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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

CITY OF OAKLAND, a Municipal Corporation, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through Oakland City Attorney BARBARA J. PARKER,

Plaintiffs,

v.

BP P.L.C., a public limited company of England and Wales, CHEVRON CORPORATION, a Delaware corporation, CONOCOPHILLIPS COMPANY, a Delaware corporation, EXXON MOBIL CORPORATION, a New Jersey corporation, ROYAL DUTCH SHELL PLC, a public limited company of England and Wales, and DOES 1 through 10,

Defendants.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, and THE PEOPLE OF THE STATE OF

First Filed Case: No. 3:17-cv-6011-WHA
Related Case: No. 3:17-cv-6012-WHA

**RESPONSE TO PLAINTIFFS' SUBMISSION
RE: CITY & COUNTY OF HONOLULU V.
SUNOCO LP AND COUNTY OF MAUI V.
SUNOCO LP**

THE HONORABLE WILLIAM H. ALSUP

1 CALIFORNIA, acting by and through the San
2 Francisco City Attorney DENNIS J.
HERRERA,

3 Plaintiffs,

4 v.

5 BP P.L.C., a public limited company of
England and Wales, CHEVRON
CORPORATION, a Delaware corporation,
CONOCOPHILLIPS COMPANY, a Delaware
corporation, EXXON MOBIL
CORPORATION, a New Jersey corporation,
ROYAL DUTCH SHELL PLC, a public
limited company of England and Wales, and
DOES 1 through 10,

Defendants.

On September 29, 2022, Plaintiffs filed with the Court copies of the Complaints in *City & County of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct.), and *County of Maui v. Sunoco LP*, No. 2CCV-20-0000283 (Haw. Cir. Ct.). *See* Dkt. 422.¹ Plaintiffs neglected to mention, however, how the plaintiffs in both *Honolulu* and *Maui* have characterized the claims asserted in their Complaints. The plaintiffs there, unlike here, have stated repeatedly that their claims are based *exclusively* on defendants' promotion and marketing of fossil-fuel products, and contend that the tortious conduct they allege in those lawsuits does not concern the production and sale of those products. To take just a few examples from the plaintiffs' statements to the courts in those cases:

- “This case is about the ***deceptive promotion*** of dangerous products.” Plaintiffs’ Opposition to Defendants’ Joint Motion to Dismiss for Failure to State a Claim, *City & County of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct. July 19, 2021), Dkt. 375 at 1 (emphasis added);
- “Under [p]laintiffs’ theory of their own case, ***the conduct that triggers Defendants’ liability is their concealment and misrepresentation of the climate impacts of their products***. . . . Indeed, so long as Defendants stop their deception, ***they can sell as many fossil-fuel products as they are able (in light of truthful, adequate warnings) without incurring any additional liability*** under [p]laintiffs’ theory of its case.” Plaintiffs’ Response to Defendants’ Supplemental Brief, *City & County of Honolulu v. Sunoco LP*, No. 1CCV-20-0000380 (Haw. Cir. Ct. Sept. 17, 2021), Dkt. 502 at 2 (emphases added);
- “[T]he tortious conduct here [is] Defendants’ ***campaign of deception and misleading promotion***[.]” Plaintiff’s Reply in Support of Motion to Remand, *City & County of Honolulu v. Sunoco LP*, No. 1:20-cv-00163-DKW-RT (D. Haw. Oct. 30, 2020), Dkt. 121 at 13 (emphasis added);
- “[T]he County’s tort claims . . . are ‘***premised on a theory of misrepresentation and disinformation***[.]’” Plaintiff County of Maui’s Position on Transfer to the Environmental Court, *County of Maui v. Sunoco LP*, No. 2CCV-20-0000283 (Haw. Cir. Ct. May 28, 2021), Dkt. 272 at 2 (emphasis added);
- “The City seeks to vindicate the local injuries within its jurisdiction caused by Defendants’ decades-long ***campaign to discredit the science*** of global warming, to ***conceal the catastrophic dangers*** posed by their fossil-fuel products, and to ***misrepresent their role*** in combatting the climate crisis.” Plaintiff City & County of Honolulu’s Motion to Remand to State Court, *City & County of Honolulu v. Sunoco LP*, No. 1:20-cv-00163-DKW-RT (D. Haw. Sept. 11, 2020), Dkt. 116 at 1 (emphases added);

¹ In submitting this response, Defendants BP P.L.C., ConocoPhillips, Exxon Mobil Corporation, and Shell plc (f/k/a Royal Dutch Shell plc), do not waive any argument or defense regarding the Court’s lack of personal jurisdiction over them, nor do they seek to vacate or alter the Court’s previous personal jurisdiction order under Rule 12(b)(2).

- 1 • “The County’s complaint alleges injuries caused by Defendants’ *decades-long campaign to*
2 *discredit the science of global warming*, conceal dangers posed by their fossil-fuel products,
3 and *misrepresent their role in combatting the climate crisis*.” Plaintiff County of Maui’s
4 Motion to Remand to State Court, *County of Maui v. Sunoco LP*, No. 1:20-cv-00470-DKW-
5 KJM (D. Haw. Nov. 25, 2020), Dkt. 74-1 at 4 (emphasis added);
- “[T]he specific conduct that triggers Defendants’ liability is their *use of deception to promote*
the unrestrained consumption of fossil fuels—i.e., their ‘failure to warn about the hazards of
using their fossil fuel products’ and their ‘disseminat[ion] [of] misleading information about
the same.’” Appellees’ Answering Brief, *City & County of Honolulu v. Sunoco LP*, Nos. 21-
15313+ (9th Cir. Sept. 17, 2021), Dkt. 63 at 3 (citation omitted; first emphasis added);
- “As a result, Defendants would *not* need to ‘cease global [fossil-fuel] production altogether’ if
they ‘want[ed] to avoid all liability under Plaintiffs’ theory of the case.’ They would *simply*
need to stop the deception. And so these lawsuits *cannot* ‘regulate global greenhouse gas
emissions’ or ‘abate . . . global warming.’ . . . Indeed, so long as Defendants adequately warn
of the dangers of fossil fuels and stop their climate-disinformation campaigns, they can continue
their fossil-fuel businesses without fear of incurring any additional liability based on the claims
set forth in Plaintiffs’ Complaints.” *Id.* at 3–4 (citation omitted; first emphasis in original);
- “And here, as in other climate-deception cases, *the challenged acts are Defendants’ failure to*
warn and deceptive promotion, not their extraction, production, or sale of fossil fuels per se.”
Id. at 10 (emphasis added); *see also id.* at 36–37 (similar); and
- “Defendants *can produce as much OCS oil as they want without incurring additional liability*
under Plaintiffs’ Complaints, just so long as they adequately warn of the dangers of fossil fuels
and stop their climate-disinformation campaigns.” *Id.* at 57 (emphasis added).

Critically, the federal district court accepted and adopted the plaintiffs’ characterizations of their claims as limited to only alleged deception in remanding those cases to state court: “Plaintiffs have chosen to pursue claims that target Defendants’ alleged concealment of the dangers of fossil fuels, rather than the acts of extracting, processing, and delivering those fuels.” *County of Maui v. Sunoco LP*, No. 1:20-cv-00470-DKW-KJM, Dkt. 99 at 2.

Here, by contrast, Plaintiffs have time and again described their claims as attacking Defendants’ “acts of extracting, processing, and delivering” fossil fuels, both in their papers and in hearings before the Court—not Defendants’ promotion and marketing. In their Response in Opposition to Defendants’ Motion to Dismiss, for example, Plaintiffs explained that “[t]he relevance of the Cities’ allegations regarding promotion is that: (a) defendants influenced consumer demand for fossil fuels, which in turn is a component of the overall pattern of conduct that was a ‘substantial factor’ in causing harm to the Cities; and (b) the misleading nature of the defendants’ promotion here goes to their knowledge that

1 fossil fuels would cause climate injuries (i.e. it is indicative of a coverup), which is relevant to intent,”
 2 but insisted that “*the primary conduct giving rise to liability remains defendants’ production and sale*
 3 *of fossil fuels.*” Dkt. 235 at 13 (emphasis added). And in their hearing on the Motion to Dismiss,
 4 Plaintiffs reiterated that, “Sure, the primary conduct here that gives rise to the nuisance is the
 5 *production and sale of fossil fuels.*” Hr’g Tr. (May 24, 2018) at 63:2-21 (emphasis added). In light
 of these representations, the Court found that, according to Plaintiffs’ theory of the case, “any such
 promotion [is] merely a ‘plus factor.’” Dkt. 283 at 6.

Because the plaintiffs in *Honolulu* and *Maui* have described their claims as relying solely on
 the defendants’ alleged promotion, whereas Plaintiffs here have repeatedly represented that “the
 primary conduct” at issue is the “production and sale of fossil fuels,” the complaints in those cases are
 not persuasive, and the Ninth Circuit’s decision affirming the remand order on claims relying solely on
 defendants’ promotion in those cases does not preclude this Court from finding that the claims here are
 properly removable.

Dated: October 13, 2022

Respectfully submitted,

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** Pursuant to Civ. L.R. 5-1(i)(3), the
electronic signatory has obtained approval
from this signatory.