

WATANABE ING LLP

MELVYN M. MIYAGI #1624-0

mmyagi@wik.com

ROSS T. SHINYAMA #8830-0

rshinyama@wik.com

SUMMER H. KAIAWE #9599-0

skaiaawe@wik.com

First Hawaiian Center

999 Bishop Street, Ste. 1250

Honolulu, Hawaii 96813

Telephone No. (808) 544-8300

Facsimile No. (808) 544-8399

GIBSON, DUNN & CRUTCHER LLP

ANDREA E. NEUMAN (*Pro Hac Vice*)

ANeuman@gibsondunn.com

200 Park Avenue, New York, NY 10166

Telephone: (212) 351-3883

Facsimile: (212) 351-5303

THEODORE J. BOUTROUS, JR. (*Pro Hac Vice*)

tboutrous@gibsondunn.com

333 South Grand Avenue

Los Angeles, CA 90071

Telephone: (213) 229-7000

Facsimile: (213) 229-7520

SUSMAN GODFREY LLP

ERICA W. HARRIS (*Pro Hac Vice*)

eharris@susmangodfrey.com

1000 Louisiana, Suite 5100

Houston, Texas

Telephone: (713) 653-7810

Facsimile: (713) 654-6666

Attorneys for Defendants

CHEVRON CORPORATION and CHEVRON

U.S.A., INC.

Electronically Filed

FIRST CIRCUIT

1CCV-20-0000380

20-AUG-2021

03:22 PM

Dkt. 447 RESP

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

Plaintiffs,

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

**DEFENDANTS' JOINT
RESPONSE TO BRIEFS OF *AMICI***

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.

***CURIAE* STATE OF HAWAI‘I
AND HAWAI‘I STATE
ASSOCIATION OF COUNTIES**

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT	4
A.	This Case Is an Attempt to Regulate Global Greenhouse Gas Emissions, Not a Routine Exercise of Local Governments’ Police Powers	4
B.	<i>Amici</i> ’s Briefs and the Public Record Confirm That the Alleged Harms Are Unrelated to Any Alleged Deception or False Advertisements	10
1.	Hawai‘i Law and Governmental Entities Have Long Promoted and Protected the Supply of Petroleum Products to Hawai‘i	10
2.	Hawai‘i’s Use of Oil and Gas Products Comes Despite Long Availability of Information on the Potential for Climate Change ...	15
C.	HSAC’s Argument About Chevron’s Anti-SLAPP Motion Is Not Relevant	22
III.	CONCLUSION	22

**DEFENDANTS' JOINT RESPONSE TO BRIEFS OF *AMICI CURIAE* STATE OF
HAWAI'I AND HAWAI'I STATE ASSOCIATION OF COUNTIES**

I. INTRODUCTION

Plaintiffs' *amici*—the State of Hawai'i (the "State") and the Hawai'i State Association of Counties ("HSAC")—provide no valid reason for the Court to deny Defendants' Joint Motion to Dismiss ("Motion"). *Amici* primarily repeat arguments that Plaintiffs already made and that Defendants have already refuted. For the reasons explained in Defendants' Motion and reply briefs, state law cannot, in our constitutional system, govern interstate and international pollution claims such as those here, and personal jurisdiction is lacking over all but two of the named Defendants. *Amici* offer nothing new on these issues, and Defendants will not take the Court's time to re-tread those issues.

Defendants instead address two points that both *amici*, in their different ways, emphasize in an effort to obscure the legal issues that Defendants' Motion presents: *amici*'s contentions that (1) the claims at issue here supposedly are run-of-the-mill exercises of the State's "police power" having nothing to do with global greenhouse gas emissions resulting from worldwide conduct since the Industrial Revolution; and (2) a purported "campaign of deception" consisting of a smattering of largely unidentified statements made to unidentified recipients over decades can even colorably be considered the real cause of the impending climate change harms depicted in *amici*'s alarming assertions and photos.

Amici assert that this case raises matters traditionally covered by state law, but that is incorrect. This case involves alleged harms from global climate change that, as confirmed by the State's first Climate Change Action Plan and Renewable Portfolio Standard (adopted in 2001), have resulted from the cumulative effect of the individual actions of billions of consumers across the world and countless national and foreign policy decisions over the past century. *See, e.g.*, Hawaii Climate

Change Action Plan, pg. 7-14 (Nov. 1998), <https://planning.hawaii.gov/wp-content/uploads/2016/06/HawaiiActionPlan1998.pdf> (acknowledging that “[w]hile Hawaii’s portion of overall greenhouse gas emissions is small on a global scale, the potential effects on Hawaii argue for a significant contribution to global emissions reduction efforts”); *see also* Haw. Rev. Stat. Ann. § 269-92 (Renewable Portfolio Standards). This case is completely different from the “deceptive marketing” cases cited by the State, in which the use of specific defendants’ individual products in Hawai‘i caused discrete, direct injuries to Hawai‘i residents as a result of alleged misstatements made in Hawai‘i. Nothing comparable is present here: Plaintiffs do not (and cannot) dispute that their alleged injuries do not depend on whether petroleum has been sold or used in Hawai‘i.

Amici also attempt to bolster Plaintiffs’ far-fetched “deception” theory, with HSAC—the representative of the County plaintiffs—going so far as to claim, without support, that “[w]ithout the failure to warn, wrongful promotion, deceptive marketing, and sale of fossil fuel products, Plaintiffs would not have incurred their injuries and mounting economic harms from the climate crisis.” HSAC Br. at 18. But this conclusory assertion is contrary to the science of climate change, common sense, and Plaintiffs’ Complaint—which never claims that Plaintiffs would not have suffered their alleged injuries absent Defendants’ alleged deception. *Amici* spend many pages on how important addressing climate change is for the State or counties whose interests they represent, but neither *amicus* even hints that *its* decisions (or in the case of HSAC, those of any of its members) were influenced in the slightest by this supposed deception campaign, let alone do they identify what decisions *it or the Plaintiffs* made based on the allegedly misleading statements or what they would have done anything different in its absence. *Amici* do not claim they would have abstained from or reduced their own oil and gas consumption, increased taxes on oil and gas sold locally, increased funding for renewable energy, required the exclusive use of electric vehicles, prohibited the arrival

of tourists in Hawai‘i, or refused the container ships that daily arrive on Hawai‘i shores powered by petroleum fuels. *Amici* do not make these claims because they are not true—just as it is not true that Hawai‘i consumers look to oil and gas companies as special purveyors of climate change information or purchase oil and gas products only because they are unaware that use of such products can cause the emission of greenhouse gases.

On the contrary, Hawai‘i policy has always promoted the availability of petroleum products—and in fact state law makes it a crime—indeed a felony punishable by up to five years in prison—to “[p]revent[], limit[], lessen[], or restrict[] the manufacture, production, supply, or distribution of petroleum products.” Haw. Rev. Stat. Ann. 486B-3 (Unlawful Profiteering) & 486B-4 (Penalty). This reflects the important role that an affordable, abundant supply of petroleum products play in the realities of modern society and the needs of Hawai‘i residents in particular. In fact, this benefit is so great that the State’s 1998 *Climate Action Plan* itself recognized that “[s]ignificant reductions in air travel would be an economic disaster” for the State. Hawaii Climate Change Action Plan, pp. 1-8 (Nov. 1998). And according to the U.S. Energy Information Agency, “jet fuel accounts for slightly more than half of all petroleum products consumed in the state.” U.S. Energy Info. Admin., Hawaii State Energy Profile (Jan. 21, 2021), <https://www.eia.gov/state/analysis.php?sid=HI>. There is no reason to believe that the harms about which *amici* complain would have been avoided or reduced absent any purported “deception.”

Defendants acknowledge that climate change is a serious problem that requires serious solutions. But energy policy and climate policy are both balancing acts and “must rest in the hands of the legislative and executive branches of our government,” not the “common law.” *Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849, 858 (9th Cir. 2012). State climate tort cases cannot

generate those solutions, and are fundamentally incompatible with our federal constitutional structure. The proper response to the “worldwide problem of global warming should be determined by our political branches, not by our judiciary.” *City of Oakland v. BP P.L.C.*, 325 F. Supp. 3d 1017, 1029 (N.D. Cal. 2018), *vacated on other grounds*, 969 F.3d 895 (9th Cir. 2020); *see also City of New York v. Chevron Corp.*, 993 F.3d 81, 98–99 (2d Cir. 2021) (finding that the “elastic standard” applicable to nuisance claims “is especially ill-suited to address ‘the technically complex area of environmental law.’” (quoting *New England Legal Found. v. Costle*, 666 F.2d 30, 33 (2d Cir. 1981), and *Am. Elec. Power Co. v. Connecticut*, 564 U.S. 410, 428 (2011) (“*ÁEP*”)); *Juliana v. United States*, 947 F.3d 1159, 1171, 1172 n.8 (9th Cir. 2020), *reh’g en banc denied*, 986 F.3d 1295 (9th Cir. Feb. 10, 2021) (dismissing climate change claims and noting that climate change solutions require a “host of complex policy decisions entrusted . . . to the wisdom and discretion” of the federal political branches, and “[m]any resolutions and plans have been introduced in Congress . . . [to] tackl[e] this global problem,” all of which entail “the exercise of discretion, trade-offs, international cooperation, private-sector partnerships, and other value judgments.”).

In sum, pointing fingers at non-existent campaigns of deception to try to penalize energy companies for lawful products that Plaintiffs and *amici* themselves continue to promote and use for gainful purposes is not the solution to the real problems that *amici*—and Defendants—recognize that our localities, our states, and our nation need to confront.

II. ARGUMENT

A. This Case Is an Attempt to Regulate Global Greenhouse Gas Emissions, Not a Routine Exercise of Local Governments’ Police Powers

Amici do not, and cannot, dispute that *all* of the relief Plaintiffs seek arises from harms allegedly caused by *global* emissions due to third parties’ use of petroleum products—and many

other sources of emissions—around the world. For this reason, and the reasons explained in Defendants’ Motion and reply briefs, Plaintiffs’ claims are barred by federal law and this Court lacks personal jurisdiction over Defendants.¹

Instead of confronting that fact head-on, *amici* try to recast this sweeping litigation as nothing more than a run-of-the-mill local controversy in order to try to evade the application of federal law. *See* State Br. at 3–5, 12–13; HSAC Br. at 12–14, 17. They argue that Plaintiffs’ claims “are based on Defendants’ alleged misrepresentations and concealment regarding the hazards of their fossil fuel products” (State Br. at 4), and that the Court should disregard the fact that Plaintiffs’ claims necessarily depend—and in fact are based—on global emissions.

Indeed, as was true of the plaintiff in the *City of New York* case, *amici*’s briefs “whipsaw[] between disavowing any intent to address emissions and identifying such emissions as the singular source of the [Plaintiffs’] harm.” *City of New York*, 993 F.3d at 91 (holding state law claims displaced by federal law). The State concedes, as it must, that Plaintiffs’ claims “*involve* the problems of global greenhouse gas (GHG) emissions and climate change,” but asserts in the next breath that Plaintiffs’ claims are “based on” alleged deception and a failure to warn. State Br. at 12; *see also id.* at 18 (acknowledging that “GHG emissions and climate change are part of the causal chain that leads from Defendants’ challenged conduct to Plaintiffs’ alleged harms, and Plaintiffs must eventually establish causation as part of the elements of their tort claims”). HSAC’s brief dedicates multiple pages to describing the climate crisis in Hawai‘i and includes nine images depicting various alleged climate-related emergencies. HSAC Br. at 1–8. To support its claim, however, that Hawai‘i “faces unique challenges with sea level rise, drought, heat, and extreme weather events

¹ It is unsurprising that HSAC’s *amicus* brief largely repeats Plaintiffs’ opposition brief, given that two of HSAC’s four members are themselves plaintiffs in the climate change lawsuits before this Court.

such as hurricanes,” HSAC cites a 2020 report that analyzes *global* (not Hawai‘i-specific) greenhouse gas effects, entitled *Reduced tropical cyclone densities and ocean effects due to anthropogenic greenhouse warming*. HSAC Br. 1 at n.1 (emphasis added) (citing Jun-Eun Chu, et al., *Reduced tropical cyclone densities and ocean effects due to anthropogenic greenhouse warming*, 6(51) SCI. ADVANCES (2020) <https://advances.sciencemag.org/content/6/51/eabd5109> (concluding that under enhanced computer modeling “[t]he forced response is similar to recent observational trends, indicating a possible emergence of the anthropogenic signal beyond natural variability levels”))

In the same vein, the State asserts that “Defendants have profited immensely from the deceptive marketing and sale of their fossil fuel products” (State Br. at 1), but this argument is entirely conclusory, and fails to identify *any* deceptive marketing or misleading statements or explain how this caused any injury. *Amici* do not claim that any person in Hawai‘i saw or relied on any false or misleading advertising, nor do they assert consumer protection or unfair trade practices claims. Moreover, contrary to *amici*’s assertions that the heart of this case is about misrepresentation, “deception” is not even an element of any of Plaintiffs’ claims (nuisance, failure to warn, and trespass)—and, in any event, to the extent that “deception” nonetheless is at least part of the claims, neither Plaintiffs nor *amici* show how the Complaint meets the requirements of Rule 9(b). But unlike “deception,” causation of “harm” *is* a required element of each of Plaintiffs’ claims—and Plaintiffs’ alleged harms are climatic, global *emissions*-based harms, not local, deception-based harms. *Amici* offer no credible reason to ignore crucial links in the attenuated causal chain leading to Plaintiffs’ claimed harms, which are necessarily based on global greenhouse gas emissions.

Amici fall back on a policy argument that dismissing this case would undermine the ability of state and local governments to “address the local effects of conduct by national and multinational

companies.” State Br. at 11; *see also* HSAC Br. at 8–9, 14–16. But *amici*’s scare tactics are baseless. Dismissing this case for Defendants’ well-supported reasons would not alter local governments’ traditional police powers. To the contrary, recognizing Plaintiffs’ theory would dramatically expand the scope of state courts’ personal jurisdiction over out-of-state defendants and improperly grant state tort law supremacy over federal law, while impinging on sister-states’ police powers over conduct occurring within their own borders.

The State’s attempt to invoke local governments’ traditional police powers is misplaced. The State notes that it “has recently pursued relief against various defendants for deceptive labeling of blood-thinning medication, the deceptive marketing of prescription opioids, and for the deceptive marketing of electronic cigarettes.” State Br. at 11 (citations omitted). But each of those cases involved alleged harms that were directly and immediately caused solely by the use of specific products *by Hawai‘i residents and visitors*. For example, all of the relief the State seeks in its blood-thinner litigation is based on the sale and use of blood-thinners *in Hawai‘i*. *See, e.g., State of Hawai‘i v. Bristol-Myers Squibb Co.*, 1CCV-14-1-0708-03, Dkt. 1373, ¶ 80 (Feb. 15, 2021) (analyzing “the number of retail prescriptions, refills and non-retail units sold *in Hawai‘i*”) (emphasis added); *id.* ¶ 146 (defining a violation based on each time a prescription was filled “*in the State of Hawai‘i*”) (emphasis added). The same geographic nexus between defendants’ actions and the alleged harms also underlies the opioid and e-cigarette cases.

There is no analogue here. As *amici* and Plaintiffs admit, the alleged injuries here necessarily result from *global* climate change, based on the cumulative effects of countless individuals, governments, corporations, and other entities *outside* of Hawai‘i. *See* State Br. at 1 (“In turn, the use of [Defendants’] products has played a significant role in the climate change-related impacts that the State of Hawai‘i is experiencing.”); HSAC Br. at 1–7 (describing alleged impacts of the

“climate crisis”); Compl. ¶¶ 148–54 (alleging injuries from climate change). In fact, unlike these unrelated consumer-products cases, Plaintiffs’ claimed injuries here *depend on* the cumulative impact of actions (emissions) taking place wholly outside Hawai‘i and would be precisely the same even if Defendants’ products *had never entered Hawai‘i*. See Joint Reply Memorandum In Support Of Defendants’ Motion To Dismiss For Lack Of Personal Jurisdiction at 9. Recognizing the well-established personal jurisdictional and other barriers to litigating this case, under state law, in Hawai‘i’s courts, in no way undermines the State’s legitimate ability to exercise its proper police-power authority to regulate in-state activity causing in-state harms. Indeed, neither Plaintiffs nor *amici* contend that Defendants’ in-state activities would themselves be sufficient to cause the alleged harms within Hawai‘i. Nor could they.

More broadly, the State argues that “the regulation of products and activities that cause *environmental* harms” is “an area traditionally occupied by state law.” State Br. at 14 (emphasis added). True enough—so long as the state is seeking to regulate activities that occur *within its borders*. That crucial limitation distinguishes the cases the State cites from this case, where virtually all of the emissions allegedly causing the State’s injuries occurred entirely outside of Hawai‘i. *Cf. Barnes ex rel. Est. of Barnes v. Koppers, Inc.*, 534 F.3d 357, 363 (5th Cir. 2008) (wrongful death action involving local environmental contamination from an in-state wood treatment plant; no interstate or international emissions); *In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.*, 725 F.3d 65, 78 (2d Cir. 2013) (lawsuit by city based on the “introduction of gasoline containing MTBE into a system of water wells in Queens”); *Am. Fuel & Petrochem. Mfrs. v. O’Keeffe*, 903 F.3d 903, 908, 913 (9th Cir. 2018) (addressing Oregon’s regulation of the production and sale of fuels “produced in or imported into Oregon”); *Huron Portland Cement Co. v. Detroit*, 362 U.S. 440, 442 (1960) (addressing city’s ability to regulate vessel emissions within city’s territory).

The same distinction applies to the statutes and cases that the State cites for the proposition that states are taking action with respect to climate change. None of these statutes or cases concerns imposition of liability on out-of-state conduct the way Plaintiffs’ suit does here—nor could they. *See City of New York*, 993 F.3d at 92. *Cf.* Haw. Rev. Stat. § 269-92 (setting renewable energy portfolio for electricity “consum[ed] in the State”); Or. Rev. Stat. § 469A.052(1)(h); Conn. Gen. Stat. § 16-245a(25); Cal. Health & Safety Code § 38500; N.J. Stat. Ann. § 26:2C-38; *Matter of Gas Co., LLC*, 147 Haw. 186, 199 (2020) (addressing Hawai‘i Public Utilities Commission’s responsibility to consider greenhouse gas emissions when evaluating projects in Hawai‘i); *New England Power Generators Ass’n, Inc. v. Dep’t of Env’t Prot.*, 105 N.E.3d 1156, 1159, 1167 (Mass. 2018) (addressing legality of regulation “which imposes declining greenhouse gas emissions limits on the in-State electric sector”); *Cal. Chamber of Com. v. State Air Res. Bd.*, 10 Cal. App. 5th 604, 615 (2017) (addressing the legality of administrative program to “meet the statewide emissions limits for greenhouse gases”); *Cascade Bicycle Club v. Puget Sound Reg’l Council*, 306 P.3d 1031, 1032 (Wash. Ct. App. 2013) (addressing need for transportation plan to comply with statute setting “specific greenhouse gas emissions reduction requirements for the state of Washington”).

At bottom, the interests of state and local governments in exercising their police powers cannot create personal jurisdiction when it is lacking, or remedy defects in causes of action that fail under federal and state law. The Supreme Court has repeatedly explained that “even if the forum State has a strong interest in applying its law to the controversy,” “the Due Process Clause, acting as an instrument of interstate federalism,” will “divest the State of its power to render a valid judgment” when a defendant’s contacts with the forum do not support personal jurisdiction. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980); *see also, e.g., Bristol-Myers Squibb Co. v. Super. Ct. of Cal.*, 137 S. Ct. 1773, 1780–81 (2017). And the law is likewise clear that state-

law tort claims based on interstate or worldwide ambient greenhouse gas emissions are barred by federal law, no matter the state’s interest in addressing climate change. *See City of New York*, 993 F.3d at 86, 91-92 (rejecting state-law tort claims even while recognizing that “[g]lobal warming is one of the greatest challenges facing humanity today” and “New York City ‘is exceptionally vulnerable’ to the effects of global warming”); *see also City of Oakland*, 325 F. Supp. 3d at 1026 (“These claims—through which plaintiffs request billions of dollars to abate the localized effects of an inherently global phenomenon—undoubtedly implicate the interests of countless governments, both foreign and domestic.”); *see also generally AEP*, 564 U.S. at 421–23.

B. *Amici*’s Briefs and the Public Record Confirm That the Alleged Harms Are Unrelated to Any Alleged Deception or False Advertisements

Amici try to bolster Plaintiffs’ “misrepresentation” theory of climate change but ignore both the facts and reasons for Hawai‘i’s reliance on petroleum products to meet its critical energy needs—none of which has anything to do with Defendants’ supposed speech about climate change. HSAC, in particular, engages in a misguided ad hominem attack on Defendants that ignores the realities of Hawai‘i’s energy needs and instead—drawing on an old and ill-fitting plaintiff-bar playbook—compares, without evidence, Defendants to “Big Tobacco.” *See* HSAC Br. at 16–20. But that analogy fails. Contrary to HSAC’s unsupported claims, there is no comparison between tobacco and the vital energy products that Defendants here supply—and that Plaintiffs, and *amici*, themselves continue to buy despite their full awareness of the long-public information that they claim Defendants have misrepresented or “omitted.”

1. Hawai‘i Law and Governmental Entities Have Long Promoted and Protected the Supply of Petroleum Products to Hawai‘i

Oil and gas have immense social utility. Indeed, “our industrial revolution and the development of our modern world has literally been fueled by oil and coal. Without those fuels, virtually

all of our monumental progress would have been impossible. All of us have benefitted.” *Oakland*, 325 F. Supp. 3d at 1023. Even today, petroleum products often have few or no ready, cost-effective, complete substitutes, and remain essential for humanity’s modern existence—including in Hawai‘i. That is why—despite *amici*’s current assertions—Hawai‘i’s official public policy has long actively promoted and protected petroleum’s use, realizing its vital importance despite recognized environmental risks. While the State cites a series of statutes requiring utilities to increase their reliance on renewable energy sources, State Br. at 15–16, it ignores its own efforts to encourage and protect the supply of fossil fuels—especially petroleum—as well as the difficulties of replacing petroleum products with renewable energy sources.

Hawai‘i is the nation’s *most petroleum-dependent state*, with more than four-fifths of its energy consumption coming from petroleum.² It is thus unsurprising that the State and local governments have taken steps to protect and encourage the petroleum supply to Hawai‘i. For example, the Legislature has found “that adequate supplies of petroleum products are *essential* to the health, welfare, and safety of the people of Hawaii, and that *any severe disruption in petroleum product supplies* for use within the State *would cause grave hardship*, pose a threat to the economic well-being of the people of the State, and have significant adverse effects upon public confidence and order and effective conservation of petroleum products.” Haw. Rev. Stat. Ann. § 125C-1 (1975) (emphasis added). The State has accordingly enacted policies to protect the steady supply of oil and gas products, including a requirement that “[t]he attorney general shall immediately investigate any shortage or condition affecting the supply of any petroleum products.” Haw. Rev. Stat. Ann. § 486H-17 (2004). Section 486B-3 imposes liability on “[a]ny person who sells petroleum products

² U.S. Energy Info. Admin., Hawaii State Energy Profile, (Jan. 21, 2021), <https://www.eia.gov/state/analysis.php?sid=HI>.

and who, with intent to . . . *restrict the supply* of petroleum products[,] . . . [p]revents, limits, lessens, or restricts the manufacture, production, supply, or distribution of petroleum products,” with possible civil and even criminal sanctions. *See* Haw. Rev. Stat. Ann. 486B-3 & 486B-4.

HSAC’s own brief makes plain that renewable alternatives to oil and gas, while important parts of the State’s energy portfolio, are not ready substitutes to fulfill all of Hawai‘i’s energy needs; the brief quotes an article about the strain that a 2014 heatwave placed on the electrical supply when a fuel-oil powered power plant was unexpectedly out of service and “the light winds also mean there is little power being provided by the island’s wind farms.” HSAC Brief at 3-4 & n.3. For this reason, Hawai‘i officials have worked diligently with their federal counterparts to ensure access to crucial petroleum supplies. For example, the State’s 1998 Hawaii State Energy Resources Coordinator’s Annual Report³ notes that Congress authorized Hawai‘i and other U.S. territories to have direct access to Federal petroleum reserves during nationwide emergency shortages. The report calls Congress’s decision “[t]he result of years of effort by the State” and one that “recognizes the special risks faced by Hawai‘i and other U.S. islands that have no internal sources of fossil fuel and which are isolated from other fuel suppliers.” *Id.* at 18. Further underscoring the critical nature of oil and gas for Hawai‘i society, at the start of the COVID-19 pandemic the Mayor of Honolulu declared “gas” and “oil refining” to be “essential businesses.”⁴

Petroleum products are essential precisely because they *can* be combusted to produce energy for Hawai‘i’s governmental entities, businesses, and people—notwithstanding the fact that

³ Hawaii Dep’t of Bus., Econ. Dev. & Tourism, Energy, *State Energy Resources Coordinator Annual Report 1998*, <https://energy.hawaii.gov/wp-content/uploads/2011/10/Energy-Resources-Coordinator-Annual-Report-1998.pdf>.

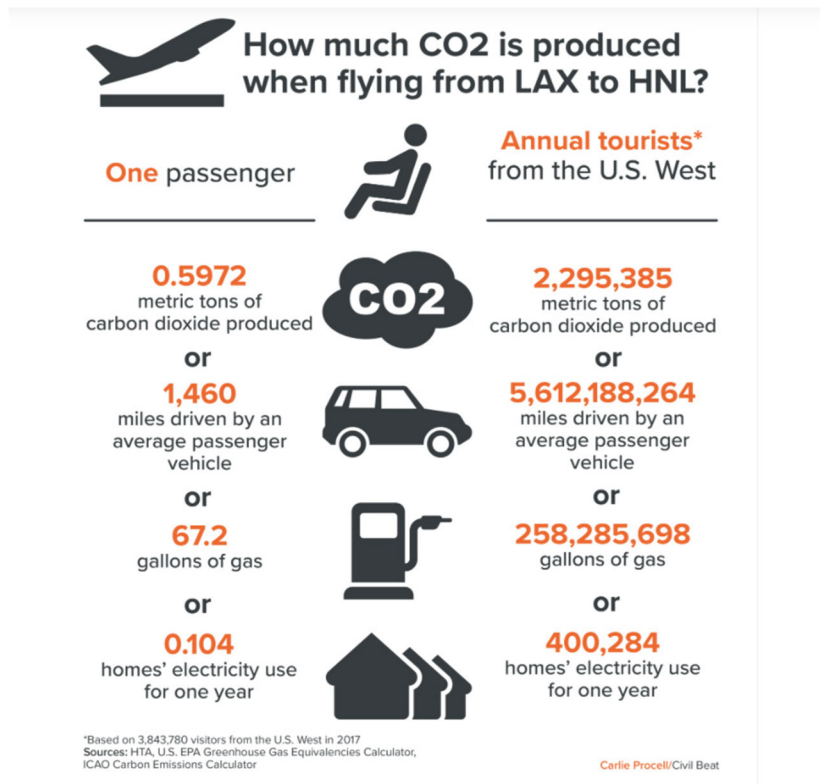
⁴ Office of the Mayor, City and County of Honolulu, Emerg. Order No. 2020-02 (Mar. 22, 2020); Office of the Mayor, City and County of Honolulu, Emerg. Order No. 2020-10 (May 6, 2020).

it has long been recognized that combustion by those end-users will result in emissions of greenhouse gases. But Hawai‘i law nonetheless views these activities as beneficial, not unlawful, and has acted to protect and promote them.

Hawai‘i is well aware of the importance of petroleum to its economy, and encourages even high-emission activity when it serves a purpose the State deems favorable. Tourism is so crucial to the State’s economy that Hawai‘i’s 1998 Climate Action Plan recognized that “[s]ignificant reductions in air travel would be an economic disaster” for the State. Hawaii Climate Change Action Plan, pp. 1-8 (Nov. 1998). And aviation fuel is a huge part of Hawai‘i’s petroleum consumption, including by the military, which has its own large economic impact on the Hawaiian economy—not to mention its security. According to the U.S. Energy Information Agency, “jet fuel accounts for slightly more than half of all petroleum products consumed in the state” of Hawai‘i, partly “[b]ecause of significant demand from military installations.” U.S. Energy Info. Admin., Hawaii State Energy Profile (Jan. 21, 2021), <https://www.eia.gov/state/analysis.php?sid=HI>. And the State of Hawai‘i has itself recognized since the 1990s that “[j]et fuel is essential to Hawaii’s tourism-based economy and the wellbeing of its people.”⁵ Indeed, travel from the west coast of the continental United States to Hawai‘i accounted for 2.3 million tons of carbon in 2017—long after the alleged “deception” was publicized—with other worldwide flights to Hawai‘i accounting for an additional 4 million tons.⁶

⁵ Hawaii Dep’t of Bus., Econ. Dev. & Tourism, Energy, Resources & Tech. Div., *Hawaii Climate Change Action Plan*, 1–5 (Nov. 1998), <https://planning.hawaii.gov/wp-content/uploads/2016/06/HawaiiActionPlan1998.pdf>.

⁶ The Honolulu Civil Beat, *Air Travel’s Carbon Footprint Takes A Big Environmental Toll in Hawaii* (Aug. 27, 2019), <https://www.civilbeat.org/2019/08/air-travels-carbon-footprint-takes-a-big-environmental-toll-in-hawaii/>.



And, most recently, in 2021, while promoting investment in the development of sustainable aviation fuels, Hawai‘i Chief Energy Officer Scott Glenn testified before the Hawai‘i House Committee on Finance that, “Hawaii is dependent upon aviation for its economy and way of life,” and that “[t]he impacts of COVID-19 on tourism and subsequently on the production of jet fuel and other fossil fuels produced in Hawaii underscores the importance of aviation and aviation fuel to a thriving Hawaii.”⁷

Plaintiffs and *amici* cannot cherry-pick which emissions are good emissions, supporting those that boost their economy while seeking to hold Defendants liable for the downstream consequences of Plaintiffs’, *amici*’s, and the rest of the world’s use of fossil fuels.

⁷ Hawaii State Energy Office, Testimony of Scott J. Glenn before the House Committee on Finance, Feb. 5, 2021, https://www.capitol.hawaii.gov/session2021/testimony/HB683_HD1_TESTIMONY_FIN_02-26-21_.PDF

2. Hawai‘i’s Use of Oil and Gas Products Comes Despite Long Availability of Information on the Potential for Climate Change

Defendants supplied the energy that federal, state, and local governments—including Plaintiffs and *amici* themselves—have demanded for decades in order to meet their own and their citizens’ critical needs, even as those governments and the general public recognized the potential climate risks associated with fossil fuel combustion. *Amici*’s account of the “misrepresentation” theory of Plaintiffs’ claims not only fails on its own terms, but also is plainly wrong in light of *amici*’s own historical knowledge of climate change and the fundamental importance of oil and gas to Hawai‘i. At best, *amici* make generalized, conclusory allegations that “deception” somehow contributed to climate change because someone must have bought or used more oil and gas than they otherwise would have. But Plaintiffs, *amici*, and the public have all known about climate change for decades, and they have nonetheless continued to buy and use petroleum because it provides safe, reliable, and affordable energy necessary to modern society.

The current climate situation that Plaintiffs seek to address in this lawsuit is not the result of a “campaign of deception.” Indeed, *amici* do not assert that, with more information about the impacts of climate change, they or Plaintiffs would have done anything differently. For good reason. There can be no dispute that Plaintiffs and their *amici* have long been informed about climate change. For example, while Plaintiffs allege that Defendants began their campaign of deception in 1988, Compl. ¶¶ 90, 95, Hawai‘i lawmakers requested “a study of the worldwide greenhouse effect on Hawaii’s coastal developments” and noted “the greenhouse effect” “has long been a concern to scientists” in 1984—*four years* before the alleged campaign of deception purportedly began.⁸ The 1985 report prepared in response to that request specifically noted a “shift[]” over the prior two

⁸ “Requesting a study of the worldwide greenhouse effect on Hawaii’s coastal environments,” S. Res. 137 (Hi. 1984).

decades “from questioning the possibility that the ‘Greenhouse Effect’ would occur to whether the effect will be mild or severe and the timeframe for its imminent occurrence.”⁹ Thus, Hawai‘ian lawmakers clearly knew—even before and independent of any alleged “deception”—that climate change was a significant concern, and in fact viewed climate change as a certainty. *Amici* also cannot claim that they were fooled into disregarding this knowledge. They continued to act on it throughout the period of the alleged deception campaign. The State “initiated its Hawaii Climate Change Action Program in 1996, in recognition of the fact that Hawaii faces many potential consequences from global warming and climate change.”¹⁰ In 1997, the Hawaii Department of Business, Economic Development and Tourism hosted a Climate Change Action Plan Workshop “to obtain citizen input on Hawaii’s goals and suggestions for emission reduction measures,” with a follow-up Climate Change Action Plan published in 1998.¹¹

In fact, Hawai‘i has played a central role in the world’s understanding of climate change. One of the earliest, foundational studies measuring carbon dioxide in the atmosphere was conducted by Charles Keeling at the Mauna Loa Observatory starting in 1958. *See, e.g.,* Charles D. Keeling, *The Influence of Mauna Loa Observatory on the Development of Atmospheric CO₂ Research*, in *Mauna Loa Observatory: A 20th Anniversary Report* 36-54 (John Miller ed., 1978). This research produced the famous “Keeling Curve” showing the increase in atmospheric carbon dioxide over time. *See* Scripps Inst. of Oceanography, *Charles David Keeling Biography*,

⁹ Hawaii Coastal Zone Mgmt. Program, Dep’t of Planning & Econ. Dev., *Effects on Hawaii of a Worldwide Rise in Sea Level Induced by the ‘Greenhouse Effect’*, (Jan. 1985), <http://planning.hawaii.gov/wp-content/uploads/2013/04/Sea-Level-Rise-Effects-on-Hawaii-1985.pdf>.

¹⁰ *See* Hawaii Dep’t of Bus., Econ. Dev. & Tourism, Energy, Resources & Tech. Div., *Hawaii Energy Strategy 2000* (Jan. 2000), <http://www.hawaiiicleanenergyinitiative.org/storage/hes2000.pdf>.

¹¹ *Id.*; *see also* Hawaii Dep’t of Bus., Econ. Dev. & Tourism, Energy, Resources & Tech. Div., *Hawaii Climate Change Action Plan* (Nov. 1998), <https://planning.hawaii.gov/wp-content/uploads/2016/06/HawaiiActionPlan1998.pdf>.

https://scrippsco2.ucsd.edu/history_legacy/charles_david_keeling_biography.html (last accessed Aug. 19, 2021) (“The Mauna Loa record, or ‘Keeling Curve’, as it is sometimes called, has become a standard icon symbolizing the impact of humans on the planet.”). The University of Hawaii—the State’s flagship public university—has recognized Keeling’s “famous Carbon Dioxide sampling program.” Univ. of Hawaii, Dep’t of Atmospheric Sciences, *History of the Department*, <http://www.soest.hawaii.edu/atmo/index.php/history-of-the-department-revised> (last accessed Aug. 19, 2021).

Similarly, Hawai‘i news outlets have long covered climate change, including features devoted to the Mauna Loa research. In a front-page story entitled “Mauna Loa Gets Key Role in Weather Study,” the *Hawaii Tribune-Herald* reported that, “[u]nder the program, scientists will try to learn, for example, whether pollution-produced carbon dioxide is increasing sufficiently to cause a ‘greenhouse effect’ on the planet or whether pollution may ultimately cool the atmosphere.”¹²



¹² *Mauna Loa Gets Key Role in Weather Study*, *Hawaii Tribune-Herald*, April 6, 1971, at 1.

On July 29, 1983—years before the start of the alleged deception campaign—the *Honolulu Star-Bulletin* ran a front-page story entitled “Use of Fossil Fuels Endangering Man.”¹³



That article explained that “[t]he carbon cycle is one of great concern because carbon-dioxide gases play a large role in determining the Earth’s heat balance and a gradual warming—known as the ‘greenhouse effect’—has been occurring.” And it attributed the carbon cycle to the “burning of fossil fuels” which “emits carbon . . . some of [which] accumulates” “in the atmosphere.” Later that year, the same newspaper’s front page carried an article entitled “EPA: We’ll All Be in the Hothouse Soon,” in which the EPA stated that “the warming trend” was a “result of a buildup of carbon dioxide in the atmosphere” and was “both imminent and inevitable.”¹⁴ “Fossil fuels,” that article proclaimed, “are *the major source of the carbon dioxide*,” and “even a total ban on the use

¹³ Helen Altonn, *Use of Fossil Fuels Endangering Man*, Honolulu Star-Bulletin, July 29, 1983 at 1.

¹⁴ *EPA: We’ll All Be in the Hothouse Soon*, Honolulu Star-Bulletin, October 18, 1983, at 1.

of fossil fuels” could not “do more than delay the warming effect for a few years.”¹⁵

Less than two years later, still prior to the start of the alleged deception campaign, the front page of the *Hawaii Tribune-Herald* identified the possibility that climate change would cause flooding in Honolulu—one of the central harms Plaintiffs allege resulted from Defendants’ “deception campaign.”¹⁶



It is thus evident that Hawai‘i, the HSAC counties, and the people of Hawai‘i have been well aware of climate change risks for decades.

The coverage of climate change in Hawai‘i newspapers did not stop when the alleged deception began. A December 1988 article identified potential flooding zones and warned that it

¹⁵ *Id.* (emphasis added).

¹⁶ ‘Greenhouse effect’ may flood Honolulu, *Hawaii Star-Bulletin*, Jan. 29, 1985, at 1.

“isn’t too early for greenhouse-effect phenomena to figure in the state plans.”¹⁷ Articles in the 1990s often discussed the international negotiations over the response to climate change,¹⁸ and articles in the 2000s made clear that the impacts of climate change would be significant to the State.¹⁹ For example, in 2006, *The Honolulu Advertiser* reported that “[m]uch of the world, including the drought-plagued American West, will face more deadly heat waves, intense rainstorms and prolonged dry spells before the end of the century, according to a new climate-change study” by the “National Center for Atmospheric Research” regarding “the most extreme effects of global warming.”



¹⁷ *In Hawaii, the climate is everything*, Honolulu Star-Bulletin, Dec. 19, 1988, at 1.

¹⁸ *E.g., Earth Summit: Hawaii pre-meeting important*, Honolulu Advertiser, April 20, 1992, at 6; *Negotiators still working on ‘greenhouse’ emissions*, Honolulu Advertiser, Sept. 14, 1997, at 3; *Global warming talks begin*, Hawaii Tribune-Herald, Dec. 2, 1997, at 1; *Global warming has islanders worrying*, Hawaii Tribune-Herald, Dec. 4, 1997, at 1.

¹⁹ *E.g., Report says Hawaii faces severe drought in 21st century*, Hawaii Tribune Herald, June 16, 2000, at 3; *Global-warming forecasts: from bad to worse*, Honolulu Advertiser, Oct. 21, 2006, at 1.

Hawai‘i’s government officials likewise went on the record to address the threat of climate change. For example, in 1992, Hawai‘i Senator Daniel Akaka told the world that “unless we implement a strategy to combat the threat of global warming, the only solution for many Pacific islands will be to start handing out snorkels.”²⁰ And in 2001, Honolulu Mayor Jeremy Harris published an editorial that said “anyone living on an island or low-lying area ought to be worrying about global warming [T]he magnitude of this environment[al] threat . . . [is] chillingly clear.”²¹

These are just a few examples showing that both Plaintiffs and *amici* were well informed of the realities of climate change, irrespective of any alleged deception. There were dozens of articles about global climate change published in Hawai‘i, and conspicuously neither Plaintiffs nor *amici* have identified a single misleading statement made by any Defendant in Hawai‘i. Their attempt to sidestep federal law by dressing up these emissions claims as deception claims is sheer chutzpah. More accurate is the 2016 State Energy Resources Coordinator Annual Report, which details both Hawai‘i’s “tremendous natural advantage in the race to secure a clean, renewable energy future,” as well as significant challenges in trying to move away from petroleum products,²² without mentioning any supposed “campaign of deception.” Instead, after describing Hawai‘i’s natural attributes that should make it a “renewable energy Mecca”—its “abundant sunshine, dependable trade winds, powerful oceans and waterfalls, a lush biosphere, and active volcanism”—the expert agency notes that “[c]rucially, those resources must be matched with the political will to effect an energy

²⁰ *Akaka warns of isle harm from global warming trend*, Hawaii Tribune-Herald, May 10, 1992, at 1.

²¹ Jeremy Harris, *Global warming is coming our way*, The Honolulu Advertiser, May 4, 2001, at 1.

²² Hawaii State Energy Office, Dep’t of Bus., Econ. Dev. and Tourism, *Hawaii’s Emerging Future: State of Hawaii Energy Resources Coordinator’s Annual Report 2016*, 2016, at 26, <https://energy.hawaii.gov/2016-energy-resources-coordinators-annual-report>.

regime change and the *technical acumen* to make it possible. *Everything is in place except for the last of those elements.*”²³ Far from ascribing Hawai‘i’s continuing dependence on fossil fuels to Defendants’ “deception,” the agency points to basic economics and technical challenges: “One major challenge associated with renewable energy is security—at present, renewable energy is less stable and reliable than fossil fuel generation, which is already vulnerable to widespread power outage in the event of a natural or manmade disaster.”²⁴

C. HSAC’s Argument About Chevron’s Anti-SLAPP Motion Is Not Relevant

HSAC concludes its brief with a two-paragraph section on Chevron’s anti-SLAPP motion, devoted exclusively to an issue that Chevron has not raised—whether Hawai‘i’s anti-SLAPP law is applicable.²⁵ HSAC’s argument thus is irrelevant to Chevron’s motion.

III. CONCLUSION

For the foregoing reasons and the reasons stated in Defendants’ Motion and reply briefs, Plaintiffs’ Complaint should be dismissed.

DATED: Honolulu, Hawai‘i, August 20, 2021.

/s/ Joachim P. Cox

Joachim P. Cox
Randall C. Whattoff
COX FRICKE LLP

David C. Frederick, *pro hac vice*
James M. Webster, III, *pro hac vice*
Daniel S. Severson, *pro hac vice*

/s/ Melvyn M. Miyagi

Melvyn M. Miyagi
Ross T. Shinyama
Summer M. Kaiawe
WATANABE ING LLP

Theodore J. Boutrous, Jr., *pro hac vice*
Andrea E. Neuman, *pro hac vice*
GIBSON, DUNN & CRUTCHER LLP

²³ *Id.*

²⁴ *Id.* at 40.

²⁵ Defendants Chevron Corporation and Chevron U.S.A. Inc. are referred to collectively as “Chevron.”

KELLOGG HANSEN TODD FIGEL &
FREDERICK PLLC

*Attorneys for Defendants Royal Dutch Shell
plc, Shell Oil Company, and Shell Oil Prod-
ucts Company LLC*

/s/ Crystal K. Rose

Crystal K. Rose
Adrian L. Lavarias
David A. Morris
BAYS, LUNG, ROSE & VOSS

Sean C. Grimsley, *pro hac vice*
Jameson R. Jones, *pro hac vice*
Daniel R. Brody, *pro hac vice*
BARTLIT BECK LLP

Steven M. Bauer, *pro hac vice*
Margaret A. Tough, *pro hac vice*
Katherine A. Rouse, *pro hac vice*
LATHAM & WATKINS, LLP

*Attorneys for Defendants ConocoPhillips and
ConocoPhillips Company*

/s/ Crystal K. Rose

Crystal K. Rose
Adrian L. Lavarias
David A. Morris
BAYS, LUNG, ROSE & VOSS

Steven M. Bauer, *pro hac vice*
Margaret A. Tough, *pro hac vice*
Katherine A. Rouse, *pro hac vice*
LATHAM & WATKINS, LLP

*Attorneys for Defendants Phillips 66 and
Phillips 66 Company*

/s/ C. Michael Heihre

C. Michael Heihre
Michi Momose

Erica W. Harris, *pro hac vice*
SUSMAN GODFREY LLP

*Attorneys for Defendants Chevron Corpora-
tion and Chevron U.S.A. Inc.*

/s/ Lisa A. Bail

Lisa A. Bail
David J. Hoftiezer
Rachel A. Zelman
GOODSILL ANDERSON QUINN &
STIFEL LLP

Matthew T. Heartney, *pro hac vice*
Jonathan W. Hughes, *pro hac vice*
John D. Lombardo, *pro hac vice*
ARNOLD & PORTER KAYE SCHOLER
LLP

*Attorneys for Defendants BP p.l.c. and BP
America Inc.*

/s/ Paul Alston

Paul Alston
Claire Wong Black
Glenn T. Melchinger
John-Anderson L. Meyer
DENTONS US LLP

Theodore V. Wells, Jr., *pro hac vice*
Daniel Toal, *pro hac vice*
Yahonnes Cleary, *pro hac vice*
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

*Attorneys for Defendants Exxon Mobil Cor-
poration and ExxonMobil Oil Corporation*

/s/ Margery S. Bronster

Margery S. Bronster
Lanson K. Kupau
BRONSTER FUJICHAKU ROBBINS

CADES SCHUTTE

J. Scott Janoe, *pro hac vice*
Megan Berge, *pro hac vice*
Sterling Marchand, *pro hac vice*
BAKER BOTTS LLP

Attorneys for Defendants
Sunoco LP, Aloha Petroleum, Ltd., and Aloha
Petroleum LLC

/s/ Ted N. Pettit

Ted N. Pettit
CASE LOMBARDI & PETTIT

Shannon S. Broome, *pro hac vice*
Shawn Patrick Regan, *pro hac vice*
Ann Marie Mortimer, *pro hac vice*
HUNTON ANDREWS KURTH LLP

Attorneys for Defendant Marathon Petroleum
Corp.

Victor L. Hou, *pro hac vice*
Boaz S. Morag, *pro hac vice*
CLEARY GOTTLIB STEEN & HAMIL-
TON LLP

Attorneys for Defendants BHP Group Lim-
ited, BHP Group plc, and BHP Hawaii Inc.

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 AMER-
ICA INC.; MARATHON PETROLEUM
CORP.; CONOCOPHILLIPS; CONO-
COPHILLIPS COMPANY; PHILLIPS 66;
PHILLIPS 66 COMPANY; AND DOES 1
through 100, inclusive,

Defendants.

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

CERTIFICATE OF SERVICE

929254

CERTIFICATE OF SERVICE

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

DANA M.O. VIOLA, ESQ.
Corporation Counsel Designate
ROBERT M. KOHN
NICOLETTE WINTER
JEFF A. LAU
Deputies Corporation Counsel
Department of Corporation Counsel
Honolulu Hale, Room 110
530 South King Street
Honolulu, Hi 96813

robert.kohn@honolulu.gov
nwinter@honolulu.gov
jlau3@honolulu.gov

VICTOR M. SHER (*pro hac vice*)
MATTHEW K. EDLING (*pro hac vice*)
Sher Edling LLP
100 Montgomery St. Suite 1410
San Francisco, CA 94104

vic@sheredling.com
matt@sheredling.com

Attorneys for Plaintiffs
*CITY AND COUNTY OF HONOLULU and
HONOLULU BOARD OF WATER SUPPLY*

JOACHIM P. COX
RANDALL C. WHATTOFF
Cox Fricke LLP
800 Bethel Street, Suite 600
Honolulu, HI 96813

jcox@cfhawaii.com
rwhattoff@cfhawaii.com

DAVID C. FREDERICK (*pro hac vice*)
DANIEL S. SEVERSON (*pro hac vice*)
JAMES M. WEBSTER, III (*pro hac vice*)
Kellogg Hansen Todd Figel & Frederick PLLC
1615 M Street, N.W., Suite 400
Washington, D.C. 20036

frederick@kellogghansen.com
dseverson@kellogghansen.com
jwebster@kellogghansen.com

Attorneys for Defendants
*ROYAL DUTCH SHELL PLC, SHELL OIL
COMPANY, and SHELL OIL PRODUCTS
COMPANY LLC*

MARGERY S. BRONSTER
LANSON K. KUPAU
Bronster Fujichaku Robbins
1003 Bishop Street, Suite 2300
Honolulu, HI 96813

mbronster@bfrhawaii.com
lkupau@bfrhawaii.com

VICTOR L. HOU (*pro hac vice*)
BOAZ S. MORAG (*pro hac vice*)
Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza
New York, NY 10006

vhou@cgsh.com
bmorag@cgsh.com

Attorneys for Defendants
*BHP GROUP LIMITED, BHP GROUP PLC,
and BHP HAWAII INC.*

CRYSTAL K. ROSE
ADRIAN L. LAVARIAS
DAVID A. MORRIS
Bays, Lung, Rose & Holma
Topa Financial Center
700 Bishop St., Suite 900
Honolulu, HI 96813

crose@legalthawaii.com
alavarias@legalthawaii.com
dmorris@legalthawaii.com

SEAN C. GRIMSLEY (*pro hac vice*)
JAMESON R. JONES (*pro hac vice*)
DANIEL R. BRODY (*pro hac vice*)
Bartlit Beck LLP
1801 Wewatta St., Suite 1200
Denver, Colorado 80202

sean.grimsley@bartlitbeck.com
jameson.jones@bartlitbeck.com
dan.brody@bartlitbeck.com

STEVEN M. BAUER (*pro hac vice*)
MARGERT A. TOUGH (*pro hac vice*)
KATHERINE A. ROUSE (*pro hac vice*)
Latham & Watkins LLP
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538

steven.bauer@lw.com
margaret.tough@lw.com
Katherine.Rouse@lw.com

Attorneys for Defendants
CONOCOPHILLIPS and CONOCOPHILLIPS
COMPANY

CRYSTAL K. ROSE
ADRIAN L. LAVARIAS
DAVID A. MORRIS
Bays, Lung, Rose & Holma
Topa Financial Center
700 Bishop St., Suite 900
Honolulu, HI 96813

crose@legalthawaii.com
alavarias@legalthawaii.com
dmorris@legalthawaii.com

STEVEN M. BAUER (*pro hac vice*)
MARGERT A. TOUGH (*pro hac vice*)
KATHERINE A. ROUSE (*pro hac vice*)
Latham & Watkins LLP
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538

steven.bauer@lw.com
margaret.tough@lw.com
Katherine.Rouse@lw.com

Attorneys for Defendants
PHILLIPS 66 and PHILLIPS 66 COMPANY

C. MICHAEL HEIHRE
MICHI MOMOSE
Cades Schutte LLP
Cades Schutte Building
1000 Bishop Street 12th Floor
Honolulu, HI 96813

mheihre@cades.com
mmomose@cades.com

J. SCOTT JANOE (*pro hac vice*)
Baker Botts LLP
910 Louisiana Street
Houston, Texas 7702-4995

scott.janoe@bakerbotts.com

MEGAN BERGE (*pro hac vice*)
STERLING MARCHAND (*pro hac vice*)
Baker Botts LLP
700 K Street, N.W.
Washington, DC 20001-5692

megan.berge@bakerbotts.com
sterling.marchand@bakerbotts.com

Attorneys for Defendants
SUNOCO LP, ALOHA PETROLEUM, LTD.
and ALOHA PETROLEUM LLC

LISA A. BAIL
DAVID J. HOFTIEZER
RACHEL A. ZELMAN
Goodsill Anderson Quinn & Stifel LLP
First Hawaiian Center
999 Bishop St., Suite 1600
Honolulu, HI 96813

lbail@goodsill.com
dhoftiezer@goodsill.com
rzelman@goodsill.com

JONATHAN W. HUGHES (*pro hac vice*)
Arnold & Porter
Three Embarcadero Center, Seventh Floor
San Francisco, CA 94111-4024

jonathan.hughes@arnoldporter.com

MATTHEW T. HEARTNEY (*pro hac vice*)
JOHN D. LOMBARDO (*pro hac vice*)
Arnold & Porter
44TH Floor, 777 South Figueroa Street
Los Angeles, CA 90017

matthew.heartney@arnoldporter.com
john.lombardo@arnoldporter.com

Attorneys for Defendants
BP P.L.C. and BP AMERICA INC.

PAUL ALSTON
JOHN-ANDERSON L. MEYER
CLAIRE WONG BLACK
GLENN T. MELCHINGER
Dentons US LLP
1001 Bishop Street, 18th Floor
Honolulu, HI 96813

paul.alston@dentons.com
john-anderson.meyer@dentons.com
claire.black@dentons.com
glenn.melchinger@dentons.com

THEODORE V. WELLS, JR. (*pro hac vice*)
DANIEL J. TOAL (*pro hac vice*)
YAHONNES CLEARY (*pro hac vice*)
Paul, Weiss, Rifkind Wharton & Garrison LLP
1285 Avenue of the Americas
New York NY 10019

twells@paulweiss.com
dtoal@paulweiss.com
ycleary@paulweiss.com

Attorneys for Defendants
EXXON MOBIL CORPORATION and
EXXONMOBIL OIL CORPORATION

TED N. PETTIT
Case Lombardi & Pettit
737 Bishop Street Suite 2600
Honolulu, HI 96813

tnp@caselombardi.com

SHANNON S. BROOME (*pro hac vice*)
Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, CA 94111

sbroome@HuntonAK.com

SHAWN PATRICK REGAN (*pro hac vice*)
Hunton Andrews Kurth LLP
200 Park Avenue
New York, NY 10166

sregan@HuntonAK.com

ANN MARIE MORTIMER (*pro hac vice*)
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

amortimer@HuntonAK.com

Attorneys for Defendant
MARATHON PETROLEUM CORP.

DATED: Honolulu, Hawaii, August 20, 2021.

/s/ Melvyn M. Miyagi

MELVYN M. MIYAGI

ROSS T. SHINYAMA

SUMMER H. KAIawe

ANDREA E. NEUMAN (*pro hac vice*)

THEODORE J. BOUTROUS, JR. (*pro hac vice*)

ERICA W. HARRIS (*pro hac vice*)

Attorneys for Defendants

CHEVRON CORPORATION and

CHEVRON U.S.A., INC.