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16 *The County of San Mateo, individually*
and on behalf of the People of the State of California

17 **UNITED STATES DISTRICT COURT**
18 **NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 The COUNTY OF SAN MATEO, individually
and on behalf of THE PEOPLE OF THE
21 STATE OF CALIFORNIA,

22 Plaintiff,

23 v.

24 CHEVRON CORP.; CHEVRON U.S.A.,
INC.; EXXONMOBIL CORP.; BP P.L.C.; BP
25 AMERICA, INC.; ROYAL DUTCH SHELL
PLC; SHELL OIL PRODUCTS COMPANY
26 LLC; CITGO PETROLEUM CORP.;
CONOCOPHILLIPS; CONOCOPHILLIPS
27 COMPANY; PHILLIPS 66; PEABODY
ENERGY CORP.; TOTAL E&P USA INC.;

CASE NO. 3:17-cv-04929-VC

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO REMAND TO STATE
COURT**

Date: February 15, 2018
Time: 10:00 a.m.
Courtroom: 4, 17th Floor
Judge: Hon. Vince G. Chhabria

TOTAL SPECIALTIES USA INC.; ARCH COAL, INC.; ENI S.p.A.; ENI OIL & GAS INC.; RIO TINTO PLC; RIO TINTO LTD.; RIO TINTO ENERGY AMERICA INC.; RIO TINTO MINERALS, INC.; RIO TINTO SERVICES INC.; STATOIL ASA; ANADARKO PETROLEUM CORP.; OCCIDENTAL PETROLEUM CORP.; OCCIDENTAL CHEMICAL CORP.; REPSOL S.A.; REPSOL ENERGY NORTH AMERICA CORP.; REPSOL TRADING USA CORP.; MARATHON OIL COMPANY; MARATHON OIL CORPORATION; MARATHON PETROLEUM CORP.; HESS CORP.; DEVON ENERGY CORP.; DEVON ENERGY PRODUCTION COMPANY, L.P.; ENCANA CORP.; APACHE CORP.; and DOES 1 through 100, inclusive,

Defendants.

NOTICE OF MOTION AND MOTION TO REMAND TO STATE COURT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD, PLEASE TAKE NOTICE that pursuant to stipulation of the parties and the Court’s September 22, 2017 Order (Dkt No. 142), Plaintiff County of San Mateo, hereby moves¹ the Court for an Order pursuant to 28 U.S.C. § 1447(c) to remand this matter to state court. The case does not satisfy the criteria for removal under any of the bases cited in the Defendants’ Notice of Removal, including 28 U.S.C. §§ 1441, 1442, and 1452, or 43 U.S.C. § 1349(b). Among other things, the cases are not removable because this Court lacks jurisdiction over the subject matter of this case given that Plaintiff asserts no federal law claims, none of the claims in Plaintiff’s well-pleaded complaint arises under the Constitution, laws, or treaties of the United States under 28 U.S.C. § 1331, as required for removal under 28 U.S.C. §§ 1441(a), and Defendants’ federal preemption defenses are not a proper basis for removal jurisdiction. See 28 U.S.C. § 1447(c); see also, e.g., *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 6 (2003) (“[A] defense that relies . . . on the pre-emptive effective of a federal statute will not provide a basis for removal”) (citation omitted). Nor does the case raise disputed, substantial questions of federal law sufficient to create federal question

¹ Pursuant to the Court’s September 22, 2017 Order (Dkt. No. 142), Plaintiff shall file its supporting papers on October 23, 2017.

1 subject matter jurisdiction in this court. *See Grable & Sons Metal Prods., Inc. v. Darue Eng'g &*
2 *Mfg.*, 545 U.S. 308 (2005). At the same time, none of Plaintiff's claims is completely preempted by
3 the Clean Air Act, any other federal statute, or the U.S. Constitution. *See, e.g., Caterpillar Inc. v.*
4 *Williams*, 482 U.S. 386, 392 (1987).

5 Furthermore, the case is not removable under 43 U.S.C. § 1349(b) because it does not
6 "aris[e] out of, or in connection with . . . any operation conducted on the outer Continental Shelf
7 which involves exploration, development, or production of the minerals, of the subsoil and seabed
8 of the outer Continental Shelf, or which involves rights to such minerals," within the meaning of
9 that provision.

10 In addition, the case is not removable pursuant to 28 U.S.C. § 1442 because, among other
11 reasons, Defendants are not federal officers or persons acting under federal officers under color of
12 such office and because they have not identified any colorable federal defense to Plaintiff's claims.

13 Nor is the case removable on the ground that some of the alleged injuries arose, or alleged
14 conduct occurred, on "federal enclaves." *See generally* U.S. Const., art. I, § 8, cl. 17. None of
15 Plaintiff's claims in fact arose within the federal enclave.

16 Removal also is not authorized pursuant to 28 U.S.C. § 1452(a) and 28 U.S.C. § 1334(b),
17 by reference to the bankruptcy code. Among other reasons, Plaintiff is a governmental unit acting
18 to enforce its police and regulatory powers, and its claims do not arise under Title 11 of the United
19 States Code or arise in or relate to any case under Title 11. In addition, even if the case were
20 removable pursuant to Section 1452(a), this Court should abstain from hearing the claims and
21 remand the case on equitable grounds, including because the state courts are better suited for
22 adjudicating the state law claims raised in the Complaint. *See* 28 U.S.C. § 1452(b); 28 U.S.C.
23 § 1334(c).

24 To the extent this case is removable with respect to some of the Defendants and/or claims,
25 the Court must remand the non-removable parties and claims and should not exercise any
26 supplemental or other additional jurisdiction it may have.

27 Lastly, to the extent that Defendants intend to expand on the articulations set forth in their
28 Notice of Removal, as the Notice implies, *see* Dkt. No. 1 at 5:26 (stating that Defendants "will not

1 be limited to the specific articulations in this Notice”), Plaintiff contends and moves that
2 Defendants are limited to those bases articulated in the Notice. *See, e.g., In re Methyl Tertiary*
3 *Butyl Ether (“MTBE”) Products Liability Litigation*, 488 F.3d 112, 124 (“In determining whether
4 jurisdiction is proper, we look only to the jurisdictional facts alleged in the Notices of Removal”);
5 *accord, e.g., Colorado v. Symes*, 286 U.S. 510, 518–19 (1932) (“The burden is upon him who
6 claims the removal plainly to set forth by petition made, signed, and unequivocally verified by
7 himself all the facts relating to the occurrence, as he claims them to be, on which the accusation is
8 based”).

9 Briefing and hearing on these matters will follow pursuant to the schedule set forth in the
10 stipulation and Order previously referenced.

11
12 Dated: September 25, 2017

**OFFICE OF THE COUNTY COUNSEL
COUNTY OF SAN MATEO**

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14
15 By: /s/ John C. Beiers

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25 *individually and on behalf of the People of the*
26 *State of California*