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VIA ECF

Molly C. Dwyer
Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *City and County of Honolulu v. Sunoco LP*, No. 21-15313; *County of Maui v. Chevron USA Inc.*, No. 21-15318
Defendants-Appellants' Response to Plaintiffs-Appellees' Citation of Supplemental Authorities

Dear Ms. Dwyer:

This Court's opinion in *Lake v. Ohana Military Communities, LLC*, 14 F.4th 993 (9th Cir. 2021) is inapposite and irrelevant here.

In *Lake*, the Court held that the "causal nexus analysis" of federal officer removal was not satisfied because plaintiff's claims and alleged injuries were based on a failure to disclose information about a pesticide remediation plan, over which the Navy exercised no control. Here, however, Plaintiffs' claims and alleged injuries are not so limited. Plaintiffs' Complaints define their alleged injuries as the physical effects of global climate change caused by the production, marketing, sale, and third-party combustion of Defendants' fossil fuels. In Plaintiffs' own words, Defendants' fossil fuel products, and the resulting greenhouse gas emissions, are "the *main driver*" of climate change and Plaintiffs' alleged injuries. 8-ER-1531. Indeed, Plaintiffs concede that "fossil fuel *production*," not alleged disinformation is "the delivery mechanism of [Plaintiffs'] injury." 2-ER-42 (emphasis added).

Accordingly, under Plaintiffs' own theory, their alleged injuries result from Defendants' supply of petroleum products, a substantial portion of which were produced at the direction of federal officers. Defendants have demonstrated multiple instances when they acted under the direction of federal officials, including their production and supply of specialized, non-commercial grade military fuels. *E.g.* 8-ER-1478. This is more than sufficient. As the Supreme Court has explained, a contractor acts under a federal officer when,

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“[i]n the absence of . . . contract[s] with . . . private firm[s], the Government itself would have had to perform” the task. *Watson v. Philip Morris Companies, Inc.*, 551 U.S. 142, 154 (2007)

Plaintiffs incorrectly argue that Defendants have not identified enclaves of exclusive federal jurisdiction. But Defendants have identified enclaves, including military bases and the Elk Hills Reserve, within the exclusive jurisdiction of the federal government. *See* 8-ER-1501–1505; *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369, 372–74 (1964) (noting that the United States exercises “exclusive federal jurisdiction” over certain oil and gas rights within Barksdale Air Force Base in Louisiana). Because some of these enclaves are outside Hawai‘i, *Lake*’s analysis of the Hawai‘i Admission Act is irrelevant. *See* 14 F.4th at 1001.

Sincerely,

/s/ Theodore J. Boutrous, Jr.

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cc: All counsel of record (via ECF)