

UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

PATRICK FEINDT, JR., et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

CIV. NO. 22-00397 LEK-KJM

PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW

A non-jury trial was conducted from April 29, 2024 to May 13, 2024 in this tort action brought pursuant the Federal Tort Claims Act ("FTCA"), Title 28 United States Code Sections 1346, 2671-80. For this trial, there are seventeen individuals designated by the parties as bellwether plaintiffs - Plaintiffs Kevin Aubart ("Aubart"); Richelle Dietz ("Dietz") and her children B.D. and V.D.; Patrick Feindt, Jr. ("Feindt") and his children T.F.¹ and P.G.F.; Nastasia Freeman ("Freeman") and her children D.F., K.F., and N.F.; Sheena Jessup ("Jessup") and her children B.B.J., B.J.J., D.J., and N.J.; and Elizabeth Witt ("Witt" and collectively "Plaintiffs").² The parties filed post-

¹ The parties refer to T.F. as either T.F., P.F. or P.R.F. For simplicity, the Court refers to him as T.F.

² "There are hundreds of additional Red Hill claimants," Fifth Amended Complaint, filed 12/01/23 (dkt. no. 210), at pg. i, n.1; see id., Attachment 1 (List of Plaintiffs).

trial briefing, which the Court has reviewed and carefully considered in addition to the extensive evidentiary record and trial testimony. Pursuant to Federal Rule of Civil Procedure 52(a), the Court states the facts and conclusions of law in this memorandum of decision. Plaintiffs are directed to prepare and file their proposed Findings of Fact and Conclusions of Law ("FOFCOL"), annotated to the record by **June 5, 2025**, based on the Court's decision, and Defendant United States of America ("United States," "Defendant," or "the Government") is directed to prepare its response to the Plaintiffs' proposed FOFCOL, annotated to the record by **July 7, 2025**. After considering these submissions, the Court will issue the final FOFCOL and direct the entry of judgment.

By a preponderance of the evidence, the Court finds and concludes that Defendant is liable under the FTCA and with the application of Hawai'i law. See 28 U.S.C. § 1346(b)(1) (directing that liability is determined "in accordance with the law of the place where the act or omission occurred."). Thus, the Court applies Hawai'i state substantive law and federal procedural law to evaluate Plaintiffs' claims against the United States. Taylor v. United States, 821 F.2d 1428, 1430, 1432 (9th Cir. 1987); see 28 U.S.C. §§ 1346, 2674. The Court finds and awards **general damages** for pain and suffering, and, in the case of some Plaintiffs, emotional distress, as follows:

Aubart - \$37,500

Dietz - \$37,500

B.D. - \$20,000

V.D. - \$10,000

Feindt - \$37,500

P.G.F. - \$10,000

T.F. - \$3,000

Freeman - \$60,000

D.F. - \$10,000

K.F. - \$25,000

N.F. - \$50,000

Jessup - \$37,500

B.B.J. - \$75,000

B.J.J. - \$75,000

D.J. - \$5,000

N.J. - \$10,000

Witt - \$37,500

Plaintiffs did not seek an award of past medical expenses. The Court finds that Plaintiffs did not prove by a preponderance of the evidence that Defendant's liability was a legal cause of injuries that require future medical treatment, except as to specified plaintiffs. For the following, the Court awards **special damages for future medical expenses:**

Dietz - \$7,322.71

P.G.F. - \$4,953.36

Freeman - \$19,250.67

Jessup - \$6,962.41

As outlined below, except for Dietz, P.G.F., Freeman, and Jessup, the Court finds that there was no credible evidence supporting a claim for future medical or mental health treatment for any other plaintiff. Therefore, the Court declines to award special damages for future medical or mental health treatment to any other plaintiff.

For Feindt, the Court awards **special damages for economic loss** in the amount of \$2,144. Except for Feindt, the Court finds for the reasons stated below that there was no credible evidence supporting a claim for economic injury or wage loss for any other plaintiff. Therefore, the Court concludes that Plaintiffs have not proven by a preponderance of the evidence that the Defendant's negligence was a legal cause of economic injury or wage loss and declines to award special damages for past or future economic or wage loss to any plaintiff other than Feindt.

The Court finds credible evidence supporting an award for **hedonic damages** for loss of enjoyment of life, and awards damages in the amount of \$1,000 to each of Plaintiffs.

I. INTRODUCTION

This is a negligence case involving personal injuries sustained from ingesting and being exposed to drinking water that was contaminated by jet fuel. The O`ahu water distribution system has a series of wells, shafts, and tunnels, and water is

stored in mains and reservoirs where it is pumped through pipelines to deliver fresh water to homes and other places in the water distribution system. One of the wells that stores water from the aquifer is the Red Hill Shaft, which pumps water to the Joint Base Pearl Harbor Hickam ("JBPHH") water distribution system. [Declaration of Paul Rosenfeld, Ph.D., filed 4/8/24 (dkt. no. 374) ("Rosenfeld Decl.") at ¶ 9.³] The Red Hill Bulk Fuel Storage Facility is located above the Red Hill Shaft and is an underground fuel storage complex. It was operated by the United States Navy since 1942. [Declaration of Joseph Hughes, Ph.D., filed 4/8/24 (dkt. no. 369) ("Hughes Decl.") at ¶ 6.⁴] This facility is made up of twenty fuel storage tanks constructed underground within a hillside with volcanic rock around it. [Id.]

On November 20, 2021, a rover train struck and ruptured the fire suppression transfer line resulting in the release of jet fuel in the storage facility. [Hughes Decl. at ¶ 12.] Gravity drew the spilled jet fuel downward and eventually emptied the jet fuel into the Red Hill Shaft, where the jet fuel

³ Plaintiffs' expert Paul Rosenfeld ("Dr. Rosenfeld") has a Ph.D. in soil chemistry and experience modeling pollution sources. See Rosenfeld Decl. at ¶¶ 1-2.

⁴ Plaintiffs' expert Dr. Hughes's expertise is environmental engineering. See Hughes Decl. at ¶¶ 1-2.

and water were pumped through the JBPHH water distribution system. [Transcript of Proceedings: Nonjury Trial Day 2, filed 5/14/24 (dkt. no. 578) ("April 30 Trial Transcript") at 71-74 (Dr. Hughes testifying).] The jet fuel likely started entering the JBPHH water distribution system on November 21, 2021 from the Red Hill Shaft and subsequently increased in amount to the point to which it contaminated the water pumped into housing areas of JBPHH ("Fuel Release"). Id. at 39, 71-74. The Red Hill Shaft was shut down by 10 p.m. on November 28, 2021, operated again between 12 p.m. and 2 p.m. on November 29, 2021, and thereafter was not a source of water to the JBPHH water distribution system. [Declaration of Walter M. Grayman, Ph.D., P.E., filed 4/8/24 (dkt. no. 376) ("Grayman Decl.") at ¶ 28.b.⁵]

Historically, the JBPHH water distribution system has been fed by three wells - the Waiawa Shaft, the Aiea-Halawa Shaft, and the Red Hill Shaft, which all draw freshwater from an underwater aquifer. [Rosenfeld Decl. at ¶¶ 28-30.] The Red Hill Shaft has not been operating since November 29, 2021. [Id.]

On November 29, 2021, the Government began a preliminary flushing of the JBPHH water distribution system in five neighborhoods that was conducted until December 10, 2021,

⁵ Dr. Grayman is a licensed professional engineer, and he received a Ph.D. in Civil Engineering from the Massachusetts Institute of Technology. [Grayman Decl. at ¶ 3.]

which involved flushing water from fire hydrants. On November 30, 2021, residents were also asked to conduct home flushes. [Id. at ¶¶ 34-35; Declaration of Jeremy Mitchell, filed 4/8/24 (dkt. no. 373) ("Mitchell Decl.") at ¶¶ 16-19, 21-24.⁶]

The Government subsequently developed a flushing plan for the JBPHH water distribution system, which involved a phased flushing of distribution lines and tanks contaminated by the Fuel Release. The plan flushed various zones in phases. Plaintiffs' residences were in these flushing zones. [Rosenfeld Decl. at ¶ 36, n.34.] For residences, the flushing activities included draining water heaters, and performing hot water system flushing, and cold water system flushing. [Id. at ¶ 37.]

A drinking water sampling plan was developed to collect water samples from Waiawa Shaft, Halawa Shaft, and Red Hill Shaft as well as from flushing zones. [Id. at ¶ 38.] According to the Hawai'i Department of Health ("HDOH"), each flushing zone had to be evaluated individually via lines of evidence and the criteria to remove the existing health advisory was (1) ensuring that no contamination was entering the water system, and (2) ensuring that no contamination remained in the system. [Id. at ¶ 40 (referring to HDOH Guidance on the Approach to Amending the Public Health Advisory Addendum 1 (Plfs.' Exh.

⁶ At the time of the Fuel Release, Mitchell was the Deputy Public Works Officer for JBPHH. See Mitchell Decl. at ¶ 2.

PX 1228).] Over 10,000 residents were relocated during the flushing activities, beginning in mid-December 2021 until their water supply was certified safe by HDOH after reviewing data provided by the Government for each specific flushing zone. [Id. at ¶ 41, n.39.]

Although estimating the actual concentration of jet fuel entering the water distribution system cannot be determined with certainty, it is reasonably probable that the concentration of jet fuel in the water distribution system began to rise after November 26 and by November 27, following the Fuel Release. See Grayman Decl. at ¶¶ 32, 35-36, 41; id., Exh. L.⁷

There were multiple samples taken at the Red Hill Community Center, Halsey Terrace Community Center, and Hickam Chapel Center, which are in or near the neighborhoods where Plaintiffs lived. See id. at ¶ 41.f. For the Red Hill Community Center, the concentrations of jet fuel in the water began to rise on November 27 and peak around December 2 or 3, then started to recede. [Id. at ¶ 41(f)(i).] For the Halsey Terrace Community Center and the Hickam Chapel Center, the concentrations began to rise after November 26 and by November 27 and peak around November 28, then started to recede. [Id. at ¶ 41(f)(ii).] After December 6, 2021, the concentration

⁷ Exhibit L of the Grayman Declaration is also located at Def.'s Exh. DX 3087.

of jet fuel in the water distribution system from the Fuel Release was nondetectable or had results below 100 micrograms per liter for total petroleum hydrocarbons in the diesel range ("TPH-d"). [Id. at ¶¶ 41(b)-(c), 53(a)(i); Def.'s Exh. 3086 (HDOH Sample Results); Def.'s Exh. 3085 (Navy Sampling Data Excerpt).]

The United States admits that it breached its duty to Plaintiffs "to exercise ordinary care in the operation of Red Hill, resulting in the May 6, 2021 and November 20, 2021 spills." [Second Joint Stipulation as to Plaintiffs' Nuisance and Negligence Claims; Order, filed 11/27/23 ("Joint Stipulation") (dkt. no. 200) at ¶ 2.] Further, the United States admits that the breach caused "Plaintiffs [to suffer] injuries compensable under the [FTCA]." [Id. at ¶ 3.] Because the United States admits it had a duty to Plaintiffs, and that it breached that duty, [id. at ¶¶ 2-3,] the issues before the Court are whether the breach was a legal cause of harm to Plaintiffs and, if so, the measure of damages to be awarded to Plaintiffs. See O'Grady v. State, 140 Hawai'i 36, 43, 398 P.3d 625, 632 (2017). "A personal injury plaintiff is generally entitled to recover damages for all the natural and proximate consequences of the defendant's wrongful act or omission." Dunbar v. Thompson, 79 Hawai'i 306, 315, 901 P.2d 1285, 1294 (App. 1995) (citation

omitted). There are two categories of recoverable damages:
general damages and special damages. Id.

General damages "encompass all the damages which naturally and necessarily result from a legal wrong done. Such damages follow by implication of law upon proof of a wrong," Ellis v. Crockett, 51 Haw. 45, 50, 451 P.2d 814, 819 (1969) (citation omitted), and include such items as physical or mental pain and suffering, inconvenience, and loss of enjoyment which cannot be measured definitively in monetary terms. 22 Am.Jur.2d Damages § 41 at 65 (1988). *Special damages* are the "natural but not the necessary result of an alleged wrong and . . . depend on the circumstances peculiar to the infliction of each particular injury." Ellis, 51 Haw. at 50, 451 P.2d at 819 (citations omitted). Special damages are often considered to be synonymous with pecuniary loss and include such items as medical and hospital expenses, loss of earnings, and diminished capacity to work. 22 Am.Jur.2d Damages § 41 at 65.

Id. (italics in original).

II. CAUSATION

"It is well-settled that all tort claims require that damages be proven with reasonable certainty." Exotics Hawaii-Kona, Inc. v. E.I. Du Pont De Nemours & Co., 116 Hawai'i 277, 292, 172 P.3d 1021, 1036 (2007) (citation omitted). Hawai'i law has adopted a substantial factor test for legal causation in negligence cases, which states that a "defendant's conduct need not have been the whole cause or the only factor in bringing about the plaintiff's injuries" but must have been more than "a negligible or trivial[] factor in causing the harm." Est. of

Frey v. Mastroianni, 146 Hawai`i 540, 550, 463 P.3d 1197, 1207 (2020) (describing the first step of the two-step analysis in determining legal cause) (quotation omitted). This test “extends to negligence claims against medical professionals.” Id. In medical negligence cases, expert medical testimony is required to determine “whether there is a causal relationship between the violation of a duty and an injury to the patient.” Exotics, 116 Hawai`i at 300, 172 P.3d at 1044 (quoting Bernard v. Char, 79 Hawai`i 371, 377, 903 P.2d 676, 682 (App. 1995)). There is no controlling Hawai`i law specifically addressing the test for legal causation in toxic tort cases. The Court must therefore predict how the Hawai`i Supreme Court will decide the issue. See Judd v. Weinstein, 967 F.3d 952, 955–56 (9th Cir. 2020). The Court predicts that the Hawai`i Supreme Court would hold that the same test applied in medical negligence cases would extend to toxic tort actions. Namely, that expert testimony is required to determine causation.

In toxic tort cases,

[c]ausation . . . is typically discussed in terms of generic and specific causation. See e.g., Raynor v. Merrell Pharms., Inc., 104 F.3d 1371, 1376 (D.C. Cir. 1997). General, or “generic” causation has been defined by courts to mean whether the substance at issue had the capacity to cause the harm alleged, while “individual causation” refers to whether a particular individual suffers from a particular ailment as a result of exposure to a substance. See Bonner v. ISP Technologies, Inc., 259 F.3d

924, 928 (8th Cir.2001); Sterling [v. Velsicol Chem. Corp.], 855 F.2d [1188,] at 1200 [(6th. Cir. 1988)] (explaining the difference between generic and individual causation); In re "Agent Orange" [Product Liab. Litig. MDL No.381], 818 F.2d [145] at 165 [(2d. Cir. 1987)] ("[t]he relevant question . . . is not whether Agent Orange has the capacity to cause harm, the generic causation issue, but whether it did cause harm and to whom. That determination is highly individualistic, and depends upon the characteristics of individual plaintiffs (e.g. state of health, lifestyle) and the nature of their exposure to Agent Orange"); Jones v. Allercare, Inc., 203 F.R.D. 290, 301 (N.D. Ohio 2001) ("relevant question in this case will not be whether the products have the capacity to cause harm, but whether the products caused harm and to whom. Thus, the real causation issue in this case is individual, not general, in nature"). See also Hilao v. Estate of Marcos, 103 F.3d 767, 788 (9th Cir. 1996) (Rymer, J. dissenting in part and concurring in part) (contrasting "generic causation – that the defendant was responsible for a tort which had the capacity to cause the harm alleged – with individual proximate cause and individual damage").

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In re Hanford Nuclear Rsrv. Litig., 292 F.3d 1124, 1133 (9th Cir. 2002).

The Court finds that expert testimony evidence supports a finding of generic causation: that the chemicals contained in the Fuel Release had the capacity to cause the harm alleged by Plaintiffs. The United States' expert witness, Dr. Caroline Tuit, Ph.D. ("Dr. Tuit"),⁸ analyzed screening samples

⁸ Dr. Tuit is an environmental chemist at the environmental sciences firm Gradient. [Tuit Decl. at ¶ 1.]

and screening sample methods for JP-5⁹ analytes of interest and considered those “to include petroleum hydrocarbons and additives associated with JP-5 jet fuel, specifically: benzene (B), toluene (T), ethylbenzene (E), xylenses (X), naphthalene (N), 1-methylnaphthalene (1-MN), 2-methylnaphthalene (2-MN) (collectively, BTEXMN), TPH for gasoline organics [TPH-g], diesel range organics [TPH-d], and oil-range organics [TPH-o], and diethylene glycol monomethyl ether (DiEGME).” [Trial Declaration of Dr. Caroline B. Tuit, filed 4/8/24 (dkt. no. 346) at ¶ 13 (brackets in original).] The United States’ expert witness, Dr. Michael J. Kosnett (“Dr. Kosnett”),¹⁰ recognized studies reporting that exposure to jet fuel is associated with headache, eye irritation, dizziness, and other neurological symptoms; [Trial Declaration of Dr. Michael Kosnett, filed 4/8/24 (dkt. no. 382) (“Kosnett Decl.”) at ¶ 50;] and that “high oral doses of jet fuel in experimental animals and kerosene in humans [have] been shown to cause gastrointestinal irritation,” [id. at ¶ 87].

⁹ “JP-5” refers jet propulsion 5 jet fuel. See, e.g., Order Granting in Part and Denying in Part Defendant’s Motion to Exclude the Expert Report and Testimony of Dr. Steven Bird, [Filed 1/16/24 (Dkt. No. 234)], filed 4/9/24 (dkt. no. 410), at 4.

¹⁰ Dr. Kosnett is a physician who is board-certified in internal medicine, medical toxicology, and preventive medicine. [Kosnett Decl. at ¶¶ 1, 5.]

The Court also finds that expert testimony evidence supports a finding of specific causation: that a particular plaintiff sustained a particular injury from exposure to the chemicals contained in the Fuel Release. The United States' expert witness, Robyn L. Prueitt, Ph.D., DAB ("Dr. Prueitt"),¹¹ testified that "[c]ertain health symptoms can occur in individuals in response to an odorous chemical that is perceived to be unpleasant or unhealthy at exposure concentrations lower than the toxicity threshold, but these symptoms are a result of stress-induced response to perceptions of the odor as a health risk (*i.e.*, a non-toxicological mechanism)." [Trial Declaration of Dr. Robyn L. Prueitt, filed 4/8/24 (dkt. no. 332) ("Prueitt Decl.") at ¶ 9.] The United States' expert witness, Timur Durrani, MD, MPH ("Dr. Durrani")¹² testified that his methodology in assessing whether there was a causal relationship between the Fuel Release and the individual plaintiffs' injuries involved looking at criteria consisting of general causation; dose;

¹¹ Dr. Prueitt is "a board-certified toxicologist with expertise in toxicology, carcinogenesis, and human health risk assessment." [Declaration of Dr. Robyn Pruiett, filed 4/8/24 (dkt. no. 332) ("Pruiett Decl.") at ¶ 1.]

¹² Dr. Durrani is a clinical professor of medicine and pharmacy in the Department of Medicine, Division of Occupational and Environmental Medicine and the School of Pharmacy at the University of California, San Francisco, among other roles. [Trial Declaration of Timmur Durrani, filed 4/8/24 (dkt. no. 384) at ¶ 5.]

temporality; and differential diagnosis. [Trial Declaration of Timmur Durrani, filed 4/8/24 (dkt. no. 384) ("Durrani Decl.") at ¶ 14.] "Temporality" being "whether the temporal pattern between the exposure and the medical conditions were consistent with a causal relationship." Id. at ¶ 14.c, see also Kosnett Decl. at ¶ 35. The Court finds that the symptoms and medical conditions reported by Plaintiffs after the Fuel Release and until approximately when the individual plaintiffs reported that they stopped using the household water supplied by the JBPHH water distribution system establishes a temporal pattern consistent with a causal relationship.

The Court finds that Plaintiffs fail to prove by a preponderance of the evidence that there is specific causation for the Fuel Release to have been a legal cause of heavy or irregular menstrual bleeding; [Kosnett Decl. at ¶ 192 ("Exposure to JP-5 or similar hydrocarbon mixtures is not a recognized risk factor for causing or exacerbating heavy menstrual bleeding[.]");] autism; cancer; suppressed immune system; meningitis; hernias; arthritis; brain fog; migraines; bloody noses or tremors.

The Court finds that the actual and specific amount of jet fuel chemicals that were released into the water supply and that reached the individual homes is not capable of being reliably calculated and thus was not proven. The Court also

finds that the actual dose to which each individual plaintiff was exposed is not required to be proved where: there is unambiguous and credible evidence that the United States breached its duty of care; that breach of duty resulted in the release of jet fuel in the JBPHH water distribution system; humans' and animals' exposure to the chemicals in jet fuel is associated with headache, eye irritation, dizziness, neurological symptoms, and gastrointestinal issues; each of the Plaintiffs were exposed by ingesting or having skin contact with water from the JBPHH water distribution system that contained some dosage of jet fuel after the Fuel Release; and the onset of symptoms or medical conditions experienced by Plaintiffs occurred within reasonable temporality of the Fuel Release and was consistent with specific causation. In short, it is reasonably inferred that the dose was in an amount sufficient to cause the ill effects reported within days of the Fuel Release. Accordingly, the Court finds sufficient evidence supporting a finding of specific causation as to Plaintiffs, and as addressed for each individual plaintiff as follows.

At the time of the Fuel Release, Plaintiffs resided in military housing in the following areas: Aubart lived at 1362 Snyder Court in the Doris Miller community; the Dietz family lived at 731 Ohana Nui Circle in the Earhart Village neighborhood; the Feindt family lived at 4838 Yorktown Boulevard

in the Ford Island neighborhood; the Freeman family lived at 185 Halawa View Loop at the Aliamanu Military Reservation neighborhood; the Jessup family lived at 2632 Stowell Circle in the Radford Terrace neighborhood; and Witt lived at 203 Signer Boulevard C in the Officer Field neighborhood. [Stipulated Facts Regarding the Water System, filed 5/7/24 (dkt. no. 548), at ¶¶ 1-6.]

Following the Fuel Release, Plaintiffs experienced various signs and symptoms after ingesting and using the water from their home waterlines supplied by the JBPHH water distribution system for various purposes, such as drinking, bathing, food preparation, and washing. See Stipulated Order Relating to Trial Declarations of Dr. Steven Bird (ECF No. 383), Ms. Cynthia Fricke (ECF No. 399), Ms. Margot Burns (ECF No. 403), and Dr. James Spira (ECF No. 386), filed 4/29/24 (dkt. no. 491), Exhibit A (Declaration of Steven B. Bird, MD) ("Bird Decl.")¹³ at ¶¶ 63-67, 68 (admissible portion), 96; Rosenfeld Decl. at ¶ 24. Whether these signs, symptoms and medical conditions were caused by exposure to a particular dosage of jet fuel in the JBPHH water distribution system, from a psychological response to reports of the Fuel Release, or a combination of both, the Court is persuaded by and finds that

¹³ Plaintiffs' expert Dr. Bird is a medical toxicologist and an emergency medicine clinician. [Bird Decl. at ¶¶ 1, 15.]

the temporal pattern between the exposure and effects reported is consistent with a causal relationship.

III. DAMAGES

In its consideration of Plaintiffs' claims, it is clear to the Court that many of the Plaintiffs have suffered greatly and have a myriad of health issues. The Court is sympathetic to Plaintiffs and their families but is nevertheless bound to hold Plaintiffs to their legal obligation to provide evidence proving by a preponderance that the Fuel Release is a legal cause of each injury. Where the Court has found that Plaintiffs have failed to demonstrate credible evidence, it is not concluding that the medical conditions or ailments do not exist. Rather, its findings reflect that correlation does not carry Plaintiffs' legal burden of proving causation. While causation and correlation can exist simultaneously, correlation is insufficient to carry a plaintiff's burden for the causation element of a negligence claim, where a court finds a lack of credible evidence establishing a causal relationship between

exposure to toxins and occurrence of disease. See Cho v. State, 115 Hawai'i 373, 393-94, 168 P.3d 17, 37-38 (2007).

A. Physical Pain and Suffering

1. Aubart

a. Acute Symptoms

In November 2021, Aubart developed a recurrent cough that lasted over a week. Beginning November 23, 2021, Aubart had a slight fever that would arise during the coughing spells.

[Declaration of Plaintiff, Kevin Aubart ("Aubart Decl."), filed 4/8/24 (dkt. no. 389), at ¶ 39.] Around November 24, 2021, Aubart experienced rashes and eye irritation after showers, bone and joint pain, abdominal pain, diarrhea, headaches, fatigue, nausea, sinus issues, and coughing. After showering at night, Aubart would notice rashes on his stomach, chest and arms that itched and lasted until morning. [Id. at ¶¶ 17, 40.] He also had to go to the bathroom frequently. [Id. at ¶ 40.]

Aubart stopped using household water for drinking on November 28, 2021. [Id. at ¶ 27.] Beginning the week of November 28, 2021, Aubart experienced abdominal issues, including pain, diarrhea and infection. On November 28, 2021, Aubart's brain fog worsened. He could not see clearly, was forgetful, and had difficulty concentrating. [Id. at ¶¶ 37-38.]

After November 28, 2021, his sinus symptoms worsened in occurrence and frequency, including head colds, coughing,

postnasal drip and fevers. [Id. at ¶ 39.] Aubart also experienced severe muscle and joint pain, such that he could not reach his arms over his head. [Id. at ¶ 41.]

b. Continued Symptoms

By September 26, 2022, the nausea, fatigue, headaches, shoulder pain, and minor rashes had improved. [Plfs.' Exh. PX 2248 (Aubart medical records) at 46 (9/26/22 Kaiser Permanente Internal Medicine clinical notes).] However, Aubart reported continued fatigue and painful headaches until mid-2023. See Kosnett Decl. at ¶ 47; see also Def.'s Exh. DX 3212 (Aubart medical records) at 39 (Kaiser Permanente 5/16/22 internal medicine office visit note). In June 2023, Aubart reported no longer experiencing headaches or fatigue, and had no cognitive complaints. See Kosnett Decl. at ¶ 47; Def.'s Exh. DX 3212 (Aubart medical records) at 3 (Kaiser Permanente initial treatment plan dated 6/5/23).

c. Preexisting Conditions

Aubart testified that his rashes may have begun two weeks prior to November 23, 2021. [Transcript of Proceedings: Nonjury Trial Day 5, filed 5/14/24 (dkt. no. 581) ("May 3 Trial Transcript") at 92.] Aubart also reported having headaches and fatigue in July 2019 in connection to litigation related to his employment that was ongoing until 2023. Def.'s Exh. DX 3212 (Aubart medical records) at 30, 33 (Kaiser Permanente 7/17/19

internal medicine office visit notes), 39 (Kaiser Permanente 5/16/22 internal medicine office visit note); see also Kosnett Decl. at ¶ 56, May 3 Trial Transcript at 96-97 (Aubart testifying). His headaches and fatigue did not resolve prior to the Fuel Release. See Kosnett Decl. at ¶ 47; Def.'s Exh. DX 3212 (Aubart medical records) at 39 (Kaiser Permanente 5/16/22 internal medicine office visit note).

d. Causation and Apportionment

A plaintiff is required to prove that a defendant's conduct was a "legal cause" of the injuries alleged. This is a two-step analysis involving a factual determination of whether a defendant's conduct was "a substantial factor in bringing about the harm, and . . . "there is no rule of law relieving" a defendant from liability" O'Grady, 140 Hawai'i at 44, 398 P.3d at 633 (citations omitted). The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Aubart's brain fog was the Fuel Release. Based on the evidence presented, the Court finds that Plaintiffs have proven by a preponderance of the evidence that a legal cause of Aubart's physical symptoms and conditions experienced or diagnosed beginning November 23, 2021 and lasting for approximately one month was the Fuel Release.

Plaintiffs do not provide citations to medical evidence or testimony regarding Aubart's continued experience of his acute symptoms, and specifically the duration of Aubart's acute symptoms that he experienced in the weeks immediately following the Fuel Release. While his sinus symptoms worsened after November 28, 2021, Plaintiffs do not cite to medical records demonstrating that Aubart continued to experience his acute symptoms in December 2021 or January 2022. Accordingly, the Court finds that Plaintiffs did not provide sufficient evidence to support recovery for pain and suffering damages for any period longer than one month after the Fuel Release.

Further, the Court must apportion damages for certain acute symptoms that Aubart experienced prior to and immediately after the Fuel Release. If a plaintiff's preexisting condition was not fully resolved or not dormant at the time of an accident, then the factfinder must apportion between the preexisting condition and the injuries caused by the accident. Montalvo v. Lapez, 77 Hawai'i 282, 300, 884 P.2d 345, 363 (1994). If the factfinder is unable to apportion, then damages must be distributed equally among the accidents. Id., 77 Hawai'i at 299, 884 P.2d at 362 (adopting the dissent in Matsumoto v. Kaku, 52 Haw. 629, 484 P.2d 147 (1971)). On the other hand, if the factfinder determines that a plaintiff had fully recovered from preexisting injuries and then suffered injuries from an

accident, there is no apportionment. Id., 77 Hawai`i at 300, 884 P.2d at 363. Where, however, a plaintiff suffers injuries from another source after an accident caused by a defendant and these injuries were not caused by this defendant, then the factfinder must apportion between these causes and, if the factfinder is unable to apportion, then damages must be distributed equally. Id., 77 Hawai`i at 299-300, 884 P.2d at 362-63.

The Court finds that Aubart was not fully recovered from rashes, headaches, and fatigue that he was experiencing prior to the Fuel Release and therefore apportionment is appropriate for these symptoms. Because there is no evidence to base apportionment between Aubart's preexisting rashes, headaches, and fatigue (including those related to his employment litigation) and the rashes, headaches, and fatigue caused by the Fuel Release, then damages must be distributed equally for these symptoms. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms Aubart experienced after the Fuel Release.

2. Dietz

a. Acute Symptoms

Beginning November 21, 2021, Dietz experienced daily painful headaches. Between November 22 and 24, 2021, Dietz experienced stomach pain, vomiting, and diarrhea. Her eyes and throat burned, and she had a cough and rashes. Declaration of

Plaintiff, Richelle Dietz, filed 4/8/24 (dkt. no. 391) ("Dietz Decl.") at ¶ 10; see also Kosnett Decl. at ¶¶ 73, 75. After Thanksgiving of 2021,¹⁴ Dietz experienced a rash, nausea, diarrhea, and stomachache. [Dietz Decl. at ¶ 11; id. at Tab D (photograph of Dietz's rash); Transcript of Proceedings: Nonjury Trial Day 3, filed 5/14/24 (dkt. no. 579) ("May 1 Trial Transcript") at 36-37 (Dietz testifying), 63 (Bryan Dietz¹⁵ testifying).] On November 27, 2021, Dietz's throat was burning and felt like it was on fire. [Dietz Decl. at ¶ 13.] Shortly after the Fuel Release, Dietz developed brain fog, short-term memory loss, word-finding challenges, attention challenges, and insomnia. [Id. at ¶ 60.] She also had issues sleeping and developed eczema and ocular migraines that made her lose vision. [Id. at ¶¶ 56-59.]

Dietz stopped using the household tap water for drinking on November 29, 2021. [May 1 Trial Transcript at 29, 44 (Dietz testifying).]

There is conflicting evidence regarding the duration of Dietz's acute symptoms. Dietz stated her family's symptoms

¹⁴ Thanksgiving fell on November 25, 2021.

¹⁵ Bryan Dietz is married to Dietz. [Dietz Decl. at ¶ 1.]

continued through the first week of December. [Id. at ¶ 25.]¹⁶ She also stated most of her symptoms started to calm down by December 2 or 3, 2021. [May 1 Trial Transcript at 25; see also Kosnett Decl. at ¶ 75.] The Court finds by a preponderance of the evidence that Dietz's symptoms began to cease by December 3, 2021.

**b. Symptoms and Conditions
Since December 3, 2022**

Dietz experienced episodic nausea throughout 2022. [Kosnett Decl. at ¶ 74.] She developed a rash in February 2022 under her arm, and it spread to her abdomen in June 2022. She was diagnosed with dermatitis, which is currently under better control. [Id. at ¶¶ 82-83.]

Dietz underwent a partial hysterectomy in April 2023 for the removal of a paraovarian cyst. Prior to the cyst removal, she experienced intense abdominal pain, nausea, and dizziness. [Dietz Decl. at ¶ 56.] In October 2023, Dietz reported a sheen in the water in her home, and she experienced symptoms of rash, diarrhea, headaches, and nausea. [Id. at ¶ 43.]

¹⁶ Dietz stated that her family continued to experience burning sensations, stomach pain, vomiting and diarrhea through the first week of December. [Dietz Decl. at ¶ 25.] The Court is unable to differentiate which of these symptoms applied to which of her family members, and thus is unable to attribute these symptoms to B.D. and V.D. The Court attributes these symptoms to Dietz.

c. Preexisting Conditions

Dietz has a history of gastroesophageal reflux disease ("GERD") since about the age of sixteen. See May 1 Trial Transcript at 17 (Dietz testifying); Def.'s Exh. DX 3213 (Dietz medical records) at 35 (5/27/22 medical record noting GERD since age 16); see also Kosnett Decl. at ¶¶ 72, 95. Dietz's symptoms of GERD is associated with "severe abdominal pain up to 10/10," nausea and diarrhea. [Def.'s Exh. DX 3213 (Dietz medical records) at 80 (10/21/22 medical record).] Dietz took Omeprazole for nearly as long as she has been diagnosed with GERD, but discontinued use in late 2022. [May 1 Trial Transcript at 17.]

Dietz also has a history of irritable bowel syndrome ("IBS"). Id. at 17 (Dietz testifying); see also Def.'s Exh. DX 3213 (Dietz medical records) at 35 (5/27/22 medical record).

Dietz was diagnosed with Meniere's disease in 2013, and at the time she was diagnosed she presented with symptoms of vertigo, nausea, vomiting and tinnitus. [May 1 Trial Transcript at 18 (Dietz testifying).] Dietz's episodes of Meniere's disease are associated with tinnitus and dizziness, and the last she had experienced prior to the Fuel Release occurred sometime in 2020. [Kosnett Decl. at ¶ 79, Def.'s Exh. DX 3213 (Dietz medical records) at 41 (6/23/23 medical record).] The only Meniere's disease symptom Dietz appeared to experience at the time of the Fuel Release was minor dizziness. [Kosnett Decl. at ¶ 84.5.]

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Dietz's brain fog, short-term memory loss, word-finding challenges, attention challenges, eczema, and ocular migraines that made her lose vision was the Fuel Release.

Based on the evidence presented, the Court finds that Plaintiffs have proven by a preponderance of the evidence that a legal cause of Dietz's other physical symptoms and conditions from November 26, 2021 to December 3, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not proven by a preponderance of the evidence that a legal cause of Dietz's physical symptoms and conditions experienced or diagnosed after December 3, 2021 was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633. The Court also finds that Plaintiffs have not proven by a preponderance of the evidence that the sheen reported in October 2023 was caused by the Fuel Release or actions attributable to Defendant.

The Court finds that Dietz was not fully recovered from GERD and IBS at the time of the Fuel Release and therefore apportionment is appropriate. Because there is no evidence to base apportionment between Dietz's preexisting medical conditions and the same or similar conditions - such as nausea

and diarrhea - caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms Dietz experienced after the Fuel Release.

3. B.D.

B.D. was approximately ten years old in November 2021. See Dietz Decl. at ¶ 1 (noting B.D. was thirteen years old as of April 7, 2024).

a. Acute Symptoms

After Thanksgiving in 2021, B.D. experienced nausea, vomiting and diarrhea. He experienced a spike in the duration and severity of his preexisting headaches. B.D. lost the ability to balance and could not feel things strongly on parts of his body. He had sensations of burning or heat in his extremities. [Id. at ¶¶ 12, 49-50; May 1 Trial Transcript at 19-20, 36, 39 (Dietz testifying).] After the Fuel Release, B.D. also experienced gastrointestinal issues and rashes. [May 1 Trial Transcript at 63 (Bryan Dietz testifying).] B.D. lost feeling in his right hand and back, and had spots that felt hot on his ankles and feet. [Dietz Decl. at ¶ 51.] B.D. also had a sore throat, dry skin, and fatigue. [Id. at ¶ 26.]

The Dietz family stopped using the household tap water for drinking on November 29, 2021. [May 1 Trial Transcript at 29, 44 (Dietz testifying).]

B.D.'s symptoms started to calm down by December 2 or 3, 2021. [May 1 Trial Transcript at 25 (Dietz testifying).]¹⁷ The Court finds by a preponderance of the evidence that B.D.'s symptoms began to cease by December 3, 2021.

b. Preexisting Conditions

B.D. was diagnosed with Chiari I malformation of the brain in 2016. B.D. has a history of having headaches, and these headaches started increasing in March 2021. See May 1 Trial Transcript at 20 (Dietz testifying); Dietz Decl. at ¶ 4; Def.'s Exh. DX 3218 (B.D. medical records) at 1. B.D. experienced numbness in his extremities in August 2021. [May 1 Trial Transcript at 23 (Dietz testifying).]

Dietz has informed B.D.'s teachers that symptoms of B.D.'s Chiari I malformation include severe headaches, memory loss, decreased sensations to hot and cold, and poor balance. [Id. at 21.]

¹⁷ Dietz stated that her family continued to experience burning sensations, stomach pain, vomiting and diarrhea through the first week of December. [Dietz Decl. at ¶ 25.] The Court is unable to differentiate which of these symptoms applied to which of her family members, and thus is unable to attribute these symptoms to B.D.

**c. Symptoms and Conditions
Since December 3, 2021**

Dietz testified that B.D.'s headaches differed after the Fuel Release. While B.D.'s headaches used to resolve quickly, he began having migraines for the first time. These migraines last for hours or even days, during which B.D. lies in bed under the covers and vomits into a bowl next to his bed. [Dietz Decl. at ¶ 49.] After the Fuel Release, he could not manage the pain and vomiting caused by the migraines. [Id. at ¶ 50.]

B.D. underwent brain surgery for his preexisting Chiari I malformation in March 2022. [Id. at ¶ 52; May 1 Trial Transcript at 23-24 (Dietz testifying).] After the surgery, B.D.'s headaches changed in character. B.D.'s headaches substantially improved, but he has since developed migraines. [May 1 Trial Transcript at 55 (Bryan Dietz testifying).]

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of B.D.'s loss of balance, diminished capacity to feel sensation on parts of his body, including loss of feeling in his right hand and back; and sensation of burning or heat in his extremities was the Fuel Release.

Based on the evidence presented, the Court finds that Plaintiffs have proven by a preponderance of the evidence that a legal cause of B.D.'s physical symptoms and conditions experienced from November 26, 2021 to December 3, 2021 (specifically, gastrointestinal issues including nausea, vomiting, and diarrhea; rashes; sore throat; dry skin; fatigue; and a spike in the severity of preexisting headaches) was the Fuel Release. The Court also finds that Plaintiffs have not proven by a preponderance of the evidence that a legal cause of B.D.'s physical symptoms and conditions experienced or diagnosed after December 3, 2021 was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

As to B.D.'s preexisting condition, Chiari I malformation, the Court finds that Plaintiffs have not proven by a preponderance of the evidence based on credible and qualified medical evidence that B.D.'s preexisting condition was exacerbated or otherwise worsened by the Fuel Release, other than physical symptoms and conditions between November 26 and December 3, 2021. The Court finds that B.D. experienced headaches from his preexisting condition at the time of the Fuel Release and therefore apportionment is appropriate. Because there is no evidence to base apportionment between B.D.'s preexisting medical condition which causes headaches, and the same condition exacerbated by the Fuel Release, then damages

must be distributed equally as to this condition. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms B.D. experienced between November 26 and December 3, 2021.

4. V.D.

V.D. was approximately three years old in November 2021. See Dietz Decl. at ¶ 1 (noting V.D. was five years old as of April 7, 2024); Declaration of Dr. Andrew Clark, filed 4/8/24 (dkt. no. 366) ("Clark Decl.") at ¶ 113.

a. Symptoms

In the days prior to Thanksgiving in 2021, V.D.'s bottom hurt while bathing, and she screamed and cried during this bathing incident. It took her twenty to thirty minutes to calm down. [Dietz Decl. at ¶ 10; May 1 Trial Transcript at 34-35.] During Thanksgiving weekend of 2021, V.D.'s stomach hurt and she had a rash on her stomach. [May 1 Trial Transcript at 36.] After Thanksgiving, V.D. experienced stomach pain, vomiting, and diarrhea. [Dietz Decl. at ¶ 12.] V.D. also experienced dry skin, and pain in her vaginal area.¹⁸ V.D. also developed shortness of breath after the Fuel Release. [May 1 Trial Transcript at 24 (Dietz testifying).]

¹⁸ It is unclear whether V.D.'s pain in the vaginal area is the same symptom as the pain she experienced while bathing.

The Dietz family stopped using the household tap water for drinking on November 29, 2021. [May 1 Trial Transcript at 29, 44 (Dietz testifying).] Most of V.D.'s symptoms started to calm down by December 2 or 3, 2021. See id. at 25 (Dietz testifying).¹⁹ The Court finds by a preponderance of the evidence that V.D.'s symptoms began to cease by December 3, 2021.

V.D. also had a cough that developed into severe wheezing. [Declaration of Bryan Dietz, filed 4/8/24 (dkt. no. 390) ("B. Dietz Decl.") at ¶ 17; Dietz Decl. at ¶ 54.] Her mother noted V.D. seemed to have a weak immune system, and her "colds began lasting weeks rather than days." [Dietz Decl. at ¶ 27.] When she would get a cold, it would take two or three weeks and sometimes "a round of steroids for her to recover." [Id. at ¶ 54.] V.D. was eventually diagnosed with asthma. [Id.] It is not clear when V.D.'s severe wheezing began after the Fuel Release. V.D. had tonsil surgery in June 2023, after which her colds began to last a normal amount of time, and she began sleeping better. [Id. at ¶ 55.]

¹⁹ Dietz stated that her family continued to experience burning sensations, stomach pain, vomiting and diarrhea through the first week of December. [Dietz Decl. at ¶ 25.] The Court is unable to differentiate which of these symptoms applied to which of her family members, and thus is unable to attribute these symptoms to V.D.

b. Preexisting Conditions

V.D. has a history of wheezing that predates the Fuel Release. See May 1 Trial Transcript at 24-25 (Dietz testifying); Durrani Decl. at ¶¶ 31-32. V.D. saw a doctor for wheezing, among other symptoms, at least twice in 2018, and at least twice in 2019. [May 1 Trial Transcript at 25 (Dietz testifying); Def.'s Exh. DX 3219 (V.D. medical records) at 58, 61-62, 71, 92-93.]

V.D. also has a history of cough that predates the Fuel Release. See May 1 Trial Transcript at 25 (Dietz testifying); Durrani Decl. at ¶ 33; see also Def.'s Exh. DX 3219 (V.D. medical records) at 34, 59-61, 83, 88, and 90. A July 1, 2021 medical record reflects V.D. had a cough that morning. [Def.'s Exh. DX 3219 (V.D. medical records) at 34.]

In February 2021, V.D. had dry skin and a history of eczema. See May 1 Trial Transcript at 25 (Dietz testifying).

c. Causation and Apportionment

Based on the evidence presented, the Court finds that Plaintiffs have proven by a preponderance of the evidence that a legal cause of V.D.'s physical symptoms and conditions from November 26, 2021 to December 3, 2021 was the Fuel Release. The Court also finds that the Plaintiffs have not proven by a preponderance of the evidence that a legal cause of V.D.'s physical symptoms and conditions experienced or diagnosed after

December 3, 2021, including her asthma diagnosis, was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

The Court finds that there is no evidence presented that V.D. was still experiencing eczema, wheezing and cough immediately prior to the Fuel Release and therefore apportionment is not appropriate for these conditions. The Court also does not apportion damages for the other acute symptoms V.D. experienced between November 26 and December 3, 2021.

5. Feindt

a. Acute Symptoms

Around Thanksgiving of 2021, Feindt had headaches and experienced nausea. [Declaration of Plaintiff, Patrick Feindt, filed 4/8/24 (dkt. no. 392) ("Feindt Decl.") at ¶ 16; Declaration of Amanda Feindt, filed 4/8/24 (dkt. no. 393) ("A. Feindt Decl.") at ¶ 11.²⁰]

The Feindt household stopped using the household tap water for drinking on December 9, 2021. [Feindt Decl. at ¶ 21; Transcript of Proceedings: Nonjury Trial Day 1, filed 5/14/24 (dkt. no. 577-1) ("April 29 Trial Transcript") at 212 (Feindt testifying).]

On December 11, 2021, Feindt went to the emergency room because he was lightheaded, vomiting, had contractions in

²⁰ Amanda Feindt is married to Feindt. [A. Feindt. Decl. at ¶ 5.]

his stomach, had intense diarrhea, was seeing stars, had brain fog and had a severe migraine. [April 29 Trial Transcript at 192 (A. Feindt testifying), 228-30 (Feindt testifying); April 30 Trial Transcript at 8-9 (Feindt testifying); Feindt Decl. at ¶¶ 25-27.] That morning, Feindt had an intense headache and vomited once, but tolerated a normal meal afterward. [Plfs.' Exh. PX 2252 (Feindt medical records) at 34-35 (12/11/21 medical record).]

In the following days, Feindt had trouble controlling his bowels and was constantly rushing to the bathroom. [Feindt Decl. at ¶ 33.] During this time, Feindt also experienced coughing, burning in his nose and mouth, muscle pain, extreme malaise, brain fog, and short-term memory loss. [Id. at ¶ 73; A. Feindt Decl. at ¶ 71.] Feindt was still sick when the family moved into a hotel on December 14, 2021. See April 30 Trial Transcript at 11-12 (Feindt testifying). It is not clear when Feindt's acute symptoms ended.

b. Continued Symptoms

On March 10, 2022, after moving back into their house, Feindt's symptoms returned: he began vomiting, having diarrhea, was dizzy and lethargic, coughing, and having migraines. [A. Feindt Decl. at ¶ 60; April 30 Trial Transcript at 15 (Feindt testifying).] He experienced "kaleidoscope vision." [April 30 Trial Transcript at 16 (Feindt testifying).]

After Feindt moved to Colorado in April 2022, Feindt's condition worsened and he started to experience "intermittent dizziness and vertigo, chronic pain, headaches, and elevated mast cells, which causes signs and symptoms similar to an allergic reaction." A. Feindt Decl. at ¶ 72; see Feindt Decl. at ¶ 50.

In May 2022, Feindt had pain in his right flank, right back, and right testicle that was so severe he went to the emergency room, where he was diagnosed with potential hernias. [Feindt Decl. at ¶ 74.] He has felt this pain for over two years. [Id. at ¶ 78; Kosnett Decl. at ¶ 127.] At the time of trial, Feindt experienced this testicular pain. [April 30 Trial Transcript at 22-23 (Feindt testifying).]

Feindt had three procedures to address his gastric issues. [Feindt Decl. at ¶¶ 74-79; A. Feindt Decl. at ¶ 73; April 30 Trial Transcript at 20-23 (Feindt testifying).] Feindt had a hernia repair in June 2022, and a cholecystectomy in November 2022. See Kosnett Decl. at ¶ 127; Feindt Decl. at ¶ 74. He has been diagnosed with macrocytosis of the gastrointestinal track. See Kosnett Decl. at ¶ 136; Feindt Decl. at ¶ 76.

In December 2022, Feindt thought he was having a stroke, and was so lethargic he could not keep his eyes open. [Feindt Decl. at ¶ 81.] He was hospitalized for eight days for a severe headache and vertigo from late December 2022 through

early January 2023. See Kosnett Decl. at ¶ 121; Def.'s Exh. DX 3214 (Feindt medical records) at 98-118, 176-77. He was diagnosed with meningitis, vertigo, tinnitus, migrainosus, and vestibular dysfunction. [Feindt Decl. at ¶ 81; A. Feindt Decl. at ¶ 73.]

He reports still being in pain, and his body taking more time to recover after physical activity. [Feindt Decl. at ¶¶ 84-85.] He continues to experience migraine symptoms and right-sided abdominal pain and flank pain. [Kosnett Decl. at ¶¶ 122, 127.]

c. Preexisting Conditions

Feindt had gastrointestinal issues in October 2017. See Def.'s Exh. DX 3214 (Feindt medical records) at 35 (10/31/17 medical note); see also Kosnett Decl. at ¶ 130. Feindt experienced gastrointestinal issues for several months prior to the Fuel Release. [Def.'s Exh. DX 3214 (Feindt medical records) at 88 (12/11/21 medical record).]

During May 2021, Feindt experienced abdominal pain, diarrhea, vomiting and migraine headaches. See April 29 Trial Transcript at 209, 211 (Feindt testifying); Kosnett Decl. at ¶ 117. That summer of 2021 he also experienced nausea and fatigue. See April 29 Trial Transcript at 209 (Feindt testifying). In August 2021, Feindt began to experience brain fog. See id. at 211 (Feindt testifying). He reported

experiencing headaches since the beginning of November 2021. Def.'s Exh. DX 3214 (Feindt medical records) at 88 (12/11/21 medical record); see also April 29 Trial Transcript at 212-13 (Feindt testifying).

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Feindt's brain fog and migraines was the Fuel Release.

Based on the evidence presented, the Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of Feindt's other physical symptoms and medical conditions beginning around November 26, 2021 and lasting for approximately one month was the Fuel Release. Plaintiffs have provided evidence that Feindt was still experiencing symptoms on December 13, 2021. However, as explained above, Plaintiffs do not provide citations to medical evidence or testimony regarding Feindt's continued experience of his acute symptoms in later December or January. Evidence before the Court indicates that Feindt took a leave of absence between December 14, 2021 and January 10, 2022, and he took sick leave for the work pay period ending December 19, 2021. [Def.'s Declaration of Erick C. West ("West Decl."), filed 5/8/24 (dkt. no. 563) at ¶ 46.] The Court finds that Plaintiffs did not provide sufficient evidence to

allow Feindt to recover for pain and suffering damages after January 10, 2022. The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Feindt's physical symptoms and medical conditions experienced or diagnosed after January 10, 2021 was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

The Court finds that Feindt was not fully recovered from gastrointestinal issues, headaches, and brain fog at the time of the Fuel Release and therefore apportionment is appropriate for these symptoms. Because there is no evidence to base apportionment between Feindt's preexisting medical conditions of gastrointestinal issues, headaches and brain fog, and the same or similar conditions such as lightheadedness, vomiting, stomach contractions, diarrhea, and seeing stars, caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms Feindt experienced between November 25, 2021 and January 10, 2022.

6. P.G.F.

P.G.F. was approximately four years old in November 2021. See Feindt Decl. at ¶ 1 (noting P.G.F. was six as of April 6, 2024); A. Feindt Decl. at ¶ 63 (noting P.G.F. was four

years old when she had trouble adjusting after moving to Colorado).

a. Acute Symptoms

On December 13, 2021, P.G.F. experienced severe abdominal pain, vomiting, and diarrhea. She lost control of her bowels. Her vomiting was so intense it progressed to dry heaving. April 29 Trial Transcript at 191 (A. Feindt testifying); A. Feindt Decl. at ¶¶ 39, 75; April 30 Trial Transcript at 9 (Feindt testifying); see also Plfs.' Exh. PX 2253 (P.G.F. medical records) at 47-49, 55-57 (12/13/21 medical records). P.G.F. also experienced sleep issues before Christmas in 2021. See A. Feindt Decl. at ¶ 57.

The Feindt household stopped using the household tap water for drinking on December 9, 2021. [Feindt Decl. at ¶ 21; April 29 Trial Transcript at 212 (Feindt testifying).] P.G.F.'s symptoms improved by December 19, 2021. [April 29 Trial Transcript at 214-15 (Feindt testifying); Joint Exh. JX 10 (12/19/21 text message from Feindt to his father).] By late January 2022, P.G.F.'s symptoms of diarrhea, vomiting and nausea had completely resolved. See April 29 Trial Transcript at 215-16 (Feindt testifying); Def.'s Exh. DX 3224 (P.G.F. medical records) at 201 (1/20/22 medical record).

b. Symptoms Since December 19, 2021

P.G.F. has lung damage, continues to have a recurring cough, abdominal pain, rashes, elevated mast cells, and shortness of breath. [Feindt Decl. at ¶¶ 64-65; A. Feindt Decl. at ¶ 77.] P.G.F. underwent a bronchoscopy due to chronic cough in December 2022, which found airway edema, and a CT scan, which found bronchial wall thickening. See Def.'s Exh. DX 3224 (P.G.F. medical records) at 181-82, 186-87 (12/6/22 medical record); see also Durrani Decl. at ¶ 94. P.G.F. also had behavioral setbacks and regression in her toilet training and language development. [A. Feindt Decl. at ¶ 76; April 29 Trial Transcript at 194 (A. Feindt testifying).]

c. Preexisting Conditions

P.G.F. experienced abdominal pain in late October 2021. See Plfs.' Exh. PX 2253 (P.G.F. medical records) at 47 (12/13/21 medical note indicating P.G.F. had abdominal pain for the last six weeks); April 29 Trial Transcript at 213-14 (Feindt testifying). P.G.F.'s symptoms of nausea, vomiting, and diarrhea also began around the beginning of November 2021. [Plfs.' Exh. 2253 (P.G.F. medical record) at 44.]

P.G.F. had a history of cough prior to the Fuel Release. See Durrani Decl. at ¶ 95 (noting cough was reported fifteen times in P.G.F.'s medical records prior to the alleged exposure date); see, e.g., Def.'s Exh. DX 3224 (P.G.F. medical

records) at 210 (1/30/20 medical record indicating two-week history of cough), 222 (3/3/21 medical record noting history of asthma and ongoing chronic cough that recently improved with medication), 276 (11/19/19 medical record noting "barky cough" during exam), 283 (10/15/18 medical record noting "complaints of non-productive cough"), 303 (4/5/18 medical record noting coughing for five days). Feindt testified P.G.F.'s cough began in May 2021. April 29 Trial Transcript at 213; see also Durrani Decl. at ¶ 91 (noting A. Feindt stated P.G.F.'s cough, along with other symptoms, began in spring of 2021).

d. Causation and Apportionment

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of P.G.F.'s symptoms and medical conditions beginning December 13, 2021 to December 19, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of P.G.F.'s physical symptoms and medical conditions of chronic cough, airway edema, bronchial wall thickening, behavioral setbacks and regression in toilet training and language development was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

The Court finds that P.G.F. was not fully recovered from abdominal pain, nausea, vomiting, and diarrhea at the time

of the Fuel Release and therefore apportionment is appropriate. Because there is no evidence to base apportionment between these preexisting conditions and the conditions caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms P.G.F. experienced between December 13, 2021 and December 19, 2021.

7. T.F.

T.F. was approximately twenty months old in November 2021. See Feindt Decl. at ¶ 42.

a. Acute Symptoms

Around Thanksgiving of 2021, T.F. experienced nausea, diarrhea, vomiting and headaches. Feindt Decl. at ¶ 16; see also A. Feindt Decl. at ¶ 78 (testifying that immediately after the Fuel Release, T.F. experienced nausea, vomiting, diarrhea, and headaches).

The Feindt household stopped using the household tap water for drinking on December 9, 2021. [Feindt Decl. at ¶ 21; April 29 Trial Transcript at 212 (Feindt testifying).]

On December 11, 2021, T.F. went to the emergency room because he was vomiting uncontrollably, dry heaving, had trouble breathing, and had diarrhea. [Feindt Decl. at ¶ 25; April 29 Trial Transcript at 190-91 (A. Feindt testifying), 229-30

(Feindt testifying); Plfs.' Exh. PX 2254 (T.F. medical records) at 10-12.] By December 15, 2021, his diarrhea was resolved. [Plfs.' Exh. PX 2254 (T.F. medical records) at 51 (12/15/21 medical record).] T.F. also experienced sleep issues before Christmas in 2021. See A. Feindt Decl. at ¶ 57.

T.F.'s symptoms had improved by December 19, 2021. [April 29 Trial Transcript at 214-15 (Feindt testifying); Joint Exh. JX 10 (12/19/21 text message from Feindt to his father).]

b. Symptoms After December 19, 2021

T.F. began to be treated for asthma in January 2022. [Plfs.' Exh. PX 2254 (T.F. medical records) at 132 (2/23/24 medical record).] T.F. has lung damage and continues to experience asthma and coughing. [Feindt Decl. at ¶¶ 67, 72; A. Feindt Decl. at ¶ 79; April 30 Trial Transcript at 24-25 (Feindt testifying).] T.F. had to undergo extensive evaluation for his asthma and cough, including a bronchoscopy and CT scan of his chest. Def.'s Exh. DX 3225 (T.F. medical records) at 77-81 (10/3/22 medical record), 88-91 (9/15/22 medical record); see also Durrani Decl. at ¶ 123.

T.F. continues to experience abdominal pain, dermatitis, asthma and elevated mast cells. [A. Feindt Decl. at ¶ 79.]

c. Preexisting Conditions

T.F.'s cough, diarrhea and wheezing began in May 2021. [April 29 Trial Transcript at 198 (A. Feindt testifying); id. at 214 (Feindt testifying).] Amanda Feindt testified his cough has continued from May 2021 to the time of trial. [April 29 Trial Transcript at 198 (A. Feindt testifying).]

d. Causation and Apportionment

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of T.F.'s symptoms and conditions from November 26, 2021 to December 19, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of T.F.'s physical symptoms and conditions experienced or diagnosed after December 19, 2021, including asthma, lung damage, abdominal pain, dermatitis, and elevated mast cells, was the Fuel Release.

The Court finds that T.F. was not fully recovered from the condition that caused coughing and wheezing at the time of the Fuel Release and therefore apportionment for those conditions is appropriate. Because there is no evidence to base apportionment between T.F.'s preexisting medical condition that caused coughing and wheezing and the same conditions caused by the Fuel Release, then damages must be distributed equally for

these conditions. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms T.F. experienced between November 26, 2021 and December 19, 2021.

8. Freeman

a. Acute Symptoms

Freeman vomited on November 26, 2021. [Amended Declaration of Plaintiff, Nastasia Freeman ("Freeman Decl."), filed 5/13/24 (dkt. no. 572), at ¶ 7.] By November 28, 2021, Freeman had headaches, a rash on her arm, and sores and lesions on her scalp, feet, and hands. She felt like her blood was on fire. Freeman Decl. at ¶ 8; see also April 29 Trial Transcript at 133 (Freeman testifying); Joint Exh. JX 52 (11/29/21 email from Freeman).] Freeman also experienced nausea during this time. See Kosnett Decl. at ¶ 163.

The Freeman household stopped drinking the household water on November 29, 2021. [Freeman Decl. at ¶ 10; Declaration of Koda Freeman,²¹ filed 4/8/24 (dkt. no. 401) ("K. Freeman Decl.") at ¶ 9; April 29 Trial Transcript at 115-16 (Freeman testifying).]

Freeman's symptoms of nausea and vomiting abated when she and her family moved to a hotel on December 3, 2021. See

²¹ Koda Freeman is Freeman's husband. [K. Freeman Decl. at ¶ 1.]

Kosnett Decl. at ¶¶ 162-63. On December 8, 2021, Freeman wrote a note to her doctor in which she noted that she had stomach issues, a rash, vomiting, diarrhea, persistent headaches, blurred vision, as well as numbness and tingling commonly associated with her seizure disorder. Def.'s Exh. DX 3215 (Freeman medical records) at 243 (12/8/21 correspondence by Freeman); see also Kosnett Decl. at ¶ 164. On December 9, 2021, Freeman noted concerns regarding insomnia, migraines, and psoriasis to her doctor. [Freeman Decl. at ¶ 35.] On December 29, 2021, Freeman experienced abdominal pain, vomiting, diarrhea, memory loss, skin rashes, brain fog, eye irritation, seizures, and teeth and gum issues. [Id. at ¶¶ 38-39.]

In early December, Freeman was having multiple seizures a day. [Id. at ¶ 40; April 29 Trial Transcript at 136 (Freeman testifying).] Freeman's preexisting seizure disorder was dormant for two and a half years prior to November 2021. [Freeman Decl. at ¶ 32.] Her seizures felt different in that, before the Fuel Release, she would completely lose consciousness during seizures but, following the Fuel Release, she had some awareness during the seizures. April 29 Trial Transcript at 136 (Freeman testifying); see also Freeman Decl. at ¶ 33; Declaration of Dr. Kristin Andruska, filed 4/8/24 (dkt. no. 364)

("Andruska Decl.")²² at ¶ 50. By December 29, 2021, her seizures continued to increase in frequency and severity to multiple seizures a day, lasting from thirty seconds to five minutes. She became disoriented, panicked, and would sometimes lose consciousness during these episodes. [Freeman Decl. at ¶¶ 38-40.]

Freeman's menses also stopped for a couple of months after the Fuel Release. [Plfs.' Exh. PX 2255 (Freeman medical records) at 1173 (9/13/22 medical record).]

b. Ongoing Symptoms

Freeman continues to experience seizures, as well as cardiovascular, dermatological, gastrointestinal, vestibular, urinary/renal, endocrine, musculoskeletal, reproductive, integumentary, respiratory, lymphatic, circulatory and neurological dysfunction. [Freeman Decl. at ¶ 58.] Some of her most persistent problems are psoriasis and a wound on her foot. [Id. at ¶ 59.]

Since February 2022, Freeman's seizures got worse, and were very frequent. [Id. at ¶¶ 53, 55; April 29 Trial Transcript at 141 (Freeman testifying).]

²² Plaintiffs' expert Kristin Andruska, M.D. ("Dr. Andruska") is a physician-scientist, board-certified by the American Board of Psychiatry and Neurology, and is a fellowship-trained Movement Disorders Specialist. [Andrusak Decl. at ¶ 1.]

Freeman was hospitalized at Walter Reed Army Medical Center at the end of July 2022. See Freeman Decl. at ¶ 60.

As of September 2022, Freeman's bleeding during menses is heavier and painful. [Plfs.' Exh. PX 2255 (Freeman medical records) at 1173 (9/13/22 medical record).]

In January 2023, Freeman went to Naval Hospital Camp Pendleton Emergency Department for chest and body pain. [Freeman Decl. at ¶ 61; Kosnett Decl. at ¶ 172.] She was given the wrong dosage of medication, which caused her to collapse and lose consciousness, and she was taken by ambulance to the hospital. [Freeman Decl. at ¶ 61; Kosnett Decl. at ¶ 172.]

i. Vestibular Dysfunction

Dr. Andruska testified that, in October 2022, Freeman underwent testing that documented vestibular dysfunction. [May 3 Trial Transcript at 132, 140.] She opined that the testing showed Freeman had dysfunction of two systems: her visual system and her vestibular system. [Id. at 140.] The vestibular system controls balance and posture, as well as consciousness, memory and learning. [Id. at 140.]

Plaintiffs cite to medical records that demonstrate medical professionals suspected Freeman had issues with her vestibular function, that she was evaluated for these issues, and that she was recommended for vestibular physical therapy. See Plfs.' Rebuttal Closing Argument Brief, filed 7/12/24 (dkt.

no. 603) ("Plfs.' Rebuttal Brief") at 34 n.28 (citing Freeman's medical records). Freeman was evaluated at Walter Reed National Military Medical Center "with serial EEG and MRI which ruled out seizure as cause of dizziness but rather more vestibular etiology." [Def.'s Exh. DX 3215 (Freeman medical records) at 246 (9/12/22 Office and Clinic Notes signed by Aaron John Fortes and Anna G. Concepcion, PA).] She was evaluated for "abnormal sensation of increased pressure in her head, brain fog, and dizziness." [Id. at 105 (7/25/22 Walter Reed assessment).] Her discharge diagnosis was epilepsy and vertigo. [Plfs.' Exh. PX 2255 (Freeman medical records) at 1082 (7/28/22 discharge summary).] She later engaged in vestibular physical therapy. See, e.g., id. at 678 (10/17/22 medical record), 805-08 (10/25/22 medical record).

No medical record was presented reflecting a specific diagnosis of Freeman for vestibular dysfunction. See, e.g., Def.'s Trial Declaration of Dr. Barry Gordon, filed 4/8/24 (dkt. no. 345) ("Gordon Decl.") at ¶ 26.bb.²³ The United States' expert Barry Gordon, M.D. ("Dr. Gordon") testified that Freeman does not have a long-term organic neurological problem from exposure. [Id. at ¶ 52.] Dr. Gordon diagnosed Freeman with psychogenic

²³ Dr. Gordon is a board-certified neurologist, and his subspecialty is behavioral neurology. [Gordon Decl. at ¶¶ 6, 8.]

seizures, or seizures caused by a psychological process rather than abnormal electrical discharges to the brain. Gordon Decl. at ¶ 20, see also id. at ¶ 21; Def.'s Trial Declaration of Dr. Eric. S. Smith, filed 4/8/24 (dkt. no. 360) ("Smith Decl.") at ¶ 210.²⁴

ii. Neurological Symptoms

Plaintiffs' expert Steven Storage, M.D. ("Dr. Storage")²⁵ opined that Freeman's brain fog, attention and concentration deficits, symptoms consistent with post-traumatic stress, gait disturbances, major depression, and worsening of the symptoms of her underlying seizure disorder were caused by the Fuel Release and the resulting trauma. See Declaration of Steven Storage, M.D., filed 4/8/24 (dkt. no. 387) ("Storage Decl.") at ¶ 15. Dr. Storage also described single-photon emission computed tomography ("SPECT") brains scans that were taken of Freeman's brain. He noted these scans show irregularities that are indicative of injury. [Id. at ¶¶ 28-39.]

²⁴ The Government's expert Eric S. Smith, Ph.D. ("Dr. Smith"), is a clinical and forensic psychologist. [Smith Decl. at ¶ 1.]

²⁵ Dr. Storage is Freeman's current psychiatric treating provider, and is a psychiatrist at the Amen Clinics in Encino, California. [Storage Decl. at ¶ 1.]

c. Preexisting Conditions

Freeman has had a seizure disorder since her early childhood. See April 29 Trial Transcript at 107-08 (Freeman testifying); Kosnett Decl. at ¶ 170. Her disorder has historically been associated with four symptoms: loss of consciousness with tonic convulsions, focal awareness seizures characterized by brief problems with comprehension and loss of train of thought, episodic loss of balance or dizziness lasting for minutes to hours, and a chronic migraine that began in her late teens. [Kosnett Decl. at ¶ 170.] Freeman testified that her seizures were dormant for two and a half years before beginning again during the week of Thanksgiving in 2021. Freeman Decl. at ¶ 32; see also K. Freeman Decl. at ¶¶ 25, 56 (noting Freeman's seizures had been dormant). Freeman testified that her last seizure prior to October or November 2021 was in May 2019. [April 29 Trial Transcript at 135-36, 138 (Freeman testifying).] Freeman had previously taken a medication for her seizures, which she had discontinued at the beginning of 2020. Def.'s Exh. DX 3215 (Freeman medical records) at 278-79 (12/9/21 medical record); see also Kosnett Decl. at ¶ 165.

Freeman's menstrual irregularities began in May 2021. See Plfs.' Exh. PX 2255 (Freeman medical records) at 599 (8/29/22 medical record).

In July 2021, Freeman experienced abdominal issues, including pain, diarrhea and vomiting. [April 29 Trial Transcript at 107-108 (Freeman testifying).] In August 2021, Freeman started to experience headaches. [Id.] Beginning in October or November 2021, Freeman had a cough. Freeman started to experience memory loss and confusion around October 2021. [Id.]

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Freeman's physical symptoms and medical conditions of menstrual irregularities, neurological issues such as attention and concentration deficits, brain fog, memory loss; symptoms consistent with post-traumatic stress; gait disturbances; major depression; worsening of symptoms of her underlying seizure disorder; cardiovascular; vestibular; urinary/renal; endocrine; musculoskeletal; reproductive; integumentary; respiratory; lymphatic; circulatory and neurological dysfunction; psoriasis; sores and lesions; migraines; and her foot wound was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

The Court finds Freeman had a predisposition to psychogenic injury. Montalvo, 77 Hawai'i at 294, 884 P.2d at 357 ("Such 'predisposition to injury' or other special sensitivity

is often involved in the context of the so-called 'thin skull' or 'eggshell skull' plaintiff.").

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of Freeman's headaches, coughing, rash, vomiting, diarrhea, and stomach pain, and subsequent psychogenic seizures - seizures caused by a psychological process, rather than abnormal electrical discharges to the brain - after November 26, 2021 and lasting approximately one and a half months was the Fuel Release.

Plaintiffs offer evidence that Freeman experienced abdominal pain, vomiting, diarrhea, memory loss, skin rashes, eye irritation, seizures, and teeth and gum issues on December 29, 2021. However, Plaintiffs do not provide citations to medical evidence or testimony regarding Freeman's continued experience of these or other acute symptoms Freeman experienced, and specifically the duration of these and other acute symptoms that Freeman experienced in the weeks immediately following the Fuel Release. Plaintiffs do not cite to medical records demonstrating that Freeman continued to experience her acute symptoms that the Court has found were caused by the Fuel Release, aside from her seizures, in January 2022. Accordingly, the Court finds that Plaintiffs did not provide sufficient evidence to allow Freeman to recover damages for the foregoing

symptoms, beginning in January 2022. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

Further, the Court finds that it must apportion damages for certain acute symptoms that Freeman experienced prior to and immediately after the Fuel Release. The Court finds that Freeman was asymptomatic for seizure disorder at the time of the Fuel Release and therefore apportionment is not appropriate for this condition. The Court also finds that Freeman had not recovered from the condition or conditions that caused headaches and cough at the time of the Fuel Release and therefore apportionment is appropriate for these conditions. Because there is no evidence to base apportionment between Freeman's preexisting medical condition or conditions that caused headaches and cough and the same conditions caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms Freeman experienced beginning November 26, 2021 and lasting approximately one and a half months.

9. D.F.

D.F. was approximately four years old in November 2021. See Freeman Decl. at ¶ 1 (noting D.F. was seven years old as of May 13, 2024).

a. Acute Symptoms

By November 28, 2021, D.F. had diarrhea, nausea, stomach pain, headaches, and was vomiting. Freeman Decl. at ¶¶ 8-9; see also April 29 Trial Transcript at 133-34 (Freeman testifying); Joint Exh. JX 52 (11/29/21 email from Freeman).

The Freeman household stopped drinking the household water on November 29, 2021. [Freeman Decl. at ¶ 10; K. Freeman Decl. at ¶ 9; April 29 Trial Transcript at 115-16 (Freeman testifying).] The family resided in a hotel beginning December 3, 2021. [Freeman Decl. at ¶ 25; Kosnett Decl. at ¶ 162; April 29 Trial Transcript at 116-117 (Freeman testifying).] D.F.'s symptoms of nausea and vomiting abated when the Freeman family moved to a hotel. See Kosnett Decl. at ¶ 163.

b. Symptoms and Conditions Since December 3, 2021

During this time, D.F.'s preexisting behavioral difficulties escalated.²⁶ [Freeman Decl. at ¶¶ 64-65.] In January 2022 he was diagnosed with autism. [Id. at ¶ 65.]

After the family moved away from Hawai'i on February 2, 2022, D.F.'s symptoms of fatigue, diarrhea, red eyes, eye twitching, skin rash, and respiratory issues greatly improved. See Freeman Decl. at ¶ 53, Plfs.' Exh. PX 2258 (D.F.

²⁶ It is not clear precisely when D.F.'s preexisting behavioral difficulties escalated. See Durrani Decl. at ¶¶ 81-82.

medical records) at 129-31 (10/12/22 medical record). He also began speaking again. [Freeman Decl. at ¶ 66.]

D.F. experienced tremors in his hands and dizziness in April 2022. At this time, he also had an episode where he lost balance and lost consciousness. His parents took him to the hospital, where upon receiving care he regained consciousness. [Id. at ¶¶ 67-70; April 29 Trial Transcript at 144-47, 166-67 (Freeman testifying).]

D.F. continues to experience headaches, vomiting, memory loss, absence seizures, and tremors. [April 29 Trial Transcript at 146-147, 166-67 (Freeman testifying); Freeman Decl. at ¶¶ 71-73.]

c. Causation

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of D.F.'s physical symptoms and medical conditions beginning November 28, 2021 and ending on December 3, 2021 for nausea and vomiting, and at some point no longer than one month after the Fuel Release for his remaining symptoms, was the Fuel Release.

Plaintiffs do not provide citations to medical evidence or testimony regarding D.F.'s continued experience of his acute symptoms after December 3, 2021. Accordingly, the Court finds that Plaintiffs did not provide sufficient evidence to allow D.F. to recover for pain and suffering damages for any period

longer than one month after the Fuel Release. Further, the Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of D.F.'s diagnosis of autism and escalation of behavioral difficulties was the Fuel Release.

10. K.F.

K.F. was approximately seven years old in November 2021. See Freeman Decl. at ¶ 1 (noting D.F. was ten years old as of May 13, 2024).

a. Acute Symptoms

K.F. vomited on November 26, 2021. [Freeman Decl. at ¶ 7.] By November 28, 2021, K.F. had diarrhea, vomiting, nausea, stomach pain, and headaches. [Id. at ¶¶ 8-9; April 29 Trial Transcript at 133-34 (Freeman testifying); Joint Exh. JX 52 (11/29/21 email from Freeman).]

The Freeman household stopped drinking the household water on November 29, 2021. [Freeman Decl. at ¶ 10; K. Freeman Decl. at ¶ 9; April 29 Trial Transcript at 115-16 (Freeman testifying).] The family resided in a hotel beginning December 3, 2021. [Freeman Decl. at ¶ 25; Kosnett Decl. at ¶ 162; April 29 Trial Transcript at 116-117 (Freeman testifying).] K.F.'s symptoms of nausea and vomiting abated when the Freeman family moved to a hotel. See Kosnett Decl. at ¶ 163.

In the wake of the Fuel Release, K.F. lost pigment in his skin, developed rashes after showering, and had bloody noses. [April 29 Trial Transcript at 157-58 (K. Freeman testifying).]

b. Continued Symptoms

The family moved from Hawai'i on February 2, 2022. [Freeman Decl. at ¶ 53.] At some point, K.F. experienced stomach pain, vomiting, headaches and a bloody nose. [K. Freeman Decl. at ¶ 43.] Since the Fuel Release, Freeman testified that K.F. experiences bloody noses, periumbilical pain, gastrointestinal issues, vomiting, constipation, weight loss, enlarged lymph nodes, bloody stools, bloating, migraines, GERD with esophagitis, nervous system dysfunction, dizziness and fainting. [Freeman Decl. at ¶ 75.]

K.F. had abnormal lab results in August 2022, which noted concerning areas in his liver, kidney, and pancreas. At that time, K.F. had blood in his urine and stool. [Id. at ¶ 74.]

c. Causation

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of K.F.'s loss of pigment in his skin and bloody noses was the Fuel Release.

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of K.F.'s

stomach pain, diarrhea, nausea, vomiting, and headaches beginning November 28, 2021 and ending on December 3, 2021 for nausea and vomiting, and at some point no longer than one month afterward for his remaining symptoms, was the Fuel Release.

The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of K.F.'s physical symptoms and medical conditions one month after the Fuel Release, including stomach pain, vomiting, headaches, rashes, abnormal lab results in August 2022, periumbilical pain, gastrointestinal issues, constipation, weight loss, enlarged lymph nodes, bloody stools, bloating, migraines, GERD with esophagitis, nervous system dysfunction, dizziness and fainting was the Fuel Release.

11. N.F.

N.F. was approximately eleven years old in November 2021. See April 29 Trial Transcript at 147 (Freeman testifying that N.F. turned fourteen recently).

a. Acute Symptoms

N.F. vomited on November 26, 2021. [Freeman Decl. at ¶ 7.] By November 28, 2021, N.F. became increasingly ill. N.F. had diarrhea, vomiting, nausea, stomach pain, and headaches. Id. at ¶¶ 8-9; see also April 29 Trial Transcript at 158 (K. Freeman testifying); id. at 133-34 (Freeman testifying); Joint Exh. JX 52 (11/29/21 email from Freeman). N.F. also had pain in his

body. [April 29 Trial Transcript at 157-58 (K. Freeman testifying).]

The Freeman household stopped drinking the household water on November 29, 2021. [Freeman Decl. at ¶ 10; K. Freeman Decl. at ¶ 9; April 29 Trial Transcript at 115-16 (Freeman testifying).] The family resided in a hotel beginning December 3, 2021. [Freeman Decl. at ¶ 25; Kosnett Decl. at ¶ 162; April 29 Trial Transcript at 116-117 (Freeman testifying).] N.F.'s symptoms of nausea and vomiting abated when the Freeman family moved to a hotel. See Kosnett Decl. at ¶ 163.

**b. Symptoms and Conditions
 Since December 3, 2021**

In mid-August 2022, N.F. had an event where he was in a lot of pain, and his body felt like it was on fire. He woke up and lost mobility: he could not stand or put his clothes on or do anything. His father had to lift him and carry him to get him to the hospital. April 29 Trial Transcript at 147-48 (Freeman testifying); Freeman Decl. at ¶ 81; see also K. Freeman Decl. at ¶ 46.

Koda Freeman testified that N.F. now has migraines, stomach issues, aches, a nerve issue that makes him sensitive to touch, and his bones hurt. [K. Freeman Decl. at ¶ 46.] Freeman testified that, since exposure, N.F. was diagnosed with petroleum product toxicity, musculoskeletal issues, soft tissue

masses, gastrointestinal problems, ENT issues, fatigue, periumbilical pain, weight loss, cough and wheezing, tinnitus, joint pain and myalgias, polyarthrititis, inflammatory arthritis, abnormal labs, gastritis, autonomic nervous system disease, migraines, and Amplified Muscular Pain Syndrome ("AMPS").

[Freeman Decl. at ¶ 78.] N.F. experiences dizziness while standing, discomfort while wearing backpack, memory and executive function issues. [Clark Decl. at ¶ 50.]

c. Preexisting Conditions

In September 2021, N.F. experienced muscle and joint pain. [April 29 Trial Transcript at 109 (Freeman testifying).] In October 2021, N.F. experienced abdominal pain and wheezing. [Id.; Plfs.' Exh. PX 2256 (N.F. medical records) at 69-70 (10/28/21 medical record); Durrani Decl. at ¶ 134.]

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of N.F.'s migraines was the Fuel Release.

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of N.F.'s physical symptoms and medical conditions beginning November 28, 2021 and ending on December 3, 2021 for nausea and vomiting, and

at some point no longer than one month afterward for his remaining systems, was the Fuel Release.

The Court finds that N.F. was not fully recovered from abdominal pain, muscle pain, and joint pain prior to the Fuel Release, and therefore apportionment is appropriate for the similar conditions he experienced immediately after the Fuel Release: stomach pain and pain in his body. Because there is no evidence to base apportionment between N.F.'s preexisting conditions of abdominal pain, muscle pain, and joint pain; and N.F.'s stomach pain and pain in his body caused by the Fuel Release, damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms N.F. experienced between November 26, 2021 and December 3, 2021.

The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of N.F.'s symptoms and conditions after December 3, 2021, including his hospitalization in August 2022; petroleum product toxicity; musculoskeletal issues; soft tissue masses; gastrointestinal problems, including stomach pain and diarrhea; ENT issues; fatigue; pain in his body, including periumbilical pain, and joint pain and myalgias; weight loss; cough and wheezing; tinnitus; polyarthrititis;

inflammatory arthritis; abnormal labs; gastritis; autonomic nervous system disease; and AMPS was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

12. Jessup

a. Acute Symptoms

Between November 22 and 25, 2021, Jessup experienced headaches, nausea, dizziness, and stomach pain. She later experienced loss of balance. See Declaration of Brian Jessup, filed 4/8/24 (dkt. no. 398) ("B. Jessup Decl.") at ¶ 9;²⁷ Declaration of Plaintiff, Sheena Jessup, filed 4/8/24 (dkt. no. 396) ("Jessup Decl.") at ¶ 10.²⁸ The following week, she continued to get sick, and experienced diarrhea, stomach pain, and nausea, as well as dizziness when in her house. [Jessup Decl. at ¶ 16.]

Jessup reported her symptoms of fever, chills, nausea, vomiting, diarrhea, bloating, change in stool consistency, abdominal pain, headache, lethargy, muscle aches, and rash were ongoing since late October and increased the week of

²⁷ Brian Jessup is Jessup's husband. [B. Jessup Decl. at ¶ 3.]

²⁸ Jessup testified that her family developed similar symptoms the week of November 22, 2021, including headaches, nausea, dizziness and abdominal pains. [Jessup Decl. at ¶ 10.] The Court credits this testimony as to Jessup, but because the Court cannot determine if each individual member of her family experienced these symptoms, the Court does not consider this testimony in relation to her children's symptoms.

November 22, 2021. [Def.'s Exh. DX 3216 (Jessup medical records) at 43-44 (12/7/21 Chronological Medical Record signed by Jessup).]

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 16-18; April 30 Trial Transcript at 128-29 (Jessup testifying).] However, on November 29, 2021, Jessup drank a gulp of coffee that was made from tap water, and it burned her throat. The burn lasted a long time. [Id. at ¶ 17; see also Kosnett Decl. at ¶ 210.]

On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.] The family lived at home without household water for six months. [B. Jessup Decl. at ¶ 23; Jessup Decl. at ¶¶ 40-43 (describing washing clothes and bathing without household water).]²⁹

On December 7, 2021, Jessup reported her esophagus feeling like it was on fire, her voice being hoarse, her stomach being constantly upset, increased headaches, dizziness and loss of balance and coordination. [Def.'s Exh. DX 3216 (Jessup medical records) at 43-44 (12/7/21 Chronological Medical Record signed by Jessup).]

²⁹ The Jessup family returned to washing clothes in their washing machine in March 2022. [Jessup Decl. at ¶ 55.]

In early to mid-December, Jessup was still experiencing abdominal pain. See Plfs.' Exh. PX 2259 (Jessup medical records) at 51-52 (12/22/21 primary care note). By December 22, 2021, Jessup's cough, nausea, rash, and fatigue had resolved. See id. at 52-53. At that time, Jessup reported abdominal pain present over the last six months, with an increase in the last ten days to an 8/10 pain scale. [Id.]

After the Navy flushed Jessup's home on two separate occasions - once in December 2021 and once in February 2022 - Jessup testified that her family experienced "an influx of symptoms." April 30 Trial Transcript at 144; see Kosnett Decl. at ¶ 238, Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts), Jessup Decl. at ¶¶ 52-53. Jessup testified she felt lightheaded after the flushes. [April 30 Trial Transcript at 145.] Jessup described experiencing increased symptoms after the second flush, including dizziness, nausea, face tingling, headaches, nosebleeds, burning eyes, skin burning, and rashes. [Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶ 53.]³⁰

³⁰ The Court credits Jessup's experience of these symptoms after the flushing of her home, but because the Court cannot determine if each individual member of her family experienced these symptoms, the Court does not consider this testimony in relation to her children's symptoms.

Jessup and her children moved out of their house and from Hawai'i on May 14, 2022 and Brian Jessup remained in Honolulu to live and work out of his office. Jessup Decl. at ¶ 63, see also B. Jessup Decl. at ¶¶ 19, 29.

b. Continued Symptoms

Jessup testified that some of her symptoms lasted a few months: abdominal pain, nausea, face tingling, brain fog, loss of balance, difficulty focusing, eye irritation, muscle aches, fatigue, rashes, sore/dry throat, shakiness, and numbness in extremities. [Jessup Decl. at ¶ 26.] This contradicts medical records documenting that her cough, nausea, rash, and fatigue had resolved by December 22, 2021. See Plfs.' Exh. PX 2259 (Jessup medical records) at 52-53 (12/22/21 primary care note). Jessup stated that her symptoms of shakiness, mood swings, numbness, balance problems, and fatigue continued while she lived on O'ahu, and abated since she left the island. [Jessup Decl. at ¶ 71.] Jessup also experienced and continues to experience heavy menses that is worse than she ever experienced prior to the Fuel Release. [Id.]

c. Preexisting Conditions

Jessup's abdominal pain began in July 2021. [Def.'s Exh. DX 3216 (Jessup medical records) at 46 (7/16/21 medical record noting "almost daily" abdominal pain); Plfs.' Exh. PX 2259 (Jessup medical records) at 51-52 (12/22/21 medical note

reporting abdominal pain over the past six months); see also Kosnett Decl. at ¶ 220 (describing past abdominal pain).

Jessup experienced fever, chills, nausea, diarrhea, change in stool consistency, bloating, vomiting, abdominal pain, headaches, lethargy, muscle aches, and rash in October 2021, and there is no evidence that these medical issues resolved before the Fuel Release. [Def.'s Exh. DX 3216 (Jessup medical records) at 43-44 (12/7/21 Chronological Record of Medical Care); see also April 30 Trial Transcript at 127-28 (Jessup testifying regarding the foregoing medical record).]

d. Causation and Apportionment

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of Jessup's symptoms and conditions from November 26, 2021 through December 22, 2021 was the Fuel Release. The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Jessup's symptoms and conditions after December 22, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Jessup's heavy menses; throat burning; brain fog; face tingling; loss of balance; difficulty focusing; fatigue; sore/dry throat; mood swings; eye irritation; shakiness; numbness in extremities;

and increased symptoms after the Navy flushed their home water system was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633.

The Court finds that Jessup was not fully recovered from symptoms of fever, chills, nausea, vomiting, diarrhea, bloating, change in stool consistency, abdominal pain, headache, lethargy, muscle aches, and rash at the time of the Fuel Release and therefore apportionment is appropriate. Because there is no evidence to base apportionment between Jessup's preexisting symptoms of fever, chills, nausea, vomiting, diarrhea, bloating, change in stool consistency, abdominal pain, headache, lethargy, muscle aches, and rash and the symptoms caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. The Court does not apportion damages for the other acute symptoms Jessup experienced between November 26, 2021 and December 22, 2021.

13. B.B.J.

B.B.J. was approximately fifteen years old at the time of the Fuel Release. See Jessup Decl. at ¶ 1 (noting B.B.J. was eighteen years old as of 4/6/24).

a. Acute Symptoms

During the week of November 22, 2021, B.B.J. experienced severe stomach pain, nausea, headaches, and

diarrhea. See Plfs.' Exh. PX 2260 (B.B.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care regarding B.B.J.); Declaration of Plaintiff [B.B.J.], filed 4/8/24 (dkt. no. 394) ("B.B.J. Decl.") at ¶ 8. These symptoms continued the following week. See April 30 Trial Transcript at 138 (Jessup stating B.B.J. was "very sick to his stomach, saying he didn't want to eat" around 11/29/21). B.B.J. attested that around the time of the Fuel Release, in addition to stomach pains, nausea and headaches, he experienced burning in his throat, coughing, intermittent eye irritation, and muscle aches. B.B.J. Decl. at ¶ 8; see also Jessup Decl. at ¶ 23.

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 16-18; April 30 Trial Transcript at 128-29 (Jessup testifying).] Jessup testified that the family continued to get sick over the next week with symptoms of diarrhea, stomach pain, and nausea, [Jessup Decl. at ¶ 16,] although the Court cannot attribute these symptoms to any particular plaintiff other than Jessup because no specific evidence was proffered that would support such a finding.

B.B.J. had trouble with his balance, memory, and ability to concentrate during late November 2021 to February 2022. B.B.J. Decl. at ¶¶ 11, 13; see also Jessup Decl. at ¶ 23. B.B.J. testified that he woke up one day and felt so off-balance

that he perceived his entire bedroom as tilted and fell twice trying to get to the stairs. [April 30 Trial Transcript at 163-64.]

On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.]

b. Symptoms After December 6, 2021

In addition to difficulties with balance, memory, and ability to concentrate, B.J.J. experienced severe nosebleeds in January 2022. B.B.J.'s nosebleeds appear to have begun around January 2022. [April 30 Trial Transcript at 152 (Jessup testifying B.B.J.'s nosebleeds "began around the January timeframe").] Jessup testified about two incidents where B.B.J. had a nosebleed that was "gushing," and he was choking on the amount of blood coming from his nose. [Id.] B.B.J. testified that one day he woke up and his sheets were covered in blood from his nosebleeds. [April 30 Trial Transcript at 164.]

B.B.J.'s initial symptoms of headaches, nausea, abdominal pain, and diarrhea had resolved by February 7, 2022. See Plfs.' Exh. PX 2260 (B.B.J. medical records) at 6 (2/8/22 primary care note).

In January or February 2022, B.B.J. began to have a tremor in his hands. [B.B.J. Decl. at ¶ 11; April 30 Trial Transcript at 159 (B.B.J. testifying that his tremors began a

month and a half after exposure), 152-53 (Jessup testifying); see also Durrani Decl. at pg. 27, ¶ 47.³¹] Both of B.B.J.'s hands shake, and his legs also shake. See Jessup Decl. at ¶ 74; B.B.J. Decl. at ¶ 22; Transcript of Proceedings: Nonjury Trial Day 4, filed 5/14/24 (dkt. no. 580) ("May 2 Trial Transcript") at 14 (B. Jessup testifying). B.B.J. also developed a stutter. See B.B.J. Decl. at ¶¶ 22, 24; Jessup Decl. at ¶ 74; May 2 Trial Transcript at 14 (B. Jessup testifying). B.B.J.'s eye also twitches. See Declaration of B.J.[J.], filed 4/8/24 (dkt. no. 395) ("B.J.J. Decl.") at ¶ 21. He first saw a neurologist on April 23, 2024 for his tremors. [April 30 Trial Transcript at 159 (B.J.J. testifying).]

After the Navy flushed the Jessup's home on two separate occasions - once in December 2021 and once in February 2022 - Jessup testified the family experienced "an influx of symptoms." April 30 Trial Transcript at 144; see Kosnett Decl. at ¶ 238; Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶¶ 52-53.³² Jessup stated that

³¹ Paragraph 47 seems to be misnumbered, and is after Paragraph 58. See Durrani Decl. at pg. 27.

³² As noted above, Jessup testified these symptoms included dizziness, nausea, face tingling, headaches, nosebleeds, burning eyes, skin burning, and rashes, but the Court is unable to attribute all these symptoms to B.B.J. See Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶ 53 (describing the 2/23/22 Facebook Post).

B.B.J.'s symptoms of nosebleeds and his eyes burning increased after flushing. [Jessup Decl. at ¶ 23.] She also testified that B.B.J. felt as if he could not stand straight and was leaning to the left in the wake of flushing. [April 30 Trial Transcript at 144-45.]

B.B.J. moved from Hawai'i on May 14, 2022 and his father remained in Honolulu to live and work out of his office. [Jessup Decl. at ¶ 63, see also B. Jessup Decl. at ¶¶ 19, 29.]

c. Causation

The Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of B.B.J.'s balance problems; memory difficulties; stuttering; tremors; and inability to concentrate was the Fuel Release.

Plaintiffs do not present evidence that B.B.J.'s symptoms of stomach pain, diarrhea, nausea, and headaches, continued after December 6, 2021 (one week from November 29, 2021). The Court therefore concludes that B.B.J.'s symptoms of stomach pain, diarrhea, nausea, and headaches dissipated by December 6, 2021. The Court finds that Plaintiffs have shown by a preponderance of the evidence that the Fuel Release was a legal cause of B.B.J.'s symptoms of stomach pain, diarrhea, nausea, and headaches from November 22, 2021 to December 6, 2021.

The precise dates and duration that B.B.J. experienced burning in his throat, coughing, intermittent eye irritation, and muscle aches is unclear from the evidence submitted. Plaintiffs do not provide citations to medical evidence or testimony regarding the duration of B.B.J.'s symptoms of burning in his throat, coughing, intermittent eye irritation, and muscle aches in the immediate wake of the Fuel Release. Accordingly, the Court finds that Plaintiffs did not provide credible evidence to allow B.B.J. to recover for pain and suffering damages for his symptoms of burning in his throat, coughing, intermittent eye irritation, and muscle aches for any period longer than December 6, 2021.

The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that the Fuel Release was a legal cause of B.B.J.'s severe stomach pain; nausea; headaches; diarrhea; intermittent eye irritation; muscles aches; coughing; and burning in his throat; after December 6, 2021.

14. B.J.J.

B.J.J. was approximately thirteen years old at the time of the Fuel Release. See Jessup Decl. at ¶ 1 (noting that B.J.J. was sixteen years old as of 4/6/24).

a. Acute Symptoms

The week of November 22, 2021, B.J.J. experienced nausea, lethargy, abdominal pain, diarrhea, burning in the throat and stomach, and a sore in her throat. [Plfs.' Exh. PX 2261 (B.J.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care describing B.J.J.'s symptoms).] B.J.J. also felt lightheaded and dizzy. [B.J.J. Decl. at ¶ 7.] The week of November 28, 2021, B.J.J. developed rashes. [Jessup Decl. at ¶¶ 16, 24.]

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 16-18; April 30 Trial Transcript at 128-29 (Jessup testifying).] Jessup testified that the family continued to get sick over the next week with symptoms of diarrhea, stomach pain, and nausea, [Jessup Decl. at ¶ 16,] although the Court cannot attribute these symptoms to any particular plaintiff other than Jessup because no specific evidence was proffered that would support such a finding.

On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.]

B.J.J. reported experiencing symptoms of nausea, diarrhea, abdominal pain, sore in her throat, and lethargy on December 7, 2021. [Plfs.' Exh. PX 2261 (B.J.J. medical records)

at 2 (12/7/21 Chronological Record of Medical Care describing B.J.J.'s symptoms).] There is a lack of evidence that these symptoms continued past December 7, 2021.

b. Symptoms after December 7, 2021

Around February 20, 2022, B.J.J. developed a rash on her face and arm after showering once with the household tap water. [B.J.J. Decl. at ¶ 12; Jessup Decl. at ¶ 52; May 2 Trial Transcript at 31-32 (B.J.J. testifying); Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts).]³³

The family left Hawai'i on May 14, 2022 and her father remained in Honolulu. [Jessup Decl. at ¶ 63, see also B. Jessup Decl. at ¶¶ 19, 29.] Since leaving Hawai'i, B.J.J.'s menstrual periods have changed and become so severe that it seems like it will not stop. [Id. at 37.] She also worries about her ability to have children in the future. [Id.] She is now also anemic. [Id. at 38.]

c. Causation

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of B.J.J.'s symptoms and conditions from November 22, 2021 through

³³ As noted above, Jessup testified her family experienced an increase in symptoms after the Navy flushed their home, however, the Court is unable to attribute these symptoms to B.J.J. See Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶ 53 (describing the 2/23/22 Facebook Post).

December 7, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of B.J.J.'s symptoms and conditions after December 7, 2021 was the Fuel Release.

15. D.J.

D.J. was ten months old at time of the Fuel Release.
See Jessup Decl. at ¶ 12.

a. Acute Symptoms

Beginning November 22, 2021, D.J. experienced vomiting, fever, change in stool consistency and rash. The fever lasted twenty-four hours and began at the first onset of symptoms. [Plfs.' Exh. PX 2262 (D.J. medical records) at 2-3 (12/7/21 Chronological Record of Medical Care).] The week of November 28, 2021, D.J. continued to vomit, his eyes were irritated, and he had diarrhea. [Jessup Decl. at ¶ 25.] D.J. also looked disoriented on two specific occasions.³⁴ [Id.; April 30 Trial Transcript at 145 (Jessup testifying).]

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 16-18; April 30 Trial Transcript at 128-29 (Jessup testifying).] Jessup testified that the family continued to get sick over the

³⁴ It is not clear what dates this disorientation occurred.

next week with symptoms of diarrhea, stomach pain, and nausea, [Jessup Decl. at ¶ 16,] although the Court cannot attribute these symptoms to any particular plaintiff other than Jessup because no specific evidence was proffered that would support such a finding.

On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.] On December 7, 2021, Jessup reported that D.J.'s abdominal cramping, vomiting, and diarrhea were "[d]oing better since stopping drinking the water." [Plfs.' Exh. PX 2262 (D.J. medical records) at 2-3 (12/7/21 Chronological Record of Medical Care).] There is no evidence that these symptoms continued after December 7, 2021.³⁵

b. Preexisting Conditions

D.J. had been sick on and off since late October 2021. [Def.'s DX 3223 (D.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care).]

c. Causation

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of D.J.'s

³⁵ As noted above, Jessup testified her family experienced an increase in symptoms after the Navy flushed their home, however, the Court is unable to attribute these symptoms to D.J. See Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶ 53 (describing the 2/23/22 Facebook Post).

symptoms and conditions from November 22, 2021 to December 7, 2021 was the Fuel Release. The Court also finds that the preponderance of the evidence establishes that D.J.'s symptoms and conditions were resolved by December 7, 2021. Apportionment is not appropriate as there is no evidence that D.J. continued to be sick from October to November 27, 2021.

16. N.J.

N.J. was approximately four years old at the time of the Fuel Release. See Jessup Decl. at ¶ 1 (noting N.J. was seven years old as of 4/6/24).

a. Symptoms

N.J. experienced fever, chills, nausea, vomiting, diarrhea, abdominal pain, headache, lethargy, and change in stool consistency beginning in late October 2021. [Plfs.' Exh. PX 2263 (N.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care).] There is no evidence that these medical issues resolved before the Fuel Release, aside from his fever. See Plfs.' Exh. PX 2263 (N.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care).

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 16-18; April 30 Trial Transcript at 128-29 (Jessup testifying).] The week after November 29, 2021, N.J. had stomach pain and

diarrhea.³⁶ [Jessup Decl. at ¶¶ 16, 22.] On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.] As of December 7, 2021, N.J. routinely had abdominal pain, and continued to experience chills, nausea, vomiting, diarrhea, abdominal pain, headache, lethargy, and change in stool consistency. [Plfs.' Exh. PX 2263 (N.J. medical records) at 2 (12/7/21 Chronological Record of Medical Care).]

N.J.'s eyes would burn when the Government would flush the Jessup's home in December 2021 and February 2022. [Jessup Decl. at ¶¶ 22, 52-53; Kosnett Decl. at ¶ 238; Plfs.' Exh. 1055 (2/23/22 Facebook post by Jessup, and texts).]³⁷

N.J. experienced skin discoloration and burning pain in May and June 2022. [Jessup Decl. at ¶ 63.] In May 2022, he bathed in the water at a hotel on Ford Island, and felt like his skin was burning, especially on the back of his legs. He lost

³⁶ As noted above, Jessup testified that the family continued to get sick over the next week with symptoms of diarrhea, stomach pain, and nausea, [Jessup Decl. at ¶ 16,] although the Court cannot attribute these symptoms to a particular plaintiff other than Jessup because no specific evidence was proffered to support such a finding.

³⁷ As noted above, Jessup testified her family experienced an increase in symptoms after the Navy flushed their home, however, the Court is unable to attribute these symptoms to N.J. See Plfs.' Exh. PX 1055 (2/23/22 Facebook post by Jessup, and texts); Jessup Decl. at ¶ 53 (describing the 2/23/22 Facebook Post).

pigment in those burned areas for months afterward. [Id. at ¶ 63; Plfs.' Exh. PX 1056 (photograph of the back of N.J.'s legs showing skin discoloration).]

b. Causation and Apportionment

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of N.J.'s symptoms and conditions from November 26, 2021 through December 7, 2021 was the Fuel Release. The Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of N.J.'s symptoms and conditions after December 7, 2021 was the Fuel Release.

The Court finds that N.J. was not fully recovered from symptoms of fever, chills, nausea, vomiting, diarrhea, abdominal pain, headache, lethargy, and change in stool consistency, at the time of the Fuel Release and therefore apportionment is appropriate. Because there is no evidence to base apportionment between N.J.'s preexisting symptoms of chills, nausea, vomiting, diarrhea, abdominal pain, headache, lethargy, and change in stool consistency, and the same symptoms caused by the Fuel Release, then damages must be distributed equally for these conditions. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63.

17. Witt

a. Acute Symptoms

In November 2021, Witt began having excessive night sweats and heart palpitations. [Declaration of Plaintiff, Elizabeth Witt, filed 4/8/24 (dkt. no. 397) (“Witt Decl.”) at ¶ 10.] The heart palpitations occurred several times a week, and sometimes she felt short of breath during the episodes. [Id. at ¶ 48.]

After Thanksgiving of 2021, Witt experienced intense stomach cramping and abdominal pain, dry and itchy skin on her arms and legs after showering, and rashes on her arms. [Id. at ¶ 11.] She experienced bad abdominal pain beginning on November 28, 2021, which lasted three days. See Plfs.’ Exh. PX 2264 (Witt medical records) at 4 (Chronological Record of Medical Care).] Witt began to experience dry skin on her arms and legs on December 1, 2021, which lasted one month. [Witt Decl. at ¶ 11; April 30 Trial Transcript at 180 (Witt testifying).] Witt had approximately three rashes in December 2021 that lasted overnight. [April 30 Trial Transcript at 177, 180, 187-88 (Witt testifying); Plfs.’ Exh. PX 1058 (photograph of a rash Witt got after showering on December 8 or 9, 2021).]

On December 1, 2021, Witt stopped using the household water for drinking. [Witt Decl. at ¶ 12.] On December 6, 2021, Witt experienced chills, bloating, headaches, abdominal pain and

rashes. Witt's facial acne was also exacerbated at that time. [Id. at ¶ 17; Plfs.' Exh. PX 2264 (Witt medical records) at 3 (Chronological Record of Medical Care).]

b. Continued Symptoms

Witt's symptoms of skin irritations, rashes, abdominal pain and cramping resolved when she moved off-island in March 2023. [Witt Decl. at ¶¶ 42, 49.]

Witt also continued to experience heart palpitations, though they became less frequent when she moved away from O`ahu in March 2023. She now experiences heart palpitations "a couple of times every few months." Witt Decl. at ¶ 48, see id. at ¶ 42. Witt continued to experience night sweats, although now they occur less frequently, approximately once a month. [Id. at ¶ 47.]

c. Preexisting Conditions

Witt had menstrual irregularities, including increased menstrual cramping and menstrual blood flow beginning in September 2021 that continued for her next several cycles. See Kosnett Decl. at ¶ 264.

Witt reported chills, bloating, abdominal pain, headache and rash beginning in August 2021 that were ongoing as of December 6, 2021. See Plfs.' Exh. PX 2264 (Witt medical records) at 4 (Chronological Record of Medical Care); April 30 Trial Transcript at 179-80 (Witt testifying as to the onset of

symptoms). Witt also has a history of migraine headaches that began in August 2020. See Kosnett Decl. at ¶ 261; Def.'s Exh. DX 3217 (Witt medical records) at 34 (12/15/21 medical record noting migraines).

Witt also experienced night sweats prior to the Fuel Release, beginning in approximately March 2021, that were ongoing at the time of the Fuel Release. See Witt Decl. at ¶ 10; Plfs.' Exh. PX 2264 (Witt medical records) at 212 (March 2022 medical record noting one year history of night sweats). Witt's heart palpitations were first reported in August 2021, and were ongoing at the time of the Fuel Release. [Def.'s Exh. DX 3217 (Witt medical records) at 6 (5/8/22 K. Yearwood treatment note stating "complaints of frequent palpitations since August 2021").]

d. Causation and Apportionment

The Court finds that Plaintiffs have not shown by a preponderance of the evidence that the Fuel Release caused Witt's heart palpitations, night sweats, and menstrual irregularities.

The Court finds that Plaintiffs have shown by a preponderance of the evidence that a legal cause of Witt's initial symptoms and conditions (except for her heart palpitations, night sweats, and menstrual irregularities) from November 26, 2021 to December 6, 2021 was the Fuel Release. The

Court also finds that Plaintiffs have not shown by a preponderance of the evidence based on credible and qualified medical evidence that a legal cause of Witt's symptoms and conditions after December 6, 2021 was the Fuel Release, with the exception of Witt's dry skin on her arms and legs, which lasted until January 1, 2022.

The Court finds that the United States has shown by a preponderance of the evidence that Witt had preexisting conditions that had not resolved by the Fuel Release, and these conditions were abdominal pain, migraine headaches, chills, bloating, and rashes. The Court finds based on credible evidence that, where Witt's injuries are the same conditions as her preexisting conditions, the preexisting conditions and the injuries caused by the Fuel Release must be apportioned. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. Because the parties did not present testimony apportioning between the two causes, the Court must apportion equally to each of them. Id. The Court does not apportion damages for the other acute symptoms Witt experienced after the Fuel Release.

B. Emotional Distress

The United States' expert Dr. Smith testified that water contamination of jet fuel in one's home can be a traumatic event. [Transcript of Proceedings: Nonjury Trial Day 10, filed 5/14/24 (dkt. no. 586) ("May 13 Trial Transcript") at 26.] He

opined that there is no evidence to support, to a reasonable degree of probability, that the Fuel Release caused or worsened any of the Plaintiffs' psychological injuries. [Smith Decl. at ¶ 14.] Dr. Smith testified that there is no evidence to support that any of the Plaintiffs will experience long-term psychological injuries or need future mental health therapies. [Id. at ¶ 16.]

Plaintiffs' expert Melissa Vargo, M.A., Psy.D. ("Dr. Vargo"), a clinical psychologist who specializes in the treatment of post-traumatic stress disorder ("PTSD"), testified that the Fuel Release was a traumatic event for each of the adult Plaintiffs. [Declaration of Dr. Melissa Vargo ("Vargo Decl.") at ¶¶ 1, 8-10, 53-54.] Plaintiffs' expert Andrew Clark, M.D. ("Dr. Clark"), a physician with board certifications in psychiatry, child and adolescent psychiatry and forensic psychiatry, testified regarding each minor Plaintiff's mental status and the impact of the water contamination on their mental health. [Clark Decl. at ¶¶ 1, 7-8.] Dr. Clark concluded that the Fuel Release was a traumatic event for each minor Plaintiff, and that the exposure to the contaminated water "substantially contributed to many of the minor Bellwether Plaintiffs' mental health symptoms and diagnoses." Id. at ¶ 24, see also id. at ¶¶ 22-23.

The Court finds that the Plaintiffs have proven by a preponderance of the evidence that the Fuel Release was a traumatic event for most of the individual Plaintiffs, that it affected their mental health and was a legal cause of emotional distress for those individual Plaintiffs. For Plaintiffs V.D., T.F., D.F., K.F., N.F., B.B.J., B.J.J., D.J., N.J., and Witt, the Court finds that the Plaintiffs have not proven by a preponderance of the evidence that the Fuel Release was a traumatic event that affected their mental health and was a legal cause of emotional distress.

1. Aubart

Aubart testified that he had never had issues with his mental health before the Fuel Release, and after the Fuel Release he experienced anxiety, stress, irritability and sleep apnea. [Aubart Decl. at ¶ 43.] Aubart had difficulty sleeping, and sought treatment from a therapist and psychiatrist. [Id.] Aubart described “long-term fear,” associated with the Fuel Release. [Id. at ¶ 45.]

Aubart attested that his lifestyle changed after the Fuel Release, he became “unsociable, anti-government and bitter.” [Id. at ¶ 46.] Aubart attested that, after the thirty-seven years he spent in public service, the Fuel Release made him distrust the government. [May 3 Trial Transcript at 111.]

Aubart described marital issues that he attributes to the Fuel Release. Aubart attested that both he and his wife felt physically ill, which led to tension in their relationship. [Id. at ¶ 47.] Further, he and his wife argued about the water contamination and his wife's continued use of the water, which "caused [him] a lot of stress and guilt." [Id.]

Aubart also stated that the Fuel Release negatively impacted his work and relationship with others. Aubart attested that he had a hard time concentrating and remembering simple things, which made him scared and embarrassed. Aubart explained that his anxiety increased, and he had an anxiety attack at work in April 2022. [Id. at ¶ 48.]

Finally, Aubart testified that he became stressed and anxious about his dog, Coco, who he cares deeply for and describes as "like another member of the family." Id. at ¶ 3; see id. at ¶ 49; see also May 3 Trial Transcript at 101 (Aubart describing Coco as his "best friend"). Aubart felt badly about unknowingly giving Coco contaminated water, [Aubart Decl. at ¶ 49,] particularly because Coco experienced seizures two to three times a week around the time of the Fuel Release, [id. at ¶ 18]. Aubart testified about becoming scared after researching jet fuel in the water and reading about the poisoning of the water in Flint, Michigan. [May 3 Trial Transcript at 104-05.]

Dr. Smith determined that there is no evidence to support that the Fuel Release caused or worsened any psychological injury that Aubart experienced. [Smith Decl. at ¶ 56.]

Dr. Vargo opined that Aubart met the criteria for PTSD. Vargo noted that, since the exposure, Aubart experienced: "repeated, disturbing, and unwanted" dreams, memories, and flashbacks in which "he feels, or acts as though the contamination is recurring;" [Vargo Decl. at ¶ 55.a;] and avoidance, or attempts to avoid distressing thoughts and feelings, [id.]. Further, Dr. Vargo opined that Aubart experienced negative emotional states such as fear or anger, diminished interest in significant activities, an inability to experience positive emotions, and "irritable behavior and angry outbursts with little or no provocation, hypervigilance, an exaggerated startle response and difficulties with concentration," [id.].

Aubart's testimony is discredited by the fact that he has documented severe emotional distress from other sources prior to and during the time of the Fuel Release, including a dispute at his workplace, and pro se litigation that he was engaged in for five years. See Smith Decl. at ¶¶ 36-37. Aubart reported a history of anxiety and depression dating back to 2017 when Aubart reported a "false statement by supervisor at his IT

job in the military. [Aubart] said [his] supervisor then accused him of lying and of engaging in criminal conduct and stripped [Aubart] of all of his duties.” [Def.’s Exh. DX 3212 (Aubart medical records) at 39 (5/16/22 Kaiser Permanente integrated behavioral health telephone appointment notes).] Aubart’s lawsuit was ongoing in November of 2021, and was not resolved until June of 2023. See May 3 Trial Transcript at 112-13 (Aubart testifying). When this lawsuit resolved, Aubart’s stress improved. See Kosnett Decl. at ¶ 47, Def.’s Exh. DX 3212 (Aubart medical records) at 3 (Kaiser Permanente initial treatment plan dated 6/5/23).

The Court finds that the United States has shown by a preponderance of the evidence that Aubart’s emotional distress preexisted the Fuel Release and that legal causes of his emotional distress included his employment issues and the lawsuit stemming from his employment, which were unresolved and ongoing at the time of the Fuel Release. Thus, the Court must apportion Aubart’s emotional distress damages. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally among them. Id., 77 Hawai`i at 299, 884 P.2d at 362.

Further, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that Aubart will need

future psychological or mental health care for emotional distress caused by the Fuel Release.

2. Dietz

Dietz testified that though she has gone through significant trauma in her life,³⁸ “[n]one of those experiences caused [her] the stress and anxiety that [she has] experienced since Red Hill.” [Dietz Decl. at ¶ 63.] Dietz testified she had not experienced a panic attack prior to a town hall she attended on November 30, 2021 hosted by the Navy related to the water contamination. [Id. at ¶ 23; May 1 Trial Transcript at 37.] At that town hall, Dietz had a panic attack. See Dietz Decl. at ¶ 23, May 1 Trial Transcript at 37-38 (Dietz testifying).

Dietz’s experience in the wake of the Fuel Release trying to care for B.D. felt “a little impossible and extremely defeating.” [May 1 Trial Transcript at 40 (Dietz testifying).] Dietz testified she felt “totally helpless.” [Id.] The stress during this time also negatively impacted her marriage and intimacy. [Dietz Decl. at ¶ 69.]

Dietz testified that she “lost all trust in the people that are supposed to ensure that we are safe,” [May 1 Trial Transcript at 39,] and attested that she will “never be able to

³⁸ Dietz states she: “grew up in scarcity, lived in an abusive household, lost my mother as a teen, sent the man I loved off to combat zones, and in 2020, dealt with a family member who threatened our family’s safety.” [Dietz Decl. at ¶ 63.]

trust the government again," [Dietz Decl. at ¶ 78]. Dietz described always having "the sense that there were 'good guys' in the government that would protect [her] from harm if all else failed," but her experience with the Fuel Release made her lose trust in this notion and in institutions generally. [Id. at ¶ 63.] She stated that her entire family has proudly served in the military, and it feels "heartbreaking" to be left behind by that same government. [Id. at ¶ 84.] Dietz attested that the disconnect between her lived experience and the Navy's statements regarding the Fuel Release "is traumatizing in itself." [Id. at ¶ 81.]

Dietz stated she is worried about her children, her husband, and herself getting cancer. [Id. at ¶ 70.] Dietz testified that she worries about water, and has continued to use bottled water to drink, brush her teeth and cook, and likely always will. [Id. at ¶ 66.] She worries she will never be able to think about water, much less drink it, without anxiety again. [Id. at ¶ 77.] Dietz worries B.D. will have migraines or worse for the rest of his life, and that her daughter will not be able to have children. She fears her children will not be able to afford the costs of care if they get sick. [Id. at ¶¶ 74-76.]

Dr. Vargo opined that Dietz met the clinical criteria for generalized anxiety disorder. [Vargo Decl. at ¶ 55.b.] Dr. Vargo testified that Dietz experienced excessive anxiety that is

difficult to control for at least six months concerning water contamination issues, occurring more days than not. Dr. Vargo opines that Dietz is restless, irritable, her sleep is disturbed, and her anxiety impairs her work and interpersonal relationships. [Id.]

Dr. Smith opined that “[a]ny stress or anxiety that she suffered at that time related to the [Fuel Release] has long since abated and she is currently at the baseline at which [he] would expect her to be had the spill never occurred.” [Smith Decl. at ¶ 75.] Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injuries that Dietz has experienced, [id. at ¶ 88,] and that “[t]here is no evidence to support, to a reasonable degree of psychological probability, that Ms. Dietz will experience long-term psychological injuries or need future mental health therapies” stemming from the Fuel Release, [id. at ¶ 90].

As explained above, Dietz has a child with a serious medical condition. B.D. was diagnosed with Chiari I malformation of the brain in 2016. See Dietz Decl. at ¶ 4; Def’s Exh. DX 3218 (B.D. medical records) at 1 (1/7/22 pediatric neurosurgery clinic note). Dietz testified, “[s]urgery terrified me, but we had to do something to help him, we were desperate.” [Dietz Decl. at ¶ 52.] The Court finds that B.D.’s serious medical

condition is a significant source of emotional distress for Dietz.

The Court finds that the United States has shown by a preponderance of the evidence that Dietz's emotional distress from excessive anxiety preexisted the Fuel Release, that a legal cause of her emotional distress is her child's serious medical condition, and that this emotional distress was exacerbated by his brain surgery. Apportionment must therefore be applied. See Montalvo, 77 Hawai'i at 299-30, 884 P.2d at 362-63. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally among them. See id., 77 Hawai'i at 299, 884 P.2d at 362.

The Court concludes that the United States is liable for damages resulting from aggravation of Dietz's preexisting psychological condition as well as her predisposition to psychological injury. Id., 77 Hawai'i at 294, 884 P.2d at 357 ("Such 'predisposition to injury' or other special sensitivity is often involved in the context of the so-called 'thin skull' or 'eggshell skull' plaintiff.").

The Court concludes that Plaintiffs have proven by a preponderance of the evidence that Dietz will need future psychological or mental health care for emotional distress caused by the Fuel Release. Because her emotional distress is also partially caused by her son's serious medical condition,

her future care cost for emotional distress must be apportioned equally between her emotional distress that predated the Fuel Release, the emotional distress from the Fuel Release, and her emotional distress from her son's serious medical condition. See id.

Plaintiffs produced evidence that the cost for Dietz's future psychological or mental health care is \$21,968.14. See Declaration of Garret J. Hoe, CPA, filed 5/6/24 (dkt. no. 545) ("Hoe Decl.") at ¶¶ 25-26; Vargo Decl. at ¶ 63; Plfs.' Affirmative Deposition Transcript Designations, filed 4/8/24 (dkt. no. 400), Exh. 4 (11/14/23 Deposition of Jennifer Canter, M.D. ("Canter Depo.)) at 126:25-128:2; Stipulated Order Relating to Trial Declarations of Cynthia Fricke (ECF 399), filed 5/2/24 (dkt. no. 523), Exh. C (updated Dietz life care plan report, dated 4/26/24).

Dietz is therefore awarded **\$7,322.71** in special damages after apportionment among a legal causes, which is one-third of the total amount of the future care opined at trial.

3. B.D.

Following the Fuel Release, Brian Dietz noted B.D.'s "anxiety went through the roof . . . he was worried about his brain and his health." B. Dietz Decl. at ¶ 18; see also Dietz Decl. at ¶ 67. Brian Dietz testified that "instead of [B.D.] embracing the world" as he did when he first arrived in Hawai'i,

he “tries to really avoid the world as he gets older . . . he just doesn’t trust it.” [May 1 Trial Transcript at 65-66.] Dietz states B.D. experiences anxiety about water, medical appointments, and being outside the house, despite seeing a therapist. [Dietz Decl. at ¶ 68.] Brian Dietz also described home as a place where B.D. used to feel safe, but no longer does. [B. Dietz Decl. at ¶ 37.]

Brian Dietz described an incident where B.D. saw the family dog, who B.D. is very fond of, have a seizure while going for a walk, and B.D. did not know how to respond to it. May 1 Trial Transcript at 66; see also Dietz Decl. at ¶¶ 3, 61. Brian Dietz also described how showering in a vinyl camp shower after the Fuel Release was traumatizing to B.D. [B. Dietz Decl. at ¶ 22.]

Dr. Clark opined that while B.D. had anxiety and anxiety-related conditions prior to 2021, the Fuel Release substantially contributed to B.D.’s anxiety. [Clark Decl. at ¶¶ 33-34.] Dr. Clark opined that B.D. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V.³⁹ [Id. at ¶ 34.]

Dr. Smith opined that B.D. experienced anxiety and worry since the Fuel Release, but any such anxiety or stress has

³⁹ The DMS-V is the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. See Smith Decl. at ¶ 55.

"long since abated and he is currently at the baseline at which [Dr. Smith] would expect him to be had the spill never occurred." Smith Decl. at ¶ 101, see also id. at ¶ 100. Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injuries that B.D. has experienced, [id. at ¶ 108,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that B.D. will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 110].

The Court finds that the Fuel Release was not a legal cause for certain aspects of B.D.'s emotional distress, specifically B.D.'s witnessing of his family's dog having a seizure. The Court finds that the United States has shown by a preponderance of the evidence that B.D.'s emotional distress manifested by anxiety and anxiety-related conditions prior to 2021, and thus preexisted the Fuel Release. The Court finds that legal causes of his emotional distress are his serious medical condition and other unknown factors, and that his emotional distress was exacerbated by his brain surgery for his Chiari I malformation medical condition. The Court finds that the Fuel Release exacerbated B.D.'s anxiety and worry but, by the time he was evaluated by Dr. Smith, both had abated and returned to the level of anxiety and worry that he had before the Fuel Release.

Thus, he is entitled to general damages for emotional distress from after the Fuel Release until his examination by Dr. Smith on September 8, 2023.

As to future care, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that B.D. will need future psychological or mental health care for emotional distress caused by the Fuel Release.

4. V.D.

Brian Dietz described how showering in a vinyl camp shower after the Fuel Release was traumatizing to V.D., and she cried and hated it. [B. Dietz Decl. at ¶ 22.] V.D. used to love baths, but now fights with her parents when getting into a shower or bath. [Dietz Decl. at ¶ 66.]

Dr. Smith testified V.D. had “little if any recollection” of the Fuel Release and had not been affected by her parents’ behavior regarding the Fuel Release. [Smith Decl. at ¶ 113.] Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injuries that V.D. has experienced, [id. at ¶ 120,] and that “[t]here is no evidence to support, to a reasonable degree of psychological probability, that V.D. will experience long-term psychological injuries or need future mental health therapies” stemming from the Fuel Release, [id. at ¶ 122]. Dr. Clark simply noted that V.D. was doing well at the time of his evaluation. [Clark Decl. at ¶ 35.]

The Court concludes that Plaintiffs have not shown by the requisite proof that the Fuel Release was a substantial factor in causing V.D.'s emotional distress nor that V.D. requires future psychological or mental health care for any emotional distress caused by the Fuel Release.

5. Feindt

Feindt testified that he has "emotions about this whole experience that I never felt in my life," ranging from embarrassment to humiliation and depression. [Feindt Decl. at ¶ 99.] He testified that he has been distressed for over two years, and does not think it will stop. [Id. at ¶ 102.] Feindt testified that after the Fuel Release he is often grouchy and not fun to be around. [Id. at ¶ 98.]

Feindt testified that he is and was scared for his own health and the health of his children and wife. See April 30 Trial Transcript at 13; Feindt Decl. at ¶ 101. He testified, "I'm scared to death that one of us is going to go to a doctor and we're going to have cancer." [April 30 Trial Transcript at 29.] He is also concerned that his family will be unable to afford existing and potential future health problems, particularly because his wife left her job due to the experience with the Fuel Release. [Feindt Decl. at ¶ 103.] Feindt also testified that this experience has negatively affected his marital intimacy. [Id. at ¶ 108.]

Dr. Vargo opined that Feindt met the criteria for a diagnosis of PTSD with anxiety. [Vargo Decl. at ¶ 55.c.] Following the Fuel Release, Dr. Vargo opined that Feindt experienced, for over a month: "repeated, disturbing, and unwanted" dreams, memories, and flashbacks in which "he feels, or acts as though the contamination is recurring;" [id.;] and avoidance - attempts to avoid distressing thoughts and feelings. Further, Dr. Vargo opined that Feindt experienced negative emotional states such as fear or anger, diminished interest in significant activities such as golf, an inability to experience positive emotions, and "irritable behavior and angry outbursts with little or no provocation, hypervigilance, an exaggerated startle response and difficulties with concentration," [id.]. Finally, Dr. Vargo noted Feindt had symptoms of depression and hopelessness. [Id.]

Dr. Smith opined that his diagnoses of Feindt, which include PTSD and Somatic Symptom Disorder, stemmed from Feindt's debilitating chronic pain, which predated the water contamination and continues today. [Smith Decl. at ¶ 137.] Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injuries that Feindt has experienced, [id. at ¶ 155,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that Mr. Feindt will experience long-term psychological injuries or need future

mental health therapies” stemming from the Fuel Release, [id. at ¶ 157].

The Court finds that the United States has shown by a preponderance of the evidence that Feindt’s emotional distress preexisted the Fuel Release and is ongoing, and that a legal cause of his emotional distress is his chronic pain from other causes, which did not resolve before the Fuel Release. The Court also finds that credible evidence supports a finding that the Fuel Release exacerbated his preexisting emotional distress. Apportionment must therefore be applied. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally to each of them. Id., 77 Hawai`i at 299, 884 P.2d at 362.

As for future care, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that Feindt will need future psychological or mental health care for emotional distress caused by the Fuel Release.

6. P.G.F.

P.G.F. had significant behavioral issues that predated the Fuel Release by years. See Smith Decl. at ¶ 162. Prior to the Fuel Release, P.G.F. could be defiant, and have extreme meltdowns when asked to transition to a new activity. Medical records in 2020 discuss the possibility of an Attention Deficit

Hyperactivity Disorder ("ADHD") diagnosis. See Clark Decl. at ¶ 36; see also Smith Decl. at ¶ 162 (opining that P.G.F. "very likely" had diagnosable ADHD years before the Fuel Release). P.G.F. also had a language delay, for which she attended speech therapy. [April 29 Trial Transcript at 194 (A. Feindt testifying).] Her mother testified that prior to the Fuel Release, P.G.F. had difficulty with toilet training, anger, and outbursts which had subsided prior to the Fuel Release, but came back worse than before after the Fuel Release. [Id.]

Around January of 2022 and for the following few months, P.G.F.'s behavior and emotional regulation markedly declined. See Clark Decl. at ¶¶ 38-39. Amanda Feindt testified that prior to the Fuel Release, P.G.F. had graduated from the therapy she was in, but after the Fuel Release, her "behavior issues, her regression as far as potty training, outbursts, anger, they all came back worse than they'd ever been before." [April 29 Trial Transcript at 194.]

P.G.F. was separated from her father and brother for six months beginning in May 2023 when the Feindt family moved away from Hawai'i. [Feindt Decl. at ¶¶ 57-59.]

P.G.F. now has a fear of water: she will not drink water unless it is bottled, and carries her own water bottle everywhere. See Feindt Decl. at ¶ 104; A. Feindt Decl. at ¶ 92. When others are sick, P.G.F. attributes the cause to water

regardless of the circumstances. When her mother was sick in April 2024, P.G.F. asked her why she drank the water, and told her not to do so. [Feindt Decl. at ¶ 104; A. Feindt Decl. at ¶ 93.] P.G.F. also has a fear of doctors, injections, and blood draws. P.G.F. screams or yells when in medical facilities. See A. Feindt Decl. at ¶ 97; Feindt Decl. at ¶ 105.

At the time of trial, P.G.F. was attending trauma therapy, and working on a book about a unicorn that helps people avoid contaminated water. [Feindt Decl. at ¶ 104.] At a recent appointment she drew a picture of "a magic unicorn that drank bad water in Hawaii and got sick." [April 30 Trial Transcript at 28 (Feindt testifying); see also Plfs.' Exh. PX 2409 (P.G.F.'s drawing)].

Dr. Clark opines that P.G.F. "appears to have some post-traumatic stress symptoms (but not PTSD)" associated with the Fuel Release, and that P.G.F. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V. Clark Decl. at ¶ 41; see id. at ¶ 44. P.G.F. spontaneously begins crying about water-related issues, and continues to worry the water is unsafe to drink. [Id. at ¶ 41.] Dr. Clark opined the loss of structure around the time of the Fuel Release "likely contributed to her dysregulation," and that she has been set back developmentally and is now somewhat emotionally fragile. Id. at ¶ 42; see id. at ¶ 43.

Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injury that P.G.F. may have experienced, [Smith Decl. at ¶ 170,] and that “[t]here is no evidence to support, to a reasonable degree of psychological probability, that P.G.F. will experience long-term psychological injuries or need future mental health therapies” stemming from the Fuel Release, [id. at ¶ 172].

The Court finds that P.G.F.’s emotional distress predated the Fuel Release and that a legal cause of P.G.F.’s emotional distress is from medical conditions that did not resolve before the Fuel Release. The Court also finds that P.G.F.’s existing emotional distress was exacerbated by the Fuel Release. Further, the United States has proven by a preponderance of the evidence that a legal cause of P.G.F.’s emotional distress and behavioral issues after the Fuel Release is her separation from family members. Thus, the emotional distress must be apportioned between the Fuel Release, separation from her family members, and P.G.F.’s preexisting emotional distress from her medical conditions, which she had before the Fuel Release. See Montalvo, 77 Hawai`i at 299-30, 884 P.2d at 362-63. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally to each of them. See id., 77 Hawai`i at 299, 884 P.2d at 362.

From a review of the evidence, the Court concludes that Plaintiffs have proven by a preponderance of the evidence that P.G.F. will need future psychological or mental health care for emotional distress caused by the Fuel Release. Because her emotional distress is also due to her preexisting medical conditions and her separation from family members, her future care cost for emotional distress must be apportioned equally among these causes. See id.

Plaintiffs produced evidence that the cost for P.G.F.'s future psychological or mental health care is \$14,860.09. [Clark Decl. at ¶ 97; Canter Depo. at 126:25-128:2; Declaration of Expert, Margot Burns, filed 5/2/24 (dkt. no. 524) ("Burns Decl.") at ¶¶ 147, 149; Hoe Decl. at ¶¶ 29-30.]

P.G.F. is therefore awarded **\$4,953.36** in special damages after apportionment among the legal causes, which is one-third of the total amount of the future care opined at trial.

7. T.F.

No evidence was presented that T.F. had documented behavioral issues prior to the Fuel Release. Dr. Smith did not examine T.F. because he was too young. See Smith Decl. at ¶ 173. T.F. was three years old at the time of Dr. Clark's opinion, and Dr. Clark did not outline any behavior problems T.F. exhibited before the Fuel Release. See Clark Decl. at ¶¶ 45-48.

Currently, T.F. is afraid of doctors, shots and giving blood. T.F. screams or yells when in medical facilities. See A. Feindt Decl. at ¶ 97; Feindt Decl. at ¶ 105. Dr. Clark also described T.F.'s difficulty adjusting to living in Virginia apart from his mother and sister, and behavioral challenges. [Clark Decl. at ¶ 47.] T.F. was separated from his mother and sister for six months beginning in May 2023 when the Feindt family moved away from Hawai'i. [Feindt Decl. at ¶¶ 57-59.] Dr. Clark opined that the disruptions associated with the Fuel Release will interfere with T.F. developing secure attachments to his parents. [Clark Decl. at ¶ 48.] Dr. Clark opined that T.F. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under DSM-V. [Id.]

The Court finds that T.F. is currently experiencing emotional distress but that Plaintiffs have not proven by a preponderance of the evidence that a legal cause of T.F.'s emotional distress is from the Fuel Release. Further, the United States has proven by a preponderance of the evidence that a legal cause of this emotional distress and behavior is T.F.'s separation from family members. The Court finds that the Fuel Release was not a substantial factor in causing T.F.'s emotional distress. See Est. of Frey, 146 Hawai'i at 550, 463 P.3d at 1207. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that T.F. will

need future psychological or mental health care for emotional distress caused by the Fuel Release.

8. Freeman

Freeman stated that some of her fears are so overwhelming that she "can barely breathe when [she] think[s] about them." [Freeman Decl. at ¶ 102.] Freeman testified she worries all the time. [April 29 Trial Transcript at 150.]

Freeman testified about a time when she gave up, where she felt like she was going to die. [April 29 Trial Transcript at 149.] Freeman testified she told her husband she wanted to do paperwork for a do-not-resuscitate order. [Id.] She described feeling as if her children were witnessing her "slow death" and not wanting them to witness that. [Id. at 150.] Freeman stated she wrote letters for each of her children and her husband in case she passed away. [Id.]

Freeman continues to worry about her own health and her children's health. Freeman testified she was worried that her children were going to die. [Id. at 148.] Freeman testified about two medical incidents involving D.F. and N.F. respectively that were particularly distressing. In one incident, D.F. was playing, then screamed and fell to the floor unconscious. Freeman and her husband rushed D.F. to the hospital, where the nurse initially could not wake him up. D.F. was unconscious for around five minutes. During this incident, Freeman was worried

D.F. was going to die. [Id. at 144-45.] In a separate incident, N.F. woke up, and lost mobility to the point where he could not stand or put his clothes on. He felt like his body was on fire and was crying. Freeman testified she and her husband took N.F. to the hospital, and N.F. asked her if he was going to die. [Id. at 147-48.]

Freeman stated that she worries about her previously healthy children developing severe symptoms and it “feel[ing] like it’s never going to [] stop.” [Id. at 148.] Freeman stated she fears that she and her children will not recover from their conditions associated with the Fuel Release, and worries that their conditions will get worse. She also fears the negative psychological and social effects of her children being so isolated. See Freeman Decl. at ¶ 103.

Freeman testified she worries that her children will get cancer; that she will not be able to find the source of abnormal labs; that her children will become depressed; that her son will never play soccer again, and that she worries that her children, her husband or herself will not wake up in the morning. She testified she is surprised they were able to live through it. [April 29 Trial Transcript at 150-51.]

Freeman stated that she distrusts the water and will never drink tap water again. See Freeman Decl. at ¶ 101. She also fears bodies of water because she is afraid that she will

lose consciousness in the water and drown, though she previously loved to swim. [Id. at ¶ 102.]

Freeman attested that the fact her husband has served his country for so many years exacerbates her distress over the Government's actions and inactions related to the Fuel Release. [Freeman Decl. at ¶ 104.] Freeman stated that the Government has "made my family sick, destroyed our lives, and turned its back on us[.]" [Id.]

Dr. Vargo opined that Freeman currently suffers from PTSD and generalized anxiety disorder. [Vargo Decl. at ¶¶ 55.d, 56.d.] Dr. Vargo opined that Freeman had generalized anxiety disorder prior to the Fuel Release, which the Fuel Release exacerbated. [Id. at ¶ 56.d.] Dr. Vargo opined Freeman was not experiencing PTSD symptoms immediately prior to the Fuel Release. [Id.] Following the Fuel Release, Dr. Vargo opines that Freeman experienced: "repeated, disturbing, and unwanted" dreams, memories and flashbacks related to the Fuel Release, avoidance, persistent anger and guilt, a diminished interest in significant activities, a feeling of detachment from others, hypervigilance, difficulty with concentration and sleep, excessive anxiety and worry occurring more days than not that is difficult to control, irritability, and "persistent and exaggerated negative beliefs or expectations about herself and others[.]" [Id. at ¶ 55.d.] Dr. Vargo opined that Freeman's

anxiety causes impairment in social and occupational functioning. [Id.] Freeman told Vargo during the interview that she was "constantly in fear that something was going to happen." [Id.]

Dr. Smith opined that the Fuel Release did not cause or worsen any of Freeman's psychological injuries, [Smith Decl. at ¶ 212,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that Ms. Freeman will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 214]. Dr. Smith also testified regarding the significant past traumas Freeman has experienced. See id. at ¶¶ 184-87, 207, 211.

The Court finds that the Fuel Release was not a legal cause for certain aspects of Freeman's emotional distress, specifically Freeman's distress from the incident where D.F. was rushed to the hospital unconscious, and the incident where N.F. lost mobility and had to be taken to the hospital.

The Court finds that Freeman's emotional distress from past traumas preexisted the Fuel Release and did not resolve before the Fuel Release. The Court also finds that Freeman's existing emotional distress was exacerbated by the Fuel Release. Thus, the emotional distress must be apportioned between the preexisting emotional distress that was exacerbated by the Fuel Release, emotional distress related to her children's health

issues for which the Fuel Release is not a legal cause, and Freeman's preexisting emotional distress. See Montalvo, 77 Hawai'i at 299-300, 884 P.2d at 363-363. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally to each of them. See id., 77 Hawai'i at 299, 884 P.2d at 362.

The Court concludes that the United States is liable for damages resulting from aggravation of Freeman's preexisting psychological condition as well as her predisposition to psychological injury. See id., 77 Hawai'i at 294, 884 P.2d at 357 ("Such 'predisposition to injury' or other special sensitivity is often involved in the context of the so-called 'thin skull' or 'eggshell skull' plaintiff."). From a review of the evidence, the Court concludes that Plaintiffs have proven by a preponderance of the evidence that Freeman will need future psychological or mental health care for emotional distress. Because her emotional distress is also due to her preexisting psychological condition and emotional distress from past traumas, which had not resolved, and her emotional distress from her children's health issues for which the Fuel Release was not a legal cause, her future care cost for emotional distress must be apportioned equally among the emotional distress from the Fuel Release, emotional distress from her children's health issues for which the Fuel Release was not a legal cause, and her

preexisting emotional distress. See id., 77 Hawai'i at 299, 884 P.2d at 362.

Plaintiffs produced evidence that the cost for Freeman's future psychological or mental health care is \$57,752.02. See Hoe Decl. at ¶ 39; Stipulated Order Relating to the Trial Declaration of Margot Burns (ECF 403), filed 5/3/24 (dkt. no. 530) ("Updated Burns Exhibits"), Exh. G (Future Care Needs Assessment: Nastasia Freeman) at PageID.41127-31; Burns Decl. at ¶¶ 298-99.

This amount is based in part on Dr. Vargo's recommendation for mental health treatment. Dr. Vargo recommended Freeman for an initial psychiatric diagnostic evaluation, exposure therapy twice weekly for six months, cognitive behavioral therapy once weekly for six months, and twenty-four therapy sessions in her lifetime of treatment of psychological triggers related to the Fuel Release. [Vargo Decl. at ¶ 65.] The amount also includes the cost of a driver for Freeman for two years for transportation to medical appointments due to her inability to drive with her seizure disorder. See Updated Burns Exhibits, Exh. G (Future Care Needs Assessment: Nastasia Freeman) at PageID.41130.

After apportionment, Freeman is awarded **\$19,250.67** as special damages for future psychological or mental health care.

9. D.F.

Prior to the Fuel Release, D.F. experienced a regression in his speech, and “a more general sense of withdrawal,” and his parents sought a pediatrician in August 2021 to address these conditions. [Clark Decl. at ¶ 65.] The pediatrician assessed D.F. as behind in certain milestones, referred him for a speech and language evaluation, and to a developmental pediatrician. Dr. Clark opined that D.F.’s function deteriorated after the family moved to Hawai‘i in the summer of 2021, including a regression in speech and toilet training, erratic sleep and general withdrawal. [Id. at ¶¶ 68-69.]

A developmental pediatrician saw D.F. in November and December 2021, and elicited a history of concern regarding D.F.’s language at age three and four. In September 2022, D.F. was found to have expressive and receptive language delays. [Id. at ¶¶ 65-66.] Dr. Smith noted that a developmental pediatrician diagnosed D.F. with Autism Spectrum Disorder, but other examiners have disagreed with that diagnosis. Smith Decl. at ¶ 260; see also Clark Decl. at ¶ 65.

Dr. Clark opined that D.F. currently meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V. [Clark Decl. at ¶ 70.] Dr. Clark opined that D.F.’s function deteriorated after the family

moved to Hawai'i in the summer of 2021, and he has suffered lasting changes to his emotional fragility, confidence, and tendency to become overwhelmed. [Id. at ¶¶ 69-70.]

Freeman testified that D.F. appears to need to control everything "because he lost control over what happened to him" - his speech, his schooling, and even his bowels. [Freeman Decl. at ¶ 105.] Freeman stated that change is hard for D.F. now. [Id.]

Koda Freeman testified about an incident in which Freeman collapsed, became unconscious, and had to be taken to the hospital in an ambulance. [April 29 Trial Transcript at 162-65.] Koda Freeman stated that his children were all crying and were devastated as they watched their mother be loaded onto a stretcher. [April 29 Trial Transcript at 165.] There is no evidence supporting that the Fuel Release was a legal cause of this incident.

Dr. Smith did not diagnose D.F. with any condition. See Smith Decl. at ¶ 275. Dr. Smith opined that the Fuel Release did not cause or worsen any of D.F.'s psychological injuries, [id. at ¶ 276,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that D.F. will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 278].

From a review of the evidence, the Court concludes by a preponderance of the evidence that D.F.'s behavioral difficulties preexisted the Fuel Release. The Court finds that Plaintiffs have not shown by a preponderance of the evidence that the Fuel Release is a legal cause of his psychological injuries. Rather, the evidence supports a finding that legal causes of his emotional distress are his behavioral and emotional issues that the Court has found are unrelated to the Fuel Release. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that D.F. will need future psychological or mental health care for emotional distress caused by the Fuel Release.

10. K.F.

No evidence was presented that K.F. had any diagnosed mental health conditions or behavioral issues before the Fuel Release. Dr. Clark noted that before the Fuel Release, K.F. was healthy and well-adjusted. See Clark. Decl. at ¶ 57. Dr. Smith noted that K.F. could be predisposed to anxiety problems. [Smith Decl. at ¶ 243.] After the Fuel Release, K.F. attended home hospital school due to the severity of his illnesses and spent a year and a half in the program. [Freeman Decl. at ¶ 89.] K.F. was in home hospital school for a year and a half, and during this time he missed socializing with his friends at school. [Freeman Decl. at ¶ 89.] He became unable to play soccer, which

was a "primary vehicle for psychological development, peer interaction, physical activity and simple joy." Clark Decl. at ¶ 60; see id. at ¶ 57.

Dr. Clark opined that K.F. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V. [Clark Decl. at ¶ 63.] Dr. Clark reported that K.F. was unable to attend school or play soccer at the time of his examination. [Id. at ¶ 57.] Dr. Clark opined that for K.F., soccer was a "primary vehicle for psychological development, peer interaction, physical activity and simple joy." [Id. at ¶ 60.] Dr. Clark opined that K.F. suffered learning loss from two years of fragmented schooling. [Id. at ¶ 59.] Dr. Clark opined that K.F. is at an increased risk of developing a psychiatric disorder and failing to achieve developmental milestones. [Id. at ¶ 63.]

Dr. Smith diagnosed K.F. with "Other Specified Anxiety Disorder." [Smith Decl. at ¶ 253.] Dr. Smith opined that the Fuel Release did not cause or worsen any of K.F.'s psychological injuries, [id. at ¶ 254,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that K.F. will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 256].

Koda Freeman described K.F. being afraid of needles and having anxiety about blood draws. [April 29 Trial Transcript at 166.] Like his siblings, K.F. also experienced distress when he witnessed his mother getting loaded onto a stretcher while unconscious and before getting into an ambulance. See id. at 162-65 (K. Freeman testifying). There is no evidence supporting that the Fuel Release was a legal cause of this incident.

The Court finds that Plaintiffs have shown by a preponderance of the evidence that K.F. has an anxiety disorder and sustained emotional distress, but Plaintiffs have not carried their burden of proof regarding the Fuel Release being a legal cause of his emotional distress. Rather, the evidence supports a finding that legal causes of his emotional distress are the unknown causes that prevented him from attending school with his peers. The Court therefore finds that the Fuel Release was not a substantial factor in causing K.F.'s emotional distress. See Est. of Frey, 146 Hawai'i at 550, 463 P.3d at 1207. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that K.F. will need future psychological or mental health care for emotional distress caused by the Fuel Release.

11. N.F.

N.F.'s nausea and vomiting, migraine headaches, and chronic severe body pain diagnosed as AMPS have kept him out of

school. See Clark Decl. at ¶¶ 49-50, see also Smith Decl. at ¶¶ 216-219. N.F. attended home hospital school due to the severity of his illnesses and has been in the program for over two years. [Freeman Decl. at ¶ 89.] N.F.'s sixth grade year was disrupted by the Fuel Release and illness, his seventh-grade year was spent almost entirely at home due to his illness, and at the time of testimony he was completing his eight grade classes in the home hospital program. See Clark Decl. at ¶ 50; Smith Decl. at ¶ 216.

Dr. Clark opined that N.F. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V. [Clark Decl. at ¶ 56.] Before the Fuel Release he had a good group of friends, and afterward his peer interactions were limited to online video games. [Id. at ¶¶ 50-51.] Dr. Clark reported that N.F. responded to the Fuel Release with anger, frustration and withdrawal, and has more recently become depressed. [Id. at ¶ 51.] Dr. Clark stated that N.F. becomes depressed particularly when his health is poor, which is often. [Id. at ¶ 55.] Dr. Clark opined that N.F. is at an increased risk of developing a psychiatric mood disorder and of failing to achieve developmental milestones. [Id. at ¶ 56.]

Dr. Smith opined that the Fuel Release did not cause or worsen any of N.F.'s psychological injuries, [Smith Decl. at ¶ 234,] and that "[t]here is no evidence to support, to a

reasonable degree of psychological probability, that N.F. will experience long-term psychological injuries or need future mental health therapies” stemming from the Fuel Release, [id. at ¶ 236].

Like his siblings, N.F. also experienced distress when he witnessed his mother getting loaded onto a stretcher while unconscious and before getting into an ambulance. See April 29 Trial Transcript at 162-65 (K. Freeman testifying). There is no evidence supporting that the Fuel Release was a legal cause of this incident.

Further, the Court determined, as noted *supra*, that the Fuel Release was not a legal cause of N.F.’s physical symptoms and illness after December 3, 2021. The Court therefore finds that the Fuel Release was not a substantial factor in causing N.F.’s emotional distress. See Est. of Frey, 146 Hawai‘i at 550, 463 P.3d at 1207. Rather, the evidence supports a finding that legal causes of his emotional distress are the unknown causes for his pain and medical problems that occurred after December 3, 2021 and that prevented him from attending school with his peers for over two years. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that N.F. will need future psychological or mental health care for emotional distress caused by the Fuel Release.

12. Jessup

Jessup worries about her own health and the health of her four children. She worries about her neurological symptoms and the possibility of her getting cancer. [April 30 Trial Transcript at 156 (Jessup testifying).] Jessup's emotional distress was exacerbated by her belief that B.J.J. may have developed a hormonal or neurological condition associated with B.J.J.'s irregular menstrual cycle from the Fuel Release, and watching her daughter suffer through severe periods. [Id. at 150-52.] Similarly, Jessup experienced emotional distress watching her son B.B.J. have severe nosebleeds that caused him to choke on his blood, and watching his tremors escalate and him develop a stutter. She cried when B.B.J. determined he could not pursue his dream of a military career due to his tremor. [Id. at 152-54.] Jessup also testified she was "terrified" about the possibilities that exposure to contaminated water would have for her son N.J., who has a mast cell disease that is triggered by trauma to his skin. [Jessup Decl. at ¶ 19.]

Jessup feels betrayed by the Government because of her husband's military service to the United States, and the sacrifices their family has made to serve their country. Jessup testified that, in return, the Government "made [her] family sick" and robbed her family of important memories and time together. April 30 Trial Transcript at 149, see id. at 150.

Jessup also stated that she was distressed by her separation from her husband when she and her children moved away from Hawai`i, and her husband missing out on five months of D.J.'s early life. [Id. at 149-50.]

Dr. Vargo opined that Jessup met the criteria for PTSD after the Fuel Release. [Vargo Decl. at ¶ 55.e.] Dr. Vargo opined that Jessup suffered from Adjustment Disorder with Mixed Anxiety and Depressed Mood, and ADHD, before the Fuel Release, which exacerbated her preexisting ADHD. [Id. at ¶ 56.e.] Following the Fuel Release, Dr. Vargo opined that Jessup experienced: "repeated, disturbing, and unwanted" dreams, memories, and intense psychological distress in response to cues related to water; avoidance, or attempts to avoid thinking about her family's exposure to contaminated water; "persistent and exaggerated negative beliefs or expectations about herself"; persistent anger and guilt; less interest in significant activities; feeling detached from others; irritable behavior and angry outbursts; and difficulties with sleep and concentration. [Id.] Jessup testified that "the anxiety related to what I have exposed my children to is crippling . . . Guilt is eating me alive." [Id.]

Dr. Smith testified regarding the significant past traumas Jessup has experienced. See Smith Decl. at ¶¶ 281-92, 298-300, 311-12.] Jessup also experienced postpartum depression

and anxiety from January 2021 to July 2022. See id. at ¶¶ 295-97. Dr. Smith opined that the Fuel Release did not cause or worsen any of Jessup's psychological injuries, [id. at ¶ 315,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that Ms. Jessup will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 317].

The Court finds that the Fuel Release was not a legal cause for certain aspects of Jessup's emotional distress, specifically her distress stemming from witnessing B.B.J.'s nosebleeds and tremors, the potential impact of B.B.J.'s tremors on his choice of career, and her concern stemming from her daughter's irregular menstrual cycle.

The Court finds that a legal cause of Jessup's emotional distress is the Fuel Release. The Court also finds that the following are legal causes of Jessup's emotional distress during and subsequent to the Fuel Release: (1) the preexisting postpartum depression and anxiety she experienced from January 2021 to July 2022 which had not resolved before the Fuel Release; (2) her diagnoses of Adjustment Disorder with Mixed Anxiety and Depressed Mood; and (3) her children's serious medical conditions for which the Court has determined that the Fuel Release was not a legal cause. Thus, the emotional distress

must be apportioned among all these legal causes. See Montalvo, 77 Hawai'i at 300, 884 P.2d at 363. Because the parties did not present testimony apportioning between the causes, the Court must apportion equally among these causes. Id., 77 Hawai'i at 299, 884 P.2d at 362.

The Court concludes that the United States is liable for damages resulting from the aggravation of Jessup's preexisting psychological condition as well as her predisposition to psychological injury. See id., 77 Hawai'i at 294, 884 P.2d at 357 ("Such 'predisposition to injury' or other special sensitivity is often involved in the context of the so-called 'thin skull' or 'eggshell skull' plaintiff."). After reviewing the evidence, the Court concludes that Plaintiffs have proven by a preponderance of the evidence that Jessup will need future psychological or mental health care for emotional distress. Because her emotional distress is also due to her preexisting psychological condition and emotional distress unrelated to the Fuel Release, her future care cost for emotional distress must be apportioned among the emotional distress from the Fuel Release, her emotional distress caused by her children's serious health conditions unrelated to the Fuel Release, and her preexisting emotional distress from postpartum depression and anxiety, and her depression. See id., 77 Hawai'i at 299, 884 P.2d at 362.

Plaintiffs produced evidence that the cost for Jessup's future psychological or mental health care is \$20,887.24. See Hoe Decl. at ¶¶ 47-48; Vargo Decl. at ¶ 66; Canter Depo. at 126:25-128:2; Burns Decl. at ¶¶ 440-41.

After apportionment, Jessup is awarded **\$6,962.41** as special damages for future psychological or mental health care.

13. B.B.J.

B.B.J. experienced emotional distress from his symptoms that occurred following the Fuel Release. His hand tremors, stuttering and legs shaking scare him. B.B.J. testified that his anxiety and depression have "gotten much worse" since the Fuel Release. B.B.J. Decl. at ¶ 23, see also id. at ¶ 22. B.B.J. testified that he feels "embarrassed and angry," [id. at ¶ 24,] and "very self-conscious," [April 30 Trial Transcript at 165,] when someone notices his tremors. He testified he "tr[ies] not to think about it, but it's impossible." [B.B.J. Decl. at ¶ 24.] B.B.J. stated that his close friends make fun of him for his stutter, and that it is frustrating to give presentations. [April 30 Trial Transcript at 165-66.]

B.B.J. testified that he missed his father when he moved to Arizona ahead of his father, and he was worried about his father's health when his father stayed behind in Hawai'i. [B.B.J. Decl. at ¶¶ 19-20.] When his family moved, B.B.J. had to leave his school that he was fond of, with good teachers and

friends. [April 30 Trial Transcript at 161-62 (B.B.J. testifying).]

B.B.J. also worries about his future. [Id. at ¶ 23.] B.B.J. testified that his “dream is to join the Navy like [his] dad” after he graduates from high school but he worries that he will be unable to because of his tremors. [Id. at ¶ 26.] B.B.J. feels betrayed and disappointed by the Government, particularly because his father spent “the majority of his life” working for the Government. [Id. at ¶ 29.]

B.B.J. also is angry on behalf of his younger brothers. He testified that “[t]hey didn’t deserve any of this.” [Id. at ¶ 28.] B.B.J. is “constantly afraid” that he or one of his family members will get cancer or other long-term impacts from the Fuel Release. [Id. at ¶ 30.]

Dr. Clark opined that B.B.J. meets the diagnostic criteria for Other Specified Trauma and Stressor Related Disorder under the DSM-V. [Clark Decl. at ¶ 74.] Dr. Clark reported that B.B.J. experienced a moderate level of anxiety about his medical issues. [Id. at ¶ 71.] Dr. Clark reported that B.B.J. described himself as depressed last year. [Id.]

Dr. Smith noted that B.B.J. reported a lifelong history of anxiety and “depressive symptoms.” [Smith Decl. at ¶ 319.] Dr. Smith detailed distressing or anxiety-inducing incidents that B.B.J. experienced, including harassment from

peers. [Id. at ¶¶ 319-21.] Dr. Smith opined that the Fuel Release did not cause or worsen any of B.B.J.'s psychological injuries, [id. at ¶ 347,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that B.B.J. will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 349].

The Court finds that legal causes of B.B.J.'s emotional distress are from preexisting anxiety and depressive symptoms, serious medical conditions from currently unknown causes, and traumatic emotional events related to family, schooling, and peers, that occurred after and are unrelated to the Fuel Release. Based on Dr. Smith's testimony, the Court therefore finds that the Fuel Release was not a substantial factor in causing B.B.J.'s emotional distress. See Est. of Frey, 146 Hawai'i at 550, 463 P.3d at 1207. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that B.B.J. will need future psychological or mental health care for emotional distress caused by the Fuel Release. The Court therefore declines to award special damages for future mental health treatment.

14. B.J.J.

B.J.J. testified that she worries about many issues: her health and whether she will be able to have kids one day,

[B.J.J. Decl. at ¶ 27,] her skin and getting rashes from the Fuel Release, getting cancer, being able to afford medical care if someone in her family gets cancer, [id. at ¶¶ 28-29,] and her brother B.B.J.'s tremor and the possible consequences of him having a tremor, [id. at ¶ 23]. B.J.J. also stated that she developed anxiety about using water and gets nervous when water tastes "off." [Id. at ¶ 25.]

B.J.J. described the difficulty leaving Hawai'i and her good friends there and starting at a new school in Arizona. [Id. at ¶ 26.] B.J.J. testified it was particularly difficult because she lived in Hawai'i the longest out of anywhere she has lived because her father is in the military. [May 2 Trial Transcript at 33.] B.J.J. testified she now struggles with depression. [B.J.J. Decl. at ¶ 26.]

B.J.J. testified that she missed her father during the months they were separated, and she worried about his safety staying in Hawai'i around contaminated water. See May 2 Trial Transcript at 33-34.

Dr. Clark opined that B.J.J. suffers from Major Depressive Order and "is experiencing a great deal of irritability as a result" and has had uncharacteristic "heated conflict" with her mother in the several months prior to Dr. Clark's testimony. [Clark Decl. at ¶ 77.] Dr. Clark opined that B.J.J. meets the diagnostic criteria for Other Specific Trauma

and Stressor Related Disorder under the DSM-V. [Id. at ¶ 80.]

Dr. Clark opined that B.J.J.'s current episode of depression warranted intervention. [Id. at ¶ 79.]

Dr. Smith opined that the Fuel Release did not cause or worsen any of B.J.J.'s psychological injuries, [Smith Decl. at ¶ 371,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that B.J.J. will experience long-term psychological injuries or need future mental health therapies" stemming from the Fuel Release, [id. at ¶ 373].

The Court finds that legal causes of B.J.J.'s emotional distress are from serious medical conditions from unknown causes and traumatic emotional events surrounding family; being separated from her father; moving from a familiar and treasured school to another; and being separated from peers and that the Fuel Release was not a legal cause of his emotional distress. Based on Dr. Smith's testimony, the Court finds that the Fuel Release was not a substantial factor in B.J.J.'s emotional distress. See Est. of Frey, 146 Hawai'i at 550, 463 P.3d at 1207. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that B.J.J. will need future psychological or mental health care for emotional distress caused by the Fuel Release. The Court

therefore declines to award special damages for future mental health treatment.

15. D.J.

D.J. was 10 months old at the time of exposure and at the time of testimony did not need mental health services. [Clark Decl. at ¶¶ 87, 89.] The Court finds that Plaintiffs have not proven by a preponderance of the evidence that the Fuel Release was a legal cause of emotional distress to D.J. Therefore, the Court declines to award special damages for future mental health treatment to D.J.

16. N.J.

Jessup opined that her son, N.J., who is on the autism spectrum and has a mast cell disease, was the “most affected” of her family by the Fuel Release. [Jessup Decl. at ¶ 19.] Jessup explained that “what may seem like small disturbances to routine affect him deeply.” [Id. at ¶ 20.] Jessup testified the disturbances to his routine following the Fuel Release were “drastic,” and N.J. “couldn’t cope with all the changes.” [Id. at ¶ 21.] N.J.’s therapy routine was disrupted, and he eventually refused to cooperate entirely. [Id.]

Jessup testified that N.J. is particular about how he drinks water, including the cup and temperature of the water. [Id. at ¶ 20.] Jessup also described a “extreme autistic meltdown” that N.J. suffered on the flight from Hawai’i to

Arizona, during which he screamed, kicked, and chewed Jessup's nails. [Id. at ¶ 65.]

Dr. Clark opined that N.J.'s reported regression around the time of the Fuel Release and his missed opportunities for effective therapy has likely resulted in his failing to achieve developmental gains. [Clark Decl. at ¶ 84.] Dr. Clark opined that the Fuel Release substantially contributed to N.J.'s regression since. [Id. at ¶ 85.]

Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injury N.J. has experienced, [Smith Decl. at ¶ 380,] and that "[t]here is no evidence to support, to a reasonable degree of psychological probability, that N.J. will experience long-term psychological injuries or need mental health therapies" stemming from the Fuel Release, [id. at ¶ 382].

There is no credible medical evidence that the Fuel Release was a legal cause of N.J.'s autism or that N.J.'s autism was exacerbated by the Fuel Release. The Court cannot conclude that Plaintiffs have proven by a preponderance of the evidence that the Fuel Release was a legal cause of emotional distress to N.J. The credible evidence supports a conclusion that the decision to move from Hawai'i was disruptive to and upsetting for N.J. and resulted in his regression and missed opportunities for therapy. Plaintiffs have not proven by a preponderance of

the evidence that the Fuel Release was a legal cause for the family's choice to move out of state.

The Court finds that Plaintiffs have not proven by a preponderance of the evidence that the Fuel Release was a legal cause of emotional distress to N.J. The Court therefore declines to award special damages to N.J. for future mental health treatment.

17. Witt

Witt testified that she worried about her future health, including cancer. [Witt Decl. at ¶¶ 51-52.] Witt also testified about her concern for the health of her son, N.W., and the health of her unborn child. [Id. at ¶ 53; April 30 Trial Transcript at 198-99.] Witt worried about passing on toxins to N.W. because she showered in contaminated water while pregnant with him, particularly because N.W. spent an extra day in the hospital when he was born. [Witt Decl. at ¶¶ 53-54; April 30 Trial Transcript at 195 (Witt testifying).] Witt had complications with N.W.'s birth, which she worried were due to her exposure to contaminated water. [April 30 Trial Transcript at 195 (Witt testifying).] Witt also worried about exposing N.W. to contaminated water at the early stages of his life, which she described as "extremely nerve-wracking." [Id. at 195.] Witt was nervous about using a pump to breastfeed and washing the pump in water. [Id. at 196.] Witt testified she cried when making

difficult decisions about how to keep N.W. safe, such as moving away from her husband during N.W.'s early years. [Id. at 197.]

Witt testified that she and her husband decided that her husband would leave the military, which meant sacrificing N.W.'s opportunity to receive the GI Bill and she and her husband losing health insurance. Witt described her frustration and anger over these financial sacrifices. [Id. at 197-98.] Witt also stated that the stress of the water contamination negatively impacted her marriage and her physical intimacy with her husband. [Witt Decl. at ¶ 40.]

Dr. Vargo opined that Witt suffers from adjustment disorder with anxiety and depression. [Vargo Decl. at ¶¶ 55.f, 56.f.] Dr. Vargo opined Witt experienced distress "out of proportion" to the severity of the stressor. [Id. at ¶ 55.f.] Witt reported there was "nowhere that [she] felt safe," and that she tried to leave O`ahu once a month, which only made her feel more disconnected. [Id.]

Dr. Smith noted that Witt has a long history of being treated for anxiety, was prescribed medication to treat her anxiety symptoms, and continued to take the medication at the same dose during the period of water contamination. [Smith Decl. at ¶¶ 390-92, 401.] Dr. Smith noted that though Witt "had some mild adjustment issues with anxiety during the Red Hill incident, she did not need to increase her medication, [or] take

additional medication[.]” [Id. at ¶ 402.] Dr. Smith opined that the Fuel Release did not cause or worsen any psychological injury Witt has experienced, [id. at ¶ 409,] and that “[t]here is no evidence to support, to a reasonable degree of psychological probability, that [Witt] will experience long-term psychological injuries or need future mental health therapies” stemming from the Fuel Release, [id. at ¶ 411].

The Court finds that a legal cause of Witt’s emotional distress is her preexisting anxiety disorder for which she was receiving medical treatment and medication prior to the Fuel Release. Further, the Court finds that her medication and treatment for her anxiety disorder continued unchanged after the Fuel Release and that credible evidence supports that the Fuel Release did not worsen Witt’s psychological condition. See id. at ¶¶ 390-92, 401.

The Court therefore finds that the Fuel Release was not a substantial factor in causing Witt’s emotional distress. See Est. of Frey, 146 Hawai’i at 550, 463 P.3d at 1207. For the same reason, the Court concludes that Plaintiffs have not shown by a preponderance of the evidence that Witt will need future psychological or mental health care for emotional distress caused by the Fuel Release. The Court therefore declines to award damages for emotional distress and for special damages for future mental health treatment.

C. Loss of Enjoyment

Plaintiffs also seek hedonic damages, or damages for loss of enjoyment of life. See Plfs.' Closing Argument Brief, filed 6/4/24 (dkt. no. 595) at 8; Fifth Amended Complaint at ¶ 576.f. Such damages are recoverable under Hawai'i law, Montalvo, 77 Hawai'i at 301, 884 P.2d at 364, and compensate plaintiffs for the loss of life's pleasures, including enjoying family, games, hobbies, and the like, see Castro v. Melchor, 142 Hawai'i 1, 11, 414 P.3d 53, 63 (2018) (quoting 2 Stuart M. Speiser et al., The American Law of Torts § 8:20 (2014)). The Court finds Plaintiffs have shown by a preponderance of the evidence that the Fuel Release was a legal cause of loss of enjoyment of life and awards \$1,000 to each Plaintiff as hedonic damages.

1. Aubart

Aubart stopped using household water for drinking on November 28, 2021, and beginning on November 30, 2021 he only took short showers and began to use bottled water to brush his teeth. He continued to use his dishwasher, but would rinse dishes off with bottled water when bottled water was available. [Aubart Decl. at ¶ 27.] Aubart stayed at a hotel for one day, at which point he moved back into his home, but would commute to the hotel for showers three or four times a week from December 2021 through mid-February 2022. [Id. at ¶ 28.] He would shower

either at a hotel or in his home. [May 3 Trial Transcript at 106-07 (Aubart testifying).] Driving to procure bottled water and to shower at the hotel was inconvenient. [Aubart Decl. at ¶ 29.] Not being able to use his household tap water disrupted his routine, and made him “completely change [his] habits[.]” [May 3 Trial Transcript at 106 (Aubart testifying).] Aubart also had to cancel holiday plans with his daughter who he rarely sees, because she could not stay with them due to the contaminated water. [Id. at 108.]

Aubart testified that prior to the Fuel Release, he used to relax by playing guitar, but he no longer would after the Fuel Release due to fatigue, muscle pain, and loss of motivation. [Aubart Decl. at ¶ 46.]

As stated above, Aubart and his wife had disagreements about the water contamination, which caused Aubart stress and guilt. [Aubart Decl. at ¶ 47.] These issues affected their closeness and diminished their sexual intimacy. [Id.]

Aubart testified that his quality of life did not improve until he moved to a new home around May 2023. [May 3 Trial Transcript at 110 (Aubart testifying).]

2. Dietz

Dietz stopped using the tap water in her home for drinking, cooking, and showering on November 29, 2021. [May 1 Trial Transcript at 29, 44 (Dietz testifying).] Dietz’s efforts

to avoid drinking, cooking, rinsing fruits or vegetables, and showering with the tap water in her home "required an incredible amount of work." Dietz Decl. at ¶ 31; see id. at ¶¶ 30-32. The family used a camp shower, which they initially heated with water in a tea kettle, before upgrading to an electric camp shower. [Id. at ¶¶ 32, 34.] Showering this way was "cold, stressful, and uncomfortable." [Id. at ¶ 32.] The Navy did not provide sufficient non-potable water, and the water they did provide was later recalled due to bacteria contamination. [Id. at ¶ 34.] It was also difficult to acquire water because large water jugs were sold out. [Id.]

Instead of cooking at home as was typical, the Dietz family went to restaurants to eat, and sought out restaurants further away from their house because they did not know the extent of the water contamination. [Id. at ¶ 33.] Eating at restaurants was also difficult due to V.D.'s many food allergies. [Id.]

3. B.D.

The Dietz family's switch to a camp shower was difficult for B.D. because he associated hot showers with relief from his headaches, and the family was not able to allow him to have hot showers as frequently due to not having enough non-contaminated water. [May 1 Trial Transcript at 39-40 (Dietz testifying).]

B.D.'s father testified that after the Fuel Release, B.D. "became so afraid of triggering a headache, he stopped going outside and doing the things he loved." [B. Dietz Decl. at ¶ 30.] Dietz testified that B.D. "stopped wanting to go out and be a kid at all. He would just stay inside because he was afraid that he would, you know, trigger another headache." [May 1 Trial Transcript at 39 (Dietz testifying).]

4. V.D.

V.D. hated the family's switch to using the camp shower, and would cry when showering. [Dietz Decl. at ¶ 32.] V.D. used to love baths, but now fights to get into showers and baths. [Id. at ¶ 66.]

5. Feindt

The Feindt household stopped using the household water for drinking, washing clothes, and showering on December 9, 2021. [Feindt Decl. at ¶ 21; April 29 Trial Transcript at 212 (Feindt testifying).] Feindt moved into a hotel December 14, 2021. [Feindt Decl. at ¶¶ 30-32.] He and his family stayed in hotels in Waikiki for eighty-four days. [Id. at ¶ 39; A. Feindt Decl. at ¶ 57.] Due to hotel availability, they had to move hotels multiple times. [Feindt Decl. at ¶ 40.] The family stayed at seven different hotels before moving off the island. [April 29 Trial Transcript at 193 (A. Feindt testifying).] Sometimes the hotel elevators were not working, forcing Feindt

to go up the hotel stairs with his two young children. [Feindt Decl. at ¶ 40.] While living in hotels, Feindt could not do many of his hobbies, such as playing instruments or singing. [Id. at ¶ 45.] Celebrating Christmas was also different for the family. [A. Feindt Decl. at ¶ 53, Feindt Decl. at ¶ 46.]

Feindt also testified he no longer wants to play golf, a sport he has loved for the last thirty years of his life. Feindt Decl. at ¶ 84; see also April 29 Trial Transcript at 196 (A. Feindt testifying).

Feindt's life was also disrupted by his move to Virginia in May 2023. See Feindt Decl. at ¶¶ 57-59. The family decided to leave the island due to the water contamination and their health issues. [April 29 Trial Transcript at 196-97 (A. Feindt testifying).] Feindt moved with his son T.F., and apart from his wife and daughter, P.G.F. The family was separated for six months. See Feindt Decl. at ¶¶ 57-59.

6. P.G.F.

P.G.F. experienced many of the same disruptions as her father: moving to different hotels and ultimately moving off-island due to the water contamination. See April 29 Trial Transcript at 192-93 (A. Feindt testifying); Feindt Decl. at ¶¶ 32, 39-41. While living in hotels, P.G.F. could no longer play with neighborhood friends, lost the routine of daycare, and had issues sleeping. [A. Feindt. Decl. at ¶¶ 56-57.] P.G.F.'s

behavior dramatically changed, and she would run away, and act recklessly and aggressively. [Feindt Decl. at ¶¶ 41, 44.] P.G.F. missed the time before the Fuel Release that she spent with her happy and healthy parents. [Id. at ¶ 43.] When the family moved off-island, P.G.F. lived with her mother in Colorado for six months and was separated from her father and brother. During this time P.G.F. missed her father. [Id. at ¶¶ 58-59.]

7. T.F.

T.F. experienced the same disruptions as the rest of his family: moving to different hotels and ultimately moving off-island due to the water contamination. See April 29 Trial Transcript at 192-93 (A. Feindt testifying); Feindt Decl. at ¶¶ 32, 39-40, 42. While living in hotels, T.F. could no longer play with neighborhood friends, lost the routine of daycare, and had issues sleeping. [A. Feindt. Decl. at ¶¶ 56-57.] As a toddler, he did not have space in the hotels to play on the floor, and he did not have his crib and lost the ability to sleep on his own. [Feindt Decl. at ¶ 42.] T.F. missed the time before the Fuel Release that he spent with his happy and healthy parents. [Id. at ¶ 43.]

When the family moved off-island, T.F. lived with his father in Virginia for six months and was separated from his mother and sister. During this time T.F. missed his mother. [Id. at ¶¶ 57-59.]

8. Freeman

The Freeman household stopped drinking the household water on November 29, 2021, and had stopped using the household water for any other purpose by December 3, 2021. [Freeman Decl. at ¶ 10; K. Freeman Decl. at ¶ 9; April 29 Trial Transcript at 115-16 (Freeman testifying).] Freeman and her family resided in a hotel beginning December 3, 2021. [Freeman Decl. at ¶ 25; Kosnett Decl. at ¶ 162; April 29 Trial Transcript at 116 (Freeman testifying).] Due to the Navy's contract, the family had to check out of the hotel on December 15 and stay at their home until they could check into a different hotel in the afternoon on December 16, 2021. [Freeman Decl. at ¶ 25.] Between December 3 and 15, 2021, Freeman had to commute back to her home to conduct her therapy appointments from her home office so her children would not to be in the same room, in order to comply with legal requirements. [Id. at ¶ 26.] She could not drive at this time due to her seizures, so her husband drove her several times a week. [Id. at ¶ 27.] The commute was over an hour each way, and was exhausting. [Id. at ¶ 28.] They would often leave the hotel in Waikiki, drive to school, drive back to Waikiki, hear their kids were sick, and drive back to school. [Id.]

Following the Fuel Release, her husband described Freeman's difficulty engaging in everyday life: she had a hard

time walking around, and felt foggy. [April 29 Trial Transcript at 159-60 (K. Freeman testifying).]

Freeman and her family ultimately moved to California in February 2022 due to her and her family's illness. [Freeman Decl. at ¶¶ 43-44, 49, 53.] The Freeman family lived in one room in Freeman's mother's house in California for approximately three months before the family bought a house in April. [Id. at ¶ 54, April 29 Trial Transcript at 141-43 (Freeman testifying).]

9. D.F.

D.F. experienced many of the same disruptions that his mother did: living in different hotels and ultimately moving off-island and staying in one room with the rest of his family for three months. [Freeman Decl. at ¶¶ 25, 53-54; April 29 Trial Transcript at 141-43 (Freeman testifying).] D.F. commuted between the hotel and the house when Freeman conducted her work appointments at the house. [Freeman Decl. at ¶¶ 26-28.] D.F. has missed a significant portion of school, and his social development and academics have suffered. [Id. at ¶ 88.]

10. K.F.

K.F. experienced many of the same disruptions as the rest of his family: living in different hotels and ultimately moving off-island and staying in one room with the rest of his family for three months. [Freeman Decl. at ¶¶ 25, 53-54; April 29 Trial Transcript at 141-43 (Freeman testifying).]

11. N.F.

N.F. experienced many of the same disruptions as the rest of his family: living in different hotels and ultimately moving off-island and staying in one room with the rest of his family for three months. [Freeman Decl. at ¶¶ 25, 53-54; April 29 Trial Transcript at 141-43 (Freeman testifying).]

12. Jessup

The Jessup family stopped using the household water for drinking on November 29, 2021. [Jessup Decl. at ¶¶ 14, 18; April 30 Trial Transcript at 128-29 (Jessup testifying).] The family lived at home without household water for six months. [B. Jessup Decl. at ¶ 23; Jessup Decl. at ¶¶ 41-43 (describing washing clothes and bathing without household water).]⁴⁰

On December 6, 2021, the Jessup family tried to move into a hotel, but the arrangement did not work. [B. Jessup Decl. at ¶ 22; Jessup Decl. at ¶¶ 34-38.] Jessup testified that the day she took her children to the hotel was an “utter nightmare.” [April 30 Trial Transcript at 140.]

Jessup’s efforts to acquire safe water were disruptive: sometimes her family went to the water distribution center twice a day to get sufficient water. [Jessup Decl. at ¶ 40.] Jessup took particular care to not allow the contaminated

⁴⁰ The Jessup family returned to washing clothes in their washing machine in March 2022. [Jessup Decl. at ¶ 55.]

water to touch her son N.F.'s skin, because he has a mast cell disease. [April 30 Trial Transcript at 138-39 (Jessup testifying).] Doing the laundry in a large tub with boiled water for the family of six was "excruciating." [Jessup Decl. at ¶ 41.] Bathing was more difficult, as each family member would use two pots of boiled water - one with soap and one without. [Id. at ¶¶ 42-43.] Because Jessup and her husband would bathe after all the children, it often was late at night, so she would shower in the contaminated water. [Id. at ¶¶ 43-44.] Jessup and her husband often argued about this, but she testified that she was "so tired that [she] didn't know what else to do." [Id. at ¶ 45.] Jessup was exhausted and stressed during this time. [Id. at ¶ 42.]

Jessup and her children moved out of their house and away from Hawai'i on May 14, 2022 due to the water contamination, despite originally intending to remain there longer so her son could finish high school. [Id. at ¶¶ 62-63.] Her husband remained in Honolulu, and they were separated until October 2022. [Id. at ¶ 61; B. Jessup Decl. at ¶ 29.]

13. B.B.J.

B.B.J. experienced many of the same disruptions as his mother during this time: he lived without using the household tap water for months before moving off-island to Arizona in May 2022. B.B.J. testified that because he was the eldest sibling,

he took more responsibility for doing the water-related chores, including boiling water, getting water, and filling his younger brother's bottles with bottled water. B.B.J. testified that his chores took significantly more time, and prevented him from hiking and going to the beach. [April 30 Trial Transcript at 162-63 (B.B.J. testifying).]

When his family moved, B.B.J. had to switch schools and leave behind friends. [April 30 Trial Transcript at 161-62 (B.B.J. testifying).]

14. B.J.J.

B.J.J. experienced many of the same disruptions that her family experienced during this time: she also lived without using the household tap water for months before moving off-island to Arizona in May 2022. B.J.J. testified that she would collect water daily from a park where the military was handing out cases. Her family would boil this water to use for cooking and washing, and for washing her brother's bottles. [May 2 Trial Transcript at 28-30 (B.J.J. testifying).] B.J.J. also testified to the difficulty bathing with the boiled water during that time. [Id. at 30.] B.J.J. stated that the lack of household tap water made it more difficult to do activities like going to the beach, because her family did not have enough water to wash off sand and saltwater. [Id. at 31.]

B.J.J. described the difficulty leaving Hawai`i and her friends and school there and starting at a new school in Arizona. [B.J.J. Decl. at ¶¶ 18-20.]

15. D.J.

D.J. experienced the same disruptions more fully described in the prior portion regarding the rest of his family: he lived without using the household tap water for months before moving off-island to Arizona in May 2022.

16. N.J.

N.J. experienced the same disruptions more fully described in the prior portion regarding the rest of his family: he lived without using the household tap water for months before moving off-island to Arizona in May 2022.

17. Witt

On December 1, 2021, Witt stopped using the household water and began using bottled water for drinking, cooking, and brushing her teeth. [Witt Decl. at ¶ 12.] She took very short showers using the household water because it was too difficult to use bottled water to shower. [Id. at ¶ 26.] In January, Witt stopped using the dishwasher, and used potable water to wash dishes until March 2022. [Id. at ¶¶ 27-28.]

Witt described the difficulty getting potable water from the Navy's distribution sites: it was first come, first-

served, so she had to get there early, and had to lug heavy jugs into her car and then into her home. [Id. at ¶ 25.]

Witt and her husband decided to leave the island due to the water contamination, and ended up moving multiple times. [April 30 Trial Transcript at 196-97, 199 (Witt testifying).]

D. Economic Loss

1. Feindt

At the time of the Fuel Release, Feindt was employed as the Director of Fitting and Instruction at The Golf Sim from March 5, 2021 through April 2, 2022. [Def.'s Declaration of Erick C. West ("West Decl."), filed 5/8/24 (dkt. no. 563) at ¶ 39.] Feindt claims he was to receive a \$20,000 raise to a base annual salary of \$85,000 at around March 2022. [Id. at ¶ 41.] No credible evidence was adduced by Plaintiffs supporting this claimed increase in compensation. Feindt took a leave of absence between December 14, 2021 and January 10, 2022 which resulted in a calculated loss of \$6,538 from lost wages and commission income, although he was paid \$1,250 in sick leave compensation for the period ending December 19, 2021. [Id. at ¶ 46.] Feindt was unemployed and collected unemployment benefits while living in Colorado from May 3, 2022 to May 17, 2023 but certified he was capable of working during this time period, and had a contract to work at Peterson Space Force Base but chose not to fulfill it. [Id. at ¶ 47.] In May 2023, Feindt became the

General Manager of The Federal Club, a private golf club in Glen Allen, Virginia. [Id. at ¶ 49.]

For the leave of absence between December 14, 2021 and January 10, 2022 which resulted in a calculated loss of \$6,538 from lost wages and commission income, the Court deducts \$1,250 because Feindt was compensated in that amount as sick leave compensation for the period ending December 19, 2021. The Court finds a loss of \$5,288, which must be apportioned equally among Feindt's preexisting medical conditions of gastrointestinal issues, and headaches, and the conditions caused by the Fuel Release from December 14, 2021 to January 10, 2022. The Court therefore awards the amount of **\$2,644 in economic damages.**

Based on the evidence presented, the Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible evidence that a legal cause of Feindt's loss of employment and employment opportunities after January 10, 2022 was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633. Therefore, Feindt's claim for economic loss after January 10, 2022 cannot be granted.

2. Freeman

At the time of the Fuel Release, Freeman was operating a business from her home as a licensed Mental Health Counselor and had been providing counseling services remotely from her home in Hawai'i beginning in October 2021. [West Decl. at ¶ 77.]

At that time, she was licensed to see clients residing in Florida. [Id.] She received payment for her services directly into her Navy Federal Credit Union business checking account. [Id. at ¶ 78.] Her checking account shows her account deposits beginning to decline in December 2021 and continuing until February 2022, which is when she relocated to Temecula, California. In California she continued to see clients until October 2022, when she took a leave of absence. [Id. at ¶¶ 81-82.] Her deposits decreased dramatically from June 2022 through October 2022. [Id. at ¶ 78.] She rebranded her business in April 2023 and began seeing clients again, but the deposits for March 2022 through July 2023 are substantially lower than those deposits recorded for October 2021 and November 2021. [Id. at ¶¶ 78, 83.] After July 2023, Freeman obtained licensure in the states of California and Texas, thereby increasing her access to patients. [Id. at ¶ 88.]

Based on the evidence presented, the Court finds that Plaintiffs have not shown by a preponderance of the evidence based on credible evidence that a legal cause of Freeman's decline in income was the Fuel Release. See O'Grady, 140 Hawai'i at 44, 398 P.3d at 633. Therefore, Freeman's claim for economic loss cannot be granted.

E. Tutoring Costs

The Court finds that there is no credible evidence supporting that the Fuel Release is a legal cause for N.F.'s or K.F.'s inability to attend school with their peers. Accordingly, the Court declines to award damages for K.F.'s and N.F.'s tutoring costs.

F. Offsets

The United States contends that it is entitled to offsets for two categories of payments to Plaintiffs:

(1) payments it likely will make for the future treatment of the Dietz, Feindt, and Jessup families, and (2) the free hotel benefit and per diem Temporary Lodging Allowance ("TLA") payments made to Plaintiffs. See Def.'s Closing Argument Brief, filed 6/25/24 (dkt. no. 601) at 86-87. Because the Court has awarded future mental health care costs to Dietz, P.G.F., Freeman, and Jessup, the argument is only applicable to the future mental health costs awarded to Dietz, P.G.F. and Jessup.

Defendant has the burden of proving its entitlement to an offset from economic damages. See Warren v. United States, 669 F. Supp. 3d 987, 1027 (D. Hawai'i 2023) (citing Siverson v. United States, 710 F.2d 557, 560 (9th Cir. 1983); Brown v. United States, [CIVIL ACTION NO. 3:17CV551TSL-RHW,] 2020 WL 6811121, at *11 (S.D. Miss. May 13, 2020)). The Court will address each claimed offset category in turn.

**1. Offsets for Future Mental Health
Care for Dietz, P.G.F. and Jessup**

The Government argues Plaintiffs' damages award should be reduced or offset based on payments it is reasonably probable it will make to certain plaintiffs through TRICARE. [Def.'s Closing Argument Brief at 87-97.] TRICARE is a health care benefit program for United States service members. See Def.'s Declaration of Richard Ruck, filed 4/8/24 (dkt. no. 359) ("Ruck Decl.") at ¶¶ 6-7, 12.

Another court in this district has explained:

Like most jurisdictions, Hawaii law follows the collateral source rule, which "in general, provides that benefits or payments received on behalf of a plaintiff, from an independent source, will not diminish recovery from the wrongdoer." Bynum [v. Magno], 106 Haw. [81] at 86, 101 P.3d [1149] at 1154 [(2004)]. "Under the collateral source rule, a tortfeasor is not entitled to have its liability reduced by benefits received by the plaintiff from a source wholly independent of and collateral to the tortfeasor[.]" Id. (quoting Sam Teague, Ltd. v. Hawai'i Civil Rights Comm'n, 89 Haw. 269, 281, 971 P.2d 1104, 1116 (1999)) (internal quotation marks and citation omitted). The collateral source rule does not generally apply when the benefit is derived from the defendant. See, e.g., McLean v. Runyon, 222 F.3d 1150, 1156 (9th Cir. 2000).

One question, then, is whether a source—such as TRICARE—is "independent" or "wholly independent" from the tortfeasor. In this context, courts sometimes apply a test that "government payments are collateral if the payments come from 'a special fund that is separate and distinct from general government revenues' and to which the plaintiff has

contributed." Mays v. United States, 806 F.2d 976, 977 (10th Cir. 1986) (quoting Berg v. United States, 806 F.2d 978, 985 (10th Cir. 1986)). As the Ninth Circuit reasoned in discussing medicare benefits, "[c]ourts distinguish between those benefits that come from unfunded general revenues of the United States (deductible) and those that come from 'a special fund supplied in part by the beneficiary or a relative upon whom the beneficiary is dependent' (nondeductible)." Siverson, 710 F.2d at 560 (quoting United States v. Harue Hayashi, 282 F.2d 599, 603 (9th Cir. 1960)).

That is, under this reasoning, if TRICARE benefits are from a "special fund" then they are collateral, but if they are paid from general government revenues then they are from the Defendant itself—meaning that such payments are not "wholly independent" from the tortfeasor—thus entitling a tortfeasor to an offset. Some cases have thus concluded that TRICARE benefits are paid from the general treasury and are not "collateral," at least for purposes of benefits already paid. See, e.g., Murphy v. United States, 2009 WL 454627, at *6 (D. Haw. Feb. 23, 2009) (applying collateral source rule to offset a past payment under a "TriCare Prime Program"); Lawson v. United States, 454 F. Supp. 2d 373, 415 (D. Md. 2006) ("The vast majority of courts to consider this issue, however, have concluded that Tricare/CHAMPUS benefits are not a collateral source, holding that they are benefits derived from general revenues of the United States, and that an award must be reduced to the extent of such benefits.") (citing Mays).

Warren, 669 F. Supp. 3d at 1027-28.

Here, there is no evidence regarding TRICARE's current source of funding - whether the funds come completely from general taxpayer funds, or from a "special fund."

Setting aside the issue of the source of TRICARE funds, courts are wary of finding such offsets appropriate for future care because such benefits are speculative for at least two reasons: (1) the fact that such benefits may not be vested if the military member has not yet retired, and (2) the TRICARE program is subject to change in the future, meaning benefits may not continue to be available, or at least be available in their current form. See Warren, 669 F. Supp. 3d at 1028-29. Finally, courts are wary of limiting a plaintiff's choice in future treatment by requiring a plaintiff to seek treatment from their tortfeasor. See, e.g., Molzof v. United States, 6 F.3d 461, 468 (7th Cir. 1993).

First, the parties agree that the right to continued TRICARE coverage has vested for the Jessup family because Brian Jessup retired from the military in March 2023 after twenty years of service. See Def.'s Closing Argument Brief at 90, Plfs.' Rebuttal Brief at 75, B. Jessup Decl. at ¶ 1. However, the parties contest whether the continued right to TRICARE coverage has vested for P.G.F. and Dietz. See Def.'s Closing Argument Brief at 90, Plfs.' Rebuttal Brief at 75-76. As to P.G.F., the service member in her family Amanda Feindt had not retired at the time of trial, and the parties dispute whether her family would be able to avail themselves to TRICARE benefits upon her retirement. See Def.'s Closing Argument Brief at 90,

Plfs.' Rebuttal Brief at 75-76, April 29 Trial Transcript at 176 (A. Feindt testifying she will reach 18 years of service one week after her trial testimony). Likewise, the service member in Dietz's family, her husband Bryan Dietz, had not retired at the time of trial, and the parties dispute whether Dietz will be able to avail herself to TRICARE benefits upon his retirement. See Def.'s Closing Argument Brief at 90, Plfs.' Rebuttal Brief at 75-76, May 1 Trial Transcript at 66-67 (B. Dietz testifying that he plans to retire from the military in 2027).

It is too speculative for this Court to apply TRICARE offsets when the benefit has not vested. P.G.F. could not secure the benefit of TRICARE coverage upon her mother's future retirement from military service for a plethora of reasons. The same is true for Dietz. However, even if the Court were to assume *arguendo* that it is reasonably probable that P.G.F. and Dietz would be entitled to TRICARE coverage upon the military member's retirement, the Government fails to demonstrate that it is reasonably probable that the cost of P.G.F.'s and Dietz's future mental health therapy appointments would be paid by TRICARE.

Reducing a damages award due to potential TRICARE coverage of future mental health treatment is too speculative because the TRICARE program may be subject to change in the future. See Galbreath v. United States, Civil No. 20-00373 LEK-

KJM, 2022 WL 18717579, at *2 (D. Hawai'i Feb. 17, 2022) (“[N]either the parties nor the Court can say with any reasonable certainty that the TRICARE program will continue for the balance of [the plaintiffs’ child’s] life or that the benefits will never change.”); Brown, 2020 WL 6811121, at *11 (“future Tricare benefits are too speculative to provide the basis for any reduction of or offset against future medical expenses. . . . Indeed, there is no guarantee that the program will continue to exist, or that it will continue to exist in its current form, for the remainder of [the plaintiff’s] life expectancy”); Transcript of Proceedings: Nonjury Trial Day 8, filed 5/14/24 (dkt. no. 584) (“May 9 Trial Transcript”) at 60-62 (Carmen DeLeon testifying that there have been 125 changes to the TRICARE manual since its inception, agreeing that the TRICARE website has a function to show redlines or changes to TRICARE regulations, and agreeing that it is possible covered services would change in the future); Ruck Decl. at ¶ 8 (“Since its creation, TRICARE has not remained static . . . Coverage plans have also been modified over the years.”). While it is true that here the future mental health therapy could be conducted within a number of years rather than for the entire duration of an individual plaintiff’s lifetime, the potential for coverage to change during even a limited time period is still significant. See Burns Decl. at ¶¶ 147, 149, 440-41

(costing Jessup's and P.G.F.'s future recommended mental health treatments to 2027); Vargo Decl. at ¶¶ 63, 66 (recommending, among other things, twenty-four therapy sessions in Dietz's and Jessup's lifetime).

Calculating the appropriate offset for TRICARE payments for Dietz, P.G.F., and Jessup is speculative for the additional reason that TRICARE is the second payer, meaning that if Dietz, P.G.F. or Jessup has other insurance besides TRICARE, a claim for treatment would be paid through the other, primary insurance before TRICARE. See May 9 Trial Transcript at 58-59 (DeLeon testifying); Ruck Decl. at ¶¶ 17, 20. Here, Jessup's husband retired from his military service and gained employment in another field. [B. Jessup Decl. at ¶¶ 1, 5.] Therefore, whether Jessup would use TRICARE for future mental health treatment payments is speculative, and the United States does not offer sufficient credible evidence to demonstrate that Jessup's future mental health therapy appointments would be paid for by TRICARE. Similarly, even assuming arguendo P.G.F. and Dietz are covered by TRICARE for the period that their mental health therapy appointments are projected to occur, they may have other insurance coverage that would cover these costs for some of the relevant time period.

Even if Dietz, P.G.F. and Jessup were able to use TRICARE for some portion of the time period that they are

projected to attend mental health therapy, they may not be able to avail themselves to mental health care through TRICARE. Testimony was provided that there are not currently enough mental health providers available nationwide through TRICARE, so even if Dietz, P.G.F. or Jessup were entitled to pay for a portion of their mental health care treatment through TRICARE, and got approved by TRICARE for such services, it is possible these services would not be available. See May 9 Trial Transcript at 54 (DeLeon testifying that there is a nationwide shortage of mental health providers in the TRICARE system).

The Court also shares the reluctance of other courts to not require a plaintiff to seek health care from its tortfeasor. See Warren, 669 F. Supp. 3d at 1029 (citing Molzof v. United States, 6 F.3d 461, 468 (7th Cir. 1993)); see also 32 C.F.R. § 199.17(a)(6)(ii)(A) (noting that TRICARE Prime “generally features use of military treatment facilities and substantially reduced out-of-pocket costs for care provided outside MTFs [military treatment facilities]. Beneficiaries generally agree to use military treatment facilities and designated civilian provider networks and to follow certain managed care rules and procedures.”).

Finally, the Court finds persuasive the reasoning stated by another district court in declining to apply offsets to future TRICARE health benefits; that is, because TRICARE

operates akin to a private health insurer, rather than as a double payment for a tort award. At the time of trial, the Jessup family used TRICARE Prime, and the Dietz family used TRICARE Select. [Jessup Decl. at ¶ 84; B. Dietz Decl. at ¶ 41.] As of June 2023, P.G.F. also used TRICARE Prime. [Def.'s Exh. DX 3224 (P.G.F. medical records) at 158 (6/13/23 office visit note).] TRICARE Prime beneficiaries do not pay if the member is on active duty, but all other beneficiaries pay annual enrollment fees and copays. [Ruck Decl. at ¶ 18.] TRICARE Select beneficiaries also pay enrollment fee and copays. [Id. at ¶ 19.] The district court noted that when military members are not on active duty, they "cost-share" or make payments akin to insurance premiums. See Alexander v. United States, CASE NO. 3:14-cv-01774-RJB, 2016 WL 1733521, at *2 (W.D. Wash. May 2, 2016); see also 32 C.F.R. § 199.17; Roemen v. United States, 4:19-CV-4006-LLP, 2023 WL 7386424, at *4 (D.S.D. Nov. 8, 2023) (likening TRICARE coverage to a private health insurance, and noting that in instances where a private insurer is a tortfeasor, a plaintiff is entitled to insurance benefits as well as the full damages award). For this reason, even if the Government had provided sufficient evidence of reasonably probable TRICARE offsets that were calculable to a reasonable certainty - which it did not - reducing an individual plaintiff's damages award based on a TRICARE offset is improper

because plaintiffs are entitled to both the full damages award and the TRICARE benefit.

For the foregoing reasons, the Court concludes that Defendant has not met its burden of demonstrating that an offset for TRICARE benefits for future health treatment applies, and the Court declines to reduce any of the Plaintiffs' damages awards on this basis.

2. Offsets for Per Diem and Hotel Payments

The United States contends that payments it made to certain Plaintiffs or Plaintiffs' family members should offset damages for inconvenience or annoyance. These payments included per diem TLA payments and the provision of a free hotel room to some of the Plaintiffs' families. [Def.'s Closing Argument Brief at 97-99.] The Government proposes deducting the TLA payments from the total damages award for each adult plaintiff. See Def.'s Closing Argument Brief at 112; id., Exh. B. (Damages Chart) at 2, 7, 10, 16, 19, 20.

TLA payments are "intended to partially pay a Service member for higher than normal expenses" incurred while occupying temporary lodgings, presumably to be used for meals and incidental expenses. Temporary Lodging Allowance, U.S. Dept. of Defense, Defense Travel Management Office, <https://www.travel.dod.mil/Allowances/Temporary-Lodging-Allowance/> (last visited May 6, 2025). TLA payments are

available to service members "when it is necessary for a Service member or dependent to occupy temporary lodging . . . Personal inconvenience to a Service member or dependent is never a determining factor for the authorization of TLA." [Id.]

The Government does not cite any legal authority in which a court has reduced a damages award due to TLA payments. It is unclear what category of damages the Government intends this offset to apply to. Plaintiffs did not seek damages for housing or associated expenses from having to leave their homes due to the water contamination. The Court has only awarded damages for emotional distress, physical pain and suffering, and loss of enjoyment of life. Neither the TLA payments nor the hotel benefit compensated Plaintiffs for these losses, such that Plaintiffs would doubly recover by receiving both the damages award and these benefits. See Pike v. United States, 652 F.2d 31, 34-35 (9th Cir. 1981) (concluding that none of the damages the district court awarded pursuant to the FTCA compensated for what the veteran's benefits compensate for, and determining no set-off for the veteran's benefits received was warranted). Accordingly, the Court declines to apply an offset for the Government's TLA payments or provision of hotel rooms.

CONCLUSION

For the reasons stated, the Court finds that Defendant is liable to Plaintiffs, and awards:

General Damages for pain and suffering, and, in the case of some Plaintiffs, emotional distress:

Aubart - \$37,500

Dietz - \$37,500

B.D. - \$37,500

V.D. - \$25,000

Feindt - \$37,500

P.G.F. - \$10,000

T.F. - \$5,000

Freeman - \$75,000

D.F. - \$10,000

K.F. - \$50,000

N.F. - \$50,000

Jessup - \$37,500

B.B.J. - \$75,000

B.J.J. - \$75,000

D.J. - \$5,000

N.J. - \$10,000

Witt - \$37,500

Special damages for future medical expenses:

Dietz - \$7,322.71

P.G.F. - \$4,953.36

Freeman - \$28,876.01

Jessup - \$6,962.41

The Court declines to award special damages for future medical or mental health treatment to any other plaintiff.

Special damages for economic loss:

Feindt - \$2,144.

The Court declines to award special damages for economic injury or wage loss to any other plaintiff.

Hedonic damages for loss of enjoyment of life for each of Plaintiffs in the amount of \$1,000.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, May 7, 2025.



/s/ Leslie E. Kobayashi

Leslie E. Kobayashi
Senior U.S. District Judge

PATRICK FEINDT, JR., ET AL. VS. UNITED STATES OF AMERICA; CV 22-00397 LEK-KJM; PRELIMINARY FINDINGS OF FACT AND CONCLUSIONS OF LAW