduct." *Id.* Rather, specific jurisdiction can attach "when a company like Ford serves a market for a product in the forum State and the product malfunctions there." *Id.* at 1027.

The Supreme Court found that the plaintiffs satisfied the "related to" standard since there was a strong relationship among the defendant, the forum, and the litigation. *Id.* at 1028. Each plaintiff's suit arose from a car accident in the forum, and Ford had advertised, sold, and serviced the car models involved in the accidents in Montana and Minnesota for many years. *Id.* "In other words, Ford had systematically served a market in Montana and Minnesota for the very vehicles that the plaintiffs allege malfunctioned and injured them in those States." *Id.* The fact that Ford had sold, designed, and manufactured the specific cars involved in the crashes outside of the forum did not defeat jurisdiction because a strict causal connection was not required to exercise specific jurisdiction. *See id.* at 1029.

Defendants here assert that the requisite connection is missing because Hawai‘i accounts for an as-yet unquantified but relatively small amount of "global greenhouse gas emissions that contribute to climate change, and, ultimately, Plaintiffs' alleged injury." Joint. MPA at 13. Ford advanced a similar argument before the Supreme Court, asserting the plaintiff's claims "would be precisely the same if Ford had never done anything in Montana or Minnesota." *Ford Motor,* 141 S. Ct. at 1029 (cleaned up). The Court rejected the contention, concluding it "merely restates Ford's demand for an exclusively causal test of connection." *Id.* The case has recently been applied to exercise personal jurisdiction in a case like this one, where tortious conduct occurs both inside and outside of the forum. *See Cisco Sys., Inc. v. Dexon Computer, Inc.*, No. 20-CV-04926-CRB, 2021 WL 2207343, at *6 (N.D. Cal. June 1, 2021) (Plaintiff's infringement claims

arise out of and relate to defendant's contacts with the forum where defendant allegedly sold counterfeit goods in the forum and elsewhere).

Here, as in *Ford Motor*, Defendants have "systematically served a market" in Hawai‘i for the very fossil fuel products at issue in this case. *See* FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i. Moreover, Plaintiffs allege that Defendants committed tortious acts in Hawai‘i, including failing to warn and deceiving Plaintiffs and their residents about the dire climate-related impacts of their products. That Defendants also committed these same torts in other states is of no moment. Whether or not Defendants' deception campaign in Hawai‘i or elsewhere was a significant factor in causing Plaintiffs' injuries is a merits question not relevant to personal jurisdiction. Here, as in *Ford Motor*, Defendants' marketing and sale of their products in the forum creates a strong connection with the forum, Plaintiffs' claims target the same kinds of products that Defendants have deceptively marketed and promoted in the forum, and Plaintiffs' injuries have been sustained in the forum.

c. Defendants had Fair Warning They Would Be Subject to Suit in Hawai‘i.

Defendants also argue *Ford Motor* created a separate "'clear notice' requirement" in addition to the "arise out of or relate to" prong for specific jurisdiction, and that they were not on "clear notice" that their misconduct in and directed at Hawai‘i could subject them to suit here. Joint MPA at 16–17. This argument relies, like the rest of their motion, on a mischaracterization of both Plaintiffs' claims and Supreme Court jurisprudence.

Neither *Ford Motor* nor any other case creates such an additional requirement for personal jurisdiction. *Ford Motor* uses the words "clear notice" three times, never in reference to a stand-alone requirement, but rather in the context of explaining why it is reasonable for a state to exercise personal jurisdiction over a company that has "exploited [a State's] market" when the

company's conduct results in harm in that state, without requiring a "strict causal relationship" between the claim and the defendant's forum contacts. 141 S. Ct. at 1025-27, 1030 (cleaned up). Thus, a company has "clear notice" that it may be held "to account for related misconduct" in a state when that company "'exercises the privilege of conducting activities within a state'—thus 'enjoy[ing] the benefits and protection of [its] laws.'" *Id.* at 1025, 1027 (cleaned up) (A company "'has clear notice' of its exposure" to suit in a forum when it "purposefully avail[s] itself" of that state's markets, and its products cause harm in the forum.); *id.* at 1029–30 (A state's "enforcement of contracts, the defense of property, [and] the resulting formation of effective markets" are "benefits" and "protections" that "create[] reciprocal obligations," putting companies on "clear notice" that they will be subject to jurisdiction in the state if their conduct or products cause harm in the state).

Ford Motor does not hold that a state cannot exercise jurisdiction over a tortfeasor who has wrongfully promoted and profited from in-state commercial activities, just because the plaintiff's harms may be the result of the tortfeasor's wrongful conduct both inside and outside the forum. To the contrary, the lesson of *Ford Motor* is that companies that "systematically serve[] a market" in a forum can and should expect to be subject to jurisdiction there so long as there is an "affiliation" between the "forum and the underlying controversy." *Id.* at 1026, 1028. Thus, jurisdiction in Montana and Minnesota created no unfairness to Ford, and it should have been on clear notice that it would be subject to suit for harms from its unsafe vehicles in those states, *even though* "the plaintiffs' claims 'would be precisely the same if Ford had never done anything in Montana and Minnesota,'" *id.* at 1029, since the vehicles at issue had not been designed, manufactured, or first sold in those states.

Likewise here, as discussed above, Defendants are national and international fossil fuel companies that have "long had a heavy presence" in Hawai‘i, *id.* at 1032 (Alito, J., concurring), deceptively marketing and promoting the sale and use of their oil and gas products. *See* FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i. Defendants have benefited from the "'protection of [Hawai‘i's] laws'—the enforcement of contracts, the defense of property, the resulting formation of effective markets." *Ford Motor*, 141 S. Ct. at 1029 (cleaned up). It is not credible to argue Defendants were not on notice that they might someday be held to account in Hawai‘i for harms to Plaintiffs from their wrongful and misleading promotion of their products in Hawai‘i and elsewhere. Indeed, Defendants were fully aware that the unabated use of their products would have disastrous consequences for coastal communities such as Hawai‘i. *See* FAC ¶ 83. Defendants had fair warning that they could be sued in Hawai‘i, given that they operated here and were aware that their misconduct would lead to harms in the state.

d. The Relatedness Requirement is also Satisfied Under the "Effects" Test.

The Court may also exercise personal jurisdiction under the effects test of specific jurisdiction since Defendants' campaign of deception was targeted at Hawai‘i and has resulted in harms within the state. Under this theory "asserting jurisdiction against nonresident defendants who commit torts directed at a forum state with the intention of causing in-state 'effects' satisfies due process." *Shaw*, 76 Hawai‘i at 330. The brunt of the harm need not be felt in the forum. *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1207 (9th Cir. 2006) ("If a jurisdictionally sufficient amount of harm is suffered in the forum state, it does not matter that even more harm might have been suffered in another state.")

The Hawai‘i Supreme Court endorsed the effects test in *Shaw*, which involved a Hawai‘i resident's suit against a California title company retained to provide escrow services for the

refinancing of the plaintiff's property in California. Unlike here, where almost all Defendants have conceded the purposeful availment prong, the defendant in *Shaw* did not transact business in Hawai‘i. While the plaintiff had signed escrow documents in Hawai‘i, received fax transmissions and phone calls in Hawai‘i, and received and signed checks in Hawai‘i, the court found these dealings were "merely incidental to the escrow transaction conducted in California."[5] *Shaw*, 76 Hawai‘i at 328. The court nevertheless held the plaintiff made a prima facie showing under the "effects test." *Id.* at 331–32. The court reasoned that the defendant targeted the plaintiff in Hawai‘i when it committed fraud by allegedly agreeing to forward his creditors' checks to the plaintiff and then closed his accounts without notice, thereby rendering the checks worthless; and by reissuing the checks directly to the plaintiff's creditors, against the plaintiff's specific instructions. *See id.* at 332. *Shaw* shows that the exercise of specific jurisdiction is appropriate, even if a defendant does not transact business in the forum, so long as the defendant targets its tortious acts at the forum state.

The case for jurisdiction is even stronger here. As an initial matter, no Defendant disputes that it transacts business in the state. Moreover, the uncontroverted allegations of the FAC show that Defendants engaged in a coordinated effort to target their tortious conduct at Hawai‘i with the intent of deceiving its residents. Specifically, Plaintiffs allege that Defendants marketed and promoted their products in Hawai‘i "with knowledge that those products have and will continue to cause climate crises-related injuries in Hawai‘i, including to Plaintiffs." FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i. These uncontradicted allegations must be taken as true. *See*

[5] Defendants cite *Shaw* unpersuasively to argue that their contacts with Hawai‘i are "merely incidental" to Plaintiffs' claims. Joint Mot. at 10. But in *Shaw*, the Defendants did not transact any business in Hawai‘i, whereas here, Defendants have conceded the purposeful availment prong, and Plaintiffs' uncontroverted allegations show that Defendants marketed and promoted their products in Hawai‘i, and also owned and operated various assets in the state.

Boschetto v. Hansing, 539 F.3d 1011, 1015 (9th Cir. 2008) (in adjudicating personal jurisdiction, "[u]ncontroverted allegations in the plaintiff's complaint must be taken as true."). Defendants' arguments that their contributions are insufficient to incur liability and that intervening causes are responsible for climate change are both premature and misplaced at this stage. *See Shaw*, 76 Hawai'i at 329 n.3 ("[R]egardless of [Plaintiff's] alleged contributory negligence, a determination of liability is premature at the motion to dismiss stage of the proceedings."); *see also Young v. United States*, 769 F.3d 1047, 1052-53 (9th Cir. 2014) (reversing dismissal where "the question of jurisdiction . . . should have awaited a determination on the merits" because it "depend[ed], at least in part, on resolution" of the merits). Because Defendants targeted their misrepresentations and failure to warn at Hawai'i, and since Plaintiffs allege the effects of those misrepresentations have caused injury in the state, the exercise of specific jurisdiction is appropriate.

Contrary to Defendants' arguments, Plaintiffs have not merely alleged that it was foreseeable that the effects of Defendants' misconduct would be felt in Hawai'i. *See* Joint MPA at 14. Rather, Plaintiffs have alleged that Defendants targeted Hawai'i by marketing and promoting their products for sale in the state. *See* FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i. In contrast, the authority cited by Defendants involved situations where a plaintiff sought to establish jurisdiction based on an isolated occurrence that resulted in injury in the forum. *See World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980) ("[A] single Audi automobile, sold in New York to New York residents, happened to suffer an accident while passing through Oklahoma."); *Walden v. Fiore*, 571 U.S. 277, 289 (2014) (finding that the defendant's "actions in Georgia did not create sufficient contacts with Nevada simply because he allegedly directed his conduct at plaintiffs whom he knew had Nevada connections"); *Kailieha v.*

Hayes, 56 Haw. 306, 313 (1975) ("[It is] fundamentally unfair . . . to compel the Virginia physician in this case to defend against a suit in the courts of Hawaii, simply by reason of an isolated encounter in Virginia with a resident of Hawaii.").

e. Exxon's Contacts with Hawai'i are Related to Plaintiffs' Claims.

Exxon's separate arguments regarding the "relating to" prong fare no better than those advanced by the other Defendants. Plaintiffs allege that Exxon supplied substantial quantities of fossil fuel products, including crude oil, to Hawai'i, *see* FAC ¶ 21h, the FAC describes specific misrepresentations by Exxon and its representatives, *see id.* ¶¶ 95, 100, 102-104, 114, and Plaintiffs suffered harm in Hawai'i as a result of the acts and omissions of Exxon and the other Defendants, *see id.* ¶¶ 148–54. Plaintiffs' claims are predicated on Defendants' failure to warn and deceptive conduct, including many of the misrepresentations by Exxon set forth in the FAC. Exxon's contacts with the forum are substantially related to Plaintiffs' claims, as those contacts involve the sale and distribution of the very products that Exxon failed to warn about and deceptively promoted.

Exxon's assertion that the requisite nexus is lacking because Plaintiffs purportedly have not alleged that Exxon's deceptive conduct took place in or targeted Hawai'i, *see* Exxon Br. at 4, also fails. First, Plaintiffs have alleged that 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." FAC ¶ 21h. While Exxon dismisses this allegation as conclusory, it has offered no evidence to dispute it and concedes that it "assumes the truth of the factual allegations in the FAC." Exxon Br. at 1. In any event, as explained above, under *Ford Motor*, Plaintiffs need not show a "strict causal relationship" between its claims and Exxon's forum contacts. It is sufficient that Exxon sold

products in Hawai‘i, Exxon failed to warn and deceived consumers about the unrestricted use of those same products, and Plaintiffs were injured in Hawai‘i as a result of that deception.

Exxon's argument that Plaintiffs cannot establish personal jurisdiction because of the "sweeping global nature of Plaintiffs' claims," Exxon Br. at 6, fails for similar reasons. Specifically, Exxon asserts that its sales of fuel to Hawai‘i "accounts for only a negligible fraction of global greenhouse gas emissions," and thus its contacts with the forum are merely incidental to Plaintiffs' claims. *Id.* But under *Ford*, Plaintiffs need not prove that Exxon's in-state conduct caused or was even a significant factor in causing Plaintiffs' injuries to establish personal jurisdiction—it is enough that there is "an affiliation between the forum and the underlying controversy."[6] 141 S. Ct. at 1025.

f. The Cases that Defendants Cite on the "Relatedness" Prong are Inapposite.

Rather than acknowledge that a "strict" causal relationship is not required to establish specific jurisdiction, Defendants point to inapposite personal jurisdiction case law to argue that their forum contacts are "merely incidental" to Plaintiffs' claims. Exxon Mot. at 4–5; Joint MPA at 11. Defendants' authority pre-dates *Ford Motor* and is otherwise unhelpful to their arguments.

[6] Exxon argues that its contacts with Hawai‘i are "de minimis," Exxon Br. at 3, though it appears to concede the purposeful availment prong and fails to present any evidence to contradict the Plaintiffs' allegations that they supplied substantial quantities of fuel products, including crude oil, to Hawai‘i during the relevant period, FAC ¶ 21h. In any event, such allegations are sufficient to satisfy the purposeful availment test. *See Hawaii Forest & Trial Ltd. v. Davey*, 556 F. Supp. 2d 1162, 1170 (D. Haw. 2008) (purposeful availment satisfied where defendant installed equipment in two custom built vehicles "it knew had been purchased by Plaintiff, a Hawaii company, for use in Hawaii"). This is not a case where a defendant places a product into the stream of commerce and that product eventually finds its way to the forum. Exxon's products did not arrive in Hawai‘i by happenstance. Rather Exxon knowingly sold and distributed fossil fuel products to customers in Hawai‘i, see FAC ¶ 21h, thereby purposefully availing itself of the privilege of doing business in the state.

First, some of the cases did not even turn on whether the defendant's in-state conduct was related to the plaintiff's claims. In *Helicopteros Nacionales de Colombia, S.A. v. Hall* the parties conceded that the plaintiffs' claims did not arise out of or relate to the Defendant's activities in the forum, and thus the case turned on general jurisdiction, not specific jurisdiction. *See* 466 U.S. 408, 415 (1984). *Phillips v. Prairie Eye Center* arose out of an employment contract concerning an out-of-state job opportunity that was not "formalized or entered into" in the forum. *See* 530 F.3d 22, 27 (1st Cir. 2008). The court nevertheless "*assume*[d] arguendo that the plaintiff established sufficient relatedness," since the plaintiff alleged that he received bad faith communications from the out-of-state defendant in the forum. *Id.* at 27–28 (emphasis added). Likewise, *CSR, Ltd. v. Taylor* found the purposeful availment prong was not satisfied, and did not reach the issue of whether the plaintiff's claims related to the defendant's forum contacts. *See* 411 Md. 457, 493 (Md. 2009).

Second, *City of Oakland v. BP p.l.c.*, No. C 17-06011 WHA, 2018 WL 3609055, at *1 (N.D. Cal. July 27, 2018), was effectively vacated after the Ninth Circuit reversed the court's earlier order denying remand. *City of Oakland v. BP PLC*, 969 F.3d 895, 911 n.13 (9th Cir. 2020) ("If, on remand, the district court determines that the cases must proceed in state court, the Cities are free to move the district court to vacate its personal-jurisdiction ruling."). In any event, *City of Oakland* was decided before *Ford Motor*, and thus the court focused on whether the Defendants' in-state conduct was the but-for cause of the plaintiffs' injuries, and did not consider the "relating to" requirement. *See City of Oakland*, 2018 WL 3609055, at *4 ("The question is therefore whether or not plaintiffs' alleged harm—namely, the effects of global warming-induced sea level rise—would have occurred even absent each defendant's respective California-related activities.").

Third, the relationship between Plaintiffs' claims and Defendants' contacts is just as strong as those presented in Defendants' cases where courts properly exercised specific jurisdiction. As discussed, in *Shaw*, the Hawai‘i Supreme Court found specific jurisdiction existed, even though the defendant did not even transact business in Hawai‘i. *See* 76 Hawai‘i at 331–32. In *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, a Colorado court exercised specific jurisdiction over an out-of-state law firm that prosecuted a case in New York state court for a Colorado resident. *See* 40 P.3d 1267 (Colo. 2002). The court found that the plaintiff's injuries arose out of or related to the defendant's representation in a lawsuit, reasoning "the defendants are attorneys, and the activity out of which the injury allegedly arose was an ongoing lawsuit with potential consequences for [plaintiff's assets] in this state." *Id.* at 1273. Unlike here, there is no indication that the defendant in *Keefe* had any contact with the forum other than correspondence with the plaintiff.

In the other cases cited by Defendants where courts declined to exercise personal jurisdiction, the defendants' forum contacts had little relationship with the plaintiff's claims. In *Norris v. Six Flags Theme Parks, Inc.*, a Hawai‘i resident brought suit for injuries sustained at a California theme park. *See* 102 Hawai‘i 203, 203-04 (2003). The court found personal jurisdiction lacking, reasoning that Defendants' only contacts with the forum amounted to advertising in a national publication. *See id.* at 209. In *Waldman v. Palestine Liberation Organization*, Americans sued two Palestinian organizations under the Anti-Terrorism Act for terror attacks that wounded the plaintiffs or family members. 835 F.3d 317, 322 (2d Cir. 2016). The court found the exercise of specific jurisdiction improper because there was no basis to conclude that the defendants participated in terrorist acts in the United States, or that their liability for these acts resulted from the defendants' actions in the United States. *See id.* at 337.

In *Moki Mac River Expeditions v. Drugg*, after a boy died on a hiking trip in Utah, his parents sued an out-of-state company that coordinated the trip in Texas state court. 221 S.W.3d 569, 573, 585 (Tex. 2007). The court found that although the defendant had directed advertisements at Texas, the suit principally concerned the guide's conduct on the hiking expedition in Utah and whether the guide exercised reasonable care in supervising the child. *Id.* at 585. In *Fidrych v. Marriott Int'l, Inc.*, the plaintiff brought a suit in South Carolina against Marriott International for injuries sustained at a Marriott-affiliated hotel in Italy. 952 F.3d 124, 139 (4th Cir. 2020). While Marriott operated hotels in South Carolina, it was not alleged to have committed wrongs in the state. *See id.* Here, unlike in *Norris*, *Waldman*, *Moki*, and *Fidrych* Defendants systematically served a market for their products in the forum, Defendants committed tortious acts in the forum, and Plaintiffs have suffered and will continue to suffer injuries in the forum.

3. Defendants have Failed to Show that Specific Jurisdiction would be Unreasonable.

As Plaintiffs have satisfied the first two prongs of the specific jurisdiction test, the burden shifts to Defendants to "present a compelling case" that specific jurisdiction would be unreasonable. *See Hawaii Forest & Trial Ltd.*, 556 F. Supp. 2d at 1169-72 (denying motion to dismiss for lack of personal jurisdiction where out-of-state company supplied custom made vehicles that caused injury in Hawai‘i). This is a burden they cannot meet in light of their significant contacts with Hawai‘i, the State's interest in adjudicating claims arising out of substantial harms to its residents, and the minimal burden litigating in Hawai‘i will place on these multinational companies. Hawai‘i courts generally consider seven factors in determining reasonableness:

> (1) the extent of the defendants' purposeful interjection into the forum state's affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of any conflict with the sovereignty of the defendants' state; (4) the forum state's

> interest in adjudicating the dispute; (5) concerns of judicial efficiency; (6) the significance of the forum to the plaintiff's interest in relief; and (7) the existence of alternative fora.

In Interest of Doe, 83 Hawai‘i 374 (1996). These factors weigh against Defendants.

First, the extent of Defendants' purposeful interjection into Hawai‘i weighs heavily in favor of Plaintiffs since, as Defendants concede, the purposeful availment prong is satisfied. *See Corp. Inv. Bus. Brokers v. Melcher*, 824 F.2d 786, 789-790 (9th Cir. 1987) ("Once it has been shown that the defendant purposely availed himself of the forum's benefits, the forum's exercise of jurisdiction over him is presumptively reasonable."). To the extent that the degree of Defendants' purposeful injection is relevant, this factor still weighs in favor of Plaintiffs. As discussed, Defendants conduct substantial fossil-fuel related business in Hawai‘i, including by operating fuels terminals and refineries, marketing and promoting gasoline and other products through branded gasoline stations, and supplying fossil fuel products to the state. *See* FAC ¶¶ 20h, 21h, 22h, 23h, 24h, 25g, 26g, 27i. Defendants' assertion that they could be "forced to appear before any court in the United States based on [their] alleged contribution to global climate change," Joint MPA at 19, is simply false. They are subject to suit in Hawai‘i based on their substantial contacts with this state, contacts that are directly related to Plaintiffs' claims. If similar contacts exist in other states, then Defendants—like other corporations operating national businesses that provide products and services to consumers that may have adverse impacts on those consumers, their health, and/or their environment—may indeed be subject to jurisdiction in multiple places for potential violations of state law.

Second, the burden on the Defendants of litigating in the forum is minimal. Defendants are large, multinational companies with more than sufficient resources to defend themselves in court outside of their primary place of business. *See Core-Vent Corp. v. Nobel Indus. AB,* 11

F.3d 1482, 1489 (9th Cir. 1993) ("[A] large international corporation with worldwide distribution of its products" would not face an unreasonable burden defending in the forum); *Sinatra v. Nat'l Enquirer, Inc.*, 854 F.2d 1191, 1199 (finding that "[m]odern advances in communications and transportation have significantly reduced the burden of litigating in another country").

Third, the Court's exercise of jurisdiction in Hawai‘i would not significantly conflict with the sovereignty of the Defendants' home states. Plaintiffs seek to hold Defendants accountable for torts committed in or aimed at Hawai‘i, and the relief requested is limited to harms suffered in the state. Defendants' contention that Plaintiffs are trying to use Hawai‘i law to regulate Defendant's worldwide activities, *see* Joint MPA at 20, is based on a gross mischaracterization of Plaintiffs' claims, which target Defendants' campaign of deception, not their mere production and distribution of their products. The federal district court rejected similar attempts by Defendants to mischaracterize Plaintiffs' claims when it remanded this matter to state court:

> Defendants' [sic] assert their theory of the case as: "Plaintiff's alleged harms resulted from decades of greenhouse gas emissions caused by billions of consumers' use of fossil fuels that were produced, in part, for the federal government and/or under federal government directives and control." While that may be a perfectly good theory in the abstract or as part of some other case, here, "the very act that forms the basis of plaintiffs' claims" is not "billions of consumers' use of fossil fuels . . . ." Instead, it is Defendants' warnings and information (or lack thereof) about the hazards of using fossil fuels–something noticeably absent from Defendants' stated theory.

City & Cty. of Honolulu, 2021 WL 531237, at *7 (cleaned up); *see also Mayor & City Council of Baltimore v. BP P.L.C.*, 952 F.3d 452, 467 (4th Cir.), *overruled on other grounds*, 141 S. Ct. 1532 (2021) (rejecting same attempts to mischaracterize similar allegations); *Bd. of Cty. Commissioners of Boulder Cty. v. Suncor Energy (U.S.A.) Inc.*, 405 F. Supp. 3d 947, 969 (D. Colo. 2019) (same); *Massachusetts v. Exxon Mobil Corp.*, 462 F. Supp. 3d 31, 44 (D. Mass.

2020) (same).[7] Viewed properly, the absence of any competing state interest is plain: No other state can claim stronger interest in protecting Hawaiian consumers from deceptive marketing, climate disinformation, or manufacturers' failure to warn.[8]

Fourth, Hawai'i has a strong interest in adjudicating this dispute. *See Core-Vent Corp.*, 11 F.3d at 1489 (citing *Sinatra*, 854 F.2d at 1200 (stating that "[the forum state] maintains a strong interest in providing an effective means of redress for its residents [who are] tortiously injured")). Climate change poses an existential threat to Plaintiffs and their residents, and Defendants' misrepresentations and failure to warn have significantly exacerbated that threat. *See* FAC ¶¶ 148–54.

The fifth and sixth factors, which focus on the location of the evidence and witnesses, are "no longer weighed heavily given the modern advances in communication and transportation." *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1323 (9th Cir. 1998) (defendant subject to personal jurisdiction where they knew alleged misconduct would have the effect of injuring the plaintiff in the forum). In any event, these factors weigh in favor of exercising jurisdiction since

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[7] Defendants rely on the *City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021), for their unfounded arguments that Plaintiffs are seeking to advance "substantive social policies" that are not shared across the states, Joint MPA at 20, but that case is distinguishable. In *City of New York*, the plaintiffs targeted "lawful . . . commercial activity" of various energy companies. 993 F.3d at 87. In contrast, in the instant action, Plaintiffs' claims are predicated **not** on lawful extraction or production activities, but on Defendants' failures to warn related to the products they marketed and sold in Hawai'i, including through their campaign of deception.

[8] For similar reasons, the Court should reject Defendants' arguments that they should not be forced to "'submit[] to the coercive power' of [the] [C]ourt in light of the limits on interstate federalism." Joint MPA at 18 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780). Under *Bristol-Myers Squibb*, these types of federalism concerns are raised where the forum court has "little legitimate interest in the claims in question." 137 S. Ct. at 1780. Here, the Court has a strong and legitimate interest in adjudicating claims arising out of harms impacting a significant number of Hawaiians that are related to Defendants' conduct in and directed at Hawai'i. For these same reasons, the concerns about foreign affairs expressed in *Asahi Metal Industry Co. v. Superior Court of California, Solano County*, are irrelevant here. *See* 480 U.S. 102 (1987); *see also* Joint MPA at 18-20.

the location of Plaintiffs' injuries and evidence of Plaintiffs' damages are both located in Hawai‘i, as are employees of Plaintiffs who may be called at trial. While many of Defendants' witnesses may not be located in Hawai‘i, Defendants conduct business around the world, and thus Defendants would not be unduly burdened by litigating here. *See Cowan v. First Ins. Co.*, 61 Haw. 644, 658 (1980) (exercising jurisdiction where defendants' "business operations span the United States with offices located on both coasts and with nationwide advertising; thus, requiring Ardell to conduct its defense in Hawaii would not entail an insurmountable hardship").

As each of the reasonableness factors favor Plaintiffs, Defendants cannot show that the exercise of personal jurisdiction would be unreasonable.

B. Defendants Sunoco LP, Aloha Petroleum LLC, and Aloha Petroleum Ltd. Are Subject to General Jurisdiction.

The Court also may properly exercise general jurisdiction over Aloha Petroleum Ltd. because it is incorporated in Hawai‘i. And the Court may impute Aloha Petroleum Ltd.'s contacts with Hawai‘i to its parent companies and related entities, Sunoco LP and Aloha Petroleum LLC, because they are alter egos of one another.

1. Aloha Petroleum Ltd. is at Home in Hawai‘i.

"A court may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011). "The 'paradigm' forums in which a corporate defendant is 'at home' are the corporation's place of incorporation and its principal place of business." *BNSF Ry. Co. v. Tyrrell*, 137 S. Ct. 1549, 1552 (2017).

Here, Plaintiffs have alleged that Aloha Petroleum Ltd. is incorporated in Hawai‘i with its principal place of business in Honolulu. *See* FAC ¶ 20f. Defendants do not dispute these

allegations. Since the uncontroverted allegations in the complaint must be taken as true for this motion, *see Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004), the Court may properly exercise general jurisdiction over Aloha Petroleum Ltd.

2. Aloha Petroleum Ltd.'s Contacts May be Imputed to Affiliated Entities.

A plaintiff may pierce the corporate veil for jurisdictional purposes and attribute a local entity's contacts to an out-of-state affiliate if there is an alter ego relationship between a parent and subsidiary. *See Ranza v. Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015); *see also Sheehan v. S. Foods Grp., LLC*, No. CV 18-00405 HG-KJM, 2019 WL 5406040, at *4 (D. Haw. Oct. 22, 2019) ("[T]here may be general jurisdiction over a parent company that is the alter-ego of its subsidiary."). To satisfy the alter ego test, a plaintiff must make a prima facie case: (1) "that there is such a unity of interest and ownership that separate personalities of the two entities no longer exists"; and (2) "that failure to disregard their separate identities would result in fraud or injustice." *Sheehan*, 2019 WL 5406040, at *4.

Hawai'i courts consider a number of factors in determining whether one corporate entity is the alter ego of another, including but not limited to:

> [1] Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses; [2] the treatment by an individual of the assets of the corporation as his own; [3] the failure to obtain authority to issue stock or to subscribe to or issue the same; [4] the holding out by an individual that he is personally liable for the debts of the corporation; [5] the identical equitable ownership in the two entities; [6] the identification of the equitable owners thereof with the domination and control of the two entities; [7] identi[ty] of . . . directors and officers of the two entities in the responsible supervision and management; [8] sole ownership of all of the stock in a corporation by one individual or the members of a family; [9] the use of the same office or business location; [10] the employment of the same employees and/or attorney *;* [11] the failure to adequately capitalize a corporation; [12] the total absence of corporate assets, and undercapitalization*;* [13] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another

> corporation*;* [14] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities; [15] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; [16] the use of the corporate entity to procure labor, services or merchandise for another person or entity; [17] the diversion stockholder [sic] or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another; [18] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions; and [19] the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Robert's Hawaii Sch. Bus, Inc. v. Laupahoehoe Transp. Co. Inc., 91 Hawai'i 224, 242 (1999) (finding that defendants were alter ego where one company was a mere instrumentality of another). These factors favor a finding of alter ego liability here.

3. Aloha Petroleum, Ltd.'s Contacts Should be Imputed to Sunoco LP and Aloha Petroleum LLC.

Plaintiffs allege that Aloha Petroleum, Ltd. and Aloha Petroleum LLC are subsidiaries of Sunoco LP, *see* FAC ¶ 20f, Sunoco LP "controls and has controlled companywide decisions about the quantity, nature, and extent of fossil fuel production, marketing, and sales, including those of its subsidiaries," FAC ¶ 20b, "Sunoco LP controls and has controlled companywide decisions related to climate change and greenhouse gas emissions from its fossil fuel products, including those of its subsidiaries," FAC ¶ 20c, and "each of Sunoco LP's subsidiaries functions as an alter ego of Sunoco LP, including by conducting fossil fuel-related business in Hawai'i that Sunoco LP would otherwise conduct if it were present in Hawai'i, sharing directors and officers with supervisory roles over both Sunoco LP and the subsidiary, and employing the same people," FAC ¶ 20d. These allegations are sufficient to support a finding of alter ego liability for the purposes of this motion. *See Vista v. USPlabs, LLC*, No. 14-CV-00378-BLF, 2014 WL 5507648,

at *1 (N.D. Cal. Oct. 30, 2014) (imputing contacts of subsidiary to parent and denying motion to dismiss based, in part, on similar uncontroverted alter ego allegations).

While Defendants argue there is no factual basis for imputing the jurisdictional contacts of their affiliated entities, *see* Joint MPA at 6 n.3, they offer no evidence to contradict Plaintiffs' alter ego allegations. Accordingly, those allegations must be taken as true. *See Schwarzenegger*, 374 F.3d at 800. The Northern District of California's decision in *Vista* is instructive. The plaintiff asserted that the contacts of a parent corporation defendant could be imputed to two affiliated entities and their officers under an alter ego theory and alleged that: all three corporations were "completely dominate[d]" by the same individuals, the parent corporation dominated the subsidiaries, and the subsidiaries were "merely shells operating through their parent," among other things. 2014 WL 5507648, at *2–3. As in this case, "rather than deny any of these allegations, the [defendants] chose instead to simply characterize them as conclusory and insufficient." *Id.* at *3. Additionally, the defendants submitted declarations with vague statements that "all corporate formalities are followed" and assets were not commingled. *Id.* at *3. The court rejected the defendants' arguments, finding that "[b]ecause Plaintiff's allegations are largely uncontroverted and therefore assumed as true for purposes of this motion, the court finds that plaintiff has made out a prima facie case that there is a unity of interests between [defendants]." *Id.* at *4. In this case, the FAC includes specific allegations regarding the alter ego relationship among Aloha Petroleum Ltd, Aloha Petroleum LLC, and Sunoco LP, and Defendants have not submitted declarations contradicting Plaintiffs' alter ego allegations.

The Court may thus impute Aloha Petroleum Ltd.'s contacts to Sunoco LP and Aloha Petroleum LLC and exercise general jurisdiction over all three defendants.

V. CONCLUSION

Defendants' motions to dismiss for lack of personal jurisdiction should be denied.[9]

Respectfully submitted,

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Dated: July 19, 2021

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[9] In the unlikely event the Court concludes more evidence is needed to sustain the exercise of personal jurisdiction, Plaintiffs respectfully request leave to conduct jurisdictional discovery, and if necessary, leave to amend based on the results of that discovery. "Discovery 'may be appropriately granted where pertinent facts bearing on the question of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.'" *Twentieth Century Fox Int'l Corp. v. Scriba*, 385 F. App'x 651, 652 (9th Cir. 2010) (vacating order granting motion to dismiss for lack of personal jurisdiction, concluding district court abused its discretion in denying discovery on jurisdictional facts).