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

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

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

Plaintiffs,

vs.

SUNOCO LP; ALOHA PETROLEUM, LTD.;
ALOHA PETROLEUM LLC; EXXON
MOBIL CORP.; EXXONMOBIL OIL
CORPORATION; ROYAL DUTCH SHELL
PLC; SHELL OIL COMPANY; SHELL OIL
PRODUCTS COMPANY LLC; CHEVRON
CORP; CHEVRON USA INC.; BHP GROUP
LIMITED; BHP 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. 1CCV-20-0000380 (JPC)

(Other Non-Vehicle Tort)

**ORDER DENYING CHEVRON
DEFENDANTS' SPECIAL MOTION TO
STRIKE AND/OR DISMISS THE
COMPLAINT PURSUANT TO
CALIFORNIA'S ANTI-SLAPP LAW**

Hearing:

Date: August 27, 2021

Time: 8:30 a.m.

Judge: The Honorable Jeffrey P. Crabtree

Trial Date: None.

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**ORDER DENYING CHEVRON DEFENDANTS' SPECIAL MOTION
TO STRIKE AND/OR DISMISS THE COMPLAINT PURSUANT
TO CALIFORNIA'S ANTI-SLAPP LAW**

Chevron Defendants' Special Motion to Strike and/or Dismiss the Complaint pursuant to California's Anti-SLAPP Law ("Anti-SLAPP Motion"), filed on June 2, 2021 (Dkt. 349), came for video hearing on August 27, 2021, at 8:30 a.m. before the Honorable Jeffrey P. Crabtree. All parties appeared through counsel. Theodore J. Boutrous argued for Defendant Chevron, and Matthew K. Edling argued for Plaintiffs.

After considering the written submissions and the arguments of counsel, the files herein, and other good cause appearing therefore, Chevron Defendants' Anti-SLAPP Motion is DENIED for reasons, set forth as follows:

A. For this choice of law issue, the court primarily applies *Mikelson v. USAA*, 107 Haw 192 (2005), and *Lewis v. Lewis*, 69 Haw. 497 (1988). *Mikelson* adopted a flexible balancing approach, with no one factor being dispositive. The court is to assess the factors, interests, and

policy factors involved. The goal is to determine which state has the most significant relationship to the parties and subject matter. *Mikelson* at 198.

B. The Plaintiffs (City & County of Honolulu and the Board of Water Supply) are in Hawai‘i. This weighs in favor of applying Hawai‘i law.

C. Plaintiffs obviously have specific, enduring, and substantial attachments to Hawai‘i, as opposed to if they were individuals who moved to Hawai‘i six months before suit was filed. This further weighs in favor of applying Hawai‘i law.

D. There are some Hawai‘i Defendants. This weighs in favor of applying Hawai‘i law.

E. The alleged damages include harm to the shoreline, infrastructure, buildings, and economy of Hawai‘i. This weighs in favor of applying Hawai‘i law.

F. Hawai‘i has its own anti-SLAPP law, HRS Chapter 634F, which is more limited than California’s version. Hawai‘i’s statute protects testimony to a governmental body during a government proceeding. The court concludes as a matter of law that the Hawai‘i statute provides no relief to movant. In other words, Hawai‘i’s legislative policy does not favor the protection sought by this motion. This weighs against applying California’s anti-SLAPP law in Hawai‘i.

G. California’s anti-SLAPP law may not protect Chevron if a similar suit were brought in California by a California municipality. Cal. Civ. Proc. Code § 425.16(d) and § 731 indicate that city public nuisance actions are not protected by the anti-SLAPP law. The court understands this language can be parsed and distinguished (e.g., must the action be brought “in the name of the people?”). Nevertheless, it generally indicates a public policy in California that public enforcement actions should not be overly constrained by the anti-SLAPP provisions. This weighs against applying California’s anti-SLAPP law in Hawai‘i.

H. There are non-California Defendants. This weighs against applying California's anti-SLAPP law.

I. Chevron is domiciled in California. This clearly weighs in favor of applying California's anti-SLAPP law but is not dispositive.

J. Chevron argues that the allegedly tortious conduct would all originate in its California headquarters. As far as the court is aware, this is not alleged in Plaintiffs' operative pleading and is disputed. More importantly, even if this is correct, the location where alleged tortious conduct originates is not dispositive. It is a factor to consider, along with where the alleged harm occurred, where the alleged victims reside, etc. On balance, the court concludes this factor weighs in favor of applying California's anti-SLAPP law, but not substantially.

K. California's anti-SLAPP law has a "commercial speech" exception. The parties raise several complex arguments on whether or not that exception would apply to the conduct alleged here. The court is not clearly convinced one way or the other on this limited record, and concludes it is a gray area under the circumstances and the current record of this case. On balance, the court concludes that if this factor weighs at all, it weighs slightly in favor of applying California's anti-SLAPP law.

L. Chevron argues the *Noerr-Pennington* doctrine immunizes it. The court concludes it is premature to apply the doctrine at this early stage. For example, the court cannot conclude based on the current record that all or most of the alleged tortious conduct is actually "petitioning." That is a complex and fact-based exercise which the court declines to resolve at this time based on the limited record.

M. On the issue of dépeçage, the court concludes it simply provides that different states' laws can apply to different issues in the same case. It does not dictate any particular choice of law result. It does not supplant *Mikelson*'s emphasis on a flexible approach that weighs and balances multiple factors.

For the reasons stated above, and Court's February 3, 2022 Order (Dkt. 579), Chevron Defendants' Motion is DENIED.

IT IS SO ORDERED.

Dated:
Honolulu, Hawai'i

/s/ Jeffrey P. Crabtree



HONORABLE JEFFREY T. CRABTREE
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

/s/ Melvyn M. Miyagi
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