WATANABE ING LLP
MELVYN M. MIYAGI #1624-0
mmiyagi@wik.com
ROSS T. SHINYAMA #8830-0
rshinyama@wik.com
SUMMER H. KAIAWE #9599-0
skaiawe@wik.com
First Hawaiian Center
999 Bishop Street, Suite 1250
Honolulu, Hawaii 96813
Telephone No. (808) 544-8300
Facsimile No. (808) 544-8399

GIBSON, DUNN & CRUTCHER LLP
THEODORE J. BOUTROUS, JR. (*Pro Hac Vice*)
tboutrous@gibsondunn.com
333 South Grand Avenue
Los Angeles, California 90071
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

ANDREA E. NEUMAN *(Pro Hac Vice)*
ANeuman@gibsondunn.com
200 Park Avenue
New York, New York 10166
Telephone: (212) 351-3883
Facsimile: (212 351-5303

JOSHUA D. DICK *(Pro Hac Vice)*
JDick@gibsondunn.com
555 Mission Street, Suite 3000
San Francisco, California 94105
Telephone: (415) 393-8321
Facsimile: (415) 374-8451

SUSMAN GODFREY LLP
ERICA W. HARRIS *(Pro Hac Vice)*
eharris@susmangodfrey.com
1000 Louisiana, Suite 5100
Houston, Texas 77002-5096
Telephone: (713) 653-7810
Facsimile: (713) 654-6666

Attorneys for Defendants
CHEVRON CORPORATION and CHEVRON U.S.A., INC.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAIʻI

COUNTY OF MAUI, Plaintiff, v. SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM LLC; EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORPORATION; CHEVRON U.S.A. INC.; BHP GROUP LIMITED; BHP GROUP PLC; BHP HAWAII INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive, Defendants.	CIVIL NO. 2CCV-20-0000283 (Other Non-Vehicle Tort) **DEFENDANTS' JOINT MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION; CERTIFICATE OF SERVICE** Action Filed: October 12, 2020 **Hearing**: Date: September 28, 2022 Time: 8:30 a.m. Judge: Jeffrey P. Crabtree No Trial Date Set

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JOINT MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Defendants Sunoco LP, Aloha Petroleum LLC, Exxon Mobil Corporation, ExxonMobil Oil Corporation, Shell plc (f/k/a Royal Dutch Shell plc), Shell USA, Inc. (f/k/a Shell Oil Company), Shell Oil Products Company LLC, Chevron Corporation, Chevron USA Inc., BP plc, BP America Inc., Marathon Petroleum Corporation, ConocoPhillips, ConocoPhillips Company, Phillips 66, and Phillips 66 Company (collectively, the "Defendants"),[1] by their undersigned attorneys and pursuant to Rules 7 and 12(b)(2) of the Hawai'i Rules of Civil Procedure, hereby submit this Joint Memorandum in Support of their Motion to Dismiss (Dkt. 397) in accordance with the Court's Order Regarding Expected Motions (Dkt. 374). As set forth below, the allegations in the Complaint are insufficient to establish personal jurisdiction over these out-of-state Defendants, and Plaintiff's claims against these Defendants should be dismissed with prejudice in their entirety.

I. INTRODUCTION

In making this motion, Defendants are mindful of the Court's prior order in the case by the City & County of Honolulu and its Board of Water Supply.[2] The arguments set forth below, which include additional arguments that were not made or addressed previously, take account of the Court's prior order and deserve further consideration.

Plaintiff, the County of Maui, seeks to impose liability on 16 out-of-state Defendants for impacts of global climate change, including "global atmospheric and ocean warming, ocean acidification, melting polar ice caps and glaciers, more extreme and volatile weather, drought, and sea level rise." Compl. ¶ 2, Dkt. 1. According to Plaintiff, Hawai'i law permits it to seek damages and equitable relief from this select group of Defendants for harms allegedly resulting from over a century of energy consumption and climatic events around the world. The Complaint suffers from numerous fatal defects, including those addressed in all Defendants' Joint Memorandum in

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[1] The majority of defendants (16 of 18) challenge this Court's personal jurisdiction over them. The two defendants that do not challenge personal jurisdiction are incorporated in Hawai'i. For ease of reference, the term "Defendants" is used throughout this Memorandum to refer to the 16 defendants challenging personal jurisdiction.

[2] *See* Order at 6, *City & County of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (JPC) (Haw. Cir. Ct. Mar. 31, 2022), Dkt. 622.

Support of their Motion to Dismiss for Failure to State a Claim, and various Defendants' individual memoranda in support of their Motion to Dismiss for Failure to State a Claim. This Memorandum focuses on one particular defect of Plaintiff's Complaint: The factual allegations against these Defendants, even if accepted as true, are insufficient to sustain personal jurisdiction over these Defendants.

Here as in *Honolulu*, there can be no dispute that this Court lacks general personal jurisdiction over Defendants because none of them is incorporated or headquartered in Hawai‘i; thus, none is "at home" in this forum. *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). The Complaint does not allege otherwise. In addition, this Court lacks specific personal jurisdiction over each of the Defendants for three separate reasons, each of which independently requires dismissal.

First, based on Plaintiff's own allegations, Plaintiff's claims do not "arise out of or relate to" Defendants' alleged contacts with Hawai‘i. *See Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 141 S. Ct. 1017, 1025 (2021). To the contrary, Plaintiff's claimed injuries are "*all due* to anthropogenic global warming," Compl. ¶ 10 (emphasis added), caused by the "increase in atmospheric CO_2 and other greenhouse gases" from the *worldwide* combustion of oil and gas over the past century, *id.* ¶ 4. Under the Supreme Court's recent decision in *Ford Motor*, to satisfy the arising out of or related to prong, a plaintiff must allege facts that, taken as true, would show that *use of a defendant's product in the State* caused plaintiff to suffer an injury in the State. *See* 141 S. Ct. at 1028.

Plaintiff has not made any allegation that the use of Defendants' products in Hawai‘i (or any acts in Hawai‘i) caused Plaintiff to suffer injury in Hawai‘i, because it is undisputed that total energy consumption in Hawai‘i accounts for a negligible fraction of worldwide total greenhouse gas emissions. Because Plaintiff's alleged injuries did *not* result from the use of Defendants' products in Hawai‘i, Plaintiff's allegations that Defendants marketed and sold those products in Hawai‘i (even accepting those allegations as true) are plainly insufficient to establish personal jurisdiction over Defendants. Indeed, Plaintiff's claims and alleged injuries would be precisely the same even if *none* of Defendants' *products* had ever entered Hawai‘i or been used in Hawai‘i. In other words, because Plaintiff's alleged injuries are necessarily based on the cumulative use of and emissions from fossil fuels across the world, they do not depend on Defendants' fossil fuels ever being sold, marketed, or consumed in Hawai‘i. Although this Court correctly noted in its

order on Defendants' motion to dismiss for lack of personal jurisdiction in the *Honolulu* action that *Ford Motor* "does not require a showing that plaintiff's claim occurred due to or because of a *defendant's* in-state conduct," *See Honolulu*, Dkt. 622 (emphasis added), *Ford Motor* nonetheless requires that where, as here, a plaintiff's claims are based on marketing and promotion, the plaintiff's alleged injuries must result from the *use and malfunction* of the product in the forum State. There, it was permissible for the courts to exercise specific personal jurisdiction over the out-of-state defendant, even though the defendant did not sell the cars in the forum States, because in addition to the fact that the defendant "systematically served a market" in the forum State, the plaintiffs' injuries occurred when the cars were used and "malfunction[ed] in the forum States." *Ford Motor*, 141 S. Ct. at 1028, 1031. But here, Plaintiff has not alleged that the use and malfunction of any Defendant's products in Hawai‘i caused Plaintiff's alleged injuries.

Plaintiff's jurisdictional theory is that any in-state marketing activities are sufficient for this Court to exercise personal jurisdiction over each Defendant, even though the use of the marketed products in Hawai‘i did *not* cause an injury in Hawai‘i. That is not the law of personal jurisdiction, and for good reason. Plaintiff's theory would dramatically expand, if not eviscerate, the bounds of specific personal jurisdiction and subject each Defendant to jurisdiction in any State in which any amount of its products may have been sold or marketed, at any point in time, no matter how small, and regardless of the connection to the alleged claims. If this Court accepted Plaintiff's expansive theory, it would follow that there would be jurisdiction in this Court over *any* corporate defendant that is alleged to have conducted *any* business that reached the State, at *any* point in time, for *any and all* claims broadly related to that business no matter how attenuated the relationship between the business, Hawai‘i, and the claims—virtually erasing the distinction between general and specific jurisdiction. Such an unprecedented expansion would violate Defendants' due process rights and has been soundly rejected by the Supreme Courts of both the United States and Hawai‘i. *See Bristol-Myers Squibb Co. v. Superior Ct. of California, San Francisco Cnty.*, 137 S. Ct. 1773, 1781 (2017); *Shaw v. N. Am. Title Co.*, 76 Haw. 323, 328 (1994).

Second, Defendants did not have "clear notice," as due process requires, that by producing, promoting, or selling oil and gas in Hawai‘i, a Defendant would become subject to jurisdiction in this forum for claims for injuries allegedly resulting, not from local use of its products, but instead from the cumulative worldwide use of coal, oil, and natural gas and other sources of emissions. *Ford Motor*, 141 S. Ct. at 1025 (citation omitted). There are billions of contributors to greenhouse

gas emissions across the world (including Plaintiff itself). *City of Oakland v. BP p.l.c.*, 325 F. Supp. 3d 1017, 1026 (N.D. Cal. 2018) ("*Oakland I*") ("Everyone has contributed to the problem of global warming and everyone will suffer the consequences—the classic scenario for a legislative or international solution."), *vacated on other grounds*, 960 F.3d 570 (9th Cir. 2020). In fact, Plaintiff alleges that "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses [sic] quickly diffuse and comingle in the atmosphere." *See, e.g.*, Compl. ¶¶ 220, 232, 244, 253. Given the lack of any discernible link between emissions in Hawai'i, Defendants' alleged in-state contacts, and any local impacts of global climate change, Defendants had no way to anticipate—let alone have "clear notice"—of potential liability for Plaintiff's sweeping allegations. Defendants could not anticipate that producing, promoting, and selling oil and gas in Hawai'i might subject them to suit here for all the alleged past and future harms from global climate change that result from the undifferentiated conduct of countless entities that sold and consumed fossil fuel products around the world. Due process does not countenance such an unbounded exercise of jurisdiction.

Third, the exercise of specific personal jurisdiction over Defendants would be unreasonable under the Due Process Clause. *See In Interest of Doe*, 83 Haw. 367, 374 (1996). Litigating this case in Hawai'i state court would contravene "the interstate judicial system's interest in obtaining the most efficient resolution of controversies" because Plaintiff's claims implicate *global* conduct and are not localized to Hawai'i. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980). And it would threaten the "interest of the several States in furthering fundamental substantive social policies" because, among other things, many States and the federal government promote the very energy production and policies that Plaintiff seeks to penalize through this lawsuit. *Id.* Moreover, it would impermissibly require nonresident Defendants to submit to the "coercive power" of an out-of-state tribunal with respect to conduct unconnected with the forum, leaving their national and even worldwide conduct subject to conflicting state rules. *See Bristol-Myers Squibb*, 137 S. Ct. at 1780.

Because the factual allegations in Plaintiff's Complaint, even if accepted as true, do not provide a basis for exercising personal jurisdiction that comports with the Due Process Clause, and

because no amendment can remedy the inherent flaws in Plaintiff's jurisdictional theory, the Court should dismiss all claims against Defendants with prejudice.

II. BACKGROUND AND PLAINTIFF'S ALLEGATIONS

Plaintiff's claims depend on the cumulative and worldwide use of oil and gas products over the course of several decades. Plaintiff alleges an attenuated (and implausible) causal chain between Defendants' allegedly tortious acts and Plaintiff's purported injuries from global climate change. Among the links in Plaintiff's causal chain are the decisions of countless third parties around the world—for any number of reasons—to purchase, sell, refine, transport, and ultimately combust (*i.e.*, use) Defendants' fossil fuel products. That combustion, in turn, may release greenhouse gas emissions (depending on the manner of the combustion and whether the third party uses emissions-capturing technology). Compl. ¶ 97 (alleging that "normal *use* of Defendants' fossil fuel products" results in greenhouse gas emissions) (emphasis added). Plaintiff alleges that those emissions—in addition to emissions originating from other sources virtually all of which are also emitted outside of Hawai'i—then increase the total amount of greenhouse gases in the global atmosphere. *Id.* ¶ 4. And, according to Plaintiff, that change in atmospheric composition causes the atmosphere to trap heat, which increases global temperature, which, in turn, raises global sea levels, among other effects. *Id.* ¶¶ 41–49. Plaintiff contends that its injuries flow from rising sea levels, as well as from other alleged effects of climate change. *Id.* ¶¶ 167–72.

Plaintiff has asserted that its claims are all "premised on a theory of misinformation and deception." Dkt. 272 at 2. But Plaintiff does not allege that its injuries are caused by "misinformation and deception," and in fact relatively little of the Complaint addresses any supposed "misinformation and deception." Plaintiff alleges, rather, that its injuries are "caused by anthropogenic greenhouse gas *emissions*." Compl. ¶¶ 42–43 (emphasis added). These emissions are the result of billions of daily choices, over more than a century, by governments, companies, and individuals about what activities to engage in, what types of fuels to use, and how to use them. *Emissions* are, to use Plaintiff's words, "[t]he mechanism" of the alleged injuries. *Id.* ¶ 42. According to Plaintiff, "greenhouse gas pollution, primarily in the form of CO_2, is far and away the dominant cause of global warming," *id.* ¶ 5, and Plaintiff's purported injuries are "*all due* to anthropogenic global warming," *id.* ¶ 10 (emphasis added).

Plaintiff alleges that Defendants' *worldwide* conduct—not conduct that occurred in Hawai'i—caused its injuries. Plaintiff's 130-plus page Complaint does not identify a *single*

misstatement or omission by a Defendant made in or targeted at Hawai‘i. Indeed, the Complaint contains very few allegations about any Defendant's *forum-related* conduct. Plaintiff instead relies on vague, boilerplate allegations that constitute nothing more than legal conclusions with respect to each alleged "family" of corporations—that "a substantial portion of [its] fossil fuel products are or have been transported, traded, distributed, promoted, marketed, manufactured, sold, and/or consumed in Hawai‘i, from which . . . [it] derived substantial revenue," and that "[it] has and continues to tortiously distribute, market, advertise, and promote its products in Hawai‘i, with knowledge that those products have caused and will continue to cause climate crisis-related injuries in Hawai‘i." *See* Compl. ¶¶ 19(k), 20(k), 21(k), 22(k), 23(k), 24(j), 25(j), 26(l).[3]

The Complaint's remaining jurisdictional allegations are equally insufficient to establish that Defendants are subject to jurisdiction in Hawai‘i. Plaintiff alleges that some Defendants owned or operated storage or distribution facilities or refineries in Hawai‘i, *id.* ¶¶ 21(k), 22(k), 26(l); marketed fossil fuel products in Hawai‘i through branded service stations, *id.* ¶¶ 21(k), 22(k), 23(k); maintained websites and smartphone applications accessible in Hawai‘i and made credit cards available to Hawai‘i residents, *id.* ¶¶ 19(k), 21(k), 22(k), 23(k), 24(j), 26(l); and are registered to do business and have registered agents in Hawai‘i, *id.* ¶¶ 20(a), 20(f), 21(g), 22(g), 24(f), 26(f)–(h). But the Complaint does not allege that these activities—individually or even collectively—were anything more than merely incidental to the global climate events that Plaintiff alleges caused its injuries.

In short, Plaintiff does *not* identify any specific misstatement or misrepresentation that a Defendant made *in or targeted at Hawai‘i*, or that the use of any Defendant's products *in Hawai‘i* caused its injuries; rather, Plaintiff alleges that it suffered injuries from the production, promotion, and use of oil and gas products occurring in virtually every State in this Nation and every country in the world.

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[3] The Complaint improperly conflates the activities of Defendants with the activities of their separately organized predecessors, subsidiaries, or affiliates. There is no factual basis alleged in the Complaint for imputing to any Defendant the alleged jurisdictional contacts of any other entity. And Defendants deny that their subsidiaries' fossil-fuel operations can be imputed to them for jurisdictional purposes. Nor is there a legal basis to do so, as this Court held in *Honolulu*. Nevertheless, even assuming *arguendo* Plaintiff's (erroneous) imputation of forum-related contacts for the purpose of this Joint Memorandum, Plaintiff's allegations provide an insufficient basis for personal jurisdiction. Defendants reserve all rights to challenge Plaintiff's incorrect imputation theory and allegations about corporate relationships for any other purpose or proceeding.

III. LEGAL STANDARD

"[W]hether personal jurisdiction exists over an out-of-state defendant involves two inquiries: whether a forum state's long-arm statute permits service of process, and whether the assertion of personal jurisdiction would violate due process." *Haw. Airboards, LLC v. Nw. River Supplies, Inc.*, 887 F. Supp. 2d 1068, 1070 (D. Haw. 2012) (internal citation and quotation marks omitted);[4] *see also Norris v. Six Flags Theme Parks, Inc.*, 102 Haw. 203, 207 (2003) ("Personal jurisdiction exists when (1) the defendant's activity falls under the State's long-arm statute, and (2) the application of the statute complies with constitutional due process."). "Because Hawaii's long-arm statute is co-extensive with federal due process requirements, the jurisdictional analyses under Hawaii law and federal law merge into one analysis." *Haw. Airboards*, 887 F. Supp. 2d at 1070; *see Cowan v. First Ins. Co. of Haw., Ltd.*, 61 Haw. 644, 649 (1980) ("Hawaii's Long-arm Statute, [Haw. Rev. Stat. § 634-35], was adopted to expand the jurisdiction of the State's courts to the extent permitted by the due process clause of the Fourteenth Amendment.").

In applying the Due Process Clause, courts have recognized two types of personal jurisdiction: general and specific. *Bristol-Myers Squibb*, 137 S. Ct. at 1779–80; *see also Hart v. Hart*, 110 Haw. 294, 298 (Ct. App. 2006). General jurisdiction allows a court to adjudicate any claim against a defendant, regardless of the connection between the claim and the forum, so long as the defendant is "at home" in that forum. *Bristol-Myers Squibb*, 137 S. Ct. at 1779–80 (internal quotation marks omitted). Specific jurisdiction applies "only as to a narrower class of claims"—these claims "must arise out of or relate to the defendant's contacts with the forum." *Ford Motor*, 141 S. Ct. at 1025 (internal quotation marks omitted).

When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction over the defendant. *Victory Carriers, Inc. v. Hawkins*, 44 Haw. 250, 259 (1960). To carry that burden, Plaintiff must allege facts sufficient to make out a "*prima facie*" case for personal jurisdiction. *Kawananakoa*, 2020 WL 5814399 at *2 (citation omitted). Further, Plaintiff must establish personal jurisdiction over *each* defendant with respect to *each* claim. *Cisneros v. Trans Union, L.L.C.*, 293 F. Supp. 2d 1156, 1163 (D. Haw. 2003).

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[4] Hawai'i courts regularly look to federal court decisions regarding personal jurisdiction as persuasive authority. *See In Interest of Doe*, 83 Haw. at 374; *Kawananakoa v. Marignoli*, 148 Haw. 278, 2020 WL 5814399, at *2–3 (Ct. App. Sept. 30, 2020) (Summary Disposition Order).

IV. ARGUMENT

Plaintiff does not, and cannot, allege facts that support this Court's exercise of personal jurisdiction over Defendants for the claims asserted in the Complaint. There is no general jurisdiction over Defendants because none of them is "at home" in Hawai'i. Nor is there specific jurisdiction because (1) the Complaint avers, as it must, that Plaintiff's alleged injuries arise out of and relate to *worldwide* conduct by countless actors, not Defendants' alleged contacts with Hawai'i; (2) Defendants did not have "clear notice" that as a result of their alleged activities in Hawai'i they could be sued here for production and marketing activities occurring around the world; and (3) exercising jurisdiction would be constitutionally unreasonable.

A. Defendants Are Not Subject to General Jurisdiction in Hawai'i.

Plaintiff does not allege that Defendants are subject to general jurisdiction in Hawai'i. Plaintiff concedes that none of the Defendants is incorporated or headquartered in Hawai'i. Compl. ¶¶ 19(a), 19(f), 21(a), 21(f)–(g), 22(a), 22(g), 23(a), 24(a), 24(f), 25(a), 26(a), 26(f)–(h). Thus, no Defendant is "at home" in this State. *Daimler*, 571 U.S. at 139 (citation omitted); *Yamashita v. LG Chem, Ltd.*, 2020 WL 4431666, at *7 (D. Haw. Jul. 31, 2020) (applying *Daimler* and holding that defendants were not "at home" in Hawai'i). And Defendants' business activities in Hawai'i do not create general jurisdiction because it "would be 'unacceptably grasping' to approve the exercise of general jurisdiction wherever a corporation 'engages in a substantial, continuous, and systematic course of business,'" much less over Defendants with limited contacts in Hawai'i. *Hartford Mut. Ins. Co. v. Hoverzon, LLC*, 2021 WL 461760, at *2 (D. Md. Feb. 9, 2021) (quoting *Daimler*, 571 U.S. at 138). Therefore, the Court lacks general jurisdiction over Defendants in Hawai'i.

B. Defendants Are Not Subject to Specific Jurisdiction in Hawai'i.

Because no Defendant is subject to general jurisdiction in Hawai'i, Plaintiff may proceed against each Defendant in this forum only if it can establish specific jurisdiction over *each* Defendant independently, which it has not done, and cannot do. *See Cisneros*, 293 F. Supp. 2d at 1163. Specific jurisdiction exists only if: (1) the defendant purposefully availed itself of the privilege of conducting activities in the State; (2) the plaintiff's claims arise out of or relate to those activities directed at the State; ***and*** (3) the exercise of personal jurisdiction would be constitutionally reasonable. *In Interest of Doe*, 83 Haw. at 374. These jurisdictional restrictions "are more than a guarantee of immunity from inconvenient or distant litigation. They are a

consequence of territorial limitations on the power of the respective States," and a State's exercise of sovereign power "implie[s] a limitation on the sovereignty" of other States and even foreign nations. *Bristol-Myers Squibb*, 137 S. Ct. at 1780 (alteration in original) (internal citation and quotation marks omitted). Accordingly,

> [e]ven if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another State; even if the forum State has a strong interest in applying its law to the controversy; even if the forum State is the most convenient location for litigation, the Due Process Clause, acting as an instrument of interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.

Id. at 1780–81 (alteration in original) (quoting *World-Wide Volkswagen*, 444 U.S. at 294).

Plaintiff does not allege a *prima facie* case of specific jurisdiction because, with respect to each Defendant, the Complaint, on its face, fails at a minimum to satisfy the second and third requirements for specific jurisdiction: The claims asserted in the Complaint do not arise from or relate to Defendants' alleged contacts with Hawai‘i, and exercising personal jurisdiction in this case would be constitutionally unreasonable.[5]

1. Plaintiff's Claims Do Not Arise Out of or Relate to Defendants' Alleged Contacts with Hawai‘i.

Plaintiff cannot establish specific jurisdiction over each Defendant because the Complaint does not, and cannot, allege claims that "arise out of or relate to" each Defendant's alleged forum contacts. *Ford Motor*, 141 S. Ct. at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780); *In Interest of Doe*, 83 Haw. at 374. While claims based on general jurisdiction "may concern events and conduct anywhere in the world," "[s]pecific jurisdiction is different: It covers defendants less intimately connected with a State, but only as to *a narrower class of claims*." *Ford Motor*, 141 S. Ct. at 1024 (emphasis added). For there to be specific jurisdiction, "[t]he plaintiff's claims . . . 'must arise out of or relate to the defendant's contacts' with the forum." *Id.* at 1025 (quoting *Bristol-Myers Squibb*, 137 S. Ct. at 1780). "When there is no such connection, specific jurisdiction

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[5] Because this Motion can be resolved based on Plaintiff's failure to establish that its injuries arise from or relate to Defendants' alleged contacts with Hawai‘i, or that exercising personal jurisdiction over Defendants would be reasonable, in deciding this Motion the Court need not consider whether Defendants are alleged to have purposefully availed themselves of the privilege of conducting business in Hawai‘i. Nevertheless, Defendants do not concede that prong is satisfied here, and reserve all rights to challenge purposeful availment in separate memoranda or at a later stage of this proceeding if necessary.

is lacking regardless of the extent of a defendant's unconnected activities in the State." *Bristol-Myers Squibb*, 137 S. Ct. at 1781.

The Supreme Court's decision in *Ford Motor* is instructive and confirms there is no specific personal jurisdiction over Defendants here. In *Ford Motor*, two individual consumers sued the automobile manufacturer Ford in Montana and Minnesota state courts, asserting product-liability claims stemming from allegedly defective automobiles that Ford initially manufactured and sold out of state but were *used* and *caused accidents* in the forum States. The Supreme Court held that Ford's in-state sales and marketing activities were sufficiently related to the plaintiffs' claims for injuries that were caused by the in-state use and malfunction of the vehicles to satisfy the arising under prong. Under *Ford Motor*, personal jurisdiction exists where "a company . . . [1] serves a market for a product in the forum State and [2] the product *malfunctions there*" "[3] *caus[ing] injury in the State* to one of its residents." 141 S. Ct. at 1022, 1026–27 (emphases added).

Critically, the Court held that in order to base personal jurisdiction on in-state "advertising, selling, and servicing," the plaintiff's alleged injuries must be *caused by the use and malfunction* of the defendant's products within the forum State. *Id.* at 1022. This holding—*i.e.*, that, at a minimum, the use of the defendant's product in the forum State caused an injury to the plaintiff in the forum State as a result of malfunctioning there—was essential to the Court's finding that there was personal jurisdiction. As the Court explained in the very first paragraph of its decision: "When a company like Ford serves a market for a product in a State and *that product* causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Id.* at 1022 (emphasis added).

The Court reiterated this core component of its personal-jurisdiction holding multiple times throughout the decision, explaining that the exercise of jurisdiction was appropriate because the plaintiffs "used the allegedly defective products in the forum States" and "suffered injuries when those products malfunctioned there." *Id.* at 1031. Put differently, "specific personal jurisdiction attaches . . . when a company like Ford serves a market for a product in the forum State *and the product malfunctions there*." *Id.* at 1027 (emphasis added). In reaching its conclusions, the Court relied heavily on its prior decision in *World-Wide Volkswagen*, where the Court reasoned that, if a "manufacturer or distributor" makes "efforts . . . to serve, directly or indirectly, the market for its product" in certain States, "it is not unreasonable to subject it to suit in one of those States if its

allegedly defective merchandise ***has there been the source of injury*** to its owner or to others." *Id.* at 1027 (quoting 444 U.S. at 297) (emphasis added). Because the *Ford Motor* plaintiffs alleged that the vehicles at issue "malfunctioned and injured them in [the forum] States," *id.* at 1028, Ford's in-state activities, including marketing and advertising of those vehicles, were sufficiently related to the plaintiffs' claims and alleged injuries.

The Court explained that the test is whether the suit "arise[s] out of *or relate*[*s*] *to* the defendant's contacts with the forum." *Id.* at 1026 (emphasis in original). "The first half of that standard asks about causation," whereas the second half "contemplates that *some* relationships will support jurisdiction without a causal showing." *Id.* (emphasis added). But the Court cautioned that this "does not mean anything goes," and in "the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits." *Id.* In *Ford Motor*, the Court placed "real limits" on the exercise of personal jurisdiction by requiring that the defendant's products were used and malfunctioned within the forum State causing injury.

Courts across the country have recognized that *Ford Motor* requires the injury to occur in-state as a result of the use of the product in-state. For example, the Rhode Island Supreme Court recently held that "it was key in *Ford* that the injury . . . occurred in the forum state" where a "car accident occurred in the state where the suit was brought." *Martins v. Bridgestone Am. Tire Ops., LLC*, 266 A.3d 753, 761 (R.I. 2022). Indeed, the *Martins* court emphasized that *Ford Motor* held specific personal jurisdiction was appropriate "[w]hen a company like Ford serves a market for a product in a [s]tate and that product causes injury *in the [s]tate* to one of its residents[.]" *Id.* (quoting 141 S. Ct. at 1022) (emphasis in *Martins*). And like *Ford Motor*, the *Martins* court also relied on *World-Wide Volkswagen*, explaining that "[t]he phrase 'has *there* been the source of injury' in *World-Wide Volkswagen* suggests that the product has both been directed toward the forum state *and* has caused injury in the forum state." *Id.* (emphasis in *Martins*). Ultimately, there was no personal jurisdiction in *Martins* because the plaintiff's claims did not arise from the use and malfunction of the product in Rhode Island, even though plaintiff alleged that defendants had "extensive contacts with Rhode Island and their intent [was] to conduct business in Rhode Island." *Id.* at 759.

Similarly, the Ninth Circuit has held that, where a plaintiff's alleged "injuries in [the] case" do not "arise out of or relate to [the defendant's] contacts with the forum," *Ford Motor* precludes the exercise of specific personal jurisdiction. *LNS Enters. LLC v. Cont'l Motors, Inc.*, 22 F.4th

852, 863 (9th Cir. 2022). The court explained that the Supreme Court found there was personal jurisdiction in *Ford Motor* "because '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.* at 862 (quoting *Ford Motor*, 141 S. Ct. at 1028) (emphasis added). In *LNS*, the Ninth Circuit ultimately held that personal jurisdiction was lacking even though the plaintiffs' injuries resulted from a malfunction of an aircraft in Arizona because the defendants' contacts with Arizona were insufficient. *Id.* at 862–64. *See also, e.g.*, *Wallace v. Yamaha Motors Corp, U.S.A.*, No. 19-2459, 2022 WL 61430, at *4 (4th Cir. Jan. 6, 2022) ("In *Ford*, the Court repeatedly emphasized that the injuries occurred in the forum states."); *Luciano v. SprayFoamPolymers.com, LLC*, 625 S.W.3d 1, 17 (Tex. 2021) (citing *Ford Motor* and explaining "that the lawsuit arises from an injury which occurred in the forum state is a relevant part of the relatedness prong of the analysis").

Accordingly, under *Ford Motor* and its progeny, a mere connection or affiliation between a plaintiff's claims and a defendant's in-state activities is plainly insufficient. It is not enough for Plaintiff to allege, as it does here, that its claims are predicated, at least in part, on tortious marketing and that Defendants marketed their products nationally, including in Hawai'i. Rather, the marketing in Hawai'i *itself*—which Plaintiff does not even identify in its Complaint—must have a sufficient relationship to the claims and, more importantly, to Plaintiff's alleged injuries.

Here, neither the events giving rise to Plaintiff's claims nor its alleged injuries occurred as the result of the use of any of Defendants' products *in Hawai'i*. Rather, Plaintiff's Complaint asserts that the alleged injuries occurred or will occur only as a result of total, cumulative, worldwide greenhouse gas emissions from global combustion of fossil fuels produced and sold by Defendants as well as countless other sources. *See* Compl. ¶¶ 2, 42–43. Plaintiff alleges that its injuries are "***all due*** to anthropogenic global warming," *id.* ¶ 10 (emphasis added), caused by the "increase in atmospheric CO_2 and other greenhouse gases" from the worldwide combustion of oil and gas over the past century, *id.* ¶ 4. Indeed, Plaintiff alleges that "[t]he mechanism by which human activity causes global warming"—and thereby causes Plaintiff's injuries—"is overwhelmingly . . . anthropogenic greenhouse gas emissions." *Id.* ¶ 42. And Plaintiff alleges that "*Global*" emissions from the *worldwide* use of fossil fuel products (and other sources), not emissions from any specific location, lead to the climate disruption upon which it bases its claims. *Id.* ¶ 42; *see also id.* ¶ 220 ("greenhouse gasses [sic] quickly diffuse and comingle in the atmosphere").

The alleged effects of global climate change in Hawai‘i also cannot be said to "arise from or relate to" Defendants' contacts with Hawai‘i because, as other courts have recognized, "the undifferentiated nature of greenhouse gas emissions from all global sources and their worldwide accumulation over long periods of time" means that "there is no realistic possibility of tracing any particular alleged effect of global warming to any particular emissions by any specific person, entity, [or] group at any particular point in time." *Native Vill. of Kivalina v. ExxonMobil Corp.*, 663 F. Supp. 2d 863, 880 (N.D. Cal. 2009), *aff'd*, 696 F.3d 849 (9th Cir. 2012). *See also City of New York v. Chevron Corp.*, 993 F.3d 81, 92 (2d Cir. 2021) ("Since greenhouse gases once emitted become well mixed in the atmosphere, emissions in New York or New Jersey may contribute no more to flooding in New York than emissions in China.") (quoting *Am. Elec. Power Co., Inc. v. Connecticut*, 564 U.S. 410, 422 (2011)) (cleaned up). The Hawai‘i Supreme Court similarly holds that "it is commonly understood that '[a]ir pollution is transient' and is 'heedless' of even 'state boundaries.'" *In re Application of Maui Elec. Co.*, 141 Haw. 249, 268 (2017) (citation omitted). In other words, "it is not plausible to state which emissions—emitted by whom and at what time in the last several centuries and at what place in the world—'caused' Plaintiff[s'] alleged global warming related injuries." *Native Vill. of Kivalina*, 663 F. Supp. 2d at 881 (emphasis added). And, as Plaintiff itself alleges, "it is not possible to determine the source of any particular individual molecule of CO_2 in the atmosphere attributable to anthropogenic sources because such greenhouse gas molecules do not bear markers that permit tracing them to their source, and because greenhouse gasses [sic] quickly diffuse and comingle in the atmosphere." *See, e.g.*, Compl. ¶¶ 220, 232, 244, 253.

Plaintiff does not, and cannot, allege that the use of any of Defendants' products in Hawai‘i—regardless whether such use was motivated by Defendants' alleged misrepresentations or failure to warn—caused global climate change and the injuries Plaintiff alleges it has suffered as a result. That is because it is undisputable that *total* energy consumption in Hawai‘i, with a population of fewer than 2 million people, accounts for a *de minimis* percentage of energy consumption in the United States and around the world. Greenhouse gas emissions resulting from the use of oil and natural gas Defendants may produce, sell, or promote in Hawai‘i (even assuming *arguendo* that such use was caused by Defendants' allegedly tortious marketing) thus make up, at most, a minuscule amount of the global greenhouse gas emissions that contribute to climate change, and, ultimately, Plaintiff's alleged injury. Unlike in *Ford Motor*, Plaintiff's alleged

injuries were not caused by the use of Defendants' products in Hawai'i. Indeed, whereas in *Ford Motor*, the plaintiffs' injuries were caused by the use and malfunction of the product in the forum States, here Plaintiff alleges that its injuries are caused by the cumulative use of oil and gas and other sources of emissions in *every* State in the country and around the world.

At most, Defendants' alleged in-state activities were "merely incidental" to Plaintiff's alleged climate-change injuries, an approach to personal jurisdiction that the Hawai'i Supreme Court has squarely rejected. *See Shaw*, 76 Haw. at 328. In *Shaw*, the plaintiff sued the defendant, a California title company retained to provide escrow services and title insurance for refinancing property located in California, after the defendant issued invalid checks to plaintiff and later reissued checks directly to plaintiff's creditors. *Id.* In analyzing personal jurisdiction under the Hawai'i long-arm statute, which "requires that the cause of action relate to the defendant's contacts in Hawaii," the court held that the defendant's forum contacts—including escrow documents, fax transmissions, telephone calls, and checks sent to Hawai'i—were "merely incidental" to the transaction that created the cause of action and were therefore insufficiently "related to" the action. *Id.* Similarly, the Ninth Circuit has consistently held, in dismissing claims for lack of specific personal jurisdiction, that there must be a "substantial connection" between the defendant's in-state conduct and the plaintiff's claims. *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (defendant's alleged act must create "a substantial connection with the forum") (quotation omitted) (citing *Bristol-Meyers Squibb*, 137 S. Ct. at 1780); *Picot v. Weston*, 780 F.3d 1206, 1212 (9th Cir. 2017) (same).[6]

Because Plaintiff's injuries did not result from the use of Defendants' oil and gas products in Hawai'i, Plaintiff's generalized allegations that Defendants tortiously marketed those products

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[6] Consistent with the United States and Hawai'i Supreme Courts, courts around the country have held that "[t]here must be *more than just an attenuated connection* between the contacts and the claim; the defendant's in-state conduct must form an *important*, or [at least] *material*, element of proof in the plaintiff's case." *Phillips v. Prairie Eye Ctr.*, 530 F.3d 22, 27 (1st Cir. 2008) (emphases added) (internal quotation marks omitted); *see also, e.g.*, *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 340 (2d Cir. 2016) (requiring that the "nucleus" or "focal point" of the plaintiff's claims be in the forum state); *CSR, Ltd. v. Taylor*, 983 A.2d 492, 503 (Md. 2009) (requiring that a cause of action be "*directly related* to[] the defendant's contacts with the forum state") (emphasis added); *Moki Mac River Expeditions v. Drugg*, 221 S.W.3d 569, 585 (Tex. 2007) ("[T]here must be a *substantial connection* between [the forum] contacts and the operative facts of the litigation.") (emphasis added); *Keefe v. Kirschenbaum & Kirschenbaum, P.C.*, 40 P.3d 1267, 1270–71 (Colo. 2002) (requiring a "substantial connection").

in Hawai‘i fails to satisfy the personal jurisdictional analysis. Put differently, if the in-state use of a product does not cause an injury in the State, then personal jurisdiction is lacking irrespective of whether the defendant markets and advertises those products in the State. Those are the fundamental lessons from *World-Wide Volkswagen* and *Ford Motor*, and they compel dismissal here.

In ruling on Defendants' motion to dismiss for lack of personal jurisdiction in the *Honolulu* action, the Court correctly recognized that "the US Supreme Court has not and does not require a showing that [a] plaintiff's claim occurred due to or because of a defendant's in-state conduct." *Honolulu*, Dkt. 622, at 4. But the Supreme Court *does* require that a plaintiff's alleged injury occurred because of the in-state *use* of the defendant's product. To hold otherwise would mean that each Defendant would be subject to specific personal jurisdiction in Hawai‘i for alleged injuries that did not occur as a result of any in-state activities at all. For example, under Plaintiff's theory, a Defendant would be subject to personal jurisdiction for alleged injuries caused by marketing and promotion activities in California that supposedly increased emissions from use of that Defendant's products in California, simply because the Defendant also engaged in some amount of marketing activities in Hawai‘i. That would so broadly expand the bounds of specific jurisdiction that there would no longer be any difference between it and general jurisdiction; a corporation that advertises a product could be haled into court in any State that the advertising reaches, regardless of where the product is used or malfunctions. Such a rule would be contrary to the Supreme Court's holding that there are "real limits" to specific jurisdiction. *Ford Motor*, 141 S. Ct. at 1026.

In both *World-Wide Volkswagen* and *Ford Motor*, the Supreme Court recognized personal jurisdiction would be appropriate over product manufacturers when plaintiffs alleged "they suffered injuries when those products malfunctioned in the forum States." *Ford Motor*, 141 S. Ct. at 1031; *see also World-Wide Volkswagen*, 444 U.S. at 297. But here, Plaintiff did not suffer its alleged injuries from even the *normal* use of Defendants' products in Hawai‘i, let alone any product "malfunction" in Hawai‘i. Because Plaintiff's claimed injuries are premised on *global* emissions, those injuries would still have occurred, and would be exactly the same, even if *no* oil or gas was *ever* used in Hawai‘i. And because the use of Defendants' products in Hawai‘i is not alleged to be (and cannot be) the "source" of Plaintiff's injuries, any alleged marketing in Hawai‘i is not sufficiently related to the claims as a matter of law. *See Ford Motor*, 141 S. Ct. at 1027.

Plaintiff therefore fails to allege that its claims "arise out of or relate to" Defendants' contacts with Hawai‘i, and the Complaint must be dismissed.

2. Defendants Are Not on "Clear Notice" that Personal Jurisdiction Would Exist in Hawai‘i for Suits Based on Global Climate Change.

In *Ford Motor*, the Supreme Court also held that the "fair[ness]" requirement of the Due Process Clause requires a defendant to have "clear notice" that, in light of its activities in the forum, it is susceptible to a lawsuit in the State for the claims asserted by the plaintiff. *Id.* at 1025, 1030. Unlike in *Ford Motor*, where the Court found Ford had clear notice of potential lawsuits for harms caused by "product malfunctions" within the State, *id.* at 1027, the "clear notice" requirement is not met here.

Plaintiff did not suffer injury from a product malfunction in Hawai'i. Plaintiff does not allege—nor could it—that the use of each Defendant's products in Hawai‘i, or each Defendant's promotion of those products in Hawai'i, is sufficient to give rise to global climate change and thus to Plaintiff's alleged physical injuries. Plaintiff's claims are instead predicated upon extra-forum, *worldwide* conduct by each Defendant and countless others. Even accepting all of Plaintiff's allegations as true, Defendants did not have "clear notice" that they would become subject to jurisdiction in this State's courts for the alleged local effects of decades-long global climate change—a complex worldwide phenomenon resulting from the cumulative effects of global greenhouse gas emissions by countless individuals and entities (including Plaintiff itself). Plaintiff's attempt at "[a]rtful pleading" does not change the fact that this case is about *global* climate change. *City of New York*, 993 F.3d at 91, 97. Such claims inherently concern transboundary and global conduct, thus amounting to "an extraterritorial nuisance action." *Id.* at 91–92, 103.

Defendants had no way to anticipate that, by allegedly processing, marketing, and/or selling fossil fuel products in Hawai‘i, they could be subjected to liability for alleged local environmental injuries resulting from the undifferentiated conduct of countless individuals and entities who consumed fossil fuel products around the world. And to the extent Plaintiff's claims are based on *worldwide* activities, Defendants had no way to avoid being subject to personal jurisdiction here—which is significant because a defendant must be able to take steps to avoid jurisdiction for the exercise of jurisdiction to be reasonable and comport with due process. *See Ford Motor*, 141 S. Ct. at 1025 (a defendant must have "fair warning" that its activities could

subject it to jurisdiction in a state, which allows the defendant to "structure its primary conduct to lessen or avoid exposure to a given State's courts"); *World-Wide Volkswagen*, 444 U.S. at 297 (the clear notice requirement ensures that a potential defendant has had the ability to "act to alleviate the risk of burdensome litigation" including by "severing its connection with the State"). This case is thus far afield from *Ford Motor*, where the Supreme Court held that Ford should reasonably have expected to be sued for *in-forum* injuries resulting directly from *in-forum* use of specific products it sold, advertised, marketed, and serviced widely *in the forum*. Exercising personal jurisdiction over Defendants in this case would deprive Defendants of the "fair warning" that "a particular activity may subject [them] to the jurisdiction of a foreign sovereign," and thus would not comport with core principles of due process. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985) (internal quotation marks omitted) (alteration in original); *see also In Interest of Doe*, 83 Haw. at 373. Such an unbounded exercise of jurisdiction exceeds the limits of due process.[7]

3. Exercising Personal Jurisdiction Over Defendants Would Be Unreasonable And Conflict With Federalism Principles.

Because Plaintiff has not alleged, and cannot allege, facts that, if true, would show that their claims arise from or relate to each Defendant's alleged contacts with Hawai‘i, the Court need not reach the reasonableness inquiry. Nonetheless, the unreasonableness of exercising jurisdiction here provides an additional, independent reason to dismiss the Complaint. *See, e.g.*, *Ford Motor*, 141 S. Ct. at 1024 (holding that exercise of jurisdiction must be "reasonable, in the context of our federal system of government.") (internal citation and quotation marks omitted); *Bristol-Myers Squibb*, 137 S. Ct. at 1786 ("[T]he exercise of jurisdiction must be reasonable under the circumstances.") (Sotomayor, J., dissenting); *In Interest of Doe*, 83 Haw. at 374 (holding that exercise of jurisdiction "must be reasonable.") (citation omitted).

In determining whether jurisdiction is reasonable under the Due Process Clause, courts consider "the burden on the defendant, the forum State's interest in adjudicating the dispute, the plaintiff's interest in obtaining convenient and effective relief, the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the

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[7] The Supreme Court acknowledged in *Ford Motor* that that case's jurisdictional analysis does not necessarily apply in other settings. *See* 141 S. Ct. at 1028 n.4. For example, internet transactions "raise doctrinal questions of their own" and may require a more tailored approach. *Id.* So too here. Exercising specific jurisdiction in this novel context would exceed the bounds of due process recognized by the Court in *Ford Motor* and many other cases.

several States in furthering fundamental substantive social policies." *Burger King*, 471 U.S. at 477 (quoting *World-Wide Volkswagen*, 444 U.S. at 292) (internal quotations omitted). The primary concern in assessing the reasonableness of personal jurisdiction is the burden of "submitting to the coercive power" of a court in light of the limits of interstate federalism on a court's ability to exercise jurisdiction. *Bristol-Myers Squibb*, 137 S. Ct. at 1780. "[R]estrictions on personal jurisdiction 'are more than a guarantee of immunity from inconvenient or distant litigation. They are a consequence of territorial limitations on the power of the respective States.'" *Id.* (quoting *Hanson v. Denckla*, 357 U.S. 235, 251 (1958)). Indeed, the Supreme Court has admonished courts to take into consideration the interests of the "several States," and emphasized that "[g]reat care and reserve should be exercised when extending our notions of personal jurisdiction into the international field." *Asahi Metal Indus. Co. v. Superior Ct.*, 480 U.S. 102, 115 (1987) (internal quotation marks omitted).

In *Honolulu*, while the Court focused on the "burden" Defendants would face from litigating in Hawai'i and the location of the likely relevant evidence and witnesses, *Honolulu*, Dkt. 622 at 5–6, fundamental constitutional principles also weigh decisively against the exercise of personal jurisdiction in this case.

First, exercising specific jurisdiction over these out-of-state Defendants for global climate change-related claims would expand the jurisdiction of this Court well beyond the limits of due process, burdening Defendants by interfering with the power of each Defendant's home State's jurisdiction over its corporate citizens. It would also enable States to interfere with commercial conduct that occurred entirely outside their own borders in violation of the "limits of interstate federalism." *Bristol-Myers Squibb*, 137 S. Ct. at 1780. This is not a case where one State has a more "significant interest[]" in addressing climate change. *See Ford Motor*, 141 S. Ct. at 1030. Plaintiff's position would resurrect the loose approaches to personal jurisdiction that the Supreme Court rejected in *Daimler* and *Bristol-Myers Squibb*, and would make companies targets for climate change suits in every forum in the country based on the barest of activity within the forum, or perhaps even without any activity in the forum at all. As the Supreme Court explained in *Asahi*, a products liability case involving the sale and distribution of tires to California by out-of-state defendants:

> The procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal interest in Government's foreign

> relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State.

480 U.S. at 115. This problem is particularly pronounced with respect to foreign Defendants.[8] Under Plaintiff's theory, *any* foreign company could be forced to appear before *any* court in the United States based on its alleged contribution to global climate change, so long as that company operates within that jurisdiction. Well-settled principles of due process do not permit such a result.

Second, the assertion of jurisdiction here would offend the principles underlying the interstate judicial system because Plaintiff seeks to use Hawai'i tort law to penalize and regulate Defendants' nationwide (indeed, worldwide) activities, including fossil fuel production and sale—activities heavily regulated by the federal government, all 50 States, and every other country in the world in which these companies operate. As the Second Circuit observed, "a substantial damages award like the one requested by the City would effectively regulate the Producers' behavior far beyond [the State]'s borders." *City of New York*, 993 F.3d at 92. The interests of the "interstate judicial system" are not served by requiring witnesses and counsel to litigate the same climate-change actions simultaneously under different legal rules, especially given the substantial risk of inconsistent decisions. "The interest in obtaining the most efficient resolution of this controversy points away from Hawai'i." *In Interest of Doe*, 83 Haw. at 376.

Third, the "substantive social policies" Plaintiff seeks to advance—curbing energy production and the use of fossil fuels or allocating the downstream costs of consumer use to the energy companies to bear directly—are not shared across all the various States and nations. Indeed, the Second Circuit recognized that "amicus briefs [filed by States] on both sides of this dispute aptly illustrate[] that this is an interstate matter raising significant federalism concerns." *City of New York*, 993 F.3d at 92; *see also id.* at 93 ("[A]s states will invariably differ in their assessment of the proper balance between these national and international objectives, there is a real risk that subjecting the [energy companies'] global operations to a welter of different states' laws could undermine important federal policy choices."); *Oakland I*, 325 F. Supp. 3d at 1026

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[8] As Plaintiff acknowledges, Defendant Shell plc (f/k/a Royal Dutch Shell plc) is incorporated in England and Wales, Compl. ¶ 21(a), and Defendant BP plc is registered in England and Wales with its principal place of business in London, England, *id.* ¶ 24(a).

("[P]laintiffs would have a single judge or jury in California impose an abatement fund as a result of such overseas behavior. Because this relief would effectively allow plaintiffs to govern conduct and control energy policy on foreign soil, we must exercise great caution."). Plaintiff's claims here similarly implicate the interests of numerous other States and nations, and thus this Court cannot reasonably exercise jurisdiction over Defendants. *See Asahi*, 480 U.S. at 115–16 (holding in part that the "international context" and "substantive interests of other nations," compared with "the slight interests of the plaintiff and the forum State," rendered the exercise of personal jurisdiction "unreasonable and unfair")

V. CONCLUSION

For the foregoing reasons, Plaintiff's claims against the out-of-state Defendants should be dismissed in their entirety, with prejudice, for lack of personal jurisdiction.

DATED: Maui, Hawai'i, June 24, 2022.

RESPECTFULLY SUBMITTED,

/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*
KELLOGG HANSEN TODD FIGEL & FREDERICK PLLC

Attorneys for Defendants Shell plc (f/k/a Royal Dutch Shell plc), Shell USA, Inc. (f/k/a Shell Oil Company), and Shell Oil Products Company LLC

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

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

Steven M. Bauer, *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*
Joshua D. Dick, *pro hac vice*
GIBSON, DUNN & CRUTCHER LLP

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

Attorneys for Defendants Chevron Corporation and Chevron U.S.A. Inc.

/s/ Lisa A. Bail
Lisa A. Bail
David J. Hoftiezer
GOODSILL ANDERSON QUINN & STIFEL LLP

Matthew T. Heartney, *pro hac vice*
Jonathan W. Hughes, *pro hac vice*
John D. Lombardo, *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
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 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.

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

DEBORAH K. WRIGHT
DOUGLAS R. WRIGHT
Wright & Kirschbraun

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 Corporation and ExxonMobil Oil Corporation

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI`I

COUNTY OF MAUI, Plaintiff, v. SUNOCO LP; ALOHA PETROLEUM, LTD.; ALOHA PETROLEUM LLC; EXXON MOBIL CORP.; EXXONMOBIL OIL CORPORATION; ROYAL DUTCH SHELL PLC; SHELL OIL COMPANY; SHELL OIL PRODUCTS COMPANY LLC; CHEVRON CORPORATION; CHEVRON U.S.A. INC.; BHP GROUP LIMITED; BHP GROUP PLC; BHP HAWAII INC.; BP PLC; BP AMERICA INC.; MARATHON PETROLEUM CORP.; CONOCOPHILLIPS; CONOCOPHILLIPS COMPANY; PHILLIPS 66; PHILLIPS 66 COMPANY; AND DOES 1 through 100, inclusive, Defendants.	CIVIL NO. 2CCV-20-0000283 (Other Non-Vehicle Tort) **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, a copy of the foregoing was duly served electronically through JEFS and a copy sent via e-mail to the following parties at their last known addresses:

***MOANA M. LUTEY** **RICHELLE M. THOMSON** **KEOLA R. WHITTAKER** Department of Corporation Counsel County of Maui 200 South High Street Wailuku, HI 96793	moana.lutey@co.maui.hi.us richelle.thomson@co.maui.hi.us keola.whittaker@co.maui.hi.us
VICTOR M. SHER *(pro hac vice)* **MATTHEW K. EDLING** *(pro hac vice)* **TIMOTHY R. SLOANE** *(pro hac vice)* **STEPHANIE D. BIEHL** *(pro hac vice)*	*vic@sheredling.com* matt@sheredling.com tim@sheredling.com stephanie@sheredling.com

Sher Edling LLP
100 Montgomery St., Suite 1410
San Francisco, CA 94104

Attorneys for Plaintiff
COUNTY OF MAUI

***C. MICHAEL HEIHRE** mheihre@cades.com
MICHI MOMOSE mmomose@cades.com
Cades Schutte
Cades Schutte Building
1000 Bishop Street 12th Floor
Honolulu, HI 96813

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

MEGAN BERGE *(pro hac vice)* megan.berge@bakerbotts.com
STERLING MARCHAND *(pro hac vice)* sterling.marchand@bakerbotts.com
Baker Botts LLP
700 K Street, N.W.
Washington, DC 20001-5692

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

***LISA A. BAIL** lbail@goodsill.com
DAVID J. HOFTIEZER dhoftiezer@goodsill.com
Goodsill Anderson Quinn & Stifel LLP
First Hawaiian Center
999 Bishop St., Suite 1600
Honolulu, HI 96813

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

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

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

DEBORAH K. WRIGHT firm@wkmaui.com
KEITH D. KIRSCHBRAUN keith@wkmaui.com
DOUGLAS R. WRIGHT firm@wkmaui.com
Wright & Kirschbraun
1885 Main St., Suite 108
Wailuku, HI 96793

***PAUL ALSTON** paul.alston@dentons.com
JOHN-ANDERSON L. MEYER john-anderson.meyer@dentons.com
CLAIRE WONG BLACK claire.black@dentons.com
GLENN T. MELCHINGER glenn.melchinger@dentons.com
Dentons US LLP
1001 Bishop Street, 18th Floor
Honolulu, HI 96813

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

Attorneys for Defendants
EXXON MOBIL CORPORATION and
EXXONMOBIL OIL CORPORATION

***JOACHIM P. COX** jcox@cfhawaii.com
RANDALL C. WHATTOFF rwhattoff@cfhawaii.com
Cox Fricke LLP
800 Bethel St., Suite 600
Honolulu, HI 96813

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

Attorneys for Defendants
SHELL PLC (F/K/A ROYAL DUTCH SHELL PLC),
SHELL USA, INC. (F/K/A SHELL OIL COMPANY),
AND SHELL OIL PRODUCTS COMPANY LLC

***CRYSTAL K. ROSE** crose@legalhawaii.com
ADRIAN L. LAVARIAS alavarias@legalhawaii.com
DAVID A. MORRIS dmorris@legalhawaii.com
Lung, Rose, Voss & Wagnild
Topa Financial Center
700 Bishop St., Suite 900
Honolulu, HI 96813

STEVEN M. BAUER *(pro hac vice)* steven.bauer@lw.com
MARGERT A. TOUGH *(pro hac vice)* margaret.tough@lw.com
KATHERINE A. ROUSE *(pro hac vice)* Katherine.Rouse@lw.com
Latham & Watkins LLP
505 Montgomery St., Suite 2000
San Francisco, CA 94111-6538

Attorneys for Defendants
CONOCOPHILLIPS, CONOCOPHILLIPS COMPANY, PHILLIPS 66 COMPANY and PHILLIPS 66

CRYSTAL K. ROSE crose@legalhawaii.com
ADRIAN L. LAVARIAS alavarias@legalhawaii.com
DAVID A. MORRIS dmorris@legalhawaii.com
Lung, Rose, Voss & Wagnild
Topa Financial Center
700 Bishop St., Suite 900
Honolulu, HI 96813

JAMESON R. JONES *(pro hac vice)* jameson.jones@bartlitbeck.com
DANIEL R. BRODY *(pro hac vice)* dan.brody@bartlitbeck.com
Bartlit Beck LLP
1801 Wewatta St., Suite 1200
Denver, Colorado 80202

Attorneys for Defendants
CONOCOPHILLIPS and CONOCOPHILLIPS COMPANY

***MARGERY S. BRONSTER** mbronster@bfrhawaii.com
LANSON K. KUPAU lkupau@bfrhawaii.com
Bronster Fujichaku Robbins
1003 Bishop Street, Suite 2300
Honolulu, HI 96813

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

Attorneys for Defendants
BHP HAWAII INC.

***TED N. PETTIT** tnp@caselombardi.com
Case Lombardi & Pettit
737 Bishop Street Suite 2600
Honolulu, HI 96813

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

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

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

Attorneys for Defendant
MARATHON PETROLEUM CORP.

DATED: Honolulu, Hawaii, June 24, 2022.

/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.